



COLORADO
Division of Reclamation,
Mining and Safety
Department of Natural Resources

August 15, 2021 - Revised

Kevin McCarty
McCarty Land & Water Valuation, Inc.
P.O. Box 407
Berthoud, CO 80513

**Re: SEMA Construction, Inc., Motorcross Borrow Pit, File No. M-2019-041,
Complaint Against Mining Operation (CT-01), Complaint Response**

Mr. McCarty,

The Division of Reclamation, Mining and Safety (Division/DRMS) received your complaint email on July 25, 2021 and following up letter on August 2, 2021 against the Motorcross Borrow Pit permitted by SEMA Construction, Inc. The Division's responses to your specific complaint items are address in the attached inspection report from July 29, 2021.

If you have any questions, please contact me at peter.hays@state.co.us or (303) 866-3567 Ext. 8124.

Sincerely,

Peter S. Hays
Environmental Protection Specialist

Enclosure: July 29, 2021 Inspection Report


Ec: Jared Ebert; Division of Reclamation, Mining & Safety
kevin@mccartylw.com





MINERALS PROGRAM INSPECTION REPORT
PHONE: (303) 866-3567

The Division of Reclamation, Mining and Safety conducted an inspection of the mining operation noted below. This report documents observations concerning compliance with the terms of the permit and applicable rules and regulations of the Mined Land Reclamation Board.

| | | | |
|--|---|--|-----------------------------|
| MINE NAME: Motorcross Borrow Pit | MINE/PROSPECTING ID#: M-2019-041 | MINERAL: Borrow material | COUNTY: Weld |
| INSPECTION TYPE: Monitoring | INSPECTOR(S): Peter Hays | INSP. DATE: July 29, 2021 | INSP. TIME: 09:00 |
| OPERATOR: SEMA Construction, Inc. | OPERATOR REPRESENTATIVE: Gavin Madsen | TYPE OF OPERATION: 111 - Construction by Government Agency | |
| REASON FOR INSPECTION: Citizen Complaint | BOND CALCULATION TYPE: Partial Bond | BOND AMOUNT: \$70,750.00 | |
| DATE OF COMPLAINT: NA | POST INSP. CONTACTS: None | JOINT INSP. AGENCY: None | |
| WEATHER: Clear | INSPECTOR'S SIGNATURE:  | SIGNATURE DATE: August 13, 2021 | |

The following inspection topics were identified as having Problems or Possible Violations. OPERATORS SHOULD READ THE FOLLOWING PAGES CAREFULLY IN ORDER TO ASSURE COMPLIANCE WITH THE TERMS OF THE PERMIT AND APPLICABLE RULES AND REGULATIONS. If a Possible Violation is indicated, you will be notified under separate cover as to when the Mined Land Reclamation Board will consider possible enforcement action.

INSPECTION TOPIC: Roads, Off-site Damage

POSSIBLE VIOLATION: The Operator has improved a new access road to the site outside of the approved permit boundary. This is a possible violation for failure to first obtain a reclamation permit from the Mined Land Reclamation Board before engaging in a new mining operation as required by C.R.S. 34-32.5-109(1), and for failure to protect areas outside of the affected land from slides or damages occurring during the mining operation and reclamation pursuant to C.R.S 34-32.5-116(4)(i).

CORRECTIVE ACTIONS: These possible violations will require a hearing before the Mined Land Reclamation Board. The schedule and other details for the MLRB hearing will be provided under a separate document to be sent via certified mail to the operator.

CORRECTIVE ACTION DUE DATE: 9/22/21

OBSERVATIONS

The Motorcross Borrow Pit was inspected by Peter Hays with the Division of Reclamation, Mining and Safety (Division/DRMS) in response to a citizen complaint (CT-01) received on July 27, 2021. Mr. Gavin Madsen with SEMA Construction, Inc. was present during the inspection. The site was previously inspected by the Division on August 5, 2020. An inspection map based on a Google Earth image is attached for reference.

The Motorcross Borrow Pit 111 permit application was approved by the Division on August 8, 2019 and issued on August 20, 2019. The site is approved for 28.30 total acres related to the North I-25 Express Lane project. The Division holds a reclamation bond in the amount of \$70,750.00.

Mining operations have commenced at the site. Active excavation and material hauling by trucks were observed during the inspection. The site will be mined from north to south with topsoil stockpiles along the north and east permit boundaries. The maximum mining depth will be 55 feet and 1,216,440 cubic yards of material is anticipated to be removed from the site. Groundwater will not be encountered by the mining operation.

The complaint from Kevin McCarthy states the Operator is using WCR 7 instead of the access road from the I-25 Frontage Road, the Town of Berthoud is within 2 miles of the operation (Rule 6.3.8) and the site is located within the Big Thompson Conservation District boundary, not Platte Valley Conservation District boundary (Rule 6.3.10).

The approved pre-existing site access road is located off of the I-25 Frontage Road. The Operator has been accessing the site from the northwest corner of the property off of WCR 7 as stated in the complaint. During the inspection the Operator stated, the road was pre-existing and no improvements were required to use the road. The road was observed to have an asphalt surface during the inspection. Based on Google Earth images dating back to 1999 the road does appear to be pre-existing and was used for the former motorcross site. However, the Google Earth images show a two-track dirt road, not an asphalt surfaced road. The road dimensions were estimated at 3,650 feet long by 15 feet wide. The Division estimated approximately 1.25 acres have been disturbed by the construction of the secondary access road.

Rule 1.1(3) states, "Affected Land" means the surface of an area within the state where a mining operation is being or will be conducted, which surface is disturbed as a result of such operation. Affected lands include but shall not be limited to private ways, roads, except those roads excluded pursuant to Rule 1.1(3), and railroad lines appurtenant to any such area; land excavations; exploration sites; drill sites or workings; refuse banks or spoil piles; evaporation or settling ponds; work, parking, storage or waste discharge areas; and areas in which structures, facilities, equipment, machines, tools or other materials or property which result from or are used in such operations are situated. All lands shall be excluded that would be otherwise included as land affected but which have been reclaimed in accordance with an approved plan or otherwise, as may be approved by the Board. Affected land shall not include off-site roads which existed prior to the date on which notice was given or permit application was made to the office and which were constructed for purposes unrelated to the proposed mining operation and which will not be substantially upgraded to support the mining operation.

The Division believes the Operator surfacing the road with asphalt is a substantial upgraded to support the mining operation and is therefore affected land pursuant to Rule 1.1(3).

Land has been affected outside of the approved permit boundary. This is a possible violation at this time pursuant to C.R.S. 34-32.5-109(1) for failure to first obtain from the Board or Office a reclamation permit prior to engaging in a new operation. Also, this is a possible violation at this time pursuant to 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 and reclamation.

These possible violations will require a hearing before the Mined Land Reclamation Board (MLRB). The schedule and other details for the MLRB hearing will be provided under a separate document to be sent via certified mail to the Operator.

The complaint states the site is within 2 miles of the Town of Berthoud and therefore the Town should have been notified of the proposed operation. Upon review, the complainant is correct, the Town of Berthoud's boundary is within 2 miles of the operation. This was an oversight; however no further action can be taken at this time as the permit has been issued by the Division.

The complaint states the site is located in the Big Thompson Conservation District boundary. The Operator notified the Platte Valley Conservation District of the permit application instead of the Big Thompson Conservation District boundary as required by Rule 6.3.8 during the permitting process. The Division agrees the site is located within the Big Thompson Conservation District boundary. The Division notified Big Thompson Conservation District following the application being called complete by the Division. The Division did not receive comments from either District during the comment period for the application. The Division considers this complaint issue resolved and will not require corrective action by the Operator.

The approved post-mining land use is rangeland. All reclaimed slopes will be graded to 3H:1V or less. Topsoil will be replaced to an average depth of 12 inches. The site will be revegetated with a rangeland seed mixture. The eastern topsoil area was observed during the inspection. The Operator stated very little topsoil was available when the site was initially stripped due to the former use of the site as a motorcross track. The Operator was reminded of the requirement salvage and stockpile all available topsoil at the site.

The Division mine sign and boundary markers as required by Rule 3.1.12 were observed during the inspection.

Please note: The Construction Materials Act and Rules do not specifically address traffic, traffic safety and road impacts for roads located outside of a permitted mining operation. These issues are under the jurisdiction of the Town of Berthoud and the Colorado Department of Transportation. Additionally, the Act and Rules do not specifically address impacts to air quality, noise levels and nighttime lighting. The issue of air quality is under the jurisdiction of the Town of Berthoud and the Air Pollution Control Division (APCD) of the Colorado Department of Public Health and Environment (CDPHE). The issues of noise levels and nighttime lighting are typically addressed at the local government level and not at the State government level.

Photographs taken during the inspection are attached. If you need additional information or have any questions, please contact me at Division of Reclamation, Mining and Safety, 1313 Sherman Street, Room 215, Denver, CO 80203, by telephone at 303.866.3567 x 8124, or by email at peter.hays@state.co.us.

Inspection Contact Address

Gavin Madsen
SEMA Construction, Inc.
7353 S Eagle St
Centennial, CO 80112

Enclosure: Inspection Map and Mr. McCarthy complaint email

Ec: Jared Ebert, DRMS

GENERAL INSPECTION TOPICS

The following list identifies the environmental and permit parameters inspected and gives a categorical evaluation of each

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|--|--|---------------------------------|
| (AR) RECORDS----- <u>Y</u> | (FN) FINANCIAL WARRANTY----- <u>Y</u> | (RD) ROADS----- <u>PV</u> |
| (HB) HYDROLOGIC BALANCE----- <u>Y</u> | (BG) BACKFILL & GRADING----- <u>N</u> | (EX) EXPLOSIVES----- <u>N</u> |
| (PW) PROCESSING WASTE/TAILING---- <u>N</u> | (SF) PROCESSING FACILITIES----- <u>N</u> | (TS) TOPSOIL----- <u>Y</u> |
| (MP) GENL MINE PLAN COMPLIANCE- <u>Y</u> | (FW) FISH & WILDLIFE----- <u>N</u> | (RV) REVEGETATION---- <u>N</u> |
| (SM) SIGNS AND MARKERS----- <u>Y</u> | (SP) STORM WATER MGT PLAN---- <u>N</u> | (RS) RECL PLAN/COMP-- <u>N</u> |
| (ES) OVERBURDEN/DEV. WASTE----- <u>N</u> | (SC) EROSION/SEDIMENTATION--- <u>Y</u> | (ST) STIPULATIONS----- <u>N</u> |
| (AT) ACID OR TOXIC MATERIALS----- <u>N</u> | (OD) OFF-SITE DAMAGE----- <u>PV</u> | |

Y = Inspected / N = Not inspected / NA = Not applicable to this operation / PB = Problem cited / PV = Possible violation cited

PHOTOGRAPHS



Motorcross Pit mine sign



View of the access road off of WCR 7 from the east end of the road looking west



View of the mining excavation located in the northeast corner of the site







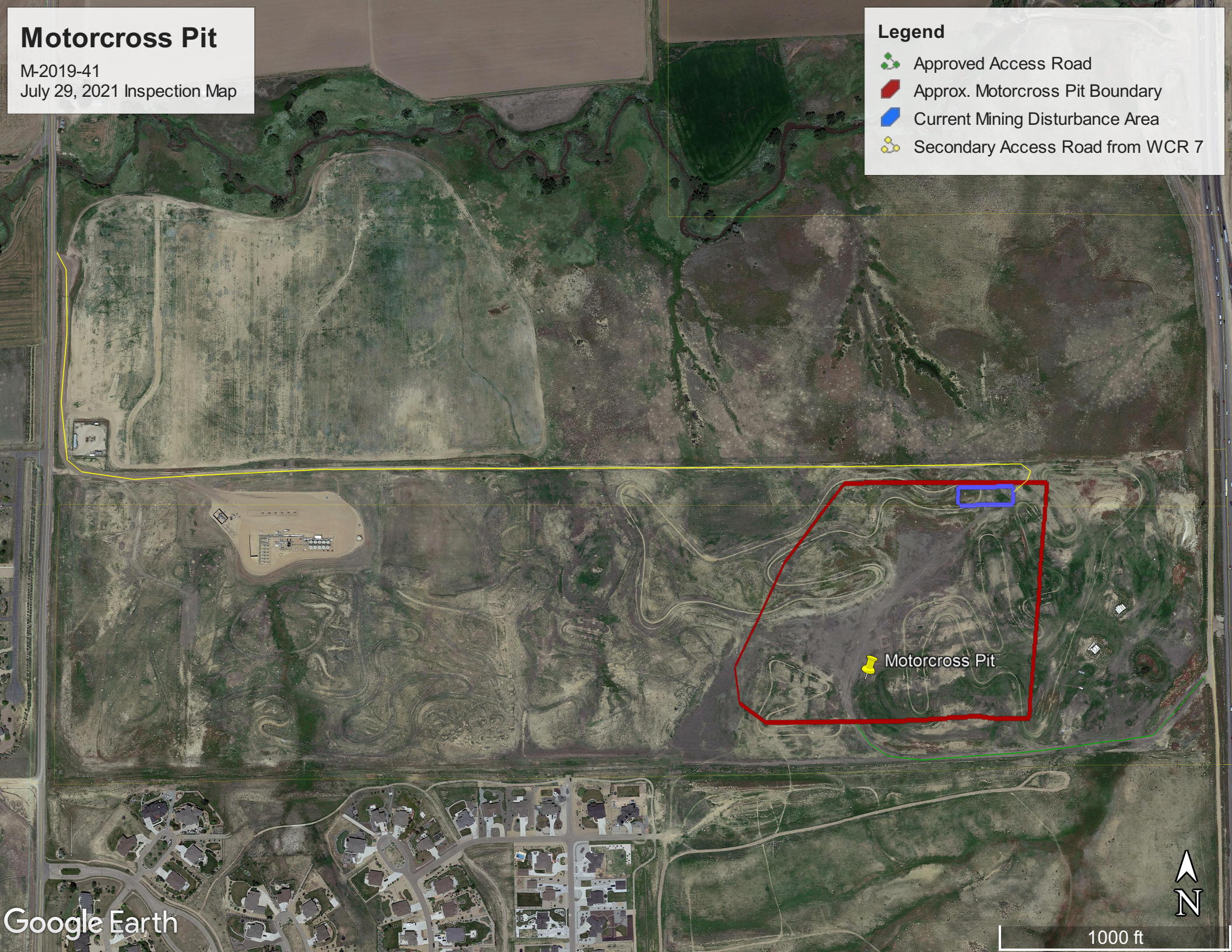
View of the mining excavation located in the northeast corner of the site

Motorcross Pit

M-2019-41
July 29, 2021 Inspection Map

Legend

-  Approved Access Road
-  Approx. Motorcross Pit Boundary
-  Current Mining Disturbance Area
-  Secondary Access Road from WCR 7



 Motorcross Pit



STATE OF
COLORADO

Ebert - DNR, Jared <jared.ebert@state.co.us>

Fwd: Inquiry as to whether a reclamation permit exists

Kevin McCarty <kevin@mccartylw.com>

Mon, Jul 26, 2021 at 10:26 AM

To: "jared.ebert@state.co.us" <jared.ebert@state.co.us>

After reviewing the Motocross permit I see the following issues:

The permit shows access from I25. They are using WCR 7. They say no municipality within 2 miles. Berthoud adjoins. It is in the Big Thompson Conservation District, not Platte Valley.

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