

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

**FILED**

AUG 11 2010

Jim Ruby, Executive Secretary  
Environmental Quality Council

IN THE MATTER OF THE NOTICE OF)  
VIOLATION AND ORDER ISSUED TO: )

Mr. Bruce Lawson )  
Permitting and Reclamation Manager )  
Black Hills Bentonite, LLC )  
P.O. Box 9 )  
Mills, WY 82644 )

DOCKET NUMBER 4708-10

NOTICE OF VIOLATION AND ORDER

NOTICE IS HEREBY GIVEN THAT:

1. Black Hills Bentonite, LLC (BHB) is the operator of a bentonite processing facility located in Natrona County, Wyoming. The processing site has received authorization for storm water discharges associated with processing activities through the Wyoming Pollution Discharge Elimination System (WYPDES), authorization WYR320096. BHB utilizes six retention basins on the north side of the facility to capture bentonite laden storm water run-off from facility operations.
2. The Wyoming Department of Environmental Quality, Water Quality Division (WQD) conducted an inspection of the facility on May 19, 2010. Violations from this inspection included: an unauthorized discharge of bentonite laden water from a breach in the berm of the most eastern retention basin that has entered Casper Creek (class 2AB) and inadequate Best Management Practices (BMPs) to control erosion and sediment transport off the site.
3. The Mineral Mining General Permit (MMGP) states in **Section 8.5 Visible or measurable erosion** "*Visible or measurable erosion, associated with an industrial activity, which leaves the industrial site as a result of inadequate or ineffective SWPPP design or maintenance of BMPs is prohibited. Visible or measurable erosion is defined as: Section 8.5.2 Evidence of concentrated flows of water over bare soils, turbid or sediment laden flows, or evidence of on-site erosion on bare slopes, where runoff of water is not filtered, treated, or captured on the site using BMPs specified in the SWPPP.*" Failure to meet these requirements is a violation of Chapter 2 of the Wyoming Water Quality Rules and Regulations.
4. The Mineral Mining General Permit (MMGP) states in **Section 8.6 Recovery of offsite sediment** "*If any measurable quantity of sediment leaves the industrial site because of structural failure or inadequate design of the BMPs, the sediment shall be placed back on site or properly disposed of, as soon as is prudent.*"

This Notice is being sent to you pursuant to W.S. 35-11-701(c)(i), which requires that in any case of the failure to correct or remedy an alleged violation, the director of the Department of Environmental Quality shall cause a written notice to be issued and served upon the person alleged to be responsible;



**ORDER**

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL – STATE OF WYOMING**

**WHEREFORE IT IS HEREBY ORDERED THAT:**

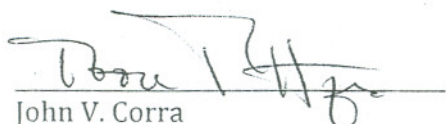
1. BHB shall immediately submit to the WQD a plan of action to meet WYPDES storm water requirements for the facility. This information shall be received by the WQD no later than 30 days from the date of this NOV and Order.
2. Sediment from the plant site and sediment ponds has been deposited on the Casper Creek flood plain from immediately east of the ponds downstream to a point about 1/10 mile above the Salt Creek Highway Bridge. Excessive sediment has also been deposited south of the plant on an adjoining property (Excal, Inc.). As required in the permit (Part 8.6), BHB shall remove excess sediment from the flood plain and adjoining property and reclaim these areas with native or adapted vegetation. BHB shall include in the plan required in item 1 above, the proposed extent of sediment removal and a proposed reclamation and sediment control plan.
3. Settling and filtration alone are inadequate to reduce off-site transport of sediment from the plant site. BHB shall investigate the applicability and efficacy of other sediment control practices to improve sediment retention from the plant site. BHB shall report to the WQD no later than 60 days from the date of this NOV what new or modified practices are to be implemented at the plant. A rationale for selecting those BMPs shall be included as well as a proposed schedule for implementation. Additional or alternative best management practices (BMPs) shall be installed and operational by February 28, 2011.
4. As allowed under the Mineral Mining General Permit, Part 7.3, BHB shall collect samples of storm water discharges from any of the settling ponds between the plant and Casper Creek at least once each month. Discharges from only one pond need be sampled. But if any pond discharges during the month, BHB shall collect a sample. Samples shall be analyzed for Total Suspended Solids (TSS) using a test procedure approved under federal regulation at 40CFR136.
5. Monthly sampling is required effective immediately and will continue through March 2012. Results must be reported to the WQD Storm Water Program Coordinator via phone (307-777-7570) or e-mail (bsahl@wyo.gov). No discharge during any month shall also be reported. This is a reporting requirement to gather additional data and not an effluent limit.
6. As samples for TSS are collected, BHP will also monitor in-stream turbidity in Casper Creek above the plant site and below the plant site (and above the Salt Creek Highway bridge). Turbidity will be reported in Nephelometric Turbidity Units (NTUs). Report results by telephone or e-mail as described above.

This ORDER is final unless, no later than ten (10) days after the date this notice is received; it is appealed by filing two written requests for a hearing before the Environmental Quality Council. If a hearing is requested, the first hearing petition shall be mailed to the Chairman, Wyoming Environmental Quality Council, Room 1714 Herschler Building, 1<sup>st</sup> Floor West, 122 West 25<sup>th</sup> St., Cheyenne, Wyoming 82002. The second petition shall be mailed to the Director, Wyoming Department of the Environmental Quality, Herschler Building, 4<sup>th</sup> Floor West, 122 West 25<sup>th</sup> St., Cheyenne, Wyoming 82002. Both petitions must be sent by certified mail, return receipt requested.

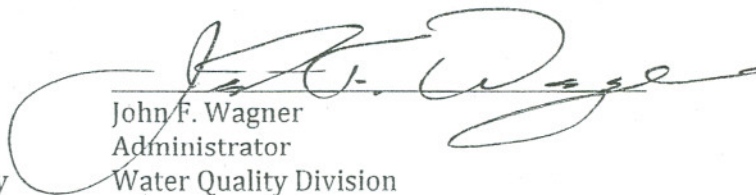
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**NOTHING IN THIS NOTICE OF VIOLATION (NOV) AND ORDER** shall be interpreted to in any way limit or contravene any other remedy available under the Environmental Quality Act, nor shall this NOV AND ORDER be interpreted as being a condition precedent to any other enforcement action.

Ordered this 16th day of July, 2010.



John V. Corra  
Director  
Department of Environmental Quality



John F. Wagner  
Administrator  
Water Quality Division

**PLEASE DIRECT ALL INQUIRIES TO:** Kevin M. Wells, WYPDES Natural Resource Program Manager, Wyoming Department of Environmental Quality, Water Quality Division, Herschler Building, 4<sup>th</sup> Floor West, 122 West 25<sup>th</sup> Street, Cheyenne, Wyoming 82002. Telephone 307-777-8669.

JVC/JFW/KMW/bb/10-0615

cc: David Gwisdalla, 8ENF-W-NP, EPA Region 8 (PDF)  
Jim Eisenhauer, WYPDES Inspection Program Coordinator (PDF)  
Bill DiRienzo ► Kevin Wells ► Barb Sahl (PDF)  
NOV Docket 4708-10  
Environmental Quality Council  
Director, DEQ  
Keith Guille, DEQ Public Information Office (PDF)