

STATE OF SOUTH DAKOTA



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CHIEF DEPUTY ATTORNEY GENERAL

July 7, 2022

Brenda Binegar  
Dept. of Agriculture & Nat. Resources  
523 E. Capitol Ave.  
Pierre, SD 57501

Re: In the Matter of Notice of Violation Issued to Cody Schad

Dear Ms. Binegar:

Enclosed please find the original of the Department's Notice of Entry concerning Hearing Chair Greenfield's recent Scheduling Order. This Notice is accompanied by a copy of the Order and a Certificate of Service.

Also enclosed, please find for filing the Settlement and Compliance Agreement entered into by Mr. Schad and Secretary Roberts. This agreement is being filed with the Board to resolve all issues currently contested in the above referenced matter. Through execution of the Agreement, Mr. Schad withdraws his request for a hearing before the Board and the Department withdraws its previously filed Petition. Failure to comply with the terms of the Agreement may result in this matter being reopened. I have also included a Certificate of Service concerning the filing of the Settlement & Compliance Agreement.

Copies of the above referenced documents have been served upon Mr. Schad and Mr. Greenfield. Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "SRL", followed by a horizontal line.

Steven R. Blair  
Assistant Attorney General

Enclosures

Cc/encl:

Cody Schad

Gregg Greenfield – Hearing Chair

Charles McGuigan – Deputy Attorney General (via email only)

Roberta Hudson – DANR Minerals & Mining Program (via email only)

STATE OF SOUTH DAKOTA  
DEPARTMENT OF AGRICULTURE & NATURAL RESOURCES  
BOARD OF MINERALS AND ENVIRONMENT

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IN THE MATTER OF NOTICE OF	)	SETTLEMENT AND
VIOLATION ISSUED TO CODY	)	COMPLIANCE AGREEMENT
SCHAD	)	
	)	
	)	
	)	

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This Settlement & Compliance Agreement is entered into by the Department of Agriculture & Natural Resources (DANR), Petitioner in the above captioned matter, and Cody Schad (Schad), Respondent. Collectively, DANR and Schad will be referred to as "Parties" throughout the Agreement. This Agreement is entered into pursuant to the authority granted by SDCL 34A-10-17.

The Parties hereby jointly stipulate and agree to the following:

I. INTRODUCTION

1. This Agreement is intended to resolve all claims brought in the above-captioned administrative action including all associated claims for civil penalties arising from the allegations contained in the Notice of Violation issued by DANR and the Petition filed by DANR with the Board of Minerals and Environment (Board).
2. This Agreement has been negotiated in good faith by the Parties in an effort to avoid the costs and risks of prolonged contested action. The Parties agree this

Agreement is a fair and reasonable resolution consistent with the purposes of the statutes pursuant to which this matter was brought.

## II. DEFINITIONS

3. "Agreement" shall mean this Settlement and Compliance Agreement.
4. "Action" shall mean the administrative proceeding entitled *In the Matter of Notice of Violation Issued to Cody Schad*, said Action initiated by Notice of Violation issued by DANR and the corresponding Petition filed by DANR with the Board.
5. "Covered Matters" shall mean all claims raised in the Notice of Violation or Petition. Covered Matters do not include any claims brought pursuant to §25 of this Agreement (Reservation of Rights), or § 26 (Reopeners).
6. "Effective Date" shall mean the date upon which this Agreement has been executed by both Parties.
7. "Termination" shall mean the date this Agreement is terminated pursuant to the procedure set forth in § 28 of this Agreement.

## III. BACKGROUND

8. The Board of Minerals and Environment (Board) has the authority, pursuant to SDCL Ch. 45-6B, to regulate mining activities in the state of South Dakota. SDCL 45-6B-52 subjects any person who operates a mining operation without a mine permit to a civil penalty of not less than \$100 per day, nor more than \$1000 per day for the duration which the violation occurs. Further, SDCL 45-6B-52 authorizes the Board to request that the Attorney General bring suit for injunctive relief to prevent continued violation of SDCL Ch. 45-6B.



9. Schad holds Mine License 19-1047 and operates two mine sites under this license – site 1047001 in Lawrence County, and site 1047002 located in Keystone, in Pennington County. The only materials Schad is allowed to mine under this license are “sand, gravel, rock to be crushed and used in construction, pegmatite minerals, or for limestone, iron ore, sand, gypsum, shale, or pozzolan, or other materials used in the process of making cement or lime.” SDCL 45-6-65.

10. Schad mined garnet mica schist at mine site 1047002 and placed it for sale as landscaping and decorative stone. The mica schist extracted by Schad falls within the definition of a “mineral” found in SDCL 45-6B-3(10), and Schad’s extraction of said mica schist was a “mining operation” as defined by SDCL 45-6B-3(11). As such, Schad was required by SDCL 45-6B-5 to have a mine permit issued by the Board to extract the mica schist at mine site 1047002.

11. Schad was notified by DANR staff through a phone call on September 2, 2021, and through a certified letter on September 13, 2021, that he was to cease all mining operations at mine site 1047002 until such time as he received a mining permit from the Board. In subsequent contacts DANR staff and Schad discussed what was required of Schad to reclaim mine site 1047002 and reached agreement on a reclamation plan and schedule. Reclamation was initially to be completed by December 20, 2021.

12. Reclamation activities were not completed at mine site 1047002 by the agreed upon December 20 date. An inspection on that date determined that a portion of reclamation was complete while several piles of material remained on

site, all equipment remained on site, and the site had not been regraded. Further periodic inspections conducted through February 23, 2022, found no additional reclamation progress at mine site 1047002.

13. On March 7, 2022, the Secretary of DANR issued a Notice of Violation to Schad outlining Schad's violation of SDCL 45-6B-5 by mining of decorative or landscaping stone without a mine permit. The Notice of Violation ordered that Schad cease and desist in any mining without a permit and that Schad fully reclaim mine site 1047002. The Notice of Violation also informed Schad of the DANR's intention to seek civil penalties if he did not complete the ordered corrective action.

14. On April 15, 2022, Schad submitted a letter to the DANR requesting a hearing before the Board of Minerals and Environment concerning the allegations raised in the Notice of Violation.

15. On May 3, 2022, DANR filed a Petition with the Board for a contested enforcement hearing regarding the allegations contained in the Petition and the previously issued Notice of Violation. The Petition requested action from the Board to uphold the Notice of Violation, order Schad to cease and desist from all mining without a proper permit, and to authorize the Attorney General to seek any and all injunctive and pecuniary relief against Schad that may be permissible by law.

#### IV. SETTLEMENT

16. The Parties agree that reclamation is nearly complete at mine site 1047002 as verified by an inspection by DANR staff conducted on June 13, 2022. At that time, all identified material had been removed from the site, including any signage

that indicated mined material was for sale. A small portion of fines material remained that needed to be regraded over the remaining area.

17. Final grading of the area must be completed no later than July 8, 2022. Schad must notify DANR upon completion of this final grading. The DANR will then inspect the site within ten business days and certify that regrading has been adequately completed.

18. Schad must seed the site, with an approved Department of Transportation seed mix, no later than October 31, 2022. Upon seeding, Schad must provide written notice to DANR that seeding has occurred.

19. In the event that Schad proposes to sell or transfer ownership of, or any interest in, the real property located at mine site 1047002 prior to termination of this Agreement, Schad must complete all required terms and conditions of this Agreement before any sale, assignment, or transfer of interest may be finalized. No sale, assignment, or transfer of interest of mine site 1047002 may release Schad from any obligation imposed under this Agreement.

20. Schad agrees that he will not engage in any future mining operations without a proper permit or license issued by the Board or DANR.

21. Schad, through his signature on this Agreement, hereby withdraws his request for a hearing before the Board to contest the allegations contained in the Notice of Violation. Schad agrees that the Action currently pending before the Board may be dismissed without further Board action.



22. The Parties both agree that the allegations contained in the Notice of Violation issued by DANR are deemed admitted.

23. In exchange for the foregoing, DANR agrees to withdraw its Petition initiating the Action currently pending before the Board. The DANR further agrees not to seek civil penalties or injunctive relief against Schad for activity under the Covered Matters and any allegation raised in the Notice of Violation or Petition.

24. RELEASE. In consideration of Schad's agreement to undertake the actions described in this Agreement, and except as otherwise provided herein, DANR releases and discharges Schad from all claims, demands, actions, and causes of action arising from, or out of, or related to, the allegations contained in the Notice of Violation and the Covered Matters except as provided in § 25, Reservation of Rights, and § 26, Reopeners, of this Agreement.

25. RESERVATION OF RIGHTS. Nothing in this Agreement shall in any way limit or restrict the authority of the State of South Dakota, including DANR, to initiate appropriate action against Schad, either judicial or administrative, with respect to claims based upon a failure of Schad to fulfill his obligations under this Agreement; claims unrelated to the Covered Matters; and claims based upon Schad's past, present, or future failure to comply with any environmental permit or regulation which do not arise from, and are not related to Covered Matters.

26. REOPENERS. Notwithstanding any other provision of this Agreement, the DANR reserves the right to re-assert claims arising from or related to Covered Matters against Schad where conditions unknown to DANR and willfully concealed

by Schad, in existence on or before entry of this Agreement, are discovered.

Further, DANR asserts the right to reassert, through judicial or administrative means, any allegation or claim raised as part of the Covered Matters should Schad fail to comply with the terms of this Agreement.

27. ENFORCEMENT. This Agreement shall be enforceable by the Parties pursuant to the applicable laws of South Dakota. Schad agrees that he will not challenge DANR's authority to bring, or any court's jurisdiction to hear, any action filed to enforce the terms of this Agreement.

28. TERMINATION. This Agreement shall be terminated by DANR after it has been determined that Schad has fully complied with all terms and conditions of the Agreement. Upon Termination, all obligations of the Parties under the Agreement shall cease, except that the provisions of § 25, Reservation of Rights, and § 26, Reopeners, shall continue unaffected. Termination also shall have no effect on Schad's obligation to comply with all environmental regulations of the State and any permit or license held by Schad.

29. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding of the Parties with respect to the Covered Matters and the Agreements subject matter.

30. PUBLIC RECORD. The Parties agree that a copy of this Agreement is a public record and will be filed with the Board to document resolution of the Covered Matters and the Action.




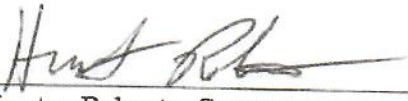
V. SIGNATURES

Signed and dated as indicated below:

*lb* ~~to~~ 7-1-22  
DATE

7-5-22  
DATE

  
Cody Schad  
RESPONDENT

  
Hunter Roberts, Secretary  
DEPT. OF AGR. & NAT. RESOURCES

STATE OF SOUTH DAKOTA  
DEPARTMENT OF AGRICULTURE & NATURAL RESOURCES

BOARD OF MINERALS & ENVIRONMENT

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IN THE MATTER OF NOTICE OF )  
VIOLATION ISSUED TO CODY )  
SCHAD )

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the SETTLEMENT & COMPLIANCE AGREEMENT entered into by the parties was submitted via United States Mail, First Class, Postage Prepaid upon the following to be filed in the above captioned matter:

Brenda Binegar  
Dept. of Agriculture & Nat. Resources  
523 E. Capitol Ave.  
Pierre, SD 57501  
*Staff – Brd. Minerals & Env.*

Further, the undersigned certifies that a true and correct copy of the above referenced document(s) was served via United States Mail, First Class, Postage Prepaid upon the following:

Cody Schad  
2911 Tower Court  
Rapid City, SD 57701  
*Respondent*

Gregg Greenfield  
609 E. Tan Tara Circle, Suite 102  
Sioux Falls, SD 57108  
*Hearing Chair*

On this 7<sup>th</sup> day of July, 2022.



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Steven R. Blair  
Assistant Attorney General