

## SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, and the Town of Burns, 102 E. First Street, Burns, WY 82053 (Burns), enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4947-12 (NOV). The DEQ alleges that Burns failed to notify DEQ/AQD, remove all regulated asbestos containing material before starting the demolition, use trained individuals, or properly dispose of Asbestos-Containing Waste Material during the demolition of the Town Morgue (Facility) located at 110 W. Second Street, in the Town of Burns, Laramie County, Wyoming, 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 Burns and DEQ/AQD hereby stipulate and agree as follows:

1. The Town of Burns 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)(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.
6. 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[.]”

7. 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[.]”

8. Chapter 3, Section 8(m)(ii)(A) of the WAQSR requires owners or operators to deposit all asbestos-containing waste material as soon as is practicable at an approved waste disposal site.

9. In response to a September 20, 2011 complaint, the DEQ/AQD Asbestos Program Inspector visited the Facility on September 21, 22 and 26, 2011. On the Inspector’s September 21st visit, he observed that the Facility had been demolished. Upon further investigation, the Inspector determined that Burns had previously conducted an asbestos inspection for the Facility. The results of that inspection indicated that the Facility had asbestos containing material in the wallboard system, floor tile, window caulk and tar roof flashing. The Inspector determined that these asbestos containing materials had not been removed from the Facility prior to demolition and the demolition waste had been transported to and disposed of at the Burns landfill as general construction debris. Finally, the Inspector noted that evidence of asbestos training was not available on site or later provided to the DEQ/AQD and later determined that the workers conducting the demolition were not trained to properly remove asbestos materials.

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

11. On January 17, 2012, the DEQ/AQD issued the NOV to Burns, alleging that Burns failed to comply with the Wyoming Environmental Quality Act and certain provisions of Chapter 3, Section 8 of the WAQSR before starting, during, and after demolition of the Facility, including failure to: a) provide prior written notification of demolition activities to DEQ/AQD; b) remove all RACM from the Facility before demolition; c) use properly trained individuals; and d) properly dispose of asbestos containing waste material.

12. Without admitting liability and in lieu of litigation under Wyo. Stat. Ann. § 35-11-901(a)(ii), Burns agrees to resolve the alleged violations described above and set forth in the NOV for a total amount of one thousand five hundred dollars and no cents (\$1,500.00) payable as follows:

A. Burns shall pay three hundred dollars and no cents (\$300.00) to the DEQ/AQD as a stipulated cash penalty. Within thirty (30) days after Burns has been notified that the final signature has been affixed to this Agreement, Burns shall make full payment by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division. Burns 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 two hundred dollars and no cents (\$1,200.00) (Additional Amount), Burns agrees to perform item 12.B.i and any two or more of the following activities:

i. Asbestos Training. Provide Asbestos Training to one or more employees by March 15, 2013. The Training is to be 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. WAM Newsletter and Presentation. The Mayor of Burns agrees to implement educational outreach to members of the Wyoming Association of Municipalities by providing an article for publication in a 2012 WAM newsletter and discussing Wyoming's Asbestos Program requirements during a WAM presentation in June 2012.

iii. Renovation and Demolition Checklist. Develop and implement a renovation and demolition procedure for all Burns' town-owned buildings. The procedure should address asbestos requirements for inspection, notification, training, removal, demolition, and disposal.

iv. DEQ/AQD Asbestos Materials. Burns agrees to maintain and distribute DEQ/AQD informational materials regarding Wyoming's

Asbestos Program to entities applying for a construction or demolition permit from Burns.

v. By March 30, 2013, Burns shall provide the DEQ/AQD with notification of completion and the employees' certificates of completion for Asbestos Training. Burns shall also provide documentation evidencing completion of two of the additional activities. Burns shall send this information to DEQ/AQD, Attention: Karen Godman, 122 West 25th Street, Herschler Building 2-E, Cheyenne, WY 82002.

vi. In the event that Burns does not complete three of these activities, Burns agrees to pay the Additional Amount to the DEQ/AQD by April 1, 2013, as an additional stipulated penalty.

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

15. In the event that Burns fails to fulfill its obligations under this Agreement, Burns 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 Burns or DEQ/AQD (hereinafter Burns and DEQ/AQD may be referred to individually as Party and collectively as Parties) 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 Burns 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 six (6) 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:

TOWN OF BURNS:

By: Judy Johnstone 4-17-12  
Judy Johnstone, Mayor Date

Attest: Joni McNamee 4-17-12  
Name: Joni McNamee Date  
Title: Town Clerk

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: Steven A. Dietrich 4-26-12  
Steven A. Dietrich, AQD Administrator Date

By: John V. Corra 4/27/12  
John V. Corra, DEQ Director Date

APPROVAL AS TO FORM:

Nancy E. Vehr March 26, 2012  
Nancy E. Vehr, Sr. Asst. Attorney General Date  
Attorney for DEQ/AQD

Monique J. Ojeda 4-20-12  
Monique J. Ojeda Date  
Attorney for Town of Burns