



# Office of the Attorney General

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May 25, 2010

Ed Smith, President  
Town & Country Plumbing  
144 S. Main Street  
Burns, WY 82053

RE: *In re: DEQ Notice of Violation No. 4627-10 issued to Town & Country Plumbing -  
Settlement Agreement*

Dear Mr. Smith,

I am writing to notify you that we received your May 7<sup>th</sup>, 2010 fax attaching the certification of course completion as required by paragraph 16 of the settlement agreement.

Thank you for your full compliance with the settlement agreement. This satisfies all claims by the DEQ/AQD for the above-referenced NOV.

Sincerely,

A handwritten signature in black ink, appearing to read "J.S. Burbridge".

John S. Burbridge  
Senior Assistant Attorney General

Enc.

cc: w/o encl DEQ/AQD-Karen Godman

*Kathy Gule*

BEFORE THE  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
STATE OF WYOMING

IN THE MATTER OF THE NOTICE OF VIOLATION )  
ISSUED TO TOWN & COUNTRY PLUMBING, ) Nos. 4627-10  
MR. JUSTIN L. SMITH, PRESIDENT )  
144 S. MAIN STREET )  
BURNS, WYOMING 82053 )

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 Town & Country Plumbing ("Town & Country"), 144 South Main Street, Burns, Wyoming 82053 enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the violations cited in DEQ Notice of Violation Docket No. 4627-10 ("NOV"). The NOV alleges that Town & Country failed to follow the following during renovation of the WYDOT building: 1) thoroughly inspect the facility prior to renovation; 2) provide prior written notification of a demolition/renovation project to the Administrator; 3) remove all Regulated Asbestos Containing Material ("RACM") from the facility being renovated prior to any activity that would break up, dislodge, or similarly disturb the material; 4) to use properly trained individuals for removal of the RACM; and 5) properly dispose of asbestos-containing waste material 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 2009) authorizes stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, Town & Country 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 8 of the WAQSR establishes asbestos emission standards for demolition, renovation, manufacturing, spraying and fabricating that apply to owners and operators of facilities where asbestos renovation/demolition activities are taking place.
4. Chapter 3, Section 8(i)(i) of the WAQSR states: "To determine which requirements of paragraphs (i)(i), (i)(ii), and (i)(iii) apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM [Asbestos Containing Material]."
5. Chapter 3, Sections 8(i)(ii)(A) & (C)(I) of the WAQSR states: "Each owner or operator of a demolition or renovation activity to which this section applies shall: (A) Provide the Administrator with written notice of intention to demolish or renovate, and (C)(I): At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site

preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (i)(i)(A) and (D) (except (i)(i)(D)(III) and (i)(i)(D)(IV)).”

6. Chapter 3, Section 8(i)(iii)(A) of the WAQSR states in part: “Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material...”

7. Chapter 3, Section 8(i)(iii)(H) of the WAQSR states: “No RACM [Regulated Asbestos Containing Material] shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless the individuals supervising and performing the operation have been trained in the provisions of this regulation and the means of complying with them.”

8. Chapter 3, Section 8(m)(ii)(A) of the WAQSR states: “All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at: (A) A waste disposal site operated in accordance with the provisions of paragraph (q).”

9. On June 18, 2009, a DEQ/AQD inspector conducted an inspection of a renovation at the WYDOT building located at 5300 Bishop Boulevard in Cheyenne, Wyoming. During the inspection, the DEQ/AQD inspector observed violations of Chapter 3, Section 8 of the WAQSR.

10. While conducting the inspection, the DEQ/AQD inspector found that two boilers had been taken apart and removed from the boiler room. Parts of the boiler were located onsite with exposed rope gasketing. Sample results for the rope gasketing on the boilers showed 100% chrysotile asbestos.

11. Based on the inspection, the DEQ/AQD inspector determined that Town & Country failed to conduct a thorough pre-renovation inspection for the presence of asbestos, including Category I and Category II non friable ACM, in violation of Chapter 3, Section 8(i)(i) of the WAQSR.

12. During the inspection the DEQ/AQD inspector checked the DEQ/AQD records to determine if notification was provided to the DEQ/AQD prior to commencement of the renovation project. The DEQ/AQD inspector determined that Town & Country failed to provide notice to the DEQ/AQD in violation of Chapter 3, Section 8(i)(ii) of the WAQSR.

13. During the inspection the DEQ/AQD inspector observed that there was a failure by Town & Country to remove all RACM from the facility prior to any activity that would break up, dislodge, or similarly disturb the RACM in violation of Chapter 3, Section 8(i)(iii) of the WAQSR.

14. Based the inspection, the DEQ/AQD inspector determined that RACM was removed by Town & Country employees that had not been properly trained in violation of Chapter 3, Section 8(i)(iii)(H) of the WAQSR.

15. Based on the inspection, the DEQ/AQD determined that Town & Country failed to properly deposit asbestos containing material at asbestos disposal site in violation of Chapter 3, Section 8(m)(ii).

16. Town & Country agrees to have Mr. Ed Smith attend and successfully complete an Asbestos Building Inspector Course listed on the national Directory of AHERA Accredited Courses (“NDAAC”). Mr. Smith shall complete the course and notify the DEQ/AQD within thirty (90) days after Town

& Country has been notified by DEQ/AQD that the final signature has been affixed to the Agreement. Town & Country shall mail the notification of completion and a copy of the certification from the course to John S. Burbridge, Senior Assistant Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

17. Town & Country, by entering into this Agreement, does not concede or admit to any liability, and this Agreement constitutes no admission of fault or noncompliance.

18. Full compliance with the signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against Town & Country based on the NOV and, solely in reliance on the Agreement, the DEQ/AQD will refrain from taking further enforcement action against Town & Country for those particular violations.

19. Town & Country 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 Town & Country fails to fulfill its obligations under this Agreement.

20. This Agreement shall be admissible by either Town & Country or DEQ/AQD (hereinafter Town & Country 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.

21. 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.

22. 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.

23. 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.

24. This Agreement, 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.

25. 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.

26. 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.

27. 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:

TOWN & COUNTRY PLUMBING

By: Edwin K. Smith 3/25/10  
SEC/TREAS. Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: Chad Schlutten 3/31/10  
Chad Schlutten, AQD Administrator Date

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

APPROVAL AS TO FORM:

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