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**FILED**

FEB 05 2009

Jim Ruby, Executive Secretary  
Environmental Quality Council

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. )

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**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S  
MOTION FOR SETTING OF HEARING ON MOTION FOR  
SUMMARY JUDGMENT**

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COMES NOW, Respondent, the Wyoming Department of Environmental Quality (DEQ), by and through the Office of the Attorney General of the State of Wyoming, and pursuant to Chapter II, Section 3 of the DEQ Rules of Practice and Procedure, hereby requests the Environmental Quality Council (EQC) set a hearing on the pending Motion for Summary Judgment in the above-captioned matter. In support of this motion, DEQ advises the EQC as follows:

1. On August 14, 2008, DEQ issued a Notice of Violation and Order (NOV) to Petitioner, KDA Construction, Inc. (KDA), for failing to abide by Authorization WYR103444 as required by the Wyoming Pollution Discharge Elimination System Storm Water Permit.

2. On September 3, 2008, KDA sent DEQ and the EQC a letter requesting an appeal of the NOV.
3. DEQ filed its response to KDA's petition on October 15, 2008.
4. On October 23, 2008, DEQ sent by certified mail and facsimile its First Discovery Request to KDA which requested admissions on issues of material fact in the case.
5. KDA failed to respond to DEQ's First Discovery Request, and the time for that response expired under Rule 36 of the Wyoming Rules of Civil Procedure (Wyo. R. Civ. P.) on November 22, 2008. Therefore, DEQ's requested admissions are deemed admitted pursuant to Rule 36(a) of the Wyo. R. Civ. P.
6. DEQ's Motion for Summary Judgment was filed and sent by certified mail to KDA on December 22, 2008.
7. Petitioner, KDA, has not responded to DEQ's Motion for Summary Judgment.
8. It is appropriate that a hearing be set in this matter since the spring runoff is approaching and an order is needed from the EQC in order to enforce the NOV and prevent additional erosion and damage to the water quality.

WHEREFORE, DEQ respectfully requests that the EQC set a hearing on the Motion for Summary Judgment in this matter.

Dated this 5<sup>th</sup> day of February, 2009.



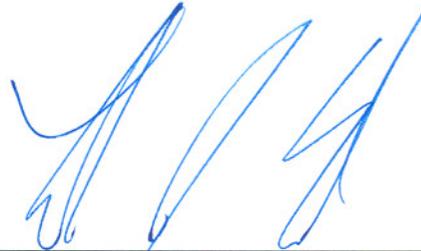
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Luke J. Esch (Bar No. 6-4155)  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

This certifies that true and correct copies of the foregoing WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S MOTION FOR SETTING OF HEARING ON MOTION FOR SUMMARY JUDGMENT was served this 5<sup>th</sup> day of February, 2009 by United States certified mail, postage prepaid addressed as follows:

Brad Hankins  
KDA Construction, Inc.  
3950 Fairview Industrial Dr., SE  
Suite, 210  
Salem, Oregon 97302

A handwritten signature in blue ink, appearing to be 'MMA', is written over a horizontal line.

Wyoming Attorney General's Office