



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

September 14, 2009

Mr. Kenny Custer
Peak Asphalt
1528 E Railroad Street
Rawlins, WY 82301-6358

RE: Notice of Violation

Dear Mr. Custer:

Enclosed you will find a Notice of Violation (NOV) issued to the Peak Asphalt by the Department of Environmental Quality, Air Quality Division, for the failure to obtain an air quality permit prior to commencing construction and operation of the Peak Asphalt Facility located in Carbon County Wyoming in violation of W.S. 35-11-801 of the Wyoming Environmental Quality Act and Chapter 6, Section 2(a)(i) of the Wyoming Air Quality Standards and Regulations. This violation was observed during a complaint inspection and subsequent communication between the Division and Peak Asphalt.

As the Department and this Division consider the failure to comply with air quality permitting requirements to be a serious matter, I am considering 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 to referral to the Attorney General's office, please contact Ms. Karen J. 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: Robert Gill
Chris Hanify
Nancy Vehr
Keith Guille



**BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING**

**IN THE MATTER OF THE NOTICE OF VIOLATION
ISSUED TO PEAK ASPHALT,
MR. KENNY CUSTER,
1528 E RAILROAD STREET,
RAWLINS, WY 82301-6358**

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DOCKET NO. 4563-09

NOTICE OF VIOLATION

NOTICE IS HEREBY GIVEN THAT:

1. The Department of Environmental Quality, Division of Air Quality, has found Peak Asphalt to be in violation of W.S. 35-11-801 of the Wyoming Environmental Quality Act and Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations in the construction and operation of the Peak Asphalt Facility located in Carbon County, Wyoming.

2. W.S. 35-11-801(c) states, "A permit to construct is required before the 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 of the Wyoming Air Quality Standards and Regulations prescribes the applicability and procedures for issuing permits to sources under Wyoming's construction and modification permitting program.

4. 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."

5. On May 29, 2009, the Air Quality Division received an odor complaint against Peak Asphalt. In response, Jeff Hancock, Engineer/Inspector, conducted odor monitoring at and around the Peak Asphalt Facility. No odor violation was noted at the time of inspection, but communication between the Division and Peak Asphalt revealed the facility was constructed in 1995 and not permitted.

6. Said violation consists of the failure to obtain an air quality permit prior to commencing construction of the Peak Asphalt Facility in violation of W.S. 35-11-801 of the Wyoming Environmental Quality Act and Chapter 6, Section 2(a)(i) of the Wyoming Air Quality Standards and Regulations.

7. 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.

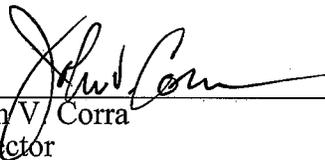
8. This notice is being sent to you pursuant to W.S. 35-11-701(c), which requires that, in any case of the failure to correct or remedy an alleged violation, the Director of the Department of

Environmental Quality shall cause a written notice to be issued and served upon the person alleged to be responsible.

DATED this 23 day of Sept, 2009.



David A. Finley
Administrator
Air Quality Division



John V. Corra
Director
Department of Environmental Quality

Please direct all inquiries to David 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.)