

~~7/23/09~~ **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 Hot Iron, Inc. ("Hot Iron"), 806 Ratcliff, P.O.Box 1067, Gillette, WY 82717, enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4259-08 ("NOV"). As more fully set forth below, the NOV alleged that Hot Iron failed to inspect for the presence of asbestos prior to demolition, failed to provide written notification to the DEQ/AQD prior to starting demolition, and failed to remove all regulated asbestos-containing material during the demolition of the Buffalo Drive in Theater located in Johnson County, Wyoming, thereby violating the Wyoming Environmental Quality Act ("Act") and applicable Wyoming Air Quality Standards and Regulations ("WAQSR").

WYO. STAT. ANN. § 35-11-901(a)(ii) (West 2008) authorizes stipulated settlement, including payment of a penalty, implementation of compliance schedules or other settlement conditions in lieu of litigation. To that end, Hot Iron and the DEQ/AQD hereby stipulate and agree as follows:

1. Hot Iron is a Wyoming corporation.
2. The DEQ/AQD is responsible for enforcing the Act and the WAQSR.
3. 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."
4. Chapter 3, Section 8 of the WAQSR establishes in part asbestos emission standards applicable to owners and operators of facilities undergoing renovation or demolition.
5. Chapter 3, Section 8(i)(i) of the WAQSR requires owners and operators of facilities undergoing renovation or demolition to "thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos," before "the commencement of the demolition or renovation."
6. Chapter 3, Section 8(i)(ii) of the WAQSR requires owners and operators of facilities undergoing renovation or demolition to provide the DEQ/AQD with "written notice of the intention to demolish or renovate" at least ten working days before the commencement of the demolition or renovation.

7. Chapter 3, Section 8(i)(iii) of the WAQSR requires owners and operators of facilities undergoing renovation or demolition to “remove all regulated asbestos-containing material (RACM) from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material[.]”

8. On or about March 31, 2008, in response to a public complaint, the DEQ/AQD Asbestos Program Manager contacted the owner of the Buffalo Drive In Theater and determined that an asbestos inspection had not been conducted prior to demolition of the Buffalo Drive In Theater.

9. On or about April 1, 2008, the DEQ/AQD Asbestos Program Manager inspected and sampled the debris from the Buffalo Drive In Theater building demolition. The sampled debris contained materials that tested positive for asbestos fibers.

10. Following a review of DEQ/AQD records, the DEQ/AQD Asbestos Program Manager determined that Hot Iron had not notified the DEQ/AQD before the start of the Buffalo Drive In Theater building demolition.

11. On April 25, 2008, the DEQ/AQD issued the NOV to Hot Iron alleging that Hot Iron failed to comply with WYO. STAT. ANN. § 35-11-201 and Chapter 3, Section 8 of the WAQSR prior to starting and during the Buffalo Drive In Theater building demolition.

12. Without admitting liability, Hot Iron agrees to resolve the alleged violations described above and more fully set forth in the NOV, in lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii), as follows:

A. Assessment of a stipulated penalty in the amount of one thousand dollars and no cents (\$1,000.00) in settlement of this matter (“Total Stipulated Penalty”). Hot Iron shall make full payment of the Total Stipulated Penalty by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty (30) days after Hot Iron has been notified by DEQ/AQD that the final signature has been affixed to this Agreement. Hot Iron shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

B. Hot Iron agrees to implement educational outreach to the members of the Wyoming Association of General Contractors by including a written document drafted by the DEQ/AQD in the Association’s monthly

newsletter at least three times over the next twelve months, and inviting the DEQ/AQD to four of the Association's Environmental Committee's quarterly meetings over the next twenty four (24) months to discuss asbestos standards and regulations.

C. Hot Iron also agrees to help educate county and city building divisions regarding the WAQSR asbestos regulations by contacting each of the county and city building officials listed on Attachment A within three months after Hot Iron has signed this Agreement. Hot Iron will submit documentation to the DEQ/AQD by January 1, 2010, demonstrating that it has completed this requirement.

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

14. Full compliance with this signed Agreement shall constitute full satisfaction and release for all claims by the DEQ/AQD against Hot Iron based on NOV Docket No. 4259-08 and, solely in reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against Hot Iron for these particular violations.

15. In the event that Hot Iron fails to fulfill its obligations under this Agreement, Hot Iron waives any statute of limitation claims which may apply in an enforcement action by the DEQ/AQD involving the specific matters described in NOV Docket No. 4259-08.

16. This Agreement shall be admissible by either Hot Iron or the DEQ/AQD (hereinafter Hot Iron and the DEQ/AQD may be referred to individually as "Party" and collectively as "Parties") without objection by the other Party only in an action between these Parties relating to the specific NOV herein; provided, however, that nothing herein constitutes an admission by Hot Iron of liability or fault.

17. 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.

18. 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.

19. 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.

20. This Agreement, consisting of five (5) pages, and Attachment A consisting of one (1) page, represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

21. 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.

22. 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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

23. 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:

HOT IRON, INC.:

By:   
Gary Garland, Owner

8-11-09  
Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY

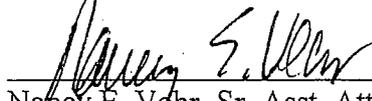
By:   
David A. Finley, AQD Administrator

8/27/09  
Date

By:   
John Corra, DEQ Director

9/2/09  
Date

APPROVAL AS TO FORM:

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

8/24/09  
Date

Contact Person	City or County	Place Name	Mailing Address	Physical Address	City	Zip	Phone Number
Building Inspector, Tom Hulick	City of Buffalo	Buffalo	46 N Main Street 500 S Gillette Ave., Ste 1500	46 N Main Street 500 S Gillette Ave., Ste 1500	Buffalo	82834	(307) 684-7609 ext. 7
Dept. of Building & Zoning	Campbell County Planning Office	Campbell County			Gillette	82716	(307) 682-1970
	Crook County Planning Office	Crook County					(307) 283-4548
Assistant Clerk, Linda Lofgren	Town of Dayton	Dayton	PO Box 100	608 Broadway	Dayton	82836	(307) 655-2217
Building Division Supervisor, Ken Rogers	City of Gillette	Gillette	PO Box 3003		Gillette	82717	(307) 686-5260
County Planner, Rob Yingling	Johnson County Planning Office	Johnson County	76 N Main Street	76 N Main Street	Buffalo	82834	(307) 684-7555
Building Inspector, Jeff Holberg	Town of Moorcroft	Moorcroft	PO Box 70		Moorcroft	82721	(307) 756-3526
Mayor Ed Wagoner	City of Newcastle	Newcastle	10 N Warwick	10 N Warwick	Newcastle	82701	(307) 746-3535
Building Inspector, John Barker	Town of Ranchester	Ranchester	PO Box 695		Ranchester	82839	(307) 655-2283
Building Official, Charlie Newcomer	City of Sheridan	Sheridan	PO Box 848	55 Grinnell Plaza	Sheridan	82801	(307) 674-5941
Building Inspector, Steve Bond.	Sheridan County Planning Office	Sheridan County	224 S Main Street, Ste 88	224 S Main Street, Ste 88	Sheridan	82801	(307) 674-2920
Maintenance Foreman, John Kiplinger	City of Sundance	Sundance	PO Box 542		Sundance	82729	(307) 283-3459
City Superintendent, Mark Lindstrom	City of Upton	Upton	PO Box 203		Upton	82730	(307) 468-2441
County Clerk	Western County Planning Office	Western County					(307)
Building Official, Lyle Murdock	City of Wright	Wright	PO Box 70		Wright	82732	(307) 464-1666

Attachment A  
Settlement Agreement between DEQ/AQD  
and Hot Iron, Inc.  
DEQ NOV No. 4259-08  
June 2009