

FILED

APR 11 2006

Terri A. Lorenzon, Director
Environmental Quality Council

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

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

John G. Sutherland)
KAIA, LLC)
15750 West Hwy 220)
Casper, WY 82604)

DOCKET NUMBER 3828-05

NOTICE OF VIOLATION

AND

ORDER

NOTICE IS HEREBY GIVEN THAT:

1. Bates Creek Store at Clarkes Corner, facility number 0-001428, is owned and operated by KAIA, LLC and is located at 15750 West Hwy 220, Casper, Wyoming. John G. Sutherland is the owner of KAIA, LLC. There are two active above ground storage tanks on this facility, both 15,000 gallon steel tanks containing gasoline and diesel. On May 11, 2005, KAIA, LLC, was invoiced for above ground storage tank fees and provided with an annual registration form filled out for the facility. On August 24, 2005 and September 27, 2005, KAIA, LLC, was again invoiced for above ground storage tank fees. The responsibility for above ground storage tank fees rests with either the owner or the operator. KAIA, LLC, is registered as both the owner and the operator of the Bates Creek Store at Clarkes Corner. Above ground storage tank fees have not been paid for fiscal year 2006. Presently Four Hundred Dollars (\$400.00) in storage tank fees remain unpaid, and the fiscal year 2006 registration has not been submitted;

2. KAIA, LLC has failed to pay above ground storage tank fees, which are mandatory under W.S. 35-11-1425, and has failed to register the tanks at the Bates Creek Store at Clarkes Corner, as required by W.S. 35-11-1419 and Chapter 17, Section 7(b), Wyoming Water Quality Rules and Regulations;

3. Since the above ground storage tank fees have not been paid for fiscal year 2006 and those fees were due July 1, 2005, Bates Creek Store at Clarkes Corner/John G. Sutherland is required to provide financial responsibility under Chapter 19, Wyoming Water Quality Rules and Regulations;

4. W.S. 35-11-1419 states: "On or before July 1 of each year the owner or operator of a tank shall register the tank with the department on forms developed and furnished by the department."

W.S. 35-11-1425 states: "On or before July 1 of each year either the owner or operator of a tank shall pay a fee to the department of two hundred dollars (\$200.00) per tank owned or operated, except that the owner or operator of an aboveground storage tank subject to this section that holds five thousand (5,000) gallons or less shall pay a fee of fifty dollars (\$50.00) per tank owned or operated. This fee shall be deposited in the corrective action account."

Wyoming Water Quality Rules and Regulations, Chapter 17, Section 7(b), states: "On or before July 1 of each year either the owner and/or operator of an above ground storage tank system shall register the system with the department on forms developed and furnished by the department. The registration form shall be submitted under oath or affirmation."

Wyoming Water Quality Rules and Regulations, Chapter 17, Section 7(e)(iii), states: "(e) All owners and/or operators of new above ground storage tank systems must certify on the notification or certification of compliance form conformance with the following requirements: (iii) Financial responsibility under Chapter 19, Water Quality Rules and Regulations, Above ground Storage Tank Program Financial Responsibility."

5. By failing to pay above ground storage tank fees for facility 0-001428, KAIA, LLC, has violated W.S. 35-11-1425. By failing to register the tanks on facility 0-001428, KAIA, LLC, has violated W.S. 35-11-1419 and Chapter 17, Section 7(b), Wyoming Water Quality Rules and Regulations. By failing to provide financial responsibility for facility 0-001428, KAIA, LLC, has violated Chapter 17, Section 7(e)(iii), and Chapter 19, Wyoming Water Quality Rules and Regulations;

6. 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 KAIA, LLC SHALL:

1. Within thirty (30) days of the receipt of this notice, pay all above ground storage tank fees for facility 0-001428. The above ground storage tank fees for this site total Four Hundred Dollars (\$400.00);
2. Within thirty (30) days of the receipt of this notice, file the registration form for the above ground storage tanks at facility 0-001428, as required by W.S. 35-11-1419;
3. If items 1 and 2 are complied with, this will constitute full compliance with this Administrative Order. The remaining items on this Order shall be complied with if items 1, 2 and 3 are not complied with within thirty (30) days:

OR

4. Within thirty (30) days of the receipt of this notice, place the tanks at facility 0-001428 in temporarily out of use condition and empty the tanks within one inch of the bottom. The tanks shall be registered with the department at that time as "temporarily out of service" tanks. Disconnect all above ground piping from the tanks until such time as they can be placed back in service;
5. Enter into a written agreement with the department as to when the above ground storage tank fees will be paid;
6. If these tanks have not been placed back in service within one (1) year of the date when they were placed in temporarily out of use condition, then Bates Creek Store at Clarkes Corner shall, at its own expense remove the tanks, decommission them in a licensed facility, and notify the department in advance so that a department inspector can witness the removal.

THIS ORDER is final unless, not later than ten (10) days after the date this notice is received, it is appealed by filing two written petitions for a hearing before the Environmental Quality Council. If a hearing is requested, the first petition shall be mailed to the Chairman, Wyoming Environmental Quality Council, Room 1714 Herschler Building, 1st Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. The second petition shall be mailed to the Director, Wyoming Department of Environmental Quality, Herschler Building, 4th Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. Both petitions must be sent by certified mail, return receipt requested.

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

ORDERED this _____ day of _____, 2005.

John V. Corra
Director
Department of Environmental Quality

John F. Wagner
Administrator
Water Quality Division

PLEASE DIRECT ALL INQUIRES TO: Robert Lucht, P.E. & P.G. Storage Tank Program Principal at 122 West 25th Street, Fourth Floor, West Wing, Cheyenne, WY 82002, (307) 777-7095 or (307) 777-5973 FAX for technical matters.

JVC/JFW/RFL/bb/5-1151.ltr