

## SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (“DEQ/AQD”), Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, and ABC Seamless of Billings, Inc., 838 Mallowney Lane, Billings, MT 59101 (“ABC Seamless”), enter into this Settlement Agreement (“Agreement”) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4922-11 (“NOV”). The NOV alleged that ABC Seamless failed to thoroughly inspect for the presence of asbestos and failed to provide prior written notification to the DEQ/AQD of the renovation of ABC Seamless’ property located at 1746 Coffeen Avenue, City of Sheridan, Sheridan 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) (2010) authorizes stipulated settlement, including payment of a penalty, implementation of compliance schedules, or other settlement conditions in lieu of litigation. To that end, ABC Seamless and DEQ/AQD hereby stipulate and agree as follows:

1. ABC Seamless is a Montana corporation that owned the Facility.
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. On September 29, 2011, the DEQ/AQD Asbestos Program Coordinator ("Coordinator") noted the demolition of the Facility. The Coordinator conducted a site visit and noted suspect materials appeared to be disturbed by the demolition, including tar material. During her visit, the Coordinator was granted permission to collect and analyze samples of the suspect material. The resulting analysis showed the tar material contained 10% chrysotile asbestos. Subsequently, the Coordinator determined that ABC Seamless had not filed any notification of intent to renovate or demolish the Facility with the DEQ/AQD prior to starting the demolition/renovation project.

8. On November 29, 2011, DEQ/AQD issued the NOV to ABC Seamless alleging that ABC Seamless failed to comply with certain provisions of Chapter 3, Section 8 of the WAQSR prior to starting the demolition/renovation of the Facility.

9. DEQ/AQD and ABC Seamless 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 two hundred twenty five dollars and no cents (\$225.00). ABC Seamless shall make full payment by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty (30) days after ABC Seamless has been notified that final signature has been affixed to this Agreement. ABC Seamless shall mail payment to Nancy Vehr, Senior Assistant Attorney General, 123 Capitol Building, Cheyenne, Wyoming 82002.

10. ABC Seamless, 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.

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

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

13. This Agreement shall be admissible by either ABC Seamless 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 ABC Seamless of liability or fault.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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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20. 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:

ABC SEAMLESS OF BILLINGS, INC:

By: \_\_\_\_\_ 1-20-12  
Name: Jerry Hanson Date  
Title: Owner

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: Steven A. Dietrich \_\_\_\_\_ 2-7-12  
Steven A. Dietrich, AQD Administrator Date

By: John V. Corra \_\_\_\_\_ 2/7/12  
John V. Corra, DEQ Director Date

APPROVAL AS TO FORM:

Nancy E. Vehr \_\_\_\_\_ 1/18/2012  
Nancy E. Vehr, Senior Assistant Attorney General Date  
Attorney for DEQ/AQD