

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

MAR 05 2007

In the Matter of the Administrative Order)
on Consent Issued to Frontier Refining Inc.,)
a Delaware corporation)

Docket No. 06-5400

Terri A. Lorenzon, Director
Environmental Quality Council

**DEQ'S RESPONSE TO ARP & HAMMOND HARDWARE COMPANY'S
MOTION TO INTERVENE AND TO SUPPLEMENT AOC**

The Wyoming Department of Environmental Quality (DEQ) submits this Response to Arp & Hammond Hardware Company's (Arp & Hammond) Motion to Intervene and to Supplement Joint Stipulation for Modification of Administrative Order on Consent (A&H motion), filed February 12, 2007, relating to the above-captioned matter before the Environmental Quality Council (EQC or Council).

INTRODUCTION

1. Arp & Hammond's motion:
 - i) moves for leave to intervene "to be admitted as a party in all matters now and in the future pending and pertaining to this Docket" (A&H motion II.4, p. 4);
 - ii) moves "[t]hat the Joint Stipulation be approved" (A&H motion III.1, p. 4);
 - iii) moves that 60 days be provided for Frontier Refining Inc. (Frontier), the DEQ and Arp & Hammond to negotiate supplementation of the Joint Stipulation modifying Administrative Order on Consent (AOC), and if no settlement is reached, that Arp & Hammond may at that time petition the EQC to convene a contested case hearing (A&H motion III.13, p. 6).

2. The DEQ does not dispute Arp & Hammond's desire for remediation of impacts to Arp & Hammond's property from refinery operations. However, Arp & Hammond is not "entitled" to intervene "as a party in all matters now and in the future pending and pertaining to this Docket," because, as will be explained in the *Discussion* below:

- a. there is no “pending” *contested case or existing action* before the Council in this matter in which to intervene at this time;
- b. Arp & Hammond did not timely petition the Council to contest the DEQ’s decision to stipulate to specific modification of the AOC, and in fact Arp & Hammond’s motion moves “[t]hat the Joint Stipulation be approved;”
- c. Arp & Hammond’s motion to intervene as a party in all matters “in the future” pertaining to this Docket is premature and potential future matters are not ripe for review;
- d. it is improper for a private interest to participate directly as a party in making future decisions for prospective administration of a government order;
- e. denial of Arp & Hammond’s motion to intervene to be admitted as a party “in all matters now and in the future pending and pertaining to this Docket” would not prevent Arp & Hammond from pursuing its own private legal remedies;
- f. the DEQ will consider as comments for potential future action the items Arp & Hammond’s motion requests as “supplementation” for the stipulated modification of the AOC, but that request for “supplementation” of a previous DEQ decision (which either has not been contested or not timely contested) does not in itself constitute a new contested case for hearing before the Council.

BACKGROUND

3. In September 1990, the United States Environmental Protection Agency (EPA) entered into an Administrative Order on Consent with Frontier Refining Inc. under subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921 et seq., for the Frontier refinery at Cheyenne, Wyoming.

4. WYO. STAT. ANN. § 35-11-518(b) authorizes the DEQ to issue administrative orders which are equivalent to any federal administrative order which has been issued pursuant

to subtitle C of RCRA prior to the effective date of the authorization of Wyoming's state hazardous waste program under that subtitle.

5. In March, 1995, pursuant to WYO. STAT. ANN. § 35-11-518(b), the DEQ entered into an AOC with Frontier that is equivalent to and has replaced the 1990 federal AOC, which was withdrawn in March, 1997.

6. By letter to DEQ dated August 15, 2006 (copy attached as ATTACHMENT #1), EPA Region 8 wrote that the current pace of Corrective Action at the Frontier refinery under the March, 1995 AOC is unacceptable and called for accelerating Corrective Action at the Frontier refinery by placing Frontier on an enforceable schedule under the AOC, including the following key activities:

- a. Completion of on-site and off-site RFI field activities and draft RFI Report submittal by October 15, 2007.
- b. Achievement of the Environmental Indicators by September 30, 2008 or sooner.
- c. Site stabilization, including boundary control, by October 15, 2008.
- d. On-site source control by October 15, 2008.

7. Section XXI (Subsequent Modification) of the AOC provides that the AOC may be amended by mutual written agreement of the DEQ and Frontier.

8. On September 15, 2006 the DEQ and Frontier executed a JOINT STIPULATION FOR MODIFICATION OF ADMINISTRATIVE ORDER ON CONSENT (the Joint Stipulation) to modify the existing 1995 AOC only by adding a specific "Special Stipulated Corrective Action Schedule" to Section VI (Work to be Performed) to place Frontier on an enforceable schedule under the AOC for certain key corrective action activities identified in EPA Region 8's August 15, 2006 letter to DEQ.

9. The first due date under the Joint Stipulation for modification of the AOC, which corresponds to EPA's August 15, 2006 letter, is less than 8 months from now (October 15, 2007).

10. On October 17, 2006, the Joint Stipulation was filed with the Council along with a JOINT MOTION TO APPROVE JOINT STIPULATION FOR MODIFICATION OF ADMINISTRATIVE ORDER ON CONSENT (the Joint Motion), both of which expressly requested the Council to enter an Order approving the Joint Stipulation and incorporating it into the AOC by reference.

11. On October 18, 2006, counsel for DEQ faxed copies of both the fully executed Joint Motion and the fully executed Joint Stipulation to counsel for Arp & Hammond (copy attached as ATTACHMENT #2).

12. By letter to DEQ's counsel dated November 6, 2006 (copy attached as ATTACHMENT #3), counsel for Arp & Hammond posed some questions for discussion at a meeting with DEQ set for November 8, 2006, including "Questions - Refinery Impacted Property 1. How will DEQ enforce the listed completion due *dates in the Joint Stipulation?*" (Italics added). This question shows that Arp & Hammond was aware of the Joint Stipulation at that time, including stipulated item 4, the request that the Council approve it and incorporate it into the AOC.

13. The "Final Agenda" for the EQC meeting in Cheyenne on February 16, 2007, under 5.A. (Consent Agenda; Approval of Orders) listed "6. Frontier Refining, Inc. Administrative Order on Consent, Docket No. 06-5400."

14. On the afternoon of February 13, 2007, counsel for DEQ received a "Motion of Arp & Hammond Hardware Company for Leave to Intervene and to Supplement *Joint Stipulation for Modification of Administrative Order on Consent* Dated September 15, 2006," file-stamped by the Council on February 12, 2007, which among other things, moved that "the Joint Stipulation be approved and that the EQC enter an order supplementing the provisions of the Joint Stipulation" (p.4), and that the Council grant Arp & Hammond leave to intervene and allow the parties sixty days to negotiate "supplementation" of the Joint Stipulation (p.6).

15. The Council removed consideration of the Joint Stipulation and Motion to modify the Frontier AOC from the agenda for its February 16, 2007 meeting in response to Arp & Hammond's February 12, 2007 motion.

DISCUSSION

A. There is no "pending" contested case or existing action before the Council in this matter in which to intervene at this time.

16. The only authority Arp & Hammond cites for its motion to intervene is Chapter II of the [DEQ] Rules of Practice & Procedure (DEQ Rules) and the Wyoming Administrative Procedure Act (WAPA) in general. (A&H motion II., pp. 3-4.)

17. Chapter II of the DEQ Rules contains rules of practice and procedure applicable to hearings in contested cases, Section 7(a) of which requires that where the proposed intervenor seeks affirmative relief, the petition for intervention should conform to the requirements for a formal petition.

18. The requirements for a formal petition under Chapter I, Section 3(c)(ii) & (iii) of the DEQ Rules include setting forth "[t]he action, decision, order or permit upon which a hearing is requested or an objection is made" and, whenever possible, particular reference to the statutes, rules or orders the Protestant alleges have been violated.

19. Chapter I, Section 2(ii) defines "Protestant" as any person protesting a permit or "objecting to an action" of the DEQ and desiring affirmative relief.

20. The Council's ORDER ON INTERVENTION, dated and filed March 3, 2006 (copy attached as ATTACHMENT #4), found:

- a. The EQC holds contested case hearings where "final actions" taken by the Department of Environmental Quality are challenged. (Finding No. 1).
- b. Contested case hearings involve "DEQ decisions" that include issuance, amendment, or revision of permits. (Finding No. 2).

c. When persons object to a *final action* taken by DEQ, a contested case is docketed with the EQC. (Finding No. 4).

d. Depending on the nature of their interest in the outcome of a case, persons who are not named as parties when a contested case is docketed are left to file a motion to intervene to become a party to the case. (Finding No. 6).

21. In general, intervention is simply a means by which an outsider with an appropriate interest may come into “an existing action.” *Amoco Prod. Co. v. Dep’t of Revenue*, 2004 WY 89, ¶ 12, 94 P.3d 430, 436 (Wyo. 2004).

22. Arp & Hammond’s motion does not identify a contested DEQ action or decision that is the subject of a pending case in which Arp & Hammond seeks to intervene.

23. Arp & Hammond has not timely appealed any final action or decision by the DEQ, and future decisions the DEQ may make regarding the AOC do not constitute a pending case or existing action in which Arp & Hammond can seek leave to intervene at this time.

B. Arp & Hammond did not timely petition the Council to contest the DEQ’s decision to stipulate to specific modification of the AOC, and in fact Arp & Hammond’s motion moves “[t]hat the Joint Stipulation be approved.”

24. The administrative remedy available for a private interest affected by a final DEQ action or decision is to timely petition the Council to request a hearing to contest that final action or decision.

25. Threshold decisions should be left to agencies charged with the primary responsibility of administering the particular activity involved, and until the agency has had an opportunity to render its decision on a particular matter there is no final agency action for administrative review. *American Colloid Co. v. Hodel*, 701 F.Supp. 1537, 1543-1544 (D. Wyo. 1988).

26. Chapter I, Section 16(a) of the DEQ Rules provides that unless otherwise provided by these Rules or the WEQA, all appeals to the Council “from final actions” of the DEQ Director or Administrators shall be made within 60 days of such action.

27. Timely filing of a request for administrative review of an agency decision is mandatory and jurisdictional. A rule that provides 30 days after the date of the decision to file an appeal satisfies due process. *Antelope Valley Improvement and Service Dist. of Gillette v. State Bd. of Equalization*, 992 P.2d 563, 567 (Wyo. 1999).

28. To date Arp & Hammond has not filed a petition for a hearing before the Council to contest the DEQ's action of stipulating to specific modification of the AOC, and in fact Arp & Hammond has moved that the Joint Stipulation "be approved" (A&H motion, III.1, p.4).

29. The Joint Stipulation and Motion were both filed with the EQC on October 17, 2006 (and DEQ's counsel faxed copies of those fully executed documents to Arp & Hammond's counsel on October 18, 2006), and the 60 day period for appealing to the Council to contest the Joint Stipulation for modification of the AOC expired before the end of last year (2006).

30. Arp & Hammond's motion to intervene and "supplement" was not filed until 117 days after DEQ's counsel faxed copies of the fully executed Joint Stipulation and Motion to Arp & Hammond's counsel on October 18, 2006, and 98 days after the November 6, 2006 letter from Arp & Hammond's counsel acknowledged their awareness of the Joint Stipulation. Consequently, even if Arp & Hammond's February 12, 2007 motion to intervene and "supplement" were to be construed as a petition to contest the Joint Stipulation (which it actually moves "be approved"), it was not timely filed as such.

C. Arp & Hammond's motion to intervene as a party in all matters "in the future" pertaining to this Docket is premature and potential future matters are not ripe for review.

31. It would be premature for Arp & Hammond at this time to petition the Council to contest future decisions the DEQ may make regarding the AOC.

32. The procedure available for an outside party is to petition the Council to contest a "final action" or "decision" taken or made by the DEQ. There is no procedure for a protestant to contest future actions or decisions before they are taken or made, or to "intervene" before the fact to participate in making future decisions. For example, persons can protest a permit issued

by DEQ, but even if they prevail, their remedy is not direct participation in making subsequent DEQ permit decisions (which, once made by DEQ, would then become appealable). (EQC's March 3, 2006 ORDER ON INTERVENTION, copy attached as ATTACHMENT #4.)

D. It is improper for a private interest to participate directly as a party in making future decisions for prospective administration of a government order.

33. Arp & Hammond's motion identifies the interest on which it bases its motion to intervene as its ownership of land that has been polluted by the operations and actions of Frontier. (A&H motion II.1, p. 4.) Arp & Hammond's motion particularly identifies that land as land owned by Arp & Hammond within the Porter Draw drainage, including those lands Arp & Hammond leased to Frontier on which the Porter Draw reservoir is located, land owned by Arp & Hammond crossed by a wastewater conveyance pipeline connecting the refinery and the reservoir, and land owned by Arp & Hammond adjacent and contiguous to the refinery. (A&H motion I.1-2, p. 1.)

34. Arp & Hammond leased the land in Porter Draw to Frontier "for the purpose of discharging wastewater and effluent." (A&H motion I.1, p. 1.)

35. Arp & Hammond's motion calls for the soonest work under the AOC to focus on the areas of particular concern to Arp & Hammond, such as removal of refinery wastewater from the reservoir on its property in Porter Draw by June 1, 2007, but Arp & Hammond's focus is narrow and does not call for proper treatment and disposal of that wastewater following its removal. (A&H motion III.7, p. 5.)

36. It is not an appropriate exercise of the state's police power for the Frontier AOC to be used for private purposes. The purposes for which the police power is invoked must have relation to the public weal and must be within the scope and in furtherance of that power. *Bulova Watch Co. v. Zale Jewelry Co. of Cheyenne*, 371 P.2d 409, 417 (Wyo. 1962). The police power of the state is to regulate any industry that in its operation is a matter of public concern as

distinguished from mere private interest. *Zancanelli v. Cent. Coal & Coke Co.*, 173 P. 981, 985 (Wyo. 1918).

37. The DEQ is responsible for administering the AOC under the state hazardous waste program pursuant to WYO. STAT. ANN. §§ 35-11-501(b), -503(d), -518(b), and 42 U.S.C. § 6926(b). The Council can review actions of the DEQ, but there is no provision in the Wyoming Environmental Quality Act authorizing the Council to delegate to a private party the DEQ's role of making decisions for administering orders issued by the DEQ. There are private parties potentially affected to varying degrees by many DEQ actions and decisions, but their remedy is to comment in advance or timely petition the Council to review final DEQ actions and decisions, not a direct role in making those decisions.

E. Denial of Arp & Hammond's motion to intervene to be admitted as a party "in all matters now and in the future pending and pertaining to this Docket" would not prevent Arp & Hammond from pursuing its own private legal remedies.

38. Private parties may also have their own private legal remedies for impacts to their property from regulated activities. Arp & Hammond leased land it owns in Porter Draw to Frontier for the Porter Draw reservoir and conveyance pipeline from the refinery to the reservoir for the purpose of discharging wastewater and effluent. (A&H motion I.1-2 &13-14, pp. 1&3.) The AOC does not relieve Frontier or deprive Arp & Hammond of any private remedies based on their lease, including requiring additional or stricter clean-up measures or standards that do not conflict with requirements under the AOC.

39. Arp & Hammond could have protected its interest either by not leasing its property to a refinery for this purpose or by making remediation of the site to prescribed standards upon termination of the lease a condition of the lease (which the DEQ has not seen).

40. The EQC's role under WYO. STAT. ANN. § 35-11-112 does not include adjudicating private contract, lease, tort or damage claims. *Preferred Energy Properties v. Wyoming State Bd. of Equalization*, 890 P.2d 1110, 1113 (Wyo. 1995).

F. The DEQ will consider as comments for potential future action the items Arp & Hammond's motion requests as "supplementation" for the stipulated modification of the AOC, but that request for "supplementation" of a previous DEQ decision (which either has not been contested or not timely contested) does not in itself constitute a new contested case for hearing before the Council.

41. Arp & Hammond's motion moves that the Joint Stipulation be approved (A&H Motion III.1, p. 4) and then "supplement[ed]" to address particular concerns of Arp & Hammond (A&H motion III., pp. 4-6).

42. Arp & Hammond's motion seeks to "supplement" the AOC to require removal of "both regulated and non-regulated compounds" from its property at Porter Draw (A&H motion III.8, p. 5.), and to require remediation of Porter Draw to "no less than established background concentrations" (A&H motion III.9, p. 5).

43. Chapter I, Section 3(c)(iii) of the DEQ Rules calls for petitions to set forth particular reference to the statutes, rules or orders the Protestant alleges have been violated, but Arp & Hammond's motion does not reference what statutes, rules or orders require remediation to "no less than established background concentrations" for "both regulated and non-regulated compounds."

44. WYO. STAT. ANN. § 35-11-518(b) applies the limitations regarding stringency contained in §518(a) to orders (such as the AOC here) issued under §518(b). §518(a) generally precludes state orders from imposing additional or more restrictive remedial or corrective action requirements than corresponding federal orders for hazardous waste units or areas of concern subject to the order, but Arp & Hammond's motion does not reconcile the particulars of its requested supplementation of the AOC with the limitations imposed by WYO. STAT. ANN. § 35-11-518(b).

45. Arp & Hammond's motion states that neither the Joint Stipulation nor the AOC contain requirements for remediation of Porter Draw (A&H Motion I.9, p. 2). Actually, the AOC (III. Statement of Purpose) identifies objectives which include (1) determining what releases of hazardous wastes or hazardous constituents have occurred at or migrated from the

refinery, and (2) developing corrective action alternatives necessary to prevent or mitigate any migration or releases of hazardous wastes or hazardous constituents at or from the refinery. This provision covers such impacts to Porter Draw, whether it is specifically listed by name or not.

46. The Joint Stipulation and AOC, which set forth procedures and schedules for accomplishing remedial action objectives for the refinery and impacted areas, contemplate that specific plans will be developed and implemented, subject to DEQ approval. Accordingly, the October 3, 2006 letter from Lily Barkau (DEQ) to Mel Wilkenfeld (Frontier) (attached as ATTACHMENT #5) invokes provisions of the AOC to call for Frontier to submit a work plan to investigate conditions at Porter Draw to determine the need for corrective action. The February 7, 2007 letter from Mel Wilkenfeld to Lily Barkau (attached as ATTACHMENT #6) discusses efforts to expedite remediation in Porter Draw and associated areas, for which Frontier will provide for DEQ review a remedial plan in May, 2007 and expects to begin and complete remedial field activities in August, 2007 and November, 2007, respectively.

47. Arp & Hammond's motion expresses concern about removal of refinery wastewater stored in the Porter Draw reservoir, which Arp & Hammond leased to Frontier for that purpose, now that the lease has expired (A&H motion I.1,14-16, pp. 1,3), and seeks supplementation of the Joint Stipulation to direct Frontier to remove all wastewater at the reservoir by June 1, 2007 (A&H motion III.7, p. 5). Removal of wastewater from the reservoir will be addressed pursuant to the October 3, 2006 letter from Lily Barkau (DEQ) to Mel Wilkenfeld (Frontier) (ATTACHMENT #5), which requires Frontier to submit a work plan to investigate conditions at Porter Draw to determine the need for corrective action under the AOC.

48. Prior to future decisions for administering the AOC, Arp & Hammond can provide, and DEQ will consider, timely comments on plans and schedules which are subject to DEQ approval for implementing Corrective Action under the AOC.

CONCLUSION

For the reasons discussed above:

- A. Arp & Hammond's motion to intervene should be denied;
- B. Arp & Hammond's motion that the Joint Stipulation for modification of Administrative Order on Consent (filed October 17, 2006) be approved should be granted; and
- C. Arp & Hammond's motion to participate directly in required three party negotiations to supplement the Administrative Order on Consent should be denied.

DATED this 5th day of March, 2007.



Mike Barrash
Sr. Assistant Attorney General
123 State Capitol Building
Cheyenne, Wyoming 82002
(307) 777-6946


CERTIFICATE OF SERVICE

True and correct copies of the foregoing DEQ'S RESPONSE TO ARP & HAMMOND
HARDWARE COMPANY'S MOTION TO INTERVENE AND TO SUPPLEMENT AOC were served this 5th day of March, 2007 by United States mail, first class postage paid, facsimile transmission and/or e-mail, addressed as follows:

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Wyoming Attorney General's Office



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DENVER, CO 80202-2466

Phone 303-277-8917

<http://www.epa.gov/region08>



August 15, 2006

LeRoy C. Fuesner, P.E., BCBE, Administrator
Solid and Hazardous Waste Division
Wyoming Department of Environmental Quality
Herschler Building, 4th Floor
122 West 25th Street 4W
Cheyenne, WY 82002

Re: Frontier Refinery, Cheyenne, Wyoming

Dear Mr. Fuesner:

As you are aware, we are increasingly concerned with Frontier's poor progress in addressing serious environmental problems. This concern was shared by Steve Tuber, Assistant Regional Administrator of the Office of Partnerships and Regulatory Assistance, and his deputy, Carol Campbell, with John Corra, you, and the other Wyoming DEQ division directors at a meeting on April 19, 2006. As a result, you agreed to provide EPA's regional office with a detailed plan of action within 60 days, which was to include a discussion of resources, achievement of environmental indicators, and completion of the RCRA Facility Investigation (RFI) and Corrective Measures Study (CMS).

In response to this commitment you submitted a plan on June 20, 2006. Our review of the plan indicates that it does not address all of the requested elements and does not provide a comprehensive plan for moving expeditiously with Corrective Action. Specifically, the plan does not address the state's staff resources or the schedule for completion of the RFI, CMS, and Corrective Measures Implementation (CMI). Rather, it focuses on accomplishing boundary control under a settlement agreement that is currently being negotiated with the facility and included a projected date for remediation of some off-site areas and achievement of the Environmental Indicators.

The current pace of Corrective Action is unacceptable, and your plan does not provide assurance that it will improve sufficiently. Our concerns are heightened because the state's Administrative Order on Consent with the Frontier Refinery has been in place since March 16, 1995, the requirement to conduct the RFI was triggered on or about October 9, 1998, and the June 20, 2006 plan does not include a schedule for completing the RFI. There are at least two acceptable options with respect to accelerating Corrective Action at the Frontier Refinery:

1. Place Frontier on an enforceable schedule, under an administrative order on consent or a settlement agreement, within 30 days of receipt of this letter. The enforceable

schedule should include, at a minimum, the following schedule for completion of key activities:

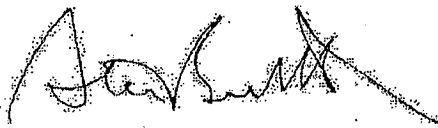
- a. Completion of on-site and off-site RFI field activities and draft RFI Report submittal by October 15, 2007.
- b. Achievement of the Environmental Indicators by September 30, 2008 or sooner.
- c. Site stabilization, including boundary control, by October 15, 2008.
- d. On-site source control by October 15, 2008.

2. Agree to direct implementation of Corrective Action at this facility by EPA. The Region will ensure that the key activities and schedule outlined above are completed. Details of EPA's direct implementation would be developed in consultation with the State over the next two months.

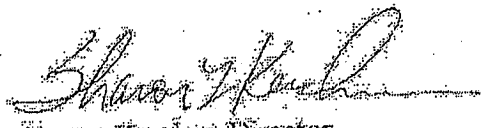
As you are aware, there are other related enforcement issues, including areas of non-compliance at this facility, which we understand will be part of your upcoming discussion with Carol Rushin and her managers on August 22, 2006. Coordinated, consistent action across all of these issues is highly desirable. Therefore, we would appreciate hearing from you by August 31, 2006 regarding which Corrective Action option you would like to pursue. This will allow us to incorporate your selection into our overall strategy and to work in concert with you as we move forward on Frontier.

We urge you to take immediate steps to accelerate the pace of Corrective Action at Frontier to ensure the protection of the human health and the environment. We are available to discuss these options with you and answer any questions you may have. We may be reached at the phone numbers listed below. We look forward to receiving your written response by the end of August.

Sincerely,



Steve Burkett, Director
Solid and Hazardous Waste Program
(303) 312-7081



Sharon Kercher, Director
RCRA/CERCLA Technical Enforcement Program
(303) 312-6352

cc: John Corra
Carl Anderson

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Wyoming Attorney General's Office

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SPECIAL INSTRUCTIONS:

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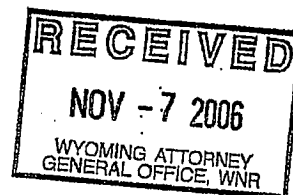
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November 6, 2006

Mike Barrash
Senior Assistant Attorney General
Office of the Attorney General
123 Capitol Building
Cheyenne, Wyoming 82002



Re: Frontier Refining

Dear Mike:

In anticipation of our meeting with DEQ representatives scheduled for Wednesday, November 8, 2006, I have attached some questions that I hope we might have the opportunity to discuss.

With best regards, I remain

Very truly yours,

A handwritten signature in cursive script, appearing to read "Alvin Wiederspahn".

Alvin Wiederspahn

ALW/aer

Enclosure

November 6, 2006

Questions - Refinery Impacted Property

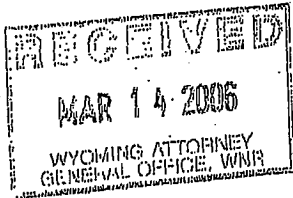
1. How will DEQ enforce the listed completion due dates in the Joint Stipulation?
2. What is the definition of boundary control?
3. Will all discharges be controlled, such as the release of hydrocarbons to Crow Creek from the storm sewer?
4. What are the boundary controls being considered?
5. Since the refinery is an active facility will the boundary controls not only contain existing impact areas, but fully surround the facility (down gradient sides) to contain all potential future releases?
6. What are the performance goals for the boundary control and how will these goals be enforced by DEQ?
7. What remediation strategies are being considered for the offsite petroleum hydrocarbon impacts to soil and groundwater?
8. What are the performance goals for offsite remediation?
9. What will be the schedule for offsite remediation completion to meet the performance goals?
10. Have impacts other than petroleum hydrocarbon been considered (salts), specifically in soil and groundwater in the area of the wastewater impoundments?
11. Did the wastewater impoundments and other onsite impoundments have constructed liners?
12. If not, did significant infiltration to soil and groundwater in the immediate areas of these impoundments occur?
13. Were these releases remediated?
14. How does the NOV work/interact with the Stipulation?

FILED

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

MAR 03 2006

Terri A. Lorenzon, Director
Environmental Quality Council



ORDER ON INTERVENTION

At a public meeting on February 16, 2006 the Wyoming Environmental Quality Council (EQC) considered Motions to Intervene and Rule 19, Wyoming Civil Rules of Procedure. In the interest of fairness and economy the EQC whose members are Mark Gordon, Jon Brady, Richard C. Moore, P.E., Wendy Hutchinson, John Morris, Dennis M. Boal, and Sara M. Flintner, by an unanimous vote hereby find, conclude and order following:

1. The EQC holds contested case hearings where final actions taken by the Department of Environmental (DEQ) are challenged.
2. Contested cases hearings involve DEQ decisions that include the issuance, amendment, or revision of permits.
3. The Environmental Quality Act (the Act) provides a right to object to final permit actions of DEQ to those permittees whose permit is affected and to citizens who have an interest in the permit.
4. When persons, who are not the permittee, object to a final permit action taken by DEQ, a contested case is docketed with the EQC. Permittees are indispensable parties to cases in which their permit is challenged.
5. Landowners or other persons may be indispensable parties in contested cases where a permit is challenged, depending on the nature of their interest in the outcome of the case.
6. Permittees, landowners, or other persons who are or may be indispensable parties are not named as parties when a contested case is docketed and they are then left to file a motion to intervene to become a party to the case.
7. Because of the nature of their interest in proceedings affecting their permit or interest, a permittee, a landowner, or other person should be a party to the case.
8. W.R.C.P. 19, incorporated by reference in the EQC's Rules of Practice and Procedure, addresses indispensable parties and provides a process to join parties in a proceeding.

Therefore, the EQC concludes:

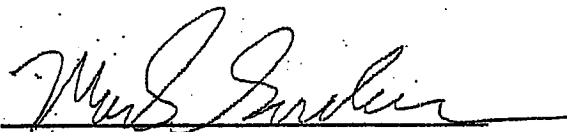
1. Permittees are indispensable parties to cases in which their permit is at issue or in jeopardy.
2. Landowners or other persons may be indispensable parties, depending on the nature of their interest.
3. Joining indispensable parties to a case is a procedural decision that may be made by the EQC member presiding over the case.

4. Should a person who is indispensable decline to participate in the case, or should a person's status as indispensable be questioned, the matter shall be referred to a majority of those on the EQC for a decision on how to proceed, which will include consideration of the procedures provided in W.R.C.P. 19.

IT IS HEREBY ORDERED THAT:

1. All persons who are indispensable parties to a contested proceeding before the EQC shall be joined as a party.
2. The EQC member presiding over a case where the joinder of an indispensable party is necessary may join that party without having the matter decided by the full EQC.
3. Where joinder is challenged or where issues as to the interests of a party are challenged, the matter will be referred to the entire EQC for a decision on how to proceed.

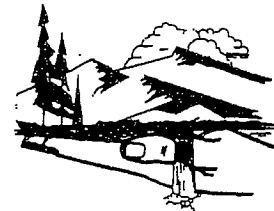
DATED this 3rd day of March, 2006



Mark Gordon, Chairman
ENVIRONMENTAL QUALITY COUNCIL



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

October 3, 2006

Mel Wilkenfeld
Frontier Refinery
P. O. Box 1588
Cheyenne, WY 82003-1588

Certified Mail # 7003 1680 0007 0438 5154
Return Receipt Requested

RE: Administrative Order on Consent – Additional Work – Porter Draw

Dear Mr. Wilkenfeld,

The Wyoming Department of Environmental Quality (WDEQ) has been informed that discharge to the Porter Draw reservoir (Porter Draw) has ceased as of June 30, 2006. Since Frontier will no longer be discharging to Porter Draw, Corrective Action measures should be implemented to determine if potential environmental impacts exists. Therefore, WDEQ is seeking to invoke Section VII, Additional Work, of the Administrative Order on Consent for Porter Draw. WDEQ believes that it is necessary for Frontier Refining to determine, whether as a result of previous discharges to Porter Draw, that there may be hazardous constituents present in soils, sediments, surface waters, or ground waters that may pose a threat to human health and the environment. Please respond within fourteen (14) calendar days to WDEQ on plans to investigate the Porter Draw site.

The work plan must include at a minimum the following: 1) a description of the historical use of the Porter Draw site; 2) proposed confirmation sampling locations within the site for all potentially impacted media and proposed background sampling locations for comparing metals concentration, as necessary; 4) proposed list of constituent of concern for confirmation sampling; 5) schedule for the proposed work; and 6) other requirements for work plans and reporting as required by the Administrative Order on Consent.

WDEQ is willing to discuss with Frontier Refining expectations for work to be conducted and reported on at your earliest convenience. Please feel free to contact me at 307-777-7541 with any questions.

Sincerely,

Lily R. Barkau
Senior Analyst, HWPCA
Solid and Hazardous Waste Division

DEQ RESPONSE ATTACHMENT #5

Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH (307) 777-7758 FAX 777-3610	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7369 FAX 777-6937	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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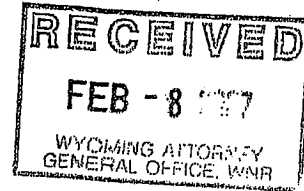


FRONTIER REFINING INC.
a Subsidiary of Frontier Refining & Marketing Inc.

P.O. BOX 1588
CHEYENNE, WYOMING 82003-1588
(307) 634-3651
FAX (Main Office) (307) 771-8794
FAX (Purchasing) (307) 771-8795

February 7, 2007

Ms. Lily Barkau
Wyoming Department of Environmental Quality
Hazardous Waste Permitting and Corrective Action
122 West 25th Street
Cheyenne, WY 82002



Re: Your letter "Porter Draw Investigation Report and Memorandum..." dated January 9, 2007

Dear Ms. Barkau,

I am in receipt of your letter referenced above and would like to thank you for your efforts to expedite the remediation of the Porter Draw reservoir and associated areas. Frontier expects to provide, for your review and comment, the remedial work plan no later than May 11, 2007. Allowing sufficient time for you to complete your review, and for your comments to be addressed, we expect to begin the remedial activities on or about August 16, 2007. If these initial target dates are successfully achieved, we anticipate field activities could be completed by early November 2007.

I trust that this will satisfy your request. Should you require any further information please contact me at your convenience at (307) 771- 8776.

Very truly yours,

Melvyn S. Wilkenfeld
Manager, Government Relations and Special Projects
Frontier Refining Inc.

cc: Mr. Mike Barrash – Senior Assistant Attorney General
Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002

Mr. Tom Aalto – USEPA Region 8
1595 Wynkoop Street
Denver, CO 80202