

STATE OF NORTH CAROLINA

COUNTY OF WAKE

EQ INDUSTRIAL SERVICES, INC.,
d/b/a EQ NORTH CAROLINA,

Petitioner,

v.

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
NO. 07-EHR-0518

SETTLEMENT AGREEMENT

NORTH CAROLINA DEPARTMENT
OF ENVIRONMENT AND NATURAL
RESOURCES, DIVISION OF WASTE
MANAGEMENT,

Respondent.

EQ Industrial Services, Inc., d/b/a EQ North Carolina ("EQ"), and the North Carolina Department of Environment and Natural Resources, Division of Waste Management ("Division") (collectively, the "Parties") hereby enter into this Settlement Agreement ("Agreement") in order to resolve the instant contested case and other pending matters between them.

1. Settlement of Administrative Penalty. In settlement of the penalty assessed by the Division against EQ in the Compliance Order with Administrative Penalty issued on March 5, 2007, Docket No. 2007-063, EQ and the Division agree:

a. EQ will pay a recomputed penalty in the amount of \$275,000.00 in settlement of the penalty assessed;

b. The recomputed penalty amount shall be paid to the Division in thirty-six (36) consecutive monthly installments according to the following schedule, and in the manner prescribed in Paragraph 9 of this Agreement: EQ shall pay a first installment in the amount of \$7,639.20 and thirty-five (35) consecutive monthly installments thereafter

in the amount of \$7,638.88 each. Each installment shall be due on the fifth day of the month, with the first installment due on November 5, 2007. Default on any installment, defined as sixty (60) days in arrears, shall render the entire unpaid balance of the recomputed penalty due and payable.

c. EQ expressly waives its right to an administrative hearing in this matter and, within ten (10) days of the effective date of this Agreement, EQ shall file with the Office of Administrative Hearings a Notice of Dismissal with Prejudice, withdrawing its Petition for Contested Case hearing in the instant case;

d. EQ expressly stipulates and acknowledges that, by entering into this Agreement, it waives for purposes of collection of the above-described recomputed penalty any and all defenses to the underlying assessment in any action to collect said penalty, and that the issue in any action to collect the recomputed penalty will be limited to the payment or non-payment thereof in accordance with the terms of this Agreement;

e. Payment of the recomputed penalty is not to be construed as an admission of liability on the part of EQ, and this settlement is a compromise of a disputed claim; and

f. Subject to Paragraphs 10 and 11 of this Agreement, the Division agrees to accept the payment of the recomputed penalty as EQ's satisfaction of the original penalty assessed and in satisfaction of any penalty that could have been assessed for the matters released in Paragraph 13 of this Agreement.

2. Closure of EQ's Apex Facility.

a. *Closure Steps Already Implemented.* EQ has provided notification to the Division that final closure activities have been initiated. All hazardous wastes have been removed from

the facility and properly disposed offsite. Cleaning of the concrete storage pad has removed all evidence of visible contamination.

b. Closure Steps Remaining. EQ shall complete final closure of the Facility by performing the following:

(1) *Concrete Cleaning.* EQ shall re-wash the hazardous waste storage bays, and then EQ will power wash each bay. EQ will sample the rinsate from the power washing. To determine the constituents for which the rinsate samples must be analyzed, EQ will review the analyses of the rinsate sampling done during the Post Incident Site Investigation and identify those constituents which were detected at levels above the current North Carolina Surface Water Standards codified in 15A NCAC 2B as of the effective date of this Agreement, or the sample method detection level for those constituents set forth in 15A NCAC 2B, whichever is higher (“the current 2B Standards”). EQ shall analyze the samples taken pursuant to this Agreement for each such constituent. If the analysis of the rinsate samples taken pursuant to this Agreement shows that none of the constituents was detected at levels above the current 2B Standards, or the background levels of constituents in the Apex municipal water used for the cleaning process, whichever is higher, the concrete shall be deemed clean closed. If the analysis shows that one or more of the constituents were detected at levels above the current 2B Standards or the background levels of constituents in the Apex municipal water used for the cleaning process, which ever is higher, EQ may achieve closure of the concrete by: (1) re-washing and power washing some or all of the concrete, and sampling the rinsate from the power washing until none of the constituents is detected at levels above the current 2B Standards; (2) removing some or all of the concrete; or (3) demonstrating that run off from the concrete will not impact any adjacent surface waters at levels exceeding the current 2B Standards.

(2) *Soil Sampling.* EQ shall re-sample soil in the area where the sample identified as “SS8” was taken during the Post Incident Site Investigation. The sample shall be analyzed for benzo(a)pyrene. EQ shall review the analysis of the re-sampled soil in addition to the analyses of all of the soil samples taken during the Post Incident Site Investigation to identify all constituents detected at levels above the Region IX Residential and Industrial Soil Limits, which are set out in the North Carolina *Guidelines for Establishing Remediation Goals at RCRA Hazardous Waste Sites, (revised May 2005)* or the sample method detection level, whichever is higher (the “Region IX Residential Soil Limits” and the “Region IX Industrial Soil Limits”, respectively). The soil shall be deemed to require no further action, if all of the levels of constituents detected in the soil samples are at or below the Region IX Residential Soil Limits. EQ shall remove the soil, if the level of contamination detected in the soil samples exceeds the Region IX Industrial Soil Limits. If the level of contamination detected in the soil samples is above Region IX Residential Soil Limits, but does not exceed Region IX Industrial Soil Limits, EQ shall either remove the contaminated soil or record perpetual land use restrictions in accordance with N.C. Gen. Stat. §§ 143B-279.9 and 143B-279.10 and Paragraph 2.b.(7) of this Agreement on those portions of the Facility that exceed Region IX Residential Soil Limits but do not exceed Region IX Industrial Soil Limits. Notwithstanding the foregoing, the EPA Region IV Residential PRG standard for arsenic (20 mg/kg) shall replace the Region IX Residential Soil Limits and the Region IX Industrial Soil Limits for that constituent for purposes of this paragraph and paragraph 2.b.(7).

- (3) *Soil Beneath The Concrete Pad.* No action is required.
- (4) *Groundwater.* No action is required.
- (5) *Project Quality Assurance and Quality Control.* All closure activities and

work done pursuant to Paragraph 2 of this Agreement must be conducted in accordance with Section 4 of the "Sampling and Analysis Plan/Post Incident Site Investigation," dated November 2, 2006, and approved by the Division on November 27, 2006. Quality Assurance and Quality Control procedures shall be adequate to support the intended use of the data, and must meet analytical reporting requirements outlined in Appendix I of the North Carolina *Guidelines for Establishing Remediation Goals at RCRA Hazardous Waste Sites, (revised May 2005)* and the requirements set forth in the Post Incident Site Investigation Report.

(6) *Well Abandonment.* All wells located at the facility must be abandoned in accordance with 15A NCAC 2C .0113. Certification of the well abandonment must be included with the certification of closure required in Paragraph 2.c. of this Agreement.

(7) *Land Use Restrictions.* Documents recorded to impose land use restrictions pursuant to Paragraph 2 b (2) of this Agreement shall be in a form approved by the Division. The Division may require imposition of one or more of the following restrictions: (1) the site shall be used exclusively for commercial or industrial purposes, but shall not be used for child care centers, schools, parks, recreational areas, or athletic fields; (2) no surface or subsurface native or fill earthen materials may be removed from the site without the written permission of the Director of the Division; (3) surface and underground water shall not be used for any purpose, and the installation of groundwater wells or other devices for access to groundwater for any purpose other than monitoring groundwater quality is prohibited without the written permission of the Director of the Division; (4) the owner of the site shall submit a letter report, containing the notarized signature of the owner, in January of each year on or before January 31st, to the Division, confirming that the declaration of perpetual land use restrictions is still recorded in the Office of the Wake County Register of Deeds, and that activities and

conditions at the site remain in compliance with the land use restrictions recorded; and (5) the owner of the site shall grant access to the Division's inspectors for the purpose of determining compliance with the recorded land use restrictions.

c. *Certification of Closure.* Within sixty (60) days after completion of final closure, EQ shall submit to the Division a certification of closure attesting that all activities required by Paragraph 2.b. of this Agreement have been completed. The certification shall be signed by EQ and an independent professional engineer registered in the State of North Carolina, and shall include documentation supporting the professional engineer's certification. Within thirty (30) days after receiving the certification of closure, the Division shall determine if all activities required by Paragraph 2.b. of this Agreement have been completed. If the Division determines that all required activities have been completed, the Division shall accept the certification of closure. If the Division determines that all activities required by Paragraph 2b of this Agreement have not been completed, the Division shall notify EQ of the deficiencies. If any deficiencies are noted, EQ shall correct the deficiencies and submit a revised certification of closure within thirty (30) days or within the time allowed in the Division's notice of deficiencies.

3. Release of Financial Assurance. Within sixty (60) days after the Division's acceptance of the closure certification described in Paragraph 2 of this Agreement, and in accordance with the requirements of 40 CFR 264.143(i), as adopted by reference in 15A NCAC 13A.0109, the Division shall notify EQ in writing that EQ is no longer required to maintain financial assurance for final closure of the Facility.

4. Post Incident Site Investigation. The parties agree that EQ's completion of closure of the Facility in accordance with Paragraph 2 of the Agreement will satisfy the requirements of the approved Post Incident Site Investigation at the Facility.

5. Termination of Permit. On March 5, 2007, the Division issued a notice of intent to unilaterally terminate the Permit due to noncompliance. During the public comment period, EQ objected to the Division's notice of intent to terminate the Permit. As of the date of this Agreement, the Division has not issued a final permit termination decision. To resolve the issue of permit termination, EQ and the Division agree:

a. Within ten (10) days after the effective date of this Agreement, EQ shall request a Class 1 modification for the early termination of its Permit consistent with 40 CFR 270.42(a), as adopted by reference at 15A NCAC 13A.0113, as follows: "EQ hereby requests approval of a Class 1 modification for a change in the expiration date of Hazardous Waste Management Permit #NCD 982 170 292 to allow for the early and immediate termination of the permit upon the Division's acceptance of the closure certification submitted by EQ in accordance with Paragraph 2c of the Settlement Agreement between EQ and the Division in the matter before the Office of Administrative Hearings No. 07- EHR-0518."

b. Termination of the Permit pursuant to Paragraph 5.a. above shall be effective only upon the happening of both of the following two events: (1) the Division's approval of EQ's modification request; and (2) the Division's acceptance of the closure certification described in Paragraph 2 of this Agreement.

c. Simultaneously with the approval of EQ's modification request, the Division will withdraw the notice of intent issued on March 5, 2007.

d. If for any reason, EQ fails to complete closure of the Facility in accordance with Paragraph 2 of this Agreement, or if EQ fails to request a Class 1 modification for the early termination of its Permit, the Division may proceed to

terminate the Permit unilaterally pursuant to the notice of intent issued on March 5, 2007.

e. If pursuant to Paragraph 5.d. above, the Division terminates the Permit unilaterally pursuant to the notice of intent issued on March 5, 2007, EQ shall have the right to contest the Division's decision to terminate the Permit to the extent such right is provided by law.

f. EQ makes no admission of liability with regard to any of the matters set forth in the notice of intent issued on March 5, 2007.

6. Cost Recovery. On February 27, 2007, pursuant to the authority in N.C. Gen. Stat. §130A-306, the Division requested reimbursement of certain sampling analysis costs in response to the emergency which began with the fire at the Facility on October 5, 2006. Within twenty (20) days after the effective date of this Agreement, EQ shall pay to the Division the sum of \$148,958.75, by check, in settlement of all of the Division's claims for reimbursement, pursuant to N.C. Gen. Stat. § 130A- 306, up to and through February 27, 2007. This payment shall be forwarded to Elizabeth W. Cannon at the address set forth in paragraph 9 below. It is understood that this payment does not constitute an admission of liability by EQ or any of its officers, directors, employees, agents or representatives with regard to the events leading to the fire or any of the matters set forth in the Division's claim for reimbursement.

7. Fees Due Pursuant to N.C. Gen. Stat. § 130A-294.1. Within ten (10) days of the effective date of this Agreement, EQ shall pay past due fees in the amount of \$12,658.01, in the manner prescribed in Paragraph 9 of this Agreement. EQ shall continue to pay all applicable tonnage fees, generator fees, transporter fees, and storage, treatment and disposal activity fees due pursuant to N.C. Gen. Stat. § 130A-294.1.

8. Resident Inspector Program Fees. Within ten (10) days of the effective date of this

Agreement, EQ shall pay past due Resident Inspector fees in the amount of \$5,328.00, in the manner prescribed in Paragraph 9 of this Agreement. In addition to paying past due fees, EQ shall continue to pay a monthly inspection fee until the date of the Division's acceptance of the closure certification described in Paragraph 2.c. of this Agreement. For the month of September 2007, EQ shall pay a monthly inspection fee in the amount of \$1,776.00. Payment of the fee for September 2007 shall be due on or before October 15, 2007. Beginning October 1, 2007, up to and including the date of the Division's acceptance of the closure certification described in Paragraph 2.c. of this Agreement, EQ shall pay an inspection fee of \$888.00 per month, which shall be due and payable on the 15th day of the month, beginning with the payment due on November 15, 2007.

9. Procedure for Payments. All payments required to be made under this Settlement Agreement, except for the payment described in paragraph 6 above, shall be by certified check or money order, made payable to the Division of Waste Management, and mailed to Elizabeth W. Cannon, Chief, Hazardous Waste Section, Division of Waste Management, 401 Oberlin Road, Suite 150, Raleigh, NC 27605 (or 1646 Mail Service Center, Raleigh, NC 27699-1646). Payments mailed by EQ shall be deemed timely made if postmarked by the date the payment is due pursuant to this Agreement.

10. Reservation of Enforcement Authority. Nothing in this Settlement Agreement shall restrict the right of the Division to inspect or take enforcement action against EQ for any new or subsequent violation of Article 9 of Chapter 130A of the North Carolina General Statutes, or the State's Hazardous Waste Management Rules, codified at 15A N.C.A.C. Subchapter 13A arising after the effective date of this Agreement, or the right of EQ to contest any subsequent enforcement action based on allegations of new or subsequent violations to the extent such right

is provided by law.

11. Future Permit Applications and Substantial Compliance Review. For purposes of N.C. Gen. Stat. §§ 130A-294(b2) and 130A-295.3, the Division will consider EQ's entire compliance history, including the violations cited in the Compliance Order with Administrative Penalty issued by the Division on March 5, 2007, Docket No. 2007-063. The Division may deny an application for a permit under Article 9 of Chapter 130A of the North Carolina General Statutes, if the Division determines EQ has a history of significant repeated violations of statutes, rules, orders, or permit terms or conditions for the protection of the environment or for the conservation of natural resources as evidenced by civil penalty assessments, administrative or judicial compliance orders or criminal penalties. EQ shall have the right to contest the Division's decision to deny an application on this basis to the extent such right is provided by law.

12. Eligibility for Tax Credits. For purposes of Article 3A of Chapter 105 of the North Carolina General Statutes, the Division will find that the facts cited in the Compliance Order with Administrative Penalty constitute a "violation" and will report the violation to the North Carolina Department of Revenue, and EQ will not be eligible for tax credits pursuant to that statute. Notwithstanding this agreement regarding eligibility for tax credits, EQ makes no admission of liability with regard to any of the matters set forth in the Compliance Order or Permit Termination proceedings.

13. Release. Subject to the terms of this Agreement, and with respect to the conduct alleged in the Compliance Order with Administrative Penalty issued on March 5, 2007, Docket No. 2007-063, and the conduct alleged in the notice of intent to unilaterally terminate the Permit issued by the Division on March 5, 2007, the Division agrees not to initiate any further action or proceeding against EQ, EQ Holding Co., their related or affiliated entities or their respective

officers, directors, employees, agents, shareholders, or representatives (collectively the "Released Parties"). Subject to the terms of this Agreement, the Division further agrees not to initiate or pursue any enforcement action against the Released Parties with respect to on-site operations at EQ's Apex facility, except with regard to any violation by the Released Parties of permit terms, generator requirements, or transporter requirements discovered after the date of this Agreement determined to have caused the October 5, 2006 fire. It is further agreed that by EQ making the payment set forth in paragraph 6 above, that the Division releases and discharges all claims against the Released Parties and their insurers for cost reimbursement pursuant to N.C. Gen. Stat. § 130A-306 related to the response to the fire at the Facility on October 5, 2006, up to and through February 27, 2007.

14. Representative Authority. The undersigned individuals represent that they are authorized representatives of the Parties on behalf of which they are signing this Settlement Agreement and that they each have full authority to bind to this Settlement Agreement the party on behalf of which they are signing.

15. Complete and Voluntary Agreement. This Settlement Agreement constitutes the full and complete agreement between the Parties and no other agreements or promises not included herein have been made between the Parties. EQ and the Division enter into this Settlement Agreement knowingly and willingly.

16. Effective Date. This agreement shall be effective on the day of its execution by the last signatory therein.

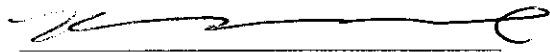
17. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed original, and all counterparts so executed shall constitute an Agreement binding on all parties hereto, notwithstanding that all of the parties are not signatory to the same

counterpart. A compiled complete copy of this Agreement, including executed signature pages sent via facsimile and/or in pdf form, shall be treated as an original.

[Signature Page to Follow]

EQ Industrial Services, Inc.

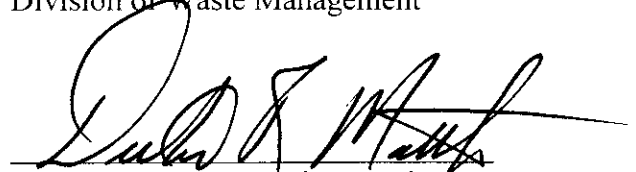
Date: 10/12/2007



By: Kenneth W. Wunderlich
Secretary/Treasurer

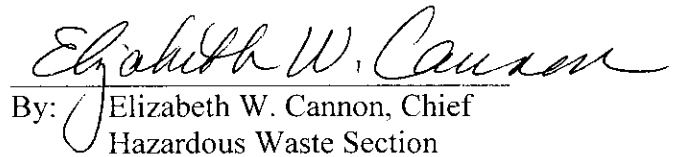
The North Carolina Department of
Environment and Natural Resources,
Division of Waste Management

Date: 10/15/07



By: Dexter R. Matthews, Director
Division of Waste Management

Date: 10/15/07



By: Elizabeth W. Cannon, Chief
Hazardous Waste Section