

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

OCT 15 2008

In the Matter of the Appeals of the)
June 2, 2008 and August 15, 2008) Docket Nos. 08-3804
Denial of Force Majeure Claims by) and 08-3806
Frontier Refining Inc.)

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

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S
MOTION TO CONSOLIDATE AND DISMISS
FRONTIER REFINING INC.'S APPEALS

Respondent Wyoming Department of Environmental Quality (DEQ), pursuant to Chapter II, Sections 3 & 14 of the DEQ Rules of Practice & Procedure and Rules 12 & 42(a) of the Wyoming Rules of Civil Procedure, moves to dismiss Petitioner Frontier Refining Inc.'s (Frontier) Petitions for Review and Requests for Hearing in related Docket Nos. 08-3804 and 08-3806 before the Wyoming Environmental Quality Council's (EQC) on grounds of mootness and lack of subject matter jurisdiction, as explained below. Frontier and DEQ are the only parties in Docket Nos. 08-3804 and 08-3806.

Discussion

Frontier filed a Petition for Review and Request for Hearing before the EQC (Docket No. 08-3804) on July 2, 2008 contesting DEQ's June 2, 2008 determination denying Frontier's Force Majeure Claim with respect to the October 15, 2008 completion deadline to achieve boundary control through installation of a barrier wall. Specifically, Frontier's July 2, 2008 Petition:

¶4. Alleges that Frontier and the DEQ entered into an Administrative Order on Consent (AOC) in 1995, followed by a Joint Stipulation for Modification of the AOC filed with the EQC on October 17, 2006, which included an October 15, 2008 deadline for Frontier to achieve boundary control.

¶5. Alleges that Frontier had, at DEQ's request, authorized its consultant (Trihydro) to prepare a Conceptual Design Report for a groundwater barrier wall along the refinery boundary with adjacent property owned by Old Horse Pasture, Inc. (OHP), which Frontier submitted to DEQ in January 2006.

¶7. Alleges that on February 19, 2008, DEQ issued a Final Decision requiring Frontier to meet the Joint Stipulation's October 15, 2008 deadline for boundary control by completion of a slurry bentonite barrier wall.

¶8. Alleges that by letter dated March 26, 2008, Frontier agreed to install a barrier wall, but asserted a force majeure claim based on Frontier's inability to obtain access to OHP property needed to proceed with work for installation of the barrier wall.

¶9. Alleges that on May 16, 2008, DEQ determined that lack of access to third party (OHP) property currently constituted a force majeure situation and that determination and corresponding extension of access-dependent deadlines only would terminate on June 16, 2008 unless DEQ determined that Frontier was still unable to obtain necessary access during that period despite its documented best efforts.

¶10. Alleges that by letter dated May 23, 2008, DEQ extended access-dependent interim deadlines for construction of the barrier wall based on the force majeure involving access, but not the October 15, 2008 deadline for completion of the barrier wall.

¶11. Alleges that (by letter dated May 30, 2008) Frontier responded to the DEQ's May 23, 2008 letter by noticing a "new force majeure claim" based on the deadlines for construction of the barrier wall.

¶12. Alleges that on June 2, 2008, DEQ denied Frontier's May 23, 2008 "new" force majeure claim because, although access-dependent, the October 15, 2008 deadline for installation of the barrier wall was not a near-term deadline extended by the DEQ's May 16, 2008 force majeure decision (which was effective only until June 16, 2008), the October 15, 2008 deadline could be re-evaluated if the access-based force majeure situation persisted beyond June 16th.

¶13. Requests the EQC to review DEQ's June 2, 2008 decision denying Frontier's "new" force majeure claim and refusing to extend the October 15, 2008 barrier wall deadline.

DEQ filed a Response to that Frontier Petition on August 15, 2008. Frontier and DEQ are the only parties in Docket No. 08-3804.

Frontier filed a second Petition for Review and Request for Hearing before the EQC (Docket No. 08-3806) on September 15, 2008 contesting DEQ's August 15, 2008 determination denying Frontier's Force Majeure Claim with respect to the October 15, 2008 completion deadline to achieve boundary control through installation of a barrier wall. Specifically, Frontier's September 15, 2008 Petition:

¶¶1-12. Restates the allegations in ¶¶1-12 of Frontier's July 2, 2008 Petition.

¶17. Alleges that on August 15, 2008, DEQ issued a final decision stating that, based on OHP's July 31, 2008 offer to sell its property (for the price Frontier had offered to buy it), there was no longer a Force Majeure situation under Section XVII of the AOC due to lack of access to third party property, but because that sale had not yet been completed, access-dependent deadlines were extended until September 15th or until the purchase transaction was completed, whichever came first.

¶18. Alleges that following OHP's July 31, 2008 offer to sell, Frontier and OHP had been working to conclude a sale and were optimistic that a sale would be concluded.

¶19. Alleges that since Frontier was continuing to use its best efforts to finalize a purchase agreement and buy the property, but "as of the date of this filing" Frontier still did not have the access required to construct the barrier wall, DEQ's August 15, 2008 final decision that a force majeure situation no longer exists is "patently unreasonable."

¶20. Requests the EQC to review DEQ's August 15, 2008 determination that Frontier's force majeure claim no longer exists, and also requests that Frontier's September 15, 2008 appeal in *Docket No. 08-3806* be consolidated with Frontier's pending appeal in *Docket No. 08-3804* into one action, because the issues in the two appeals overlap.

The EQC's September 16, 2008 Response Order directs DEQ to file a Response to Frontier's September 15, 2008 on or before October 15, 2008. Frontier and DEQ are the only parties in Docket No. 08-3806.

By e-mail to LeRoy Feusner (DEQ) dated September 24, 2008 (**copy attached hereto and incorporated herein**), Gerald Faudel (Frontier) informed DEQ that Frontier was awaiting title insurance and anticipated closing on the OHP property "by the end of this month."

By letter to Frontier dated September 26, 2008 (**copy attached hereto and incorporated herein**), citing the September 24th e-mail from Frontier anticipating closing by the end of September, DEQ gave notice that with Frontier obtaining access by the end of September, the schedule for meeting the stipulated October 15, 2008 deadline for completion of the barrier wall was being extended for 12 months as specified in the **attached schedule**.

By letter to DEQ dated September 26, 2008 (**copy attached hereto and incorporated herein**), Frontier, through counsel, confirmed that a Purchase Agreement had been executed by both Frontier and the landowner, and the estimated date required to finalize title work and complete the sales transaction was October 3, 2008.

By letter to DEQ dated October 3, 2008 (**copy attached hereto and incorporated herein**), Frontier confirmed that Frontier had in fact purchased the OHP property, but now objected to the September 26, 2008 revised schedule which extended the stipulated October 15, 2008 deadline for completion of the barrier wall by 12 months, until October 26, 2009.

Consolidation of Pending Appeals

As noted above, Frontier's September 15, 2008 Petition in Docket No. 08-3806 (¶20) requests that Docket No. 08-3806 be consolidated with Frontier's pending appeal in Docket No. 08-3804 into one action, because the issues in the two appeals overlap. Respondent DEQ agrees that Frontier's two appeals pending before the EQC should be consolidated, and then dismissed. Frontier and DEQ are the only parties in related Docket Nos. 08-3804 and 08-3806. Chapter II, Section 3 of the DEQ Rules of Practice & Procedure provides that the EQC may hear any motion filed in connection with hearings before the EQC. Pursuant to Chapter II, Section 14 of the DEQ Rules of Practice & Procedure, the Wyoming Rules of Civil Procedure generally apply to matters before the EQC. Rule 42(a), Wyo. R. Civ. P. provides that actions involving a common question of law or fact pending before the same tribunal may be consolidated to avoid unnecessary costs or delay.

Mootness and Subject Matter Jurisdiction

As Frontier's July 2, 2008 Petition in Docket No. 08-3804 (¶12) acknowledges, DEQ's June 2, 2008 letter (**copy attached hereto and incorporated herein**), gave Frontier notice that if

the access-based force majeure situation persisted, DEQ would re-evaluate the October 15, 2008 deadline for installation of the barrier wall in view of Frontier's continued diligent efforts. Upon receiving the above-referenced September 24, 2008 e-mail from Frontier informing DEQ that Frontier anticipated closing on the OHP property "by the end of this month," which would resolve the force majeure situation involving access, DEQ did re-evaluate and extend the barrier wall schedule.

DEQ's September 26, 2008 issuance of a revised schedule which extends the stipulated October 15, 2008 deadline for completion of the barrier wall by 12 months, until October 26, 2009, renders moot Petitioner Frontier's appeals of DEQ's June 2, 2008 decision denying Frontier's "new" force majeure claim and refusing to extend the October 15, 2008 barrier wall deadline and August 15, 2008 determination denying Frontier's Force Majeure Claim with respect to the October 15, 2008 completion deadline to achieve boundary control through installation of a barrier wall.

A case will be dismissed when, pending appeal, an event occurs which renders a cause moot and makes a determination of the issues unnecessary or an advisory opinion. *Graham v. Wyoming Peace Officers Standards and Training Comm'n*, 737 P.2d 1060, 1062-1063 (Wyo. 1987). A tribunal should not undertake to decide a question which by a change in the condition of affairs has become moot before or after commencement of the action. *Int'l Ass'n of Fire Fighters, Local No. 279 v. Civil Service Comm'n of the Fire Dept. of the City of Cheyenne*, 702 P.2d 1294, 1297 (Wyo. 1985).

Standing to sue is closely related to the doctrine of mootness, and involves a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. 702 P.2d at 1297. Standing to sue is jurisdictional in nature. *Id.*

Time for Responsive Pleading Altered by Motion to Dismiss

The EQC's September 16, 2008 Response Order directs DEQ to file a Response to Frontier's September 15, 2008 on or before October 15, 2008. Rule 12(a), Wyo. R. Civ. P. provides that the time for filing a responsive pleading will be 10 days after notice of the tribunal's action on a motion to dismiss under Rule 12(b)(1) for lack of subject matter

jurisdiction. Accordingly, this motion to dismiss tolls the deadline for DEQ to file a response to Frontier's September 15, 2008 petition until after the EQC decides this motion.

WHEREFORE, Respondent DEQ requests that Frontier's appeals in Docket Nos. 08-3804 and 08-3806 be consolidated and then dismissed on grounds of mootness and lack of subject matter jurisdiction.

DATED this 15th day of October, 2008.



Mike Barrash (Bar No. 5-2310)
Senior Assistant Attorney General
Peter Michael (Bar No. 5-2309)
Senior Assistant Attorney General
123 State Capitol Building
Cheyenne, Wyoming 82002
307-777-6946

CERTIFICATE OF SERVICE

This certifies that true and correct copies of the foregoing WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S MOTION TO CONSOLIDATE AND DISMISS FRONTIER REFINING INC.'S APPEALS was served this 15th day of October, 2008 by United States mail, first class postage prepaid, and also by e-mail, addressed as follows:

Mark R. Ruppert
Holland & Hart LLP
2515 Warren Ave. Suite 450
P.O. Box 1347
Cheyenne, Wyoming 82003
MRuppert@hollandhart.com





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

June 2, 2008

Mr. David Danford, P.E.
Environmental Manager
Frontier Refinery
P.O. Box 1588
Cheyenne, Wyoming 82003-1588

Certified Mail#7005 1820 0005 1478 3021
Return Receipt Requested

RE: Your May 30, 2008 Response to DEQ's May 23, 2008 Correspondence

Dear Mr. Danford:

I am in receipt of your May 30, 2008 response letter. The Administrator's May 16, 2008 Force Majeure Decision was based on a delay in Frontier obtaining access to third party property necessary for certain work to accomplish boundary control under the AOC and related joint stipulation. The May 16, 2008 Force Majeure Decision is temporary and will terminate on June 16, 2008, unless the Administrator determines that the access-based force majeure situation still exists at that time. Given the short duration of the May 16th Force Majeure Decision, only certain near-term, "access-dependent" deadlines have been extended, which are identified in the Administrator's May 23, 2008 letter to Frontier.

The DEQ agrees with Frontier that the October 15, 2008 deadline for installation of the barrier wall along the approved alignment is access-dependent, but at this time it is not a near-term deadline that is extended by the May 16th Force Majeure Decision, which is effective only until June 16th. If the DEQ determines that the access-based force majeure situation persists beyond June 16, 2008, the October 15, 2008 deadline for installation of the barrier wall along the approved alignment can be re-evaluated in view of Frontier's documented diligent efforts to meet it up to that point.

The Administrator does not agree that your May 30, 2008 letter describes "a new force majeure event" within the scope of Section XVII of the AOC. This letter constitutes the Administrator's written decision for purposes of Dispute Resolution under Section XVI of the AOC.

As always, I look forward to progress in this matter.

Sincerely,

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

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
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From: "Feusner, LeRoy" <lfeusn@wyo.gov>
To: lbarka@wyo.gov; cander@wyo.gov; PMICHA@state.wy.us; MBARRA@state.wy.us
Date: 9/24/2008 11:12:38 AM
Subject: FW: Old Horse Pasture land purchase agreement

From: Faudel, Gerald B. [mailto:gfaudel@frontieroil-den.com]
Sent: Wednesday, September 24, 2008 10:49 AM
To: Corra, John; Feusner, LeRoy; jwagne@wyo.gov
Cc: aalto.tom@epa.gov; morris.brenda@epa.gov
Subject: Old Horse Pasture land purchase agreement

Messrs. Corra, Fuesner & Wagner,

Please find attached a copy (less purchase price) of an agreement executed by Frontier and Old Horse Pasture for the purchase of approximately 133 acres of land south of the Refinery and east to the half section line (as described in June 5, 2008, correspondence from Mr. Al Wiederspahn). This property encompasses all Refinery associated groundwater contamination to the south and east of the Refinery previously beyond the Refinery's boundary, the previously off-site land areas impacted by the recent airborne releases as well as the area of the previously off-site water 'seeps'. We are now awaiting title insurance and anticipate closing by the end of this month. We appreciate your patience as we worked through this complex transaction.

Gerald B. Faudel

Vice President

Government Relations and Environmental Affairs

Frontier Oil Corporation

4610 S. Ulster, Ste. 200

Denver, CO 80237

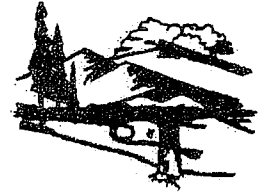
(303)714-0168

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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

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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 2nd letter also informed Frontier that WDEQ did not agree that Frontier's May 30th 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."

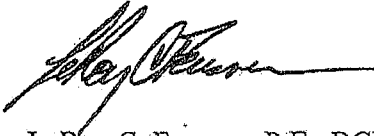
Considering the representations in Frontier's September 12, 2008 letter that Frontier and OHP had agreed in principle to terms for sale of land for the barrier wall and were close to finalizing a purchase agreement, WDEQ, by letter dated September 15, 2008, informed Frontier that, under the circumstances, 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 & Longennecker

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.

September 26, 2008

VIA E-MAIL AND REGULAR MAIL

Mr. LeRoy Feusner
Administrator; Solid & Hazardous Waste Division
Wyoming Department of Environmental Quality
122 West 25th Street
Cheyenne, WY 82002

Re: Frontier Refining Inc./Force Majeure Claim for Boundary Control

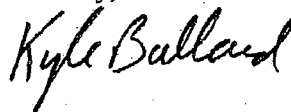
Dear Mr. Feusner:

Your September 15, 2006 letter to Gerald Faudel of Frontier Refining Inc. stated that all access-dependent deadlines related to boundary control under the AOC would be extended until September 26, 2008 in order to provide Frontier and the Lummis family additional time to complete Frontier's purchase of the 133 acre property adjacent to the refinery. Since the date of your letter, a Purchase Agreement has been executed by both Frontier and the Lummis parties. However, the final closing has not yet occurred due to the fact that Frontier has still not received a final title commitment on the property. The estimated date required to finalize title work and complete the sales transaction is October 3, 2008.

Due to the fact that Frontier continues to utilize best efforts but remains without access to Lummis property, Frontier hereby reasserts its existing force majeure claims and requests that deadlines for performance of boundary control obligations be extended pursuant to Section XVII of the AOC.

Please let me know if you have any questions. Thank you.

Sincerely,



Kyle Ballard

cc: **VIA E-MAIL**
Mr. Gerald B. Faudel
Mr. John V. Corra
Mr. Mike Barrash
Ms. Lily Barkau

Attorneys and Counselors

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FRONTIER REFINING INC.
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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 25th 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

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