STATE OF WYOMING	)	IN THE DISTRICT COURT
	) ss.	
COUNTY OF CARBON	)	SECOND JUDICIAL DISTRICT

QUALITY LANDSCAPE AND NURSERY, INC.	)	
Petitioner,	)	Docket No. 2024-CV-0000018
vs.	)	
STATE OF WYOMING, *ex rel.* DEPARTMENT OF ENVIRONMENTAL QUALITY, LAND QUALITY DIVISION,	)	
Respondent.	)	

ORDER ON JUDICIAL REVIEW

THIS MATTER comes before this Court on Petitioner's *Petition for Judicial Review of Agency Action*, filed on February 29, 2024. Petitioner having filed its *Brief* on July 30, 2024; the State of Wyoming having filed its *Response Brief* on September 10, 2024; Petitioner having filed its *Reply Brief* on September 24, 2024; the Court having reviewed the filings and evidence in this matter and being fully advised; the Court hereby finds and orders as follows below.

I. BACKGROUND

a. Quality Landscape and Nursery, Inc. ("QLN"[1]) is a landscape construction

[1] Many acronyms are used throughout these documents. The following is an appendix of abbreviations and acronyms:
EQC – Environmental Quality Council
DEQ – State of Wyoming Department of Environmental Quality
LMO – Limited Mining Operation
LQD – Land Quality Division (a division of the DEQ)
QLN – Quality Landscape and Nursery, Inc.

business. Randy Stevens is the owner-operator.[2]

b. QLN applied for and was granted a Limiting Mining Operation ("LMO") on July 22, 2010, and is designated "LMO ET1496"[3] for the removal of soil. The LMO site is in Saratoga, Carbon County, Wyoming, and is owned by the Randy Stevens Trust, which leases the LMO property to QLN.[4] Initially, the LMO had a reclamation bond of One Thousand Dollars ($1,000.00) (Bond No. 73880).[5]

c. QLN removed the majority of the soil on the LMO in compliance with the Town of Saratoga's master plan.[6]

d. Department of Environmental Quality, Land Quality Division ("DEQ/LQD") inspected the LMO site in 2013, 2014, and 2015 and issued its 2013-2014-2015 annual inspection report on February 18, 2016. These site inspections revealed a possible off-site disturbance, but it was unable to be verified at the time due to ambiguities in the Carbon County Assessor's website.[7]

e. Site inspections continued in 2016, 2017, and 2018, with a 2016-2017-2018 annual inspection report issued on June 4, 2018. The report noted a sheet pile wall located outside the LMO boundary on the Town of Saratoga property. Soil material was excavated from the side of the sheet piling wall on QLN's property. During the inspection in March of 2018, both Mr. Stevens and a representative of the Town of Saratoga, Mr. Wilcoxson, told the inspector that Mr. Stevens had permission to mine up to the sheet pile wall on QLN's side of the wall. At that time, DEQ did not require QLN to amend the LMO's boundaries to reflect the two-foot-wide area since it was reported that the Town had requested the material to be removed. [8]

f. The following month, a Wyoming State Mine Inspector raised safety concerns with the sheet pile wall. DEQ then inspected the site in June and July of 2018 and issued

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NOV – Notice of Violation

[2] *Findings of Fact, Conclusions of Law, and Order*, EQC Docket No. 22-4503, p. 5, ¶¶1-2, February 1, 2024. Hereafter referred to as *EQC Order*.

[3] *EQC Order*, p. 3; *Petition for Judicial Review of Agency Action*, p. 3, 2024-CV-0018, filed February 29, 2024. Hereinafter referred to as *Petition*.

[4] *EQC Order*, p. 5, ¶3.

[5] *EQC Order*, p. 5, ¶4.

[6] *EQC Order*, p. 5, ¶5, *Petition*, p. 3.

[7] *EQC Order*, p. 5, ¶6.

[8] *EQC Order*, p. 5, ¶7.

an inspection report on January 25, 2019. In this report, it was noted that QLN had mined outside of the LMO boundaries. Due to a lack of clarity regarding Mr. Stevens having the Town's permission to do so, DEQ took no enforcement action at that time, nor did the DEQ require that QLN amend the boundaries of the LMO.[9]

g. Six months later, in June of 2019, DEQ received a letter from Mr. Wilcoxson stating that no such permission was granted to excavate the two-foot-wide section of material abutting the sheet pile wall. His letter further stated "that the only way permission could be given to mine 2 feet on Town Property would be by a vote of the entire Town Council and written letter granting permission."[10] QLN never provided DEQ with any such writing granting the Town's permission.[11]

h. Another site inspection was conducted in June 2019, and a report was issued on August 13, 2019. In this report, the inspector recorded that mining had occurred outside the LMO boundary and that this removal of material from the Town's property had likely compromised the integrity of the sheet pile wall.[12] It was further reported that this inspection revealed that no topsoil had been salvaged or stockpiled at the LMO for reclamation purposes.[13]

i. DEQ requested that QLN provide a survey of the site if it wished to refute the inspection's findings. Further, DEQ notified QLN that reclamation of the property and stabilization of the sheet pile wall must begin immediately to avoid enforcement action. While DEQ allowed for a period for response from QLN, none was ever received.[14]

j. During this June 2019 inspection, DEQ determined that there were no further minable materials on the LMO and that QLN must commence reclamation of the site.[15]

k. On September 20, 2019, DEQ issued a Notice of Violation ("NOV") Docket No. 5970-19 to QLN for two specific violations of the Environmental Quality Act: QLN

[9] *EQC Order*, p. 6, ¶¶8-9.
[10] *EQC Order*, p. 6, ¶10.
[11] *EQC Order*, p. 7, ¶11.
[12] *EQC Order*, p. 7, ¶12.
[13] *EQC Order*, p. 7, ¶14.
[14] *EQC Order*, p. 7, ¶13.
[15] *EQC Order*, p. 8, ¶15.

had mined outside its LMO boundaries, and QLN had failed to preserve and stockpile soil for reclamation of the site. QLN ceased mining operations in 2019. [16]

l. In 2020, based on the condition of the site, DEQ increased the bond amount to require an additional Sixty-Five Thousand Dollars ($65,000.00) to cover the cost of reclamation of the property. QLN posted the increased bond with a letter of credit for the full amount (Bond No. 202001).[17]

m. To resolve NOV Docket No. 5970-19, QLN and DEQ entered into a settlement agreement on July 8, 2020[18]. In the agreement, the parties agreed that QLN would provide a site plan, approved by the Town of Saratoga, within 24 months to show prospective use and/or development of the LMO site. If the plan could not be approved by the Town, reclamation of the site was to proceed immediately. If QLN failed to comply with the terms of the Settlement Agreement, DEQ would proceed to enforce the NOV.[19]

n. In the 2020 and 2021 inspection reports, issued March 3, 2021, and June 23, 2021, respectively, the inspector included reference to the Settlement Agreement's 24-month deadline for submission of the site plan or commencing reclamation, stating the deadline date to be July 8, 2022.[20] The deadline passed, and QLN did not submit an approved site plan.[21]

o. In accordance with the Settlement Agreement, on August 12, 2022, DEQ issued NOV 6176-22 for violation of the Settlement Agreement for NOV 5970-19 and notified QLN of a 45-day period to cure the violations. QLN did not submit either an approved site plan or a reclamation plan to DEQ during the cure period.[22]

p. On August 31, 2022, QLN sent a draft site plan to the Town for approval. The Town responded in September 2022 with three possible alternative development plans; QLN replied with issues and concerns.[23]

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[16] *EQC Order*, p. 8, ¶¶16-17; *Petition*, pp. 3-4.
[17] *EQC Order*, p. 8, ¶18.
[18] Discrepancies regarding this date will be addressed below.
[19] *EQC Order*; pp. 8-9, ¶19; *Petition*, p. 4.
[20] *EQC Order*, p. 10, ¶23.
[21] *EQC Order*, p. 11, ¶25.
[22] *EQC Order*, p. 11, ¶26.
[23] *EQC Order*, p. 11, ¶27.

q. On October 3, 2022, DEQ granted QLN an extension to October 7, 2022, to comply with the Settlement Agreement. No approved site plan or reclamation plan was submitted to DEQ during this time, and no approved plan has been provided to DEQ to date.[24]

r. On October 17, 2022, DEQ issued NOV Docket No. 6183-22 for failure to comply with the Settlement Agreement of July 2020.[25] Due to continued non-compliance, on December 1, 2022, Director of DEQ Todd Parfitt sought approval from the Attorney General to initiate bond forfeiture proceedings against QLN, and the Environmental Quality Council ("EQC") approved the request for bond forfeiture on February 21, 2023.[26]

s. QLN timely filed its *Notice of Appeal and Petition for Hearing* on April 12, 2023, appealing NOVs 5970-19, 6176-22, and 6183-22.[27]

t. A contested case hearing was held by the EQC on July 19-20, 2023[28], and its *Findings of Fact, Conclusions of Law, and Order* was filed on February 1, 2024, determining QLN's reclamation bonds 202001 and 73880 for the LMO in the amount of Sixty-Six Thousand Dollars ($66,000.00) shall be forfeited.[29]

u. QLN timely filed its *Petition for Judicial Review of Agency Action*[30] in this Court on February 29, 2024.[31]

v. Further facts will be developed as necessary.

II. TIMELINE

a. July 22, 2010, QLN applied for and was granted a Limiting Mining Operation ("LMO").

b. September 20, 2019, DEQ issued NOV Docket No. 5970-19 to QLN for mining

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[24] *EQC Order*, p. 12, ¶¶28-29.
[25] *EQC Order*, p. 12, ¶30.
[26] *EQC Order*, p. 12, ¶31; *Petition*, p. 4.
[27] *EQC Order*, p. 12, ¶32; *Petition*, p. 4.
[28] *EQC Order*, p. 1.
[29] *EQC Order*, p. 20; *Petition*, p. 5.
[30] The original filing named both the State of Wyoming, Environmental Quality Counsel and the State of Wyoming, *ex rel.* Department of Environmental Quality, Land Quality Division as Respondents. State of Wyoming, Environmental Quality Counsel moved this Court to be dismissed as a party to the action on April 25, 2024, and dismissal was granted on June 4, 2024.
[31] *Petition*.

outside its LMO boundaries and failing to preserve and stockpile soil for reclamation of the site.

c. July 29, 2020, QLN and DEQ entered into a Settlement Agreement.
d. July 29, 2022, the deadline for QLN to comply with the Settlement Agreement.
e. August 12, 2022, DEQ issued NOV 6176-22 for failing to comply with the Settlement Agreement for NOV 5970-19 and notified QLN of a 45-day period to cure the violations.
f. September 26, 2022, the 45-day cure period expired.
g. On October 3, 2022, DEQ granted QLN an extension to October 7, 2022, to comply with the Settlement Agreement.
h. October 7, 2022, the DEQ extension expires.
i. October 17, 2022, DEQ issued NOV Docket No. 6183-22 for failure to comply with the Settlement Agreement of July 2020.
j. December 1, 2022, Director of DEQ Todd Parfitt sought approval of the Attorney General to initiate bond forfeiture proceedings against QLN.
k. February 21, 2023, EQC approved the request for bond forfeiture.
l. April 12, 2023, QLN timely filed its *Notice of Appeal and Petition for Hearing*.
m. July 19-20, 2023, EQC held a contested case hearing
n. February 1, 2024, *Findings of Fact, Conclusions of Law, and Order* was filed.
o. February 29, 2024, QLN's *Petition for Judicial Review of Agency Action* filed in this Court.

III. DISCUSSION

A. Standard of Review

The EQC determined forfeiture of the performance bond posted in this matter was appropriate based on its review of the record, testimony, and evidence received through the contested hearing and the filings of the parties. QLN challenges EQC's findings.

Wyoming Rules of Appellate Procedure, Rule 12, provides for judicial review of agency actions. Rule 12.09(a) limits the extent of review to the determination of

matters specified in W.S. 16–3–114(c). That statute requires reviewing courts to hold unlawful and set aside agency action, findings, and conclusions found to be:

> (A) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; [or]
>
> * * *
>
> (E) Unsupported by substantial evidence in a case reviewed on the record of an agency hearing provided by statute. W.S. 16–3–114(c)(ii).
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> * * *
>
> Our task is to examine the entire record to determine if substantial evidence exists to support the hearing examiner's findings. We will not substitute our judgment for that of the hearing examiner if his decision is supported by substantial evidence. Substantial evidence is relevant evidence which a reasonable mind might accept in support of the agency's conclusions.

Romero v. Davy McKee Corp., 854 P.2d 59, 61 (Wyo.1993).

> In reviewing questions of law, however, we do not defer to the agency's decision. If the conclusion of law is in accordance with law, we affirm it; if it is not, we correct it. *Aanenson v. State ex rel. Worker's Compensation Div.*, 842 P.2d 1077, 1079 (Wyo.1992).
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> Our review of an agency's findings of fact and conclusions of law is simple. First, if we can find from the evidence preserved in the record a rational view for the findings of fact made by the agency, we then say the findings are supported by substantial evidence. Using judicial reliance upon and deference to agency expertise in its weighing of the evidence, a reviewing court will not disturb the agency determination unless it is "clearly contrary to the overwhelming weight of the evidence on record." *Southwest Wyoming Rehabilitation Center*, 781 P.2d at 921.
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> Second, we ask if the conclusions of law made by the agency are in accordance with law. When we review agency conclusions of law, we are alert to three possibilities. The agency may correctly apply their findings of fact to the correct rule of law. In such case, the agency's conclusions are affirmed. But the agency could apply their findings of fact to the wrong rule of law or they could incorrectly apply their findings of fact to a correct rule of law. In either case, we correct an agency conclusion to ensure accordance with law. Our standard of review for any conclusion of law is straightforward. If

> the conclusion of law is in accordance with law, it is affirmed; if it is not, it is to be corrected.

Emp. Sec. Comm'n of Wyoming v. W. Gas Processors, Ltd., 786 P.2d 866, 871 (Wyo. 1990) (*internal citations omitted*).

B. Analysis

The Wyoming Environmental Quality Act, codified under Wyoming Statutes §§ 35-11-101 to -2101, was established in 1973. The policy and purpose of the Act are enumerated in Wyo. Stat. Ann. § 35-11-102, which provides

> Whereas pollution of the air, water and land of this state will imperil public health and welfare, create public or private nuisances, be harmful to wildlife, fish and aquatic life, and impair domestic, agricultural, industrial, recreational and other beneficial uses; it is hereby declared to be the policy and purpose of this act to enable the state to prevent, reduce and eliminate pollution; to preserve, and enhance the air, water and reclaim the land of Wyoming; to plan the development, use, reclamation, preservation and enhancement of the air, land and water resources of the state; to preserve and exercise the primary responsibilities and rights of the state of Wyoming; to retain for the state the control over its air, land and water and to secure cooperation between agencies of the state, agencies of other states, interstate agencies, and the federal government in carrying out these objectives.

As part of its charge to regulate land and water use, the DEQ is responsible for the oversight of mining operations. LMOs are governed by Wyo. Stat. § 35-11-401(e)(vi). It was under this statute that QLN applied for and received its LMO status. The provisions of that statute state

> (vi) Limited mining operations, whether commercial or noncommercial, for the removal of sand, gravel, scoria, limestone, dolomite, shale, ballast or feldspar from an area of fifteen (15) acres or less of affected land, excluding roads used to access the mining operation, if the operator has written permission for the operation from the owner and lessee, if any, of the surface. The operator shall notify the land quality division of the department of environmental quality and the inspector of mines within the department of workforce services of the location of the land to be mined and the postal address of the operator at least thirty (30) days before commencing operations. A copy of the notice shall also be mailed to all surface owners located within one (1) mile of the proposed boundary of the limited mining operation at least thirty (30) days

before commencing operations. The operator shall notify the land quality division of the department of environmental quality of the date of commencement of limited mining operations within thirty (30) days of commencing operations. Limited mining operations authorized under this paragraph are subject to the following:

(A) That the affected lands shall not be within three hundred (300) feet of any existing occupied dwelling, home, public building, school, church, community or institutional building, park or cemetery unless the landowner's consent has been obtained;

(B) Before commencing any limited mining operations, the operator shall file a bond to insure reclamation in accordance with the purposes of this act in the amount of two thousand dollars ($2,000.00) per acre, except for quarries for which the bond amount shall not exceed three thousand dollars ($3,000.00) per acre of affected land including roads used to access the mining operation. Within ninety (90) days after limited mining operations commence, the administrator may require the operator to post an additional bond per acre of affected land if he determines that such amount is necessary to insure reclamation. The operator shall post the additional bond not later than thirty (30) days after receipt of such notification;

(C) After the limited mining operations have ceased, the operator shall notify the administrator of such fact in the operator's next annual report and commence reclamation and restoration in compliance with the rules and regulations of the land quality division of the department of environmental quality. The rules and regulations for reclamation shall at all times be reasonable;

(D) Immediate reclamation will not be required if the landowner advises the department in writing of his intent to further utilize the product of the mine, and if he assumes the obligation of reclamation;

(E) The limited mining operations shall be terminated if the operator does not commence operations within five (5) years as noted in the annual report following notification to the land quality division of the department of environmental quality under this paragraph;

(F) Limited mining operations may continue for not more than five (5) years from the date of commencing operations unless a notification to extend operations is submitted to the land quality division administrator. Operators shall submit a notification of extension for every subsequent five (5) year period with the annual report;

(G) Limited mining operations shall be subject to rules governing the use of explosives pursuant to W.S. 35-11-402(d).

Wyo. Stat. Ann. § 35-11-401 (West). It is under this authority that DEQ brought its enforcement action against QLN, initially as NOVs, and then to enforce the allegations of continued non-compliance with the Settlement Agreement.

Petitioner's grounds for appeal consist of three (3) issues: First, Petitioner argues that the EQC's decision to forfeit the bond for LMO 1946ET is not supported by substantial evidence, constitutes an error of law, and is arbitrary and capricious based on the following factors:

i. The EQC's conclusion that Petitioner breached the terms of the Settlement Agreement is contrary to law, and

ii. The EQC's conclusion that Petitioner had a submission deadline for a reclamation plan is not supported by the evidence and is arbitrary and capricious.

Second, Petitioner states that the EQC's determination that mining outside the boundaries of the LMO as a basis for bond forfeiture is not supported by substantial evidence, ignores evidence in the record, constitutes an error of law, and is arbitrary and capricious.

Third, Petitioner argues that the EQC's conclusion that failure to stockpile topsoil constitutes a basis to forfeit bond is not supported by substantial evidence, ignores evidence in the record, constitutes an error of law, and is arbitrary and capricious.

In reviewing the EQC's order approving the forfeiture of the performance bond, the Court looks to an analysis under both a 'substantial evidence' standard of review and a *de novo* standard of review. The hearing officer's findings of fact as to whether QLN violated the provisions of the Settlement Agreement are reviewed under the 'substantial evidence" standard – determining whether substantial evidence exists in the record to support the hearing examiner's factual findings. *Batten v. Wyoming Dept. of Transp. Driver's License Div.*, 170 P.3d 1236, 1241 (Wyo. 2007). The hearing examiner, based on the factual findings, determined that the acts and/or omissions of QLN were supported by substantial evidence. This determination must be reviewed *de novo* to determine whether it was in accordance with applicable law. *Dale v. S&S Builders, Inc.*, 188 P.3d 554, 561-62 (Wyo. 2008).

In reviewing the entire record, the Court first determines whether there is sufficient evidence to conclude that QLN violated the terms of the Settlement Agreement. In summary of the timeline above, the EQC found that, on July 22, 2010, QLN was granted an LMO for its

property in Saratoga, Carbon County, Wyoming. The provisions of the LMO included that sufficient topsoil was to be salvaged, conserved, and stockpiled for final reclamation. A notice of violation was issued on September 20, 2019. The allegations in the NOV were that QLN mined outside the LMO's boundaries and failed to stockpile surface soil for later reclamation. The parties entered into a Settlement Agreement to resolve the NOV without litigation. This Settlement Agreement states in relevant part:

> 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 litigations pursuant to Wyo. Stat. Ann. § 35-11-901 (a)(ii), Quality Landscape therefore agrees to perform the following actions:
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> * * *
>
> 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. . .
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> * * *
>
> 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).
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> 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:
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> i. Quality Landscape must propose and submit an alternative plan to DEQ/LQD for the reclamation of LMO 1496ET. . .
>
> * * *
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> 4. . . . 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 . . .

* * *

f. Quality Landscape agrees that if Quality Landscape violates any term of the 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.

Settlement Agreement, pp. 2-5. The date of the final signature on the Settlement Agreement is July 29, 2020, by Todd Parfitt, Department of Environmental Quality Director.[32] This would indicate that QLN's 24-month deadline to submit its development plan would be July 29, 2022; however, in two annual reports, the date was (presumably erroneously) stated to be July 8, 2022, the date Mr. Stevens signed the Agreement for QLN.[33] The deadline was then corrected to July 29, 2022, in the Annual Report dated August 29, 2022, in which DEQ declared QLN to violate the terms of the Settlement Agreement for failing to provide an approved development plan to DEQ[34] and issued NOV 6176-22 on August 12, 2022.[35] NOV 6176-22 allowed QLN an additional forty-five (45) days to cure the violation.[36]

On October 3, 2022, in response to a request from QLN for an extension of time to cure, DEQ granted an extension from October 6, 2022, until the close of business on October 7, 2022.[37]

[32] *Settlement Agreement*, p. 9.
[33] ROA, pp. 723, 732.
[34] ROA, p. 737.
[35] ROA, p. 796.
[36] ROA, p. 796.
[37] ROA, p. 798.

On October 17, 2022, NOV 6183-22 was issued for continued non-compliance with all prior NOVs and the Settlement Agreement.[38] In that Notice's cover letter, EQD/LDQ specifically informed QLN:

> This, unfortunately, leaves LQD with no other option except to issue this NOV to initiate the process for forfeiting the reclamation performance bond for Limited Mining Operation (LMO) ET1496 for violating both the Settlement Agreement and the Wyoming Environmental Quality Act (Act). LQD may also refer this matter to the Wyoming Attorney General's Office if the forfeited bond is inadequate to cover the costs of final reclamation and may seek to enforce the stipulated penalty contained in the Settlement agreement, as well as any injunctive and other relief as provided under the Act.

ROA at 799. Accordingly, DEQ initiated bond forfeiture proceedings on November 30, 2022.[39]

Thus, from September 20, 2019, until December 1, 2022, DEQ/LDQ allowed QLN the opportunity to conform to the requirements of the LMO issued in July 2010. This is a total period of 3 years, 2 months, and 12 days that DEQ allowed for QLN to comply and cure violations with many intervening inspections, notices, violations, and extensions. There is no documentation that QLN complied with the terms of the Settlement Agreement by providing DEQ with an approved plan for the LMO site or a plan for reclamation. There is overwhelming evidence that DEQ went far and above any minimal notice requirements to allow QLN to resolve the issues for over 3 years while, during the same time period, QLN made no discernible effort to cure violations and/or comply with the Settlement Agreement. The Court finds that EQC's conclusion that the QLN breached the terms of the Settlement Agreement is not contrary to law and is supported by substantial evidence.

QLN argues that despite the Settlement Agreement, there was no submission deadline for a reclamation plan. QLN contends that the terms of the Settlement Agreement do not indicate a timeframe for the filing of a reclamation plan with DEQ. As stated above, the Settlement Agreement called for "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."[40]

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[38] ROA, p. 800.
[39] ROA, pp. 1-13.
[40] *Settlement Agreement*, p. 2.

QLN counters that subsection 7(d) gives a greater time frame for compliance. QLN reads clause 7(d) to require QLN to create and submit a reclamation plan but does not indicate a time certain after the expiration of the 24-month deadline within which this plan must be filed.[41] QLN further interprets that the Settlement Agreement requires them to submit the reclamation plan within 90 days of commencement of the [reclamation] plan.[42] Then, DEQ would have 90 days to approve the plan before QLN would be required to accomplish the plan within another 90 days.[43] This interpretation leads to an implausible result. It would allow QLN unlimited time to create a plan before choosing to begin reclamation and toll the series of 90-day periods. Rather, DEQ points to the Settlement Agreement verbiage that, "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).***"[44] Then, 7(d) states that "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.***"[45] This language indicates there is no period between the expiration of the 24-month Settlement Agreement period and the initiation of reclamation and plan submission. DEQ further points to the Wyoming Environmental Quality Act, which provides

> (C) After the limited mining operations have ceased, the operator shall notify the administrator of such fact in the operator's next annual report and commence reclamation and restoration in compliance with the rules and regulations of the land quality division of the department of environmental quality. The rules and regulations for reclamation shall at all times be reasonable;
> (D) Immediate reclamation will not be required if the landowner advises the department in writing of his intent to further utilize the product of the mine, and if he assumes the obligation of reclamation;
> (E) The limited mining operations shall be terminated if the operator does not commence operations within five (5) years as noted in the annual report following notification to the land quality division of the department of environmental quality under this paragraph;
> (F) Limited mining operations may continue for not more than

[41] *Brief of Petitioner*, pp.20-22.
[42] *Brief of Petitioner*, p 25.
[43] *Brief of Petitioner*, p. 25.
[44] *Settlement Agreement*, p. 3, ¶7(c), *emphasis added.*
[45] *Settlement Agreement*, p. 3, ¶7(d)(i), *emphasis added.*

> five (5) years from the date of commencing operations unless a notification to extend operations is submitted to the land quality division administrator. Operators shall submit a notification of extension for every subsequent five (5) year period with the annual report.

Wyoming Statutes § 35-11-401(e)(vi).

In addition, QLN argues that the Town of Saratoga's failure to approve a site plan made its compliance with the Settlement Agreement impossible. Under subsection 7(c), "Quality Landscape must provide an approved site plan to DEQ/LQD within twenty-four (24) months of signing the agreement reflecting the use and/or development of LMO 1496ET by Quality Landscape." … (vi) "The site plan must be approved of by the Town of Saratoga."[46] The Town of Saratoga was not a party to the Settlement Agreement. The Settlement Agreement was a contract between the DEQ and QLN, and as such, it was only enforceable between those two parties. At no time did QLN provide an approved site plan or communicate to DEQ its inability to comply with Section 7(c) of the Settlement Agreement, triggering Section 7(d). The Court finds substantial evidence in the record for the EQC's finding that QLN violated the Settlement Agreement and its conclusion that QLN had a submission deadline or a reclamation plan and is not arbitrary and capricious.

Petitioner then argues that this violation does not require the forfeiture of the performance bond as a sanction. QLN asserts that the increase in the performance bond to $66,000.00 from the $1,000.00 posted at the LMO's inception was relief sought by DEQ for QLN's alleged failure to stockpile soil for reclamation.[47] However, DEQ noted that the increased bond was not a sanction or a way to cure any violation by QLN. Rather, DEQ informed QLN that the bond increase was required to ensure reclamation would be possible. The increase was based on "engineering analysis indicate[ing] that the reclamation performance bond is set at $66,000.00 to achieve adequate and stable reclamation of LMO1496ET following mineral extraction."[48] Nowhere in this notice to QLN does DEQ indicate or allude to this increase being a sanction to cure any past violations.

The Act's bond forfeiture requirements and process are enumerated in W.S. § 35-11-421:

> (a) If the director determines that a performance bond should be forfeited because of any violation of this act, he shall, with the

[46] *Settlement Agreement*, p.2.
[47] *Brief of Petitioner*, pp. 33-34.
[48] ROA, p. 780.

approval of the council, make formal request of the attorney general to begin bond forfeiture proceedings.

(b) The attorney general shall institute proceedings to forfeit the bond of any operator by providing written notice to the surety and to the operator that the bond will be forfeited unless the operator makes written demand to the council within thirty (30) days after his receipt of notice, requesting a hearing before the council. If no demand is made by the operator within thirty (30) days of his receipt of notice, then the council shall order the bond forfeited.

(c) The council shall hold a hearing within thirty (30) days after the receipt of the demand by the operator. At the hearing, the operator may present for the consideration of the council statements, documents, and other information with respect to the alleged violation. At the conclusion of the hearing, the council shall either withdraw the notice of violation or enter an order forfeiting the bond.

W.S. § 35-11-421. DEQ provided evidence that they complied with the Act and that forfeiture of the entire performance bond of $66,000.00 was appropriate given QLN's repeated violations of the Act and the Settlement Agreement, the lack of communication or response when afforded the opportunity to dispute allegations thereof, and complete inaction to cure any and all violations over the course of more than three years. Further, DEQ has an obligation under the statute to enforce violations of the act and, therefore, had an obligation to enforce the Settlement Agreement, including the reclamation of the LMO site. The Court finds that EQC's conclusion that forfeiture of the bond for mining outside of the LMO is supported by substantial evidence, considering all of the evidence, does not constitute an error of law, and is not arbitrary and capricious.

Finally, QLN argues that DEQ should be estopped from asserting and advancing as a basis for forfeiture of the bonds a property condition and/or conduct of QLN because it had accepted and/or refused to act upon QLN's prior violations. QLN argues that the "EQC should have considered Petitioner's affirmative defense of estoppel."[49] However, QLN admitted that it did not raise this issue in front of the EQC during argument and testimony but only addressed it in its *Proposed Findings of Fact and Conclusions of Law*, which the EQC requested in lieu of closing arguments. QLN states that "Petitioner's closing argument, in the form of the Petitioner's Proposed FOF & COL, explicitly raised the estoppel argument to EQC for consideration and deliberation

[49] *Brief of Petitioner*, p. 31.

based on the evidence."[50] The issue of estoppel was never called to the attention of the EQC during the administrative hearing.

> Unless adverse parties appearing before administrators or administrative bodies are required to frame issues and contentions for decision by the hearing body, such hearings will become meaningless charades necessitating upon appeal what would be factually a trial de novo contrary to the purpose and philosophy of the Administrative Procedure Act. For a reviewing court to reach an asserted proposition of an appellant the issue must have been raised for decision before the administrative body or administrator responsible for the decision.

Bancorporation v. Bonham, 527 P.2d 432, 439 (Wyo. 1974). QLN's inclusion of the argument for the first time in its *Proposed Findings of Fact, Conclusions of Law, and Order of Quality Landscape and Nursery, Inc.*, submitted to the EQC after the hearing does not constitute having been "raised for decision before the administrative body or administrator responsible for the decision." *Id.*

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that EQC's *Findings of Fact, Conclusions of Law, and Order* filed February 1, 2024, is hereby **AFFIRMED**.

SO ORDERED this 22nd day of January 2025.

Dawnessa Snyder

HON. DAWNESSA SNYDER
DISTRICT JUDGE

Copies:
James R. Salisbury
D. David DeWald
Gregory Weisz

[50] *Reply Brief of Petitioner*, p. 10.