

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

APR 20 2009

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF THE NOTICE OF)
VIOLATION ISSUED TO:)
)
Robert Senitte, President)
Painter Estates Homeowners Association)
P. O. Box 2967)
Cody, WY, 82414)

DOCKET NUMBER 4437-09

NOTICE OF VIOLATION
AND ORDER

NOTICE IS HEREBY GIVEN THAT:

1. Painter Estates Homeowners Association, hereafter referred to as the Permittee, was issued an Underground Injection Control (UIC) wastewater disposal permit (01-016) on September 21, 2001 for a Class V large capacity septic system. This permit expires September 21, 2011.
2. On October 27, 2003 Bob Lucht of the DEQ, Water Quality Division (DEQ/WQD) sent a letter to the Permittee indicating that Monitor Well #1 had a Nitrate as N result of 73.7 mg/L which is significantly above the maximum allowable concentration of 10.0 mg/L in groundwater.
3. On December 15, 2003 the DEQ/WQD received a monitoring report from the Permittee indicating that Monitor Well #1 had a Nitrate as N result of 62.3 mg/L which is again significantly above the maximum allowable concentration of 10.0 mg/L.
4. The Permittee is in violation of Chapter VIII, Section 4(d) of Water Quality Division Rules and Regulations by discharging Nitrate, a toxic substance, into groundwater in concentrations or amounts which exceed maximum allowable concentrations.
5. On April 16, 2007 James Brough of the DEQ/WQD Lander office received multiple emails with photographs from Mr. Richard Zickesoose, a resident of Painter Estates Subdivision, indicating that the Septic System 2 leach field was submerged due to spring runoff. On June 19, 2007 James Brough of the DEQ/WQD scheduled a site visit and met with Mr. Richard Zickesoose and Vint Wolf, both residents of the subdivision. The inspection verified that flooding was indeed a problem as evidenced by the presence of pine needles and other debris within the manhole of a septic tank of Septic System 2. The inspection also verified that the leach field was constructed to a depth of at least nine (9) feet, which is an unapproved deviation from the engineer design drawings authorized by UIC permit #01-016. The permit authorized emplacement of trench bottoms to a depth no greater than elevation 6,527 feet Mean Sea Level (approximately three (3) to four (4) feet below land surface).
6. On August 3, 2007 Don McKenzie, Charles McGhee, and John Passehl, all of the DEQ/WQD, teleconferenced with Mr. Robert Senitte, President of the Painter Estates Homeowners Association, regarding the history and status of UIC permit #01-016. As part of the conversation DEQ/WQD indicated to Mr. Senitte that the Permittee had failed to submit all required monitoring results pursuant to UIC permit #01-016 conditions for the 2006 reporting period. Mr. Senitte indicated that the septic system has been flooded every year since 1993. Mr. Senitte indicated that the leach fields were deepened to maintain grade with the septic tanks and that wood chips were placed on top of the leach chambers to prevent sand from filtering into the chambers over time. The approved application and permit did not authorize placement of wood chips either above or within the chambers.
7. UIC PERMIT 01-016: ENVIRONMENTAL MONITORING PROGRAM FOR GROUNDWATER OF THE STATE, Section D, Condition 4 requires semi-annual sampling and annual reporting of sample results from the monitoring wells. A number of reports are missing from 2002 through 2008 for the following sample points: Monitor Well #1, Monitor Well #2, Septic Tank #1, Septic Tank #2.
8. UIC PERMIT 01-016: RECORDS AND REPORTS, Section F, Condition 2 requires the Permittee to provide advance notice to the Administrator of any planned physical alteration or additions, other than authorized operation and maintenance, to the permitted facility and receiving

authorization prior to implementing the proposed alteration. The Permittee is in violation of this permit condition for failure to obtain authorization from the Administrator to emplace trench bottoms to a depth greater than elevation 6,527 feet, and to place wood chips on top or within the leach chambers. The physical alteration to the permitted facility was not authorized by the Administrator.

9. UIC PERMIT 01-016: GENERAL PERMIT CONDITIONS, Section G, Condition 5 requires the Permittee to comply with all conditions of the UIC permit, and any permit noncompliance constitutes a violation of the permit and is grounds for enforcement action, permit termination, revocation, or modification.
10. UIC PERMIT 01-016: GENERAL PERMIT CONDITIONS, Section G, Condition 11 states that pollution or waste which migrates into an aquifer containing a usable groundwater of the state is a violation of the permit as identified in items 2, 3, and 4 of this document.
11. 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 DEQ shall cause a written notice to be issued and served on the person alleged to be responsible.
12. Pursuant to Wyoming Statute 35-11-901(a), any person who violates, or any director, officer or agent of a corporate Permittee who willingly and knowingly authorizes, orders or carries out the violation of any provision of the Environmental Quality Act (Act), or any rule, regulation, standard or permit adopted hereunder or who violates any determination or order of the council pursuant to this act or any rule, regulation, standard, permit, license or variance is subject to a penalty not to exceed ten thousand dollars and no cents (\$10,000.00) for each violation for each day during which the violation continues, a temporary or permanent injunction, or both a penalty and an injunction. The penalty may be recovered in a civil action brought by the Attorney General in the name of the People of the State of Wyoming. Nothing herein shall preclude the department from negotiating stipulated settlements involving the payment of a penalty, implementation of compliance schedules or other settlement conditions, in lieu of litigation.

ORDER

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL – STATE OF WYOMING

WHEREFORE IT IS HEREBY ORDERED THAT PAINTER ESTATES HOMEOWNERS ASSOCIATION SHALL:

1. Within sixty (60) days of receipt of this Order:
 - a. Provide a complete application, including all supporting data required in Chapter 16 of the Wyoming Water Quality Rules and Regulations, to construct a new septic system, or modify the existing septic system as necessary in order to protect groundwater quality and potential use.
 - i. The system shall be designed by a Wyoming Professional Engineer.
 - ii. The application shall also include plans to re-grade the site to ensure that surface runoff no longer floods the septic tank and leach field area.
 - iii. The application shall also include plans to plug and abandon the existing monitor wells.
 - iv. The application shall also include plans to install two (2) new monitor wells designed to appropriately monitor ground water.
 - b. Submit the required annual monitor reports with lab reports and related analytical data, and/or provide a complete explanation of why the reports have not been submitted as required by the permit.
 - c. Arrange for an inspection of the facility with Department personnel;
2. Construction of the new septic system or modification of the existing septic system shall be completed within six (6) months of Department approval of the required plans referenced in item 1, above.

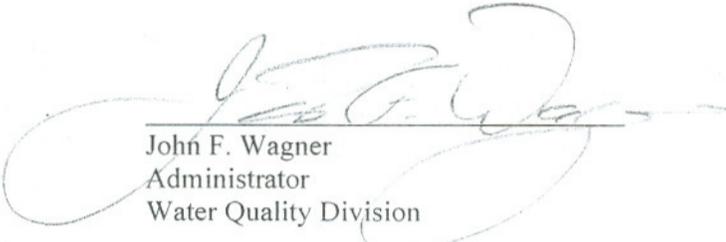
This ORDER is final unless, not later than ten (10) days after the date of this notice is received it is appealed by filing two written petitions for a hearing before the Environmental Quality Council. If a hearing is requested, the first petition shall be mailed to: Chairman, Wyoming Environmental Quality Council, Room 1714 Herschler Building, 1st Floor West, 122 West 25th Street, Cheyenne, Wyoming, 82002. The second petition shall be mailed to: Director, Wyoming Department of Environmental Quality, Herschler Building, 4th Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. Both petitions must be sent via 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 6th day of April, 2009.



John V. Corra
Director
Department of Environmental Quality



John F. Wagner
Administrator
Water Quality Division

PLEASE DIRECT ALL INQUIRIES TO: Albert "Pete" Vogel, PG, UIC Geological Project Analyst, Wyoming DEQ/WQD, Herschler Building, 4th Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. Telephone 307-777-5623.

JVC/JFW/JP/bb/9-0153

xc: Environmental Quality Council
Director, DEQ
Kevin Frederick, WDEQ
Keith Guille, DEQ Public Information Office (PDF)