

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division ("DEQ/AQD"), Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and Lewis & Lewis, Inc. ("L&L"), P.O. Box 1928, Rock Springs, WY 82902, enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the violations cited in DEQ Notice of Violation Docket No. 3844-06 ("NOV") alleging violations of the Wyoming Environmental Quality Act ("Act"), Wyoming Air Quality Standards and Regulations ("WAQSR"), and permit no. CT-1235. The NOV alleges that L&L failed to use water sprays during crusher operations to control fugitive dust emissions as required by condition no. 4 of permit no. CT-1235 at the L&L Pit #2 located in Sweetwater County, Wyoming.

WYO. STAT. ANN. § 35-11-901(a)(ii)(Lexis Nexis 2005) authorizes stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, L&L and the DEQ/AQD hereby stipulate and agree as follows:

1. The DEQ/AQD is responsible for enforcing the Act and the WAQSR.
2. WYO. STAT. ANN. § 35-11-201 states, "No person shall cause, threaten or allow the discharge or emission of any air contaminant in any form so as to cause pollution which violates rules, regulations and standards adopted by the council."
3. WYO. STAT. ANN. § 35-11-801(a) states, "In granting permits, the director may impose such conditions as may be necessary to accomplish the purpose of this act which are not inconsistent with the existing rules, regulations and standards."
4. On July 22, 1996, the DEQ/AQD issued permit no. CT-1235 to L&L. Condition no. 4 of permit CT-1235 states that: "water sprays shall be utilized at all times this crusher is operational, such that the maximum visible emission of dust escaping the crusher units is limited to fifteen percent (15%) opacity. Visible emissions from all other plant operations, such as conveyor belt transfer and discharge points, screens, loaders, stackers, etc., are limited to ten percent (10%) opacity. Spray nozzles shall be located at belt transfer and discharge points, screens, and the inlet/outlet of crushers as necessary to achieve this level of control."
5. On February 8, 2006, Mr. Tony Hoyt, AQD District Engineer, observed the crushing and screening equipment permitted under permit no. CT-1235 operating at the L&L Pit #2. Mr. Hoyt observed significant fugitive emissions from the belt drop points to the stockpiles, from the crusher output and from the primary screen; and, that water sprays were not operational on any equipment.

6. On February 23, 2006, the DEQ/AQD issued the NOV to L&L alleging that L&L failed to comply with condition no. 4 of permit no. CT-1235

7. DEQ/AQD and L&L agree that L&L will pay the DEQ/AQD, three thousand five hundred dollars and no cents (\$3,500.00) as a stipulated cash settlement to resolve these alleged violations in lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii). L&L, by entering into this Agreement, does not concede or admit to any liability, and this Agreement constitutes no admission of fault. L&L shall make full payment by check, made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty days after L&L has been notified by DEQ/AQD that the final signature has been affixed to this Agreement. L&L shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

8. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against L&L based on NOV Docket No. 3844-06 and, solely in reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against L&L for these particular violations.

9. L&L waives any statute of limitations which may apply to an enforcement action by the DEQ/AQD involving the specific matters described in NOV Docket No. 3844-06 in the event that L&L fails to fulfill its obligations under this Agreement.

10. This Agreement shall be admissible by either L&L or DEQ/AQD (hereinafter L&L and DEQ/AQD may be referred to individually as "Party" and collectively as "Parties") without objection by the other Party in any action between these Parties relating to the violations alleged herein.

11. Neither Party hereto shall have any claim against the other for attorneys' fees or other costs incurred with the allegations resolved hereby, including costs incurred in the preparation of this Agreement. Each Party shall bear its own attorney fees and costs, if any, incurred through the date this Agreement is signed by both Parties. Each party assumes the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.

12. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the Parties shall be incorporated by written instrument, executed and signed by all Parties to this Agreement.

13. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the Parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

14. This Agreement, consisting of four (4) pages represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

15. The State of Wyoming and the DEQ/AQD do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to WYO. STAT. ANN. § 1-39-104(a) and all other state law.

16. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement, and shall inure solely to the benefit of the Parties to this Agreement. The Parties to this Agreement intend and expressly agree that only Parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

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17. Each Party represents that they are authorized to enter into this Agreement and agree to be bound hereby. This Agreement shall become binding upon the Parties once executed by all Parties.

IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

LEWIS & LEWIS, INC.:

By: Arnold N. Lewis 4-21-06
Arnold N. Lewis, Secretary Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY

By: David Finley 5/11/06
David Finley, AQD Administrator Date

By: John Corra 5/18/06
John Corra, DEQ Director Date

APPROVAL AS TO FORM:

Nancy E. Vehr 4/13/2006
Nancy E. Vehr, Sr. Asst. Attorney General Date
Attorney for DEQ/AQD