

## 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 Basin Electric Power Cooperative, 1717 E. Interstate Ave., Bismarck, ND 58503-0564 ("Basin Electric"), enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4342-08 ("NOV"). As more fully set forth below, the NOV alleges that Basin Electric failed to control fugitive dust from the coal stockpile at the Laramie River Station facility ("Facility") located in Platte County, Wyoming, thereby violating the Wyoming Environmental Quality Act ("Act"), applicable Wyoming Air Quality Standards and Regulations ("WAQSR") and DEQ/AQD Permit 3-1-102-1.

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, Basin Electric and the DEQ/AQD hereby stipulate and agree as follows:

1. Basin Electric is a generation and transmission cooperative corporation organized under the laws of the state of North Dakota engaged in the business of providing wholesale electric services to its members. The Laramie River Station is a three-unit coal-based steam electric generating station located in Platte County, Wyoming. Basin Electric owns a 42.27% undivided interest in the Laramie River Station. Other participants in the Laramie River Station include the City of Lincoln, Nebraska, operating the Lincoln Electric System, Heartland Consumers Power District, Western Minnesota Municipal Power Agency, Wyoming Municipal Power Agency and Tri-State G& T Association, Inc. An agreement among the Laramie River participants names Basin Electric as the project manager and operating agent.

2. The DEQ/AQD is responsible for enforcing the Act, the WAQSR and permits issued thereunder, including Permit 3-1-102-1.

3. WYO. STAT. ANN. § 35-11-801(a) states: "In granting permits, the director may impose such conditions as may be necessary to accomplish the purpose of this act which are not inconsistent with the existing rules, regulations and standards."

4. Chapter 6, Section 3 of the WAQSR prescribes the applicability and procedures for issuing permits to sources under Wyoming's Operating Permit Program.

5. On or about November 15, 2005, the DEQ/AQD issued Permit 3-1-102-1 to Basin Electric for the Facility. Condition No. F7 of Permit 3-1-102-1 requires that coal storage pile activities be conducted so as to minimize fugitive dust, coal storage pile

sealant be maintained such that it remains an effective dust suppressant and that water be used on active portions of the coal storage pile to control fugitive dust emissions from vehicular traffic. On July 11, 2008, DEQ/AQD Engineer, Mr. Thor Nordwick, observed a significant amount of dust generated at the coal stockpile and from vehicles operating near the stockpile. The DEQ/AQD alleges Basin Electric failed to control fugitive dust from the coal stockpile on July 11, 2008, thereby violating the Act, the WAQSR, and Condition No. F7 of Permit 3-1-102-1.

6. On August 8, 2008, the DEQ/AQD issued the NOV to Basin Electric alleging that Basin Electric failed to comply with the Act, the WAQSR and Permit 3-1-102-1 by failing to control fugitive dust from the coal stockpile on July 11, 2008.

7. On February 9, 2009, DEQ/AQD Inspectors, Mr. Glenn Spangler and Mr. Thor Nordwick, observed significant fugitive dust from a scraper operating on the stockpile and did not observe a water truck in operation to control the fugitive dust. Basin Electric disputes the DEQ/AQD's observations. The DEQ/AQD alleges Basin Electric failed to comply with the Act, the WAQSR and Condition F7 of Permit 3-1-102-1 by failing to control fugitive dust from the coal stockpile on February 9, 2009.

8. DEQ/AQD and Basin Electric agree 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. Fugitive Dust Control Plan. Basin Electric agrees to implement the Fugitive Dust Control Plan attached hereto as Attachment A, by no later than the date upon which the DEQ notifies Basin Electric that the last signature has been affixed to this Agreement. The Fugitive Dust Control Plan generally sets forth operating procedures for all operations and traffic on the Facility's coal stockpile and its associated roadways.

B. Initial Application of Dust Suppressant. Basin Electric agrees to make an initial application of dust suppressant (Attachment A, Fugitive Dust Control Plan, Coal Handling Operations, Item D) by no later than forty-five (45) days after the last signature has been affixed to this Agreement.

C. Dust Control Shroud. Basin Electric agrees to install a dust control shroud at the coal load out station by October 31, 2010, to minimize dust generation during load out operations.

D. Reconfiguration of Water Loadout System. Basin Electric agrees to reconfigure the water system to improve reliability by including a water truck loading station at the coal pile by October 31, 2010.

E. Supplemental Environmental Project ("SEP"). Basin Electric agrees to fund a SEP known as the Wheatland Lagoon Aeration pilot study ("Wheatland Lagoon SEP") which will evaluate emerging technology for aeration and enhancing lagoon waste water treatment.

i. A SEP is a project that is beneficial for the environment and is otherwise not required by applicable statutes, regulations, permits or orders.

ii. The Wheatland Lagoon SEP will benefit the environment by demonstrating reduction of odors generated by improved aeration and nitrification of ammonia to reduce the impact of ammonium. Reducing the ammonium in the wastewater will reduce the amount of ammonia released to the atmosphere.

iii. Basin Electric agrees to fund this SEP by paying to the DEQ/AQD the amount of twenty thousand dollars and no cents (\$20,000.00) ("SEP Funding Amount"). Basin Electric shall make full payment of the SEP Funding Amount by check made payable to the DEQ/AQD, within thirty (30) days after the last signature has been affixed to this Agreement. Basin Electric shall mail the payment to Nancy Vehr, Sr. Assistant Attorney General, 123 Capitol Building, Cheyenne WY 82002.

iv. The DEQ/AQD agrees to use the SEP Funding Amount to pay any costs the DEQ incurs to implement the Wheatland Lagoon SEP. Any balance remaining after the DEQ/AQD has paid the Wheatland Lagoon SEP costs, or any SEP Funding Amount that has not been expended within one year, may be allocated by the DEQ for use towards any other DEQ authorized SEP.

v. Basin Electric certifies that as of the date it signs this Settlement Agreement, Basin Electric is not required to perform or develop this SEP by any federal, state or local law or regulation, nor is Basin Electric required to perform or develop this SEP pursuant to any other agreement or relief in any other case. Basin Electric further certifies that it has not received and is not presently negotiating to receive credit for this SEP in any other pending action.

9. Basin Electric, by entering into this Agreement, does not concede or admit to any of the factual allegations, or any liability or fault, and this Agreement constitutes no admission of the factual allegations, or liability or fault.

10. Full compliance with this signed Agreement shall constitute full satisfaction and release for all claims by the DEQ/AQD against Basin Electric based on NOV Docket No. 4342-08 and, solely in reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against Basin Electric for these particular violations.

11. In the event that Basin Electric fails to fulfill its obligations under this Agreement, Basin Electric 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. 4342-08.

12. This Agreement shall be admissible by either Basin Electric or the DEQ/AQD (hereinafter Basin Electric 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 Basin Electric 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 five (5) pages, and Attachment A, 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.

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:

BASIN ELECTRIC:

By: Michael Fluharty 12/31/09  
Michael Fluharty Date  
LRS Plant Manager

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY

By: David A. Finley 1/12/2010  
David A. Finley, AQD Administrator Date

By: John Corra 1/14/10  
John Corra, DEQ Director Date

APPROVAL AS TO FORM:

Nancy E. Vehr 12/21/2009  
Nancy E. Vehr, Sr. Asst. Attorney General Date  
Attorney for DEQ/AQD

Attachment A

**LARAMIE RIVER STATION**  
**COAL STOCKPILE**  
**FUGITIVE DUST CONTROL PLAN**

This Operating Procedure is written to control all operations and traffic on the Laramie River Station Coal Stockpile and its associated roadways. This procedure applies to all personnel at the LRS plant site and it is the responsibility of the LRS Superintendents and Supervisors to ensure that the employees and contractors strictly adhere to this procedure.

Coal Stockpile Area Vehicular Traffic

- A. There are five roads associated with the LRS Coal Stockpile (refer to attached Site Plan):
- 1) The paved road to the Rotary Dumper Building; there are no restrictions on the use of this road.
  - 2) The Scraper Load Out Electrical Building North access road; there are no restrictions on the use of this road. It has a maximum speed limit of 5 MPH for all non-coal handling equipment vehicles.
  - 3) The Coal Silos Access Road has the following restrictions:
    - i. The Coal Silo access road is to be used only to complete assigned work.
    - ii. Permission must be received from the Coal Yard Supervisor- or the Assistant Shift Supervisor in his absence- prior to accessing this road.
    - iii. The speed limit is a maximum of 5 MPH.
    - iv. It is the driver's responsibility to locate and yield to the Mobile Coal Handling Equipment.
  - 4) The Coal Loop Inside Road is restricted to Authorized Traffic Only. Typically this will be the BNSF contractor that services the locomotives.
  - 5) The Coal Loop Outside Road is to be used only to complete assigned work that requires entering the Rotary Dumper Building from the east side.
    - i. No thru traffic is allowed on this road. Access is restricted by posted signs.
    - ii. Permission must be received from the Coal Yard Supervisor or the Assistant Shift Supervisor in his absence prior to accessing this road.
    - iii. The speed limit is a maximum of 5 MPH.
  - 6) The personnel requiring use of unpaved roads at the coal stockpile must notify the Coal Yard Supervisor or the Assistant Shift Supervisor in his

absence. The Supervisor will ensure that these roads will receive the proper treatment to minimize opportunity for fugitive dust emissions.

- 7) Roads around the coal pile storage area will have speed limits posted and these speed limits will be adhered to by all plant personnel and contactors. Coal handling equipment may operate at higher speed as required by plant operations.
- B. Authorization to travel on the Coal Stockpile (travel to Conveyor 1A Head end/Tail end Conveyor 1B) must be obtained from the Coal & Yard Supervisor or the Assistant Shift Supervisor in his absence. When access is granted the maximum speed limit is 5 M.P.H.

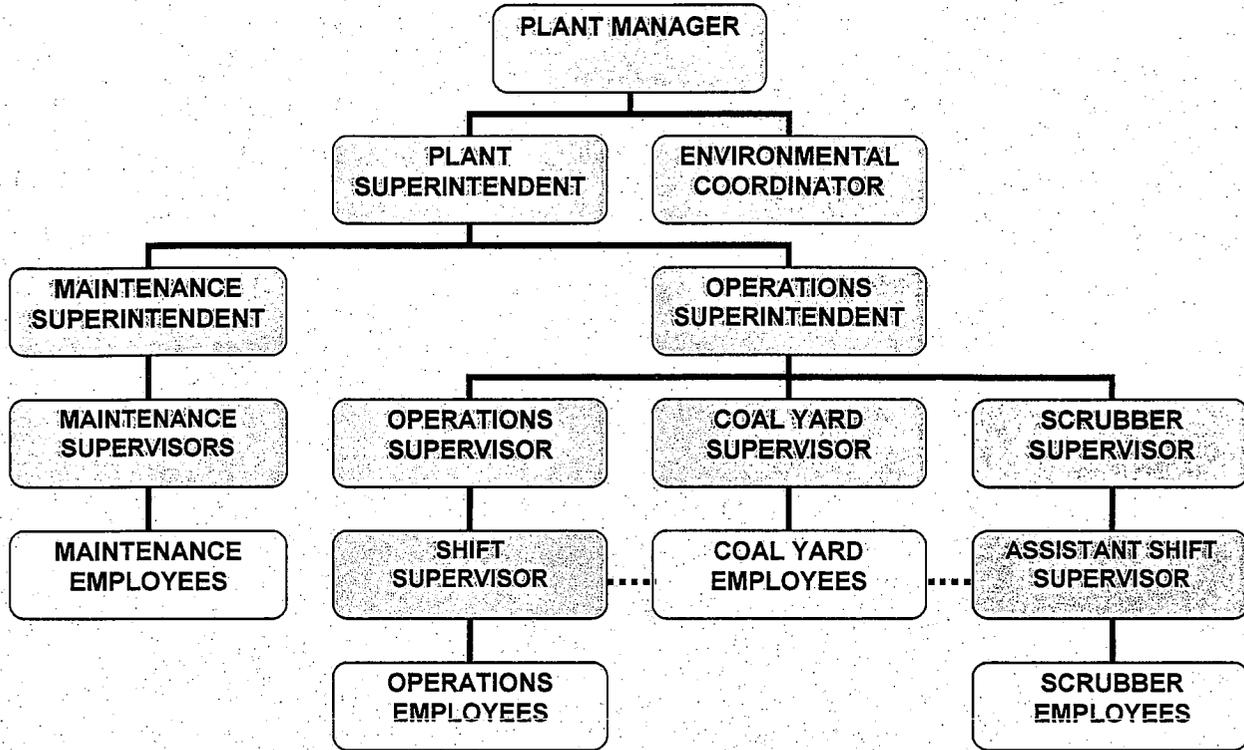
### Coal Handling Operations

- A. Routine Coal Handling operations require travel on the Coal Stockpile with heavy equipment. The Coal Stockpile slopes and top have been sealed to prevent fugitive dust. No traffic is allowed on this seal, except for seal maintenance.
- B. Weather conditions will be routinely monitored to ensure the live Coal stockpile is adequately wetted using the large water wagon and/or water truck to prevent fugitive dust. Operators working the yard are responsible to evaluate conditions of the coal pile, apply water as necessary to minimize dust and record their observations after every water wagon delivery. The Coal and Yard Supervisor is responsible to check the adequacy of dust control and, as conditions and activity require, take additional measures for dust control. The Assistant Shift Supervisor can authorize the use of an additional water truck when conditions are such that it becomes necessary.
- C. The following will be adhered to when coal handling requires heavy equipment on the live (not sealed) Coal Stockpile.
  - 1) While reclaiming or stockpiling, steps will be taken as necessary to minimize fugitive dust using the water wagon and/or water truck.
  - 2) After the coal handling operations are completed the area will be wet down and compacted as necessary to minimize fugitive dust.
- D. Unpaved roads around the coal stockpile will be treated with dust suppressant and water application as necessary to minimize fugitive dust.
- E. Paved roads will be cleaned on a regular basis to remove fines and other materials to minimize fugitive emissions.

## Training

- A. Training will be conducted by the Environmental Coordinator (Certified in Method 9), Coal Yard Supervisor (trained Method 9) and/or other suitably qualified individuals.
- B. Coal Yard: Employees whose primary functions involve daily work on or around the coal pile (coal handling, water application, dumper building / silo operations, etc.) will receive semiannual training that includes but is not limited to:
  - a. How to identify a fugitive dust situation;
  - b. Who to contact in the event that additional control measures need to be taken;
  - c. How to correctly operate the water wagon and/or water truck;
  - d. How to properly complete records of dust suppression activities including:
    - i. Volume of water applied.
    - ii. Visual observations as performed on the coal yard and surrounding roads.
    - iii. Records to be retained in Environmental Coordinator's office.
  - e. Appropriate techniques needed for dust control for unusual coal pile activities.
- C. All Employees: On an annual basis, all employees will receive training related to the fugitive dust control. This training includes, but is not limited to:
  - a. How to identify a fugitive dust situation;
  - b. Who to contact in the event that additional control measures need to be taken;
  - c. Procedures for accessing the coal yard roads for maintenance;
  - d. Other topics as appropriate to improve dust control activities.
- D. All Assistant Shift Supervisors will be certified Method-9 prior to performing Method 22-Like when evaluating the coal pile for fugitive dust.
- E. The Environmental Coordinator and one other employee TBD will maintain active Method 9 certification.
- F. Training Records will be kept on file in the Environmental Coordinator's office for a period of five years.

**Appendix A: Organizational Chart**



Employees in YELLOW will determine the need and request through their respective Supervisors additional dust control. Supervisors and Superintendents shall take the appropriate action to assure that the proper steps are taken to minimize the dust emissions, following this request, by communicating directly with the Coal Yard Supervisor, or through their respective Superintendent. During backshift operations, the Shift Supervisor and Assistant Shift Supervisor have responsibility for oversight of Coal Yard operations and the authority to assign additional personnel for dust control activities as required.