

## 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 Horsley Specialties, Inc. (Horsley), 160 E. Main Street North, Rapid City, South Dakota, 57701, enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the allegations contained within Notice of Violation Docket Number 5524-15. The Notice of Violation alleged that Horsley violated the Wyoming Environmental Quality Act (Act) and the Wyoming Air Quality Standards and Regulations (Air Quality Rules) related to renovation/demolition work at the Natrona County High School Building, located at 930 South Elm Street in Casper, Wyoming (High School). This Notice of Violation alleged that Horsley did not ensure a thorough asbestos inspection was performed prior to the start of renovation/demolition, maintain copies of current training documentation at the worksite or ensure that no visible emissions were created from waste roofing material.

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, Horsley and the DEQ/AQD hereby agree as follows:

1. Horsley is a South Dakota corporation authorized to do business in Wyoming that performed renovation/demolition work at the High School at times relevant to the allegations contained in the Notice of Violation.
2. Horsley is a “person,” as defined by the Act at 35-11-103(a)(vi).
3. Horsley is an “Owner or Operator of a demolition or renovation activity,” as defined by the Air Quality Rules, Chapter 3, Section 8(b) (Owner and Operator).
4. The DEQ/AQD is the executive branch agency of Wyoming government responsible for enforcing the Air Quality Rules.
5. The Act 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.” Wyo. Stat. Ann. § 35-11-201
6. Chapter 3, Section 8(b) of the Air Quality Rules establishes requirements for Owners and Operators.
7. Chapter 3, Section 8(i)(i) of the Air Quality Rules requires that all Owners and Operators inspect the portion of the site to be disturbed for asbestos prior to commencing a renovation or demolition activity.

8. Chapter 3, Section 8(i)(iii)(H) of the Air Quality Rules establishes training requirements for all supervisors and employees involved in certain types of demolition and renovation activities involving RACM. The sub-section further requires that owners and operators post and make available such evidence for on-site inspection.

9. Chapter 3, Section 8(i)(m)(i) of the Air Quality Rules requires Owners and Operators to use certain control measures to avoid causing visible emissions of asbestos-containing waste materials. These control measures include making sure that all asbestos-containing waste materials are kept wet, and placed into a leak tight container or waste dumpster before they dry out.

10. On June 12, 2014, DEQ/AQD Inspector Linda Dewitt visited the High School and walked through the portion of the building that would be demolished during the next stage of the project. She observed materials that she suspected contained asbestos. There was no copy of a thorough asbestos inspection on site.

11. During the June 12, 2014 inspection, Ms. Dewitt spoke with an asbestos consultant hired by the Owner who stated that Horsley was removing asbestos-containing material from the rooftop. Ms. Dewitt observed the presence of a floor buffer, and a disturbed area of previously non-friable roofing that had been made Regulated. The area on the rooftop was less than 160 square feet. Ms. Dewitt further observed that some of the removed asbestos-containing roofing material was dry, and had not been sealed into a leak-tight container or a waste dumpster.

12. During the June 12, 2014 inspection, Ms. Dewitt asked a Horsley representative to provide current training certificates for the nine Horsley employees listed on the sign-in sheet as present in the work area. The Horsley representative was unable to do so for one employee.

13. On June 25, 2014, Ms. Dewitt sent a letter to the Owner of the High School expressing concerns about the regulatory compliance of upcoming renovation and demolition work on the High School. She listed materials that had not been sufficiently sampled or examined by a trained Asbestos Building Inspector and she reminded the Owner of his legal obligation to provide such information to DEQ/AQD prior to beginning demolition of any portion of the High School. She also stated that she had not received information regarding the demolition contractor or planned start dates of the demolition of the Pool Addition.

14. 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 before 5:00 PM on June 30, 2014.

15. 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 were still present in the building, but she had not received information regarding adequate sampling or removal.

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

17. On January 9, 2015, DEQ/AQD issued Notice of Violation 5524-15 to Horsley. The Notice of Violation alleged that Horsley was in violation of the Chapter 3, Section 8 of the Air Quality Rules.

18. Without admitting liability, and in lieu of litigation pursuant to Wyo. Stat. Ann. § 35-11-901(a)(ii), Horsley agrees to pay to the DEQ/AQD the amount of two thousand four hundred thirty-seven dollars (\$2,437) as a stipulated settlement to resolve the violations alleged in the aforementioned Notice of Violation. Horsley agrees to make full payment by check made payable to the Wyoming DEQ/AQD, within thirty (30) days after Horsley has been notified by DEQ/AQD that the final signature has been affixed to this Agreement. Horsley 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.

19. Horsley, 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 Horsley may have against any entity.

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

21. In the event that Horsley fails to fulfill its obligations under this Agreement, Horsley 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.

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

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

24. 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.

25. 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.

26. 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.

27. 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.

28. 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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29. 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:

HORSLEY SPECIALTIES, INC.:

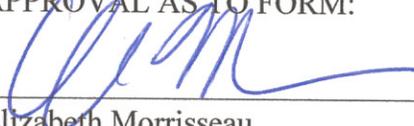
By:  8/27/15  
Robert Horsley, President Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:  8-31-15  
Steven A. Dietrich, AQD Administrator Date

By:  9/8/15  
Todd Parfitt, DEQ Director Date

APPROVAL AS TO FORM:

 8/31/15  
Elizabeth Morriseau Date  
Assistant Attorney General  
Attorney for DEQ/AQD