



COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

January 9, 2019

Gail and Charles Zimmerman
19002 County Road CC.5
Rocky Ford, CO 81067

**Re: Reason to Believe a Violation Exists and Notice of Board Hearing;
Caldwell-Nesselhuf Pit No. 1; Permit M1997-071**

Ms. Zimmerman:

On December 20, 2018, the Division conducted an inspection of the Caldwell-Nesselhuf Pit No. 1 (Permit M1997-071) and found the Operator had impacted an unpermitted area of approximately 1.4 acres.

Based on the findings of the inspection we believe this is a violation of:

- C.R.S. 34-32.5-116(4)(i) for failure to protect areas outside of the affected land from slides or damages occurring during the mining operation.

Therefore, the Division has reason to believe that a violation exists to the Colorado Land Reclamation Act for the Extraction of Construction Materials, C.R.S. § 34-32.5-101 *et seq.*, and have scheduled this matter to appear before the Mined Land Reclamation Board.

A Formal Public Hearing will be held during the February 20-21, 2019 Board Meeting for consideration of this possible violation. The hearing will be held at 1313 Sherman Street, Room 318, Denver, Colorado, beginning at 9:00 a.m. on February 20, 2019 or as soon thereafter as the matter can be considered. At that hearing you will have the opportunity to present your defense.

This is an important legal proceeding and you must appear in person for this hearing. If you fail to appear, an order and financial judgment may be entered against you. In addition, failure to appear at the hearing may result in legal consequences including, but not limited to, loss of party status and your ability to seek reconsideration from the Board or seek judicial appeal in district court.

If the Board finds a violation at this hearing, it may issue a Cease and Desist Order and assess a Civil Penalty in the amount of \$100.00 to \$1,000.00 for each day of violation, not to exceed 365 days, pursuant to C.R.S. 34-32.5-124(7). Pursuant to C.R.S. 34-32.5-124(6)(a), the Board may suspend, modify, or revoke the permit. If you have evidence indicating that the possible violation noted above does not exist or has been corrected, please provide it to the Division as soon as possible or bring it to the hearing. Any information to be considered by the Board during the hearing must be received by the Division on or before February 15, 2019.



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All parties have an opportunity to review and comment on a draft of the Board's order before it becomes final. If you wish to do so, you must provide the Board with a written request to review the draft order prior to or at the time of your hearing, or you must inform the Board orally during the hearing that you request to review the draft order. The Board's attorney must receive your comments on the draft order within three calendar days of the date the draft order is e-mailed, unless that deadline is extended by the Board's attorney. Submit all comments to Charles Kooyman, Colorado Department of Law, by fax at (720) 508-6037, or by email at Charles.Kooyman@coag.gov.

Please note that the Division has requested and will be allowed to review and comment on the draft Board order.

The Board's agenda may not be finalized until the week of the Board meeting. Therefore, we recommend you contact the Board's Secretary, Camille Mojar by telephone at (303) 866-3567, ext. 8136 or by email at Camille.Mojar@state.co.us on Tuesday (Monday February 18 is a state holiday), February 19, 2019 to confirm the specific date for the hearing.

If you have any questions about this letter or the hearing, please contact Patrick Lennberg at (303) 866-3567, ext. 8114.

Sincerely,



Virginia Brannon
Division Director

CERTIFIED MAIL # 7017 2400 0000 9205 5567
Return Receipt Requested

cc: Russ Means, DRMS
Michael Cunningham, DRMS
Patrick Lennberg, DRMS
Jeff Fugate, AGO