

HUSKY OIL COMPANY
SEP 27 1976
LEGAL DEPT. DEWRD

STATE OF WYOMING
ENVIRONMENTAL QUALITY COUNCIL

In Re HUSKY OIL COMPANY)
OF DELAWARE; Petition to)
Modify NPDES Permits)
WY-0000442 and WY-0000451)

DOCKET NO. 191-76

FINDINGS OF FACT; CONCLUSIONS OF LAW; AND ORDER

This matter came on for hearing before the Environmental Quality Council on June 29, 1976, upon notice to all parties. Don White, Chairman, acted as Hearing Officer; all of the current Council members were present; and Dave Parks, a newly-appointed Council member effective as of July 1, 1976, was also present.

Husky Oil Company of Delaware ("Husky") was represented by its attorneys, James R. Learned and Hugh E. Kingery. The Department of Environmental Quality ("DEQ") was represented by its attorney, Marilyn S. Kite.

Proposed Findings of Fact and Conclusions of Law submitted by the parties, which are not incorporated herein, are hereby rejected as immaterial, irrelevant, or not supported by the evidence. References to the record contained herein are illustrative only, and each finding and conclusion is based on the entire record.

Upon consideration of the evidence, exhibits, arguments of counsel, and the record, the Council hereby finds and concludes as follows:

FINDINGS OF FACT

1. Husky is a Delaware corporation doing business in the State of Wyoming.

2. Husky owns and operates oil refineries at Cody, Wyoming, and Cheyenne, Wyoming.

3. Husky has previously committed itself and continues to commit itself to complying with the Wyoming Environmental Quality Act, W.S. 35-502.1 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.

4. The wastewater treatment process preferred by Husky, and voluntarily selected by Husky, is total containment.

5. Neither EPA nor DEQ required Husky to elect to use total containment as a method of wastewater treatment.

6. Total containment of wastewater will enable Husky to comply with all effluent limitations required by application of Best Practicable Control Technology Currently Available ("BPT") and Best Available Technology Economically Achievable ("BATEA").

7. Pursuant to an application from Husky, DEQ issued to Husky NPDES Permit WY-0000442 (for Cheyenne refinery) and NPDES Permit WY-0000451 (for Cody refinery).

8. Said permits contain certain limitations on the discharge of effluents from the date of the permits to June 30, 1977, and other stricter limitations from June 30, 1977, to December 31, 1977.

9. DEQ derived the limitations made effective June 30, 1977, from the Effluent Limitations Guidelines published by the United States Environmental Protection Agency ("Effluent Guidelines and Standards for Petroleum Refining," published at 40

C.F.R. Section 419.22).

10. The limitations made effective as of June 30, 1977, under said permits represent BPT.

11. Wyoming Water Quality Rules and Regulations, Chapter II, Section 9.g. requires that BPT be achieved by July 1, 1977.

12. Husky's petition in this matter is limited to changing the July 1, 1977, date to some later date, and Husky consents to all other terms and conditions of the permits.

13. Husky's plans for achieving total containment call for impoundment in ponds located about five miles from the respective refineries.

14. The State Engineer asserts that Husky cannot impound discharge waters from either refinery without first obtaining a permit from his office.

15. On March 16, 1976, Husky filed suit in Laramie County District Court seeking declaratory judgment that the State Engineer does not have jurisdiction over the proposed impoundments.

16. Husky has other sources of water available at the Cody refinery which may be used in a total containment facility, without objection from the State Engineer.

17. The availability of this water, or Husky's ability to use it in a total containment facility, is not dependent upon the outcome of Husky's declaratory judgment action.

18. Husky presently has a permit to construct a total containment facility at the Cody refinery, which was issued by the DEQ on May 28, 1976. (DEQ Exhibit I).

19. The only reliable monitoring data available for the discharge from the Cheyenne refinery indicates that the present

wastewater treatment facility is able to meet BPT limitations. (DEQ Exhibits J and K).

20. The Environmental Protection Agency's ("EPA") current policy prohibits the granting of permit dates beyond July 1, 1977, for achieving compliance with BPT.

21. The discharge from the Cheyenne facility is into Crow Creek.

22. The average natural flow of Crow Creek in the Cheyenne area is one-half cubic foot per second. (DEQ Exhibits L and M).

23. The average flow of Crow Creek in the Cheyenne area from return flows (industrial and municipal discharges) is 13 cubic feet per second. (DEQ Exhibits L and M).

24. Crow Creek in the Cheyenne area has a readily discernible stream bed, an average bank height of 15 feet, and an average channel width in excess of 20 feet.

25. Husky has already received numerous extensions of time for compliance at the Cheyenne refinery: In August 1973 a permit was issued requiring compliance by July 1, 1975; at Husky's request this was extended to July 1, 1975; in May of 1975, at Husky's request, the compliance date was extended to November 1, 1975 (DEQ Exhibit E); on September 19, 1975, the compliance date was further extended to July 1, 1977. (DEQ Exhibit G).

26. A similar pattern of extension of compliance dates has occurred with respect to the Cody refinery. (DEQ Exhibit H).

27. Husky has not sought a variance under W.S. 35-502.45.

CONCLUSIONS OF LAW

1. Under Wyoming Water Quality Rules and Regulations, Chapter II, Section 9.g., compliance with BPT may not be extended beyond July 1, 1977.

2. W.S. 35-502.19(a)(vii) does not authorize the Environmental Quality Council to grant variances to its regulations. Variances may be applied for solely under W.S. 35-502.45. Since a variance has not been sought by Husky, the Council need not, and does not, decide whether variances from NPDES permits are precluded by W.S. 35-502.45(o).

3. Even if W.S. 35-502.19(a)(vii) authorized the Council to grant extensions of time beyond July 1, 1977, on a permit-by-permit basis, Husky has not presented any evidence that the amount of time for achieving compliance with BPT (August 1973 to July 1, 1977) was not a reasonable amount of time.

ORDER

BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

Husky's petition be, and hereby is, denied.

Entered this 24th day of Sept., 1976.

Donald P. White
Donald P. White, Chairman
Environmental Quality Council

CERTIFICATE OF SERVICE

I, Marilyn S. Kite, do hereby certify that I served copies of the foregoing by personally delivering once copy each to:

Robert E. Sundin
Executive Secretary
Environmental Quality Council

and

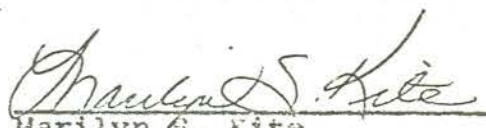
Steve F. Freudenthal
Counsel for the Environmental
Quality Council

I further certify that I served copies of the foregoing by depositing the same in the United States mail, postage prepaid, at Cheyenne, Wyoming, on the 24th day of Sept., 1976, duly enveloped and addressed to:

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