

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

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Pinnacle Materials, 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. 4860-11, issued on July 7, 2011. These violations were a result of mine activities conducted by Pinnacle Materials, Inc., operating under the Limited Mining Operation No. 1322ET. This mine site is located in Converse County, Wyoming, Section 33, Township 33 North, and Range 72 West. The NOV alleges: (1) Pinnacle Materials, Inc. affected greater than 10 acres of land at the Limited Mining Operation No. 1322ET. Affecting greater than 10 acres of land is a violation of W.S. §35-11-401(e)(vi) for Limited Mining Operations, the Wyoming Environmental Quality Act (Act), and the applicable Wyoming Department of Environmental Quality/Land Quality Division Rules and Regulations (WDEQ/LQD R&R). No previous violation associated with Pinnacle Materials, Inc. is identified.

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. Mr. Larry Freeman (Pinnacle Materials, Inc.) contacted the LQD to discuss the mitigation requirements of the NOV Docket No. 4860-11 on July 14, 2011. To that end, Pinnacle Materials, 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. The DEQ is the agency with the responsibility for administering the Wyoming Environmental Quality Act including all provisions of the WDEQ/LQD R&R.
2. Pinnacle Materials, Inc. is the operator of the limestone mining operation, 1322ET, located in Converse County, Wyoming, in Section 30, Township 33 North, Range 72 West. As part of its operation, Pinnacle Materials, Inc. removes mineral from this site and distributes or sells the mineral mined for commercial use.
3. During the inspection conducted on June 8, 2011, the mining affected area associated with LMO No. 1322ET was measured using a Global Positioning System (GPS) unit and Trimble TerraSync software. The GPS data was later post-processed and differentially corrected using Pathfinder software. Mining disturbances were found to affect a total of 13.1 acres. A survey conducted by Pinnacle Materials on July 12, 2011 determined the disturbance area to be 12.7 acres.
4. Affecting more than 10 acres is a violation of Environmental Quality Act under W.S. §35-11-401(e)(vi), which allows this exempt 10-acre mining operation to remove limestone from an area up to 10 acres of affected land.
5. To correct and remedy the alleged violation, Pinnacle Materials, Inc. agrees to grade, apply appropriate fertilizer after soil sampling and hydroseed/ hydromulch and/or use erosion control blankets as needed on approximately three (3.0) acres of affected area, previously reclaimed (including seeding), after October 15, 2011. Due to the poor quality of the previous reclamation results, poor quality of topsoil resources and rocky overburden material, hydroseeding is necessary. Grading of the previously reclaimed areas especially on the northern edge is necessary. Revegetation success will be reevaluated by the LQD by the end of June 2012. The LQD evaluation will determine if further reseeding or other mitigation will be required.
7. A Three Thousand Dollar (\$3,000.00) penalty has been assessed for the alleged violation. However, this assessment will be deferred if the Pinnacle Materials, Inc. satisfies the terms outlined in Item No. 5 above. This penalty deferment considers Pinnacle's cooperation and their attempts to already reclaim back to 10 acres.

8. In the event that Pinnacle Materials, Inc. does not satisfy the terms of this Settlement Agreement, a payment in the amount of Three Thousand Dollars (\$3,000.00) will be due within thirty (30) days' notice by the DEQ. 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: Nancy Nuttbrock, Administrator, Wyoming Dept. of Environmental Quality, Land Quality Division, Herschler Building 3-W, 122 West 25th Street, Cheyenne, Wyoming 82002.
9. This signed Settlement Agreement shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against Pinnacle Materials, Inc. based on the violations alleged in NOV, Docket No. 4860-11 contingent upon Pinnacle Materials, Inc. compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against Pinnacle 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. 4860-11.
10. Pinnacle 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. 4860-11 in the event that Pinnacle Materials, Inc. fails to fulfill its obligations under this Settlement Agreement.
11. 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 Pinnacle Materials, Inc. violate the Wyoming Statutes or applicable R&R 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 Pinnacle Materials, Inc. 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 Pinnacle Materials, Inc., and its successors and assigns, and upon the WDEQ/LQD.
16. 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 PINNACLE MATERIAL, INC.:

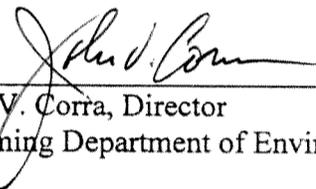
Signed:  _____

Date: 7/18/11

Typed: _____

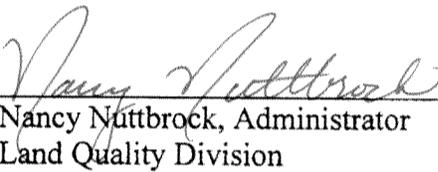
Title: Plant Manager

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:



John V. Corra, Director
Wyoming Department of Environmental Quality

Date: 7/22/11



Nancy Nuttbrock, Administrator
Land Quality Division

Date: 7/21/11

JVC/CB/LKS-mjb

cc: Lowell Spackman, WDEQ/LQD, District I
NOV Docket No. 4860-11