

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY  
LAND QUALITY DIVISION

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Black Hills Bentonite, L.L.C., 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 5064-12., dated October 2, 2012.** The NOV alleges there was no mine and reclamation plan for areas affected and that the topsoil was not removed on the areas that were affected. The site of the violation was in Sections 1 and 12, T.41N.,R.83W., and Section 36 of T.42N.,R83W. of Johnson County. This is a violation of the Environmental Quality Act (Act) and applicable Wyoming Department of Environmental Quality/Land Quality Non-Coal Rules and Regulations (WDEQ/LQD NC R & R).

Wyoming Statute (W.S.) § 35-11-901(a)(ii) authorizes the WDEQ/LQD to negotiate a stipulated settlement in lieu of litigation. To that end, Black Hills Bentonite, L.L.C. (BHB) 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 ACT including all provisions of the WDEQ/LQD Non-Coal R&R.
2. BHB is the operator of a bentonite mining operation covering 28,731 acres located in Johnson and Natrona Counties, Wyoming. This mining operation is permitted with WDEQ/LQD as mining Permit No. 248C. As part of its operation, BHB, mines mineral from this site and distributes or sells the mineral mined for commercial use.
3. Affecting lands for which there is no approved Mine and Reclamation Plan is a violation of The Wyoming Environmental Quality Act, W.S. § 35-11-415 (b) which states: The operator, pursuant to an approved surface mining permit and mining plan and reclamation plan, or any approved revisions thereto, shall: (ii) Conduct all surface mining and reclamation activities within the permit area in conformity with his approved plan.
4. Affecting lands for which there is no baseline and Mine and Reclamation Plan is a violation of Non Coal Rules and Regulations, Ch. 13, Sec. 2(b) which states: For lands for which permits were issued by August 31, 1981, but which have not been affected by August 31, 1981, the following general information shall be provided to the Administrator (i)The location, extent, and time schedule for mining and reclamation operations.(ii) A description of overburden, topsoil and subsoil present and a plan for removal, handling and stockpiling of it. For soil surveys, the SCS Order 2 Soils Survey and Soils Analysis shall be used. (iii) Establishment of vegetation data to fulfill the requirements of Section 3(a)(ii) below. (iv) The applicant shall consult with both the Wyoming game and Fish Department and the U.S. Fish and Wildlife Service prior to submission of the mine and reclamation plan.
5. Affecting areas that have not had the topsoil removed is a violation of The Department of Environmental Quality, Land Quality Rules and Regulations Chapter 3, Section 2(c)(i)(A) which states: All topsoil and approved surface material shall be removed from all areas to be affected in the permit area prior to these areas being affected unless otherwise authorized by the Administrator,
6. BHB agrees to pay fifteen thousand dollars (\$15,000) as a stipulated settlement as partial resolution to this matter in lieu of litigation under W.S. 35-11-901(a)(ii). Within thirty (30) days of full execution of this Settlement Agreement BHB shall pay \$7,500.00 directly to the WDEQ/LQD and \$7,500.00 to The Wyoming Wildlife Foundation to be used for renovations of the Whisky Mountain Conservation Camp. 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. Payment to The Wyoming Wildlife Foundation shall be directed to Andrew Coulter, Executive Director.

7. BHB has discontinued use of the road in Sections 1 and 12, T.41N.,R.83W., and Section 36 of T.42N.,R83W. and has reclaimed the road through seeding on October 17, 2012.
8. BHB will place signs on both ends of the disputed road restricting access to BHB employees.
9. This signed Settlement Agreement and payment by BHB as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against BHB on the violation alleged in **NOV Docket No 5064-12**. Contingent upon BHB compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against Hills 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. 5064-12**.
10. BHB waives any statute limitations which may apply to an enforcement action by the WDEQ/LQD involving the specific matters described in **NOV Docket No. 5064-12**.
11. Nothing in this agreement precludes WDEQ/LQD from taking additional enforcement action, including the issuance of a NOV, Order and/or pursuing penalties, should BHB violate the 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 the Settlement Agreement, the State of Wyoming and WDEQ/LQD do not waive sovereign immunity by entering into this Settlement Agreement with BHB 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 BHB, its successors and assigns, and upon the WDEQ/LQD.
16. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

**FOR BLACK HILLS BENTONITE, L.L.C.**

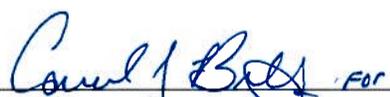
Signed:  Date: 10-30-12

Typed: Mr. Tom Thorson

Title: President and General Manager

**FOR WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:**

 Date: 11/5/12  
John V. Corra, Director  
WDEQ Todd Parfitt

 Date: 11/05/2012  
Nancy Nuttbrock, Administrator  
WDEQ/Land Quality Division

xc: Mark Rogaczewski, WDEQ/LQD, District III  
Cheyenne File