

BEFORE THE  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
STATE OF WYOMING

**FILED**

AUG 14 2012

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

Mr. Corey Bennett )  
R.S. Bennett Construction )  
PO Box 1156 )  
Big Piney, WY 83113 )  
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Jim Ruby, Executive Secretary  
Environmental Quality Council

DOCKET NUMBER 5032-12

NOTICE OF VIOLATION

NOTICE IS HEREBY GIVEN THAT:

1. On July 5, 2012 the Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD) inspected the Calpet Road construction site in Sublette County, Wyoming and R.S. Bennett Construction is the operating company. Concerns noted during the inspection included the failure to obtain storm water coverage under the Large Construction General Permit (LCGP), failure to submit a Storm Water Pollution Prevention Plan (SWPPP) and site map indicating BMP locations, etc., failure to install effective best management practices (BMPs) to prevent sediment from entering the drainages, and failure to stabilize disturbed slopes to prevent sediment from being transported onto vegetated areas or to surface waters of the state. These are violations of Chapter 2 of the Wyoming Water Quality Rules and Regulations (WWQRR).
2. Chapter 2, Section 2(a)(ii) of the WWQRR states *"All storm water discharges from industrial, construction and municipal facilities as described in Section 6 of these regulations ... shall be permitted as described in these regulations"*. Chapter 2, Section 4(o)(i)(B) of the WWQRR states *"... for any storm water discharge associated with large construction activities as described in Section 6(f)(i) ... should have made an application to the administrator ... as specified in the applicable general permit."*
3. Chapter 2, Section 6(f)(i) of the WWQRR concerning large construction activities states the following: *"Storm water discharge associated with large construction activity means the discharge of storm water from construction activities, including clearing, grading, and excavating, that result in land disturbance of five (5) or more acres of total land area. Large construction activity also includes the disturbance of less than five (5) acres of total land area that is part of a large common plan of development or sale if the larger common plan will ultimately disturb five (5) acres or more."*
4. Part 3.4. of the general permit for storm water discharges associated with large construction activities (general permit) states *"An NOI and SWPPP must be submitted to the Department and coverage under this permit must be authorized in writing prior to the start of soil disturbing activities"*. The DEQ has no record of receiving an NOI for the project referenced above. This is a violation of Part 3 of the general permit and Chapter 2 of the WWQRR.
5. Bennett's failure to obtain and comply with permit requirements, by not installing and/or maintaining erosion and sediment control measures, etc. resulted in excessive erosion and sediment being deposited into a water of the state (Fogarty Creek, class 3B). Permit requirements are stated as follows:

Part 7.2 Best management practice selection, installation and maintenance. "All *BMPS* must be properly selected, installed and maintained in accordance with the manufacturer's specifications and good engineering practices. (It is not required that the *SWPPP* be prepared or certified by a registered engineer.) If periodic inspections or other information indicates a practice has been used inappropriately or incorrectly the permittee must modify or replace the control."

Part 7.4 Visible or measurable erosion, associated with a construction activity, which leaves the construction site as a result of inadequate or ineffective *SWPPP* design or maintenance of *BMPs* is prohibited. *Visible or measurable erosion is defined as: Part 7.4.1 "Deposits of mud, dirt, sediment, or similar material exceeding one cubic foot in any area of 100 square feet or less on public or private roads, adjacent property, or into water of the state by deliberate actions or as a result of water or wind erosion"; or Part 7.4.2 "evidence of concentrated flows of water over bare soils, turbid or sediment-laden flows, or evidence of on-site erosion on bare slopes, where runoff of water is not filtered, treated, or captured on the site using *BMPs* specified in the *SWPPP*"; or Part 7.4.3 earth slides, mud flows, earth sloughing, or other earth movement which leaves the construction site"; or Part 7.5 "If any measurable quantity of sediment leaves the construction site because of structural failure of inadequate design of the *BMPs*, the sediment shall be placed back on site or properly disposed of, as soon is prudent. Under no conditions shall the sediment be washed into municipal storm sewers or surface waters of the state."*

Part 9.7 Records. *The operator shall keep a record of inspections and maintenance. The inspection record shall include all components defined in sections 9.7.1 through 9.7.9 of the general permit. If the report describes deficiencies in pollution control structures or procedures, such deficiencies shall be corrected immediately.*

Part 10.1 Duty to Comply. "The permittee must comply with all conditions of this permit, and is responsible for ensuring any subcontractors, employees or other persons associated with the construction activity comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Chapter 2 of the Wyoming Water Quality Rules and Regulations, The Wyoming Environmental Quality Act, and the Clean Water Act and may be grounds for enforcement action, permit termination, revocations, or modification, or for denial of a permit renewal application."

Part 10.5 Duty to provide information. "The permittee shall furnish to the Administrator, within a reasonable time, any information which the Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Administrator, upon request, copies of records required to be kept by this permit."

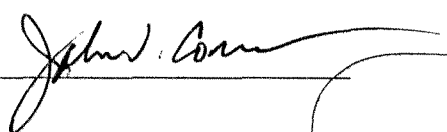
These are all violations of the Large Construction General Storm Water Permit and failure to comply is a violation of Chapter 2 of the Wyoming Water Quality Rules and Regulations (WWQRR) and the Wyoming Environmental Quality Act;

6. Pursuant to Wyoming Statute 35-11-901(a), any person who violates, or any director, officer or agent of a corporate permittee who willingly and knowingly authorizes, orders or carries out the violation of any provision of the Environmental Quality Act (Act), or any rule, regulation, standard or permit adopted hereunder or who violates any determination or order of the council pursuant to this act or any rule, regulation, standard, permit, license or variance is subject to a penalty not to exceed ten thousand dollars and no cents (\$10,000.00) for each violation for each day during which the violation continues, a temporary or permanent injunction, or both a penalty and an injunction. The penalty may be recovered in a civil action brought by the Attorney General in the name of the People of the State of Wyoming. Nothing herein shall preclude the DEQ from negotiating stipulated settlements involving the payment of a penalty, implementation of compliance schedules or other settlement conditions.

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

Signed this 14 day of August, 2012.

John V. Corra  
Director  
Department of Environmental Quality



John F. Wagner  
Administrator  
Water Quality Division



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

JVC/JFW/KMW/bb/12-0729

cc: David Gwisdalla, 8ENF-W-NP, EPA Region 8 (PDF)  
Jim Eisenhauer, WYPDES Inspection Program Coordinator, Sheridan DEQ Office (PDF)  
Bill J. DiRienzo ► Kevin M. Wells ► Barb Sahl (PDF)  
IPS (for scanning) ► Docket 5032-12  
Keith Guille, DEQ Public Information Officer (PDF File)  
DEQ Director