



## 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 VIOLATION

NOV No. **CV-2023-002**  
Permit No.: **C-1982-056**  
Type of Mine: **Underground**  
Operator (If  
Other than  
Permittee): **Twentymile Coal, LLC**  
Mail Address: **29515 Routt County Road No. 27**  
**Oak Creek, CO 80467**

Mine: **Foidel Creek Mine**  
County: **Routt**  
Permittee: **Twentymile Coal, LLC**  
Mail Address: **29515 Routt County Road**  
**No. 27**  
**Oak Creek, CO 80467**  
Date/Time of  
Inspection: **October 12, 2023**

Inspector: **Hunter Ridley**  
Person Served: **Miranda Kawcak**

Served by: **Hunter Ridley**

*Hunter Ridley*

*Miranda Kawcak*

(Signature of Person Served)

(Signature of Authorized Representative of the  
Division of Reclamation, Mining and Safety)

*Miranda Kawcak, Environmental Manager*

(Please Print Name and Title)

CERTIFIED MAIL NO.  
7014 2120 0001 7869 8299

Date and Time of Service:  
11/21/23 8:55 AM

The Division of Reclamation, Mining and Safety ("the Division") has conducted an inspection of the above mine and has made the findings stated in the attached schedule and has found violations of the Colorado Surface Coal Mining Reclamation Act, or violations of required permit conditions, listed in the attached schedule. This notice constitutes a separate notice of violation for each violation listed.

You must abate each of these violations within the designated abatement time. Where the remedial action requires submission of plans, the plans are to be submitted to the Division within the designated time. You are responsible for doing all work in a safe manner in compliance with all applicable laws and regulations.

The undersigned finds that cessation of mining is \_\_\_\_ is not \_\_\_\_ expressly, or in practical effect, required by this notice. For this purpose, "mining" means extracting coal from the earth or from a waste pile and transporting it within or from the mine site.

C.R.S. 1973, 34-33-123(8) provides for imposition of civil penalties of up to \$5,000 for each violation and provides that each day of continuing violation may be deemed a separate violation.

DRMS\_Logo

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***Important: Please read the reverse side of this page.***

**IMPORTANT: Please read carefully.**

1. Expiration Date of Notice - Informal Hearing at Site. If this notice requires cessation of mining, expressly or in practical effect (but not otherwise), it will expire automatically 30 days after service upon you, unless, within that time, (a) an informal hearing on the cessation has been held at or near the site, or (b) the operator has waived the holding of such a hearing. The hearing will be presided over by representatives of the Division other than the representative who issued the order. Temporary relief from the order may not be requested at such hearing. Your right to a formal review is not affected by any waiver on your part of an informal hearing.
2. Formal Review and Temporary Relief. The operator has the legal right to a review of this notice of violation in a public hearing before the Colorado Mined Land Reclamation Board. You may apply for review by submitting a request for review within 90 days of the issuance of this order. The request for review must be submitted to: Colorado Mined Land Reclamation Board, 1313 Sherman Street, Room 215, Denver, Colorado 80203.

If you request a formal hearing, you may request temporary relief from this notice of violation, pending hearing, but the filing of a request for review does not operate as a stay of any order or notice. Procedures in this regard are found in C.R.S. 1973, 34-33-124.

3. Penalties. If you fail to correct any of the violations described in this notice within the period permitted for its correcting, a minimum penalty of \$750.00 or more must be assessed for each day during which the violation(s) continues beyond the abatement period set forth in this notice.

If you willfully and knowingly fail or refuse to comply with a condition of a permit, you will be subject to criminal prosecution and will, upon conviction, be punished by a fine of not more than \$10,000.00 or by imprisonment for not more than one year, or both.

**In accordance with Section 5.04.3(1) of the Rules and Regulations of the Colorado Mined Land Reclamation Board for Coal Mining, within 15 days of service of a notice of violation or cessation order, you may submit written information about the violation to the Division. The Division shall consider any information so submitted in determining the facts surrounding the violation and the amount of civil penalty to be proposed under Section 5.04.3(2).**

4. Effect on Permit. In addition, if it is determined that a pattern of violations exists and that the violations were caused by unwarranted failure to comply, or were willful, your permit may be suspended or revoked.

## SCHEDULE TO NOTICE OF VIOLATION

Notice of Violation No.: **CV-2023-002**

### NATURE OF VIOLATION:

**Failure to follow the approved Permit Stipulation No. 67 within the required timeframe. Failure to provide a description of the cultural and historic resources affected by planned or probable subsidence over the life of the mine pursuant to Rule 2.04.4. Failure to conduct the stipulated surveys to ensure that accurate maps or plans clearly show all significant known archaeological sites pursuant to C.R.S 34-33-110(2)(n). Failure to conduct the stipulated surveys which ensure that mining activity will not adversely affect any place included in the national register of historic sites pursuant to C.R.S. 34-33-114(g)(III), Rule 2.07.6(2)(e)(i), and Rule 2.02.4(3)(c).**

### ACT, REGULATION, OR PERMIT PROVISION(S) VIOLATED:

ACT SECTION(S):               **34-33-110(2)(n)**  
   **34-33-114(2)(g)(III)**

REGULATIONSECTION(S):   **2.02.4(3)(c)**  
   **2.04.4**  
   **2.07.6(2)(e)(i)**

### PERMIT SECTION(S):

### PORTION OF THE OPERATION TO WHICH THIS NOTICE APPLIES:

During review of Permit Renewal No. 9 (RN-9), it was brought to the Division's attention that activities required under Permit Stipulation No. 67 had not been completed within the approved timeframe. Permit Stipulation No. 67 was put in place following the submission of Technical Revision No. 92 (TR-92) which proposed a 1,400 ft expansion of the 7 Right LW Panel 3 (7 East Panel) and a permit boundary modification which added 40 acres to the permit. The 7 East Panel is located in the northeastern corner of the permit boundary. In response to TR-92, the Office of Archaeology and Historic Preservation suggested that yet unidentified cultural resources may exist within the newly proposed permit area which had the potential to be impacted by subsidence. Through the revision process, Twentymile Coal, LLC. committed to conducting a cultural survey of the newly proposed permit boundary prior to mining. This commitment was formalized as Permit Stipulation No. 67 and TR-92 was approved with this condition on February 8, 2019.

Permit Stipulation No. 67 states, "Operator must complete the supplemental cultural resource survey for the expansion of panel 7 Right LW Panel 3 (7 East Panel) to satisfy the concerns/obligations of the Office of Archaeology and Historic Preservation prior to longwall mining in the affected area. The survey must be submitted to the Division in the form of a Minor Revision (MR) to be incorporated into the PAP prior to beginning longwall mining". As of the date of this notice of violation, the 7 East Panel expansion area has been mined through and no cultural survey has yet been completed for the above ground affected area.

The failure to comply with Permit Stipulation No. 67 constitutes a violation of C.R.S. 34-33-110(2)(n) and C.R.S. 34-33-114(g)(III) and Rule 2.02.4(3)(c), Rule 2.04.4 and Rule 2.07.6(2)(e)(i). Abatement of this violation will not occur until the stipulated cultural survey has been conducted in the required areas to ensure identification of

potential cultural resources as previously requested by the Office of Archeology and Historic Preservation.

STEPS NECESSARY TO ABATE VIOLATION (REMEDIAL ACTION):

Abatement Step #	Description
1	The Operator must complete a supplemental cultural resource survey for the expansion area of panel 7 Right LW Panel 3 (7. East Panel) to satisfy the concerns/obligations of the Office of Archaeology and Historic Preservation. The survey must be submitted to the Division in the form of a Minor Revision (MR) to be incorporated into the PAP.

TIME FOR ABATEMENT (NOT MORE THAN 90 DAYS):

ON OR BEFORE last abatement due date

Abatement Step #	Due Date
1	December 21, 2023



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### NOTICE OF PROPOSED AMOUNT OF CIVIL PENALTY REQUEST FOR CONFERENCE

NOV/CO NO.: CV-2023-002

MINE:	<b>Foidel Creek Mine</b>	DATE ISSUED:	<b>November 21, 2023</b>
PERMIT NO.:	<b>C-1982-056</b>	TYPE OF MINE:	<b>Underground/Federal</b>
OPERATOR/PERMITTEE:	<b>Twentymile Coal, LLC</b>	COUNTY:	<b>Routt</b>
ATTENTION:	<b>Miranda Kawcak</b>	ADDRESS:	<b>29515 Routt County Road No. 27 Oak Creek, CO 80467</b>

#### 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 \$3,000.00.

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 \$3,000.00, based upon the factors referred to in C.R.S. 34-33-123(8)(a).

DIVISION OF RECLAMATION, MINING AND SAFETY

December 13, 2023

By: 

Date:

Name:

Title: Assessment Officer

**DIVISION OF RECLAMATION, MINING AND SAFETY**

**CERTIFICATE OF SERVICE**

Permit No. C-1982-056  
NOV No. CV-2023-002

I hereby certify that I served a copy of the foregoing NOTICE OF PROPOSED CIVIL PENALTY on Twentymile Coal, LLC by depositing a true copy thereof, first class postage prepaid, in the United States mail, to the operator at the address above, on December 13, 2023.

Certified Mail No.: 7018 2290 0001 8923 0208

Return Receipt Requested

Miranda Kawcak

Signature of Person

Served

Jared Ebert

Signature

Signature

if Personal Service

Miranda Kawcak Environmental Manager

Name and Title

Name: Jared Ebert

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).

Twentymile Coal, LLC

Operator

By

\_\_\_\_\_  
(Signature)

Date

\_\_\_\_\_



# COLORADO DIVISION OF RECLAMATION, MINING AND SAFETY

## Civil Penalty Worksheet

### I. Identification

NOV/CO No.: CV-2023-002

Date Issued: November 21, 2023

Mine: Foidel Creek Mine

Permit No.: C-1982-056

Operator/Permittee: Twentymile Coal, LLC

Type of Violation:

<input type="checkbox"/>	Administrative
<input checked="" type="checkbox"/>	Performance Standard
<input checked="" type="checkbox"/>	Permit Condition

### II. Mandatory Penalties

NA - \$0 Cessation Order

NA - \$0 Failure to Abate - \$750 to \$5,000/day x \_\_\_\_\_ days

NA - \$0 Mining without a Permit

### III. Penalty Calculation Criteria - Rule 5.04.6

Source of Information or Assessment: ☒ Operator/Permittee ☒ Division

*Category*

*Comments*

#### A. History

0	NOVs past 12 months x \$50 =	\$0
0	COs past 12 months x \$250 =	\$0

#### B. Seriousness

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

#### C. Fault

Intentional	\$1,000	\$1,250	<u>\$1,500</u>
Negligence	\$250	\$500	<u>\$750</u>
Unavoidable	\$0		

D. Number of Days Penalty Assessed 30

E. Good Faith (May not exceed \$1,250) \$900

Credit - Extraordinary Effort \_\_\_\_\_

Credit - Rapid Compliance \$900

Total \$3,000.00



Assessment Officer

Date: December 13, 2023

Jared Ebert  
C-NV-02



**Proposed Civil Penalty Assessment  
Twentymile Coal, LLC. / Foidel Creek Mine  
Violation No. CV-2023-001 (Issued November 21, 2023)  
Date of Proposed Assessment: December 13, 2023**

Material reviewed: Colorado Division of Reclamation Mining and Safety's ("DRMS" or "Division") CV-2023-002 Notice of Violation ("NOV") document, Twentymile Coal, LLC.'s ("TC") response to NOV CV-2023-002 received on December 5, 2023, DRMS file for Technical Revision No. 92 (TR92), and the Permit Application Package ("PAP") maps for the Foidel Creek Mine (Permit No. C-1982-056) approved on 2/8/2019 titled "WC 23, Wolf Creek Mine Plan Modification" and "Map #23B Wolf Creek Mine Plan".

**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-2023-002. Therefore no penalty will be assessed for this provision.

**Penalty assessed: \$0**

**Rule 5.04.5(3)(b) – Seriousness**

Rule 2.04.4 requires an applicant to provide a description of the cultural and historic resources listed or eligible to be listed on the National Register of Historic Places and significant known archaeological sites existing on the date of application within all areas proposed or likely to be affected by surface activities or planned or probable subsidence over the life of the mine. TC did not provide the required information at the time of application when TR92 was submitted. DRMS approved TR92 with the stipulation (ST67) that TC would complete a supplemental cultural resource survey for the expansion of panel 7 Right LW Panel 3 (7 East Panel) to satisfy the concerns/obligations of the Office of Archaeology and Historic Preservation prior to longwall mining in the affected area. Further, the survey was to be submitted to the Division in the form of a Minor Revision to be incorporated into the PAP prior to longwall mining in the area in question. Also, Rule 2.05.6(4) requires that any place listed on the National Register of Historic Places that may be adversely affected by the proposed operation be protected by implementing a plan to minimize or prevent those impacts. Rule 2.05.6(4) allows the Division to require an applicant to protect historical or archeological sites listed or those places eligible to be listed, as determined by the State Historic Preservation Officer ("SHPO"), on the National Register of Historic Places through appropriate mitigation and treatment measures. These rules and standards were designed so cultural and historic resources would first be identified and evaluated, and should any be found, appropriate protection and/or mitigation measures could be planned prior to affecting the area in question. TC had two opportunities to comply with these requirements, one at the time TR92 was submitted, and second prior to affecting the area in question by complying with ST67. In TC's December 5, 2023 NOV response letter, they explain the area in question in the 7E Panel was primarily affected by subsurface room and pillar mining methods and only a small portion of this area was longwall mined resulting in a .6 foot to 3.2 foot deviation in ground surface. Previous archeological studies cited in the Foidel Creek Mine PAP page 2.04-9.3 found that limited projected changes in ground elevation from subsidence at the site would likely have negligible impact on buried cultural materials. However, without knowing if any surface or subsurface cultural and/or archaeological resources are located within the affected area, one can only speculate what impact subsidence would have on these resources and/or if any mitigation measures would have been appropriate.

Given the small area in question with the NOV and the limited amount of subsidence TC reported, likely resulting in minimal surface impacts, the Division finds the seriousness of the violation to be low.

**Penalty assessed: \$250.00**

**Rule 5.04.5(3)(c) – Fault**

This violation was a result of negligence. TC should have conducted a cultural and historic resource survey prior to the submittal of TR92. On February 15, 2019 the Division received the signed TR92 Decision Form where the authorized representative of TC signed and acknowledged ST67. Further, TC failed to comply with the stipulated approval of TR92 prior to affecting the area in question.

**Penalty assessed: \$750.00**

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

One abatement step is required to be completed by December 21, 2023 for CV-2023-002. TC was required to complete a supplemental cultural resource survey for the expansion area of panel 7 Right LW Panel 3 (7 East Panel) to satisfy the concerns/obligations of the Office of Archaeology and Historic Preservation. The survey must be submitted to the

Division in the form of a Minor Revision (MR) to be incorporated into the PAP. According to TC's December 5, 2023 NOV response letter, a cultural resource survey was completed on November 16<sup>th</sup>, 2023 and they are waiting for the final report. TC recognized they had failed to comply with ST67 during the Permit Renewal No. 8 (RN8) approval process and brought this issue to the Division's attention. Further, after TC made the Division aware of the issue they caused a cultural resource survey to be completed prior to the Division issuing CV-2023-002. While TC has not abated the violation at the time of this assessment, they appear to be moving quickly towards compliance. Given TC's honest self-reporting of the violation and their rapid move toward compliance, a reduction in penalty is appropriate.

**Penalty Subtracted: \$900**

**Rule 5.04.6 - Number of Days**

The Division 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, the Division 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. Notice of Violation CV-2023-002 was served to TC on November 21, 2023. The date for abatement of the violation cited in the NOV was fixed at December 21, 2023. Therefore, the number of days for this proposed assessment will be for the period from the NOV service date to the required abatement date, a total of 30 days.

**The number of days is proposed at 30.**

**Total penalty assessed per day of violation: \$100.00**

**The total proposed civil penalty assessment for this NOV is therefore set at \$3,000.00**

