

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

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality / Land Quality Division (WyDEQ/LQD) and Jerry Brown Construction, Inc. (JBC), a company authorized to do business in Wyoming, enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in the **Notice of Violation (NOV), Docket Number 4471-09**. The NOV alleges: (1) JBC failed to adequately salvage topsoil and subsoil as required by WyDEQ/LQD NonCoal Rules and Regulations, Chapter 10, Section 4(b), (2) Several topsoil stockpiles were found to be unsigned, and (3) encroachment of buffer zones established between mining and topsoil stockpiles. These violations are located in NW 1/4 SW 1/4 of Section 14, Township 47N, Range 93W of Washakie County and within the boundaries of WyDEQ/LQD Limited Mining Operation No. 771ET.

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

1. The WyDEQ/LQD, pursuant to W.S. § 35-11-104, is a department in the executive branch of Wyoming State Government and is principally situated in Cheyenne, Wyoming. The WyDEQ is the agency principally responsible for administering the Wyoming Environmental Quality Act, including all provisions of the WyDEQ/LQD Noncoal Rules and Regulations.
2. **JBC agrees to salvage all topsoil/subsoil from an area that was partially stripped at the west edge of the existing operation no later than August 1, 2009 (see attached).**
3. **All topsoil/subsoil previously salvaged from the west end of the disturbed area as well as the topsoil/subsoil generated through Action Item #2 (above) shall be consolidated into one, single pile no later than August 1, 2009 (see attached).**
4. **All topsoil/subsoil piles shall be signed no later than August 1, 2009.**
5. For all future operations, JBC agrees to maintain a minimum buffer width of eight (8)-feet between the edge of the highwall and the topsoil/subsoil to prevent slumpage and loss.
6. This signed Settlement Agreement, topsoil and subsoil pile consolidation, signage of all topsoil and subsoil piles and establish and maintain a buffer zone between the highwall and topsoil shall constitute full satisfaction and resolution of all claims by the WyDEQ/LQD against JBC based on the violations as specified in the NOV and Order, Docket No. **4471-09**. Contingent upon JBC's compliance with the terms of this Settlement Agreement, the WyDEQ/LQD will refrain from taking further enforcement action against JBC for these particular violations cited in the this Settlement Agreement. Through this Settlement Agreement, the parties intend to resolve with prejudice all allegations that were asserted in NOV Docket No. **4471-09**.
7. JBC waives any statute of limitations which may apply to an enforcement action by the WyDEQ/LQD involving specific matters described in the NOV and Order, Docket No. **4471-09** in the event that JBC fails to fulfill its obligations under this Settlement Agreement.
8. Nothing in this Settlement Agreement precludes the WyDEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation, Order, and/or pursuing additional penalties should JBC violate the Wyoming Environmental Quality Act or applicable WyDEQ/LQD 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 the Settlement Agreement, the State of Wyoming, and the WyDEQ do not waive Sovereign Immunity by entering into this Settlement Agreement with JBC and specifically retain all immunity and 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 of this Settlement Agreement is signed by both parties.
12. This Settlement Agreement is binding upon JBC, its successors and assignees, and upon the WyDEQ/LQD.

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

For: **JERRY BROWN CONSTRUCTION, INC.**

Signed: Clayton D. Brown

Date: 5-18-09

Typed: Clayton D. Brown

Title: President

For: **WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY**

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

Date: 5/8/09

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

Date: 05-08-09

Cc: Becky Brosius, WyDEQ/LQD Cheyenne
Mark Moxley, WyDEQ/LQD Lander
Docket No. 4471-09