



# Office of the Attorney General

**Governor**  
Dave Freudenthal

**Attorney General**  
Bruce A. Salzburg

Water and Natural Resources Division  
123 State Capitol  
Cheyenne, Wyoming 82002  
307-777-6946 Telephone  
307-777-3542 Fax

**Chief Deputy Attorney General**  
Elizabeth C. Gagen

**Division Deputy**  
Jay A. Jerde

## ROUTING MEMO

TO: AQD file

THROUGH: Steve Dietrich, Administrator *SAD*

Bob Gill, Compliance Program Manager *[Signature]*

FROM: Nancy Vehr, Sr. Asst. Attorney General *[Signature]*

DATE: 10/6/10

RE: *In re NOV issued to Koch Construction, Inc. - DEQ DN 4596-09*

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Attached for the DEQ/AQD file is a copy of the stipulated settlement check and an original copy of the Settlement Agreement.

I have sent EPA a copy of the Settlement Agreement.

I am closing the file on this matter. Please call me if you have any questions (7580).

**BEFORE THE  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
STATE OF WYOMING**

**IN THE MATTER OF THE NOTICE OF VIOLATION )  
ISSUED TO KOCH CONSTRUCTION, INC., ) No. 4596-09  
MR. AARON KOCH, )  
PO BOX 288 )  
DANIEL, WYOMING 83115 )**

**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 Koch Construction, Inc. ("Koch"), P.O. Box 288, Daniel, Wyoming 83115 enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the violation cited in DEQ Notice of Violation Docket No. 4596-09 ("NOV"). The NOV alleges that Koch failed to control fugitive dust during operations at Koch Pit located in Sublette County, Wyoming, in violation of the Air Quality Act ("Act"), applicable Wyoming Air Quality Standards and Regulations ("WAQSR") and permit CT-7572 issued to Koch.

WYO. STAT. ANN. § 35-11-901(a)(ii) (West 2009) authorizes stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, Koch and the DEQ/AQD hereby stipulate and agree as follows:

1. The DEQ/AQD is responsible for enforcing the Act, WAQSR and its permits.

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. 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 2 of the WAQSR prescribes the applicability and procedures for issuing permits to sources under DEQ/AQD's construction and modification permitting program.

5. Permit CT-7572 was issued to Koch for the Koch Pit on September 3, 2008. Permit CT-7572 includes condition 8, which states: "That all work areas, disturbed areas, and stockpiles shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust."

6. On July 29, 2009, a DEQ/AQD inspector observed significant fugitive dust from the Koch Pit and no fugitive dust control activities.

7. Based on the DEQ/AQD inspector's observations, it was determined that Koch failed to take appropriate measures to control fugitive dust emissions from its Koch Pit operations as required by the Act, WAQSR, and condition 8 of air quality permit CT-7572 issued to Koch.

8. Koch agrees to pay the DEQ/AQD one thousand five hundred dollars and no cents (\$1,500.00) as a stipulated settlement amount. Koch 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 Koch has been notified by DEQ/AQD that the final signature has been affixed to the Agreement. Koch shall mail the payment to John S. Burbridge, Senior Assistant Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

9. Koch, by entering into this Agreement, does not concede or admit to any liability, and this Agreement constitutes no admission of fault or noncompliance with the Act, WAQSR or permit CT-7572.

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

11. Koch 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 Koch fails to fulfill its obligations under this Agreement.

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

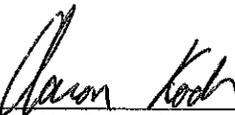
18. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in the

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.

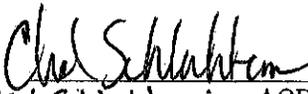
19. Each Party represents that they are authorized to enter into this Agreement and agree to be bound hereby. This Agreement shall become binding upon the Parties once executed by all Parties.

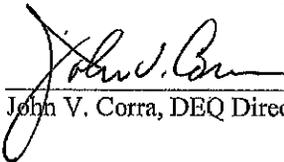
IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

KOCH CONSTRUCTION, INC.

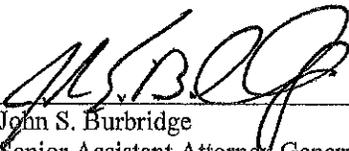
By:  3-23-2010  
Aaron Koch, President Date

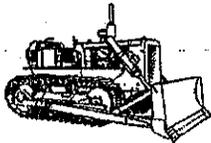
STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:  3/31/10  
Chad Schluchtem, AOD Administrator Date

By:  3/31/10  
John V. Corra, DEQ Director Date

APPROVAL AS TO FORM:

By:  3-31-10  
John S. Burbridge Date  
Senior Assistant Attorney General  
Attorney for DEQ/AQD



**KOCH CONSTRUCTION, INC.**  
 Ph. 307-859-8255  
 P. O. Box 288  
 Daniel, WY 83115

**1ST BANK OF EVANSTON**  
 PINEDALE, WY 82941  
 -99-0033/1023

8855

7/1/2010

PAY TO THE ORDER OF Wy Department of Environmental Quality

\$ \*\*1,500.00

One Thousand Five Hundred and 00/100 \*\*\*\*\* DOLLARS

Wy Department of Environmental Quality  
 Air Quality Division  
 122 West 25th Street  
 Cheyenne, WY 82002

MEMO

**COPY**  
 AUTHORIZED SIGNATURE

⑈008855⑈ ⑆102300336⑆ 55550830 3⑈

Details on Back Security Features Included

**KOCH CONSTRUCTION, INC.**

8855

Wy Department of Environmental Quality  
 Permits Gravel pit fines

7/1/2010

1,500.00

**RECEIVED**  
 JUL 06 2010  
 WYOMING ATTORNEY  
 GENERAL OFFICE, WNR

1st Bank of Pinedale

1,500.00