

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

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Croell Redi-Mix, 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 No. 4551-09, dated August 26, 2009. These violations were a result of mine activities conducted by Croell Redi-Mix, Inc., operating under the Limited Mining Operation, 1212ET. This mine site is located in Platte County, Section 25, Township 24 North, Range 69 West. The NOV alleges that the operator: 1) failed to adequately salvage topsoil resulting in damage and loss of the resource; and 2) failed to adequately protect the topsoil stockpiles resulting in damage and loss of the resource. These topsoil activities identified in the notice are violations of the Wyoming Environmental Quality Act (Act) and the applicable Wyoming Environmental Quality/Land Quality Rules and Regulations (WDEQ/LQD R&R). Previous violations associated with Croell Redi-Mix, Inc. were identified in two NOVs issued December 27, 2007 for the 1395ET and November 5, 2008 for the 1396ET.

Wyoming Statute (W.S.) §35-11-901(a)(ii) authorizes the WDEQ/LQD to negotiate a stipulated settlement, including corrective action and a monetary payment of a penalty, in lieu of litigation. **David Costigan, (Croell Redi-Mix, Inc.), met with Monte Buchanan and Lowell Spackman, WDEQ/LQD on September 9, 2009 to discuss the draft Settlement Agreement. As a result of that meeting, the Settlement Agreement has been altered accordingly. The modifications/additions to this Settlement Agreement are shown in bold text for easier reference.** To that end, Croell Redi-Mix, Inc. 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. Croell Redi-Mix, Inc. is the permittee of the sand and gravel mining operation, 1212ET, located in Platte County, Wyoming, in Section 25, Township 24 North, Range 69 West. As part of its operation, Croell Redi-Mix, Inc. mines mineral from this site and distributes or sells the mineral mined for commercial use.
3. During the inspection conducted on August 11, 2009, topsoil was not properly protected and salvaged when it was used as a safety berm and gravel material was placed on it. The east end of the north topsoil stockpile did not contain adequate vegetation to protect it from wind and water erosion. Soil was not salvaged prior to equipment operating on native areas. Failure to save and protect topsoil for a LMO is a violation of the WDEQ/LQD Noncoal Rules and Regulations, Chapter 10, Section 4(b), "*All topsoil from affected lands shall be saved and stockpiled in such a manner to minimize wind and water erosion.*" During last year's Annual Inspection report dated August 25, 2008, Croell Redi-Mix, Inc. was provided a warning not to advance mining into the topsoil stockpiles to prevent loss of topsoil.
4. An Annual Inspection report sent to Croell Redi-Mix, Inc. from the WDEQ/LQD dated August 25, 2009 requested that: 1) the perimeter containment berms be re-established, 2) the gravel material placed on the topsoil stockpiles be removed, 3) the available topsoil along the access road be salvaged and stockpiled, 4) the topsoil from the highwall safety berms be removed, 5) the topsoil stockpiles be seeded to prevent wind and water erosion, and 6) the highwall next to the north topsoil stockpiles be backfilled so the south containment berms can be re-established. Upon completion of these abatement activities, Croell Redi-Mix, Inc. was requested to submit photos that clearly document that the repairs were made.
5. **The violations noted in No. 3 above were partially corrected with photo documentation submitted on a compact-disc (CD) and received by the WDEQ/LQD**

on September 9, 2009. An e-mail summarizing the status of the repairs was received on September 11, 2009. Croell Redi-Mix, Inc. is committed to abating all outstanding repair work by September 25, 2009 and will subsequently submit photo documentation of repairs, with exception to mulching and temporary seeding portions of the topsoil stockpiles to protect it from wind and water erosion, which will be completed during optimal seeding times prior to November 30, 2009. As agreed during the meeting held on September 9, 2009:

- A) The perimeter containment berms will be re-established.
 - B) The gravel material placed on the topsoil stockpiles will be removed.
 - C) No further disturbance will occur along the access road, and the bladed topsoil will be seeded.
 - D) The topsoil from the highwall safety berms will be removed.
 - E) The topsoil stockpiles will be seeded to prevent wind and water erosion.
 - F) The highwall next to the north topsoil stockpiles will be backfilled so the south containment berms can be re-established adequately.
- 6A. Subject to the waiver hereafter set forth, Croell Redi-Mix, Inc. agrees to pay a total penalty of eight thousand dollars (\$8,000.00) as a stipulated settlement as partial resolution to this matter in lieu of litigation under W.S. §35-11-901(a)(ii). Croell Redi-Mix, Inc. shall pay three thousand dollars (\$3,000.00) directly to the WDEQ/LQD and three thousand dollars (\$3,000.00) as outlined in Item No. 6B below for a Supplemental Environmental Project (SEP). The remaining two thousand dollars (\$2,000.00) will be waived if the following criteria are met:

If, Croell Redi-Mix, Inc. satisfies the requirements found in Item No. 5, including sub-items A through F, then the remaining amount of two thousand dollars (\$2,000.00) shall be waived. If Croell Redi-Mix, Inc. fails to satisfy the requirements by September 25, 2009 and does not submit the compliance letter and photo documentation by October 1, 2009, the remaining two thousand dollars (\$2,000.00) shall be paid within thirty (30) days from the date this Settlement Agreement is finalized from signatures from all parties.

The payment of three thousand dollars (\$3,000.00) shall accompany this signed agreement due no later than fifteen (15) days upon receipt of this letter. Payment to WDEQ/LQD shall be by check and 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.

- 6B. Upon execution of the Settlement Agreement, Croell Redi-Mix, Inc. will pay three thousand dollars (\$3,000.00) directly toward the WDEQ Environmental Engineering Intern Account, University of Wyoming (UW). Payment of the Environmental Engineering Intern Account/UW shall be by check with reference to Account #WYDEQ6867 and sent to: University of Wyoming, Office of Sponsored Programs, Attn. Christy Rickard, Manager, Dept. 3355, 1000 E. University Ave., Laramie, Wyoming 82071-3355.

Croell Redi-Mix, Inc. shall complete the SEP within sixty (60) days of the full execution of this Agreement unless Croell Redi-Mix, Inc. and the WDEQ/LQD mutually agree to an extension of time. Croell Redi-Mix, Inc. shall submit a SEP Completion Report to the WDEQ/LQD, Attn: Donald R. McKenzie, Administrator, Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 3 Floor-West, 122 West 25th Street, Cheyenne, Wyoming 82002 within thirty (30) days after the completion of the SEP. The WDEQ/LQD and Croell Redi-Mix, Inc. agree that if Croell Redi-Mix, Inc. does not complete the SEP by the SEP

deadline, then Croell Redi-Mix, Inc. will pay the WDEQ/LQD the SEP amount of three thousand dollars (\$3,000.00) by the SEP Completion Report deadline.

Croell Redi-Mix, Inc. hereby certifies that as of the date it signs this Agreement, Croell Redi-Mix, Inc. is not required to perform or develop this SEP by any federal, state or local law or regulation; nor is Croell Redi-Mix, Inc. required to perform or develop this SEP pursuant to any other agreement or relief in any other case. Croell Redi-Mix, Inc. further certifies that it has not received and is not presently negotiating to receive credit for the SEP in any other pending action.

7. This signed Settlement Agreement, including payment by Croell Redi-Mix, Inc. as specified above, shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against Croell Redi-Mix, Inc. based on the violations alleged in NOV, Docket No. 4551-09 contingent upon Croell Redi-Mix, Inc. compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against Croell Redi-Mix, 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. 4551-09.
8. Croell Redi-Mix, 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. 4551-09 in the event that Croell Redi-Mix, Inc. fails to fulfill its obligations under this Settlement Agreement.
9. Nothing in this agreement precludes WDEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation, and/or pursuing additional penalties, should Croell Redi-Mix, Inc. violate the Wyoming Statutes or applicable R&R in the future.
10. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
11. 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 Croell Redi-Mix, Inc. and specifically retain all immunity and all defenses available as sovereigns under state and federal law.
12. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
13. This Settlement Agreement is binding upon Croell Redi-Mix, Inc. its successors and assigns, and upon the WDEQ/LQD.
14. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

FOR CROELL REDI-MIX, INC.:

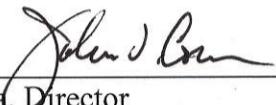
Signed: Roger Croell

Date: 10/7/09

Typed: Roger Croell

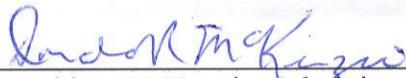
Title: Pres.

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:



John V. Corra, Director
Wyoming Department of Environmental Quality

Date: 10/12/09



Donald R. McKenzie, Administrator
Land Quality Division

Date: 10-09-09

JVC/RAC/LKS-mjb

cc: Lowell Spackman, WDEQ/LQD, District I
NOV Docket No. 4551-09