WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Three Way, Inc., 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 4425-09, dated February 27, 2009**. The NOV alleges that Three Way, Inc. distributed a waste on the surface of Limited Mining Operation (LMO) 1328ET, removed topsoil from pit without WDEQ/LQD Administrator approval, and affected topsoil by stockpiling rock and operating equipment on reclaimed areas of LMO 1328ET. The site of these violations is located in Section 18, Township 49 North, Range 80 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).

W.S. §35-11-901(a)(ii) authorizes the WDEQ to negotiate a stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, Three Way, Inc., and the 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 NC R&R.

2. Three Way, Inc., is the operator of a sand and gravel mining operation located in Johnson County, Wyoming, in Section 18, Township 49 North, Range 80 West. As part of its operation Three Way, Inc. mines mineral from this site and distributes or sells the mineral for commercial use.

3. Three Way, Inc. removed topsoil stockpiled for reclamation purposes from LMO 1328ET without the approval of the LQD Administrator which is a violation of WDEQ/LQD NC R&R, Chapter 3, Section 2(c)(i)(F).

4. Three Way, Inc. operated equipment and stockpiled rocks and boulders on topsoil which is a violation of the WDEQ/LQD NC R&R, Chapter 3, Section 2(c)(i)(A). The topsoil or approved surface material shall be removed from all areas to be affected prior to these areas being affected unless otherwise authorized by the Administrator.

5. The Wyoming Environmental Quality Act, W. S.§35-11-415(a) states that every operator to whom any permit or license is issued shall comply with all requirements of this act, the rule and regulations promulgated hereunder, and reclamation plans and other terms and conditions of any permit or license. Three Way, Inc. imported solid waste imported to the LMO 1328ET mine site. This is a violation WS § 33-11-502(a)(i) that states no person, except when authorized under the permit system established pursuant to this act, shall locate, construct, operate or close a solid waste management facility.

6. Three Way, Inc. must replace topsoil removed from LMO 1328ET in equal volume by April 30, 2009.

7. In correspondence under a cover letter dated March 3, 2009 and with photographic evidence attached, Three Way, Inc. stated that the solid waste material deposited on LMO 1328ET had been removed as requested in the WDEQ/LQD February 9, 2009 inspection report.

8. In correspondence under a cover letter dated March 3, 2009 and with photographic evidence attached, Three Way, Inc. stated that the rocks stockpiled on an area of the reclamation where topsoil had not been salvaged have been removed from the reclamation surface. The location where the rocks were placed on the reclamation and where equipment operation compacted topsoil must be ripped, disked and seeded by not later than April 30, 2009.

9. Three Way, Inc. must complete items 6 and 8 of this Settlement Agreement for NOV Docket No. 4425-09 by April 30, 2009. Three Way, Inc. agrees to pay a total penalty of Two Thousand Dollars ($2,000); One Thousand Dollars ($1,000) for the violation stated in item 3 above, Five Hundred Dollars ($500.00) for the violation stated in item 4 above and Five Hundred Dollars ($500.00) for the violation stated in item 5 above. Payment is due and payable within thirty (30) days of full execution of this Settlement Agreement. 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.

10. This signed Settlement Agreement and payment by Three Way, Inc. as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against Three Way, Inc., based on the violations alleged in NOV Docket No. 4425-09. Contingent upon Three Way, Inc. compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against Three Way, Inc., 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. 4425-09.

11. Three Way, Inc. 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. 4425-09.

12. Nothing in this agreement precludes WDEQ/LQD from taking additional enforcement action, including the issuance of a NOV, Order and/or pursuing additional penalties, should Three Way, Inc. violate the Wyoming Environmental Quality Act or applicable rules and regulations in the future.

13. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.

14. Not withstanding 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 Three Way, Inc. and specifically retain all immunity and all defenses available as sovereigns under state and federal law.

15. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.

16. **This Settlement Agreement is** binding upon Three Way, Inc., its successors and assigns, and upon the WDEQ.

17. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR: Three Way, Inc.

Signed: Raymond Gadard Date: 3/5/09

Typed: _____

Title: President

FOR: The Wyoming Department of Environmental Quality

John V. Corra Date: 3/20/09
John V. Corra, Director
WDEQ

Donald R. McKenzie Date: 03-18-09
Donald R. McKenzie, Administrator
WDEQ/Land Quality Division

JVC/RAC/DS

cc: Mark Rogaczewski, WDEQ/LQD, District III
Docket Number 4425-09