

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

**SETTLEMENT AGREEMENT**

The Wyoming Department of Environmental Quality / Land Quality Division (WyDEQ/LQD) and Hyland Enterprises, Inc, a company authorized to do business in Wyoming, enters into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in the **Notice of Violation (NOV), Docket Number 4560-09**. The NOV alleges: (1) Hyland failed to protect and salvage topsoil which is violation of W.S. §35-11-415(b)(iii). (2) Hyland affected lands outside the Permit Boundary of Permit 728. Affecting lands outside the approved permit boundary is a violation of W.S. §35-11-415(b)(ii). These violations are located in the SW ¼ Section 31, T.17N, R.94W and the NE ¼ NE ¼ Section 1, T.16N, R.95W approximately 21 miles south by southwest of Wamsutter, Wyoming in Sweetwater County and within the boundaries of WyDEQ/LQD Permit No. 728.

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, Hyland Enterprises, Inc. 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. Hyland Enterprises, Inc. agrees to pay a **total penalty of Ten Thousand Dollars (\$10,000.00)** as a stipulated settlement as partial resolution to this matter in lieu of litigation under W.S. § 35-11-901(a)(ii). One-half of the penalty, Five Thousand Dollars (\$5,000.00), will be paid directly to the WyDEQ/LQD within thirty (30) days of full execution of this Settlement Agreement. Payment shall be by check payable to the Wyoming Department of Environmental Quality / Land Quality Division and sent to the attention of Donald R. McKenzie, Administrator, Wyoming Department of Environmental Quality / Land Quality Division, Herschler Bldg. 3W, 122 West 25<sup>th</sup> Street, Cheyenne, WY, 82002. One-half of the penalty, Five Thousand Dollars (\$5,000.00), shall be paid to the Wyoming Environmental Engineering Intern Account at the University of Wyoming as a Supplemental Environmental Project. Payment shall be made by check with reference to account # WYDEQ 6867 sent to: University of Wyoming – Office of Sponsored Programs, Attn: Christy Rickard, Manager, Dept. 3355, 100 E. University Ave., Laramie, WY 82071-3355. A copy of the receipt confirming this donation shall be provided to the WDEQ-LQD.
3. To remedy the topsoil salvage and protection issues at the Permit 728 site, Hyland personnel shall consolidate all the topsoil that was noted as being affected in the September 9, 2009 Inspection Report into discreet stockpiles. All of the site's topsoil stockpiles shall be surrounded by a toe ditch (a berm and v-ditch) such that if topsoil should slough off the stockpile, it remains within the area surrounded by the toe ditch. Additionally, all of the topsoil stockpiles shall be identified with a sign that reads "topsoil". The stockpiles depicted in Photo Numbers 1 and 9 in the September 9, 2009 Inspection Report appear to be subsoil or reject materials; not topsoil. Hyland personnel must properly identify the material in this stockpile. If it is subsoil, it should be labeled as such. Lastly, all of the topsoil stockpiles shall be seeded with a temporary seed mix that is composed of the approved seed mix in the Permit's Reclamation Plan (see page RP-2) minus the shrub species. Hyland shall send the seed tags to the WyDEQ/LQD office in Lander as soon as the seeding has been completed. The seeding shall occur before the ground freezes in the fall of 2009 and no later than October 30, 2009.
4. To remedy the affected lands outside the approved Permit Boundary, Hyland personnel shall reclaim that land immediately. Topsoil shall be reapplied and the area shall be seeded with the site's permanent seed mix (refer to Page RP-2 of the reclamation plan). Hyland shall send the seed tags to the WyDEQ/LQD office in Lander as soon as the seeding has been completed. The seeding shall occur before the ground freezes in the fall of 2009 and no later than October 30, 2009.
5. This signed Settlement Agreement, payment of penalty, consolidation and seeding and protection of the site's topsoil stockpiles, and the reclamation of the lands affected outside the Permit Boundary shall constitute full satisfaction and resolution of all claims by the WyDEQ/LQD against Hyland Enterprises, Inc. based on the violations as specified in the NOV and Order, Docket No, 4560-09. Contingent upon APPC's and GRP's compliance with the terms of this Settlement Agreement, the WyDEQ/LQD will refrain from taking further

enforcement action against Hyland Enterprises, Inc. 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. 4560-09.

6. Hyland Enterprises, Inc. 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. 4560-09 in the event that Hyland Enterprises, Inc. fails to fulfill its obligations under this Settlement Agreement.
7. 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 Hyland Enterprises, Inc. violate the Wyoming Environmental Quality Act or applicable WyDEQ/LQD 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 the Settlement Agreement, the State of Wyoming, and the WyDEQ do not waive Sovereign Immunity by entering into this Settlement Agreement with Hyland Enterprises, Inc. and specifically retain all immunity and 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 of this Settlement Agreement is signed by both parties.
11. This Settlement Agreement is binding upon Hyland Enterprises, Inc., its successors and assignees, and upon the WyDEQ/LQD.
12. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

For: **HYLAND ENTERPRISES, INC.**

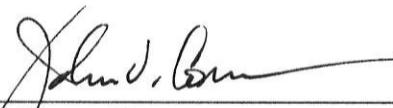
Signed:  \_\_\_\_\_

Date: 11/3/09

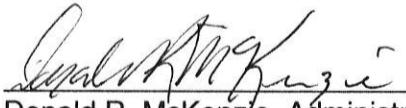
Typed: JEFFREY H. KAUFMAN

Title: VICE PRESIDENT

For: **WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY**

  
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John V. Corra, Director  
Wyoming Department of Environmental Quality

Date: 11/30/09

  
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Donald R. McKenzie, Administrator  
Land Quality Division

Date: 11/27/09

Cc: Carol Billbrough, WyDEQ/LQD Cheyenne  
Mark Moxley, WyDEQ/LQD Lander  
Docket No. 4560-09