

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

**IN THE MATTER OF THE NOTICE OF VIOLATION,
ISSUED TO AMERICAN COLLOID COMPANY,) DOCKET NO. 4641-10
KEVIN MUDGE, PLANT MANAGER,)
BOX 135 HRC 69, 666 HIGHWAY 212,)
COLONY, WYOMING 82431)**

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (“DEQ/AQD”), Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and American Colloid Company (“ACC”), Box 135, HRC 69, 666 Highway 212, Colony, WY 82431 enter into this Settlement Agreement (“Agreement”) to fully and finally resolve without litigation the violation cited in DEQ Notice of Violation, Docket No. 4641-10 (“NOV”). The NOV alleges that ACC failed to control fugitive dust from the haul road at its Colony East and Colony West Plants (“Facility”), in violation of the Air Quality Act (“Act”), applicable Wyoming Air Quality Standards and Regulations (“WAQSR”) and air quality permits MD-1591A2 and MD-1590A issued to ACC.

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

1. The DEQ/AQD is responsible for enforcing the Act, the 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. Chapter 3, Section 2(f)(i)(A) of the WAQSR states: “Any person engaged in clearing or leveling of land, earthmoving, excavation, or movement of trucks or construction equipment over access haul roads or cleared land shall take steps to minimize fugitive dust from such activities. Such control measures may include frequent watering and/or chemical stabilization.”

4. 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 operations. 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 dust...”

5. Chapter 6, Section 2 of the WAQSR prescribes the applicability and procedures for issuing permits to sources under Wyoming’s construction and modification permitting program.

6. Permit MD-1590A was issued to ACC on December 7, 2007. Condition 14 of permit MD-1590A requires that all unpaved portions of haul roads, access roads, and work areas shall be treated with water and/or chemical suppressants on a schedule sufficient to control fugitive dust from vehicular traffic and wind erosion.

7. Permit MD-1591A2 was issued to ACC on March 10, 2008. Condition 13 of permit MD-1591A2 requires that all unpaved portions of haul roads, access roads, and work areas shall be treated with water and/or chemical suppressants on a schedule sufficient to control fugitive dust from vehicular traffic and wind erosion.

8. On September 23, 2009, DEQ/AQD inspectors observed excessive fugitive dust from haul trucks traveling the haul road at ACC's Facility. No water trucks were observed by the inspectors.

9. Failure to control fugitive dust at ACC's haul road violates Condition 13 of permit MD-1591A2 and Condition 14 of permit MD-1590A, Chapter 3, Section 2 of the WAQSR and the Act.

10. ACC agrees to pay the DEQ/AQD seven thousand five hundred dollars and no cents (\$7,500.00) as a stipulated settlement amount. ACC 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 ACC has been notified by DEQ/AQD that the final signature has been affixed to the Agreement. ACC shall mail the payment to John S. Burbridge, Senior Assistant Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

11. ACC, 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 ACC based on the NOV and, solely in reliance on the Agreement, the DEQ/AQD will refrain from taking further enforcement action against ACC for that particular violation.

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

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

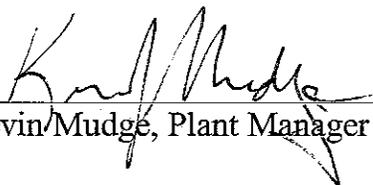
19. The State of Wyoming and the DEQ/AQD do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to WYO. STAT. ANN. § 1-39-104(a) and all other state law.

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.

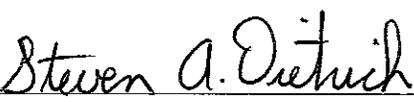
21. Each Party represents that they are authorized to enter into this Agreement and agree to be bound hereby. This Agreement shall become binding upon the Parties once executed by all Parties.

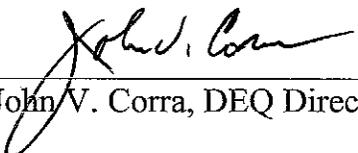
IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

AMERICAN COLLOID COMPANY

By:  9/20/2010
Kevin Mudge, Plant Manager Date

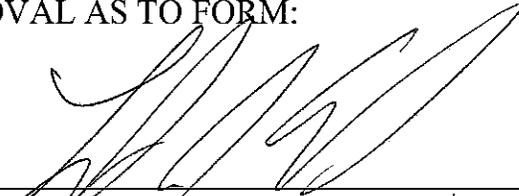
STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:  10-12-10
Steven A. Dietrich, AQD Administrator Date

By:  12/8/10
John V. Corra, DEQ Director Date

APPROVAL AS TO FORM:

By:



~~John S. Burbidge~~ Luke J. Esch
Senior Assistant Attorney General
Attorney for DEQ/AQD

10 / 18 / 10
Date

APPROVAL AS TO FORM:

By:



Kathleen B. Dixon
CHAPIN & DIXON, LLP
Attorney for American Colloid Company

9 / 27 / 10
Date