

## 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 Demolition, Incorporated (Wyoming Demolition), 1055 Cleveland Avenue, Sheridan, Wyoming, 82801, enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in Notice of Violation Docket Number 5527-15. The Notice of Violation alleged that Wyoming Demolition violated the Wyoming Air Quality Standards and Regulations (Air Quality Rules) by (1) failing to maintain control measures to minimize fugitive dust, (2) failing to perform a thorough pre-demolition/pre-renovation asbestos inspection, and (3) failing to revise the Notification of Demolition and Renovation prior to demolition, all related to the demolition work at the Natrona County High School Building, located at 930 South Elm Street in Casper, Wyoming (High School).

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 Demolition and the DEQ/AQD hereby agree as follows:

1. Wyoming Demolition is a Wyoming corporation that performed demolition work at the High School.

2. Wyoming Demolition is an “Owner or Operator of a demolition or renovation activity,” as defined by the Air Quality Rules, Chapter 3, Section 8(b).

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

4. 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.”

5. Chapter 3, Section 8 of the Air Quality Rules requires all owners and operators of demolition or renovation activities that will disturb a certain amount of asbestos-containing material to provide DEQ/AQD with written notice of their intent to renovate or demolish, at least ten (10) working days before the commencement of renovation or demolition activities. This written notice must include the name, address, and telephone number of the owner and all operators. This section of the Air Quality Rules further requires all such owners and operators to perform a thorough inspection of the renovation or demolition site for the presence of asbestos prior to commencing

renovation or demolition. Finally, this section requires such owners and operators to update their initial notices as necessary.

6. Chapter 3, Section 2(f)(i) of the Air Quality Rules establishes control measures appropriate for minimizing fugitive dust that occur during construction and demolition activities. These control measures include frequent watering and chemical stabilization.

7. On June 12, 2014, DEQ/AQD Inspector Linda Dewitt visited the High School. She inspected the portion of the building (Pool Addition, Mustang Gym, Main Gym, Auxiliary Gym, two Cafeterias, locker rooms, and other associated rooms) which would be demolished during that stage of the project, and observed numerous materials that she suspected contained asbestos. There was no copy of a thorough asbestos inspection on site or provided after the site visit. The notification forms provided by the Owner and Operators, including Wyoming Demolition, did not contain any information regarding the demolition contractor or planned demolition work dates for demolition of the portion of the High School to be demolished during that phase of work.

8. On June 25, 2014, Ms. Dewitt sent a letter to the Owner of the High School expressing concerns about the regulatory compliance of upcoming demolition work on the High School. She listed materials that had not been sufficiently sampled or removed and reminded the Owner that such information must be obtained prior to beginning demolition of any portion of the building. She also stated that she had not received information regarding the demolition contractor, or planned start dates of the demolition.

9. On June 30, 2014, at 3:01 PM, Ms. Dewitt received an email from the High School's consultant, requesting a demolition start date of July 1, 2014. Ms. Dewitt did not respond to that email.

10. In response to a complaint, Ms. Dewitt visited the high school on July 1, 2014, at 9:40 AM. She observed that the Pool Addition had been partially demolished before her site visit. She observed that several items described in her June 25, 2014 letter had not been either adequately sampled or removed.

11. During the July 1, 2014 site visit, another Operator informed Ms. Dewitt that demolition had started on June 30, 2014.

12. During the July 1, 2014 site visit, a Wyoming Demolition employee informed Ms. Dewitt that no source of water or dust control was on site or in use during demolition of the Pool Addition.

13. On January 9, 2015, DEQ/AQD issued Notice of Violation 5527-15 to Wyoming Demolition. The Notice of Violation alleged that Wyoming Demolition was in violation of the Air Quality Rules for (1) failing to maintain control measures to minimize fugitive dust, (2) failing to perform a thorough pre-demolition/pre-renovation asbestos inspection, and (3) failing to revise the Notification of Demolition and Renovation prior to demolition, all in relation to their demolition work at the High School.

14. Without admitting liability, and in lieu of litigation pursuant to Wyo. Stat. Ann. § 35-11-901(a)(ii), Wyoming Demolition agrees to pay to the DEQ/AQD the amount of four thousand six hundred thirty dollars (\$4,630) as a stipulated settlement to resolve the violations alleged in the aforementioned Notice of Violation. Wyoming Demolition agrees to make full payment by check made payable to the Wyoming DEQ/AQD, within thirty (30) days after Wyoming Demolition has been notified by DEQ/AQD that the final signature has been affixed to this Agreement. Wyoming Demolition 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.

15. Wyoming Demolition, 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 Demolition may have against any entity.

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

17. In the event that Wyoming Demolition fails to fulfill its obligations under this Agreement, Wyoming Demolition agrees to toll 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 for the period that the statute of limitation of such claim or claims would otherwise have run but for the negotiation and performance of this settlement agreement.

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

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

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

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25. 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 DEMOLITION, INCORPORATED:

By: Randy J. Warnke 4/15/2015  
Randy Warnke Date  
Owner

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: Steven A. Dietrich 4-23-15  
Steven A. Dietrich, AQD Administrator Date

By: Todd Parfitt 4/23/15  
Todd Parfitt, DEQ Director Date

APPROVAL AS TO FORM:

Elizabeth Lyon 5/4/15  
Elizabeth Lyon Date  
Assistant Attorney General  
Attorney for DEQ/AQD