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IN THE FIRST JUDICIAL DISTRICT COURT  
IN AND FOR LARAMIE COUNTY, STATE OF WYOMING

**FILED**

FEB 07 2013

SANDY LANDERS  
CLERK OF THE DISTRICT COURT

PEOPLE OF THE STATE OF )  
WYOMING, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
PACIFICORP, an Oregon corporation, )  
 )  
Defendant. )

Docket No. 180-628

**CONSENT DECREE**

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), in the name of the People of the State of Wyoming as Plaintiff, pursuant to Sections 901(a) and 903(c) of the Wyoming Environmental Quality Act (Act) Wyo. Stat. Ann. §§ 35-11-901(a) and 903(c) (2012), has filed a Complaint against Defendant PacifiCorp, an Oregon corporation, alleging that PacifiCorp failed to comply with Condition No. 6.i.7 of Permit MD-12186 at its Jim Bridger Plant facility (Facility) located in Sweetwater County, Wyoming. The Parties, DEQ/AQD and PacifiCorp, state, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties at arms length and in good faith and will avoid or settle certain litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, the Parties, by and through their respective attorneys, have agreed to the following terms for resolving this litigation prior to trial, before the taking of

evidence, without adjudication or admission of any issue of fact or law, and with the consent of the Parties,

**IT IS HEREBY ORDERED, ADJUDGED and DECREED** as follows:

**I. Jurisdiction and Venue**

This Court has jurisdiction over the subject matter and parties in this civil action under Section 901(a) of the Act. Wyo. Stat. Ann. § 35-11-901(a). Venue is proper in Laramie County under Section 903(c) of the Act. Wyo. Stat. Ann. § 35-11-903(c).

**II. Parties**

A. PacifiCorp is an Oregon corporation and is a partial owner and operator of the Facility located in Sweetwater County, Wyoming.

B. DEQ/AQD is the agency of Wyoming state government responsible for enforcing the Act, the Wyoming Air Quality Standards and Regulations (Air Quality Rules), the State Implementation Plan (State Plan) adopted pursuant to the federal Clean Air Act as amended, and permits issued pursuant to those provisions including Permit MD-12186.

**III. Background**

A. PacifiCorp

1. PacifiCorp partly owns and operates the Facility.
2. PacifiCorp is a “person” as defined in Wyo. Stat. Ann. § 35-11-103(a)(vi) and Rules Dep’t of Env’tl. Quality, Air Quality Div., Ch. 1, § 3(a) (2012).
3. PacifiCorp holds various DEQ/AQD permits relating to the Facility, including Permit MD-12186.

B. DEQ Permit MD-12186

1. The Act establishes a statutory scheme which is designed in part to enable the State of Wyoming to prevent, reduce, and eliminate pollution; to preserve and enhance the State of Wyoming’s air, water, and land resources; and, to allow the State of Wyoming to plan the development, use, reclamation, and enhancement of its air, land and water resources. Wyo. Stat. Ann. § 35-11-102.

2. Wyo. Stat. Ann. § 35-11-801(a) provides in pertinent part, “[i]n granting permits, the [DEQ] director may impose such conditions as may be necessary to accomplish the purpose of [the Wyoming Environmental Quality Act] which are not inconsistent with the existing rules, regulations and standards.”

3. Chapter 6, Section 2 of the Air Quality Rules prescribes the applicability and procedures for issuing permits to sources under Wyoming’s construction permitting program. Rules Dep’t of Env’tl. Quality, Air Quality Div., Ch. 6, § 2.

4. Chapter 6, Section 2(f) of the Air Quality Rules authorizes DEQ/AQD to impose reasonable conditions upon construction or modification permits, including emission limits, and emission testing and monitoring requirements. Rules Dep’t of Env’tl. Quality, Air Quality Div., Ch. 6, § 2(f).

5. On November 15, 2011, DEQ/AQD issued Permit MD-12186 to PacifiCorp, in part to modify and update permit requirements.

6. Condition No. 6.i.7 of Permit MD-12186 limits sulfuric acid emissions from Unit 2 of the Facility to 0.004 lb/MMBtu.

C. DEQ Notice of Violation Docket No. 4994-12 (Notice of Violation)

1. Pursuant to Wyo. Stat. Ann. § 35-11-701, the DEQ/AQD issued a Notice of Violation, Docket No. 4994-12 (Notice of Violation) to PacifiCorp, dated April 30, 2012, alleging that PacifiCorp violated the Act, the Air Quality Rules, and Permit MD-12186 by failing to comply with the sulfuric acid mist emission permit limit for Unit 2 of the Facility.

2. Any person who violates any provision of Article 2 of the Act, the Air Quality Rules, or any standard or permit adopted pursuant to those provisions, “is subject to a penalty not to exceed ten thousand dollars (\$10,000.00) for each violation for each day during which violation continues, a temporary or permanent injunction, or both a penalty and an injunction[.]” Wyo. Stat. Ann. § 35-11-901(a).

#### IV. Settlement

Without admitting any of the facts alleged in the Notice of Violation or Complaint, and without admitting any liability or failure to comply with permit conditions, PacifiCorp agrees to the following:

A. Stipulated Civil Penalty. Within thirty (30) days after notice to PacifiCorp of entry by the Court of this Consent Decree, PacifiCorp agrees to pay to the DEQ/AQD the sum of eight thousand seven hundred fifty dollars and no cents (\$8,750.00) (Stipulated Civil Penalty). PacifiCorp shall make the check payable to the Department of Environmental Quality and shall deliver it to Nancy Vehr, Senior Assistant Attorney General, Wyoming Attorney General's Office, 123 Capitol Building, Cheyenne, WY 82002.

B. Supplemental Environmental Project. In addition to paying a Stipulated Civil Penalty, PacifiCorp agrees to complete the following Supplemental Environmental Project.

1. A Supplemental Environmental Project is a project that is beneficial for the environment and is otherwise not required by applicable statutes, regulations, permits, or orders. PacifiCorp's Supplemental Environmental Project (Project) will benefit the environment through activities conducted by the University of Wyoming Environmental Engineering Internship Program.

2. PacifiCorp agrees to complete this Project by submitting a check made payable to the University of Wyoming in the amount of eight thousand seven hundred fifty dollars and no cents (\$8,750.00) for the University of Wyoming Environmental Engineering Internship Program account WYDEQ6867. PacifiCorp shall make full payment for this Project within thirty (30) days after PacifiCorp has been notified that the Court has entered this Consent Decree. PacifiCorp shall submit the payment to Shannyn Adkins, University of Wyoming, Sponsored Programs, 1000 East University Avenue, Dept. 3355, Laramie, WY 82071. Within thirty (30) days after completing this Project, PacifiCorp shall provide evidence that it completed this Project to Nancy Vehr, Senior Assistant Attorney General, at the address noted in Section IV.A.

3. PacifiCorp certifies that as of the date it signed this Consent Decree, it was not required to perform or develop this Project by any federal, state, or local law or regulation; nor was PacifiCorp required to perform or develop this Project pursuant to any other agreement or relief in any other case. PacifiCorp further certifies that it has not received and is not negotiating to receive credit for this Project in any other pending action.

C. Satisfaction. Payment of the Stipulated Civil Penalty and successful completion of the Project shall constitute full satisfaction of PacifiCorp's obligations under this Consent Decree.

#### **V. Release and Covenant Not to Sue and Dismissal with Prejudice**

A. DEQ/AQD agrees that payment of the Stipulated Civil Penalty and completion of the Project as specified in Section IV of this Consent Decree shall constitute full satisfaction of the claims against PacifiCorp that the Plaintiff alleged in the Complaint initiating this action or in the Notice of Violation.

B. In consideration of PacifiCorp's payment of the Stipulated Civil Penalty and completion of the Project, the DEQ/AQD and the State of Wyoming hereby release and covenant not to sue PacifiCorp, its respective successors, assigns, affiliates, parents, officers, directors, employees, and representatives, as to any common law claims, statutory claims, or other claims or causes of action arising out of the facts, transactions, or events which were alleged in the Complaint initiating this action or in the Notice of Violation on the basis of knowledge DEQ/AQD actually had at the time of issuing the Notice of Violation.

C. This covenant not to sue is expressly conditioned upon the complete and satisfactory performance by PacifiCorp as specified in Section IV of this Consent Decree.

D. Within thirty (30) days after the complete and satisfactory performance by PacifiCorp of the terms of this Consent Decree, the DEQ/AQD shall request that the Court terminate this Consent Decree and dismiss this action with prejudice as to all claims which were made in this lawsuit.

E. The terms of Section V shall survive the termination of the Consent Decree.

## **VI. Parties Bound**

A. This Consent Decree shall apply to, and be binding upon PacifiCorp, its successors and assigns and upon the DEQ/AQD and the State of Wyoming.

B. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Consent Decree shall not be construed so as to create such status. The rights, duties, and obligations contained in this Consent Decree shall operate among the Parties to this Consent Decree.

C. Nothing in this Consent Decree relieves PacifiCorp of its duty to comply with the Act, the Air Quality Rules, Wyoming's State Plan, the federal Clean Air Act, and any rules, regulations, and standards adopted thereunder including any permit requirements.

D. This Consent Decree is not and shall not be construed to be a permit or permit modification issued pursuant to any federal, state, or local statute, ordinance, or regulation. PacifiCorp shall remain solely responsible for its compliance with the terms of this Consent Decree, all permits, and all applicable federal, state, and local laws and regulations.

## **VII. Terms Not Severable**

The terms of this Consent Decree, which embody the comprehensive stipulated settlement between the Parties, are not severable.

## **VIII. Reservation of Rights**

A. By signing this Consent Decree, PacifiCorp does not admit that it violated any provision of the Act, the Air Quality Rules, Wyoming's State Plan, the federal Clean Air Act, or permits or waivers issued pursuant to such authority. By entering this Consent Decree, PacifiCorp does not admit or deny the validity of any allegation contained in the Notice of Violation or the Complaint.

B. DEQ/AQD and the State of Wyoming reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, including seeking injunctive relief and/or civil penalties.

C. DEQ/AQD and the State of Wyoming do not waive sovereign immunity by entering into this Consent Decree and retain immunity and all defenses available to them as sovereigns under all state and federal law, except that any of the Parties may bring an action to seek interpretation or enforcement of this Consent Decree. Each party shall bear its own costs, fees, and expenses in any such action.

**IX. Termination of Consent Decree**

Except as otherwise provided in Section V, the terms and conditions of this Consent Decree shall terminate upon the DEQ/AQD's filing of written notice to the Court confirming the completion of PacifiCorp's obligations under this Consent Decree and the Court's entry of a Termination and Dismissal Order.

**X. Attorney's Fees/Costs of Action**

Each party shall bear its own attorneys fees and costs of this action.

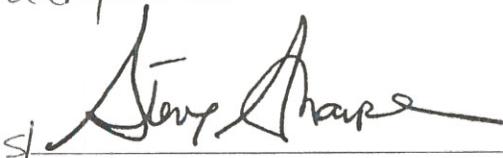
**XI. Retention of Jurisdiction**

This Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree, to enter such orders as are appropriate under the Consent Decree, and to resolve all disputes as may be necessary or appropriate for the construction or to carry out the terms of this Consent Decree until it is terminated as provided above.

**XII. Authority**

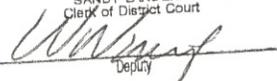
The signatories certify that they are duly authorized to bind their respective Parties to this Consent Decree.

DATED this 5<sup>th</sup> day of February, 2013.

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

Peter G. Arnold

STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE  
I, Sandy Landers, Clerk of the District Court in and for the County of Laramie, Wyoming, do hereby certify that the within and foregoing is a full true and correct copy of the original thereof as the same appears on file or of record in my office and that the same is in full force and effect as of this date.

Witness my hand and seal of said court this 7 day of Feb 2013  
SANDY LANDERS  
Clerk of District Court  
By   
Deputy

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

Steven A. Dietrich  
Steven A. Dietrich, Administrator  
Air Quality Division

1-10-13  
Date

Todd Parfitt  
Todd Parfitt, Director  
Department of Environmental Quality

1/11/13  
Date

FOR PACIFICORP:

By: John A. Coppede  
Name: John A. Coppede  
Title: Counsel for PacificCorp

1/8/2013  
Date

APPROVAL AS TO FORM:

Nancy E. Vehr  
Nancy E. Vehr (#6-3341)  
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123 Capitol Building  
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Attorney for DEQ/AQD

1/2/2013  
Date

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John A. Coppede (#5-2485)  
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jcoppede@hickeyevans.com  
Attorney for PacificCorp

1/3/2013  
Date

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7 day of Feb, 2013, a true copy of the foregoing *Consent Decree* was mailed, postage prepaid to the following:

John A. Coppede <sup>B</sup>  
Hickey & Evans, LLP  
P.O. Box 467  
Cheyenne, WY 82003-0467

Wyoming Attorney General's Office <sup>m</sup>  
Attn: Nancy E. Vehr  
123 Capitol Building  
Cheyenne, WY 82002

*Sandy hamden*

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CLERK OF DISTRICT COURT

*W. Wang*

Deputy Clerk District Court