

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

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD), Madsen Mining, LLC and Intermountain Construction and Materials, Inc., companies authorized to do business in Wyoming, enter into this Settlement Agreement to fully and finally resolve without litigation the violation alleged in **Notice of Violation (NOV) Docket Number 4595-09, dated November 30, 2009**. The Notice of Violation (NOV) alleges Madsen Mining, LLC and Intermountain Construction and Materials, Inc. disturbed lands in excess of the approved ten acre limit, dumped processed materials over the edge of the disturbance where topsoil had not been salvaged, failed to properly salvage and stockpile topsoil in advance of disturbance, failed to identify topsoil with a topsoil sign, and have failed to segregate stockpiled topsoil for use in reclamation and to protect it from mixing with materials of unknown properties. The site of this violation is located in S1/2, NE1/4 and N1/2, SE1/4 of Section 5, Township 48 North, Range 82 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, Madsen Mining, LLC, Intermountain Construction and Materials, Inc., 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. Madsen Mining, LLC is the Applicant of record and Intermountain Construction and Materials, Inc. is the operator of a sand and gravel mining operation located in Johnson County, Wyoming, in Sections 5, Township 48 North, Range 82 West. As part of its operation, Madsen Mining, LLC and Intermountain Construction and Materials, Inc., mine mineral from this site and distributes or sells the mineral mined for commercial use.
3. The mine site disturbance for 1407ET was resurveyed on behalf of Madsen Mining, LLC, Inc., and Intermountain Construction and Materials, Inc., by Grizzly Engineering of Buffalo, WY on December 14, 2009 and by Dave Schellinger of LQD District III staff on December 22, 2009. These new surveys verified that the disturbance associated with 1407ET is 9.6 acres. Thus, no violation for disturbing lands in excess of ten acres is warranted and no penalty shall be assessed.
4. Pushing or dumping materials over natural escarpments a violation of the WDEQ/LQD NC R&R, Chapter 10, Section 4(c).
5. Failure to salvage and stockpile topsoil from affected lands is a violation of the WDEQ/LQD NC R&R, Chapter 10, Section 4(b).
6. Failure to identify topsoil stockpiles with a topsoil sign is a violation of the WDEQ/LQD NC R&R, Chapter 10, Section 4(b).
7. Conducting mining operations in the State of Wyoming that fail to protect the removed and segregated topsoil from wind and water erosion, and from acid or toxic materials, and preserve such in a usable condition for sustained vegetation is a violation of W. S. §35-11-415(b)(iii).
8. Madsen Mining, LLC and Intermountain Construction and Materials, Inc. agree to pay a total penalty of Three Thousand Dollars (\$3,000.00) for Items 4 through 7 above as a stipulated settlement as partial resolution to this matter in lieu of litigation under W.S. §35-11-901(a)(ii). Madsen Mining, LLC and Intermountain Construction and Materials, Inc. shall pay \$3,000.00 directly to the WDEQ/LQD. Payment is due and payable within fifteen (15) days of full execution of this Settlement Agreement. Payment to

SETTLEMENT AGREEMENT BETWEEN WDEQ/LQD Madsen Mining, LL and Intermountain Construction and Materials, Inc.,

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.

9. Materials stockpiled on areas of the northwest pit edge where topsoil has not been previously salvaged must be removed.
10. Materials spilled on and over the topsoil stockpile on the southeast pit edge must be removed and the topsoil must either be consolidated into a protected stockpile or must be separated by a buffer from pit operations.
11. All stockpiled or windrowed topsoil must be identified by topsoil signs.
12. Items 9 through 11 have been addressed per an inspection performed on December 22, 2009 by Dave Schellinger of the LQD District III staff.
13. This signed Settlement Agreement and payment by Madsen Mining, LLC and Intermountain Construction and Materials, Inc., as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against Madsen Mining, LLC and Intermountain Construction and Materials, Inc., based on the violations alleged in NOV Docket No. 4595-09. Contingent upon Madsen Mining, LLC and Intermountain Construction and Materials, Inc. compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against Madsen Mining, LLC and Intermountain Construction and Materials, 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. 4595-09.
14. Madsen Mining, LLC and Intermountain Construction and Materials, 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. 4595-09 in the event that Madsen Mining, LLC and Intermountain Construction and Materials, Inc. fails to fulfill its obligations under this Settlement Agreement.
15. 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 Madsen Mining, LLC and Intermountain Construction and Materials, Inc. violate the Act or applicable rules and regulations in the future.
16. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
17. 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 Madsen Mining, LLC and Intermountain Construction and Materials, Inc. and specifically retain all immunity and all defenses available as sovereigns under state and federal law.
18. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
19. **This Settlement Agreement is binding upon Madsen Mining, LLC and Intermountain Construction and Materials, Inc., their successors and assigns, and upon the WDEQ.**
20. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR: Madsen Mining, LLC

Signed: Earl K. Madsen

Date: January 23, 2010

Typed: Earl K. Madsen

Title: Manager

FOR: Intermountain Construction and Materials, Inc

Signed: Jeff Dahlen

Date: 1/25/10

Typed: Jeff Dahlen

Title: General Manager

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

John V. Corra
John V. Corra, Director
WDEQ

Date: 1/28/10

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

Date: 01/27/10

JVC/DRM/DS/MR

cc: Mark Rogaczewski, WDEQ/LQD, District III
Docket Number 4595-09