

STATE OF
COLORADO

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

Updated Consent Agreement

1 message

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

Mon, Mar 11, 2024 at 2:14 PM

To: Jerry Carson <jerry@grc-consulting.net>, Aaron Acker <aacker@galvanize.law>

Cc: Robin Reilley - DNR <robin.reilley@state.co.us>

Gentlemen,

Please see the updated documents. If you have any questions I'm available to assist you. Otherwise, please sign and return at your earliest convenience. The Board meets on Wednesday 20 March.

Thank you

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



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

P [303.866.3567](tel:303.866.3567) ext 8105 |F [303.832.8106](tel:303.832.8106)

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 | <http://mining.state.co.us>

2 attachments



DeerTrail_Pit Consent Cover Letter March_2024F.pdf
237K



Deer Trail Consent Agreement March_2024 MLRBF.pdf
280K



STAFF SUMMARY FORM FOR CONSENT AGENDA ITEMS

Date	March 11, 2024	Operator	5A Aggregate LLC
File No.	M-1988-090	Site Name	Deer Trail Pit
Specialist	Robin Reilley	Objecting Party	N/A
County	Arapahoe	Permit Type	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.
- Mr. Gerald Carson Jr. asserts that the alleged violations occurred prior to the transfer of ownership of 5A to (himself), Mr. Gerald Carson, Jr.
- Mr. Carson met with DRMS Staff and demonstrated a desire to remediate the issues and cooperate with the Division in bringing the mining operation into compliance with the requirements of the permit and law.

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 2, 2024, according to Mr. Gerald Carson Jr. the entirety of the membership interest of 5A was sold by unrelated third parties to Mr. Carson, Jr. and the alleged violations pre-date Mr. Carson's ownership of 5A.
- 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).
- February 22, 2024: Operator met with DRMS staff to discuss the alleged violations and requirements to bring the mining site into compliance with the permit requirements.
- March 7, 2024: Mr. Carson submitted a surety bond in the amount of \$294,815 as requested by the Division. DRMS Staff is working with the Mr. Carson on finalizing the required surety paperwork.



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

March 11, 2024

5A Aggregate
Attn: Jerry Carson
PO Box 777
Frederick, CO 80530

Re: Deer Trail Pit, Permit M-1988-090, Revised 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. The Division received a request from your counsel Aaron Acker regarding requested changes to the Consent Agreement.

Please find enclosed a revised Staff Summary Form for Consent Agenda Items (Consent Agreement) for the possible violation at the site. If you concede to the violation, corrective actions, the Cease and Desist Order and civil penalties, please affix your notarized signature on the enclosed Consent Agreement 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 Agreement 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 Agreement, please inform the Division at your earliest convenience and do not sign the form. In the absence of a signed and notarized Consent Agreement, the formal Board hearing will proceed as scheduled for March 20-21, 2024.

Mr. Acker also requested information on what activities will be permitted once the Cease and Desist order has been issued. As the consent agreement states, 5A would be able to complete reclamation and activities that protect public health and safety while under the Cease and Desist order. No additional mining or excavation may occur until the corrective action identified in the agreement has been complied with to the Division's satisfaction. 5A must request in writing and obtain approval from the Division to conduct other activities at the site until the Cease and Desist order has been lifted.

If you have any questions, please contact me at 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