



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 MAY 27 PM 1:33

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

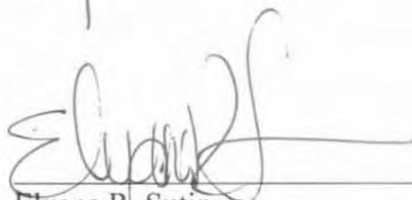
FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: RCRA-08-2009-0002

IN THE MATTER OF:)	
)	
FRONTIER REFINING, INC.)	FINAL ORDER
300 Morrie Avenue)	
Cheyenne, WY 82007)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 27th DAY OF May, 2010.



Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 MAY 27 PM 12:40

Docket No.: RCRA-08-2009-0002

FILED
EPA REGION VIII
HEARING CLERK

In The Matter Of:)
)
Frontier Refining Inc.)
300 Morrie Avenue)
Cheyenne, Wyoming)
82007)
)

Respondent.)

CONSENT AGREEMENT

Complainant, the United States Environmental Protection Agency (EPA), and Respondent, Frontier Refining Inc., (Parties) agree that settlement of this matter is in the public interest, and that entry of this Consent Agreement without further litigation is the most appropriate means of resolving this matter, and consent and agree as follows:

A. PRELIMINARY STATEMENT

1. On September 30, 2009, Complainant issued a Complaint and Compliance Order alleging certain violations of section 3008 of the Solid Waste Disposal Act, as amended by and hereafter referred to as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C.

§ 6928. The Complaint proposed a civil penalty for the alleged violations relating to a surface impoundment at Respondent's Cheyenne, Wyoming refinery (hereinafter "Surface Impoundment 2"). Further, the Compliance Order directed Respondent to take certain action to comply with the requirements of RCRA.

2. Respondent filed a Motion to Dismiss, Answer, and Request for Hearing contesting EPA's Complaint and Compliance Order. Complainant responded to the Motion to Dismiss, Answer, and Request for Hearing and filed a Motion to Amend the Complaint and proposed Amended Complaint.

3. By Order dated January 28, 2010, proceedings in this case were stayed pending settlement discussions, which stay was continued by Order on March 2, 2010, and again by Order on April 6, 2010, for the purpose of affording the Parties time for completion and filing of this Consent Agreement. Currently, Respondent's Motion to Dismiss, and EPA's Response, EPA's Motion to Amend Complaint, and Respondent's Opposition to EPA's Motion to Amend Complaint, and EPA's Reply, are pending and, as specified at Paragraph 49 of this Consent Agreement, such pleadings will be rendered moot by the incorporation of this Consent Agreement into a Final Order by the Regional Judicial Officer.

4. Complainant and, solely for the purpose of this Consent Agreement, Respondent, admits that EPA has jurisdiction over this action under RCRA Section 3008(a), 42 U.S.C. § 6928(a). Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement, provided that Respondent reserves the right to contest any issue of law or fact in the Complaint or this Consent Agreement in any unrelated proceeding other than in this proceeding, not including an appeal of this proceeding.

5. Respondent neither admits nor denies the factual allegations in the Complaint.

6. This Consent Agreement, upon incorporation into a final order, and full satisfaction by the Parties, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the Parties.

B. CIVIL PENALTY

7. Respondent consents and agrees to pay a civil penalty in the amount of nine hundred thousand dollars (\$900,000), in the manner described below in this paragraph:

- a. Payment is due within thirty (30) calendar days from the date of the Regional Judicial Officer's signature on the Final Order that approves this Consent Agreement. If the due date falls on a weekend or legal Federal holiday, the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, the address for which is given below. Payment must be received by 11:00 a.m. Eastern Time to be considered as received that day.
- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for this amount, payable to "Treasurer, United States of America," as follows:

If sent by regular U.S. mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If sent by any commercial overnight carrier:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

If sent by wire transfer:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727

A copy of the check (or notification of wire transfer or on-line payment) shall be sent simultaneously to:

Linda Jacobson, Environmental Engineer
Technical Enforcement Program (8ENF-T)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

and

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the final order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the

due date (i.e., the 121st day from the date the Final Order is signed).

Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

8. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

C. COMPLIANCE ORDER

9. The Parties recognize that Respondent is subject to existing corrective action requirements under the 1995 Wyoming Department of Environmental Quality (WDEQ) Administrative Order on Consent and a WDEQ Consent Decree dated January 5, 2007, related to Ponds 1, 3, 4, and 5, at Respondent's Cheyenne facility. Closure activities for Surface Impoundment 2 will be coordinated with the work activities required in Sections VI. A. and B. of the 2007 WDEQ Consent Decree. The Parties agree that regarding Surface Impoundment 2, removal of the existing liner, removal of sediments and subsoils, if any, between the synthetic liner and the clay liner, and proposal of repairs, if any, and repairs to the clay liner, will commence no sooner than June 1, 2011.

10. Surface Impoundment 2 is depicted in the figure included as Diagram #1.

11. By June 30, 2010, Respondent shall submit to EPA a closure plan for Surface Impoundment 2 in accordance with applicable requirements found at 40 C.F.R. part 265, subpart G, 40 C.F.R. § 265.228, and consistent with the corresponding requirements of Wyoming HWRR Chapters 11, and 12(j) specific to the closure of a surface impoundment. The closure plan will include the following:

a. removal of liquids, sludges, sediments, debris, and other wastes on top of the

- existing synthetic liner and management of the removed materials in accordance with applicable hazardous waste requirements for F037 wastes;
- b. physically disconnect the manual diversion piping from the API discharge pumps to the inlet piping of Surface Impoundment 2 that would otherwise allow dry weather flow diversions to reach Surface Impoundment 2;
 - c. proposal of procedures for cleaning the existing synthetic liner following removal of waste, debris, and equipment;
 - d. cleaning the existing synthetic liner;
 - e. specification of inspection, monitoring, and maintenance procedures for Surface Impoundment 2 prior to cleaning the existing synthetic liner ensuring dike integrity and maintenance of two feet of freeboard;
 - f. removal of the existing synthetic liner, subject to paragraph 11(k), below, and installation of the new liner;
 - g. removal of sediments and subsoils, if any, between the synthetic liner and the clay liner that exceed closure concentration limits for all constituents specified in appendix A (attached hereto);
 - h. specification of procedures to assess the integrity and thickness of the clay liner;
 - i. proposal of repairs, if any, and repairs to the clay liner;
 - j. prevention of the release of hazardous constituents to the environment, ensuring the structural integrity of the surface impoundment during removal activities;
 - k. management of all materials removed from Surface Impoundment 2, as well as impacted sediments and subsoils, as F037 listed hazardous wastes, unless EPA approves non-hazardous waste disposal of any of the materials removed; and

1. a schedule for all closure activities.
12. Upon approval by EPA of the closure plan required by this Consent Agreement, Respondent agrees and consents to complete items described in subparagraphs 11.a., b., d., and j., by no later than October 31, 2010, subject to the excused performance in section E (Force Majeure) of this Consent Agreement.
13. The work activities in the closure plan shall include, at a minimum, procedures for waste testing, confirmation sampling and analysis, design and construction of the new synthetic liner and bed preparation, capacity and structural integrity of the impoundment, data collection methods, and quality assurance and quality control.
14. The closure plan and the schedule shall be deemed incorporated into this Consent Agreement without further order or process, and shall be binding on the Parties, subject to the excused performance in Section E (Force Majeure) of this Consent Agreement.
15. Vertical excavation shall not extend into groundwater. Groundwater conditions are being addressed under the WDEQ 1995 Administrative Order on Consent and any amendments thereto. Horizontal excavation shall not extend beyond the boundaries of Surface Impoundment 2, as depicted in Diagram #1. Excavation to the vertical and horizontal limits detailed above shall constitute satisfaction of soil and groundwater closure requirements for purposes of compliance under this Consent Agreement only.
16. Within ninety (90) days after completion and implementation of the closure plan, Respondent shall submit a final report to EPA documenting work activities, including as-built design drawings.
17. Within thirty (30) days of EPA's approval of the closure plan, Respondent shall submit a

cost estimate for closure of Surface Impoundment 2, in accordance with applicable requirements found at 40 C.F.R. §§265.142(a), 265.144(a), and 265.228 and Wyoming HWRR Chapter 5, Section 1(c), Chapter 11, Sections 9(b) through (f), and Section 12(j).

18. Within thirty (30) days of EPA's approval of the Closure plan and simultaneously with the submittal of the cost estimate, Respondent shall propose the financial assurance mechanism to be used to establish financial assurance for closure, pursuant to the requirements of 40 C.F.R. §§ 265.143 and 265.145.

19. Within ten (10) days of EPA's approval of Respondent's financial assurance mechanism, Respondent shall establish financial assurance for the closure of Surface Impoundment 2.

20. Within sixty (60) days of completion of final closure of Surface Impoundment 2, Respondent shall submit a certification that the unit has been closed in accordance with the approved closure plan. As required by 40 C.F.R. § 265.115 and Wyoming HWRR, Chapter 11, Section 9(f) and (g), Respondent shall submit to the local zoning authority or the authority with jurisdiction over local land use a survey plat, indicating the location and dimensions of Surface Impoundment 2 with respect to permanently surveyed benchmarks.

21. Respondent agrees to provide EPA seven (7) days oral notice and fourteen (14) days written notice prior to commencement of any field work, including but not limited to, waste removal, liner cleaning, clay liner assessment, and installation of the new liner.

D. SUBSEQUENT MODIFICATIONS

22. This Consent Agreement may only be modified or amended in writing signed by the authorized signatories below, and each modification shall be effective on the date it is approved in an order.

E. FORCE MAJEURE

23. Respondent shall perform the actions required under this Consent Agreement within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond reasonable control of Respondent, including its employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Agreement within the specified time period. "Due diligence" includes anticipating a potential Force Majeure event and addressing the effects of such an event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state or local permits (unless Respondent has made timely, good-faith efforts to secure such permits).

24. Respondent shall provide notice orally or by electronic or facsimile transmission to EPA as soon as possible pursuant to section H (Notification) of this Consent Agreement, but not later than three (3) days after the time Respondent first learned of, or by the exercise of due diligence should have known of, a claimed Force Majeure event. Respondent shall also provide a follow-up written notice, as provided in section H (Notification) within seven (7) days of the time Respondent first knew of, or by the exercise of due diligence should have known of, the event. The follow-up written notice shall state what action has been impacted by the delay, the anticipated duration of any delay, its cause(s), Respondent's past and

proposed actions to prevent or minimize any delay, a schedule for carrying out those actions, and Respondent's rationale for attributing any delay to a Force Majeure event. Respondent shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure event. Failure to provide the oral and written notices as required by this paragraph shall preclude Respondent from asserting any claim of Force Majeure as to the event in question.

25. In response to Respondent's follow-up written notice in paragraph 24, EPA shall make a determination whether it agrees or disagrees that a Force Majeure event has occurred, and, pursuant to this Consent Agreement within twenty (20) business days, provide written notice to Respondent of its determination and the reasoning for that decision.

26. If EPA agrees that a Force Majeure event has occurred, the time for Respondent to perform the affected requirements shall be extended, if appropriate, for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a Force Majeure event shall not, by itself, extend the time to perform any other obligation unless EPA determines that dependent activities will be delayed by the Force Majeure event and that the time period should be extended for performance of such activities.

27. If EPA does not agree that a Force Majeure event has occurred, or does not agree to the extension of time sought by Respondent, then EPA's position shall be binding, unless Respondent, within ten (10) days of EPA's decision, invoke the dispute resolution procedures set forth in section F (Dispute Resolution) of this Consent Agreement.

28. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writings submitted by Respondent shall

be construed as relieving Respondent of its obligations to obtain written approval, if and when required by the Final Order.

F. DISPUTE RESOLUTION

29. If Respondent disagrees, in whole or in part, with any decision made or action taken pursuant to this Consent Agreement, Respondent shall notify EPA's Project Manager listed in section H (Notification), of the dispute in writing within fourteen (14) days of receipt of the decision or notice of the action.

30. The Project Managers identified in Section H, will attempt to resolve the dispute informally within ten (10) business days. If the Project Managers cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objections in writing addressed to the EPA Project Manager and placing them in the mail within fourteen (14) days of the close of business of the tenth (10th) business day of informal dispute. The written description must set forth the specific points of the dispute.

31. EPA and Respondent shall then in good faith attempt to resolve the dispute through formal negotiations within fourteen (14) days of EPA receipt, or longer if agreed in writing by EPA.

32. If the Parties are unable to reach agreement within this fourteen (14) day period, Respondent may submit additional written information to the Director, Legal Enforcement Program (LEP), EPA Region 8, within twenty-one (21) days of the close of the fourteen (14) day period described for formal negotiation.

33. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this section. The LEP Director may allow

submission of relevant supplemental statements of position by Respondent. Based on the record, EPA will respond to Respondent's arguments and evidence and place such response in the record, with a copy to Respondent. After review of the record of dispute as supplemented, the LEP Director shall provide Respondent with EPA's written decision on the dispute signed by the LEP Director.

34. Any agreement or decision made pursuant to this Section by EPA shall be reduced to writing, shall be deemed incorporated into this Consent Agreement without further order or process, and shall be binding on the Parties, subject to the excused performance in Section E (Force Majeure) of this Consent Agreement and Final Order. If a decision or agreement results in a substantive change to the requirements of this Consent Agreement and Final Order then the procedures under paragraph 22 will apply.

G. STIPULATED PENALTIES

35. Unless performance is prevented or delayed by a force majeure event or there has been a written modification of a performance requirement or compliance date by EPA as provided in the section D (Subsequent Modifications) in the event Respondent fails to timely meet any requirement set forth in this Consent Agreement, Respondent shall pay stipulated penalties upon demand by EPA. Compliance by Respondent shall include completion of an activity required by this Consent Agreement or a plan or schedule approved under this Consent Agreement or any matter under this Consent Agreement in an acceptable manner and within the specified time schedules in and approved under this Consent Agreement.

36. Respondent will be subject to the following stipulated penalties:

- a. For failure to commence work as prescribed in this Consent Agreement

and in EPA-approved plans and reports incorporated into this Consent Agreement, Respondent shall pay \$250 per day for the first seven (7) days of delay and \$500 per day for each day of delay, or part thereof, thereafter;

- b. For failure to submit acceptable reports, design plans, work plans, revised work plans, or any other documents and reports at the time required pursuant to this Consent Agreement, Respondent shall pay \$250 per day for the first seven (7) days of delay, and \$500 per day for each day of delay thereafter;
- c. For any other failure to comply with provisions of this Consent Agreement, after notice by EPA of noncompliance to Respondent, Respondent shall pay \$500 per day for the first seven (7) days of delay, and \$1000 per day for each day of delay thereafter.

37. All penalties shall begin to accrue on the date that complete performance is due or a violation of this Consent Agreement occurs and continues to accrue until correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Agreement.

38. All stipulated penalties owed to EPA under this Consent Agreement are due and payable within thirty (30) days of receipt of a notification of noncompliance from EPA. Such notification shall describe the noncompliance and indicate the amount of penalties due.

39. Stipulated penalties shall be paid in accordance with paragraph 7.

40. The stipulated penalties set forth in this section do not preclude EPA from pursuing any

other remedies or sanctions available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Agreement, and payment of said penalties does not relieve Respondent of the responsibility to comply with this Consent Agreement.

41. The Respondent may dispute EPA's assessment of stipulated penalties by invoking the Dispute Resolution procedures of section F of this Consent Agreement. The stipulated penalties in dispute will continue to accrue, during the dispute resolution period, unless Respondent ultimately prevails in the dispute. To the extent that Respondent prevails upon resolution of the dispute, no penalties shall be payable with respect to those aspects of the dispute on which Respondent prevails.

H. NOTIFICATIONS

42. Unless otherwise specifically provided by this Consent Agreement, notifications, certifications, reports, documents or other communications required pursuant to this Consent Agreement shall be deemed submitted on the date they are either (i) postmarked and sent by certified mail, return receipt requested, (ii) sent by facsimile and/or email transmission with confirmation of receipt, or (iii) sent by overnight delivery service. Otherwise, transmittals are deemed submitted on the date they are received. Except as specified otherwise, when written notification to or communication with a party is required by the terms of this Consent Agreement, it shall be addressed as follows:

As to the Complainant:

Linda Jacobson
Environmental Engineer
Technical Enforcement Program (8ENF-T)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

As to the Respondent:

Stu Fischbeck
Environmental Manager
Frontier Refining Inc.
P.O. Box 1588
Cheyenne, WY 82003

43. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with RCRA and its implementing regulations.

44. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

45. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

46. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.

47. The Parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

48. Each party shall bear its own costs and attorney fees in connection with this matter.

I. TERMINATION AND SATISFACTION

49. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the Parties, shall be a complete and full resolution of the United States' claim for civil penalties for the specific violations alleged in the Complaint and EPA's proposed Amended Complaint. The Parties further agree that this Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer, addresses and fully

resolves all issues raised in EPA's proposed Amended Complaint, which was filed in conjunction with EPA's Motion to Amend Complaint. All pending motions will be rendered moot by incorporation of this Consent Agreement into a Final Order by the Regional Judicial Officer.

K. ATTACHMENTS

50. The following documents are incorporated into this Consent Agreement: (a) Diagram #1 (Figure depicting Surface Impoundment 2); and (b) Appendix A (closure concentration limits).

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: _____

By: _____

Kelcey Land, Supervisor
Technical Enforcement Program

Date: _____

By: _____

David Rochlin, Supervisor
Legal Enforcement Program


Date: _____

By: _____

Brenda L. Morris, Attorney
Legal Enforcement Program

FRONTIER REFINING INC., RESPONDENT.

Date: 5/27/10

By: 

Kevin D. Burke
Vice President and Refinery Manager

resolves all issues raised in EPA's proposed Amended Complaint, which was filed in conjunction with EPA's Motion to Amend Complaint. All pending motions will be rendered moot by incorporation of this Consent Agreement into a Final Order by the Regional Judicial Officer.

K. ATTACHMENTS

50. The following documents are incorporated into this Consent Agreement: (a) Diagram #1 (Figure depicting Surface Impoundment 2); and (b) Appendix A (closure concentration limits).

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: May 27, 2010

By: Sharon L Keck
for Kelcey Land, Supervisor
Technical Enforcement Program

Date: May 27, 2010

By: David Rochlin
David Rochlin, Supervisor
Legal Enforcement Program

Date: 5-27-10

By: Brenda L Morris
Brenda L. Morris, Attorney
Legal Enforcement Program

FRONTIER REFINING INC., RESPONDENT.

Date: _____

By: _____
Kevin D. Burke
Vice President and Refinery Manager



EXPLANATION

2 THE AREA SURROUNDED IN RED IS SHOWN FOR THE LIMITED PURPOSE OF DEPICTING THE LOCATION OF SURFACE IMPOUNDMENT NO. 2 UNDER THE CONSENT AGREEMENT IN WHICH THIS DIAGRAM NO. 1 IS INCORPORATED.

FRONTIER REFINING INC.
CHEYENNE, WYOMING

SURFACE IMPOUNDMENT NO. 2

DIAGRAM

1

APPENDIX A

CONSTITUENT	CAS NUMBER	CLOSURE CONCENTRATION (mg/kg)
Benzene	71-43-2	0.65
Benzo(a)pyrene	50-32-8	3.4
Chromium (total)	7440-47-3	0.86 mg/L (TCLP)
Chrysene	218-01-9	3.4
Lead	7439-92-1	45

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **FRONTIER REFINING INC.; DOCKET NO.: RCRA-08-2009-0002**. The **CONSENT AGREEMENT/FINAL ORDER** was filed with the Regional Hearing Clerk on May 27, 2010.

Further, the undersigned certifies that a true and correct copy of the documents were delivered Brenda Morris, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested and e-mail on May 27, 2010:

Joseph F. Guida
Guida, Slavich & Flores, P. C.
750 N. St. Paul Street, Suite 200
Dallas, TX 75201-3205

Honorable Barbara A. Gunning
Administrative Law Judge (1900L)
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

E-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

May 27, 2010



Tina Artemis
Paralegal/Regional Hearing Clerk

