

## SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Solid and Hazardous Waste Management Division (DEQ) and Dingman Investments, LLC (Dingman), enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in Notice of Violation No. 4127-07, dated June 28, 2007. Dingman is the owner and operator of the underground storage tanks (USTs) located at 1426 Warm Springs Drive, Dubois, Wyoming. This UST facility is registered with the DEQ as facility 0-004337. The Notice of Violation alleges that: 1) Dingman failed to conduct inventory control from November 1, 2005, until August 2, 2007. and 2) Dingman operated the unleaded gasoline tank with the overfill device purposely disabled until that was discovered on August 2, 2007. These acts are violations of the Wyoming Water Quality Rules and Regulations (WWQRR), Chapter 17, Sections 6 (c) (ii) (B) and 16 (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, Dingman and the DEQ hereby stipulate and agree as follows:

1. The DEQ is responsible for enforcing the Storage Tank Act of 2007 and Chapter 17, WWQRR.
2. Wyoming Water Quality Rules and Regulations (WWQRR), Chapter 17, Section 6 (c) (i) (B), states: “(c) Spill and overfill prevention equipment. (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; or (II) Alert the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank or triggering a high-level alarm.”

Wyoming Water Quality Rules and Regulations (WWQRR), Chapter 17, Section 16 (c), states: “(c) *Automatic tank gauging (ATG)*. Equipment for automatic tank gauging that 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.

Since receiving Notice of Violation No. 4127-07 on or about July 1, 2007, Dingman has corrected the cited violations. Dingman provided passing results for all tanks for the period cited in the Notice of Violation.

3. Dingman agrees to pay a total of Three Thousand Five Hundred Dollars (\$3,500.00) to the DEQ as a stipulated penalty for the cited violations. Payment of One Thousand Dollars (\$1,000.00) shall be made within 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. Two Thousand Five Hundred Dollars (\$2,500.00) of this penalty is stayed for one (1) year. If Dingman fully complies with WWQRR, Chapter 17 for one (1) year from the date of this settlement agreement, the stayed portion of this penalty shall be forgiven. For purposes of this Settlement Agreement only, full compliance with WWQRR, Chapter 17 means:
  - (A) Dingman shall pay storage tank fees in the amount of Two Hundred Dollars (\$200.00) per tank per calendar year, no later than January 1 of each year.

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- (B) Dingman shall conduct automatic tank gauging and inventory control as required in WWQRR Chapter 17, Section 16 (c).
  - (C) Dingman shall report a suspected release and investigate that release whenever required by Chapter 17, Sections 16, 19 and 20.
  - (D) Dingman shall maintain all spill prevention and overflow devices in working condition as required by WWQRR, Chapter 17, Section 6 (c).
  - (E) Dingman shall monitor all interstitial monitoring devices (sump sensors) and maintain those devices in working order. In the event that any of these devices alarms, investigate immediately. If the alarm is caused by fuel in the sump, report and investigate a suspected release in accordance with Chapter 17, Sections 19 and 20. If the alarm is caused by water in the sump, remove that water immediately and re-set the sump sensor. Maintain all sump sensors within 1 inch of the bottom of each sump.
  - (F) Dingman shall conduct an Operator's Annual Inspection no later than November 5 of each year.
  - (G) If this facility is sold, Dingman shall file the change of ownership form with the department with the signatures of both Dingman and the new owner within 30 (thirty) days of the closing date of the sale. Since this Settlement Agreement is binding on Dingman's successors, Dingman shall disclose this Settlement Agreement to any potential purchaser of the property prior to any sale.
  - (H) If any of the tanks at this location are removed, Dingman shall coordinate the removal with the Lander Office of DEQ, so that a tank removal inspection may be conducted while the excavation is still open and the tank is available for inspection. Dingman shall decommission any tank removed in accordance with DEQ regulations.
  - (I) If any additional tanks are installed at this location, Dingman shall follow all of the requirements in the Storage Tank Act of 2007 and Chapter 17, WWQRR.
5. Dingman's full compliance with the terms of this Settlement Agreement shall constitute satisfaction for all claims by the DEQ against Dingman based on the violations alleged in Notice of Violation No. 4127-07. Contingent upon Dingman's compliance with the terms of this Settlement Agreement, the DEQ will refrain from taking further enforcement action against Dingman for these particular violations.
  6. Dingman waives any statute of limitations that may apply to an enforcement action by the DEQ involving the specific matters described in Notice of Violation No. 4127-07 in the event that Dingman 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 Dingman and all of 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.

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- 11. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR DINGMAN INVESTMENTS, LLC:

*Richard L. Dingman*

Richard Dingman

*9/18/07*

Date

*Cynthia D. Dingman*

Cynthia Dingman

*9/18/07*

Date

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

*John V. Corra*

John V. Corra,  
Director

*Sept 14/07*

Date

*LeRoy C. Feusner*

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

*7 Sept 07*

Date

*Penalty check in the amount of One Thousand Dollars (\$1000<sup>00</sup>) received with this Settlement Agreement 9/20/07.*

*Richard L. Dingman*