

V # 446

**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. 4930-11, dated December 22, 2011. The NOV alleges the operator failed to obtain LQD authorization prior to the start of mining operations. These violations were a result of mine activities without LQD authorization by Pinnacle Material, Inc. The mine site is located in Converse County, Section 8 and 9, Township 31 North, Range 68 West. These activities are violations of the Wyoming Environmental Quality Act (Act) and the applicable Wyoming Environmental Quality/Land Quality Rules and Regulations (WDEQ/LQD R&R).

Wyoming Statute (W.S.) §35-11-901(a) (ii) authorizes the WDEQ/LQD to negotiate a stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, Pinnacle Materials, LLC 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. 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. was registered in Wyoming on July 23, 2010. The main office is located in near Douglas, Wyoming.
3. Failure to gain LQD authorization prior to beginning mining operations is in violation of the Wyoming Statute §35-11-401(e)(vi) and the Department of Environmental Quality, Land Quality Division Noncoal Rules and Regulations, Chapter 10, Section 1(a). Pinnacle Materials, Inc. did not obtain LQD approval of a Limited Mining Operation permit prior to further mining operations.
4. Subsequent to the issuance of the NOV, Pinnacle Materials, Inc. had completed the requirements for a Limited Mining Operation authorization. This authorization was approved as 1546ET on November 22, 2011. However, during the Settlement Agreement meeting, it was agreed that Pinnacle Materials, Inc shall submit a revised Form 10 and map accurately showing the location of the office trailer and scale by January 25, 2012. These revisions do not affect the previous authorization for this ET. No other mitigation is required.
5. Pinnacle Materials, Inc, agrees to pay Eight Thousand Dollars (\$8,000) directly to the WDEQ/LQD as stipulated settlements as partial resolution to this matter in lieu of litigation under W.S. §35-11-901(a)(ii). Full payment in the amount of Eight Thousand Dollars (\$8,000) shall accompany this Settlement Agreement with the signatures of both parties. This signed agreement and payment are due no later than fifteen days following Pinnacle Materials, Inc signing of the Settlement Agreement. Payment to WDEQ/LQD shall be checks 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.
6. This signed Settlement Agreement by Pinnacle Materials, Inc., as specified above, shall constitute full satisfaction for and resolution of all claims based on the violations alleged in NOV, Docket No. 4930-11. 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 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. 4930-11.

7. 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. 4930-11 in the event that Pinnacle Materials, Inc. 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/or pursuing additional penalties, should Pinnacle Materials, Inc. violate the Wyoming Statutes or applicable R&R in the future.
9. This signed 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 Pinnacle Materials, Inc. 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 Pinnacle Materials, Inc. its successors and assigns, 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 Pinnacle Materials, Inc:

Signed: J. Mike Aronow

Date: 1/12/12

Typed: J. Mike Aronow

Title: President

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

John Y. Corra
John Y. Corra, Director
Wyoming Department of Environmental Quality

Date: 1/18/12

Nancy Nuttbrock
Nancy Nuttbrock, Administrator
Land Quality Division

Date: 1/18/12

cc: Lowell Spackman, WDEQ/LQD, District I
NOV Docket No.4930-11