

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. 100560
Permit No. 486-T5
Docket No. 4515-09

To the Following Permittee or Operator or Licensee:

Name: Evergreen Energy, Inc.

Mine: KFx Mine County: Campbell Telephone: (307) 685-9121

Surface: Underground: Other:

Mailing Address: 1225 17th Street, Suite 1300
Denver, CO 80202

Date of Inspection: June 17, 2009

Time of Inspection: from 1:00 p.m. to 3:30 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.

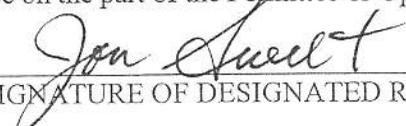
You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

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: JUNE 25, 2009

MANNER OF SERVICE: CERTIFIED MAIL
#7005 1160 0001 6423 8495
PROOF OF SERVICE: RETURN RECEIPT


SIGNATURE OF DESIGNATED REPRESENTATIVE
JON SWEET
PRINTED NAME

PERSON SERVED WITH NOTICE: RON BERGLUND

CC: CHEYENNE LQD
DISTRICT OFFICE
OSM - CASPER FIELD OFFICE

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



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.

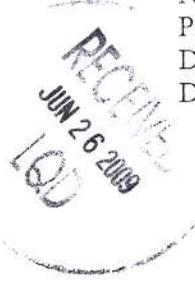
2. EXPEDITED REVIEW If this Notice requires cessation of mining, expressly or in practical effect, as found on page 1, then the procedures of W.S. § 35-11-437 (d) apply. This provision affords an opportunity for an expedited hearing, upon request, if this Notice is affirmed by the director. Please review 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

Review of the impoundment inspection records found that the latest on file were for the fourth quarter of 2008. All of the impoundments had been inspected on December 28, 2008, by J. Stratton of Tetrattech. The first quarter impoundment inspections were not in the files. Personnel contacted the consultants responsible for the report. The first quarter impoundment report was emailed from consultants within one hour. The first quarter impoundment report was dated and conducted April 8, 2009; not complete in the first three months of 2009. Heavy snowfall occurred throughout the region in late March and was provided as the reason the consultant could not access areas to complete the quarterly impoundment report.

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

Reference: Department of Environmental Quality-Land Quality, Coal Rules and Regulations, Chapter 4, Section 2(g)(iv)(H). Wyoming Statute §35-11-415(a), and W.S. §35-11-415(b)(ii) refer to failure to follow mine plan.

Portion of the Operation to which Notice Applies

Failure to follow mine plan and perform required impoundment inspections. The KFx Coal Mine Permit 486-T5, Volume 5, Mine Plan and Reclamation, Section MP5.1.1.1.2 Impoundment Monitoring states quarterly inspections shall be conducted on specific impoundments identified on Table MP-T7A. Table MP-T7C contains information which shall comprise the quarterly inspection report. All quarterly impoundment inspection reports shall be retained at the mine for LQD inspection

Remedial Action Required (including interim steps, if any)

No remedial action is required. The report was emailed from Tetrattech to KFx Mine on day of inspection.

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

None required.