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

August 19, 2009

Mr. Joe Stephenson
Knife River
PO Box 20150
Cheyenne, Wyoming 82003

RE: Notice of Violation, Docket Number 4536-09

Dear Mr. Stephenson:

Attached is a copy of a Notice of Violation, Docket Number 4536-09, issued to Knife River (Knife River), for violations noted by the Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD) at the "WYDOT Happy Jack Road-Gilchrist Section" 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. Knife River should comply with the requirement as written under the LCGP authorization WYR103897.

2. Knife River 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	ABANDONED MINES	AIR QUALITY	INDUSTRIAL SITING	LAND QUALITY	SOLID & HAZ. WASTE	WATER QUALITY
(307) 777-7937	(307) 777-6145	(307) 777-7391	(307) 777-7369	(307) 777-7756	(307) 777-7752	(307) 777-7781
FAX 777-3610	FAX 777-6462	FAX 777-5616	FAX 777-5973	FAX 777-5864	FAX 777-5973	FAX 777-5973

The WQD has the authority to resolve violations with an out-of-court settlement agreement through the payment of a penalty by Knife River. If Knife River 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

Enclosure: Notice of Violation

JVC/JFW/KMW/bb/9-0728

cc: Lee Hanley, 8ENF-W-NP, EPA Region 8 (PDF)
Bill J. DiRienzo ► Kevin M. Wells (PDF)
IPS (for scanning) ► Docket 4536-09
Keith Guille, DEQ Public Information Officer (PDF)
DEQ Director

BEFORE THE

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF WYOMING

IN THE MATTER OF THE NOTICE OF VIOLATION ISSUED TO:	)	
Knife River	)	
PO Box 20150.	)	
Cheyenne, Wyoming 82003	)	
	)	**DOCKET NUMBER 4536-09**
	)	**Permit # WYR103897**

NOTICE OF VIOLATION

NOTICE IS HEREBY GIVEN THAT:

1. Knife River (Knife River) is the contractor of a highway construction project described as "The WYDOT Happy Jack Road Gilchrist Section" (HJGS). The construction site is located in Section 28, Township 14 North, Range 67 West to Section 13, Township 15 North, Range 70 West, Laramie County, Wyoming and received WYPDES construction storm water authorization WYR103897 under the Large Construction General Permit (LCGP) on December 29, 2008.

2. On June 2, 2009 the Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD) conducted an inspection at the HGGS construction site. During the inspection numerous violations of permit conditions were noted to include; no inspection or maintenance records, no updated Storm Water Pollution Prevention Plan (SWPPP) or site map, ineffective or no Best Management Practices (BMPs), and no maintenance records regarding inspections of BMPs as needed to prevent transport of sediment off site. The DEQ issued a Letter of Violation (LOV) dated June 15, 2009 along with a copy of the inspection report to Knife River, dated June 4, 2009. The LOV requested a written response documenting what corrective action Knife River would complete to meet the permit requirements. To date, the DEQ has not received the written response.

3. On August 3, 2009 the Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD) conducted an inspection at the HGGS construction site. During the inspection numerous violations of permit conditions were noted to include; no inspection or maintenance records, no updated Storm Water Pollution Prevention Plan (SWPPP) or site map, ineffective BMPs allowing sediment to enter Crow Creek (Class 2AB water), a water of the state, and no maintenance records regarding inspections of BMPs as needed to prevent transport of sediment to water of the state or off site.

4. Knife River's failure to install and/or maintain erosion and sediment control measures has resulted in sediment being deposited into the adjacent drainages (Crow Creek) 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.

5. 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 19 day of August, 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/9-0728

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