

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

NOV 18 2008

In the Matter of the Appeals of the)
June 2, 2008 and August 15, 2008)
Denial of Force Majeure Claims by)
Frontier Refining Inc.)

Docket Nos. 08-3804
and 08-3806

*Jim Ruby, Executive Secretary
Environmental Quality Council*

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S
REPLY TO FRONTIER REFINING INC.'S RESPONSE TO DEQ'S
MOTION TO CONSOLIDATE AND DISMISS FRONTIER'S APPEALS**

Respondent Wyoming Department of Environmental Quality (DEQ), pursuant to Chapter II, Section 14 of the DEQ Rules of Practice & Procedure and Rule 6(c) of the Wyoming Rules of Civil Procedure, replies as follows to Petitioner Frontier Refining Inc.'s (Frontier) Response to DEQ's Motion to Consolidate and Dismiss Frontier's Petitions for Review and Requests for Hearing (Response) filed November 4, 2008 in related Docket Nos. 08-3804 and 08-3806 before the Wyoming Environmental Quality Council's (EQC).

Introduction

The DEQ has moved the EQC to consolidate and dismiss Frontier's Petitions for Review and Requests for Hearing (Petitions) in related Docket Nos. 08-3804 and 08-3806 on the grounds of mootness and lack of subject matter jurisdiction. Frontier agrees to DEQ's motion to dismiss Frontier's appeal in Docket No. 08-3806, but opposes DEQ's motion to dismiss Frontier's appeal in Docket No. 08-3804. Response, pp.1 & 8.

Frontier contends that its appeal in Docket No. 08-3804 is not moot by arguing that Frontier and DEQ have not fully resolved the primary issue in that appeal—the schedule for Frontier to construct a barrier wall along the refinery boundary to control continuing off-site migration of contamination from refinery sources. Response, pp.5-6. This argument fails because Frontier and DEQ have fully and finally resolved the barrier wall construction schedule, leaving nothing more for the EQC to decide on that issue, which is now moot.

Frontier's Response also implies that its appeal in Docket No. 08-3804 is not moot by arguing that there is an issue in this appeal as to whether Frontier must install a barrier wall at all

due its recent purchase of neighboring ranch land. Response, pp.6-7. This argument fails for three reasons. First, Frontier's Petition in Docket No. 08-3804 only contests the barrier wall construction schedule, not to the barrier wall requirement itself. A claim not raised in an appeal is not a basis for preserving that appeal when the claim that was raised has been resolved and become moot. Second, the barrier wall requirement itself was set forth in the DEQ Solid & Hazardous Waste Division (SHWD) Administrator's February 19, 2008 "Final Decision" letter (copy attached as EXHIBIT A), which Frontier did not appeal and therefore became final and binding. Third, Frontier's view of the boundary control requirement is inconsistent with the Administrative Order on Consent (AOC).

Discussion

The Barrier Wall Scheduling Issue Raised In Docket No. 08-3804 Has Been Resolved

Frontier "disagrees with DEQ's assertion that Frontier's July 2, 2008 appeal (Docket No. 08-3804) is now moot" and argues that "Frontier's appeal is not resolved by DEQ's new September 26, 2008 barrier wall construction schedule or its subsequent revised October 27, 2008 barrier wall schedule." Response pp.5-6. This is incorrect.

In its Motion to Dismiss Frontier's July 2, 2008 appeal, DEQ explained that in late September, 2008 Frontier represented that its purchase of the Old Horse Pasture, Inc. (OHP) property was imminent, which would resolve the access problem. On September 26, 2008, in reliance upon that representation, DEQ issued a revised schedule (copy attached as EXHIBIT B), extending the previous barrier wall schedule and the Joint Stipulation's October 15, 2008 deadline for completion of the barrier wall, which Frontier was appealing, by 12 months, until October 26, 2009. Motion to Dismiss, pp.4-5.

By letter dated October 3, 2008 (copy attached as EXHIBIT C), Frontier invoked the dispute resolution provisions in Section [XVI] of the AOC to object to the DEQ's September 26, 2008 revised barrier wall construction schedule. Following a dispute resolution meeting on October 17, 2008, DEQ, by letter dated October 21, 2008 (copy attached as EXHIBIT D), asked Frontier to provide Frontier's own proposed barrier wall construction schedule with interim deadlines for DEQ review before the follow-up dispute resolution meeting on October 27, 2008. By letter dated October 24, 2008 (copy attached as EXHIBIT E), Frontier proposed its own

revised barrier wall construction schedule with interim deadlines, which it “believe[d]” to be “aggressive yet achievable.” The SHWD Administrator’s October 27, 2008 Dispute Resolution Decision letter (“Exhibit 2” attached to Frontier’s Response (p.5)), notified Frontier that “Frontier’s proposed schedule, as specified in [its] October 24, 2008 letter (attached), is approved and deemed incorporated into the AOC under the Dispute Resolution provisions in Section XVI.” Consequently, the dispute resolution process invoked by Frontier was concluded by mutual agreement (DEQ’s approval of the specific schedule proposed by Frontier).

In its Response to DEQ’s Motion to Dismiss, Frontier now argues that:

Although DEQ’s October 27, 2008 letter to Frontier stated that a new barrier schedule was approved by DEQ and incorporated into the AOC, Frontier has not agreed to such an amendment to the AOC. Section XVI of the AOC requires that, following a finding of force majeure, the relevant workplan will be extended “through an amendment to the [AOC] pursuant to Section XXI”. (see Section XVI, paragraph 5 of the AOC – Exhibit 1). Section XXI requires that such amendment be made by mutual agreement between Frontier and the DEQ. *Id.* Because Frontier and DEQ have not yet agreed to an AOC amendment . . . the issues raised in Frontier’s July 2, 2008 appeal remain unresolved.

Response, p.6.

Frontier’s argument is flawed. The schedule Frontier itself proposed in its October 24, 2008 letter was part of the dispute resolution process invoked by Frontier under Section XVI of the AOC. Paragraph 5 in Section XVII (not XVI) of the AOC pertaining to Force Majeure provides that “if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the Dispute Resolution provisions of Section XVI.” That is what has happened. DEQ’s September 26, 2008 revised schedule extended the deadline for barrier wall completion by 12 months, until October 26, 2009. Frontier’s October 3, 2008 letter to DEQ (EXHIBIT C) invoked dispute resolution under the AOC to object to the DEQ’s September 26, 2008 revised schedule for barrier wall construction. As part of the dispute resolution process, Frontier’s October 24, 2008 letter proposed Frontier’s own revised schedule for barrier wall construction. The SHWD Administrator’s October 27, 2008 “Dispute Resolution Decision” letter to Frontier (Frontier’s Response “Exhibit 2”) approved the proposed schedule, as specified in Frontier’s October 24, 2008 letter and deemed that schedule incorporated into the AOC under

the Dispute Resolution provisions in Section XVI. AOC Sections XVI, XVII & XXI are all included in "Exhibit 1" attached to Frontier's Response (p.2).

The AOC's provisions for Dispute Resolution in Section XVI.1. call for DEQ and Frontier to work in "good faith" in an effort to reach a mutually agreeable resolution to the dispute. Assuming Frontier actions during the dispute resolution process invoked by Frontier were done in good faith, DEQ's approval of the specific barrier wall schedule that Frontier itself proposed constitutes mutual agreement on that schedule and resolves that issue.

Frontier's procedural argument that an amendment to the AOC pursuant to Section XXI is required here inaccurately cites to paragraph 5 of AOC Section "XVI" (Response, p.6) rather than to paragraph 5 of Section XVII. There is no paragraph 5 of AOC Section XVI. As noted above, paragraph 5 in Section XVII pertaining to Force Majeure provides that "if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the Dispute Resolution provisions of Section XVI," which is what happened. Paragraph 2 of AOC Section XVI states that:

Notwithstanding the provisions of Section XXI, "Subsequent Modification", of this Consent Order, any agreement or decision made pursuant to this Section by the Department shall be reduced to writing, shall be deemed incorporated into this Consent Order without further order or process, and shall be binding on the parties.

Accordingly, the SHWD Administrator's October 27, 2008 "Dispute Resolution Decision" letter to Frontier (Frontier's Response "Exhibit 2") approved the specific schedule as proposed in Frontier's October 24, 2008 letter and deemed that schedule incorporated into the AOC under the Dispute Resolution provisions in Section XVI.

Contrary to Frontier's contention, the primary issue in Frontier's July 2, 2008 appeal in Docket No. 08-3804 contesting the schedule for barrier wall construction has been fully and finally resolved in accordance with the AOC and is now moot.

The Barrier Wall Requirement Is A Final Decision That Frontier Neither Timely Appealed Nor Raised In Its July 2, 2008 Petition In Docket No. 08-3804

Frontier's Response also raises a new issue that it did not raise in its July 2, 2008 Petition in Docket No. 08-3804: whether, given its purchase of OHP property, Frontier is still legally

obligated to construct the barrier wall, if the groundwater plume migrating from the refinery is, as Frontier alleges, now completely contained on property owned by Frontier. Response, pp.6-7. The barrier wall requirement was set forth in the SHWD Administrator's February 19, 2008 "Final Decision" letter (EXHIBIT A). Chapter I, Section 16(a) of the DEQ Rules of Practice & Procedure provides 60 days in which to appeal final actions of the Administrator. The Administrator's February 19, 2008 barrier wall decision became final and binding when Frontier did not appeal it in 60 days. In fact, in its March 26, 2008 letter to DEQ (copy attached as EXHIBIT F), cited in Frontier's Response (p.2), Frontier "agree[d] to install a barrier wall around the refinery."

The DEQ's February 19, 2008 Final Decision letter expressly states that DEQ does not approve hydraulic control (alone) as "a technology to halt outward migration of contaminants at the refinery boundary," but DEQ does approve a slurry bentonite wall as the technology "to halt outward migration of contaminants at the existing refinery boundary." Then by letter to DEQ dated March 26, 2008, Frontier "agree[d] to install a barrier wall around the refinery." The 60 day period to appeal the DEQ's February 19, 2008 decision under Chapter I, Section 16(a) of the DEQ Rules of Practice & Procedure expired 7 months ago.

As stated in AOC Section III (copy attached as EXHIBIT G), a purpose of the AOC and a "mutual objective" of DEQ and Frontier is to "prevent or mitigate any migration or releases of hazardous waste or hazardous constituents at or from the Facility." AOC Section IV (included in attached EXHIBIT G) identifies "The Facility" as the Frontier Refinery consisting of 116.78 acres located adjacent to Fifth Street and Camp Stool Road on the north, Morrie Avenue to the west, and the flood plain of Crow Creek to the south and east, as well as open fields to the east, which are the "facility boundaries" identified in Frontier's RCRA Part A Permit Application. The additional 133 ranch acres Frontier recently purchased from OHP are not and never were part of the 116.78 acre historic refinery described in the AOC or within the "facility boundaries" identified in Frontier's RCRA Part A Permit Application. Those newly acquired 133 acres were contaminated by releases from sources at the actual, historic Facility that migrated off-site.

In telephone conversations and e-mails exchanged in June 2008 between Frontier's attorneys and DEQ's attorneys in the AG's office (copy of e-mails attached as EXHIBIT H), Frontier inquired whether if it were to purchase 133 acres of OHP land to the south and east of

the refinery, DEQ would withdraw the February 19, 2008 final decision letter requiring installation of a barrier wall for boundary control. Frontier "acknowledge[d] the need to protect Crow Creek from potential future migration of contaminants," and proposed installing a system of upgradient groundwater recovery wells for that purpose instead of a barrier wall. The DEQ rejected that notion and told Frontier that the potential property transfer of 133 acres would not affect the February 19, 2008 final decision regarding refinery boundary control requirements, which already included hydraulic control to supplement the barrier wall. Therefore, Frontier's subsequent purchase of the 133 acres from OHP was not done in reliance upon an indication from DEQ that it might then consider withdrawing the February 19, 2008 final decision and agree to modify the refinery boundary control requirements as Frontier now proposes.

Neither DEQ nor OHP compelled Frontier to buy 133 acres to obtain access needed to install the barrier wall along the DEQ-approved alignment. OHP's July 31, 2008 letter (copy attached as EXHIBIT I), offered to sell Frontier either 12 acres or 18.5 (12+6.5) acres for less than the per acre price Frontier had recently offered OHP to buy 43 acres. DEQ's August 12, 2008 Notice of Compliance (NOC) to OHP said that OHP's July 31, 2008 letter offer to sell Frontier the minimal property (12 or 18.5 acres) needed to install the barrier wall along the DEQ-approved alignment for a per acre price less than what Frontier had offered to pay constituted compliance with DEQ's July 21, 2008 Administrative Order to OHP (DEQ Docket No. 4316-08). (See NOC attached to "Joint Request to Protect Financial Information" filed August 15, 2008 in EQC Docket No. 08-5201.) The DEQ-approved barrier wall alignment is needed to protect Crow Creek and contain continuing off-site migration of contamination from sources at the *actual, historic refinery* that have not yet been controlled. The express purpose of the AOC is to "prevent or mitigate any migration or releases of hazardous waste or hazardous constituents at or from the Facility." The "Facility" is the *actual, historic refinery*. Frontier's recent purchase of 133 acres of adjacent bottomland property that has been contaminated by releases from, but was never a part of, the *actual, historic refinery* does not in itself constitute boundary control for purposes of the AOC. It is also worth noting that the Wyoming Environmental Quality Act does not condone knowingly obtaining an interest in land to avoid liability for remediation of contamination. WYO. STAT. ANN. § 35-11-1803(a).

Chapter I, Section 16(a) of the DEQ Rules of Practice & Procedure precludes Frontier from using its November 4, 2008 Response to DEQ's Motion to Dismiss Frontier's July 2, 2008

appeal about scheduling in Docket No. 08-3804 to now contest the SHWD Administrator's February 19, 2008 final decision requiring a barrier wall, which was not an issue in this appeal. Furthermore, Frontier's view of the boundary control requirement is inconsistent with the AOC.

Conclusion

DEQ's Motion to Dismiss Frontier's September 15, 2008 appeal in Docket No. 08-3806 for mootness should be granted on the grounds set forth in the motion. Frontier "agrees to DEQ's motion to dismiss Frontier's appeal in Docket No. 08-3806." Response, pp.1 & 8. DEQ's Motion to Dismiss Frontier's July 2, 2008 appeal in Docket No. 08-3804 for mootness should be granted on the grounds set forth in the motion and for the reasons explained above.

DATED this 18th day of November, 2008.



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 REPLY TO FRONTIER REFINING INC.'S RESPONSE TO DEQ'S MOTION TO CONSOLIDATE AND DISMISS FRONTIER'S APPEALS was served this 18th day of November, 2008 by United States mail, first class postage prepaid, and 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.

DEQ REPLY EXHIBIT A



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

February 19, 2008

Mr. David Danford, P.E.
Environmental Manager
Frontier Refinery
P. O. Box 1588
Cheyenne, WY 82003-1588

CERTIFIED MAIL # 7005 1820 0005 1478 1805
RETURN RECEIPT REQUESTED

RE: Boundary Control Design Report and Implementation, Frontier Refining Inc., Cheyenne, Wyoming

Dear Mr. Danford,

Frontier Refining Inc. (Frontier) and the Wyoming Department of Environmental Quality (WDEQ) entered a Joint Stipulation for Modification of Administrative Order on Consent on October 17, 2006, which added a "Special Stipulated Corrective Action Schedule" to Section VI of the Administrative Order on Consent (AOC). Among other things, that schedule:

(20.i.) calls for site stabilization, including boundary control, by October 15, 2008, and specifies that to mean DEQ approved implementation of boundary control; and

(20.iv.) explains that boundary control for the entire boundary "must occur before October 15, 2008."

The Wyoming Department of Environmental Quality/Hazardous Waste Permitting and Corrective Action Program (WDEQ/HWPCA) requested in a June 27, 2007 letter that a submittal date for the Draft Boundary Control System Design Report (Report) be provided no later than July 20, 2007. In subsequent meetings between WDEQ and Frontier, Frontier indicated that the Report would be provided within a few weeks of each meeting (last meeting date of August 20, 2007). An email from Frontier, dated September 6, 2007, represented that a schedule for proposed boundary control activities and submittal of the Report would be provided during the week of September 10, 2007. A Pilot Test Work Plan was received in October 2007 and a schedule for Boundary Control was finally received in December 2007. Technologies suitable for the site have been presented in the Pilot Test Work Plan, Groundwater Hydraulic Boundary Control, Upper Ogallala Aquifer (Trihydro, 2007) and the Conceptual Design Report, Groundwater Barrier Wall for the Upper Ogallala Aquifer (Trihydro, 2006).

This letter constitutes the WDEQ's Final Decision regarding action Frontier must take to meet the schedule for implementing DEQ-approved boundary control to which Frontier stipulated. Frontier has not provided sufficient data for WDEQ to approve hydraulic control as a technology to halt outward migration of contaminants at the refinery boundary (e.g., field data, pilot tests, groundwater model), but other boundary control technologies suitable for the facility have been presented. The

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ADMIN/OUTREACH (307) 777-7937 FAX 777-3610	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7369 FAX 777-5973	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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DEQ REPLY
EXHIBIT A
NOV 19 2008



technology WDEQ does approve to halt outward migration of contaminants at the existing refinery boundary is a slurry bentonite wall, as identified in the Conceptual Design Report, Groundwater Barrier Wall for the Upper Ogallala Aquifer (Trihydro, 2006). Accordingly, Frontier must take the following actions to implement boundary control:

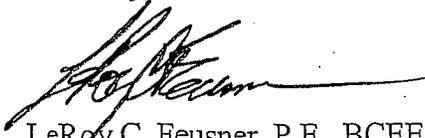
1. Construction activities must start no later than June 1, 2008.
2. Proposed construction and plans for the barrier wall and monitoring system must be submitted for review to WDEQ no later than April 1, 2008.
3. A performance standard for barrier wall permeability must be 1×10^{-7} .
4. The alignment of the barrier wall must be at the facility boundary as specified in the Conceptual Design Report, Groundwater Barrier Wall for the Upper Ogallala Aquifer (Trihydro, 2006). The alignment will begin at the northeast corner of the refinery boundary, continue south to the southeast corner of the refinery boundary, contain the entire southern boundary of the refinery to the southwest corner and extending to the north to a point that will contain all non-aqueous phase liquids and dissolved constituents. At a minimum, this point from the southwest corner extending north must extend past the current Truck Loading Dock which has identified high concentrations of volatile organic compounds exceeding hazardous waste levels at the facility boundary. In addition, the city storm sewer which runs along the west boundary of the facility should be located on the outside of any alignment to ensure that a preferential pathway is eliminated. Adjustments less than five-feet will be allowed as a small adjustment. Any adjustments needed over five-feet should be discussed with WDEQ prior to adjustment.
5. As shown on Figure 1 of the Conceptual Design Report, Groundwater Barrier Wall for the Upper Ogallala Aquifer (Trihydro, 2006), the light non-aqueous phase liquid plume, located in the southeast corner of the refinery just south of the closed RCRA Cell, must be contained within the alignment.
6. A project specific soil management plan must be developed and submitted prior to construction activities. The plan must incorporate management and containerization of soils and liquids associated with construction activities of the slurry wall, disposal practices of excess soils, characterization of excess soils, and most importantly, segregation practices of soils, unimpacted hydrocarbon stained soils, and soils containing free phase hydrocarbon. The Soil Management Plan for boundary control installation activities must be submitted by May 1, 2008 to ensure review and approval prior to June 1, 2008.
7. Additional specification drawings, certification of materials, contractor qualifications, quality control/quality assurance, and any other pertinent information not submitted in the

Conceptual Design Report Groundwater Barrier Wall for the Upper Ogallala Aquifer must be submitted to WDEQ by May 1, 2008.

8. Quality Control/Quality Assurance shall be met by providing the items listed in number 6 including, but not limited to the names and duties of persons responsible for field decision making and the scope of those decisions, who will determine stop work due to specifications not being met (e.g., the occasional lump up to and greater than six inches), who will determine whether soils can or cannot be used due to hydrocarbon staining or presence of free phase hydrocarbon present, submittal of daily QA/QC reports to WDEQ for review, and what constitutes minor and major deviations from specifications.
9. Any section of the slurry wall which fails to meet the hydraulic conductivity specifications will be removed and replaced. A minimum of 100 feet of slurry wall will be replaced. This distance is consistent with the minimum length needed to provide proper run-in and run-out distances for soil-bentonite backfill material placement.
10. Information as to how the Hydraulic Control Requirement shall be presented in a plan incorporating all of the above information or a separate memorandum to reflect how control will be maintained for the barrier system.
11. It would be in the best interest of Frontier and the project to utilize a construction firm that specializes solely in installation of barrier walls.

If you should have any questions regarding this Final Decision, please feel free to contact Lily Barkau at (307) 777-7541, or me at (307) 777-7753.

Sincerely,



LeRoy C. Feusner, P.E., BCEE
Administrator
Solid and Hazardous Waste Division

Cc: Carl Anderson (WDEQ/SHWD)
Lily Barkau (WDEQ/SHWD)
Mike Barrash (AG's Office)
Scott Denton (Frontier Refining Inc.)
Tom Aalto (EPA Region 8)
Facility file

DEQ REPLY EXHIBIT B



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

September 26, 2008

Gerald B. Faudel
Vice President
Government Relations & Environmental Affairs
Frontier Refining, Inc.
4610 South Ulster Street, Suite 200
Denver, CO 80234

Reference: Administrative Order on Consent (Boundary Control)

Dear Mr. Faudel:

The "Special Stipulated Corrective Action Schedule" in the Joint Stipulation for Modification of Administrative Order on Consent between the Wyoming Department of Environmental Quality (WDEQ) / Solid and Hazardous Waste Division (SHWD) and Frontier Refining Inc. (Frontier), dated September 15, 2006, calls for implementation of boundary control by October 15, 2008. The SHWD Administrator's February 19, 2008 Final Decision letter to Frontier specified a slurry bentonite wall as the approved technology for boundary control, and set forth certain intermediate deadlines for meeting the October 15, 2008 overall deadline.

By letter to the WDEQ dated March 26, 2008, Frontier agreed to install the barrier wall and meet some of the intermediate deadlines, but also gave notice that lack of access to third party property necessary for installation of the barrier wall, despite its diligent efforts, would prevent Frontier from meeting certain access-dependent deadlines and constituted a force majeure event under Section XVII, ¶ 4 of the Administrative Order on Consent (AOC). In response, the WDEQ's May 16, 2008 letter informed Frontier of the SHWD Administrator's determination that lack of access to third party property needed for installation of the barrier wall currently constituted a force majeure situation, prompting a corresponding extension of access-dependent deadlines only, which would terminate in 30 days, unless Frontier remained unable to obtain such access, despite its best efforts during that 30 day period. The WDEQ's May 23, 2008 letter to Frontier identified deadlines not extended by the force majeure determination.

Frontier's May 30, 2008 letter to WDEQ replied that certain deadlines in the May 23, 2008 letter were not achievable, asserted a "new" force majeure claim, and requested an extension of time to obtain access and to design and install the barrier wall, specifically including an extension of the stipulated October 15, 2008 deadline. By letter dated June 2, 2008, the WDEQ responded that although the October 15, 2008 deadline for completion of the barrier wall along the approved-alignment was access-dependent, it was not a near-term deadline extended by the May 16, 2008



force majeure decision, but noted that the October 15, 2008 deadline could be re-evaluated later, if the force majeure situation due to lack of access persisted. The June 2nd letter also informed Frontier that WDEQ did not agree that Frontier's May 30th letter described a "new" force majeure event.

By letters dated June 16, 2008 and July 16, 2008, WDEQ informed Frontier of its determinations that lack of access to third party property needed for installation of those segments of the barrier wall that actually require such access continued to constitute a force majeure situation with corresponding second and third 30 day extensions of certain access-dependent deadlines, respectively.

Frontier's August 14, 2008 letter to WDEQ claimed a continuing force majeure situation despite its best efforts to obtain access, but represented that Frontier and the landowner, Old Horse Pasture, Inc. (OHP), were very close to agreeing in principle to a sale of a parcel of OHP property. WDEQ's letter dated August 15, 2008 informed Frontier of its determination that there was no longer a force majeure situation due to lack of access to third party property needed to proceed with work for installation of those segments of the barrier wall that actually require such access, based on OHP's pending offer to sell the property needed for the same or less than the price Frontier had offered to purchase it, as represented in Frontier's July 15, 2008 letter to WDEQ describing Frontier's efforts to obtain access in support of its July force majeure claim. Nevertheless, recognizing that the transaction had not yet been completed, WDEQ's August 15, 2008 letter extended access-dependent deadlines for another 30 days until September 15, 2008.

Frontier's September 12, 2008 letter to WDEQ, renewing its force majeure claim, represented that Frontier and OHP "agreed in principle" to the sale of OHP property including the area of the proposed barrier wall and were "close to finalizing" a purchase agreement for the parcel, but also contended that the deadline for performance of boundary control activities "should continue to be extended."

Considering the representations in Frontier's September 12, 2008 letter that Frontier and OHP had agreed in principle to terms for sale of land for the barrier wall and were close to finalizing a purchase agreement, WDEQ, by letter dated September 15, 2008, informed Frontier that, under the circumstances, access-dependent deadlines for installation of the barrier wall would be further extended until September 26, 2008 to provide additional time to complete the transaction. By e-mail on September 24, 2008, Frontier informed WDEQ that the purchase agreement had been executed by Frontier and OHP, and they were now awaiting title insurance and anticipated closing by the end of September 2008.

With Frontier obtaining access by the end of September, 2008 through acquisition of the land needed for installation of the barrier wall along the approved-alignment, the WDEQ, as previously contemplated in its June 2, 2008 letter and most recently requested in Frontier's

Gerald B. Faudel
September 26, 2008
Page 3

September 12, 2008 letter, has re-evaluated the schedule for meeting the October 15, 2008 deadline for completion of the barrier wall, which is hereby extended as specified in the attached schedule.

Sincerely,



LeRoy C. Feusner, P.E., BCEE
Administrator
Solid and Hazardous Waste Division

ATTACHMENT: Extended Barrier Wall schedule

CC: John C. Corra, WDEQ Director
John Wagner, WQD Administrator
Carl Anderson, SHWD
Lily Barkau, SHWD
Peter Michael, Esq., AG's Office
Mike Barrash, Esq., AG's Office
Melvin Wilkenfeld, Frontier/Cheyenne
David Danford, Frontier/Cheyenne
Joseph Guida, Esq., Guida, Slavich and Flores
Kyle Ballard, Esq., Guida, Slavich and Flores
Mark Ruppert, Esq., Holland & Hart
Steve Burkett, EPA/Region 8
Nancy Morlock, EPA/Region 8
Tom Aalto, EPA/Region 8
Brenda Morris, Esq., EPA/Region 8
Alvin Wiederspahn, Esq., Arp & Hammond
Elizabeth Temkin, Esq., Temkin Wielga Hardt & Longennecker

Boundary Control System (BCS) Construction and Implementation Schedule

1. Pre-construction Activities.

Submit a technically adequate and thoroughly detailed BCS (physical barrier wall, hydraulic control system, performance monitoring system) Pre-Construction Work Plan to WDEQ not later than October 16, 2008, addressing, at a minimum, the following components:

- Geophysical survey.
- Underground utilities locate and survey.
- Geotechnical investigation.
- Slurry mix design evaluation.
- A list of all necessary permits and authorizations for construction.

2. Submit BCS draft Engineering Evaluation and Design Report including Plans and Specifications (EEDR) to WDEQ not later than January 30, 2009. The EEDR must include, at a minimum, the following components:

- Summary of existing conditions.
- Findings of the BCS Additional Investigation and Pre-Construction Investigation activities.
- BCS design and construction, including, at a minimum, descriptions of site preparation, the work platform, trench excavation, trench slurry, contaminated soil management, soil-bentonite backfill, physical barrier wall design and construction, hydraulic control system design and construction, performance monitoring system design and construction, and construction quality control.
- Status of any necessary permits and authorizations.
- Conceptual Performance Monitoring and Evaluation Plan including, at a minimum, hydraulic control, groundwater protection, system effectiveness and performance, and system maintenance.
- Implementation schedule.

3. Submit Boundary Control System (BCS) Final Engineering Evaluation and Design Report with Plans and Specifications to WDEQ incorporating, at a minimum, all components listed for the draft EEDR and any additional components identified by WDEQ review of the draft EEDR not later than April 8, 2009.
4. Initiate BCS Construction Contractor mobilization and site preparation work in time to begin actual BCS construction on schedule identified in item 5 below.
5. Begin actual BCS construction work not later than June 1, 2009.
6. Complete BCS construction work not later than October 26, 2009. BCS construction work completion must include, at a minimum, all of the following components:
 - Physical Barrier Wall construction complete.
 - Site re-grading work complete.
 - Groundwater monitoring well system installation complete and operational.
 - Recovery well installation complete and operational.
 - Pump Back system installation complete and operational.
7. Submit BCS Operation and Maintenance Manual and Performance Monitoring Program to WDEQ not later than April 26, 2010.

DEQ REPLY EXHIBIT C



FRONTIER REFINING INC.
a Subsidiary of Frontier Refining & Marketing Inc.

P.O. BOX 1588
CHEYENNE, WYOMING 82003-1588
(307) 634-3551
FAX (Main Office) (307) 771-8794
FAX (Purchasing) (307) 771-8795

Sent By E-mail and U.S. Mail

October 3, 2008

Mr. LeRoy C. Feusner, P.E., BCEE
Administrator, Solid and Hazardous Waste Division
Wyoming Department of Environmental Quality
Herschler Building, 4-W
122 West 25th Street
Cheyenne, WY 82002

Re: Frontier Refining Inc.
Response to WDEQ's September 26, 2008 letter and Invocation of Dispute
Resolution Under Section XVI of the AOC

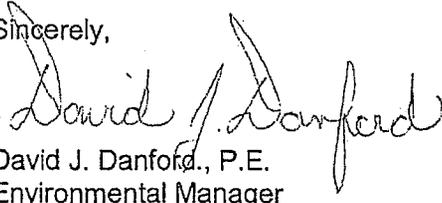
Dear Mr. Feusner:

Frontier Refining Inc. (Frontier) has received your September 26, 2008 letter containing a revised schedule for construction of the barrier wall for purposes of boundary control under the AOC. Frontier and its consultants have reviewed the proposed schedule and do not believe the dates are technically or practically achievable. For example, Frontier's prior schedule (submitted to DEQ on May 30, 2008) allotted approximately thirteen months for preconstruction work. Your September 26 letter only provides eight months for this work.

Frontier would like to meet with DEQ to discuss scheduling issues regarding the barrier wall, as well as issues concerning the nature of the project in light of Frontier's recent purchase of the 133 acre property south of the refinery. Frontier is hopeful that a mutually-agreeable resolution of these issues can be reached in such a meeting, but, in order to protect its rights under the AOC, Frontier hereby objects, pursuant to the dispute resolution provisions in Section VXI of the AOC, to the barrier wall construction schedule in your September 26 letter.

Please contact me at your earliest convenience to discuss a date that Frontier and DEQ representatives can meet and discuss these issues.

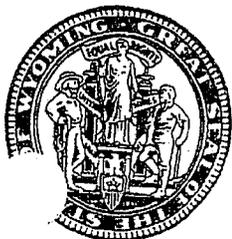
Sincerely,


David J. Danford, P.E.
Environmental Manager

DEQ REPLY
EXHIBIT C
DOC #08-3814

cc: Carl Anderson, WDEQ
Lily Barkau, WDEQ (2 Copies)
Mike Barrash, AG's Office
Kyle Ballard, Guida, Slavich & Flores

DEQ REPLY EXHIBIT D



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

October 21, 2008

Mr. David Danford, P.E.
Environmental Manager
Frontier Refining Inc.
P.O. Box 1588
Cheyenne, Wyoming 82003-1588

Certified Mail# 7008 0150 0001 1173 7036
Return Receipt Requested

RE: Boundary Control System Schedule Dispute Resolution Meeting – October 17, 2008

Dear Mr. Danford:

On October 17, 2008, LeRoy Feusner, Lily Barkau and Carl Anderson of the Wyoming Department of Environmental Quality (WDEQ) met with you and Scott Denton of Frontier Refining, Inc. (Frontier) and Jeremy Sell (Trihydro Corp). The purpose of the meeting was to respond to your October 3, 2008, Dispute Resolution request under the Administrative Order on Consent (AOC) regarding the barrier wall / boundary control system (BCS) schedule set forth in WDEQ's September 26, 2008, decision letter.

During the October 17th meeting, the parties discussed Frontier's proposed schedule for completion of BCS construction and implementation activities by December 29, 2009. WDEQ's September 26th decision letter requires Frontier to complete BCS construction and implementation activities by October 26, 2009. The parties discussed the following issues regarding resolution of the two (2) schedules: 1) the difference in the schedules for completion of milestone activities, including submittal of draft and final engineer design reports and BCS completion/ implementation; 2) what pre-construction activities have been completed, and what efforts Frontier made during the 4 months from May 30 to October 3, 2008 to accomplish other pre-construction work for which either access to Old Horse Pasture (OHP) land was provided or was not needed; 3) Frontier's ability to move forward concurrently on more than one pre-construction activity, rather than working on only one at a time, in order to make up some of the time lost during those 4 months and to expedite the BCS project that has already missed the stipulated completion deadline; and 4) Frontier's assertion that 'contractor demobilization' in its schedule is equivalent to WDEQ's BCS completion activities (#6 in WDEQ's September 26th BCS Construction and Implementation Schedule).

No resolution was reached on the above issues, but Frontier agreed to review and adjust its proposed schedule based on the meeting discussion. The parties agreed to meet again on October 27, 2008 at 9am to discuss Frontier's revised proposed schedule. Frontier can make the October 27th meeting more productive by providing WDEQ with Frontier's revised proposed schedule along with any written discussion points by noon on Friday, October 24, 2008, for review before the meeting. Frontier should include its proposed interim deadlines for milestones needed to complete the BCS on schedule.

Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH (307) 777-7937 FAX 777-3610	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7369 FAX 777-5973	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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DEQ REPLY
EXHIBIT D
NOV 10 2008

Mr. David Danford

October 21, 2008

Page 2

Pursuant to the Dispute Resolution provision in the AOC, following the October 27th meeting, WDEQ will inform Frontier in writing whether or not WDEQ agrees with Frontier's position on the revised BCS schedule. We look forward to moving beyond this dispute and making actual progress toward timely completion of the BCS.

Sincerely,



LeRoy C. Feusner, P.E., BCEE
Administrator
Solid and Hazardous Waste Division

Cc: Lily Barkau (DEQ)
Mike Barrash (AG's office)
Tom Aalto (EPA Region 8)
Gerald Faudel (Frontier)
Scott Denton (Frontier)
Joseph Guida (Frontier Counsel)
Kyle Ballard (Frontier Counsel)
Alex Davison (Frontier Counsel)
File

DEQ REPLY EXHIBIT E



FRONTIER REFINING INC.
a Subsidiary of Frontier Refining & Marketing Inc.

P.O. BOX 1588
CHEYENNE, WYOMING 82003-1588
(307) 634-3551
FAX (Main Office) (307) 771-8794
FAX (Purchasing) (307) 771-8795

October 24, 2008

Mr. LeRoy C. Feusner, P.E., BCEE
Administrator, Solid and Hazardous Waste Division
Wyoming Department of Environmental Quality
Herschler Building, 4-W
122 West 25th Street
Cheyenne, WY 82002

Re: Frontier Refining Inc.
Revised Boundary Control System Construction Schedule

Dear Mr. Feusner:

Frontier Refining Inc. (Frontier) has received your October 21, 2008 letter containing a summary of our meeting on October 17th and requesting a revised schedule of barrier wall interim deadlines for review. Frontier and its consultants have reviewed the proposed schedule, reassessed each step, and made reasonable adjustments. The table below lists the Implementation Schedule from the agency's letter dated September 26, 2008, and Frontier's updated schedule. The revisions bring the two schedules much closer together.

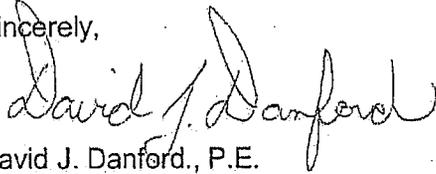
Tasks from May 2008 Pre-Construction Activities Work Plan	WDEQ	Frontier
Submit Revised Work Plan for Pre-Construction Activities for the Barrier Wall.	10/16/08	10/23/08
Prepare summary report based on direct push investigation (Draft Design Report and Plans and Specifications)	1/30/09	2/18/09
Prepare Final Plans and Specifications.	4/8/09	4/27/09
Prepare Final Design Report	4/8/09	4/27/09
Contractor Mobilization	before June 1, 2009	5/18/09-6/6/09
Begin Construction	6/1/09	6/8/09
Complete Construction	10/26/09	10/30/09
Submit O&M Manual and Performance Monitoring Program	4/26/10	4/26/10

DEQ REPLY
EXHIBIT E
DOC #08-3804

Although Frontier believes that, based on current information, the above schedule is aggressive yet achievable, it could be impacted by unforeseen events or information discovered in the field.

Frontier looks forward to discussing these revisions with the agency at our meeting on October 27, 2008.

Sincerely,

A handwritten signature in cursive script that reads "David J. Danford". The signature is written in black ink and is positioned above the typed name.

David J. Danford, P.E.
Environmental Manager

cc: Carl Anderson, WDEQ
Lily Barkau, WDEQ
Mike Barrash, AG's Office
Kyle Ballard, Guida, Slavich & Flores

DEQ REPLY EXHIBIT F



SOLID AND HAZARDOUS
WASTE DIVISION FRONTIER REFINING INC.
a Subsidiary of Frontier Refining & Marketing Inc.

MAR 26 2008

P.O. BOX 1588
CHEYENNE, WYOMING 82003-1588
(307) 684-3551
FAX (Main Office) (307) 771-8794
FAX (Purchasing) (307) 771-8795

March 26, 2008

Mr. LeRoy C. Feusner, P.E., BCEE
Administrator, Solid and Hazardous Waste Division
Wyoming WDEQ
Herschler Building
122 West 25th St.
Cheyenne, WY 82002

RE: Frontier Refining Inc.
Response to February 19, 2008 WDEQ Letter On Boundary Control Design
Report & Implementation
Notice of Force Majeure Claim Under Section XVII of the Administrative Order
On Consent

Dear Mr. Feusner:

Frontier Refining Inc. has received your letter dated February 19, 2008 concerning boundary control at the refinery. Although your letter and WDEQ's final decision on the boundary wall came as a surprise to Frontier, Frontier is mobilizing to comply with the requirements set forth in the letter and offers the following response. Also, a detailed response to each of the eleven requirements outlined in your correspondence is included as Attachment A to this letter.

Frontier agrees to install a barrier wall around the refinery and meet the submittal deadlines for: (i) construction and plans for the barrier wall and monitoring system by April 1, 2008; and (ii) a Soils Management Plan by May 1, 2008. Although your letter states that the Joint Stipulation requires boundary control for "the entire boundary" by October 15, 2008, I note that the Joint Stipulation only requires boundary control for the east, south and west portions of the refinery. I do not believe this will be an issue since Frontier agrees, in principle, to the boundary requirements set forth in requirement #4 of your letter. However, some issues remain as to the exact path of the barrier wall, which are discussed in more detail in the attachment to this letter.

Construction activities can begin by June 1, 2008 but will likely be limited to installation of hydraulic control wells on the refinery side of a portion of the barrier wall. Construction of the barrier wall has several complicating issues, including access to the Lummis family property to the east and south, construction interferences with city sanitary and storm sewer lines, several underground pipeline crossings, and overhead power lines. Construction is further complicated by the pond reconstruction project which is required by the January 2007 Consent Decree with WDEQ.

In order to construct the barrier wall, Frontier must obtain an access agreement and a permanent easement from the Lummis family for the areas of the Lummis property on which the barrier wall will be located. Frontier previously attempted to purchase this property and the property around Porter Draw from the Lummis family for a total of \$7.5 million in May 2007. However, when the Lummis family refused to sell Frontier a portion of its land and insisted that Frontier purchase all of its land at a total of \$30,207,500, no deal was reached. (Correspondence between Frontier and the Lummis family concerning the proposed property purchase is included as Attachment B. Because the proposed purchase related to the Porter Draw property, as well as property adjacent to the refinery, Frontier requests that this attached information also be included as part of Frontier's force majeure claim that was submitted for Porter Draw Work Plan activities on March 20, 2008.)

Following receipt of your February 19, 2008 letter, Frontier submitted an access agreement for the barrier wall to counsel for the Lummis family, Alvin Wiederspahn, on March 19, 2008. Frontier has not received a response from Mr. Wiederspahn to Frontier's request for access, but Frontier was contacted last week by Elizabeth Temkin, an attorney in Denver, Colorado, who stated that she will be lead counsel for the Lummis family for all outstanding access issues. Frontier's counsel has since had preliminary discussions with Ms. Temkin concerning access issues, but no access agreement or easement for the barrier wall has been finalized. Frontier has requested that Ms. Temkin provide documentation from the Lummis family indicating the scope of her authority in dealing with Frontier.

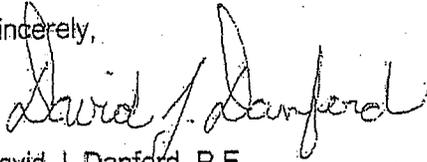
Although Frontier is continuing to work diligently to resolve the construction interference issues noted above and to obtain access to the Lummis family property for areas where the barrier wall will be located, Frontier will not be able to meet the deadlines in your February 19 letter if access is not timely provided. Consequently, Frontier is hereby providing notice that, under Section XVII, Paragraph 4 of the Final Administrative Order on Consent, Frontier's lack of access is a force majeure event. Frontier cannot estimate the length of delay caused by the landowner's failure to provide access. Frontier remains hopeful that access can be obtained and the deadlines in your February 19 letter met, but the force majeure event will continue until the Lummis family grants access. In the meantime, Frontier will proceed with all activities that do not require access and will be prepared to commence all activities that do require access as quickly as possible upon its receipt.

Frontier proposes a meeting during the week of March 31 to discuss the issues in your letter and Frontier's response. Also, since your letter states that it is a "final decision" of WDEQ, Frontier requests that the decision be submitted for public comment pursuant to Section IX of the Administrative Order on Consent.

Finally, with the installation of a barrier wall, which provides an impermeable boundary for groundwater migration from the refinery, Frontier believes there is no longer a need for synthetic liners in surface impoundments 1, 3, 4, and 5. This condition was included under the January 2007 Consent Decree on Water and Waste. Frontier would like to discuss this issue with the agency further.

Please feel free to contact me at 771-8819 so we may arrange a date and time for a meeting.

Sincerely,



David J. Danford, P.E.
Environmental Manager

cc: ~~Carl Anderson~~
Lily Barkau (Two Copies by Hand Delivery)
Mike Barrash
Tom Alto
Scott Denton
Alvin Wiederspahn

DEQ REPLY EXHIBIT G

property, Frontier shall reserve the right to perform the obligations of this Order.

3. Within seven (7) calendar days of the effective date of this Consent Order or date of retention, Frontier shall provide a copy of this Consent Order to all primary contractors retained to conduct or monitor any portion of the work performed pursuant to this Consent Order. Additionally, Frontier shall inform all subcontractors, laboratories, and consultants utilized by Frontier's primary contractors about the name of the waste involved in the work being performed.

4. Frontier shall give notice of this Order to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify the Department within thirty (30) calendar days prior to such transfer. In its discretion, the Department may shorten the advance notification period provided herein.

III. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of the Department and Frontier are: (1) to complete a RCRA Facility Investigation (RFI) to determine fully the nature, concentration, rate, and extent of migration of any releases of hazardous waste or hazardous constituents at or from the Facility; (2) to plan and perform a Corrective Measure Study (CMS) to identify and evaluate corrective action alternatives necessary to prevent or mitigate any migration or releases of hazardous wastes or hazardous constituents at or from the Facility; (3) to perform Initial Measures at the Facility as provided in Attachment 1, and, (4) to perform Interim Measures at the Facility as necessary.

IV. FINDINGS OF FACT

The following findings of fact have been made by the Department, without admission of any such findings by Frontier:

1. Frontier is a corporation organized under the laws of the State of Delaware, is authorized to do business in the State of Wyoming, and is a person as defined in section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

2a. Frontier is a generator of hazardous waste and an owner and operator of a hazardous waste management facility located in Cheyenne, Wyoming. Specifically the Frontier Refinery is located at 2700 East Fifth Street, Cheyenne, Wyoming, and consists of 116.78 acres adjacent to Fifth Street and Camp Stool Road on the north, Morrie Avenue to the west, and the flood plain of Crow Creek to the south and east, as well as open fields to the east. The facility boundaries are as identified in its RCRA Part A Permit Application dated July 12, 1989 ("The Facility"). Frontier and its predecessors in ownership engaged in generation, treatment, storage, and disposal of hazardous waste at the Facility subject to interim status requirements under 40 C.F.R. Part 265. Frontier is engaged in refinery operations at the Facility including processing propane, gasoline and diesel fuels, heating oil, asphalt, residual oil, petroleum coke and sulfur.

2b. The Facility began operations in 1937. There has been a series of owners and operators of the Facility as summarized below:

Capitol Oil and Refining Company	1934
Bay Petroleum Refinery (SW portion) (name changed to Frontier Refining Company in 1940 which is unrelated	1937-1942

DEQ REPLY EXHIBIT H

From: Mike Barrash
To: Ballard, Kyle; Guida, Joseph
CC: Anderson, Carl; Barkau, Lily; LFEUSN@wyo.gov; Michael, Peter
Date: 6/13/2008 11:56 AM
Subject: Re: Frontier Refining

Kyle- During our telephone conversation on Wednesday afternoon (6/11/08), Pete Michael and I told Joe and you that while we understood DEQ's position to be that the potential property transfer referenced in your email below would not affect the February 19, 2008 final decision that boundary control for the actual refinery requires a barrier wall along the approved alignment supplemented by hydraulic control, we would ask the DEQ if it would be productive for Frontier to submit a proposal for withdrawal of the February 19, 2008 final decision and substitution of an expanded hydraulic control system for the approved barrier wall supplemented by hydraulic control. We have done that, and the DEQ does not see the potential property transfer affecting the February 19, 2008 final decision regarding refinery boundary control requirements.

>>> "Kyle Ballard" <Ballard@guidaslavichflores.com> 06/06/08 4:34 PM >>>
Mike--Pursuant to the discussion Joe Guida and I had with you earlier this afternoon, I have attached a copy of Al Wiederpahn's letter responding to Frontier's offer to purchase property south of the refinery where the barrier wall is to be located. As you can see, the Lummls' are proposing that Frontier purchase 133 acres of property to the south and east of the refinery, which would include all areas of known contamination on the Lummls property.

If Frontier were to purchase the Lummls family property identified in Al Wiederpahn's attached letter, "boundary control" required by the Joint Stipulation would appear to be achieved because the extent of contamination would then be contained on Frontier property (i.e., onsite). Would DEQ therefore withdraw its February 19, 2008 decision requiring installation of a barrier wall for boundary control, since there would be no practical or legal reason for a barrier wall running down the middle of Frontier's property? Frontier acknowledges the need to protect Crow Creek from potential future migration of contaminants and would, in place of a barrier wall, install a system of groundwater recovery wells to achieve hydraulic control upgradient of Crow Creek.

Please let me know DEQ's position on this issue as soon as possible so that Frontier may evaluate the feasibility of the proposed land purchase. Thank you.

Kyle Ballard
Guida, Slavich & Flores, P.C.
750 N. St. Paul Street, Suite 200
Dallas, Texas 75201
214 692-0012
214 692-6610 fax
ballard@gsfpc.com

THIS COMMUNICATION AND ANY ATTACHMENTS ARE PRIVILEGED AND CONFIDENTIAL. ANY UNAUTHORIZED RECEIPT, USE, OR DISSEMINATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY THE SENDER IMMEDIATELY BY RETURN E-MAIL, AND DELETE THIS COMMUNICATION FROM ALL AFFECTED DATABASES. THANK YOU FOR YOUR COOPERATION.

DEQ REPLY EXHIBIT I

ALVIN WIEDERSPAHN J.D., P.C.

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW
FIRST NATIONAL BANK BUILDING
2015 CENTRAL AVENUE, SUITE 200
CHEYENNE, WYOMING 82001
TELEPHONE (307) 638-6417
FACSIMILE (307) 638-1975

July 31, 2008

LeRoy C. Feusner, Administrator
Department of Environmental Quality
Solid & Hazardous Waste Division
Herschler Building, 4th Floor West
122 West 25th Street
Cheyenne, Wyoming 82002

Gerald B. Fandel, Vice President
Government Relations and Environmental Affairs
Frontier Oil Corporation
4610 South Ulster Street, Suite 200
Denver, Colorado 80237

Re: Administrative Order Docket 4316-08

Gentlemen:

Old Horse Pasture, Inc. is filing an appeal today of the Wyoming DEQ's Administrative Order (the "Order") dated July 21, 2008. However, we are simultaneously making the following proposal to Frontier to resolve the issues and facilitate the timely construction of the barrier wall.

We understand the importance of Frontier's moving expeditiously to construct this barrier wall. The problem is that the barrier wall, as currently conceived and identified in the Order, is proposed to be largely built on Old Horse Pasture, Inc. property. The Order, which we otherwise view as a positive step toward resolving the subsurface environmental impacts migrating offsite from the Frontier Refinery, effectively is allowing Frontier to build the barrier wall on property it does not own. Stated otherwise, it can be read as a "taking" of Old Horse Pasture, Inc. property without just compensation. The legal issues are explained in the appeal.

Old Horse Pasture, Inc. offers two alternatives to resolve this matter, as follows:

Alternative 1. Old Horse Pasture, Inc. offers to sell to Frontier 1) that portion of its property needed to accommodate the barrier wall alignment contemplated by the Final Decision dated February 19, 2008 (the "offsite alignment") inclusive of a 100-foot wide parcel south of the alignment to accommodate construction access activities; and, if Frontier wishes, 2) an additional 100-foot parcel as buffer between the barrier wall construction and Old Horse Pasture,

DEQ REPLY
EXHIBIT I
DOC #08-3804

Inc. property. Old Horse Pasture, Inc. offers to sell these parcels at the same price per acre of ~~XXXXXX~~ which Frontier earlier offered to purchase a larger portion of the property by letter dated May 22, 2008. All water rights and irrigation systems will need to be accommodated at Frontier's expense. The areas offered for sale are illustrated on the map attached hereto identified as Exhibit A and include approximately twelve (12) acres for Option 1 and an additional six and one-half (6.5) acres for Option 2. Please note that the land areas depicted on the map attached hereto are approximate and that a professional survey would need to be completed to determine the actual acreage and configuration.

Alternative 2. Frontier may construct the barrier wall entirely on its property as set forth and proposed by Frontier in its Conceptual Design Report Groundwater Barrier Wall for the Upper Ogallala Aquifer, Frontier Refinery, Cheyenne, Wyoming, dated January 3, 2006 (the "onsite alignment"), and Old Horse Pasture, Inc. will provide access along a parcel approximately 100 feet wide adjacent to the alignment for construction activities. The approximate access area is attached hereto and identified as Exhibit B. In the case of either Option 1 or Option 2, Frontier would be required at its expense to ensure that associated water rights and water conveyance systems are maintained and irrigation needs and delivery are not interrupted.

In the event that Frontier chooses to construct the barrier wall in conformance with the onsite alignment (Alternative 2), I have attached an Access Agreement to afford Frontier the access needed to build the barrier wall boundary system on its own property. This Access Agreement is substantially the same as the Porter Draw Access Agreement to which both parties have previously signed.

We are available to accommodate whichever alternative is agreeable to Frontier and DEQ.

With best regards, I am

Very truly yours,



Alvin Wiederspahn

ALW/aem

Enclosures

cc: John Corra
Lily Barkau
Michael Barrash
Peter Michael
Brenda Morris
Tom Aalto
Kyle Ballard
Betsy Temkin

1000
1000
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