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

FILED

JUN 25 2013

SANDY LANDERS
CLERK OF THE DISTRICT COURT

PEOPLE OF THE STATE OF)
WYOMING,)
)
Plaintiff,)
)
v.)
)
BLACK HILLS CORPORATION,)
a South Dakota corporation,)
)
Defendant.)

Docket No. 181-220

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, under 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 Black Hills Corporation, a South Dakota corporation, alleging that Black Hills failed to comply with Condition No. 8 of Permit CT-4517A at its WyGen III facility (Facility) located in Campbell County, Wyoming. The Parties, DEQ/AQD and Black Hills, state, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties at arm's 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. Black Hills is a South Dakota corporation and is the owner and operator of the Facility located in Campbell County.

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 CT-4517A.

III. Background

A. Black Hills

1. Black Hills owns and operates the Facility.
2. Black Hills 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. Black Hills holds various DEQ/AQD permits relating to the Facility, including Permit CT-4517A.

B. DEQ Permit CT-4517A

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 air pollution 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) (2012).

5. On November 24, 2008, DEQ/AQD issued Permit CT-4517A to Black Hills for the Facility.

6. Condition No. 8 of Permit CT-4517A limits filterable particulate matter emissions, including PM10, from the Facility’s ES3-01PC Boiler to 0.012 lb/MMBtu (pounds per million Btu) and also to 15.6 lb/hr (pounds per hour).

C. DEQ Notice of Violation Docket No. 5124-13 (Notice of Violation)

1. Under Wyo. Stat. Ann. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 5124-13 (Notice of Violation) to Black Hills, dated February 4, 2013, alleging that Black Hills violated the Act, the Air Quality Rules, and Permit CT-4517A by failing to comply with the filterable particulate matter lb/MMBtu and lb/hr emission limits for the Facility’s ES3-01 PC Boiler from September 26, 2012, through October 11, 2012.

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

A. Within thirty (30) days after notice to Black Hills of entry by the Court of this Consent Decree, Black Hills, without admitting any of the facts alleged in the Notice of Violation or the Complaint and without admitting liability or failure to comply with any permit requirements, agrees to pay to the DEQ/AQD the sum of ten thousand dollars and no cents (\$10,000.00) as a full and complete stipulated civil penalty payment in order to resolve this matter. Black Hills 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.

2. Payment of the stipulated civil penalty shall constitute full satisfaction of Black Hills'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 as specified in Section IV of this Consent Decree shall constitute full satisfaction of the claims against Black Hills that the People of the State of Wyoming alleged in the Complaint initiating this action or in the Notice of Violation.

B. In consideration of Black Hills's payment of the stipulated civil penalty, the DEQ/AQD and the State of Wyoming hereby release and covenant not to sue Black Hills, 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 Black Hills's complete and satisfactory performance specified in Section IV of this Consent Decree.

D. Within thirty (30) days after Black Hills's complete and satisfactory performance of the Consent Decree terms, 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 Black Hills, 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 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 Black Hills 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. Black Hills 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, Black Hills 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, Black Hills 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 Black Hills'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 20th day of June, 2013.

of Peter G. Arnold
DISTRICT COURT JUDGE

STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE
I, Sandy Landers, Clerk of the District Court, 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 20th day of June, 2013.
SANDY LANDERS
Clerk of District Court

By [Signature]

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: Steven A. Dietrich Date 6-3-13
Steven A. Dietrich, Administrator
Air Quality Division

By: Todd Parfitt Date 6/4/13
Todd Parfitt, Director
Department of Environmental Quality

FOR BLACK HILLS CORPORATION:

By: Steven J. Helmers Date 5.23.13
Steven J. Helmers
Senior VP and General Counsel



APPROVAL AS TO FORM:

Nancy E. Vehr Date 5/13/13
Nancy E. Vehr (#6-3341)
Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002
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Attorney for DEQ/AQD

John A. Sundahl
John A. Sundahl (#5-1244)
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1725 Carey Ave.
P.O. Box 328
Cheyenne, WY 82003-0328
Ph: (307) 632-6421
Fax: (307) 632-7216
jsundahl@spkn.org
Attorney for Black Hills Corporation

Date 5/29/13

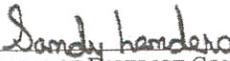


CERTIFICATE OF SERVICE

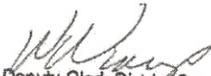
I hereby certify that on the 25 day of June, 2013, a true copy of the foregoing *Consent Decree* was mailed, postage prepaid to the following:

John A. Sundahl
Sundahl, Powers, Kapp & Martin, LLC
P.O. Box 328
Cheyenne, WY 82003-0328

Wyoming Attorney General's Office
Attn: Nancy E. Vehr
123 Capitol Building
Cheyenne, WY 82002



CLERK OF DISTRICT COURT


Deputy Clerk District Court

Jeremiah I. Williamson (Wyo. Bar No. 7-4748)
Wyoming Attorney General's Office
123 State Capitol
Cheyenne, Wyoming 82002
(307) 777-6946
(307) 777-3542 *facsimile*
jeremiah.williamson@wyo.gov

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

PEOPLE OF THE STATE OF)
WYOMING,)
)
Plaintiff,)
)
v.)
)
BLACK HILLS CORPORATION,)
a South Dakota corporation,)
)
Defendant.)

Docket No. 181-220

FILED

JUL 30 2013

SANDY LANDERS
CLERK OF THE DISTRICT COURT

**NOTICE OF SATISFACTION AND REQUEST FOR TERMINATION OF
CONSENT DECREE AND DISMISSAL WITH PREJUDICE**

Plaintiff, the People of the State of Wyoming, filed a complaint under Wyo. Stat. Ann. § 35-11-901(a) for assessment of civil penalties against Defendant Black Hills Corporation alleging that Black Hills violated Permit CT-4517A at its WyGen III facility located in Campbell County, Wyoming. The Parties, through their respective attorneys, resolved the allegations in the Complaint through a Consent Decree approved by the Court. Black Hills has paid the stipulated penalty required by section IV.A of the Consent Decree and satisfied all other requirements of the Decree. Pursuant to section V.D of the Consent Decree, the Consent Decree can be terminated. Therefore, Plaintiff hereby requests that the Court terminate the Consent Decree and dismiss this matter with prejudice.

Submitted this 30th day of July, 2013.


Jeremiah I. Williamson (Wyo. Bar. No. 7-4748)
Wyoming Attorney General's Office
123 State Capitol
Cheyenne, Wyoming 82002
(307) 777-6946
(307) 777-3542 *facsimile*
jeremiah.williamson@wyo.gov
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of July, 2013, a true copy of the foregoing NOTICE OF SATISFACTION AND REQUEST FOR TERMINATION OF CONSENT DECREE AND DISMISSAL WITH PREJUDICE was served by placing a true and correct copy in the United States Mail, postage prepaid, and via electronic mail addressed to the following:

John A. Sundahl
Sundahl, Powers, Kapp & Martin, LLC
1725 Carey Avenue
P.O. Box 328
Cheyenne, Wyoming 82003-0328
jsundahl@spkm.org


Wyoming Attorney General's Office

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2013, a true copy of the foregoing ORDER TERMINATING CONSENT DECREE AND DIMISSING WITH PREJUDICE was served by placing a true and correct copy in the United States Mail, postage prepaid, and via electronic mail addressed to the following:

John A. Sundahl
Sundahl, Powers, Kapp & Martin, LLC
P.O. Box 328
Cheyenne, WY 82003-0328

Wyoming Attorney General's Office
Attn: Jeremiah I. Williamson
123 State Capitol
Cheyenne, WY 82002

Clerk of the District Court

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

PEOPLE OF THE STATE OF)
WYOMING,)
)
Plaintiff,)
)
v.)
)
BLACK HILLS CORPORATION,)
a South Dakota corporation,)
)
Defendant.)

Docket No. 181-220

FILED
AUG 08 2013
SANDY LANDERS
CLERK OF THE DISTRICT COURT

**ORDER TERMINATING CONSENT DECREE AND
DISMISSING WITH PREJUDICE**

Plaintiff, the People of the State of Wyoming, filed a complaint under Wyo. Stat. Ann. § 35-11-901(a) for assessment of civil penalties against Defendant Black Hills Corporation alleging that Black Hills violated Permit CT-4517A at its WyGen III facility located in Campbell County, Wyoming. The Parties, through their respective attorneys, resolved the allegations in the Complaint through a Consent Decree approved by the Court on June 20, 2013. The Court received notice from the State that Black Hills has fully complied with the terms of the Consent Decree. It is therefore ORDERED, ADJUDGED, and DECREED that:

Black Hills has complied in all respects with the Consent Decree. Pursuant to Section V.D of the Consent Decree, the Decree is hereby terminated and the matter is dismissed with prejudice. Each party shall bear its own costs and attorneys fees.

DATED this 5th day of Aug., 2013.

S/ [Signature]
District Court Judge

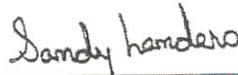
STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE
Sandy Landers, Clerk of the District Court - and for the
County of Laramie, Wyoming, do hereby certify that the within and
attached is a true and correct copy of the original thereof as
the same appears on file of record in my office and that the
same is in full force and effect as of this date.
Witness my hand and seal of said court this 8 day of Aug. 2013
SANDY LANDERS
Clerk of District Court
By [Signature]
Deputy

CERTIFICATE OF SERVICE

I hereby certify that on this 8 day of Aug., 2013, a true copy of the foregoing ORDER TERMINATING CONSENT DECREE AND DIMISSING WITH PREJUDICE was served by placing a true and correct copy in the United States Mail, postage prepaid, and via electronic mail addressed to the following:

John A. Sundahl
Sundahl, Powers, Kapp & Martin, LLC
P.O. Box 328
Cheyenne, WY 82003-0328

Wyoming Attorney General's Office
Attn: Jeremiah I. Williamson
123 State Capitol
Cheyenne, WY 82002



Clerk of the District Court



Deputy Clerk, District Court