

**FILED**

**NOV 04 2008**

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

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ATTORNEY FOR PETITIONER

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

In the Matter of the Appeals )  
Of the June 2, 2008 and August 15, ) Docket No. 08-3804  
2008 Denial Of Frontier Refining ) 08-3806  
Inc.'s Force Majeure Claim )

**FRONTIER REFINING INC.'S RESPONSE TO WYOMING DEQ'S  
MOTION TO CONSOLIDATE AND DISMISS FRONTIER REFINING  
INC.'S APPEALS**

Frontier Refining Inc. (Frontier) files this response to the Wyoming Department of Environmental Quality's (DEQ's) October 15, 2008 Motion to Consolidate and Dismiss Frontier's Appeals (Motion to Dismiss) in related Docket Nos. 08-3804 and 08-3806 on grounds of mootness and issue of subject matter jurisdiction related to a claim of mootness. As detailed below, Frontier opposes DEQ's motion to dismiss Frontier's appeal in Docket No. 08-3804 and agrees to DEQ's motion to dismiss Frontier's appeal in Docket No. 08-3806.

**PROCEDURAL BACKGROUND**

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. 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.

Frontier informed DEQ in a March 26, 2008 letter that several construction interference issues—known to Frontier and to DEQ at that time—needed to be resolved prior to beginning construction of the barrier wall. Frontier's letter to DEQ also asserted a force majeure claim (Original Force Majeure Claim) under Section XVII of the AOC (attached as Exhibit 1). This claim was based on Frontier's inability to obtain access to the adjacent Old Horse Pasture, Inc. (OHP) property which was needed to proceed with work required for installation of the barrier wall.

On May 16, 2008, DEQ acknowledged that the lack of access to the OHP property constituted a force majeure situation under Section XVII of the AOC with regard to construction of the barrier wall and consequently extended all "access-dependent deadlines." In a May 23, 2008 letter to Frontier, DEQ clarified which boundary control related deadlines it considered to be "access dependent" (and thus extended by Frontier's force majeure claim for non-access)

and which were non-access dependent (and thus not extended). The May 23, 2008 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.

Frontier responded to DEQ's May 23, 2008 letter by noticing a new force majeure claim (New Force Majeure Claim) 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. On June 2, 2008, the DEQ denied Frontier's New Force Majeure Claim.

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. The EQC assigned Docket Number 08-3804 to Frontier's petition, and DEQ filed a response to the petition on August 15, 2008.

On July 21, 2008, DEQ issued an Administrative Order to OHP ordering it to grant Frontier (and its contractors) access to OHP property as needed to allow 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. Citing to OHP's offer to sell property to Frontier, on August 12, 2008, 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.

On August 15, 2008, DEQ issued a Final Decision stating that Frontier's Original Force Majeure Claim was no longer valid. The basis for DEQ's 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 explained that, because the sale of OHP property had not yet been completed, access-dependent deadlines were extended until September 15, 2008, or until the purchase transaction was completed, whichever came first.

On September 15, 2008, Frontier filed a Petition for Review, Request for Hearing, and Request for Consolidation with the EQC. The EQC assigned Docket Number 08-3806 to this Frontier petition. Frontier in this petition asked the EQC to review DEQ's August 15, 2008 determination that Frontier's Original Force Majeure claim was no longer valid and requesting that the appeal be consolidated into one action with Frontier's pending appeal in Docket No. 08-3804 because the issues in the two appeals overlapped.

On September 26, 2008, DEQ issued to Frontier a revised schedule for barrier wall construction that contained numerous interim construction deadlines and extended the deadline for completion of the barrier wall to October 15, 2009. On October 3, 2008, Frontier completed a purchase of approximately 133 acres of OHP property adjacent to Frontier's refinery and encompassing the area where the proposed barrier wall is to be located. On October 15, 2008, DEQ filed its Motion to Dismiss both of Frontier's appeals on the grounds that DEQ's

September 26, 2008 issuance of the revised barrier wall schedule rendered Frontier's two pending appeals based on the original schedule moot.

Following Frontier's purchase of the OHP property, Frontier and DEQ began discussions regarding: i) the legal effect of the property purchase under the Joint Stipulation requirement for boundary control; and ii) a revised schedule for the barrier wall provided such barrier wall was still required. On October 27, 2008, DEQ sent a letter (attached as Exhibit 2) to Frontier stating that a barrier wall construction schedule "is approved and deemed incorporated into the AOC under the Dispute Resolution provisions in Section XVI".

## **DISCUSSION**

### **July 2, 2008 Appeal (Docket No. 08-3804)**

Frontier disagrees with DEQ's assertion that Frontier's July 2, 2008 appeal (Docket No. 08-3804) is now moot, lacks subject matter jurisdiction related to the DEQ's assertion of mootness and should be dismissed. Frontier's July 2, 2008 appeal is based on two points: i) DEQ's original deadlines for construction of the barrier wall were technically impracticable; 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. Frontier's appeal requested, among other things, that EQC "order that the barrier wall deadline for boundary control be suspended until such time as Frontier is able to obtain the necessary accesses and negotiate an amendment to the AOC to proceed with the work on a feasible schedule." As explained below, 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.

DEQ asserts in its Motion to Dismiss that DEQ's September 26, 2008 extension of the barrier wall construction deadline rendered Frontier's July 2, 2008 appeal moot because it resolved the issue with the October 15, 2008 boundary control deadline in the Joint Stipulation. However, Frontier's appeal was not limited to disagreement over the October 15, 2008 deadline. Frontier's appeal also requested that the EQC suspend the barrier wall deadline for boundary control until such time as access to OHP property was obtained *and an amendment to the AOC was negotiated between DEQ and Frontier* (see Frontier Petition No. 08-3804, at p. 10, "Relief Requested"). Although DEQ's October 27, 2008 letter to Frontier stated that a new barrier wall 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 DEQ. *Id.* Because Frontier and DEQ have not yet agreed to an AOC amendment (or as discussed below, whether such an amendment is even required), the issues raised in Frontier's July 2, 2008 appeal remain unresolved.

In fact, issues concerning the barrier wall schedule are tied up with the larger issue of whether, given Frontier's purchase of the OHP property, a barrier

wall is legally required. The Joint Stipulation requires Frontier to achieve boundary control by October 15, 2008. Because a contaminated groundwater plume crossed the property boundary between Frontier and OHP, on February 18, 2008 the DEQ required Frontier to construct a barrier wall along the OHP property boundary as the required method of boundary control under the Joint Stipulation. After Frontier's October 3, 2008 purchase of OHP property, however, the groundwater plume is now completely contained on property owned by Frontier. Thus, Frontier has achieved boundary control as required by the Joint Stipulation and is not legally obligated to construct the barrier wall. Indeed, Frontier and DEQ have a meeting scheduled on November 7, 2008 to discuss this very issue.

In summary, Frontier's July 2, 2008 appeal raises issues concerning the boundary control deadline and the barrier wall schedule. Because such issues have yet to be fully resolved between DEQ and Frontier, Frontier opposes DEQ's Motion to Dismiss Frontier's appeal in Docket No. 08-3804.

**September 15, 2008 Appeal (Docket No. 08-3806)**

Frontier's September 15, 2008 appeal concerned a force majeure claim due to lack of access to OHP property. Because Frontier has now purchased the OHP property, Frontier believes that this appeal is moot and agrees with DEQ that Docket No. 08-3806 may be dismissed.

**RELIEF REQUESTED**

Frontier respectfully requests that the EQC: deny DEQ's Motion to Dismiss as to Frontier's appeal in Docket No. 08-3804 and approve DEQ's Motion to Dismiss as to Frontier's appeal in Docket No. 08-3806.

Dated this 4th day of November, 2008.



Mark R. Ruppert (#6-3593)  
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2515 Warren Ave., Suite 450  
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Cheyenne, WY 82003  
(307) 778-4200 Telephone  
(307) 778-8175 Facsimile

Attorney for the Petitioner



## CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2008, I served the foregoing by placing a true and correct copy thereof in the United States mail, postage prepaid and properly addressed to the following:

Mr. Mike Barrash  
Assistant Attorney General State of Wyoming  
123 Capitol Building  
Cheyenne, WY 82002



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# Exhibit 1

6. Frontier may dispute the Department's right to the stated amount of penalties by invoking the dispute resolution process under Section XVI of this Order. If Frontier does not prevail upon resolution of the dispute, including either administratively or judicially, the Department has the right to collect all penalties which accrued prior to and during the period of dispute. If Frontier prevails upon resolution of the dispute, no penalties shall be payable. Stipulated penalties shall not accrue during the initial five (5) business day period referenced in Section XVI. Nothing herein shall preclude the Department in its sole and absolute discretion from waiving stipulated penalties either in whole or in part.

7. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Frontier's obligation to complete the performance required hereunder.

8. If stipulated penalties accrue under this Order, the Department shall take into account any stipulated penalties accruing under corresponding provisions of the EPA Order when seeking penalties under this Section.

#### XVI. DISPUTE RESOLUTION

1. The Project Coordinators shall work by consensus and when a dispute arises concerning specific activities required by this Consent Order, shall first attempt to resolve the matter informally. If the Project Coordinators cannot resolve a difference of opinion with respect to such matters within five (5) business days, the dispute shall be resolved in favor of the Department. In this event the Department shall give notice of that resolution to Frontier. If Frontier further objects or if Frontier objects to any Department notice of disapproval or other decision or directive made pursuant to this Consent Order, Frontier shall notify the Department in writing of its objections, and the reasons therefore, within seven (7) calendar days of its receipt of the Department's notification. The Department and Frontier shall endeavor to meet promptly and work in good faith for a period of ten (10) calendar days in an effort to reach a mutually agreeable resolution of the dispute. If agreement is not reached within the ten (10) day period, the Department shall then provide a written statement of its decision and the reasons therefore to Frontier signed by the Solid and Hazardous Waste Administrator. Within thirty (30) days of receiving the written statement of decision from the Department, if Frontier continues to disagree with the decision, Frontier may appeal the Department's decision to the Environmental Quality Council ("Council"), as provided by the Wyoming Environmental Quality Act, W.S. 35-11-101 et seq. The parties may, upon mutual agreement, extend any of the time periods herein to the extent allowed by state law. Frontier's right to judicial review of a final decision of the Council is governed by state law.

2. 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.

3. Should the outcome of any dispute resolution proceeding under this Order conflict with requirements imposed under the EPA Order, then either party to this Order may seek review in accordance with state law in order to effect the purposes of this Order and the consistency of this Order with the EPA Order and/or RCRA.

#### XVII. FORCE MAJEURE AND EXCUSABLE DELAY

1. Frontier shall perform the requirements of this Consent Order within the time limits set forth herein or in any approved workplan schedules, unless performance is prevented or delayed by events which constitute a force majeure. Frontier shall have the burden of proving a force majeure. A force majeure is defined 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 Consent Order. Force majeure events are limited to extraordinary weather events, or weather events normal for the area but which prohibit work from proceeding safely, natural disasters, national emergencies, inability to otherwise perform due to any act of God, act of public enemy, war blockade, public riot, lightning, fire, tornado, blizzard, flood, explosion, labor disputes, or other such circumstance, delays in obtaining access to property not owned or controlled by Frontier despite best efforts to obtain such access in a timely manner and any delays directly resulting from Department failure to submit oral or written comments or approvals to Frontier within a reasonable time where the cause of such failure is not attributable to omissions or deficiencies in Frontier's work product.

2. Although they do not technically constitute force majeure events, any failure to obtain any necessary governmental permits and approvals shall be treated in the same manner as force majeure events pursuant to this Consent Order, provided that Frontier exercises due diligence in seeking to obtain such permits and approvals. For permits required by the Department for operation of ground water monitoring, or recovery wells or systems, due diligence shall include submission of the required permit application at least sixty (60) calendar days prior to the date required by this Consent Order for installation of the well or system. Due diligence for all permits required by this Consent Order shall also include Frontier regularly contacting the agency responsible for issuing the permit to ascertain the status of the permit application. There shall be a presumption against a finding of due diligence where Frontier has failed to have such contact at least semi-monthly from the time Frontier submits any required permit application until the responsible agency takes final action on the subject permit application. If the agency responsible for issuing the required permit determines Frontier's permit application is incomplete and informs Frontier of such, due diligence in seeking the permit application shall also include Frontier responding to the permit issuing agency within seven (7) calendar days of Frontier being informed of the deficiencies in the subject permit application.

3. Force majeure events do not include, and are not limited to, normal inclement weather other than as described above, increased costs or expenses of the work to be performed under the Order, the financial difficulty of Frontier to perform such work, the failure of Frontier to satisfy its obligations under the Order, and acts or omissions not otherwise force majeure attributable to Frontier's contractors or representatives.

4. Frontier shall notify the Department in writing within seven (7) calendar days after it becomes aware of events which Frontier knows or should know constitutes a force majeure. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken to minimize the delay, and an estimated time table for implementation of these measures. Failure to comply with the notice provision of this Section, without good cause, shall constitute a waiver of Frontier's right to assert a force majeure.

5. If the Department determines that the delay has been or will be caused by a force majeure, the time for performance for that element of the relevant workplan shall be extended for a period equal to the delay resulting from such circumstances. This shall be accomplished through an amendment to this Consent Order pursuant to Section XXI. Such extension does not alter the schedule for performance or completion of other tasks required by any workplan unless these are dependent on the task delayed and are also altered by amendment of this Consent Order. In the

event that the parties cannot agree that any delay or failure has been or will be caused by a force majeure, or 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 of this Consent Order.

### XVIII. RESERVATION OF RIGHTS

1. The Department expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Frontier pursuant to this Order and to request that Frontier perform tasks in addition to those stated in the workplans and Scopes of Work.

2. The Department hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Frontier's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under this Order, applicable state laws or regulations. This Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which the Department has under any statutory, regulatory or common law enforcement authority.

3. Compliance by Frontier with the terms of this Order shall not relieve Frontier of its obligations to comply with RCRA or any other applicable local, state or federal laws and regulations.

4. This Order shall not limit or otherwise preclude the Agency from taking additional enforcement action pursuant to W.S. 35-11-518, W.S. 35-11-115, or other available legal authorities should the Department determine that such actions are warranted.

5. This Order is not intended to be nor shall it be construed as a permit. This Order does not relieve Frontier of any obligation to obtain and comply with any local, state or federal permits in existence or in the future.

6. The Department reserves the right to (1) perform any portion of the work herein or any additional site characterization, feasibility study and response/corrective actions as it deems necessary to protect human health and the environment, and (2) exercise its authority under applicable laws and regulations to undertake removal actions or remedial actions at any time. However, prior to taking any such actions, the Department shall notify Frontier and afford Frontier an opportunity to perform such actions. In any event, the Department reserves its right, if any, to seek reimbursement from Frontier for such additional costs incurred by the State of Wyoming. Notwithstanding compliance with the terms of this Order, Frontier is not released from liability, if any, for the costs of any response actions taken or authorized by the Department.

7. For the purposes of enforcing this Consent Order only, Frontier does not contest any of the findings of fact, conclusions of law, or determinations that the Department has stated in this Consent Order, nor does Frontier contest any of the requirements and tasks as stated in this Order. Frontier, however, expressly reserves all rights it has to contest such findings, conclusions, and determinations in any proceeding other than a proceeding to enforce this Consent Order. Frontier also reserves all rights it has to contest any claim by the Department of non-compliance with the terms of this Consent Order or the work plans. Frontier further reserves all rights and defenses it has under this Consent Order, CERCLA, RCRA, and any other legal or equitable rights or defenses. These reservations of rights by Frontier include actions and defenses that are capable of being asserted by Frontier against any party other than the Department, and

include, but are not limited to, the right to seek cost recovery from third parties for actions taken by Frontier.

#### XIX. OTHER CLAIMS

Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to other generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

#### XX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. Frontier shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### XXI. SUBSEQUENT MODIFICATION

1. This Consent Order may be amended by mutual agreement of the Department and Frontier. Such amendments shall be in writing, shall have as their effective date the date on which a fully executed copy is received by Frontier, and shall be incorporated into this Consent Order, unless expressly stated otherwise in the applicable agencies' approval notice. In the event that a mutual agreement of the parties to modify this Order is not reached and if the Department denies any request for modification by Frontier, or if Frontier denies any request for modification by the Department, such disagreement shall be subject to the dispute resolution provisions in Section XVI herein. If, however, the requirements in the EPA Order are amended, the corresponding provisions in this Order shall, consistent with state law, be amended in an equivalent manner. The parties shall promptly agree on the incorporation of the modified text from the EPA Order into this Order.

2. Any reports, plans, specifications, schedules, and attachments required by this Order are, upon written approval by the Department, incorporated into this Order. Any noncompliance with such Department approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Order and shall subject Frontier to the penalty provisions referenced in Section XV of this Order.

3. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, and any other writing submitted by Frontier will be construed as relieving Frontier of its obligation to obtain written approval, if and when required by this Order.

#### XXII. INDEMNIFICATION

1. Frontier agrees to indemnify and save and hold harmless the State of Wyoming, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of any acts or omissions by Frontier, or Frontier's employees, agents, independent contractors, consultants, receivers, trustees, or assigns in carrying out any action or activity pursuant to this Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of the parties under their various contracts. This

# Exhibit 2



# 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 27, 2008

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

RE: Boundary Control System Schedule Dispute Resolution Decision, Frontier Refining Inc., Cheyenne, Wyoming.

Dear Mr. Danford,

On October 27, 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 and Joel Farber (Trihydro Corp). The purpose of the meeting was to discuss Frontier's proposed revised schedule for barrier wall interim and final deadlines which WDEQ had requested during our October 17, 2008 Dispute Resolution meeting and in our October 21, 2008 letter which summarized the content of that meeting. Both the October 17<sup>th</sup> and October 27<sup>th</sup> meetings were 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 extension set forth in WDEQ's September 26, 2008 decision letter responding to Frontier's September 12, 2008 letter requesting such an extension.

Prior to our October 27, 2008 meeting, Frontier submitted a revised schedule which included proposed interim deadlines for milestones needed to complete the BCS by the proposed final deadline. Frontier's proposed schedule, as specified in your October 24, 2008 letter (attached), is approved and deemed incorporated into the AOC under the Dispute Resolution provisions in Section XVI.

Sincerely,

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

ENC: Frontier Refining Inc., Revised Boundary Control System Construction Schedule (dated October 24, 2008)

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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Mr. David Danford  
October 27, 2008  
Page 2

Cc: Carl Anderson (WDEQ/SHWD)  
Lily Barkau (WDEQ/SHWD)  
Mike Barrash (WYAGO Office)  
Gerald Faudel (Frontier Refining)  
Scott Denton (Frontier Refining)  
Jeremy Sell (Trihydro Corporation)  
Joseph Guida (Frontier Counsel)  
Kyle Ballard (Frontier Counsel)  
Mark Ruppert (Frontier Counsel)  
Nancy Morlock (EPA Region 8)  
Tom Aalto (EPA Region 8)  
Facility file

HOLLAND & HART  
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OCT 29 2008

OFFICE 60



SOLID AND HAZARDOUS  
WASTE DIVISION

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

OCT 27 2008

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 25<sup>th</sup> Street  
Cheyenne, WY 82002

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

Dear Mr. Feusner:

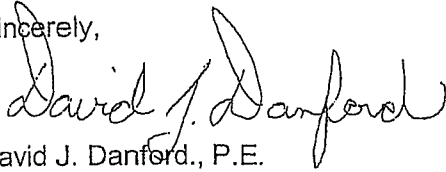
Frontier Refining Inc. (Frontier) has received your October 21, 2008 letter containing a summary of our meeting on October 17<sup>th</sup> and requesting a revised schedule of barrier wall interim deadlines for review. Frontier and its consultants have reviewed the proposed schedule, reassessed each 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

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 printed 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