

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, and the City of Rock Springs, 212 D Street, Rock Springs, WY 82901 (Rock Springs), enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4939-11 (NOV). The DEQ alleges that Rock Springs failed to inspect for asbestos, notify DEQ/AQD, or remove all regulated asbestos containing material before starting the renovation of the water line system, and failed to use trained individuals during the renovation of the water line system located near 1799 Elk Street in Rock Springs, Sweetwater 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) (2011) authorizes stipulated settlement, including payment of a penalty, implementation of compliance schedules, or other settlement conditions in lieu of litigation. To that end Rock Springs and DEQ/AQD hereby stipulate and agree as follows:

1. Rock Springs is a Wyoming incorporated municipality.
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 “[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 [Wyoming Environmental Quality] council.”
4. Chapter 3, Section 8 of the WAQSR establishes asbestos emission standards for demolition and renovation that apply to owners and operators of facilities where renovation or demolition activities take 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 starting the demolition or renovation.

7. Chapter 3, Section 8(i)(iii) of the WAQSR requires owners and operators of facilities undergoing renovation or demolition to “remove all regulated asbestos-containing material (RACM) from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material[.]”

8. Chapter 3, Section 8(i)(iii)(H) of the WAQSR prohibits the stripping, removal, handling or otherwise disturbing RACM unless “the individuals supervising and performing the operation have been trained in the provisions of this regulation and the means of complying with them[.]”

9. On August 19, 2011, the DEQ/AQD Asbestos Program Coordinator observed suspected asbestos containing transite pipe lying by a fence near the Facility. Upon further investigation, the Coordinator observed renovation work involving the use of a diamond-bladed saw to cut and then remove and replace what appeared to be 12-inch diameter transite pipe at the Facility. The Coordinator spoke with Patrick Construction and was informed that no asbestos inspection had been conducted. The Coordinator obtained a sample of the suspect material. The results of the sampling analysis indicated the suspect material contained 65% chrysotile asbestos. The Coordinator also requested evidence that the workers removing the suspect material had received proper asbestos training. Evidence of training was not available on site or later provided to the DEQ/AQD.

10. After a subsequent review of DEQ/AQD’s records, the DEQ/AQD determined that it had not received from Rock Springs any notice of intent to renovate the Facility before Rock Springs started the renovation.

11. On December 22, 2011, the DEQ/AQD issued the NOV to Rock Springs, alleging that Rock Springs failed to comply with the Wyoming Environmental Quality Act and certain provisions of Chapter 3, Section 8 of the WAQSR before starting, and during, renovation of the Facility.

12. Without admitting liability and in lieu of litigation under Wyo. Stat. Ann. § 35-11-901(a)(ii), Rock Springs agrees to resolve the alleged violations described above and set forth in the NOV for a total amount of two thousand two hundred seventy five dollars and no cents (\$2,275.00) payable as follows:

A. Rock Springs shall pay five hundred seventy five dollars and no cents (\$575.00) to the DEQ/AQD as a stipulated cash penalty. Within thirty (30) days after Rock Springs has been notified that the final signature has been affixed to this Agreement, Rock Springs shall make full payment by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division.

Rock Springs shall mail the payment to Nancy Vehr, Sr. Assistant Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

B. In lieu of paying the additional amount of one thousand seven hundred dollars and no cents (\$1,700.00) (Additional Amount), Rock Springs agrees that it will provide, or make arrangements to provide, asbestos training to several employees to be completed by February 15, 2013, as follows:

i. Asbestos Training, provided by a Model Accreditation Plan Trainer as listed on the National Directory of AHERA Accredited Courses (NDAAC), which may include any of the following:

a. 24-hour Building Inspector Initial Course. This training provides information on the types of suspect materials and appropriate sampling protocol needed to prove asbestos content.

b. 32-hour Worker Initial Course. This training provides information on abatement project work-practices.

c. 40-hour Contractor/Supervisor Initial Course. This training provides information on regulatory requirements for performance of abatement projects.

ii. By March 15, 2013, Rock Springs shall provide the DEQ/AQD with notification of completion and the employees' certificates of completion. Rock Springs shall send this information to DEQ/AQD, Attention: Karen Godman, 122 West 25th Street, Herschler Building 2-E, Cheyenne, WY 82002.

iii. By March 15, 2013, Rock Springs will provide the DEQ/AQD with actual cost information. If Rock Spring's total actual cost of providing Asbestos Training is less than the Additional Amount, Rock Springs agrees to pay the difference to the DEQ/AQD by March 1, 2013, as an additional stipulated penalty. Rock Springs shall send this information to DEQ/AQD, Attention: Karen Godman, 122 West 25th Street, Herschler Building 2-E, Cheyenne, WY 82002.

13. Rock Springs, 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 Rock Springs based on the NOV and,

solely in reliance on this Agreement, DEQ/AQD will refrain from taking further enforcement action against Rock Springs for these particular violations.

15. In the event that Rock Springs fails to fulfill its obligations under this Agreement, Rock Springs 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 Rock Springs or DEQ/AQD without 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 Rock Springs 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 by 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.

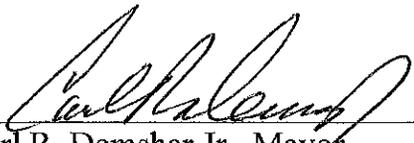
22. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement, 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.

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.

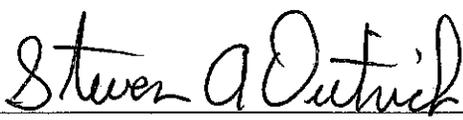
IN WITNESS THEREOF, the parties, by their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

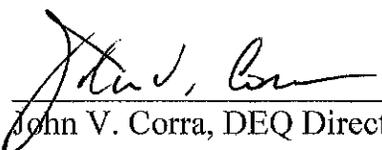
CITY OF ROCK SPRINGS:

By:  3-12-12
Carl R. Demshar Jr., Mayor Date

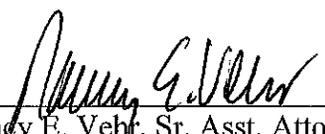
Attest:  3-12-2012
Lisa M. Taruffelli, City Clerk Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:  3-20-12
Steven A. Dietrich, AQD Administrator Date

By:  3/28/12
John V. Corra, DEQ Director Date

APPROVAL AS TO FORM:

 2/22/2012
Nancy E. Vehr, Sr. Asst. Attorney General Date
Attorney for DEQ/AQD