



Montana Department of  
**ENVIRONMENTAL QUALITY**

**MEMO**

TO: Katherine Orr, Hearing Examiner  
Board of Environmental Review

FROM: Joyce Wittenberg, Board Secretary  
Board of Environmental Review  
P.O. Box 200901  
Helena, MT 59620-0901

DATE: October 14, 2009

SUBJECT: Board of Environmental Review case, Case No. BER 2009-20 SUB

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF:  
THE REQUEST FOR HEARING REGARDING  
THE REVOCATION OF CERTIFICATE OF  
APPROVAL ES#34-93-C1-4 FOR THE FORT  
YELLOWSTONE SUBDIVISION, PARK  
COUNTY.

Case No. BER 2009-20 SUB

BER has received the attached request for hearing. Also attached is DEQ's administrative document(s) relating to this request.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Jim Madden  
Legal Counsel  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Steve Kilbreath  
Public Water Supply & Subdivisions Bureau  
Permitting and Compliance Division  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Nicole Olmstead  
Enforcement Division  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Attachments

LAW OFFICES  
KARL KNUCHEL, P.C.

116 West Callender Street  
P.O. Box 953  
Livingston, MT 59047

Karl Knuchel [karl@knuchelpc.com](mailto:karl@knuchelpc.com)  
Jami Layne Rebsom [jami@knuchelpc.com](mailto:jami@knuchelpc.com)  
Courtney Lawellin [courtney@knuchelpc.com](mailto:courtney@knuchelpc.com)

October 9, 2009

FILED this 13<sup>th</sup> day of  
October AD 2009  
at 11:00 o'clock A. M.  
MONTANA BOARD OF  
ENVIRONMENTAL REVIEW  
by M. Grabe

JOYCE WITTENBERG  
SECRETARY  
BOARD OF ENVIRONMENTAL REVIEW  
1520 EAST SIXTH AVENUE  
P O BO 200901  
HELENA NT 59620-0901

Re: Fort Yellowstone Subdivision request for hearing

Dear Ms. Wittenberg:

Please find this letter as a request for a hearing pursuant to Mont. Code Ann. 76-4-108(5) on the Department of Environmental Quality's revocation of Certificate of Approval ES #34-93-C1-4 for the Fort Yellowstone Subdivision.

The reason for this request is that the decision made by Mr. Kilbreath is incorrect and fails to recognize factors that mitigate to the subdivision owners.

Please send any information regarding this hearing directly to me at the following address:

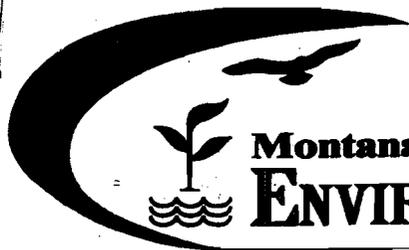
KARL KNUCHEL  
P O BOX 953  
LIVINGSTON MT 59047

Should you have any questions or concerns, please do not hesitate to contact me at (406) 222 0135.

  
Best Wishes,  
KARL KNUCHEL  
Attorney at Law

xc: Max and Sue Berg

RETURN RECEIPT REQUESTED  
CERTIFIED NO. 7008 1830 0004 5433 6188



Montana Department of  
**ENVIRONMENTAL QUALITY**

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • [www.deq.mt.gov](http://www.deq.mt.gov)

October 2, 2009

Sue Berg  
Fort Yellowstone PUD, LLC  
59 Pool Creek Road  
Livingston, MT 59047

**CERTIFIED MAIL #7008 0500 0000 2880 2873**  
Return Receipt Requested

John J. Mcinerny  
Bob G. Haney  
Marwin E. Hofer  
119 N 7<sup>th</sup> Street  
Livingston, MT 59047

**CERTIFIED MAIL #7008 0500 0000 2880 2866**  
Return Receipt Requested

**RE: Notice of Revocation, Fort Yellowstone Subdivision, Park County, Sanitation in Subdivisions Act Complaint (CVID #11671)**

Dear Ms. Berg, Mr. Mcinerny, Mr. Haney and Mr. Hofer:

This letter is to notify you that the Department of Environmental Quality (Department) is revoking Certificate of Approval ES #34-93-C1-4, for the Fort Yellowstone Subdivision (Fort Yellowstone). This revocation is effective as to all lots and condominium units in the subdivision except for condominium unit # 12. Unit # 12 has been approved for hookup to the Gardiner public water supply system under Certificate of Approval EQ #09-1275, and that approval is not affected by this revocation. Under the Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA, this revocation will require that the owners of lots and condominium units apply to the Department for approval before any lots or units may be sold and before water, sewer, solid waste, or storm drainage facilities may be constructed or used.

Pursuant to the authority in Section 76-4-108(5), MCA, the Department may revoke a Certificate of Approval when a violation of the requirements of the Sanitation in Subdivisions Act has occurred. In this case, there is a violation of Section 76-4-130, MCA, which states that a person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation. The water system serving the subdivision was not constructed in accordance with the plans and specifications approved by the Department. The approved plans called for a retaining wall to be constructed adjacent to the water main to prevent erosion and to maintain the depth of cover for the main. The retaining wall was not installed. This is a violation of § 76-4-130, MCA, which prohibits construction or use of a facility that deviates from a Certificate of Approval.

Based on the above violation, the Department is revoking Certificate of Approval #34-93-C1-4. The revocation will be final in 30 days from the date of your receipt of this Notice if a hearing is not requested as set out in the next paragraph. After the revocation is final, no lots or units may be sold and no water,

Sue Berg  
John Mcinerny  
Bob Haney  
Marwin Hofer  
Fort Yellowstone PUD, LLC  
September 18, 2009  
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sewer, solid waste, or storm drainage facilities may be constructed or used until after Department approval of those facilities is obtained. Section 76-4-121, MCA.

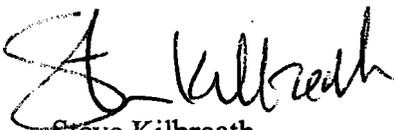
As stated in Section 76-4-108(5), MCA, when the Department revokes a Certificate of Approval, the person aggrieved by revocation may request a hearing before the Board of Environmental Review. A hearing request must be filed in writing within 30 days after receipt of this Notice of Revocation, and must state the reason for the request. The contested case provisions of Montana Administrative Procedure Act, Title 2, Chapter 4, Part 6, apply to a hearing held under Section 76-4-108, MCA.

If you wish to request a hearing you must send written notice, postmarked no later than 30 days after receipt of this notice, to:

Joyce Wittenberg  
Secretary  
Board of Environmental Review  
1520 East Sixth Avenue  
P.O. Box 200901  
Helena, MT 59620-0901

If you have questions about this Notice of Revocation, you may contact me at 406-444-3638.

Sincerely,



Steve Kilbreath  
Supervisor  
Subdivision Section  
Department of Environmental Quality

cc: Nicole Olmstead, Case Manager, DEQ ENFD  
Karl Knuchel, P.O. Box 953, Livingston, MT 59047