

10-4202

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

NOTICE OF VIOLATION
AND ORDER

FILED

NOV 17 2010

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF THE NOTICE OF)
VIOLATION ISSUED TO)
KOCH CONSTRUCTION, INC.)
ATTN: AARON KOCH)
P.O. BOX 288)
PINEDALE, WY 82941)
RE: SMALL MINE PERMIT 761(s))

DOCKET NO. 4764-10

NOTICE

NOTICE IS HEREBY GIVEN THAT:

1. This Notice of Violation is being sent to you pursuant to Wyoming Statute 35-11-701(c)(i) which requires that a written notice shall be issued in the case of failure to correct or remedy an alleged violation.
2. On July 27, 2010, an Annual Inspection of Koch Construction, Inc., Small Mine Permit No. 761(s), was conducted by Tanya King of the Land Quality Division, District II. The pit is located in Sec. 21, T.34N., R.111W., Sublette County, Wyoming.
3. A copy of the inspection report was sent by certified mail to the operator, who signed for receipt of the report on September 22, 2010. To date there has been no response from the operator in regards to any of the action items outlined in the report.
4. The inspection revealed that Koch Construction, Inc. mined outside the permit area along the south slope of the entrance road.

The entrance road to the pit is described in the mine plan as an existing road which will be left in place following reclamation. Map 6 of the Mine Plan shows the road with borrow ditch and slopes to average about 40 feet in width. Maps 7A and 7B only show the surface width of approximately 20 feet; pre and post mining. Map 8, the reclamation map, shows the width with borrow ditch and slopes to be about 40 feet. The Appendix C legal description of the entrance road is a 40 foot wide corridor; approximately 4 acres. Most of the road is located on private land.

The area along the road which was mined in the spring of 2010 results in the road width with borrow ditch and slopes averaging about 80 feet; resulting in approximately 6.4 acres of disturbance, 2.4 acres more than what was permitted.

Mining adjacent to the road is clearly outside the permit area. Mining the south sidewall of the road during the time mining was not allowed in the pit, due to stipulated restrictive dates for wildlife protection set by BLM, was clearly for the purpose of continued production.

Mining in an unpermitted area adjacent to the entrance road is in violation of the Wyoming Statute 35-11-401(a) and 35-11-415(a).

5. Koch Construction, Inc. has failed to follow the Mine Plan (application approved May 15, 2009) page III.4 item 7.) first paragraph:

“Koch Construction, Inc. will prevent the endangerment of public safety and human and animal life by stockpiling topsoil along the edge of the permit boundary to provide a physical barrier between the active mining operation highwall and the lands outside of the permit area.”

During the inspection it was observed that no berm existed above the west highwall, which at the time of the inspection was approximately 20 feet in height and vertical to overhanging.

6. Failure to follow the mine plan is in violation of Wyoming Statute 35-11-415(b)(ii)
7. These violations have not been corrected or remedied nor has the operator provided any information to the Land Quality Division concerning the violations.
8. 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 hereunder 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.

ORDER

WHEREFORE, IT IS HEREBY ORDERED THAT:

1. Mr. Aaron Koch shall perform the following by January 15, 2011:
 - a.) Secure additional bonding in the amount of \$23,000; increasing the total bond for this operation to \$52,000.
 - b.) Provided an engineered drainage design for the haul road including ditching, culverts and erosion control to handle a 10 year/24 hour storm. Culverts must be a minimum of 18 inches in diameter, regardless of the flow calculations. Riprap must be provided at the culvert outlets.
 - c.) Prepare and submit revisions to the permit, mine plan and the reclamation plan to include the entire area affected by the road. The reclamation plan must reduce the road surface back to a maximum of 40 feet in width; top of cut-slope to edge of road fill.
 - d.) Prepare and submit revisions to the permit to include the BLM Contract under the tab “Other Permits”.
2. Mr. Arron Koch shall perform the following by June 30, 2011:
 - a.) Pull topsoil back from the slope crest along the haulroad. Either spread the topsoil thinly behind the highwall crest and seed it, or pick up the topsoil and stockpile it with the other topsoil piles.
 - b.) Remove any material pushed over the slope north of the road and seed the area with the approved reclamation seed mix.
 - c.) Build a temporary safety berm above the west highwall not closer than 20 feet nor greater than 40 feet from the highwall.

THIS ORDER is final and binding, unless not later than ten (10) days after the day the Order is served, it is appealed by filing a written request for a hearing before the Environmental Quality Council. The request should be mailed to:

Chairman
Environmental Quality Council
Herschler Building, 122 West 25th Street
Cheyenne, WY 82002

A copy of the appeal shall be sent to:

Director
Department of Environmental Quality
Herschler Building, 122 West 25th Street
Cheyenne, WY 82002

NOTHING IN THE ORDER shall be interpreted to in any way limit or contravene any other remedy available under the Environmental Quality Act, nor shall this order be interpreted as being a condition precedent to any other enforcement action.

ORDERED this 16th day of November, 2010.



John V. Corra
Director
Department of Environmental Quality



Donald R. McKenzie
Administrator
Land Quality Division

Please direct all inquiries regarding this Notice of Violation to Mr. Mark Moxley, Land Quality Division District II Supervisor, 510 Meadowview Dr., Lander, WY 82520, telephone 307-332-3047.

cc: Don McKenzie, LQD Administrator
Mark Moxley, District II, Lander
Environmental Quality Council
Luke Esch, AG