

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY  
LAND QUALITY DIVISION

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Black Hills Bentonite, L.L.C., a company authorized to do business in Wyoming, enter into this Settlement Agreement to fully and finally resolve without litigation the violation alleged in **Notice of Violation (NOV) Docket Number 4068-07, dated June 11, 2007**. The NOV alleges that Pit 4D was not reclaimed by the end of the year 2006 as required by a variance to timely reclamation. This is a violation of Wyoming Statutes and Land Quality Noncoal Rules and Regulations (WDEQ/LQD NC R & R).

Wyoming Environmental Quality Act (ACT), Wyoming Statute W.S. §35-11-901(a)(ii) authorizes the WDEQ/LQD to negotiate a stipulated settlement in lieu of litigation. To that end, Black Hills Bentonite, L.L.C. (BHB) and the WDEQ/LQD hereby stipulate and agree as follows:

1. The WDEQ/LQD pursuant to W.S. §35-11-104, is a department in the executive branch of the state government of Wyoming and is principally situated in Cheyenne, Wyoming. The WDEQ/LQD is the agency with the responsibility for administering the ACT including all provisions of the WDEQ/LQD Non-Coal R&R.
2. BHB is the operator of a bentonite mining operation covering 27,832 acres located in Johnson and Natrona Counties, Wyoming. This mining operation is permitted with WDEQ/LQD as mining Permit No. 248C. As part of its operation, BHB mines mineral from this site and distributes or sells the mineral mined for commercial use.
3. The reclamation deadline set in a WDEQ/LQD variance was not met for Pit 4D. Failure to comply with the conditions imposed by any variance shall be cause for modification or termination of the variance by the director as per WS §35-11-601(m). Termination of the variance causes Pit 4D to not meet the timely reclamation standards of WDEQ/LQD NC R & R Chapter 13, Section 3(a)(vi) which is a violation.
4. BHB agrees to pay one thousand dollars (\$1,000) as a stipulated settlement as partial resolution to this matter in lieu of litigation under W.S. § 35-11-901(a)(ii). BHB shall pay \$1,000 directly to the WDEQ/LQD within thirty (30) days of full execution of this Settlement Agreement. Payment to WDEQ/LQD shall be by check made payable to the Wyoming Department of Environmental Quality /Land Quality Division and shall be sent to: Richard A. Chancellor, Administrator, Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 3 Floor-West, 122 West 25<sup>th</sup> Street, Cheyenne, Wyoming 82002.
5. No remedial action is required resulting from NOV, Docket No. 4068-07.
6. The signed Settlement Agreement and payment by BHB as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against BHB on the violation alleged in NOV Docket No. 4068-07. Contingent upon BHB compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against BHB for these particular violations cited in this Settlement Agreement. By this Settlement Agreement, the parties intend to resolve with prejudice all allegations that were asserted in NOV Docket No. 4068-07.

7. BHB waives any statute limitations which may apply to an enforcement action by the WDEQ/LQD involving the specific matters described in NOV Docket No. 4068-07, in the event that BHB fails to fulfill its obligations under this Settlement Agreement.
8. Nothing in this agreement precludes WDEQ/LQD from taking additional enforcement action, including the issuance of a NOV, Order and/or pursuing penalties, should BHB violate the ACT or applicable rules and regulations in the future.
9. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
10. Notwithstanding any other language in the Settlement Agreement, the State of Wyoming and WDEQ/LQD do not waive sovereign immunity by entering into this Settlement Agreement with BHB and specifically retain all immunity and all defenses available as sovereigns under state and federal law.
11. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
12. This Settlement Agreement is binding upon BHB, its successors and assigns, and upon the WDEQ/LQD.
13. The persons signing the Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR BLACK HILLS BENTONITE, LLC

Signed: Thomas A. Thorson Date: July 11, 2007

Typed: THOMAS A. THORSON

Title: President

FOR WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

John V. Corra  
John V. Corra, Director  
WDEQ

Date: 07/16/07

Richard A. Chancellor  
Richard A. Chancellor, Administrator  
WDEQ/Land Quality Division

Date: 17 July 07

xc: WDEQ/LQD District III  
WDEQ/LQD Cheyenne File