

## SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), Herschler Building, 122 West 25<sup>th</sup> Street, Cheyenne, Wyoming 82002, and Wyoming Crushing Inc. (Wyoming Crushing), PO Box 2440, Mills, Wyoming, 82644, enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in the Notice of Violation docket number 5530-15 (Notice of Violation). The Notice of Violation alleged that Wyoming Crushing violated the Wyoming Air Quality Standards and Regulations (Air Quality Rules) and Permit RE-185A2 (Permit) by exceeding permitted visible emission limits and improperly maintaining a combustor at the Wayne Coleman construction yard, located in Casper, Natrona County, Wyoming (Facility).

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, Wyoming Crushing and the DEQ/AQD hereby agree as follows:

1. Wyoming Crushing is a Wyoming corporation that owns and operates the Facility.

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 Air Quality Rules prescribes the applicability and procedures for issuing permits to sources under Wyoming’s construction and modification permitting program.

6. On January 8, 2003, DEQ/AQD issued the Permit to Lee Excavation, Inc. for the Facility. On or about February 19, 2009, Lee Excavation, Inc. transferred the Facility and the Permit to Wyoming Crushing.

7. Condition 3 of the Permit requires control of visible emissions as follows:

“[T]he allowable opacity for fugitive emissions associated with the crusher shall be limited to 15%, the allowable opacity for the screen, conveyor transfer points and all other fugitive emission points shall be limited to 10% as determined by 40 CFR Part 60, Appendix A, Method 9.”

8. On December 8, 2014, DEQ/AQD Inspector Chris Hanify observed a reading of 44% opacity from the crusher, using the 40 CR Part 60, Appendix A, Method 9 methodology.

9. On January 9, 2015, DEQ/AQD issued Notice of Violation 5530-15 to Wyoming Crushing. The Notice of Violation alleged that Wyoming Crushing was in violation of Condition 3 of the Permit for exceeding permitted opacity limits.

10. Without admitting liability, and in lieu of litigation pursuant to Wyo. Stat. Ann. § 35-11-901(a)(ii), Wyoming Crushing agrees to pay to the DEQ/AQD the amount of two thousand five hundred dollars (\$2,500) as a stipulated penalty to resolve the violations alleged in the aforementioned Notice of Violation. Wyoming Crushing agrees to make full payment by check made payable to the Wyoming DEQ/AQD, within thirty (30) days after Wyoming Crushing has been notified by DEQ/AQD that the final signature has been affixed to this Agreement. Wyoming Crushing agrees to mail the payment to Ann Shed, Compliance Program Principal, DEQ/AQD, Herschler Building, 122 West 25<sup>th</sup> Street, Cheyenne, Wyoming 82002.

11. Wyoming Crushing, 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 Wyoming Crushing may have against any entity.

12. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against Wyoming Crushing 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 Wyoming Crushing 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.

13. In the event that Wyoming Crushing fails to fulfill its obligations under this Agreement, Wyoming Crushing 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 or otherwise set forth in this Agreement.

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

15. 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 Wyoming Crushing shall have any claim against the other for attorneys' fees, or any other costs related to the preparation and resolution of this Agreement.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. DEQ/AQD reserves the right to enforce this Agreement against any and all subsequent owners and operators.

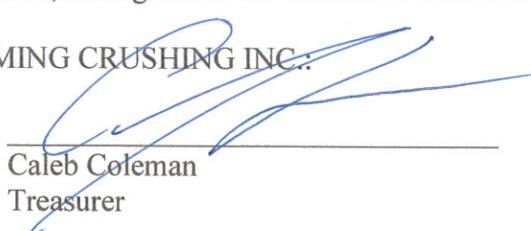
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22. Each party represents that they are authorized to enter into this Agreement, agrees to comply with and to be bound by the terms of this Agreement, and further agrees that they will not contest the basis or validity of this Agreement. This Agreement 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:

WYOMING CRUSHING INC.:

By:

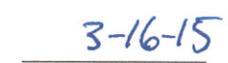
  
Caleb Coleman  
Treasurer

  
Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:

  
Steven A. Dietrich, AQD Administrator

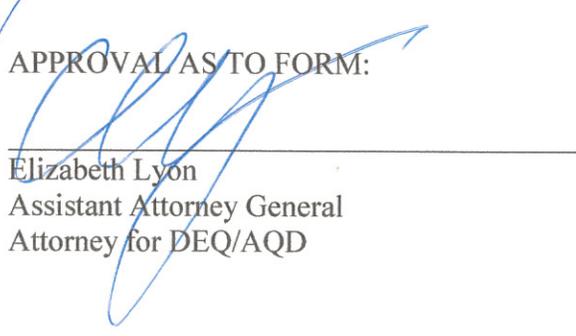
  
Date

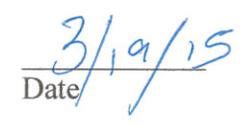
By:

  
Todd Parfitt, DEQ Director

  
Date

APPROVAL AS TO FORM:

  
Elizabeth Lyon  
Assistant Attorney General  
Attorney for DEQ/AQD

  
Date