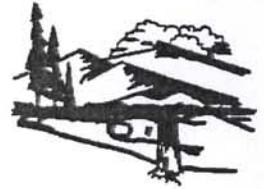




Department of Environmental Quality



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

January 8, 2009

WR
1/13/09

RECEIVED
JAN 12 2009
LSD

Mr. Tony Ames
Ames Construction, Inc..
18450 East 28th Ave
Aurora, CO 80011

RE: Notice of Violation No. 100199 (Docket No. 4412-09) for Ames Construction, Inc. Wyoming, Inc., Dry Fork Mine, Permit No. 599-T4

Dear Mr. Ames:

This letter covers your original copy of this Notice of Violation. Please carefully read page two of the Notice for your options for Formal Review, Temporary Relief, and Penalties.

The remedial action requires you to submit a permit revision by January 26, 2009.

Please contact me if you have any questions.

Sincerely,

Stacy Page
Stacy Page
Senior Analyst

Attachments

xc: Don McKenzie (with attach.)

**CERTIFIED MAIL NO. 7005 1160 0001 6423 8266
RETURN RECEIPT REQUESTED**



STATE OF WYOMING
DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION
HERSCHLER BUILDING, 122 W. 25TH ST
CHEYENNE, WY 82002
TELEPHONE: (307) 777-7756
COAL OPERATION
NOTICE OF VIOLATION (NOTICE)

N.O.V. No. 100199
Permit No. 599-T4
Docket No. 4412-09

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To the Following Permittee or Operator or Licensee:

Name: Ames Construction, Inc, and Western Fuels – Wyoming, Inc.

Mine: Dry Fork Mine, Permit No. 559-T4 County: Campbell

Surface: Underground: _____ Other:

Mailing Address: Ms. Beth Goodnough
Dry Fork Mine
P.O. Box 1809
Gillette, WY 82717-1809

Mr. Tony Ames
Ames Construction, Inc..
18450 East 28th Ave
Aurora, CO 80011

Telephone (307)686-8841

(303) 363-1000

Date of Inspection: December 17, 2008

Time of Inspection: from 11:00 a.m. to 12:00 p.m.

Name of Operator (if other than permittee): same

Mailing Address: same

Under the authority of the Wyoming Environmental Quality Act of 1973 (Act), as amended, the undersigned designated representative of the Director of the Wyoming Department of Environmental Quality (DEQ) has conducted an inspection of the above mine on the above date and has found violation(s) of the Act., the regulations or required permit condition(s) *listed in the attachment(s)*. This Notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned designated representative finds that cessation of mining is _____ is not expressly or in practical effect required by this Notice. For this purpose "mining" means extracting coal from the earth or a waste pile and transporting it within or from the permit area.

This Notice shall remain in effect until it expires as provided on the attached Page 2 or is modified, terminated, or vacated by written notice of a designated representative or the Wyoming Environmental Quality Council. The time for abatement may be extended by a designated representative for up to 90 days from issuance of the notice, if the failure to meet the time previously set was not caused by lack of diligence on the part of the Permittee or Operator or Licensee.

DATE OF SERVICE: 1/8/09

MANNER OF SERVICE: CERTIFIED MAIL

PROOF OF SERVICE: RETURN RECEIPT

PERSON SERVED WITH NOTICE: BETH GOODNOUGH AND TONY AMES

CC: CHEYENNE LQD
DISTRICT OFFICE
OSM – CASPER FIELD OFFICE

Stacy Page
SIGNATURE OF DESIGNATED REPRESENTATIVE
STACY PAGE
PRINTED NAME

IMPORTANT – PLEASE READ CAREFULLY

1. FORMAL REVIEW AND TEMPORARY RELIEF You must apply for review of this Notice by submitting an application for review, within 30 days of this Notice by you or your agent, to:

Mr. John V. Corra, Director
Department of Environmental Quality
Herschler Building
122 W.25th St.
Cheyenne, WY 82002

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If you apply for a formal public hearing, you may request temporary relief from this Notice. Your request must be filed at the above address prior to a decision in the hearing. The procedures for obtaining a formal public hearing or temporary relief are contained in W.S. § 35-11-437 (c) (ii) and (e), Land Quality Division (LQD) Coal Rules & Regulations (R&R) Chapter 16, Section 2(m) and DEQ Rules of Practice and Procedures Chapters 1 and 2.

2. EXPEDITED REVIEW If this Notice requires cessation of mining, expressly or in practical effect, as found on page 1, then the procedures of W.S. § 35-11-437 (d) apply. This provision affords an opportunity for an expedited hearing, upon request, if this Notice is affirmed by the director. Please review this finding and inform the designated representative if you agree with it.
3. PENALTIES You may submit information in writing pertaining to the violation(s) covered by this Notice within 15 days of the date it is served on you or your agent. This information will be considered in determining the facts surrounding the violation and the amount of penalty.

For each violation covered by this Notice, a penalty of up to \$5,000.00 may be assessed for each day during which that violation continues.

If you fail to abate any of the violations within the time set for abatement or for meeting any interim step, you must be assessed a minimum penalty of \$750.00 or more for each day during which the violation continues beyond the time set for abatement, and you must be issued a cessation order requiring you to cease surface coal mining operations on the portion relevant to the violation(s).

4. EFFECT ON THE PERMIT In addition, if it is determined that a pattern of violations of any requirement(s) of the Act, the regulations, or permit conditions exists, and that the violations were caused by unwarranted failure to comply or were willful, the permit may be suspended or revoked.

FOR FURTHER INFORMATION, PLEASE CONSULT: W.S. § 35-11-409(c), W.S. § 35-11-437, LQD Coal R&R Chapter 16, Sections 2 and 3 and DEQ Rules of Practice and Procedures Chapters 1 and 2.

Violation 1 of 1

Nature of the Violation

Failure to follow the approved Mine Plan. Earthen materials were transported from off the mine site onto the mine site and spread on backfill.

Provision(s) of the LQD coal R&R, Act, or Permit Violated

Wyoming Environmental Act §35-11-415(b)(ii) which requires under the duties of the operator that the operator shall: "conduct all mining and reclamation activities within the permit area in conformity with his approved plan."

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Portion of the Operation to which Notice Applies

In the southwest ¼ of Section 24R.72W.,T.51N.

Remedial Action Required (including interim steps, if any)

The Dry Fork Mine shall submit a permit revision to document the activities leading to the issuance of this NOV. Further, no additional importation of the waste materials onto the Dry Fork Mine from the Dry Fork Station will occur until the Mine Plan is revised to allow the activity. If no additional importation of materials is anticipated, the Mine Plan revision must include an estimate of the volume and quality of the materials and the location of materials that have already been imported to the mine and that the location is temporary and the materials will be managed according to the currently approved overburden handling commitments. If additional materials are to be imported from the mine mouth facility during construction the Revision must include an estimate of the volume and quality of the materials and the anticipated placement location of these materials. The revised plan should acknowledge that the imported earthen materials are unsuitable according to Guideline 1 and will be managed according to the permit approved overburden handling commitments. If the materials are placed in a location that is inconsistent with the currently approved or revised plan, then the placement is considered temporary. The revision should also state that the location and volume of any stockpiled materials will be reported annually in the Annual Report.

Time for Abatement (including time for interim steps, if any)

The remedial action requiring a permit revision shall be submitted by January 26, 2009.