

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality (WDEQ) and Craig Mader (MADER) and the Overbrook Improvement & Service District (DISTRICT) enter into this Settlement Agreement to fully and finally resolve without litigation the violation alleged in the WDEQ Notice of Violation (NOV), Docket Number 4403-08, dated December 29, 2008. The NOV alleges the construction and operation of a public water supply system, the Overbrook Subdivision Community Water System, without a permit. This is a violation of the Wyoming Environmental Quality Act. The subdivisions served by the water system are Overbrook Subdivision NE1/4 NW1/4 Section 10 Township 49 North (T49N) Range 73 West (R73W); Overbrook Subdivision II NE1/4 NW1/4; NW1/4NE1/4; SW1/4 NE1/4; NW1/4 SE1/4 and the SW1/4 SW1/4 of Section 10 Township 49 North (T49N) Range 73 West (R73W); and Overbrook Subdivision III, a tract of land located in NE1/4 NW1/4 and the NW1/4 NE1/4 Section 10 Township 49 North (T49N) Range 73 West (R73W), all located in Campbell County.

Wyoming Statute (W.S.) 35-11-901 (a) (ii) authorizes the WDEQ to negotiate a stipulated settlement in lieu of litigation. To that end, MADER and the DISTRICT and the WDEQ hereby stipulate and agree as follows:

- 1 of 15 The WDEQ pursuant to W.S. 35-11-104, is a department in the executive branch of the state government of Wyoming and is principally situated in Cheyenne, Wyoming. WDEQ is the agency with the responsibility for administering the Wyoming Environmental Quality Act including all provisions of the WDEQ rules.
- 2 of 15 MADER is the developer of the Overbrook Subdivision and the public water supply system while the District is the owner and responsible for the operation of the public water supply system.
- 3 of 15 The construction of a public water supply system without a permit to construct is a violation of W.S. 35-11-301 (a) (v).
- 4 of 15 MADER and the DISTRICT agree to pay a total penalty of five thousand five hundred dollars and no cents (\$5,500) and complete the items outlined in 5 of 15 as a stipulated settlement to resolve NOV Docket 4403-08 in lieu of litigation under W.S. 35-11-901 (a)(ii). MADER and the DISTRICT shall pay \$5,500 directly to the DEQ/WQD. The payment is due and payable within thirty (30) days of the full execution of this Settlement Agreement. Payment to DEQ shall be by check made payable to the Wyoming Department of Environmental Quality, Water Quality Division and shall be sent to: John F. Wagner, WQD Administrator, Department of Environmental Quality Water Quality Division, Herschler Building, 4th Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. **The check should reference Docket Number 4403-08.**
- 5 of 15 MADER and the DISTRICT shall complete the as-built permitting process with the WDEQ in accordance with the Water Quality Rules and Regulations (WQRR) and commits to provide the following to the WDEQ once the Settlement Agreement is signed by both parties:
 - a. Well (WQRR Chapter 12, Section 7 (e)).
 - i. A down-hole video;
 - ii. Cement bond log;
 - iii. Water quality testing to include all primary and secondary drinking water standards, as well as testing for Iron Bacteria;
 - iv. New yield and drawdown tests as defined in WWQRR Chapter 12, Section 9 (b)(ii).
 - b. Groundwater (WQRR Chapter 12, Section 9 (b))
 - i. Provide information on the well's locations in relation to nearest sources of pollution, buildings, property lines;

- ii. Provide information on the type of casing used;
- iii. Provide information on the pump;
- iv. Provide information on the upper terminal well construction.
- c. Chemical Application (WQRR Chapter 12, Section 11)
 - i. Provide information on how the sodium chlorite is stored and handled.
- d. Pumping Facilities (WQRR Chapter 12, Section 12)
 - i. Provide the information required in this section, such as what pumps are installed and how or if these pumps are adequate for the demand of the subdivision;
 - ii. Standby power or back-up power is required.
- e. Finished Water Storage (WQRR Chapter 12, Section 13)
 - i. Provide information on the concrete storage tank and how it complies with AWWA Standards for Concrete Tanks.
 - ii. Provide information regarding the inspection, cleaning, and any repairs completed on the tank and provide any available pictures.
 - iii. Provide the remaining information required in this WQRR Chapter 12, Section 13.
- f. Water Main Design (WQRR Chapter 12, Section 14 (b))
 - i. Provide information on the water line used for the subdivision, such as, what pressure class and type, sizing information, and pressure information. Provide an analysis of the existing pressures in the system and how they comply with the regulations.
 - ii. There are numerous high points shown in the submitted profile which need to be addressed. Further, there are no main line valves shown in the profiles –main line valves are required to minimize sanitary hazards. In addition, flushing hydrants are required at all dead ends.
 - iii. Provide information on the flushing valves used.

MADER and the DISTRICT must submit a remediation plan for approval to the WDEQ that addresses any components of the water system that are not in compliance with the WQRR. The information outlined above must be provided to the WDEQ by 60 days of signing this settlement agreement.

6 of 15 The WDEQ commits to completing the as-built review of the water system within thirty (30) days of receiving all of the required information and then either issuing an as-built permit or requesting additional information from MADER and the DISTRICT so an as-built permit can be issued.

7 of 15 MADER and the DISTRICT and the WDEQ commit to completing the permit construction required to satisfy the requirements of the as-built permit 08-251 as issued for the remaining components of the Overbrook Subdivision water system within one hundred twenty (120) days after issuance of the as-built permit.

8 of 15 This signed Settlement Agreement, as specified above, shall constitute full satisfaction for and resolution of all claims by the WDEQ against MADER and the DISTRICT based on the violations alleged in NOV Docket Number 4403-08. Contingent upon MADER's and the DISTRICT's compliance with the terms of this Settlement Agreement, the WDEQ will refrain from taking further enforcement action against MADER and the DISTRICT for the violation cited in this Settlement Agreement. By this Settlement Agreement, the parties intend to resolve with prejudice all allegations that were asserted in NOV Docket Number 4403-08.

9 of 15 MADER and the DISTRICT waive any statute of limitations which may apply to an enforcement action by the WDEQ involving the specific matters described in NOV Docket Number 4403-08 in the event that MADER and the DISTRICT fail to fulfill their obligations under this Settlement Agreement.

10 of 15 Nothing in this agreement precludes WDEQ from taking additional enforcement action, including the issuance of a Notification of Violation, Order and/or pursuing

additional penalties, should MADER and/or the DISTRICT violate the Wyoming Environmental Quality Act or applicable rules and regulations in the future.

- 11 of 15 This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
- 12 of 15 Notwithstanding any other language in this Settlement Agreement, the State of Wyoming and WDEQ do not waive sovereign immunity by entering into this Settlement Agreement with MADER and the DISTRICT, and specifically retain all immunity and all defenses available as sovereigns under state and federal law.
- 13 of 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.
- 14 of 15 This Settlement Agreement is binding upon MADER and the DISTRICT, its successors and assigns, and upon the WDEQ.
- 15 of 15 The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR CRAIG MADER

Signed: Craig G. Mader

Date: April 14, 2009

Typed: Craig G. Mader

Title: Developer

FOR OVERBROOK IMPROVEMENT & SERVICE DISTRICT

Signed: Adam Edmondson

Date: 04/30/09

Typed: Adam Edmondson

Title: PRESIDENT

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

John V. Corra
John V. Corra, Director
WDEQ

Date: 5/8/09

John F. Wagner
John F. Wagner, Administrator
WDEQ/WQD

Date: 5/8/09

JVC/JFW/LBH/bb/9-0249