

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

FEB 12 2007

In the Matter of the)
Administrative Order on Consent)
Issued to Frontier Refining, Inc.,)
A Delaware Corporation)

Docket No. 06-5400

Terri A. Lorenzon, Director
Environmental Quality Council

**MOTION OF ARP & HAMMOND HARDWARE COMPANY FOR LEAVE TO
INTERVENE AND TO SUPPLEMENT *JOINT STIPULATION FOR MODIFICATION OF
ADMINISTRATIVE ORDER ON CONSENT DATED SEPTEMBER 15, 2006***

COMES NOW, Arp & Hammond Hardware Company, through undersigned counsel, and states as follows:

I. FACTS

1) Arp & Hammond Hardware Company, Lummis Livestock Company and their affiliates (collectively "Arp & Hammond") are owners of land contiguous to the "Frontier Refinery" owned and operated by Frontier Refining, Inc. ("Frontier"). Arp & Hammond owns land within the Porter Draw drainage, including those lands on which the Porter Draw reservoir is located. These Porter Draw lands were formerly leased by Frontier for the purpose of discharging wastewater and effluent.

2) Frontier Refinery is connected to the Porter Draw reservoir by a wastewater conveyance pipeline that crosses the lands owned by Arp & Hammond. The land adjacent and contiguous to Frontier Refinery, and the lands situated in Porter Draw, have been materially and adversely impacted by Frontier's operations, including but not limited to contamination of the soil, contamination of the surface water and groundwater, contamination of the surrounding area and damage to the aesthetic values of the property.

3) As the owner of property that has been materially and adversely affected by Frontier's operations, Arp & Hammond is entitled to be informed about, and included in negotiations or dispositions of, matters affecting its property and legal rights.

4) The cleanup and remediation of land and water within Arp & Hammond's property and adversely affected by Frontier is governed by a Final Administrative Order on Consent ("AOC") entered into by Frontier and the Wyoming Department of Environmental Quality ("DEQ")

in March of 1995, which was equivalent to and intended to run concurrently with 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 The EPA Order was withdrawn on March 19, 1997.

5) On or prior to September 15, 2006, the DEQ and Frontier entered into an agreement to modify the AOC. They have also filed with the Environmental Quality Council (“EQC”) a *Joint Stipulation for Modification of Administrative Order on Consent* (“Joint Stipulation”) dated September 15, 2006. The Joint Stipulation is currently pending before the EQC.

6) The Joint Stipulation specifically establishes remediation deadlines which were absent in the original AOC.

7) The fact that the AOC did not include such deadlines has contributed to the current situation, whereby the remediation requirements contained in the AOC have not been completed more than ten years after its entry.

8) The Joint Stipulation establishes completion dates for RCRA Facility Investigations (onsite and offsite), achievement of Environmental Indicators, site stabilization and onsite source controls.

9) Neither the Joint Stipulation nor the AOC contain requirements for the remediation of Porter Draw, one of several specific areas of concern to Arp & Hammond.

10) As the owner of lands that have been contaminated and materially and adversely affected by Frontier’s operations, Arp & Hammond has actively sought to participate in the proceedings and negotiations between DEQ and Frontier. Arp & Hammond has requested to be informed of, included in and allowed to fully participate in these proceedings, including the discussions, negotiations and/or agreements that relate in any way to the settlement or resolution of the matters affecting its real property, property rights and legal rights. These requests to participate are not only reasonable, but are the only manner in which Arp & Hammond will be able to fully protect its property.

11) Frontier has completed preliminary environmental investigations at the Porter Draw reservoir and its immediate vicinity.

12) Arp & Hammond understood that remediation of Porter Draw would be a requirement of that certain Consent Decree dated January 5, 2007, which was entered into for the specific purpose of resolving a Notice of Violation dated February 5, 2004 (EQC Docket Number 3538-04). The Notice of Violation identified and described the manner in which Porter Draw was impacted by Frontier Refinery's violations (see Exhibit A – Complaint and Exhibit B – January 5, 2007, Consent Decree, First Judicial District, State of Wyoming, Civil No. 169-196). The Consent Decree, however, referred the remediation back to the “existing or modified” AOC. As a result, the remediation of all impacts at Porter Draw and any impacts along the conveyance pipeline must be addressed by the AOC. Importantly, however, neither the Joint Stipulation nor the AOC require Frontier to remediate the contamination and problems that it created and caused to those lands within the Porter Draw drainage, including those lands underlying the Porter Draw reservoir.

13) Frontier ceased its operation of Porter Draw as of June 30, 2006, at which time its lease with Arp & Hammond expired. Initial investigations of Porter Draw were completed by Frontier the last two weeks of June 2006. Therefore, over six months have lapsed since Frontier last used the system.

14) Due to the fact that the lease has expired, and will not be renewed, there is no reason for continued use or existence of the Porter Draw conveyance pipeline system or reservoir.

15) The wastewater in the Porter Draw reservoir belongs to Frontier and its containment allows for continued seepage of wastewater to the Porter Draw drainage and subsurface system.

16) Without removal of the remaining wastewater in the reservoir and remediation of sediment, soil, surface water and groundwater, the entirety of Porter Draw below that point will forever remain impacted by Frontier's actions.

II. MOTION FOR LEAVE TO INTERVENE

ARP & HAMMOND HEREBY MOVES FOR LEAVE TO INTERVENE. In conformance with Chapter II of the Rules of Practice and Procedure before the Environmental Quality Council and the Wyoming Administrative Procedure Act (W.S. §16-3-101 and following), Arp & Hammond

petitions for leave to intervene in the captioned matter. In support of its petition, Arp & Hammond states:

- 1) That it owns land that has been polluted by the operations and actions of Frontier.
- 2) That its legal and property rights are at risk in decisions made under this Docket.
- 3) That Arp & Hammond repeatedly requested to be included in proceedings and negotiations between the Attorney General's office, the Wyoming Department of Environmental Quality and Frontier regarding the Notice of Violations filed against Frontier (NOV 3538-04, dated February 5, 2004) and was denied the opportunity to so participate. The NOV was settled by Consent Decree filed with the District Court. The Consent Decree relegated remediation of the Porter Draw land and water to the AOC, which is the subject of this Docket.
- 4) That Arp & Hammond is adversely affected by Frontier's actions and is entitled as of right to be admitted as a party in all matters now and in the future pending and pertaining to this Docket.

III. MOTION FOR ORDER SUPPLEMENTING JOINT STIPULATION

ARP & HAMMOND HEREBY MOVES FOR AN ORDER SUPPLEMENTING THE JOINT STIPULATION AS FOLLOWS:

- 1) That the Joint Stipulation be approved and that the EQC enter an order supplementing the provisions of the Joint Stipulation be entered regarding the matters described below which relate to Arp & Hammond land impacted by Frontier's operations.
- 2) That Frontier be directed to conduct environmental investigations along the entire length of the wastewater conveyance pipeline that connects Frontier Refinery to the Porter Draw reservoir to determine whether there are any environmental impacts or contamination associated with that pipeline or whether such pipeline should be removed to prevent such impacts or contamination in the future; and that any impacts identified be addressed by Frontier for remediation not later than November 30, 2008.
- 3) That remediation be completed to no less than established background conditions.

4) That Frontier be directed to develop a work plan for remediation of Porter Draw and to complete additional investigations to address soil and sediment sampling data gaps near the conveyance pipeline discharge, the drainage basin leading to the reservoir and the inlet in the southwest corner of the reservoir.

5) That Frontier be directed to complete additional sampling within the high wastewater line of the reservoir to further define sediment quality, depth of subsurface soil impacts and groundwater impacts.

6) That Frontier be directed to complete additional groundwater assessment to establish background groundwater quality and the depth and areal extent of groundwater impact beneath the reservoir and well as down gradient of the reservoir; and that such investigations shall not be limited to RCRA regulated compounds, but shall include constituents of the wastewater that potentially impact waters of the State of Wyoming.

7) That Frontier be directed to remove all wastewater remaining at the Porter Draw reservoir no later than June 1, 2007.

8) That Frontier be directed to remove all impacts to the land, surface water and groundwater associated with its use of the Porter Draw reservoir; and that such impacts be deemed to be inclusive of both regulated and non-regulated compounds contained within the wastewater which have impacted sediment, soil, surface water and groundwater at Porter Draw.

9) That Frontier be directed to remediate Porter Draw to no less than established background concentrations.

10) That characterization and remediation of the Porter Draw be completed no later than November 30, 2008, and that penalties for non-compliance as provided in the AOC shall apply.

11) That Frontier and DEQ be directed to keep Arp & Hammond informed of all activities associated with this matter and to include Arp & Hammond in the review, comment and participation in any and all negotiations relating to Frontier actions and compliance addressed to offsite impacts specific to and/or in relation to Arp & Hammond lands.

12) That Porter Draw and other lands associated with the conveyance system be remediated to their established background condition.

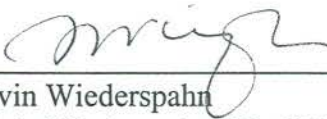
13) That Frontier and DEQ and Arp & Hammond be provided sixty (60) days from this date to negotiate and settle the matters set forth in this *Motion to Supplement Joint Stipulation for Modification of Administrative Order on Consent* pursuant to Section 11 of the Rules of Practice and Procedure before the EQC. If no settlement is reached by the expiration of the sixty days, Arp & Hammond may at that time petition the EQC to convene a contested case hearing to resolve the issues in dispute among the parties.

WHEREFORE, Arp & Hammond prays that the Environmental Quality Council grant leave to Arp & Hammond to intervene for all purposes in this matter and allow the parties sixty days from date to negotiate the supplementation of the *Joint Stipulation Modifying Administrative Order on Consent* as above set forth.

Submitted this 12th day of February, 2007.

ARP & HAMMOND HARDWARE COMPANY

By:



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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2007, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, addressed to:

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