

AMENDMENT TO SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, and Mark Sisneros, doing business as SafeAir (SafeAir), 329 West Allison Road, Cheyenne, Wyoming 82007, entered into a Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4816-11 (NOV).

As a result of financial hardship, SafeAir requested that DEQ/AQD allow SafeAir to pay the stipulated civil penalty set forth in the Agreement on a payment schedule. DEQ/AQD has agreed to SafeAir's request, but in so doing has not waived its right to require strict performance of the Agreement and this Amendment.

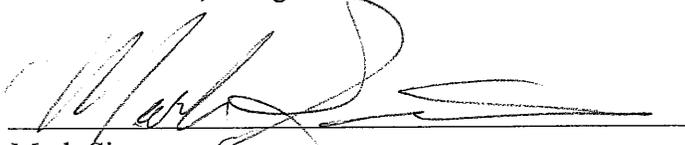
In accordance with Paragraph 18 of the Agreement, this writing amends Paragraph 12 of the Agreement as follows:

12. DEQ/AQD and SafeAir 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 SafeAir pay DEQ/AQD one thousand five hundred seventy-five dollars and no cents (\$1,575.00) as a stipulated cash penalty. SafeAir shall make three payments by check each in the amount of five-hundred and twenty-five dollars (\$525.00) made payable to the Wyoming Department of Environmental Quality, Air Quality Division on the following dates: October 20, 2011, November 19, 2011, and December 19, 2011. SafeAir shall mail payment to Jeremiah I. Williamson, Assistant Attorney General, 123 Capitol Building, Cheyenne, Wyoming 82002.

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

MARK SISNEROS, doing business as SAFEAIR:

By: 
Mark Sisneros

Sept 21 - 11
Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: 
Steven A. Dietrich, AQD Administrator

10-28-11
Date

By: 
John V. Corra, DEQ Director

12/31/11
Date

APPROVAL AS TO FORM:


Jeremiah I. Williamson, Assistant Attorney General
Attorney for DEQ/AQD

11/5/12
Date

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, and Mark Sisneros, doing business as SafeAir (SafeAir), 329 West Allison Road, Cheyenne, Wyoming 82007, enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4816-11 (NOV). The NOV alleged that SafeAir's activities at the Wyoming Armory located at 2901 Armory Road, Laramie, Wyoming (facility) violated the Wyoming Environmental Quality Act (Act) and the Wyoming Air Quality Standards and Regulations (WAQSR). To wit, the NOV alleged that SafeAir failed to: thoroughly inspect the facility prior to renovation; remove all Regulated Asbestos Containing Materials (RACM) from the facility prior to activity that would break up, dislodge, or disturb RACM; use trained individuals to strip, remove, handle or disturb RACM; adequately wet RACM in preparation for disposal; and properly dispose of RACM.

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, SafeAir and DEQ/AQD hereby stipulate and agree as follows:

1. Mark Sisneros is an individual doing business as SafeAir.
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)(iii)(A) of the WAQSR requires owners and operators of facilities undergoing renovation or demolition to "[r]emove all RACM from a facility being

Settlement Agreement Between DEQ/AQD and Mark Sisneros, doing business as SafeAir

DEQ NOV No. 4816-11

April 2011

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demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.”

7. Chapter 3, Section 8(i)(iii)(H) of the WAQSR provides that “[n]o RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless the individuals supervising and performing the operation have been trained in the provisions of this regulation and the means of complying with them....Evidence that the required training has been completed shall be posted and made available for inspection by the Administrator at the demolition or renovation site.”

8. Chapter 3, Section 8(m)(i)(A) of the WAQSR requires that all asbestos-containing waste material be kept adequately wet during packaging and transport to an appropriate disposal facility.

9. Chapter 3, Section 8(m)(ii)(A) of the WAQSR requires that all asbestos-containing waste material be deposited as soon as is practical by the waste generator at an approved waste disposal site.

10. On or about January 21, 2011, Ms. Linda Dewitt, DEQ/AQD Asbestos Program Coordinator, inspected SafeAir’s renovation activities occurring at the facility. Ms. Dewitt noted suspect nine-inch floor tile and mastic being removed and requested a copy of the asbestos inspection for the area under renovation. Neither the owner of the site, the Wyoming Military Department, nor the operator, SafeAir, was able to produce sample results for the tile or the mastic. Ms. Dewitt noted bags of broken floor tile which were not adequately wet in the back of an open truck. Ms. Dewitt further observed an employee of SafeAir placing dry floor tile into a bag for disposal without benefit of water. Ms. Dewitt requested training certificates for the individuals working onsite, but no certificates were presented. After receiving approval, Ms. Dewitt collected samples of the floor tile and the mastic. Both the floor tile and the mastic contained twenty percent (20%) chrysotile asbestos. The floor tile became RACM when it was broken into small pieces, triggering work practices that include adequate wetting and disposal at an appropriate landfill. These are requirements of the WAQSR.

11. On March 15, 2011, DEQ/AQD issued the NOV to SafeAir, alleging that SafeAir failed to comply with certain provisions of Chapter 3, Section 8 of the WAQSR prior to and during renovation of the facility.

12. DEQ/AQD and SafeAir 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 SafeAir pay DEQ/AQD one thousand five hundred seventy-five dollars and no cents (\$1,575.00)

as a stipulated cash penalty. SafeAir shall make full payment by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty (30) days after SafeAir has been notified that final signature has been affixed to this Agreement. SafeAir shall mail payment to Jeremiah I. Williamson, Assistant Attorney General, 123 Capitol Building, Cheyenne, Wyoming 82002.

13. SafeAir, 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 SafeAir specifically alleged in the NOV, and solely in reliance on this Agreement DEQ/AQD will refrain from taking further enforcement action against SafeAir for these particular violations.

15. In the event that SafeAir fails to fulfill its obligations under this Agreement, SafeAir 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 SafeAir 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 SafeAir 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.

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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:

MARK SISNEROS, doing business as SAFEAIR:

By: 
Mark Sisneros

5/31/11
Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: Steven A. Dietrich
Steven A. Dietrich, AQD Administrator

6-7-11
Date

By: John V. Corra
John V. Corra, DEQ Director

6/2/11
Date

APPROVAL AS TO FORM:

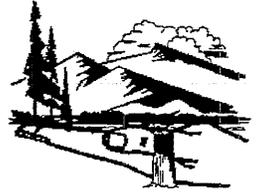
Jeremiah I. Williamson, Assistant Attorney General
Attorney for DEQ/AQD

6/3/11
Date



Department of Environmental Quality

*To protect, conserve and enhance the quality of Wyoming's
environment for the benefit of current and future generations.*



Matthew H. Mead, Governor

John Corra, Director

March 9, 2011

Mr. Mark Sisneros
Owner,
SafeAir
329 West Allison Road,
Cheyenne, WY 82007

RE: Notice of Violation

Dear Mr. Sisneros,

Enclosed you will find a Notice of Violation (NOV) issued to SafeAir by the Department of Environmental Quality, Air Quality Division, for the failure to comply with Chapter 3, Section 8 of the Wyoming Air Quality Standards and Regulations in the renovation of Wyoming Armory located at 2901 Armory Road, Laramie, Wyoming.

As the Department and this Division consider the failure to comply with asbestos requirements to be a serious matter, I am considering recommending that the Department refer this violation to the State Attorney General's office requesting a suit be filed in District Court to recover appropriate penalties.

If you would like to discuss settlement of this issue prior to referral to the Attorney General's office, please contact Ms. Karen Godman, Air Quality Compliance Program Principal, at 307-777-8601 no later than ten (10) days after receipt of this letter.

Should you have any questions regarding this matter, please feel free to contact me or Ms. Karen Godman.

Sincerely,

Steven A. Dietrich
Administrator
Air Quality Division

cc: Glenn Spangler
Linda Dewitt
Nancy Vehr
Bob Gill
Keith Guille



**BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING**

IN THE MATTER OF THE NOTICE OF VIOLATION)
ISSUED TO SAFEAIR) DOCKET NO. 4816-11
MR. MARK SISNEROS, OWNER)
329 WEST ALLISON ROAD,)
CHEYENNE, WYOMING 82007)

NOTICE OF VIOLATION

NOTICE IS HEREBY GIVEN THAT:

1) The Department of Environmental Quality, Division of Air Quality has found SafeAir to be in violation of Chapter 3, Section 8 of the Wyoming Air Quality Standards and Regulations as a result of the renovation of the Wyoming Armory located at 2901 Armory Road, Laramie, Wyoming.

2) Chapter 3, Section 8 of the Wyoming Air Quality Standards and Regulations establishes asbestos emission standards for demolition, renovation, manufacturing, spraying and fabricating that apply to owners and operators of facilities where renovation/demolition activities are taking place.

3) On January 21, 2011, Ms. Linda Dewitt, Asbestos Program Coordinator, conducted an inspection of a renovation at the Wyoming Armory located at 2901 Armory Road in Laramie, Wyoming. While conducting the inspection, Ms. Dewitt noted suspect 9" floor tile and mastic being removed. Ms. Dewitt then requested a copy of the asbestos inspection for the area under renovation. Neither the Wyoming Military Department nor SafeAir were able to produce sample results for the floor tile or the mastic. The facility representative explained that the floor had been sampled at some point and found positive but the mastic did not contain asbestos. SafeAir explained that based on this information, they were removing the floor tile with spud bars. Ms. Dewitt noted bags of the 9" floor tile broken into large and small pieces in plastic bags which were not adequately wet and observed an employee of SafeAir dispose of dry floor tile and place them into a bag without benefit of water. She also noted bags of broken floor tile material in the back of the truck that did not contain any sign of moisture. Ms. Dewitt requested training certificates for the individuals working onsite and was told that as the mastic was not asbestos containing, they did not have the certificates onsite. Approval was granted to collect and analyze a sample of the floor tile and mastic. Sample results for floor tile returned at 20% chrysotile asbestos and mastic at 20% chrysotile asbestos. This floor tile became Regulated Asbestos Containing Material (RACM) when it was excessively broken into small pieces. This would initiate the requirement to keep the material in adequately wet condition and disposal of the waste at a landfill that can accept regulated waste.

4) Chapter 3, Section 8(i)(i) of the Wyoming Air Quality Standards and Regulations states, "To determine which requirements of paragraphs (i)(i), (i)(ii), and (i)(iii) apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II non friable ACM." Based on the site visit, no thorough inspection had been conducted at the site prior to the renovation.

5) Chapter 3, Section 8(i)(iii)(A) of the Wyoming Air Quality Standards and Regulations states, "Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal..." RACM (floor tile with mastic) was not removed prior to activity that significantly damaged the materials.

6) Chapter 3, Section 8(i)(iii)(H) of the Wyoming Air Quality Standards and Regulations states, "No RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless the individuals supervising and performing the operation have been trained in the provisions of this regulation and the means of complying with them..." Evidence that the required training has been completed shall be posted and made available for inspection by the Administrator at the demolition or renovation site." RACM was removed by employees that had not been properly trained. Evidence of training was not available or provided.

7) Chapter 3, Section 8(m)(i)(A) of the Wyoming Air Quality Standards and Regulations states in part, that all asbestos-containing waste material shall be kept adequately wet during packaging and transport to the appropriate disposal facility. The bags of floor tile did not contain any sign of moisture. There was no condensation, no water rings and no droplets observed in bags.

8) Chapter 3, Section 8(m)(ii)(A) of the Wyoming Air Quality Standards and Regulations states in part, that all asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at an approved waste disposal site. Asbestos containing waste was disposed of at a local landfill as general construction debris.

9) Said violations consist of failing to: 1) thoroughly inspect the facility prior to renovation, 2) remove all RACM from the facility prior to activity that would break up, dislodge, or disturb material, 3) use trained individuals to strip, remove, handle or disturb regulated asbestos containing material, 4) adequately wet the RACM in preparation for disposal and 5) properly dispose of asbestos-containing waste material. These are violations of Chapter 3, Section 8 of the Wyoming Air Quality Standards and Regulations.

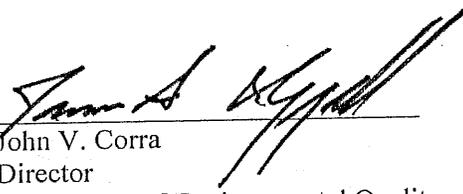
10) Under W.S. 35-11-901(a), any person who violates any provision of Article 2 of (the Environmental Quality Act)... or any rule, regulation, standard or permit adopted pursuant to those provision, or who violates any determination or order of the council pursuant to Article 2 of (the Environmental Quality Act)... is subject to a penalty not to exceed ten thousand dollars for each violation for each day during which the violation continues, a temporary or permanent injunction, or both a penalty and an injunction.

11) This notice is being sent to you pursuant to W.S. 35-11-701(c), which requires that, in any case of the failure to correct or remedy an alleged violation, the Director of the Department of Environmental Quality shall cause a written notice to be issued and served upon the person alleged to be responsible.

Dated this 15th day of MARCH, 2011.



Steven A. Dietrich
Administrator
Air Quality Division



John V. Corra
Director
Department of Environmental Quality

Please direct all inquiries to Steven A. Dietrich, Administrator, Division of Air Quality, Department of Environmental Quality, Herschler Building, 2nd Floor, 122 West 25th Street, Cheyenne, Wyoming 82002. (Telephone: 307-777-3746)