

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION

NOV 14 2014

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SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division ("WDEQ/LQD"), whose address is Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and FMC Wyoming Corporation, whose address is 1735 Market St., Philadelphia, PA 19103, enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in Notice of Violation Docket Number 5470-14, dated October 6, 2014 ("NOV"). Specifically, the NOV alleges: 1) FMC Wyoming Corporation's approved mine plan was not followed in violation of Wyoming Statute §35-11-415 (b)(ii); and 2) topsoil was not protected and properly salvaged from all affected areas in violation of WDEQ/LQD Non-Coal Rules and Regulations Chapter 3, Section 2(c)(i)(A) and Section 2(c)(iv)(A). The alleged violations occurred at the FMC-Granger Facility, which is located in Section 21, T20N R110W.

W.S. §35-11-901(a)(ii) authorizes the WDEQ/LQD to negotiate a stipulated settlement, including without limitation payment of a penalty, in lieu of litigation. To that end, FMC Wyoming Corporation and the WDEQ/LQD hereby stipulate and agree as follows:

1. FMC Wyoming Corporation is a Delaware corporation that owns and operates the FMC-Granger Facility.
2. 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. WDEQ is the agency with the responsibility for administering the Wyoming Environmental Quality Act including all provisions of the WDEQ/LQD Rules & Regulations.
3. Wyoming Statute § 35-11-415(b)(ii) requires the operator, pursuant to an approved surface mining permit and mining plan and reclamation plan, or any approved revisions thereto, to among other things, "[c]onduct all surface mining and reclamation activities within the permit area in conformity with his approved plan." Additionally, WDEQ/LQD Non-Coal Rules and Regulations, Chapter 3, Section 2(c)(i)(A) provides, in relevant part, "All topsoil or 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." WDEQ/LQD Rules and Regulations, Chapter 3, Section 2(c)(iv)(A) states, "All overburden, spoil material and refuse shall be segregated from the topsoil and subsoil and stockpiled in such a manner to facilitate the earliest reclamation consistent with the approved reclamation plan."
4. On August 6, 2014, an annual inspection of the FMC-Granger Facility (Permit 454) was conducted by WDEQ/LQD personnel in which it was observed that topsoil was not stripped from the laydown yard, and the topsoil stripped from the roads and well pad was not placed in designated topsoil pile locations in violation of Wyoming Statute § 35-11-415(b)(ii). Additionally, after a follow up inspection on September 22, 2014, it was observed that topsoil was not salvaged from the laydown yard, which served as a staging area for material and equipment by several contractors during construction of the pump house, in violation of Chapter 3, Section 2(c)(i)(A) of the WDEQ/LQD Non-Coal Rules and Regulations. It was also observed after the follow up inspection that topsoil was not stockpiled and topsoil from the laydown yard had a pile of subsoil on top of it, in violation of Chapter 3, Section 2(c)(iv)(A) of the WDEQ/LQD Non-Coal Rules and Regulations.

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5. FMC Wyoming Corporation agrees to pay the WDEQ/LQD a one-time payment totaling five thousand dollars (\$5,000) as a stipulated settlement to fully, finally and completely resolve the allegations in the NOV as per W. S. § 35-11-901(a)(ii). Payment is due and payable within thirty (30) days after FMC Wyoming Corporation has been notified by WDEQ/LQD that final signature has been affixed to this Settlement Agreement. Payment to WDEQ/LQD shall be by check and 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, 3rd Floor-West, 122 West 25th Street, Cheyenne, Wyoming 82002.
6. WDEQ/LQD acknowledges and agrees that since its September 22, 2014 follow up inspection, FMC Wyoming Corporation has made efforts to salvage additional topsoil in later stages of the SMP project. Windrowed topsoil along the access road was relocated to a designated topsoil stockpile and signage was added to all topsoil stockpiles. Overburden material on top of the laydown yard was removed and used as fill material for the road expansion.
7. As additional consideration for this Settlement Agreement, FMC Wyoming Corporation agrees to rip, disk and seed the laydown yard and to seed all topsoil stockpiles prior to March 15, 2015.
8. This signed Settlement Agreement and payment of penalty shall constitute full and final satisfaction and resolution of all claims by the WDEQ/LQD against FMC Wyoming Corporation based on the violations alleged in the NOV and otherwise set forth in this Settlement Agreement.. So long as FMC Wyoming Corporation complies with the terms of this Settlement Agreement, the WDEQ/LQD shall not take further enforcement action against FMC Wyoming Corporation for these particular violations cited in this Settlement Agreement. With this Settlement Agreement, the Parties intend to resolve, with prejudice, all allegations that were asserted in the NOV and otherwise set forth in this Settlement Agreement.
9. In the event that FMC Wyoming Corporation fails to fulfill its obligations under this Settlement Agreement, FMC Wyoming Corporation waives any statute of limitations claims which may apply to an enforcement action by the WDEQ/LQD involving the specific matters described in the NOV and otherwise set forth in this Settlement Agreement.
10. Nothing in this agreement precludes WDEQ/LQD from taking enforcement actions against FMC Wyoming Corporation, including the issuance of a Notice of Violation, Order and/or pursuing additional penalties, for any future violations of the Wyoming Environmental Quality Act or applicable rules and regulations unrelated to the allegations in the NOV or as otherwise set forth in this Settlement Agreement.
11. This Settlement Agreement shall be admissible by either FMC Wyoming Corporation or WDEQ/LQD without objection by the other, but only in an action between WDEQ/LQD and FMC Wyoming Corporation relating to the violations alleged herein.
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 FMC Wyoming Corporation and specifically retain all immunity and all defenses available as sovereigns under state and federal law, except to the extent necessary for the Parties to pursue a contract action to clarify or enforce the written terms of this Settlement Agreement.

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- 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 FMC Wyoming Corporation, its successors and assignees, and upon the WDEQ/LQD.
- 15. The construction, interpretation, and enforcement of this Settlement Agreement shall be governed by the laws of the State of Wyoming.
- 16. Each Party represents that it is authorized to enter into this Settlement Agreement, agree to comply with and to be bound by the terms of this Settlement Agreement, and further agree that it will not contest the basis or validity of this Settlement Agreement. This Settlement Agreement shall become binding upon the Parties once executed by all Parties.

IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Settlement Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Settlement Agreement:

FMC Wyoming Corporation:

By: 
 Name:
 Title:

Date: 11-11-14

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:


 Todd Parfitt, Director
 Wyoming Department of Environmental Quality

Date: 11/17/14


 Nancy Nuttbrock, Administrator
 Land Quality Division

Date: 11/17/14

cc: John Erickson, WDEQ/LQD, District II
Docket Number 5470-14