

**SOLID AND HAZARDOUS  
WASTE DIVISION**

**JUL 23 2008**

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Solid and Hazardous Waste Division (DEQ/SHWD) and McMurry Ready Mix (referred to collectively below as the "Parties"), enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in **Notice of Violation No. 4269-08, dated May 5, 2008 ("NOV")**. That NOV alleges that McMurry Ready Mix is in violation of the Wyoming Environmental Quality Act (EQA) and applicable Solid and Hazardous Waste Rules & Regulations ("SWRR" and "HWRR") or permit conditions.

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, McMurry Ready Mix, and the DEQ/SHWD hereby stipulate and agree as follows:

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

2. McMurry Ready Mix operates a construction contracting facility located at 5684 West Yellowstone Highway, Casper, Wyoming.

3. Wyoming SWRR, Chapter 1, Section 1(f)(i) and Section 1(l)(xviii), requires a permit or a one-time or emergency disposal authorization for the capacity to store more than 2,000 gallons of used oil on-site. The April 14, 2008, inspection of McMurry Ready Mix, revealed that the combined used oil storage capacity at the facility exceeded approximately 20,000 gallons of used oil, and that the facility did not have a solid waste permit. It was further observed, however, that the large structure used by McMurry Ready Mix for the storage and containment of such used oil is considered state of the art and provides excellent protection against a possible leak or release of used oil.

4. McMurry Ready Mix states that it was unaware that it did not have the necessary permits for storing used oil at the facility.

5. Wyoming HWRR, Chapter 12, Section 11(c)(iii), requires that containers, above ground tanks, and UST fill pipes containing used oil are to be labeled or clearly marked with the words "Used Oil". During the April 28, 2008, inspection, it was observed that there were a large number of plastic 5-gallon buckets (62) and some 55-gallon drums and tanks that were not labeled or clearly marked with the words

"Used Oil".

6. In issuing the NOV, DEQ/SHWD does not allege that McMurry Ready Mix improperly released any solid or hazardous waste or used oil.
7. Within thirty (30) days from the date of this Settlement Agreement, McMurry Ready Mix shall have corrected the used-oil labeling violation described under Condition #5.
8. Within one hundred twenty (120) days from the date of this Settlement Agreement, McMurry Ready Mix shall have submitted the required solid waste permit application to obtain the required solid waste permit to address Condition #3.
9. By letter dated June 26, 2008, McMurry Ready Mix and the DEQ/SHWD agreed to a stipulated penalty of six thousand dollars (\$6000) to fully and finally resolve the violations alleged in the NOV in lieu of litigation.
10. McMurry Ready Mix further agrees that in lieu of paying up to six thousand dollars (\$6000) as a penalty, McMurry Ready Mix shall within sixty (60) days from the effective date of this Settlement Agreement, donate \$6000.00, the total penalty amount, to the Casper Balefill to implement a Supplemental Environmental Project (SEP) involving the purchase of an automatic drum lift for used oil and liquid waste management.
11. Upon completion of its obligation under paragraph 10, McMurry Ready Mix shall promptly notify the DEQ/SHWD in writing to confirm that the SEP has been implemented and that payment to the Casper Balefill has been made. This notification in writing shall include written documentation showing that McMurry Ready Mix requested Casper Balefill to use such funding to purchase an automatic drum lift for used oil and liquid waste management.
12. McMurry Ready Mix, by entering into this Settlement Agreement, does not concede or admit to any liability, and this Settlement Agreement constitutes no admission of fault or noncompliance.
13. McMurry Ready Mix's full compliance with the terms of this Settlement Agreement shall constitute satisfaction for all present and future claims by the DEQ against McMurry Ready Mix based on the acts and omissions alleged to be violations in Notice of Violation No. 4269-08. Contingent on McMurry Ready Mix's compliance with the terms of this Settlement Agreement, the DEQ will

refrain from taking any further enforcement action against McMurry Ready Mix for these particular alleged acts or omissions, or for any other acts or omissions discovered or observed during the April 28, 2008 inspection.

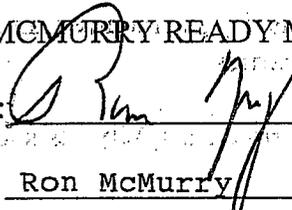
14. McMurry Ready Mix waives any statute of limitations which may apply to an enforcement action by the DEQ/SHWD involving the specific matters described in the NOV in the event that McMurry Ready Mix fails to fulfill its obligations under this Settlement Agreement.
15. This Settlement Agreement shall be admissible by either Party without objection by the other Party in any subsequent action between these Parties.
16. Each Party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both Parties.
17. This Settlement Agreement is binding upon McMurry Ready Mix, its successors and assigns, and upon the DEQ.
18. This Settlement Agreement may only be amended in writing, signed by both Parties.
19. 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.
20. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective Parties to this Settlement Agreement.
21. This Agreement is not binding until fully executed by all Parties to this Agreement.
22. The Parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Settlement Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Settlement Agreement shall operate only between the Parties to this Settlement Agreement, and shall inure solely to the benefit of the Parties to this Settlement Agreement. The Parties to this Settlement Agreement intend and expressly agree that only Parties signatory to this Settlement Agreement shall have any legal or equitable right to seek enforcement of this Settlement 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 Settlement Agreement.

23. Each Party represents that they are authorized to enter into this Settlement Agreement and agree to be bound hereby.

IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Settlement 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 Settlement Agreement:

FOR: MCMURRY READY MIX:

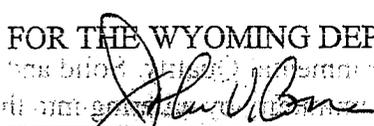
Signed:  \_\_\_\_\_

Date: 07/22/2008

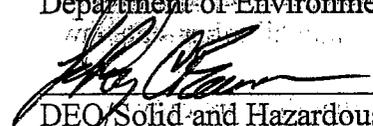
Typed: Ron McMurry

Title: Vice President

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

 \_\_\_\_\_, Director Date: 7/27/08

Department of Environmental Quality (DEQ)

 \_\_\_\_\_, Administrator Date: 11/16/08

DEQ Solid and Hazardous Waste