

Keith Gaille

## 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 John Bunning Transfer Company, Inc. ("Bunning"), P.O. Box 128, Rock Springs, WY 82902 enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the violations cited in DEQ Notice of Violation Docket No. 4394-08 ("NOV"). The NOV alleges that Bunning failed to control fugitive dust in the operation of Bunning Pipe Yard ("Facility") located in Sweetwater County, Wyoming in violation of the Air 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, in lieu of litigation. To that end, Bunning 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)(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. Control measures for material handling may also include installation of hoods, fans and fabric filters to enclose and vent dusty materials."
6. On September 15, 2008, a DEQ/AQD inspector observed excessive fugitive dust from equipment operating at the Facility. No fugitive dust control measures were observed.
7. Based on the observations, the DEQ/AQD determined that Bunning failed to take appropriate measures to control fugitive dust emissions at the Facility as required by Chapter 3, Section 2(f) of the WAQSR.
8. DEQ/AQD and Bunning agree that Bunning shall pave the center section of the pipe yard where truck and loader traffic is heavy within sixty (60) days of the last signature on this agreement to fully resolve the violations alleged in the NOV in lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii). Bunning shall submit a Completion Report to the DEQ/AQD, Attn: Mr. Robert Gill, 122 West 25<sup>th</sup> Street, Cheyenne, WY 82002 within thirty (30) days after the completion of the paving project.
9. Bunning, by entering into this Agreement, does not concede or admit to any liability, and this Agreement constitutes no admission of fault or noncompliance.
10. Full compliance with the signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against Bunning based on the NOV and, solely in reliance on the Agreement, the DEQ/AQD will refrain from taking further enforcement action against Bunning for that particular violation.

11. Bunning waives any statute of limitations which may apply to an enforcement action by the DEQ/AQD involving the specific matters described in the NOV in the event that Bunning fails to fulfill its obligations under this Agreement.

12. This Agreement shall be admissible by either Bunning or DEQ/AQD (hereinafter Bunning 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.

13. 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.

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 three (3) 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 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.

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:

JOHN BUNNING TRANSFER COMPANY, INC.

By: Chris M Bunning 9/14/09  
Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: David Finley 9/23/09  
Date  
David Finley, AQD Administrator

By: John Corra 9/25/09  
Date  
John Corra, DEQ Director

APPRVAL AS TO FORM:

By: John S. Burbridge 9.23.09  
Date  
John S. Burbridge  
Senior Assistant Attorney General  
Attorney for DEQ/AQD