

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and PacifiCorp, an Oregon corporation, P.O. Box 191 Kemmerer, Wyoming 83101, enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 5170-13 (Notice of Violation). As more fully set forth below, the Notice of Violation alleges that PacifiCorp failed to minimize fugitive dust emissions and adhere to the Fugitive Dust Compliance Plan as required by Condition F10(b) of operating permit 3-2-121 issued for the Naughton Plant facility (Facility) located in Lincoln County, Wyoming, thereby violating the Wyoming Environmental Quality Act (Act), 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, PacifiCorp and the DEQ/AQD hereby stipulate and agree as follows:

1. PacifiCorp is an Oregon corporation that owns and/or operates the Facility.
2. The DEQ/AQD is responsible for enforcing the Act, the DEQ/AQD rules (Air Quality Rules), and permits issued under those provisions, including operating permit 3-2-121.
3. Chapter 3, Section 3(f)(i)(A) of the Air Quality Rules states, "Any person engaged in clearing, leveling of land, earthmoving, excavating, or movement of trucks or construction equipment over access haul roads or cleared land shall take steps to minimize fugitive dust from such activities. Such control measures may include frequent watering and/or chemical stabilization."
4. Chapter 3, Section 2(f)(ii)(A) of the Air Quality Rules states, "Any person owning, operating or maintaining a new or existing material storage, handling and/or hauling operation shall minimize fugitive dust from such operations. Such control measures may include the application of asphalt, oil, water or suitable chemicals on unpaved roads, material stockpiles and other surfaces which can give rise to airborne dust..."
5. Condition F10(b) of operating permit 3-2-121 issued May 19, 2008 for the Facility requires fugitive dust control measures as indicated in the Fugitive Dust Compliance Plan.

6. On May 14, 2013, the AQD determined that there was an exceedance of the 24-hour PM₁₀ standard at the Facility on January 7, 2012. On January 7, 2012 the PM₁₀ 24-hour concentration was measured at 169 µg/m³, exceeding the PM₁₀ 24-hour average concentration limit of 150 µg/m³.

7. Under Wyo. Stat. Ann. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 5170-13 (Notice of Violation) to PacifiCorp, dated June 5, 2013, alleging that PacifiCorp violated the Act, the Air Quality Rules and operating permit 3-2-121 by failing to minimize fugitive dust emissions from the Facility.

8. Without admitting liability and in lieu of litigation under Wyo. Stat. Ann. § 35-11-901(a)(ii), PacifiCorp agrees to resolve the violations alleged above and also set forth in the Notice of Violation as follows:

- a. Stipulated Civil Penalty– For a total amount of five thousand dollars and no cents (\$5,000.00) payable as a stipulated civil penalty. PacifiCorp shall make full payment by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty (30) days after PacifiCorp has been notified by the DEQ/AQD that the final signature has been affixed to this Agreement. PacifiCorp shall mail the payment to Matthias Sayer, Assistant Attorney General, 123 Capitol Building, Cheyenne, WY 82002.
- b. Supplemental Environmental Project– PacifiCorp agrees to complete a project that is beneficial for the environment and is otherwise not required by applicable statutes, regulations, permits, or orders. PacifiCorp's Supplemental Environmental Project (Project) will benefit the environment through activities conducted by the University of Wyoming Environmental Engineering Internship Program. PacifiCorp agrees to complete this Project by submitting a check made payable to the University of Wyoming in the amount of five thousand dollars and no cents (\$5,000.00) for the University of Wyoming Environmental Engineering Internship Program account WYDEQ6867. PacifiCorp shall make full payment for this Project within thirty (30) days after PacifiCorp has been notified by the DEQ/AQD that the final signature has been affixed to this Agreement. PacifiCorp shall submit the payment to Shannyn Adkins, University of Wyoming, Sponsored Programs, 1000 East University Avenue, Dept. 3355, Laramie, WY 82071. Within thirty (30) days after completing this Project, PacifiCorp shall provide evidence that it completed this Project to Matthias Sayer, Assistant Attorney General, at the address noted in Section 8(a) of this Agreement.

c. Fugitive Dust Compliance Plan Update— PacifiCorp further agrees to update its Fugitive Dust Compliance Plan to include:

i. Coal Pile

1. During periods of sustained winds exceeding 25 mph for 15 minutes the coal pile should be inspected for any fugitive dust emissions. A decision on whether or not to take corrective action should be made and documented. If temperatures are above 40F, the coal pile water cannon system shall be activated and the shift supervisor (or plant management) will determine how long the system will stay activated.
2. If the forecasted weather report indicates high winds (25 mph or greater), plant management shall evaluate if the coal pile should be watered before the wind event occurs.

ii. Ash Ponds

1. Sealants will be applied to any dry areas that have not been reclaimed when necessary and at a minimum frequency of two times per year separated by at least 3 months.

iii. Monitoring and Measurement

1. During periods of sustained winds exceeding 25 mph for 15 minutes, a fugitive dust inspection should be initiated within one hour and documented.

9. PacifiCorp, 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.

10. Full compliance with this Agreement shall constitute full satisfaction and release for all claims by the DEQ/AQD against PacifiCorp and its predecessors and successors based on the Notice of Violation and, solely in reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against PacifiCorp for these particular alleged violations.

11. In the event that PacifiCorp fails to fulfill its obligations under this Agreement, PacifiCorp 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.

12. This Agreement shall be admissible by either PacifiCorp or the DEQ/AQD (hereinafter PacifiCorp 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 this Notice of Violation; provided, however, that nothing herein constitutes an admission by PacifiCorp of liability or fault.

13. 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.

14. 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.

15. 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.

16. This Agreement, consisting of four (4) pages, represent the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

17. 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.

18. 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.

19. 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:

FOR PACIFICORP:


Name: SHAWN SMITH
Title: MANAGING DIRECTOR

2/24/14
Date

STATE OF WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:


Steven A. Dietrich, Administrator
Air Quality Division

4-3-14
Date


Todd Parfitt, Director
Department of Environmental Quality

4/3/14
Date

APPROVAL AS TO FORM:


Matthias L. Sayer (#7-4677)
Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002
(307) 777-6946
Attorney for DEQ/AQD

3/31/14
Date