

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

**FILED**  
**FEB 1 1999**  
David A. Laramore, Attorney  
Environmental Quality Council

IN THE MATTER OF THE )  
NOTICE OF VIOLATION AND )  
ORDER ISSUED TO: )  
 )  
High Plains Resources, Inc. )  
P.O. Box 370 )  
Buffalo, WY 82834 )  
 )  
 )  
 )

DOCKET NO. 3043-99

**REQUEST FOR HEARING**

COMES NOW, **HIGH PLAINS RESOURCES, INC.**, hereinafter "High Plains", by and through its undersigned attorneys, and pursuant to Wyoming Department of Environmental Quality, Rules of Practice and Procedure, Chapter 1, Section 3, does hereby request an Administrative Hearing regarding the Notice of Violation and Order dated January 26, 1999, from Dennis Hemmer, Director, Department of Environmental Quality, and Gary Beach, Administrator, Water Quality Division, a copy of which is attached hereto as **Exhibit "A"**.

1.

The person making the request for hearing and the name and address of its attorney is as follows:

High Plains Resources, Inc.  
P.O. Box 370  
Buffalo, Wyoming 82834

Attorney:

Timothy J. Kirven  
Kirven & Kirven, P.C.  
P.O. Box 640  
Buffalo, Wyoming 82834

Phone: 307-684-2248  
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2.

The order upon which the hearing is requested is that certain Notice of Violation and Order, dated January 26, 1999, issued by Dennis Hemmer, Director, Department of Environmental Quality and Gary Beach, Administrator, Water Quality Division, a copy of which is attached to this request as Exhibit "A".

3.

The statement of facts upon which the request for hearing is based is as follows:

A. That said Notice recites in paragraph three (3) certain correspondence with Mr. Lawrence, a representative of High Plains Resources, Inc., and does

not allege nor has there occurred any failure to act as required by the terms of the permit or any other rules and regulations applicable to said permit.

B. That paragraph four (4) of said Notice specifies the absence of a groundwater monitoring system by Section 15, Chapter 3 of the Wyoming Water Quality Rules and Regulations, while the history of the permit is that groundwater monitoring would only be required in the event the facility received drilling mud. The facility never received drilling mud. Inspection Reports furnished to High Plains for inspections conducted from October 16, 1986 through the current date, never recite any requirement for groundwater monitoring wells.

By letter dated October 29, 1986, from Susan Fields, Environmental Engineer with the Water Quality Division, the installation of monitor wells was only required for the disposal of drilling fluids. The imposition of the requirement for groundwater monitoring wells after the issuance of the permit is arbitrary, capricious and contrary to law.

C. Paragraph five (5) of said Notice recites that inspection were conducted and alleges that the amount of

oil present in the skim pond is not consistent with condition number three (3) of Permit No. 83-601, which indicates that the facility may receive only production water. Inspection reports from more than twelve years ago noted the presence of oil which was entirely consistent with the terms of the permit. The alleged "inconsistency" did not twelve years ago, and does not today, constitute a violation of the terms and conditions of Permit No. 83-601. Paragraph five (5) of the Notice fails to specify in any detail what provisions of the Migratory Bird Act are alleged to be inconsistent with the facility. To the extent that the Notice seeks to impose additional requirements on the existing permit, such action is arbitrary, capricious, and contrary to law.

4.

The Order provisions of the Notice of Violation and Order dated January 26, 1999, are contrary to law in the following particulars:

A. The Order seeks to impose conditions and obligations subsequent to the issuance of the permit without any justification therefore, said permit having specifically

been granted without the requirement of a groundwater monitoring system. The Order to submit an application for a permit to install a groundwater monitoring system is directly contrary to the correspondence of Susan Fields, Environmental Engineer, Water Quality Division, dated October 29, 1986.

B. The requirement of the Order for removal of oil from skim pits, is contrary to the terms of the permit and all inspection report recommendations from 1986 through the current date. The facility has been operated in compliance with the terms of the permit and the efforts to impose additional and differing conditions to the terms of the permit are arbitrary, capricious, and contrary to law.

C. The requirement in the Order to submit plans and specifications and an application for a permit to construct migratory bird and wildlife deterrents, is contrary to the terms of the permit, which specified flagging as a deterrent. No report, study, or other analysis, or requirement of law has been provided as a basis for imposing such a punitive economic sanction against the facility.

D. Item 7 of the Order is contrary to law in that it imposes a burden on individuals, other than the owner/operator and permittee of the facility. There is no basis for subjecting recipients of the Order to requirements of the order, such action being a violation of due process and contrary to the civil rights of individuals named in the Notice.

5.

Based upon the foregoing issues and related issues, a hearing is hereby requested before the Environmental Quality Council on the notice and order specified herein.

DATED this 10<sup>th</sup> day of February, 1999.

**KIRVEN and KIRVEN, P.C.:**

By



TIMOTHY J. KIRVEN, Attorney for  
High Plains Resources, Inc.  
Contestant

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