

November 22, 2016

Jay Wagner
Wagner Construction, Inc.
1850 E 1st St
Craig, CO 81625



COLORADO
Division of Reclamation,
Mining and Safety
Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

**RE: Reason to Believe a Violation Exists and Notice of Board Hearing, Wagner Rock Pit,
Permit No. M-1999-018**

Dear Mr. Wagner:

On November 8, 2016 you were sent a letter and given notice that a board hearing has been scheduled for December 15, 2016. This hearing is based on the Division's belief that you have violated C.R.S. 34-32.5-109(1) for failure to obtain from the board or office a reclamation permit prior to engaging in a new operation. On November 15, 2016 the Division received a letter from you saying that you had gotten the site surveyed and it was over the permitted 9.74 acres.

To resolve this matter and avoid an enforcement hearing before the Mined Land Reclamation Board the Division can correct this item via consent agenda. Attached is a Consent Agreement. The agreement must be signed, notarized and received by the Division's Denver office by December 5, 2016. If the agreement is returned after that date the matter cannot be resolved during the December 2016 board meeting and will have to be reviewed in the January 2017 board meeting.

Please submit the enclosed Consent Agreement no later than **Monday, December 5, 2016.**

If you require additional information, or have questions or concerns, please feel free to contact me. Amy Yeldell at the Division of Reclamation, Mining and Safety, 1313 Sherman St., Room 215, Denver, CO 80203. Direct contact can be made by phone at 970-254-8511 or via email at amy.yeldell@state.co.us

Sincerely,

Amy Yeldell

Environmental Protection Specialist
Department of Natural Resources
Division of Reclamation, Mining and Safety
Phone: (970) 254-8511

Ec: Russ Means, Senior EPS, Grand Junction DRMS





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**STAFF SUMMARY FORM FOR
CONSENT AGENDA ITEMS**

<u>Date</u>	November 22, 2016	<u>Operator</u>	Wagner Construction, Inc.
<u>Permit No.</u>	M-1999-018	<u>Site Name</u>	Wagner Rock
<u>Specialist</u>	Amy Yeldell	<u>Objecting Party</u>	N/A

Action:

_____ Permit application with objections

__X__ Violation

_____ Extension of Board-ordered deadline

_____ Other

Resolution:

NATURE OF VIOLATION:

This item is in regards to a Notice of a Possible Violation, Cease and Desist Order, corrective actions and civil penalties for a possible violation of C.R.S. § 34-32.5-109(1) for failure to obtain from the board or office a reclamation permit prior to engaging in a new operation.

CHRONOLOGY:

July 19, 2016 - The Division conducted a regular monitoring inspection of Wagner Rock.

August 5, 2016 - The Division mailed a signed copy of the inspection report.

August 8, 2016 - The Division issues a Notice of Surety Increase.



CHRONOLOGY: (con't)

October 14, 2016 - The Division receives a formal objection.

October 24, 2016 - The Division sends Notification of Findings letter. The Division reviewed the objection merits and began verifying figures for a response. The Division measured the affected areas using 2014 aerial imagery of the site and Google Earth Pro software. The Division also overlaid the 2016 annual report map over satellite imagery. Neither the permit boundary shape nor acreage matched the approved permit. The Division found the Operator has affected approximately 15.1 acres, or 5.36 acres beyond the maximum allowed disturbance of 9.74 acres.

November 8, 2016 - The Division mailed a signed copy of the Reason to Believe a Violation Exists and Notice of Board Hearing letter.

November 8, 2016 - The operator sends the Division Director a letter requesting a postponement of board items due to health issues. He also gives an update on progress being made to rectify the situation.

November 15, 2016 – The operator sends the Division a letter stating that the survey has determined that under 13 acres has been affected and requested guidance moving forward.

REASON FOR VIOLATION:

The Operator has affected approximately 5.36 acres outside of the permit boundary. It is the Operator's responsibility to protect areas outside of the affected land from slides or damages occurring during the mining and reclamation operation. Pursuant to C.R.S. § 34-32.5-123(2), an operator who mines substantial acreage beyond the approved permit boundary may be found to be operating without a permit.

STAFF RECOMMENDATION:

Violation:

Find a violation of C.R.S. § 34-32.5-109(1) for failure to obtain from the board or office a reclamation permit prior to engaging in a new operation.

Cease and Desist Order:

Issue a Cease and Desist order for any additional disturbances outside of the existing operations footprint until all required corrective actions are completed.

Corrective Action(s):

Require the Operator to submit a Conversion Application to modify the permit/affected area to incorporate the entire disturbed area. The Operator shall obtain an approved Conversion Application Permit within 180 days of the effective date of the Board Order.

Civil Penalty:

Pursuant to C.R.S. § 34-32.5-123(2), a Civil Penalty may be assessed in an amount not less than \$1,000.00 per day nor more than \$5,000.00 per day the land has been affected, not to exceed 365 days.

In this case, there are 37 days of violation (from the date of the Reason to Believe a Violation Exists and Notice of Board Hearing Letter on November 8, 2016 to the December 15, 2016 Board Meeting), resulting in a range of civil penalty not less than \$37,000.00 and not more than \$185,000.00.

In this matter the Division proposes a civil penalty of \$37,000.00 based on 37 days of violation at \$1,000.00 per day. The Board will suspend all but \$500.00 of the assessed civil penalty to encourage timely compliance from the Operator.

Payment of the un-suspended portion of the civil penalty, \$500.00, is due within 30 days of the effective date of this Board Order. Failure by the Operator to comply by the Board Order due date shall result in the suspended portion of the civil penalty, \$36,500.00, becoming effective and due.

Operator's Notarized Signature: As an authorized representative of the Operator, I hereby attest that the Operator concedes to the above described violation and agrees to comply with the Cease and Desist Order, Corrective Action, and Civil Penalty proposed in the STAFF SUMMARY FORM FOR CONSENT AGENDA ITEMS.

Signed and dated this _____ day of _____, 2016.

Wagner Construction, Inc.

(Operator)

Signature: _____

Title: _____

State of _____)

County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016,

by _____ as _____ of _____.

Notary Public

My Commission Expires: _____

SIGNATURES MUST BE IN BLUE INK