

10/27/10 DRAFT SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (“DEQ/AQD”), Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and Fresh Air Environmental Solutions, Inc. (“FAES”) 367 W. 1600 S, Salt Lake City, UT 84115, enter into this Settlement Agreement (“Agreement”) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4740-10 (“NOV”). The NOV alleged that FAES failed to adequately wet regulated asbestos-containing material (“RACM”) during stripping operations, failed to properly wrap and label asbestos-containing waste material (“ACWM”) to be transported offsite and, failed to placard vehicles used for loading/unloading and transporting ACWM during the renovation of the Rock Springs High School (“Facility”) located at 1375 James Drive in Rock Springs, Sweetwater County, Wyoming, thereby violating the Wyoming Environmental Quality Act (“Act”) and applicable Wyoming Air Quality Standards and Regulations (“WAQSR”).

WYO. STAT. ANN. § 35-11-901(a)(ii) (West 2010) authorizes stipulated settlement, including payment of a penalty, implementation of compliance schedules or other settlement conditions in lieu of litigation. To that end, FAES and the DEQ/AQD hereby stipulate and agree as follows:

1. Fresh Air Environmental Solutions, Inc. is a Utah corporation.
2. The DEQ/AQD is responsible for enforcing the Act and the WAQSR.
3. 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.”
4. Chapter 3, Section 8 of the WAQSR establishes in part asbestos emission standards applicable to owners and operators of facilities undergoing renovation or demolition.
5. Chapter 3, Section 8(i)(iii)(C) of the WAQSR requires owners and operators of facilities undergoing renovation to adequately wet RACM “[w]hen RACM is stripped from a facility component while it remains in place in the facility[.]”
6. Chapter 3, Section 8(m)(i)(A)(V) of the WAQSR requires owners and operators of facilities undergoing renovation to “label containers or wrapped [ACWM] materials with the name of the waste generator and the location at which the waste was generated.”

7. Chapter 3, Section 8(m)(iii) of the WAQSR requires owners and operators of facilities undergoing renovation to “[m]ark vehicles used to transport [ACWM] during loading and unloading of waste so that signs are visible[.]”

8. On or about June 9, 2010, the DEQ/AQD Asbestos Program Coordinator inspected the Facility in response to a notification received by the DEQ/AQD. During her inspection, the DEQ/AQD Asbestos Coordinator observed the asbestos floor tile and stair treads being removed were not wet inside the work area or the waste bags; the waste material prepared for transport was in unlabeled bags; and there were no signs posted on the waste dumpster during loading and unloading.

9. On September 20, 2010, the DEQ/AQD issued the NOV to FAES alleging that FAES failed to comply with certain provisions of Chapter 3, Section 8 of the WAQSR during Facility renovation.

10. The DEQ/AQD and FAES agree to resolve the alleged violations, described above and set forth in the NOV, in lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii) by having FAES pay the DEQ/AQD two thousand five hundred dollars and no cents (\$2,500.00) as a stipulated cash penalty. FAES shall make full payment by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty (30) days after FAES has been notified that the final signature has been affixed to this Agreement. FAES shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

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

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

13. In the event that FAES fails to fulfill its obligations under this Agreement, FAES waives any statute of limitation claims which may apply in an enforcement action by the DEQ/AQD involving the specific matters described in the NOV.

14. This Agreement shall be admissible by either FAES or the DEQ/AQD (hereinafter the DEQ/AQD may be referred to individually as “Party” and collectively as “Parties”) without objection by the other Party only in an action between these Parties relating to the violations alleged herein; provided, however, that nothing herein constitutes an admission by FAES of liability or fault.

15. Neither Party shall have any claim against the other for attorney fees or other costs incurred with the allegations resolved hereby, including costs incurred in the preparation of this Agreement. Each Party shall bear its own attorney fees and costs, if any, incurred through the date this Agreement is signed by the 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 that 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 this 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 any 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.

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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:

FRESH AIR ENVIRONMENTAL SOLUTIONS, INC.:

By: John Tippetts 12/10/10
Name: John Tippetts Date
Title: V.P.

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: Steven A. Dietrich 12-3-10
Steven A. Dietrich, AQD Administrator Date

By: John Corra 12/3/10
John Corra, DEQ Director Date

APPROVAL AS TO FORM:

Nancy E. Vehr 12/1/2010
Nancy E. Vehr, Sr. Asst. Attorney General Date
Attorney for DEQ/AQD