

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY  
LAND QUALITY DIVISION

SETTLEMENT AGREEMENT

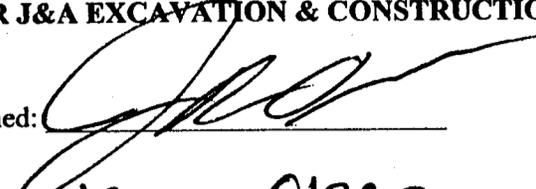
The Wyoming Department of Environmental Quality (WDEQ) and J&A Excavation & Construction, Inc. (J&A Excavation), enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in the WDEQ Notice of Violation (NOV), Docket Number 4209-08, dated February 21, 2008. The NOV alleges: 1) that unauthorized gravel mining or exploration operations were conducted by J&A Excavation in the NW¼NW¼ of Section 26, T.21N., R.116W., on private lands within the City of Kemmerer, Wyoming, 2) that 3.3 acres were affected at the site by these operations, 3) that the company did not submit a Limited Mining Operation Notification or Special License to Explore for Minerals Application to the WDEQ/Land Quality Division prior to conducting these operations, and 4) that a reclamation performance bond was not posted. These are violations of the Wyoming Statutes (W.S.) and the applicable Land Quality Division Non-coal Rules and Regulations (LQD R&R).

W.S. §35-11-901(a)(ii) authorizes WDEQ to negotiate a stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, J&A Excavation and WDEQ hereby stipulate and agree as follows:

- 1 of 12 WDEQ, 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. WDEQ is the agency with the responsibility for administering the Wyoming Environmental Quality Act including all provisions of the LQD R&R.
- 2 of 12 J&A Excavation agrees to pay a total penalty of five thousand dollars (\$5,000.00) as a stipulated settlement as partial resolution to this matter in lieu of litigation under W.S. §35-11-901(a)(ii). The penalty shall be paid directly to the WDEQ within thirty (30) days of full execution of this Settlement Agreement.  
  
Payment shall be by check made payable to the Wyoming Land Quality Division and sent to: Donald R. McKenzie, Administrator, Land Quality Division, Herschler Building, 3 Floor-West, 122 West 25<sup>th</sup> Street, Cheyenne, Wyoming 82002.
- 3 of 12 J&A Excavation will not conduct any mining or exploration activities in Wyoming until a Notification or License is approved by the Land Quality Division.
- 4 of 12 J&A will register with the Wyoming Secretary of State in order to conduct business in the State.
- 5 of 12 Compliance with this signed Settlement Agreement shall constitute full satisfaction and resolution of all claims by the WDEQ against J&A Excavation based on the violations in Notice of Violation, Docket No. 4209-08. Contingent upon J&A Excavation's compliance with the terms of this Settlement Agreement, the WDEQ will refrain from taking further enforcement action against 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. 4209-08.
- 6 of 12 J&A Excavation waives any statute of limitations which may apply to an enforcement action by WDEQ involving the specific matters described in NOV Docket No. 4209-08 in the event that J&A Excavation fails to fulfill its obligations under this Settlement Agreement.
- 7 of 12 Nothing in this agreement precludes WDEQ from taking additional enforcement action, including the issuance of a Notice of Violation, Order and/or pursuing additional penalties, should J&A Excavation violate the Wyoming Environmental Quality Act or applicable rules and regulations in the future.
- 8 of 12 This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
- 9 of 12 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 J&A Excavation and specifically retain all immunity and all defenses available as sovereigns under state and federal law.

- 10 of 12 Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
- 11 of 12 This Settlement Agreement is binding upon J&A Excavation, its successors and assignees, and upon WDEQ.
- 12 of 12 The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

**FOR J&A EXCAVATION & CONSTRUCTION, INC.:**

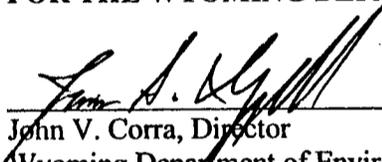
Signed:  \_\_\_\_\_

Date: 7.15.08

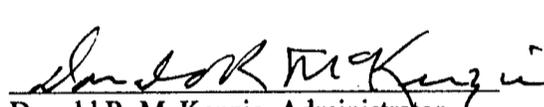
Typed: Jason Olsen

Title: vice president

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

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

Date: 07/28/08

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

Date: 07-24-08

cc: Mark Moxley, WDEQ/LQD, District II  
Docket Number 4209-08