

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (“DEQ/AQD”), Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and Hamaker Excavation, Inc. (“Hamaker”), 4391 North Third Street, Laramie, WY 82073, enter into this Settlement Agreement (“Agreement”) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4894-11 (“NOV”). As more fully set forth below, the NOV alleged that Hamaker failed to obtain DEQ/AQD construction permits for the crushing/screening equipment, material stockpiles and the pit facility (“Facility”) located at 4391 North Third Street, Laramie, Albany County, Wyoming before beginning work at the 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) (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, Hamaker and the DEQ/AQD hereby stipulate and agree as follows:

1. Hamaker is a Wyoming corporation that owns and/or operates the Facility.
2. The DEQ/AQD is responsible for enforcing the Act and the WAQSR.
3. Wyo. Stat. Ann. § 35-11-801(c) states: “A permit to construct is required before construction or modification of any industrial facility capable of causing or increasing air or water pollution in excess of standards established by the department is commenced.”
4. 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.
5. Chapter 6, Section 2(a)(i) of the WAQSR states: “Any person who plans to construct any new facility or source, modify any existing facility or source, or to engage in the use of which may cause the issuance of or an increase in the issuance of air contaminants into the air of this state shall obtain a construction permit from the State of Wyoming, Department of Environmental Quality before any actual work is begun on the facility.”
6. On both June 22, 2011 and July 20, 2011, a DEQ/AQD Engineer observed and inspected the operating Facility. A subsequent DEQ/AQD file review indicated that there were no air quality permits for the Facility.

7. Based on the results of DEQ/AQD's inspection and file review, the DEQ/AQD determined that Hamaker violated the Act and WAQSR by failing to obtain DEQ/AQD construction permits before constructing and operating the Facility.

8. The DEQ/AQD and Hamaker agree to resolve the alleged violations described above and more fully set forth in the NOV in lieu of litigation under Wyo. Stat. Ann. § 35-11-901(a)(ii), by having Hamaker pay the DEQ/AQD a stipulated cash penalty of one thousand five hundred dollars and no cents (\$1,500.00). Hamaker shall make full payment by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within 30 days after Hamaker has been notified that the final signature has been affixed to this Agreement. Hamaker shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

9. Hamaker, 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.

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

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

12. This Agreement shall be admissible by either Hamaker or the DEQ/AQD (hereinafter Hamaker and 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 Hamaker of liability or fault.

13. Neither Party hereto shall have any claim against the other for attorneys' fees or other costs incurred with the allegation 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.

14. 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.

15. 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.

16. 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.

17. 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.

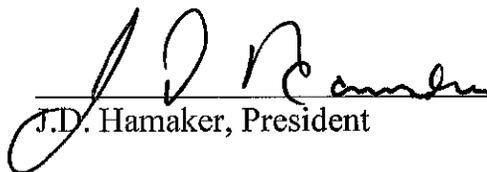
18. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement 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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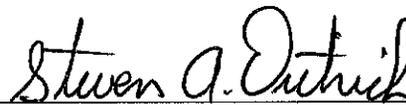
19. Each Party represents that they are authorized to enter into this Agreement and agree to be bound hereby. This Agreement shall become binding upon the Parties once executed by all Parties.

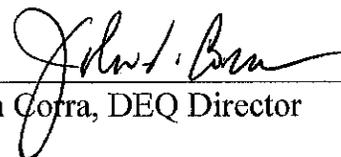
IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

HAMAKER EXCAVATION, INC.:

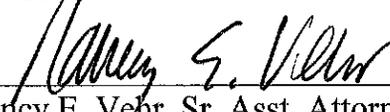
By:  11/01/11
J.D. Hamaker, President Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY

By:  11-23-11
Steven A. Dietrich, AQD Administrator Date

By:  11/23/11
John Corra, DEQ Director Date

APPROVAL AS TO FORM:

 10/18/11
Nancy E. Vehr, Sr. Asst. Attorney General Date
Attorney for DEQ/AQD