

Keith Gulle

BEFORE THE  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
STATE OF WYOMING

IN THE MATTER OF THE NOTICE OF VIOLATION )  
ISSUED TO MCGARVIN-MOBERLY CONSTRUCTION, )No. 4634-10  
MR. GARY BERTSCH, VICE PRESIDENT, )  
PO BOX 1166, WORLAND, WY 82401 )

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 McGarvin-Moberly Construction ("McGarvin"), P.O. Box 1166, Worland, Wyoming 82401 enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the violation cited in DEQ Notice of Violation Docket No. 4634-10 ("NOV"). The NOV alleges that McGarvin failed to comply with the 20% opacity limit for the Buzzer Screen at the McGarvin-Moberly Asphalt Plant located in Carbon County, Wyoming, in violation of the Air Quality Act ("Act"), applicable Wyoming Air Quality Standards and Regulations ("WAQSR") and condition 7 of permit CT-1297.

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, McGarvin 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. Permits CT-1297 was issued to McGarvin on May 6, 1997. Permit CT-1297 includes condition 7 which limits visible emissions from all sources associated with the asphalt plant to 20% opacity.
6. On August 21, 2009, a DEQ/AQD inspector noted excessive fugitive dust from the McGarvin asphalt plant feed train. In response to the DEQ/AQD inspector's observation, a site visit was conducted and an opacity reading of 53% was measured at the Buzzer Screen.
7. Based on the DEQ/AQD inspector's observations, it was determined that McGarvin failed to take appropriate measures to control dust emissions at its Buzzer Screen located at the asphalt plant as required by the Act, WAQSR, and condition 7 of air quality permit CT-1297 issued to McGarvin.

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

9. McGarvin, 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-1297.

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

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

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

