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BEFORE THE MONTANA TAX APPEAL BOARD OF THE STATE OF MONTANA

MONTANA RENEWABLES, LLC, Appellant, v. MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, Respondent.	Case No. SPT-2024-39 **MONTANA RENEWABLES, LLC'S COMPLAINT**

INTRODUCTION

1. This is an appeal of a decision of the Montana Department of Environmental Quality (MDEQ) denying certification of Montana Renewables, LLC's (MRL) biomass conversion plant in its entirety as a pollution control facility which provides environmental benefits as provided in Montana Code Annotated §15-6-135.

JURISDICTION

2. The Montana Tax Appeal Board has jurisdiction pursuant to MCA §15-6-135(2)(f), which provides in pertinent part, "A person may appeal the certification [of pollution control equipment] to the Montana tax appeal board. Appeals on the property certification must name the department of environmental quality as a respondent …."

PARTIES

3. MRL is a foreign limited liability company organized in Delaware and authorized to do business in the state of Montana.

4. MDEQ is responsible, among other things, for the certification of air and water pollution control equipment pursuant to MCA §15-6-135.

FACTS

5. Prior to 2022, the Calumet Montana Refinery (CMR) owned and operated a 30,000 barrel per day (bpd) refinery in Great Falls, Montana which processed crude oil into finished petroleum products.

6. In 2022, CMR reduced its refinery capacity to 15,000 barrels per day after it transferred to MRL, a separate legal entity, ownership of a portion of its refinery assets.

7. As explained more fully below, MRL then converted those transferred assets and acquired new assets to own and operate a 15,000 barrels per day biomass conversion facility separate and distinct from the crude oil refinery.

8. The MRL facility is a self-contained biomass conversion facility which does not share any processes or equipment with the CMR fossil fuels refinery. The MRL facility is separate from CMR and has its own SAIC code, permits, and legal status. It is co-owned in a joint venture structure with another party.

9. The process for refining biomass materials into biodiesel fuels involves the following steps:

a. Renewable biomass feedstocks in the form of vegetable oils (soybeans, canola, etc.), waste byproduct corn oil from the ethanol industry, and animal waste fats and greases are delivered to the MRL facility. These biomass feedstocks have a dramatically lower life cycle

carbon footprint than traditional crude oil feedstocks and are the centerpiece of a national energy transition away from fossil fuels.

b. These renewable feedstocks are then sent to a biomass pretreatment unit which uses water to remove trace salts, metals, seed husks and other materials not used in the production of renewable fuels. The biomass pretreatment unit is new equipment required specifically for the purpose of cleaning raw biomass feedstocks from local and regional sources.

c. The cleaned feedstock from the pretreatment unit is then sent to the renewable fuel unit (hydrocracker) which uses renewable hydrogen, heat, and a catalyst to de-oxygenate, saturate, and isomerize the feedstock molecules, producing high-purity renewable diesel, sustainable aviation fuel and other renewable products including renewable fuel gas, renewable LPG (propane), and renewable gasoline blending components.

d. Two hydrogen plants, denominated as 3 and 4, produce the hydrogen necessary for the conversion of biomass feedstock into renewable fuels. Hydrogen plant 3 was acquired from CMR and required modification for its current use. Hydrogen plant 4 is new and provides additional hydrogen required to process biomass instead of traditional hydrocarbon (fossil fuel) feedstocks. Hydrogen plant 4 was built to reduce lifecycle GHG emissions by processing recycled off-gas (hydrogen) from the hydrocracker to produce fully renewable hydrogen.

e. The renewable products are then sent to new dedicated storage tanks until shipped over new rail facilities to end users. The dedicated storage tanks are necessary so that the renewable products are not co-mingled with the products from the CMR fossil fuel refinery. Similarly, the renewable products are shipped in dedicated rail cars or trucks.

10. The renewable fuels which are the result of the process described above have a significantly lower carbon intensity compared to the end products from fossil fuel refineries.

11. The MRL facility also significantly reduces lifecycle emissions of GHG compared to a fossil fuel refinery. For example, the CMR 15,000 bpd crude oil refinery produces 2.3 Metric tons of carbon dioxide emissions per year, while the MRL 15,000 bpd biomass conversion facility produces 0.96 Metric tons of carbon dioxide per year per Part 98 EPA reporting requirements.

Similarly, MRL output of other air pollutants in the form of Particulate Matter, PM10, PM2.5, PMcond, NOx, VOC, CO and SO2 are all dramatically lower from the MRL biomass conversion facility than from the CMR crude oil refinery.

Finally, the MRL waste waters are fully non-hazardous, unlike petroleum refinery waste water.

12. The MRL facility contributes to meeting the USEPA renewable fuel standard to reduce greenhouse gas emissions and expand the renewable fuels sector.

13. As a self-contained biomass conversion process, MRL does not share unit processes or tankage with the CMR refinery.

14. The processing of biomass feedstocks into renewable fuels provides an economic and environmental benefit to Great Falls, Cascade County, and the State of Montana, and provides environmental benefit in the use of biofuels produced at the MRL biomass conversion plant.

RELEVANT STATUTORY LAW

15. The requirements for certification by MDEQ of the MRL facility are set forth in MCA §15-6-135.

16. The MRL facility meets the definition of air and water capture equipment found in §15-6-135(2)(a) in that the project is "identifiable property, facilities . . . or equipment . . . designed, constructed, or under construction, or operated for removing . . . abating, treating . . .

or preventing the creation of air and water pollutants that, except for the use of the item, would be released to the environment."

17. Subsection 15-6-135(2)(d) provides that the certification will be accorded when the air and water pollution equipment is placed in service "for the purposes of environmental benefit."

18. In 1993, when the definition of air and water pollution found in §15-6-135 was expanded and clarified, the bill sponsor explained the bill was needed to clarify that a refinery which added equipment to cut down air pollution, or which added new equipment to an existing refinery, or to retrofit an existing refinery would qualify for certification.

19. In 2015, §15-6-135 was further amended by adding subsection (2)(d) to clarify that equipment which provides an "environmental benefit" would qualify for certification.

20. In 2021, §15-6-135 was further amended. Proponents of the 2021 legislation testified that §15-6-135 is intended to apply to biofuels operations and the installation of air and water pollution equipment and was not intended to just cover mandated changes, but also changes which were "over and above" meeting regulatory requirements.

COUNT I
Mistake of Fact

21. Paragraphs 1-20 are incorporated by reference as fully set forth herein.

22. MDEQ has refused to certify the entire MRL facility as an air and water pollution control facility; and, instead, MDEQ has only certified certain of the MRL equipment representing a small portion of the facility (approximately 8%).

23. In so doing, MDEQ has proceeded under a mistake of fact and has failed to recognize that the MRL facility is a fully-integrated facility which provides identifiable and substantial

environmental benefits that can be achieved only by operation of the biomass conversion plant and all of its equipment together as one emissions-reducing unit.

24. MDEQ's failure to certify the entire biomass conversion plant is clearly erroneous in view of the reliable, probative, and substantial evidence taken as a whole.

COUNT II
Mistake of Law

25. Paragraphs 1-20 are incorporated by reference as fully set forth herein.

26. MDEQ has made a mistake of law in its interpretation of the relevant statute by failing to apply the statute together with its legislative intent and history to the facts.

27. MDEQ has violated the statutory provisions and the intent of the statute.

COUNT III
Arbitrary and Capricious

28. Paragraphs 1-20 are incorporated by reference as fully set forth herein.

29. MDEQ's failure to certify the MRL facility in its entirety is arbitrary and capricious in that it failed to take into consideration (1) the self-contained and integrated nature of the MRL facility compared to a traditional fossil fuel refinery or other facilities which provide limited environmental benefit by the operation of discrete pieces of equipment and (2) failed to properly certify the facility and all of its equipment as a whole, which together provide significant environmental benefits.

RELIEF REQUESTED

WHEREFORE, MRL respectfully requests that the Montana Tax Appeal Board:

1. Finds that the MRL facility is an integrated facility which provides a substantial environmental benefit by its operation as a whole and thus meets the certification requirements of MCA §15-6-135.

2. Orders the MDEQ to certify the entire MRL facility pursuant to MCA §15-6-135.

3. Grant such other relief as is just and proper.

DATED this 19th day of April 2024.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By _____
Stanley T. Kaleczyc
Kimberly A. Beatty

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of April 2024, a true and correct copy of the foregoing was this mailed to:

Chris Dorrington
Jeremiah R. Langston
Montana Department of Environmental Quality
P O Box 200901
Helena, MT 59620-0901

_____
BROWNING, KALECZYC, BERRY & HOVEN, P.C.

March 21, 2024

Philip Murphy
Tax Vice President
Calumet Specialty Products – Montana Renewables, LLC
Great Falls, MT 59404

Sent via email: philip.murphy@calumetspecialty.com

RE: Montana Renewables Tax Certification Original Application Submitted December 23, 2022

Dear Mr. Murphy:

On February 19, 2024, the Montana Department of Environmental Quality-Air Quality Bureau (DEQ) received the most recent response regarding the application submitted on December 23, 2022. This most recent letter was in response to DEQ's request for additional information provided to MRL on January 18, 2024.

Below is a summary of the specific elements, as well as a summary table of the total amount certified under the application.

1. Renewable Diesel Unit-Technology Transfer

   DEQ previously approved the Mild Hydrocracker Unit for $11,691,430 and believes that the Department of Revenue (DOR) already has those assets transferred to Montana Renewables, LLC. DEQ does not track the specific asset numbers, so confirmation of that with DOR is recommended.

2. RDU Pad Expansions and Drains Lower RDU

   Equipment specifically required to comply with 40 CFR 61 Subpart QQQ should be eligible, and this would include that portion which is for sewer cups, p-traps and water seals to control VOC off-gassing. DEQ certifies 25 percent of this item as pollution control equipment.

3. #3 Hydrogen Plant-Atmospheric Vent

   DEQ has approved a 50 percent portion of the $148,659 capital, as routing this non-regulated pollutant serves to reduce fuel usage at the flare, per MRL's concurrence in the February 19, 2024, letter.

4. #4 Hydrogen Plant Atmospheric Vent

   DEQ has approved a 50 percent portion of the $147,728 capital, as routing this non-regulated pollutant serves to reduce fuel usage at the flare, per MRL's concurrence in the February 19, 2024, letter.

5. #4 Hydrogen Plant -Pad/Drains

   Equipment specifically required to comply with 40 CFR 61 Subpart QQQ should be eligible and this would include that portion which is for sewer cups, p-traps and water seals to control VOC off-gassing. DEQ certifies 25 percent of this item as pollution control equipment.

6. #4 Hydrogen Plant-Off-gas Recycle to Hydrogen Plant Feed

   DEQ approves 100 percent of this line item based on its ability to reduce the use of fossil fuels to produce the H_2. This provides $3,825,166 certified for this item.

7. Biomass Pretreatment Unit Pads/Drains

   Equipment specifically required to comply with 40 CFR 61 Subpart QQQ should be eligible and this would include that portion which is for sewer cups, p-traps and water seals to control VOC off-gassing. DEQ certifies 25 percent of this item as pollution control equipment.

8. Associated Tanks

   Leak detection monitoring equipment and leak protection equipment would be eligible. DEQ approves 25 percent of this item as pollution control equipment.

Overall Project Status – Summary of Certified Equipment

Identified Equipment	Equipment Status	Component Equipment	Cost	Current DEQ Determination on Approvability	Amount Approved or Planned for Approval as of March 21, 2024	Follow-Up that Occurred
Renewable Diesel Unit (RDU)	Modified	Flare Systems to Control VOCS	$1,630,385	100% Eligible	1,630,385	
		Technology Transfer	$11,691,430	CMR Transfer	11,691,430	Already Approved and Transferred according to
		Off-gas Treaters (Sour Gas)	$2,888,190	100% Eligible	2,888,190	
		Pad Expansions and Drains Lower RDU	$987,180	25% Eligible	246,795	Got Breakdown
#3 Hydrogen Plant 15 MM	New Equipment	Atmospheric Vent of H2	$148,659	50% Eligible	74,330	Got Breakdown, accepted by MR in 2/19 letter
#4 Hydrogen Plant 21 MM	New Equipment	Atmospheric Vent of H2	$147,728	50% Eligible	73,864	Got Breakdown, accepted by Mrin 2/19 letter
		ULNB for NOx and CO	$400,000	100% Eligible	400,000	
		Pad/Drains	$1,567,681	25% Eligible	391,920	Got Breakdown
		Offgas Recycle to Hydrogen Plant Feed	$3,825,166	100% Eligible	3,825,166	Got Breakdown
Biomass Pretreatment Unit	New Equipment	ULNB for NOx and CO	$167,100	100% Eligible	167,100	
		Pad/Drains	$615,300	25% Eligible	153,825	Got Breakdown
		PTU Blowdown Drum VOC Carbon Control	$73,554	100% Eligible	73,554	
Associated Tanks		Pads	$2,513,872	25% Eligible	628,468	Got Breakdown
		VOC control via submerged fill for tanks 301, 302, 303, 305, 306, 307, 308, and 801	$800,000	100% Eligible	800,000	
		VOC Carbon Control for Tanks 50, 102, 301 and 4201	$294,214	100% Eligible	294,214	
		Tank 304 External Floating Roof	$1,240,000	100% Eligible	1,240,000	
					$24,579,241	Approved Total

If you have any questions or concerns, please contact me by phone at (406) 444-6711 or by e-mail at chenrikson@mt.gov.

Sincerely,

Craig Henrikson

Craig Henrikson
Environmental Engineer P.E.
Air Quality Bureau

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