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FILED

AUG 14 2008

Jim Ruby, Executive Secretary
Environmental Quality Council

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

In the Matter of the Administrative)
Order Issued to Arp & Hammond)
Hardware Co. and/or Old Horse) Docket No. 4316-08
Pasture, Inc. 2015 Central Ave.)
Suite 200, Cheyenne, Wyoming)
82001)

PETITION FOR LEAVE TO INTERVENE AND
REVIEW OF DEQ'S NOTICE OF COMPLIANCE
FOR ADMINISTRATIVE ORDER #4316-08

Frontier Refining Inc. (Frontier) files this its Petition for Leave to Intervene in the Wyoming Environmental Quality Council (EQC) proceeding in the matter of The Review of the Administrative Order Issued to Arp & Hammond Hardware Co. and/or Old Horse Pasture, Inc.'s (OHP's) by the Department of Environmental Quality's (DEQ's) on July 21, 2008 Administrative Order (the Order) requiring OHP to grant Frontier and its contractors access to OHP property adjacent to the Frontier Refinery as needed for installation of a barrier wall boundary control system and Petition for Review of the DEQ's Notice of Compliance for Administrative Order #4316-08 dated August 12, 2008.

I. STATEMENT OF FACTS

1. OHP owns property adjacent to the southern and eastern boundaries of the Frontier Refinery.

2. A Final Administrative Order on Consent (AOC) was entered into by Frontier and DEQ in March, 1995, which effectively replaced the Final Order on Consent (U.S. EPA Docket No. 3008(h)-VIII 88-08) that was entered into by the United States Environmental Protection Agency (EPA) and Frontier in September 1990. The EPA Order was withdrawn on March 19, 1997. The AOC requires various investigation and remedial measures related to the Frontier Refinery.

3. On October 17, 2006, Frontier and DEQ entered a Joint Stipulation (Joint Stipulation) for Modification of Administrative Order on Consent which included a requirement for a DEQ-approved boundary control system to be completed by October 15, 2008.

4. On February 19, 2008, DEQ issued its Final Decision requiring Frontier to implement a DEQ-approved boundary control system which specified the installation of a slurry bentonite wall at the western, southern and eastern boundaries of the Frontier Refinery. The DEQ-approved boundary control plan dictates that the barrier wall be primarily located on OHP property.

5. Although there have been discussions between OHP and Frontier regarding access to, or purchase of, the OHP property in order to implement the February 19, 2008 DEQ Final Decision regarding the DEQ-approved boundary control, access continues to be denied by OHP.

6. On July 21, 2008, DEQ issued an Order requiring OHP to grant Frontier and its contractors access to OHP property as needed for installation of a barrier wall.

7. On July 31, 2008 OHP filed its Petition For Review and Request for Hearing regarding the July 21, 2008 DEQ Order requiring OHP to grant Frontier and its contractors access to OHP property.

8. Simultaneously, OHP sent a letter to Frontier offering to sell property proportionately in the area to be occupied by the barrier wall. Although the offer set forth the monetary terms, no other terms or proposed sale agreement was provided.

9. On August 12, 2008, DEQ issued a Notice of Compliance for Administrative Order No. 4316-08 specifying that OHP's July 31, 2008 letter offering to sell a 100 foot wide strip of its property satisfied compliance with the Administrative Order No. 4316-08.

10. Frontier files this its Petition for Leave to Intervene into the Petition for Review and Request for Hearing initiated by OHP because the Order and the appeal of the Order involves issues of significant importance to Frontier (i.e. access necessary to comply with the AOC and Joint Stipulation) and is integrally related to Frontier's obligation regarding the DEQ's February 19, 2008 Final Decision.

11. Further, Frontier files this its Petition for Leave to Intervene because Frontier disagrees with the DEQ's determination that a mere offer to sell property satisfies OHP's requirements to provide access to the property.

12. Currently Frontier and OHP are negotiating the purchase of the property at issue in the Order. It appears that they are close to finalizing their negotiations and

entering into a written purchase agreement with respect to the property. They have not, however, finalized the purchase.

II. ARGUMENT

13. Chapter II, Section 7 of the DEQ's General Rules of Practice and Procedure permit a party such as Frontier to file a petition for leave to intervene. The same provision provides that leave will be granted upon the EQC's determination, "that the party [who is] requesting to intervene is adversely affected by the action, has a legal right under the Environmental Quality Act in the ongoing Administrative Procedure Act."

A. Frontier Is Adversely Affected by the Outcome of the Proceeding

14. The outcome of OHP's appeal of the Order and the DEQ's Notice of Compliance adversely affects Frontier. The terms under which access is provided will be adjudicated in this proceeding and Frontier, as the party obligated to obtain access, has a right to be heard on the nature and substance of such access, establishing the tailoring of access rights to the specific construction activities that will need to be conducted, and restrictions on OHP's interference with such activities.

15. In the event the EQC vacates the Order, as OHP requests at page 6 of its Petition for Review, Frontier will be placed in the impossible circumstance of being under the obligation to construct the DEQ-approved barrier wall by October 15, 2008, without having actual, legal access to the property where Frontier is obligated to build the barrier wall. Clearly such a determination would adversely affect Frontier by subjecting Frontier to liability for its failure to comply with the obligation to build the barrier wall..

16. Further, Frontier requests the EQC review the DEQ's Notice of Compliance filed on August 12, 2008. More specifically the DEQ found that OHP's

mere offer to sell property to Frontier satisfies the terms of the Order. Frontier cannot understand how a mere offer to sell property can satisfy an order compelling OHP to permit Frontier access to the property. Moreover, requiring Frontier to purchase property on terms exclusively determined by the seller OHP adversely affects Frontier, thus satisfying the elements necessary to permit Frontier's intervention in this proceeding.

B. OHP Recognizes Frontier as an Adversely Affected Party

17. OHP copied counsel for Frontier on its Petition for Review (*See* Petition for Review and Request for Hearing at p.7). Including Frontier's counsel on the Certificate of Service serves as a quasi-admission by OHP of the appropriateness of including Frontier in the proceeding and a recognition of the potential adverse affect on Frontier in this proceeding.

RELIEF REQUESTED

Frontier respectfully requests that the EQC grant its Petition for Leave to Intervene, find that Frontier has satisfied the requirements of an intervening party under Chapter II Section 7 of the DEQ's General Rules of Practice and Procedure, and enter an order vacating the DEQ's Notice of Compliance for Administrative Order # 4316-08.

Dated this 14th day of August, 2008.

FRONTIER REFINING INC.

A handwritten signature in cursive script, appearing to read "Brady Cove Box", written over a horizontal line.

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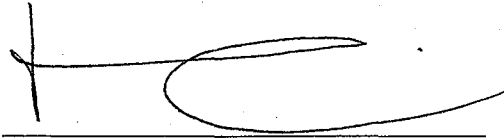
CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 14th day of August, 2008, in accordance with the requirements of Chapter 1, Section 3(b) of the Department of Environmental Quality Rules of Practice and Procedure, two copies of this PETITION FOR LEAVE TO INTERVENE AND REVIEW OF DEQ'S NOTICE OF COMPLIANCE FOR ADMINISTRATIVE ORDER #4316-08, via registered mail, return receipt requested, were served on the following:

Alvin Wiederspahn
Alvin Wiederspahn, J.D., P.C.
2015 Central Avenue, Suite 200
Cheyenne, Wyoming 82001

Dennis M. Boal, Chairman
Environmental Quality Council
122 West 25th Street
Herschler Building, Room 1714
Cheyenne, WY 82002

John Corra, Director
Department of Environmental Quality
122 West 25th Street
Herschler Building, 4th Floor West
Cheyenne, WY 82002



A handwritten signature in black ink, appearing to be 'J. Corra', is written over a horizontal line.