



# *Office of the Attorney General*

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December 18, 2009

Larry Madsen, Vice President  
Black Hills Bentonite, LLC  
P.O. Box 9  
Mills, WY 82644

RE: DEQ Notice of Violation No. 4573-09 issued to Black Hills-Settlement Agreement

Dear Mr. Madsen,

We are in receipt of the cash penalty in the above-referenced matter. Thank you for your professional courtesy.

Sincerely,

Heather L. Hunter  
Paralegal

## 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 Black Hills Bentonite, LLC ("Black Hills"), P.O. Box 9, Mills, Wyoming 82644 enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the violations cited in DEQ/AQD Notice of Violation Docket No. 4573-09 ("NOV"). The NOV alleges that Black Hills exceeded its permitted opacity limit of 10% for the 1-M (Mills Rotary Dryer) at its Mills Complex located in Natrona County, Wyoming in violation of the Air Quality Act ("Act"), applicable Wyoming Air Quality Standards and Regulations ("WAQSR") and permit 3-1-176.

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, Black Hills 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. § 35-11-801(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 3 of the WAQSR prescribes the applicability and procedures for issuing permits to major sources under DEQ/AQD's operating permitting program.
4. Permit 3-1-176 was issued to Black Hills on or about April 24, 2007.
5. Condition F3 of permit 3-1-176 limits the opacity of visible emissions from the Mills Rotary Dryer Baghouse (1-M) to 10 percent.
6. Condition P60-UUU3 of permit 3-1-176 requires that Black Hills install, calibrate, maintain and operate a Continuous Opacity Monitoring System on each dryer, to measure and record opacity of emissions discharged into the atmosphere from unit 1-M. Condition P60-UUU3 also requires that the Continuous Opacity Monitoring Systems meet all other requirements of WAQSR, Chapter 5, Section 2 and 40 CFR Part 60, Subpart UUU and except for system breakdowns, repairs, calibration checks and zero and span adjustments all Continuous Opacity Monitoring Systems shall be in continuous operation.
7. A DEQ/AQD review of Black Hills excess emission reports showed a 1-M noncompliance rate with the opacity limit at 13.2% during the second quarter of 2009.
8. Black Hills agrees to pay the DEQ/AQD five thousand dollars and no cents (\$5,000.00) as a stipulated settlement amount. Black Hills shall make full payment of the settlement amount by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty (30) days after Black Hills has been notified by DEQ/AQD that the final signature has been affixed to the Agreement. Black Hills shall mail the payment to John S. Burbridge, Senior Assistant Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

9. Black Hills, 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 Black Hills based on the NOV and, solely in reliance on the Agreement, the DEQ/AQD will refrain from taking further enforcement action against Black Hills for that particular violation.

11. Black Hills 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 Black Hills fails to fulfill its obligations under this Agreement.

12. This Agreement shall be admissible by either Black Hills or DEQ/AQD (hereinafter Black Hills 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:

BLACK HILLS BENTONITE. LLC

By: Larry Madson 11-18-09  
VP + CFO Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: David Finley 11/20/09  
David Finley, AQD Administrator Date

By: John Corra 11/20/09  
John Corra, DEQ Director Date

APPROVAL AS TO FORM:

By: John S. Burbridge 11-20-09  
John S. Burbridge Date  
Senior Assistant Attorney General  
Attorney for DEQ/AQD