

## 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 Rowdy Pipeline, LLC (“Rowdy”), 105 S. Fourth Street, Artesia, NM 88210 enter into this Settlement Agreement (“Agreement”) to fully and finally resolve without litigation the violation cited in DEQ Notice of Violation Docket No. 4154-07 (“NOV”). The NOV alleges that Rowdy failed to obtain a construction permit modification of DEQ/AQD Permit No. CT-3568 prior to installing a 637 Hp Caterpillar G3412 engine (“Engine”) at the Interstate 1/Dry Creek Compressor Station facility (“Facility”) located in Campbell County, Wyoming, in violation of the Wyoming Environmental Quality Act (“Act”), the applicable Wyoming Air Quality Standards and Regulations (“WAQSR”), and condition no. 11 of DEQ/AQD Permit No. CT-3568.

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

1. The DEQ/AQD is responsible for enforcing the Act, the WAQSR and DEQ/AQD Permit No. CT-3568.
2. 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.”
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, “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.”
5. On or about March 23, 2004, DEQ/AQD Permit No. CT-3568 was issued to Rowdy for the Facility. Condition no. 11 of DEQ/AQD Permit No. CT-3568 limited the number of Caterpillar G3412 engines at the Facility to three such engines.

6. On July 11, 2007, DEQ/AQD air quality inspectors Mr. Brad Steidley and Ms. Debbie White conducted an inspection of the Facility and noted a fourth Caterpillar G3412 engine at the Facility.

7. On October 4, 2007, the DEQ/AQD issued the NOV to Rowdy alleging that Rowdy violated the Act, the WAQSR, and DEQ/AQD Permit No. CT-3568 by installing the Engine at the Facility without first obtaining a construction permit modification of DEQ/AQD Permit No. CT-3568.

8. DEQ/AQD and Rowdy agree to resolve the alleged violation described above and more fully set forth in the NOV in lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii) by Rowdy paying a seven thousand five hundred dollars and no cents (\$7,500.00) stipulated cash settlement to the DEQ/AQD. Rowdy shall pay the stipulated cash settlement by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty (30) days after Rowdy has been notified by DEQ/AQD that the final signature has been affixed to this Agreement. Rowdy shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

9. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against Rowdy based on NOV Docket No. 4154-07 and, solely in reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against Rowdy for this particular violation.

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

11. Rowdy 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. 4154-07 in the event that Rowdy fails to fulfill its obligations under this Agreement.

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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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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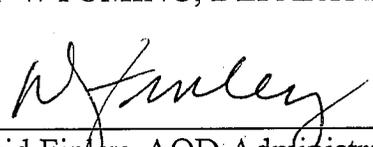
19. Each Party represents that they are authorized to enter into this Agreement and agree to be bound hereby. This Agreement shall become binding upon the Parties once executed by all Parties.

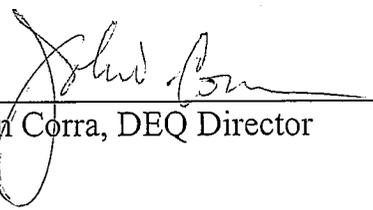
IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

ROWDY PIPELINE, LLC:

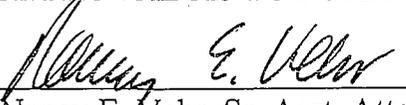
By:  1-7-08  
Greg Jokela Date  
President, Agave Energy Company

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY

By:  <sup>17th</sup> 1/18/08  
David Finley, AQD Administrator Date

By:  1/21/08  
John Corra, DEQ Director Date

APPROVAL AS TO FORM:

 12/18/2007  
Nancy E. Vehr, Sr. Asst. Attorney General Date  
Attorney for DEQ/AQD