

SUMMARY SHEET VIOLATION FILE FOR TFN 5 3/100

NOV #100559
Docket #4494-09

2/26/09 Memo from WESCO (Shaun Seebaum & Joe Strobbe) concerning blaster training that was conducted on February 24th through February 26th.

4/09 Doug Emme heard comments concerning bogus training by WESCO.

5/20/09 Memo from Doug Emme, Blasting Engineer, to Don McKenzie, LQD Administrator, attaching copies of the NOV and letters that were sent to each party involved.

5/20/09 Memo from LQD Administrator to DEQ Director showing the civil penalty should be \$120,000.

5/20/09 **NOV issued for falsifying information concerning blasters' certification classes, thus leading to certification of blasters who hadn't taken the class.**

5/20/09 Letter from Doug Emme, LQD Blasting Engineer, to Shawn Seebaum of WESCO stating that his blaster certification was being revoked effective May 26, 2009.

5/20/09 Letter from Doug Emme, LQD Blasting Engineer, to Joe Strobbe of WESCO stating that his blaster certification was being revoked effective May 26, 2009.

5/20/09 Letter from Doug Emme, LQD Blasting Engineer, to Jerry Hugen of WESCO stating that his blaster certification was being suspended effective May 26, 2009.

5/20/09 Letter from Doug Emme, LQD Blasting Engineer, to Marty Davies of WESCO stating that his blaster certification was being suspended effective May 26, 2009.

5/20/09 Memo from Doug Emme, Blasting Engineer, to Don McKenzie, LQD Administrator, discussing the suspensions and revocations of the blaster certificates for the four individuals noted above.

5/21/09 Doug Emme's meeting notes of this day between Joe Strobbe and Shawn Seebaum of WESCO.

5/26/09 Letter from Joe Strobbe of WESCO to the DEQ Director requesting an informal conference.

5/28/09 Email between Don McKenzie, LQD Administrator, and Doug Emme, LQD Blasting Engineer, concerning the request by Mr. Joe Strobbe for an informal conference.

5/28/09 Letter from Doug Emmer, LQD Blasting Engineer, to Shawn Seebaum, WESCO Plant Manager, letting him know which blasters have current blasting certificates.

6/1/09 Letter sent from LQD to Mr. Joe Strobbe letting him know an informal conference has been set for June 23rd from 9 – 10 am.

6/1/09 Memo from Doug Emme, Blasting Engineer, to Don McKenzie, LQD Administrator discussing his conversation with Tom Frederick of WESCO.

6/3/09 Director's letter sent to Shawn Seebaum and Joe Strobbe of WESCO.

6/4/09 Letter from Doug Emme, Blasting Engineer, to Jim Stratton of WESCO concerning blaster recertification requirements.

6/4/09 Letter from Doug Emme, Blasting Engineer, to Brad Brown of WESCO concerning blaster recertification requirements.

6/4/09 Memo from Doug Emme, Blasting Engineer, to Don McKenzie, LQD Administrator, concerning his meeting with representatives of companies performing blaster recertification training.

6/15/09 Tom Frederick's information

6/15/09 Letter sent from LQD to Mr. Tom Frederick letting him know an informal conference has been re-scheduled for July 13th from 1 – 2 pm.

7/2/09 Memo from Doug Emme, Blasting Engineer, to LQD Administrator, concerning Jerry Hugen. Mr. Hugen's passed the new exam with a 90% and has had his license issued to him by Doug Emme.

7/10/09 Memo from Doug Emme, Blasting Engineer, to LQD Administrator concerning the WESCO training class he had audited. He recommended that LQD reinstate training privileges for WESCO.

7/10/09 Memo from Doug Emme, Blasting Engineer, to LQD Administrator concerning blaster certification for Marty Davies. On his second attempt, he passed the blaster test and Doug had issued him a new blaster certificate.

7/14/09 Memo from Doug Emme, Blasting Engineer, to DEQ Director and LQD Administrator concerning the abatement actions that have been taken by WESCO.

7/15/09 Letter from Joe Strobbe of WESCO to Doug Emme, LQD District III, requesting that his blasting certificate be reinstated.

7/24/09 Memo from Doug Emme to DEQ Director with recommendations/requirements for Joe Strobbe's reinstatement of his Wyoming blaster certification.

8/17/09 **DIRECTOR'S FINDINGS OF FACT - reduced penalty to \$110,000 - Joe Strobbe's request to be reinstated was granted pending successful completion of the blaster's exam.**

9/08/09 **NOTICE OF APPEAL AND REQUEST FOR HEARING ISSUED BY THE EQC.**

9/10/09 Email from Don McKenzie to Doug Emme letting him know that WESCO has asked for a hearing with the EQC.

9/11/09 Termination letter sent by Doug Emme to Joe Strobbe.



Department of Environmental Quality



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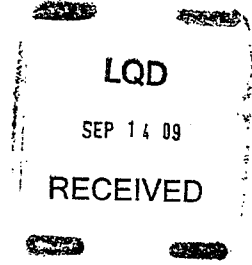
Dave Freudenthal, Governor

John Corra 9/14/9

John Corra, Director

September 11, 2009

**CERTIFIED MAIL NO. 7009 1410 0000 9032 8787
RETURN RECEIPT REQUESTED**



Mr. Joe Strobbe
WESCO
P.O. Box 40
Wright, WY 82732

RE: Notice of Violation No. 100559, Docket No. 4494-09

Dear Joe:

Attached to this letter is the termination for the referenced Notice of Violation that was issued to WESCO on May 20, 2009. All the required abatement actions have been completed in a timely manner and with the Director's findings from the Informal Conference the companies training privileges have been restored and he has given you directions for reinstatement of your Wyoming Blaster Certificate.

If you have any questions please call me.

Sincerely,

Doug Emme
Blasting Engineer

/de
Attachment

xc: Cheyenne LQD File (with att.)
OSM-Casper Field Office

CAFILES\MISC\WESCO-LT911.09E



WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION
CHEYENNE, WY

LQD
SEP 14 09
RECEIVED

PERMIT NO. N/A
DOCKET NO. 4494-09

VACATION OR TERMINATION OF NOTICE OR ORDER

To the Following Permittee or Operator or Licensee:

Name WESCO

Mailing Address P.O. Box 40, Wright, WY 82732

Under the authority of the Wyoming Environmental Quality Act of 1973, as amended, with respect to:

Notice of Violation No. 100559, dated May, 20, 2009

Cessation Order No. _____, dated _____

Violation No. 100559 is hereby Terminated _____ Vacated because:

Violation No. _____ is hereby _____ Terminated _____ Vacated because:

Violation No. _____ is hereby _____ Terminated _____ Vacated because:

WESCO completed all the required remedial actions: Mr. Jerry Hugen and Mr. Marty Davies acquired the necessary training, took and passed the certification exam and were issued new blaster certificates; documentation of training for all WESCO blasters was provided to LQD in a timely fashion; WESCO had a training class in July that was audited by the LQD blasting engineer.

Doug Emme
Printed Name of Designated Representative

Date of Service September 11, 2009

Signature of Designated Representative

Manner of Service Certified Mail

Proof of Service Return Receipt Requested Person Served Joe Strobbe

cc: Cheyenne LQD
District Office
OSM - Casper Field Office

Brosius, Becky

From: McKenzie, Don
Sent: Thursday, September 10, 2009 8:04 AM
To: Brosius, Becky
Subject: FW: Westco

Becky, pls copy the NOV file with this email.

From: Emme, Douglas
Sent: Thursday, September 10, 2009 7:09 AM
To: McKenzie, Don
Subject: RE: Westco

Don,
Both of the blasters, Jerry Hugen and Marty Davies, have gotten training, taken and passed the certification exam and have valid Wyoming Blasters Certificates. Mr. Strobbe has talked to me about coming in and taking the exam in October per the Director's Findings from the Informal Conference. Yesterday Mr. Seebaum (the fired manager) called me and talked to me about how he could get his license reinstated. I told him the first step was to write a letter requesting it and we would proceed from there.

I suppose for that amount of money an appeal was to be expected. And going before the EQC will be a crap shoot and WESCO can bring their high powered lawyer so who knows how that will play out. But if nothing else it delays the payment many months and that is a benefit to them.

I also need to abate the NOV since all the required abatement items have been done.

doug

From: McKenzie, Don
Sent: Wednesday, September 09, 2009 4:32 PM
To: Emme, Douglas
Cc: Rogaczewski, Mark
Subject: Westco

Westco has appealed the DEQ penalty assessment to the EQC. Once the document arrives I will send it on to you. Doug, can you give me an update on the Westco folks who had licenses revoked? Have they got them back?

Pls take w/ n

John, I am
ok w/ Doug's
Rec's Are
you?
Don
07/28/09
you
Don't call

MEMORANDUM

TO: John Corra, DEQ Director

THROUGH: Don McKenzie, LQD Administrator *DM ok*

FROM: Doug Emme, Blasting Engineer *DE*

DATE: July 24, 2009

SUBJECT: Reinstatement of Mr. Joe Strobbe's Wyoming Blaster Certification, TFN 5 3/100

Mr. Joe Strobbe sent me the attached letter dated July 15, 2009 requesting reinstatement of his Wyoming Blaster Certification. He made a verbal request for this during the Informal Conference regarding the WESCO Notice of Violation, number 100559, on July 13, 2009 in Cheyenne.

Wyoming LQD revoked his blaster certification effective May 26, 2009 as a result of the investigation of falsification of training records that led to the NOV.

I audited a WESCO class that Mr. Strobbe was the primary presenter at from July 7-9, 2009 in Gillette. The class was a very good class and he and WESCO did a good job putting on the class. It was very good training for blasters. I have recommended that the WESCO training privileges be reinstated based on my audit of the class.

I think the facts that Mr. Strobbe presented during the Informal Conference and in the attached letter are probably a fair assessment of what occurred. Based on my experience with Mr. Strobbe, the quality of the recent class, the companies willingness to rebuild their professional relationships, and their reputation I recommend that we allow Mr. Strobbe to apply for recertification. I think that at a minimum he should be required to take the latest version of the Wyoming Blaster Certification exam and pass it before we reinstate his license. I would also recommend that if or when this occurs that LQD reinstate his license with the same expiration date that it currently carries. The WESCO file should continue to show that his Wyoming Blaster Certification was revoked for cause from May 26, 2009 until it was reinstated.

If either of you have any other ideas for reinstatement of his license please let me know.

/de
Attachment

*Becky,
Pls paper
our NOV
file + send
in to Mr.
Corra*

C:\FILES\MISC\WESCO-MM724.09E

DEQ-WESCO 000006

*MJR
7/24/09*



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RECEIVED

July 15, 2009

Mr. Doug Emme
Blasting Engineer
Department of Environmental Quality
Sheridan, WY

Dear Doug:

This letter is a formal request for the reinstatement of my Wyoming Blasting Certificate, WS-0556-07, and an explanation of why I feel vacating the revocation is justified.

The document that created the problem by our people was careless and negligent. Their thought was that all the training I had done through the years was more than enough to meet the requirements. The author of the document made a devastating error by arbitrarily committing to three fictitious dates of training. My only involvement in this document was nothing more than a hurried signature without reading it. This is an act I will always regret and apologize for.

As I stated in our conference, I have spent a significant part of my career training blasters in the field and in the classroom. I am proud of our training program that I have helped WESCO put together and the positive results it has yielded. I have always felt strongly about the education of blasters and consequently have been heavily involved with numerous agencies enhancing various programs.

My role in this unfortunate incident was minimal. My wish is that you agree with this assessment and will reinstate my blasters certificate.

Thank you for your time and attention to this matter.

Respectfully submitted

Joe Strobbe

A handwritten signature in cursive script that reads "Joe Strobbe".

cc John Corra, Director

DEQ-WESCO 000007

MEMORANDUM

NR
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BB

TO: John Corra, DEQ Director
✓ Don McKenzie, LQD Administrator

FROM: Doug Emme, Blasting Engineer *DE*

DATE: July 14, 2009

SUBJECT: WESCO Notice of Violation Abatement Actions

The following is a list of the actions WESCO has taken to abate Notice of Violation No. 100559:

May 20, 2009 - LQD sent out the NOV under a cover letter on this date.

May 26, 2009 - Joe Strobbe of WESCO arranged to do a training class in Gillette from July 7-9, 2009 and have me audit it to help WESCO establish training privileges again.

May 28, 2009 - Mr. Jim Stratton, WESCO Safety Officer, contacted LQD and sent a list of WESCO blasters, their current certification numbers, expiration dates, and listing of training hours. I checked the training hours versus what I had on file and made corrections and sent it back to WESCO.

June 2, 2009 - WESCO formally submitted a list of all their blasters and their approved training to support their current Wyoming blaster Certificates. LQD informed WESCO that this satisfied item 3 of the remedial action requirements of the Notice of Violation.

June 2, 2009 - WESCO contracted with DYNO Nobel to put on a blasting training class from June 16-18, 2009 in Gillette for WESCO blasters. WESCO got approval for this class from LQD.

June 16-18, 2009 - WESCO sent 9 blasters to the DYNO class including Mr. Jerry Hugen and Mr. Marty Davies who have their certificates suspended as a result of the NOV. I audited parts of the class to assure content.

July 2, 2009 - Mr. Hugen and Mr. Davies took the Wyoming Blaster Certification exam in the Sheridan office. Mr. Hugen passed the exam and I issued him a new Wyoming blaster Certificate which was effective on July 6, 2009. Mr. Davies failed the exam and I informed him that he could take it again within 30 days but if he failed a second time he would have to take another 24 hour training class.

July 7-9, 2009 - I audited the WESCO training class that was taught by Mr. Joe Strobbe and Mr. Tim Wright. The class was 10 hrs. on July 7 and 8 and another 5 hours on July

Memorandum
Mr. Corra and Mr. McKenzie
WESCO Abatement Actions
July 14, 2009
Page Two

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9. The class was attended by 12 WESCO blasters including Mr. Marty Davies. The class was well done and a very good class for the active blasters. I administered the exam to Mr. Davies on the afternoon of July 9, 2009 and he passed with a 91%.

July 10, 2009 - I issued Mr. Davies a new Wyoming Blaster Certificate with an effective date of July 14, 2009.

July 13, 2009 - Informal conference with WESCO in Cheyenne.

The actions taken by WESCO to date have fulfilled the remedial actions required by the NOV.

If you have any other questions regarding this NOV and the subsequent events please call me.

/de

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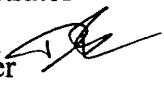
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JRE
7/14/9

BT

MEMORANDUM

TO: Don McKenzie, LQD Administrator

FROM: Doug Emme, Blasting Engineer 

DATE: July 10, 2009

SUBJECT: WESCO Training Class

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Don, I audited the WESCO class this week. They did two 10 hour days and five hours on Thursday. I attended 8.5 hours of the Tuesday class, all ten hours on Wednesday and 2.5 hours yesterday. I had to get back to Sheridan by supper time on Tuesday and yesterday I slipped down to Coal Creek and did my monthly inspection before going to the class.

Mr. Joe Strobbe the WESCO Western Region Manger and Mr. Tim Wright the WESCO Safety Director taught the class and it was a very good class. They covered all the topics and it related very well to the blaster on the bench.

I also discretely talked to two of the attendees that recently were in the DYNO class that I also sat in on parts of and they both told me they thought this class was better and that the topics are geared more toward the average blaster and not so much heavy technical material that is rarely used by blasters.

I would recommend that LQD reinstate the training privileges of WESCO based on my audit of this class and the new requirements we have implemented for crediting of training hours.

If you have any questions please call me.

/de

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APR → NOV file
7/14/09
65

MEMORANDUM

TO: Don McKenzie, LQD Administrator
Lowell Spackman, LQD-DI Supervisor
Mark Moxley, LQD-DII Supervisor
Mark Rogaczewski, LQD-DIII Supervisor
Terry Adcock, State Inspector of Mines

LQD

JUL 14 09

FROM: Doug Emme, Blasting Engineer *DE*

RECEIVED

DATE: July 10, 2009

SUBJECT: Marty Davies Blaster Certification

Mr. Davies was one of the blasters that had his license suspended as a result of the WESCO Notice of Violation in May. He took a DYNO class about 3 weeks ago and took and failed the exam after that three day training class. This week he sat through a WESCO class and took his certification exam again and passed. I have issued him a new blaster certificate, number WS 0756-09, with an effective date of July 14, 2009. The WESCO class that Mr. Davies sat through was one that I audited since they are trying to get approval to do training again as part of the NOV stripped them of their training privileges.

If you have any questions please call me.

/de

BS

MEMORANDUM

ARK
7/9/9
Pls place
in Wesco NW
file

TO: Don McKenzie, LQD Administrator
Lowell spackman, LQD-District I Supervisor
Mark Moxley, LQD-District II Supervisor
Mark Rogaczewski, LQD-DIII Supervisor
Terry Adcock, State Mine Inspector

FROM: Doug Emme, Blasting Engineer *DE*

DATE: July 2, 2009

SUBJECT: New Blaster Certificate for Blaster with Suspended Certificate

Mr. Jerry L. Hugen was in the office today and he took the new Wyoming Blaster Certification exam and passed it with a 90%. He had acquired the training that was specified in the Notice of Violation written in May that suspended his license due to falsification of training records by his employer, WESCO. I have issued him a new Wyoming Blaster Certificate, number WS 0948-09 that will be effective on July 6, 2009.

Mr. Marty Davies was also in to retake the exam after acquiring approved training but he failed to pass the exam. He can take it once more and if he fails again he will have to retake an approved training class. Mr. Davies license is still suspended.

If you have any questions please call me.

/de

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Department of Environmental Quality



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Dave Freudenthal, Governor

John Corra, Director

JK
6/17/9

June 15, 2009

Mr. Tom Frederick
WESCO
6875 S. 900 E., Suite 100
Midvale, UT 84047

RE: Informal Conference for NOV #100559, Docket # 4494-09

Dear Mr. Frederick:

Per your request, we have re-scheduled an informal conference concerning the above referenced Notice of Violation. This conference will be held on Monday, July 13, 2009, from 1:00 p.m. to 2:00 pm in the Yellowstone Conference Room located in the Herschler Building, 4th Floor, West Wing.

Please refer to the Rules of Practice and Procedure if you have any questions concerning the conduct of the conference.

Sincerely,

Becky Brosius
Administrative Assistant
Land Quality Division

cc: John V. Corra, Director
Don McKenzie, Administrator
Doug Emme - District 3 - Sheridan
Joe Strobbe, WESCO Technical Services, 8228 Yeager St. NE, Albuquerque, NM
87109

Herschler Building • 122 West 25th Street • Cheyenne, Wyoming 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH
(307) 777-7937
FAX 777-3610

ABANDONED MINES
(307) 777-6145
FAX 777-6482

AIR QUALITY
(307) 777-7391
FAX 777-5616

INDUSTRIAL SITING
(307) 777-7369
FAX 777-5973

LAND QUALITY
(307) 777-7756
FAX 777-5864

SOLID & HAZ WASTE
(307) 777-7752
FAX 777-5973

WATER QUALITY
(307) 777-7781
FAX 777-5973



Tom Frederick

801-484-6557

801-243-9200 (cell)

6875 S. 900 E.

Suite 100

Midvale, UT 84047

MEMORANDUM

OK
6/5/09

JA
RE
JUN-5 2009
LSD

TO: Don McKenzie, LQD Administrator
FROM: Doug Emme, Blasting Engineer *DE*
DATE: June 4, 2009
SUBJECT: June 3, 2009 Meeting with Representatives of Companies Performing Blaster Recertification Training

I met with nine people to discuss the recent incident with WESCO regarding blasting training records and to discuss the future of the recertification training program. I reviewed the methods LQD allows for acquiring recertification credit presently including: ISEE Chapter drill & blast seminars like the Best in the West, explosive company training classes, classes put on by professional blasting trainers, MSHA drill and blast seminars, ISEE International seminar, and my classes. I summarized the events that led up to LQD writing a Notice of Violation to WESCO for problems with training records and told the group that because of this incident LQD will require additional documentation from them to get credit for future classes. I passed out copies of the attached May, 28, 2009-memo regarding requirements for blaster recertification training credit and discussed it. I also discussed the suspensions, revocations, and loss of approval for their training classes that were part of the NOV.

The meeting was opened up to questions and I answered most of the questions as honestly as possible. I confirmed that there would be a monetary fine but I told them I could not divulge the amount at that time. I reviewed the appeal process that WESCO has and told them they have already requested an informal conference with the Director.

The general consensus was that the new requirements are no problem to comply with and the other companies are happy to provide us with whatever we want. The group was upset that any company would try to circumvent the training requirements since Wyoming makes it so easy to acquire the recertification training and 24 hours of training every five years is easy to obtain.

Everyone in the meeting knew which company had the incident so there was no need to keep the name out of the conversation. The news of the incident has spread across the Powder River Basin and I told the group that I thought they needed to hear what actually happened from me in person and not via a letter or phone call. They appreciated the meeting and assured me that they will follow whatever guidelines we give them in regard to blaster training. I did confirm that a manager with WESCO was terminated because of this incident.

I have also attached a copy of the attendance roster from the class. When I got back to the office I realized that I had forgotten to contact Mr. Brad Brown, Drill and Blast Supervisor, of Cordero-Rojo so I called him and summarized what I had told the group and apologized for

Mr. Don McKenzie, LQD Administrator
Memorandum, Blaster Recertification Training
June 4, 2009
Page Two

JUN 10 2009
10:15 AM
LQD

forgetting to include him. There may be a couple of others out there that I forgot but the group that attended does the bulk of the training in Wyoming.

They all felt that whatever happens to WESCO is deserved and they support the LQD in this action.

/de
Attachments

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Department of Environmental Quality



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Dave Freudenthal, Governor

John Corra, Director

May 28, 2009

To Whom It May Concern:

RE: LQD Requirements for Blaster Recertification Training

LQD must modify the blaster recertification training requirements for companies that do this and get credit from the Wyoming LQD. The modifications are the result of a recent incident by one company to get some of their blasters recertified in a timely manner.

LQD feels that overall the blaster recertification training that the division has allowed credit for has been successful and that most of the companies that have participated have done a good job. What the division has allowed in the past has seemed to work and the companies that have participated have done a good job of getting documentation to the LQD Blasting Engineer.

In the future the LQD will require the following for all classes that companies are asking to receive credit toward blaster recertification:

- Outline of the materials covered
- Breakdown of class time
- Roster of attendees with printed names and signatures for each day of training
- Letter requesting the training credit signed by the trainer and the company representative
- The letter with signatures must be notarized

The LQD has accepted emails and hand written requests in the past but will no longer do so. LQD realizes that this will inconvenience the companies that have done nothing wrong but it should still be relatively easy to get credit for all classes that are put on. It will require a little more forethought and work on the part of the companies but it won't be too restrictive.

It is unfortunate that the actions of one company impact all the others but these changes are necessary at this time for the Wyoming LQD.

Sincerely,

Doug Emme
Blasting Engineer

/de

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MAY - 5 2009
LQD

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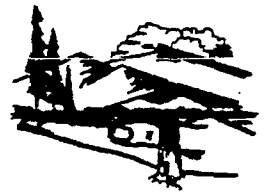
June 3, 2009 Meeting Regarding Blaster Recertification Credit- Gillette, WY

RECEIVED
JUN - 5 2009
LCO

| <u>Printed Name</u> | <u>Signature</u> | <u>Company</u> |
|------------------------|----------------------------|---------------------------|
| 1. Rod Burke | <i>Rodney Burke</i> | RTEA - Antelope VIKING |
| 2. Terry Cook | <i>[Signature]</i> | |
| 3. JON CRAWFORD | <i>J B Crawford</i> | FCL |
| 4. Robert Stowe | <i>Robert Stowe</i> | TBCC |
| 5. Greg Smith | <i>Greg Smith</i> | Dyno Nobel |
| 6. Donnie Fullen, dr | <i>Donnie Fullen</i> | PRCC - Cabala |
| 7. Jerry Marshall | <i>Jerry Marshall</i> | TBCC - Black Thunder |
| 8. Michael T. Anderson | <i>Michael T. Anderson</i> | Nelson Brothers |
| 9. Chuck Sumner | <i>Chuck Sumner</i> | Nelson Brothers |
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Department of Environmental Quality



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Dave Freudenthal, Governor

John Corra, Director

June 4, 2009

Mr. Brad Brown
Drill and Blast Supervisor
Cordero-Rojo Mine
P.O. Box 1449
Gillette, WY 82717-1449

RECEIVED
JUN 5 2009

RE: Wyoming Blaster Recertification Meeting and New Requirements

Dear Brad:

I have attached a memo that I passed out in the meeting of June 3, 2009 with blasting trainers that discusses some new requirements that LQD has put in place for approval of blaster recertification training hours. I covered all the other items that were discussed in the meeting in our phone conversation of yesterday afternoon. You can look them over and we can discuss whether these topics need to be sent out via email to the chapter members. I told the group in the meeting that these requirements are not set in stone and if anyone has some suggestions or ideas on how to improve what them to please let me know.

I have to apologize again for forgetting to notify you about the meeting.

If you have any questions or comments please call me.

Sincerely,

Doug Emme
Blasting Engineer

/de
Attachment

D. MCKENZIE

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Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH
(307) 777-7758
FAX 777-3610

ABANDONED MINES
(307) 777-6145
FAX 777-6462

AIR QUALITY
(307) 777-7391
FAX 777-5616

INDUSTRIAL SITING
(307) 777-7369
FAX 777-6937

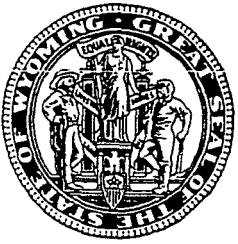
LAND QUALITY
(307) 777-7756
FAX 777-5864

SOLID & HAZ. WASTE
(307) 777-7752
FAX 777-5973

WATER QUALITY
(307) 777-7781
FAX 777-5973

DEQ WESCO 000009





Department of Environmental Quality

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ORE 06/05/09
John Corra, Director

Dave Freudenthal, Governor

June 4, 2009

Mr. Jim Stratton
WESCO
P.O. Box 40
Wright, WY 82732

RECEIVED
JUN 5 2009

RE: Wyoming Blaster Recertification Requirements

Dear Jim:

The attached memo summarizes the requirements for submitting training hours for credit toward blaster recertification in Wyoming. These are subject to change if anyone has suggestions to improve the process. If WESCO gets approval from LQD for your training program the documentation listed in the memo will have to be included with each submittal.

If you have any questions please call me.

Sincerely,

Doug Emme
Blasting Engineer

/de
Attachment

xc: Don McKenzie, LQD Administrator (w/o att.)

C:\FILES\MISC\WESCO-MM604.09E

Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

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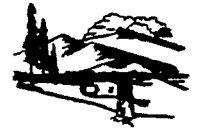
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(307) 777-7759
FAX 777-5873

WESCO 000020





Department of Environmental Quality



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Dave Freudenthal, Governor

John Corra, Director

June 3, 2009

**CERTIFIED MAIL #7008 1140 0004 2414 0486
RETURN RECEIPT REQUESTED**

Mr. Shawn Seebaum
Mr. Joe Strobbe
WESCO
P.O. Box 40
Wright, WY 82732

RE: WESCO; Blasting Contractor for Peabody Energy; NOV No. 100559, Docket No. 4494-09

Dear Mr. Seebaum and Mr. Strobbe:

It has come to my attention that you were issued a notice of violation by Doug Emme on May 20, 2009, a copy of which is attached hereto. All details surrounding the issuance of the notice are described in the attachment. The notice constitutes a separate notice for each violation listed.

As you probably realize, the Wyoming Environmental Quality Act provides for penalties of not to exceed ten thousand dollars (\$10,000.00) for each day during which a violation continues, or, for multiple violations by surface coal mining operations, a penalty of not to exceed five thousand dollars (\$5,000.00) for each violation for each day during which each violation continues.

Please be advised that in my opinion a penalty of \$120,000.00 is appropriate in this case. I base this decision after consideration of the factors set out in Land Quality Division Coal Rules and Regulations, Chapter 16, Section 3. Of particular concern is the fact that false information was submitted to obtain blaster recertification.

You should take special notice that you have only fifteen (15) days from the date of receipt of this letter to request a conference with me for an informal resolution of any dispute over either the amount of the penalty or the occurrence of the violation. If you do not request this conference, within thirty (30) days from the date of this letter, you must either pay the proposed penalty in full or petition to the Environmental Quality Council for formal review of the penalty amount or the fact of the violation. If you decide to petition the Council, you must submit with your petition for review, cash or a bond equal to the proposed amount of the penalty. I will stress that if you miss both the periods for informal or formal review, you must pay the penalty in full with no opportunity for review either by myself, the Council, or the courts. If you fail to pay the penalty, it will be recovered in a civil action brought against you by the Attorney General's Office.

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FAX 777-5973

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FAX 777-5864

SOLID WASTE
(307) 777-7752
FAX 777-5973

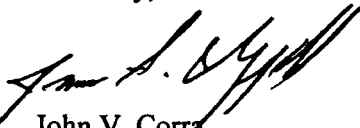
WATER QUALITY
(307) 777-7781
FAX 777-5973



WESCO NOV
Page Two

I cannot overstress the need for your direct attention to this letter. Please feel free to call Doug Emme at (307) 673-9337 or Don McKenzie, LQD Administrator, at (307) 777-7756. In addition, you may find it beneficial to consult W.S. § 35-11-901, Chapter 16, Section 3 of the Land Quality Division Coal Rules and Regulations, and Chapters I and II of DEQ Rules of Practice and Procedure for additional information.

Sincerely,



John V. Corra
Director
Dept. of Environmental Quality

/de

xc: LQD-Cheyenne
LQD-District III

WCC
06/03/09

MEMORANDUM

TO: Don McKenzie, LQD Administrator
FROM: Doug Emme, Blasting Engineer *DE*
DATE: June 1, 2009
SUBJECT: WESCO Notice of Violation #100559

LQD
JUN 3 09
RECEIVED

Mr. Tom Frederick of WESCO called me today and discussed how his company is handling the situation with this NOV. He said that they have terminated Mr. Shawn Seebaum and were undecided on how to deal with Mr. Joe Strobbe. He asked me about the February training class and my investigation. I told him what I had done to determine the records had been falsified. He also wanted my opinion on Mr. Jim Stratton and I told him that since last week my dealings with him have been positive but before that I didn't interact with him enough to venture an opinion. Mr. Frederick said that the NARM management had several issues with Mr. Seebaum and that they had lost confidence in him as a manager. He wanted to know my thoughts on how we go forward and work to rebuild the relationship. I told him that my past dealings with Mr. Strobbe and Mr. Seebaum had been good and that I feel we can work this problem out. Mr. Frederick asked if I could work with Joe or if I thought our relationship was irreparable. I told him that I think Mr. Strobbe is a good hand, knowledgeable, and does a good job and that this was an aberration and uncharacteristic of Mr. Strobbe.

Mr. Frederick had just finished having a meeting with Mr. Dan Cartwright, Mr. Tony Basko, and Mr. Jack Laakso of NARM when he called me.

I outlined my thoughts on how the two blasters that have their certificates suspended can get the training and then retest in our office in a timely fashion. We also discussed the revocation of the two certificates and how long it might take to get them reinstated. I said it depends on how the NOV is abated and how the Administrator and I feel about WESCO's actions and our comfort level with those two individuals.

Mr. Joe Strobbe called me about 30 minutes after this call and we discussed moving forward and me monitoring a class that Joe teaches in early July in Gillette.

/de
WESCO NOV File

C:\FILES\MISC\WESCO-PL601.09E

DEQ-WESCO 000023



Department of Environmental Quality



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Dave Freudenthal, Governor

John Corra, Director

June 1, 2009

Mr. Joe Strobbe
WESCO
8228 Yeager NE
Albuquerque, NM 87109

RE: Informal Conference for NOV #1005⁹9, Docket # 4494-09

Dear Mr. Strobbe:

Per your written request of May 26, 2009, we have scheduled an informal conference concerning the above referenced Notice of Violation. This conference will be held on Tuesday, June 23, 2009, from 9:00 a.m. to 10:00 am in the Yellowstone Conference Room located in the Herschler Building, 4th Floor, West Wing.

Please refer to the Rules of Practice and Procedure if you have any questions concerning the conduct of the conference.

Sincerely,

Becky Brosius
Administrative Assistant
Land Quality Division

cc: John V. Corra, Director
Don McKenzie, Administrator
Doug Emme - District 3 - Sheridan





Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

May 28, 2009

LQD

JUN 01 09

RECEIVED

Mr. Shawn Seebaum
Plant Manager
WESCO
P.O. Box 40
Wright, WY 82732

RE: Wyoming Blaster Certification for Mr. Ramsey McKee and Mr. James Noblin

Dear Shawn:

The blasters referenced have active Wyoming Blaster Certificates. Mr. Ramsey McKee has certificate number WS 1163-09 and it was effective on May 11, 2009. Mr. James Noblin has certificate number WS 1164-09 and it was effective on May 11, 2009. I have not received these certificates back from Cheyenne yet but both of these blasters are able to act as the blaster-in-charge and sign shot reports.

Please add this letter to the mine files verifying that they have active blaster certificates until you receive the originals and can make copies for the mine files.

If you have any questions please call me.

Sincerely,

Doug Emme
Blasting Engineer

/de

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FAX 777-5973

WATER QUALITY
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FAX 777-5973

WESCO 0700025



Brosius, Becky

From: McKenzie, Don
Sent: Thursday, May 28, 2009 1:18 PM
To: Emme, Douglas
Cc: Brosius, Becky
Subject: RE: WESCO

Thanks, Doug. I probably won't see the Corra letter until next week. Could you have it faxed to Becky and I so we can begin to find a date for the mtg?

From: Emme, Douglas
Sent: Thursday, May 28, 2009 12:41 PM
To: McKenzie, Don; Rogaczewski, Mark
Subject: WESCO

I got a copy of a letter that Joe Strobbe sent to Mr. Corra requesting a meeting regarding the NOV. The letter requests the meeting on his and Mr. Seebaum's behalf. I guess that it could be the informal conference for the NOV and the revocations of their licenses.

I do know that Peabody is meeting with WESCO management next Monday and they have requested some information from me for use in that meeting. The NARM Drill & blast Production Manager told me he will pass on any information he can after the meeting. Much of that is probably going to be confidential but maybe we'll hear something.

doug



WYOMING

Department of Environmental Quality

1866 S. Sheridan Avenue
Sheridan, WY 82801

Air, Land, & Water Divisions

Phone: (307) 673-9337

Fax: (307) 672-2213

No. of pages (cover sheet included) 2

Date 5-28-09

TO Don McKenzie

& Becky Brosius

Fax No. (307) 777-5864

From _____

Comments This is a copy of the letter Mr. Strabbe sent to the Director requesting an informal conference.

Doug

RFM
5/29/09



May 26, 2009

Mr. John V. Corra, Director
Department of Environmental Quality
Herschler Building
122 W. 25th St.
Cheyenne, WY 82002

Dear Mr. Corra:

The two WESCO representatives, Joe Strobbe and Shawn Seebaum, are requesting a meeting with you and Doug Emme in regards to the Notice of Violation #100559.

It is our desire to explain our position and more importantly, to express our procedure for training as we go forward.

Please contact me at 505-259-9096, or by mail at Joe Strobbe, 8228 Yeager NE, Albuquerque, NM 87109

Sincerely,

A handwritten signature in cursive script that reads "Joe Strobbe".

Joe Strobbe

cc Doug Emme

5/28/09
cc enf-file

May 21, 2009 Meeting with WESCO

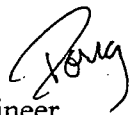
Mr. Joe Strobbe and Mr. Shawn Seebaum of WESCO met with me in our office on Thursday, May 21, 2009 from 7:45 AM to 8:40 AM. The meeting was in regard to the Notice of Violation that LQD wrote for falsification of training records regarding a class that they claimed to have in February of 2009. Ms. Stacy Page of LQD-District III sat in on the meeting as a witness.

I summarized the events that lead up to the NOV and informed them that it was written and I sent it out on Wednesday, May 20. The NOV will revoke the blaster certificates of Mr. Strobbe and Mr. Seebaum and suspend the certificates of Mr. Marty Davies and Mr. Jerry Hugen. It will also require WESCO to submit documentation to LQD that all the WESCO blasters are properly certified and have the proper training to support the certification. LQD will no longer accept blaster recertification training from WESCO. I explained the differences between revocation and suspension and that revocation is not necessarily a permanent loss of license based on language in CFR. I also informed them that there would be a monetary fine involved and that it would be forthcoming from the DEQ Director at a later date. I could not disclose what the fine would be because the Director may modify what the Administrator and I had agreed to when we discussed this NOV and the fine.

Mr. Seebaum and Mr. Strobbe both were sorry that this happened and realize that mistakes were made and they are interested in moving forward and correcting the problems. I told them I would work with them and help them try to rebuild the relationship between WESCO and the State. I also told them that the Administrator and I may consider approval of the WESCO training programs at a later date after we have been assured that WESCO has taken actions to correct all these problems. I also informed them that because of their actions I would have to implement more restrictive requirements on all the other companies that do blaster recertification training.

I informed them of their right to request a conference with the Director regarding the NOV and the revocations and suspensions of blaster certificates.

It was a very professional meeting and not confrontational at all. Mr. Strobbe and Mr. Seebaum did not dispute the falsification of records and were interested in how to proceed in the future.

Doug Emme 
Blasting Engineer

/de

xc: Don McKenzie, LQD Administrator
Stacy Page, LQD-District III Senior Analyst

C:\FILES\MISC\WESCO-Meet521.09E

McKenzie, Don

From: Emme, Douglas
Sent: Thursday, May 21, 2009 1:09 PM
To: McKenzie, Don; Rogaczewski, Mark
Subject: WESCO meeting

I met with Joe Strobbe and Shawn Seebaum this morning from about 7:45 AM to 8:40 AM. It was a good meeting and I hope they are aware of the seriousness of their act. I had Stacy in with me to witness the meeting and she took notes. I will write up a summary of what was said this weekend and get a copy off to you when I am done with it. I started the meeting out by telling them the NOV was sent out yesterday and that there will be a fine associated with via the Director's letter at a later date. I did not even allude to the amount because I don't know if the Director will modify it or not. They both acted pretty humble and said they want to repair the damage done to their relationship with the State, me and the mine.

I intentionally sent the NOV out before this meeting because I think their intent was to try to convince me to not take any regulatory action so I wanted it to be a done deal.

At this point I'm not sure if they can be believed or not. They were particularly concerned about how they get their certificates reinstated.

Doug

McKenzie, Don

From: Emme, Douglas
Sent: Wednesday, May 20, 2009 9:21 AM
To: McKenzie, Don
Cc: Rogaczewski, Mark
Subject: SMI

Don,

I talked to the Terry Adcock, the SMI, a few minutes ago and he said that when they tried to revoke a foreman's certificate the AG said there was no procedure in place to do and they had to set something up.

After looking at 30 CFR this morning it appears that OSM has established the guidelines for suspension and revocation and that revocation is not permanent. But the way I interpret this I have to formally notify in a letter that we are suspending or revoking their certificates and tell them they can request an informal hearing. So I will send those letters out today to the blasters and also the NOV. I will also email you copies of all and of course you will be copied on all correspondence. I will also do the assessment memo and draft a Director's letter for that and send them to you and also email you copies so if you want to change anything next week before you have Mr. Corra sent it out you can easily do it.

My meeting with NARM management yesterday was pretty interesting. They were prepared for a CO to WESCO and had contingency plans if that happened and I really got the feeling that they are seriously questioning their relationship with WESCO and this isn't close to being over with them.

doug

McKenzie, Don

From: Emme, Douglas
Sent: Wednesday, May 20, 2009 8:04 AM
To: McKenzie, Don
Subject: Revocation

I haven't gotten ahold of the Mine Inspector yet but he might not come in until 8 AM or so. 30 CFR speaks of suspension and revocation and says that OSM, when practicable, shall give written notice and an opportunity for an informal hearing prior to suspending, revoking, or taking other action on his OSM blaster certificate. It goes on to say that OSM can reissue a blaster certificate to an applicant whose certificate has been revoked if they demonstrate ...

This appears to say that we maybe should send a separate letter to the blasters that we are revoking and suspending their certificates. I will wait to hear from the mine inspector.

doug

McKenzie, Don

From: Emme, Douglas
Sent: Monday, May 18, 2009 6:10 AM
To: McKenzie, Don
Cc: Rogaczewski, Mark
Subject: RE: WESCO

Don, I know you are out of the office but I assume you will check you emails if you can and if you are on vacation I hope you don't even think about checking in!

I had talked to Terry Adcock and he was OK with what we were doing. He said he is always amazed when people try to do this kind of stuff.

I think if this was a MSHA investigation they would be looking at personal fines and perhaps jail time for falsification of MSHA records. I will try to look into that so I have more information to fire at them.

Unless something changes I will probably send the violation off on Wed. and send the assessment memo and the draft cover letter down to you the same day so it can go out right after Memorial Day. I did talk with two of the blasters that were listed as being at that class this weekend and they both said they never attended any class. I couldn't get ahold of the other two but I'm hoping they are on site at NARM tomorrow.

Doug

From: McKenzie, Don
Sent: Friday, May 15, 2009 5:15 PM
To: Emme, Douglas
Cc: Rogaczewski, Mark
Subject: WESCO

Doug, I tried to reach Adcock. He left a message that he had talked with you. I assume he is ok with our enforcement plans. I upped the penalty to \$120K. I did not recheck the Notice. If you have checked the citations, grammar, facts, dates and are ok with it I am ok with it. Thanks for your patience with me on this. Hope all goes well next week.

cc Wescotite

BB

5/26/9

MEMORANDUM

RECEIVED
MAY 22 2009
LQD

TO: Don McKenzie, LQD Administrator
Terry Adcock, State Mine Inspector
Lowell Spackman, LQD-DI Supervisor
Mark Moxley, LQD-DII Supervisor
Mark Rogaczewski, LQD-DIII Supervisor

FROM: Doug Emme, Blasting Engineer *DE*

DATE: May 20, 2009

SUBJECT: Blaster Certificate Suspensions and Revocations

WESCO, the blasting contractor for Peabody Energy, was issued a Notice of Violation #100559 on May 20, 2009 for falsifying blaster training records to obtain blaster recertification for two of their blasters that had expired or nearly expired certificates. They also intended to use this fabricated training to help toward the recertification of three other blasters whose certificates expire later in 2009.

LQD has revoked the Wyoming Blaster Certificates for the following:

Shawn B. Seebaum; certificate no. WS 0623-04

Joe D. Strobbe; certificate no. WS 0556-07

These blasters are managers with WESCO and appear to have conspired to fabricate this training class. The revocations are effective on May 26, 2009. 30 CFR allows blasters to apply for reinstatement once the RA feels that the actions resulting in the revocation have been corrected and that all other applicable requirements have been met.

LQD has suspended the Wyoming Blaster Certificates for the following:

Marty D. Davies; certificate no. WS 0756-09

Jerry L. Hugen; certificate no. WS 0948-09

These suspensions are effective on May 26, 2009. These two blasters benefitted from the submittal of false information and they will be required to obtain approved blaster training and retake the certification exam and pass it before they can have new blaster certificates issued.

I have sent out letters to all these individuals notifying them of the action taken against them and made them aware that they can appeal the action to the Director.

Memorandum
WESCO Blasters
May 20, 2009
Page Two

LQD will no longer accept any training classes that WESCO puts on toward blaster recertification.

WESCO primarily does contract blasting and down hole service for the Peabody Energy coal mines in the Powder River Basin in LQD Districts 1 and III. I don't think they do any quarry work in the state but all of the LQD inspectors should be made aware of this action so they can assure that these individuals are not acting as the blaster-in-charge and signing shot reports.

If anyone has any questions please call me.

/de
xc: Cheyenne File

C:\FILES\MISC\WESCOMM520.09E

RECEIVED
MAY 22 2009
LQD

DEQ-WESCO 000035



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Dave Freudenthal, Governor

John Corra, Director

CERTIFIED MAIL NO. 7005-1160 0001 6423 7047
RETURN RECEIPT REQUESTED

May 21, 2009

Mr. Marty D. Davies
281 Hwy. 59
Douglas, WY 82633

RE: Blaster Certification Suspension

Dear Mr. Davies:

The LQD has issued WESCO Notice of Violation #100559 and as a result of this notice your Wyoming Blaster Certificate, number WS 0756-09, will be suspended. The suspension will be effective on May 26, 2009. The Notice of Violation states that you can obtain approved recertification training and retest to acquire a new Wyoming Blaster Certificate.

You can request an informal hearing with the Director regarding this suspension by submitting an application for review to:

Mr. John V. Corra, Director
Department of Environmental Quality
Herschler Building
122 W. 25th St.
Cheyenne, WY 82002

RECEIVED
MAY 22 2009
LQD

If you have any questions regarding this action please contact me.

Sincerely,

Doug Emme
Blasting Engineer

/de

xc: Don McKenzie, LQD Administrator

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WESCO 7000076





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Dave Freudenthal, Governor

John Corra, Director

**CERTIFIED MAIL NO. 7005 1160 0001 6423 7030
RETURN RECEIPT REQUESTED**

May 20, 2009

Mr. Jerry L. Hugen
Box 936
Douglas, WY 82633

RE: Blaster Certification Suspension

Dear Mr. Hugen:

The LQD has issued WESCO Notice of Violation #100559 and as a result of this notice your Wyoming Blaster Certificate, number WS 0948-09, will be suspended. The suspension will be effective on May 26, 2009. The Notice of Violation states that you can obtain approved recertification training and retest to acquire a new Wyoming Blaster Certificate.

You can request an informal hearing with the Director regarding this suspension by submitting an application for review to:

Mr. John V. Corra, Director
Department of Environmental Quality
Herschler Building
122 W. 25th St.
Cheyenne, WY 82002

RECEIVED
MAY 22 2009
LQD

If you have any questions regarding this action please contact me.

Sincerely,

Doug Emme
Blasting Engineer

/de

xc: Don McKenzie, LQD Administrator

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WESCO 0970000397





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Dave Freudenthal, Governor

John Corra, Director

**CERTIFIED MAIL NO. 7005 1160 0001 6423 7023
RETURN RECEIPT REQUESTED**

May 20, 2009

Mr. Joe D. Strobbe
WESCO Technical Services
8228 Yeager St. NE
Albuquerque, NM 87109

RE: Blaster Certification Revocation

Dear Mr. Strobbe:

The LQD has issued WESCO Notice of Violation #100559 and as a result of this notice your Wyoming Blaster Certificate, number WS 0556-07, will be revoked. The revocation will be effective on May 26, 2009.

You can request an informal hearing with the Director regarding this revocation by submitting an application for review to:

Mr. John V. Corra, Director
Department of Environmental Quality
Herschler Building
122 W. 25th St.
Cheyenne, WY 82002



If you have any questions regarding this action please contact me.

Sincerely,

Doug Emme
Blasting Engineer

/de

xc: Don McKenzie, LQD Administrator

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WESCO 09000028





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Dave Freudenthal, Governor

John Corra, Director

**CERTIFIED MAIL NO. 7005 1160 0001 6423 7054
RETURN RECEIPT REQUESTED**

May 20, 2009

Mr. Shawn Seebaum
Plant Manager
WESCO
P.O. Box 40
Wright, WY 82732

RE: Blaster Certification Revocation

Dear Mr. Seebaum:

The LQD has issued WESCO Notice of Violation #100559 and as a result of this notice your Wyoming Blaster Certificate, number WS 0623-04, will be revoked. The revocation will be effective on May 26, 2009.

You can request an informal hearing with the Director regarding this revocation by submitting an application for review to:

Mr. John V. Corra, Director
Department of Environmental Quality
Herschler Building
122 W. 25th St.
Cheyenne, WY 82002

If you have any questions regarding this action please contact me.

Sincerely,

Doug Emme
Blasting Engineer

/de

xc: Don McKenzie, LQD Administrator

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LQD

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SOLID & HAZ. WASTE
(307) 777-7755
FAX 777-5973

WATER QUALITY
(307) 777-7755
FAX 777-5973

WESCO 09700039





Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

May 20, 2009

Mr. Shawn Seebaum
Mr. Joe Strobbe
WESCO
P.O. Box 40
Wright, WY 82732

RECEIVED
MAY 22 2009
LQD

RE: WESCO Notice of Violation No. 100559, Docket No. 4494-09

Dear Mr. Seebaum and Mr. Strobbe:

Please find enclosed a Notice of Violation (Notice) for a blasting certification violation. I direct your attention to pages two and three of the Notice for your options for 1) Formal Review, Temporary Relief, and Penalties, and 2) the remedial actions and deadlines.

Please contact me if you have any questions.

Sincerely,

Doug Emme
Blasting Engineer

/de

Enclosure: Notice

xc: Don McKenzie, LQD Administrator w/Notice

**CERTIFIED MAIL NO. 7005 1160 0001 6423 8471
RETURN RECEIPT REQUESTED**

Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH
(307) 777-7758
FAX 777-3610

ABANDONED MINES
(307) 777-6145
FAX 777-6462

AIR QUALITY
(307) 777-7391
FAX 777-5616

INDUSTRIAL SITING
(307) 777-7369
FAX 777-6937

LAND QUALITY
(307) 777-7756
FAX 777-5864

SOLID & HAZ. WASTE
(307) 777-5973
FAX 777-5973

WATER QUALITY
(307) 777-5973
FAX 777-5973

WESCO 000040



STATE OF WYOMING
DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION
HERSCHLER BUILDING, 122 W. 25TH ST
CHEYENNE, WY 82002
TELEPHONE: (307) 777-7756
COAL PROGRAM
NOTICE OF VIOLATION (NOTICE)

N.O.V. No. 100559
Permit No. N/A
Docket No. 4494-09

To the Following Permittee or Operator or Licensee: Shawn Seebaum & Joe Strobbe
WESCO
P.O. Box 40
Wright, WY 82732

Name: WESCO

Mine: N/A, Blasting Contractor in PRB County: Campbell & Converse Telephone: (307) 464-0234

Surface: Underground: _____ Other:

Mailing Address: P.O. Box 40
Wright, WY 82732

Date of Inspection: N/A, Complaint Received May 4, 2009

Time of Inspection: N/A, Complaint Investigation Conducted Between May 4 and May 20, 2009

Name of Operator (if other than permittee): same

Mailing Address: same

Under the authority of the Wyoming Environmental Quality Act of 1973 (ACT), as amended, the undersigned designated representative of the Director of the Wyoming Department of Environmental Quality (DEQ) has conducted a complaint investigation of the above mine operator on the dates above and has found violation(s) of the ACT, the regulations or required permit condition(s) *listed on page 3 of this document*. This Notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned designated representative finds that cessation of blasting is _____ is not expressly or in practical effect required by this Notice. For this purpose "blasting" means loading holes, tying-in shots and initiating shots.

This Notice shall remain in effect until it expires as provided on the attached Page 2 or is modified, terminated, or vacated by written notice of a designated representative or the Wyoming Environmental Quality Council. The time for abatement may be extended by a designated representative for up to 90 days from issuance of the notice, if the failure to meet the time previously set was not caused by lack of diligence on the part of the Permittee or Operator or Licensee.

DATE OF SERVICE: MAY 20, 2009

MANNER OF SERVICE: CERTIFIED MAIL

PROOF OF SERVICE: RETURN RECEIPT

PERSON SERVED WITH NOTICE: SHAWN SEEBAUM

CC: CHEYENNE & SHERIDAN LQD OFFICES
OSM - CASPER FIELD OFFICE


SIGNATURE OF DESIGNATED REPRESENTATIVE

DOUG EMME - BLASTING ENGINEER
PRINTED NAME



IMPORTANT – PLEASE READ CAREFULLY

1. FORMAL REVIEW AND TEMPORARY RELIEF You must apply for review of this Notice by submitting an application for review, within 30 days of this Notice by you or your agent, to:

Mr. John V. Corra, Director
Department of Environmental Quality
Herschler Building
122 W.25th St.
Cheyenne, WY 82002

RECEIVED
MAY 22 2009
LQD

If you apply for a formal public hearing, you may request temporary relief from this Notice. Your request must be filed at the above address prior to a decision in the hearing. The procedures for obtaining a formal public hearing or temporary relief are contained in W.S. § 35-11-437 (c) (ii) and (e), Land Quality Division (LQD) Coal Rules & Regulations (R&R) Chapter 16, Section 2(m) and DEQ Rules of Practice and Procedures Chapters 1 and 2.

2. EXPEDITED REVIEW If this Notice requires cessation of mining, expressly or in practical effect, as found on page 1, then the procedures of W.S. § 35-11-437 (d) apply. This provision affords an opportunity for an expedited hearing, upon request, if this Notice is affirmed by the director. Please review this finding and inform the designated representative if you agree with it.
3. PENALTIES You may submit information in writing pertaining to the violation(s) covered by this Notice within 15 days of the date it is served on you or your agent. This information will be considered in determining the facts surrounding the violation and the amount of penalty.

For each violation covered by this Notice, a penalty of up to \$5,000.00 may be assessed for each day during which that violation continues.

If you fail to abate any of the violations within the time set for abatement or for meeting any interim step, you must be assessed a minimum penalty of \$750.00 or more for each day during which the violation continues beyond the time set for abatement, and you must be issued a cessation order requiring you to cease surface coal mining operations on the portion relevant to the violation(s).

4. EFFECT ON THE PERMIT In addition, if it is determined that a pattern of violations of any requirement(s) of the ACT, the regulations, or permit conditions exists, and that the violations were caused by unwarranted failure to comply or were willful, the permit may be suspended or revoked.

FOR FURTHER INFORMATION, PLEASE CONSULT: W.S. § 35-11-409(c), W.S. § 35-11-437, LQD Coal R&R Chapter 16, Sections 2 and 3 and DEQ Rules of Practice and Procedures Chapters 1 and 2.

Nature of the Violation

WESCO is an operator under Wyoming Statute 35-11-103 (e) (ix).

On May 4, 2009, a complaint was received by the LQD alleging a WESCO blasting recertification training event had not occurred.

LQD conducted a complaint investigation between May 4 and May 20, 2009 and found: WESCO represented to the LQD that a WESCO 3 day 24-hour blaster recertification training class was held February 24-26, 2009 in the WESCO Office at Wright. WESCO provided a roster of class attendees and the instructor to the LQD. The class instructor did not teach the class and the listed class attendees did not attend the class.

As a result of the class, two WESCO employees, Mr. Jerry Hugen and Mr. Marty Davies, obtained recertification based upon training credits from a WESCO class that did not occur.

Provision(s) of the LQD coal R&R, Act, or Permit Violated

LQD R& Regulations Chapter 6, Section 6(h) (i) (D) requires blasting certification to be revoked or suspended upon a finding that false information or misrepresentation was used to obtain certification.

Portion of the Operation to which Notice Applies

WESCO blasting operations in Wyoming.

Remedial Action Required (including interim steps, if any)

- 1) Blasting certificates for Mr. Hugen and Mr. Davies are suspended under LQD Coal R&R Chapter 6 Section 6 (h) (i). Both must acquire LQD approved training and retest to renew their respective blasting certificates.
- 2) Blasting certificates for Mr. Shawn Seebaum and Mr. Joe Strubbe are revoked under LQD Coal R&R Chapter 6 Section 6 (h) (i).
- 3) WESCO shall provide documentation to the LQD that all of WESCO's Wyoming certified blasters are properly certified.
- 4) LQD will no longer accept certification credit for WESCO blasting training.

Time for Abatement (including time for interim steps, if any)

- 1) Mr. Hugen and Mr. Davies shall obtain LQD approved training and retest for their certificates within 90 days of the issuance of this Notice.
- 2) Mr. Seebaum and Mr. Strubbe shall immediately surrender their certificates to the LQD under LQD R&R Chapter 6 Section 6 (h) (iii).
- 3) WESCO shall submit documentation to the LQD within 45 days of the issuance of this Notice to confirm WESCO's Wyoming blasters are properly certified.
- 4) WESCO blasting training is no longer acceptable to the LQD for certification credit as of the issuance date of this Notice.

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MAY 22 2009

MEMORANDUM

TO: John V. Corra, DEQ Director

FROM: Don McKenzie, LQD Administrator *DMK*

DATE: May 20, 2009

SUBJECT: Notice of Violation No. 100559; Docket No. 4494-09; Issued to WESCO on May 20, 2009; Blasting Contractor for Peabody Energy

This memorandum provides information related to the civil penalty issue.

I recommend that a civil penalty of \$120,000.00 be assessed for this Notice of Violation. I base my recommendation on the six (6) factors from Land Quality Division Rules and Regulations (2002), Chapter 16, Section 3(a).

- (i) The operator's history of previous violations at the particular surface coal mining operation, regardless of whether any led to a civil penalty assessment.

A WESCO blaster let his blaster certificate expire in January of 2009 and was still signing shot reports and LQD-District 1 staff discovered this during an inspection and wrote a Notice of Violation for that but no fine was assessed. The no fine was due to a partial recommendation from the LQD Blasting Engineer since WESCO had ~~no~~ prior problems. However, the training used for this individual to renew his license was based upon a WESCO training event that never occurred. A penalty of \$10,000.00 is recommended. ← ?

- (ii) The seriousness of the violation based on the likelihood and extent of the potential or actual impact on the public or environment, both within and outside the permit or exploration area.

WESCO, the blasting contractor for Peabody Energy, made up a record for a 24 hour blaster training class that was never given to allow two blasters to get recertified in a timely fashion. The blaster training class that WESCO allegedly had was from February 24-26, 2009 at the WESCO office in Wright. WESCO submitted a letter requesting credit for the 24 hours of training to the LQD Blasting Engineer. The document was accepted and two blasters were recertified based on their attendance at this class.

Almost two months after the class was supposedly given the LQD Blasting Engineer heard that the class never happened and investigated. The falsification of the training records to obtain recertification was a serious and egregious act. LQD had a training class in the Sheridan office from February 25-27, 2009 and WESCO was aware of that class yet they still felt the need to concoct a plan to submit a training record for a class that was never given. A penalty of \$10,000.00 per day per day for the three day training hoax plus \$10,000 per day per for the two WESCO employees that used the fake training credit to renew their licenses $[(\$10,000 \times 3) + (2 \times 3 \times \$10,000)] = \$90,000$ is recommended.

- (iii) The degree of fault of the operator in causing or failing to correct the violation, either through act or omission.

The operator was solely at fault in falsifying training records. A penalty of \$10,000 is recommended.

- (iv) The operator's demonstrated good faith, by considering whether he took extraordinary measures to abate the violation in the shortest possible time, or merely abated the violation within the time given for abatement.

There were no measures taken by the operator to alleviate this situation. No penalty is recommended.

- (v) Inability to comply, unless caused by lack of diligence.

There is no known reason that WESCO could not comply with the rules and regulations on this issue. A penalty of \$10,000.00 is recommended.

- (vi) Any information submitted to the Director by the operator within 15 days of the service of the Notice or Order relating to the facts surrounding the violation or the amount of penalty.

As of the date of this assessment memorandum there have been no additional materials submitted by the operator. No other information has been requested. No penalty nor credit is recommended.

NOV # 100559
Assessment Memo, WESCO
May 20, 2009
Page Three

SUMMARY

I am recommending that a penalty of \$120,000.00 be pursued for the violation described in Notice of Violation No. 100559. This is appropriate because of the seriousness of the act of falsifying the training records.

/de

xc: Doug Emme, Blasting Engineer

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BB

MEMORANDUM

TO: Don McKenzie, LQD Administrator
FROM: Doug Emme, Blasting Engineer *DE*
DATE: May 20, 2009
SUBJECT: WESCO NOV #100559 Assessment Memo and Draft Director's Letter

Don, attached are the assessment memorandum for this NOV and a draft of the Director's letter for assessing the fine. I have sent copies of both of these to you via email so it will be easy for your staff to modify the Director's letter and get the proper date on it when it is ready to go to WESCO.

I sent certified letters to all the blasters involved and discussed their suspensions and revocations, which I made effective on May 26, 2009. The letters offer them the option to appeal the suspensions and revocations to the Director. I think this should be adequate based on CFR 30.

If you have any questions when you get back in the office please call me. I'll be in the office May 26 and 27 and then I am taking some vacation to move our daughter back to Indiana so I'll be out until June 2 or 3. You can always reach me on my cell phone while I'm out at (307) 751-3768.

/de

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RECEIVED
MAY 22 2009



A Dyno Nobel Distributor

Memo

To: To all concerned
From: Shawn Seebaum
Date: 26 February 2009
Re: Blaster Training

To All Concerned,

The following blasters received 24 hours blaster training conducted on 24, 25, and 26 February 2009, at WESCO Office from 7:00 AM to 4:00 PM. Joe Strobbe Technical Manager for WESCO conducted the training on Blasting Safety and Blasting Training I, II, and III:

| NAME | LICENSE NUMBER |
|---------------|--------------------------------|
| Dustin Bates | WS 0963-04 to 10-11-2009 |
| Shawn Seebaum | WS 0623-04 to 11-21-2009 |
| Jerry Hugen | WS 0948-04 Expired on 1-5-2009 |
| Matt Freese | WS 0965-04 to 10-11-2009 |
| Marty Davies | WS 0756-04 Renewed on 3-16-09 |

Shawn Seebaum
WESCO Plant Manager

Shawn Seebaum 2-26-09

Joe Strobbe

Joe Strobbe 2-26-09



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

John V. Corra 09/23/09

August 17, 2009

LQD

AUG 20 09

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WESCO
Mr. Tom Frederick, President
6875 S. 900 East, Suite 100
Midvale, UT 84047

Dear Mr. Frederick:

Enclosed, please find my decision regarding the Informal Conference held on July 13, 2009 for NOV #100559.

Sincerely,

John V. Corra
John V. Corra
Director

Enclosure



BEFORE THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF WYOMING

**IN THE MATTER OF A NOTICE OF VIOLATION
ISSUED TO WESCO
P.O. Box 40, Wright, Wyoming 82732
NOV NO. 100559**

)
)
) **DOCKET NO. 4494-09**
)

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**DIRECTOR'S FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION**

This matter came before the Director of the Department of Environmental Quality pursuant to a request by WESCO for an Informal Conference as provided in W.S. 35-11-901(c), W.S. 35-11-437(c)(i) and Chapter VI of the Wyoming Department of Environmental Quality Rules of Practice and Procedure.

At issue is NOV # 100559, issued by Doug Emme on May 20, 2009, for failure to follow the requirements of Chapter 6 of the Land Quality Division (LQD) Rules and Regulations, "Blasting for Surface Coal Mining Operations". In a letter written on February 26, 2009, WESCO represented to the LQD that a WESCO 24 hour training class was held on February 24 – 26, 2009. The letter contained a roster of class attendees and was signed by the instructor. It was later discovered that the class never took place. This violation, along with other false communications by WESCO to LQD was ultimately pieced together sometime in May, 2009 and the NOV was written. A penalty of \$120,000 was assessed in a letter to WESCO dated June 3, 2009.

An Informal Conference was held by the Director on July 13, 2009. WESCO was represented by Jared Fredrick, Tom Fredrick, Tom Fredrick Sr., and Joe Strobbe. The Land Quality Division was represented by Don McKenzie and Doug Emme. Also in attendance were John Burbridge and Becky Brosius.

After reviewing the record and being fully advised of the premises, the Director hereby makes the following Findings of Fact, Conclusions of Law, and Decision.

FINDING OF FACT

1. Mr. Jerry Hugen's blasting certification expired on January 6, 2009. Chapter 6, Section 6 (c)(i) requires that, "All blasting operations be conducted under the direction of a certified blaster..." A number of blasts were conducted by WESCO under Mr. Hugen's direction after the expiration of his certification.
2. Sometime between February 3 and February 12, 2009; Mr. Shawn Seebaum, Mr. Hugen's supervisor, became aware of this matter and called Mr. Doug Emme on February 12, 2009. Mr. Seebaum said that no blasts had been directed by Mr. Hugen during the period of license expiration. Mr. Doug Emme offered that a class in Sheridan in February was available to allow Mr. Hugen to become recertified.
3. A memo written on February 26, 2009 by Mr. Shawn Seebaum stated that Mr. Joe Strobbe of WESCO had conducted training for, among others, Mr. Shawn Seebaum and Mr. Jerry Hugen. This letter was signed by Mr. Seebaum and Mr. Strobbe. LQD recertified those who were listed on the memo.
4. During a mine inspection on April 7 and 8, 2009, another LQD employee conducted a routine audit of blasting records for the North Antelope Rochelle Mine. It was discovered that Mr. Hugen, the blaster in charge, signed six blasts in January and early February, 2009 during the time period when he was not certified.
5. On April 9, 2009 Mr. Strobbe and Mr. Seebaum visited with Mr. Emme's about Mr. Hugen's certification. At that meeting, they requested that we not write an NOV. Mr. Emme informed them that when they spoke with him in February they assured him that no blasts had been certified by Mr. Hugen.
6. Sometime during the period from April 21 to 22, 2009 Mr. Emme overheard that WESCO had "dummied up" a training class.
7. In early May, 2009 Mr. Emme looked at the guard shack log and discovered that individuals who were supposed to have been at the training noted in the February 26, 2009 memo were actually at the mine site on those days. Mr. Emme later interviewed several people whom WESCO claimed had been trained. He was told that there was no class.
8. On May 20, 2009 the NOV was issued to WESCO. Additionally on this day, LQD revoked Wyoming Blaster Certificates for Shawn Seebaum, Joe Strobbe, Marty Davies and Jerry Hugen and

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informed WESCO that LQD would not longer accept training classes by WESCO as a basis for certification.

9. Mr. Tom Frederick stated that upon becoming aware of these matters in mid-May, and after discussion with Peabody on June 1, 2009, certain corrective measures were taken. These included termination of Mr. Seebaum; adding a place on their blasting forms to include the certificate expiration dates of the blasters involved; and re-assigning the responsibility for tracking and record keeping from the site manager to their safety manager.

10. At the conference Mr. Strobbe requested that LQD reinstate his certification and was asked to submit a letter of request to Mr. Emme. This was submitted on July 15, 2009.

11. Mr. Emme has recommended that training privileges for WESCO be reinstated.

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CONCLUSIONS OF LAW

The Director has jurisdiction over the subject matter and of the parties to this proceeding pursuant to W.S. § 35-11-902(c) and W.S. § 35-11-437(b)(i) of the Wyoming Environmental Quality Act and the Rules of Practice and Procedure, Chapter VI of the Wyoming Department of Environmental Quality.

DECISION

1. WESCO has terminated the employment of the person they hold responsible for the violation. However, a company must be held responsible and accountable for the actions of its employees. At the informal conference, the close relationship between Mr. Strobbe and senior management of WESCO was noted. Mr. Strobbe was aware of this matter throughout the time period under review.
2. WESCO did not contest the NOV at the hearing.
3. On three separate occasions, February 12, February 26, and April 9, 2009, WESCO had the chance to fully explain the problems but did not.
4. Mr. Emme, upon hearing at a public meeting that a false training event had been approved by him, inspected mine visitor records and confirmed that no training event had occurred, as presented by WESCO in their February 26, 2009 memo.
5. Despite WESCO's position that some amount of training takes place many times over the years, the only way to confirm that the statutes and rules are followed is through documentation that not only training takes place but also evidence that employees attended that training. WESCO had

not submitted any documentation of this, despite having knowledge of LQD's policy that training be documented, signed and filed with the division.

6. WESCO questioned the basis for the penalty calculation. My review of the six factors used by LQD in determining penalty amounts follows:

- a. Factor (i) deals with the operator's history of compliance. As noted in the penalty assessment memo from Don McKenzie to me, dated May 20, 2009, WESCO has no prior history of violations. However, based on the fact that training never occurred, a penalty of \$10,000 was assessed. In keeping with the spirit of this factor and that the basis for this assessment is also addressed in factor (ii), I find that the penalty assessment should be reduced to zero.
- b. Factor (ii) considers the seriousness of the violation based on the likelihood and extent of the potential or actual impact on the public or environment, both within and outside the permit or exploration area. I wish to stress that falsification of blasting training and records, and the potential for blasting to be undertaken by persons who have been purported to have been trained but have not, is very serious. It is typical of LQD to assess a \$10,000 per day penalty for every day that a violation occurs. Using only the days of training alleged by WESCO and the number of employees involved in those days, a penalty of \$90,000 was assessed. The \$90,000 penalty for this factor is upheld.
- c. Factor (iii) addresses the degree of fault by the operator in causing or failing to correct the violation. I find that the degree of fault by WESCO is high. The penalty amount of \$10,000 is upheld.
- d. Factor (iv) carried no credit for good faith actions on the part of the WESCO. I agree.
- e. Factor (v) allows for credit or penalty if there is good reason to show that there is an inability for WESCO to comply. Not only was WESCO able to comply, they were also able on several occasions to notify LQD of the violation and present evidence of actions taken to prevent recurrence. They did not do this. The \$10,000 penalty for this factor is upheld.
- f. Factor (vi) allows for penalty adjustment for any information provided by the operator within 15 days of Notice of order relating to the facts surrounding the violation or the amount of penalty. No information was submitted and no adjustment is made under this factor.

The adjusted penalty is \$110,000. In concluding the reasonableness of this amount, it has been determined that there were 20 blasts made from January of 2009 until the NOV was

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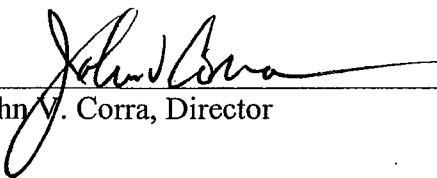
written on May 20, 2009. The adjusted penalty relates to \$5,500 per occurrence. Since the LQD is authorized to calculate penalties up to \$10,000 per day of occurrence of a violation, this amount is reasonable.

7. Mr. Strobe's request to be reinstated is granted pending successful completion of the blasters exam.

The decision is that the NOV stands, and that the penalty be reduced to \$110,000.

ORDERED THIS 18th DAY OF AUGUST, 2009.

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY



John V. Corra, Director

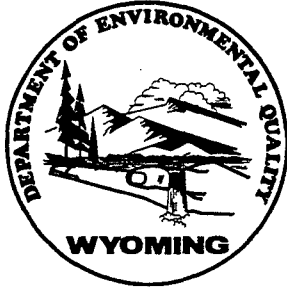
This decision may be appealed to the Environmental Council for a period of 15 days after the date the parties receive the decision. Appeals shall be directed to:

Chairman
Environmental Quality Council
122 W. 25th Street, Room 1714
Cheyenne, WY 82002

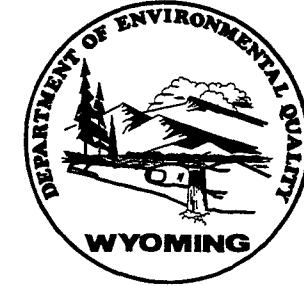
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This Informal Conference is convened at 1:00 p.m., on Monday, July 13, 2009, at the Yellowstone Conference Room, Herschler Building, in Cheyenne, Wyoming for the purpose of receiving comment on NOV 100559, Docket # 4494-09, issued on May 20, 2009, to WESCO. The Informal Conference will be conducted pursuant of the Wyoming Environmental Quality Act, Section 35-11-406(k).

My name is John Corra, Director of the Department of Environmental Quality. I am charged with the responsibility to ~~try to~~ investigate any disputes, consider the views of the persons who may be affected by this NOV, and consider all the facts bearing the request between the parties.



DEPARTMENT OF ENVIRONMENTAL QUALITY
 Land Quality Division
 WESCO Informal Conference
 Herschler Building
 Cheyenne, Wyoming
 July 13, 2009



| NAME | NAME OF COMPANY OR ORGANIZATION |
|----------------|---------------------------------------|
| John Corrao | WDEQ |
| Jared Fredrick | WESCO jared@wesco1.com 801-484-6557 |
| Doug Emme | WDEQ/LQD demme@wyo.gov (307) 673-9337 |
| Tom Fredrick | Wesco tomst@wesco1.com 801-484-6557 |
| John Burbridge | A/G |
| Dan McKenzie | LQD (307) 777-7046 |
| Becky Brasius | LQD 777-2176 |
| Tom Fredrick | WESCO TOMTREWESCO7.COM 801-484-6557 |
| Joe Strobbe | WESCO JOSRRMT@aol.com 505 259-9096 |
| | |
| | |
| | |
| | |
| | |

MEMORANDUM

TO: ✓ John Corra, DEQ Director
Don McKenzie, LQD Administrator

FROM: Doug Emme, Blasting Engineer *DE*

DATE: July 14, 2009

SUBJECT: WESCO Notice of Violation Abatement Actions

The following is a list of the actions WESCO has taken to abate Notice of Violation No. 100559:

May 20, 2009 - LQD sent out the NOV under a cover letter on this date.

May 26, 2009 - Joe Strobbe of WESCO arranged to do a training class in Gillette from July 7-9, 2009 and have me audit it to help WESCO establish training privileges again.

May 28, 2009 - Mr. Jim Stratton, WESCO Safety Officer, contacted LQD and sent a list of WESCO blasters, their current certification numbers, expiration dates, and listing of training hours. I checked the training hours versus what I had on file and made corrections and sent it back to WESCO.

June 2, 2009 - WESCO formally submitted a list of all their blasters and their approved training to support their current Wyoming blaster Certificates. LQD informed WESCO that this satisfied item 3 of the remedial action requirements of the Notice of Violation.

June 2, 2009 - WESCO contracted with DYNO Nobel to put on a blasting training class from June 16-18, 2009 in Gillette for WESCO blasters. WESCO got approval for this class from LQD.

June 16-18, 2009 - WESCO sent 9 blasters to the DYNO class including Mr. Jerry Hugen and Mr. Marty Davies who have their certificates suspended as a result of the NOV. I audited parts of the class to assure content.

July 2, 2009 - Mr. Hugen and Mr. Davies took the Wyoming Blaster Certification exam in the Sheridan office. Mr. Hugen passed the exam and I issued him a new Wyoming blaster Certificate which was effective on July 6, 2009. Mr. Davies failed the exam and I informed him that he could take it again within 30 days but if he failed a second time he would have to take another 24 hour training class.

July 7-9, 2009 - I audited the WESCO training class that was taught by Mr. Joe Strobbe and Mr. Tim Wright. The class was 10 hrs. on July 7 and 8 and another 5 hours on July

Memorandum
Mr. Corra and Mr. McKenzie
WESCO Abatement Actions
July 14, 2009
Page Two

9. The class was attended by 12 WESCO blasters including Mr. Marty Davies. The class was well done and a very good class for the active blasters. I administered the exam to Mr. Davies on the afternoon of July 9, 2009 and he passed with a 91%.

July 10, 2009 - I issued Mr. Davies a new Wyoming Blaster Certificate with an effective date of July 14, 2009.

July 13, 2009 - Informal conference with WESCO in Cheyenne.

The actions taken by WESCO to date have fulfilled the remedial actions required by the NOV.

If you have any other questions regarding this NOV and the subsequent events please call me.

/de

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DEQ-WESCO 000058

CHAPTER 6

BLASTING FOR SURFACE COAL MINING OPERATIONS

Section 1. General.

(a) The permittee shall comply with all applicable State, local and Federal laws and regulations and the requirements of this Chapter in the use of explosives.

(b) Blasts that use more than five pounds of explosives or blasting agent shall be conducted according to the schedule required under Section 3.

(c) All persons working with explosive material shall be, or be under the direct supervision of, an experienced, trained, and competent person who understands the hazards involved and who:

(i) Possesses current knowledge of the local, State and Federal laws and regulations applicable to this work; and

(ii) Has obtained a certificate of completion of training and qualification as required by State law.

(d) Blasting operations within 500 feet of active underground mines require approval of the State and Federal regulatory authorities concerned with the health and safety of underground miners.

(e) Blasting signs clearly warning that explosives are in use in particular areas, explaining blast-warning and all-clear signals, and explaining the marking of blast areas, shall be posted at all public entrances to the permit area. Signs containing "blasting area" shall be posted along the edge of any blasting area that comes within 100 feet of any public road right-of-way and at the point where any other road provides access to the blasting area.

Section 2. Preblasting Survey.

(a) On the request of a resident or owner of a man-made dwelling or structure that is located within one-half mile of any part of the area covered under the term of the permit, the applicant or permittee shall conduct a preblasting survey. The request may be made either directly to the applicant or permittee with confirming documents forwarded to the Administrator, or to the Administrator with confirming documents forwarded to the applicant or permittee. The operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the operator

if requested by the resident or owner. The operator shall determine the condition of the dwelling(s) and structure(s) and document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and other readily available data. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(b) A written report of the survey shall be prepared and signed by the person who conducted the survey. The report shall include recommendations of any special conditions or proposed adjustments to the blasting procedures outlined in this Section which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the Administrator. The person requesting the survey may submit any written disagreements he has with the results of the survey to the permittee and the Administrator.

(c) Any surveys requested more than three days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting.

Section 3. Public Notice of Blasting Schedule.

(a) At least 30 days, but not more than 60 days before beginning a blasting program in which more than five pounds of explosives or blasting agent are detonated, the permittee shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by mail to local governments, public utilities and to each residence or owner of a man-made dwelling or structure within one-half mile of the blasting sites described in the schedule. The residents or owners within one-half mile shall also be notified of the manner for requesting a preblasting survey. The permittee shall republish and redistribute the schedule by mail at least every 12 months. The permittee also shall revise and republish the schedule at least 30 days, but not more than 60 days, prior to blasting whenever the area covered by the schedule changes or time periods significantly differ from the prior announcement. Blasting schedules shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur. The blasting schedule shall contain at a minimum:

- (i) Name, address and telephone number of the operator;
- (ii) Identification of the specific areas in which blasting will take place;
- (iii) Dates and time periods when explosives are to be detonated;

- (iv) Methods to be used to control access to the blasting area; and
- (v) Types and patterns of audible warnings and all-clear signals to be used before and after blasting.

Section 4. Blasting Standards.

(a) General.

(i) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(ii) All blasting shall be conducted during time approved by the Administrator and announced on the blasting schedule. Based on public requests or other considerations, including the proximity to residential areas, the Administrator may limit the area covered, timing and sequence of blasting. Blasting shall be conducted between sunrise and sunset unless night-time blasting is approved by the Administrator based on public protection and annoyance considerations.

(iii) Blasting may not be conducted at times different from those announced in the blasting schedule except in conditions where operator or public safety requires unscheduled detonation or for emergency blasting actions. Reasons for unscheduled detonation shall be documented.

(iv) Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. All persons within the area covered under the term of permit and those who reside or regularly work within one-half mile of this same area shall be notified of the meanings of the signals in the blasting schedule.

(v) Area of control. Access to the blasting area shall be controlled to protect the public and livestock from the effects of blasting and to prevent unauthorized entry. Access control shall continue until the permittee's authorized representative has determined that no unusual circumstances such as imminent slides or undetonated charges exist and access to and travel in or through the area can safely resume.

(vi) Areas in which charged (loaded) holes are awaiting firing shall be guarded against unauthorized entry.

(b) Limitations.

(i) **Airblast shall not exceed the values specified below at any dwelling, public building, school, church, and community or institutional building outside the permit area, unless the building is owned by the operator and not leased to another, or, if leased, the lessee signs a waiver relieving the operator from meeting the limitations. If necessary to prevent damage, the Administrator shall specify lower maximum allowable airblast levels.**

| Lower frequency limit of measuring system, Hz (+3dB) | Maximum level in dB |
|--|---------------------|
| 0.1 Hz or lower-flat response ¹ | 134 peak |
| 2 Hz or lower-flat response | 133 peak |
| 6 Hz or lower-flat response | 129 peak |
| C-weighted, slow response ¹ | 105 peak dBC |

¹ Only if approved by the Administrator.

(A) At the request of the Administrator, the operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The Administrator shall request monitoring in certain instances, including but not limited to complaints, blasting in sensitive areas, and in areas where there is reason to believe airblast limits may be exceeded. The measuring systems shall have an upper-end flat frequency response of at least 200 Hz.

(ii) Flyrock shall not be cast from the blasting site more than half the distance to the nearest occupied structure or beyond either the permit boundary or the area of control required under (a)(v) above.

(iii) In all blasting operations except as specified below, the maximum ground vibration shall not exceed the values approved in the blasting plan. The maximum ground vibration at the location of any dwelling, public building, school, church, and community or institutional building outside the permit area shall not exceed the values established by paragraph (iv), the scaled-distance equation of paragraph (v), the blasting level chart of paragraph (vi), or by the Administrator under paragraph (vii). All other

structures such as water towers, pipelines, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on ground vibration, submitted by the operator in the blasting plan and approved by the Administrator. The ground vibration standards do not apply at structures owned by the operator and not leased to another, or, if leased, the lessee signs a waiver relieving the operator from meeting the limitations.

(iv) Maximum peak particle velocity applicable when seismograph records are provided for each blast:

| Distance (D) from the Blasting Site in feet | Maximum allowable peak particle velocity (Vmax) for ground vibration in inches/second ¹ | Scaled distance factor to be applied without seismic monitoring ² |
|---|--|--|
| 0 to 300 | 1.25 | 50 |
| 301 to 5000 | 1.00 | 55 |
| 5001 and beyond | 0.75 | 65 |

¹ Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

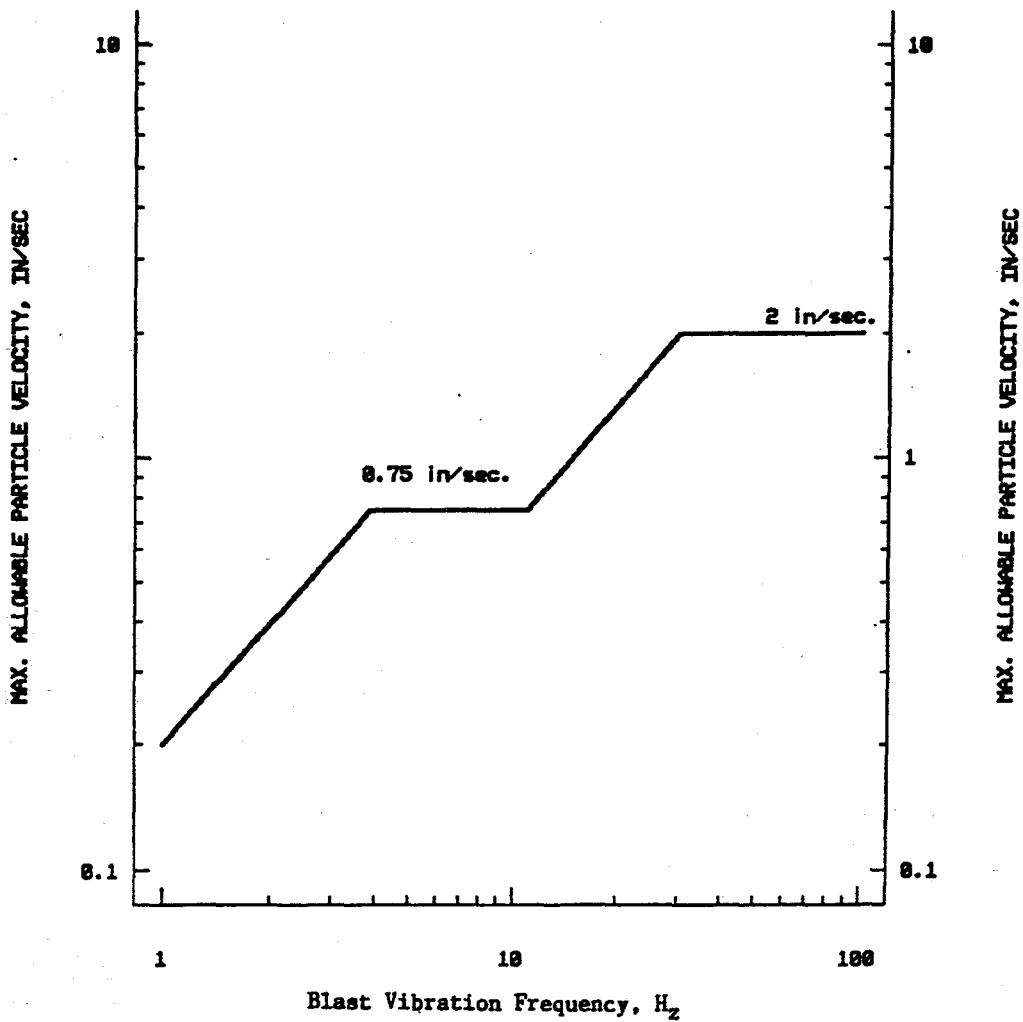
² Applicable to the scaled-distance equation of Paragraph (v).

(v) An operator may use the scaled-distance equation, $W = (D/D_s)^2$ to determine the allowable charge weight of explosives to be detonated in any eight millisecond period, without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and D_s = the scaled-distance factor, which may initially be approved by the Administrator using the values for scaled-distance factor listed in paragraph (iv) above.

(A) Upon written request by the operator with seismographic records, the Administrator may authorize a modified scaled-distance factor. The modified scaled-distance factor shall be determined such that particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of paragraph (iv) above, at a 95 percent confidence level.

(vi) An operator may use the ground vibration limits in Figure 1 (blasting-level chart) to determine the maximum allowable ground vibration. A seismograph record including both particle velocity and vibration frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency

FIGURE 1
ALTERNATIVE BLASTING LEVEL CRITERIA



(Source modified from Figure B-1, Bureau of Mines R18507)

contained in the blasting records shall be approved by the Administrator before application of this alternative blasting criterion.

(vii) The maximum allowable ground vibration shall be reduced by the Administrator beyond the limits otherwise provided by paragraphs (iv)-(vi), if necessary to provide damage protection. The Administrator may require an operator to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurements.

(c) **Blast Design.** Permit requirements pertaining to blasting are located in Chapter 2, Section 2(b)(v).

(i) Anticipated blast design(s) shall be submitted if blasting operations will be conducted within:

(A) 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

(B) 500 feet of an active or abandoned underground mine.

(ii) The blast design may be presented as part of a permit application or at a time, before the blast, approved by the Administrator.

(iii) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in (b) above.

(iv) The blast design shall be prepared and signed by a certified blaster.

(v) The Administrator may require changes to the design submitted.

Section 5. Records of Blasting Operations.

(a) A record of each blast, including seismograph reports, shall be retained for at least three years and shall be available for inspection by the Administrator and the public on request. The record shall contain the following data:

(i) Name of permittee, operator, or other person conducting the blast;

- (ii) Location, date and time of blast;
- (iii) Name, signature, and certification number of blaster conducting the blast;
- (iv) Identification, direction and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, and community or institutional building outside the permit area neither owned nor leased by the permittee;
- (v) Weather condition;
- (vi) Type of material blasted;
- (vii) Sketches of the blast pattern including number of holes, burden, spacing, decks and delay pattern;
- (viii) Diameter and depth of holes;
- (ix) Types of explosives used;
- (x) Total weight of explosives used per hole;
- (xi) Maximum weight of explosives detonated within any eight millisecond period;
- (xii) Initiation system;
- (xiii) Type and length of stemming;
- (xiv) Mats or other protections used;
- (xv) Seismograph and airblast records, where required, including:
 - (A) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;
 - (B) Exact location of instrument and the date, time, and distance from the blast;
 - (C) Name of person and firm taking the seismograph reading;

- and
- (D) Name of person and firm analyzing the seismograph record;
 - (E) The vibration and/or airblast level recorded.
- (xvi) Reasons and conditions for each unscheduled blast.

Section 6. Blaster Certification.

(a) **General.**

(i) The Department of Environmental Quality, Land Quality Division and the State Inspector of Mines will jointly administer this Section by Memorandum of Understanding.

(b) **Definition.**

(i) A blaster or shot-firer is a person directly responsible for the use of explosives in surface coal mining operations or surface blasting operations incident to underground coal mining operations.

(c) **Requirements.**

(i) All blasting operations shall be conducted under the direction of a certified blaster having a minimum of two years of blasting experience.

(ii) Certificates of blaster certification shall be carried by blasters or shall be on file at the mine site during blasting operations and shall be exhibited to any authorized State or Federal inspector upon request.

(iii) A blaster and at least one other person shall be present in the blasting area at the firing of a blast.

(iv) Persons responsible for blasting operations at a blasting site shall be familiar with the operator's blasting plan and site-specific performance standards.

(d) **Training.**

(i) The Department of Environmental Quality, Land Quality Division, shall establish or approve training programs for persons seeking to become certified as blasters. These training programs shall include:

- (A) Selection of the type of explosives to be used;
- (B) Determination of the properties of explosives which will produce desired results at an acceptable level of risk;
- (C) Handling, transportation, and storage of explosives;
- (D) Geologic and topographic considerations of blast designs;
- (E) Design of a blast hole with critical dimensions;
- (F) Pattern design, field layout, and timing of blast holes;
- (G) Field applications of blast designs;
- (H) Loading blast holes, including priming and boosting;
- (I) Initiation systems and blasting machines;
- (J) Blasting vibrations, airblast, and flyrock, including monitoring techniques and methods to control adverse affects;
- (K) Secondary blasting applications;
- (L) Current Federal and State rules applicable to the use of explosives;
- (M) Blast records;
- (N) Schedules;
- (O) Preblasting surveys, including availability, coverage, and the use of in-blast designs;
- (P) Blast plan requirements;
- (Q) Certification and training;
- (R) Signs, warning signals, and site control; and

(S) Unpredictable hazards, including lightning, stray currents, radio waves, and misfires.

(ii) Reciprocity of blaster's certificates from other approved State or Federal programs will require approval of the Administrator and the State Mine Inspector and at a minimum, knowledge of site-specific performance standards and blasting plan.

(e) Examination.

(i) To attain certification, a candidate must receive a passing score on the written and oral examinations which are prepared and approved by the Administrator.

(ii) The written examination for candidates for blaster certification shall test their competence in and practical application of the topics set forth in Section 6(d).

(iii) The oral examination for candidates for blaster certification shall test the use of explosives in relation to site-specific performance standards and the blasting plan under which they will be operating.

(f) Issuance of Certification.

(i) Certificates will be issued to those candidates receiving a passing score on the certification examination. The certification will expire five years from the issuance date.

(g) Renewal.

(i) Certificates may be renewed upon completion of the training, examination and certification program as required by the Administrator.

(h) Revocation.

(i) Following written notice and opportunity for hearing, the blasting certification will be revoked or suspended upon finding of:

(A) Noncompliance with any blasting-related order of Land Quality Division or the State Inspector of Mines;

(B) Unlawful use in the workplace of, or current addiction to, alcohol, narcotics, or other dangerous drugs;

(C) Violation of any provision of the State or Federal explosives laws or regulations; and

(D) Providing false information or a misrepresentation to obtain certification.

(ii) If advance notice and opportunity for hearing cannot be provided, an opportunity for a hearing shall be provided as soon as practical following the suspension or revocation.

(iii) Upon notice of revocation, the blaster shall immediately surrender to the Land Quality Division the revoked certification.

(i) Maintenance of Certificates.

(i) Certificates will be protected from loss, theft, or unauthorized duplication and any such occurrence shall be reported to the Land Quality Division immediately.

(ii) Certificates shall not be assigned or transferred.

(iii) The blasters shall not delegate their responsibilities to any individual who is not a certified blaster.

Corra, John

From: Emme, Douglas
Sent: Wednesday, July 29, 2009 1:56 PM
To: Corra, John
Subject: WESCO

John,

I talked to Brandon Pease, the NARM blasting engineer, and he said Mr. Hugen signed 14 shot reports between March 30, 2009 (the date of his renewal based on the fabricated class) and May 26, 2009 (the day we suspended his license based on the NOV).

If you need any other information please call me.

doug

14 shots
Mar 30 - May 26
day
license
renewed
class WESCO
summed up re 4/15/09
to memo



Department WESCO 7/17/09 lity

To protect, conserve, and improve the environment for

Dave Freudenthal, Governor



John Corra, Director

John,
No info in our files for the April 9 mtg/discussion between Doug & Wesco. I suspect it was a followup to the NARM NOV since Hugen was re-licensed March 30.

CERTIFIED MAIL RETURN REC

April 23, 2009

Ms. Rose Haroian
Peabody Coal Company
Caller Box 3035
Gillette, WY 82717-3035

RE: Notice of Violation No. 100558, Docket No. 4486-09, North Antelope Rochelle Mine (NARM) Permit 569-T6

Dear Ms. Haroian:

Attached is a copy of the above referenced Notice of Violation. This NOV is for six blasting records that were signed by Mr. Jerry L. Hugen whose blasting certification had not been renewed after it expired. The inspection and records review of the 569-T6 permit area was conducted on April 7 and 8, 2009. The compliance section of the inspection report details the records that were improperly signed by Mr. Hugen. The NOV also outlines the violation.

Because Mr. Hugen has subsequently been recertified through the Wyoming Blasting Program, no mitigation is required for this NOV.

If you have any questions, please contact me at 307.777.7052, Anna Waitkus at 307.777.6284, or Doug Emme at 307.672.6488.

Sincerely,

Lowell K. Spackman

Lowell K. Spackman
District I Supervisor
Land Quality Division

Attachments



STATE OF WYOMING
DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION
HERSCHLER BUILDING, 122 W. 25TH ST
CHEYENNE, WY 82002
TELEPHONE: (307) 777-7756
COAL OPERATION
NOTICE OF VIOLATION (NOTICE)

N.O.V. No. 100558
Permit No. 569-T6
Docket No. 4486-09

To the Following Permittee or Operator or Licensee:

Name: Powder River Coal Company, LLC

Mine: North Antelope Rochelle Mine Campbell/Converse County: Telephone: (307) 687-3923

Surface: X Underground: _____ Other: _____

Mailing Address: Caller Box 3034 Gillette, WY 82717-3034

Date of Inspection: April 7 and April 8, 2009

Time of Inspection: from 4/7/09 - 7:00 am and 4/8/09 - 4.30 pm

Name of Operator (if other than permittee): same as above

Mailing Address: same as above

Under the authority of the Wyoming Environmental Quality Act of 1973 (Act), as amended, the undersigned designated representative of the Director of the Wyoming Department of Environmental Quality (DEQ) has conducted an inspection of the above mine on the above date and has found violation(s) of the Act., the regulations or required permit condition(s) *listed in the attachment(s)*. This Notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned designated representative finds that cessation of mining is not expressly or in practical effect required by this Notice. For this purpose "mining" means extracting coal from the earth or a waste pile and transporting it within or from the permit area.

This Notice shall remain in effect until it expires as provided on the attached Page 2 or is modified, terminated, or vacated by written notice of a designated representative or the Wyoming Environmental Quality Council. The time for abatement may be extended by a designated representative for up to 90 days from issuance of the notice, if the failure to meet the time previously set was not caused by lack of diligence on the part of the Permittee or Operator or Licensee.

DATE OF SERVICE: April 23, 2009

Lowell K. Spackman
SIGNATURE OF DESIGNATED REPRESENTATIVE

MANNER OF SERVICE: CERTIFIED MAIL

Lowell K. Spackman
PRINTED NAME

PROOF OF SERVICE: CERTIFIED MAIL RECEIPT

PERSON SERVED WITH NOTICE: ROSE HAROIAN

CC: CHEYENNE LQD
DISTRICT OFFICE
OSM - CASPER FIELD OFFICE

IMPORTANT – PLEASE READ CAREFULLY

1. **FORMAL REVIEW AND TEMPORARY RELIEF** You must apply for review of this Notice by submitting an application for review, within 30 days of this Notice by you or your agent, to:

Mr. John V. Corra, Director
Department of Environmental Quality
Herschler Building
122 W.25th St.
Cheyenne, WY 82002

If you apply for a formal public hearing, you may request temporary relief from this Notice. Your request must be filed at the above address prior to a decision in the hearing. The procedures for obtaining a formal public hearing or temporary relief are contained in W.S. § 35-11-437 (c) (ii) and (e), Land Quality Division (LQD) Coal Rules & Regulations (R&R) Chapter 16, Section 2(m) and DEQ Rules of Practice and Procedures Chapters 1 and 2.

2. **EXPEDITED REVIEW** If this Notice requires cessation of mining, expressly or in practical effect, as found on page 1, then the procedures of W.S. § 35-11-437 (d) apply. This provision affords an opportunity for an expedited hearing, upon request, if this Notice is affirmed by the director. Please review this finding and inform the designated representative if you agree with it.
3. **PENALTIES** You may submit information in writing pertaining to the violation(s) covered by this Notice within 15 days of the date it is served on you or your agent. This information will be considered in determining the facts surrounding the violation and the amount of penalty.

For each violation covered by this Notice, a penalty of up to \$5,000.00 may be assessed for each day during which that violation continues.

If you fail to abate any of the violations within the time set for abatement or for meeting any interim step, you must be assessed a minimum penalty of \$750.00 or more for each day during which the violation continues beyond the time set for abatement, and you must be issued a cessation order requiring you to cease surface coal mining operations on the portion relevant to the violation(s).

4. **EFFECT ON THE PERMIT** In addition, if it is determined that a pattern of violations of any requirement(s) of the Act, the regulations, or permit conditions exists, and that the violations were caused by unwarranted failure to comply or were willful, the permit may be suspended or revoked.

FOR FURTHER INFORMATION, PLEASE CONSULT: W.S. § 35-11-409(c), W.S. § 35-11-437, LQD Coal R&R Chapter 16, Sections 2 and 3 and DEQ Rules of Practice and Procedures Chapters 1 and 2.

Violation No. 100558

Nature of the Violation

During the inspection on April 7, 2009, it was determined that the blaster in charge, Jerry L. Hugen, signed six blasts shot records (Shot Nos.: 17133, 17136, 17155, 17182, 117184, and 17211). At the time of these shots, Mr. Hugen was not certified to sign the records for each of these shots. His State of Wyoming Blaster Certificate expired on January 5, 2009. The renewal of Jerry Hugen's Wyoming Blaster Certificate took place on March 30, 2009. Mr. Jerry L. Hugen signature appeared on the six blast shots noted above on the following dates: January 7, 2009; January 8, 2009; January 18, 2009; January 24, 2009 (x2), and February 3, 2009.

Provision(s) of the LQD Coal R&R, Act, or Permit Violated

1. Department of Environmental Quality, Coal Rules and Regulations, Ch.6, Sec.5 (a)(iii), "...The record shall contain the following data: Name, signature, and certification of blaster conducting the blast."
2. Department of Environmental Quality, Coal Rules and Regulations, Ch.6, Sec.6 (c)(i), "All blasting operations shall be conducted under the directions of a certified blaster having a minimum of two years of blasting experience."
3. Department of Environmental Quality, Coal Rules and Regulations, Ch.6, Sec.6 (f)(i), "Certificates will be issued to those candidates receiving a passing score on the certification examination. The certification will expire five years from the issuance date."

Portion of the Operation to which Notice Applies

Records recording the blasting operations

Remedial Action Required (including interim steps, if any)

None required (see below)

Time for Abatement (including time for interim steps, if any)

There is no need for any abatement. Mr. Jerry L. Hugen passed the blasting certification test and a new Wyoming Blaster Certificate number WS 0948-09 was issued with an effective date of March 30, 2009.

MEMORANDUM

To: Don McKenzie, Administrator, LQD
From: Anna Krzyszowska-Waitkus, Soil Scientist, LQD
Date: April 15, 2009
Subject: Notice of Violation (NOV) No. 100558, Docket No. 4486-09 issued to Powder River Coal Company, LLC, North Antelope Rochelle Mine on April 22, 2009, Permit 569-T6

The NOV was issued for failure to have a current State of Wyoming Blaster Certificate for Jerry L. Huguen who was the blaster in charge. Mr. Huguen signed six records dated 1/7/09, 1/8/09, 1/18/09, 1/24/09 (x2), and 2/3/09 during the time he was not certified. His State of Wyoming Blaster Certificate expired on 01/05/2009. The renewal of Jerry Huguen's Wyoming Blaster Certificate took place on 3/30/2009.

This NOV was issued for a violation of the Wyoming DEQ Coal Rules and Regulations, Ch.6, Sec.5 (a)(iii), "...*The record shall contain the following data: Name, signature, and certification of blaster conducting the blast*", Ch.6, Sec.6 (c)(i), "*All blasting operations shall be conducted under the directions of a certified blaster having a minimum of two years of blasting experience*", and Ch.6, Sec.6 (f)(i), "*Certificates will be issued to those candidates receiving a passing score on the certification examination. The certification will expire five years from the issuance date*".

I recommend that no fine be assessed in consideration of the following six factors, as required by the Land Quality Division Rules and Regulations (R & R), Chapter 16, Section 3(a):

- 1. The operator history of previous violations at the particular coal mining operation. Special consideration should be given to violations contained in or leading to a cessation order.**

The North Antelope Rochelle Mine, since the merger of the two mines in August 1999, has been issued four Notices of Violation (NOV). The last Minor Violation was issued on 2/13/2007 due to the failure to republish a public notice of blasting activity at least every 12 months and at last 30 days, but no more than 60 days before blasting operation occur. The last Notice of Violation was issued on 11/15/2004 due to failure to follow mine and reclamation plan by operating outside the approved permit area. None of these violations are related to the blasting records.

No penalty is recommended. **(\$0.00 Penalty)**

2. **The seriousness of the violation based on the likelihood and extent of the potential or actual impact on the public or environment both within and outside the permit area.**

The violation did not result in serious impact to the public or environment.

No penalty is recommended. (**\$0.00 Penalty**)

3. **The fault of the operator in causing or failing to correct the violation through act or omission.**

The failure to have current State of Wyoming Blaster Certificate is the fault of Mr. Jerry L. Hugen. After 85 days, his State of Wyoming Blaster Certificate was renewed. He had the required knowledge and experience, lacking only the recertification

No penalty is recommended. (**\$0.00 Penalty**)

4. **The operator has demonstrated good faith to achieve rapid compliance, and consideration of whether the operator gained an economic benefit as a result of a failure to comply.**

The blaster in charge, after realizing that his State of Wyoming Blaster Certificate had expired stopped signing records of blasting operations. He took the test with Douglas Emme on 3/16/2009 and passed the test with a 93%.

No credit is recommended for this factor. (**\$0.00 Credit**)

5. **Inability to comply unless caused by lack of diligence.**

There is no known reason the operator can not comply with the regulations to have current State of Wyoming Blaster Certificate.

No credit is recommended for this factor. (**\$0.00 Credit**)

6. **Any information submitted by the operator relating to the facts surrounding the violation or amount of penalty.**

The operator, at the request of the LQD inspector, provided immediately information (an email from Emme Douglas to Diane Giesen) regarding passing the test by Jerry Hugen on 3/16/2009. The violation was confirmed by the LQD on April 13, 2009.

No credit is recommended for this factor. (**\$0.00 Credit**)

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City, State, ZIP+4 *Gillette, WY 82717*

PS Form 3800 August 2006 See Reverse for Instructions

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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ms. Rose Haroian
Peabody Coal Co
Caller Box 3035
Gillette, WY 82707-3035

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x *Bonnie Schwab* Agent Addressee

B. Received by (Printed Name)

Bonnie Schwab

C. Date of Delivery

D. Is delivery address different from item 1? Yes

YES, enter delivery address below: No

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- C.O.D.

4. Restricted Delivery? (Extra Fee)

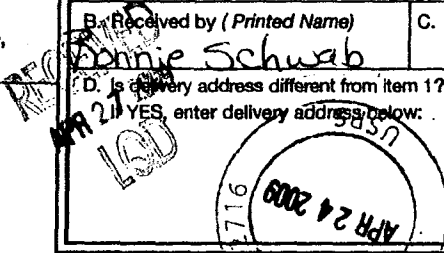
Yes

2. Article Number

(Transfer from service label)

7008 1140 0004 2414 0479

PT 569-76
NOV 53





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Status: Delivered

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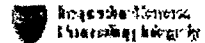
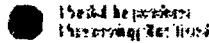
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Tomjr Fredrick

From: Tom Campbell [terratek@hotmail.com]
Sent: Thursday, June 25, 2009 12:00 PM
To: Tomjr Fredrick
Subject: Fw: Suspended Wyoming Blaster Certificates

Sent from my Verizon Wireless BlackBerry

-----Original Message-----

From: Tom Campbell <terratek@hotmail.com>

Date: Thu, 25 Jun 2009 17:58:15

To: <terratek@hotmail.com>

Cc: <jared.fredrick@gmail.com>

Subject: FW: Suspended Wyoming Blaster Certificates

"Mann, Mike"
<Mike.Mann@dnr.state.oh.us>

06/08/2009 05:31
PM

To
"AK Rock Drilling (E-mail)"
<akr0ckdrill@ezlinknet.com>, "Al
Hooper (E-mail)"
<ohiodrillman@aol.com>, "Bob
McClure (E-mail)"
<r.mcclure@ramets.com>, "Bob Wright
(E-mail)"
<rcwrtght@windstream.net>, "'Briar
Hill Stone (E-mail)"
<briarhill@valkyrie.net>, "Chris
Walton (E-mail 2)"
<CWalton@rhinoenergyllc.com>,
"Connie at NOE (E-mail)"
<connie@udata.com>, "Dan Slisher"
<danslisher@hughes.net>, "Daryl Kin
(E-mail)" <D33KK@aol.com>, "Dave
Donnelly (E-mail)"
<dave6361@udata.com>, "Dave Jones
(E-mail)" <djones@kimbleclay.com>,
"Dave Lucas (E-mail)"
<dave@wampumgibson.com>, "David
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"Derek Novotny (E-mail)"
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"Roger Hambleton"
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"SEEX" <senex1@earthlink.net>,
"Steve Benson (E-mail)"
<stephen.benson@austinpowder.com>,
"Terry Johnson at Kipton Quarry
(E-mail)" <kiptonquarry@gmail.com>,
"Tom Cochran at APCo (E-mail)"
<tom.cochranjr@austinpowder.com>,
"Tom Young (E-mail)"
<tyoung@dwdickey.com>, "Vern Dewees
(E-mail)" <vdewees05@yahoo.com>,
"Virgil Lewis (E-mail)"
<vlewis@wampumhardware.com>

cc

Subject

FW: Suspended Wyoming Blaster
Certificates

Blasting Contractors and Independents,

Please share this with all of your blasters.

Mike Mann

-----Original Message-----

From: Emme, Douglas [mailto:demme@wyo.gov <mailto:demme@wyo.gov>]
Sent: Monday, June 08, 2009 3:14 PM
To: Eltschlager, Kenneth K. "Ken"; Mann, Mike; 'Carey, John; Clark, Dennis
A.; Best, David; 'Rhonda Dossett; Orell, Rade; Hay, Gene; 'Bill York-Feirn;
Rockwell, Joshua; Ratcliff, Jim E; Stoltz, Jason R.; Don Carter; Rick
Lamkie; Dave Vandelinde ; Brashear, Martin (EEC); phart@dnr.in.gov;
William.kitchens@asmc.alabama.gov; John Guranich

Subject: Suspended Wyoming Blaster Certificates

FYI

We discussed the falsification of training records that led to Wyoming DEQ/Land Quality Division writing a Notice of Violation to WESCO, a blasting contractor. WESCO submitted training records that indicated they had a 24 hour training class February 24-26, 2009 and as result of this class two blasters had their certificates renewed. One had let his license expire in January of 2009 and the other's license would have expired on March 16, 2009. The blaster whose license had expired had to retake the certification exam and pass it which he did on March 5. I received the records of the class shortly after that and renewed those two certificates and credited the training hours to three other blasters whose certificates are valid until late November of this year. The class WESCO claimed to have probably came about because the one blaster's certificate had expired and they called me about it on Feb. 12, 2009 and when I asked if he had been the blaster-in-charge on any shots they assured me he hadn't. I told them if he had signed any shot reports they would be in violation. I also informed them that I had a training class set up in our Sheridan office from Feb. 25-27. Why they decided to drum up a fake class and not send the two folks to my class in Sheridan is still beyond my comprehension. The class they pretended to have was set at about the same time as mine and if might have cost them \$500-600 to send the two blasters they were concerned about.

In early April one of our inspectors discovered that the blaster that let his certificate expire in Jan. had actually signed several shot reports while after his license had expired and before he got his renewal. They wrote an NOV to the mine since the shot records are the mines responsibility. There was no fine attached since I recommended it based on my past history with the blasting contractor. As you can imagine this NOV didn't sit well with the mine since the mistake was fully the contractor's fault.

After discovering the class never took place through guard shack entry and exit logs and phone interviews with the blasters who allegedly were in this class I wrote a NOV and my supervisor and I discussed the penalties and fine. The NOV suspends the Wyoming Blaster Certificates of:

Jerry L. Hugen; Wyo. cert. no. WS 0948-09

and

Marty D. Davies; Wyo. cert. no. WS 0756-09

These two suspensions were effective on May 26, 2009. They can have their licenses reinstated by attending an approved 24 hour training class and passing the Wyo. Certification exam.

The Wyoming Blaster Certificates for the following two WESCO managers were revoked effective May 26, 2009:

Joe D. Strobbe; Western Region Technical Manager; Wyo. cert. no. WS 0556-07

And

Shawn B. Seebaum; Wyoming Plant Manager; Wyo. cert. no. WS 0623-04

Both of these managers signed the records for the class that did not occur and Mr. Strobbe was listed as the instructor. The guard shack records indicated that he was at two of the Wyoming mines for several hours on the days he was supposedly teaching the class.

The Administrator and I have not determined when or exactly how the revocations can be reinstated but they are not necessarily permanent. We will both have to be very confident that the operation is being managed

much better than it has been.

The NOV also suspended WESCO's training privileges', requires them to prove the ~~validity of the training hours for all of their blasters,~~ and fines them \$120,000 for the falsification of the records.

Since the NOV was written WESCO has terminated Mr. Seebaum and Mr. Strobbe's fate was undecided when I talked to WESCO's President last week. Peabody Coal has banned Mr. Strobbe from entering the North Antelope Rochelle Mine (NARM) and a decision will be made from their St. Louis office if he is banned from all Peabody properties. NARM, a southern Powder river Basin mine, produced about 96 million tons of coal last year so it is a prime customer and WESCO provides full service at that mine. They also provide down hole service to Caballo and Rawhide Mines in the northern Powder River Basin. WESCO probably sells about a million pounds of explosives per day to Peabody in Wyoming alone so not only have they damaged their relationship with the RA but they have hurt their companies reputation and it may affect their relationship with a major customer. WESCO also services Peabody mines in New Mexico and Arizona that I know of.

As I said WESCO is 50% owned by DYNOL Nobel but WESCO manages the operations that they service with little input or direction from DYNOL.

Mr. Strobbe has already requested an informal conference with the Director of DEQ, the LQD Administrator and me and it is set up for June 23. After that the Director will make a determination and if the company doesn't like his decision then they appeal to the Environmental Quality Council which is appointed by the Governor to settle disputes with industry and DEQ. After that the next level would be civil court.

Doug

early-April - Arja audited blast reports NARM
 - April 7, 8 inspection of record

April 9 - Joel & Sharon visited w/ Doug.
 OVA Hazard license -

April 21, 22 - of Best of West - Doug watched
 guys saying "dumny up a class like
 Wildo did"

~~April 24~~
 Doug - Early May - looked at grand abo record
 at mine & found folks that
 were supposed to be in class
 on date given were on mine
 site

They know
 of policy
 for compliance - interviewed some people who
 were supposed to be in class
 "said there was no class"
 Sharon then backpeddled the here & there
 over past 12-14 months

Tom jr. started getting calls around
 mid-May

Site Mgr
 - customer at
 site
 - man. eq.
 - man. personal
 - 20 guys
 to Sharon
 to lead sheet

- met Peabody June 1, then called
 Doug.
 - took correction action
 - let Sharon go
 - add update to plant reports
 - slighted teaching & record keeping
 to safety mgr who was at site
 Mgr

Q. What schedule
Taxes
Q. P&C
Q. Reputation
or fine

- reviewed sign-in, sign out requirements for employees
- Was to her good blessing - no one put in harmful way.
- past record is clean, good w/ OSHA maybe 1 root / year
- our reputation has been damaged
- \$20K fine is significant amt. of money.
- They have great training program.
- email sent out to whole Jefferson's industry that hurt our reputation by Day 5 email.

Joe Stoddy just became aware in May of letter of misrepresentation written in Feb.

- didn't fully read the letter before signing - regrets he did.

- Tom Jr found mistakes we have made on licenses we have given & they have called to an attention, got hearing before 2 years of expiration were up. was then shown called to bring this up to Doug's attention

- a singular event.
- how \$20K was calculated
- believe amount should be \$10K

NOTE
Letter
Received

Joe - my license was revoked until it re-instated

7/13/9

WESCO - INTERNAL CONFERENCE

Tom jr - not arguing with the leader of Feb 26 being incorrect

Q. → - then Tom took it upon himself due to Hugen signing besting reports w/o a license
Hugen is an AFE of WESCO
- contacted DEQ that reports had been signed by Hugen

Q. When did they realize reports were invalid
- ~~on Feb 26~~ Tom jr. talked to Sharon about what to do given - between 2/3 and 2/12

Q. WESCO called Doug Feb. 12 reported that license expired but said Hugen had not signed reports.

1/6/09 - Hugen license expired

↓
2/3 to 2/12 - Sharon (SUQU.) became aware

2/12 - ~~Tom jr~~ Sharon called Doug
Sharon said - no blocks by Hugen
Doug opened a file class in Brandon

- Order for Sharon + Joe Stobbe showing training to take place in Lake file

WESCO
Trained
Hugen 2/21-26
↓
WR
accept training

idea
ask for
proceeding.

- not intentional
- order w/ the 3 dates may have seen account

Doug - advised a Tony. last but week
 - good training class
 - have recommended reinstatement of WESCO's training privileges

Don - on process calculation
 6 factors

- (i) prev. list. \$10K due to liquid trans.
- etc.

15 day clock starts date of receipt of letter
 ≈ May 23

- = get Doug records
- ~~set~~

idea ask for review of good faith claim from Doug + Don

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BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION
STATE OF WYOMING

IN THE MATTER OF NOTICE OF VIOLATION 100559 ISSUED ON MAY 20, 2009 TO WESCO Docket No. 4494-09

TRANSCRIPT OF RECORDED INFORMAL CONFERENCE

Transcript of Recorded Informal Conference in the above-entitled matter commencing on the 13th day of July, 2009, at the hour of 1:00 p.m., in the Yellowstone Conference Room at the Herschler Building, 122 W. 25th Street, Cheyenne, Wyoming, John Corra, Director, presiding. Also present were Doug Emme, Don McKenzie, and Becky Brosius of the Department of Environmental Quality Land Quality Division; Jared Fredrick, Tom Fredrick, Sr., Tom Fredrick, Jr., and Joe Strobbe for WESCO. Also present was John Burbridge, Senior Assistant Attorney General.

ORIGINAL

P R O C E E D I N G S

1
2
3 DIRECTOR CORRA: This informal conference
4 is convened at 1 p.m. on Monday, July 13, 2009 in the
5 Yellowstone Conference Room, Herschler Building, Cheyenne,
6 Wyoming for the purpose of receiving comment on NOV 100559,
7 Docket No. 4494-09 issued on May 20th, 2009 to WESCO. The
8 informal conference will be conducted pursuant to the
9 Wyoming Environmental Quality Act, Section 35-11-406(k).

10 As I mentioned, my name is John Corra. I'm the
11 director of the department, and I am charged with the
12 responsibility to look into this dispute and -- and conduct
13 this informal conference the way in which I described it to
14 you. The -- I will consider the views of all the persons
15 who have been affected by this NOV, and I'll consider all
16 the facts that come up. There may be new facts. You may
17 have -- you may have an opinion about existing facts.
18 We'll work all through that, okay?

19 So that's the brief opening statement. So let's
20 start with WESCO. Is there -- I mean, I could go over
21 the -- I could go over the NOV in detail, but you all know
22 about that, right?

23 Okay. So no sense boring you with that. I read
24 it. I've read the file, and so, WESCO, why don't you just
25 start and start to talk to me about --

1 MR. TOM FREDRICK, JR.: Okay. Well, we're
2 not here today to -- to say that this letter that was
3 written on February 26th was -- was correct. We -- we
4 aren't here to defend that. That -- that -- that letter
5 was a misrepresentation, and we have taken acts to try to
6 make things right that -- where we had committed wrongs,
7 and that letter that was written was incorrect.

8 DIRECTOR CORRA: Now, what letter are
9 you --

10 MR. TOM FREDRICK, JR.: I'm referring to a
11 letter dated February 26th which stated that there was
12 training that took place on February 24th, 25th and 26th.

13 DIRECTOR CORRA: Okay. So you're not
14 arguing with the letter of the 26th being incorrect?

15 MR. TOM FREDRICK, JR.: No.

16 DIRECTOR CORRA: Okay.

17 MR. TOM FREDRICK, JR.: And we feel like
18 that was an event, a single event that was -- that was in
19 error on our manager's part, who he, for some reason, took
20 it upon himself, I think, as a reaction to what had
21 happened previously with Marty Hugen signing the blast
22 reports with an expired license. And I think he -- this
23 letter was a reaction to that, done so incorrectly.

24 Just going back, though, to that event, I think
25 there may be different interpretations of -- when we

1 recognized that Mr. Hugen's license had expired --

2 DIRECTOR CORRA: He's one of your
3 employees?

4 MR. TOM FREDRICK, JR.: He's a WESCO
5 employee, a blaster with a blasting license that expired
6 early January, and he shot into -- he signed -- I think
7 there were five or six blast reports that he had signed on
8 an expired license.

9 DIRECTOR CORRA: Mm-hmm.

10 MR. TOM FREDRICK, JR.: When we realized
11 that he had signed those blast reports, we had him stop
12 blasting, and how I understand the chain of events is that
13 we actually contacted DEQ and let them know that there was
14 blast reports that -- we didn't go back and look at how
15 many. A call was made to me asking, "What should we do?
16 We realized that this blast -- that this blaster's license
17 has expired." My response was that, "We can't change
18 anything. It's already a document. Let's just let them
19 know what we did and move on from there."

20 DIRECTOR CORRA: When did you come -- when
21 did you contact DEQ about the -- about the -- when you
22 first became aware that the reports were signed, you knew
23 that he had an expired license, signed the report, when did
24 you become aware of that and when did you call us?

25 MR. TOM FREDRICK, JR.: Joe, I don't know

1 if you know those exact -- I don't know those exact dates.
2 I think the -- I think the call was placed to me sometime
3 around the 1st of February once we realized.

4 MR. STROBBE: I was gonna take care of that
5 information, but I think Shawn, in fact, had called you; is
6 that not correct?

7 MR. EMME: Shawn Seebaum with WESCO did
8 call me. He called me on February 12th --

9 MR. TOM FREDRICK, JR.: Okay.

10 MR. EMME: -- said that Jerry's license had
11 expired. First thing I did was ask him if he had signed
12 any shot reports because if he had, it would be a
13 violation.

14 MR. TOM FREDRICK, JR.: Right.

15 MR. EMME: He shared with me that he had
16 not.

17 DIRECTOR CORRA: Okay. Hold on.

18 MR. TOM FREDRICK, JR.: I read that e-mail.

19 DIRECTOR CORRA: I was writing a note and
20 I -- and I didn't hear correctly. So you -- you -- you
21 guys called Doug on February 12th?

22 MR. EMME: That's when Shawn called me.
23 Now, he might have notified Tom and Joe prior to that.

24 DIRECTOR CORRA: Yeah. That's okay. I was
25 just trying to get the date right. Okay. And then

1 (inaudible).

2 MR. TOM FREDRICK, JR.: And I don't know
3 how the conversation took place between -- between you and
4 Shawn, but the conversation between Shawn and I was that
5 let them know what has happened, that the documents have
6 already been signed, they are already in Peabody's files,
7 let them know what's happened and let's -- you know,
8 there's nothing we can hide.

9 And that's how I expected -- that's how I --
10 that's my recollection of how it happened.

11 DIRECTOR CORRA: And you don't remember
12 when Shawn talked to you?

13 MR. TOM FREDRICK, JR.: No, but I'm going
14 to guess it was somewhere between February 3rd and February
15 12th.

16 DIRECTOR CORRA: Mm-hmm. Mm-hmm. Okay.

17 MR. TOM FREDRICK, JR.: And -- and I think
18 what I guess I'm, I guess, trying to show in that is that
19 there wasn't something we were trying to hide in that
20 event. Those blast reports have been signed, and you're
21 going to find them, and that's how I expected Shawn to
22 communicate with you. And that's how I pursued it all
23 along.

24 DIRECTOR CORRA: Now, Shawn called you on
25 the 12th?

1 MR. EMME: On the 12th, yes. And he did
2 report that Jerry's license had expired, but he also told
3 me that he had not signed any shot report between January
4 6th, I believe, when his license expired and the date he
5 called me, and he assured me that he wouldn't be the
6 blaster in charge until we got it taken care of.

7 I also told him that I had a class in Sheridan
8 February 25th through the 27th. If he needed to get
9 anybody in it, I had to run.

10 DIRECTOR CORRA: So Huguen had not signed
11 reports --

12 MR. TOM FREDRICK, JR.: Let me just -- one
13 of the things that --

14 DIRECTOR CORRA: -- since his license had
15 expired. See, one of the -- I think if I -- if I read this
16 correctly, one of the -- one of the concerns is that Shawn,
17 I guess it is, who called Doug did not tell Doug everything
18 he needed to tell Doug.

19 MR. TOM FREDRICK, JR.: Yeah, I mean, I
20 read Doug's e-mail.

21 DIRECTOR CORRA: He told Doug that he had
22 not signed any reports since his license had expired, but
23 he's reporting it because you told him to.

24 MR. TOM FREDRICK, JR.: I read Doug's
25 e-mail, and that's where I felt like there was a conflict.

1 I even asked Joe to call Shawn.

2 MR. STROBBE: Yeah, and Shawn's
3 recollection is that -- again, he and I think Jim -- was
4 that they felt that they had told you that there may be
5 some stuff out there. I remember when you were putting on
6 the class that Shawn and I came up, you stepped out into
7 the hall for a few minutes.

8 MR. EMME: That was another class later.
9 That was a class in early April in Gillette.

10 MR. STROBBE: Oh, okay.

11 MR. EMME: That was after District 1 had
12 discovered the shot reports that he had signed --

13 MR. STROBBE: Okay.

14 MR. EMME: -- and his license had expired.

15 MR. STROBBE: And I know at that time there
16 was discussion of an NOV for that -- that instance, but --

17 MR. EMME: And quite honestly, when Shawn
18 called me, I assumed that he was telling me the truth that,
19 you know, no shot reports had been signed by Jerry. I
20 think he called me because he needed to get Jerry
21 relicensed as quick as he could.

22 It sounds like, you know, there was a disconnect
23 between what you told him and what he relayed to me,
24 because he did not tell me anything like what you
25 instructed him to tell me. You know, he -- the first thing

1 I asked was if he had signed shot reports, and he denied
2 that he had signed any.

3 MR. TOM FREDRICK, JR.: Yeah, well, I read
4 that in an e-mail that you had put together, and I -- I
5 felt like there was a point of difference there, and one of
6 the other reasons I felt that way was because I sat in a
7 meeting with Peabody, and they were -- they said to me, "We
8 don't like the way you've handled this because you
9 should've let us know rather than let DEQ know first."
10 And --

11 DIRECTOR CORRA: Why did they say that?

12 MR. TOM FREDRICK, JR.: I don't know why
13 they said that, but that was --

14 MR. STROBBE: Probably just wanted to know
15 what the NOV says.

16 MR. TOM FREDRICK, JR.: And so it -- it led
17 me to believe that everything happened how it was
18 supposed -- how it was happening -- how we had talked
19 about.

20 DIRECTOR CORRA: Let's -- you guys are all
21 talking faster than I can think. Is there an e-mail
22 that -- was there -- show me this e-mail you're referring
23 to. One of you said (inaudible). Is this --

24 MR. TOM FREDRICK, JR.: This is an e-mail
25 that I got. Actually --

1 DIRECTOR CORRA: It could be in here
2 somewhere.

3 MR. TOM FREDRICK, JR.: -- that was from a
4 brother-in-law. I never received this.

5 UNIDENTIFIED SPEAKER: For clarification,
6 John, we're right now discussing a prior NOV, not the NOV
7 that we're here today to talk about, so this is even --

8 MR. TOM FREDRICK, JR.: Yeah, I think we're
9 trying to give some history.

10 UNIDENTIFIED SPEAKER: I just wanted John
11 to know that because that would not be in your file folder.

12 DIRECTOR CORRA: Well, the -- see, the --
13 well, I'll -- I'll say what's on my mind so you know what's
14 on my mind. The -- your company is responsible for the
15 behavior of their employees. You guys know that. That's
16 kind of a standard business axiom, right?

17 So although I listen and I appreciate you telling
18 me that story to indicate to me you had the best of
19 intentions, so don't misunderstand me, I'll listen to that,
20 but what I think I heard was that Hugen is the guy who was
21 doing the blasting and his license expired on January --

22 UNIDENTIFIED SPEAKER: 6th.

23 DIRECTOR CORRA: -- 6th, so -- and so --
24 and we're talking about Hugen now, just what he was doing.
25 So his license expired, and then somewhere along the line,

1 and I'm going to guess that somewhere around February --
2 between -- between, say, February 3rd to February 12th you
3 became aware that he was doing this without a license.

4 MR. TOM FREDRICK, JR.: Yes.

5 DIRECTOR CORRA: How did you become aware
6 of that?

7 MR. TOM FREDRICK, JR.: Our manager became
8 aware of that.

9 DIRECTOR CORRA: And who is the manager?

10 MR. TOM FREDRICK, JR.: That was Shawn
11 Seebaum.

12 DIRECTOR CORRA: Okay. So Shawn, who was
13 the supervisor of Hugen --

14 MR. TOM FREDRICK, JR.: Yes.

15 DIRECTOR CORRA: -- became aware of it --
16 became aware. Now, the -- how did he become aware?

17 MR. TOM FREDRICK, JR.: He was keeping
18 track of the expiration dates of our -- all of our
19 blasters, along with the blaster themselves.

20 DIRECTOR CORRA: So anyway, he becomes
21 aware, and on 2-12 you called -- you called Doug.

22 MR. EMME: No, Shawn called me.

23 DIRECTOR CORRA: Shawn -- oh, okay. Shawn
24 called. And Shawn said no reports -- no -- no -- no blasts
25 were conducted by this guy without a license.

1 MR. EMME: Right.

2 DIRECTOR CORRA: Okay. So am I caught up
3 so far?

4 MR. TOM FREDRICK, JR.: I think so.

5 DIRECTOR CORRA: Okay. And so at that
6 meeting Doug then says, well, hurry up and get it into my
7 March or April -- March for that?

8 MR. EMME: February. I told him I had a
9 February class because he was concerned, wanted to get him
10 relicensed as quick as he could. We had no records of any
11 hours that he had, and you have to have 24 every five years
12 to renew. I had no records. Shawn apparently had no
13 records that he had any hours, so I said, "Well, he's got
14 to get a 24-hour class and then retake his exam." And I
15 said, "I have a class the end of February in Sheridan."
16 And Shawn said, "I will think about sending him and maybe
17 another person or two, and I'll get back to you."

18 DIRECTOR CORRA: Okay. All right. So now
19 it's -- now I'm -- now I'm to February 12th, and so then
20 now carry -- take me forward.

21 MR. TOM FREDRICK, JR.: Then I think -- I
22 think then it would lead up to, after the conversation,
23 lead up to the letter that was written. Was there anything
24 in between there?

25 MR. STROBBE: Not that I'm aware of.

1 DIRECTOR CORRA: There was a letter that
2 was written from Doug to you?

3 MR. TOM FREDRICK, JR.: From -- from Shawn
4 Seebaum.

5 DIRECTOR CORRA: Oh, okay.

6 MR. TOM FREDRICK, JR.: Signed by Shawn and
7 Joe to Doug.

8 DIRECTOR CORRA: Yeah. Okay.

9 MR. TOM FREDRICK, JR.: Which stated there
10 was training that took place on the dates of the 24th, 25th
11 and 26th of February.

12 DIRECTOR CORRA: Okay.

13 MR. EMME: Between February 12th and that
14 February 24th class that WESCO submitted the records for,
15 Shawn called me back and said, "We're going to put on our
16 own 24-hour class and get some of these guys the hours they
17 need." I said, "That's fine, because you have an approved
18 program." So then we're up to the letter that they sent
19 that said they had the class.

20 DIRECTOR CORRA: Okay. So what day was the
21 letter that you sent?

22 MR. TOM FREDRICK, JR.: The 26th.

23 DIRECTOR CORRA: 26th?

24 MR. TOM FREDRICK, JR.: 26th of February.

25 DIRECTOR CORRA: Yeah. All right. And so

1 somewhere in between there WESCO trained Hugen, correct?

2 MR. STROBBE: No.

3 MR. EMME: Well, they trained him the 24th
4 through the 26th.

5 DIRECTOR CORRA: Okay. Well, yeah.

6 MR. EMME: Yeah.

7 DIRECTOR CORRA: And then he immediately
8 wrote the letter to him?

9 MR. TOM FREDRICK, JR.: Yeah.

10 MR. EMME: Yeah.

11 DIRECTOR CORRA: Okay. And we accepted
12 their training?

13 MR. EMME: Yes, we did.

14 DIRECTOR CORRA: Okay. All right. Got it.
15 Okay. Go ahead. So then -- then what?

16 MR. TOM FREDRICK, JR.: Then I think it
17 probably goes to the auditing the -- auditing the blast
18 reports, finding that there were, in fact, blast reports
19 that were signed.

20 DIRECTOR CORRA: Yeah. Okay. Now, who
21 audited -- who audited the blasting reports?

22 MR. EMME: Anna from District 1.

23 DIRECTOR CORRA: Okay.

24 MR. TOM FREDRICK, JR.: Which there was an
25 NOV written because of blast reports.

1 DIRECTOR CORRA: She did that audit
2 somewhere after June -- or after --

3 MR. EMME: April, I believe, wasn't it, or
4 was it the end of March?

5 MR. TOM FREDRICK, JR.: I thought it was --
6 I thought it was around the Best of the West because --

7 MR. EMME: No, it was prior to that because
8 Joe and Shawn came to see me on, I think, April 8th in the
9 middle of a class I had in Gillette.

10 MR. TOM FREDRICK, JR.: Okay.

11 MR. EMME: So it must have been, you know,
12 a week or just a few days prior to that.

13 MR. TOM FREDRICK, JR.: Okay.

14 MR. EMME: Because that's when you and
15 Shawn came up and I came out of class there at the college
16 in Gillette, and we talked about it, Joe.

17 MR. STROBBE: Yeah, I'm trying to . . .

18 Oh, yeah, Wyoming, 6th through the 10th.

19 MR. EMME: Yeah, so it was the 7th or -- my
20 class was 7, 8 and 9, so it was either the 7th or 8th that
21 I think they stopped in and talked to me about it.

22 DIRECTOR CORRA: So somewhere around in
23 early April?

24 MR. EMME: Yeah.

25 MR. McKENZIE: I've got the dates. The

1 inspection was on April 7th and 8th, and the Notice of
2 Violation was written on April 23rd.

3 MR. EMME: So maybe it was the 8th or 9th
4 when Joe and Shawn came in to see me at class.

5 MR. STROBBE: (Inaudible).

6 MR. EMME: Yeah.

7 DIRECTOR CORRA: Okay. All right. Keep
8 going.

9 MR. TOM FREDRICK, JR.: Then there were
10 events that took place, I think, around the Best of the
11 West --

12 MR. EMME: Yeah.

13 MR. TOM FREDRICK, JR.: -- that Doug --
14 there was some suspicion that maybe that class didn't take
15 place, and I don't know how that occurred, but that
16 occurred around the Best of the West.

17 MR. EMME: It was at the Best of the West,
18 yes.

19 MR. TOM FREDRICK, JR.: At the Best of the
20 West.

21 DIRECTOR CORRA: And the Best of the West
22 is a convention?

23 MR. EMME: We have a blast seminar that's
24 put on every year.

25 DIRECTOR CORRA: Okay. And that occurred

1 in April when?

2 MR. TOM FREDRICK, JR.: 23rd?

3 MR. EMME: 22nd, I think.

4 MR. McKENZIE: 22nd.

5 MR. EMME: Yeah, it was the night -- the
6 first night of the thing.

7 DIRECTOR CORRA: So anyway, at the Best of
8 the West

9 MR. TOM FREDRICK, JR.: At the Best of the
10 West, yeah, Doug can probably -- I don't -- I don't know
11 the events that took place.

12 DIRECTOR CORRA: Can you jump in and say,
13 hey, I heard something that says --

14 MR. EMME: John and I overheard some guys
15 talking in the evening. I was visiting with one group of
16 guys, and I don't even think they knew I was there, and
17 somebody joked about their buddy that didn't go that day
18 that played golf, and he was going to do the same thing the
19 next day, and it was a big joke. And they said, "Well, you
20 know, if he needs the hours, we can just have our company
21 dummy up a class like WESCO did." And so then I thought,
22 well, it's out there, I've got to look into it.

23 DIRECTOR CORRA: Mm-hmm.

24 MR. EMME: And I just kind of, you know,
25 ducked my head and got out of there so they didn't see me

1 and start, you know, backtracking. And the 24th, Friday,
2 the 24th I took off for Knoxville, Tennessee to teach an
3 OSM class. So I really didn't get to looking into this
4 till early May.

5 DIRECTOR CORRA: Okay. Okay. Then so what
6 did you -- so what did you find out then?

7 MR. EMME: Well, it was pretty easy, you
8 know. You go to the guard shack records at the mines that
9 WESCO services, and you just ask for a record of who came
10 in and who left and what times, and I had it right there,
11 and many of the people, including Joe, that were supposed
12 to be in that February class were actually on mine sites
13 for, you know, as many as 11, 12 hours a couple of them.

14 DIRECTOR CORRA: You're saying they were
15 supposed to be in a class on the dates?

16 MR. EMME: Yeah, they were supposed to be
17 in class on February dates, and they were on the mine
18 sites. I also interviewed some of the people that were
19 supposed to be in the class.

20 DIRECTOR CORRA: Okay. What did they say?

21 MR. EMME: They said there was no class,
22 and a couple of them had no knowledge that they were being
23 credited 24 hours for a class until a couple days before I
24 called them after Shawn had got word I was looking into it,
25 then he started doing damage control with his own people

1 and telling them, well, it's an accumulation of an hour
2 here, two hours here, another hour here over the last 12,
3 14 months.

4 DIRECTOR CORRA: Okay. All right. So does
5 that take care of your timeline for the most part, at least
6 for the moment?

7 MR. EMME: Yeah, pretty much.

8 DIRECTOR CORRA: So, Tom, back to your --
9 now back to where you were. Go ahead and talk to me about
10 your sense of the timeline, if there's anything different
11 from --

12 MR. TOM FREDRICK, JR.: No, I think when we
13 received -- once Shawn started realizing that you were
14 looking into it, then I started getting some phone calls
15 about what was going on and started getting, I guess you
16 would say, more of what had actually happened.

17 MR. EMME: Mm-hmm.

18 MR. TOM FREDRICK, JR.: And --

19 DIRECTOR CORRA: So, excuse me, Tom, you
20 started getting some calls probably around April or May?

21 MR. TOM FREDRICK, JR.: It would have been
22 May. I would guess it would be mid-May.

23 MR. EMME: Yeah, that would be about right.

24 MR. TOM FREDRICK, JR.: You know, I started
25 getting calls about they were looking into that training,

1 you know, and realizing that that training didn't happen,
2 recognizing that, you know, it was a total fabrication. I /
3 had a meeting with Peabody on, I think, June 1st, just
4 going through all of the events. I called you right after
5 that meeting.

6 MR. EMME: Yeah, yeah.

7 MR. TOM FREDRICK, JR.: And I wrote a
8 letter to Peabody going through the events, how I
9 understood they all happened. We took corrective action
10 with Peabody with our blast reports, putting the expiration
11 date of the blaster on the blast report so that we wouldn't
12 run into that issue again.

13 We let Shawn Seebaum go. We also took -- we took
14 that responsibility away from our plant manager and put it
15 into our safety and compliance manager so that we are
16 trying to divide up some of the responsibilities so you
17 didn't have a manager who did what happened.

18 DIRECTOR CORRA: Let me -- let me start
19 there and ask you, how -- how are you organized and how are
20 you doing this? That might help me a little bit. You
21 mentioned plant manager, so I'm assuming that -- you guys
22 are headquartered in Utah.

23 MR. TOM FREDRICK, JR.: We're headquartered
24 in Salt Lake City. Most of our, I guess you'd say our --
25 our administration, our management, we've got Joe Strobbe,

1 who is a technical manager, who is in Albuquerque, New
2 Mexico. We set up on a site where we have a plant manager
3 up in -- up in the Powder River Basin. Shawn Seebaum, he
4 was what we would call site manager or plant manager.

5 DIRECTOR CORRA: Mm-hmm.

6 MR. TOM FREDRICK, JR.: And then he has a
7 couple of lead guys that run crews.

8 DIRECTOR CORRA: So these site managers,
9 that's just where the mixing -- is that just the mixing
10 facility and the truck -- truck -- whatever you do, fuel
11 oil and (inaudible)?

12 MR. TOM FREDRICK, JR.: All of that is done
13 on -- all of that is actually done right on the mine site.

14 DIRECTOR CORRA: Oh, okay. So there's no
15 plant where you're mixing the stuff and then it's taken out
16 to the mines?

17 MR. TOM FREDRICK, JR.: No, no. If you go
18 to our plant, you would think of it more as a maintenance
19 facility --

20 DIRECTOR CORRA: Right.

21 MR. TOM FREDRICK, JR.: -- rather than an
22 explosive -- like an emulsion manufacturing facility or a
23 blending facility (inaudible).

24 DIRECTOR CORRA: That's all it is is a
25 blending facility at the mine site?

1 MR. TOM FREDRICK, JR.: No, we do all of
2 our blending on our trucks. All of the trucks are brought
3 in as AN and emulsion. They're put into our trucks, and
4 then we blend it in the hole.

5 DIRECTOR CORRA: So site manager is really
6 the guy that is managing the contract you have for an
7 individual mine?

8 MR. TOM FREDRICK, JR.: He's managing the
9 relationship with the customer there on site. He's
10 managing our personnel. He's managing our equipment
11 through -- he's managing the safety of our organization and
12 those types of things. He has lead -- a lead role in those
13 responsibilities.

14 DIRECTOR CORRA: Okay. How many employees
15 does he have?

16 MR. TOM FREDRICK, JR.: There's about 51.

17 DIRECTOR CORRA: And Shawn was supervising
18 all 51?

19 MR. TOM FREDRICK, JR.: He was.

20 DIRECTOR CORRA: 51 employees for one mine?

21 MR. TOM FREDRICK, JR.: There's -- there's
22 the north basin and the south basin. The north basin
23 there's about what, eight guys up there?

24 MR. TOM FREDRICK, SR.: Yeah, eight to
25 twelve.

1 MR. TOM FREDRICK, JR.: Eight to twelve
2 guys, and we have a gentleman up there who manages that
3 crew. And so then Shawn would manage, you know, maybe 40
4 guys at NA/RM. And our responsibility at NA/RM is a full
5 load and shoot where we actually put the product down the
6 hole and we shoot it. We do not -- we do not sell any of
7 the products to the mine.

8 DIRECTOR CORRA: Sure.

9 MR. TOM FREDRICK, JR.: We're just a
10 service provider.

11 DIRECTOR CORRA: Right.

12 MR. TOM FREDRICK, JR.: And so that was one
13 of the things, you know, we're not selling product to
14 Peabody. Dyno sells all that product. We just service it.

15 DIRECTOR CORRA: Yeah. I gotcha. Okay.
16 So anyway, so in your corrective action, now back to that,
17 you let Shawn go, you had the expiration date for the
18 licenses to all of your blasting reports, and then you --
19 you started to tell me you were doing something about
20 division of responsibilities with the manager or --

21 MR. TOM FREDRICK, JR.: Yeah. We -- we --
22 Shawn was -- Shawn was keeping track of training and things
23 like that, keeping track of blasters' expiration dates, and
24 we shifted that over to our safety and compliance manager
25 where he's keeping track of all those records. He's

1 reporting all of that information to Doug and dividing
2 up -- trying to divide up responsibilities.

3 DIRECTOR CORRA: Mm-hmm. Okay. Where is
4 the safety man, if you know?

5 MR. TOM FREDRICK, JR.: He lives up in
6 Wyoming.

7 DIRECTOR CORRA: Oh, okay. He doesn't work
8 for Shawn?

9 MR. TOM FREDRICK, JR.: He doesn't --

10 DIRECTOR CORRA: He did work for Shawn
11 (inaudible).

12 MR. TOM FREDRICK, JR.: Yeah, he did work
13 for Shawn, yeah.

14 DIRECTOR CORRA: All right. All right.
15 Okay. Keep going.

16 MR. TOM FREDRICK, JR.: We have -- also we
17 have -- we have reinforced a policy that all training has a
18 sign in and sign out or a sign-in sheet by the employee who
19 is being trained so that there isn't any, you know, you
20 couldn't put a document together and say this person was
21 trained. The employee actually has to state themselves
22 that they were trained.

23 I think that if you look at -- at our employee
24 base up in Wyoming, our blasters, I think you will find
25 that they are some of the -- I don't know if this is just

1 anecdotal evidence. I think if you looked around the
2 basin, ours are -- ours are the most prepared for the
3 Wyoming test. They are -- they are the best blasters up
4 there. I think if you look at blast troops throughout that
5 basin up there, you'll see a number of them who are
6 blasters in charge at other mines after they have been
7 trained and gone through our program.

8 Joe Strobbe has, you know, been in this business
9 for 30-plus years, and I think he's got a reputation that
10 is very solid. I think he goes back with MSHA every year
11 and helps train them. He's very involved at OSM and their
12 training.

13 And so although this document that was put
14 together was -- was not correct, I don't think there was
15 ever a moment when our blaster was not trained and -- and
16 was ever putting anybody in jeopardy or any -- anybody in
17 harm's way.

18 I think that, you know, as a leader of an
19 organization, you -- you -- you try to put people in place
20 who you have -- who you have confidence and trust in. And
21 that's what we -- that's what we did in this case. We put
22 people in place who we believe that were trustworthy, were,
23 you know, what they told us was what was happening. And I
24 think if you -- if you look at our track record, this event
25 is -- is a singular event. There's not a track record of

1 these types of things.

2 As you look through MSHA records and things like
3 that, I think if you look up in the basin, we have an
4 exceptional record with MSHA. I think that, you know, on
5 average, I think we've received one violation per year, and
6 I think if you look at what those violations are, they
7 are -- they are very nitpicky.

8 And so our organization, you know, is well run.
9 It's an organization that is -- that is run based on
10 relationships with our customers. They know what we tell
11 them is what we're going to do. And it's the same way with
12 regulatory agencies. What we tell them is what we're going
13 to do.

14 And this -- this has been an event that has been,
15 I mean, disturbing for each of us. I mean, I look over at
16 my friend here, Joe, who I've been associated with for 18
17 years now, and there were a number of things that I'm very
18 disappointed about. There were a number of events that
19 I'm -- you know, you lose sleep over. And we're -- we're
20 trying to reconcile everything that's happened. We're
21 trying to -- you know, we've got a big customer up there.
22 Doug stated in his e-mail, you know, that our reputation's
23 been damaged. And it has. We have work to do with our
24 customer.

25 \$120,000 fine, you know, that's a significant

1 amount of money for a company our size. For just -- just
2 doing the service work up there, that would be a
3 significant account if you were -- if you were selling, you
4 know, a million pounds of product every day up there,
5 that's a significant account. It is for Dyno Nobel. It's
6 a significant account for us as far as the service goes.

7 But \$120,000 fine, it makes it difficult for us
8 to reinvest in equipment. It makes it difficult for us to
9 pay our guys well. It makes it difficult for us to do the
10 things that we need to to run our business safely and
11 productively every day.

12 And we're not here to tell you that what we did
13 was right because we know it was wrong. What we're here
14 today is to, I think, to say we realize that we made a
15 mistake and that there were mistakes made and that we want
16 to move on, that we want to -- we want to build up our
17 reputation again as it has been, I think, as the premier
18 provider of products and service to the explosives
19 industry. And we look at this event as a single event, one
20 that -- one that is not going to happen again.

21 I think -- I think, you know, we've got a great
22 training program. I think it's evident in the scores of
23 our test. I think what you saw last week, a blaster who
24 was trained by one of the most reputable explosives
25 companies in the world, they come in and train our people

1 and he doesn't pass the test. We come in and train him and
2 he passes with a 91 percent. I mean --

3 DIRECTOR CORRA: Let me interject here for
4 a little bit while you're -- in this part of your -- part
5 of your story.

6 The comment on the reputation versus fine, just
7 for a moment, I think the fine or the penalty, you know,
8 I -- that in my mind is separate from the NOV itself and
9 your reputation. You know, one way you can repair your
10 reputation -- I can't help to repair your reputation. No
11 matter what I do, those are obvious conflicts. Only you
12 can do that. Sounds like you are. (Inaudible).

13 MR. TOM FREDRICK, JR.: Well, let me
14 interrupt that just for --

15 DIRECTOR CORRA: (Inaudible).

16 MR. TOM FREDRICK, JR.: There was an e-mail
17 that was sent out to basically the whole explosives
18 industry that certainly hurt our reputation, I think, in a
19 broader -- in more of a broader way than just the event
20 that's happened now. I mean, this e-mail went out to -- to
21 I think everybody in the United States as I start looking
22 at -- and I know it was --

23 DIRECTOR CORRA: Show me the e-mail. Who
24 is Tom Campbell?

25 MR. TOM FREDRICK, JR.: He's a

1 brother-in-law of mine.

2 DIRECTOR CORRA: Oh, okay.

3 MR. TOM FREDRICK, JR.: That's how I
4 received it.

5 DIRECTOR CORRA: All right. So this is an
6 e-mail from -- for the recorder, this is an e-mail from Tom
7 Campbell of TerraTek, written to TerraTek and then at
8 the -- Mike Mann, who is Mike Mann?

9 MR. TOM FREDRICK, JR.: I don't know.

10 MR. EMME: Mike Mann essentially holds my
11 position in the State of Ohio.

12 DIRECTOR CORRA: Okay.

13 MR. EMME: If it's the same Mike Mann. I
14 assume it is.

15 MR. TOM FREDRICK, JR.: Yeah.

16 DIRECTOR CORRA: So and Mike is forwarding
17 an e-mail from Doug Emme, and you sent an e-mail to all
18 your counterparts?

19 MR. EMME: Yeah, you know, Ken Eltschlager
20 with OSM and some of the state people that we've been doing
21 a lot of work on revising the tests from the different
22 states and whatnot, so we speak relatively often.

23 DIRECTOR CORRA: Okay. Why don't you stop
24 the recorder while I just take a moment to read the e-mail.

25 (Recorder stopped.)

1 MR. STROBBE: -- along the way. I was not
2 aware that there was a problem until late May, Shawn called
3 me and said, "We may have some problems. Doug is doing
4 some investigation," at which point I called Doug in May,
5 and Doug and I have worked together very well for 15-plus
6 years. And he was obviously upset, told me what he had
7 discovered. I was -- I was very surprised, shocked, and it
8 wasn't until I go back to my little Daytimer that I started
9 to put events together because I wasn't able to really get
10 my arms around what had happened.

11 And there had been -- that was my original
12 attempt at going to Wyoming was to -- was to do a class
13 because I had been aware certainly by then that Jerry's
14 license had expired, and it was about time to do some
15 training anyway.

16 DIRECTOR CORRA: Now, this all started in
17 May?

18 MR. STROBBE: This is in February.

19 DIRECTOR CORRA: Wait a minute. I
20 misunderstood. I thought you said you first became aware
21 in May.

22 MR. STROBBE: Well, I became aware of it
23 in -- in May, but after I went back through a few things, I
24 was able to put together what had happened in February.

25 DIRECTOR CORRA: Well, yeah, but you were

1 not aware of anything that was going on in February, any of
2 this other stuff?

3 MR. STROBBE: Well, my name is on that.
4 There's no question, that is my name and a kind of hurried
5 signature, and what had happened there is instead of
6 putting on the class, I spent three days with the explosive
7 engineer in the field. On Thursday evening I'm headed up
8 to our shop --

9 DIRECTOR CORRA: So let me back up.

10 MR. STROBBE: Okay.

11 DIRECTOR CORRA: So this -- I was writing
12 notes as you were talking.

13 MR. STROBBE: Okay.

14 DIRECTOR CORRA: I wrote a note that said
15 Joe first became aware in May, and that's incorrect. You
16 became aware in February?

17 MR. STROBBE: No, I became aware that there
18 was a problem with DEQ because of the letter written in
19 February.

20 DIRECTOR CORRA: Which letter is this?

21 MR. STROBBE: That's the one where --
22 that's the misrepresentation. That's the --

23 DIRECTOR CORRA: So you became aware in May
24 of the letter of misrepresentation?

25 MR. STROBBE: Yes.

1 DIRECTOR CORRA: Written in February?

2 MR. STROBBE: Correct.

3 DIRECTOR CORRA: By you?

4 MR. STROBBE: Well, I was just -- I was a
5 signee to it, yes.

6 DIRECTOR CORRA: By you?

7 MR. STROBBE: By me.

8 DIRECTOR CORRA: See, I don't get that
9 luxury when I -- in my business.

10 MR. STROBBE: Well, you know, and I kind of
11 attribute that to anyone who has refinanced a house or
12 bought a house in the last five years, you sign documents
13 from a kid that you've met 15 minutes before that he's
14 telling you what is in there.

15 I signed a document without fully reading it, and
16 that will be a regret that I'm going to have for a long,
17 long time because I damaged a friendship with -- with Doug,
18 I lost a good friend throughout this and damaged WESCO's
19 reputation. Had I taken another 10 seconds to read it or
20 15, whatever it was, I would've caught it at the time. I
21 was not aware that he had -- the author had arbitrarily
22 thrown three dates in there. What I looked at was we had
23 some people who we were saying were trained. If you asked
24 me today if our people are trained, I'm going to tell you
25 yeah, every one of them.

1 DIRECTOR CORRA: Well, I -- I appreciate --
2 I -- I certainly appreciate your feelings about your
3 people, and I certainly appreciate your feelings about the
4 company you run. That -- that's fine.

5 But, you know, somehow, one of the questions I
6 was going to ask when you were talking, Tom, is that we --
7 you talk about this excellent training program that you have.

8 MR. STROBBE: I will stand by that.

9 DIRECTOR CORRA: Well, and that's good,
10 but -- but somehow it didn't function very well. It didn't
11 function very well for a couple, three reasons. One is if
12 a plant manager who doesn't -- didn't either know about it
13 or doesn't -- didn't know he was supposed to track
14 expiration dates, you have an employee who wasn't paying
15 any attention to his expiration date, and then you have --
16 you have people in your organization that decided to put
17 together some story to get by this instead of just facing
18 the music at the time the band was playing, and it got --
19 one problem got magnified into another problem, really.

20 And so, you know, whatever we did for a Notice of
21 Violation or a penalty, which is where were at when you
22 were talking about the size of the penalty and you're
23 talking about your reputation, the -- you know, just to
24 kind of come back full circle with that, my guess is that
25 your customers, if you've done a good job of talking to

1 your customers, will recognize the quality of your program
2 and the quality of your company going forward would be my
3 guess.

4 There is a trust relationship that's been broken
5 with one of your customers that you'll have to repair, I'm
6 pretty sure, and you know, the past -- that's not the fault
7 of Doug and it's not the fault of the way we see Doug's
8 penalty or what wrote the NOV. And, you know, you fired
9 the guy that you think was responsible for this whole
10 thing, and that's good for -- well, I -- I -- I'm going,
11 well, that probably makes some sense, but I'm not in a
12 position to barter people's jobs against fines, just so you
13 know that.

14 So the fact that you took serious action, I hear
15 you. I -- you know, I -- I hope it works out for you, but
16 gee whiz, somewhere along the line something failed in your
17 system.

18 MR. STROBBE: True.

19 DIRECTOR CORRA: It did, and -- and you
20 know, you talked about MSHA and the record with MSHA, and
21 MSHA requires training, and I'll bet you a lot -- well,
22 I'll bet you that your recordkeeping for MSHA is pretty up
23 to snuff.

24 MR. STROBBE: Yeah.

25 DIRECTOR CORRA: Why is that?

1 MR. STROBBE: Well, we have to sign
2 documents.

3 DIRECTOR CORRA: Because that's very
4 specific, very heavy rules both civil and criminal if you
5 screw that up.

6 Okay. Well, I think now you know that there are
7 some pretty stiff rules and penalties if you screw up the
8 recordkeeping as far as OSM and the State is concerned.

9 You know, the other -- the other half of this
10 thing that I don't think has been discussed is OSM has
11 oversight over all of our enforcement action as well as our
12 permit actions and all our other stuff. So, you know, the,
13 you know, somehow or another some of what was in this
14 e-mail here necessarily gets reported up the chain. And
15 how we deal with something this severe is important to MSHA
16 as well. Not that MSHA is telling us what to do in this
17 case. I'm just telling you that we have somebody looking
18 over our shoulder, too.

19 But the -- the -- what you're telling me is you
20 got a good MSHA record. You know all about MSHA. You've
21 got good training and you have good blasters and your guys
22 get good scores when they take tests, and maybe you had
23 one -- this Shawn, how long did Shawn work for you?

24 MR. STROBBE: Fifteen, sixteen years.

25 DIRECTOR CORRA: So he's been there long

1 enough that you ought to know what kind of guy Shawn is.

2 MR. TOM FREDRICK, SR.: Well, he's been
3 with us for the last three years.

4 MR. TOM FREDRICK, JR.: Yeah.

5 MR. JARED FREDRICK: Well, he started with
6 us early on.

7 DIRECTOR CORRA: It's either 15 years or 3.

8 MR. JARED FREDRICK: He was with us in a
9 different capacity. The last three years he's been our
10 site manager. Before that he was out of town.

11 DIRECTOR CORRA: You've known him for 16
12 years as an employee. You wouldn't have promoted him
13 (inaudible) if you didn't have some fairly good idea.
14 Anyway, I'm just -- you can probably tell where I'm going
15 with this. I'm just saying I appreciate what you're
16 saying, and it's on the recorder.

17 MR. TOM FREDRICK, JR.: I do appreciate
18 where you're going with this, John, but also, we can go
19 back and we can -- we have -- we find things that you guys
20 have made mistakes in, too. So you've pointed out that
21 we've made some mistakes.

22 DIRECTOR CORRA: Okay. Tell me -- tell us.

23 MR. TOM FREDRICK, JR.: Well, I mean -- we,
24 we found things where we've sent things in and licenses
25 were given when they shouldn't have been given. We

1 specifically said that. Or I've talked -- I talked to a
2 blaster who had his license expired, and he was able to
3 continue blasting. And these are -- these are years in the
4 past, and so I'm -- I don't want -- I feel like you're
5 telling me that you've -- that, you know, we -- we're
6 admitting to our mistake. We're not saying that we didn't
7 make a mistake. And I understand exactly what you're
8 saying. There were things that were ignored. I --

9 DIRECTOR CORRA: Tell us more about these
10 mistakes you've found of ours.

11 MR. TOM FREDRICK, JR.: Well, just recently
12 we had a blaster that applied for a license, and he -- we
13 put in his papers and we noted on there when his two years
14 would be up so that he could receive the license, and the
15 license came before and we let you know that --

16 DIRECTOR CORRA: Yeah, I don't understand
17 that enough to be able to fill in the gaps. So he got a
18 license for two years?

19 MR. TOM FREDRICK, JR.: No, he received a
20 license before his two years was -- he needs two years of
21 experience to receive the license itself.

22 DIRECTOR CORRA: Oh, okay. So he got a
23 license before the two years were up?

24 MR. TOM FREDRICK, JR.: Yeah.

25 MR. EMME: That did, in fact, happen. We

1 sent several people to a class. He noted on there and
2 Shawn had also told me that, you know, he wouldn't have his
3 two years for another three months or something. I said,
4 "Go ahead and send him to class and we'll hold the
5 license." As I went through the 20-some people that were
6 in the class, I overlooked that, issued him a license, sent
7 it out. Shawn called and said, "Okay, you know, we'll pull
8 that until he's got his two years in." And I quite often
9 let people come into class a few months before they have
10 their two years.

11 DIRECTOR CORRA: Okay.

12 MR. EMME: Just because I don't have a set
13 schedule. I give classes when I have enough people to
14 warrant putting on a class.

15 DIRECTOR CORRA: Okay. All right. So
16 the -- Tom, why don't you carry on with the rest of your
17 story.

18 MR. TOM FREDRICK, JR.: Well, I just -- my
19 feeling is, getting down to the -- to the -- to the quick
20 of it, is that we feel like this is a singular event. We
21 would like to understand how the \$120,000 fine was -- was
22 come up with, if there's a method behind that. As we've
23 looked into it, we would -- we would disagree with that
24 amount. We would look at this as a singular event and
25 believe that the amount should be \$10,000.

1 DIRECTOR CORRA: Okay. Okay. I cut you
2 off, too, there for a minute. Do you have more to say?

3 MR. STROBBE: Well, yeah, I quite frankly
4 do, because, again, my license was revoked because of this,
5 and that's what initiated the initial appeal, and I would
6 like the consideration of that -- of my license being
7 reinstated, and it's primarily from the fact that, yes, I
8 did make an error in signing something rapidly. I was
9 doing that under some very tough circumstances. I was on
10 my way out to drive all the way from the North -- the NA/RM
11 location all the way to Gallup, New Mexico, which I did
12 make by the next day to do some laser work because those
13 folks were in trouble with NOV's on overpressure. And I had
14 to take a laser profiler in, dragline's about out of dirt,
15 and had to profile an area to make sure that we had
16 adequate burden and in some cases inadequate burden in
17 order to allow them to shoot so they weren't rattling the
18 neighbors.

19 So that's where my weekend quite literally went.
20 And so, yes, I was in a hurry. I didn't read it.
21 Should've read it, no question about it. I trusted that
22 what was there was true and accurate, but I was on my way
23 out.

24 For 20 years of my career I have spent a good
25 share of it training people. My training outline is one of

1 only two or three that's accepted by New Mexico, and every
2 other year we use my training plan to recertify blasters
3 down there. I've trained I don't know how many people in
4 Wyoming. In '08, I looked back through my little book, I
5 was in Wyoming eight times. I held 60 hours of class. So
6 when someone asks me, "Are your people trained up?" My
7 short answer is yes. Have we done a very good job
8 documenting? Obviously not as good. That was usually left
9 to someone else.

10 But those things are changing. But I spent the
11 last part of my career stiffening tests. And a lot of this
12 is time -- personal time that I spent, but a tremendous
13 amount of time and energy and money is put out by WESCO,
14 and they have supported me a hundred percent in this.

15 I go back to West Virginia for the last seven,
16 eight years to help teach that class in January. I've sat
17 in with a colleague of mine from Peabody to go through the
18 OSM test. Doug and I talked about that last week to go
19 through their pool of questions that we challenged many of
20 them. Some of them were thrown out and some of them were
21 modified, but these are efforts that I've done over the
22 years on my own to try and make better blasters out there.
23 I'm the first one to tell you I don't want dumb blasters
24 out there, you know. I want those tests stiff. Doug's got
25 a good test. It's very thorough. And I have several tests

1 that throughout the three days or two and a half days that
2 they have to take, and that's why they are prepared.

3 So, again, I would like to appeal revocation. I
4 carry licenses in about seven states, and I've never had
5 one on my record, and I would like to be able to say that
6 it's gonna hold.

7 DIRECTOR CORRA: Somewhere in my notes here
8 you -- on April 9th you and Shawn visited with Doug.

9 MR. STROBBE: Yes.

10 DIRECTOR CORRA: Over this whole problem.

11 MR. STROBBE: No, not over the whole
12 problem. The only thing that was addressed there was Jerry
13 Hugen's license and the potential for an NOV there. It had
14 nothing to do with these other things that were laying back
15 there simmering.

16 MR. EMME: I wasn't aware of this on April
17 9th.

18 DIRECTOR CORRA: I see.

19 MR. EMME: I didn't find out about it until
20 the Best of the West, which was April 22nd.

21 DIRECTOR CORRA: So April 9th, as far as
22 you know, there was training conducted?

23 MR. EMME: Yes, as far as I know.

24 DIRECTOR CORRA: As far as you know, there
25 was training conducted?

1 MR. STROBBE: Well, as far as I knew, I
2 knew there was no training conducted. I would have been
3 the one conducting it.

4 DIRECTOR CORRA: Well, wait a minute.

5 MR. STROBBE: I -- I signed a letter saying
6 that our people were trained. I'm looking back at the 60
7 hours in '08 that I put on.

8 DIRECTOR CORRA: So where is that letter?
9 Do we have that letter?

10 MR. STROBBE: There wasn't a letter to that
11 effect.

12 DIRECTOR CORRA: No, no, not about the 60
13 hours, but about -- see, what you're -- what I think you're
14 telling me and where -- where I'm trying to get the
15 connection is you're saying that this employee, Shawn,
16 wrote something up that indicated training had taken place.

17 MR. STROBBE: Correct.

18 DIRECTOR CORRA: And that was to be
19 something presented to the DEQ to demonstrate that the guy
20 got his training so he could go back to blasting again
21 would be my guess.

22 MR. STROBBE: Mm-hmm.

23 DIRECTOR CORRA: And so you signed that.

24 MR. STROBBE: Yes.

25 DIRECTOR CORRA: And -- and that's the part

1 that I'm having a disconnect with what you just said,
2 because you just said that if there was training that had
3 taken place, you'd know about it.

4 MR. STROBBE: Right. I would've done --
5 what I'm saying is I did not -- I think there had been --
6 over the years there had been letters sent out that the
7 following people had received training. I think the
8 stickler on this particular letter is there was three
9 arbitrary dates thrown down, which shouldn't have been,
10 because there was not training on those days.

11 DIRECTOR CORRA: Right. And you guys are
12 admitting to that.

13 MR. STROBBE: Yes, absolutely.

14 DIRECTOR CORRA: There is no question about
15 that.

16 MR. STROBBE: Yeah. My train of thought at
17 that point is he said, "There's a letter there to sign
18 saying the guys have had enough training," and I'm going,
19 well, yeah, we did 60 hours just last year for crying out
20 loud. So there's no question in my mind that our guys are
21 trained adequately.

22 DIRECTOR CORRA: So Shawn basically
23 bullshitted you is what you're telling me.

24 MR. STROBBE: Somebody put three dates down
25 that shouldn't have been there. In my mind, had he not put

1 three dates down, I think the letter would have been
2 correct and accurate.

3 DIRECTOR CORRA: (Inaudible). Okay. All
4 right. Are you through?

5 MR. STROBBE: Yes.

6 DIRECTOR CORRA: Okay. The -- the -- okay.
7 So let me ask Doug. Doug, do you have anything more to
8 say? Do you have anything to add to what you've heard in
9 rebuttal?

10 MR. EMME: I think the chain of events has
11 been covered pretty well. I wouldn't dispute what Tom or
12 Joe said. I think the WESCO people as a general rule are
13 very well trained, they're well prepared.

14 I audited a class that Joe put on last week
15 because they want to get their training privileges back.
16 It was a very good class. He does have some good tests
17 that he gives those folks. He did two 10-hour days and a
18 5-hour day. Good class. As good a class as I've been to,
19 and I've been through about everybody's in the business
20 that does training.

21 I sat down Friday morning and wrote a memo to
22 Don, which I'm sure he hasn't gotten yet, recommending that
23 we reinstate WESCO's training privileges. As Tom said, one
24 of the guys that about four weeks ago he sat through a --
25 three weeks ago perhaps it was, he sat through a three-day

1 class that Dyno put on, and I audited part of that class
2 also. He came in the day after the class, failed his test.
3 Wasn't terribly close to passing his test, and he sat
4 through Joe's class again, so he's had essentially 48 hours
5 of training in the last three, three and a half weeks and
6 took his test after Joe's class and, like Tom said, he got
7 a 91 and did very good on it. We, you know, talked about a
8 few of the ones that he missed, and you know, several of
9 them were half wrong, that type of thing. He did very
10 good.

11 So I -- I will not dispute that the WESCO
12 training is very good training. It -- and I do recommend
13 that we reinstate their training.

14 DIRECTOR CORRA: Okay. All right.
15 Anything else?

16 MR. EMME: Unless you have questions, I
17 don't think so.

18 DIRECTOR CORRA: Don, do you have anything
19 to add?

20 MR. MCKENZIE: No, unless you want me to
21 speak to the penalty.

22 DIRECTOR CORRA: Yeah, I'll get to that in
23 a second, but (inaudible). Do you have anything?

24 MR. TOM FREDRICK, JR.: I don't.

25 DIRECTOR CORRA: Tom Senior?

1 MR. TOM FREDRICK, SR.: Well, I would just
2 say that we certainly want to accept any responsibility for
3 any wrongdoing that we've done and take corrective action.
4 I've been involved in this business for 41 years, and I
5 know that it's a huge responsibility to handle this
6 (inaudible) utilized improperly. It's no small thing to
7 have that responsibility as a blaster and a supervisor, and
8 we take it seriously to have our people well trained and to
9 establish relationships of trust with our customers, and
10 that's been I feel like our forte is to do that.

11 And so when these kinds of things happen, it's --
12 it's very serious to us, and we want to make sure that we
13 correct it and do it properly. And if there's any way I
14 could plead for leniency for any of the wrongdoers, I would
15 do that. I'd leave that in your hands.

16 DIRECTOR CORRA: All right. Yeah. Don, to
17 answer the question about how the penalty is calculated,
18 could you go through that. I believe that some of that --
19 you got a letter to that effect, right, showing the penalty
20 assessment letter?

21 MR. TOM FREDRICK, JR.: I got a letter
22 which stated the -- the fine. There's one that says,
23 "Please be advised that, in my opinion, a penalty of
24 120,000 is appropriate."

25 DIRECTOR CORRA: That's the letter that I

1 signed.

2 MR. TOM FREDRICK, JR.: Yes.

3 DIRECTOR CORRA: That's the penalty letter
4 you have. They don't have the penalty calculation letter.

5 MR. TOM FREDRICK, JR.: I don't have it.

6 DIRECTOR CORRA: Yeah. Right.

7 (Inaudible). I'll be responsible for that.

8 Don, why don't you go ahead and talk about the
9 penalty calculation.

10 MR. McKENZIE: There are six factors in the
11 Land Quality Division rules and regs, Chapter 16, Section
12 3(a). The first one is operator history. Second is
13 seriousness of the violation. Third is the degree of
14 fault. Fourth is the operator has demonstrated good faith.
15 The fifth is inability to comply. And the sixth is any
16 information that might be submitted to the director within
17 15 days of receipt of the NOV so it's actually taken into
18 account, and it's this letter that you received.

19 DIRECTOR CORRA: Mm-hmm.

20 MR. McKENZIE: The previous history, you
21 know, we talked about the NA/RM NOV that was issued. There
22 was no penalty assessed to NA/RM, and that was based on
23 Doug's assessment of your company and not having a prior
24 history. However, in hindsight, the training used to get
25 that person's certificate was this training event that did

1 not occur, and \$10,000 was assessed for that.

2 The seriousness of having what looks like a
3 three-day event --

4 MR. TOM FREDRICK, JR.: Are you going to
5 give that -- are you going to give us a copy of that?

6 MR. MCKENZIE: I don't -- doesn't matter to
7 me.

8 DIRECTOR CORRA: Sure. (Inaudible).

9 MR. MCKENZIE: Yeah, we'll give you a copy.
10 I'll continue if you want.

11 MR. TOM FREDRICK, JR.: No, yeah, that
12 would be good.

13 DIRECTOR CORRA: So the prior history is
14 that that -- when did NA/RM -- NA/RM occurred before
15 Peabody?

16 MR. TOM FREDRICK, JR.: NA/RM --

17 MR. MCKENZIE: It's the same.

18 DIRECTOR CORRA: Oh, it's the same, I'm
19 sorry.

20 MR. MCKENZIE: NA/RM is -- that was the
21 records that you (inaudible).

22 DIRECTOR CORRA: Yeah. So -- but you --
23 but you fined them because they had no record. I guess
24 that's the part I'm trying to get at here.

25 MR. MCKENZIE: Yeah, and what I was saying

1 is the training that eventually was found to be used for
2 that was falsified, so we did assess \$10,000 for that.

3 MR. EMME: We didn't recommend any fine to
4 NA/RM when we wrote the NOV --

5 DIRECTOR CORRA: Right.

6 MR. EMME: -- for the blaster, and that was
7 based on my recommendation to District 1 because WESCO has
8 been a, you know, a good operator in the past with good
9 blasters, good training, no incidents in the past, so I
10 recommended to District 1 to assess no fine with that NOV.
11 And that NOV went to NA/RM.

12 DIRECTOR CORRA: Okay.

13 MR. EMME: Because the records are theirs.

14 DIRECTOR CORRA: Okay. Keep going, Don.

15 MR. McKENZIE: Under the seriousness of the
16 violation we considered the falsified training event to be
17 an egregious act, and we assessed a penalty of \$10,000 per
18 day for the three-day training event, as well as \$10,000
19 per day for at least two WESCO employees that used the
20 training event to obtain their recertification.

21 DIRECTOR CORRA: So \$10,000 a day for the
22 three days of training, and that was falsified, plus
23 \$10,000 per day per each employee?

24 MR. McKENZIE: That used the training.

25 DIRECTOR CORRA: For the three days that

1 they were supposed to have been in training, okay.

2 MR. McKENZIE: Yes.

3 DIRECTOR CORRA: So 30 plus, yeah, 60,
4 equals 90.

5 MR. McKENZIE: Correct.

6 DIRECTOR CORRA: Okay.

7 MR. McKENZIE: For degree of fault, we
8 found the operator solely at fault for falsifying training
9 records, and we assessed \$10,000.

10 For the operators demonstrating good faith, at
11 the time we wrote this there were no measures taken by the
12 operator that we were aware of to alleviate the situation.
13 No penalty was recommended.

14 Under inability to comply, we could find no
15 reason why WESCO could not comply with the rules and
16 regulations on the training event.

17 And under any information submitted to the
18 director, we did not receive anything from WESCO within
19 that 15 days prior to the director writing his letter.
20 Although today we've heard that you've got a method to
21 check license expirations, change your organization, and
22 Doug's assessment of your training is glowing, based on the
23 last one that he attended. So those are not included in
24 this assessment.

25 DIRECTOR CORRA: So, Tom, while we're here,

1 to answer the question, the -- the -- one of the factors,
2 the previous history, there's \$10,000 because of the
3 falsification of the (inaudible). How many -- how many
4 days did -- did Hugen -- after February 26th, when you
5 certified that Hugen had his training, and I presume that
6 Hugen is blasting every day for you or however often NA/RM
7 wants you to blast.

8 MR. EMME: After that class and he had to
9 come to Sheridan and retake the exam, which he did early
10 March. I can't remember the exact date.

11 DIRECTOR CORRA: He passed it?

12 MR. EMME: He passed the test with no
13 problems. I issued him a new license probably sometime
14 around, you know, the 10th, 12th, effective late March.

15 DIRECTOR CORRA: Mm-hmm.

16 MR. EMME: So, you know, from the time --

17 DIRECTOR CORRA: So he -- so he did some --
18 yeah, so late March to when this was written in May or --
19 right?

20 MR. EMME: Yeah, he signed a lot of shot
21 reports with a -- with a license we thought was valid based
22 on the February training.

23 DIRECTOR CORRA: Right. Okay. All right.
24 So anyway, you -- oh, you don't have a copy of that. We'll
25 make a copy of that and make a copy of this. You may want

1 to go back and -- seriousness of violation based on the
2 likelihood and extent of potential or actual impact on the
3 public or environment. So if it's in or outside the
4 perimeter of exploration . . .

5 The degree of fault by the operator is 10,000, as
6 he mentioned. He didn't see any good faith because of
7 the -- I'm assuming because of the -- the -- the falsified
8 training event, right? Is that it? Is that why -- okay.

9 And then there was no credit -- actually there's
10 a penalty. Usually an inability to comply unless caused by
11 lack of diligence -- you could find no inability why they
12 shouldn't have complied.

13 So they can give you a copy of this to read after
14 the -- after the meeting. That answers your question about
15 that.

16 MR. TOM FREDRICK, JR.: Okay. When you're
17 referring to this 15-day period, I think what we were --
18 what we were -- our understanding of that was each of these
19 remedial actions or these things to try to respond to each
20 of those, because are you saying that the penalties were
21 more severe because we didn't respond to you in some of the
22 things that we said today that we should've said earlier?

23 DIRECTOR CORRA: No.

24 MR. McKENZIE: I'm saying they could not be
25 taken into account because we didn't hear anything from

1 you.

2 DIRECTOR CORRA: Yeah. That one the --
3 just my -- my suggestion as to how you ought to think about
4 that particular factor is that it does say 15 days. So if
5 you think about a standard NOV or a standard situation,
6 these guys go out and find something that's wrong in one of
7 the mines, you know, the NOV gets written. Generally
8 speaking -- not always, but generally speaking, the miner
9 shuts operations down and goes and fixes the problem or
10 does something else, and within a very short period of time
11 everything is abated and done with and you're moving on.

12 And depending upon that good-faith effort, you
13 know, you can get some credit. In other words, you can get
14 a deduct from the total penalty calculated. Fifteen days
15 after the date of the instance that caused the NOV
16 probably -- I don't know, when would be the -- when would
17 the 15-day clock start to tick in the minds of --

18 MR. EMME: I thought the 15-day clock
19 started when they received the letter.

20 MR. McKENZIE: When they received the NOV.

21 DIRECTOR CORRA: And you received the NOV,
22 which would be when?

23 MR. TOM FREDRICK, JR.: The date of service
24 was May 20th.

25 MR. EMME: That was at the WESCO office in

1 Wright.

2 MR. TOM FREDRICK, JR.: Yeah. That's the
3 date the letter was written. That's what you have on here,
4 the date of service, May 20th. So we probably received it
5 a few days after that would be my guess.

6 MR. EMME: Right. Yeah. So my
7 understanding when the clock starts is the day you receive
8 that letter, so the 22nd, 23rd, whatever that might be.

9 DIRECTOR CORRA: Yeah, May 23rd.

10 MR. TOM FREDRICK, JR.: I guess what --
11 what my point is is that once we received this, the things
12 that -- everything that we could do to remediate the
13 problem we did within -- I mean, you know, getting you
14 records of our training that you would certify. I know
15 that we, you know, we scheduled this trying to recertify
16 our training, you know, we did. There were things that we
17 were doing to try to, you know, remediate any of this
18 within that period of time. But it sounds like there's
19 some information that maybe we should've gotten you that --

20 MR. EMME: Well, part of the comments is I
21 did the assessment memo with help from Don basically the
22 day after I wrote the Notice of Violation.

23 MR. TOM FREDRICK, JR.: Mm-hmm.

24 MR. EMME: So, you know, the clock started
25 ticking. That memo was already done before the clock ever

1 started ticking because the NOV was written, what did he
2 say, the 20th, so I thought we wrote that assessment
3 memo -- I don't know what the date of it is, Don, but the
4 20th or 21st, right?

5 MR. McKENZIE: It's the 20th, but it didn't
6 go anywhere until --

7 MR. TOM FREDRICK, JR.: Yeah, I don't think
8 we got it till the 9th or 10th.

9 MR. EMME: So basically we did not give you
10 any credit because at that time, you know, you had not --

11 MR. TOM FREDRICK, JR.: We didn't have an
12 opportunity.

13 MR. EMME: -- started any of these because
14 you hadn't even received the NOV yet.

15 MR. TOM FREDRICK, JR.: Yeah.

16 MR. McKENZIE: The terms for abatement are
17 spelled out in the NOV, 90 days, 45 days.

18 MR. EMME: I think everything that you
19 needed to abate the NOV, Don and I were talking before
20 lunch, has been done. The two blasters' licenses were
21 suspended, got their training, they have been recertified.
22 You documented your training records. You documented that
23 everybody, you know, that you have on site has adequate
24 training. Joe put on a class that I've audited trying to
25 get your training privileges back. I think you've done

1 everything to abate the NOV that needed to be done.

2 DIRECTOR CORRA: Okay. Okay. Any other
3 questions about the penalties? You know, just for -- and
4 you probably know this, but this \$10,000 per day or \$10,000
5 per day for every day that something is haywire that is
6 fairly standard in the environmental world. EPA uses those
7 numbers. OSM uses it. Everybody uses it. Regulatory
8 authorities use those numbers.

9 MR. TOM FREDRICK, JR.: Yeah. Is that as
10 applicable to them as it is to us?

11 DIRECTOR CORRA: Well, it says so on the
12 Act, so -- you know, the Act itself, I think. Does OSM --
13 now, I need a refresher here. The Act itself doesn't, just
14 our -- so where do we get -- where do we get that authority
15 from? Where is that 10,000 derived from?

16 MR. MCKENZIE: The Wyoming Environmental
17 Quality Act.

18 DIRECTOR CORRA: That act. Not the federal
19 act is what you're saying?

20 MR. MCKENZIE: We cannot rely on those
21 folks.

22 DIRECTOR CORRA: Okay. Whereas EPA, if
23 it's a federal act, I think they have the 10,000 as well as
24 in our rules and regulations. Our act says that. Well,
25 I'm only stating that to let you know how you -- where you

1 sit.

2 MR. TOM FREDRICK, JR.: Yeah. I -- we've
3 had a chance to look at it, and it's -- it's -- I guess we
4 would -- I guess we would have a stance that it's --

5 UNIDENTIFIED SPEAKER: Heavy.

6 MR. TOM FREDRICK, JR.: -- it's maybe a
7 little -- it is, it's heavy and maybe it's -- maybe it's a
8 little more ambiguous when it comes to what we're doing
9 versus someone who is out there polluting every day and who
10 that's really more who it's designed for.

11 DIRECTOR CORRA: Well, you know, the
12 problem I -- I would -- you know, that -- not to respond to
13 that last part or react to it or even to debate it, I think
14 the issue here is -- is really one of -- of -- it's -- you
15 know, one day, and I always say this, one of these days
16 I'll give a speech.

17 You know, the -- the -- you should know -- and
18 I'll be able to talk about this clearly, but you should
19 know that I'm a miner, and I spent -- before the six and a
20 half years I've been here, I spent my first 35 years of my
21 life mining. In fact, I had a blaster certificate, not
22 from him, but -- well, you may have signed that one also
23 before -- you might have not even been born yet. I don't
24 know.

25 MR. EMME: I was in the industry when you

1 probably had yours, Don.

2 DIRECTOR CORRA: And -- but anyway, the --
3 so I've been on that side of the fence, but you know, it
4 struck me that -- that there is -- in this whole area of
5 complying with environmental rules and complying with the
6 OSM rules and all that stuff, there is such a heavy
7 reliance on the written and spoken word and on people's
8 word, for us to get our job done or us to feel like things
9 are being done right, the -- that that's why this is felt
10 by the (inaudible) that shows up in that penalty
11 calculation, and all I could say is is that the -- a lot of
12 what we do is reliance upon the operator or reliance upon
13 the person who has the license. It's just that basic trust
14 relationship, you know, and what it does there.

15 And -- and so when it -- when it doesn't exist
16 and it's -- and then it -- and it gets compounded because
17 your guy was scrambling, okay. You guys are saying you're
18 sitting here basically with an employee who took advantage
19 of you and scrambled to try to get his job done without
20 thinking about what he was doing, which, you know, and
21 somehow I got to sort through that. You know, you talk
22 about, hey, I'm registered in eight states or, you know,
23 you do this quality training, and I believe you, but
24 somewhere along the line your system failed and failed
25 basically because of the behavior of the guy that you

1 ultimately terminated. I understand that. So I don't
2 blame you for terminating him, but there were a couple of
3 things he could've done along the way that he didn't, and
4 then he bragged about it.

5 You see, what kind of bothers me is I -- you
6 know, the -- now you're getting a little bit of a lecture
7 here, and I'll get off of it real quick, and we'll close
8 the meeting. If you have any more comments, we'll keep the
9 meeting open, but you know, here you are at this big
10 convention of blasters, I assume, Best of the West, and
11 guys saying, hey, you know what, those DEQ guys, they're
12 easy to snooker. You know, Christ, you got a little
13 problem, just do this and you'll be taken care of.

14 And you know, that's -- how does an agency like
15 us stop that, you know? You know, I just -- how -- you
16 know, that -- so here we are sitting here going, well,
17 shoot, you know, all the Environmental Quality Act, the
18 rules and regulations, everything that we do isn't worth a
19 plugged nickel to some percentage of people in the blasting
20 community. And we're a bit angry about that.

21 And this individual, whatever his name is, is
22 getting paychecks with your company's name printed on
23 there, and so without delving into the -- we'll probably
24 never get to the bottom of that, but somehow -- and he's
25 been with you for 16 years, so this is not like you hired

1 some guy off the street and six months later you found out
2 something about him that you didn't know when you read his
3 application. He's a guy that was your employee. He's a
4 guy that you promoted to be your manager. And so he
5 demonstrated to you along the way that he could do some
6 things right.

7 So I'll stop there, but you know, we talk
8 about -- talking about the size of the fine, I appreciate
9 you saying you're not denying any of those, that's fine.
10 But anyway, at the end of this conference I've got to go
11 back and think about what you told me. And I think it's
12 only fair to let you know how I feel, and I'll get back to
13 you.

14 There's one thing that I want to request before I
15 make a decision, and that is, Joe, evidently you're going
16 to get your training privileges back.

17 MR. STROBBE: Good.

18 DIRECTOR CORRA: The last piece of work is
19 see if you can get your license reinstated, and that's part
20 of this appeal that you're asking for.

21 MR. STROBBE: Yes, sir.

22 DIRECTOR CORRA: You need to write a letter
23 to Doug that spells out why he should give you your license
24 back and copy me, and I just consider that to be part of
25 this, you know -- just make that -- make that appeal that

1 way.

2 MR. STROBBE: Okay.

3 DIRECTOR CORRA: And since you brought it
4 up in this informal conference, I won't write anything up
5 until I see that letter and I see what his response is to
6 that letter, okay. And then I'll answer your appeal in my
7 answer to you all, and then I'll answer your appeal of
8 penalties in that letter as well. So I'm done.

9 So anything -- anything you want to add or
10 anything to respond to that or anything like that?
11 Anything you want to say?

12 MR. TOM FREDRICK, JR.: The thing that
13 really touches me is we don't want our people in any way
14 making a mockery of the regulatory agencies. I hope you
15 would know that we would never ever consider that
16 appropriate behavior. We know that it's not and it will
17 only get us in trouble. We want to have a cooperative
18 relationship because we know it is in our best interest.

19 DIRECTOR CORRA: Sure.

20 MR. TOM FREDRICK, JR.: And we hope the
21 other way around is true as well.

22 DIRECTOR CORRA: I take that, you know, and
23 I base -- I -- I'm looking at four gentlemen here that are
24 feeling pretty badly about this. Based upon what I've
25 heard, it sounds like you have a pretty good, solid

1 company. So I think, you know, you'll survive this.

2 And there's -- there is nothing in the Act
3 that -- and take this in the spirit it's intended. There's
4 nothing in the Act that allows -- allows me to factor in,
5 other than the factors you'll see in this copy, the quality
6 of the company, you know, the -- or the intentions of the
7 company, you know, to run a business. You know, the --
8 I'll just say that to you, but that's not to say I don't
9 believe you when you say you're a solid company. And it's
10 not saying I don't believe you when you talk about your
11 quality of training, okay. There's nothing in the Act that
12 says they had a bad employee, so therefore, give them
13 credit. I have not -- none of that.

14 I appreciate you telling me that stuff today. I
15 think, you know, me meeting you and me putting a face to
16 this issue and you guys talking to me about what your
17 corporate philosophy is is important, but I still have to
18 go back and take a look at this through kind of a narrow
19 (inaudible). That's your answer.

20 MR. TOM FREDRICK, JR.: Yeah, I guess, as
21 we, you know, sat here for the last hour --

22 DIRECTOR CORRA: And a half.

23 MR. TOM FREDRICK, JR.: Hour and a half,
24 how then does this change -- or how does this, you know,
25 going through this process -- I mean, to me the point of

1 this process is sitting in front of you and explaining our
2 point of view --

3 DIRECTOR CORRA: Sure.

4 MR. TOM FREDRICK, JR.: -- where when we
5 came pleading for forgiveness, recognizing some of the
6 mistakes that were made, that I mean, I guess I thought
7 that was the point of this conference was understanding
8 better the events.

9 DIRECTOR CORRA: Mm-hmm. It was.

10 MR. TOM FREDRICK, JR.: Okay.

11 DIRECTOR CORRA: And I understand those.
12 Oh, yeah. Actually, the point of the conference is for you
13 guys to come in and say, "You know what, I'm not happy with
14 how these guys treated me. I got an NOV and I got this
15 penalty. I'm not arguing the NOV. I'm kind of feeling bad
16 about the penalty," and you spent the time, as you said,
17 you know, making sure I was aware of all of the facets of
18 the story to take that so that I can reconsider that
19 penalty. And that's all I'm -- that's the essence -- well,
20 your appeal, too, but that's the essence of this thing.

21 So I will go back, and based upon my notes, I'll
22 check that if I need to and I will write you an answer, and
23 the answer will say something. They're generally fairly
24 brief. I am not an attorney, so you'll get an answer that
25 has findings of fact in it, you know, and I'll be talking

1 about considerations of law, findings of fact. I'll try to
2 ferret out what I think are the facts from what I've heard
3 today, and then I will write a request that you've asked
4 for, and then I will make some judgment. The judgment
5 could be the fine stays. The judgment could be I could
6 adjust the fine. You know, we'll see.

7 So there's nothing in the law that requires that
8 I give you a lecture at the end of these informal
9 conferences, and there's nothing in the law that says you
10 have to sit here and listen to one. So just so you know
11 that, but that's just the way I am, so . . .

12 MR. TOM FREDRICK, SR.: Well, there's
13 value, though, I think in facing the music --

14 DIRECTOR CORRA: Oh, yeah.

15 MR. TOM FREDRICK, SR.: -- and making
16 resolve that I'm sure all of us from WESCO will make a
17 resolve that we'll take whatever corrective action is
18 necessary to try to avoid anything like this in the future.

19 DIRECTOR CORRA: Right. It sounds like
20 steps --

21 MR. TOM FREDRICK, SR.: So from that point,
22 this meeting is beneficial to us all.

23 DIRECTOR CORRA: So the -- you know, the
24 one -- the one other thing I might mention to you is that
25 when you -- the word forgiveness is a good word for me to

1 just touch on just for a moment. You know, forgiveness is
2 generally when you've paid the fine and you've abated the
3 violation and you're moving forward and you're taking steps
4 to prevent recurrence, you know, that -- forgiveness kind
5 of comes out of that.

6 If something comes up a year or two from now and
7 it's the same thing that's the issue today, well, you'll
8 hear about it, but other than that, we don't carry a book
9 and we don't carry a scorecard. So, you know, this -- the
10 opinion of Doug and the opinion of this agency about your
11 company is, you know, it will be what it will be, and this
12 is -- we're not going to be qualifying it by saying,
13 "WESCO's got a great training program, but they had an NOV
14 from us." We don't do that.

15 So this thing -- we'll deal with this and it will
16 be behind us all, and it won't change the basic respect
17 that Doug has for some of you and/or your programs. Okay.
18 So there's not some list that I keep somewhere that keeps
19 track of all the folks that have NOVs. So anyway, that's
20 it. Any last comments?

21 MR. JARED FREDRICK: Well, I just want to
22 make sure it's clear. This may not have any relevance, but
23 you know, we talked about Shawn and his employment with
24 WESCO, and his employment with WESCO was from '93 to '98.
25 He was an employee of WESCO in the basin. That business

1 transition for Dyno, he became a Dyno employee, and then
2 three years ago when we took that business back over, he
3 became a WESCO employee again. So just -- I don't know if
4 it matters, but that's how his employment record is with
5 WESCO.

6 DIRECTOR CORRA: Okay. Okay. Good. I'm
7 going to call the conference -- oh, by the way, just -- I
8 think we said it at the beginning, but I'll say it again at
9 the end, you'll get some decision from me. It will -- it
10 will be what it will be, and then you have a right -- you
11 have a right to take this on to the Environmental Quality
12 Council, okay. And I think that right -- you know, you
13 don't -- it's not -- your appeal to the Council is not
14 narrowed by the way I write this opinion. This is an
15 informal conference, so there's a body of seven citizens
16 that will be glad to hear you.

17 MR. BURBRIDGE: An appeal to the Council
18 will be a contested case hearing. So that would be formal.

19 DIRECTOR CORRA: Oh, yeah, right. I knew
20 there was a reason why you sat here. Okay. Very good.
21 Thank you for being here, John. Do you have any comments?

22 MR. BURBRIDGE: No, I just came to listen.

23 DIRECTOR CORRA: Thank you. All right.
24 The meeting's over.

25 --o0o--

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I, LORI ARNOLD, a Registered Merit Reporter, do hereby certify that I transcribed by machine shorthand the foregoing recorded proceedings contained herein to the best of my ability.

Dated this 28th day of September, 2009

Lori Arnold

LORI ARNOLD
Registered Merit Reporter