BEFORE THE

ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

IN THE MATTER OF THE NOTICE OF VIOLATION AND ORDER ISSUED TO:	)	
Diana Kudar Waycott & Tim Waycott 235 North Cache P.O. Box 1712 Jackson, WY 83001	)	DOCKET NUMBER: 3971-06

NOTICE OF VIOLATION

AND

ORDER

NOTICE IS HEREBY GIVEN THAT:

1. Diana Kudar Waycott & Tim Waycott are the registered owners of a contaminated site, Number 0-004305, located at 235 North Cache, Jackson, Wyoming. The tanks were removed from the ground on November 18, 1997, with a DEQ inspector on site. The site was found to be contaminated. The responsibility for Contaminated Site Fees rests with the present landowner.
On May 8, 2006, and again on August 17, 2006, Diana Kudar Waycott & Tim Waycott were invoiced for Contaminated Site Fees for this site. Contaminated Site Fees for fiscal year 2007 in the amount of two hundred dollars ($200.00) remain unpaid. While the Contaminated Site Fees are voluntary, failure to pay these fees makes the site ineligible for the Corrective Action Account.

2. Diana Kudar Waycott & Tim Waycott have not performed the remediation actions required under Chapter 17, Section 24. Failing to perform the required remediation actions is a threat to the public health and safety because groundwater can move contamination from the site to nearby homes and businesses. Diana Kudar Waycott & Tim Waycott are required to clean up this site since they have, through failure to pay Contaminated Site Fees, made contaminated site 0-004305 ineligible for cleanup under the Corrective Action Account.

3. Diana Kudar Waycott & Tim Waycott have failed to pay voluntary Contaminated Site Fees for contaminated site 0-004305 and have failed to clean up the site.

4. Chapter 17, Section 24, Wyoming Water Quality Rules and Regulations, is entitled "Owners and/or Operators Not Eligible for the State Corrective Action Program." Subsections (b)(iii), (b)(v), (b)(vi), and (b)(vii) require initial abatement measures and state that: "(b) Initial Abatement Measures and Site Check. Owners and/or operators must accomplish the following abatement measures: (iii) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the underground storage tank excavation zone and entered into subsurface structures (such as sewers or basements); (v) Measure for the presence of a release where contamination is most likely to be present at the underground storage tank site, unless the presence and source of the release have been confirmed in accordance with the site check required by Section 21 or the closure site assessment of Section 32. In selecting sample types, sample locations, and measurement methods, the owner and/or operator must consider the nature of the stored regulated substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; (vi) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with this section; and (vii) Submit a report, within thirty (30) days after release confirmation, to the department summarizing the initial abatement steps taken and any resulting information or data required by this section."

Subsection (c) requires an initial site characterization and states that: "(c) Initial Site Characterization. Owners and/or operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures of this section. This information must include, but is not limited to, the following: (i) Data on the nature and estimated quantity of release; (ii) Data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use; (iii) Results of the site check required under Section 24; (iv) Results of the free product investigations required under Section 24 (b), to be used by owners and/or operators to determine whether free product must be recovered under Section 24 (d); (v) Within sixty (60) days of release confirmation, owners and/or operators must submit the information collected in compliance with this section to the department in a manner that demonstrates its applicability and technical adequacy."

Subsection (d) requires free product removal and states that: "(d) Free Product Removal. When free product is found, owners and/or operators shall contact the department by telephone within 24 hours of the discovery of free product using the department's 24 hour telephone (307-777-7781). Owners and/or operators must present a corrective action plan for product removal at sites where investigations under Section 24 (b) indicate the presence of free product. Owners and/or operators must remove free product to the maximum extent practicable as determined by the department. In meeting the requirements of this section, owners and/or operators must: (i) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by-products in compliance with applicable local, state and federal regulations; (ii) Use abatement of free product migration as a minimum objective for the design of the free product removal system; (iii) Handle any flammable products in a safe and competent manner to prevent fires and explosions; and (iv) Prepare and submit to the department, within forty-five (45) days after confirming a release, a free product removal report that provides at least the following information: (A) The name of the person(s) responsible for implementing the free product removal measures; (B) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations; (C) The type of free product recovery system used; (D) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located; (E) The type of treatment applied to, and the effluent quality expected from, any discharge; (F) The steps that have been or are being taken to obtain necessary permits for any discharge; and (G) The disposition of the recovered free product."

Subsection (e) requires an investigation for soil and groundwater cleanup and states that: "(e) Investigation for Soil and Groundwater Cleanup. In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater, owners and/or operators must conduct a subsurface investigation of the release, the release site, and the surrounding area possibly affected by the release to determine if any of the following conditions exist: (i) There is evidence that groundwater wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures); (ii) Free product is discovered on the groundwater table in compliance with this section; (iii) There is evidence that contaminated soils may be in contact with groundwater (e.g., as found during the initial response measures or investigations required under this section); (iv) The department requests an investigation based on the potential threats of contaminated soil or groundwater on nearby surface water and groundwater resources; (v) Owners and/or operators must submit the information collected under this section in accordance with a schedule established by the administrator."

5. By failing to pay Contaminated Site Fees, Diana Kudar Waycott & Tim Waycott have made the contaminated site, Number 0-004305, ineligible for the Corrective Action Account. By failing to provide for cleanup of the contaminated site, Diana Kudar Waycott & Tim Waycott have violated Chapter 17, Section 24, Wyoming Water Quality Rules and Regulations, Subsections (b)(iii), (b)(v), (b)(vi), and (b)(vii), and Subsections (c), (d), and (e).

6. This Notice is being sent to you pursuant to W.S. 35-11-701(c)(i), which requires that in any case of the failure to correct or remedy an alleged violation, the director of the Department of Environmental Quality shall cause a written notice to be issued and served upon the person alleged to be responsible.

ORDER

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL-STATE OF WYOMING

WHEREFORE IT IS HEREBY ORDERED THAT DIANA KUDAR WAYCOTT & TIM WAYCOTT SHALL:

1. Within 30 days of the receipt of this notice, pay Contaminated Site Fees in the amount of two hundred dollars ($200.00) to make site number 0-004305 eligible for participation in the state's corrective action program. Take all necessary steps to insure that this site remains eligible for the state's corrective action program as long as you own this site until it is ultimately cleaned up.

-OR-

2. If Item 1 is not complied with:

a. Within 30 days of the receipt of this notice, submit a written Initial Abatement Measures and Site Check Report to this department. This report shall detail the actions that have or will be taken to provide for the clean up and restoration of contaminated site number 0-004305 as required by W.S. 35-11-1426 and Section 24, Chapter 17, Wyoming Water Quality Rules and Regulations. The written description shall include the following abatement measures:

1. Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the underground storage tank excavation zone and entered into subsurface structures (such as sewers or basements).

2. Remediate hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If remediation actions include treatment or disposal of soils, the owner and/or operator must comply with the applicable department permit requirements.

3. Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable in accordance with section 24(d), Chapter 17, Water Quality Rules and Regulations. If free product removal requires installation of wells and/or remediation equipment, comply with applicable department permit requirements.

b. Within 60 days of the receipt of this order, submit an Initial Site Characterization Report. Diana Kudar Waycott & Tim Waycott shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures of this section. This information must include, but is not limited to, the following:

1. Data on the nature and estimated quantity of release.

2. Data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use.

3. Results of the free product investigations required under Section 24 (b), Chapter 17, Water Quality Rules and Regulations, used to determine if free product must be recovered under item 3 above.

4. Diana Kudar Waycott & Tim Waycott shall submit the information collected in compliance with this section to the department in a manner that demonstrates its applicability and technical adequacy.

c. Within 90 days of receipt of this order, submit a report detailing the investigation for Soil and Groundwater Cleanup as required by Chapter 17, Section 24(e), Water Quality Rules and Regulations, and the Corrective Action Plan as required by Chapter 17, Section 24(f), Water Quality Rules and Regulations.

THIS ORDER is final unless, not later than 10 days after the date this notice is received, it is appealed by filing two written petitions for a hearing before the Environmental Quality Council. If a hearing is requested, the first petition shall be mailed to the Chairman, Wyoming Environmental Quality Council, Room 1714 Herschler Building, 1st Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. The second petition shall be mailed to the Director, Wyoming Department of Environmental Quality, Herschler Building, 4th Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. Both petitions must be sent by certified mail, return receipt requested.

NOTHING IN THIS ORDER shall be interpreted to in any way limit or contravene any other remedy available under the Environmental Quality Act, nor shall this Order be interpreted as being a condition precedent to any other enforcement action.

ORDERED this 2 day of November 2006.

John V. Corra
Director
Department of Environmental Quality

LeRoy C. Feusner, PE, BCEE
Administrator
Solid and Hazardous Waste Management Division

PLEASE DIRECT ALL INQUIRES TO: Robert Lucht, P.E. & P.G., Storage Tank Compliance Program, at 122 West 25th Street, Fourth Floor, West Wing, Cheyenne, WY 82002, (307) 777-7095 or (307) 777-5973 FAX for technical matters.

JVC/LCF/KH/RFL/lm/