

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. 100561
Permit No. 233-T7
Docket No. 4519-09

To the Following Permittee or Operator or Licensee:

Name: Thunder Basin Coal Company, LLC

Mine: Black Thunder Mine County: Campbell Telephone: (307) 464-2113

Surface: Underground: Other:

Mailing Address: P.O. Box 406
Wright, WY 82732-0406

Date of Inspection: June 23, 2009

Time of Inspection: from 1:00 p.m. to 5:00 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: JULY 2, 2009


SIGNATURE OF DESIGNATED REPRESENTATIVE

MANNER OF SERVICE: CERTIFIED MAIL

DON CRECELIUS
PRINTED NAME

PROOF OF SERVICE: RETURN RECEIPT

PERSON SERVED WITH NOTICE: WENDY HUTCHINSON

CC: CHEYENNE LQD
DISTRICT OFFICE
OSM - CASPER FIELD OFFICE

PAGE 1 OF 3

LQD
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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.

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Violation 1 of 2

Nature of the Violation

The Black Thunder Mine constructed a crossing of the Little Thunder Diversion II channel. The crossing was not approved by the LQD nor was it built according to provisions required by Mine Plan Section MP-3.5.3.2.1.

The Mine Plan Section MP-3.5.3.2.1 mentions that crossing structures may be needed for diversions and it then directs the reader to Section MP-3.5.3.2.3. This section specifically discusses the selection and design of all culverts and states that "Culverts will also be used in road crossings on diversions." It further states that "The crossings will be designed to either allow the culverts to pass the 2-yr 24-hr event with overtopping occurring during high flow events or the culverts will be sized to pass the entire event that the diversion was designed for without overtopping." The mine did not install a culvert in the diversion crossing.

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

W.S. § 35-11-415 (b)(ii)

Portion of the Operation to which Notice Applies

The Little Thunder Diversion II channel below (north of) 24-FC-1 reservoir.

Remedial Action Required (including interim steps, if any)

No remedial action is required. The crossing has been removed. The operator may wish to revise the MP section on diversions in their permit.

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

No abatement of Violation 1 of 2 is required.

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Violation 2 of 2

Nature of the Violation

The fill material used in constructing the crossing of the Little Thunder Diversion II channel did not have approved sediment control below it, nor does the newly affected portions of the diversion channel slopes and bottom.

Both diversion structures and roads are exempt from sediment control. However, the fill material used for crossing the diversion is not a part of the diversion. In fact, placement of the fill compromised the designed function of the diversion.

The fill material used for crossing the diversion was not a road as defined in the LQD Rules and Regulations, nor was it a road that met the requirements of the Black Thunder Permit to Mine (roads must be permitted and designed).

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

Land Quality Division Rules and Regulations Chapter 4, Section 2(f)(i) and Chapter 4, Section 2(f)(vii).

Portion of the Operation to which Notice Applies

The Little Thunder Diversion II channel below (north of) 24-FC-1 reservoir.

Remedial Action Required (including interim steps, if any)

The operator must place sediment control measures downstream of the crossing site and block traffic from using the crossing site. Reportedly, the disturbance from removing the fill has been reseeded.

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

The required actions must be completed within 48 hours of receipt of this notice.

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