

FILED

JAN 02 2009

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

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

In the Matter of Frontier Refining Inc.'s Appeal of)
DEQ's October 27, 2008 Incorporation of the)
Barrier Wall Schedule into the AOC and) Docket No. 08-3808
November 7, 2008 Denial that Frontier has)
Achieved Boundary Control)

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S MOTION TO
DISMISS FRONTIER REFINING INC.'S PETITION FOR REVIEW**

Respondent Wyoming Department of Environmental Quality (DEQ) moves the Wyoming Environmental Quality Council (EQC) to dismiss Frontier Refining, Inc.'s (Frontier) Petition for Review, Request for Hearing and Request for Consolidation under Chapter II, Sections 3 & 14 of the DEQ Rules of Practice & Procedure and Rule 12 of the Wyoming Rules of Civil Procedure. Frontier's first claim in its petition for review should be dismissed under Rule 12(b)(6), Wyo. R. Civ. P., on grounds that it fails to state a claim on which relief can be granted. This claim substantially duplicates a contention Frontier already argued in its Response to DEQ's pending Motion to Dismiss Frontier's appeal in EQC Docket No. 08-3804. DEQ therefore incorporates by this reference the arguments it made in its November 18, 2008 reply to that Frontier response.

Frontier's second and final claim should be dismissed under Rule 12(b)(1), Wyo. R. Civ. P., because the doctrine of collateral estoppels deprives the EQC of subject matter jurisdiction to hear it. The grounds for this motion are more fully set forth in DEQ's brief filed herewith, and the exhibits attached to that brief.

The EQC's December 3, 2008 Response Order calls for Respondent DEQ to respond to Frontier's petition on or before January 2, 2009. Rule 12(a), Wyo. R. Civ. P., provides that the time for filing a responsive pleading will be 10 days after notice of the tribunal's action on a motion to dismiss under Rule 12(b). Accordingly, this motion to dismiss tolls the deadline for DEQ to file a response to Frontier's petition until after the EQC decides this motion.

In its petition, Frontier included a request that the EQC consolidate the adjudication of this petition with Frontier's petition in Docket No. 08-3804. DEQ agrees that these dockets should be consolidated for purposes of DEQ's motions to dismiss and all other proceedings.

Frontier and DEQ are the only parties in Docket No. 08-3808.

WHEREFORE, Respondent DEQ requests that the EQC dismiss Frontier's petition.

DATED this 2nd day of January, 2009.



Mike Barrash (Bar No. 5-2310)
Senior Assistant Attorney General
Peter Michael (Bar No. 5-2309)
Senior Assistant Attorney General
123 State Capitol Building
Cheyenne, Wyoming 82002
307-777-6946

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the foregoing WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S MOTION TO DISMISS FRONTIER REFINING INC.'S PETITION FOR REVIEW was served this 2nd day of January, 2009 by hand delivery or United States mail, first class postage prepaid, and also by e-mail, addressed as follows:

Mark R. Ruppert
Holland & Hart LLP
2515 Warren Ave. Suite 450
P.O. Box 1347
Cheyenne, Wyoming 82003
MRuppert@hollandhart.com



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