

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

AUG 15 2008

*Jim Ruby, Executive Secretary
Environmental Quality Council*

IN THE MATTER OF THE)
ADMINISTRATIVE ORDER)
ISSUED TO ARP & HAMMOND) DOCKET NO. 08-5201
HARDWARE CO. AND/OR OLD)
HORSE PASTURE, INC.)

JOINT REQUEST TO PROTECT FINANCIAL INFORMATION

The Wyoming Department of Environmental Quality (DEQ) issued an Administrative Order (DEQ Docket No. 4316-08) dated July 21, 2008 to Arp & Hammond Hardware Company (A&H) and/or Old Horse Pasture, Inc. (OHP), ordering them to grant Frontier Refining Inc. (Frontier) and its contractors access to their property adjacent to the southern and eastern boundary of Frontier's Cheyenne refinery as needed for Frontier to install the barrier wall boundary control system required by the DEQ's February 19, 2008 Final Decision letter to Frontier. On August 12, 2008, the DEQ issued a Notice of Compliance to A&H and/or OHP based on "Alternative 1" in OHP's July 31, 2008 written offer of access to Frontier.

The Notice of Compliance referenced OHP's July 31, 2008 written offer and Frontier's July 15, 2008 letter to DEQ, both of which were attached to the Notice of Compliance. The Notice of Compliance and the two letters each specified dollar amounts relating to the offers and appraisals. A&H and OHP considers those specific dollar amounts to be confidential financial information, and requests that they not be disclosed outside an actual hearing before the EQC or by posting the un-redacted Notice of Compliance on the EQC or DEQ websites.

WYO. STAT. ANN. § 16-4-203(d)(v) provides for non-disclosure of confidential financial information. The DEQ does not consider disclosure of the actual specific dollar amounts to be necessary for outside parties to understand the basis for the Notice of Compliance, and therefore joins A&H and OHP in requesting that the EQC not disclose that particular information outside of an actual hearing before the EQC or by posting the un-redacted Notice of Compliance on the EQC website.

Redacted copies of the filed Notice of Compliance and referenced letters are attached hereto.

DATED this 14th day of August, 2008.

FOR A&H and OHP:

FOR THE DEQ



Alvin Wiederspahn (Bar No. 5-1553)
Attorney at Law
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Senior Assistant Attorney General
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Cheyenne, WY 82002
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THE DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

FILED

AUG 12 2008

IN THE MATTER OF THE NOTICE)
OF VIOLATION AND ORDER)
ISSUED TO ARP & HAMMOND)
HARDWARE CO. AND/OR OLD) DOCKET NO. 4316-08
HORSE PASTURE, INC.)
2015 CENTRAL AVE., SUITE 200)
CHEYENNE, WYOMING 82001)

Jim Ruby, Executive Secretary
Environmental Quality Council

NOTICE OF COMPLIANCE

The Wyoming Department of Environmental Quality (DEQ), Solid & Hazardous Waste Division (SHWD) issued an Administrative Order dated July 21, 2008 to Arp & Hammond Hardware Company (A&H) and/or Old Horse Pasture, Inc. (OHP), ordering them to grant Frontier Refining Inc. (Frontier) and its contractors access to their property adjacent to the southern and eastern boundary of Frontier's Cheyenne refinery as needed for Frontier to install the barrier wall boundary control system required by the DEQ's February 19, 2008 Final Decision letter to Frontier.

By letter dated July 31, 2008, addressed to both the DEQ/SHWD and Frontier (copy attached), OHP, through counsel, offered to sell a 100-foot wide strip of its property covering approximately 12 acres needed to accommodate construction of the barrier wall along the alignment approved in the DEQ's February 19, 2008 Final Decision letter (and, at Frontier's option, an additional 100-foot wide strip covering approximately 6.5 acres) for [REDACTED] per acre.

Frontier had previously offered to buy 43 acres of OHP's property adjacent to the refinery for a total of [REDACTED] (> [REDACTED] per acre), and had an appraisal done which estimated the total market value for 133 acres of OHP property at [REDACTED] (> [REDACTED] per acre). A copy of Frontier's July 15, 2008 letter to DEQ/SHWD is attached.

OHP's July 31, 2008 written offer to sell Frontier the minimal property needed to install the barrier wall along the DEQ-approved alignment for a per acre price that is not more than Frontier itself had offered constitutes reasonable access for purposes of compliance with the DEQ's July 21, 2008 Administrative Order.

The DEQ finds that "Alternative 1" in OHP's July 31, 2008 written offer of access to Frontier constitutes compliance with Administrative Order No. 4316-08, dated July 21, 2008.

DATED this 12TH day of August, 2008.



John Corra
Director, Department of
Environmental Quality



LeRoy Feusner, P.E., BCEE,
Administrator, Solid & Hazardous
Waste Division

ALVIN WIEDERSPAHN J.D., P.C.

A PROFESSIONAL CORPORATION
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July 31, 2008

LeRoy C. Feusner, Administrator
Department of Environmental Quality
Solid & Hazardous Waste Division
Herschler Building, 4th Floor West
122 West 25th Street
Cheyenne, Wyoming 82002

Gerald B. Faudel, Vice President
Government Relations and Environmental Affairs
Frontier Oil Corporation
4610 South Ulster Street, Suite 200
Denver, Colorado 80237

Re: Administrative Order Docket 4316-08

Gentlemen:

Old Horse Pasture, Inc. is filing an appeal today of the Wyoming DEQ's Administrative Order (the "Order") dated July 21, 2008. However, we are simultaneously making the following proposal to Frontier to resolve the issues and facilitate the timely construction of the barrier wall.

We understand the importance of Frontier's moving expeditiously to construct this barrier wall. The problem is that the barrier wall, as currently conceived and identified in the Order, is proposed to be largely built on Old Horse Pasture, Inc. property. The Order, which we otherwise view as a positive step toward resolving the subsurface environmental impacts migrating offsite from the Frontier Refinery, effectively is allowing Frontier to build the barrier wall on property it does not own. Stated otherwise, it can be read as a "taking" of Old Horse Pasture, Inc. property without just compensation. The legal issues are explained in the appeal.

Old Horse Pasture, Inc. offers two alternatives to resolve this matter, as follows:

Alternative 1. Old Horse Pasture, Inc. offers to sell to Frontier 1) that portion of its property needed to accommodate the barrier wall alignment contemplated by the Final Decision dated February 19, 2008 (the "offsite alignment") inclusive of a 100-foot wide parcel south of the alignment to accommodate construction access activities; and, if Frontier wishes, 2) an additional 100-foot parcel as buffer between the barrier wall construction and Old Horse Pasture,

Inc. property. Old Horse Pasture, Inc. offers to sell these parcels at the same price per acre of [REDACTED] which Frontier earlier offered to purchase a larger portion of the property by letter dated May 22, 2008. All water rights and irrigation systems will need to be accommodated at Frontier's expense. The areas offered for sale are illustrated on the map attached hereto identified as Exhibit A and include approximately twelve (12) acres for Option 1 and an additional six and one-half (6.5) acres for Option 2. Please note that the land areas depicted on the map attached hereto are approximate and that a professional survey would need to be completed to determine the actual acreage and configuration.

Alternative 2. Frontier may construct the barrier wall entirely on its property as set forth and proposed by Frontier in its Conceptual Design Report Groundwater Barrier Wall for the Upper Ogallala Aquifer, Frontier Refinery, Cheyenne, Wyoming, dated January 3, 2006 (the "onsite alignment"), and Old Horse Pasture, Inc. will provide access along a parcel approximately 100 feet wide adjacent to the alignment for construction activities. The approximate access area is attached hereto and identified as Exhibit B. In the case of either Option 1 or Option 2, Frontier would be required at its expense to ensure that associated water rights and water conveyance systems are maintained and irrigation needs and delivery are not interrupted.

In the event that Frontier chooses to construct the barrier wall in conformance with the onsite alignment (Alternative 2), I have attached an Access Agreement to afford Frontier the access needed to build the barrier wall boundary system on its own property. This Access Agreement is substantially the same as the Porter Draw Access Agreement to which both parties have previously signed.

We are available to accommodate whichever alternative is agreeable to Frontier and DEQ.

With best regards, I am

Very truly yours,



Alvin Wiederspahn

ALW/aem

Enclosures

cc: John Corra
Lily Barkau
Michael Barrash
Peter Michael
Brenda Morris
Tom Aalto
Kyle Ballard
Betsy Temkin

July 15, 2008

VIA E-MAIL AND REGULAR MAIL

Mr. LeRoy Feusner
Administrator; Solid & Hazardous Waste Division
Wyoming Department of Environmental Quality
122 West 25th Street
Cheyenne, WY 82002

Re: Frontier Refining Inc./Force Majeure Claim

Dear Mr. Feusner:

Your June 16, 2008 letter to Mr. Gerald Faudel determined that Frontier's "lack of access to third party property needed to proceed with work required for remediation of the Porter Draw reservoir and installation of the barrier wall currently continues to constitute a force majeure situation under Section XVII of the AOC" and granted an extension of all access dependent deadlines. Your letter further stated that such deadline extension would terminate in 30 days, unless DEQ determines that Frontier has been unable to obtain necessary access to third party property despite documented best efforts during that 30 day period ending July 16, 2008.

Since the date of your letter, Frontier has continued its diligent efforts to obtain access to the Lummis family property. Despite such efforts, Frontier has been unable to obtain access to the off-site property and, by this letter, reasserts its prior force majeure claims.

A summary of Frontier's access efforts appears below.

Ranch Headquarters Property:

- On May 16, Frontier submitted a revised, redlined access agreement to Elizabeth Temkin, counsel for the Lummis family. Terms of Frontier's access agreement included greater than fair market compensation in exchange for access. After not receiving a reply to Frontier's proposed access agreement, I sent Ms. Temkin a letter on June 26, 2008 inquiring as to whether she or the Lummis family had any comments on the draft agreement. However, as of the date of this letter, Frontier has still not received a response from Ms. Temkin to Frontier's access proposal.

Attorneys and Counselors

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- Although Frontier has not received access to perform remedial activities at the Ranch Headquarters property, Frontier requested and received permission from the Lummis family to proceed with certain pre-construction activities at the Ranch Headquarters Property. Under such authority, from June 25 to June 27 Frontier collected ground water elevation data and sampled monitoring wells on the Lummis property pursuant to the DEQ-approved Unified Sampling Plan.
- During the month of July, Frontier completed installation of a portion of the recovery wells on its own property as part of boundary control efforts.
- On May 22, Frontier submitted a written offer to the Lummis family to purchase 43 acres of Ranch Headquarters property adjacent to the refinery for a total of [REDACTED]. On June 5, 2008, Al Wiederspahn submitted a counteroffer to sell 133 acres of ranch Headquarters property to Frontier for a total of [REDACTED]. Multiple discussions between Frontier and Mr. Wiederspahn concerning the potential sale occurred over the next three weeks.

On June 27, 2008, Mr. Wiederspahn sent a letter to Frontier (a copy of which is attached hereto as Exhibit "A") stating that the Lummis family's offer to sell the 133 acres would terminate at 5 P.M. on July 9, 2008. The letter further stated: "Absent a sales agreement, [the Lummis family] will not grant access for barrier wall construction activities."

Following receipt of Mr. Wiederspahn's letter, Frontier ordered an appraisal (a copy of which is attached hereto as Exhibit "B") of the 133 acre property from one of the leading commercial appraisers in Wyoming. The appraisal estimated the total market value of the 133 acre property at [REDACTED]. Given this valuation, Frontier did not accept the Lummis family's offer to sell the property for more than three times market value.

On July 9, 2008, according to the terms of Mr. Wiederspahn's June 27 letter to Frontier, the Lummis family withdrew its offer to sell to Frontier the property where the barrier wall is required to be located. Given the Lummis family's statement that it will not allow access for barrier wall construction absent a sales agreement, Frontier is currently in an impossible situation - and one which clearly constitutes force majeure under Section XVII of the AOC.

Porter Draw Property

- On May 16, Frontier submitted a revised, redlined access agreement to Elizabeth Temkin, counsel for the Lummis family. Terms of Frontier's access agreement included greater than fair market compensation in exchange for access. After not receiving a reply to Frontier's proposed access agreement, I sent Ms. Temkin a letter on June 26, 2008 inquiring as to whether she or the Lummis family had any comments on the draft agreement. However, as of the date of this letter, Frontier has still not received a response from Ms. Temkin or the Lummis family to Frontier's access proposal.
- Although Frontier does not have access to perform remedial activities at Porter Draw, Frontier continues with efforts to remove the remaining water from Porter Draw. Frontier has removed over 90% of the water in Porter Draw but has been unable to pump water due to the high concentration of algae present and BOPU's refusal to accept the water with those concentrations. Frontier believes those issues have now been resolved and pumping of water from Porter Draw is scheduled to resume today, July 15.

As detailed above, Frontier continues to make best efforts to obtain access to Lummis family property and, to the extent possible, has been performing all pre-construction activities at the Lummis property that it can while access for remedial activities is pending. As such, a force majeure situation continues to exist pursuant to Section XVII of the AOC, and the deadlines for performance of Porter Draw remediation and boundary control activities under the AOC and Joint Stipulation should continue to be extended.

Please let me know if you have any questions. Thank you.

Sincerely,


Kyle Ballard

cc: Mr. Gerald B. Faudel
Mr. John V. Corra
Mr. Mike Barrash
Ms. Lily Barkau
Mr. Tom Aalto
Ms. Brenda Morris
Ms. Elizabeth Temkin
Mr. Al Wiederspahn