

# 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

November 28, 2007

Mr. Robert J. Bartosh,  
Senior Vice President & COO  
Dakota Coal Company  
P.O. Box 5540  
Bismark, ND 58506

RE: Notice of Violation

Dear Mr. Bartosh:

Enclosed is a Notice of Violation issued to Dakota Coal Company for failing to: 1) obtain a construction permit for the coal stockpile located between the facility office and the lime kiln, 2) comply with NO<sub>x</sub> emission limits for the lime kiln during fourth quarter 2006, 3) initiate immediate corrective action upon observing visible emissions from the lime kiln baghouse, 4) maintain compliance with opacity limits for the lime kiln, 5) have a qualified observer certified to conduct opacity readings for the limestone unloading and fuel unloading operations, and 6) conduct quarterly visual observations of the petroleum coke loading operations. These violations are requirements of Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations and permits 30-129-1 and 3-1-129.

As the Department and this Division consider the failure to comply with air quality regulatory and permit requirements to be a serious matter, I am recommending the Department refer this violation to the State Attorney General's office requesting a suit be filed in District Court to recover appropriate penalties. If you would like to discuss settlement of this Notice of Violation prior action on the referral by the Attorney General's office, please contact Ms. Karen Godman, Air Quality Compliance Program Principal, at 307-777-8601 no later than ten (10) days after receipt of this letter.

Should you have any questions or comments regarding this matter, please feel free to contact me or Ms. Karen Godman.

Sincerely,

David A. Finley  
Administrator  
Air Quality Division

cc: Bob Gill  
Greg Meeker  
Keith Guille  
Nancy Vehr

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

ADMIN/OUTREACH (307) 777-7937 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 777-5973	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
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**BEFORE THE  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
STATE OF WYOMING**

**IN THE MATTER OF THE NOTICE OF VIOLATION  
ISSUED TO DAKOTA COAL COMPANY,  
MR. ROBERT J. BARTOSH,  
SENIOR VICE PRESIDENT & COO,  
P.O. BOX 5540  
BISMARCK, ND 58506**

)  
) **DOCKET NO.**  
) **4186-07**  
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**NOTICE OF VIOLATION**

**NOTICE IS HEREBY GIVEN THAT:**

1. The Department of Environmental Quality, Division of Air Quality, has found Dakota Coal Company to be in violation of W.S. 35-11-801(c) of the Wyoming Environmental Quality Act and Chapter 6, Section 2(a) Wyoming Air Quality Standards and Regulations and to be in violation of various permits issued in accordance with W.S. 35-11-801 (a) of the Wyoming Environmental Act and Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations in the operation of the Frannie Lime Plant located in Park County, Wyoming.

2. W.S. 35-11-801(c) states, "A permit to construct is required before construction or modification of any industrial facility capable of causing or increasing air or water pollution in excess of standards established by the department is commenced."

3. Chapter 6, Section 2(a)(i) of the Wyoming Air Quality Standards and Regulations states, "Any person who plans to construct any new facility or source, modify any existing facility or source, or to engage in the use of which may cause the issuance of or an increase in the issuance of air contaminants into the air of this state shall obtain a construction permit from the State of Wyoming, Department of Environmental Quality, before any actual work is begun on the facility."

4. During the inspection on September 10, 2007, Mr. Kirk Billings, Air Quality Division compliance inspector, noted an unpermitted coal stockpile between the facility office and the Lime Kiln. Upon review of correspondence, it was observed that company representatives contacted the Air Quality Division field office regarding installing a coal stockpile and the company representatives were told to contact the Air Quality Division's New Source Review Permitting Program regarding permitting of any new stockpile.

5. Said violation consists of the failure to obtain a construction permit for the coal stockpile at the Frannie Lime Plant in violation of W.S. 35-11-801(c) of the Wyoming Environmental Quality Act and Chapter 6, Section 2(a)(i) of the Wyoming Air Quality Standards and Regulations.

6. W.S. 35-11-801(a) states, "In granting permits, the director may impose such conditions as may be necessary to accomplish the purpose of this act which are not inconsistent with the existing rules, regulations and standards."

7. Chapter 6, Section 3 of the Wyoming Air Quality Standards and Regulations prescribes the applicability and procedure for issuing permits to major sources under Wyoming's operating permitting program.

8. Operating permit 30-129-1 was issued to Dakota Coal Company on June 15, 2004. Condition (F4) of permit 30-129-1 states, "NO<sub>x</sub> emissions from the Lime Kiln shall not exceed 85 lb/hr based on 24-hour block averages."

9. Dakota Coal Company's CEM reports indicates that fourth quarter 2006 NO<sub>x</sub> emissions were in excess of permitted levels for 120 hours (5.5% of the reporting period) for the lb/hr measurements.

10. Said violation consists of exceeding permitted NO<sub>x</sub> emissions limits for the fourth quarter of 2006 in violation of condition (F4) of permit 30-129-1.

11. Operating permit 30-129-1 was issued to Dakota Coal Company on June 15, 2004. Condition (F7) of permit 30-129-1 requires that the permittee conduct, at minimum, weekly visual observations of each baghouse stack and observation of any visual emissions from any baghouse shall prompt immediate inspection and, if necessary, corrective actions to eliminate the visual emissions.

12. Visible emissions from the lime kiln were identified in the 2006 second half semi-annual report starting in September. The same report indicates the first corrective action was on October 13, 2006. Corrective action to eliminate visible emissions took over three weeks to initiate, which is a violation of condition (F7) of permit 30-129-1.

13. Said violation consists of failure to initiate immediate corrective action upon observing visible emissions from the lime kiln baghouse in violation of condition (F7) of permit 30-129-1.

14. Operating permit 30-129-1 was issued to Dakota Coal Company on June 15, 2004. Conditions (F2), Table 1 specifies the opacity limit for the lime kiln as 15% opacity.

15. The submitted Q4-06 Continuous Opacity Monitor (COMs) report recorded 217.5 hours, or 9.9% of the reporting period of excess emissions.

16. Said violation consists of failure to maintain compliance with opacity limits for the lime kiln during Q4-06 in violation of condition (F2), Table 1 of permit 30-129-1.

17. Operating permit 3-1-129 was issued to Dakota Coal Company on January 8, 2007. Conditions (F6)(c) and (F6)(d) of permit 3-1-129 require that opacity readings shall be conducted by a qualified observer certified in accordance with Section 3.1 of Method 9 for the both the limestone unloading and fuel unloading operations.

18. During the inspection on September 10, 2007, Mr. Kirk Billings, Air Quality Division compliance inspector, noted that only three measurements were collected instead of the required twenty-four. Mr. Billings was informed by company representative that the observer was not certified to perform Method 9 observations and would not be certified until November 2007.

19. Said violation consists of failure to have a qualified observer certified to conduct opacity readings in violation of condition (F6) of permit 3-1-129.

20. Operating permit 3-1-129 was issued to Dakota Coal Company on January 8, 2007. Condition (F17)(b)(i) of permit 3-1-129 states, "The permittee shall conduct, at minimum, quarterly visual observations of the petroleum coke loading operations to assess compliance with the 20 percent opacity limit."

21. On September 10, 2007, Mr. Kirk Billings, Air Quality Division compliance inspector, conducted a site visit at the Frannie Lime Plant. During the inspection, Mr. Billings was informed by company representative that the quarterly visual observation of the petroleum coke loading operations was not made. Shutdown of this activity was March 9, 2007, therefore at least one Method 9 observation of the process should have been made and submitted to the Air Quality Division.

22. Said violation consists of the failure to comply with the requirement to conduct quarterly visual observations of the petroleum coke loading operations in violation of condition (F17)(b)(i) of permit 3-1-129.

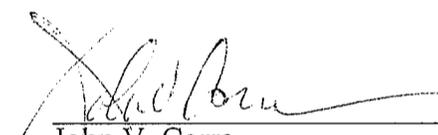
23. Said violations consist of failure to: 1) obtain a construction permit for the coal stockpile located between the facility office and the lime kiln, 2) comply with NO<sub>x</sub> emission limits for the lime kiln during fourth quarter 2006, 3) initiate immediate corrective action upon observing visible emissions from the lime kiln baghouse, 4) maintain compliance with opacity limits for the lime kiln, 5) have a qualified observer certified to conduct opacity readings for the limestone unloading and fuel unloading operations, and 6) conduct quarterly visual observations of the petroleum coke loading operations. These violations are requirements of Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations and permits 30-129-1 and 3-1-129.

24. Under W.S. 35-11-901(a), any person who violates any provision of Article 2 of [the Environmental Quality Act] ... or any rule, regulation, standard or permit adopted pursuant to those provisions, or who violates any determination or order of the council pursuant to Article 2 of [the Environmental Quality Act] ... is subject to a penalty not to exceed ten thousand dollars (\$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.

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

DATED this 4 day of Dec, 2007.

  
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David A. Finley  
Administrator  
Air Quality Division

  
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John V. Corra  
Director  
Department of Environmental Quality

Please direct all inquiries to David A. Finley, Administrator, Division of Air Quality, Department of Environmental Quality, Herschler Building, 2nd Floor, 122 W. 25th Street, Cheyenne, Wyoming 82002. (Telephone: 307/777-7393)