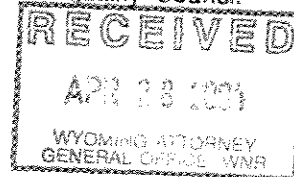


**FILED**

MAY 25 2004

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

Terri A. Lorenzon, Director  
Environmental Quality Council



**IN THE MATTER OF THE NOTICE OF )**  
**VIOLATION ISSUED TO )**  
**CUNDY ASPHALT PAVING )**  
**CONSTRUCTION, INC ) DOCKET NUMBER**  
**ATTN: MR. ERNIE SKRETTEBERG )**  
**P.O. BOX 2469 )**  
**GILLETTE, WYOMING 82717 )**  
**RE: PERMIT 546(s) )**

---

**STIPULATED FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
CONSENT AGREEMENT**

---

**STIPULATED FINDINGS OF FACT**

1. Cundy Asphalt Paving Construction, Inc. (Cundy) is a small mining operation located north of Buffalo and near the airport in parts of Sections 9, 15, 16, 17 and 22 of Township 51 North, Range 82 West in Johnson County, Wyoming, also known as the "Irvine Pit".
2. A complaint inspection alleges that Cundy conducted mining operations outside of the hours of 7:00 a.m. and 5:00 p.m. as set forth in its permit, number 546(s).
3. Failure to abide by the hours of operation is a violation of a permit condition and Order of the Environmental Quality Council Order dated December 28, 1983.
4. Wyoming Statute '35-11-901(a) provides that any person who violates any provision of the Environmental Quality Act or any rule, standard, permit, license or variance adopted there under is liable to a penalty of ten thousand dollars (\$10,000.00) for each day of violation, which penalty may be recovered in a civil action brought by the Attorney General in the name of the People of the State of Wyoming.

**CONCLUSIONS OF LAW**

1. The DEQ, 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/LQD is the agency vested by statute W.S. § 35-11-110(a) with the responsibility for administering the environmental laws of the State of Wyoming and for administering all provisions of the Wyoming Land Quality Rules and Regulations.

2. Pursuant to W.S. 35-11-901(a), any person who violates any provision of the Environmental Quality Act, or any order, rule, standard, permit, license, or variance adopted thereunder, is subject to a penalty not to exceed ten thousand dollars (\$10,000) for each violation for each day during which the violation continues. The penalty may be recovered in a civil action brought by the Attorney General in the name of the People of the State of Wyoming.

3. W.S. § 35-11-901(a)(ii) authorizes stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, Cundy Asphalt Paving Construction, Inc. and the DEQ/LQD hereby stipulate and agree as follows:

### **CONSENT AGREEMENT**

1. Cundy Asphalt Paving consents and agrees that it will limit its hours of operation to those hours between 7:00 a.m. and 5:00 p.m. through the end of scheduled mining during 2004 at the Irvine Pit.

2. Cundy consents and agrees that reclamation at the Irvine Pit shall be completed by the end of 2007 as set forth in the September 10, 2003, approved Reclamation Site Plan on Sheet L-3; provided, however, that if the permit is amended to include any additional adjoining land, the reclamation shall proceed as set forth in the amended permit.

3. Cundy waives any statute of limitations which may apply to an enforcement action by the DEQ involving the specific matters described in Notice of Violation No. 3407-02 in the event that Cundy fails to fulfill its obligations under this Settlement Agreement.

4. Nothing in this agreement precludes DEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation, Order and/or pursuing additional penalties, should Cundy violate the Wyoming Land Quality Act or applicable rules and regulations in the future.

5. This Settlement Agreement shall be admissible by either party without objection by the other party in any action between these parties.

6. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.

[INTENTIONALLY LEFT BLANK]

7. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

CUNDY ASPHALT PAVING CONSTRUCTION, INC. :


Signed: 

Date: April 23, 2004


Typed: Ernest M. Skretteberg

Title: Vice President/General Manager

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

  
John Corra, Director

Date: 5/3/04

  
Richard Chancellor, Administrator  
Land Quality Division

Date: 30 April 04