



STATE OF
COLORADO

Gagnon - DNR, Nikie <nikie.gagnon@state.co.us>

Response to Citizen Complaint M-2022-017

1 message

Gagnon - DNR, Nikie <nikie.gagnon@state.co.us>

Wed, May 4, 2022 at 2:07 PM

To: justin.markwardt@claytonhomes.com

Cc: rphuwa@gmail.com, Jason Musick - DNR <jason.musick@state.co.us>

Hello Mr. Markwardt.

Thank you for meeting with us last week to discuss the recent activity at the borrow pit in Section 3 T2S 63W in Adams County. Attached is the Division's inspection report in response to the citizen complaint of unpermitted mining occurring at the site.

Feel free to contact me if you have any questions.

Kind regards,

Nikie Gagnon
Environmental Protection Specialist



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

P 303.866.3567 x8126 | C 720.527.1640 | F 303.832.8106
Physical: 1313 Sherman Street, Room 215, Denver, CO 80203
Mailing: DRMS Room 215, 1001 E 62nd Ave, Denver, CO 80216
nikie.gagnon@state.co.us | <https://www.drms.colorado.gov>

2 attachments



M2022017_Clayton Homes_ DRMS Response to Complaint.pdf
2400K



IsItMining.pdf
601K



May 4, 2022

Justin Markwardt
Clayton Homes
3455 West Service Road
Evans, CO 80620

Re: Response to Citizen Complaint, M-2022-017

Dear Mr. Markwardt,

On April 20, 2022, the Division of Reclamation, Mining and Safety (Division/DRMS) received a citizen complaint indicating that unpermitted mining was potentially occurring at a borrow pit and material was being transported to a new home site nearby to be used as fill. The Division conducted an inspection and the inspection report is attached.

As noted in the inspection report, based on the history of the existing pit and the amount of material moved by Clayton Homes, the Division will not pursue a violation for mining without a permit at this time. However, in the future, if any material is anticipated to be removed from the property, it is required that you complete an Is It Mining form (attached) and submit it to our office for an official determination of the proposed activities prior to initiation of the activities.

The Division would also like to bring to your attention that as of the date of the inspection, the Adams County assessor lists Turnpike Limited Liability Company as the current owner of the property. Please note that any agreement between Clayton Homes and Turnpike LLC to provide material from the pit for farming operations may require permitting action through the Division. This notice informs both parties that if material leaves the site without a mining permit in place, enforcement action will be pursued.

If you require additional information, or have questions or concerns, please feel free to contact me at the mailing address below. Direct contact can be made by phone at 303-866-3567 Ext 8126 or via email at nikie.gagnon@state.co.us

Sincerely,

Nike Gagnon

Environmental Protection Specialist

Cc: Richard Huwa, Turnpike Limited Liability Company, rphuwa@gmail.com
Jason Music, Senior EPS, DRMS





MINERALS PROGRAM INSPECTION REPORT

PHONE: (303) 866-3567

The Division of Reclamation, Mining and Safety has 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: Clayton Homes Pit	MINE/PROSPECTING ID#: M-2022-017	MINERAL: Sand and gravel	COUNTY: Adams
INSPECTION TYPE: Illegal (Unpermitted Operation)	INSPECTOR(S): Nikie Gagnon	INSP. DATE: April 25, 2022	INSP. TIME: 10:00
OPERATOR: Clayton Homes	OPERATOR REPRESENTATIVE: Mike Jansen	TYPE OF OPERATION: ILL - Illegal	

REASON FOR INSPECTION: Citizen Complaint	BOND CALCULATION TYPE: NA	BOND AMOUNT: NA
DATE OF COMPLAINT: April 20, 2022	POST INSP. CONTACTS: None	JOINT INSP. AGENCY: None
WEATHER: Clear	INSPECTOR'S SIGNATURE: 	SIGNATURE DATE: May 4, 2022

GENERAL INSPECTION TOPICS

This list identifies the environmental and permit parameters inspected and gives a categorical evaluation of each. No problems or possible violations were noted during the inspection. The mine operation was found to be in full compliance with Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials and/or for Hard Rock, Metal and Designated Mining Operations. Any person engaged in any mining operation shall notify the office of any failure or imminent failure, as soon as reasonably practicable after such person has knowledge of such condition or of any impoundment, embankment, or slope that poses a reasonable potential for danger to any persons or property or to the environment; or any environmental protection facility designed to contain or control chemicals or waste which are acid or toxic-forming, as identified in the permit.

(AR) RECORDS----- <u>Y</u>	(FN) FINANCIAL WARRANTY----- <u>N</u>	(RD) ROADS----- <u>N</u>
(HB) HYDROLOGIC BALANCE----- <u>Y</u>	(BG) BACKFILL & GRADING----- <u>Y</u>	(EX) EXPLOSIVES----- <u>N</u>
(PW) PROCESSING WASTE/TAILING---- <u>N</u>	(SF) PROCESSING FACILITIES----- <u>N</u>	(TS) TOPSOIL----- <u>N</u>
(MP) GENL MINE PLAN COMPLIANCE- <u>N</u>	(FW) FISH & WILDLIFE----- <u>N</u>	(RV) REVEGETATION---- <u>N</u>
(SM) SIGNS AND MARKERS----- <u>N</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>N</u>	

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

OBSERVATIONS

This inspection was prompted by a complaint received on April 20, 2022, by the Division of Reclamation, Mining and Safety (Division/DRMS) indicating that unpermitted mining was potentially occurring at a borrow pit and material was being transported to a new home site nearby to be used as fill. The complaint located the site in Section 3 T1S 63W, one half mile west of Highway 79 on Weld County Road 2. The Division conducted a records search and determined no mining permit exists at this location. Todd Denning, the complainant, is an adjacent landowner concerned about the excavating activity causing severe erosion to the county road and impacting groundwater. Nikie Gagnon and Jason Musick represented the Division during the inspection and were joined by Justin Markwardt, representing Clayton Homes, the company responsible for moving material off site. Todd Denning was present at the start of the inspection to relay his concerns to Mr. Markwardt but did not stay for the duration of the inspection. The weather was clear and sunny.

The Division reviewed Google Earth imagery which shows a borrow pit at this location since the early 2000s. The borrow pit has expanded over the years and the disturbance area is currently 1.21 acres (Photo 1). The Division contacted Richard Huwa of Turnpike LLC, who is listed as the property owner on the Adams County Assessor website. Mr. Huwa stated that he sold the property to Clayton Homes in November 2021. When asked about the borrow pit, Mr. Huwa stated that he routinely excavated material from the pit to fill sprinkler tracks on the property. According to Mr. Huwa, the Division was called out to investigate this practice in the past and determined that he was not mining because excavated material did not leave the property. No records were found in the DRMS permit system to confirm a previous inspection, however, Todd Denning, the adjacent landowner and complainant, acknowledged that the pit has been there for years and previous owners used material from the pit for agriculture practices. Mr. Denning's current concern with the activity is that the material removed from the pit was trucked off-site by the new owner, Clayton Homes, and groundwater could be impacted if Clayton Homes excavated any deeper into the pit. Although Mr. Denning stated in the complaint that the illegal mining of sand and soil is occurring in the West Sand Creek waterway, the Division determined West Sand Creek is approximately 400 feet east of the pit (Photo 2). Imagery of the area shows a ditch that intersects the south highwall of the pit (Photo 2 & 3). During the inspection, there was no evidence of exposed groundwater or stormwater in the pit.

Google imagery from April 20, 2021 and GPS points taken during the inspection shows the boundary of the pit wall has not expanded since Clayton Homes purchased the property in November, 2021 (Photo 1). During the inspection, Justin Markwardt confirmed that Clayton Homes removed ten truckloads of material on one day during the previous week and drove it to a home site approximately 5 miles north of the borrow pit. The fill material was removed from the northwestern side of the pit (Photos 5 & 6). Justin Markwardt estimated that the amount of material was 250 cubic yards (25 cubic yards per truck). Justin Markwardt stated that Clayton Homes was not aware of the requirement for a permit to move material between properties and now that they are informed of the process, the company has no plans to submit a permit application to mine the borrow pit.

Based on the history of the existing pit and the amount of material moved by Clayton Homes, the Division will not pursue a violation for mining without a permit at this time. However, the Division informed Clayton Homes and Turnpike LLC of the requirement to obtain a permit to remove material from the property. If any similar activities are anticipated in the future, it is required that the contractor complete an Is It Mining form (attached) and submit it to our office for an official determination of the proposed activities.

Photographs taken during the inspection are attached.

Please contact Nikie Gagnon (303)866-3537 ext. 8126 or email at Nikie.Gagnon@state.co.us if you have any questions regarding this report.

PHOTOGRAPHS



Photo 1: Google earth imagery photo from April 20, 2021. Red boundary shows the current disturbance surveyed on 4/25/2022. For safety reasons, GPS points were taken approximately 5 feet away from the high wall.



Photo 2: Google earth imagery photo from April 20, 2021 showing location of West Sand Creek, east of the pit. Arrow points to ditch.



Photo 3: Entrance to borrow pit looking south. Photo taken from Weld County Road 2. Red arrow indicates where the ditch enters the pit.



Photo 4: Looking south at ditch located on the south side of the pit. Water flows north into borrow pit.



Photo 5: Looking southwest from inside the pit. Red circle indicates area where material was excavated and removed from the site.



Photo 6: Looking northwest from southern edge of pit. Red circle indicates area where material was excavated and removed from the site.



Photo 7: Looking southwest from the road. Stockpiled material along western edge of the pit.



Photo 8: Closer view of stockpiled material along western edge of the pit.



Photo 9: Looking north at the eastern edge of the pit.



Photo 10: Looking east at the southern wall of the pit.



Photo 11: Looking east, previous disturbance above southern highwall of the pit.

Inspection Contact Address

Mike Jansen, Clayton Homes
3455 W Service Road
Evans, CO 80620

Attachment: Need for a State Reclamation Permit: "Is It Mining"

CC: Justin Markwardt, Clayton Homes
Richard Huwa, Turnpike LLC
Jason Music, Senior EPS, DRMS