

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and Pinnacle Materials, LLC (Pinnacle), formerly known as Pinnacle Materials, Inc., PO Box 296, Sulphur Springs, TX 75483, enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in DEQ Notice of Violation Docket No. 4943-12 (NOV). As more fully set forth below, the NOV alleged that Pinnacle failed to control or minimize fugitive dust from haul truck traffic and failed to obtain a DEQ/AQD construction permit for the Bright Pit gravel mine facility (Facility) located in Converse County, Wyoming, before beginning work at the Facility, thereby violating the Wyoming Environmental Quality Act (Act) and applicable Wyoming Air Quality Standards and Regulations (WAQSR).

Wyo. Stat. Ann. § 35-11-901(a)(ii) (West 2010) authorizes stipulated settlement, including payment of a penalty, implementation of compliance schedules or other settlement conditions in lieu of litigation. To that end, Pinnacle and DEQ/AQD hereby stipulate and agree as follows:

1. Pinnacle Materials, LLC is a Texas limited liability company that now owns and/or operates the Facility. Previously, the Facility was owned and/or operated by Pinnacle Materials, Inc., a Texas corporation.
2. The DEQ/AQD is responsible for enforcing the Act and the WAQSR.
3. Wyo. Stat. Ann. § 35-11-201 states: “[n]o person shall cause, threaten or allow the discharge or emission of any air contaminant in any form so as to cause pollution which violates rules, regulations and standards adopted by the council.”
4. Chapter 3, Section 2(f) of the WAQSR specifies fugitive dust control requirements. Chapter 3, Section 2(f)(ii) states, “[a]ny person owning, operating or maintaining a new or existing material storage, handling and/or hauling operation shall minimize fugitive dust from such an operation. Such control measures may include the application of asphalt, oil, water or suitable chemicals on unpaved roads, material stockpiles and other surfaces which can give rise to airborne dust.”
5. On November 28, 2011, a DEQ/AQD Engineer, in response to a complaint, inspected the Facility and observed significant fugitive dust from haul truck traffic.
6. On January 3, 2012, the DEQ/AQD issued the NOV to Pinnacle, alleging in part that Pinnacle failed to control or minimize fugitive dust emissions from haul truck traffic as required by the Act and Chapter 3, Section 2(f)(ii) of the WAQSR.

7. Wyo. Stat. Ann. § 35-11-801(c) states: "A permit to construct is required before construction or modification of any industrial facility capable of causing or increasing air or water pollution in excess of standards established by the department is commenced."

8. 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.

9. Chapter 6, Section 2(a)(i) of the WAQSR states: "Any person who plans to construct any new facility or source, modify any existing facility or source, or to engage in the use of which may cause the issuance of or an increase in the issuance of air contaminants into the air of this state shall obtain a construction permit from the State of Wyoming, Department of Environmental Quality before any actual work is begun on the facility."

10. On November 28, 2011, a DEQ/AQD Engineer, in response to a complaint, inspected the Facility. Upon inspection and subsequent communication between the DEQ/AQD and Pinnacle, the DEQ/AQD determined that Pinnacle had not obtained a DEQ/AQD construction permit for the Facility.

11. On January 3, 2012, the DEQ/AQD issued the NOV to Pinnacle, alleging in part that Pinnacle failed to obtain a DEQ/AQD construction permit before constructing and operating the Facility as required by the Act and Chapter 6, Section 2(a)(i) of the WAQSR.

12. In lieu of litigation under Wyo. Stat. Ann. § 35-11-901(a)(ii), the DEQ/AQD and Pinnacle agree that Pinnacle shall pay the DEQ/AQD five thousand two hundred fifty dollars and no cents (\$5,250.00) as a stipulated penalty to fully and finally resolve the violations alleged above and in the NOV. Pinnacle shall make fully payment by check, made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty (30) days after Pinnacle has been notified by the DEQ/AQD that the final signature has been affixed to this Agreement. Pinnacle shall mail the payment to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

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

14. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against Pinnacle based on the NOV, and

solely in reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against Pinnacle for these particular alleged violations.

15. In the event that Pinnacle fails to fulfill its obligations under this Agreement, Pinnacle waives any statute of limitation claims that may apply in an enforcement action by the DEQ/AQD involving the specific matters described in the NOV.

16. This Agreement shall be admissible by either Pinnacle or the DEQ/AQD (hereinafter Pinnacle and the DEQ/AQD may be referred to individually as "Party" or collectively as "Parties") without objection by the other Party only in an action between these Parties relating to the violations alleged herein; provided, however, that nothing herein constitutes an admission by Pinnacle of liability or fault.

17. 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.

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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

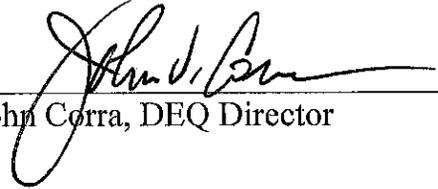
IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

PINNACLE MATERIALS, LLC:

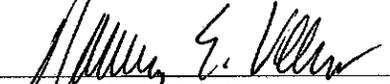
By:  _____ Date: 4/2/2012
Name: TIM LOCHRIDES
Title: REGIONAL PRODUCTION MGR.

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:  _____ Date: 4-11-12
Steven A. Dietrich, AQD Administrator

By:  _____ Date: 4/12/12
John Corra, DEQ Director

APPROVAL AS TO FORM:

 _____ Date: 3/22/2012
Nancy E. Vehr, Sr. Asst. A.G.
Attorney for DEQ/AQD