



Permit M-1992-117-CMC's Motion to Reconsider or Reduce Civil Penalty

John Henderson <jrhcolaw@comcast.net>

Wed, Aug 21, 2019 at 10:37 AM

Reply-To: John Henderson <jrhcolaw@comcast.net>

To: Jeff Fugate <Jeff.Fugate@coag.gov>, Scott Schultz <Scott.Schultz@coag.gov>, "Cunningham - DNR, Michael" <michaela.cunningham@state.co.us>, Cyndi Kennedy <ctk@kennedylawyer.com>, Mark Steen <goldtontine@gmail.com>, "Mike Bynum (mike@bzrez.com)" <mike@bzrez.com>, amy.eschberger@state.co.us, Camille Mojar <camille.mojar@state.co.us>, John Ramsey <john@flyredtail.com>

All:

Attached is a pdf of the Motion filed by CMC today to reconsider or reduce the civil penalty assessed by the Board on June 26. Hard copies were mailed to all of the State parties today.

We were left somewhat uncertain of the precise deadline for our Motion given the busted mailing to Robinson on August 6. Still, we believe that you will find the Motion to be succinct and straightforward.

CMC is working on its adequacy response which we propose to have to Division in timely fashion.

With regards,

John R. Henderson, on behalf himself and Cyndi Kennedy, for CMC

John Richard Henderson
Law Office of John R. Henderson, P.C.
[308 E. Simpson Street, Suite 103](#)
[Lafayette, CO 80026](#)
Office: 720.512.2953
Cell: 720.971.7063
<https://landwaterlaw.co>
jrhcolaw@comcast.net



CMCs Motion to Reconsider or Reduce Civil Penalty.pdf
220K

BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

Violation No. MV-2019-018

**COLORADO MILLING COMPANY LLC'S MOTION FOR
RECONSIDERATION OF CIVIL PENALTY OR FOR REDUCTION OF CIVIL
PENALTY**

IN THE MATTER OF A POSSIBLE VIOLATION BY COLORADO MILLING
COMPANY, LLC, CEASE AND DESIST ORDER, CORRECTIVE ACTIONS, AND
CIVIL PENALTIES FOR FAILING TO COMPLY WITH THE CONDITIONS OF A
BOARD ORDER ISSUED FOR VIOLATION No. MV-2017-036, File No. M-1994-117

THIS MATTER came before the Mined Land Reclamation Board ("Board") on June 26, 2019 in Denver, Colorado to consider a possible violation by Colorado Milling Company, LLC ("Operator"), cease and desist order, corrective action, and civil penalties for failing to comply with the conditions of a Board Order issued for Violation No. MV-2017-036, permit number M-1994-117. The Board Issued its Findings of Fact, Conclusions of Law and Order dated August 3, 2019, and attempted to transmit the same to CMC on August 6, 2019 (the cover letter was mis-addressed to an unknown entity, Robinson Sons, Inc.).

In its Order, the Board assessed civil penalties of \$7200.00, being \$200 per day from the period May 21, 2019 to the date of the hearing, June 26, 2019. May 21, 2019 had been the deadline for CMC to obtain approval of AM-1, its proposed amendment. CMC seeks reconsideration of the assessment of the civil penalty, or, a reduction of the civil penalty to \$50 per day for 22 days, or, \$1100.00. As grounds for such reconsideration, CMC states as follows:

STATEMENTS IN SUPPORT OF MOTION

1. The Operator holds a 110(2) reclamation permit for a 8.4-acre gold and silver mill operation located in Section 12, Township 1 North, Range 72 West, 6th Principal Meridian in Boulder County, Colorado, permit number M-1994-117. The site is known as the Gold Hill Mill.

2. As noted in the Order, Division and CMC had failed to resolve adequacy issues regarding AM-1 by May 21, 2019. On that same day, Division issued its 4th adequacy letter concerning AM-1. By e-mail of that same date, Division stated that

"Given that the Board-Ordered decision date was today, 5/21, I strongly urge that you submit an extension request as soon as possible. We would need to

set your request for consideration by the Board, most likely the June 26th meeting”.

3. Based on the e-mail, CMC believed that Division would support the request, as the 4th Adequacy Letter had been sent only that day.

4. The 4th Adequacy Letter also noted the need for an extension:

...[T]he decision date of May 21, 2019 was set by the Board Order mailed on March 7, 2019. Therefore, if you are unable to address all remaining adequacy items by this date [the same date as the 4th Adequacy Letter an extension request must be submitted to our office. Such a request would need to be scheduled for consideration by the Mined Land Reclamation Board at an upcoming meeting.

5. On May 29, 2019, Division stated in an e-mail to CMC:

If you submit an extension request for AM-1 by close of business next Thursday, June 6, 2019, we could revise the Board agenda for this matter to consider your extension request *rather than* failure to comply with a Board Order (emphasis added).

6. CMC, believing that Division supported the extension, and, that the violation matter would be removed from the agenda, submitted its extension request in timely fashion on June 5, 2019, before the June 6 deadline proposed for amendment of the Board agenda by Division. CMC timely did exactly what Division requested it do.

7. Division would certainly have been aware of the impossibility of CMC responding to the extensive 4th Adequacy Letter on the same day it was issued; its written suggestion of and support for an extension was logical, and CMC was justified in relying on it.

8. On the same date as the extension request was filed by CMC, CMC received a letter from Division indicating that the “handful” of remaining issues could be resolved quickly if CMC could make certain technical commitments.

9. On June 12, 2019, Division denied the permit amendment, and stopped all processing of the AM-1 application. CMC was surprised by this action given the 3, earlier communications from Division.

10. At the hearing on June 26, 2019, the civil penalties were assessed, but the Board stayed the denial of AM-1, and granted CMC an additional 90 days to complete the AM-1 process. Processing has since resumed. In essence, CMC

achieved the extension which it sought, and believes that the civil penalty assessed is disproportionate to any violation.

11. Given the circumstances, CMC challenges the exaction of the maximum civil penalty, requesting either that the assessment be suspended, or, that a lesser penalty for what amounts to a procedural misunderstanding be assessed.

12. CMC requests suspension of the civil penalty assessed, or, in the alternative, assessment of a civil penalty of \$50 per day from May 21, 2019 to June 12, 2019, when further compliance became temporarily impossible due to the denial by Division, or \$1100.00.

13. CMC incorporates here by reference its June 21, 2019 Motion "Colorado Milling Company, LLC's Motion to Postpone or Stay Enforcement Hearing, For Extension of Review and Decision Date, And For Exemption to Cease and Desist Order To Allow Pump Testing", including its more extensive timeline and factual statements.

ARGUMENT

1. CMC justifiably relied on Division's 3 statements that it supported a 30-day extension and amendment of the Board's agenda for the June 26, 2019 meeting.
2. Division's support for an extension was rationale and justified, as Division sent its 4th Adequacy Response on the date of the May 21, 2019 deadline.
3. The violation is centered on this procedural misunderstanding rather than an egregious violation of either the Board's Order or in complying with its permit.
4. The civil penalty of \$7200 is disproportionate to any violation and should be suspended or reduced to \$50 per day from May 21, 2019 until June 12, 2019, when processing of AM-1 stopped and compliance with the Order became impossible.

Dated this 21st day of August, 2019


John R. Henderson #9013

Cynthia T. Kennedy #11668
308 E. Simpson St.
Lafayette, CO 80026

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within "Colorado Milling Company, LLC's Motion For Reconsideration of Civil Penalty Or For Reduction of Civil Penalty" upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 21st day of August, 2019 addressed as follows:

By US mail and electronic mail to:

Amy Eschberger
Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, CO 80203

By US Mail and electronic mail to:

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

By US Mail and electronic mail to:

Michael Cunningham
Division of Reclamation, Mining and
Safety
1313 Sherman Street, Room 215

Denver, CO 80203

By US Mail and electronic mail to:

Jeff Fugate
First Assistant Attorney General
Colorado Department of Law
Natural Resources Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203

By US mail and electronic mail to:

Scott Schultz
Assistant Attorney General
Natural Resources Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203

By US mail to:

Colorado Mined Land Reclamation Board
c/o Camie Mojar
1313 Sherman Street, Room 215
Denver, CO 80203

By: _____

A handwritten signature in black ink, appearing to be "D. Fugate", written over a horizontal line.