

## SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division ("DEQ/AQD"), Herschler Building, 122 West 25<sup>th</sup> Street, Cheyenne, WY 82002, and Merit Energy Company ("Merit"), 13727 Noel Rd., Suite 500, Dallas, TX 75240 enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the violation cited in DEQ Notice of Violation Docket No. 3854-06 ("NOV"). The NOV alleges that Merit failed to obtain air quality permits prior to continuing operations of John Deere 6125H diesel generator sets at the Jons CBM Facility and the Jons/Ruth Swezey compressor station located in Carbon County, Wyoming, in violation of the Wyoming Environmental Quality Act ("Act"), and applicable Wyoming Air Quality Standards and Regulations ("WAQSR").

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, Merit 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. § 35-11-801(c) states, "[a] permit to construct is required before construction or modification of any industrial facility capable of causing or increasing air or water pollution in excess of standards established by the department is commenced."
3. Chapter 6, Section 2 of the WAQSR prescribes the applicability and procedures for issuing permits to sources under Wyoming's construction and modification permitting program.
4. Chapter 6, Section 2(a)(i) of the WAQSR states, "[a]ny person who plans to construct any new facility or source, modify any existing facility or source, or to engage in the use of which may cause the issuance of or an increase in the issuance of air contaminants into the air of this state shall obtain a construction permit from the State of Wyoming, Department of Environmental Quality, before any actual work is begun on the facility."
5. On June 5, 2004, the DEQ/AQD issued permit application waivers AP-1368 for a John Deere 6125H diesel generator set at the Jons CBM Facility and AP-1369 for a John Deere 6125H diesel generator set at the Jons/Ruth Swezey compressor station ("Generator Set"). Each permit application waiver AP-1368 and AP-1369 allowed for operation of the respective Generator Set for six months after initial startup. In a letter dated March 8, 2005, Merit reported the initial startup of each Generator Set occurred on May 6, 2004.

6. On February 6, 2006, DEQ/AQD inspector Mr. Chris Hanify conducted an inspection of the Jons CBM facility and the Jons/Ruth Swezey compressor station and observed each Generator Set was operating. In a follow-up call, Mr. Hanify confirmed each Generator Set was still operating. In a February 23, 2006 letter, Merit informed the DEQ/AQD that each Generator Set was shutdown as of February 22, 2006.

7. DEQ/AQD and Merit agree that to resolve these alleged violations in lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii), Merit will pay the DEQ/AQD ten thousand dollars and no cents (\$10,000.00) as a stipulated cash settlement. Merit, by entering into this Agreement, does not concede or admit to any liability or fault, and this Agreement constitutes no admission of fault. Merit shall make full payment by check, made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty days after Merit has been notified by DEQ/AQD that the final signature has been affixed to this Agreement. Merit 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 Merit based on NOV Docket No. 3854-06, and solely in reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against Merit for these particular violations.

9. Merit 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. 3854-06 in the event that Merit fails to fulfill its obligations under this Agreement.

10. This Agreement shall be admissible by either Merit or DEQ/AQD (hereinafter Merit 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; provided, however, that nothing herein constitutes an admission by Merit of liability or fault.

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.

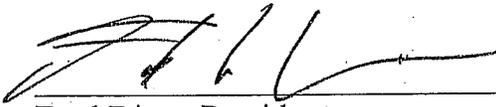
16. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement, 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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16. 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:

MERIT ENERGY COMPANY:

By:  5/22/06  
Fred Diem, President Date  
vice

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY

By:  6/2/06  
David Finley, AQD Administrator Date

By:  6/8/06  
John Corra, DEQ Director Date

APPROVAL AS TO FORM:

 5/16/2006  
Nancy E. Vehr, Sr. Asst. Attorney General Date  
Attorney for DEQ/AQD