

## SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Solid and Hazardous Waste Management Division (DEQ) and Pahaska Tepee Resort (Pahaska) enter into this Settlement Agreement to fully and finally resolve, without litigation, the violations alleged in Notice of Violation No. 3933-06, dated October 5, 2006. Pahaska is the owner and operator of the underground storage tanks located at 183 Yellowstone Highway, Cody, Wyoming. This underground storage tank facility is registered with the DEQ as facility 0-001790. The Notice of Violation alleges that: 1) Pahaska failed to have passing results on file for the automatic tank gauge for the entire months of April through July 2005, September 2005, and November 2005 through June 2006 for the diesel tank; for the entire months of April through July 2005, September 2005 and January 2006 through June 2006 for the unleaded tank; and for the entire months of April through July 2005, September 2005, January 2006, February 2006, June 2006, and July 2006, for the premium tank ; 2) Pahaska failed to conduct inventory control for the entire period from April 2005, through July 2006; 3) Pahaska failed to report and investigate any suspected releases during the period April 2005 through July 2006; 4) Pahaska failed to have the sump sensors tested when they were due for testing on March 17, 2005 and March 17, 2006. These acts are violations of the Wyoming Water Quality Rules and Regulations (WWQRR), Chapter 17, Sections 16 (c)(i) and (ii), 14(g), and 19(c).

W.S. 35-11-901(a)(ii) authorizes the DEQ to negotiate a stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, Pahaska and the DEQ hereby stipulate and agree as follows:

1. The DEQ is responsible for enforcing the Environmental Quality Act and Chapter 17, WWQRR.

WWQRR, Chapter 17, Section 16 (c)(ii), states: “(c) *Automatic tank gauging (ATG)*. Equipment for automatic tank gauging which tests for the loss of a regulated substance shall detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains a regulated substance. Owners and/or operators using automatic tank gauging shall also: (i) conduct inventory control in conformance with paragraph (a)(i) of this section, unless: (A) the regulated substance is placed in the UST in batches of twenty five (25) gallons or less; (B) a passing result is obtained monthly from the Automatic Tank Gauge with the tank at least 85% full; (C) the automatic tank gauge itself reconciles the inventory to the same levels as required by paragraph (a)(i) of this section; or (D) a method of equivalent performance to inventory control is also used. (ii) report a suspected release and follow the requirements of Section 19(c) of this chapter whenever: (A) Any calendar month goes by when a passing result cannot be obtained from the ATG sometime during the month; or (B) A pattern becomes evident that the ATG produces a failing result whenever the level of a regulated substance in the tank is high, even if passing results can be obtained when the level is low. (C) Inventory control fails for the second consecutive month.”

WWQRR, Chapter 17, Section 19 (c), states: “Section 19. *Reporting of Suspected Releases*. Owners and/or operators of storage tank systems shall orally report to the department within twenty-four (24) hours all releases or suspected releases in accordance with Section 22 and follow the procedures of Section 22. Owners of sites where storage tanks were formerly located shall also report within seven (7) days after discovering any new evidence of a release. These reports shall be made for any of the following conditions: (c) Monitoring results: Monitoring results from a release detection method required under Section 14 through 17 that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result.”

WWQRR, Chapter 17, Section 6 (c)(i)(B), states: (i) Except as provided in Section 6 (c) (ii), to prevent spilling and overfilling associated with regulated substance transfer to the UST system, owners and/or operators shall use the following spill and overfill prevention equipment: (B) Overfill prevention equipment that will: (I) Automatically shut off flow into the tank when the tank is no more than ninety-five percent (95%) full;”

Pahaska owns and operates tanks located at 183 Yellowstone Highway, Cody, Wyoming, and registered with the DEQ, as facility 0-001790. During an inspection conducted August 22, 2006, the only leak detection records available were ATG records for August 2005, October 2005, and August 2006 for all three products; November and December 2005 for the unleaded and premium USTs; March, April, and May 2006 for the premium UST; and July 2006 for the diesel and unleaded UST.

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Pahaska was also not performing inventory control as required. No suspected releases were reported, nor was there any documentation of investigations to determine if releases had occurred.

2. Since receiving Notice of Violation No. 3933-06 on or about October 7, 2006, Pahaska has corrected the cited violations.
3. Pahaska agrees to pay a total of Five Thousand Dollars (\$5,000.00) to the Solid and Hazardous Waste Management Division as a stipulated penalty for the cited violations. Payment of Five Hundred Dollars (\$500.00) shall be made within thirty (30) days after execution of this Settlement Agreement. Payment shall be by check made payable to the Wyoming Department of Environmental Quality and addressed to the Wyoming Department of Environmental Quality, Attention: Robert Lucht, Herschler Building, 4<sup>th</sup> Floor West Wing, 122 W. 25<sup>th</sup> Street, Cheyenne, WY 82002.
4. Four Thousand Five Hundred Dollars (\$4,500.00) of this penalty is stayed pending full compliance with Chapter 17 for two (2) years from the date of this Settlement Agreement. For purposes of this Settlement Agreement only, full compliance means:
  - a. Payment in full of all storage tank fees no later than July 1 of each year.
  - b. Registration of these tanks every year no later than July 1 and every time there is a change in status of these tanks as required by statute.
  - c. Performance of any one of the tank leak detection methods found in Chapter 17, Section 16 within thirty (30) days of the date of this Settlement Agreement and again every thirty (30) days thereafter. This means that passing Automatic Tank Gauging records are to be maintained for every tank for every month. In addition, Pahaska shall perform inventory control in accordance with Chapter 17, Section 16(a). Records of all these tests shall be maintained by Pahaska for three (3) years.
  - d. Providing an Operator's Annual Inspection (OAI) of this facility no later than June 4 of each year. The OAI includes: a functional test of the Sump Sensors on the pressurized lines no later than June 4, 2007, and every year thereafter no later than June 4. Records of these tests shall be maintained by Pahaska for three (3) years.
  - e. Whenever a month passes without a passing result on the automatic tank gauge for each compartment of each tank, a release may have occurred. In this event, Pahaska agrees to immediately report a suspected release and follow all procedures in Chapter 17, Section 19(c) and Section 20.
  - f. Whenever inventory control fails for any two consecutive months, for any compartment, for any tank, a release may have occurred. In this event, Pahaska agrees to immediately report a suspected release and follow all procedures in Chapter 17, Section 19(c) and Section 20.
  - g. If these tanks are removed, notification to the department and inspection by the department, as required by statute. During tank removal, if it is found that the site is contaminated, payment of all contaminated site fees by July 1 of each year.

If Pahaska complies fully with Chapter 17 for two (2) years from the date of this Settlement Agreement, Four Thousand Five Hundred Dollars (\$4,500.00) of this penalty shall be forgiven.

5. Pahaska Tepee Resort's full compliance with the terms of this Settlement Agreement shall constitute satisfaction for all claims by the DEQ against Pahaska based on the violations alleged in Notice of

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Violation No. 3933-06. Contingent upon Pahaska Tepee Resort's compliance with the terms of this Settlement Agreement, the DEQ will refrain from taking further enforcement action against Pahaska for these particular violations.

6. Pahaska waives any statute of limitations which may apply to an enforcement action by the DEQ involving the specific matters described in Notice of Violation No. 3933-06 in the event that Pahaska fails to fulfill its obligations under this Settlement Agreement.
7. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
8. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
9. This Settlement Agreement is binding upon Pahaska and all its successors and assigns, and upon the DEQ.
10. Nothing in this Settlement Agreement supersedes any provision found in any Wyoming State law, or any regulation issued by the Department of Environmental Quality or any federal law or regulation.
11. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR PAHASKA TEPEE RESORT :

\_\_\_\_\_  
Robert Coe

\_\_\_\_\_  
Date

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

\_\_\_\_\_  
John V. Corra,  
Director

\_\_\_\_\_  
Date

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LeRoy C. Feusner, PE, BCEE  
Administrator  
Solid and Hazardous Waste Management Division

\_\_\_\_\_  
Date