

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (“DEQ/AQD”), Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, and Western Wyoming Construction Company (“WWCC”), 1290 N. 2nd Street, Lander, Wyoming, 82520, enter into this Settlement Agreement (“Agreement”) to fully and finally resolve without litigation the alleged violations cited in the DEQ Notice of Violation docket number 5210-13 (“Notice of Violation”). The Notice of Violation alleged that WWCC violated the Wyoming Air Quality Standards and Regulations (“Air Quality Rules”) by failing to comply with permit requirements at the gravel pit, crushing plant, and asphalt plant located in Fremont County, Wyoming.

Wyo. Stat. Ann. § 35-11-901(a)(ii) (2013) authorizes stipulated settlement, including payment of a penalty, implementation of compliance schedules, or other settlement conditions in lieu of litigation. To that end, WWCC and the DEQ/AQD hereby agree as follows:



1. WWCC is a Wyoming corporation ~~that owns~~ and operates the gravel pit, crushing plant, and asphalt plant in Fremont County.

2. The DEQ/AQD is the executive branch agency of Wyoming government responsible for enforcing the Air Quality Rules.

3. Wyo. Stat. Ann. § 35-11-201 provides, “[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 [environmental quality] council.”

4. Wyo. Stat. Ann. § 35-11-801 states, “In granting permits, the director may impose such conditions as may be necessary to accomplish the purpose of this act which are not inconsistent with the existing rules, regulations and standards.”

5. Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations prescribes the applicability and procedures for issuing permits to sources under Wyoming’s construction and modification permitting program.

6. Permit RE-25 was issued to WWCC on March 12, 1975. Permit CT-4444 was issued to WWCC on May 18, 2007. Permit CT-4444 included conditions mandating use of control measures to limit visible emissions and fugitive dust. The permit also stated that operations were to be limited to a 5:00AM – 7:00PM Monday through Saturday work week.

7. In response to complaints, DEQ/AQD Engineers performed inspections on September 6, 2013, October 22, 2013, November 1, 2013, and November 21, 2013. On

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these days, the DEQ/AQD Engineers observed or were otherwise informed of the following, apparent permit violations:

- There was excessive visible emissions from several point sources, the worst being 50% discharge from the fines discharge conveyor off the Masaba screen;
- There was excessive emissions from the asphalt plant;
- The asphalt and crushing plants installed equipment after receiving Permit RE-7, without notifying DEQ/AQD; and
- There was significant fugitive dust release from the gap between the propane burner and the rotating drum at the asphalt plant.

8. On March, 5, 2014, DEQ/AQD issued Notice of Violation 5210-13 to WWCC. The Notice of Violation alleged that WWCC was violating requirements contained in Permits CT-4444 and RE-25, namely operating on a required off day, excessive emissions from the asphalt plant, a significant amount of fugitive dust emanating from the gap between the propane burner and the rotating drum at the asphalt plant, and were excessive visible emissions from several point sources, the worst being 50 percent opacity from the fines discharge conveyor off the Masaba screen.

9. Without admitting liability, and in lieu of litigation pursuant to Wyo. Stat. Ann. § 35-11-901(a)(ii), WWCC agrees to pay to the DEQ/AQD the amount of three thousand five hundred dollars and no cents (\$3,500.00) as a stipulated penalty to resolve the violations alleged in the aforementioned Notice of Violation. WWCC agrees to make full payment by check made payable to the Wyoming DEQ/AQD, within thirty (30) days after the final signature has been affixed to this Agreement. WWCC agrees to mail the payment to Ann Shed, DEQ/AQD, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002.

10. WWCC, by entering into this Agreement, does not concede or admit any liability, fault, or statutory noncompliance. Except as specifically provided for herein, nothing in this Agreement shall prejudice, waive, or impair any right, remedy, or defense that WWCC may have against any entity.

11. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against WWCC arising from the allegations contained within the Notice of Violation and this Agreement. In reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against WWCC for these particular alleged violations. By this Agreement, the Parties intend to resolve with prejudice all allegations that are contained within the Notice of Violation and this Agreement.

12. In the event that WWCC fails to fulfill its obligations under this Agreement, WWCC waives any statute of limitation claims that may apply in an enforcement action

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by the DEQ/AQD involving the specific matters described in the Notice of Violation or otherwise set forth in this Agreement.

13. This Agreement shall be admissible by either WWCC or the DEQ/AQD without objection by the other party in any action between DEQ/AQD and WWCC relating to the violations alleged herein.

14. Each party assumes the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other. Neither DEQ/AQD nor WWCC shall have any claim against the other for attorneys' fees, or any other costs related to the preparation and resolution of this Agreement.

15. Any changes, modifications, revisions, or amendments to this Agreement are invalid unless mutually agreed upon by both parties, incorporated by written instrument, executed, and signed by all parties to this Agreement.

16. The laws of the State of Wyoming shall govern the construction, interpretation, and enforcement of this Agreement. 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.

17. 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.

18. 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.

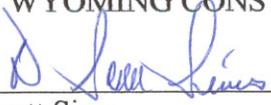
19. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement, and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

20. In the event that WWCC assigns any or all of its proprietary interest in the gravel pit, crushing plant, and asphalt plant located in Fremont County, DEQ/AQD reserves the right to enforce this Agreement against any and all subsequent owners.

21. Each party represents that they are authorized to enter into this Agreement, agrees to comply with and to be bound by the terms of this Agreement, and further agrees that they will not contest the basis or validity of this Agreement. This Agreement shall become binding upon the parties once executed.

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:

WESTERN WYOMING CONSTRUCTION COMPANY:

By:  6/30/2014
D. Scott Sims Date
Vice President

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:  7-8-14
Steven A. Dietrich, AQD Administrator Date

By:  7/9/14
Todd Parfitt, DEQ Director Date

APPROVAL AS TO FORM:

 7/10/14
Jeremiah Williamson Date
Assistant Attorney General
Attorney for DEQ/AQD