

## 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 Mr. Paul D. Miller dba Scrap Busters ("Scrap Busters"), 150 South Main Street, Torrington, WY 82240 enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the violations cited in DEQ Notice of Violation Docket No. 4888-11 ("NOV"). The NOV alleges that Scrap Busters burned tires, rims, telephone poles, rebar and concrete, stoves, refrigerators, electrical wiring and a tank cylinder ("Prohibited Materials") without an air quality permit at Scrap Buster's facility ("Facility") located at 150 South Main Street, Torrington, Goshen County, Wyoming, in violation of the Wyoming Environmental Quality Act ("Act") and the applicable 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, Scrap Busters and the DEQ/AQD hereby stipulate and agree as follows:

1. Paul D. Miller dba Scrap Busters owns and or operates the Facility.
2. The DEQ/AQD is responsible for enforcing the Act and the WAQSR.
3. WYO. STAT. ANN. § 35-11-201 states: "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 10, section 2(c) of the WAQSR states: "No person shall burn prohibited materials using an open burning method, except as may be authorized by permit."
5. On May 17, 2007, the DEQ/AQD received a complaint regarding open burning at the Facility. In response, DEQ/AQD Engineer, Ms. Carla Mlinar, conducted an inspection of the Facility and noted Prohibited Materials burning.
6. On August 19, 2011, the DEQ/AQD issued the NOV to Scrap Busters alleging that Scrap Busters violated the Act and WAQSR by the unauthorized open burning of Prohibited Materials at the Facility.
7. In lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii), the DEQ/AQD and Scrap Busters agree that Scrap Busters will pay the DEQ/AQD one

hundred dollars and no cents (\$100.00) as a stipulated cash penalty to resolve the violations alleged above and in the NOV. Scrap Busters shall make full payment by check, made payable to the Wyoming DEQ/AQD, within thirty days after having been notified by DEQ/AQD that the final signature has been affixed to this Agreement. Scrap Busters shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002

8. Scrap Busters, by entering into this Agreement, does not concede or admit to any liability, and this Agreement constitutes no admission of fault or noncompliance.

9. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against Scrap Busters based on NOV Docket No. 4888-11 and solely in reliance on this Agreement the DEQ/AQD will refrain from taking further enforcement action against Scrap Busters for this particular alleged violation.

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

11. This Agreement shall be admissible by either Scrap Busters or the DEQ/AQD (hereinafter Scrap Busters and the DEQ/AQD may be referred to individually as "Party" and collectively as "Parties") without objection by the other Party in any action between these Parties relating to the violations alleged herein; provided, however, that nothing herein constitutes an admission by Scrap Busters of liability or fault.

12. Neither Party hereto shall have any claim against the other for attorney fees or other costs incurred relating to 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 both 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 the 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.

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:

SCRAP BUSTERS:

By: Paul D. Miller owner 9/15/11  
Paul D. Miller, Owner Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Steven A. Dietrich 10-17-11  
Steven A. Dietrich, AQD Administrator Date

By: John Corra 10/18/11  
John Corra, DEQ Director Date

APPROVAL AS TO FORM:

Nancy E. Vehr 10/14/2011  
Nancy E. Vehr, Sr. Asst. Attorney General Date  
Attorney for DEQ/AQD