



Department of Environmental Quality

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



Matthew H. Mead, Governor

John Corra, Director

FILED

CERTIFIED MAIL

September 4, 2012

SEP 06 2012

Jim Ruby, Executive Secretary
Environmental Quality Council

Badger Daylighting
Mr. Virgil Shockley
3941 W. 5th Street, Unit D
Cheyenne, WY 82007

RE: Notice of Violation and Order, Docket Number 5053-12

Dear Mr. Shockley:

Attached is a Notice of Violation and Order, Docket Number 5053-12, for the unpermitted release of a petroleum pollutant into a storm water collection basin. This is a violation Chapter 2 of the Wyoming Water Quality Rules and Regulations (WQRR). The Department of Environmental Quality has completed a site visit of the impacted site and based on the information collected the DEQ is requesting a written response describing the corrective actions taken to stop the future releases of the pollutant and address any mitigation necessary at the impacted site.

ANY APPEALS TO THE ENVIRONMENTAL QUALITY COUNCIL FROM THE ATTACHED ORDER MUST BE MADE IN WRITING WITHIN THE TEN (10) DAY TIME LIMIT PRESCRIBED BY W.S. 35-11-701(c). Chapter I, Section 3 of the Department of Environmental Quality Rules of Practice and Procedure (<http://soswy.state.wy.us/RULES/5675.pdf>) sets forth the requirements for the initiation of appeal proceedings.

To appeal this Order and request a hearing, you must file two (2) copies of your written petition. The first petition shall be mailed to the Chairman of the Environmental Quality Council at Room 1714, Herschler Building, 1st Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. The second petition should be sent to John V. Corra, Director, Wyoming Department of Environmental Quality, Herschler Building, 4th West, 122 West 25th Street, Cheyenne, Wyoming 82002. Both petitions must be sent by certified mail, return receipt requested.

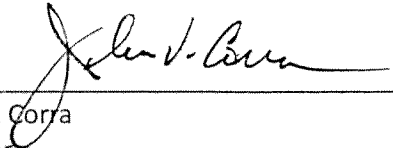
PLEASE DIRECT ALL INQUIRIES TO: Kevin M. Wells, WYPDES Natural Resource Program Manager at the Wyoming Department of Environmental Quality, Water Quality Division, Herschler Building, 4th Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. Telephone 307-777-8669.

Page L-1

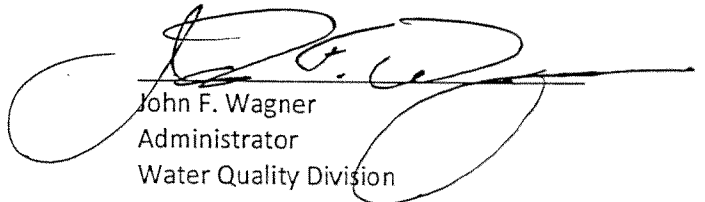
Herschler Building · 122 West 25th Street · Cheyenne, WY 82002 · <http://deq.state.wy.us>

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|----------------------------------|-----------------------------------|-------------------------------|-------------------------------------|--------------------------------|--------------------------------------|---------------------------------|
| ADMIN/OUTREACH (307) 777-7756 | ABANDONED MINES (307) 777-6145 | AIR QUALITY (307) 777-7391 | INDUSTRIAL SITING (307) 777-7369 | LAND QUALITY (307) 777-7756 | SOLID & HAZ. WASTE (307) 777-7752 | WATER QUALITY (307) 777-7781 |
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John V. Corra
Director
Department of Environmental Quality



John F. Wagner
Administrator
Water Quality Division

JVC/JFW/KMW/bb/rm/12-0803

Enclosure: Notice of Violation and Order

cc: David Gwisdalla, 8ENF-W-NP, EPA Region 8 (PDF)
James B. Eisenhauer, WYPDES Inspection Program Coordinator, Sheridan (PDF)
Bill DiRienzo ► Kevin M. Wells (PDF)
Environmental Quality Council
Keith Guille, DEQ Public Information Officer (PDF)

BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF WYOMING

FILED

SEP 06 2012

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF THE NOTICE OF)
VIOLATION AND ORDER ISSUED TO:)
)
)
Badger Daylighting)
3941 W. 5th Street, Unit D)
Cheyenne, WY 82007)
)

DOCKET NUMBER 5053-12

NOTICE OF VIOLATION AND ORDER

NOTICE IS HEREBY GIVEN THAT:

1. Badger Daylighting (Badger) is authorized to conduct hydrovac excavating for debris removal and cleanup for construction and maintenance work in Wyoming. Some of the operations include recovery and cleanup of petroleum products in oil and gas energy fields.
2. On August 29, 2012 Wyoming Department of Environmental Quality personnel were informed of an unpermitted release of a petroleum product from a hydrovac truck at the Badger office in Cheyenne, Wyoming. The DEQ received photos and the location information from a concerned citizen.
3. On August 30, 2012 Wyoming Department of Environmental Quality personnel met with Badger personnel and visited the release site. The release occurred into a storm water catch basin which is considered a water of the state. DEQ was informed the product had been removed with a vacuum truck and absorbent material had been placed on the impacted area to aid in recovering absorbed product in the soil. Once the absorbent has been allowed to capture residual product then it will be removed and disposed of properly.
4. The discharge of petroleum product to waters of the state is not permitted under any Department of Environmental Quality permits held by Badger from the locations referenced above.
5. Storm water catch basins are a "water of the state" as defined under W.S. 35-11-103 (c)(vi);
6. Chapter 2 of the Wyoming Water Quality Rules and Regulations (WWQRR) defines pollution as "contamination or other alterations of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity or odor of the waters or any discharge of any acid or toxic material.
7. By discharging pollution into waters of the state Badger is in violation of W.S. 35-11-301 (a)(i) of the Wyoming Environmental Quality Act (Act) and Chapter 2 of the Wyoming Water Quality Rules and Regulations (WWQRR) which state that no person, except when authorized by a permit issued by the Department of Environmental Quality, shall cause, threaten or allow the discharge of any pollution or wastes into the waters of the state;
8. 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 department from negotiating stipulated settlements involving the payment of a penalty, implementation of compliance schedules or other settlement conditions, as appropriate, in lieu of litigation.

ORDER

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL – STATE OF WYOMING

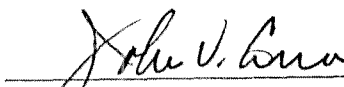
WHEREFORE IT IS HEREBY ORDERED THAT:

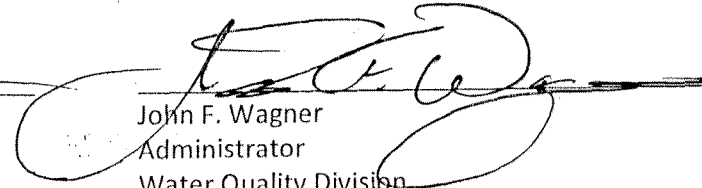
1. The owner/operator shall immediately proceed with clean up procedures and corrective actions to mitigate the impacted site.
2. The owner/operator shall submit within 30 days of receipt of this NOV and Order a written description of the cause of the release, the status of the cleanup operation, and ongoing efforts to ensure this type of release does not happen again.

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

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

Signed this 6th day of September, 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, 4th Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. Telephone 307-777-8669.

JVC/JFW/KMW/bb/rm/12-0803

cc: David Gwisdalla, 8ENF-W-NP, EPA Region 8 (PDF)
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Bill DiRienzo ► Kevin M. Wells (PDF) Docket # 5053-12
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Director, DEQ
Keith Guille, DEQ Public Information Office (PDF)