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FILED

JUL 30 2013

Jim Ruby, Executive Secretary
Environmental Quality Council

**BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

IN THE MATTER OF THE)
NOTICE OF VIOLATION ISSUED) Docket No. 12-2201A
TO POWDER RIVER COAL LLC)

FIFTH JOINT MOTION TO EXTEND RESPONSE FILING DEADLINE

The State of Wyoming, Department of Environmental Quality, Air Quality Division (DEQ/AQD), and Peabody Powder River Mining, LLC, f/k/a Powder River Coal, LLC (Peabody Powder River Mining), jointly move the Council to extend the DEQ/AQD's deadline to file a response to Peabody Powder River Mining's Amended Notice of Appeal and Request for Hearing to September 30, 2013, pursuant to Chapter 1, Sections 1 and 3 of the DEQ Rules of Practice and Procedure.

DEQ/AQD and Peabody Powder River Mining have agreed to settle this matter through complaint and consent decree in the First Judicial District Court of Wyoming. Accordingly, DEQ/AQD filed a complaint, a copy of which is attached at Exhibit 1, on July 26, 2013. Within the next two weeks, DEQ/AQD and Peabody Powder River Mining

will jointly move the Court to enter a consent decree that will fully and finally resolve this matter. Upon the Court's entry of that decree, Peabody Powder River Mining will withdraw its appeal and request for hearing before the Council.

WHEREFORE, the DEQ and Peabody Powder River Mining jointly move this Council for an Order extending DEQ's response deadline until September 30, 2013. A proposed order is attached.

RESPECTFULLY SUBMITTED this 30th day of July, 2013.

COUNSEL FOR RESPONDENT STATE
OF WYOMING, DEPARTMENT OF
ENVIRONMENTAL QUALITY, AIR
QUALITY DIVISION:



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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 2013, I served a copy of the foregoing **FIFTH JOINT MOTION TO EXTEND RESPONSE FILING DEADLINE** by electronic mail to the following:

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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.)
)
PEABODY POWDER RIVER MINING,)
LLC, f/k/a Powder River Coal, LLC, a)
Wyoming limited liability company,)
)
Defendant.)

Docket No. 181-408

FILED

JUL 26 2013

SANDY LANDERS
CLERK OF THE DISTRICT COURT

COMPLAINT

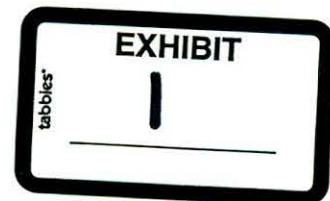
Plaintiff, the People of the State of Wyoming, by and through the Department of Environmental Quality, Air Quality Division (DEQ/AQD) and Wyoming's Attorney General (collectively referred to hereinafter as Wyoming), alleges:

NATURE OF THE ACTION

1. This is a civil action brought against Peabody Powder River Mining Company, LLC, f/ka/ Powder River Coal, LLC, a Wyoming limited liability company (Powder River Mining), 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)), for certain air quality violations at its North Antelope Rochelle Mine facility (Facility) located in Campbell and Converse Counties, Wyoming.

2. As set forth in greater detail below, Wyoming alleges that Powder River Mining violated the Act, Chapter 3, section 2(f) of the Wyoming Air Quality Standards and Regulations (Air Quality Rules), and Condition No. 24 of Permit MD-6375A on August 23, 2011.

3. Wyoming seeks a civil penalty and injunctive relief for these alleged past violations.



JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter and the parties in this action because Wyoming seeks a civil penalty and injunctive relief against Powder River Mining pursuant to Section 901(a) of the Act. Wyo. Stat. Ann. § 35-11-901(a).

5. Laramie County is the proper venue for this matter because an action brought under article nine of the Act may be brought in Laramie County by the Attorney General in the name of the people of the State of Wyoming. Wyo. Stat. Ann. § 35-11-903(c).

PARTIES

6. The DEQ, pursuant to Wyo. Stat. Ann. §§ 35-11-104 and -109, is the executive branch agency of Wyoming state government vested by statute with the responsibility for administering and enforcing the Act, rules promulgated under the Act, and related permits. The DEQ/AQD is also charged with responsibility for administering the Act and the Air Quality Rules. Wyo. Stat. Ann. § 35-11-110.

7. Defendant Powder River Mining is a Wyoming limited liability company that operates the Facility.

8. Powder River Mining is a “person” as defined in Section 103(a)(vi) of the Act and the Air Quality Rules. Wyo. Stat. Ann. § 35-11-103(a)(vi); Rules Dep’t of Env’tl. Quality, Air Quality Div., Ch. 1, § 3(a) (2012).

9. The Facility is subject to various statutory, regulatory, and permitting requirements, including Permit MD-6375A.

STATUTORY AND REGULATORY BACKGROUND

10. 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.

11. The Act states, “[n]o person shall cause, threaten or allow the discharge or emission of any air contaminant in any form so as to cause pollution which violates rules,

regulations and standards adopted by the [environmental quality] council.” Wyo. Stat. Ann. § 35-11-201.

12. 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).

13. 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).

14. Any person who violates any provision 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).

BACKGROUND – DEQ/AQD PERMITTING and PERMIT MD-6375A

15. A DEQ/AQD 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).

16. The DEQ director may impose permit 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).

17. 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.

18. 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).

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

20. 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.

21. 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.

22. 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."

23. Under Powder River Mining contingency action plan, when the monitored 24-hour PM10 value exceeds 100 ug/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."

**BACKGROUND - PARTICULATE MATTER and THE 24-HOUR PM10
CONCENTRATION ON AUGUST 23, 2011**

24. “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.*

25. 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).

26. 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).

27. 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.

**CLAIM I
Failure to Minimize Fugitive Dust Emissions**

28. Plaintiff repeats and incorporates by this reference the allegations contained in paragraphs 1-27 of this Complaint.

29. AQD reviewed the Facility’s RO-1 ambient particulate monitoring data for August 23, 2011, and determined that the final 24-hour PM10 concentration of 217.6 ug/m³ exceeded Wyoming’s 24-hour average ambient air quality standard of 150 ug/m³.

30. Based upon Powder River Mining’s RO-1 monitoring data for August 23, 2011, the results of DEQ/AQD’s record review, and upon information and belief, Powder River Mining violated the Act and the Air Quality Rules by failing to minimize fugitive dust from activities at the Facility, during a high particulate event on August 23, 2011.

31. 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 dated June 29, 2012, 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.

32. Wyoming is entitled to a judgment for penalties and injunctive relief under Wyo. Stat. Ann. § 35-11-901(a).

CLAIM II
Failure to Comply with Condition No. 24 of Permit MD-6375A

33. Plaintiff repeats and incorporates by this reference the allegations contained in paragraphs 1-32 of this Complaint.

34. AQD reviewed the Facility's RO-1 ambient particulate monitoring data for August 23, 2011, and determined that the final 24-hour PM10 concentration of 217.6 ug/m3 exceeded Wyoming's 24-hour average ambient air quality standard of 150 ug/m3.

35. Based upon Powder River Mining's RO-1 monitoring data for August 23, 2011, the results of DEQ/AQD's record review, and upon information and belief, Powder River Mining violated the Act, the Air Quality Rules, and Condition No. 24 of Permit MD-6375A by failing to adhere to the contingency action plan for high ambient particulate events at the Facility during a high particulate event on August 23, 2011.

36. 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 dated June 29, 2012, alleging in part that Powder River Mining violated the Act, the Air Quality Rules, and Condition No. 24 of Permit MD-6375A by failing to adhere to the contingency action plan for high ambient particulate events at the Facility.

37. Wyoming is entitled to a judgment for penalties and injunctive relief under Wyo. Stat. Ann. § 35-11-901(a).

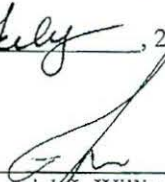
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the People of the State of Wyoming, pray that this Court:

- A. Enter the Consent Decree executed by the Parties, soon to be filed with the Court; or
- B. Enter judgment in favor of the Plaintiff on the Claims asserted; and
- C. Assess appropriate penalties and/or injunctive relief against Defendant as provided in Sections 901(a) and 903(c) of the Act; and,
- D. Award such other and further relief as this Court deems appropriate.

DATED this 26th day of July, 2013.


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