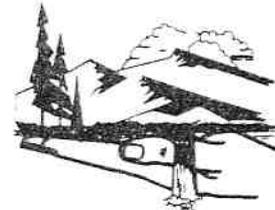




Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

CERTIFIED MAIL

October 20, 2006

Mr. Jim Rodgers
Owner
Jim's Water Service
205 Newton Road
Gillette, Wyoming 82716

RE: Notice of Violation, Docket Number 3930-06

Mr. Jesse Gray
President
Tisdale Trucking
10277 Highway 59 South
Gillette, Wyoming 82718

Mr. Ron Vesser
Plant Manager
KFx, Inc.
P.O. Box 1777
Gillette, Wyoming 82717

Gentlemen:

Enclosed is a Notice of Violation, Docket Number 3930-06, issued to Jim's Water Service (Jim's), Tisdale Trucking (Tisdale) and KFx, Inc. (KFx), collectively known as the Companies, for the unpermitted discharge of wastewater into a water of the state. The violation was noted during an inspection on August 10, 2006 conducted by the Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD) in response to a complaint of an odorous, black material in the drainage located next to Jim's.

While neither the attached Notice of Violation nor this letter constitutes an order, this office strongly urges you to take action to immediately eliminate the violation as follows:

1. The Companies should inform the WQD in writing of the steps taken to ensure that the unpermitted discharge of a wastewater noted in NOV Docket Number 3930-06 does not happen again.
2. The Companies should inform the WQD in writing of the steps already taken, or will be taken, to remove and properly dispose of the odorous, black material from the entire length of the drainage starting at Jim's and ending at the pond at McManaman Park in Gillette.

Page L-1

Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH
(307) 777-7758
FAX 777-3610

ABANDONED MINES
(307) 777-6145
FAX 777-6462

AIR QUALITY
(307) 777-7391
FAX 777-5616

INDUSTRIAL SITING
(307) 777-7369
FAX 777-6937

LAND QUALITY
(307) 777-7756
FAX 777-5864

SOLID & HAZ. WASTE
(307) 777-7752
FAX 777-5973

WATER QUALITY
(307) 777-7781
FAX 777-5973

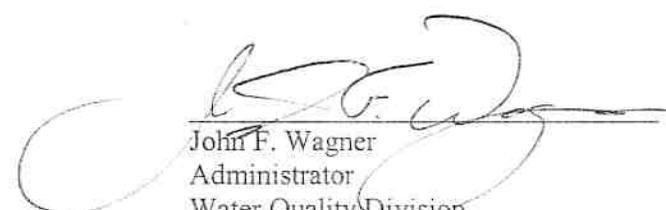


3. The Companies should ensure that all discharges to waters of the state are permitted in accordance with Chapter 2 of the Wyoming Water Quality Rules and Regulations (WWQRR).
4. Information requested in items 1 and 2 above should be received by the WQD on or before December 1, 2006.

The WQD has the authority to resolve violations with an out-of-court settlement agreement through the payment of a penalty by the Companies. If the Companies wish to pursue resolution of the previously noted violation through such an agreement, please contact Mr. Brian R. Bohlmann, P.E., WYPDES Compliance & Enforcement Coordinator at (307)777-8669, or Mr. Brian K. Lovett, WYPDES Inspection & Compliance Supervisor at (307)777-5630 on or before November 17, 2006 to set up a meeting to discuss this matter.



John V. Corra
Director
Department of Environmental Quality



John F. Wagner
Administrator
Water Quality Division

JVC/JFW/BRB/bb/6-0968.LTR

Enclosure: Notice of Violation

cc: Colleen Gillespie, 8ENF-W-NP, EPA Region 8
Brian R. Bohlmann, P.E., WYPDES Compliance & Enforcement Coordinator
James B. Eisenhauer, WYPDES Inspection Coordinator, WQD - Sheridan
Don McKenzie, Water & Wastewater Program Manager
Carol Bilbrough, LQD Program Manager
Mike Barrash, Senior Assistant Attorney General
Bill J. DiRienzo ► Brian K. Lovett ► Leah J. Krafft
IPS (for scanning) ► Docket 3930-06
Keith Guile, DEQ Public Information Officer (PDF file only)
DEQ Director

BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

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

DOCKET NUMBER 3930-06

Jim's Water Service)
205 Newton Road)
Gillette, Wyoming 82716)

Tisdale Trucking)
10277 Highway 59 South)
Gillette, Wyoming 82718)

KFx, Inc.)
P.O. Box 1777)
Gillette, Wyoming 82717)

NOTICE OF VIOLATION

NOTICE IS HEREBY GIVEN THAT:

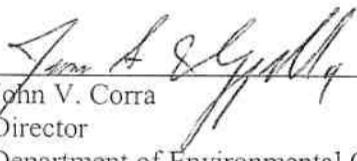
1. On August 9, 2006, the Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD) received a complaint from the City of Gillette concerning the release of a black, odorous material into a drainage next to a facility operated by Jim's Water Service (Jim's) in Gillette some time prior to the morning of August 9, 2006. The WQD inspector contacted a local testing laboratory concerning the material released in order to prepare for collecting a sample to be analyzed, and was informed that it sounded very similar to the by-product material the laboratory had analyzed previously for KFx;
2. On August 10, 2006, two (2) WQD inspectors met with a representative of the City of Gillette at Jim's to examine the release site. Due to a recent rain storm event, the released material had traveled an estimated two and a half miles with some material entering a pond at McManaman Park in Gillette. Further inspection of the drainage by the WQD indicated that none of the released material was visible in the drainage up gradient of Jim's facility;
3. The WQD inspectors then conducted an inspection of Jim's facility. An odor similar to the released material was noted to be coming from sumps located at the facility. Samples collected from the north sump at the facility and from the drainage next to the facility appeared to be similar in odor and content. Photos taken during the inspection shows the released material in the discharge pipe from the sumps at Jim's;
4. Landrica Development Company (Landrica), a wholly owned subsidiary of KFx, Inc. (KFx), is the owner and operator of the open pit KFx Coal Mine and the Fort Union Coal Benefication Plant. WYPDES permit WY0033057 was issued to Landrica on March 27, 2004 and expires on March 31, 2009. Outfall 001 associated with WYPDES permit WY0033057 is for the discharge of surface water runoff from the benefication plant. Outfall 002 associated with WYPDES permit WY0033057 is for the discharge of storm water runoff from disturbed areas associated with the KFx Coal Mine, and pit water that may accumulate in the mine. No other sources of wastewater are permitted to be discharged into a water of the state through these two (2) outfalls;

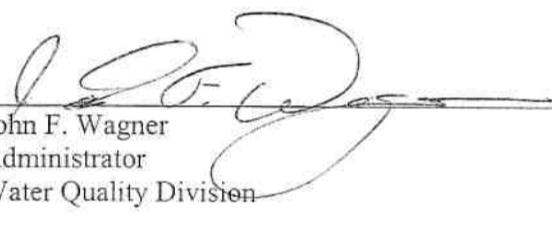
5. On August 11, 2006 the WQD conducted an inspection of the KFx facility near Gillette. The WQD inspector was informed that Jim's had transported material from the KFx facility some time during the week. Samples were collected from a treated water containment area and from a by-product water storage tank at the KFx facility. The material in the samples collected looked and smelled similar to the material released from Jim's facility;
6. A review of gate and loadout logs provided by KFx to the WQD indicates that Tisdale Trucking (Tisdale) employees hauled wastewater from the KFx facility on August 6, 7, 8, and 9, 2006. The quantity of wastewater hauled each day was 2,700 barrels (bbls), 4,800 bbls, 9,000 bbls, and 8,700 bbls, respectively. Additionally, gate and loadout logs indicate that Jim's employees hauled wastewater from the KFx facility on August 8 and 9, 2006. According to the bills-of-lading provided by Jim's to the WQD, 2,225 bbls and 3,511 bbls of wastewater was transported by Jim's from the KFx facility on August 8 and 9, 2006, respectively;
7. Lab results of the by-product water collected by the WQD from the KFx facility had a concentration of 14,000 micrograms per liter ($\mu\text{g/l}$) of Phenol, 4,600 $\mu\text{g/l}$ of m+p-Cresols, and 420 $\mu\text{g/l}$ of o-Cresol. Lab results of the material in the drainage next to Jim's had a concentration of 7,900 $\mu\text{g/l}$ of Phenol, 3,200 $\mu\text{g/l}$ of m+p-Cresols, and 200 $\mu\text{g/l}$ of o-Cresol;
8. The Department of Environmental Quality has no record of permits authorizing the discharge of wastewater to waters of the state from the location referenced for the pipe from Jim's Water Service in the case described previously;
9. The drainage ditch and the pond at McManaman Park in Gillette are "*waters of the state*" as defined under W.S. 35-11-103 (c)(vi);
10. Wastewater from Jim's Water Service's facility contains "*pollution*" as defined in W.S. 35-11-103 (c)(i);
11. By discharging pollution into waters of the state, Jim's, Tisdale, and KFx, collectively known as the Companies, are in violation of W.S. 35-11-301 (a)(i) and Chapter 2 of the Wyoming Water Quality Rules and Regulations (WWQRR) which state that no person, except when authorized by a permit issued by the Department of Environmental Quality, shall cause, threaten, or allow the discharge of any pollution or wastes into the waters of the state;
12. Chapter 4, Section 3(a) of the WWQRR defines a hazardous substance as "*any substance or waste which, after release, constitutes a threat to public health or welfare, or other aquatic life or wildlife ...*" Chapter 4, Section 3(d) of the WWQRR defines a release as to "*include, but not limited to, any sudden spilling, leaking, pumping, pouring, emptying, emitting, discharging, dumping, addition of, escaping leaching, or unauthorized disposal of any oil or hazardous substance which enters, or threatens to enter, waters of the state*";
13. Chapter 4, Section 4(a)(i) of the WWQRR states that after a release has occurred that enters or threatens to enter waters of the state the responsible party shall: "*immediately take appropriate action to stop and contain the release.*" By not taking any action to contain the release and allowing the released material to reach the pond at McManaman Park, the Companies are in violation of Chapter 4, Section 4(a)(i) of the WWQRR;
14. Chapter 4, Section 4(a)(ii) of the WWQRR states that after a release has occurred that enters or threatens to enter waters of the state the responsible party shall: "*immediately notify the division of the type, quantity, and location of the release, and of the response, containment, and cleanup actions which have been taken or proposed to be taken.*" By not notifying the WQD of the release and actions to be taken, the Companies are in violation of Chapter 4, Section 4(a)(ii) of the WWQRR;
15. Chapter 4, Section 4(a)(iv) of the WWQRR states that after a release has occurred that enters or threatens to enter waters of the state the responsible party shall: "*within seven (7) days following the release, submit a complete written report to the division describing the reportable release and steps taken to prevent a recurrence.*" By not submitting a written report to the WQD as required, the Companies are in violation of Chapter 4, Section 4(a)(iv) of the WWQRR;
16. Chapter 4, Section 4(b) of the WWQRR state that: "*cleanup of oil or hazardous substance releases shall proceed in a timely and diligent manner. ...*" By not cleaning up the released material, the Companies are in violation of Chapter 4, Section 4(b) of the WWQRR;

17. 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;
18. Pursuant to Wyoming Statute 35-11-901(a), any person who violates, or any director, officer, or agent of a corporate permittee who willingly and knowingly authorizes, orders, or carries out the violation of any provision of the Environmental Quality Act (Act), or any rule, regulation, standard, or permit adopted hereunder or who violates any determination or order of the council pursuant to this act or any rule, regulation, standard, permit, license, or variance is subject to a penalty not to exceed ten thousand dollars and no cents (\$10,000.00) for each violation for each day during which the violation continues, a temporary or permanent injunction, or both a penalty and an injunction. The 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 herein shall preclude the department from negotiating stipulated settlements involving the payment of a penalty, implementation of compliance schedules, or other settlement conditions, as appropriate, in lieu of litigation.

NOTHING IN THIS NOTICE OF VIOLATION (NOV) 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 20th day of October, 2006.


John V. Corra
Director
Department of Environmental Quality


John F. Wagner
Administrator
Water Quality Division

PLEASE DIRECT ALL INQUIRIES TO: Brian R. Bohlmann, P.E., WYPDES Compliance & Enforcement Coordinator, Wyoming Department of Environmental Quality, Water Quality Division, Herschler Building, 4th Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. Telephone 307-777-8669.

JVC/JFW/BRB/bb/6-0968.NOV

cc: Colleen Gillespie, 8ENF-W-NP, EPA Region 8
Brian R. Bohlmann, P.E., WYPDES Compliance & Enforcement Coordinator
James B. Eisenhauer, WYPDES Inspection Coordinator, WQD - Sheridan
Don McKenzie, Water & Wastewater Program Manager
Carol Bilbrough, LQD Program Manager
Mike Barrash, Senior Assistant Attorney General
Bill J. DiRienzo ► Brian K. Lovett ► Leah J. Krafft
IPS (for scanning) ► Docket 3930-06
Keith Guile, DEQ Public Information Officer (PDF file only)
DEQ Director