

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY  
LAND QUALITY DIVISION**

**SETTLEMENT AGREEMENT**

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Fisher Sand & Gravel Company, a company authorized to do business in Wyoming, enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in Notice of Violation (NOV) Docket No. 4161-07, dated October 19, 2007. These violations were a result of mine activities conducted by Fisher Sand & Gravel Company, operating under the Limited Mining Operation, 1397ET. **This mine site is located in Carbon County, Section 22, Township 13 North, Range 81 West.** The NOV alleges the operator: 1) failed to salvage topsoil resulting in damage and loss of the resource; 2) failed to protect the topsoil stockpiles resulting in erosion and loss of the resource; 3) failed to post topsoil identification signs, and 4) dumped solid wastes from the baghouse on native lands inadequately stripped of soil. These topsoil activities identified in the notice are violations of the Wyoming Environmental Quality Act (Act) and the applicable Wyoming Environmental Quality/Land Quality Rules and Regulations (WDEQ/LQD R&R). **Other violations associated with Fisher Sand & Gravel operations were identified in two NOVs issued October 29, 2003 and November 4, 2005 for the 702(s) permit in Platte County.**

Wyoming Statute (W.S.) §35-11-901(a)(ii) authorizes the WDEQ/LQD to negotiate a stipulated settlement, including corrective action and a monetary payment, in lieu of litigation. **Ray Leahy (Fisher Sand & Gravel) and Mark Adsit (Southwest Asphalt Paving) met with Bill Hogg and Lowell Spackman, WDEQ/LQD on November 9, 2007 to discuss the draft Settlement Agreement. As a result of that meeting the Settlement Agreement has been altered accordingly. The additions to this Settlement Agreement are shown in bold text for easier reference.** To that end, Fisher Sand & Gravel Company, Inc. 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. DEQ is the agency with the responsibility for administering the Wyoming Environmental Quality Act including all provisions of the WDEQ/LQD R&R.
2. Fisher Sand & Gravel Company is the permittee of this sand and gravel mining operation, 1397ET, located in Carbon County, Wyoming, Section 22, Township 13 North, Range 81 West. As part of its operation, Fisher Sand & Gravel Company mines mineral from this site and distributes or sells the mineral mined for commercial use.
3. Failure to protect topsoil in stockpile is a violation of the WDEQ/LQD R&R, Chapter 3, Section 2 (c)(i)(B). Failure to strip topsoil from lands to be disturbed by mining related activities is a violation of WDEQ/LQD R&R, Chapter 3, Section 2 (c)(i)(A). Failure to mark topsoil stockpiles with a legible sign is a violation of WDEQ/LQD R&R, Chapter 3, Section 2 (c)(i)(D). Dumping of solid wastes on the mine site is a violation of WDEQ/LQD R&R, Chapter 3, Section 2 (c)(v).
4. The violations noted in No. 3 above were partially corrected with photo documentation submitted in a letter dated October 8, 2007. In addition to these corrections, **Southwest Asphalt Paving in association with Fisher Sand & Gravel reclaimed the site as documented in a letter dated November 30, 2007. As agreed, the reclamation included: 1) backfilling the southeast pit area with a gradual slope to provide through drainage; 2) grading all un-reclaimed acres including any reconstructed slopes with minimum slopes of 3H:1V; 3) distributing all available topsoil evenly over the graded acres; and 4) providing stable slopes.**

**Mulching and permanent seeding were also completed and documented in the letter of November 30, 2007. Any stockpiles left for the landowner's use should be minimal or moved to his site to the west of the highway. Vegetation at the site will need to be established and the slopes stabilized before the bond can be released. The bond covering the re-vegetation will be held for at least five years or as long as necessary to assure proper re-vegetation of the reclaimed areas (W.S. §35-11-423 (a)).**

5. Fisher Sand & Gravel Company agrees to pay a total of **two thousand dollars (\$2,000.00)** as a stipulated settlement as partial resolution to this matter in lieu of litigation under W.S. §35-11-901 (a)(ii). Fisher Sand & Gravel Company shall **pay two thousand dollars (\$2,000.00)** directly to the WDEQ/LQD. The payment of two thousand dollars (\$2,000.00) shall accompany this signed agreement due no later than fifteen (15) days of receipt of this letter. 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: Donald R. McKenzie, Administrator, Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 3 Floor-West, 122 West 25<sup>th</sup> Street, Cheyenne, Wyoming 82002.
6. This signed Settlement Agreement and payment of **two thousand dollars (\$2,000.00)** by Fisher Sand & Gravel Company, as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against Fisher Sand & Gravel Company, based on the violations alleged in NOV, Docket No. 4161-07. Contingent upon Fisher Sand & Gravel Company's compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against Fisher Sand & Gravel Company 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. 4161-07.
7. Fisher Sand & Gravel Company waives any statute of limitations which may apply to an enforcement action by the WDEQ/LQD involving the specific matters described in NOV Docket No. 4161-07 in the event that Fisher Sand & Gravel Company fails to fulfill its obligations under this Settlement Agreement.
8. Nothing in this agreement precludes WDEQ/LQD from taking additional enforcement action, including pursuing additional penalties, should Fisher Sand & Gravel Company violate the Wyoming Statutes or applicable R&R in the future.
9. This signed 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 this Settlement Agreement, the State of Wyoming and WDEQ do not waive sovereign immunity by entering into this Settlement Agreement with Fisher Sand & Gravel Company and specifically retain all immunity and all defenses available as sovereign 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 Fisher Sand & Gravel Company, its successors and assigns, and upon the WDEQ/LQD.

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

**FOR FISHER SAND & GRAVEL COMPANY**

Signed: Ray Leahy

Date: December 11, 2007

Typed: Ray Leahy

Title: Material & Environmental Mgr.

**FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:**

John Y. Corra  
John Y. Corra, Director  
Wyoming Department of Environmental Quality

Date: 1/3/08

Donald R. McKenzie  
Donald R. McKenzie, Administrator  
Land Quality Division

Date: 12-31-7

JVC/DRM/LKS

cc: Lowell Spackman, WDEQ/LQD, District I  
NOV Docket No. 4161-07