

**BEFORE THE STATE BOARD OF EQUALIZATION**

**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF            )  
**SOLVAY CHEMICALS, INC.**                    )       Docket No. 2018-42  
FROM A DECISION BY THE                    )  
DEPARTMENT OF REVENUE                    )  
(Mineral Audit Production Years 2012-2015) )

---

**FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND ORDER**

---

**APPEARANCES**

Walter F. Eggers, III, Holland & Hart, appeared on behalf of Taxpayer, Solvay Chemicals, Inc.

Karl D. Anderson, Senior Assistant Attorney General, Wyoming Attorney General's Office, appeared on behalf of the Wyoming Department of Revenue.

**DIGEST**

[¶ 1] Solvay appeals the Department's decision imposing severance tax and interest totaling \$409,751.50 on natural gas that Solvay captured from its Sweetwater County trona mine and used to process trona into soda ash.

[¶ 2] The Wyoming State Board of Equalization, Chairman David L. Delicath, Vice-Chairman E. Jayne Mockler, and Board Member Martin L. Hardsocg, held a hearing to receive evidence and hear arguments. Finding no reversible error, the State Board affirms the Department's decision. At the Department's request, the Board remands for recalculation of the interest.

**ISSUES**

[¶ 3] Solvay initially presented eleven issues:

1. Contested Issues of Fact (which may be mixed questions of fact and law)

- a. Whether the Wyoming Department of Revenue (WDOR) and the Wyoming Department of Audit (WDOA) improperly concluded that waste methane gas (WMG) is the type of oil and gas subject to Wyoming's production taxes?
  - b. Did the WDOR and WDOA fail to recognize that WMG is an unavoidable consequence of trona, coal, and other mining operations?
  - c. Did the WDOR and WDOA ignore the fact that Solvay does not have the privilege of extracting WMG?
  - d. Did the WDOR and WDOA ignore the fact that Solvay does not have leasehold rights to produce WMG?
2. Contested Issues of Law (which may be mixed questions of fact and law)
- a. Did the WDOR and WDOA improperly apply Wyoming's oil and gas production tax statutes, Wyo. Stat. §§ 39-13-101 *et seq.* and 39-14-201 *et seq.*, to WMG?
  - b. Did the WDOR and WDOA improperly conclude that WMG is "natural gas" as that term is defined in Wyo. Stat. § 39-14-201(a)(xv)? Specifically, the statutory definition requires that "natural gas" be "produced from an oil or gas well." WMG at Solvay's trona/soda ash mine is not "produced from an oil or gas well," as that term is used in Wyoming's tax statutes. Wyo. Stat. §§ 39-14-201(a)(xv) and (a)(xxx). Did the WDOR and WDOA ignore these statutory provisions?
  - c. Did the WDOR and WDOA improperly conclude that Solvay has the "**privilege of severing or extracting** ... natural gas in the state"? Wyo. Stat. § 39-14-203(a)(i).
  - d. Did the WDOR and WDOA ignore the requirement that tax imposition statutes be construed in favor of the taxpayer and against the taxing authority? "In case of doubt, they are construed most strongly against the government and in favor of the citizen." *See, e.g., Amoco Prod. Co. v. Dep't of Revenue*, 2004 WY 89, [¶] 18, 94 P.3d 430, 438 (Wyo. 2004); Wyo. Const. art. 15, § 13.

- e. In their assessment decisions for ad valorem/gross products taxes, did the WDOR and WDOA fail to recognize that the legislature has defined the “taxpayer” as a “lessor, lessee, or the lessee’s assignee.” [*Wyo. Dep’t of Revenue v. Exxon Mobil [Corp.]*, [] 2007 WY 112, ¶ 26, 162 P.3d [515, at] 524 [(Wyo. 2007)] (citing Wyo. Stat. § 39-14-203(c)(i); *see also* Wyo. Stat. §§ 39-13-101 and -103).
- f. Does the audit assessment issued by WDOR and WDOA violate Wyoming’s constitutional requirement of fair and equal treatment of similarly-situated taxpayers? *See* Wyo. Const. art. 1, § 28; art. 15, § 11?
- g. Was WDOR’s assessment of interest legal [sic] in its Final Determination contrary to Wyo. Stat. §§ 39-13-108(b) and 39-14-208(c)?

(Solvay’s Issues of Fact & Law & Ex. Index, 1-2). After the hearing, Solvay condensed its issues to these two:

- A. Did the Department and WDOA improperly apply Wyoming’s oil and gas production tax statutes to WMG? Wyo. Stat. §§ 39-13-101 *et seq.*; 39-14-201 *et seq.*
- B. Was the Department’s and WDOA’s valuation of WMG inconsistent with Wyoming’s oil and gas production tax valuation statute? Wyo. Stat. § 39-14-203(b).

(Solvay Opening Br. 6-7).

[¶ 4] The Department stated three mixed questions of fact and law:

- a) Does [sic] Wyoming’s mineral tax statutes impose a severance tax upon Solvay’s 2012-2015 natural gas severance/extraction production? ...
- b) Does [sic] Wyoming’s Constitution and mineral tax statutes impose an obligation on the Department of Revenue to certify a taxable value to the county for an eventual ad valorem tax assessment upon Solvay?  
...

- c) Did the Department correctly value the extracted gas in accordance with the mineral tax statutes?

(Dep't's Issues of Fact & Law & Ex. Index, 1).

## **JURISDICTION**

[¶ 5] The State Board shall “review final decisions of the department upon application of any interested person adversely affected.” Wyo. Stat. Ann. §§ 39-11-102.1(c); 39-14-209(b)(i) (2019). An aggrieved taxpayer may file an appeal with the State Board within 30 days after the Department’s final decision. Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(e) (2006). The Department issued its final decision on August 31, 2018. (Notice of Appeal, Ex. A). Solvay filed its appeal on September 26, 2018. (Notice of Appeal). Accordingly, we have jurisdiction.

## **FINDINGS OF FACT**

[¶ 6] Solvay operates a trona mine in Sweetwater County on land leased from Anadarko Land Corp. and from the Federal Bureau of Land Management (BLM) (Hr’g Tr. 28-29, 32, 71; Ex. 100; Ex. 113). After extracting trona from the mine, Solvay processes it into soda ash using a process that employs driers fueled with natural gas. (Hr’g Tr. 63-64).

[¶ 7] Waste mine gas (WMG) containing methane and other substances is an inevitable, and dangerous, by-product of trona mining. (Ex. 112). To evacuate WMG from the mine, Solvay drills vertical “gob-vent” bore holes and then mechanically induces a slight suction that forces the WMG to the surface. (Hr’g Tr. 38-39, 112-13; Ex. 112, at 0094).

[¶ 8] Initially, Solvay either flared (burned) the WMG or vented it into the atmosphere. (Hr’g Tr. 40). Earlier this decade, Solvay devised a plan to capture and process WMG and then burn it to heat the soda ash driers. (Hr’g Tr. 71-73, 86-87; Exs. 105, Attach.; 108; 113). Anadarko granted Solvay “the right and privilege of producing Mine Methane for [Solvay’s] sole use.” (Ex. 113, at 0107). In exchange, Solvay agreed to pay Anadarko monthly “Mine Methane Production Royalties” for the thermal content (energy) of the WMG, based on the published price of natural gas. *Id.* BLM determined that it could not issue Solvay a federal lease to produce WMG, but nonetheless authorized Solvay to capture and use WMG. (Exs. 105; 108). Solvay also obtained permission from the Wyoming Department of Environmental Quality. (Ex. 104).

[¶ 9] Before it began using WMG in its soda ash driers, Solvay used only natural gas that it purchased. (Hr’g Tr. 64). Solvay still purchases most of its natural gas because the WMG

supplies only a portion of the natural gas that Solvay needs. (Hr’g Tr. 65). Before it can use the WMG, Solvay must collect it from the gob-vent bore holes, compress it, dehydrate it, and transport it via pipeline to the driers. (Hr’g Tr. 121; Ex. 112, at 0099). The WMG contains less thermal content, by volume, than the natural gas that Solvay purchases. (Hr’g Tr. 116-17). But, once Solvay processes the WMG, it can use the WMG just as it uses purchased natural gas. *Id.*

[¶ 10] DOA conducted an audit and determined that Solvay owed \$286,822.50 in severance tax on WMG that Solvay captured and used in 2012-2015. (Ex. 116). The Department also imposed interest in the amount of \$122,929.00. (Ex. 117). Having subsequently determined that it used the wrong date to begin charging interest, the Department asked us to remand the case so it can re-calculate the interest as of the appropriate date. (Hr’g Tr. 20-21).

## CONCLUSIONS OF LAW

### A. State Board’s review function, burdens of proof, and applicable law

[¶ 11] “[T]he Petitioner shall have the burden of going forward and the ultimate burden of persuasion, which burden shall be met by a preponderance of the evidence. If Petitioner provides sufficient evidence to suggest the Department determination is incorrect, the burden shifts to the Department to defend its action.” Rules, Wyo. State Bd. of Equalization, ch. 2 § 20 (2006). The burden of going forward, also called the burden of production, is “[a] party’s duty to introduce enough evidence on an issue to have the issue decided by the fact-finder, rather than decided against the party in a peremptory ruling such as a summary judgment or a directed verdict.” *Burden of Production, Black’s Law Dictionary* 236 (10<sup>th</sup> ed. 2014). Normally, a party asserting that it should be exempt from a tax has the burden of proof. *PacifiCorp, Inc. v. Dep’t of Revenue*, 2017 WY 106, ¶ 11, 401 P.3d 905, 909 (Wyo. 2017) citing *Comm’rs of Cambria Park v. Bd. of Cty. Comm’rs of Weston Cty.*, 174 P.2d 402, 405 (Wyo. 1946). But, “[i]n proceedings involving the question of whether or not there is a taxable event under Wyoming law, the Petitioner shall have the burden of going forward and the Department shall have the ultimate burden of persuasion.” Rules, Wyo. State Bd. of Equalization, ch. 2 § 20 (2006).

[¶ 12] We review questions of statutory construction de novo. *Town of Pine Bluffs v. Eisele*, 2017 WY 117, ¶ 9, 403 P.3d 126, 128 (Wyo. 2017) (quoting *Bates v. Chicago Lumber Co. of Omaha*, 2016 WY 58, ¶ 27, 375 P.3d 732, 739 (Wyo. 2016)).

B. Solvay’s use of WMG is subject to severance tax.

[¶ 13] Wyoming Statutes section 39-14-203(a)(i) imposes a severance tax on “the value of the gross product extracted for the privilege of severing or extracting ... natural gas[.]” That language raises five questions:

- 1) Is the WMG “natural gas”?
- 2) Was that WMG “extracted”?
- 3) Did Solvay have the “privilege” of extracting it?
- 4) What is the “gross product extracted”?
- 5) What is the value of the gross product extracted?

Solvay contends that 1) WMG is not natural gas; 2) it did not have the privilege of extracting WMG; and 3) the Department erred in calculating the value of the WMG. We address each of those contentions in turn.

1. Is the WMG “natural gas”?

[¶ 14] Solvay denies that WMG fits within the statutory definition of natural gas. (Solvay Opening Br. 15-17). Natural gas “means all gases, both hydrocarbon and nonhydrocarbon, that occur naturally beneath the earth’s crust and are produced from an oil or gas well.” Wyo. Stat. Ann. § 39-14-201(a)(xv) (2019). Solvay does not dispute that the WMG is a gas that occurs naturally beneath the earth’s crust. That leaves two sub-questions: a) was the WMG “produced?” and if so, b) was it produced from a well?

a. Was the WMG produced?

[¶ 15] “Produce” is not defined by statute or Department rules. But, we accept that the verb “produce” and the noun “production” are expressions of the same concept and “generally refer to gas and valuable components removed from the ground which reach the end of the production process, or ‘point of valuation.’ ” *In re WPX Energy, Inc.*, 2017 WL 6276019, \*9, ¶ 35, Docket No. 2016-31 (Wyo. State Bd. of Equalization, Dec. 1, 2017). Having established that, we can find guidance in a related statute. “The production process for natural gas is completed after extracting from the well, gathering, separating, injecting and any other activity which occurs before the outlet of the initial dehydrator.” Wyo. Stat. Ann. § 39-14-203(b)(iv) (2109). From that, we can conclude that production is completed

– and the gas is “produced” – when the gas reaches the outlet of the initial dehydrator. In other words, the WMG is “produced” because it goes through the “production process,” (*supra* ¶ 9), so we answer this question in the affirmative. The WMG was produced.

b. Was the WMG produced from a well?

[¶ 16] A well is “a hole drilled in the earth for the purpose of finding or producing crude oil or natural gas.” Wyo. Stat. Ann. § 39-14-201(a)(xxx) (2019). Solvay contends that it did not drill the gob vent holes to find or produce natural gas. (Solvay Br. 16-17). Rather, according to Solvay, the gob vent holes have three purposes: “1) improving safety of miners; 2) reducing greenhouse gas emissions; and 3) capturing waste stream energy.” (*Id.* at 12). The holes serve all three of those purposes by transporting WMG up from beneath the earth’s surface.

[¶ 17] Solvay drills gob vent blowholes in the earth to bring WMG to the surface. (Hr’g Tr., 38-39; Ex. 113, at 0094; *supra* ¶ 7). Bringing the WMG to the surface is the first listed step of the production process. Wyo. Stat. Ann. § 39-14-203(b)(iv) (2109). When Solvay vented or flared the WMG, the production process was not begun, and thus could not be completed. Once Solvay began capturing, processing, and using WMG, there was a complete production process. Therefore, we conclude that the gob vent holes drilled in the earth to extract WMG are wells within the statutory definition of that word.

[¶ 18] The WMG that Solvay captures and processes is produced from wells, and thus meets the statutory definition of natural gas.

2. Did Solvay have the privilege of extracting the WMG?

[¶ 19] Solvay contends that it did not have the “privilege” of extracting WMG because it did not have a lease from the BLM authorizing it to extract natural gas. (Solvay Opening Br. 17-20). The Department counters that a “privilege” does not require such a lease, and that Solvay’s leases from BLM and Anadarko granting it “the right and privilege of producing Mine Methane” in exchange for royalty payments are sufficient. (Dep’t Br. 14-15; Ex. 113, at 0107).

[¶ 20] Solvay cites *Wyo. Dep’t of Revenue v. ExxonMobil Corp.*, 2007 WY 112, ¶ 32, 162 P.3d 515, 526 (Wyo. 2007) to support its position. *ExxonMobil* held that helium extracted from federal lands was not subject to state severance tax because the taxpayer did not have a lease granting it the privilege of severing or extracting helium. *Id.* *ExxonMobil* operated wells in Sublette County on land leased from the federal government. *Id.*, ¶6. Those wells yielded a gas stream that included helium. *Id.* As required by federal law, *ExxonMobil*’s

federal leases granted it the right and privilege to extract “all of the oil and gas deposits, *except helium gas ...*” *Id.* (emphasis added). The federal government retained ownership of the helium until ExxonMobil separated it from the gas stream, at which point ExxonMobil purchased the helium from the federal government. *Id.* at ¶¶ 8-10. By the plain language of its lease agreements, therefore, ExxonMobil did not have the privilege of extracting helium. *Id.* at 32. Because the facts and statutes surrounding *ExxonMobil* are very different from the case at hand, it does not aid our determination of whether Solvay had the necessary “privilege.”

[¶ 21] Solvay’s argument on this point rests on the premise that a privilege to extract WMG springs only from a federal lease allowing such extraction. From that premise, Solvay cites *Vessels Coal Gas, Inc.*, 175 IBLA 8 (June 26, 2008) for the proposition that “WMG is not a typical oil or gas deposit subject to leasing under federal law.” (Solvay Opening Br. 17-19). As explained below, we do not accept Solvay’s premise. Accordingly, we do not find *Vessels* to be helpful in resolving the question at hand.

[¶ 22] There is no statutory definition of “privilege” that applies to Wyoming Statutes section 39-17-203(b)(iv) (2109), nor is the word defined in any relevant rule. A leading legal dictionary says it means “[a] special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty. • A privilege grants someone the legal freedom to do or not do a given act. It immunizes conduct that, under ordinary circumstances, would subject the actor to liability.” *Privilege, Black’s Law Dictionary* 1390-91 (10<sup>th</sup> ed. 2014). Solvay has a special legal right, granted by BLM and Anadarko, to produce WMG. That right meets the dictionary definition of a privilege.

[¶ 23] In addition, multiple sections of Title 39, Chapter 14 use identical, or nearly identical, language to impose severance taxes:

- “There is levied a severance tax on the value of the gross product extracted for the *privilege of severing or extracting* crude oil, lease condensate or natural gas in the state.” Wyo. Stat. Ann. § 39-14-203(a)(i) (2019) (emphasis added).
- “Taxable event: There is levied a severance tax on the value of the gross product extracted for the present and continuing *privilege of removing, extracting, severing or producing* helium in this state.” Wyo. Stat. Ann. § 39-14-212(c) (2019) (emphasis added).
- “There is levied a severance tax on the value of the gross product for the *privilege of severing or extracting* trona, in the state.” Wyo. Stat. Ann. § 39-14-303(a)(i) (2019) (emphasis added).



- “There is levied a severance tax on the value of the gross product for the *privilege of severing or extracting* uranium in the state.” Wyo. Stat. Ann. § 39-14-503(a)(i) (2019) (emphasis added).

[¶ 24] Despite taxing “privileges” in multiple statutory sections, the legislature defined “privilege” in only one of them. For purposes of helium taxation, “ ‘[p]resent and continuing privilege of removing, extracting, severing or producing’ means the right to physically separate the helium, by itself, or as a component of the gas stream, from the ground[.]” Wyo. Stat. Ann. § 39-14-212(a)(i) (2109). We see no reason why “the privilege of severing or extracting” natural gas should mean something very different than the “continuing privilege of removing, extracting, severing or producing” helium.

[¶ 25] Accepting that the privilege of severing or extracting natural gas means, as it does with helium, simply the right to do so, we believe the Department is right that there’s no need for a BLM lease. The right to “separate [natural gas] from the ground” is enough, and Solvay had the privilege. (Ex. 113, at 2).

3. What is the value of the gross product extracted?

a. Violation of Wyoming Statutes section § 39-14-203(b)(vi)

[¶ 26] Solvay’s first salvo against the Department’s valuation is a tangential claim that the Department violated Wyoming Statutes section 39-14-203(b)(vi) (2019), which required it to notify Solvay of the valuation method to be used “before September 1 of the year preceding the year for which the method shall be employed.” (Solvay Opening Br. 25). Solvay contends that “[i]f the Department had given the required statutory notice, Solvay would have had an opportunity to object to the [DOA’s] selection of alleged ‘comparables’ and the calculation of the value of WMG.” (Solvay’s Opening Br. 25).

[¶ 27] The Department does not counter, or even acknowledge, Solvay’s notification claim in its brief. But, Craig Grenvik, Administrator of the Mineral Tax Division, testified that the Department did not provide Solvay the statutorily required notice because Solvay never told the Department that Solvay was severing natural gas. (Hr’g Tr. 220). So, the Department’s failure to act resulted from Solvay’s failure to provide information. The legislature could not have intended that a company could lawfully avoid severance tax by just not telling the Department that it is extracting minerals: that would be absurd. *Crow v. 2010-1 RADC/CADC Venture, LLC*, 2018 WY 139, ¶ 9, 430 P.3d 1171, 1173-74 (Wyo. 2018) (citing *Adekale v. State*, 2015 WY 30, ¶ 13, 344 P.3d 761, 765-66 (Wyo. 2015) (“This Court will not interpret a statute ... in a manner producing absurd results.”)).

[¶ 28] Solvay does not tell us what the remedy should be for the Department’s alleged failure. Wyoming Statutes section 39-14-203(b)(ix) (2019) states that “[i]f the Department fails to notify the taxpayer of the method selected pursuant to paragraph (vi) of this subsection, the taxpayer shall select a method and inform the department.” Thus, even if the Department had failed in its duty to act, the statutory remedy for that failure is for Solvay to act instead, which it did not do. Having failed to avail itself of the statutory remedy for the statutory violation it alleges, Solvay cannot prevail on this claim.

b. Comparable transactions

[¶ 29] “ ‘Value of the gross product’ means fair market value as prescribed by W.S. 39-14-203(b), less any deductions and exemption allowed by Wyoming law or rules.” Wyo. Stat. Ann. § 39-14-201(a)(xxix) (2019). So, to determine the value of the gross product, one must first determine the fair market value (FMV). To determine FMV, the Department must use one of five statutorily mandated methods: Comparable sales; Comparable value; Netback; Proportionate profits; or Modified netback. Wyo. Stat. Ann. § 39-14-203(b)(vi) (2019). The Department chose the comparable value method to value Solvay’s WMG. (Hr’g Tr. 221-22). Under that method, “[t]he fair market value is the arms-length sales price less processing and transportation fees charged to other parties for minerals of like quantity, taking into consideration the quality, terms and conditions under which the minerals are being processed or transported[.]” Wyo. Stat. Ann. § 39-14-203(b)(vi)(B) (2019). Solvay does not appear to disagree with the Department’s choice of the comparable value method, but it challenges the “comparable” transactions that the Department used:

In its Final Assessment, after quoting Wyo. Stat. § 39-14-203(a) and noting that Solvay had provided volumes of WMG, WDOA concluded:

We used the MMBtu volumes as audited volumes. Solvay buys gas for their dryers from QEP and BP Energy. We used a weighted average price from QEP and BP Energy to value the MMBtu volumes. There is a dehydrator right after the compressor. We allowed a deduction from the outlet of the dehydrator to the inlet of the dryers. The deduction was calculated using a weighted average tariff from Northwest Pipeline and Questar Pipeline. We used those two pipelines as Solvay buys gas from BP Energy and Questar. We took the weighted average tariff times the MMBtu volumes to come up with a total transportation deduction. We subtracted the allowed deduction from audited value to come up with a net

taxable value. We took the net taxable value times the tax rate of 6% to come up with an additional tax due.

Solvay Exh. 116 at p. 2 (citation to worksheets omitted); Department Exh. 501. The Department and WDOA made absolutely no showing at hearing that the “QEP” and “BP Energy” transactions referenced by WDOA addressed mineral production that was comparable to WMG, Solvay’s trona mining operations, the release of WMG, or the use of WMG.

(Solvay Opening Br. 26). In other words, Solvay contends that the Department didn’t prove the comparable transactions were suitable.

[¶ 30] At this point, the question is no longer whether there was a taxable event: the question is whether the Department properly calculated the tax. Therefore, the burden of going forward and the burden of persuasion by a preponderance of the evidence both rest squarely on Solvay. Rules, Wyo. State Bd. of Equalization, ch. 2 § 20 (2006). Solvay cannot carry those burdens by merely claiming that the Department did not prove its method was correct. Rather, Solvay must produce evidence that the Department’s method was wrong. Solvay did not do that. We cannot, therefore, find reversible error in the Department’s choice of comparable transactions.

c. Deductions

[¶ 31] Solvay next takes issue with the deductions that the Department allowed. (Solvay Opening Br. 26-27). It begins by contending that “neither the Department nor WDOA demonstrated a link between Northwest Pipeline and Questar Pipeline on one hand, and the natural gas Solvay purchases from QEP and BP Energy.” *Id.* Even if that is true, it was not the Department’s burden to demonstrate anything. The burden was on Solvay to show that the Department erred. Again, Solvay can’t carry its burden by arguing that the Department failed to carry a burden that it didn’t have. Rules, Wyo. State Bd. of Equalization, ch. 2 § 20 (2006).

[¶ 32] Solvay next declares:

The quantity and quality of WMG released as a part of Solvay’s mining operations is not remotely comparable to the quantity and quality of methane produced for commercial natural gas purposes in Wyoming, including but not limited to the natural gas produced by QEP or BP. The Department and WDOA made no effort to explain why the quantity or quality of methane purchased by Solvay is comparable to WMG. Furthermore, there is no

evidence that WDOA considered whether or how the purchased gas was subject to similar contractual “terms and conditions.” Wyo. Stat. § 39-14-203(b)(vi)(B).

(Solvay Opening Br. 27). Once again, Solvay attempts to shift the burden to the Department, but the burden remains Solvay’s to bear, which it did not.

d. Unequal treatment

[¶ 33] In a separate argument, Solvay notes that the Department does not impose severance tax on WMG that Solvay and other mining firms vent or flare. (Solvay Br. 20-25). A witness for the Department agreed that this was the first time that the Department taxed WMG from a trona mine as natural gas. (Hr’g Tr. 190). That “unequal” treatment, says Solvay, violates Article 1, Sections 28, 34, and Article 15, Section 11 of the Wyoming Constitution. (Solvay Br. 25).

[¶ 34] Solvay’s argument fails when it runs into the statutory analysis presented above. (*Supra*, ¶ 14). Natural gas is not taxed unless it is “produced.” Gas is not produced unless the “production process” is completed. The production process is not initiated or completed if the gas is flared or vented. Therefore, gas that goes through the production process is subject to severance and ad valorem taxes. Thus, we don’t have unequal treatment of equal situations; we have unequal treatment of unequal situations.

**DECISION**

[¶ 35] The WMG captured and used by Solvay is natural gas and is subject to severance and ad valorem tax. Solvay has not demonstrated error in the Department’s calculations.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.**

**ORDER**

[¶ 36] The Wyoming Department of Revenue's decision is **affirmed**. The case is, nonetheless, remanded at the Department's request for re-calculation of interest.

[¶ 37] Pursuant to Wyoming Statutes section 16-3-114 (2019) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date of this decision.

DATED this 19 day of December 2019.

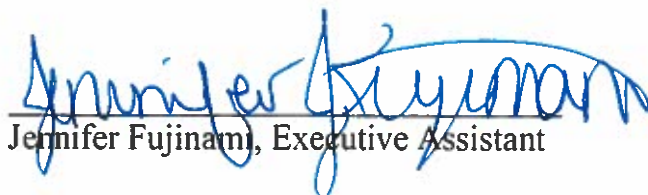
**STATE BOARD OF EQUALIZATION**

  
\_\_\_\_\_  
David L. Delicath, Chairman

  
\_\_\_\_\_  
E. Jayne Mockler, Vice-Chairman

  
\_\_\_\_\_  
Martin L. Hardsocg, Board Member

ATTEST:

  
\_\_\_\_\_  
Jennifer Fujinam, Executive Assistant

**CERTIFICATE OF SERVICE**

I certify that on the 19 day of December 2019, I served the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND ORDER by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to:

Walter F. Eggers, III  
Holland & Hart LLP  
2515 Warren Ave., Suite 450  
Cheyenne, WY 82001

Karl D. Anderson  
Senior Assistant Attorney General  
Kendrick Building  
2320 Capitol Ave  
Cheyenne, WY 82002



Jennifer Fujinam, Executive Assistant  
State Board of Equalization  
P.O. Box 448  
Cheyenne, WY 82003  
Phone: (307) 777-6989  
Fax: (307) 777-6363

cc: State Bd. of Equalization  
Dan Noble, Director, Wyo. Dep't Revenue  
Craig Grenvik, Adm'r, Mineral Tax Div., Wyo. Dep't of Revenue  
Wyo. Dep't of Audit  
A.B.A. State & Local Tax Reporter  
Wyo. State Library