

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, and Sweetwater Aire, LLC, 39 North Fork Road, Lander, WY 82520, enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 5138-13 (Notice of Violation). The Notice of Violation alleged that Sweetwater Aire failed to: provide prior written notice of the demolition/renovation project to DEQ/AQD; remove all regulated asbestos-containing material (RACM) prior to renovation; adequately wet the RACM in preparation for disposal; use trained individuals to strip, remove, handle or disturb RACM; or properly dispose of Asbestos-Containing Waste Material (ACWM) during the renovation of the former auto dealership facility (Facility) located at 381 Lincoln Street, Lander, Fremont County, Wyoming, 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, Sweetwater Aire and DEQ/AQD hereby stipulate and agree as follows:

1. Sweetwater Aire, LLC is a Wyoming limited liability company.
2. 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 and renovation that apply to owners and operators of facilities where renovation or demolition activities are taking place.
5. Chapter 3, Section 8(i)(ii) of the Air Quality Rules requires owners and operators of facilities undergoing renovation or demolition to provide 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.
6. Chapter 3, Section 8(i)(iii)(A) of the Air Quality Rules requires that owners and operators of facilities undergoing renovation or demolition “[r]emove all RACM from a facility being demolished or renovated before any activity begins that would break

up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.”

7. Chapter 3, Section 8(i)(iii)(F)(I) of the WAQSR requires that operators adequately wet all RACM and ensure that it remains wet until collected and contained or treated in preparation for disposal.

8. 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.”

9. Chapter 3, Section 8(m)(ii) 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.

10. On November 11, 2012, the DEQ/AQD Asbestos Program Coordinator visited the Facility. DEQ/AQD had not received any prior notification of this project. During her site visit, the Coordinator spoke to the owner of Sweetwater Aire who stated that he and his employees had removed approximately 1,500 square feet of floor tile using an air chipper, without using wet methods. After the site visit, Sweetwater Aire’s owner provided DEQ/AQD with a copy of an asbestos inspection report that had been performed before the start of the renovation. The report indicated that the floor tile contained 2% chrysotile asbestos and the mastic contained 3% chrysotile asbestos. The Coordinator determined that the workers conducting the renovation were not trained to properly remove asbestos containing materials. The Coordinator also determined that Sweetwater Aire had taken asbestos containing waste material from the Facility to the Fremont County Solid Waste Landfill for disposal as general construction debris. After the Coordinator’s site visit, Sweetwater Aire reports that it stopped the renovation work and hired an asbestos abatement contractor to remove the remaining asbestos containing floor tile and mastic.

11. On March 12, 2013, DEQ/AQD issued the Notice of Violation to Sweetwater Aire alleging that Sweetwater Aire failed to comply with certain provisions of Chapter 3, Section 8 of the Air Quality Rules prior to and during the renovation of the Facility, including failure to: a) provide prior written notice of the renovation activities to DEQ/AQD; b) remove all RACM from the Facility before starting renovation activities; c) adequately wet RACM; d) remove RACM by properly trained employees; and e) 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), DEQ/AQD and Sweetwater Aire agree to resolve the alleged violations

described above and set forth in the NOV for the total amount of four thousand dollars and no cents (\$4,000.00), payable as follows:

A. Sweetwater Aire shall pay the DEQ/AQD two thousand dollars and no cents (\$2,000.00) as a stipulated cash penalty within thirty (30) days after Sweetwater Aire has been notified that the final signature has been affixed to this Agreement. Sweetwater Aire shall make full payment by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division. Sweetwater Aire shall mail payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, Wyoming 82002.

B. Sweetwater Aire agrees that it will provide asbestos training to several employees to be completed by October 31, 2013, as follows:

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

ii. By November 30, 2013, Sweetwater Aire shall provide DEQ/AQD with notification of completion and the employee(s) certificate of completion. Sweetwater Aire shall send this information to DEQ/AQD, Attention: Karen Godman, 122 West 25th Street, Herschler Building 2-E, Cheyenne, WY 82002.

iii. By November 30, 2013, Sweetwater Aire shall provide DEQ/AQD with actual cost information. If Sweetwater Aire's total actual cost of providing the asbestos training listed above is less than two thousand dollars and no cents (\$2,000.00), Sweetwater Aire agrees to pay the difference to DEQ/AQD by December 15, 2013, as an additional stipulated penalty. Sweetwater Aire shall send the cost information to DEQ/AQD, Attention: Karen Godman, 122 West 25th Street, Herschler Building 2-E, Cheyenne, WY 82002.

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

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

16. This Agreement shall be admissible by either Sweetwater Aire or DEQ/AQD (hereinafter Sweetwater Aire 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 Sweetwater Aire 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 five (5) 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.

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:

SWEETWATER AIRE, LLC:

By: Wade White Date 6/7/13
Wade White, Owner

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: Steven A. Dietrich Date 6-14-13
Steven A. Dietrich, AQD Administrator

By: Todd Parfitt Date 6/17/13
Todd Parfitt, DEQ Director

APPROVAL AS TO FORM:
Nancy E. Vehr
Nancy E. Vehr, Sr. Asst. Attorney General
Attorney for DEQ/AQD

May 22, 2013
Date