

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

SETTLEMENT AGREEMENT

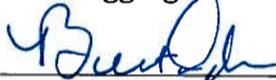
The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and B & B Aggregate, a company authorized to do business in Wyoming, enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in **Notice of Violation (NOV) Docket Number 5072-12, dated October 11, 2012**. The Notice of Violation (NOV) alleges that the operator failed to salvage and stockpile topsoil prior to disturbance, failure to protect topsoil from unnecessary compaction and to save topsoil in a condition useable for reclamation, and disturbing acreage exceeding the 10 acre exemption limit.

The site of the violations is located in Section 22, Township 44 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, B & B Aggregate 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. B & B Aggregate is the operator of a gravel mining operation located in Johnson County, Wyoming, in Section 22, Township 44 North and Range 83 West.
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. Failure to protect topsoil from unnecessary compaction and to save topsoil in a condition useable for reclamation is a violation of WDEQ/ LQD NC R&R Chapter 3, Section 2(c)(i)(B).
5. Pushing or dumping materials over a natural escarpment is a violation of WDEQ/ LQD NC R&R Chapter 10, Section 4(c).
6. Disturbing acreage exceeding the ten-acre limit on a ten-acre exemption is a violation of the Act, W.S. § 35-11-401(d)(vi).
7. B & B Aggregate or the Applicant, Energy Basin Construction, Inc. must increase the bond amount by a minimum of \$1000.00 to cover the under bonded disturbed acreage by November 30, 2012.
8. During a follow-up inspection by LQD staff on October 17, 2012 and in photographs submitted to the LQD District 3 staff on October 23, 2012 by Mr. Bert Dale of B & B Aggregate, topsoil had been salvaged from an area where equipment traffic had affected unsalvaged topsoil, topsoil from a stockpile that had been pushed into a draw had been partially removed and re-stockpiled. The topsoil stockpile had been pushed further away from the road to protect it from sloughing onto the road, berms had been removed from unsalvaged topsoil above the highwalls, and some topsoil had been salvaged in advance of the highwall to prevent sloughing into the pit. A rock check structure was also shown constructed at the base of a stockpile of processed material that had spilled over the edge of the pit disturbance.
9. Mr. Dale must salvage topsoil above highwalls to create a buffer of at least three feet between the highwall edge and the topsoil salvage edge by no later than November 30, 2012.
10. This signed Settlement Agreement and payment by B & B Aggregate as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against B & B Aggregate based on the violations alleged in Notice of Violation Docket

- No. **5072-12**. Contingent upon B & B Aggregate's compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against B & B Aggregate 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. **5072-12**.
11. B & B Aggregate 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. **5072-12**.
 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 B & B Aggregate 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 B & B Aggregate 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 B & B Aggregate 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: B & B Aggregate

Signed: 

Date: 10/31/12

Typed: BERT DAVIS

Title: OWNER

FOR: The Wyoming Department of Environmental Quality



Todd Parfitt, Director
WDEQ

Date: 11/5/12

 for

Nancy Nuttbrock, Administrator
WDEQ/Land Quality Division

Date: 11/05/2012

TP/NN/DS

cc: Mark Rogaczewski, WDEQ/LQD, District III
Docket Number **5072-12**
LMO 1479ET File