



COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

DATE: February 2, 2017

TO: Julie Sevier
Pioneer Sand Company, Inc.
5000 Northpark Drive
Colorado Springs, CO 80918

RE: Findings of Fact, Conclusions of Law and Order
Pioneer Sand Company, Inc.
File No's. M-1977-057, MV-2017-002

On February 1st, 2017, 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,


Camille Mojar
Board Secretary

Enclosure(s)

Certified Mail

7016 2140 0000 2345 9787

Cc's
Amy Yeldell
Russ Means
John Roberts
Jeff Fugate



BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

Notice of Violation No. MV-2017-002

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

IN THE MATTER OF A POSSIBLE VIOLATION BY PIONEER SAND COMPANY, 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-1977-057

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 Pioneer Sand Company, 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-1977-057.

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. The Operator holds a 110c reclamation permit for a stone mining operation located in in Section 14, Township 6 North, Range 90 West, 6th Principal Meridian in Moffat County, Colorado. The site is known as the Fedinec Pit.
2. On May 10, 2016, the Division of Reclamation, Mining and Safety ("Division") conducted a regular monitoring inspection of the Fedinec Pit. Wayne Brantley, representing the Operator, attended the inspection. During the inspection, the Division found that approximately 11 acres have been disturbed. The permit is approved to affect not more than 5 acres. In the May 10, 2016 inspection report, the Division required the Operator to conduct a survey of the disturbance and submit documentation of the survey.
3. On October 14, 2016, the Operator submitted a survey of the site, indicating that 9.44 acres were disturbed and one acre has been disturbed and reclaimed. The total amount of disturbed land exceeds the permitted total by 5.44 acres.
4. On October 27, 2016, the Division inspected the site and confirmed that 10.44 acres had been disturbed. The Division mailed a copy of the October 27, 2016 inspection to the Operator on November 2, 2016.
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 22, 2016, the Operator admitted the violation and agreed to the Division's recommendations to the Board.

CONCLUSIONS OF LAW

7. 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).

8. 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.

9. 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 disturbing 5.44 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.

10. 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.

11. 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.


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 1 day of February 2017.

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 2nd day of February 2017, addressed as follows:

By certified mail:
7016 2140 0000 2345 9787

Julie Sevier
Pioneer Sand Company, Inc.
5000 Northpark Drive
Colorado Springs, CO 80918

By electronic mail to:

Amy Yeldell
Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, Colorado 80203
Amy.yeldell@state.co.us

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Camille Mojar, Board Secretary