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WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality / Land Quality Division (WDEQ/LQD) and Big Horn Redi-Mix, Inc. (BHRM), a company authorized to do business in Wyoming, enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in the **Notice of Violation (NOV), Docket Number 4104-07**. The NOV alleges: (1) BHRM failed to adequately salvage topsoil and subsoil per permit commitments and as required W.S. § 35-11-406(b)(viii), (2) Several topsoil stockpiles were found to be unsigned, (3) topsoil was contaminated by placement of reject material at two locations, and (4) encroachment of buffer zones established between mining and topsoil stockpiles. The remaining three issues are in violation of W.S. § 35-11-415(b)(iii). These violations are located in SW 1/4 NW 1/4 of Section 14, T.47N, R.93W and the SE 1/4 NE 1/4 of Section 15, T.47N, R.93W of Washakie County and within the boundaries of WDEQ/LQD Permit No. 653(s).

W.S. § 35-11-901(a)(ii) authorizes the WDEQ/LQD to negotiate a stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, BHRM 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 Wyoming State Government and is principally situated in Cheyenne, Wyoming. The WDEQ is the agency principally responsible for administering the Wyoming Environmental Quality Act, including all provisions of the WDEQ/LQD Noncoal Rules and Regulations.

2. BHRM agrees to pay a **total penalty of Six Thousand Dollars ($6,000.00)** as a stipulated settlement as partial resolution to this matter in lieu of litigation under W.S. § 35-11-901(a)(ii). BHRM shall pay Six Thousand Dollars ($6,000.00) directly to the WDEQ/LQD. Installment payments will be allowed in three (3) payments of $2,000.00 each. The first payment is due within thirty (30) days of full execution of this Settlement Agreement. Payment to the WDEQ/LQD shall be by check and made payable to the Wyoming Department of Environmental Quality / Land Quality Division and sent to the attention of Richard Chancellor, Administrator, Wyoming Department of Environmental Quality / Land Quality Division, Herschler Bldg. 3W, 122 West 25th Street, Cheyenne, WY, 82002.

3. Annual Reports will be submitted by March 21st of every year. For purposes of this NOV this requirement will be considered fulfilled if BHRM files the 2007 – 2008 by March 21, 2008.

4. **All topsoil and subsoil shall be consolidated into several large stockpiles no later than November 20, 2007.** Stockpiles shall be located away from the active mining operation and in such a manner to reduce windblown contamination.

5. **All topsoil and subsoil piles shall be signed no later than November 20, 2007**.

6. BHRM mix agrees to maintain a minimum buffer width of 10-feet between the edge of the highwall and the topsoil/subsoil to prevent slumpage, as specified in the approved permit.

7. **BHRM agrees to remove any reject or pit-run material from existing topsoil and/or subsoil piles no later than November 20, 2007**.

8. **BHRM agrees to meet contemporaneous reclamation standards as required under W.S. § 35-11-415(b)(ix). For purposes of this NOV this requirement will be considered fulfilled if the unreclaimed area east of the Bureau of Land Management road as shown in the attached air photo is reclaimed by November 20, 2007**.

9. **BHRM agrees to reseed the previously reclaimed areas, located east of the Bureau of Land Management road, that are absent of any type perennial vegetative species by November 20, 2007**.

10. This signed Settlement Agreement, payment of penalty, topsoil and subsoil pile consolidation, signage of all topsoil and subsoil piles, establish and maintain a buffer zone between the highwall and topsoil, removal of foreign material topsoil and subsoil stockpiles, achievement of contemporaneous reclamation, and submission of Annual Reports shall constitute full satisfaction and resolution of all claims by the WDEQ/LQD against BHRM based on the violations as specified in the NOV and Order, Docket No, 4104-07. Contingent upon BHRM's compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against BHRM for these particular violations

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cited in the this Settlement Agreement. Through this Settlement Agreement, the parties intend to resolve with prejudice all allegations that were asserted in NOV Docket No. 4104-07.

11. BHRM waives any statute of limitations which may apply to an enforcement action by the WyDEQ/LQD involving specific matters described in the NOV and Order, Docket No. 4104-07 in the event that BHRM fails to fulfill its obligations under this Settlement Agreement.

12. Nothing in this Settlement Agreement precludes the WyDEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation, Order, and/or pursuing additional penalties should BHRM violate the Wyoming Environmental Quality Act or applicable WyDEQ/LQD Rules and Regulations in the future.

13. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.

14. Not withstanding any other language in the Settlement Agreement, the State of Wyoming, and the WyDEQ do not waive Sovereign Immunity by entering into this Settlement Agreement with BHRM and specifically retain all immunity and defenses available as sovereigns under State and Federal law.

15. Each party shall bear its own attorney fees and costs, if any, incurred through the date of this Settlement Agreement is signed by both parties.

16. This Settlement Agreement is binding upon BHRM, its successors and assignees, and upon the WyDEQ/LQD.

17. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

For: **BIG HORN REDI-MIX, INC.**

Signed: Cynthia S. DeVries Date: 8/24/07

Typed: Cynthia S. DeVries

Title: Secretary Treasurer

For: **WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY**

John V. Corra, Director
Wyoming Department of Environmental Quality
Date: 9/5/07

Richard A. Chancellor, Administrator
Land Quality Division
Date: 5 Sept 07

Cc: Carol Bilbrough, WyDEQ/LQD Cheyenne
Mark Moxley, WyDEQ/LQD Lander
Docket No. 4104-07