

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, LLC (BHB), 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. 4188-07, dated December 11, 2007. The NOV was issued by WDEQ/LQD following an Annual Inspection of Permit 281C conducted on November 13 and 14, 2007. The NOV alleges: 1) that BHB had driven heavy mining equipment outside of the permit area boundary onto a Wyoming Department of Transportation (WyDOT) Right-of-Way in the SW¼ of Section 20, T.47N., R.89W., resulting in adverse impacts to topsoil and vegetation, 2) that BHB had constructed a topsoil stockpile outside of the permit area in the NE¼ of Section 27, T.48N., R.90W., 2) that BHB had constructed an overburden stockpile outside of the permit area in the NW¼ of Section 27, T.48N., R.90W., 4) that BHB had dumped spoil over steep slopes in Sections 36, 17, and 27, T.48N., R.90W., 5) that BHB had failed to salvage topsoil from areas affected by the steep-slope spoil dumping, as well as in an area affected by construction of a haulroad in Section 26, T.48N., R.90W., and that 6) BHB had failed to protect an existing topsoil stockpile from being adversely affected by adjacent mining operations in Section 27, T.40N., R.90W. These are violations of Wyoming Statutes and the applicable WDEQ/LQD Noncoal Rules and Regulations.

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

1. The 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 WDEQ/LQD Non-Coal Rules and Regulations.
2. BHB agrees to pay a penalty of twenty thousand dollars (\$20,000.00) to resolve this matter in lieu of litigation under W.S. §35-11-901(a)(ii). Payment of one-half of this amount, \$10,000, is due and payable within thirty (30) days of full execution of this Settlement Agreement by check payable to the Wyoming Land Quality Division and shall be sent to: Administrator, Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 3 Floor-West, 122 West 25th Street, Cheyenne, Wyoming 82002. One-half of the penalty (\$10,000) will be paid within thirty (30) days of full execution of this Settlement Agreement to the Wyoming Wildlife and Natural Resource Trust, as a Supplemental Environmental Project which will fund the construction of water guzzlers on public lands in the Big Horn Basin specifically for the benefit of game birds and wildlife. A copy of the receipt confirming this donation will be provided to WDEQ/LQD as soon as it is received from the Trust.
3. BHB has contacted the WyDOT Highway Maintenance Office in Worland, Wyoming regarding mining-related disturbances on their Right-of-Way. In accordance with these discussions, WyDOT will assess the need and extent of any repairs. BHB will reimburse WyDOT for the cost of any needed repairs within 30 days of receiving an invoice from WyDOT.
4. All topsoil and spoil that was placed outside of the permit area will be recovered. BHB will fully reclaim all disturbances associated with this activity by the end of 2008.
5. All spoil that was dumped over steep slopes (slopes in excess of 20 degrees) will be recovered. Areas affected by steep-slope spoil dumping will be fully reclaimed by the end of 2008.
6. Fill from construction of a haul road that affected unstripped topsoil in Section 26, T.48N., R.90W. will be removed. The affected area will be fully reclaimed in 2008.
7. Topsoil that was affected by adjacent mining operations in Section 27, T.40N., R.90W. will be consolidated and stockpiled in a manner that will minimize wind and water erosion and unnecessary compaction. BHB will seed the stockpile at the earliest available opportunity in the spring of 2008 to establish a cover crop for stabilization.

8. This signed Settlement Agreement and payment of cash settlement amount shall constitute full satisfaction and resolution of all claims by the WDEQ/LQD against BHB based on the violations alleged in the NOV Docket No. 4188-07. Contingent upon BHB's 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 the NOV.
9. BHB 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. 4188-07, in the event that BHB fails to fulfill its obligations under this Settlement Agreement.
10. Nothing in this agreement precludes WDEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation, Order and/or pursuing additional penalties, should BHB violate the Wyoming Environmental Quality Act or applicable rules and regulations in the future.
11. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
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 Black Hills Bentonite, LLC and specifically retain all immunity and all defenses available as sovereigns under state and federal law.
13. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
14. This Settlement Agreement is binding upon Black Hills Bentonite, LLC, its successors and assignees, and upon the WDEQ/LQD.
15. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR: Black Hills Bentonite:

Signed: Larry Madsen

Date: 3-21-08

Typed: Larry Madsen

Title: V P & CFO

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

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

Date: 3/11/08

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

Date: 3-21-08

xc: Mark Moxley, WDEQ/LQD, District II
NOV Docket Number 4188-07
281C File