

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air quality Division ("DEQ/AQD"), Herschler building, 122 West 25th Street, Cheyenne, WY 82002, and Triton Coal Company, LLC ("Triton"), P.O. Box 406, Wright, WY 82732 enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4277-08 ("NOV"). The NOV alleges that Triton failed to control fugitive dust in the operation of the North Rochelle Mine in potential violation of the Air Quality Act ("Act"), applicable Wyoming Air Quality Standards and Regulations ("WAQSR") and various air quality permits issued to Triton.

WYO. STAT. ANN. § 35-11-701(c) authorizes the DEQ/AQD Administrator via conference and conciliation to resolve alleged violations without a judicial determination that such alleged violations actually occurred or not. WYO. STAT. ANN. § 35-11-901(a)(ii) (West 2007) authorizes stipulated settlement in lieu of litigation. To that end, Triton and the DEQ/AQD hereby stipulate and agree as follows:

1. The DEQ/AQD is responsible for enforcing the Act and 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. Chapter 3, Section 2(f)(i)(A) of the WAQSR states: "Any person engaged in clearing or leveling of land, earthmoving, excavation, or movement of trucks or construction equipment over access haul roads or cleared land shall take steps to minimize fugitive dust from such activities. Such control measures may include frequent watering and/or chemical stabilization."
4. Chapter 3, Section 2(f)(ii)(A) of the WAQSR states: "Any person owning, operating or maintaining a new or existing material storage, handling and/or hauling operation shall minimize fugitive dust from such operations. Such control measures may include the application of asphalt, oil, water or suitable chemicals on unpaved roads, material stockpiles and other surfaces which can give rise to airborne dust..."
5. Various permits issued to Triton for the North Rochelle Mine require Triton to implement fugitive dust control measures and to install and operate an ambient particulate monitoring network.
6. On August 8, 2007, Triton's ambient particulate monitoring data for the 13 G/H Monitor monitoring site associated with the North Rochelle Mine showed that there was an exceedance of the 24-hour PM₁₀ standard. The final PM₁₀ 24-hour average concentration for August 8, 2007 was measured at 270 µg/m³, exceeding the PM₁₀ 24-hour average concentration limit of 150 µg/m³.
7. Based on the August 8, 2007 monitor data, the DEQ/AQD alleges that Triton failed to take appropriate measures to control fugitive dust emissions from the excavation, stockpiling, material handling and material hauling operations at the North Rochelle Mine as required by Chapter 3, Section 2(f) of WAQSR and Triton's various AQD permits.
8. Triton requested in September 2007 that AQD flag the monitor exceedance as an exceptional event under 40 CFR § 50.14. Triton's report

attributed the exceedance to offsite impacts. AQD reviewed the materials submitted, but did not agree to flag the monitor exceedance as an exceptional event. No written notice or explanation of the denial was provided to Triton.

9. DEQ/AQD and Triton agree to resolve the NOV pursuant to and in accordance with the terms and conditions herein. The total stipulated settlement amount ("Total Settlement Amount") to resolve the allegations in the NOV in lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii) is ten thousand dollars and no cents (\$10,000.00) payable as follows:

A. Triton shall pay to the DEQ/AQD five thousand dollars and no cents (\$5,000.00) as a partial settlement amount ("Partial Settlement Amount"). Triton shall pay the Partial Settlement Amount by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty (30) days after Triton has been notified in writing by DEQ/AQD that this Agreement has been fully executed by all parties. Triton shall mail the payment to John S. Burbridge, Senior Assistant Attorney General, 123 Capitol Building, Cheyenne, WY 82002 and placing such payment in the mail shall satisfy the payment obligations in this paragraph 9(A).

B. In lieu of paying the five thousand dollar and no cents (\$5,000.00) balance remaining ("Settlement Balance Amount") after payment of the Partial Settlement Amount, Triton agrees to complete the following Supplemental Environmental Project ("SEP"):

i. Triton agrees to spend at least ten thousand dollars and no cents (\$10,000.00) ("SEP Expenditure Amount") on dust control projects to chemically treat the Reno Road from ½ mile west of the 13 G/H air quality monitoring site to ½ mile north of the 13 G/H air quality monitoring site and to chemically treat the detour of the Campbell County Hilight Road located north of the intersection with Highway 450.

ii. Triton shall complete the SEP by no later than within sixty (60) days of the full execution of this Agreement unless Triton and the DEQ/AQD mutually agree to an extension of time. Triton shall submit a SEP Completion Report to the DEQ/AQD, Attn: Mr. Robert Gill, 122 West 25th Street, Cheyenne, WY 82002 within thirty (30) days after the completion of the SEP. The SEP Completion Report shall describe the completed SEP, include itemized costs and receipts, and certify that the SEP has been fully implemented pursuant to the provisions of this Agreement. The DEQ/AQD and Triton agree that if Triton does not complete the SEP by the SEP deadline, then Triton will pay the DEQ/AQD the balance of the full Settlement Balance Amount (\$5,000.00) by the SEP Completion Report deadline. The DEQ/AQD and Triton agree that if the amount Triton actually spends in performance of the SEP is less than the SEP Expenditure Amount, then Triton will pay the DEQ/AQD a prorated amount calculated by taking the SEP Expenditure Amount and subtracting the amount Triton actually spent on the SEP and then dividing that difference by a factor of two (2) by no later than thirty (30) days after submitting the SEP Completion Report to the DEQ/AQD.

iii. Triton hereby represents that as of the date it executed this Agreement, Triton is not required to perform or develop the SEP described herein by any federal, state or local law or regulation; nor is Triton required to perform or develop the SEP pursuant to any other agreement or relief in any other case. Triton further represents that it has not received and is not presently negotiating to receive credit for the SEP described herein in any other pending action.

10. By entering into this Agreement, Triton does not concede or admit to any liability or responsibility whatsoever with respect to the allegations contained in the NOV, and this Agreement shall not constitute any admission of fault or noncompliance.

11. This Agreement represents the full and final settlement of any and all claims, now existing or in the future, with respect to the allegations contained in the NOV. Full compliance with the signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against Triton based on the NOV and, solely in reliance on the Agreement, the DEQ/AQD shall not take any further enforcement action against Triton related to or arising out of the alleged violation contained in the NOV, as no judicial determination has been made proving the violation occurred or not.

12. In the event that Triton fails to fulfill its obligations under this Agreement Triton and DEQ/AQD herein agree to toll any applicable statute of limitations with respect to an enforcement action by the DEQ/AQD involving the specific matters described in the NOV for the period of time identified herein for complying with this Agreement.

13. This Agreement shall be admissible by either Triton or DEQ/AQD (hereinafter Triton and DEQ/AQD may be referred to individually as "Party" and collectively as "Parties") without objection by the other Party in an action between these Parties relating to the enforcement of this agreement.

14. Neither party hereto shall have any claim against the other for attorney's fees or other costs incurred with the allegations resolved hereby, including costs incurred in the preparation of the 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.

15. 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.

16. 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.

17. 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.

18. The State of Wyoming and the DEQ/AQD do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all

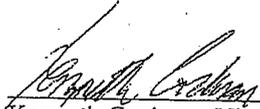
defenses available to them as sovereigns pursuant to WYO. STAT. ANN. § 1-39-104(a) and all other state law.

19. 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 the 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 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.

20. 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:

TRITON COAL COMPANY, LLC

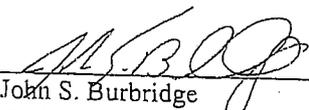
By:  12/12/08
Kenneth Cochran, Vice President Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:  12/30/08
David Finley, AQD Administrator Date

By:  12/18/08
John Corra, DEQ Director Date

APPROVAL AS TO FORM:

By:  12-18-08
John S. Burbridge Date
Senior Assistant Attorney General
Attorney for DEQ/AQD