

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

**SETTLEMENT AGREEMENT**

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Tri-State Construction, 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 4553-09, dated September 9, 2009**. The site of these violations is located in Section 18, Township 57 North, Range 64 West.

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, Tri-State Construction 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. Tri-State Construction is the operator of a sand and gravel mining operation located in Crook County, Wyoming, in Section 18, Township 57 North, Range 64 West. As part of its operation Tri-State Construction mines mineral from this site and distributes or sells the mineral for commercial use.
3. Conducting Limited Mining Operations in the State of Wyoming that disturb lands in excess of 10 acres is a violation of W. S. §35-11-401(e)(vi).
4. Not adequately salvaging and segregating all topsoil prior to affecting areas by mining activities is a violation of the WDEQ/LQD NC R&R, Chapter 3, Section 2(c)(i)(A).
5. Not providing notice to the Land Quality Division before beginning operations under Limited Mining Operation 1428ET and failure to file a Form 10 are violations of WDEQ/LQD NC R&R, Chapter 10, Section 6(b).
6. Tri-State Construction agrees to pay a total penalty of Two Thousand Dollars (\$2,500.00), for the violations stated in Items 3 - 5 above, as a partial settlement for the resolution to this matter in lieu of litigation under W.S. §35-11-901(a)(ii). Tri-State Construction shall pay \$2,500.00 directly to the WDEQ/LQD. 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 25<sup>th</sup> Street, Cheyenne, Wyoming 82002.**
7. An additional reclamation bond in the amount of Three Thousand Dollars (\$3,000.00) shall be posted by October 23, 2009, to cover the additional 2.5 acres of disturbance not currently bonded under LMO 1428ET.
8. Tri-State Construction agrees to immediately halt all mining associated activities at LMO 1428ET that will extend the area of disturbance beyond the approved ten acre limit. Tri-State Construction will be allowed to remove currently stockpiled products for further processing and sale. Tri-State Construction will not expand the area of disturbance beyond the approved ten acre limit unless a Small or Regular Mine Permit application is submitted to, and approved by, the LQD.
9. Tri-State Construction agrees to receive LQD approval to become the operator under LMO 1428ET by submitting a Form 10 to the LQD by October 23, 2009.
10. This signed Settlement Agreement and payment by Tri-State Construction as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against Tri-State Construction based on the violations alleged in NOV Docket No. 4553-09. Contingent upon Tri-State Construction's compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against Tri-State Construction 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. 4553-09.

11. Tri-State Construction 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. 4553-09.
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 Tri-State Construction 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. 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 Tri-State Construction 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 Tri-State Construction 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: Tri-State Construction**

Signed: Mike Watson

Date: 9-19-09

Typed: Mike Watson

Title: Manager

**FOR: The Wyoming Department of Environmental Quality**

John V. Corra  
John V. Corra, Director  
WDEQ

Date: 10/1/09

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

Date: 9/30/2009

JVC/RAC/MJR

cc: Mark Rogaczewski, WDEQ/LQD, District III  
Docket Number 4553-09