

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and Mack Energy Corporation, P.O. Box 960, Artesia, NM 88211-0960, enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 5121-13 (Notice of Violation) and other alleged violations more fully set forth below. The Notice of Violation alleged that Mack Energy failed to obtain a DEQ/AQD construction permit prior to constructing and operating a generator engine, a compressor engine, and the Dilts 7-1H production facility located in Converse County, Wyoming, thereby violating the Wyoming Environmental Quality Act (Act) and applicable Wyoming Air Quality Standards and Regulations (Air Quality Rules). Other alleged violations pertain to the construction and operation of four additional production facilities located in Converse County, the Irene Ranch 32-1H, the Irene Ranch 33-1H, the Johnson 14-1H, and the Johnson 13-1H all of which Mack Energy self-reported to the DEQ/AQD following receipt of the Notice of Violation. The five production facilities that are the subject of this Agreement shall be referred to herein collectively as “the Facilities.”

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, Mack Energy and the DEQ/AQD hereby stipulate and agree as follows:

1. Mack Energy is a New Mexico corporation that owns and/or operates the engines and the Facility.
2. The DEQ/AQD is responsible for enforcing the Act and the Air Quality Rules.
3. Wyo. Stat. Ann. § 35-11-801(c) provides: “A permit to construct is required before construction or modification of any industrial facility capable of causing or increasing air or water pollution in excess of standards established by the department is commenced.”
4. Chapter 6, Section 2 of the Air Quality Rules prescribes the applicability and procedures for issuing permits to sources under Wyoming’s construction and modification permitting program.
5. Chapter 6, Section 2(a)(i) of the Air Quality Rules provides: “Any person who plans to construct any new facility or source, modify any existing facility or source, or to engage in the use of which may cause the issuance of or an increase in the issuance of air contaminants into the air of this state shall obtain a construction permit from the

State of Wyoming, Department of Environmental Quality before any actual work is begun on the facility.”

6. The DEQ/AQD issued Air Quality Rule Ch. 6 § 2 permitting guidance for Oil and Gas Production Facilities (Guidance) in June 1997, with subsequent revisions in November 1998, January 2000, August 2001, July 2004, August 2007, and March 2010. The Guidance indicates what DEQ/AQD accepts as meeting the intent of Wyoming’s regulatory requirement to obtain a construction permit prior to the construction or operation of new air emission sources. Unless a DEQ/AQD construction permit has been obtained prior to start up, the Guidance requires new facilities to file an air quality construction permit application within 90 days of the First Date of Production. The Guidance also notes that engines greater than 50 horsepower must be permitted prior to installation.

7. On August 28, 2012, a DEQ/AQD Inspector observed an unpermitted generator engine present at the Facility.

8. On November 20, 2012, a DEQ/AQD Inspector observed an unpermitted compressor engine at the Facility. The DEQ/AQD Inspector also noted that the Facility had started production in April of 2012.

9. On March 4, 2013, the DEQ/AQD received Mack Energy’s permit application for the two engines and the Facility. The DEQ/AQD alleges that this permit application was submitted approximately eight months past the due date.

10. On February 13, 2013, the DEQ/AQD issued the Notice of Violation to Mack Energy, alleging that Mack Energy’s failure to obtain a DEQ/AQD construction permit prior to constructing and operating two engines and the Facility violated the Act and the Air Quality Rules.

11. On March 4, 2013, following its receipt of the Notice of Violation, Mack Energy provided to the DEQ/AQD existing available information, including legal descriptions and date of first production for four production facilities in addition to the Dilts 7-1H: the Irene Ranch 32-1H, the Irene Ranch 33-1H, the Johnson 14-1H, and the Johnson 13-1H.

12. On May 1, 2013, the DEQ/AQD received Mack Energy’s permit applications for the Irene Ranch 32-1H, the Irene Ranch 33-1H, the Johnson 14-1H, and the Johnson 13-1H facilities. The DEQ/AQD alleges that Mack Energy failed to obtain DEQ/AQD construction permits prior to constructing and operating the Irene Ranch 1-32H, Irene Ranch 33-1H, Johnson 1-14H and Johnson 13-1H facilities which violated the Act and Chapter 6, Section 2(a)(i) of the Air Quality Rules, and failed to control flashing

emissions within 60-days of the First Date of Production for the Irene Ranch 33-1H and Johnson 13-1H facilities (Other Alleged Violations).

13. Without admitting liability, and in lieu of litigation pursuant to Wyo. Stat. Ann. § 35-11-901(a)(ii), Mack Energy agrees to pay to the DEQ/AQD the amount of forty one thousand nine hundred eighty-six dollars and no cents (\$41,986.00) as a stipulated penalty amount to resolve the violations alleged in the Notice of Violation and all other alleged violations pertaining to the construction and operation of the Irene Ranch 32-1H, the Irene Ranch 33-1H, the Johnson 14-1H, and the Johnson 13-1H facilities. Mack Energy shall make full payment by check made payable to the Wyoming DEQ/AQD, within thirty (30) days after Mack Energy has been notified by DEQ/AQD that the final signature has been affixed to this Agreement. Mack Energy shall mail the payment to Jeremiah Williamson, Assistant Attorney General, 123 State Capitol, Cheyenne, WY 82002.

14. Mack Energy, by entering into this Agreement, does not concede or admit to any liability or fault, and this Agreement constitutes no admission of liability, fault or noncompliance with any allegations, findings, determinations or conclusions contained in this Agreement or in the Notice of Violation. Except as specifically provided for herein, nothing in this Agreement shall prejudice, waive or impair any right, remedy, or defense that Mack Energy may have against any entity.

15. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against Mack Energy based on the Notice of Violation and the Other Alleged Violations and, solely in reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against Mack Energy for all of these particular alleged violations. By this Settlement Agreement, the Parties intend to resolve with prejudice all allegations that were asserted in the Notice of Violation and otherwise set forth in this Agreement.

16. In the event that Mack Energy fails to fulfill its obligations under this Agreement, Mack Energy waives any statute of limitation claims that may apply in an enforcement action by the DEQ/AQD involving the specific matters described in the Notice of Violation and otherwise set forth in this Agreement.

17. This Agreement shall be admissible by either Mack Energy or the DEQ/AQD (hereinafter Mack Energy and the 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.

18. 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 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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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24. Each Party represents that they are authorized to enter into this Agreement, agree to comply with and to be bound by the terms of this Agreement, and further agree that they will not contest the basis or validity of this Agreement. 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:

MACK ENERGY CORPORATION:

By:  6/28/13
Lee Livingston, Operations Manager Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY

By:  7-8-13
Steven A. Dietrich, AQD Administrator Date

By:  7/8/13
Todd Parfitt, DEQ Director Date

APPROVAL AS TO FORM:

 7/1/13
Jeremiah Williamson, Assistant Attorney General Date
Attorney for DEQ/AQD