



## COLORADO

Division of Reclamation,  
Mining and Safety

Department of Natural Resources

**ORIGINAL ORDER ISSUED: January 10, 2020**

**UPDATED ORDER ISSUED: March 9, 2020**

March 9, 2020

Gillette Sand and Gravel, Inc.  
Chris Pyles  
20575 Highway 24  
Woodland Park, CO 80863

Re: Findings of Fact, Conclusions of Law, and Order, Gillette Sand and Gravel, Inc.  
File No. M-1992-009, MV-2019-033

On March 2, 2020, 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 1069

cc:  
Elliott Russel  
Michael Cunningham  
Jeff Fugate  
Scott Schultz  
Charles Kooyman  
Brendan Shine, P.E.





**BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO**

Notice of Violation No. MV-2019-033

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND MODIFIED ORDER**

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**IN THE MATTER OF A POSSIBLE VIOLATION BY GILLETTE SAND AND GRAVEL, INC., CORRECTIVE ACTION, CEASE AND DESIST ORDER, AND CIVIL PENALTIES FOR FAILURE TO MINIMIZE DISTURBANCES TO THE PREVAILING HYDROLOGIC BALANCE, PROTECT AREAS OUTSIDE OF THE AFFECTED LAND FROM SLIDES OR DAMAGES OCCURRING DURING THE MINING OPERATION, NOTIFY THE DIVISION OF A FAILURE OF AN EMBANKMENT, AND FOLLOW CONDITIONS OF A PERMIT, File No. M-1992-009**

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THIS MATTER came before the Mined Land Reclamation Board ("Board") on November 13, 2019, in Denver, Colorado to consider possible violations by Gillette Sand and Gravel, Inc. ("Operator"), cease and desist order, corrective action, and civil penalties for failure to minimize disturbances to the prevailing hydrologic balance, protect areas outside of the affected land from slides or damages occurring during the mining operation, notify the Division of a failure of an embankment, and follow conditions of a permit, file number M-1992-009. Elliott Russell appeared on behalf of the Division of Reclamation, Mining, and Safety ("Division"). Chris Piles of Gillette Sand and Gravel, Inc. and consultants Bill Pedler and Brandon Shine of Realtime Aquifer Services appeared on behalf of Operator.

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

**FINDINGS OF FACT**

1. The Operator holds a 112c permit for a 32-acre gravel operation located in Section 4, Township 15 South, Range 69 West, 6th Principal Meridian in Teller County, Colorado, permit number M-1992-009. The site is known as the Gillette Pit.

2. On October 3, 2019, the Colorado Department of Public Health and Environment received a citizen complaint regarding contaminated water being discharged into Beaver Creek.

3. On October 4, 2019, the Division inspected the Gillette Pit. During the inspection, the Division observed wash water ponds on the site that were extremely close to capacity and evidence that the ponds had overtopped, both recently and in



the past. The Division observed that the northern wash pond had over topped the western pond embankment and that wash water from the operation had discharged into Beaver Creek. The Division also observed that sediment fines had been removed from the ponds and piled on and over the permit boundary such that the stockpiled fines and a two-track road had affected off-site lands. The off-site disturbances constituted .03 acres.

4. Operator did not notify the Division that water from the wash pond had overtopped an embankment and discharged into Beaver Creek within twenty-four hours of the discharge.

5. On October 9, 2019, the Division mailed a Reason to Believe a Violation Exists Letter to Operator which provided notice regarding the alleged violations and the November 13, 2019 hearing.

6. The Division also sent Operator a cease and desist order on October 9, 2019 due to the emergency situation created by the release of waste water into Beaver Creek.

7. In response to the cease and desist order, Operator undertook several corrective actions.

8. The Division conducted a follow-up inspection on October 16, 2019. During the inspection, the Division observed that Beaver Creek was running clear and that Operator had done work to reinforce the embankment meant to contain the ponds as well as storm water control measures.

9. Following the follow-up inspection, Operator requested a partial lift of the cease and desist order on October 18, 2019 to enable it to conduct further corrective actions.

10. The Division granted the request on the same day, recognizing that Operator had complied with the cease and desist order and shown good-faith efforts to bring the site into compliance. The Division authorized Operator to continue corrective actions, reclamation activities, and the removal from the site of materials that had already been stockpiled.

11. At the hearing, the Division presented testimony regarding the potential violations observed during its initial inspection. The Division also presented testimony regarding Operator's good-faith efforts to bring the site into compliance and the level of communications from the Operator and the consultant it retained.



12. Operator presented testimony that it had not known of the overtopping of the pond that led to the complaint until the Division conducted its first inspection. The Operator's consultants testified regarding the corrective actions taken in response to the issue and that those corrective actions were largely complete.

13. Operator requested that any cease and desist order not apply to the site's southern pit, which is used to provide gravel to Teller County.

### **CONCLUSIONS OF LAW**

14. 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. (2019) (the "Act").

15. The Operator is engaged in a "mining operation" as that term is defined in section 34-32.5-103(13), C.R.S.

16. Section 34-32.5-116(4)(h), C.R.S. requires operators to minimize disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area as well as to the quality and quantity of water in surface and groundwater systems, both during and after the mining operation and during reclamation. Operator violated section 34-32.5-116(4)(h), C.R.S. by failing to prevent wash water from the mining operation from overtopping containment ponds and discharging into adjacent water sources,

17. Section 34-32.5-121(2), C.R.S. requires that any person engaged in a mining operation shall notify the Division as soon as reasonably practicable of any failure of any impoundment, embankment, or slope that poses a reasonable potential for danger to persons or property. By failing to notify the Division of the failure of the process pond impoundment, the Operator violated section 34-32.5-121(2), C.R.S.

18. Section 34-32.5-116(4)(i) requires that operators protect areas outside affected land from slides or damage occurring during mining or reclamation. Operator violated section 34-32.5-116(4)(i) by stockpiling sediment fines outside the permitted boundary.

19. Section 34-32.5-124(1), C.R.S. requires compliance with Board orders, permits, and regulations. Operator violated its permit, specifically the performance warranty, which requires compliance with the Act, by violating the provisions of the Act describe above. Accordingly, the Operator has violated section 34-32.5-124(1), C.R.S.



20. Based on its determination that Operator violated provisions of the Act, the Board may issue a cease-and-desist order and include the nature of any required corrective actions. § 34-32.5-124(2), C.R.S. (2019).

21. The Board may impose a civil penalty of not less than \$100 per day or more than \$1,000 per day for each day during which a violation of a mining operation permit occurs. § 34-32.5-124(7), C.R.S. (2019). Here, the Board may impose a penalty based on 41 days of violation, at \$100 to \$1,000 per day, for a civil penalty of \$4,100 to \$41,000.

### **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Board finds the Operator in violation of sections 34-32.5-116(4)(h), -116(4)(i), -121, and 124, C.R.S., for failure to minimize disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area as well as to the quality and quantity of water in surface and groundwater systems; failure to protect areas outside affected land from slides or damage occurring during mining or reclamation; failure to notify the Division of the failure of any impoundment, embankment, or slope that poses a reasonable potential for danger to any person or property; and for failure to follow the conditions of a permit or regulation.

Operator shall **CEASE AND DESIST** any further mining activities, except those approved in writing by the Division as necessary to comply with the conditions of a Board Order, prevent damage to off-site areas, complete reclamation, or to protect public health and safety, until corrective actions have been resolved to the satisfaction of the Division. This Cease and Desist Order shall not apply to the southeast pit, which is used to supply road base materials to Teller County.

The Board imposes against the Operator the following **CORRECTIVE ACTION**: The Operator shall submit to the Division a permit amendment application to increase the size of the current 112c Reclamation Permit to include the affected lands outside the approved permit boundary. The Operator shall submit the amendment application within 90 days of the effective date of this Order, with all material in an approvable form within statutory deadlines. The permit amendment shall also address appropriate process pond designs and control measures to prevent further discharges.

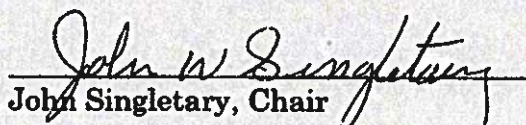
The Board imposes a **CIVIL PENALTY** of \$41,000. All but \$1,000 of the penalty is suspended if the Operator complies with the corrective action within the time specified. The portion of the civil penalty not suspended, \$1,000, shall be due and payable within 30 days of the effective date of this Order. If the Operator does not comply with the corrective action set forth in this Order, the suspended civil



penalty, \$40,000, will become due and payable within 30 days of the deadline for completion of the corrective action. Failure to submit any due and unpaid civil penalties shall result in immediate submittal of such penalties to State collections.

DONE AND ORDERED this 2<sup>nd</sup> day of March 2020.

FOR THE COLORADO MINED LAND  
RECLAMATION BOARD

  
John Singletary, 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 thirty-five (35) days after the effective date of this order, pursuant to section 24-4-106, C.R.S. (2019) and the Colorado Rules of Civil Procedure. In the event that 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 9th day of March 2020, addressed as follows:

*By certified mail to:*  
7018 2290 0000 8923 1069

Gillette Sand and Gravel, Inc.  
Chris Pyles  
20575 Highway 24  
Woodland Park, CO

*By electronic mail to:*

Brendan Shine, P.E.  
Realtime Aquifer Services  
PO Box 1042  
Golden, CO 80402  
[bren.shine@q.com](mailto:bren.shine@q.com)

*By electronic mail to:*

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Camille Mojar, Board Administrator

Gillette Sand and Gravel, Inc.,  
Gillette Pit/M-1992-009  
MV-2019-033