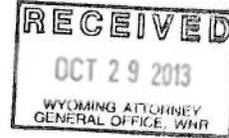


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IN THE FIRST JUDICIAL DISTRICT COURT  
IN AND FOR LARAMIE COUNTY, STATE OF WYOMING

PEOPLE OF THE STATE OF )  
WYOMING, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
HERMES CONSOLIDATED, LLC, a )  
Delaware limited liability company dba )  
WYOMING REFINING COMPANY, )  
 )  
Defendant. )

Docket No. 181-651

FILED

OCT 24 2013

SANDY LANDERS  
CLERK OF THE DISTRICT COURT

**CONSENT DECREE**

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ), in the name of the People of the State of Wyoming as Plaintiff, has filed a Complaint 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), against Defendant Hermes Consolidated, LLC, a Delaware limited liability company, doing business as Wyoming Refining Company (Wyoming Refining), alleging that Wyoming Refining failed to comply with the Act and the Wyoming Air Quality Standards and Regulations (Air Quality Rules) at its refinery facility (Facility) located in Newcastle, Weston County, Wyoming. The Parties 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, without requiring the

Defendant to file an answer, 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. ~~Hermes Consolidated, LLC, a Delaware limited liability company doing~~ business as Wyoming Refining Company, owns and operates the Facility located in Newcastle, Weston County, Wyoming.

B. DEQ is the agency of Wyoming state government responsible for enforcing the Act, the 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.

**III. Background**

A. Wyoming Refining

1. Wyoming Refining owns and operates the Facility.
2. Wyoming Refining 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).

B. Air Quality Rules

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(c) provides in pertinent part that a DEQ construction permit “is required before construction or modification of any industrial facility capable of causing or increasing air or water pollution in excess of

standards established by the department is commenced.” Wyo. Stat. Ann. § 35-11-801(c); *see also* Rules Dep’t of Env’tl. Quality, Air Quality Div., Ch. 6, § 2(a)(i) (2012).

3. Wyoming’s prevention of significant deterioration permitting program generally requires that existing stationary sources undergo a specific air quality review before any person makes a physical change or change in the method of operations if the net emissions increase of a regulated NSR pollutant from the existing source qualifies as a major modification. Rules Dep’t of Env’tl. Quality, Air Quality Div., Ch. 6, § 4(b).

4. A “major modification” means “any physical change in or change in the method or operation of a major stationary source that would result in: a significant emissions increase . . . of a regulated NSR pollutant. . . and a significant net emissions increase of that pollutant from the major stationary source.” *Id.* at § 4(a).

5. A “regulated NSR pollutant” means “any pollutant for which a national ambient air quality standard has been promulgated[.]” *Id.*

6. Carbon Monoxide is a pollutant for which a national ambient air quality standard has been promulgated. 76 Fed. Reg. 54294.

7. For Carbon Monoxide, a “significant emissions increase” means an increase in emissions that equals or exceeds 100 tons per year. Rules Dep’t of Env’tl. Quality, Air Quality Div., Ch. 6, § 4 (a).

C. DEQ Notice of Violation Docket No. 5028-12 (Notice of Violation)

1. Pursuant to Wyo. Stat. Ann. § 35-11-701, the DEQ issued Notice of Violation, Docket No. 5028-12 (Notice of Violation) to Wyoming Refining, dated August 8, 2012, alleging that Wyoming Refining violated the Act and the Air Quality Rules by failing to undergo prevention of significant deterioration review when it obtained permit MD-1500 in 2006.

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 Wyoming Refining of entry by the Court of this Consent Decree, Wyoming Refining, without admitting any of the facts alleged in the Notice of Violation or Complaint and without admitting liability or failure to comply with DEQ statutory, regulatory, or permit requirements, agrees to pay to the DEQ the sum of forty eight thousand dollars and no cents (\$48,000.00) (Stipulated Civil Penalty). Wyoming Refining 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 State Capitol, Cheyenne, Wyoming 82002.

B. Payment of the Stipulated Civil Penalty shall constitute full satisfaction of Wyoming Refining’s obligations under this Consent Decree.

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

A. DEQ agrees that payment of the Stipulated Civil Penalty as specified in Section IV.A of this Consent Decree shall constitute full satisfaction of DEQ’s allegations in the Complaint initiating this action and in the Notice of Violation.

B. In consideration of Wyoming Refining’s payment of the Stipulated Civil Penalty, the DEQ and the State of Wyoming hereby release and covenant not to sue Wyoming Refining, 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 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 Wyoming Refining as specified in Section IV.A of this Consent Decree.

D. Within thirty (30) days after Wyoming Refining's complete and satisfactory performance of the Consent Decree terms, the DEQ 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, Wyoming Refining, its successors, and assigns and upon the DEQ 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 Wyoming Refining 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. Wyoming Refining 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, Wyoming Refining 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, Wyoming Refining does not admit the validity of any allegation contained in the Notice of Violation or the Complaint.

B. DEQ 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 civil penalties.

C. DEQ 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.

D. Wyoming Refining shall not be required to file an Answer to the Complaint prior to the Court's action upon the Parties' Joint Motion for Consent Decree, or if the Court approves this Consent Decree. In the event that the Court does not approve this Consent Decree as presented and stipulated to by the Parties, all rights, claims, and defenses of the respective parties are expressly reserved, and nothing herein or in the Parties' Joint Motion for Entry of Consent Decree shall be deemed to be an admission of any fact or law by either party or to prejudice or waive either party's respective rights in this litigation. The Parties further agree that, in such event, they will move the Court for a scheduling and case management order and set a date by which Wyoming Refining shall file an Answer to the Complaint, and DEQ agrees that it will not seek entry or judgment by default against Wyoming Refining for not filing an answer prior to the date set by the Court in such order.

#### **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's filing of written notice to the Court confirming the completion of Wyoming Refining'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, costs, and expenses 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**

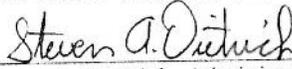
The signatories certify that they are duly authorized to bind their respective Parties to this Consent Decree. 22

DATED this 10<sup>th</sup> day of OCTOBER, 2013.

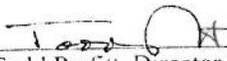
  
\_\_\_\_\_  
DISTRICT COURT JUDGE  
Thomas Campbell

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

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

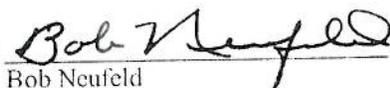
10-10-13  
Date

  
\_\_\_\_\_  
Todd Parfitt, Director  
Department of Environmental Quality

10/10/13  
Date

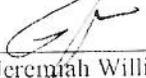
STATE OF WYOMING COUNTY OF LARAMIE SS AND SHERRILL  
COUNTY CLERK  
I, B. Wells, County Clerk of Laramie County, Wyoming, do hereby certify that the above is a true and correct copy of the original as filed in my office on the date and at the place specified herein.  
24 Oct. 13  
B. Wells  
COUNTY CLERK

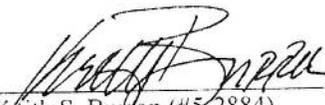
FOR HERMES CONSOLIDATED, LLC:

By:   
\_\_\_\_\_  
Bob Neufeld  
VP, Environment and Government Relations

9/30/2013  
Date

APPROVAL AS TO FORM:

  
\_\_\_\_\_  
Jeremiah Williamson (#7-4748) Date 10/8/13  
Attorney General's Office  
123 State Capitol  
Cheyenne, WY 82002  
Ph: (307) 777-6946  
Fax: (307) 777-3542  
jeremiah.williamson@wyo.gov  
Attorney for DEQ/AQD

  
\_\_\_\_\_  
Keith S. Burrton (#5-2884) Date October 3, 2013  
Associated Legal Group, LLC  
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Ph: (307) 632-2888  
Fax: (307) 632-2828  
kburrton@associatedlegal.com  
Attorney for ~~Wyoming Refining~~  
HERMES CONSOLIDATED, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24 day of October, 2013, a true copy of the foregoing *Consent Decree* was mailed, postage prepaid to the following:

Keith S. Burron - MB  
Associated Legal Group, LLC  
1807 Capitol Avenue, Suite 203  
Cheyenne, WY 82001

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

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*Sandy Sanders*  
CLERK OF DISTRICT COURT  
*B. Wells*  
Deputy Clerk District Court