

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

JAN 23 2002

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF)
WYOMING REFINING COMPANY,)
AIR QUALITY PERMIT NO. MD-433,)

Docket No. 00-2601

JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

Petitioner Wyoming Refining Company (WRC) and Respondent Wyoming Department of Environmental Quality, Air Quality Division (AQD), for the following reasons, jointly move the Environmental Quality Council to approve of the settlement agreement reached in this matter.

1. On March 17, 2000, WRC filed its petition for review in this matter, seeking review of certain conditions of an air quality permit issued to WRC by AQD.

2. WRC and AQD have negotiated a resolution of their differences in this matter, and entered into a settlement agreement. A copy the agreement is attached to this motion.

3. Because of some unusual aspects of this settlement, WRC and AQD request that the Environmental Quality Council approve the settlement agreement and incorporate it into its order resolving this matter.

4. WRC and AQD request an opportunity to appear at the next meeting of the Environmental Quality Council to explain the settlement agreement and answer any questions the Council members may have.

For these reasons, the parties jointly request a hearing before the Environmental Quality Council, and move the Council to approve the settlement agreement entered into by the parties.

DATED this 23rd day of January, 2002.



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EWH:nmf:2894993
15207.3003

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ) and Hermes Consolidated, Inc., a Delaware corporation authorized to do business in Wyoming, d/b/a Wyoming Refining Company (Wyoming Refining) enter into this Settlement Agreement to resolve, fully and finally and without litigation, the administrative appeal pending before the Environmental Quality Council entitled In the Matter of Wyoming Refining Company, Air Quality Permit No. MD-433, Docket No. 00-2601. To that end, DEQ and Wyoming Refining hereby agree and stipulate as follows:

LEGAL AUTHORITY

1. Wyo. Stat. § 35-11-901(a)(ii) authorizes stipulated settlements in lieu of litigation in enforcement actions. Chapter 1, Section 11 of the Wyoming Department of Environmental Quality's Rules of Practice and Procedure allows informal disposition of matters before the Wyoming Environmental Quality Council.

2. DEQ, pursuant to the Wyoming Environmental Quality Act, Wyo. Stat. § 35-11-101, et seq., is responsible for enforcing the Wyoming Air Quality Standards and Regulations (WAQSR). Further, pursuant to approval of Wyoming's State Implementation Plan by the federal Environmental Protection Agency (EPA), see 40 C.F.R. 52, subpart ZZ, DEQ is primarily responsible for implementing and enforcing air quality programs and requirements within the State.

FACTUAL BACKGROUND

1. On October 26, 1993, DEQ adopted WAQSR Section 30 (now WAQSR Chapter 6, Section 3) requiring operating permits for major stationary sources of air pollution. This rule was intended to comply with the federal operating permit program set forth in Title V of the Clean Air Act and with the EPA's operating permit program requirements set forth in 40 CFR Part 70.

2. Pursuant to WAQSR Section 30 (now WAQSR Chapter 6, Section 3), operating permits must include all air quality requirements applicable to the permitted facility. Operating permits may include a permit shield, or a statement in the permit that compliance with the permit shall be deemed compliance with all applicable requirements relating to the facility. Under this permit shield concept, if a requirement is not in the permit, then it is deemed not applicable to the facility. Operating permits are, therefore, a means of documenting whether certain air quality requirements are or are not applicable to emitting facilities.

3. A facility's status as a major or minor source and, therefore, the applicability of the operating permit and other requirements, is based on the facility's potential-to-emit each air pollutant or class of pollutants subject to controls.

4. On March 1, 1995, DEQ sent a letter to Wyoming Refining Company and other sources in Wyoming containing guidance for calculating potential-to-emit for fugitive emissions of hydrocarbons and hazardous air pollutants ("HAPs") from equipment leaks. This guidance recommended using "correlation equations" published by the American Petroleum Institute (API) and reviewed by the EPA in order to determine the potential-to-emit from equipment leaks. Using these API/EPA equations involves measuring the concentration of hydrocarbons in the air near all possible leak points and using the equations to convert the measured hydrocarbon concentration into a pound-per-hour emission rate. The hydrocarbon potential-to-emit for equipment leaks would be the sum of these emission rates for all points in the facility. The HAP potential-to-emit for equipment leaks would be the fraction of HAPs contained in the leaking or potentially leaking hydrocarbons.

5. In January, February, and April, 1995, Wyoming Refining Company tested or screened the potential leak points in the refinery facility for hydrocarbon emissions in order to apply the API/EPA correlation equations and determine the potential-to-emit for equipment leaks. Actual screening values for each point were used as recommended in the DEQ March 1, 1995 guidance.

6. When the results of these exercises were combined with the emission potential of all other sources within the refinery, Wyoming Refining Company determined that the refinery's potential-to-emit for HAPs did not exceed the major source threshold. On the basis of this analysis, Wyoming Refining Company concluded it was a "natural minor" source of HAPs, and therefore, not subject to Clean Air Act controls on major sources of HAPs emissions.

7. On May 16, 1995, the EPA issued guidance entitled "Potential to Emit for MACT Standards -- Guidance on Timing Issues," in which it interpreted §112 of the Clean Air Act. The EPA concluded that an otherwise major source of HAPs could become a "synthetic minor" source of HAPs through the imposition of federally enforceable permit limits on its potential-to-emit, and thereby avoid the application of Maximum Achievable Control Technology ("MACT") standards. However, the EPA asserted that the permit containing the federally enforceable permit limits had to be issued on or before the first compliance date of the MACT standard in order for the source to avoid the application of MACT standards. Under this policy, once a major source became subject to the MACT standard, it could not later avoid the MACT standard by becoming a synthetic minor source. This is often referred to as the EPA's "once in, always in" policy.

8. On August 18, 1995, (60 FR 43244), the EPA promulgated MACT rules for controlling HAP emissions from various sources within petroleum refineries. The first compliance date for this MACT rule was August 18, 1998, three years after its promulgation by the EPA. Pursuant to WAQSR Chapter 5, Section 3, DEQ is the agency primarily responsible for implementing and enforcing the MACT rules within the State.

9. On November 15, 1995, Wyoming Refining Company applied to DEQ for an operating permit for the Newcastle refinery. DEQ's application form contained a Part C in

which the applicant was directed to list all requirements from which it was exempt. Wyoming Refining Company stated that it was exempt from the August 18, 1995 refinery MACT rule (WAQSR Chapter 5, Section 3; 40 CFR Part 63, subpart CC), on the basis that the refinery was "not a major source of HAPs." In the introduction to the application, under the section "Key Issues," Wyoming Refining Company stated, "The Newcastle Refinery is a minor source of hazardous air pollutants (HAPS). Therefore, the Refinery is not subject to Title III of the 1990 Clean Air Act Amendments or to refinery MACT, when the MACT is promulgated."

10. The operating permit application also stated, "Although not required, we intend to confirm our minor source status by repeating the component screening once per permit term; our next component screening will be before we submit our application for the renewal of the operating permit."

11. Even though Wyoming Refining Company determined and documented that it was a natural minor source of HAPs, it was aware that the DEQ might conclude otherwise. In case of such an event, Wyoming Refining Company wanted to ensure that federally enforceable permit conditions qualifying it as a synthetic minor source, and further preventing the application of MACT standards for major sources of HAPs, would be in place prior to the effective date of the MACT standard for petroleum refineries. Therefore, on October 30, 1997, Wyoming Refining Company wrote to DEQ regarding the company's expectations for an upcoming meeting with DEQ on November 3, 1997, stating that "Issuance of Wyoming Refining Company's §30 permit before August of 1998 is important. If our status as a minor source for HAP emissions is not confirmed before that date, the effective date for the first petroleum refinery MACT requirements, Wyoming Refining Company may be subject to MACT requirements at the capital expense of several million dollars and the significant ongoing expenses of record keeping and maintenance."

12. On November 12, 1997, Wyoming Refining Company wrote DEQ summarizing the November 3 meeting discussion on the refinery's minor source status as follows:

Wyoming Refining Company wishes to use the § 30 permit process as a way to certify the refinery's status as a minor source of HAPs. DEQ is not sure the permit is the proper means for establishing this fact. Wyoming Refining Company, however, believes the § 30 permit is proper for this purpose because of the permit shield. The permit shield states that a requirement must be stated in the permit to be applicable. Conversely, if there is no applicable requirement for the refinery MACT in our § 30 permit, it must be because the refinery is a minor HAP source. Even better for Wyoming Refining Company would be an explicit statement in the permit that the refinery is a minor HAP source and that the refinery MACT is not an applicable requirement for Wyoming Refining Company. If the § 30 permit is not the proper means for accomplishing this, another vehicle must be found as time will become a critical factor soon. It is clear that if synthetic minor provisions or operating restrictions will be required to ensure the refinery's minor source status, those

provisions must be in a federally enforceable permit issued before the effective date of the refinery MACT which is August, 1998. The MACT rule requires compliance on or before the MACT effective date, and EPA takes the position that once a facility is subject to MACT, it cannot escape to minor source status by the subsequent imposition of synthetic minor operating restrictions or by later construction of control equipment. In short, Wyoming Refining Company needs regulatory confirmation of its minor source status before August, 1998, and it appears to Wyoming Refining Company that the best way to state that confirmation is through the issuance of a §30 permit before August, 1998. Wyoming Refining Company needs to review its HAP potential-to-emit calculations and conclusions with Richard Schrader of the AQD Sheridan office. If Richard is satisfied with our methodology, AQD will then determine if the § 30 permit is the proper vehicle for certifying Wyoming Refining Company's minor source status.

13. On March 25, 1998, Wyoming Refining Company again wrote to DEQ, stating:

With respect to item 8 in my November 12, 1997 letter to Dan Olson, Mike Stoll and you, Wyoming Refining Company reviewed its HAP emission potential estimates and methodology with Richard Schrader and Mike Warren of the AQD Sheridan office on December 17, 1997. We were informed that our estimates and methods were acceptable. You may wish to confer with Richard and Mike for further elaboration on their conclusions.

14. In its report of the December 17, 1997 Wyoming Refining Company semi-annual inspection, DEQ stated the following with respect to the HAP potential discussion held during that meeting:

In Wyoming Refining Company's Section 30, operating permit application (30-136), WRC states that the Newcastle refinery is a minor source of HAPS and therefore, will not be subject to the refinery MACT which has a compliance date of August 18, 1998. ... As shown in the above table, most of the HAP emissions are from process line components. Wyoming Refining Company performed a TOC screening in 1995 and 1996 throughout the entire refinery. With this data, WRC calculated emissions using emission factors derived from the 1995 EPA approved emission estimation methods based on API data. WRC is proposing to perform the TOC screening once per permit term in order to demonstrate that they remain a minor source in regards to the refinery MACT. No problems were noted in reviewing the calculations submitted with the Section 30 permit application.

15. DEQ did not act on Wyoming Refining Company's operating permit application on or before August 18, 1998.

16. On February 10, 1999, Bob Neufeld of Wyoming Refining Company had a telephone conversation with Mike Stoll of DEQ. Mr. Neufeld's notes of that conversation reflect that Mr. Stoll "has heard nothing negative regarding the HAP PTE [potential-to-emit]".

17. On July 12, 1999, Wyoming Refining Company applied for a construction permit pursuant to WAQSR Chapter 6, Section 2 (formerly WAQSR Section 21). The application sought authority to install at the Newcastle refinery a fluid catalytic cracker (FCC) to be relocated from a refinery in Texas and to make necessary associated changes as described. In the application, Wyoming Refining Company referred DEQ to the HAP potential-to-emit data submitted with the November 15, 1995 operating permit application.

18. In its December 13, 1999 analysis of the application and proposed permit, DEQ stated:

In the Chapter 6, Section 3 and Chapter 6, Section 2 applications, WRC represented the Newcastle refinery as a minor source for HAPs and therefore, is not subject to the requirements of 40 CFR Part 63, Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries. As part of this application, the Division reviewed the minor source status. The Division has not finalized the total HAP emissions from the refinery, but based on the information available, cannot conclude that the Newcastle refinery is a minor source of HAP emissions. The refinery will be required to comply with the requirements of Chapter 5, Section 3, Subpart CC as part of this permitting action.

19. DEQ also proposed that the entire refinery, where it would otherwise be exempted because of equipment age, be required, pursuant to DEQ's best available control technology (BACT) provisions, to comply with the equipment leak detection and repair (LDAR) requirements of 40 CFR Part 60, subpart GGG.

20. On January 7, 2000, Wyoming Refining Company commented on the proposed conditions requiring compliance with MACT stating:

Wyoming Refining Company objects to Condition [27] on the grounds that the refinery is a minor source of hazardous air pollutant (HAP) emissions. Wyoming Refining Company has demonstrated that its potential to emit HAPs is less than the applicability levels for subpart CC, i.e. - the refinery MACT. There is no evidence or data to the contrary which is reliable or relevant to the emission potential of our refinery in the record. Wyoming Refining Company's minor source status is valid either with or without the leak detection and repair (LDAR) requirement as requested in our operating permit application submitted November 15, 1995. The Division's proposed Condition [28] imposing an LDAR requirement on the entire refinery responds to that request and is enforceable and adequate to ensure that the refinery's

HAP emission potential will continue far below MACT applicability levels. Condition [27] should be removed from the permit.

21. In its January 21, 2000 decision issuing Permit No. MD-433, DEQ stated:

The Division acknowledges receipt of the HAP information received on January 12, 2000 and subsequent submittal received on January 19, 2000. As of the date of the permit, the Division has not had an opportunity to review the information. Until the Division has reviewed the information, the applicability determination for the refinery is based on the information submitted with Application AP-740. Therefore, the condition will remain as proposed. Should further review convince the Division that the refinery is a minor source, appropriate steps will be taken to amend the permit.

22. On March 17, 2000, Wyoming Refining Company appealed DEQ's decision regarding Permit No. MD-433, specifically challenging the following permit terms:

a. Condition 9 and Table I imposing a pound-per-hour limit in addition to a ton-per-year limit on NO_x emissions from the FCC.

b. Condition 27 subjecting the refinery to MACT controls for HAP emissions.

c. Condition 28 imposing LDAR requirements on the entire refinery where equipment would otherwise be exempt from LDAR requirements solely on account of age.

d. Comment 2 of the DEQ decision document stating that the firing rates assumed for refinery heaters in calculating their potential-to-emit all pollutants, not just HAPs, are considered to be substantive commitments made in the permit application. Condition 2 of the permit states that all substantive commitments are enforceable as permit conditions even if not specifically stated in the permit.

23. The only substantial area of disagreement between the parties regarding Wyoming Refining Company's potential-to-emit HAPs is the potential-to-emit associated with equipment leaks. Wyoming Refining Company has concluded that it is a natural minor source of HAPs because the refinery's equipment leak potential-to-emit, without any LDAR program, does not cause the refinery to exceed any MACT applicability thresholds. DEQ is unable to reach the same conclusion.

24. Despite the disagreement noted in the previous paragraph, Wyoming Refining Company and the DEQ agree that, if Wyoming Refining Company, as required by Condition 28 of Permit No. MD-433, performs LDAR inspection, control and repair activities on all refinery equipment and components otherwise exempt due to their construction date, then

Wyoming Refining Company qualifies as a synthetic minor source of HAPS because the refinery's potential-to-emit HAPS is below all MACT applicability thresholds.

AGREEMENT OF THE PARTIES

1. Wyoming Refining Company and DEQ agree as follows:

a. Wyoming Refining Company will perform the LDAR inspection, control and repair activities required by the conditions of Permit No. MD-433 relating to emissions of volatile organic compounds (VOCs) and HAPS, including Condition 28 of that permit, in order to demonstrate that Wyoming Refining Company's Newcastle refinery remains a minor source of HAPS.

b. DEQ will delete from Permit No. MD-433 its Condition 27 imposing MACT controls on the Newcastle refinery. This Condition 27 will no longer be a part of Permit No. MD-433, and Wyoming Refining Company will not be subject to the MACT standards set forth in WAQSR Chapter 5, Section 3 (40 C.F.R. Part 63, subpart CC).

c. Wyoming Refining Company will withdraw its objections to Permit No. MD-433, and move to dismiss its appeal pending before the Wyoming Environmental Quality Council, entitled In the Matter of Wyoming Refining Company, Air Quality Permit No. MD-433, Docket No. 00-2601.

2. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR HERMES CONSOLIDATED, INC., a Delaware corporation, d/b/a WYOMING REFINING COMPANY:

Signed: Bob Neufeld Date: 11/27/2001
W. Robert Neufeld
Vice President, Environment and Governmental Relations

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

Dennis Hemmer Date: 1-8-2002
Dennis Hemmer, Director

Dan Olson Date: 1/8/2002
Dan Olson, Administrator
Air Quality Division