

## SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Solid and Hazardous Waste Division (DEQ) and AB Power, LLC, enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in Notice of Violation No. 4716-10, dated August 18, 2010. AB Power, LLC, is the owner and operator of the underground storage tanks (USTs) located at 1514 East Fifth Street, Sheridan, Wyoming. This UST facility is registered with the DEQ as facility 0-004300. The Notice of Violation alleges that AB Power, LLC, failed to: perform an operator's annual inspection, annually function test automatic line leak detectors, perform inventory control in conjunction with automatic tank gauge (ATG) testing, report suspected releases and investigate suspected releases. These acts are violations of the Wyoming Water Quality Rules and Regulations (WWQRR), Chapter 17.

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, AB Power, LLC, and the DEQ hereby stipulate and agree as follows:

1. The DEQ is responsible for enforcing the Storage Tank Act of 2007 and WWQRR, Chapter 17.
2. AB Power, LLC, committed the following violations of WWQRR, Chapter 17:

**Count 1: Failure to perform an operator's annual inspection [WWQRR, Chapter 17, Section 13(e)].** As owner and operator of underground storage tanks, AB Power, LLC, has violated WWQRR, Chapter 17, Section 13(e), by not conducting an operator's annual inspection in 2009.

**Count 2: Failure to annually function test automatic line leak detectors [WWQRR, Chapter 17, Section 14(g)(i)(B)].** As owner and operator of underground storage tanks, AB Power, LLC, has violated WWQRR, Chapter 17, Section 14(g)(i)(B), by failing to perform annual automatic line leak detector function testing.

**Count 3: Failure to perform inventory control in conjunction with ATG testing [WWQRR, Chapter 17, Section 16(c)(i)].** As owner and operator of underground storage tanks, AB Power, LLC, has violated WWQRR, Chapter 17, Section 16(c)(i), by failing to perform inventory control in conjunction with ATG testing.

**Count 4: Failure to report a suspected release when a calendar month goes by and a passing result cannot be obtained from the ATG [WWQRR, Chapter 17, Section 16(c)(ii)(A)].** As owner and operator of underground storage tanks, AB Power, LLC, violated WWQRR, Chapter 17, Section 16(c)(ii)(A), by failing to report a suspected release for each month the tanks did not pass ATG testing.

**Count 5: Failure to investigate a suspected release [WWQRR, Chapter 17, Section 20].** As owner and operator of underground storage tanks, AB Power, LLC, violated WWQRR, Chapter 17, Section 20, by failing to investigate a suspected release each month the tanks did not pass ATG testing.

Since receiving Notice of Violation No. 4716-10 on or about August 25, 2010, AB Power, LLC, has corrected the preceding violations.

3. AB Power, LLC, agrees to pay a total of Fifteen Thousand Dollars (\$15,000.00) to the DEQ as a stipulated penalty for the cited violations. Payment of Seven Thousand Dollars (\$7,000.00) shall be made within 30 days of signing 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: Oma Gilbreth, Herschler Building, 4<sup>th</sup> Floor West Wing, 122 W. 25<sup>th</sup> Street, Cheyenne, WY 82002.
4. AB Power, LLC,'s full compliance with the terms of this Settlement Agreement shall constitute satisfaction for all claims by the DEQ against AB Power, LLC, based on the violations alleged in Notice of Violation No. 4716-10. Contingent upon AB Power, LLC,'s compliance with the terms of this Settlement Agreement, the DEQ will refrain from taking further enforcement action against AB Power, LLC, for these particular violations.

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- 5. AB Power, LLC, 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. 4716-10 in the event that AB Power, LLC, fails to fulfill its obligations under this Settlement Agreement.
- 6. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
- 7. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
- 8. This Settlement Agreement is binding upon AB Power, LLC, and all its successors and assigns and upon the DEQ.
- 9. Payment of Eight Thousand Dollars (\$8,000.00) is stayed for one (1) year from the date of this Settlement Agreement with the following conditions:

If AB Power, LLC, complies with WWQRR, Chapter 17 and the Storage Tank Act of 2007 for one (1) year after this agreement has been signed, Eight Thousand Dollars (\$8,000.00) of this penalty shall be forgiven.

AB Power, LLC, 's full compliance with WWQRR, Chapter 17, and the Storage Tank Act of 2007 includes, but is not limited to, payment of annual tank fees by January 1, performing an operator's annual inspection by June 3, 2011, function testing of the sump sensors by June 3, 2011, reporting and investigating a suspected release whenever a month goes by and a passing automatic tank gauge test is not received on any one of the tank compartments, performance of monthly inventory control on each of the tank compartments, reporting and investigating a suspected release whenever the inventory records for a tank compartment fails to balance for two consecutive months, having a licensed Class A Operator, and having a licensed Class B Operator.

- 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 AB POWER, LLC:

Signature: *Rhoda Jones*  
 Name: *Rhoda Jones*

*12-6-10*  
 Date

*The money orders totalling \$3,500.00 received in November 2010.*

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

*John V. Corra*  
 John V. Corra,  
 Director

*11/24/10*  
 Date

*CA*  
 Carl Anderson, PhD  
 Administrator  
 Solid and Hazardous Waste Division

*11/24/10*  
 Date