

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

**SETTLEMENT AGREEMENT**

The Wyoming Department of Environmental Quality/Land Quality Division (WDEQ/LQD), Sulenta, LLC (Sulenta) and First Energy Services Co. (FESCO) enter into this Settlement Agreement to fully and finally resolve without litigation the violation alleged in Notice of Violation (NOV) Docket Number 4556-09 issued by WDEQ/LQD on September 11, 2009. The NOV was issued following an inspection by WDEQ/LQD staff of the Permit 606 mine site on August 25, 2009. Sulenta is the Permittee and FESCO is the Licensed Operator of Mining Permit No. 606 issued by WDEQ/LQD on September 2, 1987.

The NOV alleged that Sulenta and FESCO failed to adequately protect topsoil that had been salvaged and preserved for use in reclamation as required by W.S. § 35-11-415(b) and WDEQ/LQD Non-Coal Rules & Regulations, Chapter 3, Sec. 2(c)(I)(A). Specifically, stockpiled topsoil needed for reclamation was removed from the mine site. The violation occurred within the boundaries of Permit No. 606, located in Sections 6 and 7, T.23N, R.111W., Lincoln County, Wyoming.

W.S. § 35-11-901(a)(ii) authorizes WDEQ/LQD to negotiate a stipulated settlement in lieu of litigation. To that end, WDEQ/LQD, Sulenta and FESCO hereby stipulate and agree as follows:

1. WDEQ/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. WDEQ is the agency principally responsible for administering the Wyoming Environmental Quality Act, including all provisions of the WDEQ/LQD Non-Coal Rules and Regulations.
2. In lieu of a penalty assessment, WDEQ/LQD, Sulenta and FESCO agree to the following settlement conditions:
  - a. The entire area will be professionally surveyed and mapped to show the currently affected acreage in relation to the permit boundary (Settlement Map). The exact acreage of the permit area will be verified since Sulenta apparently owns 91 acres in the area and Permit No. 606 lists 81.35 due to an earlier survey discrepancy. The Settlement Map is due within 60 days of the date of the WDEQ/LQD inspection, or no later than November 16, 2009 unless the work is delayed by inclement weather.
  - b. The Permit No. 606 Mine Plan states that an "average of 5 feet of topsoil will be removed and stockpiled". As this commitment has been called into question by the Permittee, information will be provided to accurately quantify the remaining topsoil resources within the permit area, both in existing stockpiles and available for recovery during future mining. Soil depths available for recovery will be shown on the Settlement Map along with test hole drilling locations.
  - c. The Settlement Map will show projected mining disturbances at least through the upcoming year, or preferably through the remaining life of mine,
  - d. Approximately the E½ of the currently affected area will be fully reclaimed by the end of 2010. All remaining topsoil stockpiles in that area of the pit will be evenly spread and seeded. This area to be reclaimed will be shown on the Settlement Map.
  - e. The legal survey, the Settlement Map, and soil survey information will be submitted to DEQ as a Non-Significant Revision (Form 4) to Permit No. 606.
  - f. License to Mine No. 606-L3 will be revised to acknowledge that FESCO will have responsibility for mining and reclamation over the entire permit area. This may be accomplished with a signed letter from Sulenta authorizing FESCO to operate within Permit No. 606 and also stating whether or not the Sulenta bond will continue to cover FESCO's mining activities. This revision is required before any further mining or reclamation is conducted.

- g. Topsoil signs will be immediately installed on all stockpiles, or no later than October 30, 2009. The Lander WDEQ/LQD office will be notified when this work is completed.
3. Compliance with this signed Settlement Agreement shall constitute full satisfaction and resolution of all claims by the WDEQ/LQD against Sulenta and FESCO based on the violations as specified in NOV Docket No. 4556-09. Contingent upon Sulenta's and FESCO's compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action for the violation cited in this Settlement Agreement. Through this Settlement Agreement, the parties intend to resolve with prejudice all allegations that were asserted in the NOV.
  4. Sulenta and FESCO waive any statute of limitations which may apply to an enforcement action by the WDEQ/LQD involving specific matters described in NOV Docket No. 4556-09 in the event that either Sulenta or FESCO fails to fulfill its obligations under this Settlement Agreement.
  5. Nothing in this Settlement Agreement precludes WDEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation, Order, and/or pursuing additional penalties should Sulenta or FESCO violate the Wyoming Environmental Quality Act, applicable WDEQ/LQD Rules and Regulations, or the terms and conditions of Permit 606 in the future.
  6. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
  7. Notwithstanding any other language in the Settlement Agreement, the State of Wyoming, and the WDEQ do not waive Sovereign Immunity by entering into this Settlement Agreement and specifically retain all immunity and defenses available as sovereigns under State and Federal law.
  8. 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.
  9. This Settlement Agreement is binding upon Sulenta and FESCO, their successors and assignees, and upon WDEQ/LQD.
  10. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

For: Sulenta, LLC

Signed: 

Date: 11-16-09

Typed: John A. Sulenta

Title: Managing Member

For: First Energy Services Company

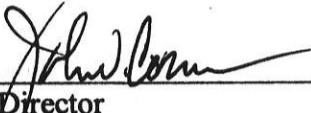
Signed: 

Date: 11/19/09

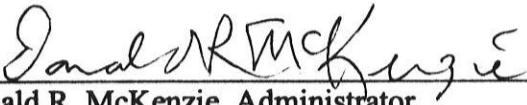
Typed: Travis St. John

Title: District Manager

**For: Wyoming Department Of Environmental Quality**

  
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John V. Corra, Director  
Wyoming Department of Environmental Quality

Date: 12/3/09

  
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Donald R. McKenzie, Administrator  
Land Quality Division

Date: 12/01/09

xc: Becky Brosius WDEQ/LQD Cheyenne  
Mark Moxley, WDEQ/LQD Lander  
Docket No. 4556-09