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COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

RECEIVED

SEP 19 2014

September 3, 2014

**Division of Reclamation,
Mining & Safety**

Yuma County
Howard McGinnis
1310 South Blake Street
Wray, Colorado 80758

**Re: Findings of Fact, Conclusions of Law and Order
Yuma County**

File No. ~~M-2013-035~~, MV-2014-030

M-2008-035 ERR

On September 3, 2014 the Mined Land Reclamation Board signed the enclosed Board Order for the above captioned operation. We strongly advise that you read this document carefully since it may contain provisions which must be satisfied by specific dates to avoid future Board actions.

Failure to submit payment for the unsuspended portion of the civil penalty, by the date specified in the attached MLRB Order, will result in immediate submittal of those penalties to Central Collection Services for further processing and the addition of collection fees.

Sincerely,

Johnie Abad

Johnie Abad
Board Secretary

Enclosure(s)

Certified Mail

7012 3460 0000 6385 3806

cc's

Elliott Russell
Tom Kaldenbach
John Roberts

*This check is in response
to the penalty outlined
on page 2.*

Yuma County R&B



**BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO**

Violation No. MV-2014-030

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

**IN THE MATTER OF A POSSIBLE VIOLATION BY YUMA COUNTY, CEASE
AND DESIST ORDER, CORRECTIVE ACTIONS, AND CIVIL PENALTIES, File
No. M-2008-035**

THIS MATTER came before the Mined Land Reclamation Board ("Board") on August 20, 2014 in Denver, Colorado as a consent agenda item to consider the possible violation by Yuma County ("Operator"), cease and desist order, corrective actions, and civil penalties for failing to obtain a reclamation permit prior to engaging in a new operation, file number M-2008-035. ✓

The Board, being fully informed of the facts in the matter, hereby enters the following:

FINDINGS OF FACT

1. The Operator holds a 112c Construction Materials permit for a 38.57-acre sand and gravel operation located in Section 39, Township 1 South, Range 48 West, 6th Principal Meridian in Yuma, County, Colorado, permit number M-2008-035. The site is known as the Moser Pit.

2. On July 9, 2014, the Division conducted a normal monitoring inspection of the site. The Division observed, among other things, approximately 4.57 acres of mining disturbance outside of the approved permit boundary.

3. On July 18, 2014, the Division sent the Operator the July 9, 2014 inspection report and a Reason to Believe a Violation Exists letter. The Division's letter provided notice regarding the alleged violations and information about the August 2014 hearing.

4. On August 11, 2014, the Operator admitted the violation in writing and agreed to the Division's recommendations to the Board.

CONCLUSIONS OF LAW

5. The Board has jurisdiction over this matter pursuant to the Colorado Land Reclamation Act for the Extraction of Construction Materials, Article 32.5 of Title 34, C.R.S. (2013).

6. "An operator who mines substantial acreage beyond the approved permit boundary may be found to be operating without a permit." C.R.S. § 34-32.5-123(2), C.R.S. The Operator's mining disturbance of land outside the permit boundary, affecting more than two acres, constitutes mining substantial acreage beyond the approved permit boundary for permit number M-2008-035.

7. By mining substantial acreage beyond the approved permit boundary, the Operator engaged in a mining operation without first obtaining a reclamation permit, in violation of section 34-32.5-109(1), C.R.S.

8. Pursuant to section 34-32.5-123(2), C.R.S., the Board may impose a civil penalty of not less than \$1,000 per day nor more than \$5,000 per day for each day during which the violation occurs. The Board may impose a civil penalty against the Operator based on forty-two (42) days of violation (from the inspection date to the August 20, 2014 hearing) for a civil penalty of \$42,000 to \$210,000.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board hereby finds the Operator in violation of section 34-32.5-109(1), C.R.S. for failing to obtain a reclamation permit prior to engaging in a new mining operation.

The Operator shall CEASE AND DESIST any further activity on affected lands outside the approved permit boundary, with the exception of environmental maintenance, reclamation, or corrective actions, until violations have been resolved to the satisfaction of the Division and the Board.

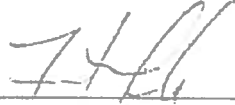
The Board imposes the following CORRECTIVE ACTION against the Operator: the Operator shall file with the Division an amendment application to increase the size of the current 112 reclamation permit to include the affected lands outside the approved permit boundary. The Operator shall submit the amendment application within ninety (90) days of the effective date of this Order, with all materials in an approvable form within one hundred eighty (180) days of the effective date of this Order.

The Board imposes a CIVIL PENALTY for forty-two (42) days of violation at \$1,000 per day for a civil penalty of \$42,000.00. All but \$500.00 of the \$42,000.00 civil penalty is suspended if the Operator complies with the corrective action. Failure to complete the corrective action within the time provided in this Order shall result in the suspended civil penalty (\$41,500.00) becoming effective and due within thirty (30) days of the deadline for the corrective action. The portion of the civil penalty not suspended (\$500.00) shall be due and payable within thirty (30) days of the effective date of this Order. Failure to submit any portion of the civil

penalty by the date specified above shall result in submittal of such civil penalty to state collections.

DONE AND ORDERED this 3rd day of September 2014.

FOR THE COLORADO MINED LAND
RECLAMATION BOARD



Forrest Luke, Chair

NOTICE OF APPEAL RIGHTS

This order becomes effective and final upon mailing. Any party adversely affected or aggrieved by agency action may commence an action for judicial review by filing a notice of appeal with the district court within thirty-five (35) days after the effective date of this order, pursuant to section 24-4-106, C.R.S. (2013). In the event that an appeal is filed, designations of record made in accordance with section 24-4-106(6), C.R.S. should be served on the Board at 1313 Sherman Street, Room 215, Denver, CO 80203, Attention: Johnie Abad.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER upon all parties herein by depositing copies
of same in the United States mail, first-class postage prepaid, at Denver, Colorado,
this 3rd day of September 2014 addressed as follows:

Howard McGinnis
Yuma County
1310 South Blake Street
Wray, CO 80758

By inter-office or electronic mail to:

Elliott Russell
Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, Colorado, 80203

By inter-office or electronic mail to:

Tom Kaldenbach
Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, Colorado 80203

By intra-office or electronic mail to:

John J. Roberts
Senior Assistant Attorney General
Department of Law
Business and Licensing Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 8th floor
Denver, CO 80203



Johnnie Abad, Board Secretary

Yuma County Road & Bridge
1310 South Blake St.
Wray, CO 80758



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UNITED STATES
POSTAL SERVICE

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CO Division of Reclamation, Mining, & Safety
1313 Sherman St, Rm 215
Denver, CO 80203

Division of Reclamation, Mining, and Safety

Fee Receipt for ~~M2013035~~

M2008035

~~Arboles Sand & Stone~~
Yuma County

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Receipt #: 18236

Date: 09/22/2014

Permit: ~~M2013035~~
M2008035

Payment Method	Revenue Code	Fee Description/Notes	Amount
057657 msr	5700	Minerals Civil Penalty/Violation Fines M2013-035 MV2014-030 Civil Penalty M2008-035	\$500.00
Receipt Total:			\$500.00

We just recieved Yuma County's Civil Penalty for MV2014-030, But the cover letter we sent them (which they returned w/ the payment) had the wrong permit # on it. I have corrected the letter; once we get a new receipt we should probably re-send the packet.

Thank you

-Elliott

Division of Reclamation, Mining, and Safety

Fee Receipt for M2008035

Yuma County

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Receipt #: 18238

Date: 09/22/2014

Permit: M2008035

Payment Method	Revenue Code	Fee Description/Notes	Amount
057657 msr	5700	Minerals Civil Penalty/Violation Fines M2008-035 MV2014-030 Civil Penalties	\$500.00
Receipt Total:			\$500.00