

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

**SETTLEMENT AGREEMENT**

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) at 122 W 25 St., Herschler Building 3<sup>rd</sup> Floor West, Cheyenne, Wyoming 82002; and Willits Company, Inc. at 1417 W 6<sup>th</sup> Ave., Cheyenne, Wyoming 82001, which is 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 No. 5503-14 dated November 7, 2014**. The NOV alleges that Willits Company: 1) mined outside of the approved permit boundary (Permit SP0669) without submitting a permit amendment for review and approval, and 2) failed to salvage the topsoil resource in advance of the highwall.

The permitted mine site is located in Laramie County and includes approximately 89.9 acres. The allegations are violations of the Wyoming Environmental Quality Act (WEQA) and the applicable Wyoming Department of Environmental Quality/Land Quality Division Noncoal Rules and Regulations (WDEQ/LQD R&R).

Wyoming Statute (W.S.) §35-11-901(a)(ii) authorizes the WDEQ/LQD to attempt to eliminate the cause of the violations by negotiating stipulated settlement in lieu of litigation. To that end, Willits Company 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 WEQA including all provisions of the WDEQ/LQD R&R.
2. Willits Company is the permittee of small mine permit SP 669, a sand and gravel mining operation located in the NW1/4 of Section 18, Township 14 North, Range 67 West, Laramie County. Willits Company is also the primary operator of the mine.
3. Willits Company has conducted mining operations outside of the approved permit area of WDEQ/LQD small mine permit SP 669. Mining outside the approved permit boundary on land for which there is not in effect a valid mining permit is a violation of W.S. § 35-11-405(a).
4. In order to mitigate mining outside of the currently approved permit boundary, Willits Company agrees to complete Items 5 thru 8 of this stipulated settlement.
5. Willits Company agrees to submit and secure an approved amendment to SP 669 in order to incorporate lands that have been disturbed by mining operations outside of the currently approved permit and any other lands proposed for future disturbance. Currently, WDEQ/LQD is in receipt of such a proposal. This amendment application has been assigned TFN (Temporary Filing Number) 6 5/149 and a deadline for WDEQ/LQD to notify the applicant if the application is complete has been established for July 23, 2015. This amendment application shall include all the information required by the WEQA and the WDEQ/LQD R&R for amending lands into an existing small mining permit. The amendment application shall be subject to the completeness and technical review processes in accordance with W.S. §35-11-406(e) thru (k). To facilitate the review process, the Willits Company shall respond to any WDEQ/LQD comments on completeness or technical deficiencies no later than thirty (30) days after receipt of such comments.
6. The Willits Company shall provide WDEQ/LQD a map with professionally surveyed demarcation of: 1) the currently approved permit area, 2) the area proposed for amendment into SP 669, and 3) the most recent disturbance boundary. Willits Company shall provide this map within 15 days of the effective date of this agreement. Providing this map is in addition to, and separate from the supporting material required for an approvable amendment application. Failure to provide the map within the specified deadline may result in assessment of penalty up to the maximum allowable by W.S. §35-11-901(a).

7. Willits Company shall provide signed surface owner consent to conduct mining and reclamation activities for all lands included in the proposed amendment application. Additionally, Willits Company shall provide written consent from the appropriate landowner of any occupied existing dwelling that is within three hundred (300) feet of the current surveyed disturbance line identified in the map requested in item six. This is a requirement of WDEQ/LQD R&R Chapter 9, Section 2(a)(xiii). Willits Company shall provide these consents within 15 days of the effective date of this agreement. These consents are to be provided in addition to, and separate from the supporting material required for an approvable amendment application. Failure to provide these consents within the specified deadline may result in assessment of penalty up to the maximum allowable by W.S. §35-11-901(a).
8. Willits Company shall provide a bond estimate for the operations at SP 669, current as of the July 23, 2015 deadline noted in Item 5. WDEQ/LQD will analyze this estimate in conjunction with review of the proposed amendment and notify Willits Company if the estimate is adequate or if additional bonding will be required prior to approval of the proposed amendment.
9. Inspections have identified that Willits Company mining activities in the east and northeast areas of SP 669 did not include topsoil stripping prior to highwall advancement. It is a violation of the WDEQ/LQD R&R Chapter 3, Sec. 2(c)(i)(A) to fail to remove topsoil from areas affected by mining.
10. To mitigate the failure to salvage topsoil, Willits Company shall strip all suitable topsoil before advancing the highwall unless otherwise approved by WDEQ/LQD. A penalty in the amount of three thousand dollars (\$3,000) shall be assessed for failing to salvage topsoil prior to the issuance of NOV Docket No. 5503-14.
11. In accordance with Item 10, Willits Company shall pay to WDEQ/LQD three thousand dollars (\$3,000) for failure to salvage topsoil as stipulated settlement for partial resolution to this matter in lieu of litigation under W.S. § 35-11-901(a)(ii). Payment in the amount of three thousand dollars (\$3,000) is due within fifteen (15) days of the effective date of this agreement. Payment to WDEQ/LQD shall be payable to the "Wyoming Department of Environmental Quality" and shall be sent to: the LQD Administrator, Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 3<sup>rd</sup> Floor West, 122 West 25 Street, Cheyenne, WY 82002.
12. Complete performance of this Settlement Agreement shall constitute full satisfaction for and resolution of all claims based on the violations alleged in NOV Docket No. 5503-14. Contingent upon Willits Company's compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against Willits Company for violations specified in NOV Docket No. 5503-14, to the extent that those violations existed up to the issuance of NOV Docket No. 5503-14. By this Settlement Agreement, the parties intend to resolve with prejudice all allegations that were asserted in NOV Docket No. 5503-14. Failure to comply with any provision in this Settlement Agreement will result in further enforcement action.
13. Willits Company 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. 5503-14 in the event that Willits Company fails to fulfill its obligations under this Settlement Agreement.
14. Nothing in this agreement precludes WDEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation, and/or pursuing additional penalties or injunctive relief, should Willits Company violate the Wyoming Statutes or applicable WDEQ/LQD R&R after the date of issuance of NOV Docket No. 5503-14.
15. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
16. The State of Wyoming and WDEQ/LQD do not waive sovereign immunity by entering into this Settlement Agreement and specifically retain all immunities and defenses

available to them as sovereigns under state and federal law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Settlement Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

17. Each party shall bear its own attorney fees and costs, if any, incurred through the effective date of this Settlement Agreement.
18. The Willits Company shall accept receipt of all certified mail from the WDEQ/LQD regarding this permit and mining operation.
19. This Settlement Agreement is binding upon Willits Company, its successors and assigns, and upon the WDEQ/LQD.
20. Any changes, modifications, revisions, or amendments to this Settlement Agreement are invalid unless mutually agreed upon by both parties, incorporated by written instrument, executed, and signed by all parties to this Settlement Agreement.
21. The laws of the State of Wyoming shall govern the construction, interpretation, and enforcement of this Settlement Agreement. The Courts of the State of Wyoming shall have jurisdiction over this Settlement Agreement and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.
22. This Settlement Agreement, consisting of four (4) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Settlement Agreement shall not be construed to create such status. The rights, duties, and obligations contained in this Settlement Agreement shall operate only between the parties to this Settlement Agreement, and shall inure solely to the benefit of the parties to this Settlement Agreement. The parties to this Settlement Agreement intend and expressly agree that only parties signatory to this Settlement Agreement shall have any legal or equitable right to seek to enforce this Settlement Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Settlement Agreement, or to bring an action for the breach of this Settlement Agreement.
23. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.
24. The parties to this Settlement Agreement, through their duly authorized representatives, have executed this Settlement Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Settlement Agreement, and that they will not contest the basis or validity of this Settlement Agreement.

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The effective date of this Settlement Agreement is the date of the signature last affixed to this page.

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FOR WILLITS COMPANY, INC.

Signed: 

Date: 7-14-15

Typed: Robert C. Willits

Title: President

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

  
Todd Parfitt, Director  
Wyoming Department of Environmental Quality

7/16/15  
Date

  
Kyle Wendtland  
Deputy Director, Dept. of Environmental Quality  
Acting Administrator, Land Quality Division

7-16-15  
Date

TP/KW/rj  
cc: Kim Pandulo, NOV Files (SP0669)  
Robin Jones, LQD