

STATE OF
COLORADO

Eschberger - DNR, Amy <amy.eschberger@state.co.us>

Trapper Mine C1981-010 / CV-2023-001 / Notice of Proposed Amount of Civil Penalty

Eschberger - DNR, Amy <amy.eschberger@state.co.us>

Wed, Jul 19, 2023 at 2:47 PM

To: graham.roberts@trappermine.com

Cc: "Reilley - DNR, Robin" <robin.reilley@state.co.us>, Jared Ebert - DNR <jared.ebert@state.co.us>, Jason Musick - DNR <jason.musick@state.co.us>

Hello Mr. Roberts

Please see attached Notice of Proposed Amount of Civil Penalty for the above referenced violation. A hard copy was also sent to you via certified mail.

Let me know if you have any questions

Best Regards,

Amy Eschberger
Senior Environmental Protection Specialist



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

O: 303.866.3567 x 8129 | C: 303.945.9014 | F: 303.832.8106

Physical Address: 1313 Sherman Street, Room 215, Denver, CO 80203

Address for FedEx, UPS, or hand delivery:

1001 E 62nd Ave, Denver, CO 80216

Amy.Eschberger@state.co.us | <https://drms.colorado.gov>

C1981-010_CV-2023-001_Notice-of-Proposed-Amount-of-Civil-Penalty_2023-07-19_ALL.pdf

244K



COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

1313 Sherman St. Room 215 Denver, CO 80203
P (303) 866-3567 F (303) 832-8106
<https://drms.colorado.gov>

NOTICE OF PROPOSED AMOUNT OF CIVIL PENALTY REQUEST FOR CONFERENCE

NOV/CO NO.: CV-2023-001

MINE:	Trapper Mine	DATE ISSUED:	June 21, 2023
PERMIT NO.:	C-1981-010	TYPE OF MINE:	Surface/Federal
OPERATOR/PERMITTEE:	Trapper Mining, Inc.	COUNTY:	Moffat
ATTENTION:	Graham C. Roberts	ADDRESS:	P.O. Box 187 Craig, CO 81626

TO OPERATOR:

You are hereby notified, pursuant to C.R.S. 34-33-123(8)(b), that the Division of Reclamation, Mining and Safety ("the Division") of the Department of Natural Resources, State of Colorado, proposes to assess a civil penalty against you in the amount of \$2,000.00.

If you wish to request a conference at which the proposed penalty may be reviewed, you may do so by indicating on, and returning to the Division, the attached page of this notice. Your request should be completed in the space provided and returned to the Division within ten days after your receipt of this notice.

If you fail to request such conference within ten days after service of this notice, the Division will fix the penalty at \$2,000.00, based upon the factors referred to in C.R.S. 34-33-123(8)(a).

DIVISION OF RECLAMATION, MINING AND SAFETY

By: Amy Eschberger

Date: July 19, 2023

Name: Amy Eschberger

Title: Assessment Officer

DIVISION OF RECLAMATION, MINING AND SAFETY

CERTIFICATE OF SERVICE

Permit No. C-1981-010

NOV No. CV-2023-001

I hereby certify that I served a copy of the foregoing NOTICE OF PROPOSED CIVIL PENALTY on Trapper Mining, Inc. by depositing a true copy thereof, first class postage prepaid, in the United States mail, to the operator at the address above, on July 19, 2023.

Certified Mail No.: 7019 2280 0001 8254 9774

Return Receipt Requested



Signature of Person Served if Personal Service

Signature

Name: Amy Eschberger

Name and Title

Title: Assessment Officer

REQUEST FOR CONFERENCE

The operator above described hereby requests an assessment or settlement conference as permitted by C.R.S. 34-33-123(8).

Trapper Mining, Inc.

Operator

By

(Signature)

Date

COLORADO DIVISION OF RECLAMATION, MINING AND SAFETY

Civil Penalty Worksheet

I. Identification

NOV/CO No.: CV-2023-001

Date Issued: June 21, 2023

Mine: Trapper Mine

Permit No.: C-1981-010

Operator/Permittee: Trapper Mining, Inc.

Type of Violation:

<u> </u>	Administrative
<u>X</u>	Performance Standard
<u>X</u>	Permit Condition

II. Mandatory Penalties

NA Cessation Order

NA Failure to Abate - \$750 to \$5,000/day x days

NA Mining without a Permit

III. Penalty Calculation Criteria - Rule 5.04.6

Source of Information or Assessment: Operator/Permittee X Division

Category

Comments

A. History

NA NOVs past 12 months x \$50 =

NA COs past 12 months x \$250 = CO-2023-001 is subject to administrative appeal

B. Seriousness

Severe	\$1,500	\$1,750	
Significant	\$1,000	\$1,250	
Low/Moderate	\$250	\$500	\$750
Insignificant	\$0		
Administrative	<u> </u>		

C. Fault

Intentional	\$1,000	\$1,250	\$1,500
Negligence	\$250	\$500	\$750
Unavoidable	\$0		

D. Number of Days Penalty Assessed 1

E. Good Faith (May not exceed \$1,250) \$250

Credit - Extraordinary Effort	<u>\$0</u>
Credit - Rapid Compliance	<u>\$250</u>

Total \$2,000.00



Assessment Officer

Date: July 19, 2023

Amy Eschberger
C-NV-02

**Proposed Civil Penalty Assessment
Trapper Mining, Inc. / Trapper Mine
Violation No. CV-2023-001 (Issued June 21, 2023)
Date of Proposed Assessment: July 19, 2023**

Materials reviewed: DRMS Cessation Order CO-2023-001 issued on June 13, 2023, DRMS Notice of Violation CV-2023-001 issued on June 21, 2023, DRMS inspection report issued on June 21, 2023, and Map M10B from Permit Revision No. 11 issued on May 27, 2023. Trapper Mining, Inc. (TMI) did not submit written information about the violation for DRMS consideration within 15 days of service of CV-2023-001 (by July 6, 2023), as allowed by Rule 5.04.3(1). DRMS Senior Environmental Protection Specialist Jared Ebert requested a Proposed Civil Penalty Assessment on June 22, 2023.

Rule 5.04.5(3)(a) – History of Previous Violations

No notice of violations have been issued within one year of the issuance date for CV-2023-001. A cessation order (CO-2023-001) was served to TMI on June 13, 2023. However, the time within which TMI can request administrative and/or judicial appeal of the CO has not yet expired. Therefore, no penalty will be assessed for this provision.

Penalty assessed: \$0

Rule 5.04.5(3)(b) – Seriousness

Up to \$1,750 of the penalty assessment shall be based on the seriousness of the violation. The amount to be assessed for seriousness depends on whether the violation was one of performance requirements or of administrative requirements. CV-2023-001 was written for a violation of performance requirements (and permit conditions).

In the case of a violation of performance requirements, the amount to be assessed for seriousness is based on two factors: (1) the probability of the occurrence of the event which a violated standard is designed to prevent, and (2) the duration and extent of the potential or actual damage in terms of area and impact on the public environment.

With respect to the first factor, the event that standards are designed to prevent did in fact occur, as approximately 18 acres of disturbance occurred outside of the approved 2023 topsoil strip/reclaim limit of J Pit West, per Map M10B approved with Permit Revision No. 11 (PR-11). This disturbance included topsoil stripping and active drilling in preparation of mining the area, as DRMS observed during its June 12, 2023 site inspection. Therefore, the probability of the occurrence of the event was very low since the impacts were entirely avoidable if TMI had received approval of a technical revision prior to commencing with the unapproved activities. However, TMI had submitted a technical revision (TR-134) to expand the disturbance area for J Pit West, and this revision was under review at the time that CO-2023-001 was issued. DRMS proposed its decision to approve TR-134 on July 14, 2023. Provided there are no objections, this decision will become effective upon the termination of the ten day public comment period. This means the final approval of TR-134 will likely occur prior to the abatement due date set for the violation (August 11, 2023).

With respect to the second factor, the full duration of the damage is unknown. However, the damage may have occurred at

least as early as June 7, 2023, the date DRMS received an anonymous complaint regarding the unapproved disturbance. While the unapproved activities ceased on June 13, 2023, as verified by DRMS upon the issuance of CO-2023-001, the actual damage (unapproved disturbed land) is ongoing until a technical revision is approved to incorporate these lands into the permit. As noted above, DRMS proposed its decision to approve TR-134 on July 14, 2023, and this revision covers the unapproved disturbed land. While the extent of the damage in terms of area is approximately 18 acres, the impacts on the public environment as a result of this disturbance are minimal.

Given the facts stated above, the overall seriousness of the violation is considered moderate.

Penalty assessed: \$750.00

Rule 5.04.5(3)(c) – Fault

The amount to be assessed for fault is based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the issuance of the notice or order, either through act or omission. A violation which would have been unavoidable despite the exercise of reasonable care shall result in no assessment for fault. A violation which occurred as the result of negligence shall result in an assessment for fault of at least \$250 but not more than \$750. A violation which occurred as the result of a greater degree of fault than negligence (reckless, knowing, or intentional conduct) shall result in an assessment for fault of at least \$750 but no more than \$1,500.

In this case, TMI had submitted a technical revision (TR-134) that would cover the unapproved disturbed land, which demonstrates TMI was aware the land was not already included in the approved disturbance area. Regardless, TMI made the decision to begin disturbing the unapproved area without first obtaining DRMS approval of TR-134. Therefore, this violation occurred as the result of intentional conduct.

Penalty assessed: \$1,500.00

Rule 5.04.5(3)(d) – Good faith in achieving compliance

One abatement step was required for CV-2023-001, to submit and receive approval of a technical revision to revise the mining and reclamation plans to cover the unapproved disturbed land. The abatement due date is set for August 11, 2023. As noted above, TMI had previously submitted a technical revision (TR-134) that would incorporate the unapproved disturbed land into the permit. DRMS proposed its decision to approve TR-134 on July 14, 2023, and will issue its final approval if no objections are received within the ten day public comment period. This means the abatement will likely be achieved well before the time fixed for abatement in CV-2023-001.

Given these good faith actions, DRMS will subtract a portion of the penalty.

Penalty Subtracted: \$250

Rule 5.04.6 - Number of Days

DRMS may assess a separate civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date fixed for abatement of a violation. In determining whether to make such an assessment, DRMS may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply.

CV-2023-001 was issued to TMI on June 21, 2023. The date for abatement of the violation was fixed at August 11, 2023. As noted above, DRMS proposed its decision to approve TR-134 on July 14, 2023 which, upon final approval, will satisfy the abatement for CV-2023-001.

While CV-2023-001 will not be officially abated until the final approval of TR-134 has been issued, TMI did halt the unapproved activities at the site within one day of DRMS's June 12, 2023 inspection. This was confirmed by DRMS during its June 13, 2023 site visit (to serve CO-2023-001).

Therefore, the number of days for this proposed assessment will be for one day.

The number of days is proposed at 1.

The total penalty assessed per day of violation is \$2,000.00.

The total proposed civil penalty assessment for this NOV is therefore set at \$2,000.00.