

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

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Melgaard Construction Co., 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 Number 4904-11, dated September 29, 2011**. The Notice of Violation (NOV) alleges that the operator failed to post an entrance sign with the correct permit number, failed to identify topsoil stockpiles with topsoil signs, failed to operate as directed by the approved mine plan, and failure to salvage, stockpile and protect topsoil from areas prior to affecting those areas.

The site of the remaining violations is located in Sections 25 and 36, Township 50 North, Range 80 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, Melgaard Construction Co., 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. DEQ is the agency with the responsibility for administering the Wyoming Environmental Quality Act including all provisions of the WDEQ/LQD R&R.
2. Melgarrd Construction Co., Inc. is the operator for a gravel mining located in Johnson County, Wyoming, in Sections 25 and 36, Township 50 North, Range 80 West. As part of its operation, Melgaard Construction Co., Inc. mines mineral from this site and distributes or sells the mineral mined for commercial use.
3. Failure to post a sign which clearly shows the name, address and telephone number of the operator, the name of his local authorized agent, and the permit number of his operation is a violation of the Wyoming Environmental Quality Act, Statute WS § 35-11-415(b)(i).
4. Failure to identify topsoil stockpiles with "topsoil" signs is a violation of WDEQ/LQD Noncoal Rules and Regulations, Chapter 3, Section 2(c)(i)(D).
5. Failure to operate an approved surface mining permit within the permit area in conformity with his approved mine or reclamation plan is a violation of the Wyoming Environmental Quality Act, Statute WS § 35-11-415(b)(ii)
6. Affecting an area by mining activity before topsoil has been salvaged from the area is a violation of WDEQ/LQD R & R, Chapter 3, Section 2(c)(i)(A)
7. Melgaard Construction Co., Inc. agrees to pay a total penalty of Two Thousand Five Hundred Dollars (\$2,500.00) for the violations stated in Item 3, 4, 5 and 6 above as a partial settlement for the resolution to this matter in lieu of litigation under W.S. §35-11-901(a)(ii). Melgaard Construction Co., Inc. shall pay \$2,500.00 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: Nancy Nuttbrock, Administrator, Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 3 Floor-West, 122 West 25th Street, Cheyenne, Wyoming 82002.
8. Melgarrd Construction Co., Inc. has corrected the entrance sign and identified one topsoil stockpile with a "topsoil" sign as documented by Mr. David Schellinger in the October 21, 2011 Follow-Up Inspection Report following the October 18, 2011 inspection of the permit. Melgaard Construction Co., Inc. submitted a Mine Plan Revision to the LQD on October 18, 2011 to correct dates of current and proposed mining disturbance progressions which was approved by the LQD on October 27, 2011.
9. Materials pushed over unsalvaged topsoil on the southeast pit edge must be removed from the topsoil surface. The topsoil must be salvaged from the surface of the highwall to form a buffer between the pit and native topsoil. Another berm of topsoil on the northeast pit edge must be identified by a topsoil sign, and another smaller berm on the same pit edge must be salvaged and stockpiled. Melgaard Construction Co., Inc. agrees to provide photo documentation to the LQD

that abatement activities have been completed by no later than December 6, 2011.

10. This signed Settlement Agreement and payment by Melgaard Construction Co., Inc. as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against Melgaard Construction Co., Inc. based on the violations alleged in Notice of Violation Docket No. 4904-11. Contingent upon Melgaard Construction Co., Inc. compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against Melgaard Construction Co., 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. 4904-11.
11. Melgaard Construction Co., Inc. 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. 4904-11.
12. 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 Melgaard Construction Co., Inc. violate the Wyoming Environmental Quality Act or applicable rules and regulations in the future.
13. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
14. 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 Melgaard Construction Co., Inc. and specifically retain all immunity and all defenses available as sovereigns under state and federal law.
15. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
16. **This Settlement Agreement is binding upon Melgaard Construction Co., Inc. its successors and assigns, and upon the WDEQ.**
17. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR: Melgaard Construction Co., Inc.

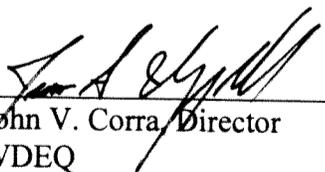
Signed: 

Date: 11/7/11

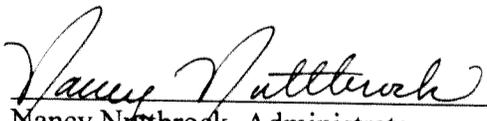
Typed: John E. Melgaard

Title: Pres.

FOR: The Wyoming Department of Environmental Quality


John V. Corra, Director
WDEQ

Date: 11/15/11


Nancy Nuttbrock, Administrator
WDEQ Land Quality Division

Date: 11/15/11

JVC/NN/DS

cc: Mark Rogaczewski, WDEQ/LQD, District III
Docket Number 4904-11