

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Solid and Hazardous Waste Division (DEQ), and Border Foods of Wyoming, LLC, enter into this Settlement Agreement to fully and finally resolve, without litigation, the violations alleged in Notice of Violation Docket Number 5096-12, dated January 3, 2013. Border Foods of Wyoming, LLC, is the owner and operator of the underground storage tanks (USTs) located at Shell C-Store #91000, 2421 Plaza Street, Rawlins, Wyoming. This UST facility is registered with the DEQ as facility 0-004334. This NOV alleges that Border Foods of Wyoming, LLC, failed to notify the DEQ of suspected releases when passing automatic tank gauge test results could not be obtained during multiple months. These acts are violations of 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, Border Foods of Wyoming, 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. Border Foods of Wyoming, LLC, neither admits nor denies any alleged violation of WWQRR, Chapter 17; however, in order to avoid further litigation, Border Foods of Wyoming, LLC, accepts civil liability for the following alleged violations of WWQRR, Chapter 17:

Count 1: Failure to Report and Investigate a Suspected Release [WWQRR, Chapter 17, Section 16(c)(ii)(A)]. As the owner and operator of the USTs located at Shell C-Store #91000, Border Foods of Wyoming, LLC, violated WWQRR, Chapter 17, Section 16(c)(ii)(A), by failing to report and investigate a suspected release when a passing ATG test result could not be obtained for the diesel UST during the month of November 2011.

Count 2: Failure to Report and Investigate a Suspected Release [WWQRR, Chapter 17, Section 16(c)(ii)(A)]. As the owner and operator of the USTs located at Shell C-Store #91000, Border Foods of Wyoming, LLC, violated WWQRR, Chapter 17, Section 16(c)(ii)(A), by failing to report and investigate a suspected release when a passing ATG test result could not be obtained for the diesel UST during the month of December 2011.

Count 3: Failure to Report and Investigate a Suspected Release [WWQRR, Chapter 17, Section 16(c)(ii)(A)]. As the owner and operator of the USTs located at Shell C-Store #91000, Border Foods of Wyoming, LLC, violated WWQRR, Chapter 17, Section 16(c)(ii)(A), by failing to report and investigate a suspected release when a passing ATG test result could not be obtained for the diesel UST during the month of January 2012.

Count 4: Failure to Report and Investigate a Suspected Release [WWQRR, Chapter 17, Section 16(c)(ii)(A)]. As the owner and operator of the USTs located at Shell C-Store #91000, Border Foods of Wyoming, LLC, violated WWQRR, Chapter 17, Section 16(c)(ii)(A), by failing to report and investigate a suspected release when a passing ATG test result could not be obtained for the diesel UST during the month of February 2012.

Count 5: Failure to Report and Investigate a Suspected Release [WWQRR, Chapter 17, Section 16(c)(ii)(A)]. As the owner and operator of the USTs located at Shell C-Store #91000, Border Foods of Wyoming, LLC, violated WWQRR, Chapter 17, Section 16(c)(ii)(A), by failing to report and investigate a suspected release when a passing ATG test result could not be obtained for the diesel UST during the month of May 2012.

Count 6: Failure to Report and Investigate a Suspected Release [WWQRR, Chapter 17, Section 16(c)(ii)(A)]. As the owner and operator of the USTs located at Shell C-Store #91000, Border Foods of Wyoming, LLC, violated WWQRR, Chapter 17, Section 16(c)(ii)(A), by failing to report and investigate a suspected release when a passing ATG test result could not be obtained for the diesel UST during the month of June 2012.

Count 7: Failure to Report and Investigate a Suspected Release [WWQRR, Chapter 17, Section 16(c)(ii)(A)]. As the owner and operator of the USTs located at Shell C-Store #91000, Border Foods of Wyoming, LLC, violated WWQRR, Chapter 17, Section 16(c)(ii)(A), by failing to report and investigate a suspected release when a passing ATG test result could not be obtained for the premium UST during the month of September 2012.

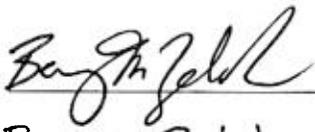
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3. The total penalty for the cited violations shall be six thousand dollars (\$6,000.00). Border Foods of Wyoming, LLC, agrees to pay a total of one thousand dollars (\$1,000.00) to the DEQ as a stipulated penalty for the cited violations. Payment of one thousand dollars (\$1,000.00) shall be made and returned with 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, 4th Floor West Wing, 122 W. 25th Street, Cheyenne, WY 82002.
4. Border Foods of Wyoming, LLC's, full compliance with the terms of this Settlement Agreement shall constitute satisfaction for all claims by the DEQ against Border Foods of Wyoming, LLC, based on the violations alleged in Notice of Violation Docket Number 5096-12. Contingent upon Border Foods of Wyoming, LLC's, compliance with the terms of this Settlement Agreement, the DEQ will refrain from taking further enforcement action against Border Foods of Wyoming, LLC, for these particular violations.
5. Border Foods of Wyoming, 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 Docket Number 5096-12 in the event that Border Foods of Wyoming, 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 Border Foods of Wyoming, LLC, and all its successors and assigns and upon the DEQ.
9. Payment of five thousand dollars (\$5,000.00) is stayed for one (1) year from the date of this Settlement Agreement. If Border Foods of Wyoming, LLC, complies with WWQRR, Chapter 17, and the Storage Tank Act of 2007 for one (1) year after this agreement has been signed, the five thousand dollars (\$5,000.00) of this penalty shall be waived. Full compliance with WWQRR, Chapter 17, and the Storage Tank Act of 2007 includes, but is not limited to: 1) payment of annual tank fees by January 1, 2) performing an operator's annual inspection by March 7, 2014, 3) function testing of the line leak detectors by March 7, 2014, and 4) reporting and investigating a suspected release whenever a month goes by and the facility's automatic tank gauge (ATG) does not issue a passing tank monitoring result and/or two months go by and the facility's inventory control fails to balance.
10. Nothing in this Settlement Agreement supersedes any provision found in any Wyoming state law, or any regulation issued by the DEQ, or any federal law or regulation.
11. This Agreement may not be amended except by a written order signed by both parties.
12. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

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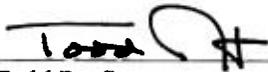
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FOR BORDER FOODS OF WYOMING, LLC:

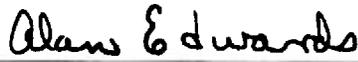
Signature: 
Written Name: Barry M. Zelickson

Date 6/10/13

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:


Todd Parfitt,
Director

Date June 4, 2013


Alan Edwards,
Acting Administrator
Solid and Hazardous Waste Division

Date May 31, 2013