

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY  
LAND QUALITY DIVISION

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Michael Cunningham, President, 2M Construction, Inc. (2M), a corporation 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 4459-09 dated March 13, 2009. The NOV alleges that the Limited Mining Operation No. 1447ET exceeded the permitted maximum of a 10 acre exemption area by 4.4 acres, for a total of 14.4 affected acres. These violations are located in the S ½SW¼ Section 18 and S ½SE¼ of Section 13, T.1N., R.4E., WRM, Fremont County, Wyoming. This is a violation 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, Michael Cunningham 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 Noncoal Rules and Regulations.
2. 2M operates a sand and gravel mining operation 1447ET located in Fremont County, Wyoming, in the S½SW¼ Sec. 18 and S½SE¼ Sec. 13, T.1N., R.4E., WRM. As part of his operation, 2M mines mineral from this site and distributes or sells the mineral mined for commercial use.
3. 2M agrees to pay a total of Four Thousand Five Hundred dollars (\$4,500.00) as a stipulated cash settlement payment to resolve this matter in lieu of litigation under W.S. § 35-11-901(a)(ii). Payment is due and payable 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 shall be sent to: Donald R. McKenzie, Administrator, Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 3 Floor-West, 122 West 25<sup>th</sup> Street, Cheyenne, Wyoming 82002.
4. A minimum of 4.4 acres of lands affected outside of the exemption boundary of 1447ET must be regraded, re-topsoiled, and seeded. Because 2M has completed 4.5 acres of regrade and topsoil replacement only seeding remains to be done. 2M shall seed the re-topsoiled area outside the 1447ET exemption boundary, no later than May 15, 2009 with a seed mix approved by the LQD.
5. This signed Settlement Agreement and payment of cash settlement amount shall constitute full satisfaction and resolution of all claims by the WDEQ/LQD against 2M based on the violations alleged in NOV Docket No. 4459-09. Contingent upon 2M's compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action 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. 4459-09.
6. 2M 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. 4459-09 in the event that 2M fails to fulfill his obligations under this Settlement Agreement.
7. Nothing in this agreement precludes WDEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation and Order, should 2M violate the Wyoming Environmental Quality Act or applicable rules and regulations in the future.
8. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
9. 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 2M and specifically retain all immunity and all defenses available as sovereigns under state and federal law.
10. 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. This Settlement Agreement is binding upon 2M, its successors and assignees, and upon the WDEQ/LQD.
12. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR: 2M Construction, Inc.:

Signed: Michael W. Cunningham

Date: 4/2/2009

Typed: MICHAEL W. CUNNINGHAM

Title: PRESIDENT

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

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

Date: 4/8/09

Donald R. McKenzie  
Donald R. McKenzie  
Land Quality Division

Date: 04/03/09

xc: Mark Moxley, WDEQ/LQD, District 2  
NOV Docket Number 4459-09  
LMO 1447ET File