



November 22, 2022

Alex Swank  
3581 CR 51  
Keenesburg, CO 80643

**RE: Swank Farms, Reference No. M-2022-049, Division Response to “Is It Mining?”  
Questionnaire, Permit Required**

Dear Mr. Swank,

On November 17, 2022, the Division of Reclamation, Mining and Safety (Division) received information for an “Is It Mining” questionnaire regarding a proposed project to excavate 8 inches of topsoil across 300 acres of private property in Weld County. The material will be excavated using loaders, scrapers and excavators and the landowner will receive compensation for the material that is mined and sold. Please use the reference number M-2022-049 regarding any correspondence or submittals for this site in the future.

The Mined Land Reclamation Board (Board) has requested the Division make determinations as to the need for a Mined Land Reclamation Permit. Based on the information provided in the questionnaire, the Division has determined **a permit is required for the proposed activity**.

If you disagree with this decision, you may petition to appear before the Board during a formal public hearing for a Declaratory Order concerning this matter. Pursuant to Rule 2.5.2(1), the request must be submitted to the Board in writing and be received no later than 10 days prior to the hearing. The written request must contain the information required pursuant to Rule 2.5.2(2) (copy enclosed). The next available Board hearing will be held on December 14, 2022. All hearings are held at 1313 Sherman St., Room 318, in Denver, Colorado 80203. Please be advised the Division will oppose a Declaratory Order request for this proposed operation on the above stated reasons and other facts it may bring forth in testimony before the Board if necessary.

If you have questions please contact me at (303) 866-3567 extension 8116, otherwise we look forward to working with you through the permitting process.

Sincerely,

Michael A. Cunningham  
Senior Environmental Protection Specialist

CC: Russ Means, DRMS



### **2.5.2 Petition Submission**

- (1) The petition must be submitted, at a minimum, ten (10) days prior to the Board meeting at which it is to be considered.
  - (a) At the regularly scheduled Board meeting, the Board will determine in its discretion and without notice to Petitioner, whether to rule upon any such petition.
  - (b) If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the Petitioner of its action and state the reasons for such action.
- (2) Any petition filed pursuant to this rule shall set forth the following:
  - (a) the name and address of the Petitioner and whether the Petitioner is a Permittee pursuant to the Colorado Mined Land Reclamation Act;
  - (b) the statute, rule or order to which the petition relates;
  - (c) a concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the Petitioner.

### **2.5.3 Consideration of Petition**

In determining whether to rule upon a petition filed pursuant to this Rule, the Board will consider the following matters, among others:

- (a) whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to Petitioner of any statutory provision or rule or order of the Board.
- (b) whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more of the Petitioners.
- (c) whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court, but not involving any Petitioner.
- (d) whether the petition seeks a ruling on a moot or hypothetical question or