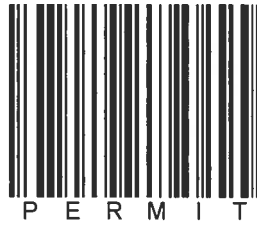


Enforcement



QATESTOCR



COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

DATE: ✓ December 5, 2014

TO: ✓ Jim Murray
3040 S. Vallejo Street
Englewood, Colorado 80110

RE: ✓ Findings of Fact, Conclusions of Law and Order
High Mountain Mining Company, LLC
File No. M-1985-029, MV-2014-039

On December 5, 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 Board Order, will result in immediate submittal of those penalties to the State Central Collection Services for further processing and the addition of collection fees.

Sincerely,

Johnie Abad
Board Secretary

Enclosure(s)

Certified Mail

7014 0150 0000 9138 2661

Cc's

✓ Michael Cunningham
Tom Kaldenbach
John Roberts



BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

Notice of Violation No. MV-2014-039

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

IN THE MATTER OF A POSSIBLE VIOLATION BY HIGH MOUNTAIN MINING COMPANY, CEASE AND DESIST ORDER, CORRECTIVE ACTIONS, AND CIVIL PENALTIES FOR FAILING TO FOLLOW THE CONDITIONS OF AN ORDER, PERMIT, OR REGULATION; FAILING TO MINIMIZE DISTURBANCES TO THE PREVAILING HYDROLOGIC BALANCE; AND FAILING TO PROTECT AREAS OUTSIDE OF THE AFFECTED LAND FROM SLIDES OR DAMAGE,
File No. M-1985-029

THIS MATTER came before the Mined Land Reclamation Board ("Board") on November 19, 2014 in Denver, Colorado to consider a possible violation by High Mountain Mining Company ("Operator"), cease and desist order, corrective actions, and civil penalties for failing to follow the conditions of an order, permit, or regulation; failing to minimize disturbances to the prevailing hydrologic balance; and failing to protect areas outside of the affected land from slides or damage, file number M-1985-029. Michael Cunningham appeared on behalf of the Division of Reclamation, Mining and Safety ("Division"). Greg Lewicki, Jim Murray, and Tom Gibson appeared on behalf of the Operator.

The Board, have considered the parties' presentations and being fully informed of the facts in the matter, enters the following:

FINDINGS OF FACT

1. The Operator holds a 112 permit for a 216.1-acre gold, sand, and gravel operation located in the NE $\frac{1}{4}$ of Section 12, Township 9 South, Range 78 West, 6th Principal Meridian in Park County, Colorado, permit number M-1985-029. The site, known as the Alma Placer Mine, is located near Alma, Colorado.
2. The Operator uses a gravity concentration process to separate gold from sand and gravel, employing four (4) settling ponds (Ponds 1 through 4) to recycle and reuse the water required for the process. Water from the last settling pond, Pond 4, is pumped back to the processing plant. The Operator does not hold a permit to discharge water into the Middle Fork of the South Platte River.
3. On October 3, 2014, the Division received an e-mail from the Park County Administrator, stating that the Middle Fork of the South Platte River was full of sediment and mistakenly identifying the source of the sediment as the Gloria Z Mine. On the same date, the Division received a telephone call from Mr. Lewicki,

environmental consultant for the Operator, who identified the source of the sediment as the Alma Placer Mine.

4. On October 3, 2014, the Division conducted an inspection of the site and the Middle Fork of the South Platte River. Jim Murray, Tom Gibson, and Arnis Townsend attend the inspection on behalf of the Operator. The Division observed a fresh water intake pipe, intended to divert water from the river to mine site, located at an elevation below an overflow pipe from Pond 4, the last in a series of four settling ponds used by the Operator. The Division found that the fresh water intake pipe was the potential source of the unpermitted sediment discharge. Following the inspection, the Division contacted the Operator and requested that the Operator cease mining activity until the source of the sediment was identified and provide a plan for identifying both the source of the sediment and measures taken to prevent future sediment discharges. The Division found that the release of sediment from the mine impacted at least 6.0 miles of the Middle Fork of the South Platte River, from Alma to Fairplay, Colorado.

5. During the inspection, the Division met with the Division Wildlife Manager with Colorado Parks and Wildlife ("CPW"); after the inspection, CPW informed the Division that it did not observe any immediate impacts to fish in the Middle Fork of the South Platte River. CPW will continue to evaluate the impact of the sediment discharge on the river and the aquatic species in the river. At the hearing, Mr. Cunningham stated that CPW agreed to notify the Division of the results of its evaluation.

6. On October 4, 2014, the Operator notified the Division that the sediment discharge was the result of water back-flowing from Pond 4 through the fresh water pipe directly into the Middle Fork of the South Platte River. The Operator reported that the valve on the fresh water line was left in the wrong position at the end of the work shift on October 2, 2014 (the valve is normally set to direct water to the processing plant; on that date, the valve was mistakenly set to direct water to Pond 4). When the pump was turned off at approximately 9:00 p.m., water back-flowed from Pond 4 into the river through the fresh water intake pipe until the pump was turned on the next morning, on October 3, 2014.

7. On October 6, 2014 the Division received a written *Report on discharge of suspended clay from Alma Placer Mine* from the Operator ("Report") identifying the source of the sediment discharge and , a plan to prevent future sediment discharges into the Middle Fork of the South Platte River.

8. On October 6, 2014, the Division mailed the Operator a letter authorizing the Operator to complete corrective actions proposed in its Report, including: (1) raise the fresh water discharge pipe at Pond 4 to an elevation above the overflow pipe; (2) install an above-ground check valve on the fresh water fill

pipe; (3) install signage at the valve that directs fresh water to Pond 4 or the processing plant; (4) provide training to employees on correct operation of the pond system and valves; and (5) clean sediment from Ponds 3 and 4.

9. On October 16, 2014, the Division mailed the Operator a copy of the October 3, 2014 inspection report and a Reason to Believe a Violation Exists letter, informing the Operator of the possible violation and providing details regarding a hearing on this matter scheduled for November 19, 2014.

10. On October 16, 2014, the Operator notified the Division that it had completed the interim corrective actions it proposed to complete in the Report. In addition, Mr. Cunningham testified at the hearing that the Operator complied with the notification requirements of Rule 8 of the Mineral Rules and Regulations of the Board for Hard Rock, Metal, and Designated Mining Operations.

11. On November 4, 2014, the Division conducted a follow-up informal inspection to assess potential offsite impacts of the release of sediment on parcels of private property.

12. A subsequent review of the Mining Plan revealed that, in 2004, the Division approved Amendment No. 4 to permit number M-1985-029. As amended, the permit's Mining Plan in the permit provides for wash water from the processing plant to discharge into four (4) ponds before entering a collection ditch and then flowing into Pond 4.¹

13. Based on aerial photographs and observations during the inspection, the Division determined that the Operator has deviated from the approved Mining Plan. Specifically, water currently flows from the processing plant to the two upper ponds, through a collection ditch, and then into two lower ponds. In addition, the Mining Plan calls for the fresh water line to run from the pump house directly to the processing plant; instead, the fresh water line currently runs to Pond 4. The Mining Plan also neither includes the overflow pipe nor states that the fresh water line would be used to fill Pond 4.

14. The permit for the site requires the Operator to periodically remove sediment from Ponds 3 and 4. During the hearing, the Operator stated that it "could have done a better job" at cleaning sediment from Ponds 1 and 2 as required by the permit.

15. The Board received written comments from Park County and several private landowners. The comments included requests for the Board to take actions that are outside the Board's statutory authority.

¹ Pond 4 is referenced as "Pond A" in the Mining Plan.

16. At the hearing, the Operator acknowledged the violations alleged and consented to the Division's recommended corrective actions.

CONCLUSIONS OF LAW

17. The Board has jurisdiction over this matter pursuant to the Colorado Mined Land Reclamation Act, Article 32 of Title 34, C.R.S. (2014) ("Act").

18. Section 34-32-116(7)(g), C.R.S. requires operators to minimize disturbances to the prevailing hydrologic balance of the affected lands and the surrounding area and to the quality and quantity of water in surface and groundwater systems both during and after the mining operation and during reclamation. The Operator disturbed the quality of surface and groundwater systems at and around the site during the mining operation.

19. Pursuant to section 34-32-116(7)(h), C.R.S., operators are required to protect areas outside of the affected lands from slides or damage during the mining operation and reclamation. The Operator affected land outside the approved affected area during the mining operation, in violation of section 34-32-116(7)(h), C.R.S.

20. Pursuant to section 34-32-124(2), C.R.S. the Board may issue a cease and desist order if it determines that a provision of the Act, the permit, or regulation has been violated. By diverting from the approved sediment collection plan, the Operator violated provision of the permit, in violation of section 34-32-116(7)(g) and (h) C.R.S.

21. Pursuant to section 34-32-124(7), C.R.S. the Board may impose a civil penalty of not less than \$100 per day nor more than \$1,000 per day for each day during which the violation occurs. The Board may impose a civil penalty against the Operator based on forty-eight (48) days of violation (from the October 3, 2014 inspection to the November 19, 2014 Board meeting) at \$100 to \$1,000 per day for a civil penalty of \$4,800 to \$48,000.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board finds the Operator:

- A. in violation pursuant to section 34-32-124, C.R.S. for failure to follow the provisions of the Act, permit, or regulation;
- B. in violation of section 34-32-116(7)(g), C.R.S. for failure to minimize disturbances of the prevailing hydrologic balance of affected lands and the surrounding area and to the quality and quantity of water in

surface and groundwater systems during and after the mining operation and during reclamation; and

- C. in violation of section 34-32-116(7)(h), C.R.S. for failing to protect areas outside the affected land from slides or damage occurring during the mining operation or reclamation.

The Operator shall CEASE AND DESIST any further unpermitted discharges from the mine.

The Board imposes the following CORRECTIVE ACTIONS against the Operator:

- A. the Operator shall, within sixty (60) days of the effective date of this Order, submit an Amendment Application to update and clarify how water is managed at the mine, including but not limited to a review of the locations of all water lines and valves, the size and location of all sediment ponds and ditches, and a review of the stormwater design calculations; and
- B. the Operator shall, within thirty (30) days of the end of each calendar quarter until no longer required by the Board, provide quarterly written reports to the Board summarizing the actions and findings of agencies known to be investigating impacts from the discharge (for example but not limited to, Colorado Parks and Wildlife and the Water Quality Control Division of the Colorado Department of Public Health and Environment). In addition, the Operator shall, at the December 2015 Board meeting, appear and update the Board on the status of the corrective actions required by this Order.

The Board imposes a CIVIL PENALTY for 48 days of violation at \$1,000 per day for a total civil penalty of \$48,000. All but \$5,000 of the civil penalty is suspended if the Operator fully complies with the corrective actions in the time specified. The portion of the civil penalty not suspended, \$5,000, shall be due and payable within thirty (30) days of the effective date of this Order. If the Operator does not timely comply with the corrective actions set forth in this Order, then the suspended penalties, \$43,000, shall be due and payable in full within thirty (30) days of the deadline for corrective actions. Failure to timely submit any due and unpaid civil penalties shall result in immediate submittal of such penalties to State collections.

DONE AND ORDERED this 5th day of December 2014.

FOR THE COLORADO MINED LAND
RECLAMATION BOARD


Jill H. Van Noord, Vice 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. (2014). 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 5th day of December, 2014 addressed as follows:

Jim Murray
High Mountain Mining Company, LLC
3040 S. Vallejo Street
Englewood, Colorado 80110

By inter-office or electronic mail to:

Michael Cunningham
Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, CO 80203

By inter-office or electronic mail to:

Tom Kaldenbach
Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, CO 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



Board Secretary