

## SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division ("DEQ/AQD"), Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, and Fisher Construction Inc. ("Fisher"), 235 Moore Lane, Billings, MT 59101, enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4795-11 ("NOV"). The NOV alleged that Fisher failed to: thoroughly inspect for the presence of asbestos prior to renovation; provide prior written notification of the demolition/renovation project to DEQ/AQD; use trained individuals to strip, remove, handle or disturb Regulated Asbestos Containing Material ("RACM"); adequately wet the RACM in preparation for disposal; and properly dispose of Asbestos-Containing Waste Material ("ACWM") during the demolition/renovation of the Douglas Care Center located at 1108 Birch Street in Douglas, Converse County, Wyoming ("Facility"), 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) authorizes stipulated settlement, including payment of a penalty, implementation of compliance schedules, or other settlement conditions in lieu of litigation. To that end, Fisher and DEQ/AQD hereby stipulate and agree as follows:

1. Fisher is a Montana corporation.
2. DEQ/AQD is the executive branch agency of Wyoming government responsible for enforcing the Act and the WAQSR.
3. WYO. STAT. ANN. § 35-11-201 states that "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 for demolition, renovation, manufacturing, spraying and fabricating that apply to owners and operators of facilities where renovation or demolition activities are taking place.
5. Chapter 3, Section 8(i)(i) of the WAQSR requires owners and operators of facilities undergoing renovation or demolition to "thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos" before "the commencement of the demolition or renovation."

6. Chapter 3, Section 8(i)(ii) of the WAQSR requires owners and operators of facilities undergoing renovation or demolition to provide the DEQ/AQD with "written notice of the intention to demolish or renovate" at least ten working days before the commencement of demolition or renovation.

7. Chapter 3, Section 8(i)(iii)(F)(I) of the WAQSR requires that operators adequately wet all RACM and ensure that it remains wet until collected and contained or treated in preparation for disposal.

8. Chapter 3, Section 8(i)(iii)(H) of the WAQSR prohibits the stripping, removal, handling, or otherwise disturbing RACM unless "the individuals supervising and performing the operation have been trained in the provisions of this regulation and the means of complying with them."

9. Chapter 3, Section 8(m)(ii) of the WAQSR requires operators to deposit all asbestos-containing waste material as soon as is practicable at a waste disposal site meeting the requirements of WAQSR Ch. 3, Section 8(q) or an EPA-approved site that converts RACM and asbestos-containing waste material into asbestos-free material according to the requirements of WAQSR Ch. 3, Section 8(r).

10. On two occasions (October 26, 2010 and January 5, 2011), the DEQ/AQD inspected the renovation activities occurring at the Facility. The DEQ/AQD observed the disturbance and removal of suspected asbestos containing materials including: mudded pipe joints, spray-on acoustic ceilings, wallboard system walls and ceilings, 9" floor tile with mastic, and 12" ceiling tile with glue dots. Fisher arranged for the sampling of some suspected asbestos containing materials. The results of the sampling analysis indicated that the following materials were RACM: the mudded joint material containing 15% chrysotile asbestos and 2% amosite asbestos; the spray-on acoustic ceilings containing 2% chrysotile asbestos; and the wallboard system walls and ceilings containing trace amounts of chrysotile asbestos.

Upon further investigation, the DEQ/AQD determined that Fisher: had not conducted a thorough inspection at the site prior to the renovation; removed and/or disturbed RACM; failed to utilize proper work practices during this disturbance; had not properly packaged the RACM for disposal; had taken the RACM to a local landfill which is not approved to accept RACM; and the Fisher employees removing the RACM had not received any asbestos training. Also, based on a review of the DEQ/AQD's records, the DEQ/AQD determined that Fisher had not provided DEQ/AQD with notification of intent to renovate the Facility prior to starting the renovation.

11. On January 18, 2011, DEQ/AQD issued the NOV to Fisher, alleging that Fisher failed to comply with certain provisions of Chapter 3, Section 8 of the WAQSR prior to and during the renovation of the Facility.

12. DEQ/AQD and Fisher 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) for the total amount of four thousand two hundred dollars and no cents (\$4,200.00), payable as follows:

- a. Fisher shall pay the DEQ/AQD two thousand two hundred dollars and no cents (\$2,200.00) as a stipulated cash penalty. Fisher shall make full payment by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty (30) days after Fisher has been notified that final signature has been affixed to this Agreement. Fisher shall mail payment to Nancy Vehr, Senior Assistant Attorney General, 123 Capitol Building, Cheyenne, Wyoming 82002.
- b. In lieu of paying the remaining two thousand dollar and no cents (\$2,000.00) balance, Fisher agrees to have 5 employees attend and successfully complete the 24-hour Building Inspector Course listed on the National Directory of AHERA Accredited Courses (NDAAC) within sixty (60) days after Fisher has been notified by the DEQ/AQD that the final signature has been affixed to this Agreement ("Course Attendance Requirement"). Within seventy-five days after Fisher has been notified that the final signature has been affixed to this Agreement, Fisher shall send copies of the course invoices, notification of completion and copies of certifications from the course to Karen J. Godman, 122 West 25<sup>th</sup> Street, Herschler Building 2-E, Cheyenne, WY 82002 ("Course Documentation Requirement").
- c. In the event that Fisher does not complete the Course Attendance Requirement or the Course Documentation Requirement, Fisher agrees to pay the DE/AQD the remaining two thousand dollar and no cents (\$2,000.00) balance within ninety days after Fisher has been notified that the final signature has been affixed to this Agreement.

13. Fisher, 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.

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

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

16. This Agreement shall be admissible by either Fisher or DEQ/AQD without the objection of the other party to this Agreement only in an action between these parties relating to the violations alleged herein; provided, however, that nothing herein constitutes an admission by Fisher of liability or fault.

17. Neither party to this Agreement 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 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.

18. 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.

19. 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 venue shall be the First Judicial District, Laramie County, Wyoming.

20. This Agreement, consisting of five (5) pages, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

21. The State of Wyoming and 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.

22. 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.

23. 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 dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

FISHER CONSTRUCTION, INC.:

By: James Berve 4-5-11  
James Berve, Title: Pres. Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: Steven A. Dietrich 4-13-11  
Steven A. Dietrich, AQD Administrator Date

By: John V. Corra 4/13/11  
John V. Corra, DEQ Director Date

APPROVAL AS TO FORM:

Nancy E. Vehr 3/31/11  
Nancy E. Vehr, Senior Assistant Attorney General Date  
Attorney for DEQ/AQD