DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

NOTICE OF VIOLATION

IN THE MATTER OF THE NOTICE OF	)	
VIOLATION ISSUED TO	)	
MELGAARD CONSTRUCTION CO., INC.	)	**DOCKET NO. 4345-08**
ATTN: MR. JOHN MELGAARD	)	
P.O. BOX 2408	)	
GILLETTE, WYOMING 82717	)	
1180ET – LIMITED MINING OPERATION	)	

NOTICE

NOTICE IS HEREBY GIVEN THAT:

1. Notice of Violation (NOV) is being sent to you pursuant to Wyoming Statute §35-11-701(c)(i) which requires that a written notice shall be issued in the case of failure to correct or remedy an alleged violation.

2. The Wyoming Environmental Quality Act, W. S. §35-11-401 e.(vi) allows exempt surface mining operations, whether commercial or noncommercial, for the removal of sand, gravel, scoria, limestone, dolomite, shale, ballast or feldspar from an area of ten (10) acres or less of affected land.

3. During inspections performed on July 20 and 24, 2007, Mr. David Schellinger mapped the disturbances associated with Limited Mining Operation (LMO) 1180ET using a Global Positioning System. The mapped disturbances equaled approximately 12.6 acres; 2.6 acres greater than the 10 acres allowed under a LMO by state law.

4. On August 16, 2007, during an inspection of LMO 1180ET with Mr. John Melgaard, Ms. Jenna Polk, Melgaard representatives; Mr. Fred Hepp, the landowner; and Mark Rogaczewski and David Schellinger, LQD representatives, Mr. Schellinger again mapped the LMO disturbance, allowing a 1.3 acre landowner residence access road to be removed from the LMO disturbance acreage. The LMO 1180ET disturbance was revised to be 11.3 acres. The disturbances beyond the allowed ten acres resulted in NOV Docket No. 4118-07 being written.

5. A Settlement Agreement for NOV Docket No. 4118-07 was signed by Mr. John Melgaard on September 17, 2007; and by the DEQ Director and LQD Administrator on October 3, 2007. Item No. 9 of the Settlement Agreement stated:

   "Melgaard will discontinue mining of gravel and sand from LMO 1180ET where mining will extend the area of disturbance beyond the approved ten acre limit (removal of stockpiled products is allowed)."

6. Items 11. 12., and 13. of the Settlement Agreement for NOV Docket No. 4118-07 state the following :

   "11. This signed Settlement Agreement and payment by Melgaard as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against Melgaard, based on the violations alleged in Notice of Violation Docket No. 4118-07. Contingent upon Melgaard, compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against Melgaard, for these particular violations cited in this Settlement Agreement. By this Settlement Agreement, the parties intend to resolve with prejudice all allegations that were asserted in NOV Docket No. 4118-07."

   "12. Melgaard waives any statute of limitations which may apply to an enforcement action by the WDEQ/LQD involving the specific matters described in Notice of Violation Docket No. 4118-07."

"13. Nothing in this agreement precludes WDEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation, Order and/or pursuing additional penalties, should Melgaard violate the Wyoming Environmental Quality Act or applicable rules and regulations in the future."

7. During an inspection of LMO 1180ET on August 12, 2008, David Schellinger observed that gravel not previously mined and that was located outside the approved ten (10) acre limit for LMO 1180ET had been mined, processed and stockpiled. This is a breach of Item No. 9 of the Settlement Agreement for NOV Docket No. 4118-07 and a violation of Wyoming Statute §35-11-901(a)(ii).

8. Wyoming Statute §35-11-901(a) provides that any person who violates any provision of the Environmental Quality Act or any rule, standard, permit, license or variance adopted hereunder is liable to a penalty of ten thousand dollars ($10,000.00) for each day of violation, which 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 IN THE NOTICE 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 4th day of September, 2008

John V. Corra
Director
Department of Environmental Quality

Donald R. McKenzie
Administrator
Land Quality Division

Please direct all inquires regarding this Notice of Violation to Mr. Mark Rogaczewski, District III Supervisor, Wyoming Department of Environmental Quality/Land Quality Division, 1866 South Sheridan Avenue, Sheridan, WY, 82801

1180ET – LIMITED MINING OPERATION

cc: Mark Rogaczewski, LQD DIII
Cheyenne LQD File