

Jeremiah I. Williamson (#7-4748)
Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002
Ph: (307) 777-6946
Fax: (307) 777-3542
jeremiah.williamson@wyo.gov

Maryl L. Fredrickson (#7-4722)
Holland & Hart, LLP
2515 Warren Avenue, Suite 450
P.O. Box 1347
Cheyenne, WY 82003-1347
Ph: (307) 778-4214
Fax: (307) 778-8175
mifredrickson@hollandhart.com

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

PEOPLE OF THE STATE OF)
WYOMING,)
)
Plaintiff,)
)
v.)
)
PEABODY POWDER RIVER MINING,)
LLC, f/k/a Powder River Coal, LLC, a)
Wyoming limited liability company,)
)
Defendant.)

Docket No. 181-408

FILED

AUG 26 2013

SANDY LANDERS
CLERK OF THE DISTRICT COURT

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 Peabody Powder River Mining, LLC, f/k/a Powder River Coal, LLC, a Wyoming limited liability company (Powder River Mining), alleging that Powder River Mining failed to comply with Chapter 3, Section 2(f) of the Wyoming Air Quality Standards and Regulations (Air Quality Rules), and Condition No. 24 of Permit MD-6375A at its North Antelope Rochelle Mine facility (Facility) located in Campbell County, Wyoming. The Parties, DEQ/AQD and Powder River Mining, 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. Powder River Mining is a Wyoming limited liability company and is the operator of the Facility located in Campbell and Converse Counties, 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-6375A.

III. Background

A. Powder River Mining

1. Powder River Mining operates the Facility.

2. Powder River Mining 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. Powder River Mining holds various DEQ/AQD permits relating to the Facility, including Permit MD-6375A.

B. DEQ Permit MD-6375A

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 (2012).

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 April 26, 2010, DEQ/AQD issued Permit MD-6375A to Powder River Coal, LLC for the Facility.

6. Condition No. 20 of Permit MD-6375A requires that Powder River Mining operate an ambient PM10 monitoring network at the Facility “to demonstrate compliance with the ambient particulate standards in Chapter 2, Section 2 of the Air Quality Rules.

7. Condition No. 24 of Permit MD-6375A requires that Powder River Mining adhere to their contingency action plan for high ambient particulate events at the Facility.

8. Under Powder River Mining’s contingency action plan, when the monitored 24-hour PM10 value is above 75 ug/m³ but below 100 ug/m³, Powder River Mining’s response must include “determin[ing] possible emission source areas at and surrounding the mine . . . [checking] factors such as the weather forecast and actual wind speed and direction.” As necessary, Powder River Mining also must implement

preparatory actions such as: “determining the availability and staffing of water trucks, the nature and location of any contractor activities, or optional digging or haulage plans.”

9. Under Powder River Mining contingency action plan, when the monitored 24-hour PM₁₀ value exceeds 100 µg/m³, Powder River Mining’s response must include, but may not be limited to “inspection of the immediate vicinity of the monitors, focused chemical and water treatment in active mine areas, and if necessary, temporary realignment or suspension of certain mine activities that are determined to contribute to the levels of concern.”

C. Air Quality Rules for Fugitive Dust Emissions

1. Chapter 3, Section 2(f)(i)(A) of the Air Quality Rules provides that “[a]ny person engaged in clearing or leveling of land, earthmoving, excavation, or movement of trucks or construction equipment over access haul roads or cleared land shall take steps to minimize fugitive dust from such activities. Such control measures may include frequent watering and/or chemical stabilization.” Rules Dep’t of Env’tl. Quality, Air Quality Div., Ch. 3, § 2(f)(i)(A).

2. Chapter 3, Section 2(f)(ii)(A) of the Air Quality Rules provides that “[a]ny person owning, operating or maintaining a new or existing material storage, handling and/or hauling operation shall minimize fugitive dust from such operations. Such control measures may include the application of asphalt, oil, water or suitable chemicals on unpaved roads, material stockpiles and other surfaces which can give rise to airborne dust.” *Id.* at § 2(f)(ii)(A).

D. Particulate Matter and the 24-hour PM₁₀ Concentration on August 23, 2011

1. “Particulate Matter” is a generic term for “a broad class of chemically and physically diverse substances that exist as discrete particles (liquid droplets or solids) over a wide range of sizes.” National Ambient Air Quality Standards for Particulate Matter, Final Rule, 78 Fed. Reg. 3086, 3090 n.4 (Jan. 15, 2013). In Wyoming, particulate matter means “any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.” Rules Dep’t of Env’tl.

Quality, Air Quality Div., Ch. 1 § 3(a). “Particulate matter emissions” are “all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods[.]” *Id.* “PM10 emissions” means “finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air[.]” *Id.*

2. The term “ambient air” refers to “that portion of the atmosphere, external to buildings, to which the general public has access.” *Id.* at Ch. 2 § 1(a).

3. The Wyoming 24-hour average ambient air quality standard for PM10 is 150 micrograms per cubic meter (ug/m3). *Id.* at Ch. 2 § 2(a)(i).

4. On August 23, 2011, the Facility’s RO-1 PM10 ambient air monitor measured a final 24-hour PM10 concentration of 217.6 ug/m3.

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

1. Pursuant to Wyo. Stat. Ann. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 5014-12 (Notice of Violation) to Powder River Mining alleging, in part, that Powder River Mining violated the Act and the Air Quality Rules by failing to minimize fugitive dust from activities at the Facility, and also failed to comply with Condition No. 24 of Permit MD-6375A on August 23, 2011.

2. The Notice of Violation also alleged that Powder River Mining violated the Act and the Air Quality Rules by failing to minimize fugitive dust from activities at the Facility, and also failed to comply with Condition No. 24 of Permit MD-6375A on November 12, 2011.

3. 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).

F. EQC Docket No. 12-2201A

1. On August 15, 2012, Powder River Mining petitioned the Wyoming Environmental Quality Council (EQC) for a hearing with respect to the Notice of Violation, and DEQ/AQD actions preceding the Notice of Violation, including a letter dated June 12, 2012 (Letter from Cara Keslar, Monitoring Section Supervisor, DEQ/AQD, to Staci Hammond, Environmental Supervisor, Powder River Coal, LLC), and a letter dated June 14, 2012 (Letter from Cara Keslar to Staci Hammond). *See In the Matter of the Notice of Violation Issued to Powder River Coal, LLC*, EQC Docket No. 12-2201A.
2. The DEQ/AQD and Powder River Mining engaged in settlement discussions.
3. During the course of the settlement discussions, the DEQ/AQD reviewed additional information from Powder River Mining about the November 12, 2011 exceedance and Powder River Mining's request for DEQ/AQD to "flag" the exceedance in EPA's Air Quality System as a high wind exceptional event under 40 C.F.R. § 50.14.
4. The DEQ/AQD found that Powder River Mining demonstrated that the November 12, 2011 exceedance met the criteria for EPA's exceptional event demonstrations. *See* 40 C.F.R. §§ 50.1(j) and 50.14.
5. The DEQ/AQD noticed Powder River Mining's request to flag the November 12, 2011 exceedance as an exceptional event for a 30-day written public comment period from January 28, 2013 through February 27, 2013. The DEQ/AQD received no written comments.
6. On April 15, 2013, the DEQ/AQD "flagged" the November 12, 2011 data in EPA's Air Quality System database as a high wind exceptional event.
7. On May 20, 2013, the DEQ/AQD submitted Powder River Mining's exceptional event demonstration package for the November 12, 2011 exceedance to EPA and requested that EPA determine that the exceedance qualifies as an exceptional event and enter a "concurrence flag" in EPA's Air Quality System database.

8. The allegation related to the November 12, 2011 exceedance in the Notice of Violation is rescinded.

IV. Settlement

A. Within thirty (30) days after notice to Powder River Mining of entry by the Court of this Consent Decree, Powder River Mining, 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 statutory, regulatory, or permit requirements, agrees to pay to the DEQ/AQD the sum of two thousand dollars and no cents (\$2,000.00) as a stipulated civil penalty payment. Powder River Mining shall make the check payable to the Department of Environmental Quality and shall deliver it to Jeremiah Williamson, Assistant Attorney General, Wyoming Attorney General's Office, 123 Capitol Building, Cheyenne, WY 82002.

B. Powder River Mining agrees to implement the following actions:

1. Install wind speed/direction monitoring equipment (anemometers) on three TEOMs at NARM. These anemometers will allow accurate, real time, identification of meteorological conditions at the samplers where elevated levels of emissions may be recorded. This component of the project is estimated to be complete by the end of April 2013.

2. Develop procedures for translating this new meteorological data onto maps for use in identifying potential sources of emissions that may significantly contribute to elevated measurements of PM₁₀. This component of the project is estimated to be completed by the end of July 2013.

3. Develop and present a 2013 training class for various levels of Powder River Mining personnel. Training will address actions for responding to Action Plan alarms at the mine, including reactionary measures, and for the proper use of data generated by the newly installed anemometers. Training will be presented to (1) upper management, (2) field supervisors and dispatch personnel, and (3) the NARM workforce. This component of the project is estimated to be complete by the end of May 2013. By August 15, 2013, Powder River Mining

will provide evidence to the Department of Environmental Quality Air Quality Division that this training has been completed.

4. Develop a module to address air protection topics in training for new employees by March 31, 2013.

C. By August 31, 2013, Powder River Mining shall submit documentation to the DEQ/AQD, Attention: Karen Godman, to demonstrate that Powder River Mining completed each item listed in Section IV.B.

D. Payment of the stipulated civil penalty and completion of all the items in Section IV.B shall constitute full satisfaction of Powder River Mining'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 all the items as specified in Section IV of this Consent Decree shall constitute full satisfaction of the claims against Powder River Mining 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 Powder River Mining's payment of the stipulated civil penalty and completion of the other items specified in Section IV.B of this Consent Decree, the DEQ/AQD and the State of Wyoming hereby release and covenant not to sue Powder River Mining, 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 Powder River Mining's complete and satisfactory performance of its obligations specified in Section IV of this Consent Decree.

D. Within thirty (30) days after Powder River Mining'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 Powder River Mining, 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 between the Parties to this Consent Decree.

C. Nothing in this Consent Decree relieves Powder River Mining 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.

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, Powder River Mining 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 authorities. By entering this Consent Decree, Powder River Mining does not admit or deny the validity of any allegation arising from the measured exceedance of the 24-hour PM10 standard at the RO-1 monitoring site on August 23, 2011 that is contained in the Notice of Violation or the Complaint. By entering this Consent Decree, Powder River Mining denies the validity of any allegation arising from the measured exceedance of the 24-hour PM10

standard at the RO-1 monitoring site on November 12, 2011 that is contained in the Notice of Violation.

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. By entering this Consent Decree, Powder River Mining does not concede that DEQ/AQD's enforcement approach in this matter regarding measured exceedances of the 24-hour PM10 standard is the appropriate mechanism to address such exceedances. Powder River Mining reserves the right to challenge similar enforcement methods for future exceedances.

D. 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 Powder River Mining'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 arising from this Consent Decree as may be necessary or appropriate 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.

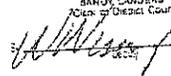
DATED this 23 day of Aug, 2013.


s/ _____
DISTRICT COURT JUDGE
Thomas Campbell

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 true and correct copy of the original 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 23 day of Aug, 2013.


SANDY LANDERS
Clerk of District Court

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

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

7-16-13
Date

By: Todd Parfitt
Todd Parfitt, Director
Department of Environmental Quality

7/16/13
Date

FOR PEABODY POWDER RIVER MINING:

By: Scott Durgin
Scott Durgin, President
Powder River Mining, LLC

7/23/13
Date

APPROVAL AS TO FORM:

Jeremiah I. Williamson
Jeremiah I. Williamson (#7-4748)
Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002
Ph: (307) 777-6946
Fax: (307) 777-3542
jeremiah.williamson@wyo.gov
Attorney for DEQ/AQD

7/18/13
Date

Maryt L. Fredrickson
Maryt L. Fredrickson (#7-4722)
Holland & Hart, LLP
2515 Warren Avenue, Suite 450
P.O. Box 1347
Cheyenne, WY 82003-1347
Ph: (307) 778-4214
Fax: (307) 778-8175
mlfredrickson@hollandhart.com

7/24/13
Date

CERTIFICATE OF SERVICE

I hereby certify that on the 26 day of Aug, 2013, a true copy of the foregoing *Consent Decree* was mailed, postage prepaid to the following:

Maryt L. Fredrickson
Holland & Hart, LLP
P.O. Box 1347
Cheyenne, WY 82003-1347

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

Sandy Hamdani

CLERK OF DISTRICT COURT

W. Hamdani
Deputy Clerk District Court