

**BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING**

**IN THE MATTER OF THE NOTICE OF)
VIOLATION ISSUED TO:)**

**Quality Landscape & Nursery, Inc.)
Mr. Randy Stevens)
P.O. Box 1074)
Saratoga, Wyoming 82331)**

DOCKET NUMBER 5970-19

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (“DEQ/LQD”), 200 West 17th Street, Cheyenne, Wyoming 82002, and Quality Landscape & Nursery, Inc. (“Quality Landscape”) and Randy Stevens (“Mr. Stevens”), P.O. Box 1074, Saratoga, Wyoming 82331, enter into this Settlement Agreement (“Agreement”) to fully and finally resolve without litigation the violations alleged in Notice of Violation (“NOV”), Docket Number 5970-19 issued September 20, 2019. The Wyoming Environmental Quality Act (“Act”) authorizes the DEQ/LQD to enter into stipulated settlements, including the payment of penalties, implementation of compliance schedules, or other settlement conditions, to resolve enforcement actions in lieu of litigation. Wyo. Stat. Ann. § 35-11-901(a)(ii). To that end, Quality Landscape and the DEQ/LQD hereby agree as follows:

1. Quality Landscape is a registered incorporated company with the Wyoming Secretary of State.
2. Mr. Stevens is an individual domiciled in the State of Wyoming.
3. Quality Landscape and Mr. Stevens are “persons” within the meaning of the Act. Wyo. Stat. Ann. § 35-11-103(a)(vi).
4. The term “Quality Landscape,” when used below in this Settlement Agreement, refers collectively to Quality Landscape and Mr. Stevens.
5. Quality Landscape owned and operated the Limited Mining Operation (“LMO”) 1496ET identified in NOV 5970-19 in Saratoga, Wyoming at the time the alleged violations identified in that NOV occurred.
6. The DEQ/LQD is an executive branch agency of Wyoming government responsible for enforcing the Act and applicable rules and regulations promulgated pursuant to that Act. Wyo. Ann. Stat. § 35-11-109(a)(vii).

7. Quality Landscape and the DEQ/LQD desire to resolve the alleged violations identified in NOV 5970-19 without litigation. Without admitting liability, and in lieu of litigation pursuant to Wyo. Stat. Ann. § 35-11-901(a)(ii), Quality Landscape therefore agrees to perform the following actions:

a. Quality Landscape will restrict public access to the LMO 1496ET area including, without limitation, installation and maintenance of fencing around those areas of LMO 1496ET which pose a public health danger. DEQ/LQD will inspect the restrictions implemented by Quality Landscape to include the integrity of the fence during random inspections, pursuant to Wyoming Statute § 35-11-406(b)(xiii).

b. Quality Landscape must post warning signs on the perimeter of the LMO 1496ET area and on all fencing installed by Quality Landscape to identify potential danger. DEQ/LQD will verify signage is posted during random inspections, pursuant to Wyoming Statute § 35-11-406(b)(xiii).

c. Quality Landscape will provide an approved site plan to DEQ/LQD within twenty-four (24) months of signing this agreement reflecting the use and/or development of LMO 1496ET proposed by Quality Landscape. During this twenty-four month period, DEQ/LQD will continue to inspect LMO 1496ET on a regular basis, but assumes no liability for any material failures at LMO 1496ET during this same period. The site plan must include the following:

i. Quality Landscape will confirm that there are no more minable areas within the legal description of the LMO 1496ET.

ii. A small narrative to describe the development of the LMO 1496ET for commercial use as an alternative to reclaiming the LMO 1496ET;

iii. Maps and engineer diagrams that illustrate the proposed commercial development;

iv. The site plan must be stamped by a Wyoming Professional Engineer;

v. The site plan must comply with city ordinances;

vi. The site plan must be approved by the Town of Saratoga;

vii. The site plan must include measures to address slope stability between LMO 1496ET and the adjacent alleyway to the south in order to protect public safety during future commercial use of LMO 1496ET. These measures shall be implemented by Quality Landscape and/or the Town of Saratoga in accordance with the Second Judicial District Court's decisions in *Town of Saratoga v. Randy Stevens et al*, No. CV-09-284.

viii. The slopes and grades in an approved site plan under this subsection shall be exempt from Chapter 10, Section 5 of DEQ's Land Quality Non-Coal Rules, which requires final reclaimed slopes to have a grade no steeper than a ratio of 3:1.

ix. The submission or presentation of the approved site plan contemplated herein by Quality Landscape shall not prevent, inhibit, restrain, preclude and/or abridge the right, authority, opportunity and/or ability of Quality Landscape to amend, modify, revise or rework the approved site plan to provide for a different development concept or plan on LMO 1496ET.

If Quality Landscape does not complete the approved site plan within twenty-four (24) months, Quality Landscape must proceed with site reclamation as described in subsection (d).

d. If Quality Landscape is unable to complete Section 7(c) of this agreement, Quality Landscape agrees to develop an alternative plan to stabilize and reclaim LMO 1496ET, in accordance with the reclamation schedule and actions provided below:

i. Quality Landscape must propose and submit an alternative plan to DEQ/LQD for the reclamation of LMO 1496ET. This plan must include the following:

1. A map depicting the existing and proposed topography using two foot contour intervals tying into the adjacent properties;

2. Description of the proposed methods for stabilization and replacement materials along the southern boundary of the LMO;

3. The plan must be stamped by a Wyoming licensed Professional Engineer; and

4. Identify a source of suitable backfill material to import for completing the reclamation plan. Quality Landscape must provide a certified geotechnical analysis of the proposed imported backfill material, including standard proctor testing for determination of maximum soil density and optimum water content, recommendations for the appropriate lift thickness, recommendation for compaction testing of the intervals and depths, and completion of nuclear density compaction testing of the material as it is placed on site.

Quality Landscape will provide the LMO 1496ET reclamation plan and soil analysis for DEQ/LQD review within ninety (90) days of commencing the alternative plan. DEQ/LQD will conduct a technical review of the reclamation plan. This technical review may include a request for additional information as needed to ensure public safety, environmental compliance and long term site stability of the final reclamation. Based on the reclamation plan, DEQ/LQD will establish a phased approach to reclaim the site. This approach will include evaluation periods to conduct oversight of the site reclamation. Once the technical review is completed, DEQ/LQD will grant approval for Quality Landscape within ninety (90) days to proceed to the following settlement action for LMO 1496ET.

ii. Quality Landscape must:

1. Fully implement the approved reclamation plan within ninety (90) days of DEQ/LQD's approval of the plan; and
2. Notify DEQ/LQD that this phase of reclamation has been completed to the approved reclamation plan.

DEQ/LQD will conduct a site visit to verify the work to this point has been completed in compliance with the reclamation plan. DEQ/LQD will notify Quality Landscape whether to proceed with implementation of the remaining reclamation plan requirements or whether any corrective measures are necessary.

Following this mid-point review, Quality Landscape must:

1. Fully implement the second phase of the reclamation plan; and
2. Notify DEQ/LQD that this phase of reclamation has been completed to the approved reclamation plan.

DEQ/LQD will conduct a site inspection to verify all reclamation has been completed in compliance with the reclamation plan. Quality Landscape will be responsible for any work that has not been completed to the requirements prescribed by the approved reclamation plan. Once this settlement action is completed, DEQ/LQD will grant permission for Quality Landscape to proceed to the following settlement action.

iii. Quality Landscape must contour, apply topsoil, and seed the surface of LMO 1496ET. Quality Landscape must provide DEQ/LQD with a permanent seed mixture for review and approval to apply to the reclaimed surface. DEQ/LQD will monitor the surface stability and vegetation establishment for two (2) growing seasons. The vegetation may be eligible for bond release after two (2) successful growing seasons. Quality Landscape will be responsible for any maintenance of the site, repairing any erosion features, and reseeding areas where vegetation may have failed to establish. DEQ/LQD will conduct random site inspections to verify that there is no mining occurring at the site and the reclamation is in compliance with the approved reclamation plan.

iv. In the event of reclamation of LMO 1496ET as provided herein and for purposes of reclamation only, Quality Landscape shall generally provide for slopes and grades no steeper than a 3:1 ratio at LMO 1496ET, as required by the Act, its implementing regulations, and this Agreement. The parties hereto acknowledge and agree that the slope/grade requirements set forth in this subsection iv. are applicable to reclamation only and not to the commercial development of the LMO 1496ET area.

e. Quality Landscape shall provide DEQ/LQD access to the LMO 1496ET located within Lots 1 thru 10, Block 11, Section 14 of Township 17N Range 84W in Carbon County. The access shall provide DEQ/LQD employees and their authorized designees legal access to the site in question for the purpose of ensuring compliance with the Act, its implementing regulations, and this Agreement.

f. Quality Landscape agrees that if Quality Landscape violates any term of this Settlement Agreement, DEQ/LQD shall provide notice of the violation to Quality Landscape and provide Quality Landscape a reasonable opportunity to cure. Should Quality Landscape fail and/or refuse to cure such violation within a reasonable period of time after notice, Quality Landscape will pay to DEQ/LQD stipulated civil penalties in the amount of one thousand dollars (\$1,000.00) per day the violation exists.

g. Notices required by this Agreement shall be provided telephonically, through email, or in writing to:

DEQ/LQD
Attention: Robin Jones
200 W. 17th St. Suite 10
Cheyenne, WY 82002
Phone: (307) 777-8956
Email: robin.jones@wyo.gov

Quality Landscape & Nursery, Inc.
Randy Stevens
P.O. Box 1074
Saratoga, WY 82331
Phone: (307) 326-8670
Email: randyqln@union-tel.com

With a copy to:

James R. Salisbury
THE SALISBURY FIRM, P.C.
P.O. Box 1617
Cheyenne, WY 82003
(307) 634-2002
Email: jim@lawwyo.com

h. This Agreement represents a good faith settlement and resolution of NOV 5970-19 in lieu of litigation and shall not constitute or be construed as an admission by Quality Landscape or a retraction by the DEQ/LQD of the specific allegations in that NOV. Quality Landscape does not concede or admit any liability, fault, or statutory noncompliance, including those violations alleged in NOV 5970-19.

i. Full compliance with this Agreement shall constitute full satisfaction of all claims by the DEQ/LQD against Quality Landscape arising from the allegations contained in NOV 5970-19. In reliance on this Agreement, the DEQ/LQD will not take further enforcement action against Quality Landscape for the specific violations alleged in the NOV. Nothing in this Agreement precludes the DEQ/LQD from initiating enforcement actions for violations not identified in NOV 5970-19.

j. In the event that Quality Landscape fails to fulfill its obligations under this Agreement, Quality Landscape waives any statute of limitation claims that may apply in an enforcement action by the DEQ/LQD involving the specific matters described in NOV 5970-19.

k. This Agreement shall be admissible by either Quality Landscape or the DEQ/LQD without objection by the other party in any subsequent action between the parties to enforce its terms.

l. Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.

m. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties. The venue shall be the Second Judicial District, Carbon County, Wyoming.

n. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

o. The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

p. This Agreement, consisting of eight (8) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

q. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

r. Each party to this Agreement assumes the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Agreement is executed by both parties.

s. Pursuant to Wyoming Statutes § 1-39-104(a), the State of Wyoming and the DEQ/LQD expressly reserve sovereign immunity by entering into this Agreement and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this 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.

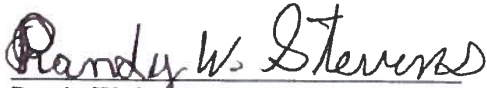
t. Each party represents that they are authorized to enter into this Agreement, agrees to comply with and be bound by the terms of this Agreement, and further agrees that they will not contest the basis or validity of this Agreement. This Agreement shall become binding upon the DEQ/LQD, Quality Landscape, and its successors and assigns once executed, as determined by the latest date of all parties signing. The DEQ/LQD reserves the right to enforce this Agreement against any and all subsequent owners of the Stevens LMO 1496ET.

u. This Agreement shall terminate within two (2) years of execution or upon compliance with the terms and conditions set forth herein, whichever is later.

[Signature Page(s) Follow]

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

QUALITY LANDSCAPE & NURSERY, INC.
By:


Randy W. Stevens, President

7-8-2020
Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:


Kyle Wendtland, Land Quality Division Administrator

7/23/2020
Date


Robin Jones, Cheyenne DEQ-LQD

7/23/2020
Date



Todd Parfitt, Department of Environmental Quality Director

7/29/2020
Date

APPROVAL AS TO FORM:


Matt Van Wormer, Senior Assistant Attorney General
Attorney for DEQ/LQD

7-23-2020
Date


James R. Salisbury
Attorney for Quality Landscape & Nursery, Inc.

9 July 2020
Date