

STATE OF  
COLORADO

Reilley - DNR, Robin &lt;robin.reilley@state.co.us&gt;

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## Deer Trail Consent Agenda

1 message

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**Reilley - DNR, Robin** <robin.reilley@state.co.us>

Wed, Feb 28, 2024 at 9:43 AM

To: Jerry Carson &lt;jerry@grc-consulting.net&gt;, Robin Reilley - DNR &lt;robin.reilley@state.co.us&gt;

Good Morning Jerry,

I have been given the go ahead to offer you the option of consent to the violation. Please read carefully and follow the instructions in the letter. This will vacate the need for a hearing before the board.

You will also receive the documents via certified mail.

Should you have any questions, I'm available to assist you.

Thank you

Robin Reilley, M.S. GISP  
Environmental Protection Specialist II



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

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Physical Address: 1313 Sherman Street St., Suite 215, Denver, CO 80203

Mailing Address: DRMS Room 215, 1001 E 62nd Ave, Denver, CO 80216

[robin.reilley@state.co.us](mailto:robin.reilley@state.co.us) | <http://mining.state.co.us>

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### 2 attachments



**Deer Trail Consent Agreement March\_2024 MLRB.pdf**  
278K



**DeerTrail\_Pit Consent Cover Letter March\_2024 MLRB.pdf**  
234K



**STAFF SUMMARY FORM FOR CONSENT AGENDA ITEMS**

<b>Date</b>	February 27, 2024	<b>Operator</b>	5A Aggregate LLC
<b>File No.</b>	M-1988-090	<b>Site Name</b>	Deer Trail Pit
<b>Specialist</b>	Robin Reilley	<b>Objecting Party</b>	N/A
<b>County</b>	Lincoln	<b>Permit Type</b>	112c

**Action:**

Possible violation of:

- C.R.S. 34-32.5-124 for failure to comply with conditions of an order, permit, or regulation.

And,

- Rule 3.1.9(1) and C.R.S. 34-32.5-116(4)(g) for failure to remove topsoil and segregate it from other spoil for future reclamation use.

**Resolution:**

- 5A Aggregates LLC (“5A” or “Operator”) concedes a violation of C.R.S. 34-32.5-124 for failure to comply with conditions of an order, permit, or regulation; and Rule 3.1.9(1) and C.R.S. 34-32.5-116(4)(g) for failure to remove topsoil and segregate it from other spoil for future reclamation use at the Deer Trail Pit site, File No. M-1988-090.

**Chronology:**

- December 6, 2023: DRMS conducted a routine monitoring inspection of the operation and found the Operator had not salvaged and stockpiled topsoil in accordance with the approved plan, and that contemporaneous reclamation was not occurring as per the mining and reclamation plan.
- January 18, 2024: DRMS sent the Operator an updated reclamation cost estimate.
- January 22, 2024: DRMS sent the Operator a Reason to Believe a Violation Exists and Notice of Board Hearing letter (RTB).

**Reason for Violation:**

The approved mining plan for the site indicates the Operator shall actively mine five acres, will actively replace overburden and construct the final slopes and spread topsoil on five acres and will be revegetating five acres concurrently. The Division Staff found the Permittee has affected about twenty two acres of land and was not conducting concurrent reclamation in the five acre stages as required. Also, the approved reclamation plan requires that topsoil be salvaged and stored for reclamation. No topsoil piles were observed at the time of December 6, 2023 inspection.

Grants, Condition and Agreement No. 1 of permit M-1988-090 requires the Operator to comply with the requirements of the Act and all applicable rules and regulations of the Mined Land Reclamation Board



(“Board”), the terms of the permit application, the terms of the performance warranty, and the terms of the financial warranty. Rule 3.1.9(1) and C.R.S. 34-32.5-116(4)(g) requires topsoil to be removed and segregated from other spoil and saved for reclamation use. Therefore, 5A has violated a condition of permit M-1988-090 by not following the approved mining and reclamation plan.

### **STAFF RECOMMENDATION**

#### **Board Actions:**

Find a violation of:

- C.R.S. 34-32.5-124 for failure to comply with conditions of an order, permit, or regulation.

And,

- Rule 3.1.9(1) and C.R.S. 34-32.5-116(4)(g) for failure to remove topsoil and segregate it from other spoil for future reclamation use.

#### **Issue a Cease and Desist Order:**

- Issue a Cease and Desist Order pursuant to C.R.S. 34-32.5-124(2), prohibiting any further activities within the permit boundary, except those activities approved by the Division, in writing, as necessary to comply with the conditions of a Board Order, prevent damage to off-site areas, complete reclamation, or to protect public health and safety, until the corrective actions have been resolved to the satisfaction of the Division.

#### **Corrective Action(s):**

- The Operator must submit a Technical Revision or an Amendment application to update the approved mining and reclamation plans and maps to account for the current site conditions and the lack of salvaged topsoil to conduct adequate reclamation. The Operator shall submit the revision within 90 days of the effective date of the Board's order, with all materials in an approvable form within statutory deadlines.

#### **Civil Penalty:**

Pursuant to C.R.S. § 34-32.5-124(7), a person who violates any provision of a permit issued under this article shall be subject to a civil penalty of not less than one hundred dollars per day nor more than one thousand dollars per day for each day during which such violation occurs. In this matter, the Board may assess a civil penalty of \$5,800 to \$58,000 for 58 days of violation. The 58 days of violation were calculated from the date of the Reason To Believe and Notice of MLRB Hearing (RTB) letter dated January 22, 2024 to the Board meeting scheduled for March 20-21, 2024.

- In this matter, the Board may assess a civil penalty of **\$5,800** based on 58 days of violation at \$100 per day. The Board will suspend a portion of the assessed civil penalty with the exception of **\$500**, if the corrective actions cited above are completed to the satisfaction of the Division within the required deadlines.
- The unsuspended portion of the civil penalty, **\$500**, is due within 30 days of the effective date of the Board's Order finding the violation which will be sent under a separate cover. Failure of the

Operator to comply by the Board Order due date shall result in the suspended portions of the civil penalty, **\$5,800** becoming effective and due.

**Operator's Notarized Signature:**

As an authorized representative of the Applicant, I hereby attest that the Operator concedes to the above described violation and agrees to comply with the Corrective Action and Civil Penalty proposed in this STAFF SUMMARY FORM FOR CONSENT AGENDA ITEMS.

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
(Applicant)

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024,

by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**SIGNATURES MUST BE IN BLUE INK**



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

February 27, 2024

Jerry Carson  
GRC Consulting, Inc.  
PO Box 777  
Frederick, CO 80530

**Re: Lincoln County, Der Trail Pit, Permit M-1988-090, Consent Agenda Summary Form**

Dear Mr. Carson,

A possible violation hearing is scheduled for consideration by the Mined Land Reclamation Board (Board). As indicated in the Division's correspondence dated January 22, 2024, Re: Reason to Believe a Violation Exists and Notice of Enforcement Hearing, the formal Board hearing is scheduled to occur during the March 20-21, 2024 meeting.

Please find enclosed the Staff Summary Form for Consent Agenda Items (consent form) for the possible violation at the site. If you concede to the violation, corrective actions and civil penalties, please affix your notarized signature on the enclosed consent form and return the signed form, with original signatures, to the Division no later than March 14, 2024. Upon receipt of the signed and notarized consent form the item will be moved from the Board's agenda for enforcement hearings to consent items and there will not be a formal Board hearing regarding the possible violation.

However, if you wish to contest the possible violation or any of the conditions of the enclosed consent form, please inform the Division at your earliest convenience and do not sign the consent form. In the absence of a signed and notarized consent form, the formal Board hearing will proceed as scheduled for March 20-21, 2024.

If you have any questions, please contact me at [robin.reilley@state.co.us](mailto:robin.reilley@state.co.us) or (303)866.3567 ext. 8105.

Sincerely,

Robin Reilley M.S. GISP  
Environmental Protection Specialist II

*Enclosure - Staff Summary Form for the Consent Agenda Items*

Ec: Jared Ebert; Division of Reclamation, Mining & Safety  
Russ Means; Division of Reclamation, Mining & Safety  
Scott Schultz; Attorney General's Office

