



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

October 4, 2022

Natasha Branch
HCR High Country Repair
2632 McCormick Ave.
Pueblo, CO 81001

Re: Notice of Continuance, Ghost River Gravel Pit; Permit No. M-2003-002

Mrs. Branch:

On October 22, 2021, the Mined Land Reclamation Board (Board) issued their Findings of Fact, Conclusions of Law, and Order for Violation No. MV-2021-016. This Order included a required corrective action for HCR-High Country Repair (Operator) to submit a conversion application to include the affected lands outside the approved permit boundary due within 90 days of the Board Order. The Operator has failed to comply with the Board's Order.

Therefore, in accordance with the Division's letter dated September 8, 2022 the Division hereby provides notice that the hearing for consideration of a violation of C.R.S. 34-32.5-124 for failing to comply with the conditions of an order, permit, or regulation has been continued from the October 19-20, 2022 Board meeting and will now occur during the **December 14-15, 2022 Board meeting**. If the Board finds a violation at this hearing, it may issue/retain the cease-and-desist order pursuant to C.R.S. 34-32.5-124(2); suspend, modify, or revoke the permit pursuant to C.R.S. 34-32.5-124(6)(a); assess a civil penalty in the amount of \$100.00 to \$1,000.00 for each day of violation pursuant to C.R.S. 34-32.5-124(7); and/or find the financial warranty subject to forfeiture pursuant to C.R.S. 34-32.5-118(1).

The enforcement action is being continued to allow the Operator time to submit a conversion application by **December 1, 2022** as required by the Board's Order. If the Operator is able to submit a conversion application by the December 1 due date, the Division may withdraw the item from the December Board Hearing. However, the Division has received information that the Operator is continuing the mining operation at the site in violation of the Board's order (attached). **HCR- High County Repair and all subcontractors must CEASE and DESIST any further mining activities at the site.** Failure to do so may result in further enforcement action being taken and/or the Division proceeding with the enforcement hearing as scheduled during the December 14-15, 2022 Board meeting.

If you have any questions about this letter or the hearing, please contact Patrick Lennberg at (303) 866-3567, ext. 8114.

Sincerely,

Patrick Lennberg



Environmental Protection Specialist

CERTIFIED MAIL NO.
Return Receipt Requested

Attachment: Board Order Dated October 22, 2021

cc: Jared Ebert, DRMS
Russ Means, DRMS
Jeff Fugate, AGO
Liz McClure

Attachments



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

October 22, 2021

HCR - High Country Repair
2632 McCormick Ave.
Pueblo, Colorado 81001

Re: Findings of Fact, Conclusions of Law, and Order, HCR - High Country Repair
File No. M-2003-002, MV-2021-016

On October 21, 2021 the Mined Land Reclamation Board signed the enclosed Board Order for the above captioned operation. Because this document is the final order of the Board, it is legally binding on and affects the above-captioned operation, and we strongly advise that you read this document carefully.

Sincerely,


Camille Mojar
Board Administrator

Enclosure(s)

Certified Mail

7018 2290 0001 8923 1908

cc:

Patrick Lennberg
Jared Ebert
Jeff Fugate
Scott Schultz
Charles Kooyman



BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

Notice of Violation No. MV-2021-016

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

IN THE MATTER OF A POSSIBLE VIOLATION BY HCR HIGH COUNTRY REPAIR, CORRECTIVE ACTION, CEASE AND DESIST ORDER, AND CIVIL PENALTIES FOR FAILURE TO PROTECT LAND OUTSIDE THE PERMIT BOUNDARIES FROM SLIDES OR DAMAGE OCCURRING DURING THE MINING OPERATION, File No. M-2003-002

THIS MATTER came before the Mined Land Reclamation Board ("Board") on September 22, 2021, via videoconference to consider possible violations by HCR High Country Repair ("Operator"), cease and desist order, corrective action, and civil penalties for failure to protect land outside the permit boundaries from slides or damage occurring during the mining operation, file number M-2003-002. Patrick Lennberg appeared on behalf of the Division of Reclamation, Mining, and Safety ("Division"). There was no appearance on behalf of Operator.¹

The Board, having considered the testimony and the materials presented and having been otherwise fully informed of the facts in the matter, enters the following:

FINDINGS OF FACT

1. The Operator holds a 110(c) permit for a 9.9-acre gravel operation located in Section 35, Township 25 South, Range 66 West, 6th Principal Meridian in Huerfano County, Colorado, permit number M-2003-002. The site is known as the Ghost River Gravel Pit.

2. On July 28, 2021, the Division conducted an inspection of the site. The inspection report, dated August 11, 2021, noted several issues at the site. In particular, the Division determined that the boundary at the site does not match the permit boundaries submitted with the permit. 1.8 acres of affected lands are

¹ The Board delayed the hearing until later in its September 22, 2021 meeting to allow Operator more time to participate in the hearing. Though a representative from the Operator joined the meeting briefly, no representative remained in the videoconference during the hearing and no testimony was presented by Operator.

beyond the permit boundaries, including overburden stockpiles and equipment storage.

3. On August 10, 2021, the Division mailed a Reason to Believe a Violation Exists Letter to Operator, providing notice of an alleged violation and providing notice the matter would be heard at the Board's September 22, 2021 meeting.

4. At the hearing, the Division presented testimony regarding the potential violation observed during its inspection, including the extent and nature of the off-site disturbances. The Division also provided testimony regarding its efforts to contact Operator regarding the hearing. The Division provided Operator with several notices regarding the hearing and details on how to join the video conference meeting, both in the August 10, 2021 Reason to Believe a Violation Exists Letter and in subsequent communications.

5. Operator did not present any testimony or submit any evidence.

CONCLUSIONS OF LAW

6. 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. (2020) (the "Act").

7. The Operator is engaged in a "mining operation" as that term is defined in section 34-32.5-103(13), C.R.S.

8. Section 34-32.5-116(4)(i) requires that operators protect areas outside affected land from slides or damage occurring during mining or reclamation. Operator violated section 34-32.5-116(4)(i) by stockpiling overburden, storing equipment, and disturbing land outside the permitted boundary.

9. Based on its determination that Operator violated provisions of the Act, the Board may issue a cease-and-desist order and include the nature of any required corrective actions. § 34-32.5-124(2), C.R.S. (2020).

10. The Board may impose a civil penalty of not less than \$100 per day or more than \$1,000 per day for each day during which a violation of a mining operation permit occurs. § 34-32.5-124(7), C.R.S. (2020). Here, the Board may impose a penalty based on 43 days of violation, at \$100 to \$1,000 per day, for a civil penalty of \$4,300 to \$43,000.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board finds the Operator in violation of section 34-32.5-116(4)(i), C.R.S. for failure to protect areas outside affected land from slides or damage occurring during mining or reclamation.

Operator shall CEASE AND DESIST any further mining activities, except those approved in writing by the Division as necessary to comply with the conditions of a Board Order, prevent damage to off-site areas, or to protect public health and safety, until corrective actions have been resolved to the satisfaction of the Division

The Board imposes against the Operator the following CORRECTIVE ACTION: The Operator shall submit to the Division a permit conversion application to include the affected lands outside the approved permit boundary. The Operator shall submit the conversion application within 90 days of the effective date of this Order, with all material in an approvable form within statutory deadlines.

The Board imposes a CIVIL PENALTY of \$43,000. All but \$4,300 of the penalty is suspended if the Operator complies with the corrective action is completed within the time specified. The portion of the civil penalty not suspended, \$4,300, shall be due and payable within 30 days of the effective date of this Order. If the Operator does not comply with the corrective action set forth in this Order, the suspended civil penalty, \$38,700, will become due and payable within 30 days of the deadline for completion of the corrective action. Failure to submit any due and unpaid civil penalties shall result in immediate submittal of such penalties to State collections.

DONE AND ORDERED this 21st day of October 2021.

FOR THE COLORADO MINED LAND
RECLAMATION BOARD



Lauren Duncan, Chair

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. (2020) 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 22nd day of October 2021 addressed as follows:

By certified mail to:

7018 2290 0001 8923 1908

HCR – High Country Repair
2632 McCormick Ave.
Pueblo, Colorado 81001

By electronic mail to:

Patrick Lennberg
Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, Colorado 80203

Jared Ebert
Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, CO 80203

Charles J. Kooyman
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Camille Mojar, Board Administrator

HCR High Country Repair,
Ghost River Gravel Pit/M-2003-002
MV-2021-016