

## SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), Herschler Building, 122 West 25<sup>th</sup> Street, Cheyenne, WY 82002, and The Western Sugar Cooperative (Western Sugar), 7555 E. Hampden Avenue, Suite 600, Denver, CO 80231, enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4972-12 (NOV). As more fully set forth below, the NOV generally alleges that odors from Western Sugar's Torrington facility (Facility) located in Goshen County, Wyoming, exceeded that allowed by regulation thereby violating the Wyoming Environmental Quality Act (Act) and Chapter 2, Section 11 of the Wyoming Air Quality Standards and Regulations (WAQSR).

Wyo. Stat. Ann. § 35-11-901(a)(ii)(West 2011) authorizes stipulated settlement, including payment of a penalty, implementation of compliance schedules or other settlement conditions in lieu of litigation. To that end, Western Sugar and the DEQ/AQD hereby stipulate and agree as follows:

1. Western Sugar is a Colorado corporation that owns and/or operates the Facility.

2. The DEQ/AQD is the executive branch agency of Wyoming government responsible for enforcing the Act, the WAQSR and permits issued thereunder.

3. Wyo. Stat. Ann. § 35-11-201 provides, "[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 [environmental quality] council."

4. Chapter 2, Section 11(a) of the WAQSR limits the ambient air odor standard to: "(i) An odor emission at the property line which is undetectable at seven dilutions with odor free air as determined by a scentometer as manufactured by the Barnebey-Cheney Company or any other instrument, device, or technique designated by the Division as producing equivalent results. The occurrence of odors shall be measured so that at least two measurements can be made within a period of one hour, these determinations being separated by at least 15 minutes."

5. On January 25, 2012, a DEQ/AQD Inspector conducted odor monitoring at the Facility. At 1:34 p.m., the Inspector conducted an odor monitoring evaluation across the street from the Facility, approximately five feet from John's Pump Service approach and detected odors at a 15:1 dilution level. At 1:49 p.m., the Inspector conducted an odor

monitoring evaluation at the same location and again detected odors at a 15:1 dilution level.

6. The DEQ/AQD issued the NOV to Western Sugar on March 12, 2012, alleging that the odors from Western Sugar's Facility exceeded that allowed by regulation.

7. In lieu of litigation, the DEQ/AQD and Western Sugar agree to resolve the violations alleged above and more fully set forth in the NOV for a total amount of two thousand dollars and no cents (\$2,000.00) as a stipulated civil penalty. Within thirty (30) days after Western Sugar has been notified by the DEQ/AQD that the final signature has been affixed to this Agreement, Western Sugar shall make full payment by check made payable to the DEQ/AQD. Western Sugar shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

8. Western Sugar, 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.

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

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

11. This Agreement shall be admissible by either Western Sugar or DEQ/AQD (hereinafter Western Sugar and 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 Western Sugar of liability or fault.

12. Neither Party hereto shall have any claim against the other for attorneys' 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.

13. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the Parties shall be incorporated by written instrument, executed and signed by all Parties to this Agreement.

14. 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.

15. 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.

16. 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 sovereign pursuant to Wyo. Stat. Ann. § 1-39-104(a) and all other state law.

17. 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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18. 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:

THE WESTERN SUGAR COOPERATIVE:

By: I. K. Mathur 5/2/12  
Inder K. Mathur Date  
President, CEO

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: Steven A. Dietrich 5-7-12  
Steven A. Dietrich Date  
AQD Administrator

By: John Corra 5/11/12  
John Corra, DEQ Director Date

APPROVAL AS TO FORM:

Nancy E. Vehr 4/26/2012  
Nancy E. Vehr, Sr. Asst. Attorney General Date  
Attorney for DEQ/AQD