

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, L.L.C., 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 Number 4321-08., dated August 1, 2008.** The NOV alleges the mine plan was disregarded and areas were affected without topsoil being removed. The site of the violation was in Section 12, T.42N.,R.83W., Johnson County. This is a violation of the Environmental Quality Act (Act) and applicable Wyoming Department of Environmental Quality/Land Quality Non-Coal rules and Regulations (WDEQ/LQD NC R & R).

Wyoming Statute (W.S.) §35-11-901(a)(ii) authorizes the WDEQ/LQD to negotiate a stipulated settlement in lieu of litigation. To that end, Black Hills Bentonite, L.L.C. (BHB) 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 ACT including all provisions of the WDEQ/LQD Non-Coal R&R.
2. BHB is the operator of a bentonite mining operation covering 28,696 acres located in Johnson and Natrona Counties, Wyoming. This mining operation is permitted with WDEQ/LQD as mining Permit No. 248C. As part of its operation, BHB, mines mineral from this site and distributes or sells the mineral mined for commercial use.
3. Not constructing the crossing according to the mining plan is a violation of the Wyoming Environmental Quality Act, W.S. § 35-11-415 (b) which states: The operator, pursuant to an approved surface mining permit and mining plan and reclamation plan, or any approved revisions thereto, shall: (ii) Conduct all surface mining and reclamation activities within the permit area in conformity with his approved plan.
4. Affecting areas that have not had the topsoil removed is a violation of the Department of Environmental Quality, Land Quality Rules and Regulations Chapter 3, Section 2(c)(i)(A) which states: All topsoil and approved surface material shall be removed from all areas to be affected in the permit area prior to these areas being affected unless otherwise authorized by the Administrator,
5. BHB agrees to pay a penalty of six thousand dollars (\$6,000.00) to resolve this matter in lieu of litigation under W.S. §35-11-901(a)(ii). Payment of one-half of this amount, (\$3,000.00) 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 (\$3,000.00) is due and payable within thirty (30) days of full execution of this Settlement Agreement by check payable to the Wildlife Heritage Foundation of Wyoming (WHFW) and shall be sent to: Wildlife Heritage Foundation of Wyoming, P.O. Box 20088, Cheyenne, Wyoming 82003-7002. The payment to the WHFW will serve as a Supplemental Environmental Project (SEP) providing funding specifically for the Wildlife Forensics Fund, a dedicated account of the WHFW. A copy of the receipt confirming this donation will be provided to WDEQ/LQD as soon as it is received from the WHFW.
6. A maintenance and repair plan for the two crossings was submitted on July 11, 2008. The plan was found acceptable with the following stipulation: the crossing in **Amendment No. 10** shall not be used for mining or hauling overburden or bentonite until the crossing has been completed according to the plan.

7. An inspection by LQD on August 19, 2008 found the first crossing repaired according to the maintenance and repair plan and the second crossing constructed according to the approved plan in the permit.
8. This signed Settlement Agreement and payment by BHB as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against BHB on the violation alleged in NOV Docket No. 4321-08. Contingent upon BHB 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 NOV Docket No. 4321-08.
9. BHB waives any statute limitations which may apply to an enforcement action by the WDEQ/LQD involving the specific matters described in NOV Docket No. 4321-08.
10. Nothing in this agreement precludes WDEQ/LQD from taking additional enforcement action, including the issuance of a NOV, Order and/or pursuing penalties, should BHB violate the 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 the Settlement Agreement, the State of Wyoming and WDEQ/LQD do not waive sovereign immunity by entering into this Settlement Agreement with BHB 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 BHB, its successors and assigns, 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, L.L.C.

Signed: Bruce A. Lawson

Date: October 29, 2008

Typed: Bruce Lawson

Title: Manager – Lands & Regulatory Compliance

FOR WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

John V. Corra
John V. Corra, Director
WDEQ

Date: 11-03-08

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

Date: 11-03-08

xc: Mark Rogaczewski, WDEQ/LQD, District III
Cheyenne File