

**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING**

NOTICE OF VIOLATION

**IN THE MATTER OF THE NOTICE OF
VIOLATION ISSUED TO:**

**ATTN: MR. BRUCE LAWSON
BLACK HILLS BENTONITE, LLC
P.O. BOX 9
MILLS, WY 82644**

OPERATOR, Permit No. 248C – Regular Mine Permit

DOCKET NO. 5377-14

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 WDEQ/LQD Non-coal Rules and Regulations, Chapter 3, Section 2(c)(i)(A) states that all topsoil or approved surface material shall be removed from all areas to be affected in the permit area prior to these areas being affected unless otherwise authorize by the Administrator.
3. During a February 10, 2014 inspection of topsoil salvage operations on the Murphy Creek Update area road corridor Mr. David Schellinger observed a 36-inch culvert placed in the bottom of a major drainage intersecting the road corridor and observed that no topsoil had been salvaged from one side of the drainage, and that topsoil salvage was inadequate on the other. During an inspection of the drainage on February 19, 2013, Mr. Schellinger and Mr. Josh Malmberg noticed topsoil had been buried by fill material covering the culvert, and that the fill material contained vegetation and root mass remnants from inadequately salvaged topsoil. Mr. Bob Perry, the Black Hills Bentonite foreman overseeing operations on the road construction, stated that topsoil had not been salvaged from a portion of the drainage. Two other drainages in the road construction also contained culverts buried without adequate topsoil salvage. A staging area used to store culverts for the road construction operation was also not properly stripped of topsoil.
4. The WDEQ/LQD Non-coal Rules and Regulations, Chapter 3, Section 2(c)(i)(B) states that the topsoil shall also be protected from acid or toxic materials, and shall be preserved in a usable condition for sustaining vegetation when placed over affected land.
5. During the February 19, 2014 inspection of the topsoil salvage operations, Mr. Schellinger and Mr. Malmberg observed salt laden subsoil contaminating topsoil stockpiles. The heavy salt contaminants in subsoil have degraded the topsoil.
6. W.S. § 35-11-415(b)(ii) states that the operator, pursuant to an approved surface mining permit and mining plan and reclamation plan, or any other approved revision thereto, shall conduct all surface mining and reclamation activities in conformity with his approved plan.
7. Section 2.2, Page MP-7 of the approved Murphy Creek Update to Permit No. 248C states that “Ideally, topsoil salvage is conducted in the summer or fall season in order to avoid salvaging topsoil when it could become saturated by spring rains or snowmelt, or frozen during winter months. Every attempt will be made to salvage topsoil with scrapers, as control of topsoil removal is greatly improved with the use of scrapers versus dozers”. Topsoil salvage for this project began under frozen soil conditions, and progresses under muddy soil conditions due to snow melt.
8. Wyoming Statute §35-11-901(a) provides that any person who violates any provision of

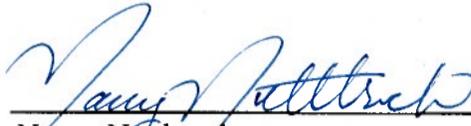
the Environmental Quality Act or any rule, standard, permit, license or variance adopted hereunder is liable to a penalty of ten thousand dollars (\$10,000.00) for each day of violation, which penalty may be recovered in a civil action brought by the Attorney General in the name of the People of the 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 17th day of March, 2014



Todd Parfitt
Director
Department of Environmental Quality



Nancy Nuttbrock
Deputy Director
Department of Environmental Quality
Administrator
Land Quality Division

Please direct all inquiries regarding this Notice of Violation to Mr. Mark Rogaczewski, District III Supervisor, Wyoming Department of Environmental Quality/Land Quality Division, 2100 West 5th Street, Sheridan, WY, 82801

Permit No. 248C – Regular Mine Permit

cc: Mark Rogaczewski, LQD
File, Permit No. 248C