

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made between the Environmental Protection Division ("Division") of the New Mexico Environment Department ("NMED") and Herzog Environmental Inc. ("Herzog"), for the purpose of resolving an alleged violation of the permit conditions in Air Quality Title V Operating Permit No. P189L-R1 for Northeastern New Mexico Regional Landfill ("NNMR") operated in Mora County, New Mexico.

### I. BACKGROUND OF DISPUTE

#### A. ALLEGED VIOLATIONS

1. Herzog operates a municipal solid waste landfill; pursuant to Air Quality Permit P189L-R1, issued by NMED on September 6, 2001.
2. On March 18, 2009, NMED issued Notice of Violation ("NOV") NOR-0930-0801 to NNMR, and alleged the following violation of the Permit P189L-R1:
  - a. Failure to timely submit the Title V Annual Compliance Certification report.
3. NMED calculated a civil penalty of \$6,080.00 for the violation.

### II. COMPROMISE AND SETTLEMENT

4. The parties have engaged in settlement discussions to resolve the alleged violations described above without further proceedings. As a result of these discussions, the parties have agreed to the following settlement.

5. The Air Quality Bureau, considering the nature of the violation assesses only the gravity component of the penalty. This results in a reduction of the penalty from \$6,080.00 to \$3,000.00.

6. The parties enter into this Agreement for the sole purpose of resolving the alleged violation described above and any other violations that could have been asserted from the facts and legal conclusions alleged therein. The parties agree that the dispute described in Paragraph 2 is the only known dispute between the parties concerning the NNMR facility, specifically excluding any potential violations not yet known to the Division, and the parties agree that these potential violations are not resolved by this Agreement.

7. NNMR does not admit any liability, fact, or legal conclusion by entering into or complying with this Agreement.

8. NNMR agrees to the civil penalty total of \$3,000.00 (three thousand dollars). NNMR shall pay the penalty within 30 days of the effective date of this agreement. Make the check payable to the 'New Mexico General Fund' and submit to:

New Mexico Air Quality Bureau  
1301 Siler Road  
Building B  
Santa Fe, NM 87507

9. NNMR shall abide by the terms and condition of effective permits issued by the New Mexico Air Quality Bureau.

10. When total payment of the penalty amount is received and all other terms of this agreement are satisfied, a notice of release and discharge from the event described in the Notice of Violation will be issued to Herzog Environmental, Inc.

### **III. OTHER TERMS AND CONDITIONS**

#### **A. ENFORCEMENT**

11. The Division retains the right to pursue any relief authorized by the Act for any violation not addressed herein.

#### **B. DURATION**

12. This Agreement shall remain in effect until NMNR complies with the terms and conditions of the Agreement or it is terminated by written agreement of the parties.

#### **C. INTEGRATION**

13. This Agreement merges any prior written and oral communications between the parties concerning the subject matter of this Agreement, and contains the entire Agreement between the parties. This Agreement shall not be modified without the express written consent of the parties.

#### **D. MUTUAL RELEASE**

14. The parties mutually release each other from all claims that each party raised or could have raised against the other regarding the disputes or findings alleged in NOV NOR-0930-0801.

#### **E. EFFECTIVE DATE**

15. This Agreement shall become effective upon full execution by the duly authorized representatives of both parties.

#### **F. AUTHORITY OF SIGNATORIES**

16. The persons executing this Agreement represent that they have the authority to bind their respective parties to this Agreement, and that their representation shall be legally

sufficient evidence of actual or apparent authority to bind their respective parties to this Agreement.

**G. SIGNATURE AND COUNTERPART**

17. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

**NORTHEASTERN NEW MEXICO REGIONAL LANDFILL**

By: George Zanter  
**GEORGE ZANTER**  
**VICE PRESIDENT**  
**HERZOG ENVIRONMENTAL, INC.**

Date: MARCH 31, 2009

**AIR QUALITY BUREAU  
NEW MEXICO ENVIRONMENT DEPARTMENT**

By: M. A. Uhl  
**MARY UHL**  
**BUREAU CHIEF**  
**AIR QUALITY**

Date: 4/1/09