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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. )  
 )  
BLACK BUTTE COAL COMPANY, )  
a joint venture )  
 )  
Defendant. )

Docket No. 182-021

**FILED**

FEB 18 2014

SANDY LANDERS  
CLERK OF THE DISTRICT COURT

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**CONSENT DECREE**

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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 Black Butte Coal Company (Black Butte), a joint venture between KCP, Inc. and Bitter Creek Coal Company, a subsidiary of Anadarko Petroleum Corporation, alleging that Black Butte Coal failed to comply with Chapter 3, Section 2(f) of the Wyoming Air Quality Standards and Regulations (Air Quality Rules), and various permit conditions at its Black Butte Mine facility (Facility) located in Sweetwater County, Wyoming. The Parties, DEQ/AQD and Black Butte, 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 Butte is a joint venture between KCP, Inc. and Bitter Creek Coal Company, a subsidiary of Anadarko Petroleum Corporation and is the owner and operator of the Facility.

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-7424.

**III. Background**

A. Black Butte

1. Black Butte owns and operates the Facility.
2. Black Butte is a “person” as defined in Wyo. Stat. Ann. § 35-11-103(a)(vi) and Rules Wyo. Dep’t of Env’tl. Quality, Air Quality Div., Ch. 1, § 3(a) (2012).
3. Black Butte holds various DEQ/AQD permits relating to the Facility, including Permit MD-7424.

B. DEQ Permit MD-7424

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.” Wyo. Stat. Ann. § 35-11-801(a).

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 Wyo. 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 Wyo. Dep’t of Env’tl. Quality, Air Quality Div., Ch. 6, § 2(f).

5. On March 19, 2009, DEQ/AQD issued Permit MD-7424 to Black Butte for the Facility.

6. Condition No. 12 of Permit MD-7424 requires that Black Butte "shall conduct weekly inspections of the Pit 8 coal truck dump control system to determine any repair measures necessary to minimize fugitive dust emissions and maintain proper operation of each control system. Corrective action and repair measures must be initiated in an expeditious manner when the control device is determined to be improperly maintained or operated."

7. Condition No. 14 of Permit MD-7424 requires that Black Butte "shall treat the inactive spoil piles in Pit 10 and Pit 11 with water or chemical dust suppressants to control fugitive dust emissions on a schedule such that treatment remains a viable control measure."

8. Condition No. 15 of Permit MD-7424 requires that Black Butte "shall treat disturbed pre-strip areas in Pit 10 and Pit 11 with water or chemical dust suppressants to control fugitive dust emissions on a schedule such that treatment remains

a viable control measure. Newly disturbed pre-strip areas in Pit 10 and Pit 11 shall be treated within seven (7) days of completion of stripping."

9. Condition No. 31 of Permit MD-7424 states that "[t]he coal stockpiles at the Black Butte Mine shall be treated with water, to the extent necessary, to minimize fugitive dust emissions."

10. Various permits issued to Black Butte for the Black Butte Mine require Black Butte to treat all haul roads, access roads, work areas, and stockpiles with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust from vehicular traffic and wind erosion.

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 Wyo. 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 October 29, 2011, January 18, 2012, February 25, 2012, and March 26, 2012.

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 Wyo. 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/m<sup>3</sup>). *Id.* at Ch. 2, § 2(a)(i).

4. On October 29, 2011, the Facility’s PM10 ambient air monitor for Pit 10 measured a final 24-hour PM10 concentration of 156.7 ug/m<sup>3</sup>.

5. On January 18, 2012, the Facility’s PM10 ambient air monitor for Pit 10 measured a final 24-hour PM10 concentration of 182.5 ug/m<sup>3</sup>.

6. On February 25, 2012, the Facility’s PM10 ambient air monitor for Pit 10 measured a final 24-hour PM10 concentration of 215.1 ug/m<sup>3</sup>.

7. On March 26, 2012, the Facility’s I-80 PM10 ambient air monitor measured a final 24-hour PM10 concentration of 224.1 ug/m<sup>3</sup>.

E. DEQ Notice of Violation Docket No. 5078-12 (Notice of Violation)

1. Under Wyo. Stat. Ann. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 5078-12 (Notice of Violation) to Black Butte alleging, in part, that Black Butte violated the Act and the Air Quality Rules by failing to comply with Conditions 12, 14, 15, and 31 of Permit MD-7424 when it did not minimize fugitive dust from activities at the Facility on October 29, 2011, January 18, 2012, February 25, 2012, and March 26, 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 Butte of entry by the Court of this Consent Decree, Black Butte, 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 sixty thousand dollars and no cents (\$60,000.00) as a stipulated civil penalty payment. Black Butte shall make the check payable to the Department of Environmental Quality and shall deliver it to Matthias Sayer, Assistant Attorney General, Wyoming Attorney General’s Office, 123 Capitol Building, Cheyenne, WY 82002.

B. Payment of the stipulated civil penalty shall constitute full satisfaction of Black Butte’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 Black Butte 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 Butte’s payment of the stipulated civil penalty specified in Section IV.A of this Consent Decree, the DEQ/AQD and the State of Wyoming hereby release and covenant not to sue Black Butte, 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 Butte’s complete and satisfactory performance specified in Section IV of this Consent Decree.

D. Within thirty (30) days after Black Butte'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 Butte, 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 Black Butte 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 Butte 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 Butte 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 Butte 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 Butte'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.

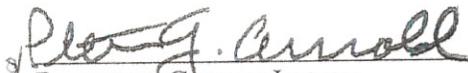
**XI. Retention of Jurisdiction**

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 13<sup>th</sup> day of Feb, 2014.

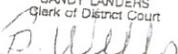
  
DISTRICT COURT JUDGE

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 18 day of Feb, 2014

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:

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

2-3-14  
Date

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

2/4/14  
Date

FOR BLACK BUTTE COAL COMPANY:

By: John Thomas  
John Thomas, Secretary  
KCP, Inc., managing partner  
Black Butte Coal Company

Jan 22, 2014  
Date

APPROVAL AS TO FORM:

Matthias L. Sayer  
Matthias L. Sayer (#7-4677)  
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123 Capitol Building  
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matthias.sayer@wyo.gov  
Attorney for DEQ/AQD

1-13-14  
Date

John Thomas  
John Thomas, General Counsel  
KCP, Inc.  
170 S. Main St., Suite 700  
Salt Lake City, UT 84101  
Ph: 801-539-3803  
j.thomas@ambreenergy.com  
Attorney for Black Butte Coal Company

Jan 22, 2014  
Date

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18~~th~~ day of February, 2014, a true copy of the foregoing *Consent Decree* was mailed, postage prepaid to the following:

John Thomas, General Counsel  
KCP, Inc. -m  
170 S. Main St., Suite 700  
Salt Lake City, UT 84101

Wyoming Attorney General's Office  
Attn: Matthias L. Sayer -m  
123 Capitol Building  
Cheyenne, WY 82002

*Sandy hamdeno*

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CLERK OF DISTRICT COURT

*B. Wells*  
Deputy Clerk District Court