

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (“DEQ/AQD”), Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and Black Hills Bentonite, LLC (“BHB”), P.O. Box 9, Mills, WY 82644 enter into this Settlement Agreement (“Agreement”) to fully and finally resolve without litigation the violation cited in DEQ Notice of Violation Docket No. 3925-06 (“NOV”). The NOV alleges that BHB failed to comply with the rotary dryer opacity permit limit at the Worland Plant (“Plant”) located in Washakie County, Wyoming, in violation of the Wyoming Environmental Quality Act (“Act”), applicable Wyoming Air Quality Standards and Regulations (“WAQSR”), and DEQ/AQD Permit No. MD-902.

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, BHB and the DEQ/AQD hereby stipulate and agree as follows:

1. The DEQ/AQD is responsible for enforcing the Act, WAQSR, and permit MD-902.

2. WYO. STAT. ANN. § 35-11-801 states in part, “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.”

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. On July 30, 2003, the DEQ/AQD issued permit no. MD-902 to BHB for the Plant. Condition 11 of permit MD-902 limits the opacity of visible emissions to ten percent (10%) as determined by 40 C.F.R., Part 60, Appendix A, Method 9.

5. DEQ/AQD Compliance Inspector Mr. David Reid, conducted a site visit of the Plant on July 11, 2006. Mr. Reid observed visible emissions from the rotary dryer stack and conducted a method 9 opacity observation with a resultant opacity reading of forty and two-tenths percent (40.2%) which exceeded the ten percent (10%) allowable permit limit. The DEQ/AQD determined that BHB violated the Act, WAQSR and permit MD-902 by failing to comply with the opacity limit at the Plant.

6. DEQ/AQD and BHB agree that BHB will pay the DEQ/AQD seven thousand five hundred dollars and no cents (\$7,500.00) as a stipulated cash settlement to resolve these alleged violations in lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii). BHB, by entering into this Agreement, does not concede or admit to any liability or fault,

and this Agreement constitutes no admission of fault. BHB shall make full payment by check, made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty days after BHB has been notified by DEQ/AQD that the final signature has been affixed to this Agreement. BHB shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

7. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against BHB based on NOV Docket No. 3925-06, and solely in reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against BHB for these particular violations.

8. BHB 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. 3925-06 in the event that BHB fails to fulfill its obligations under this Agreement.

9. This Agreement shall be admissible by either BHB or DEQ/AQD (hereinafter BHB 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 BHB of liability or fault.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

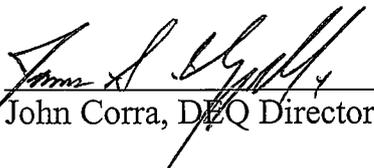
IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

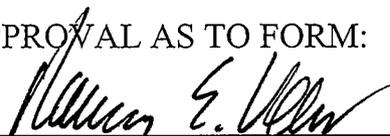
BLACK HILLS BENTONITE, LLC:

By:  9-27-06
Thomas A. Thorsen Date
President and General Manager

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY

By:  10/2/06
David A. Finley, AQD Administrator Date

By:  10/12/06
John Corra, DEQ Director Date

APPROVAL AS TO FORM:
 9/25/06
Nancy E. Vehr, Sr. Asst. Attorney General Date
Attorney for DEQ/AQD