

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

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Spencer's Inc. of Mt. Airy, NC d/b/a Ararat Rock Products of Wyoming, 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 4540-09, dated August 18, 2009**. The site of these violations is located in Section 33, Township 43 North, Range 83 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, Spencer's Inc. of Mt. Airy, NC d/b/a Ararat Rock Products of Wyoming, 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. DEQ is the agency with the responsibility for administering the Wyoming Environmental Quality Act including all provisions of the WDEQ/LQD R&R.
2. Spencer's Inc. of Mt. Airy, NC d/b/a Ararat Rock Products of Wyoming (Ararat Rock Products) is the operator of a sand and gravel mining operation located in Johnson County, Wyoming, in Section 33, Township 43 North, Range 83 West. As part of its operation, Ararat Rock Products mined mineral from this site to be distributed or sold 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. Affecting areas before first salvaging topsoil is a violation of the Department of Environmental Quality Land Quality Division Noncoal Rules and Regulations, Chapter 3, Section (c)(i)(A).
5. Ararat Rock Products agrees to pay a total penalty of One Thousand Dollars (\$1,000.00) for the violations stated in Items 3 and 4. above, as a partial settlement for the resolution to this matter in lieu of litigation under W.S. §35-11-901(a)(ii). Ararat Rock Products shall pay \$1,000.00 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 25th Street, Cheyenne, Wyoming 82002.
6. An additional reclamation bond in the amount of One Thousand Dollars (\$1,000.00) shall post by October 23, 2009, to cover the additional 0.9 acres of disturbance not currently bonded under LMO 1311ET.
7. Ararat Rock Products, will discontinue mining of gravel and sand from LMO 1311ET where mining will extend the area of disturbance beyond the approved ten acre limit (removal of stockpiled products is allowed).
8. Ararat Rock Products will immediately delineate and restrict access to areas of LMO 1311ET where topsoil has not been salvaged from active pit disturbances.
9. This signed Settlement Agreement and penalty payment by Ararat Rock Products as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against Ararat Rock Products based on the violations alleged in Notice of Violation Docket No. 4540-09. Contingent upon and Ararat Rock Products, compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against and Ararat Rock Products, 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. 4540-09.
10. Ararat Rock Products waives any statute of limitations which may apply to an enforcement action by the WDEQ/LQD involving the specific matters described in Notice of Violation Docket No. 4540-09.
11. Nothing in this agreement precludes WDEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation, Order and/or pursuing additional penalties, should Ararat Rock Products violate the Wyoming Environmental Quality Act or applicable rules and regulations in the future.

12. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
13. 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 Ararat Rock Products and specifically retain all immunity and all defenses available as sovereigns under state and federal law.
14. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
15. **This Settlement Agreement** is binding upon Ararat Rock Products its successors and assigns, and upon the WDEQ.
16. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR: Spencer's Inc. of Mt. Airy, NC d/b/a Ararat Rock Products of Wyoming

Signed: James H. Crossingham IV Date: 9/28/09
Typed: James H. Crossingham IV
Title: President

FOR: The Wyoming Department of Environmental Quality

John V. Corra Date: 10/15/09
John V. Corra, Director
WDEQ
Donald R. McKenzie Date: 10-09-09
Donald R. McKenzie, Administrator
WDEQ/Land Quality Division

JVC/DRM/DS/MR

cc: Mark Rogaczewski, WDEQ/LQD, District III
Docket Number 4540-09