



# 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

May 28, 2009

Mr. Ron McMurry  
Vice President  
McMurry Ready Mix Company  
PO BOX 2488  
Casper, WY 82604

RE: Notice of Violation

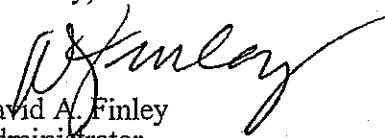
Dear Mr. McMurry:

Enclosed is a Notice of Violation issued to McMurry Ready Mix Company for the failure to: 1) apply at minimum, two (2) applications of chemical dust suppressant annually in violation of condition 9 of permit CT-4284, 2) maintain and provide water records to the Division after August 2008 in violation of condition 10 of permit CT-4284 and 3) provide relocation notifications for equipment now located in the WYUTE Pit in violation of Chapter 6, Section 2(v)(b)(ii) of the Wyoming Air Quality Standards and Regulations.

As the Department and this Division consider the failure to comply with permit and regulatory requirements to be a serious matter, I am considering recommending that 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 action on the referral by 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: Bob Gill  
Chris Hanify  
Nancy Vehr  
Keith Guille

Boulder Residents  
Exhibit 35

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. RON MCMURRY,  
VICE PRESIDENT,  
PO BOX 2488  
CASPER, WYOMING 82602

DOCKET NO. 4503-09

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 CT-4284 issued in accordance with W.S. 35-11-801(a) of the Wyoming Environmental Quality Act and Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations in the operation of the WYUTE Pit 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 CT-4284 was issued to McMurry Ready Mix Company May 22, 2006. Condition 9 states:

"The haul road extending from the pit to the frontage road off I-80 shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust from vehicular traffic and wind erosion. At a minimum, two (2) applications of chemical dust suppressant shall be applied annually in accordance with the manufacturer's recommendations. The chemical dust suppressant shall be maintained continuously to the extent that it remains a viable control measure, which may require additional applications. All unpaved portions of haul roads shall receive an initial treatment of chemical dust suppressant prior to any hauling activities at the beginning of each construction season."

5. On March 6, 2009 the Division received a complaint regarding excessive fugitive dust emissions at the WYUTE Pit, located in Carbon County, Wyoming. In response, Mr. Chris Hanify, District 2 Engineer, conducted an inspection on March 10, 2009. During the inspection and record review, Mr. Hanify noted that records showed that only one (1) application of the dust suppressant, Magnesium Chloride (MgCl<sub>2</sub>) for the year 2008 and was applied in August 2008. This is a violation of condition 9 of permit CT-4284.

6. Permit CT-4284 was issued to McMurry Ready Mix Company May 22, 2006. Condition 10 states:

"McMurry Ready Mix Company shall maintain a log book listing the dates, amount of dust suppressant applied, areas treated, water usage and operating hours of the water truck. The log shall be maintained on site for a period of at least five (5) years and shall be made available to the Division upon request."

7. On March 6, 2009 the Division received a complaint regarding excessive fugitive dust emissions at the WYUTE Pit, located in Carbon County, Wyoming. In response, Mr. Chris Hanify, District 2 Engineer, conducted an inspection on March 10, 2009. During the inspection and record review, Mr. Hanify noted no water records were available after August 2008. This is a violation of condition 10 of permit CT-4284.

8. Chapter 6, Section 2(v)(b)(ii) of the Wyoming Air Quality Standards and Regulations states:

"For portable sources or facilities, the Division may authorize the owner or operator to utilize a self-issuance" operating permit system for the new locations which are not new sources or facilities... The Division shall provide to authorized owners or operators of portable sources, forms upon which the self-issued permits are to be recorded. The owner or operator shall, at a minimum provide, as appropriate the permit number previously issued to the portable source or facility, the new location for which the permit is issued, the duration of operation at the new location, the production rate at the new location and the production rate at the new location in addition to any other information that the Administrator may require. Such permit shall be executed and a copy provided to the Air Quality Division prior to operation at the new location."

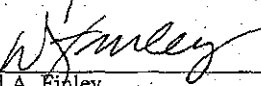
9. On March 6, 2009 the Division received a complaint regarding excessive fugitive dust emissions at the WYUTE Pit, located in Carbon County, Wyoming. In response, Mr. Chris Hanify, District 2 Engineer, conducted an inspection on March 10, 2009. During the inspection and record review, Mr. Hanify observed air separators at the WYUTE Pit that were not noted in any relocate permits. It was found that initial permitting of the air separators had been conducted, but McMurry had not been diligent in providing relocation notifications for equipment now located in the WYUTE Pit. This is a violation of Chapter 6, Section 2(v)(b)(ii) of the Wyoming Air Quality Standards and Regulations.

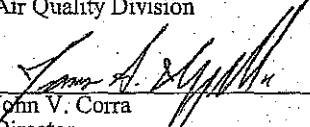
10. Said violations consist of failure to: 1) apply at minimum, two (2) applications of chemical dust suppressant annually in violation of condition 9 of permit CT-4284, 2) maintain and provide water records to the Division after August 2008 in violation of condition 10 of permit CT-4284 and 3) provide relocation notifications for equipment now located in the WYUTE Pit in violation of Chapter 6, Section 2(v)(b)(ii) of the Wyoming Air Quality Standards and Regulations.

11. 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.

12. 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 3<sup>rd</sup> day of June, 2009.

  
David A. Finley  
Administrator  
Air Quality Division

  
John V. Corra  
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.)

## SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air quality Division ("DEQ/AQD"), Herschler building, 122 West 25<sup>th</sup> Street, Cheyenne, WY 82002, and McMurry Ready Mix Company ("McMurry"), P.O. Box 2488, Casper, Wyoming 82604 enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation the violations cited in DEQ/AQD Notice of Violation Docket No. 4503-09 ("NOV"). The NOV alleges that McMurry failed to apply at minimum, two (2) applications of chemical dust suppressant in violation of condition 9 of permit CT-4284; failed to maintain and provide water records to the DEQ/AQD after August 2008, in violation of condition 10 of permit CT-4284; and failed to provide relocation notifications for equipment moved to the WTUTE Pit in violation of Chapter 6, Section 2(b)(ii) of the WAQSR at the WYUTE Pit located in Carbon County, Wyoming in violation of the Air Quality Act ("Act") and applicable Wyoming Air Quality Standards and Regulations ("WAQSR").

WYO. STAT. ANN. § 35-11-901(a)(ii) (West 2008) authorizes stipulated settlement, including payment of a penalty, 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 and WAQSR.
2. WYO. STAT. ANN. § 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 WAQSR prescribes the applicability and procedures for issuing permits to sources under DEQ/AQD's construction and modification permitting program.
4. Permit CT-4284 was issued to McMurry on May 22, 2006. Condition 9 states: "The haul road extending from the pit to the frontage road off I-80 shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust from vehicular traffic and wind erosion. At a minimum, two (2) applications of chemical dust suppressant shall be applied annually in accordance with the manufacturer's recommendations. The chemical dust suppressant shall be maintained continuously to the extent that it remains a viable control measure, which may require additional applications. All unpaved portions of haul roads shall receive an initial treatment of chemical dust suppressant prior to any hauling activities at the beginning of each construction season."
5. On March 6, 2009 the DEQ/AQD received a complaint regarding excessive fugitive dust emissions at the WYUTE Pit, located in Carbon County, Wyoming. The DEQ/AQD conducted an inspection on March 10, 2009 and determined that McMurry only made one (1) application of the dust suppressant, Magnesium Chloride for the year 2008 instead of two (2) applications as required by condition 9 of permit CT-4284.
6. McMurry's failure to comply with condition 9 of permit CT-4284 is a violation of WYO. STAT. ANN. § 35-11-801 and WAQSR, Chapter 6, Section 2.
7. Condition 10 of permit CT-4284 states: "McMurry Ready Mix Company shall maintain a log book listing the dates, amount of dust suppressant applied, areas treated, water usage and operating hours of the water truck. The log

shall be maintained on site for a period of at least five (5) years and shall be made available to the Division upon request."

8. On March 6, 2009 the DEQ/AQD received a complaint regarding excessive fugitive dust emissions at the WYUTE Pit, located in Carbon County, Wyoming. The DEQ/AQD conducted an inspection on March 10, 2009 and determined that McMurry failed to keep and maintain a log book listing the dates, amount of dust suppressant applied, areas treated, water usage and operating hours of the water truck after August 2008 as required by condition 10 of permit CT-4284.

9. McMurry's failure to comply with condition 10 of permit CT-4284 is a violation of WYO. STAT. ANN. § 35-11-801 and WAQSR, Chapter 6, Section 2.

10. Chapter 6, Section 2(b)(ii) of the WAQSR states: "For portable sources or facilities, the Division may authorize the owner or operator to utilize a "self issuance" operating permit system for new locations which are not new sources or facilities. For purposes of this paragraph, a new source or facility is a source or facility for which operation or construction commenced after May 29, 1974, and for which a permit has not previously been issued.

The Division shall provide to authorized owners or operators of portable sources, forms upon which the self-issued permits are to be recorded. The owner or operator shall, at a minimum provide, as appropriate the permit number previously issued to the portable source or facility, the new location for which the permit is issued, the duration of operation of the new location, the production rate at the new location and the production at the new location in addition to any other information that the Administrator may require. Such permit shall be executed and a copy provided to the Air Quality Division prior to operation at the new location."

11. On March 6, 2009 the DEQ/AQD received a complaint regarding excessive fugitive dust emissions at the WYUTE Pit, located in Carbon County, Wyoming. The DEQ/AQD conducted an inspection on March 10, 2009 and determined that air separators at the WYUTE Pit were not noted in any relocate permits. The air separators were initially permitted with the DEQ/AQD, but McMurry had not been diligent in providing relocation notifications for equipment moved to the WYUTE Pit.

12. Failure to obtain a relocate permit prior to moving equipment is a violation of Chapter 6, Section 2(b)(ii) of the WAQSR.

13. During 2008, McMurry applied two applications of dust suppressant at its WYUTE Pit.

14. DEQ/AQD and McMurry agree that the total stipulated settlement amount ("Total Settlement Amount") to resolve the violations alleged in the NOV in lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii) is five thousand seven hundred fifty dollars and no cents (\$5,750.00) payable as follows:

A. McMurry agrees to pay the DEQ/AQD two thousand dollars and no cents (\$2,000.00) as a partial settlement amount ("Partial Settlement Amount"). McMurry shall make full payment of the Partial Settlement 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 the Agreement. McMurry shall mail the payment to John S. Burbridge, Senior Assistant Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

B. In lieu of paying the three thousand seven hundred fifty dollar and no cents (\$3,750.00) balance remaining ("Settlement Balance Amount") after payment of the Partial Settlement Amount, McMurry agrees to complete the following Supplemental Environmental Project ("SEP"):

i. McMurry agrees to spend at least three thousand seven hundred fifty dollars and no cents (\$3,750.00) ("SEP Expenditure Amount") to improve (through dirtwork) and apply dust suppressant (magnesium chloride) to the road west of Sublette County's Bousman Pit, McMurry Ready Mix Company's Eastfork Ranch Pit and WYDOT Pit to suppress and control fugitive dust emissions.

ii. McMurry shall complete the SEP by no later November 1, 2009 unless McMurry and the DEQ/AQD mutually agree to an extension of time. McMurry shall submit a SEP Completion Report to the DEQ/AQD, Attn: Mr. Robert Gill, 122 West 25<sup>th</sup> Street, Cheyenne, WY 82002 within thirty (30) days after the completion of the SEP. The SEP Completion Report shall describe the completed SEP, include itemized costs and receipts, and certify that the SEP has been fully implemented pursuant to the provisions of this Agreement. The DEQ/AQD and McMurry agree that if McMurry does not complete the SEP by the SEP deadline, then McMurry will pay the DEQ/AQD the balance of the full Settlement Balance Amount (\$3,750.00) by the SEP Completion Report deadline. The DEQ/AQD and McMurry agree that if the amount McMurry actually spends in performance of the SEP is less than the SEP Expenditure Amount, then McMurry will pay the DEQ/AQD the balance of the three thousand seven hundred fifty dollars and no cents (\$3,750.00) not spent on the SEP by no later than thirty (30) days after submitting the SEP Completion Report to the DEQ/AQD.

iii. McMurry hereby certifies that as of the date it signs this Agreement, McMurry is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is McMurry required to perform or develop the SEP pursuant to any other agreement or relief in any other case. McMurry further certifies that it has not received and is not presently negotiating to receive credit for the SEP in any other pending action.

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

16. Full compliance with the signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against McMurry based on the NOV and, solely in reliance on the Agreement, the DEQ/AQD will refrain from taking further enforcement action against McMurry for that particular violation.

17. McMurry waives any statute of limitations which may apply to an enforcement action by the DEQ/AQD involving the specific matters described in the NOV in the event that McMurry fails to fulfill its obligations under this Agreement.

18. 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.

19. Neither Party hereto shall have any claim against the other for attorney's fees or other costs incurred with the allegations resolved hereby, including costs incurred in the preparation of the 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.

20. 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.

21. 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.

22. This Agreement, consisting of five (5) pages represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

23. 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.

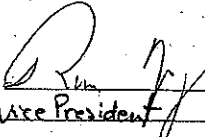
24. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in the Agreement shall operate only between the Parties to this Agreement, 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 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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25. 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.

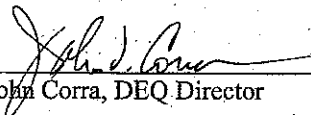
IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

MCMURRY READY MIX


By:  10-6-09  
Vice President Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:  11/6/09  
David Finley, AQD Administrator Date

By:  11/3/09  
John Corra, DEQ Director Date

APPRVAL AS TO FORM:

By:  11-3-09  
John S. Burbridge Date  
Senior Assistant Attorney General  
Attorney for DEQ/AQD