

BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

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In re: )

Yellowstone Refining Company )  
Cody Refinery )

RCRA Appeal No. 94-9

Docket No. WYD006230189 )

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ORDER DISMISSING APPEAL

On June 15, 1994, Yellowstone Refining Company filed a petition seeking review of a post-closure permit issued by U.S. EPA Region VIII under the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the 1984 Hazardous and Solid Waste Amendments, 42 U.S.C. §§ 6901-6992k, for Yellowstone's closed refinery located near Cody, Wyoming. *See Petition for Review of RCRA Final Post-Closure Permit.* By joint request of the parties, this matter has been stayed since September 7, 1994, to allow the parties to engage in settlement negotiations with the intent of settling or narrowing the issues for review.

The parties have now filed a joint motion asking that the Board dismiss the appeal with prejudice and issue a formal determination "that the permit issued by EPA that is the subject of this appeal is irrevocably nullified and cannot in the future be given any legal effect whatsoever." *Joint Motion for Finding that EPA's Permit is Null and Void and to Dismiss With Prejudice*

*for Mootness and Withdrawal of Respondent's Motion to Dismiss* ("Joint Motion") (January 9, 1997).<sup>1</sup> The Joint Motion states that on October 18, 1995, the State of Wyoming received authorization to carry out its hazardous waste program in lieu of EPA,<sup>2</sup> and that:

Pursuant to that authority, the State of Wyoming issued a permit (in lieu of the EPA permit appealed by Petitioner) to Petitioner on September 1, 1996. As a result, the permit issued by EPA is now a nullity and without legal effect. Consequently, this action is moot.

Joint Motion at 1. For good cause shown, the petition for review is dismissed with prejudice. With regard to the parties' request that the Board make a formal finding that the EPA-issued permit is null and void, the Board does not have sufficient information before it at this time to make such a finding. However, the Region (by signing the Joint Motion) has represented that the EPA-issued permit has been superseded by issuance of the State

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<sup>1</sup>Prior to submission of the Joint Motion, the Region submitted its own motion to dismiss the appeal dated December 30, 1996. *Respondent's Motion to Dismiss with Prejudice for Mootness*. At the parties' request, the Region's motion has now been superseded by the Joint Motion.

<sup>2</sup>See RCRA § 3006(b), 42 U.S.C. § 6926(b).

permit, and that EPA's permit is now null and void. We conclude that these representations are binding on the Region.

So ordered.

Dated: 1/13/97

ENVIRONMENTAL APPEALS BOARD

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
Kathie A. Stein  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the forgoing Order Dismissing Appeal in the matter of Yellowstone Refining Company, Cody Refinery, RCRA Appeal No. 94-9, were sent to the following persons in the manner indicated:

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\_\_\_\_\_/s/  
Mildred T. Johnson  
Secretary