

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (“DEQ/AQD”), Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and Jim Huxtable Quarry (“Huxtable”), 720 Cold Springs Road, Douglas, WY 82633 enter into this Settlement Agreement (“Agreement”) to fully and finally resolve without litigation the violations cited in DEQ Notice of Violation Docket No. 3910-06 (“NOV”). The NOV alleges that Huxtable failed to maintain dust control records required by permit CT-3787 (“Dust Control Record Violation”) and failed to obtain a construction permit prior to constructing and operating the Nordberg Screen (“Failure to Permit Violation”) at the Jim Huxtable Quarry facility (“Facility”) located in Converse County, Wyoming, in violation of the Wyoming Environmental Quality Act (“Act”), the applicable Wyoming Air Quality Standards and Regulations (“WAQSR”), and permit CT-3787.

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

1. The DEQ/AQD is responsible for enforcing the Act, the WAQSR, and permit CT-3787.

Dust Control Record Violation

2. 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.”

3. On September 1, 2005, permit CT-3787 was issued for the Facility. Conditions no. 3 and 5 of permit CT-3787 required treatment of haul roads, work areas, disturbed areas and stockpiles with water and/or chemical dust suppressants to control fugitive dust. Condition no. 4 of permit CT-3787 required a log book listing the dates, amount of dust suppressant applied, areas treated, water usage and water truck operating hours be maintained at the Facility.

4. On November 3, 2005 and April 28, 2006, DEQ/AQD Compliance Inspector Mr. Chris Hanify conducted site inspections of the Facility and asked to see the Facility’s dust control records as required by condition no. 4 of permit CT-3787. Huxtable did not provide the dust control records during either of these two site inspections. On August 23, 2006, Huxtable provided dust control records for the Facility to Mr. Hanify.

5. Based on the results of its investigation, the DEQ/AQD determined that Huxtable violated the Act, the WAQSR and permit no. CT-3787 by failing to maintain and provide the dust control records during the DEQ/AQD’s on-site inspections.

However, the DEQ/AQD reviewed the dust control records provided on August 23, 2006, and accepted them to resolve the Dust Control Record violation in lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii).

Failure to Permit Violation

6. WYO. STAT. ANN. § 35-11-801(c) states, "A permit to construct is required before the 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."

7. 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.

8. Chapter 6, Section 2(a)(i) of the WAQSR states, "Any 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 any 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."

9. On November 3, 2005 and again on April 28, 2006, DEQ/AQD Compliance Inspector Mr. Chris Hanify conducted site inspections of the Facility and observed a Nordberg Screen on site. During the inspections and follow-up investigation, the DEQ/AQD could not find, nor did Huxtable provide, any permitting record for the Nordberg Screen.

10. Based on the results of its investigation, the DEQ/AQD determined that Huxtable violated the Act and WAQSR by failing to obtain a DEQ/AQD construction permit prior to constructing and operating the Nordberg Screen at the Facility.

11. DEQ/AQD and Huxtable agree that Huxtable will pay the DEQ/AQD two thousand five hundred dollars and no cents (\$2,500.00) as a stipulated cash settlement to resolve the Failure To Permit Violation in lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii). Huxtable shall make full payment by check, made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty days after Huxtable has been notified by DEQ/AQD that the final signature has been affixed to this Agreement. Huxtable shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

General Terms and Conditions

12. Huxtable, by entering into this Agreement, does not concede or admit to any liability or fault, and this Agreement constitutes no admission of fault.

13. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against Huxtable based on NOV Docket No. 3910-06, and solely in reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against Huxtable for these particular violations.

14. Huxtable 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. 3910-06 in the event that Huxtable fails to fulfill its obligations under this Agreement.

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

16. 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.

17. 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.

18. 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.

19. This Agreement, consisting of five (5) pages represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

20. 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.

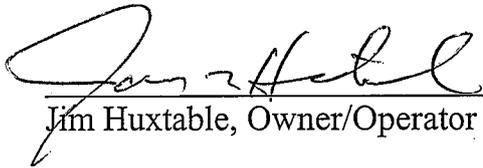
21. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement, 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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22. 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:

JIM HUXTABLE QUARRY:



Jim Huxtable, Owner/Operator

10/11/06
Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY



David A. Finley, AQD Administrator

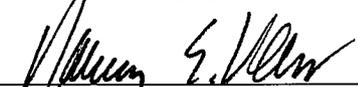
10/24/06
Date



John Corra, DEQ Director

10/24/06
Date

APPROVAL AS TO FORM:



Nancy E. Wehr, Sr. Asst. Attorney General
Attorney for DEQ/AQD

9/25/06
Date