

Luke Esch
Assistant Attorney General
123 Capital Building
Cheyenne, WY 82002
Telephone: (307) 777-6946
Facsimile: (307) 777-3542

Attorney for the State of Wyoming

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
NOTICE OF VIOLATION AND)
ORDER NO. 4331-08) Docket No. 08-3807
ISSUED TO KDA CONSTRUCTION, INC.)

**AFFIDAVIT OF MATT BUCHHOLZ
IN SUPPORT OF THE WYOMING DEPARTMENT OF ENVIRONMENTAL
QUALITY'S MOTION FOR SUMMARY JUDGMENT**

STATE OF WYOMING)
)ss.
COUNTY OF LARAMIE)

Matt Buchholz, being first duly sworn, deposes and says as follows:

1. I am over the age of 21 and am competent to make this affidavit.
2. The facts and matters stated herein are within my personal knowledge, and are true and correct.
3. I have a Bachelor of Science degree in Chemical Engineering, which I received from the University of North Dakota.

4. In September of 2004, I began working for the Wyoming Department of Environmental Quality, Water Quality Division (DEQ) as an Environmental Specialist. My job responsibilities during that time period included: site inspections, reviewing Wyoming Pollution Discharge Elimination System (WYPDES) permits for compliance, enforcement actions on WYPDES violators, and data entry.

5. In July 2007, I was promoted to the position I currently have of Environmental Scientist 3. My current job responsibilities include: site inspections, managing WYPDES eDMR system, reviewing WYPDES permits for compliance, enforcement actions on WYPDES permits, data entry, and database analysis.

6. In my experience, I have conducted or assisted in approximately 100 Storm Water Inspections.

7. On June 18, 2007, DEQ received a Notice of Intent to Request Discharge Authorization for Storm Water from Large Construction Activities (NOI) from KDA Construction, Inc. (KDA) The NOI is attached hereto as Exhibit A.

8. KDA's NOI was dated "6-15-07" and signed by Douglas Sproul as CEO of KDA, and requested discharge authorization from DEQ for storm water from construction activities at the Bluffs Senior Estates project in Sweetwater County under Large Construction General Permit WYR 10-0000. (Ex. A at 1).

9. KDA's NOI listed the "Name of project operator" who is "responsible for permit compliance" as "KDA Const. Inc." and the mailing address as 3723 Fairview Industrial Dr. SE, Suite 196, Salem, OR 97302. (Ex. A at 1).

10. KDA's NOI described the Bluffs Senior Estates project as construction of a new residential site approximately 14.47 acres in size. (Ex. A at 2).

11. KDA's NOI stated that a storm pipe would be used to convey most stormwater runoff from the Bluffs Senior Estates construction project approximately one-half mile northeast to Killpecker Creek, and the remainder would flow into Killpecker Creek down an existing borrow ditch within the WYDOT right of way. (Ex. A at 2).

12. DEQ issued Authorization to Discharge WYR103444 to KDA for storm water associated with the Bluffs Senior Estates construction project in Sweetwater County. The Authorization is attached hereto as Exhibit B.

13. Following the issuance of Authorization to Discharge WYR103444, KDA engaged in construction activities associated with the Bluffs Senior Estates project in Sweetwater County which involved excavation and disturbance of the land surface.

14. On May 20, 2008, I conducted a site inspection of the Bluffs Senior Estates project site in Rock Springs, Wyoming. During this site visit, I took several pictures of the project site and drafted a Construction Storm Water Inspection Report. The photos and report are attached hereto as Exhibits C & D, respectively.

15. Also on May 20, 2008, I called KDA and spoke to a Mr. Michael Neely with KDA about the site inspection. Mr. Neely told me KDA had not been onsite in six months, and I informed him of the permit requirements that were not being met.

16. On June 17, 2008, I wrote a letter to KDA using the contact information that was listed on the NOI and informed KDA of the observed violations and demanded KDA cure the observed violations within 30 days. This letter is attached hereto as Exhibit E.

17. I returned to the project site for a follow-up inspection on July 24, 2008, and the conditions on the site had not improved from the previous inspection. Additionally, none of the observed violations cited in my June 17, 2008, letter were addressed.

18. During both of my inspections of the project site, vegetative cover with a density of 70% of the native background vegetative cover for the area had not been established on all disturbed unpaved areas and areas not covered by permanent structures. In my opinion, the vegetative cover on all disturbed areas was less than 5%.

19. On August 14, 2008, DEQ issued Notice of Violation and Order (NOV) No. 4331-08 to KDA for failing to abide by WYPDES Authorization WYR103444 as required by the WYPDES Storm Water Permit. The NOV is attached hereto as Exhibit F.

Exhibit A

NOTICE OF INTENT

TO REQUEST
DISCHARGE AUTHORIZATION
FOR STORM WATER FROM
LARGE CONSTRUCTION ACTIVITIES
(Under Large Construction General Permit WYR10-0000)

WJK 100444



Official Use Only
Date received:
RECEIVED
JUN 16 2007

- ✓ Please print or type.
- ✓ All items must be completed accurately and in their entirety or the NOI will be deemed incomplete and processing will be delayed.
- ✓ Storm water discharges from a large construction project are covered under the large construction general permit when the Administrator provides a letter of authorization (LOA) to the applicant (see Part 1.2.5 of the permit).
- ☒ Authorizations issued under the general permit are subject to an annual \$100 permit fee for as long as the authorization is active or until the general permit expires. The annual billing cycle is based on the state's fiscal year from July 1 to June 30. There is no need to pay the fee with the application. Permit fees are invoiced after June 30th. See Part 5 of the general permit for information regarding when and how to terminate coverage.
- ☒ An original signature of the applicant is required. Faxes cannot be accepted.

1. General Information:

Name of project operator - This is the company, organization or individual that has day-to-day supervision and control of activities occurring at the construction site and which will be the permittee:

Site Works, Inc. KDA CONST. INC.

Contact person responsible for permit compliance:	Position title:		
<u>Mark Tobiasson</u>	<u>Mark Tobiasson</u>		
Mailing address:	City:	State:	ZIP:
<u>3723 Fairview Industrial Dr. SE, Suite 196</u>	<u>Salem</u>	<u>OR</u>	<u>97302</u>
Telephone number:	Fax number:		
<u>(503) 587-8700 503-931-6953</u>	<u>(503) 485-1054</u>		

2. Project Information:

Project Name:
The Bluff Senior Estates

Name, legal description, and county of the project for which this notice is being filed (for linear projects give location at each end of the construction area): Yellowstone Road Industrial Park, Lot 2B and 29, Sweetwater County

Note that a project location using section, township and range OR a street address is required.

Quarter/quarter:	Section(s):	Township:	Range:	County:
<u>NE</u>	<u>27</u>	<u>19N</u>	<u>105W</u>	<u>Sweetwater</u>

If this is a linear project add ending location. If more space is needed attach additional sheet(s):

Quarter/quarter:	Section	Township	Range:	County:

Street Address (if applicable):

Latitude and longitude to the nearest 15 seconds (if available):

If this is a WYDOT project, list project number(s):

3. **Project Description:**

Briefly describe the project:

The project will consist of constructing a new residential site. The site is approximately 14.47 acres in size. The site will consist of water, sanitary sewer, storm sewer, curb, gutter sidewalk and asphalt streets.

The surface area that will be disturbed during construction in acres: 14.47 acres

Date construction is planned to start:

June 20, 2007

Date construction is planned to end:

November 30, 2007

4. **Receiving Waters and Municipal Storm Sewers:**

Name(s) of the nearest defined drainage(s) which could receive runoff from the construction project, whether it contains water or not. Include bodies of water such as lakes and wetlands where applicable.

The nearest defined drainage is the Killpecker Creek, located approximately 1/2 miles northeast of the construction site. A storm pipe will be used to convey most of the water to the Killpecker Creek. The remainder will flow down an existing borrow ditch within the WYDOT R.O.W. The WYDOT R.O.W. flows into the Killpecker Creek.

Will storm water discharge from the project enter a municipal storm sewer? Yes No

If so, what municipality?

Rock Springs

To what water body does the storm sewer discharge?

Killpecker Creek

5. **SWPPP Certification:**

Has a "Storm Water Pollution Prevention Plan," following the requirements presented Part 7 of the Large Construction General Permit (WYR10-0000), been prepared for the construction project?

Yes

No

If 'No,' when will it be developed?

Note that a SWPPP *must be developed prior to beginning* any land disturbing activity at the permitted site.

Submit SWPPP with NOI for projects that will disturb 100 or more acres.

6. Attachments:

For all projects: Attach a site map that shows the boundaries of expected land clearing. Indicate storm water drainage patterns on the map or include a topographic map that includes the locations of nearby drainages, water bodies, and/or municipal storm sewers.

Alternative inspection plans only. Operators seeking approval for alternative inspection schedules at the beginning of their project must submit the project SWPPP and proposed inspection plan with their NOI. Approval for an alternative plan may be requested later (see Part 9.1.4 in the permit).

Projects that will disturb 100 or more acres only. A SWPPP must be submitted with the NOI for any project that is expected to result in 100 or more acres of disturbance (see Part 3.6 in the permit).

7. Certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. In addition, I certify that I am aware of the terms and conditions of the large construction general permit and I agree to comply with those requirements.

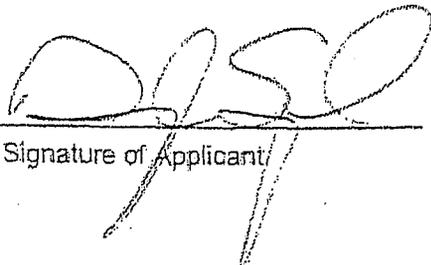
Authorized signatories for this notice of intent are the following:	
For corporations:	A principal executive officer of at least the level of vice president, or the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the overall operation of the facility from which the discharge originates.
For partnerships:	A general partner.
For a sole proprietorship:	The proprietor.
For a municipal, state, federal or other public facility:	Either a principal executive officer or ranking elected official.

DOUGLAS SPROUL

CEO

Printed Name of Person Signing

Title



6-15-07

503-587-8700

Signature of Applicant

Date

Telephone

Exhibit B



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

Authorization to Discharge Storm Water Associated Large Construction Activities Under the National Pollutant Discharge Elimination System

In compliance with the provisions of Chapter 2 of the Wyoming Water Quality Rules and Regulations, the Wyoming Environmental Quality Act and the federal Water Pollution Control Act,

KDA Construction Inc.

The Bluff Senior Estates

NE Section 27, Township 19 North, Range 105 West, Sweetwater County

and located within the State of Wyoming which has or may discharge storm water associated with Construction Activities, is hereby authorized to discharge to the surface waters of the State of Wyoming in accordance with the requirements of this permit which was issued September 1, 2006.

Coverage under the general permit expires March 15, 2011.

This facility has been assigned permit authorization number **WYMP103944**

Authorization under this general permit is effective beginning November 20, 2006.

The permittee listed above is subject to a statutorily-required annual \$100 fee (W.S. §35-11-312) for as long as this authorization is active or until the general permit expires. See Part 5 of the general permit for information regarding termination of coverage.

Discharges from dewatering of collected storm water and minor amounts of ground water from excavations and depressions are permitted provided that requirements specified in Part 8.8 are followed and the necessary BMPs are installed and effective. Discharges that consist of process or wastewaters or more than minor amounts of ground water must be covered under a separate WYPDES permit specifically for those discharges.

Attached is a copy of the general permit. If you have any questions regarding the conditions of your permit, contact Barb Sahi at (307) 777-7570 or John Gorman at (307) 777-5622.

Authorized Signature
Department of Environmental Quality/Water Quality Division

Mailing Address:

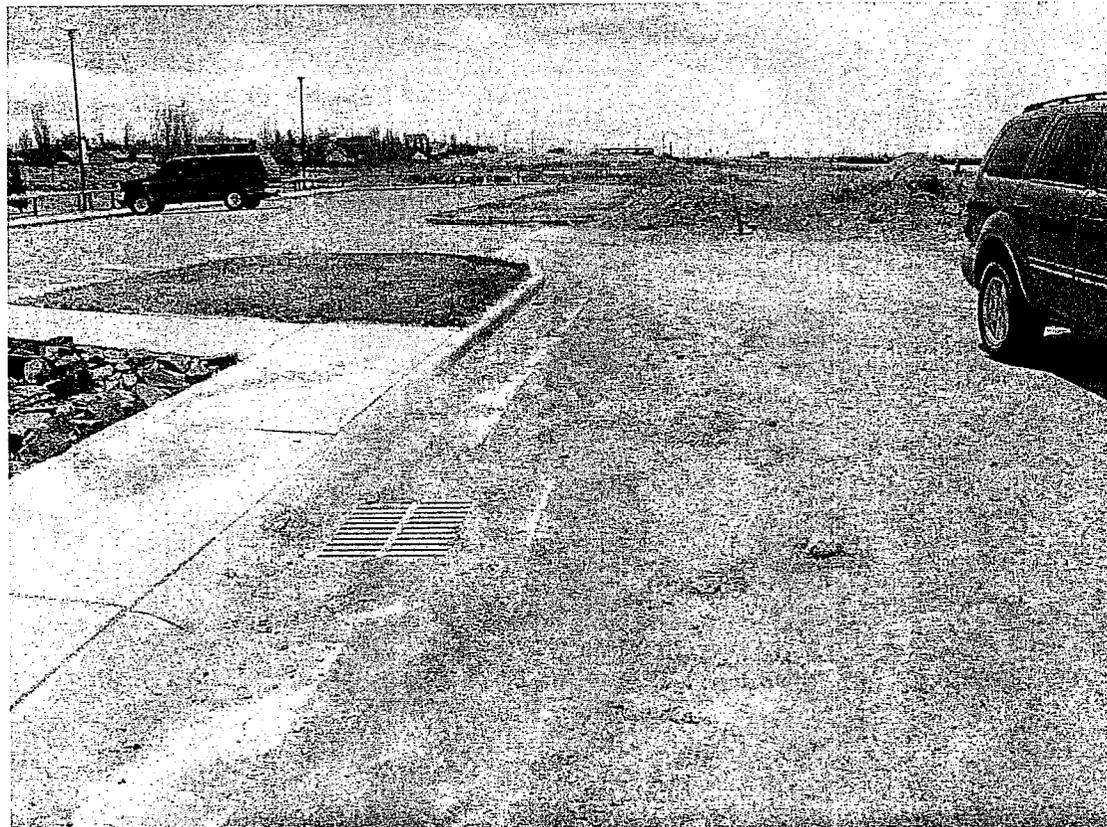
KDA Construction Inc.
Mark Tobasson
3723 Fairview Industrial Drive SE, Suite 196
Salem, OR 97302

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

ADMIN/OUTREACH (307) 777-7752 FAX 777-3618	ABANDONED MINES (307) 777-8145 FAX 777-6482	AIR QUALITY (307) 777-7381 FAX 777-5616	INDUSTRIAL SITING (307) 777-7389 FAX 777-6037	LAND QUALITY (307) 777-7756 FAX 777-5866	SOLID & HAZ WASTE (307) 777-7752 FAX 777-5972	WATER QUALITY (307) 777-7752 FAX 777-5972
--	---	---	---	--	---	---



Exhibit C



OFFICIAL PHOTOGRAPH
Water Quality Division
Department of Environmental Quality

Subject: PHOTO 1: Sediment from the construction project entering the storm sewer

Location/County: Rock Springs, Sweetwater County

Date/Time: 05/20/08/1330 Hrs

Photographer: Matt Buchholz (DEQ/WQD)

Witness: Jon Deutscher (DEQ/WQD)

File No: KDA Construction, Senior Bluff Estates (WYR103444)



OFFICIAL PHOTOGRAPH
Water Quality Division
Department of Environmental Quality

Subject: PHOTO 2: Sediment piled next to the street without any BMPs.

Location/County: Rock Springs, Sweetwater County

Date/Time: 05/20/08/1330 Hrs

Photographer: Matt Buchholz (DEQ/WQD)

Witness: Jon Deutscher (DEQ/WQD)

File No: KDA Construction, Senior Bluff Estates (WYR103444)



OFFICIAL PHOTOGRAPH
Water Quality Division
Department of Environmental Quality

Subject: PHOTO 3: View of the construction site looking South.

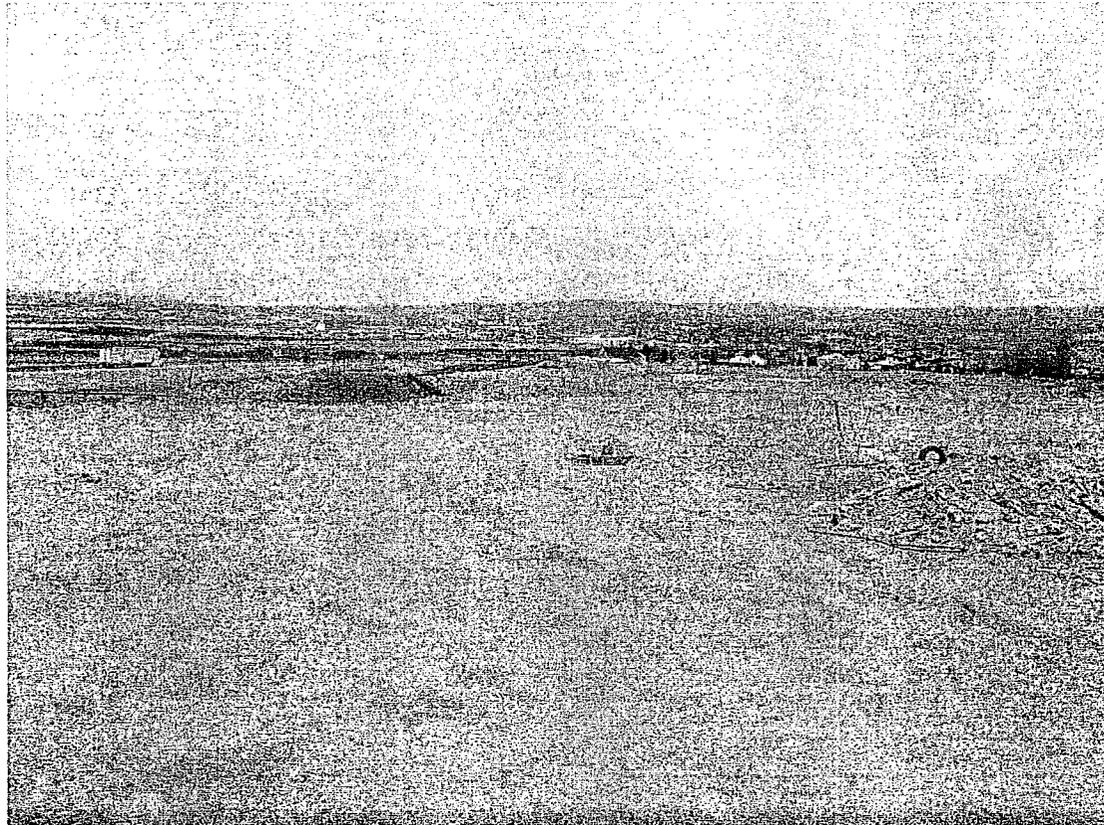
Location/County: Rock Springs, Sweetwater County

Date/Time: 05/20/08/1330 Hrs

Photographer: Matt Buchholz (DEQ/WQD)

Witness: Jon Deutscher (DEQ/WQD)

File No: KDA Construction, Senior Bluff Estates (WYR103444)



OFFICIAL PHOTOGRAPH
Water Quality Division
Department of Environmental Quality

Subject: PHOTO 4: View of the construction site looking North.

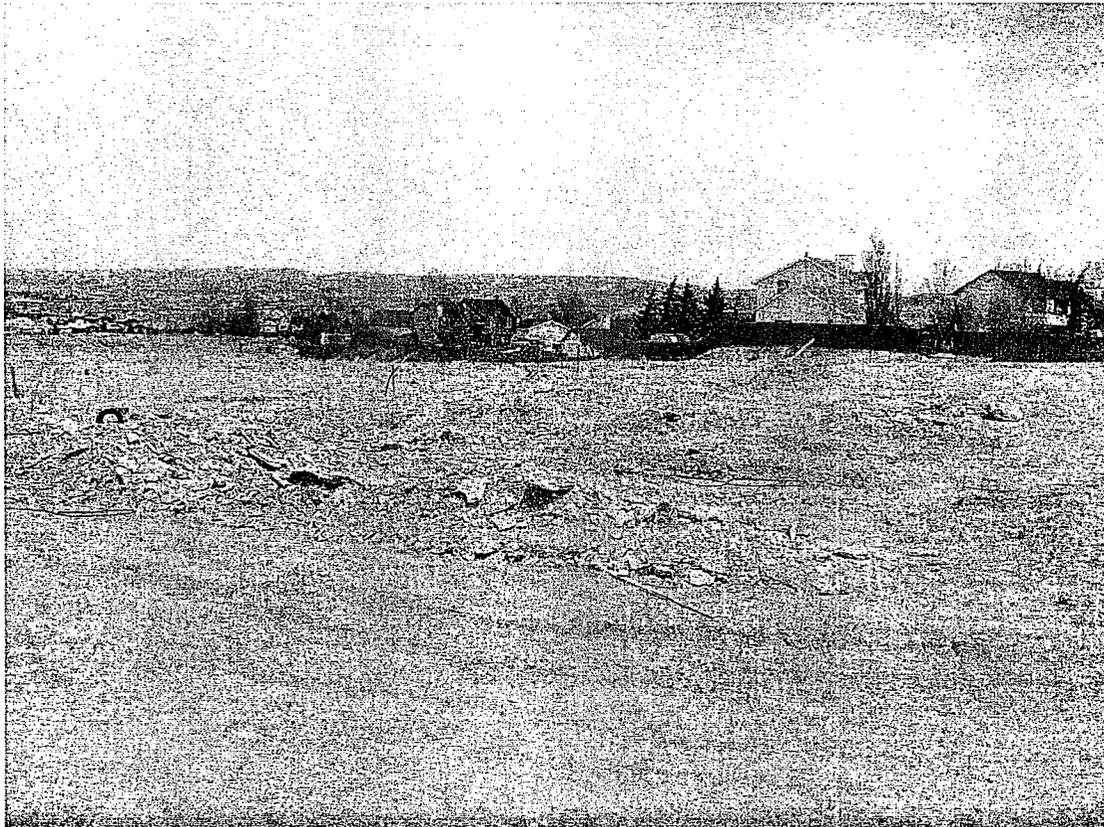
Location/County: Rock Springs, Sweetwater County

Date/Time: 05/20/08/1330 Hrs

Photographer: Matt Buchholz (DEQ/WQD)

Witness: Jon Deutscher (DEQ/WQD)

File No: KDA Construction, Senior Bluff Estates (WYR103444)



OFFICIAL PHOTOGRAPH
Water Quality Division
Department of Environmental Quality

Subject: PHOTO 5: Sediment piled on site without any BMPs..

Location/County: Rock Springs, Sweetwater County

Date/Time: 05/20/08/1330 Hrs

Photographer: Matt Buchholz (DEQ/WQD)

Witness: Jon Deutscher (DEQ/WQD)

File No: KDA Construction, Senior Bluff Estates (WYR103444)



OFFICIAL PHOTOGRAPH
Water Quality Division
Department of Environmental Quality

Subject: PHOTO 6: Improperly installed BMPs.

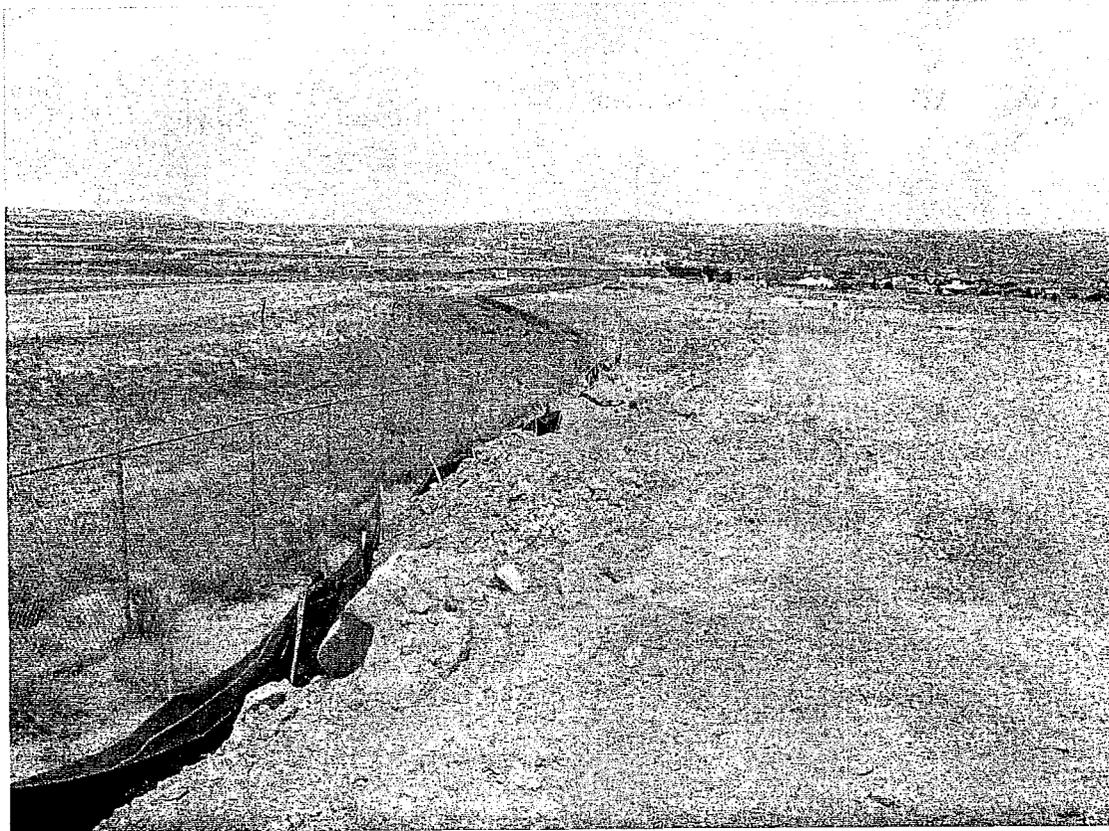
Location/County: Rock Springs, Sweetwater County

Date/Time: 05/20/08/1330 Hrs

Photographer: Matt Buchholz (DEQ/WQD)

Witness: Jon Deutscher (DEQ/WQD)

File No: KDA Construction, Senior Bluff Estates (WYR103444)



OFFICIAL PHOTOGRAPH
Water Quality Division
Department of Environmental Quality

Subject: PHOTO 7: Improperly maintained BMPs.

Location/County: Rock Springs, Sweetwater County

Date/Time: 05/20/08/1330 Hrs

Photographer: Matt Buchholz (DEQ/WQD)

Witness: Jon Deutscher (DEQ/WQD)

File No: KDA Construction, Senior Bluff Estates (WYR103444)

Exhibit D

**State of Wyoming
Department of Environmental Quality
Water Quality Division**



Construction Storm Water Inspection Report

Date: 5/20/08 Inspector(s): Matt Buchholz, Jon Deutscher Permit #: WYR103444

Project Name: The Bluff Senior Estates

Permittee: KDA Construction

Location: Rock Springs

County: Sweetwater

Contact: Mark Tobiasson

Title: Unknown

Project Size: Estimated 10 acres

Time: 1324 hrs

Weather Conditions: Sunny

Inspection Type:	Complaint	Compliance	X	Follow up
------------------	-----------	------------	---	-----------

Receiving Water: Killpecker Creek

I. Inspection Checklist:

WYPDES Authority

	Yes	No	N/A	Comment	
1.	X				Is there currently more than 1 acre of disturbed soil at the site?
2.	X				Is the site covered by a storm water permit?
3.		X			Is a copy of the Letter of Authorization posted at the construction site for public viewing (≥ 5 acres)?
4.		X			Is an up-to-date copy of the signed and certified SWPPP retained at the construction site?
5.		X			Is a copy of the WYPDES General Permit retained at the construction site?

SWPPP Content

	Yes	No	N/A	Comment	
6.			X		Does the SWPPP contain a site map that is current to project conditions?
7.			X		Does the SWPPP describe and identify the erosion and sediment control measures to be employed?
8.			X		Does the SWPPP provide a maintenance schedule for the erosion and sediment control measures?
9.			X		Does the SWPPP describe and identify the post-construction storm water control measures?
10.			X		Does the SWPPP identify the responsible parties for inspection and maintenance?
11.			X		Are there any SWPPP items not mentioned above?

Recordkeeping

	Yes	No	N/A	Comment	
12.		X			Are inspections being performed as outlined by SWPPP?
13.		X			Are the site inspections being performed by a qualified professional?
14.		X			Are all required reports signed/certified by the permittee?
15.		X			Are there any record keeping items not mentioned above?

Visual Observations

	Yes	No	N/A	Photograph	
16.		X			Have erosion and sediment control measures been installed/constructed?
17.		X			Are erosion and sediment control measures being maintained properly and operating effectively?
18.		X			Have temporary stabilization measures been initiated in inactive areas?
19.		X			Are post-construction storm water control measures being implemented?
20.			X		Has there been a recent discharge to the receiving water?
21.			X		Is there evidence of turbidity, sedimentation, or an oily sheen in the receiving waters?
22.	X				Are there any items of concern observed not mentioned above?
23.			X		Have non-compliance issues with the permit been corrected since the last inspection?

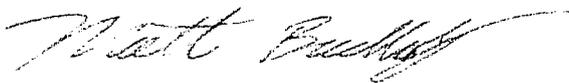
Storm Water Field Inspection Report
Construction Activities (page 2 of 2)
Permit No. WYR103444

II. Comments:

- There were no representatives from KDA onsite.
- A call to the business card stuck in the office door onsite to Michael Neely resulted in the inspector being informed that KDA has not been onsite in about 6 months.
- It does not appear any BMPs have been installed or maintained since KDA left the facility.
- The observed BMPs are ineffective.

III. Corrective Actions:

- Install and maintain effective BMPs on site.
- Conduct inspections according to your SWPPP and permit.



WYPDES Inspector Signature

5/28/08

Date

Exhibit E

6/17/2008

Mark Tobiasson
KDA Construction
3723 Fairview Industrial Drive SE, Suite 196
Salem, OR 97302

*RE: Letter of Violation of WYPDES Permit WYR103444, The
Bluff Senior Estates*

Dear Mr. Tobiasson:

The Water Quality Division (Division) recently conducted an inspection of the above referenced facility. A copy of the inspection report is enclosed. Concerns noted as a result of the inspection include the lack of a SWPPP onsite, active erosion onsite, not conducting inspections, lack of effective BMPs onsite, and lack of BMP maintenance.

This letter hereby serves as notification that the above described conditions constitute violations of the Wyoming Environmental Quality Act (Act), the Wyoming Water Quality Rules and Regulations (WWQRR), and respective permit conditions. In order to rectify this situation, the following step must be accomplished:

1. Upon inspection of the above referenced facility it was noted there were no records available for review. Your company shall immediately arrange with WQD to provide the facility records (A copy of the SWPPP and Inspection Records) for the history of your project. Your company shall inform the WQD of actions taken to assure records availability during future inspections.
2. Upon inspection of the above referenced facility, ineffective Best Management Practices (BMPs) were noted. Your company shall immediately address any areas of concern noted during the inspection. Your company shall update your Storm Water Pollution Prevention Plan and send an updated copy to the WQD along with schedules for implementation and actions taken to prevent future violations.
3. Upon inspection of the above referenced facility, a lack of Best Management Practices (BMP) maintenance was noted. Your company shall immediately perform maintenance on issues identified during the inspection. Your company shall update your SWPPP and send a copy of the updated SWPPP to the WQD along with photo documentation of completed BMP maintenance, scheduled dates for implementation and actions taken to prevent future violations.

4. Upon inspection of the above referenced facility it was noted that site inspections are not being conducted as required by the general storm water permit. Your company shall provide the WQD with any available inspection records and actions taken to prevent future violations.

The written response to 1-4 shall be received by the Division on or before 30 days from the date on this letter. The Division is very concerned about the lack of effort to comply with the storm water permit. Please inform the Division of your company's plan to address all of these issues in the future. The information shall be addressed to Matt Buchholz, Environmental Scientist 3, Water Quality Division, 4th Floor West Herschler Building, 122 W 25th St, Cheyenne, WY 82002.

The Water Quality Division is attempting to resolve these violations through conference and conciliation. This letter does not constitute an order, but rather, identifies steps to be taken by your company to satisfactorily resolve the violations. The intent of this letter is to provide an opportunity for your company to show good faith efforts toward resolving the problems and to prevent the need for more formal enforcement action by this office.

Your Company should also refer to the inspection report for more detailed information about the above mentioned violation(s) and any additional information not addressed in this letter.

Should you have any questions or comments concerning this matter, please contact me at 307-777-8786.

Sincerely,



Matt Buchholz
Environmental Scientist 3
Water Quality Division

cc: WYPDES File # WYR103444
Lee Hanley, 8ENF-W-NP, US EPA, Denver

Exhibit F



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 14, 2008

Mr. Mark Tobiasson
KDA Construction Inc.
3723 Fairview Industrial Drive SE, Suite 196
Salem, OR 97302

RE: Notice of Violation and Order, Docket Number 4331-08

Dear Mr. Tobiasson:

Attached is a Notice of Violation and Order, Docket Number 4331-08, for failing to abide by WYPDES Authorization WYR103444 as required by the WYPDES Storm Water Permit.

ANY APPEALS TO THE ENVIRONMENTAL QUALITY COUNCIL FROM THE ATTACHED ORDER MUST BE MADE IN WRITING WITHIN THE TEN (10) DAY TIME LIMIT PRESCRIBED BY W.S. 35-11-701(c). Chapter I, Section 3 of the Department of Environmental Quality Rules of Practice and Procedure (<http://soswy.state.wy.us/RULES/5675.pdf>) sets forth the requirements for the initiation of appeal proceedings.

To appeal this Order and request a hearing, you must file two (2) copies of your written petition. The first petition shall be mailed to the Chairman of the Environmental Quality Council at Room 1714, Herschler Building, 1st Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. The second petition should be sent to John V. Corra, Director, Wyoming Department of Environmental Quality, Herschler Building, 4th West, 122 West 25th Street, Cheyenne, Wyoming 82002. Both petitions must be sent by certified mail, return receipt requested.

THIS SPACE INTENTIONALLY LEFT BLANK

Page L-1

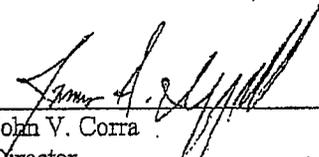
Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

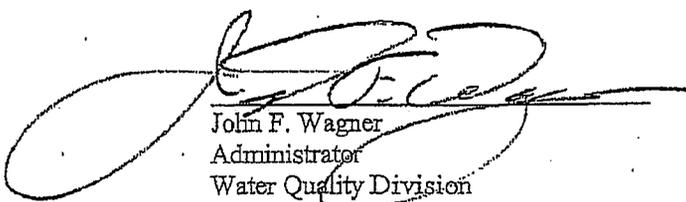
ADMIN/OUTREACH (307) 777-7937 FAX 777-3610	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7869 FAX 777-5973	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
--	---	---	---	--	--	---



KDA Construction Inc.
August 14, 2008
Page L-2

PLEASE DIRECT ALL INQUIRIES TO: Kevin M. Wells, WYPDES Compliance & Enforcement Program Coordinator 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.



John V. Corra
Director
Department of Environmental Quality

John F. Wagner
Administrator
Water Quality Division

JVC/JFW/MB/bb/8-0614

Enclosure: Notice of Violation and Order

cc: Lee Hanley, 8ENF-W-NP, EPA Region 8 (PDF)
James B. Eisenhower, WYPDES Inspection Program Coordinator, Sheridan (PDF)
Bill DiRienzo ► Brian K. Lovett ► Leah J. Krafft ► Barb Sahl (PDF)
NOV Docket 4331-08
Environmental Quality Council
Keith Guille, DEQ Public Information Officer (PDF)

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

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

KDA Construction, Inc.)
3723 Fairview Industrial Drive SE, Suite 196)
Salem, OR 97302)

DOCKET NUMBER 4331-08

NOTICE OF VIOLATION AND ORDER

NOTICE IS HEREBY GIVEN THAT:

1. KDA Construction, Inc. (KDA) is the contractor of a large construction site located in Sweetwater County, Wyoming. The construction site has received authorization for storm water discharges associated with new and existing "large construction activities through the Wyoming Pollution Discharge Elimination System (WYPDES), authorization WYR103444.
2. The Wyoming Department of Environmental Quality, Water Quality Division (WQD) conducted an inspection of the facility on May 20, 2008. At the time of the inspection the construction site appeared to be inactive and KDA personnel were not present during the inspection. Observations recorded from the inspection resulted in a letter of violation (LOV) issued to KDA on June 6, 2008 for failure to meet permit requirements. DEQ requested KDA to respond to the LOV by July 17, 2008. To date, the WQD has not received the required response to the LOV. The WQD conducted another inspection of the facility on July 24, 2008 and conditions of the site had not improved from the previous inspection.
3. Under the Large Construction General Permit (LCGP) it states in part 7.4 SWPPP Implementation, part 2 "Projects beginning after September 1, 2006 For projects that begin after the effective date of this permit, the SWPPP must be implemented immediately and throughout the duration of the construction activity and up until the site is finally stabilized." Failure to meet these requirements is a violation of Chapter 2 of the Wyoming Water Quality Rules and Regulations.

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:

1. KDA shall immediately submit to the WQD a plan of action to meet WYPDES storm water requirements for the facility. If the construction site has become inactive then KDA needs to proceed with the process to terminate this permit. Permittees wishing to terminate coverage under this permit must submit a Notice of Termination (NOT) as stated in Part 5 of the LCGP identifying the facility/site and the reason permit coverage is no longer required. If the

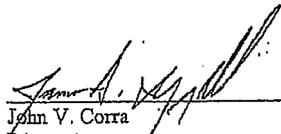
construction site is still active KDA needs to submit a plan of action indicating the permit requirements will be met for the life of the permit. This information shall be received by the WQD no later than 30 days from the date of the NOV and Order.

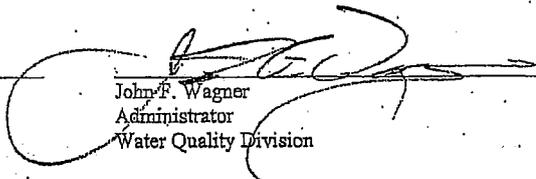
2. KDA shall immediately address site stabilization with implementation of BMPs (Best Management Practices) as required in the WYPDES storm water permit until the construction site has been stabilized.

This ORDER is final unless, no later than ten (10) days after the date this notice is received; it is appealed by filing two written requests for a hearing before the Environmental Quality Council. If a hearing is requested, the first hearing petition shall be mailed to the Chairman, Wyoming Environmental Quality Council, Room 1714, Herschler Building, 1st Floor West, 122 West 25th St., Cheyenne, Wyoming 82002. The second petition shall be mailed to the Director, Wyoming Department of the Environmental Quality, Herschler Building, 4th Floor West, 122 West 25th St., Cheyenne, Wyoming 82002. Both petitions must be sent by certified mail, return receipt requested.

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

Signed this 19th day of August, 2008.


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 Program 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/8-0614

cc: Lee Hanley, 8ENF-W-NP, EPA Region 8 (PDF)
Jim Eisenhauer, WYPDES Inspection Program Coordinator (PDF)
Bill DiRienzo ▶ Brian K. Lovett ▶ Leah J. Krafft ▶ Barb Sahl (PDF)
NOV Docket 4331-08
Environmental Quality Council
Director, DEQ
Keith Guille, DEQ Public Information Office (PDF)

Exhibit G



08-3807
FILED

SEP 08 2008

Jim Ruby, Executive Secretary
Environmental Quality Council

3950 Fairview Industrial Dr. SE
Salem, OR 97302

Telephone (503) 587-8700 Facsimile (503) 587-8766 Oregon CCB# 138526

September 3, 2008

Chairman of the Environmental Quality Council
Herschler Building, 1st Floor West, Room 1714
122 West 25th Street
Cheyenne, WY 82002

RE: Docket Number 4331-08

To Whom It May Concern:

This letter is a request to appeal the notice of violation issued to KDA Construction, Inc. on August 14th, 2008 for the project known as The Bluffs Senior Estates located at 1600 Lombard Dr in Rock Springs, WY. This project has been abandoned due to lack of financing and no work has been performed since January 31st, 2008. This project has been canceled and there are no plans to continue to build the project at this time. Please accept this letter as termination of the project. All correspondence regarding this project can be forwarded to the ownership group. There contact information is as follows:

Rock Springs Senior Living, LLC
Contact: Scott Ramey
P.O. Box 3006
Salem, OR 97302
Phone: (503) 375-9016

If you have any questions regarding this letter please contact me at (503) 587-8700. Please note that I attached a copy of the mailing envelope that the notice of violation was sent in. The address that the notice of violation was sent to is our former address and we did not receive the notice until September 3, 2008.

Sincerely,

Brad Hankins
KDA Construction, Inc.
Project Manager

Cc: John V. Corra -- Director of Wyoming DEQ
Scott Ramey -- Rock Springs Senior Living, LLC

STATE OF WYOMING
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION
HERSCHLER BUILDING - 122 W. 25TH STREET
CHEYENNE, WYOMING 82002

HERSCHLER



7008 0150 0001 1178 0485

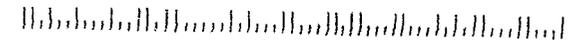
UNITED STATES POSTAGE
02 1M \$ 05.40
000426-213 AUG 21 2008
MAILED FROM ZIP CODE 97302

CERTIFIED
Mr. Mark Tobiasson
KDA Construction Inc.
3723 Fairview
Salem, OR 973

802 N7E 1 1081 74 08/28/08
NOTIFY SENDER OF NEW ADDRESS
KDA CONSTRUCTION INC
3950 FAIRVIEW INDUSTRIAL DR SE # 210
SALEM OR 97302-1166

BC: 97302115830 *0295-04335-21-39

97302+4375083166





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 14, 2008

Mr. Mark Tobiasson
KDA Construction Inc.
3723 Fairview Industrial Drive SE, Suite 196
Salem, OR 97302

RE: Notice of Violation and Order, Docket Number 4331-08

Dear Mr. Tobiasson:

Attached is a Notice of Violation and Order, Docket Number 4331-08, for failing to abide by WYPDES Authorization WYR103444 as required by the WYPDES Storm Water Permit.

ANY APPEALS TO THE ENVIRONMENTAL QUALITY COUNCIL FROM THE ATTACHED ORDER MUST BE MADE IN WRITING WITHIN THE TEN (10) DAY TIME LIMIT PRESCRIBED BY W.S. 35-11-701(c). Chapter I, Section 3 of the Department of Environmental Quality Rules of Practice and Procedure (<http://sos.wy.state.wy.us/RULES/5675.pdf>) sets forth the requirements for the initiation of appeal proceedings.

To appeal this Order and request a hearing, you must file two (2) copies of your written petition. The first petition shall be mailed to the Chairman of the Environmental Quality Council at Room 1714, Herschler Building, 1st Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. The second petition should be sent to John V. Corra, Director, Wyoming Department of Environmental Quality, Herschler Building, 4th West, 122 West 25th Street, Cheyenne, Wyoming 82002. Both petitions must be sent by certified mail, return receipt requested.

THIS SPACE INTENTIONALLY LEFT BLANK

Page L-1

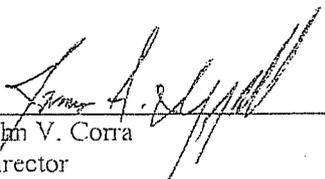
Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

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
--	---	---	---	--	--	---

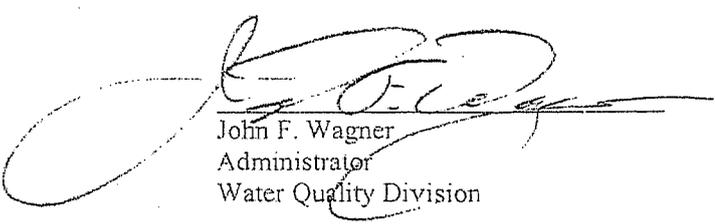


KDA Construction Inc.
August 14, 2008
Page L-2

PLEASE DIRECT ALL INQUIRIES TO: Kevin M. Wells, WYPDES Compliance & Enforcement Program Coordinator 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.



John V. Corra
Director
Department of Environmental Quality



John F. Wagner
Administrator
Water Quality Division

JVC/JFW/MB/bb/8-0614

Enclosure: Notice of Violation and Order

cc: Lee Hanley, 8ENF-W-NP, EPA Region 8 (PDF)
James B. Eisenhauer, WYPDES Inspection Program Coordinator, Sheridan (PDF)
Bill DiRienzo ► Brian K. Lovett ► Leah J. Krafft ► Barb Sahl (PDF)
NOV Docket 4331-08
Environmental Quality Council
Keith Guille, DEQ Public Information Officer (PDF)