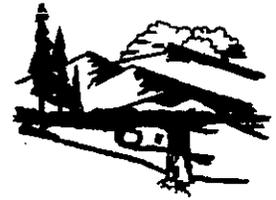




Department of Environmental Quality



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

June 9, 2009

Mr. Don Berland
Berland Real Estate, Inc.
13394 E. Control Tower Rd.
Englewood, CO 80112

RE: Notice of Violation, Docket Number 4505-09

Dear Mr. Berland:

Attached is a copy of a Notice of Violation, Docket Number 4505-09, issued to Berland Real Estate, Inc. (Berland), for violations noted by the Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD) at the Preserve Apartments-Rock Springs construction site. Violations at the construction site include the failure to comply with the Large Construction General Storm Water permit (LCGP) requirements and failure to maintain proper best management practices (BMPs) to control storm water runoff. 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 alleged violations as follows:

1. Berland should comply with the requirement as written under the LCGP authorization WYR103927.
2. Berland shall maintain storm water "Best Management Practices" (BMP) throughout the life of the project to ensure no sedimentation enters a water of the state. *"BMPs mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage."*

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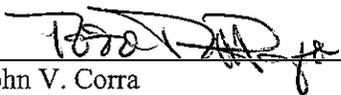
Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH (307) 777-7937 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 777-5973	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
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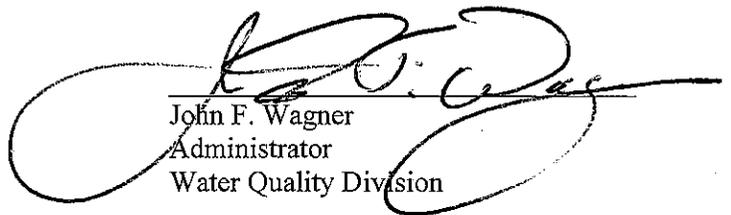


Berland Real Estate Inc.
June 9, 2009
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The WQD has the authority to resolve violations with an out-of-court settlement agreement through the payment of a penalty by Berland. If Berland wishes to pursue resolution of the previously noted violations through such an agreement, please contact Kevin M. Wells, WYPDES Compliance & Enforcement Coordinator, at (307) 777-8669 within 21 days of the date of this notice 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/KMW/bb/9-0483

Enclosure: Notice of Violation

cc: Lee Hanley, 8ENF-W-NP, EPA Region 8 (PDF)
Bill J. DiRienzo ► Kevin M. Wells (PDF)
IPS (for scanning) ► Docket 4505-09
Keith Guille, DEQ Public Information Officer (PDF)

BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

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

Berland Real Estate Inc.)
13394 E. control Tower Rd.)
Englewood, CO 80112)
)
)
)
)

DOCKET NUMBER 4505-09
Permit # WYR103927

NOTICE OF VIOLATION

NOTICE IS HEREBY GIVEN THAT:

1. Berland Real Estate Inc (Berland) is the contractor of a construction site described as The Preserve Apartments-Rock Springs (PARS). The construction site is located in Section 28, Township 19 North, Range 105 West, Sweetwater County, Rock Springs, Wyoming and received WYPDES construction storm water authorization WYR103927 under the Large Construction General Permit on March 2 2009.
2. On May 18, 2009 the Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD) conducted an inspection at the PARS construction site. During the inspection numerous violations of permit conditions [no inspection or maintenance records, no updated Storm Water Pollution Prevention Plan (SWPPP) or site map, and ineffective Best Management Practices (BMPs)] were documented. The DEQ submitted a copy of the inspection report to Berland, dated June 4, 2009, and indicated within the cover letter that elevated enforcement may be considered based on the conditions of the construction site and the nature of the violations.
3. Berland's failure to install and/or maintain erosion and sediment control measures resulted in sediment being deposited into the adjacent drainages and tracked off site. This is a violation of the following permit conditions:

Part 8.4 Visible or measurable erosion, associated with a construction activity, which leaves the construction site as a result of inadequate or ineffective SWPPP design or maintenance of BMPs is prohibited. Visible or measurable erosion is defined as: Part 8.4.1 "Deposits of mud, dirt, sediment, or similar material exceeding one cubic foot in any area of 100 square feet or less on public or private roads, adjacent property, or into water of the state by deliberate actions or as a result of water or wind erosion"; or Part 8.4.2 "evidence of concentrated flows of water over bare soils, turbid or sediment-laden flows, or evidence of on-site erosion on bare slopes, where runoff of water is not filtered, treated, or captured on the site using BMPs specified in the SWPPP"; or Part 8.4.3 earth slides, mud flows, earth sloughing, or other earth movement which leaves the construction site" are all violations of the Large Construction General Storm Water Permit.

Part 9.1.1 Active Construction Sites. "During active construction inspections must be conducted in accordance with one of the two schedules listed below, unless the project has an alternate inspection schedule approved by the administrator."

Part 9.1.6 Records. "The operator shall keep a record of inspections and maintenance."

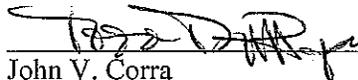
Part 10.1 Duty to Comply. "The permittee must comply with all conditions of this permit, and is responsible for ensuring any subcontractors, employees or other persons associated with the construction activity comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Chapter 2 of the Wyoming Water Quality Rules and Regulations, The Wyoming Environmental Quality Act, and the Clean Water Act and may be grounds for enforcement action, permit termination, revocations, or modification, or for denial of a permit renewal application."

Failure to comply is a violation of the Large Construction General Storm Water Permit.

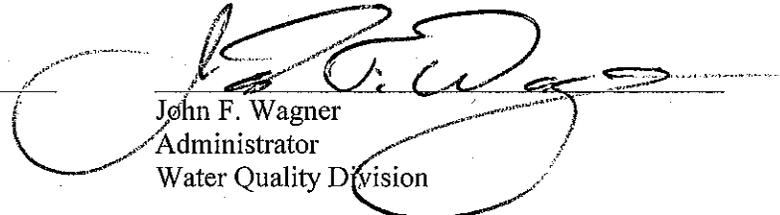
4. Pursuant to Wyoming Statute 35-11-901(a), any person who violates, or any director, officer or agent of a corporate permittee who willingly and knowingly authorizes, orders or carries out the violation of any provision of the Environmental Quality Act (Act), or any rule, regulation, standard or permit 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 DEQ from negotiating stipulated settlements involving the payment of a penalty, implementation of compliance schedules, or other settlement conditions.

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 15th day of June, 2009.



John V. Corra
Director
Department of Environmental Quality



John F. Wagner
Administrator
Water Quality Division

PLEASE DIRECT ALL INQUIRIES TO: Kevin M. Wells, 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/KMW/bb/9-0483

cc: Lee Hanley, 8ENF-W-NP, EPA Region 8 (PDF)
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