

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

AUG 15 2008

Jim Ruby, Executive Secretary
Environmental Quality Council

In the Matter of the Appeal)
Of the Denial of June 2, 2008) Docket No. 08-3804
Force Majeure Claim by)
Frontier Refining Inc.)

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE
TO FRONTIER REFINING INC.'S PETITION FOR REVIEW

Respondent Wyoming Department of Environmental Quality (DEQ),
through counsel, pursuant to the Wyoming Environmental Quality Council's
(EQC) Order dated and filed July 30, 2008, answers Petitioner Frontier Refining
Inc.'s (Frontier) Petition for Review and Request for Hearing as follows:

STATEMENT OF FACTS

1. Admit that Frontier owns and operates a refinery located in
Cheyenne, Wyoming. DEQ is without information as to the truth of the allegation
of Frontier's business address. Admit that Mark Ruppert has entered his
appearance in this matter as Frontier's attorney. Admit that Mark Ruppert's
address is given in paragraph 1.
2. Deny that Frontier has accurately quoted WYO. STAT. ANN. §
35-11-112(a)(iii) in paragraph 2.
3. Admit.
4. Admit.
5. Admit the first sentence, except deny that Frontier's authorization
was at DEQ's request. Admit the second sentence. Admit that the Conceptual
Design Report indicated under one proposed alignment that a portion of a future

barrier wall could be located on adjacent land owned by Old Horse Pasture, Inc.
Deny the remaining allegations of paragraph 5.

6. Admit the first sentence. Deny the second sentence. Admit that in October 2007 Frontier submitted to DEQ a Pilot Test Work Plan to evaluate hydraulic control. Deny the remaining allegations in the third sentence.

7. Admit the first sentence. DEQ cannot answer the second sentence due to the vagueness of term “to a certain degree.” DEQ affirmatively alleges that the February 19, 2008 Final Decision provides specifications for the barrier wall, a schedule with interim construction deadlines, and incorporated the October 15, 2008 final deadline for completion of the barrier wall.

8. Admit the first sentence. Admit that Frontier identified several construction interference issues that were known to Frontier at that time. Deny that all of the interference issues were known to DEQ at that time. Deny that all the interference issues needed to be resolved prior to the beginning of construction of the barrier wall. Admit that Frontier’s letter asserted a force majeure claim under Section XVII of the AOC. Admit that the force majeure claim was based upon Frontier’s inability to obtain access to property. Deny Frontier’s assertion that access to property was needed to proceed with all work required for installation of the barrier wall.

9. Admit that on May 16, 2008 DEQ made a determination that the lack of access constituted a force majeure situation. Deny that the quotation of DEQ’s May 16, 2008 letter in paragraph 9 is accurate.

10. Admit.

11. DEQ is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the first sentence allegation regarding information between Frontier and its consultants. Admit that Frontier's May 30, 2008 letter was a response to DEQ's May 23, 2008 letter, and admit the remaining allegations in second sentence. Admit that Frontier's May 30, 2008 letter based its new force majeure claim on the two points identified in the third sentence of paragraph 11 of their Petition.

12. Deny that the June 2, 2008 letter denied Frontier's new force majeure claim. Admit DEQ did not agree that Frontier's May 30, 2008 letter described a new force majeure event. Deny that the quotation of DEQ's June 2, 2008 letter in paragraph 12 is accurate.

13. Paragraph 13 is not an allegation of fact to which a responsive pleading is required.

14. DEQ is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, this averment.

15. Admit the first sentence. Admit the allegation in footnote 1 that Frontier's May 30, 2008 letter notified DEQ of its intent to invoke Dispute Resolution, and that DEQ informed Frontier that the June 2, 2008 determination is directly appealable to the EQC. Deny the remaining allegations in footnote 1. Admit that Frontier's request for review and hearing was timely filed, but deny the remaining the allegations in the second sentence of paragraph 15.

16. Admit.

17. Deny.

18. Admit the first sentence. Admit the second sentence allegation that the Conceptual Design Report indicated under one proposed alignment that a portion of a future barrier wall could be located on adjacent land owned by Old Horse Pasture, Inc. Deny the third sentence allegation that access is necessary for Frontier to conduct all activities associated with building the barrier wall. Admit the remaining allegations of the third sentence. Deny the fourth sentence.

19. Admit that the DEQ has determined that the lack of access constituted a force majeure as described in the letters dated May 16 and June 16, 2008. Deny remaining allegations in the first sentence. Admit that the DEQ made determinations in letters dated May 16 and June 16, 2008, but deny the remaining allegations in the second sentence. Deny the third sentence. The fourth sentence is not sufficiently clear for DEQ to admit or deny, and therefore DEQ denies, the fourth sentence. Deny the fifth sentence.

20. Deny the first sentence. Admit that without appropriate access Frontier cannot conduct certain activities for installation of the barrier wall. Deny the remaining allegations of the second sentence. DEQ is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the averment in the third sentence.

21. DEQ is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, these averments.

22. Deny the first sentence. DEQ is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the averment in the second sentence.

23. DEQ is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the averment in the first sentence.

Deny the second sentence. Admit the third sentence.

24. Admit.

25. Admit the first sentence. DEQ is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the averment in the second sentence. Admit the third sentence. Deny the fourth sentence. Deny fifth sentence.

26. Deny the first sentence. Admit the first clause of the second sentence. DEQ is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the remaining averments in the second sentence. DEQ is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the averment in the first clause of the third sentence. Deny the remaining averments in the third sentence.

WHEREFORE, the relief requested by Frontier should be denied.

DATED this 15th day of August, 2008.



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CERTIFICATE OF SERVICE

This certifies that true and correct copies of the foregoing WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE TO FRONTIER REFINING INC.'S PETITION FOR REVIEW was served this 15th day of August, 2008 by United States mail, first class postage prepaid, and also by e-mail, addressed as follows:

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A handwritten signature in blue ink, appearing to read "MRuppert", is written over a horizontal line.