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SEP 15 2008

**Jim Ruby, Executive Secretary
Environmental Quality Council**

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

In the Matter of the Appeal)
Of the August 15, 2008 Denial)
Of Frontier Refining Inc.'s) Docket No. _____
Force Majeure Claim)

**PETITION FOR REVIEW, REQUEST FOR HEARING
AND REQUEST FOR CONSOLIDATION**

Frontier Refining Inc. (Frontier) petitions the Wyoming Environmental Quality Council (EQC) to review the Department of Environmental Quality's (DEQ's) August 15, 2008 determination denying Frontier's Force Majeure claim with respect to the October 15, 2008 completion deadline to achieve boundary control through the installation of a barrier wall. Frontier further requests a contested case hearing before the EQC on the issues raised and relief requested in this Petition.

STATEMENT OF FACTS

1. Frontier is located at 2700 East 5th Street, Cheyenne, Wyoming, 82007 and its legal counsel is Mark Ruppert, Holland & Hart LLP, 2515 Warren Avenue, Suite 450, Cheyenne, Wyoming, 82001.

2. Wyo. Stat. § 35-11-112(a)(iii) provides that the EQC will conduct hearings in any case contesting the administration or enforcement of any law, rule, regulation, standard or order issued or administered by DEQ or any division.

3. Frontier operates a refinery in Cheyenne, Wyoming (the refinery). In connection with the historical operation of the refinery, some petroleum-based contaminants have entered the groundwater beneath the refinery. Groundwater sampling indicates that some of this contaminated groundwater has migrated off-site to the south and east of Frontier's refinery and onto adjacent property owned by Old Horse Pasture, Inc.

4. DEQ and Frontier entered into an Administrative Order on Consent (AOC) in March of 1995 and Frontier then entered into a Joint Stipulation for Modification of the AOC (Joint Stipulation) on October 17, 2006. The Joint Stipulation contains a "Special Stipulated Corrective Action Schedule" to Section VI of the AOC which, among other things, includes an October 15, 2008 deadline for Frontier to achieve boundary control. The technology or specific remedy that Frontier is required to use to achieve boundary control is not specified in the Joint Stipulation.

5. Frontier had, at the request of DEQ, previously authorized its consultant to prepare a Conceptual Design Report for a groundwater barrier wall near the south and east boundaries of the refinery. Frontier submitted this report to DEQ in January 2006. Due to the design and layout of the refinery, the Conceptual Design Report indicated that a large portion of any future barrier wall would need to be located on the adjacent land owned by Old Horse Pasture, Inc. (OHP).

6. Following entry of the Joint Stipulation in October 2006, Frontier and its consultant met and spoke with DEQ on multiple occasions concerning potential boundary control options. Due to access and other technical issues associated with a groundwater barrier wall, Frontier indicated to DEQ that it proposed to achieve required boundary control through installation of a system of overlapping groundwater recovery wells instead of a barrier wall. In October 2007 Frontier submitted to DEQ a Pilot Test Work Plan for the hydraulic groundwater control system.

7. On February 19, 2008 DEQ issued a Final Decision requiring construction of a slurry bentonite wall (barrier wall). The February 19, 2008 Final Decision by DEQ provides, to a certain degree, specifications for the barrier wall as well as a schedule with interim construction deadlines and a final October 15, 2008 deadline for completion of the barrier wall.

8. Frontier informed DEQ in a March 26, 2008 letter that, although it was surprised by DEQ's February 19 Final Decision requiring a barrier wall, Frontier agreed to install a barrier wall and was mobilizing to comply with the various requirements in DEQ's decision. Frontier's letter identified several construction interference issues -- known to Frontier and to DEQ at that time -- that needed to be resolved prior to beginning construction of the barrier wall. Frontier's letter to DEQ also asserted a force majeure claim, under Section XVII of the AOC, based upon Frontier's inability to obtain access to the Old Horse Pasture, Inc. property needed to proceed with work required for installation of the barrier wall.

9. On May 16, 2008, DEQ determined that the lack of access to a third party property "currently constitutes a Force Majeure situation under Section XVII of the

AOC, and that [t]his determination, and corresponding extension of access-dependent deadlines only, will terminate on June 16, 2008, unless the Administrator determines Frontier has been unable to obtain necessary access to third party property despite documented best efforts during the period ending June 16, 2008.”

10. In a May 23, 2008 letter to Frontier, DEQ clarified which boundary control related deadlines it considers to be “access dependent” (and thus extended by Frontier’s force majeure claim for non-access) and which are non-access dependent (and thus not extended). The May 23 letter also instituted new interim construction deadlines and stated that the October 15, 2008 deadline for completion of the barrier wall was still in effect.

11. As Frontier worked with its consultants and potential barrier wall contractors to prepare information required to construct a barrier wall, it received, for the first time, a draft schedule from its consultant indicating that at least twenty-two months are required to properly design and construct the barrier wall. Consequently, Frontier responded to DEQ’s May 23, 2008 letter by noticing a new force majeure claim and invoking the AOC dispute resolution procedures concerning DEQ’s barrier wall deadlines. Frontier’s new force majeure claim was based on two points: i) the deadlines for construction of the barrier wall are technically impracticable (including the fact that they apparently do not contain any meaningful opportunity for regulatory approvals by DEQ); and ii) DEQ’s February 19, 2008 determination requiring a barrier wall was not made reasonably in advance of the applicable deadlines under the Joint Stipulation to allow compliance by Frontier.

12. On June 2, 2008, the DEQ denied Frontier's new claim of force majeure in a letter which further stated that while "[t]he DEQ agrees with Frontier that the October 15, 2008 deadline for installation of the barrier wall along the approved alignment is access-dependent, but at this time it is not a near-term deadline that is extended by the May 16 [2008] Force Majeure Decision, which is effective only until June 16th. If the DEQ determines that the access-based force majeure situation persists beyond June 16th, the October 15, 2008 deadline for installation of the barrier wall along the approved alignment can be re-evaluated in view of Frontier's documented diligent efforts to meet it up to that point."

13. On July 2, 2008 Frontier filed a Petition for Review and Request for Hearing appealing DEQ's June 2, 2008 determination denying Frontier's new Force Majeure claim and refusing to extend the October 15, 2008 barrier wall deadline. The EQC assigned Docket Number 08-3804 to Frontier's petition, and DEQ filed a response to the petition on August 15, 2008.

14. On June 16, 2008 and July 16, 2008, DEQ issued decisions stating that lack of access to third-party property continues to constitute a force majeure situation under Section XVII of the AOC.

15. On July 21, 2008 DEQ issued an Administrative Order to OHP ordering it to grant Frontier and its contractors access to its property as needed for Frontier to install the barrier wall. By letter dated July 31, 2008, OHP offered to sell Frontier a 100-foot wide strip along the proposed barrier wall alignment for a price of \$20,642.20 per acre. No purchase agreement with proposed terms of such a sale was included with OHP's offer.

16. On August 12, DEQ filed a Notice of Compliance with its prior Administrative Order to OHP. The Notice of Compliance stated that OHP's offer to sell property to Frontier for a price that Frontier had previously offered constituted providing reasonable access to Frontier for purposes of complying with the Administrative Order.

17. On August 15, 2008, DEQ issued a Final Decision stating that "there is no longer a Force Majeure situation under Section XVII of the AOC due to lack of access to third party property." The basis for DEQ decision was that the AOC's requirement that Frontier use "best efforts" to obtain access required Frontier to accept OHP's offer to sell the property. The decision further stated that, because the sales of OHP property had not yet been completed, access-dependent deadlines were extended until September 15, or until the purchase transaction was completed, whichever came first.

18. Following OHP's July 31, 2008 offer to sell a 100-foot wide strip of property to Frontier, Frontier and OHP have been working to conclude a sale for a much larger 133 acre property that includes the area of the proposed barrier wall. Frontier and OHP have traded drafts of a purchase agreement and are optimistic that a sale will be concluded. However, a commercial real estate transaction of this nature is a complicated matter and requires time to work out the multitude of diverse issues.

19. Frontier has used, and continues to use, best efforts to finalize the draft purchase agreement and buy OHP property that is required to construct the barrier wall. Therefore, DEQ's August 15, 2008 final decision that a force majeure situation no longer exists is patently unreasonable because, as of the date of this filing, Frontier still does not have the required access.

20. Frontier now requests that the EQC review and set for hearing Frontier's appeal of DEQ's August 15, 2008 determination that Frontier's Force Majeure claim no longer exists. Because the issues associated with this appeal overlap in many ways with Frontier's pending appeal in Docket Number 08-3804, Frontier requests that the two appeals be consolidated into one action.

**GOVERNING LAW ENTITLING FRONTIER
TO ITS FORCE MAJEURE CLAIMS**

21. The AOC specifies a dispute resolution process requiring Frontier to appeal a DEQ decision within thirty days of receiving written notice of decision. AOC XVI(1). Frontier's request for review and hearing of DEQ's August 15, 2008 written determination regarding Frontier's Force Majeure claim with respect to the barrier wall deadline is timely and appropriate.

22. Section XVII of the AOC, entitled "FORCE MAJEURE AND EXCUSABLE DELAY" defines a force majeure as "any event arising from causes not foreseeable and beyond the control of Frontier which could not be overcome by due diligence and which delays or prevents performance by a date required by this [AOC]. Force majeure events are limited to . . . delays in obtaining access to property not owned or controlled by Frontier despite best efforts to obtain such access in a timely manner..."

23. Frontier's Force Majeure Claim with respect to the barrier wall deadline of October 15, 2008 falls squarely within one of the AOC's definitions of "Force Majeure": delays in obtaining access to property not owned or controlled by Frontier despite best efforts to obtain such access in a timely manner. DEQ previously determined that a force majeure situation exists due to lack of access by Frontier to OHP property. An OHP offer to sell property to Frontier does not change the fact that Frontier still does not have

access to the property, and denial by DEQ of Frontier's force majeure claim solely on the basis of such an offer is contrary to the terms of Section XVII of the AOC.

**DEQ'S DETERMINATION THAT A FORCE MAJEURE SITUATION
FOR LACK OF ACCESS NO LONGER EXISTS IS INSUPPORTABLE
AND SHOULD BE OVERTURNED**

24. On May 16, 2008 DEQ determined that a force majeure situation existed due to lack of access by Frontier to OHP property and that access-dependent deadlines for barrier wall construction were suspended. In written decisions dated June 16 and July 16, 2008, DEQ determined that this force majeure situation continued to exist. Although Frontier still does not have access to OHP property, DEQ determined on August 15, 2008 that a force majeure situation no longer exists due to OHP's offer to sell property to Frontier.

25. Since the time of OHP's sale offer (and even before the time of that offer), Frontier has been in discussions with counsel for OHP to arrange a purchase by Frontier of OHP property. Frontier believes that a purchase of the property can be finalized and is working to achieve that result as quickly as possible. However, DEQ's assertion that Frontier's force majeure claim is no longer valid due to OHP's offer to sell property to Frontier is unjustified and contrary to the terms of the AOC.

26. DEQ's August 15, 2008 decision is fundamentally flawed in at least two respects: i) A mere offer to sell property (an offer that did not even contain proposed terms and conditions of sale) does not constitute actual access. Even if Frontier and OHP are able to agree on a property purchase, the force majeure situation for lack of access would continue until the property transaction is completed; and ii) Frontier cannot be required to purchase third-party property in order to perform its obligations under the

AOC. DEQ's decision that a force majeure situation for lack of access no longer exists due to OHP's sale offer means that Frontier must purchase the OHP property in order to comply with the AOC. Such a decision is contrary to the scope and terms of the AOC and beyond DEQ's authority.

27. Until Frontier actually obtains access to OHP property, the force majeure situation due to lack of access will continue. Although Frontier is currently using best efforts to obtain access through purchase of property from OHP, the transaction has not yet been agreed to by the parties or finalized. Therefore, DEQ's determination that lack of access is no longer a force majeure situation must be overturned.

MOTION TO CONSOLIDATE ACTIONS

28. Currently pending before the EQC is Frontier's Appeal of the Denial of June 2, 2008 Force Majeure Claim by Frontier Refining Inc., Docket No. 08-3804. Because a substantial amount of the facts relevant to this Petition for Review and Request for Hearing are shared by Docket No. 08-3804, Frontier respectfully requests the two matters be consolidated into one matter. Both matters have common parties, involve the same property, and the same administrative compliance issues. Consolidating the two actions would not prejudice the parties and promotes judicial economy.

RELIEF REQUESTED

Frontier respectfully requests that the EQC: i) consolidate this Appeal with Docket No. 08-3804; ii) vacate and reverse the August 15, 2008 DEQ determination and decision that a force majeure situation for lack of access by Frontier to OHP property no longer exists; iii) order that a force majeure exists based upon a lack of access to third party property for construction of a barrier wall; and iv) order that "best efforts" to obtain

access under Section XVII of the AOC cannot require that Frontier purchase property from a third party.

DATED this 15th day of September, 2008.



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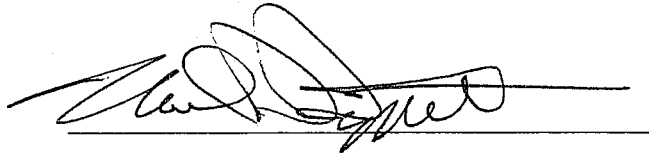
CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 15 day of September, 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 Review and Request for Hearing, via registered mail, return receipt requested, were served on the following:

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