

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

In the Matter of the Appeal of)
Phyllis Atchison from NPDES)
Permit No. WY0000442)

Docket No. 03-3801

SEP 22 2004

Terri A. Lorenzon, Director
Environmental Quality Council

**JOINT STIPULATION REGARDING
WITHDRAWAL AND DISMISSAL OF
AMENDED PETITION FOR HEARING AND NOTICE OF APPEAL
AND WITHDRAWAL OF REQUEST FOR HEARING**

The Department of Environmental Quality ("DEQ"), Water Quality Division issued renewal NPDES Permit No. WY0000442 (the "Permit") to Frontier Refining Inc. ("Frontier") on July 31, 2003. The permit, among other things, authorized Frontier to discharge treated refinery wastewater from Outfall 004 to Porter Draw.

Petitioner Phyllis Atchison timely petitioned the Environmental Quality Council (Council) to contest the renewal Permit by filing a Petition for Hearing and Notice of Appeal on September 18, 2003, and an Amended Petition for Hearing and Notice of Appeal on April 12, 2004.

Since then the Petitioner, Frontier and the DEQ (the parties) have met and discussed the situation, and have now reached an agreement for resolving this matter without a hearing. W.S. 16-3-107(n) and Chapter 1, Section 11 of the DEQ Rules of Practice & Procedure provide for disposition of contested cases by stipulation of the parties upon approval of the Council. To that end, the parties hereby stipulate as follows:

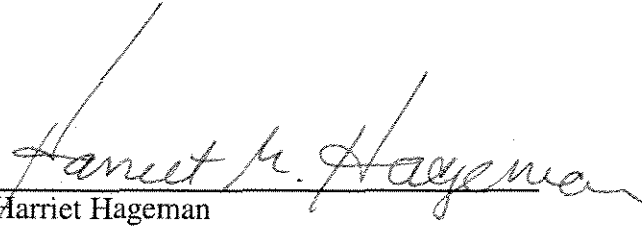
Joint Stipulation

1. Frontier has made certain agreements with Petitioner Phyllis Atchison and taken certain actions relating to the instant proceeding that represent a compromise and settlement of the issues herein in consideration for Petitioner Phyllis Atchison's agreement that, upon the Council's approval of this Joint Stipulation, her Amended Petition for Hearing and Notice of Appeal to contest the renewal permit at issue in this matter shall be deemed withdrawn and dismissed with prejudice.
2. Specifically, in relation to the Permit, Frontier shall file with the DEQ Water Quality

Division a written request to modify its NPDES Permit No. 0000442 to delete outfall 004 (Porter Draw) and to authorize the continued seepage from the earthen Porter Draw Reservoir.

3. W.S. 16-3-107(n) and Chapter I, §11 of the DEQ Rules of Practice & Procedure provide for disposition of contested cases by stipulation of the parties upon approval of the Council.
4. The parties request that the Council enter the attached Order approving and incorporating this Joint Stipulation.
5. This Joint Stipulation shall be binding upon the parties, their successors and assigns.
6. Each party shall bear its own costs and attorney fees incurred through the entry of an Order by the Council approving and incorporating this Joint Stipulation.
7. The signatories certify that they are authorized to bind their respective parties to this Joint Stipulation.

DATED this 22 day of SEPTEMBER, 2004.


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FILED

APR 12 2004

Terri A. Lorenzon, Director
Environmental Quality Council

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL OF THE
STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
PHYLLIS ATCHISON FROM NPDES) No. 03-3801
PERMIT NO. WY0000442)

**AMENDED PETITION FOR HEARING AND NOTICE OF APPEAL
RELATED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S
"AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL
POLLUTANT DISCHARGE ELIMINATION SYSTEM" ISSUED TO
FRONTIER REFINING, INC.**

Protestant: Phyllis Atchison
3795 County Road 203
Cheyenne, Wyoming 82007

Protestant's Attorney: Harriet M. Hageman
Kara Brighton
Hageman & Brighton
1822 Warren Avenue
Cheyenne, Wyoming 82001

Protestant Phyllis Atchison, by and through her undersigned counsel, files this Amended Petition for Hearing and Notice of Appeal pursuant to Wyo. Stat. Ann. § 35-11-112(a) and Chapter I, Section 3 of the Rules of Practice and Procedure promulgated by the Environmental Quality Council (Council). In particular, Ms. Atchison protests the above-referenced Department of

Environmental Quality (DEQ) Authorization to Discharge Under the National Pollutant Discharge Elimination System (Discharge Permit) that was issued to Frontier Refining, Inc. (Frontier) on July 25, 2003. A copy of the Discharge Permit is attached as Exhibit A. The basis for Ms. Atchison's protest is that the Discharge Permit was issued:

- (1) Without considering the degradation that such discharge would cause to the vegetation on her property.
- (2) Without considering the degradation that such discharge would cause to the groundwater underlying her property.
- (3) Without considering the degradation that such discharge would cause to her stock watering wells.
- (4) Without considering the degradation that such discharge would cause to the soils on her property.
- (5) Without considering the degradation that such discharge would cause to her property rights.
- (6) Without considering the fact that the discharge (introduction) of standing and running water into Porter Draw would degrade the existing soils and vegetation, as well as erode Porter Draw and the surrounding property.
- (7) Based upon the erroneous conclusion that it is legally or technically appropriate for Frontier to discharge water into Porter Draw.
- (8) Without considering the degradation that such discharge would cause to Ms. Atchison's roadways and access to her property.
- (9) Without adequately considering or evaluating the effluent limits and water quality to ensure protection of the designated uses of Porter Draw and, most specifically, Ms. Atchison's

property.

- (10) Without considering the impact that such discharge would have on Ms. Atchison's livestock.
- (11) Without considering the health and safety of such discharges.
- (12) Without considering whether Frontier's discharges violate the terms and conditions of the Discharge Permit and previous Authorizations to Discharge.
- (13) In violation of the Wyoming Environmental Quality Act (EQA), Wyo. Stat. §§ 35-11-101 *et seq.*, and the rules and regulations promulgated thereunder. The standards, as well as the enforcement mechanisms contained in the permits fall short of providing the necessary compliance with the EQA and the rules and regulations promulgated thereunder, for reasons including, but not limited to (1) the permit provisions allow for monitoring, testing, and enforcement after the damage is done, if at all; (2) DEQ has failed to obtain adequate baseline data; (3) the schedule for Frontier to comply with the water-quality based effluent limits is too long; and (4) the standards and the enforcement mechanisms do not protect against degradation of Petitioner's property.
- (14) In violation of the Water Quality Rules and Regulations, including, but not limited to, Chapters 1 and 2.
- (15) In violation of the Federal Water Pollution Control Act (Clean Water Act) and amendments thereto.
- (16) In violation of the Wyoming Administrative Procedures Act, Wyo. Stat. §§ 16-3-010 *et seq.*
- (17) In violation of Wyo. Stat. § 35-11-801, in that the Discharge Permit should never have been issued by the DEQ without "proof by the applicant that the procedures of this act and the rules and regulations promulgated hereunder have been complied with."

STATEMENT OF FACTS

Petitioner Phyllis Atchison is a resident of Laramie County, Wyoming. Her address is 3795 County Road 203, Cheyenne, Wyoming 82007. Ms. Atchison's ranch is located south-east of Cheyenne. Porter Draw traverses a portion of her property.

Frontier is an oil and gas refining company located on the southern edge of Cheyenne, Wyoming. The DEQ has permitted Frontier to discharge waste water into Crow Creek and Porter Draw. According to the Discharge Permit issued on July 25, 2003 (effective August 1, 2003), Porter Draw is a "Class 3B waterway." Porter Draw is an ephemeral/intermittent stream that normally supports and sustains communities of aquatic life including but not limited to invertebrates, polywogs (tadpoles), salamanders, frogs, and other related flora and fauna.

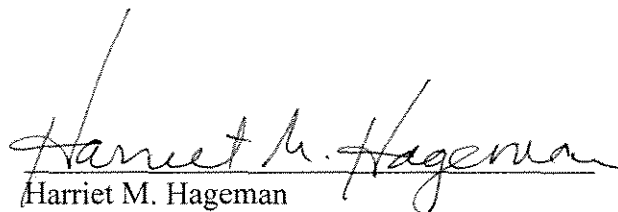
Frontier has been discharging large volumes of water down Crow Creek and Porter Draw. Frontier's discharge of water down Porter Draw has caused substantial damage to Ms. Atchison's property. Such damage, which is continuing in nature, includes, but is not limited to, degradation of vegetation, degradation of the groundwater quality, degradation of stock watering wells, degradation of the soils, increase in erosion, destruction of aquatic life and flora and fauna, degradation of existing and designated uses, and degradation of roadways and access to Petitioner's property.

WHEREFORE, Ms. Atchison hereby requests the EQC to reverse the DEQ's Authorization to Discharge as granted to Frontier on July 25, 2003, and deny Frontier's Authorization to Discharge. In the alternative, Ms. Atchison requests that any future Authorization to Discharge be granted with substantially more stringent standards and enforcement provisions to ensure that she does not suffer

harm as a result of Frontier's operation. Ms. Atchison also requests an award of costs and attorney's fees, and for such other and further relief as the EQC deems appropriate.

Ms. Atchison respectfully requests a hearing before the Council.

Dated this 12th day of April, 2004



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