

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

IN THE MATTER OF THE NOTICE OF VIOLATION)
ISSUED TO SCHERER CONSTRUCTION, LLC,)
MR. TIM SCHERER,) DOCKET NO. 4636-10
P.O. BOX 50187,)
CASPER, WY 82605)

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division ("DEQ/AQD"), Herschler building, 122 West 25th Street, Cheyenne, WY 82002, and Scherer Construction, LLC ("Scherer"), P.O. Box, Casper, WY 82605 enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the violations cited in DEQ Notice of Violation Docket No. 4636-10 ("NOV"). The NOV alleges that Scherer failed to comply with the 20% opacity limit for its asphalt plant ("Facility") located in Natrona County, Wyoming in violation of the Air Quality Act ("Act"), applicable Wyoming Air Quality Standards and Regulations ("WAQSR") and permit CT-1225.

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

1. The DEQ/AQD is responsible for enforcing the Act, WAQSR and permit CT-1225.

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. Chapter 3, Section 2(f)(ii)(A) of the WAQSR states: "Any person owning, operating or maintaining a new or existing material storage, handling and/or hauling operation shall minimize fugitive dust from such an operation. Such control measures may include the application of asphalt, oil, water or suitable chemicals on unpaved roads, material stockpiles and other surfaces which can give rise to airborne dusts. Control measures for material handling may also include installation and use of hoods, fans and fabric filters to enclose and vent dusty materials."

6. Permit CT-1225 was issued to Western Mobile Northern on June 18, 1996, and transferred to Scherer on May 5, 1997. Permit CT-1225 includes condition 7 which requires that visible emissions from all sources associated with the Facility not exceed 20% opacity.

7. On August 18, 2009, a DEQ/AQD engineer noted a dust plume rising to the sky from Scherer's Facility. In response to the observation a site visit was conducted and opacity readings of 36% and 40% were measured from the Facility. The readings were in excess of the 20% opacity limit prescribed by condition 7 of permit CT-1225.

8. Based on the DEQ/AQD inspector's observations, it was determined that Scherer failed to take appropriate measures to control dust emissions at its asphalt plant as required by the Act, WAQSR, and condition 7 of air quality permit CT-1225 issued to Scherer.

9. Scherer agrees to pay the DEQ/AQD two thousand dollars and no cents (\$2,000.00) as a stipulated settlement amount. Scherer 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 Scherer has been notified by DEQ/AQD that the final signature has been affixed to the Agreement. Scherer shall mail the payment to John S. Burbridge, Senior Assistant Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

10. DEQ/AQD and Scherer also agree that Scherer shall keep its conveyors at the Facility covered on the top and windward sides from the feed bins to asphalt drums at all times.

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

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

13. Scherer 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 Scherer fails to fulfill its obligations under this Agreement.

14. This Agreement shall be admissible by either Scherer or DEQ/AQD (hereinafter Scherer 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

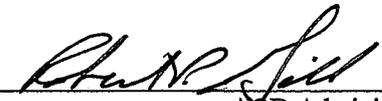
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IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

SCHERER CONSTRUCTION, LLC

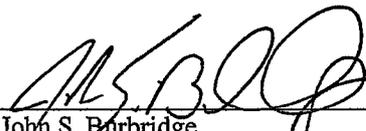
By:  6-1-10
Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:  6/9/10
Date
AOD Administrator

By:  6/9/10
Date
John Corra, DEQ Director

APPROVAL AS TO FORM:

By:  6-9-10
Date
John S. Burbridge
Senior Assistant Attorney General
Attorney for DEQ/AQD