



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

June 25, 2007

Mr. David Crnich
Environmental Director
McMurry Ready Mix Company
PO BOX 2488
Casper, WY 82602

RE: Notice of Violation

Dear Mr. Crnich:

Enclosed you will find a Notice of Violation (NOV) issued to McMurry Ready Mix Company by the Department of Environmental Quality, Air Quality Division, for failing to comply with the permit requirements for 1) failing to maintain opacity at the venturi scrubber to 20% or less and 2) failing to adequately control fugitive dust from the haul road and aggregate handling bin for the hot mix asphalt plant located in Carbon County, Wyoming. These violations of permit MD-899 were observed by Mr. Thor Nordwick and Mr. Glenn Spangler on May 30, 2007.

Another issue, not currently addressed in this Notice of Violation, but of great concern was observed during this inspection. A fire in a steel barrel was observed, burning which is suspected to be burning trade waste.

As the Department and this Division consider the failure to comply with air quality permit conditions to be a serious matter, I am considering recommending the Department refer this violation to the State Attorney General's office requesting a suit be filed in District Court to recover appropriate penalties. If you would like to discuss settlement of this Notice of Violation prior to referral to the Attorney General's office, please contact Ms. Karen Godman, Air Quality Compliance Program Principal, at 307-777-8601 no later than ten (10) days after receipt of this letter.

Should you have any questions or comments regarding this matter, please feel free to contact me or Ms. Karen Godman.

Sincerely,

David A. Finley
Administrator
Air Quality Division

cc: Robert Gill
Karen Godman
Glenn Spangler
Thor Nordwick
Nancy Vehr
Keith Guille

Boulder Residents
Exhibit 34

Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH (307) 777-7937 FAX 777-3610	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7369 FAX 777-5973	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

IN THE MATTER OF THE NOTICE OF VIOLATION)
ISSUED TO MCMURRY READY MIX COMPANY,)
MR. DAVID CRNICH,)
ENVIRONMENTAL DIRECTOR,)
PO BOX 2488)
CASPER, WYOMING 82602)

DOCKET NO.

4107-07

NOTICE OF VIOLATION

NOTICE IS HEREBY GIVEN THAT:

1. The Department of Environmental Quality, Division of Air Quality, has found McMurry Ready Mix Company to be in violation of permit MD-899 issued in accordance with W.S. 35-11-801 of the Wyoming Environmental Quality Act and Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations at the hot mix asphalt plant located in Carbon County, Wyoming.

2. W.S. 35-11-801(a) states, "In granting permits, the Director may impose such conditions as may be necessary to accomplish the purpose of this act which are not inconsistent with the existing rules, regulations and standards."

3. Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations prescribes the applicability and procedures for issuing permits to sources under Wyoming's construction and modification permitting program.

4. Permit MD-899 was issued to McMurry Ready Mix Company July 25, 2003. Condition 6 states:

"That the opacity from the venturi scrubber or any other emission point shall be limited to 20 percent or less as determined by 40 CFR, Part 60, Appendix A, Method 9."

5. On May 30, 2007, Mr. Thor Nordwick and Mr. Glenn Spangler, Air Quality Engineers, visited the McMurry Ready Mix Company hot mix asphalt plant operating near Walcott Junction located in Carbon County, Wyoming. Mr. Nordwick conducted a Method 9 opacity observation of the venturi scrubber with a resultant opacity of 32.9%.

6. Condition 13 of permit MD-899 states:

"All haul roads, access roads, and work areas used in the operation of this facility shall be treated with water and/or chemical suppressants on a schedule sufficient to adequately control fugitive dust emissions"

7. On May 30, 2007, Mr. Thor Nordwick and Mr. Glenn Spangler, Air Quality Engineers, visited the McMurry Ready Mix Company hot mix asphalt plant operating near Walcott Junction located in Carbon County, Wyoming. Mr. Nordwick and Mr. Spangler observed significant fugitive dust emissions from trucks using the haul road and also the aggregate handling bin.

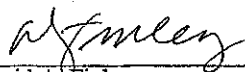
8. Said violations consist of 1) visible emissions from the venturi scrubber system in excess of the opacity limitation of 20% and 2) failing to adequately control fugitive dust from the haul road and aggregate handling bin. These are direct violations of permit MD-899.

McMurry Ready Mix Company
Notice of Violation
Page Two


9. Under W.S. 35-11-901(a), any person who violates any provision of Article 2 of [the Environmental Quality Act] ... or any rule, regulation, standard or permit adopted pursuant to those provisions, or who violates any determination or order of the council pursuant to Article 2 of [the Environmental Quality Act] ... is subject to a penalty not to exceed ten thousand dollars (\$10,000.00) for each violation for each day during which the violation continues, a temporary or permanent injunction, or both a penalty and an injunction.

10. This notice is being sent to you pursuant to W.S. 35-11-701(c), which requires that, in any case of the failure to correct or remedy an alleged violation, the Director of the Department of Environmental Quality shall cause a written notice to be issued and served upon the person alleged to be responsible.

DATED this 12 day of July, 2007.



David A. Finley
Administrator
Air Quality Division



John Gorra
Director
Department of Environmental Quality

Please direct all inquiries to David A. Finley, Administrator, Division of Air Quality, Department of Environmental Quality, Herschler Building, 2nd Floor, 122 W. 25th Street, Cheyenne, Wyoming 82002. (Telephone: 307/777-7393.)



Keith Lulle

Office of the Attorney General

Governor
Dave Freudenthal

Water and Natural Resources Division
123 State Capitol
Cheyenne, Wyoming 82002
307-777-6946 Telephone
307-777-3542 Fax

Chief Deputy Attorney General
Elizabeth C. Gagen

Attorney General
Bruce A. Salzburg

Division Deputy
Jay A. Jerde

ROUTING MEMO

TO: AQD file

THROUGH: Bob Gill, Compliance Program Manager *[Signature]*

FROM: *[Signature]* Nancy Vehr, Sr. Asst. Attorney General

DATE: 4/10/08

RE: In re NOV issued to McMurry Ready-Mix Co. - DEQ DN 4107-07

Attached for your records is a copy of the Settlement Agreement and a copy of the check for the \$5,000.00 Partial Stipulated Penalty Amount. I have sent EPA a copy of the Settlement Agreement. I am keeping this matter open until you notify me that McMurry has completed the remaining requirements in paragraph 10. Please call me if you have any questions (7580).

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division ("DEQ/AQD"), ~~Herschler Building, 122 West 25th Street, Cheyenne, WY 82002,~~ and McMurry Ready-Mix Co. ("McMurry"), P.O. Box 2488, Casper, WY 82602, enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation DEQ Notice of Violation Docket No. 4107-07 ("NOV") alleging violations of the Wyoming Environmental Quality Act ("Act"), the Wyoming Air Quality Standards and Regulations ("WAQSR"), and DEQ/AQD permit no. MD-899. The NOV alleges that McMurry failed to comply certain permit conditions related to the opacity of visible emissions and fugitive dust control at the McMurry hot mix asphalt plant facility operating near Walcott Junction ("Facility") located in Carbon County, Wyoming.

WYO. STAT. ANN. § 35-11-901(a)(ii)(West 2007) authorizes stipulated settlement in lieu of litigation. To that end, McMurry and the DEQ/AQD hereby stipulate and agree as follows:

1. The DEQ/AQD is responsible for enforcing the Act, the WAQSR and permit MD-899.
2. WYO. STAT. ANN. § 35-11-801(a) states, in pertinent part: "In granting permits, the director may impose such conditions as may be necessary to accomplish the purpose of this act which are not inconsistent with the existing rules, regulations and standards."
3. Chapter 6, § 2 of the WAQSR prescribes the applicability and procedures for issuing permits to sources under Wyoming's construction and modification permitting program.
4. The DEQ/AQD issued permit MD-899 to McMurry on July 25, 2003.
5. Condition No. 6 of permit MD-899 limits the opacity from the venturi scrubber or any other emission point to 20 percent (20%) or less as determined by 40 C.F.R. Part 60, Appendix A, Method 9 ("Method 9").
6. On May 30, 2007, Air Quality Engineer Thor Nordwick conducted a Method 9 opacity observation of the venturi scrubber at the Facility with a resultant opacity of 32.9%.
7. Condition No. 13 of permit MD-899 requires all haul roads, access roads, and other work areas used in the operation of the Facility to be treated with water and/or chemical suppressants on a schedule sufficient to adequately control fugitive dust emissions.

8. On May 30, 2007, Air Quality Engineers Thor Nordwick and Glenn Spangler visited the Facility and observed significant fugitive dust emissions from trucks using the haul road and also the aggregate handling bin.

9. On July 12, 2007, the DEQ/AQD issued the NOV to McMurry alleging that McMurry failed to comply with certain permit conditions in DEQ/AQD permit no. MD-899 related to the opacity of visible emissions and fugitive dust control at the Facility.

10. DEQ/AQD and McMurry agree that the total stipulated penalty amount ("Total Stipulated Penalty Amount") to resolve the violations alleged in the NOV in lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii) is seven thousand five hundred dollars and no cents (\$7,500.00) payable as follows:

A. McMurry agrees to pay the DEQ/AQD, five thousand dollars and no cents (\$5,000.00) as a partial stipulated penalty amount ("Partial Stipulated Penalty Amount"). McMurry shall make full payment of the Partial Stipulated Penalty Amount by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty (30) days after McMurry has been notified by DEQ/AQD that the final signature has been affixed to this Agreement. McMurry shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

B. In lieu of paying the balance remaining after payment of the Partial Stipulated Penalty Amount ("Stipulated Penalty Balance Amount"), McMurry agrees to enroll seven (7) employees in the next "smoke school" being held in Cheyenne, Wyoming, which is set for May 13-15, 2008. McMurry shall submit documentation of the employees' smoke school attendance to: DEQ/AQD, Attn: Mr. Robert Gill, 122 West 25th Street, Cheyenne, WY 82002, by June 15, 2008. In the event that McMurry fails to either enroll the seven employees in smoke school or fails to submit documentation of the employees' smoke school attendance, McMurry agrees that it will pay the Stipulated Penalty Balance Amount to the DEQ/AQD by July 1, 2008.

11. McMurry, by entering into this Agreement, does not concede or admit to any liability, and this Agreement constitutes no admission of fault or noncompliance.

12. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against McMurry based on NOV Docket No. 4107-07 and, solely in reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against McMurry for these particular violations.

13. McMurry waives any statute of limitations which may apply to an enforcement action by the DEQ/AQD involving the specific matters described in NOV Docket No. 4107-07 in the event that McMurry fails to fulfill its obligations under this Agreement.

14. This Agreement shall be admissible by either McMurry or DEQ/AQD (hereinafter McMurry and DEQ/AQD may be referred to individually as "Party" and collectively as "Parties") without objection by the other Party in any action between these Parties relating to the violations alleged herein.

15. Neither Party hereto shall have any claim against the other for attorneys' fees or other costs incurred with the allegations resolved hereby, including costs incurred in the preparation of this Agreement. Each Party shall bear its own attorney fees and costs, if any, incurred through the date this Agreement is signed by both Parties. Each party assumes the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.

16. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the Parties shall be incorporated by written instrument, executed and signed by all Parties to this Agreement.

17. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the Parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

18. This Agreement, consisting of four (4) pages represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

19. The State of Wyoming and the DEQ/AQD do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to WYO. STAT. ANN. § 1-39-104(a) and all other state law.

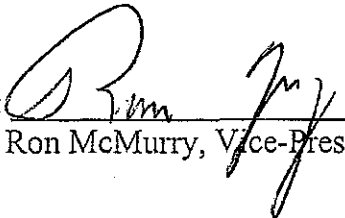
20. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement, and shall inure solely to the benefit of the Parties to this Agreement. The Parties to this Agreement intend and expressly agree that only Parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this 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 Agreement.

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21. Each Party represents that they are authorized to enter into this Agreement and agree to be bound hereby. This Agreement shall become binding upon the Parties once executed by all Parties.

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

MCMURRY READY-MIX CO.:

By: 
Ron McMurry, Vice-President

2-14-2008
Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

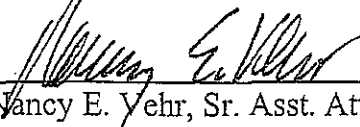
By: 
David Finley, AQD Administrator

3/10/08
Date

By: 
John Corra, DEQ Director

3/12/08
Date

APPROVAL AS TO FORM:


Nancy E. Yehr, Sr. Asst. Attorney General
Attorney for DEQ/AQD

2/8/2008
Date