



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

June 3, 2024

Joseph Welte
Summit Brick & Tile Co.
P.O. Box 533
Pueblo, CO 81002

**RE: Outstanding Civil Penalty Due; MV-2023-011
Edmundson Clay Mine, Permit No. M-1985-203**

Dear Mr. Welte,

On August 16, 2023, the Mined Land Reclamation Board (Board) found Summit Brick & Tile Co. in violation (MV-2023-011) for disturbing 2.95 acres of land beyond the approved permit boundary. The Board Order is enclosed for your review.

The Board assessed a total civil penalty of \$30,000. All but \$783.20 of the civil penalty was suspended if the Operator complies with the corrective action. The unsuspended portion of the civil penalty is still outstanding. The Board's Order became effective on September 1, 2023.

You must pay the \$783.20 unsuspended penalty by **July 3, 2024**, 30 days from the date of this letter. Failure to timely submit any due and unpaid civil penalties shall result in immediate submittal of such penalties to collections.

Sincerely,

Jocelyn Carter
Environmental Protection Specialist

Ec: Amy Eschberger, DRMS
Julie Welte, Summit Brick & Tile Co.

Enclosures: Board Order, MV-2023-011



STATE OF
COLORADO

DRMSMinAdmin - DNR, DNR_ <dnr_drmsminadmin@state.co.us>

MV-2023-011, M-1985-203 Summit Brick and Tile Co

1 message

Mojar - DNR, Camille <camille.mojar@state.co.us>

Tue, Sep 5, 2023 at 10:20 AM

To: Amber Michels - DNR <amber.michels@state.co.us>

Cc: Jared Ebert - DNR <jared.ebert@state.co.us>, Jeff Fugate <jeff.fugate@coag.gov>, Scott Schultz <Scott.Schultz@coag.gov>, Charles Kooyman <Charles.Kooyman@coag.gov>, julie.welte@summitbrick.com, Steve <environment-inc@outdrs.net>, "DRMSMinAdmin - DNR, DNR_" <dnr_drmsminadmin@state.co.us>

Hi Amber,

Attached is the Board order that will go out today, via certified mail.

Please let me know if you have any questions or concerns.

Thanks,
C

--

Camille Mojar
Executive Assistant/MLRB Administrator
Division of Reclamation, Mining and Safety
Department of Natl Resources**COLORADO**
Division of Reclamation,
Mining and Safety
Department of Natural Resources**P 303.866.3567 x 8136 | F 303.832.8106****1313 Sherman Street, Room 215, Denver, CO 80203****Mailing Address: DRMS Room 215, 1001 E 62nd Ave Denver, CO 80216****<https://drms.colorado.gov/>**

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MV-2023-011, M-1985-203 Summit Brick and Tile Co.pdf

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COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

September 5, 2023

Joseph Welte
Summit Brick & Tile Co.
PO Box 533
Pueblo, Colorado 81002

Re: Findings of Fact, Conclusions of Law, and Order, Summit Brick & Tile Co.
File No. M-1985-203, MV-2023-011

On September 1, 2023, the Mined Land Reclamation Board signed the enclosed Board Order for the above captioned operation. Because this document is the final order of the Board, it is legally binding on and affects the above-captioned operation, and we strongly advise that you read this document carefully.

Sincerely,


Camille Mojar
Board Administrator

Enclosure(s)

Certified Mail

7018 2290 0001 8923 3551

cc:
Amber Michels
Jared Ebert
Jeff Fugate
Scott Schultz
Charles Kooyman
Julie Welte
Steve O'Brian



BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

Notice of Violation No. MV-2023-011

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

IN THE MATTER OF A POSSIBLE VIOLATION BY SUMMIT BRICK & TILE CO., CORRECTIVE ACTIONS, CEASE AND DESIST ORDER, AND CIVIL PENALTIES FOR FAILING TO OBTAIN A RECLAMATION PERMIT PRIOR TO ENGAGING IN A NEW MINING OPERATION, File No. M-1985-203

THIS MATTER came before the Mined Land Reclamation Board ("Board") on August 16, 2023, via videoconference, to consider a possible violation by Summit Brick & Tile Co. ("Operator"), cease and desist order, corrective action, and civil penalties for failing to obtain a reclamation permit before engaging in a new mining operation, file number M-1985-203. Amber Michels and Jared Ebert appeared on behalf of the Division of Reclamation, Mining and Safety ("Division"). Julie Welte and Steve O'Brian appeared on behalf of Operator.

The Board, having considered the presentations, testimony, materials submitted, and being otherwise fully informed of the facts in the matter, enters the following:

FINDINGS OF FACT

1. Operator holds a 110(c) reclamation permit for a 9.80-acre clay mining operation located in Section 1, Township 25 South, Range 65 West, 6th Principal Meridian, Huerfano County. The site is known as the Edmundson Clay Mine.

2. On March 16, 2023, the Division conducted a routine monitoring inspection of the site. The inspection report, signed June 22, 2023, observed that approximately 3.42 acres had been disturbed beyond the permit boundaries. The permit history contained discrepancies of where the permit boundary is located and where mining and reclamation activities have been conducted.

3. On July 17, 2023, the Division sent the Operator a Reason to Believe a Violation Exists letter. The Division's letter provided notice regarding the alleged violations and informed Operator that the matter had been set for a hearing at the Board's August 16-17, 2023 meeting.

4. At the August 16, 2023 hearing, the Division presented testimony regarding the site. The original map approved under the permit has not been amended or revised since the permit was approved, but the boundary markers at

the site do not match the approved boundaries and there are mining disturbances beyond the boundary markers to the north and south. Mining had started north of the marked boundary line and went beyond the southern end of the marked boundary. The Division presented testimony that the size of the disturbance beyond the actual boundaries, 2.95 acres, was substantial enough to be considered mining without a permit. The Division made several recommendations regarding this matter, including that the Board find a violation, impose corrective actions, and assess civil penalties as provided or required by statute.

5. At the hearing, Operator offered testimony agreeing that mining had occurred beyond the permit boundary. Operator indicated its willingness to comply with the Division's suggested corrective action of submitting a permit amendment or conversion application to include the disturbed land beyond the permit boundary. Operator also presented testimony that the site is in final reclamation and that any amendment or conversion application would simply need to be for reclamation.

CONCLUSIONS OF LAW

6. The Board has jurisdiction over this matter pursuant to the Colorado Mined Land Reclamation Act, Article 32.5 of Title 34, C.R.S. (2022) ("Act").

7. Section 34-32.5-109(1), C.R.S provides that "before engaging in a new operation, an operator shall first obtain from the board or office a reclamation permit." By disturbing 2.95 acres of land beyond the approved permit boundary, the Operator engaged in a new operation without first obtaining a permit, in violation of section 34-32.5-109(1), C.R.S.

8. Pursuant to section 34-32.5-123(1), C.R.S., the Board may issue a cease and desist order when it finds that an operator has failed to obtain a valid permit.

9. The Board may impose a civil penalty of not less than \$1,000 per day or more than \$5,000 per day for each day during which a violation occurs. § 34-32.5-123(2), C.R.S. (2022). Here, the Board may impose a penalty based on 30 days of violation at \$1,000 to \$5,000 per day for a civil penalty of \$30,000 to \$150,000.

10. The Board shall also impose a civil penalty in an amount not less than the costs incurred by the Division in investigating the violation. § 34-32.5-123(4), C.R.S. (2022).

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board finds the Operator in violation of section 34-32.5-109(1), C.R.S., for engaging in a new mining operation without first obtaining a reclamation permit.

The Operator shall CEASE AND DESIST any further mining activities beyond the permit boundaries 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, or to protect public health and safety, until the corrective action has been resolved to the satisfaction of the Division.

The Board imposes the following CORRECTIVE ACTION: The Operator shall, within 90 days of the effective date of this Order, submit either a conversion or amendment application to encompass all of the affected land at the site and obtain approval within statutory deadlines.

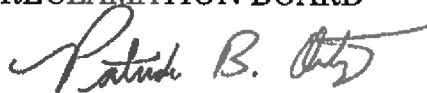
The Board imposes a CIVIL PENALTY of \$30,000. The Board also assesses a civil penalty to cover costs incurred by the Division in investigating the alleged violation at a rate of \$56.64 per hour for 5 hours, for a penalty of \$283.20.

The Board will suspend all but \$783.20 of the assessed civil penalties if the corrective actions cited above are completed to the satisfaction of the Division within the required deadlines.

If the Operator does not comply with the corrective actions set forth in this Order, then the suspended civil penalties, \$29,500, shall be due and payable.

DONE AND ORDERED this 1st day of September 2023.

FOR THE COLORADO MINED LAND
RECLAMATION BOARD



Patrick Ortiz, Chair

NOTICE OF JUDICIAL REVIEW RIGHTS

This order becomes effective and final upon mailing. Any party adversely affected or aggrieved by agency action may commence an action for judicial review by filing a complaint with the district court within 35 days after the effective date of this order, pursuant to section 24-4-106, C.R.S. and the Colorado Rules of Civil Procedure. If a complaint for judicial review is filed, designations of record made in accordance with section 24-4-106(6), C.R.S. should be served on the Board at: 1313 Sherman Street, Room 215, Denver, CO 80203, Attention: Camie Mojar.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 5th day of September 2023 as follows:

By certified mail to:
7018 2290 0001 8923 3551

Joseph Welte
Summit Brick & Tile Co.
PO Box 533
Pueblo, Colorado 81002

By electronic mail:

Julie Welte
julie.welte@summitbrick.com

Steve O'Brian
environment-inc@outdrs.net

By electronic mail to:

Amber Michels
Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, Colorado 80203

Jared Ebert
Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, CO 80203

Charles J. Kooyman
Senior Assistant Attorney General
Department of Law
Business and Licensing Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th floor
Denver, CO 80203

Jeff Fugate
First Assistant Attorney General
Department of Law
Natural Resources Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th floor
Denver, CO 80203

Scott Schultz
Senior Assistant Attorney General
Department of Law
Natural Resources Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th floor
Denver, CO 80203



Camille Mojar, Board Administrator

Summit Brick & Tile Co.
M-1985-203
MV-2023-011

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Joseph Welte
Summit Brick & Tile Co.
PO Box 533
Pueblo, Colorado 81002



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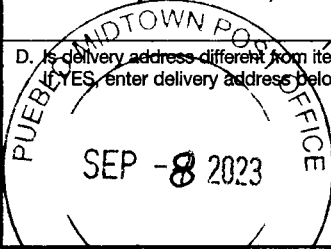
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Colorado Division of Reclamation,
Mining and Safety

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State of Colorado

Department of Natural Resources

Division of Reclamation, Mining & Safety

1313 Sherman Street, Suite 215

Denver, CO 80203

From: Camille Mojat

M-1985-203

42023-011

August MLRB 2023