

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

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Indian Pipe Cattle Company Doing Business As Sussex Sand and Gravel, 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 5068-12, dated October 10, 2012**. The Notice of Violation (NOV) alleges that the operator failed to salvage and stockpile topsoil prior to disturbance, disturbing acreage exceeding the approved and bonded disturbance, and allowing an unauthorized operator to mine in the Limited Mining Operation.

The site of the violations is located in Section 27, Township 45 North, and Range 83 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 (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, Sussex Sand and Gravel 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. Sussex Sand and Gravel is the operator of a gravel mining operation located in Johnson County, Wyoming, in Section 27, Township 45 North and Range 83 West. As part of its operation, Sussex Sand and Gravel mines mineral from this site and distributes or sells the mineral mined for commercial use.
3. Failure to salvage and stockpile topsoil prior to affecting the area is a violation of WDEQ/ LQD NC R&R Chapter 3, Section 2(c)(i)(A).
4. Disturbing acreage exceeding the approved and bonded acreage are violations of the Act, W.S. § 35-11-401(d)(vi) and (vii).
5. Based on promulgated Rules at the time that the violation occurred, allowing Fuller Construction, Inc. and Quality Aggregate & Construction to operate in LMO 889ET is a violation of the WDEQ/LQD NC R&R, Chapter 10, Section 6.(a).
6. Sussex Sand and Gravel agrees to pay a total penalty of One Thousand, Five Hundred Dollars (\$1,500.00) for the violations stated in Items 3, 4 and 5 above as partial settlement for the resolution to this matter in lieu of litigation under W.S. §35-11-901(a)(ii). Sussex Sand and Gravel shall pay \$1,500.00 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.
7. Sussex Sand and Gravel must increase the bond amount by a minimum of \$2000.00 to cover the under bonded disturbed acreage by November 29, 2012.
8. Sussex Sand and Gravel must salvage and stockpile topsoil from areas surrounding the current disturbance at LMO 889ET to prevent further topsoil impacts by mining operations. Topsoil salvage activities must be completed by November 29, 2012.
9. This signed Settlement Agreement and payment by Sussex Sand and Gravel as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against Sussex Sand and Gravel based on the violations alleged in Notice of Violation Docket No. 5068-12. Contingent upon Sussex Sand and Gravel's compliance with the

terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against Sussex Sand and Gravel 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. 5068-12.

10. Sussex Sand and Gravel 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. 5068-12.
11. 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 Sussex Sand and Gravel violate the Wyoming Environmental Quality Act or applicable rules and regulations 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 Sussex Sand and Gravel 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 Sussex Sand and Gravel its successors and assigns, and upon the WDEQ.**
16. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR: Sussex Sand and Gravel

Signed: James W. Ullery

Date: OCT 30, 2012

Typed: James W. Ullery

Title: Pres & Owner

FOR: The Wyoming Department of Environmental Quality

Todd Parfitt
Todd Parfitt, Director
WDEQ

Date: 11/1/12

Nancy Nuttbrock
Nancy Nuttbrock, Administrator
WDEQ/Land Quality Division

Date: 11/1/12

TP/NN/DS

cc: Mark Rogaczewski, WDEQ/LQD, District III
Docket Number 5068-12
LMO 889ET File