

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION



SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD), and Intermountain Construction and Materials, Inc., a company authorized to do business in Wyoming, enter into this Settlement Agreement to fully and finally resolve without litigation the violation alleged in **Notice of Violation (NOV) Docket Number 5179-13, dated July 15, 2013**. The Notice of Violation (NOV) alleges Intermountain Construction and Materials, Inc. did not properly salvage and protect topsoil. The site of this violation is located in Section 10, Township 48 North, Range 82 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 (WDEQ/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, Intermountain Construction and Materials, Inc., 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 NC R&R.
2. Intermountain Construction and Materials, Inc. is the applicant and operator of a sand and gravel mining operation located in Johnson County, Wyoming, in Section 10, Township 48 North, Range 82 West. As part of its operation, Intermountain Construction and Materials, Inc., mine mineral from this site and distributes or sells the mineral mined for commercial use.
3. Failure to adequately salvage and protect topsoil is a violation of the WDEQ/LQD NC R&R, Chapter 3, Section 2.(c)(i)(A).
4. Intermountain Construction and Materials, Inc. agrees to pay a total penalty of Ten Thousand Dollars (\$10,000.00) for Item 3 above as a stipulated settlement as partial resolution to this matter in lieu of litigation under W.S. §35-11-901(a)(ii). Intermountain Construction and Materials, Inc. shall pay \$10,000.00 directly to the WDEQ/LQD. Payment is due and payable within fifteen (15) 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.
5. Intermountain Construction and Materials, Inc., must adequately salvage topsoil from all disturbed areas of Permit No. 775 and send photo documentation of this completed work to the Land Quality Division District 3 office in Sheridan, WY by August 16, 2013.
6. This signed Settlement Agreement and payment by Intermountain Construction and Materials, Inc., as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against Intermountain Construction and Materials, Inc., based on the violations alleged in NOV Docket No. 5179-13. Contingent upon Intermountain Construction and Materials, Inc. compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against Intermountain Construction and Materials, Inc. 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. 5179-13.
7. Intermountain Construction and 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. 5179-13 in the event that Intermountain Construction and 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 NOV, Order and/or pursuing additional penalties, should Intermountain Construction and Materials, Inc. violate the 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 Intermountain Construction and 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 Intermountain Construction and Materials, Inc., their successors and assigns, and upon the WDEQ.**
- 13. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR: Intermountain Construction and Materials, Inc

Signed: *Jeff Dabbs*

Date: 8/2/13

Typed: Jeff Dabbs

Title: General Manager

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

Todd Parfitt
Todd Parfitt, Director
WDEQ

Date: 8/7/13

Nancy Nuttbrock
Nancy Nuttbrock
Deputy Director,
Department of Environmental Quality
Administrator, Land Quality Division

Date: 8/7/13

JVC//MR

cc: Mark Rogaczewski, WDEQ/LQD, District III
Permit 775, NOV Docket Number 5179-13