



## COLORADO

Division of Reclamation,  
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215  
Denver, CO 80203

**DATE:** January 10, 2017

**TO:** Jay Wagner  
Wagner Construction, Inc.  
1850 E. 1st Street  
Craig, Colorado 81626

**RE:** Findings of Fact, Conclusions of Law and Order  
Wagner Construction, Inc.  
File No's. M-1999-018, MV-2016-061

On January 9, 2016, 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.

Sincerely,

  
Camille Mojar  
Board Secretary

Enclosure(s)

Certified Mail

7014 2120 0001 7885 6781

Cc's

Amy Yeldell  
Russ Means  
John Roberts  
Jay Wagner  
Jeff Fugate



BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO

Notice of Violation No. MV-2016-061

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

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IN THE MATTER OF A POSSIBLE VIOLATION BY WAGNER CONSTRUCTION, INC., CEASE AND DESIST ORDER, CORRECTIVE ACTION, AND CIVIL PENALTY FOR FAILING TO OBTAIN A RECLAMATION PERMIT PRIOR TO ENGAGING IN A NEW MINING OPERATION, File No. M-1999-018

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THIS MATTER came before the Mined Land Reclamation Board ("Board") on December 15, 2016 in Denver, Colorado as a consent agenda item to consider a possible violation by Wagner Construction, Inc. ("Operator"), cease and desist order, corrective action, and a civil penalty for failing to obtain a reclamation permit before engaging in a new mining operation, file number M-1999-018.

The Board, having considered the materials presented with this consent agenda item and having been otherwise fully informed of the facts in the matter, enters the following:

**FINDINGS OF FACT**

1. On July 19, 2016, the Division of Reclamation, Mining and Safety ("Division") conducted a regular monitoring inspection of a site known as Wagner Rock. Wagner Rock is located in Section 10, Township 6 North, Range 90 West, 6th Principal Meridian in Moffat County, Colorado.

2. On August 5, 2016, the Division mailed a signed copy of the inspection report to the Operator. On August 8, 2016, the Division issued a Notice of Surety Increase. As a result of the July 19, 2016 inspection, it was determined that the cost to reclaim Wagner Rock had increased to \$35,341.00. This was an increase of \$21,336 over the previous amount of \$14,005 currently held by the Division.

3. On October 14, 2016, the Division received a formal objection from the Operator, requesting that the Division reassess its survey of the site, reclamation costs, and revalue the bonding amount appropriately.

4. On October 24, 2016, the Division sent the Operator a Notification of Findings letter. The Division reviewed the merits of the Operator's objection and began verifying figures for a response. The Division measured the affected area 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.

5. On November 8, 2016, the Division mailed a signed copy of the Reason to Believe a Violation Exists letter. The Division's letter provided notice regarding the alleged violations and information about the December 15, 2016 hearing.

6. On November 8, 2016, the Operator sent the Division a letter requesting a postponement of Board items due to health issues. The Operator also provided an update on the progress being made to rectify the situation.

7. On November 15, 2016, the Operator sent the Division a letter stating that a survey had determined that the affected area is less than 13 acres, and the excavation lies within the original permit boundary. The Operator admitted that stored equipment, stockpiled topsoil, and stockpiled crushed aggregates remained outside the permitted boundary, affecting unpermitted land. The Operator admitted that it is not possible to confine the mine to the original permit boundary, and requested further guidance as to how to resolve the issue.

8. On December 7, 2016, the Operator admitted the violation and agreed to the Division's recommendations to the Board.

#### **CONCLUSIONS OF LAW**

9. 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. (2016).

10. The material that the Operator extracted or developed at the site constitutes a "construction material" as that term is defined in section 34-32.5-103(3), C.R.S.

11. Section 34-32.5-109(1), C.R.S. provides that "before engaging in a new operation, an operator shall first obtain from the board or office a reclamation permit." By mining 5.36 acres of land beyond the approved permit boundary, the Operator engaged in a new operation without first obtaining a permit, in violation of section 34-32.5-109(1), C.R.S.

12. Under section 34-32.5-116(4)(i) C.R.S., it is the Operator's responsibility to protect areas outside of the affected land from slides or damages occurring during the mining operation.

13. Pursuant to section 34-32.5-123(1), C.R.S., the Board may issue a cease and desist order when it finds that an operator has failed to obtain a valid permit.

14. The Board may impose a civil penalty of not less than \$1,000 per day or more than \$5,000 per day for each day during which a violation occurs. C.R.S. § 34-32.5-123(2) (2016). Here, the Board may impose a penalty based on thirty-seven (37) days of violation (from the November 8, 2016 Reason to Believe letter to the December 15, 2016 hearing) at \$1,000 to \$5,000 per day for a civil penalty of \$37,000 to \$185,000.

## ORDER

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


The Operator shall CEASE AND DESIST any additional disturbances outside of the existing operations footprint until all required corrective actions are completed except those activities, approved by the Division in writing, as necessary to comply with the conditions of this Order, prevent damage to off-site areas, or to protect public health and safety, until the corrective actions set forth herein have been resolved to the satisfaction of the Division and the Board.

The Board imposes against the Operator the following CORRECTIVE ACTION: the Operator shall submit a Conversion Application to modify the permit/affected area to incorporate the entire disturbed area. The Operator shall, within one hundred and eighty (180) days of the effective date of this Order, obtain an approved Conversion Application Permit.

The Board imposes a CIVIL PENALTY for thirty-seven (37) days of violation at \$1,000 per day for a total civil penalty of \$37,000. All but \$500 of the penalty is suspended if the Operator complies with this Order within the time specified. The portion of the civil penalty not suspended, \$500, shall be due and payable within thirty (30) days of the effective date of this Order. If the Operator fails to timely comply with this Order, the suspended civil penalty, \$36,500, will become due and payable within thirty (30) days of the deadline to comply with this Order. Failure to submit any portion of the civil penalty by the date specified herein shall result in immediate submittal of any unpaid civil penalties to State collections.

DONE AND ORDERED this 9 day of January 2018.

FOR THE COLORADO MINED LAND  
RECLAMATION BOARD

  
Thomas Brubaker, Chairman

## NOTICE OF JUDICIAL REVIEW 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 complaint 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. and the Colorado Rules of Civil Procedure. In

the event that a complaint for judicial review 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: Camie Mojar

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 10<sup>th</sup> day of January 2017 addressed as follows:

*By certified mail to:*  
7014 2120 0001 7885 6781

Jay Wagner  
Wagner Construction, Inc.  
1850 E. 1<sup>st</sup> Street  
Craig, Colorado 81626

*By electronic mail to:*  
7014 2120 0001 7885 6781

Amy Yeldell  
Division of Reclamation, Mining & Safety  
101 South 3<sup>rd</sup>, Suite 301  
Grand Junction, CO 81501

Russ Means  
Division of Reclamation, Mining & Safety  
101 South 3<sup>rd</sup>, Suite 301  
Grand Junction, CO 81501

*By electronic mail to:*  
7014 2120 0001 7885 6781

John J. Roberts  
First Assistant Attorney General  
Colorado Department of Law  
Business and Licensing Section  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, CO 80203

Jeff Fugate  
First Assistant Attorney General  
Colorado Department of Law  
Natural Resources and Environment Section  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, CO 80203

  
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Camille Mojar, Board Secretary