

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (“DEQ/AQD”), Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and M-I, LLC, Road 26, Lane 33, Greybull, WY 82426, (“M-I, LLC”), enter into this Settlement Agreement (“Agreement”) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4856-11 (“NOV”). As more fully set forth below, the NOV generally alleges that M-I, LLC failed to control fugitive dust emissions from hauling activities at the Greybull Plant facility (“Facility”) located in Big Horn County, Wyoming, thereby violating the Wyoming Environmental Quality Act (“Act”) and the 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, M-I, LLC and the DEQ/AQD hereby stipulate and agree as follows:

1. M-I, LLC is a Delaware limited liability company that owns and/or operates the Facility.
2. The DEQ/AQD is responsible for enforcing the Act and the WAQSR.
3. Wyo. Stat. Ann. § 35-11-201 states: “[n]o 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 2(f) of the WAQSR specifies fugitive dust control requirements. Chapter 3, Section 2(f)(ii) states, “[a]ny 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 dust.”
5. On June 7, 2011, in response to several dust complaints, the DEQ/AQD inspected the Facility and observed excessive fugitive dust from M-I, LLC haul trucks using Potato Ridge Road.
6. On June 22, 2011, the DEQ/AQD issued the NOV to M-I, LLC alleging that M-I, LLC failed to adequately control fugitive dust emissions from the M-I, LLC’s haul trucks using Potato Ridge Road as required by the Act and Chapter 3, Section 2(f)(ii) of the WAQSR.

7. In lieu of litigation, the DEQ/AQD and M-I, LLC agree that to resolve the violation alleged in the NOV, M-I, LLC shall pay the DEQ/AQD a total amount of two thousand five hundred dollars and no cents (\$2,500.00) as a stipulated civil penalty. M-I, LLC shall make full payment by check made payable to the DEQ/AQD, within thirty (30) days after M-I, LLC has been notified by the DEQ/AQD that the final signature has been affixed to this Agreement. M-I, LLC shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

8. M-I, LLC, by entering into this Agreement, neither admits nor denies the validity of any allegation contained in the NOV, nor does M-I, LLC concede or admit to any liability or fault, and this Agreement constitutes no admission of fault or non-compliance.

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

10. M-I, LLC 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 M-I, LLC fails to fulfill its obligations under this Agreement.

11. This Agreement shall be admissible by either M-I, LLC or DEQ/AQD (hereinafter M-I, LLC and 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 M-I, LLC of liability or fault.

12. Neither Party hereto shall have any claim against the other for attorneys' 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 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.

13. 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.

14. 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.

~~15. 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.~~

16. 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 sovereign pursuant to WYO. STAT. ANN. § 1-39-104(a) and all other state law.

17. 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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18. 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:

M-I, LLC:

By: Jay T. Fagley 9-27-11
Jay T. Fagley, Operations Manager Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: Steven A. Dietrich 10-4-11
Steven A. Dietrich, AQD Administrator Date

By: John Corra 10-5-11
John Corra, DEQ Director Date

APPROVAL AS TO FORM:

Nancy E. Vehr 9/26/2011
Nancy E. Vehr, Sr. Asst. Attorney General Date
Attorney for DEQ/AQD