

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION

LQD

DEC 23 2011

SETTLEMENT AGREEMENT

RECEIVED

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and McGarvin-Moberly Construction Company, a corporation 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 4910-11 dated October 11, 2011. The NOV alleges: 1) that mining activities knowingly and willfully occurred beyond the permitted ten acres. This violation is located in the SW $\frac{1}{2}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, T.44N., R.94W., Hot Springs County Wyoming. These are violations of Wyoming Statutes and the applicable WDEQ/LQD Noncoal Rules and Regulations.

W.S. § 35-11-901(a)(ii) authorizes the WDEQ/LQD to negotiate a stipulated settlement, including a cash settlement payment, in lieu of litigation. To that end, McGarvin-Moberly Construction Company 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 Noncoal Rules and Regulations.
2. McGarvin-Moberly Construction Company is the operator of a sand and gravel mining operation located in Hot Springs County Wyoming, in the SW $\frac{1}{2}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, Township 44 North, Range 94 West. As part of their operation, McGarvin-Moberly Construction Company mines mineral from this site and distributes or sells the mineral mined for commercial use.
3. McGarvin-Moberly Construction Company agrees to pay a total of Ten Thousand dollars (\$10,000.00) as a stipulated cash settlement payment to resolve this matter in lieu of litigation under W.S. § 35-11-901(a)(ii). Payment is due and payable within thirty (30) days of full execution of this Settlement Agreement. Payment shall be by check made payable to the Wyoming 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.
4. McGarvin-Moberly Construction Company agrees to reclaim the mine site, to include seeding, back to a size of no more than 10 (ten) acres by May 1, 2012, **OR AS WEATHER ALLOWS.** *End*
5. McGarvin-Moberly Construction Company agrees to post Five Thousand Four Hundred dollars (\$5,400.00) in additional bonding within thirty (30) days of full execution of this Settlement Agreement.
6. This signed Settlement Agreement and payment of cash settlement amount shall constitute full satisfaction and resolution of all claims by the WDEQ/LQD against McGarvin-Moberly Construction Company based on the violations alleged in NOV Docket No. 4910-11. Contingent upon McGarvin-Moberly Construction Company's compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action 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. 4910-11.
7. McGarvin-Moberly Construction Company 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. 4910-11 in the event that McGarvin-Moberly Construction Company fails to fulfill its obligations under this Settlement Agreement.
8. Nothing in this agreement precludes WDEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation and Order, should McGarvin-Moberly Construction Company violate the Wyoming Environmental Quality Act or applicable rules and regulations in the future.
9. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.

10. 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 McGarvin-Moberly Construction Company and specifically retain all immunity and all defenses available as sovereigns under state and federal law.
11. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
12. This Settlement Agreement is binding upon McGarvin-Moberly Construction Company, its successors and assignees, and upon the WDEQ/LQD.
13. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR: McGarvin-Moberly Construction Company:

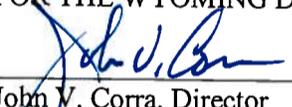
Signed: 

Date: December 21, 2011

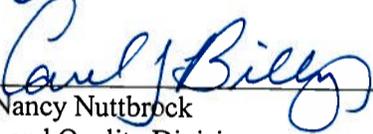
Typed: Ernest M. Skretteberg

Title: Partner / Vice President

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:


John V. Corra, Director
Wyoming Department of Environmental Quality

Date: 12/28/11


Nancy Nuttbrock
Land Quality Division

Date: 12/27/2011

xc: Mark Moxley, WDEQ/LQD, District II
NOV Docket Number 4910-11
Cheyenne DEQ/LQD LMO 1513ET File

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