

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF WYOMING

IN THE MATTER OF A NOTICE OF VIOLATION )  
ISSUED TO LANDRICA DEVELOPMENT COMPANY, KF<sub>x</sub> MINE )  
1225 17<sup>th</sup> Street, Suite 1300, Denver, CO 80206 )  
PERMIT NO. 486-T5, NOV NO. 100193 )  
DOCKET NO. 4245-08 )

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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 Landrica Development Company 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 #100193, on April 4, 2008 by Glenn Mooney, for failure to follow the approved mine plan and failure to prevent contamination of subsurface water. On February 28, 2008, Landrica personnel discovered a leak in a high pressure pipeline used to carry fluids to an injection well. Fluid transfer through this line was discontinued, and the area of the suspected leak was excavated the following morning. Landrica personnel state that approximately 13,000 gallons of fluids leaked over a 34 hour period. Soil samples taken at the site of the leak showed various amounts of Acetone, Methyl Ethyl Ketone, Phenolics, Arsenic, Lead and Mercury. Except for the metals, the other constituents match up with the content of the fluids found in the pipeline. Landrica is required to drill monitor wells at appropriate locations near the site of the leak in order to ascertain the extent of soil contamination, groundwater pollution, and the degree of any necessary cleanup activity. The drilling and sampling plan has been agreed upon and drilling will commence on August 12, 2008.

An Informal Conference was held by the Director on June 30, 2008. Landrica was represented by Steve Freudenthal, John Neeley, Ron Berglund and Sage Olson. The Land Quality Division of DEQ was represented by Don McKenzie, Mark Rogaczewski and Glenn Mooney.

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.

## FINDINGS OF FACT

1. There is no record of an immediate verbal notification to the department. A written notification was received by the department, but was received on March 12, 2008. The approved Mine Plan requires that Landrica report pipeline leaks as soon as possible, but no longer than five (5) days after an occurrence.
2. Landrica stated at the Informal Conference that they have no dispute with the Land Quality Division's basis for the Notice of Violation. Their complaint is with the size of the penalty. Landrica presented information that indicated that the penalty assessment was high in relation to a number of other penalties assessed against coal mining operations in the state, and asked that the penalty amount be reviewed.
3. In a letter dated May 5, 2008 from John Corra to Mr. Rod Berglund, a penalty of \$34,000 was assessed in accordance with the Land Quality Division Coal Rules and Regulations, Chapter 16, Section 3 (a) based on the following factors:
  - i. The operator's history of previous violations; no penalty was assessed for this factor.
  - ii. The seriousness of the violation based on the likelihood and extent of the potential of actual impact on the public or environment, both within and outside the permit or exploration area; a penalty of \$19,000 was assessed. At the time of the May 5, 2008 letter, a drilling and sampling plan had not been agreed to, and the penalty was determined to be 25% of the estimated costs of completing four monitoring wells and associated sample analyses that would be necessary to determine the extent of the contamination plume.
  - iii. The degree of fault of the operator in causing or failing to correct the violations, either through act or omission; a penalty of \$5,000 was assessed. Various communications with mine staff are unclear as to when, or even whether, Landrica staff would have known about the leak. The fact that the leak was not detected until steam was found to be rising from the ground surface is indicative that the pipeline monitoring and alarm system were not functioning properly.
  - 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; no credit was given for good faith. Landrica personnel investigated the area of the leak, and immediately shut down the pipeline

operation. Excavation of the site began the following morning and consultants were brought in to provide guidance and collect samples. It was noted in the assessment memo that Landrica did provide soil and pipeline fluid sampling results. Also noted were the late notification of the leak and that Landrica came to a meeting on May 1, 2008 unprepared to develop a plan for drilling and sampling monitoring wells as instructed in an April 23, 2008 conference call.

v. Inability to comply, unless caused by lack of diligence; a penalty of \$10,000 was assessed. The assessment memo stated that the operator was found to be able to comply with the currently approved Mine Plan and required responses to delivery pipeline leaks and environmental harm. The violation was issued due to a lack of diligence at the KfX mine to properly respond to the detected leak in the delivery pipeline.

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; the operator had not supplied any significant information that would cause a reduction of penalty and no credit was given.

### **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. At the time of the penalty determination for the seriousness of the violation, there was no information or plan to ascertain the potential of actual impact to the public or the environment. The amount of assessment was based on a percentage of the estimated costs to install and sample monitoring wells that would provide the necessary information to determine seriousness. Landrica is now implementing a plan that will enable a more accurate assessment of the seriousness of the violation. Should it be determined that the seriousness is low, a reduction up to \$14,000 will be granted.

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2. I cannot find any reason for reducing the assessment amount for the degree of fault.

There is no evidence to indicate that Landrica was prevented from complying with the terms and conditions of the Mine Plan.

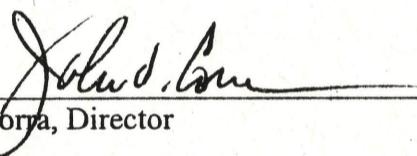
3. The immediate actions taken by Landrica once they became aware of the leak indicate a good faith effort to respond to the leak. Offsetting this are the late notification of the leak and a failure to provide drilling and sampling plans when requested. Abatement of the leak has yet to occur. I cannot find a basis for providing any credit for good faith.

4. I can find no evidence to support an inability to comply.

After reviewing the facts and other information presented, I will reduce the penalty by an amount up to \$14,000, depending on the seriousness of environmental harm discovered from the drilling and sampling plan.

ORDERED THIS 13<sup>th</sup> Day of August, 2008.

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

  
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John V. Corra, Director

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

Chairman  
Environmental Quality Council  
Room 1714, Herschler Building  
122 W. 25<sup>th</sup> Street  
Cheyenne, WY 82002

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