

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, and Heritage Homes, P.O. Box 812, Moorcroft, WY 82721, enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 5090-12 (Notice of Violation). The Notice of Violation alleged that Heritage Homes failed to inspect the Holiday Plaza facility (Facility) located in the City of Gillette, Campbell County, Wyoming, for the presence of asbestos containing materials prior to the start of renovation, failed to provide prior written notification of the renovation project to the DEQ/AQD, failed to remove all regulated asbestos-containing material from the Facility before beginning renovation activities, failed to adequately wet the regulated asbestos-containing material until collected and contained for disposal, failed to use properly trained employees to strip, remove, handle or disturb regulated asbestos-containing material, and failed to properly dispose of asbestos-containing waste material, 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) (2012) authorizes stipulated settlement, including payment of a penalty, implementation of compliance schedules, or other settlement conditions in lieu of litigation. To that end, Heritage Homes and the DEQ/AQD hereby stipulate and agree as follows:

1. Heritage Homes is a Wyoming corporation.
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 that apply to owners and operators of facilities undergoing renovation or demolition.
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. Chapter 3, Section 8(i)(iii) of the Air Quality Rules 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)(F)(I) of the Air Quality Rules requires that owners and operators adequately wet all regulated asbestos-containing material and ensure that it remains wet until collected and contained or treated in preparation for disposal.

9. Chapter 3, Section 8(i)(iii)(H) of the Air Quality Rules prohibits the stripping, removal, handling or otherwise disturbing regulated asbestos-containing material unless “the individuals supervising and performing the operation have been trained in the provisions of this regulation and the means of complying with them[.]”

10. Chapter 3, Section 8(m)(ii)(A) of the Air Quality Rules requires owners and operators to deposit all asbestos-containing waste material at an approved waste disposal site.

11. On November 19, 2012, the DEQ/AQD issued the Notice of Violation to Heritage Homes, alleging that Heritage Homes failed to comply with certain provisions of Chapter 3, Section 8 of the Air Quality Rules prior to the start of renovation activities at the Facility, during renovation activities at the Facility, and in the disposal of asbestos-containing waste material from the Facility.

12. Without admitting liability and in lieu of litigation under Wyo. Stat. Ann. § 35-11-901(a)(ii), the DEQ/AQD and Heritage Homes agree that to resolve the alleged violations described above and set forth in the Notice of Violation, Heritage Homes shall pay the DEQ/AQD a total amount of four thousand dollars and no cents (\$4,000.00) as a stipulated cash penalty. Within thirty (30) days after Heritage Homes has been notified that the final signature has been affixed to this Agreement, Heritage Homes shall make full payment by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division. Heritage Homes shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, Wyoming 82002.

13. Heritage Homes, 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 the DEQ/AQD against Heritage Homes based on the Notice of Violation and, solely in reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against Heritage Homes for these particular violations.

15. In the event that Heritage Homes fails to fulfill its obligations under this Agreement, Heritage Homes waives any statute of limitations claims which may apply in an enforcement action by the DEQ/AQD involving the specific matters described in the Notice of Violation.

16. This Agreement shall be admissible by either Heritage Homes or the DEQ/AQD (hereinafter Heritage Homes and the 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 Heritage Homes 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 four (4) 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 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.

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.

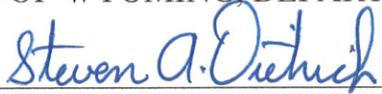
23. Each Party represents that they are authorized to enter into this Agreement and agree to be bound hereby. This Agreement shall become binding upon the Parties once executed by all Parties.

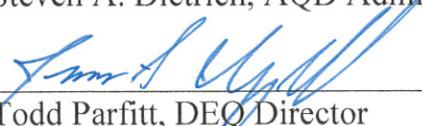
IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

HERITAGE HOMES:

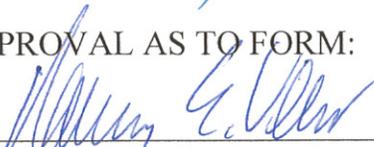
By:  4-9-13
Daniel Swaney, President Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:  4-12-13
Steven A. Dietrich, AQD Administrator Date

By:  4/12/13
Todd Parfitt, DEQ Director Date

APPROVAL AS TO FORM:

 3/26/2013
Nancy E. Vehr, Sr. Asst. Attorney General Date
Attorney for DEQ/AQD