

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (“DEQ/AQD”), Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and Black Hills Bentonite, LLC, P.O. Box 9, Mills, WY 82644 (“Black Hills Bentonite”), enter into this Settlement Agreement (“Agreement”) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4898-11 (“NOV”). As more fully set forth below, the NOV generally alleges that Black Hills Bentonite failed to comply with opacity monitoring requirements for the dryer dust collector system, initial performance testing of the Screen Baghouse and Hammer Mill and Tank Baghouse, its commitment to construct a three sided enclosure for granular storage, and failed to obtain a construction permit for the Carbon Dust Collector Baghouse prior to construction and operation at Black Hills Bentonite’s Thornton Plant facility (“Facility”) located in Weston County, Wyoming, thereby violating the Wyoming Environmental Quality Act (“Act”), applicable Wyoming Air Quality Standards and Regulations (“WAQSR”), and DEQ/AQD Permit Nos. CT-2408 and MD-1583.

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, Black Hills Bentonite and the DEQ/AQD hereby stipulate and agree as follows:

1. Black Hills Bentonite is a Wyoming Limited Liability Company that owns and/or operates the Facility. The Facility manufactures crushed and dried bentonite.
2. The DEQ/AQD is responsible for enforcing the Act, the WAQSR, and permits issued thereunder, including Permit Nos. CT-2408 and MD-1583.
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. 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.”
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. On June 26, 2001, DEQ/AQD issued Permit CT-2408 to Black Hills Bentonite for the Facility. Condition 12 of Permit CT-2408 limits visible emissions from

the dryer dust collector to ten percent opacity. Condition 12 also requires Black Hills Bentonite to demonstrate compliance with the opacity standard by installing and operating a continuous opacity monitoring system or performing daily opacity observations in accordance with 40 C.F.R., Part 60, Appendix A, Method 9.

7. On May 30, 2007, DEQ/AQD issued Permit MD-1583 to Black Hills Bentonite for the Facility. Condition 2 of Permit MD-1583 incorporates the commitments and descriptions set forth in the permit application, unless superseded by a specific permit condition. Black Hills Bentonite's permit application represented that granular product would be conveyed directly to a three sided enclosure for storage. Condition 8 of Permit MD-1583 requires Black Hills Bentonite to conduct initial performance tests of the Screen Baghouse and the Hammer Mill and Tank Baghouse.

8. On August 15, 2011, a DEQ/AQD Inspector conducted an inspection and record review of the Facility. The Inspector determined that Black Hills Bentonite had conducted daily see/no see observations on the dryer dust collector instead of installing or operating a continuous opacity monitoring system or performing daily Method 9 opacity observations. The Inspector also determined that Black Hills Bentonite had not conducted initial performance tests of the Screen Baghouse and the Hammer Mill and Tank Baghouse. The Inspector observed that Black Hills Bentonite had not constructed a three sided enclosure for storage of granular product and had constructed an extra baghouse known as the Carbon Dust Collector Baghouse. Subsequently, the Inspector determined that Black Hills Bentonite had not obtained an air quality construction permit before constructing and operating the Carbon Dust Collector Baghouse. Black Hills Bentonite disputes some or all of these findings.

9. On September 20, 2011, the DEQ/AQD issued the NOV to Black Hills Bentonite alleging that failing to comply with: a) opacity monitoring requirements for the dryer dust collector system; b) initial performance testing requirements for the Screen Baghouse and Hammer Mill and Tank Baghouse; c) permit application commitments to construct a three sided enclosure for granular storage; and d) failing to obtain a construction permit for the Carbon Dust Collector Baghouse prior to construction and operation at the Facility violated the Act, the WAQSR and Permits CT-2408 and MD-1583.

10. In lieu of litigation under Wyo. Stat. Ann. § 35-11-901(a)(ii), the DEQ/AQD and Black Hills Bentonite agree that Black Hills Bentonite will pay the DEQ/AQD ten thousand five hundred dollars and no cents (\$10,500.00) as a stipulated cash penalty to fully and finally resolve the violations alleged above and in the NOV. Black Hills Bentonite shall make full payment by check, made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty (30) days after Black Hills Bentonite has been notified by the DEQ/AQD that the final signature has

been affixed to this Agreement. Black Hills Bentonite shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

11. Black Hills Bentonite, 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 this signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against Black Hills Bentonite based on the NOV and, solely in reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against Black Hills Bentonite for these particular alleged violations.

13. Black Hills Bentonite 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 Black Hills Bentonite fails to fulfill its obligations under this Agreement.

14. This Agreement shall be admissible by either Black Hills Bentonite or the DEQ/AQD (hereinafter Black Hills Bentonite and the 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; provided, however, that nothing herein constitutes an admission by Black Hills Bentonite of liability or fault.

15. Neither Party hereto 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 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 five (5) 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.

21. 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 and their successors 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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22. 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.

BLACK HILLS BENTONITE, LLC:

By: Larry Madsen 11-4-11
Larry Madsen, Vice-President Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: Steven A. Dietrich 11-9-11
Steven A. Dietrich, AQD Administrator Date

By: John Corra 11/13/11
John Corra, DEQ Director Date

APPROVAL AS TO FORM:

Nancy E. Vehr 11/2/11
Nancy E. Vehr, Sr. Asst. Attorney General Date
Attorney for DEQ/AQD