



STATE OF
COLORADO

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

Deer Trail Violation M1988 090

1 message

Reilley - DNR, Robin <robin.reilley@state.co.us>
To: Charles Kooyman <charles.kooyman@coag.gov>
Cc: Robin Reilley - DNR <robin.reilley@state.co.us>

Wed, Mar 20, 2024 at 11:17 AM

Good Morning Mr. Kooyman,

Please find the consent form and the Infraction number for the Deer Trail (M1988 090) permit violation that was on the Board consent agenda for 20 March 2024. Infraction number: MV 2024 006.

Please let me know if any questions come up, I'm available to answer them.

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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Deer Trail Consent Agreement March_2024 MLRB.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 11th day of March, 2024.

Gerald Carson
(Applicant)

Signature: [Signature]

Title: VP President

State of Colorado

County of Weld

The foregoing instrument was acknowledged before me this 11th day of March, 2024,

by Jerry Carson as VP of 5A Aggregate.

Jacelyn Marie Lorman
Notary Public

My Commission Expires: 4/20/2025

SIGNATURES MUST BE IN BLUE INK

