

**FILED**

**JAN 02 2009**

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

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

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

**EXHIBIT LIST FOR DEQ'S BRIEF IN SUPPORT OF MOTION TO DISMISS**

- Exh. A. SHWD Administrator's February 19, 2008 "Final Decision" letter to Frontier
- Exh. B. SHWD Administrator's September 26, 2008 letter to Frontier, with revised schedule
- Exh. C. Frontier's October 3, 2008 letter to SHWD Administrator invoking dispute resolution
- Exh. D. SHWD Administrator's October 21, 2008 letter to Frontier
- Exh. E. Frontier's October 24, 2008 letter to DEQ with proposed schedule
- Exh. F. Frontier's March 26, 2008 letter to DEQ
- Exh. G. 1995 Administrative Order on Consent (AOC), Sections I, III, IV, XVI, XVII, XXI (EQC Doc. No. 06-5400)
- Exh. H. "06/06/08" & "6/13/2008" e-mails between counsel for Frontier and counsel DEQ
- Exh. I. July 31, 2008 letter from counsel for OHP to Frontier and DEQ
- Exh. J. SHWD Administrator's October 27, 2008 "Dispute Resolution Decision" letter to Frontier
- Exh. K. SHWD Administrator's November 7, 2008 letter to Frontier
- Exh. L. 2006 Joint Stipulation for Modification of AOC (EQC Doc. No. 06-5400)

# **DEQ BRIEF 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

Docket # 08-3808  
DEQ Exh. A

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
--	---	---	---	--	--	---



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:

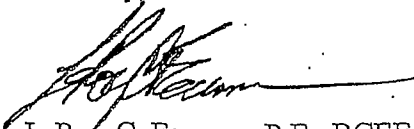
1. Construction activities must start no later than June 1, 2008.
2. Proposed construction and plans for the barrier wall and monitoring system must be submitted for review to WDEQ no later than April 1, 2008.
3. A performance standard for barrier wall permeability must be  $1 \times 10^{-7}$ .
4. The 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,



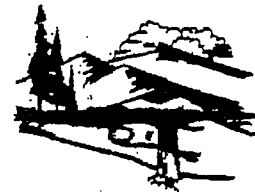
LeRoy C. Feusner, P.E., BCEE  
Administrator  
Solid and Hazardous Waste Division

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 BRIEF 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

Docket # 08-3808  
DEQ Exh. B

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
--	---	---	---	--	--	---



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 2<sup>nd</sup> letter also informed Frontier that WDEQ did not agree that Frontier's May 30<sup>th</sup> 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.

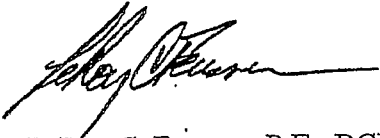
With Frontier obtaining access by the end of September, 2008 through acquisition of the land needed for installation of the barrier wall along the approved-alignment, the WDEQ, as previously contemplated in its June 2, 2008 letter and most recently requested in Frontier's



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 & Longenecker

## 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 BRIEF EXHIBIT C**



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

P.O. BOX 1588  
CHEYENNE, WYOMING 82003-1588  
(307) 834-3661  
FAX (Main Office) (307) 771-8794  
FAX (Purchasing) (307) 771-8706

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 25<sup>th</sup> 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

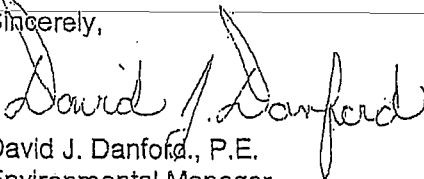
Dear Mr. Feusner:

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 XVI 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

Docket # 08-3808  
DEQ Exh. C

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

# **DEQ BRIEF 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 17<sup>th</sup> meeting, the parties discussed Frontier's proposed schedule for completion of BCS construction and implementation activities by December 29, 2009. WDEQ's September 26<sup>th</sup> 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 26<sup>th</sup> 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 27<sup>th</sup> 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.

Docket # 08-3808  
DEQ Exh. D

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
--	---	---	---	--	--	---

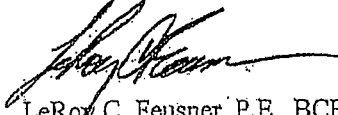




Mr. David Danford  
October 21, 2008  
Page 2

Pursuant to the Dispute Resolution provision in the AOC, following the October 27<sup>th</sup> 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.

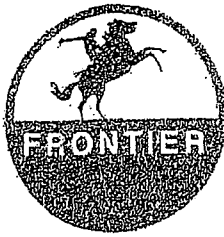
Sincerely,



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 BRIEF EXHIBIT E**



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

P.O. BOX 1588  
CHEYENNE, WYOMING 82003-1588  
(307) 834-3551  
FAX (Mnln 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.

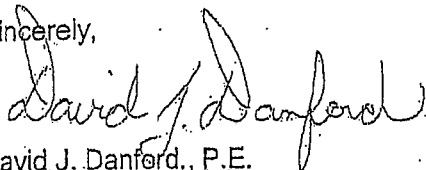
Tasks from May 2008 Pre-Construction Activities Work Plan	WDEQ	Frontier
Submit Revised Work Plan for Pre-Construction Activities for the Barrier Wall.	10/16/08	10/23/08
Prepare summary report based on direct push investigation (Draft Design Report and Plans and Specifications)	1/30/09	2/18/09
Prepare 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

Docket # 08-3808  
DEQ Exh. E

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,



David J. Danford., P.E.  
Environmental Manager

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

**DEQ BRIEF EXHIBIT F**

---



SOLID AND HAZARDOUS  
WASTE DIVISION FRONTIER REFINING INC.  
a Subsidiary of Frontier Refining & Marketing Inc.  
MAR 26 2008

P.O. BOX 1688  
CHEYENNE, WYOMING 82003-1688  
(307) 684-3551  
FAX (Main Office) (307) 771-8784  
FAX (Purchasing) (307) 771-8785

March 26, 2008

Mr. LeRoy C. Feusner, P.E., BCEE  
Administrator, Solid and Hazardous Waste Division  
Wyoming WDEQ  
Herschler Building  
122 West 25<sup>th</sup> 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.

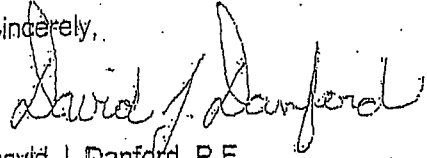
Although Frontier is continuing to work diligently to resolve the construction interference issues noted above and to obtain access to the Lummis family property for areas where the barrier wall will be located, Frontier will not be able to meet the deadlines in your February 19 letter if access is not 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 BRIEF EXHIBIT G**

---

FILED

WYOMING  
DEPARTMENT OF ENVIRONMENTAL QUALITY

OCT 17 2006

IN THE MATTER OF:

FRONTIER REFINING INC.  
Cheyenne, Wyoming

Respondent.

) FINAL ADMINISTRATIVE ORDER  
) ON CONSENT Environmental Quality Council  
) Lorenzon, Director

) DOCKET NO. \_\_\_\_\_

) Proceeding under Wyoming  
) Environmental Quality Act  
) §§ 35-11-101 *et seq.*

I. JURISDICTION

This Administrative Order on Consent ("Order" or "Consent Order") is issued pursuant to the authority vested in the Wyoming Department of Environmental Quality ("Department" or "WDEQ") by the provisions of Act No. 43, 1994 Budget Session, of the Fifty-second Legislature of the State of Wyoming. Among other things, this Act provides for Wyoming State primacy in the federal hazardous waste program that is authorized by the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h).

Except for certain provisions which have been changed to conform with state law, this Order corresponds, is equivalent to, and is intended to run concurrently with the Final Administrative Order on Consent, U.S. EPA Docket No. RCRA 3008(h)-VIII-88-08 ("EPA Order"), that was entered into by the United States Environmental Protection Agency ("EPA") and Frontier Refining Inc. ("Frontier") in September of 1990. This Order is being issued pursuant to W.S. 35-11-518.

This Order is issued to Frontier, owner and operator of Frontier Refinery, Cheyenne, Wyoming (the "Facility"). Frontier consents to the issuance of this Consent Order and agrees to abide by its terms and conditions. Frontier agrees not to contest the Department's authority to bring, or any court's jurisdiction to hear, any action to enforce this Consent Order. In an action to enforce this Consent Order or any rights afforded hereunder, Frontier agrees not to contest the Department's jurisdiction in this matter pursuant to W.S. 35-11-518. Because this Consent Order was entered with the consent of the parties, Frontier waives any right it may have to a hearing to challenge the Department's issuance of the Consent Order.

II. PARTIES BOUND

1. This Order shall apply to and be binding upon Frontier and its officers, directors, employees, agents, successors and assigns. Frontier shall be responsible for ensuring that all contractors, consultants, firms, and other persons or entities acting on its behalf, with respect to matters included herein, comply with the terms of this Consent Order.

2. No change in ownership or corporate or partnership status relating to the Facility shall in any way alter Frontier's responsibility under this Order, unless any successor-in-interest demonstrates to the Department's satisfaction that it has the capability to perform and also consents to perform the obligations of this Order in lieu of Frontier. In any conveyance of Frontier's real

Docket # 08-3808  
DEQ Ex. 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 Steel Road on the north, Morris 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

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

# **DEQ BRIEF 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 Wiederspahn'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 Lummlis' 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 Lummlis property.

If Frontier were to purchase the Lummlis family property identified in Al Wiederspahn'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](mailto: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 BRIEF 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, 4<sup>th</sup> Floor West  
122 West 25<sup>th</sup> Street  
Cheyenne, Wyoming 82002

Gerald B. Faudel, 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,

Docket # 08-3808  
DEQ Exh. I

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.

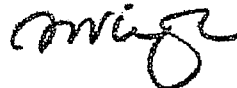
Alternative 2. Frontier may construct the barrier wall entirely on its property as set forth and proposed by Frontier in its Conceptual Design Report Groundwater Barrier Wall for the Upper Ogallala Aquifer, Frontier Refinery, Cheyenne, Wyoming, dated January 3, 2006 (the "onsite alignment"), and Old 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

# **DEQ BRIEF EXHIBIT J**

---



# 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)

Docket # 08-3808  
DEQ Exh. J

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
--	---	---	---	--	--	---



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  
RECEIVED

OCT 29 2008

OFFICE 60



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

OCT 27 2008

P.O. BOX 1588  
CHEYENNE, WYOMING 82003-1588  
(307) 634-3661  
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.

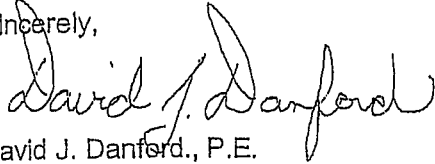
Tasks from May 2008 Pre-Construction Activities Work Plan	WDEQ	Frontier
Submit Revised Work Plan for Pre-Construction Activities for the Barrier Wall	10/16/08	10/23/08
Prepare summary report based on direct push investigation (Draft Design Report and Plans and Specifications)	1/30/09	2/18/09
Prepare 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 black ink that reads "David J. Danford". The signature is written in a cursive, flowing style.

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 BRIEF EXHIBIT K**



# 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

November 7, 2008

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

Dear Mr. Faudel:

Your November 4, 2008 letter to me states that "this letter constitutes notice of a dispute, pursuant to the dispute resolution procedures in Section XVI of the AOC" concerning my October 27, 2008 decision letter to Mr. David Danford approving the extended schedule for barrier wall construction proposed in Frontier Refining Inc.'s (Frontier) October 24, 2008 letter to me. Both Frontier's October 24, 2008 letter proposing the extended schedule for barrier wall construction and my October 27, 2008 "Dispute Resolution Decision" letter approving it were part of the dispute resolution process invoked by Frontier in Mr. Danford's October 3, 2008 letter to me.

This dispute has been resolved by the DEQ's decision based on mutual agreement as documented in the referenced October 24, 2008 and October 27, 2008 letters. Re-invoking dispute resolution concerning my October 27, 2008 decision letter, which resulted from the dispute resolution process already invoked by Frontier, is not called for under AOC Section XVI. There is no basis for further dispute resolution proceedings.

Sincerely,

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

Cc: John Corra  
Mike Barrash  
Lily Barkau  
Joseph F. Guida  
Kyle Ballard

Docket # 08-3808  
DEQ Exh. K



# **DEQ BRIEF EXHIBIT L**

---

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

**FILED**

OCT 17 2006

Terri A. Lorenzon, Director  
Environmental Quality Council

In the Matter of the )  
Administrative Order on Consent )  
Issued to Frontier Refining Inc. )  
a Delaware corporation )

Docket No. \_\_\_\_\_

JOINT STIPULATION FOR MODIFICATION  
OF ADMINISTRATIVE ORDER ON CONSENT

The Wyoming Department of Environmental Quality (DEQ) and Frontier Refining Inc. (Frontier), a Delaware corporation, entered into a Final Administrative Order on Consent (AOC) in March, 1995, which was equivalent to and intended to run concurrently with the Final Administrative Order on Consent, U.S. EPA Docket No. RCRA 3008(h)-VIII-88-08 (EPA Order) that was entered into by the United States Environmental Protection Agency (EPA) and Frontier in September, 1990. The EPA Order was withdrawn on March 19, 1997. W.S. 35-11-518(b) provides that the DEQ may issue an administrative order which is equivalent to any federal administrative order which has been issued pursuant to subtitle C of the Resource Conservation and Recovery Act (RCRA) prior to the effective date of the authorization of the state hazardous waste program under that subtitle. Wyoming's program was authorized in 1995. Section XXI (SUBSEQUENT MODIFICATION) of the AOC provides that the AOC may be amended by mutual written agreement of the DEQ and Frontier. Such amendments shall be incorporated into the AOC. Accordingly, the DEQ and Frontier now jointly stipulate as follows:

1. The DEQ and Frontier agree to modification of Section VI (WORK TO BE PERFORMED) by adding the following terms:

SPECIAL STIPULATED CORRECTIVE ACTION SCHEDULE

18. Completion of on-site and off-site RFI field activities and submittal of a Draft Final RFI report by October 15, 2007.

- i. The Draft Final RFI report will cover all on-site and off-site areas that have a reasonable potential to be impacted by refinery waste management activities and releases.
- ii. Information and data may need to be compiled from previously existing reports.
- iii. Additional data may need to be collected.
- iv. DEQ acknowledges potential limitations related to investigation of an operating refinery, but a good faith effort will be made to characterize on-site and off-site conditions.

- v. As part of the Draft Final RFI report, Frontier shall propose for DEQ approval, those areas (including SWMUs, AOCs, sources, hot spots) that should be subject to the standard Corrective Action process under the original AOC, or subject to Site Stabilization described in this Special Stipulation Corrective Action Schedule.
19. Achievement of the Environmental Indicators (EI) (human health and groundwater) by September 30, 2008, or sooner.
- i. Frontier will make diligent efforts to achieve both EIs by September 30, 2008. However, DEQ acknowledges that those determinations by September 30, 2008, are contingent on RFI and Site Stabilization activities.
  - ii. "Diligent efforts" as provided in Paragraph 19 (i) above may include actions taken by Frontier pursuant to a consent decree if entered into by the Parties hereto in connection with DEQ Notice of Violation Docket No. 3538-04.
  - iii. Achievement of EIs does not necessarily constitute fulfillment of other Special Stipulation Corrective Action Schedule Objectives.
20. Special Stipulation Corrective Action Schedule - Site Stabilization, including boundary control, by October 15, 2008.
- i. Site Stabilization consists of DEQ approved (subject to dispute resolution) completion of remediation of hot spots; elimination and/or remediation of on-going sources of contamination (e.g., underground pipes, above ground pipes, tanks); remediation of off-site releases, and implementation of boundary control. For purposes of this Paragraph 20, remediation shall be consistent with Paragraph 21 (ii).
    - a. Frontier shall accomplish Special Stipulation Corrective Action Schedule Site Stabilization by October 15, 2008, except as provided in Paragraph 20(i)(b). Boundary control is not subject to the exception provided in Paragraph 20(i)(b).
    - b. For hot spots, known ongoing sources of contamination, and off-site releases, which cannot be remediated by October 15, 2008, Frontier shall accomplish Corrective Action according to a plan and schedule to be submitted by October 15, 2007, and approved by DEQ (subject to dispute resolution).
  - ii. Frontier should implement a strategy to ensure on-going activities at the site will not affect Site Stabilization (future releases).
  - iii. DEQ and Frontier are currently in settlement negotiations, as of September, 2006, for boundary control along the southern, eastern, and southwestern portion of the facility. Provided that boundary control along the southern, eastern, and southwestern portion is agreed upon, this will satisfy a portion of this requirement for Site Stabilization.

- iv. For boundaries not part of the current settlement negotiations, as of September, 2006, Frontier and DEQ acknowledge that there may be an eventual need for boundary control in other areas and that actions (e.g., design development) to address those other boundaries must occur before October 15, 2008.
- v. Additional boundary control measures, as warranted, will be invoked through Section VII, Additional Work Measures, of this Administrative Order on Consent.

21. On-site source control by October 15, 2008.

- i. Source control is a component of Site Stabilization, and is covered by Paragraph 20 above.
- ii. Sources include, but are not limited to, hot spots identified during the RFI that pose a significant risk to humans and to groundwater, or other on-going sources of releases of contamination that pose a significant risk to humans or groundwater.

2. Except as specifically modified by this Joint Stipulation, all terms of the original AOC remain unchanged and in effect.

3. The AOC, as modified by this Joint Stipulation, shall apply to and be binding upon Frontier and its successors and assigns.

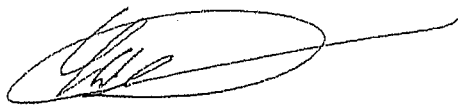
4. The DEQ and Frontier request that the Wyoming Environmental Quality Council (EQC) approve this Joint Stipulation for modification of the AOC and incorporate it into the AOC by reference.

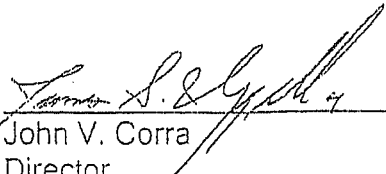
The signatories certify that they are authorized to execute this Joint Stipulation on behalf of their respective Parties.


DATED this 15<sup>th</sup> day of September, 2006.

FOR FRONTIER REFINING INC.:

FOR THE WYOMING DEPARTMENT  
OF ENVIRONMENTAL QUALITY:

  
\_\_\_\_\_  
Lloyd J. Nordhausen  
Vice President and Refinery Manager

  
\_\_\_\_\_  
John V. Corra  
Director

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

