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BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

IN THE MATTER OF THE NOTICE OF VIOLATION	)	
ISSUED TO PEAK ASPHALT,	)	No. 4563-09
MR. KENNY CUSTER,	)	
1528 E. RAILROAD STREET	)	
RAWLINS, WYOMING 82301-6358	)	

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air quality Division ("DEQ/AQD"), Herschler building, 122 West 25th Street, Cheyenne, WY 82002, and Peak Asphalt ("Peak"), 1528 E. Railroad Street, Rawlins, Wyoming 82301-6358 enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the violations cited in DEQ/AQD Notice of Violation Docket No. 4563-09 ("NOV"). The NOV alleges that Peak failed to obtain an air quality permit prior to the construction and operation of its Peak Asphalt Facility ("Facility") located in Carbon 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, Peak 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 2 of the WAQSR prescribes the applicability and procedures for issuing permits to sources under DEQ/AQD's construction and modification permitting program.

4. Chapter 6, Section 2(a)(i) of the WAQSR states, "Any person who plans to construct any new facility or source, modify any existing facility or source, or to engage in the use of which may cause the issuance of or an increase in the issuance of air contaminants into the air of this state shall obtain a construction permit from the State of Wyoming, Department of Environmental Quality, before any actual work is begun on the facility."

5. On May 29, 2009, the DEQ/AQD received an odor complaint against Peak. In response, a DEQ/AQD inspector conducted odor monitoring at and around Peak's Facility. No odor violation was noted at the time of inspection, but communication between the DEQ/AQD and Peak revealed that the Facility was constructed in 1995 and never permitted.

6. Failure to obtain an air quality permit prior to commencing construction and operation of Peak's Facility is a violation of WYO. STAT. ANN. § 35-11-801 and WAQSR, Chapter 6, Section 2(a)(i).

7. Peak agrees to pay the DEQ/AQD five thousand dollars and no cents ($5,000.00) as a stipulated settlement amount. Peak 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 Peak has been notified by DEQ/AQD that the final signature has been affixed to the Agreement. Peak shall mail the payment to John S. Burbridge, Senior Assistant Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

8. Peak, by entering into this Agreement, does not concede or admit to any liability, and this Agreement constitutes no admission of fault or noncompliance.

9. Full compliance with the signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against Peak based on the NOV and, solely in reliance on the Agreement, the DEQ/AQD will refrain from taking further enforcement action against Peak for that particular violation.

10. Peak 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 Peak fails to fulfill its obligations under this Agreement.

11. This Agreement shall be admissible by either Peak or DEQ/AQD (herinafter Peak 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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:

PEAK ASPHALT

By: Paul Ersland
Paul Ersland V.P. Operations

2/1/2010
Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: David Finley, AQD Administrator

2/12/2010
Date

By: John Corra, DEQ Director

2/12/10
Date

APPROVAL AS TO FORM:

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

2-12-10
Date