

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

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Magna Energy Services LLC (Magna), 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. 4395-08, dated November 26, 2008**. The NOV alleges: that Magna affected lands outside the approved permit boundary for Permit 673(s). The site of this violation is located in the NE1/4 of Section 2, Township 49 North, Range 71 West. This is a violation of the Wyoming 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, including payment of a penalty, in lieu of litigation. To that end, Magna 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. Magna is the operator of a scoria mining operation located in Campbell County, Wyoming, in Section 35, Township 50 North, Range 71 West and Section 2, Township 49 North, Range 71 West. As part of its operation, Magna has mined mineral from this site and distributes or sells the mineral mined for commercial use.
3. Magna has not contained mining disturbance within the approved permit boundary of Permit 673(s). Topsoil was salvaged and a topsoil stockpile constructed outside the approved permit boundary of Permit 673(s). This is a violation of W.S. §35-11-415 (b) (ii).
4. Magna agrees to pay a penalty of One Thousand Dollars (\$1,000.00) for the violation stated in Item 3 above, as a partial settlement for the resolution to this matter in lieu of litigation under W.S. §35-11-901(a)(ii). Further, Magna agrees to pay an additional penalty of Four Thousand Dollars (\$4,000.00) should Magna **not submit** a complete amendment application to the LQD District III Office by January 15, 2009. 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 25th Street, Cheyenne, Wyoming 82002.
5. Magna agrees to submit a complete amendment application to the LQD District III Office by January 15, 2009. The amendment application will incorporate approximately two (2) acres including the area disturbed outside the approved permit boundary of Permit 673(s). The additional penalty of Four Thousand Dollars (\$4,000.00) will not be assessed as long as Magna submits the complete amendment application within the prescribed time frame.
6. This signed Settlement Agreement by Magna as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against Magna, based on the violations alleged in NOV, Docket No. 4395-08. Contingent upon Magna's compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against Magna, 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. 4395-08.

7. Magna 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. 4395-08 in the event that Magna fails to fulfill its obligations under this Settlement Agreement.
8. 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 Magna violate the Wyoming Environmental Quality Act or applicable rules and regulations in the future.
9. This 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 Pinnacle and specifically retain all immunity and all defenses available as sovereigns 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 Magna, 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 Magna Energy Services LLC:

Signed: Montie L. Means

Date: 12/16/08

Typed: Montie L. Means

Title: Manager

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

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

Date: 12-18-08

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

Date: 12-18-08

JVC/DRM/KK

cc: Mark Rogaczewski, WDEQ/LQD, District III
NOV Docket No. 4395-08