

## **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 Green Bridge Holdings, Inc. 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 Docket No. 4854-11, a notice of violation and associated civil penalties resulting from observations made during a formal inspection that a berm had breached allowing a large quantity of spoil onto topsoil. The inspection occurred on June 16, 2011 and the NOV was issued on June 21, 2011 by Stacy Page, designated representative of the Department of Environmental Quality. The informal conference was conducted on September 8, 2011 in the Cheyenne office of the Director of the Department of Environmental Quality.

Green Bridge Holdings was represented by James Nairne and Jim Kintz of EN4CO, LLC. The Land Quality Division of the Department of Environmental Quality was represented by Nancy Nuttbrock, Mark Rogaczewski and Stacy Page. All of the above named individuals participated in the conference. After reviewing the record and being fully advised of the premises, the Director hereby makes his Findings of Fact, Conclusions of Law, and Decision.

### **FINDINGS OF FACT**

1. Green Bridge Holdings, Inc. (Green Bridge) recently purchased the operation and closed the transaction on March 29, 2011.
2. Green Bridge is not familiar with coal mining and the rules and regulations of the Wyoming Department of Environmental Quality and has retained consultants to oversee the mine and perform other work necessary to maintain the permit.
3. An inspection of the mine took place on May 4, 2011 and there was no note of any berm failures or spoil spilling onto topsoil.
4. On May 31, 2011, one of the consultants visited the site and noted the failure of the sump and release of spoil onto native ground.
5. An inspection of the mine on June 16, 2011 noted a breach in the sediment control structure and extensive spillage of spoil onto topsoil and onto a railroad right of way.
6. Remedial action has taken place.

7. Green Bridge does not contest the notice of violation.
8. Green Bridge does disagree with the penalty assessment.
9. The \$5,000 assessment was based on:
  - a. Seriousness - \$5,000
  - b. Degree of Fault - \$5,000
  - c. Good Faith Effort to Abate- \$5,000 credit.

### **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**

Damage to native topsoil is serious, and we have high expectations that operators will maintain sediment control structures in an effective manner. I find that the assessment under this factor is appropriate.

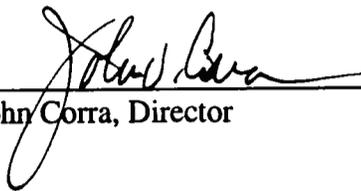
The credit for good faith effort is also deemed appropriate.

The degree of fault by Green Bridge was determined to be moderate by the inspector. At the informal conference, LQD presented a long history of topsoil violations at the site by the previous owners and stated that the fine was based in part on the history of violations at the site. Green Bridge is new to the site, having completed the purchase a couple months previous to the event, and it is possible that the berm and sump structures had little attention prior to the purchase. A wet spring and heavy storms exacerbated the situation, resulting in the violation. Based on the testimony at the informal conference and the fact that the new owners are not responsible for the past history at the site, I reduce the penalty assessment for Degree of Fault to \$2,500.

Therefore, the NOV is upheld, and the penalty assessment is \$2,500.

ORDERED THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2011

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

  
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John Corra, Director

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

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