

**BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

FILED

OCT 09 2009

*Jim Ruby, Executive Secretary
Environmental Quality Council*

IN THE MATTER OF A NOTICE OF VIOLATION)
ISSUED TO WESCO)
P.O. Box 40, Wright, Wyoming 82732) DOCKET NO. 09-4601
NOV NO. 100559, Docket # 4494-09)

**DEPARTMENT OF ENVIRONMENTAL QUALITY/LAND
QUALITY DIVISION'S RESPONSE TO WESCO'S NOTICE OF APPEAL
AND REQUEST FOR HEARING**

The Department of Environmental Quality (DEQ)/ Land Quality Division (LQD) by and through its attorney, John S. Burbridge, Senior Assistant Attorney General, hereby responds to WESCO's Notice of Appeal and Request for Hearing and states to the Environmental Quality Council (EQC) the following:

1. The DEQ denies that the fine imposed on WESCO is contrary to Wyoming law and LQD rules and Regulations.
2. The DEQ admits that it issued a Notice of Violation to WESCO on May 20, 2009.
3. The DEQ agrees that the conduct at issue is the intentional misrepresentation to the LQD that WESCO conducted a three day blaster training session for recertification for WESCO employees when the class did not occur.
4. The DEQ disagrees that the intentional misrepresentation to the LQD constituted a single incident of misrepresentation by WESCO.

5. The DEQ denies that the Director misapplied the factors set forth in Chapter 16, Section 3 of the DEQ/LQD, Coal Rules and Regulations when determining the penalty assessed to WESCO.
6. The DEQ asserts that the violation commenced with the intentional misrepresentation that the blasting recertification class occurred and was attended by WESCO employees. The DEQ further asserts that the violation continued for each day thereafter that each employee worked for WESCO in reliance on the intentional misrepresentations made to DEQ until WESCO corrected the violation.
7. The DEQ denies that the Director set WESCO's penalty beyond that allowed by statute.
8. The DEQ denies each and every allegation not specifically admitted to in this response.

DATED this 9th day of October, 2009.

FOR THE DEPARTMENT OF
ENVIRONMENTAL QUALITY

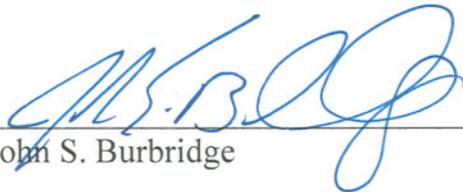


John S. Burbridge #5-2856
Senior Assistant Attorney General
Attorney General's Office
123 Capitol Avenue
Cheyenne, Wyoming 82002
307-777-6946

CERTIFICATE OF SERVICE

I, John S. Burbridge, certify that the foregoing Response was served by US. Mail, postage prepaid, and addressed correctly, to the following people on the 9th day of October, 2009:

Loyd E. Smith
Murane and Bostwick, LLC
508 West 27th Street
Cheyenne, Wyoming 82001



John S. Burbridge