



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 E CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

March 7, 2022

Cody Schad  
2801 Skyline Drive  
Rapid City, SD 57701-5345

Dear Mr. Schad:

Enclosed is a Notice of Violation and Order (Notice) that applies to the area of Mine Site 1047002 under Mine License 19-1047 for illegal mining without a mine permit. The Notice states you failed to complete the required remediation activities that the department directed you to complete by December 20, 2021. If you do not complete the remedial activities outlined in this Notice; then DANR will initiate a contested case hearing before the SD Board of Minerals and Environment, requesting the Board allow DANR to pursue civil penalties against you pursuant to SDCL 45-6B-71.

You may request a hearing before the Board of Minerals and Environment regarding the allegations contained herein by submitting a written request to the Secretary, Department of Agriculture and Natural Resources, 523 E Capitol Avenue, Pierre, SD 57501-3182. If you fail to request a hearing within 30 days after receipt of the Notice, the allegations stated in the Notice shall be deemed fact, and the Order proposed above shall automatically become effective.

Be advised, the issuance of a Notice of Violation and Order may affect any future attempts to obtain an environmental permit from the department. You may be required to disclose this Notice in accordance with SDCL 1-41-20 when filing a Certification of Applicant Form for any permit filed pursuant to Title 34A or 45. In addition, the secretary may reject an application for any permit filed pursuant to Title 34A or 45.

If you have any questions about this letter or the enclosed Notice, please contact Roberta Hudson at (605) 773-4201. If you have an attorney, your attorney should contact Steve Blair with the Attorney General's Office at (605) 773-3215. Thank you for your anticipated cooperation and prompt attention in this matter.

Sincerely,

Hunter Roberts  
Secretary

Enclosure: Notice of Violation and Order

Cc: Steve Blair, Assistant Attorney General w/enclosure

**STATE OF SOUTH DAKOTA**

**SECRETARY OF THE  
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES**

**IN THE MATTER OF VIOLATIONS OF SDCL 46-6B ) NOTICE OF VIOLATION  
MINE LICENSE 19-1047 HELD BY CODY SCHAD ) AND ORDER**

TO: Cody Schad  
2801 Skyline Drive  
Rapid City, South Dakota 57701-5345

Notice is hereby given by the Secretary of the Department of Agriculture and Natural Resources (“DANR”), that Cody Schad, operator under Mine License 19-1047, has violated South Dakota Codified Law (SDCL) 45-6B as specified below:

**THE FACTS** alleged to constitute this violation are as follows:

1. An operator must obtain a license to mine for sand, gravel, and rock to be crushed and used in construction, pegmatite minerals, or for limestone, iron ore, sand, gypsum, or shale used in the process of making cement or lime from DANR pursuant to SDCL 45-6-65.
2. A mine license is only valid for mining sand, gravel, and rock to be crushed and used in construction, pegmatite minerals, or for limestone, iron ore, sand, gypsum, or shale used in the process of making cement or lime. Operators mining for any other mineral, as defined by SDCL 45-6B-3(10), must obtain a mine permit pursuant to SDCL 45-6B.
3. A person who operates a mining operation without a valid permit is subject to a civil penalty of not less than one hundred dollars per day nor more than one thousand dollars per day during which such violation occurs pursuant to SDCL 45-6B-71.
4. DANR issued Mine License 19-1047 to Cody Schad on March 20, 2019.
5. Cody Schad operates two mine sites under Mine License 19-1047, site 1047001 in Lawrence County, and site 1047002 in Pennington County.
6. On November 5, 2018, Cody Schad posted a \$2,500 reclamation bond for Mine License 19-1047 as required under SDCL 45-6-71.
7. The violation involves site 1047002, located in Section 5, Township 2 South, Range 6 East, Pennington County.
8. On September 2, 2021, Cody Schad contacted Roberta Hudson via telephone. Cody Schad asked Ms. Hudson what he must do to be allowed to process fine-grained material produced under Mine License 19-1047 in order to extract gold. Ms. Hudson requested clarification on the type of material he was mining under the mine license, to which Mr. Schad explained he

was mining a garnet mica schist for sale as landscaping and decorative stone. Ms. Hudson explained that mining decorative stone is not allowed under a mine license and that a mine permit is required for mining decorative stone and gold.

9. On September 2, 2021, after the aforementioned phone call, Ms. Hudson emailed Cody Schad the forms, instructions, and example applications for a Request for Determination of Special, Exceptional, Critical or Unique Lands and Notice of Intent, instructing Cody Schad to begin the process of obtaining a mine permit for the site as soon as possible.
10. On September 7, 2021, a DANR inspector visited the site and took several pictures of the operation. A sign displayed at the site indicated mined materials were for sale. Material on site was sorted by size for various landscape and decorative purposes including landscape rock, bench rocks, paver rocks, and stone veneer, as well as for industrial purposes such as for power sand, stone mulch, rip rap, gabion rock, rock wall boulders, and pipe bedding. The material uses advertised at Cody Schad's operation are not allowed under a mine license; extraction of minerals for all of the advertised uses requires a mine permit.
11. On September 13, 2021, Ms. Hudson sent a letter via certified mail to Cody Schad, directing cessation of all operations at the site until Cody Schad obtains a mine permit from DANR. Ms. Hudson reminded Cody Schad of the information that had been sent to him on September 2, 2021. The letter reiterated that mining decorative rock at the site was not authorized under Cody Schad's mine license, and a mine permit was required to continue operations. The letter also explained there was no exemption to remove materials for personal use under SDCL 45-6B, and any removal of material from the site for advertised uses would be in violation of the statute. The mail receipt was returned to the DANR on September 24, 2021, signed by Cody Schad.
12. On September 23, 2021, Cody Schad contacted DANR and spoke via telephone to Mike Lees, Tom Cline, and Roberta Hudson. During this phone call Cody Schad expressed his frustration that DANR directed him to cease his operation at mine site 1047002. DANR staff explained that the material he was mining did not fit the definition of "sand and gravel" as defined under SDCL 45-6; rather, the material mined at the site is dimensional stone, landscape rock, and decorative stone, which require a mine permit to produce. DANR staff reiterated to Cody Schad that mining at the site must cease until Cody Schad obtains the required mine permit. DANR agreed to meet with Cody Schad on site and discuss the disposition of the mined rock stockpiled at the site.
13. On September 27, 2021, Ms. Hudson sent a letter via certified mail reaffirming the information discussed during the September 23, 2021, phone meeting. The mail receipt was returned to DANR on October 14, 2021, signed by Lindsey Schad.
14. On October 6, 2021, Roberta Hudson, Tom Cline, Bret Graves, and Roderick McRae of DANR met with Cody Schad at mine site 1047002 to discuss requirements for reclaiming the site. During the inspection DANR staff and Cody Schad agreed upon a schedule; Cody Schad agreed to complete site reclamation by December 20, 2021; Cody Schad agreed to provide DANR an update on reclamation progress by November 10, 2021. DANR staff provided specific direction regarding what Cody Schad needed to reclaim, as follows:

- a. The two northernmost sorted piles with the larger sorted materials need to be regraded in place.
  - b. The piles of finer material immediately adjacent to the sorting machine must be regraded or removed off-site.
  - c. The southernmost pile of unsorted materials must be removed for use as part of the construction base material for Cody Schad's construction project on the other side of the highway or regraded in place.
15. On October 15, 2021, Roberta Hudson sent a letter to Cody Schad reaffirming the reclamation plan agreed to during the October 6, 2021, inspection. The mail receipt was returned to DANR on October 29, 2021, signed by Lindsey Schad.
  16. The DANR performed regular inspections of the site from October 6, 2021, through December 20, 2021. Dates of site visits were, September 20, October 14, October 21, October 27, November 2, November 10, November 16, November 22, November 29, December 7, and December 20, 2021.
  17. Cody Schad did not provide an update to the DANR on or before November 10, 2021.
  18. On December 20, 2021, a DANR inspector visited the site to evaluate if required reclamation work was complete. It was determined a portion of the reclamation had been completed. The two northernmost piles remained and did not appear to have been touched. One larger sorted pile of material had been removed and another had been partially removed. A larger pile immediately adjacent to the sorting machine had not been moved or regraded. The larger, southernmost pile of unsorted material had also not been touched. All equipment remained on site and the signs indicating the material was for sale remained on site.
  19. DANR continued to conduct periodic inspections at the site from December 20, 2021, through February 23, 2022, finding no additional reclamation progress at the site.
  20. As of March 1, 2022, Cody Schad has not filed paperwork with DANR to begin the process of obtaining a mine permit for site 1047002 in accordance with SDCL 45-6B.

**WHEREFORE**, as a result of these FACTS and VIOLATIONS, and pursuant to SDCL 45-6B, the Secretary of DANR hereby ORDERS that the following corrective actions to be taken by Cody Schad:

1. Continue to cease and desist in the mining of any decorative stone or gold from the real property connected to site 1047002 in Pennington County until such time as a valid permit to mine is acquired;
2. Within 30 days of receipt of this Notice, fully complete reclamation activities at site 1047002 including the regrading and smoothing out of all piles, appropriate seeding of grass or other vegetation, and the removal of all equipment from the site; and
3. Within 30 days of receipt of this Notice, remove any sign indicating material is for sale.

**NOTICE IS HEREBY GIVEN** that pending completion of site reclamation, DANR will recommend the Board of Minerals and Environment release reclamation liability for Mine License Site 1047002.

**NOTICE IS HEREBY GIVEN** that Cody Schad may request a hearing before the Board of Minerals and Environment (Board) regarding the allegations contained herein by submitting a written request within **30 days** of receipt of the Notice of Violation and Order. This written request must be filed with DANR before the expiration of the 30 days, by delivery to: Secretary, Department of Agriculture and Natural Resources, 523 East Capitol Avenue, Pierre, SD 57501-3182.

**NOTICE IS ALSO HEREBY GIVEN** that if Cody Schad fails to request a hearing within 30 days, the allegations stated herein shall be deemed fact.

**NOTICE IS ALSO HEREBY GIVEN** that if Cody Schad requests a hearing before the Board on these allegations, a Notice of Hearing will be sent to Cody Schad designating the date, time, and location of the hearing.

**NOTICE IS ALSO HEREBY GIVEN** that if Cody Schad does not take the corrective actions listed above within **30 days** of receipt of this Notice of Violation and Order, DANR may initiate a contested case hearing for Board consideration of DANR's recommendation to pursue civil penalties, pursuant to SDCL 45-6B-71, against Cody Schad for conducting a mining operation without a valid permit. If DANR initiates a contested case hearing before the Board, a Notice of Hearing will be sent to Cody Schad designating the date, time and locations of the hearing.

**THIS NOTICE** does not constitute a waiver or an election by the State to forego civil or criminal action to seek penalties or other relief as the State may deem appropriate under the provisions of SDCL Chapter 45-6B and other applicable laws.

Dated this 7<sup>th</sup> day of March, 2022



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Hunter Roberts, Secretary  
Department of Agriculture and Natural Resources