

# STATE OF COLORADO

## DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215

Denver, Colorado 80203

Phone: (303) 866-3567

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John W. Hickenlooper  
Governor

Mike King  
Executive Director

Loretta E. Piñeda  
Director

May 1, 2012

McAtee Construction Co.  
220 Edwards Ave.  
Sterling, CO 80751

**Re: Findings of Fact, Conclusions of Law and Order, McAtee Construction Co.,  
File No. M-1995-030, MV-2012-015**

On May 1, 2012 the Mined Land Reclamation Board signed the enclosed Board Order for the above captioned operation. We strongly advise that you read this document carefully since it may contain provisions which must be satisfied by specific dates to avoid future Board actions.

Sincerely,

Sitira Pope  
Secretary to the Board

Enclosure(s)

CERTIFIED MAIL NO.  
7010 1060 0001 0936 8907

Cc's  
Michael Cunningham  
John Roberts

BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO

Notice of Violation No. MV-2012-015

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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IN THE MATTER OF A POSSIBLE VIOLATION BY MCATEE CONSTRUCTION CO., CEASE AND DESIST ORDER, CORRECTIVE ACTIONS, AND CIVIL PENALTIES FOR FAILING TO OBTAIN A RECLAMATION PERMIT PRIOR TO ENGAGING IN A NEW OPERATION, File No. M-1995-030

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THIS MATTER came before the Mined Land Reclamation Board ("Board") on April 11, 2012 in Denver, Colorado as a consent agenda item to consider a possible violation by McAtee Construction Co. ("Operator"), cease and desist order, corrective actions, and civil penalties for failing to obtain a reclamation permit before engaging in a new mining operation, file number M-1995-030.

The Board, having considered the materials presented with this consent agenda item and having been otherwise fully informed of the facts in the matter, enters the following:

FINDINGS OF FACT

1. The Operator holds a 110c permit for a 9.9-acre operation in the SE ¼ of Section 33, Township 4 North, Range 57 West of the 6th Principal Meridian, Morgan County, Colorado. The site, known as the Green Bros. Pit No. 2, is located approximately 1 mile north of Fort Morgan, Colorado.

2. On February 27, 2012, the Division of Reclamation, Mining and Safety ("Division") inspected the site. Ron Weingardt accompanied the Division on the inspection. During the inspection, the Division discovered that the Operator had located product stockpiles outside the permit boundary. The product stockpile area was found to be 3.51 acres in size.

3. On March 2, 2012, the Division sent a copy of the inspection report to the Operator notifying the Operator that it had failed to obtain a permit prior to engaging in a new operation, and that such violation would require a hearing before the Board on April 11, 2012.

4. On March 6, 2012, the Division sent the Operator a Reason to Believe a Violation Exists letter for failure to obtain from the Board or office a reclamation permit prior to engaging in a new operation as required pursuant to section 34-32.5-

109(1), C.R.S. The letter also notified the Operator that the matter was scheduled for hearing at the April 11, 2011 Board meeting.

5. The Division's letter provided notice regarding the alleged violations and information about the April 11, 2012 hearing.

6. On March 23, 2012, the Operator admitted the violation and agreed to the Division's recommendations.

### CONCLUSIONS OF LAW

7. The Board has jurisdiction over this matter pursuant to the Colorado Land Reclamation Act for the Extraction of Construction Materials, Article 32.5 of Title 34, C.R.S. (2011) ("Act").

8. Section 34-32.5-109(1), C.R.S. requires an operator to obtain a reclamation permit before engaging in a new mining operation. The Operator is conducting a mining operation prior to obtaining a valid reclamation permit in violation of section 34-32.5-109(1), C.R.S.

9. Section 34-32.5-123(2), C.R.S. provides for a civil penalty of not less than \$1,000 per day and not more than \$5,000 per day for each day during which the violation occurs. The Board may impose a penalty based on 45 days of violation (from the date of the February 27, 2012 inspection to the April 11, 2012 Board meeting).

10. Pursuant to section 34-32.5-124(2), C.R.S., the Board may issue a cease and desist order if it determines that the Operator violated any provision of the Act.

### ORDER

Based on the foregoing findings of fact and conclusions of law, the Board hereby finds the Operator in violation of section 34-32.5-109(1), C.R.S. for failing to obtain a reclamation permit before engaging in a new operation.

The Operator shall CEASE AND DESIST all activities outside of the approved permit boundary, except for Division-authorized reclamation and environmental maintenance activities, until all areas affected by the operation are included in a reclamation permit issued by the Division or the Board.

The Board imposes against the Operator the following CORRECTIVE ACTION: the Operator shall provide all materials necessary for a 112c conversion application to secure a reclamation permit for all areas affected by the mining

operation and shall submit such conversion application with all materials in an approvable form within ninety (90) days of the effective date of this Order.

The Board imposes a CIVIL PENALTY for 45 days of violation at \$1,000 per day for a civil penalty of \$45,000. All but five hundred dollars (\$500.00) of the civil penalty is suspended if the Operator complies with the corrective action within the time specified. The portion of the total civil penalty not suspended, five hundred dollars (\$500.00), shall be due and payable within thirty (30) days of the effective date of this Order.

DONE AND ORDERED this 15<sup>th</sup> day of May 2012.

FOR THE COLORADO MINED LAND  
RECLAMATION BOARD

  
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Ron Peterson, Chair

#### NOTICE OF APPEAL 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 notice of appeal with the district court within thirty (30) days after the effective date of this order, pursuant to section 24-4-106, C.R.S. (2011). In the event that an appeal 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: Sitira Pope.

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 1<sup>st</sup> day of May 2012 addressed as follows:

*By inter-office or electronic mail to:*

McAtee Construction Co.  
220 Edwards Ave.  
Sterling, CO 80751

Michael Cunningham  
Division of Reclamation, Mining & Safety  
1313 Sherman St., Room 215  
Denver, CO 80203

*By intra-office or electronic mail to:*

John Roberts  
Senior Assistant Attorney General  
Office of the Attorney General  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203

  
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