



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

September 27, 2021

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

**Re: SEMA Construction, Inc., Motorcross Borrow Pit, File No. M-2019-041,
Revised Consent Agenda Summary Form**

Mr. Madsen:

A possible violation hearing is scheduled for consideration by the Mined Land Reclamation Board (Board). As indicated in the Division's correspondence dated August 12, 2021, Re: Reason to Believe a Violation Exists and Notice of Enforcement Hearing, the formal Board hearing was scheduled to occur during the September 22-23, 2021 meeting. During the September hearing, the Board continued the hearing for the possible violation to the October 20-21, 2021 Board meeting.

Please find enclosed the Revised Staff Summary Form for Consent Agenda Items (consent form) for the possible violation at the site. If you concede to the violation, corrective actions and civil penalties, please affix your notarized signature on the enclosed consent form and return the signed form, with original signatures, to the Division no later than October 8, 2021. Upon receipt of the signed and notarized consent form the item will be moved from the Board's agenda for enforcement hearings to consent items and there will not be a formal Board hearing regarding the possible violation.

However, if you wish to contest the possible violation or any of the conditions of the enclosed consent form, please inform the Division at your earliest convenience and do not sign the consent form. In the absence of a signed and notarized consent form, the formal Board hearing will proceed as scheduled for October 20-21, 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 - Revised Staff Summary Form for the Consent Agenda Items

Ec: Jared Ebert; Division of Reclamation, Mining & Safety





COLORADO
**Division of Reclamation,
Mining and Safety**
Department of Natural Resources
1313 Sherman Street, Room 215
Denver, CO 80203

REVISED STAFF SUMMARY FORM FOR CONSENT AGENDA ITEMS

| | | | |
|-------------------|--------------------|------------------------|-------------------------|
| Date | September 27, 2021 | Applicant | SEMA Construction, Inc. |
| File No. | M-2019-041 | Site Name | Motorcross Borrow Pit |
| Specialist | Peter Hays | Objecting Party | N/A |
| County | Weld | Permit Type | 111 |

Action:

Possible violation of:

- C.R.S. 34-32.5-109(1) for failure to first obtain a reclamation permit prior to engaging in a new operation, and
- 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.

Resolution:

SEMA Construction, Inc. concedes to the violation of C.R.S. § 34-32.5-109(1) for failure to first obtain a reclamation permit from the Board prior to engaging in a new mining operation, 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 and reclamation, Corrective Actions, and Civil Penalties, provided herein, for the Motorcross Borrow Pit, File No. M-2019-041.

Chronology:

| | |
|-----------------|--|
| August 20, 2019 | The Division issued a 111 Construction Materials Special Operation permit for the Motorcross Borrow Pit. |
| July 26, 2021 | The Division received a complaint email from Mr. Kevin McCarty stating the Operator was accessing the mine site from a non-approved road of off Weld County Road 7. |
| July 29, 2021 | The Division conducted an inspection of the site and determined the Operator had improved an existing road to the mine site outside of the approved permit boundary. |



July 30, 2021 The Division received a complaint email from Mr. Mike Coleman stating the Operator was using an access road off of Weld County Road 7 to access the mine site.

August 2, 2021 The Division received a follow up complaint letter from Mr. Kevin McCarthy restating the complaint.

August 12, 2021 The Division notified the Operator of a possible violation and the MLRB hearing date (RTB).

September 22, 2021 The MLRB continued the hearing for the possible violation to the October 20 and 21, 2021 MLRB Meeting.

Reason for Violation:

The Operator failed to first obtain a reclamation permit prior to engaging in a new operation and/or failed to protect areas outside of the affected land from slides or damages occurring during the mining operation and reclamation.

STAFF RECOMMENDATION

Violation:

Find a violation of:

- C.R.S. 34-32.5-109(1) for failure to first obtain a reclamation permit prior to engaging in a new operation, and
- 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.

Corrective Action(s):

1. Within 120 days of the effective date of the Board's Order, submit a reclamation permit application to include the access road off of WCR 7 pursuant to C.R.S. § section 34-32.5-111.
2. Obtain approval of the reclamation permit within statutory timeframes.

Civil Penalty:

Pursuant to C.R.S. § 34-32.5-123(2), an operator who operates without a permit shall be subject to a civil penalty of not less than \$1,000 per day nor more than \$5,000 per day for each day the land has been affected, not to exceed 365 days.

In this matter, the Board may assess a civil penalty of \$41,000 to \$205,000 for 41 days of violation. The 41 days of violation were calculated from the date of the Reason To Believe and

Notice of MLRB Hearing (RTB) letter dated August 12, 2021 to the Board meeting scheduled for September 22, 2021.

In this matter the Division will assess a civil penalty of **\$41,000** based on 41 days of violation at \$1,000 per day. Also, the Board shall assess a civil penalty to cover costs incurred by the Division in investigating the alleged violation at a rate of \$56.64 per hour for six (6) hours, for a penalty of \$339.84 in accordance with C.R.S. 34-32.5-123(4). The Board will suspend all of the assessed civil penalty including staff time with the exception of **\$3,000**, if the corrective actions cited above are completed to the satisfaction of the Division within the required deadlines.

The unsuspended portion of the civil penalty, **\$3,000**, is due within 30 days of the effective date of the Board's Order finding the violation which will be sent under a separate cover. Failure of the Operator to comply by the Board Order due date shall result in the suspended portions of the civil penalty, **\$38,339.84** becoming effective and due.

Operator's Notarized Signature:

As an authorized representative of the Applicant, I hereby attest that the Operator concedes to the above described violation and agrees to comply with the Corrective Action and Civil Penalty proposed in this STAFF SUMMARY FORM FOR CONSENT AGENDA ITEMS.

Signed and dated this _____ day of _____, 2021.

(Applicant)

Signature: _____

Title: _____

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2021,

by _____ as _____ of _____.

Notary Public

My Commission Expires: _____

SIGNATURES MUST BE IN BLUE INK