

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY  
LAND QUALITY DIVISION

SETTLEMENT AGREEMENT

LQD

APR 25 2014

RECEIVED

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Black Hills, Bentonite, LLC (BHB), 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 5377-14, dated March 17, 2014**. The Notice of Violation (NOV) alleges that the operator failed to adequately salvage topsoil prior to disturbance of lands, failed to protect topsoil from mixing with unsuitable materials, and failure to conduct surface mining activities in conformity with the approved plan

The site of these violations is located in Section 36, Township 42 North, Range 83 West. These are violations 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, Black Hills, Bentonite, LLC (BHB) 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. BHB is the operator of a bentonite mine 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. The Notice of Violation was written for failure to salvage all topsoil from all areas to be affected in the permit area prior to those areas being affected, a violation of WDEQ/LQD Non-coal Rules and Regulations, Chapter 3, Section 2(c)(i)(A), failure to protect topsoil from contamination with unsuitable materials, a violation of WDEQ/LQD Non-coal Rules and Regulations, Chapter 3, Section 2(c)(i)(B), and failure to conduct surface mining activities in conformity with the approved plan, a violation of W.S. § 35-11-415(b)(ii).
4. BHB agrees to pay a total penalty of Fifteen Thousand Dollars (\$15,000.00) for the violations stated in Item 3 above as a settlement for the resolution to this matter in lieu of litigation under W.S. §35-11-901(a)(ii). BHB shall pay \$15,000.00 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 25<sup>th</sup> Street, Cheyenne, Wyoming 82002.
5. The topsoil salvage language in all future BHB permitting actions administered by the LQD shall be revised to state that topsoil salvage under frozen or muddy conditions will not occur.
6. The Mine Plan text in future BHB permitting actions administered by the LQD shall state that topsoil baseline salvage depths shall be considered soil depth estimates, and that actual salvage depths will be assessed and adjusted during salvage operations to ensure salvage of only suitable materials.
7. 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, based on the violations alleged in Notice of Violation Docket No. 5377-14. Contingent upon BHB compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against BHB 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. 5377-14.

9. BHB 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. 5377-14.
10. 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 BHB violate the Wyoming Environmental Quality Act or applicable rules and regulations in the future.
11. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
12. 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 BHB and specifically retain all immunity and all defenses available as sovereigns under state and federal law.
13. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
14. **This Settlement Agreement is binding upon BHB its successors and assigns, and upon the WDEQ.**
15. 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, LLC**

Signed: 

Date: 4-22-14

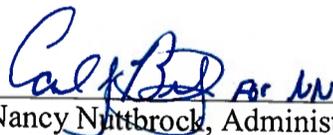
Typed: \_\_\_\_\_

Title: President

**FOR: The Wyoming Department of Environmental Quality**

  
Todd Parfitt, Director  
WDEQ

Date: 4/28/14

  
Nancy Nittbrock, Administrator  
WDEQ/Land Quality Division

Date: 4/25/2014

TP/RAC/DS

cc: Mark Rogaczewski, WDEQ/LQD, District III  
Permit 248C NOV Docket Number 5377-14

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