

**In the Matter of the Appeal  
of the June 2, 2008 Denial of Frontier  
Refining Inc.'s Force Majeure Claim**

**DEQ Oct. 15 Motion to Dismiss**

Docket No. 08-3804

January 15, 2009

## Two Related Appeals are Pending (and Two DEQ Motions to Dismiss)

- Barrier wall schedule (3804 filed July 2)
- Barrier wall not required (3808 filed Nov. 19)
- What happened between appeals?
  - 133-acre purchase contained groundwater plume (Oct. 3)
  - Schedule now can't be resolved until remedy is resolved

# Schedule Appeal (3804) is not Moot/Resolved

- AOC procedural requirements not met
- Sep. 26 DEQ letter unilaterally changed the schedule for the wall
  - Sec. 17 determination requires Sec. 21 mutual agreement
  - But, unilateral schedule imposed by DEQ
  - Therefore, Sep. 26 letter flawed and DEQ knew it
  - Sole basis of Oct. 15 motion to dismiss

# Putting Band-Aids on the Sep. 26 Decision

- AOC procedural requirements still not met
- Frontier invoked dispute resolution (Sec. 16) on Oct. 3
- DEQ set a meeting on Oct. 17
- Oct. 27 DEQ letter unilaterally changed schedule
  - But, failed to meet 10-day requirement of AOC
  - And, after DEQ's Oct. 15 motion
  - And, ignored discussions on no need for the wall

## Barrier Wall Required at All?

- Frontier has discussed with DEQ since summer
- Wall is now in middle of acquired property
- Simultaneous discussions on schedule and appropriate boundary control remedy
- Technical discussions on schedule
- Management discussions on property purchase impact on wall

# Can't Separate Schedule from Need for Wall

- Schedule must depend on appropriate remedy
- Tailor remedy to match circumstances, not just follow a property line
- DEQ unilateral time clock ticking
  - e.g., draft design for wall due Feb. 18, 2009
- DEQ unilateral schedule does not meet remedy sought in appeal
  - suspension of schedule pending AOC agreement
- Can't view schedule dispute in isolation

# Conclusions

- Sep. 26 schedule ≠ mutual agreement
  - YOU COULD STOP RIGHT HERE
- Forced schedule proposal ≠ mutual agreement
- Oct. 27 “Gotcha” ≠ mutual agreement,
  - Also did not follow AOC
  - Also misused Frontier’s cooperation on schedule proposal
  - Also ignored impact discussions
- Schedule and need for wall are intertwined issues
- DEQ invites:
  - Piecemeal decision-making
  - Backward-looking decision-making