

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, and the Wyoming Military Department (Military Department), 5500 Bishop Boulevard, Cheyenne, WY 82009-3320, enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 5074-12 (Notice of Violation). The Notice of Violation alleged that WMD failed to inspect the Smith Ranch House (Facility) located in Platte County, Wyoming, for the presence of asbestos containing materials prior to the start of demolition or provide prior written notification of the demolition project to the DEQ/AQD thereby violating the Wyoming Environmental Quality Act (Act) and applicable Wyoming Air Quality Standards and Regulations (Air Quality Rules).

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

1. The Military Department is the executive branch agency of Wyoming government that owns and/or operates the Facility.
2. The DEQ/AQD is the executive branch agency of Wyoming government responsible for enforcing the Act and the Air Quality Rules.
3. Wyo. Stat. Ann. § 35-11-201 states, “[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 council.”
4. Chapter 3, Section 8 of the Air Quality Rules 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 Air Quality Rules 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 Air Quality Rules 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 prior to the start of the demolition or renovation activity.

7. On July 11 and 12, 2012, in response to a complaint, a DEQ/AQD Asbestos Program Inspector conducted site visits of the demolition activity at the Facility. The Inspector noticed that the Facility was demolished and remnants were piled at the site. The Inspector was informed that the Military Department had not conducted an asbestos inspection prior to demolition. The subsequent asbestos analysis of sampled demolition material, which included fiberboard covered in gray paint, indicated the presence of 3% chrysotile asbestos. The Inspector’s investigation also revealed that the DEQ/AQD had not received notice prior to the start of the demolition activities.

8. On October 11, 2012, the DEQ/AQD issued the Notice of Violation to the Military Department, alleging that the Military Department failed to comply with certain provisions of Chapter 3, Section 8 of the Air Quality Rules prior to the start of demolition activities at the Facility, including requirements to inspect for the presence of asbestos containing materials prior to the start of demolition or provide prior written notification of the demolition project to the DEQ/AQD.

9. Without waiving sovereign immunity or admitting any liability, and in lieu of litigation under Wyo. Stat. Ann. § 35-11-901(a)(ii), the DEQ/AQD and the Military Department agree to resolve the alleged violations described above and set forth in the Notice of Violation as follows:

A. Asbestos Training. The Military Department agrees to send two employees to asbestos training to be completed by June 1, 2013, which may include any of the following:

i. 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.

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

B. By July 1, 2013, the Military Department shall provide the DEQ/AQD with notice of completion of the asbestos training and copies of the employees’ certificates of completion. The Military Department shall send this information to the DEQ/AQD, Attention: Karen Godman, 122 West 25th Street, Herschler Building 2-E, Cheyenne, WY 82002.

C. Renovation and/or Demolition Checklist Revision. By, January 1, 2013, the Military Department will complete revisions to its checklist used for renovation and/or demolition projects to address the Asbestos Air Quality Rule requirements. The Military Department agrees to attach an Asbestos Fact Sheet, attached hereto as Attachment A, to its renovation and/or demolition checklist. By February 1, 2013, the Military Department shall send a copy of its revised checklist to the DEQ/AQD, Attention: Karen Godman, 122 West 25th Street, Herschler Building 2-E, Cheyenne, WY 82002.

10. The Military Department, by entering into this Agreement, does not concede or admit to any of the factual allegations, any liability or fault, or any waiver of sovereign immunity and this Agreement constitutes no admission of the factual allegations, liability, fault or waiver of sovereign immunity.

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

12. 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.

13. 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.

14. This Agreement, consisting of four (4) pages, and Attachment A, consisting of one (1) page, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

15. The State of Wyoming, the DEQ/AQD, and the Military Department do not waive their sovereign immunity by entering into this Agreement and each fully retains all immunities and defenses available to them as sovereigns pursuant to Wyo. Stat. Ann. § 1-39-104(a) and all other state law, with respect to any action based on or occurring as a result of this Agreement.

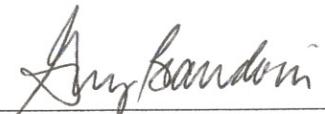
16. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate

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.

17. 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:

STATE OF WYOMING, MILITARY DEPARTMENT:

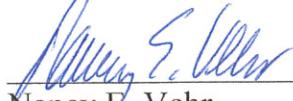
By:  6 DEC 12
LTC Guy Beaudoin, Wyo. Army Nat. Guard Date

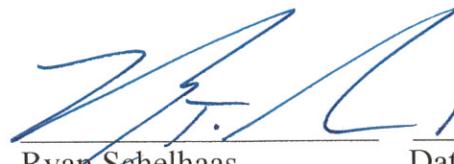
STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:  12-17-12
Steven A. Dietrich, AQD Administrator Date

By:  12/17/12
Todd Parfitt, DEQ Director Date

APPROVAL AS TO FORM:

 11/30/2012
Nancy E. Vehr Date
Sr. Asst. Attorney General
Attorney for DEQ/AQD

 12/4/12
Ryan Schelhaas Date
Sr. Asst. Attorney General
Attorney for Wyoming Military Dept.