

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality (DEQ), Air Quality Division (AQD), Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, and Mountain Cement Company (Mountain Cement), 3811 Turtle Creek Boulevard, Suite 1100, Dallas, Texas, 75219, enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in Notice of Violation Dockets Number 4424-09, 4588-09, 4913-11, 4750-10, and 4978-12 (Notices of Violation).

The Notices of Violation alleged that Mountain Cement violated the Wyoming Air Quality Standards and Regulations (Air Quality Rules) and conditions from Permit 3-1-098-1, Permit CT-1137, and Permit MD-73 at the Laramie Cement Plant in Albany County, Wyoming. Mountain Cement has denied that it was in violation of the Air Quality Rules or the conditions of its permits.

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, Mountain Cement and DEQ hereby agree as follows:

1. Mountain Cement is a Nevada corporation authorized to do business in Wyoming. Mountain Cement is the owner and operator of the Laramie Cement Plant in Albany County, Wyoming.
2. DEQ 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. Chapter 6, Section 3 of the Air Quality Rules prescribes the applicability and procedures for issuing permits to major sources under Wyoming’s operating permitting program.
5. Chapter 6, Section 2 of the Air Quality Rules prescribes the applicability and procedures for issuing permits to major sources under Wyoming’s construction and modification permitting program.

6. 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.

7. 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 an operation. 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 dusts."

8. DEQ has issued several permits to Mountain Cement:

a. On August 26, 1987, DEQ issued Permit MD-73 to Mountain Cement. The following information is found in Permit MD-73:

i. While analyzing Permit MD-73, DEQ considered the efficacy of an enclosure for the control of particulate matter emissions during the coal loading and unloading process.

ii. During permitting discussions, Mountain Cement wrote in a letter that coal would be unloaded inside of an enclosure.

b. On March 6, 1995, DEQ issued Permit CT-1137 to Mountain Cement.

i. Condition 13 of Permit CT-1137 requires Mountain Cement to review monitoring data, and report SO₂ emissions from Kiln #1 to DEQ on a quarterly basis.

ii. Condition 13 of Permit CT-1137 also specifies that, after one year of SO₂ emission reporting, DEQ will establish a maximum 30-day rolling average emission, not to exceed the 3 hour average emission limit, based on the SO₂ emission data and operational data, reported by Mountain Cement.

iii. On March 23, 2003, DEQ sent Mountain Cement a letter, *Re: Administrative Amendment to Operating Permit 30-098*, that established hourly SO₂ limits to 100 pounds per hour on a 30-day rolling average.

c. On or about December 26, 2007, DEQ issued Permit 3-1-098-1 to Mountain Cement.

- i. Condition F1(b) of Permit 3-1-098-1 states: "All working areas subject to the movement of trucks, loaders, and other heavy equipment shall be treated with chemical dust suppressants and/or water to prevent excessive fugitive dust emissions."
- ii. Condition F2(a) of Permit 3-1-098-1 states: "No raw material or clinker shall be stored in the open."
- iii. Condition F2(b) of Permit 3-1-098-1 states: "The Division will allow temporary outside storage of materials due to materials handling equipment breakdown. The permittee shall notify the Division of each such event within 24 hours of occurrence, to be followed in writing requesting permission to do so and stating the types of materials involved, amounts to be stockpiled, life of stockpile, and proposed method of controls."
- iv. Condition F3(d) of Permit 3-1-098-1 states: "Visible emissions from the sources listed in Table I of this permit; the CKD spout; kiln #1 feed transfer (K-274); each material, clinker, or finished product storage bin; conveying system transfer point; bagging systems; and bulk loading or unloading system shall not exceed [an opacity of] 10 percent."
- v. Condition G20 of Permit 3-1-098-1 states: "The permittee shall minimize fugitive dust in compliance with standards in Ch 3, Sec 2(f) of WAQSR for construction/demolition activities, handling and transportation of materials, and agricultural practices."

9. On September 15, 2008, DEQ Inspectors Glenn Spangler and Thor Nordwick conducted an inspection of the Laramie Cement Plant in Albany County, Wyoming, during which they reported the following observations.

- a. Fugitive emissions from the K-602 clinker/conveyor transfer point to the clinker storage building. Following this observation they performed a Method 9 opacity test. The Method 9 opacity test revealed to them a six-minute average opacity of 27.7%, in alleged violation of Condition F3(d) of Permit 30-1-098-1.
- b. Fugitive dust from the clinker transfer tunnel under the clinker storage tunnel, in alleged violation of Condition G20 of Permit 3-1-098-1.

- c. An outside clinker storage pile of approximately 4,000 tons. Mountain Cement representatives informed Mr. Spangler and Mr. Nordwick that the clinker was being stored outside due to repairs on the clinker storage building. Failing to notify DEQ and request DEQ for permission to store clinker outside is an alleged violation of Condition F2(a) and F2(b) of Permit 3-1-098-1.

10. On January 30, 2009, DEQ issued Notice of Violation 4424-09 to Mountain Cement. The Notice of Violation alleged that Mountain Cement was in violation of Conditions F3(d), G-20, F2(a), and F2(b) of Permit 3-1-098-1.

11. DEQ reviewed the ambient particulate matter monitoring data for the East and North TEOM monitoring sites, associated with the Laramie Cement Plant, and determined that there were two alleged exceedances of the 24-hour PM₁₀ standard of 150 µ/m³:

- a. On January 25, 2008, the monitoring data indicated an ambient PM₁₀ concentration of 179.3 µ/m³.
- b. On January 7, 2009, the monitoring data indicated an ambient PM₁₀ concentration of 255.6 µ/m³.

12. On November 9, 2009, DEQ issued Notice of Violation 4588-09 to Mountain Cement. The Notice of Violation alleged that Mountain Cement was in violation of Chapter 3, Section 2(f) of the Air Quality Rules, as well as the fugitive dust control measures outlined in its various permits.

13. On September 9, 2010, DEQ Inspector Glenn Spangler conducted a site inspection at the Laramie Cement Plant after observing a haze in the vicinity. During the inspection, Mr. Spangler reported that he observed significant dust plumes on the property and significant fugitive dust clouds leaving the property. Mr. Spangler reported that he did not observe any street sweeping equipment or water trucks in operation.

14. On October 2, 2010, DEQ issued Notice of Violation 4750-10 to Mountain Cement. The Notice of Violation alleged that Mountain Cement had failed to minimize fugitive dust, in apparent violation of Chapter 3, Section 2(f) of the Air Quality Rules, and Condition F1(b) of Permit 3-1-098-1.

15. On August 11, 2011, DEQ Inspector Carla Mlinar reported that she observed that coal had been unloaded in front of the coal storage building at the Laramie Cement Plant.

16. On September 30, 2011, DEQ Inspector Thor Nordwick reported that he observed that the coal loadout area, outside of the building, was covered in coal.

17. On October 28, 2011, DEQ issued Notice of Violation 4913-11 to Mountain Cement. The Notice of Violation alleged that Mountain Cement was in violation of Chapter 6, Section 2 of the Air Quality Rules for failing to obtain a permit prior to modifying or changing the coal unloading and handling process.

18. DEQ reviewed the excess SO₂ emission reports submitted by Mountain Cement for Kiln #1 from the second quarter of 2010. DEQ discovered that emissions were greater than the 100 lb/hr 30-day rolling average limit, in alleged violation of Permit CT-1137, and the hourly emission limits established by DEQ through the letter, *Re: Administrative Amendment to Operating Permit 30-098*.

19. On April 27, 2012, DEQ issued Notice of Violation 4978-12 to Mountain Cement. The Notice of Violation alleged that Mountain Cement had excess SO₂ emissions in the second quarter of 2010, in apparent violation of Permit CT-1137 and the letter, *Re: Administrative Amendment to Operating Permit 30-098*.

20. Without admitting liability, and in lieu of litigation pursuant to Wyo. Stat. Ann. § 35-11-901(a)(ii), Mountain Cement agrees to pay to the DEQ the amount of twenty-two thousand dollars and no cents (\$22,000.00) as a stipulated penalty to resolve the violations alleged in the aforementioned Notices of Violation. Mountain Cement agrees to make full payment by check made payable to the Wyoming DEQ, within thirty (30) days after Mountain Cement has been notified by DEQ that the final signature has been affixed to this Agreement. Mountain Cement agrees to mail the payment to Ann Shed, DEQ, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002.

21. Mountain Cement further agrees to submit a complete permit application for the modification of coal unloading and handling processes at the Laramie Cement Plant. This complete permit application must include a Dust Control Action Plan.

22. Mountain Cement, 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 Mountain Cement may have against any entity.

23. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by DEQ against Mountain Cement arising from the allegations contained within the Notices of Violation and this Agreement. In reliance on this Agreement, DEQ will refrain from taking further enforcement action against Mountain Cement for these particular alleged violations. By this Agreement, the Parties intend to resolve with

prejudice all allegations that are contained within the Notices of Violation and this Agreement.

24. In the event that Mountain Cement fails to fulfill its obligations under this Agreement, Mountain Cement waives any statute of limitation claims that may apply in an enforcement action by DEQ involving the specific matters described in the Notices of Violation, or otherwise set forth in this Agreement.

25. This Agreement shall be admissible by either Mountain Cement or DEQ without objection by the other party in any action between DEQ and Mountain Cement relating to the violations alleged herein.

26. 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 nor Mountain Cement shall have any claim against the other for attorneys' fees, or any other costs related to the preparation and resolution of this Agreement.

27. 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.

28. 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.

29. This Agreement, consisting of seven (7) pages represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

30. The State of Wyoming and DEQ 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.

31. 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.

32. In the event that Mountain Cement assigns any or all of its proprietary interest in the Laramie Cement Plant, located in Albany County, Wyoming, DEQ reserves the right to enforce this Agreement against any and all subsequent owners and operators.

33. 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:

MOUNTAIN CEMENT COMPANY:

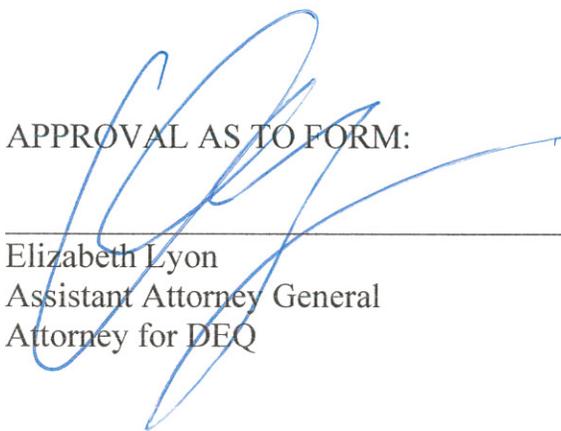
By:  3/10/15
Thomas Hamp Date
President

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:  3-12-15
Steven A. Dietrich, AQD Administrator Date

By:  3/13/15
Todd Parfitt, DEQ Director Date

APPROVAL AS TO FORM:

 3/12/15
Elizabeth Lyon Date
Assistant Attorney General
Attorney for DEQ