



Department of Environmental Quality

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



Matthew H. Mead, Governor

John Corra, Director

CERTIFIED MAIL

August 19, 2011

Mr. Roger Rathbun
Kennedy Oil
222 South Gillette Ave. #302
Gillette, WY 82716

RE: Notice of Violation, Docket Number 4859-11

Dear Mr. Rathbun:

Enclosed is a copy of Notice of Violation, Docket Number 4859-11 issued to Kennedy Oil, (Kennedy), for unpermitted discharges from the off-channel lined pit at the Hanging Woman POD 1 facility. There is also evidence that seepage from the off channel unlined pit entered Horsley Draw tributary to Hanging Woman Creek in the Tongue River Basin, which are waters of the state. These unpermitted discharges were observed by the Department of Environmental Quality/ Water Quality Division (WDEQ/WQD) on June 28, 2011 and again on July 7, 2011. Review of DEQ data base records indicated the previous permit for this facility had expired on March 31, 2011. These unpermitted discharges are violations of the Wyoming Environmental Quality Act (Act) and the Wyoming Water Quality Rules and Regulations (WWQRR).

While neither the attached Notice of Violation nor this letter constitutes an order, it is the recommendation of this office that you take action to eliminate the alleged violations as follows:

1. Kennedy should inform the Water Quality Division (WQD) in writing of the steps taken to eliminate unpermitted discharges from the off-channel lined pit at the Hanging Woman POD 1 facility without proper authorization. This information should be received by the WQD within 30 days from the date of this letter.
2. Kennedy should cease all unpermitted discharges from the off-channel pit at this facility until a WYPDES discharge permit has been obtained.
3. Kennedy shall submit the application for a WYPDES permit and receive authorization prior to any future discharges from the off-channel lined pit to the off-channel unlined pit.
4. Kennedy should investigate any seepage from the off channel unlined pit at this facility, take necessary correction actions as necessary, and report on such action to the WQD within 30 days from the date of this letter.

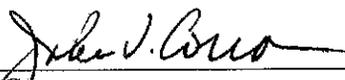
Herschler Building · 122 West 25th Street · Cheyenne, WY 82002 · <http://deq.state.wy.us>

ADMIN/OUTREACH (307) 777-7758 FAX 777-7682	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 777-5884	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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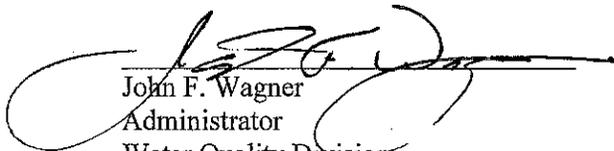


Kennedy Oil
August 19, 2011
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The WQD has the authority to resolve violations with an out-of-court settlement agreement through the payment of a penalty by Kennedy. If Kennedy wishes to pursue resolution of the previously noted violations through such an agreement, please contact Mr. Kevin M. Wells, WYPDES Natural Resource Program Manager at 777-8669, or Mr. Brian K. Lovett, WYPDES Natural Resource Program Supervisor at (307) 777-5630, within 21 days of the date of this letter 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/rm/11-0728

Enclosure: Notice of Violation

cc: David Gwisdalla, 8ENF-W-NP, EPA Region 8 (PDF)
Bill J. DiRienzo ► Kevin M. Wells (PDF)
IPS (for scanning) ► Docket 4859-11
Keith Guille, DEQ Public Information Officer (PDF File Only)

BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

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

Kennedy Oil)
222 South Gillette Ave. #302)
Gillette, WY 82716)

DOCKET NUMBER 4859-11

NOTICE OF VIOLATION

NOTICE IS HEREBY GIVEN THAT:

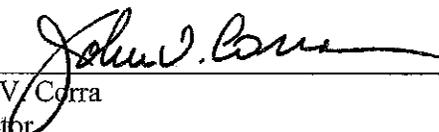
1. Kennedy Oil, (Kennedy) operates numerous coal bed methane (CBM) gas production facilities in Wyoming and has received authorization to discharge under Wyoming Pollution Discharge Elimination System (WYPDES) permits in Wyoming, issued by the Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD).
2. On March 4, 2008, DEQ authorized the discharge of CBM produced water by Kennedy to an off-channel full containment pit under WYPDES permit WY0056219, outfall 001. Any discharges from the containment pit are prohibited except due to overflow from a 50 year/24 hour or larger storm event.
3. A letter dated June 29, 2010 was sent to Kennedy indicating WYPDES permit WY0056219 would expire on March 31, 2011. Data base records indicate permit WY0056219 expired on March 31, 2011 after which time all discharges of CBM produced water from outfall 001 to the containment pit should have ceased at this facility.
4. A compliance inspection conducted by WQD on June 28, 2011, at the facility located in the NWNW Section 36, Township 57 North, Range 80 West, in Sheridan County, Wyoming, (Hanging Woman POD 1) documented discharge from outfall 001 was occurring. The site was revisited on July 7, 2011 by WQD personnel, along with Mr. Roger Rathbun (Kennedy Oil) for clarification as to the on-going operations. The previous mentioned discharge was observed again flowing from the lined pit to the unlined pit. At this time Mr. Rathbun was informed that WY0056219 had expired and the discharge was unpermitted.
5. Additionally, the DEQ inspector documented evidence of past spills and seepage from the site including saturated soils and a flow path from the unlined pit to nearby Horsley Draw. The occurrence of past spills was also confirmed on site by Mr. Roger Rathbun on July 7, 2011.
6. Coal bed methane produced water contains "pollution" as defined in W.S. 35-11-103 (c)(i);
7. The discharges referenced above in items (3) and (4) entered an off-channel reservoir and the spills/seepage referenced above in item (5) entered or threatened to enter Horsley Draw which are both considered "waters of the state" as defined under W.S. 35-11-103 (c)(vi).
8. The Department of Environmental Quality has no record of active permits authorizing discharge from the facility at the time of the inspection.
9. By discharging pollution into waters of the state, Kennedy is in violation of W.S. 35-11-301 (a)(i) and Chapter 2 of the Wyoming Water Quality Rules and Regulations (WWQRR) which states that no person, except when authorized by a permit issued by the Department of Environmental

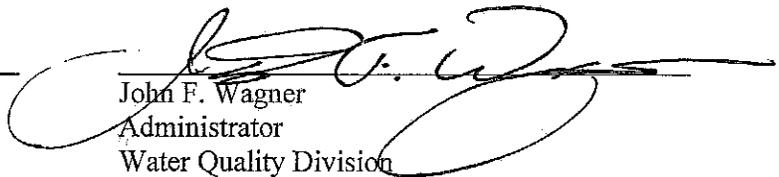
Quality, shall cause, threaten or allow the discharge of any pollution or wastes into the waters of the state.

10. 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.
11. 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, 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 25th day of August, 2011.


John V. Corra
Director
Department of Environmental Quality


John F. Wagner
Administrator
Water Quality Division

PLEASE DIRECT ALL INQUIRIES TO: Kevin M. Wells, WYPDES Natural Resource Program Manager at the 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/rm/11-0728

cc: David Gwisdalla, 8ENF-W-NP, EPA Region 8 (PDF)
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DEQ Director