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January 10, 2005

FILED

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VIA CERTIFIED MAIL # 7003 1010 0002 8439 8404

Olin D. Sims, Chairman
Wyoming Environmental Quality Council
Room 1714
Herschler Building, 1st Floor West
122 West 25th Street
Cheyenne WY 82002

Terri A. Lorenzon, Director
Environmental Quality Council

VIA CERTIFIED MAIL # 7003 1010 0002 8439 8411

John V. Corra, Director
Wyoming Department of Environmental Quality
Herschler Building, 4th Floor West
122 West 25th Street
Cheyenne WY 82002

Re: Snowy Range Properties LLC, Notice of
Violation and Order, Docket No. 3629-04

Dear Mr. Sims and Mr. Corra:

Pursuant to Wyo. Stat. § 35-11-701(c)(ii) and the Rules of Practice and Procedure of the Environmental Quality Council, Snowy Range Properties LLC (Snowy Range) hereby appeals and requests a hearing before the Environmental Quality Council on all matters which are the subject of the Notice of Violation and Order dated December 27, 2004, designated as Docket No. 3629-04, before the Department of Environmental Quality, Water Quality Division (Water Quality). The Notice of Violation and Order was hand delivered to Snowy Range by Louis Harmon on December 30, 2004.

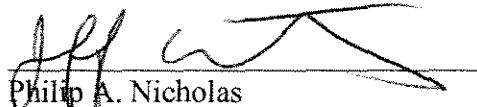
Snowy Range respectfully requests that the Environmental Quality Council postpone any action on this appeal and request for hearing until further request by Snowy Range or the Administrator of the Water Quality Division. The reason for this request are as follows:

1. Snowy Range has submitted to Water Quality a statement of the corrective actions that have been or will be taken as required by Order, a copy of which is attached and incorporated herein by reference.
2. Combined in that statement was a request to Water Quality to modify its Order for the specific reasons set forth therein.
3. Snowy Range intends to fully cooperate with the Department of Environmental Quality, Water Quality Division in order to resolve all concerns of the Division.
4. In order to protect its rights to an appeal, Snowy Range filed this appeal and request for hearing.
5. Upon modification of the Order, Snowy Range believes that it can fully comply with the terms contained in the Order and this appeal will not be necessary.

Snowy Range respectfully requests that the Environmental Quality Council postpone any action on this appeal and request for hearing so Water Quality has the opportunity to review and act upon Snowy Range's requests for modification of the Order. If you have questions or need additional information, please contact us.

Sincerely,

ANTHONY, NICHOLAS,
TANGEMAN & YATES, LLC



Philip A. Nicholas

Jeff Anthony

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Snowy Range Properties LLC
1148 Highway 11
Laramie, WY 82070
(307) 745-5782
(307) 745-8738 (FAX)

Encl.

cc: Ray Duvall
Tom Mueller



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

December 22, 2004

CERTIFIED

Snowy Range Properties LLC
DBA Albany Lodge
1148 State Highway 11
Laramie Wyoming 82070

Dear Mr. Duvall:

Enclosed you will find a Notice of Violation and Order, Docket Number 3629-04 issued under the provisions of W.S. §35-11-701(c). As a result of an investigation conducted February 20, 2004, it was determined that two violations of W.S. §35-11-301(a) had occurred at the Albany Lodge. Those violations were contamination of the groundwater due to a failure of the small wastewater treatment system and the operation of a public water supply that had been constructed within the previous year without a permit to construct from the Wyoming Department of Environmental Quality. At that time, the acting Albany Lodge manager, Larry Otterstein, was informed of the violations. Albany Lodge was requested to retain a Wyoming licensed engineer to devise a solution to the failing small wastewater system and to prepare an application for as-built approval of the public water supply system.

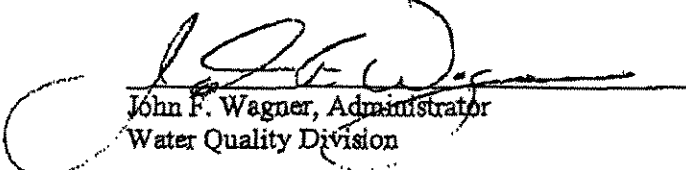
Please be aware that the attached Notice of Violation contains instructions in the form of an Order on what must be done to eliminate and rectify the violation.

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 enclosed Department of Environmental Quality Rules of Practice and Procedure sets forth the requirements for the initiation of appeal proceedings. You are urged to review all of the provisions of the attached Rules of Practice and Procedures as they relate to this action.

To appeal this order and request a hearing, you must file two (2) copies of your written petition. One copy of the petition must go to the Chairman of the Environmental Quality Council at Room 1714, Herschler Building, 1 West, 122 West 25th Street, Cheyenne, Wyoming 82002. The second petition must be sent to the Director, Wyoming Department of Environmental Quality, Herschler Building, 4 West, 122 West 25th Street, Cheyenne, Wyoming 82002. Both copies of the petition must be sent by certified mail, return receipt requested.

If you have any questions concerning this matter, you may contact Louis Harmon, Southeast District Engineer for the Water and Wastewater Program, Wyoming Department of Environmental Quality, Water Quality Division, telephone number 307-777-7088.


John V. Corra, Director
Department of Environmental Quality


John F. Wagner, Administrator
Water Quality Division

JVC/JFW/LRR/LBH/bb/4-1280.ltr

Enclosure: Notice of Violation and Order, Rules of Practice and Procedure

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

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

Snowy Range Properties LLC)
DBA Albany Lodge)
1148 State Highway 11)
Laramie Wyoming 82070)

DOCKET NUMBER 3629-04

NOTICE OF VIOLATION

AND

ORDER

NOTICE IS HEREBY GIVEN THAT:

- 1 A permit for the construction of a small wastewater system, in the SW ¼ NW ¼ Section 14 T14N R78W, for the Albany Lodge, Snowy Range Properties, LLC, on Albany County Parcel 05-1478-2-00-057.00, 1148 Highway 11 was issued by the Albany County Planning Office May 20, 2003. A septic tank and leach field was constructed by May 27, 2003 under the Albany County permit.
- 2 On December 8, 2003, a sanitary survey of the Albany Lodge was conducted by Mike Sposit of the Midwest Assistance Program for the Region VIII EPA Direct Implementation Program. The sanitary survey found a well completed in November 2003, SEO Permit # UW 154139. The well was connected to a new storage and distribution system put into service in November 2003. The sanitary survey identified a public water system serving population of more than 25.
- 3 On February 17, 2004, John Harju of the State Engineers Office received a complaint from Larry Otterstein of Albany that his well was contaminated with what appeared to be sewage. The Otterstein well is 100 ft northeast of the northeast corner of the new Albany Lodge leach field. On February 20, 2004, Linda Stratton of the Wyoming Department of Agriculture and Louis Harmon of the Wyoming Department of Environmental Quality conducted an inspection of the Albany Lodge facilities. Visual identification was made of sewage contamination of the Otterstein well and an adjacent hand pumped well. On March 3, 2004, Rick Duell of WWC Engineers of Laramie, with the assistance of Larry Otterstein, excavated to the north of the northeast corner of the leachfield. The excavation uncovered a layer of stone which formed a pathway to the Otterstein wells that was saturated with leachfield effluent. The effluent from the septic tank and leachfield contaminated the groundwater at the Otterstein wells.
- 4 The discharge of sewage effluent without a permit to discharge to the groundwater violates WS §35-11-301(a)(i), and (ii).
- 5 A search of the Wyoming Water Quality records does not find any record of a permit to construct a public water supply being issued to the Albany Lodge. The public water system serving the Albany lodge was constructed without a permit to construct. The construction of the public water system without a permit violates W.S. §35-11-301(a)(v), and Chapter 3 Section 4 and Chapter 12 of the Wyoming Water Quality Division 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

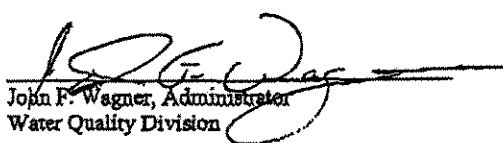
WHEREFORE IT IS HEREBY ORDERED THAT:

- 1 Within seven days of receipt of this Notice and Order, the recipient shall submit to this department a written description of corrective actions that have been or will be taken and a schedule to implement the items required below:
- 2 Immediately stop discharge to the leachfield by removing the discharge line from the septic tank and plugging the opening. All wastewater must be transported to a Wyoming permitted wastewater treatment facility until such time as the permitted replacement wastewater treatment system is placed into service.
- 3 Obtain a permit to construct from the Wyoming Department of Environmental Quality to replace the current wastewater treatment system. The application for the permit to construct the replacement wastewater system must be submitted by March 30, 2005.
- 4 By January 15, 2005, submit an application for an as-built authorization for the facilities that comprise the public water supply for the Albany Lodge. Any deficiencies found by the Wyoming Water Quality Division during the review of the application for as-built authorization must be corrected by March 1, 2005.
- 5 Undertake actions to address the existing groundwater contamination by pumping the contaminated Otterstein well as proposed in the letter from the Albany Lodge signed by Ray Duvall on October 24, 2004. At the conclusion of the 30 day pumping cycle, a joint sampling of the well will be conducted by the Water Quality Division and Albany Lodge within 24 hours of the last pumping period and again 30 days later. The Albany Lodge will attempt to coordinate with Stephanie Byam to take samples from her well concurrent with the compliance sampling discussed above. If any contamination is observed, Albany Lodge must cooperate with the Wyoming Water Quality Division to develop and implement a groundwater remediation plan.
- 6 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 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 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 27th day of December 2004.


 John V. Corra, Director
 Department of Environmental Quality


 John F. Wagner, Administrator
 Water Quality Division

JVC/JFW/LRR/LBH/bb/4-1281.ltr

PLEASE DIRECT ALL INQUIRES TO: Louis Harmon at Wyoming DEQ/WQD, Herschler Bldg., 4 West, Cheyenne, WY 82002, 307-777-7088, e-mail LHARMO@state.wy.us.

cc: Dean Finkenbinder, Consumer Health Services, Wyoming Department of Agriculture
 Dr. John Gillis, US EPA 8P-W-MS, 999 18th Street, Suite 500, Denver CO 80202-2466
 Laura Laughlin
 IPS file
 Environmental Quality Council

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January 10, 2005

John V. Corra
Director, Wyoming Department of Environmental Quality
Room 1714
Herschler Building, 4 West
122 West 25th Street
Cheyenne WY 82002

John F. Wagner
Administrator, Water Quality Division
Herschler Building, 4 West
122 West 25th Street
Cheyenne WY 82002

Louis Harmon
Water Quality Division
Herschler Building, 4 West
122 West 25th Street
Cheyenne WY 82002

Re: Snowy Range Properties LLC, Notice of
Violation and Order, Docket No. 3629-04

Gentleman:

Snowy Range Properties LLC (Snowy Range), dba Albany Lodge, received the above-referenced Notice of Violation and Order from the Department of Environmental Quality on December 30, 2004. Snowy Range submits this written description of corrective actions that have been or will be taken and schedule to implement the items required in the Order. Snowy Range further respectfully requests that you modify the Order for the reasons stated herein.

Septic System

A commercial recreational and lodging enterprise has existed for many years at the site of the present Albany Lodge. In the fall of 2003, the business reopened under new ownership and with

John V. Corra
John F. Wagner
Louis Harmon
January 10, 2005
Page 2

a new central dining and lodging facility. The new facility is connected to the septic system at issue in this matter.

Snowy Range obtained a permit from the Albany County Planning Department for the new septic system. Prior to obtaining that permit, Ray Duvall, a member of Snowy Range, went to the Water Quality Division in Cheyenne to discuss the groundwater discharge. Mr. Duvall was told that the system was considered a small wastewater system since it would be under 2,000 gallons per day and that Snowy Range needed to obtain its permit from Albany County rather than the Department of Environmental Quality. The Albany County Planner discussed the issue with the Department of Environmental Quality and issued its permit to Snowy Range.

In February of 2004, it was reported that the domestic water well serving the Larry Otterstein residence downgradient from the septic system was contaminated by sewage. WWC Engineering (WWC) became involved with the site at that time. Upon discovery of the septic system problems, Snowy Range took the following actions:

1. WWC performed a subsurface investigation of the site and determined that there was a large area of construction debris, buried at a shallow depth below the ground surface, that was forming a highly preferential pathway for septic tank effluent toward the Otterstein wells.
2. A water meter was installed to measure actual on-site water consumption and, by inference, wastewater generation for the entire Albany Lodge property for three weeks in March and April of 2004.
3. WWC obtained percolation test rate data for a number of locations on the site on April 27, 2004.
4. The site was mapped for additional features, particularly water wells and springs, which figure in the local groundwater situation.
5. Snowy Range provided a replacement domestic well for the Otterstein property. This well is located substantially further downgradient than the original Otterstein wells, and is properly completed with a surface seal to prevent the entrance of near-surface contamination.

The investigations revealed a number of circumstances that might have allowed the new Albany Lodge septic system to cause or contribute to contamination at the original Otterstein wells, as follows:

John V. Corra
John F. Wagner
Louis Harmon
January 10, 2005
Page 3

1. The construction debris field provides a preferential groundwater pathway toward the wells.
2. It is believed the older (hand pumped) well, and possibly the newer well, on the Otterstein property were completed without a surface seal. This would allow surface or near-surface contamination to flow directly down the well casing into the well(s). Even if this condition existed only at the hand pumped well, it would cause immediate contamination of all adjacent deeper groundwater, thus assuring that the newer well would also produce contaminated water.
3. Infiltration rates for native soils at the site, as measured by WWC, range from 30 to 120 minutes per inch, and average 70 minutes per inch. The poor infiltrative capabilities of the native soil may have caused the septic tank effluent to preferentially migrate in a lateral direction (i.e. eventually reaching the debris field and then the Otterstein wells) and prevented it from infiltrating into deeper soils.

Mapping of the property also revealed new information about the distribution of groundwater sources around the septic system. Although the original Otterstein wells are reportedly 107 feet from the new septic system leach field, there are other wells and springs that are closer than 100 feet. These include two wells on the Albany Lodge property itself (80-90 feet), and the spring on Stephanie Byam's property (about 73 feet).

Since the determination of these conditions, two redesigned wastewater treatment systems have been proposed by WWC and Snowy Range.

The first proposed system, a single-pass sand filter, would have incorporated the following major features:

1. A substantially increased septic tank capacity;
2. An automatically dosed single-pass sand filter to produce effluent of significantly higher quality than that available from conventional septic systems;
3. A substantially enlarged leach field, constructed at sufficient depth to discharge directly to the fractured bedrock below the slowly-percolating surface soil; and
4. Abandonment of the spring on the Stephany Byam property.

John V. Corra
John F. Wagner
Louis Harmon
January 10, 2005
Page 4

WWC worked on this proposal in the summer of 2004, and the design was essentially completed although no application for a Permit to Construct was made. The Water Quality Division was consulted throughout this process. Work on this approach was suspended in late August, 2004 following determination by Snowy Range that the financial consideration demanded by Stephany Byam for abandonment of the spring was unreasonable.

The second proposed system, a recirculating filtration system, would have incorporated the following major features:

1. Substantially increased septic tank capacity;
2. An automatically controlled, recirculating, fabric filter system to produce effluent of very high quality, suitable for direct discharge to surface receiving waters;
3. A permit to discharge wastewater, issued by the Wyoming Department of Environmental Quality under the national NPDES system (this permit has been applied for and the permitting process is proceeding on schedule); and
4. Establishment of an easement for a discharge pipeline to the perennial stream east of the Otterstein and Byam properties.

As with the first design, the Water Quality Division was consulted throughout development of this design. This design, apart from the discharge pipeline, has been complete and can be submitted to the Department of Environmental Quality as soon as that issue is finalized.

Paragraph 2 of the Order requires Snowy Range to stop the discharge to the leachfield by removing the discharge line from the septic tank and plugging the opening. Snowy Range respectfully requests that the Department of Environmental Quality modify the Order regarding this requirement and that it not require complete cessation of discharge to the leachfield for the following reasons:

1. The wells that may have been contaminated by the septic system are no longer in use. Snowy Range has paid for the drilling of a new well for the Otterstein residence and there is no evidence of contamination of that well. There is also no evidence that Stephany Byam's spring or any other well in the area has shown contamination. The septic system operated throughout the summer and fall of 2004 without the appearance of any other contamination.

John V. Corra
John F. Wagner
Louis Harmon
January 10, 2005
Page 5

2. Prior to the issuance of the Order, Snowy Range had made arrangements with All-In-One Septic to pump the septic tank for this septic system. Snowy Range plans to have the septic tank pumped five times per week throughout its winter busy season. The pumping schedule is currently staying ahead of discharge and All-In-One reports that it is not finding the septic tank full when it comes, having approximately 500 gallons to spare.
3. Snowy Range's pumping program would eliminate most of the discharge to the existing leach field and avoid any possibility of an overflow of the septic tank.

Snowy Range respectfully requests that paragraph 2 of the Order be modified to not require complete cessation of discharge to the leachfield and, instead, require Snowy Range to maintain a pumping schedule and/or a float with a warning light to call the pumper when the system is reaching capacity.

Paragraph 4 of the Order requires Snowy Range to submit an application for a Permit to Construct to replace the current wastewater treatment system. Snowy Range intends to and anticipates no problem in complying with this Paragraph.

Public Water Supply

Snowy Range obtained a permit from the State Engineers Office for its new well and has been reporting its water system testing to the State of Wyoming Public Health Lab, which also forwards it to the Environmental Protection Agency. Snowy Range was unaware that it needed to apply to the Water Quality Division for a permit to construct a public water supply.

Paragraph 4 of the Order requires Snowy Range to submit an application for an as-built authorization for the facilities that comprise the public water supply for Albany Lodge by January 15, 2004. That paragraph further requires Snowy Range to correct any deficiencies found by the Water Quality Division by March 1, 2005. Snowy Range respectfully requests that you modify the Order regarding this requirement to reflect that Snowy Range is required to submit its application by January 31, 2005 and to correct any deficiencies by March 15, 2004. Such additional time would ensure that Snowy Range had adequate time to meet those deadlines.

Groundwater Cleanup

Paragraph 5 of the Order requires Snowy Range to undertake actions to address the existing groundwater contamination. Snowy Range will undertake such actions. Snowy Range notes that

John V. Corra
John F. Wagner
Louis Harmon
January 10, 2005
Page 6

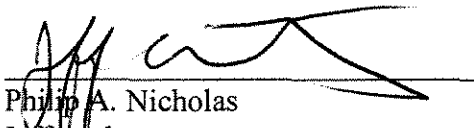
there is no time specified in the Order for it to commence such actions and requests that it be allowed to wait until warmer weather to commence.

Snowy Range has acted in good faith throughout this matter. It applied for permits with Albany County and the State Engineer and was not informed that additional permits were required. Snowy Range cooperated fully with the Department of Environmental Quality during its investigation and engaged WWC Engineering to help it resolve the issues and to engineer a new wastewater system. It remediated part of the problem by closing the Otterstein wells and paying the costs for a new well. It has negotiated with two adjoining landowners to gain their acquiescence to features of a new wastewater system. Snowy Range also began a pumping program for the existing septic system before the Notice of Violation and the Order were issued.

Snowy Range intends to fully cooperate with the Water Quality Division and will provide you with any additional information that you require. For the foregoing reasons, Snowy Range respectfully requests that consideration be given to modify the Order as set forth herein.

Sincerely,

ANTHONY, NICHOLAS,
TANGEMAN & YATES, LLC



Philip A. Nicholas

Jeff Anthony

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Attorneys for Snowy Range Properties LLC

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Encl.

cc: Ray Duvall
Tom Mueller