

MAY 23 2008

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Solid and Hazardous Waste Division (DEQ/SHWD) and Sunlight Ranch Company, finally resolve without litigation the violations alleged in **Notice of Violation Docket No. 4195-07, dated February 4, 2008 (Corrected)**. The Notice of Violation alleges that Sunlight Ranch Company, is in violation of the Wyoming Environmental Quality Act (EQA) and applicable Solid Waste Rules and Regulations (SWRR) and Hazardous Waste Rules and Regulations (HWRR) or permit conditions.

Wyoming Statute (W.S.) 35-11-901 (a)(ii) authorizes the DEQ to negotiate a stipulated settlement, including payment of a penalty, compliance schedules, or other enforcement conditions, in lieu of litigation. To that end, Sunlight Ranch Company, and the DEQ/SHWD hereby stipulate and agree as follows.

1. The DEQ/SHWD is responsible for enforcing the Wyoming SWRR and HWRR.

2. Sunlight Ranch Company operates the Wyoming Feeders concentrated animal feeding operation (CAFO) [the Powell Unit] in or near Powell and the Clark's Fork Unit farming and ranching operation [Clarks Fork Unit] near Route 120 in Park County, Wyoming.

3. W.S. §35-11-502(a)(i), requires an authorized permit for a solid waste management facility, including that owned or operated by a CAFO, to locate, construct, operate or close such a solid waste management facility. Therefore, the Company's Powell Unit facility was in violation of W.S. §35-11-502(a)(i) for operating solid waste management facilities [open dumps] on the Company's Powell Unit and Clarks Fork Unit facilities without authorized permits. Solid Waste Management Facilities do not include lands and facilities owned by a person engaged in farming and ranching operations and used to dispose of solid waste generated incidental to his or her farming and ranching operations. W.S. §35-11-103(d)(ii)(E) and Wyoming SWRR, Chapter 1, Section 1(e). A permit or disposal authorization is not required for the facilities or activities identified in Chapter 1, Section f (l) of the Wyoming Solid Waste Regulations. Wyoming SWRR, Chapter 1, Section f(ii). The administrator may exempt lands and facilities owned by a person engaged in farming and ranching operations and used to dispose of solid waste generated incidental to his or her farming and ranching operations from a permit or any requirement to obtain a waste management authorization under Wyoming regulations under certain conditions. Wyoming SWRR Chapter 1, Section 1(l)(xi).

4. Wyoming SWRR, Chapter 1, Section 1(h)(v), prohibits the act of open burning solid wastes not exempted in Chapter 1, Section 1(l). On October 19, 2007, department personnel observed the burning of solid wastes in a pit [open dump] located on the Clarks Fork Unit.

5. Wyoming SWRR, Chapter 1, Section 1(h)(i), prohibits the acts of placing solid wastes on the land at an uncontrolled Solid Waste Management Facility in such a manner that they present a real or potential hazard to human health or the environment ("open dumping"). On October 19, 2007, department personnel observed the open dumping of solid wastes in a pit [open dump] at the Company's Powell Unit and Clarks Fork Unit facilities located on the Clarks Fork Unit.

6. Wyoming HWRR, Chapter 1, Section 11(c)(iv)(A through D), requires proper response to releases of used oil and other materials into the environment. The October 18 and 19, 2007, inspections of the facility indicated there was an area of used oil spills and used oil-contaminated soils at the Sunlight Ranch Company's Powell Unit facility.

7. Wyoming HWRR, Chapter 12, Section 11 (c)(iii), requires containers and above ground tanks used for the storage of used oil to be labeled or clearly marked with the words "Used Oil." The October 18 and 19, 2007, inspections of the facility indicated there were seven (7) 55-gallon steel and plastic containers containing used oil that had not been properly marked/labeled with the words "Used Oil" at the Company's Powell Unit facility located near Powell, Wyoming, in the facility's post treatment area.

8. Since receiving the Notice of Violation Docket No. 4195-07 on or about December 24, 2007, Sunlight Ranch Company has corrected all of the above violations.

9. Because of the potential for groundwater contamination from deposited wastes, Sunlight Ranch Company shall install a minimum of one (1) groundwater monitoring well located hydraulically up gradient and shall construct two (2) wells located hydraulically down gradient from the municipal/dead animal disposal pits. Groundwater monitoring shall be conducted at all wells on a quarterly basis to obtain and establish a minimum of eight (8) separate sampling results events. The groundwater monitoring parameters shall include ammonia, nitrates, biochemical oxygen demand (BOD), chemical oxygen demand (COD), E.coli (pathogen indicator), total coliform (pathogen indicator), temperature, conductivity, alkalinity (carbonate, bicarbonate), sodium, sulfate, and TDS.

A Groundwater Monitoring Plan shall be submitted to the WDEQ/SHWD for review prior to installation of the wells and the wells shall be constructed according to the SWRR Chapter 2 requirements. The plan shall be submitted within ninety (90) days of execution of this settlement agreement. The plan shall also include a schedule for well installation, commencement of monitoring activities and report submittal. In any event, monitoring shall commence on or before October 1, 2008. Background concentrations shall be established in the up-gradient or background well(s) according to SWRR Chapter 2 requirements. Groundwater monitoring shall be conducted and reported to the WDEQ/SHWD on a semiannual basis and according to the SWRR Chapter 2

requirements. A statistical analysis of the groundwater monitoring data shall be conducted and reported according to the SWRR Chapter 2 requirements and upon completion of the fourth (4th) and eighth (8th) quarterly monitoring events.

A final groundwater assessment report shall be submitted upon completion of the final statistical analysis of groundwater data that provides an assessment of the potential for the closed landfills to impact groundwater in the future. The report shall be submitted within 120 days of the last sampling event. Information describing groundwater flow characteristics in the river alluvium including groundwater hydraulic conductivity, groundwater flow direction and rate, etc., shall be used to provide the basis for the assessment. Depending on the results of the assessment to further impact groundwater and the results of the statistical analysis of the groundwater data, the department reserves the right to require additional monitoring and/or further remedial action as specified under SWRR, Chapter 2, Section 8.

10. Sunlight Ranch Company shall cover and properly slope the native final cover material to prevent surface water ponding, over the two (2) known (former and active) solid waste pits and seed the final cover with native vegetation. Work under this paragraph shall be completed before the end of the calendar year 2008. Depending on the results of groundwater monitoring in #9 above, Sunlight Ranch Company may be required to install a two (2) foot compacted clay layer (minimum compaction of 1 X 10⁻⁷ cm/sec) over the two (2) known (former and active) municipal/dead animal solid waste pits.

11. Sunlight Ranch Company, in accordance with this Settlement Agreement, agrees to pay a total of \$16,500 dollars to the Wyoming Department of Environmental Quality for the cited violations. Such payment shall be made no later than June 6, 2008, by check. In lieu of paying the total penalty payment of \$16,500 dollars to the WDEQ, Sunlight Ranch Company may make payment of the entire amount as an Supplemental Environmental Project (SEP) to Powell Valley Recycling in Powell, Wyoming. Such payment shall be made no later than June 6, 2008, by check to Powell Valley Recycling and a copy of the check shall be submitted to the department to confirm that this condition has been properly addressed.

12. Sunlight Ranch Company's full compliance with the terms of this Settlement Agreement shall constitute satisfaction for all present and future claims by DEQ against Sunlight Ranch Company based on the acts or omissions alleged to be violations in Notice of Violation Docket No. 4195-07. Contingent on Sunlight Ranch Company's compliance with the terms of this Settlement Agreement, DEQ will refrain from taking further enforcement action against Sunlight Ranch Company's for these particular alleged acts or omissions.

13. Sunlight Ranch Company's waives any statute of limitations which may apply to an enforcement action by the DEQ/SHWD involving the specific matters described in Notice of Violation No. 4195-07 in the event that Sunlight Ranch Company fails to fulfill its obligations under this Settlement Agreement.

14. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.

15. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.

16. This Settlement Agreement is binding upon Sunlight Ranch Company, its successors and assigns, and upon the DEQ.

17. This Settlement Agreement may only be amended in writing, signed by both parties.

18. The State of Wyoming and the Department of Environmental Quality, Solid and Hazardous Waste Division, do not waive sovereign immunity by entering into this Settlement Agreement, and specifically retain all immunity and all defenses to them as sovereigns pursuant to Wyo. Stat. §1-39-104(a) and all other state law.

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

20. This agreement is not binding until fully executed by all parties to this Agreement.

FOR: Sunlight Ranch Company

Signed:

David G. Crittenden

Date:

5/20/08

Typed:

David G. Crittenden

Title:

Vice President



FOR: THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

Signed:

John V. Ann

Director

Date:

5/18/08

Department of Environmental Quality (DEQ)

Signed:

John V. Ann

Administrator

Date:

8 May 08

DEQ/Solid & Hazardous Waste Division