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WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY  
LAND QUALITY DIVISION

MAY 20 2008

SETTLEMENT AGREEMENT

LAND QUALITY DIVISION  
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The Wyoming Department of Environmental Quality / Land Quality Division (WyDEQ/LQD) and M-I, LLC (MI), 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 4270-08**. The NOV alleges: (1) MI failed to adequately handle and protect topsoil and subsoil per permit commitments and as required W.S. § 35-11-406(b)(viii), (2) Topsoil stockpiles and native lands were found to be contaminated by either bentonite or ash by encroaching on established buffer zones which is a violation of W.S. § 35-11-415(b)(iii), and (3) Inadequate cover was placed over the toxic material that will eventually result in poor revegetative success, which is in violation of W.S. § 35-11-415(b)(iv). These violations are located in the lands in question are located in Township 51N, Range 91W, Sections 25, 26, and 36 and Township 53N, Range 93W, Section 18 and within the boundaries of WyDEQ/LQD Permit No. 278C.

W.S. § 35-11-901(a)(ii) authorizes the WyDEQ/LQD to negotiate a stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, MI and the WyDEQ/LQD hereby stipulate and agree as follows:

1. The WyDEQ/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 WyDEQ is the agency principally responsible for administering the Wyoming Environmental Quality Act, including all provisions of the WyDEQ/LQD Noncoal Rules and Regulations.
2. MI agrees to pay a **total penalty of Seven Thousand Dollars (\$7,000.00)** as a stipulated settlement as partial resolution to this matter in lieu of litigation under W.S. § 35-11-901(a)(ii). MI shall pay Seven Thousand Dollars (\$7,000.00) directly to the WyDEQ/LQD. Payment is due within thirty (30) days of full execution of this Settlement Agreement. Payment to the WyDEQ/LQD shall be by check and made payable to the Wyoming Department of Environmental Quality / Land Quality Division and sent to the attention of Donald McKenzie, Administrator, Wyoming Department of Environmental Quality / Land Quality Division, Herschler Bldg. 3W, 122 West 25<sup>th</sup> Street, Cheyenne, WY, 82002.
3. MI shall remove all contaminated topsoil from stockpiles located in the Lone Tree and Johnson areas no later than September 30, 2008.
4. MI shall remove all ash that has contaminated native and reclaimed lands in the State Lease series, J-24, and North Johnson pits within the Johnson area by September 30, 2008.
5. MI shall sample lands reclaimed during the 2007/2008 seeding period within Johnson Area to demonstrate that all unsuitable material has been covered with a minimum of two feet suitable material by September 30, 2008. These areas shall be reseeded during the 2008/2009 seeding season.
6. MI must develop a field manual that specifies how suitable material (topsoil, subsoil, and/or adequate substitutes) salvage depths will be determined, including a field implementation procedure. The manual will also specify techniques for ash and bentonite cleanings disposal to ensure protection of suitable material resources. Finally, the manual must specify and implement procedures for ensuring adequate cover of toxic materials.
7. This signed Settlement Agreement, payment of penalty, and documented fulfillment of Items 3 through 6 shall constitute full satisfaction and resolution of all claims by the WyDEQ/LQD against MI based on the violations as specified in the NOV and Order, Docket No, 4270-08. Contingent upon MI's compliance with the terms of this Settlement Agreement, the WyDEQ/LQD will refrain from taking further enforcement action against MI for these particular violations 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. 4270-08.
8. MI 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. 4270-08 in the event that MI fails to fulfill its obligations under this Settlement Agreement.
9. 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 MI violate the Wyoming Environmental Quality Act or applicable WyDEQ/LQD Rules and Regulations in the future.

10. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
11. Notwithstanding 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 MI and specifically retain all immunity and defenses available as sovereigns under State and Federal law.
12. 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.
13. This Settlement Agreement is binding upon MI, its successors and assignees, and upon the WyDEQ/LQD.
14. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

For: **M-I, LLC**

Signed: J. Timothy Fagley

Date: 5-19-08

Typed: J. Timothy Fagley

Title: Sr. Operations Manager

For: **WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY**

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

Date: 5/28/08

Donald R. McKenzie  
Donald McKenzie, Administrator  
Land Quality Division

Date: 5-27-8

Cc: Carol Bilbrough, WyDEQ/LQD Cheyenne  
Mark Moxley, WyDEQ/LQD Lander  
Docket No. 4270-08