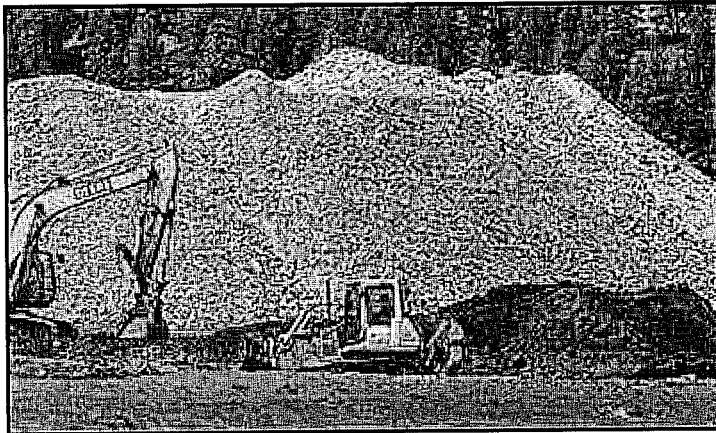


DEQ says Rock Creek developer violating law
By PERRY BACKUS of the Missoulian May 10, 2006



Earth-moving equipment was at work last week at a new subdivision near the mouth of Rock Creek. The large gravel pile at the site caught the attention of the Montana Department of Environmental Quality, which told Oregon-based developer Michael Barnes to stop mining gravel without a permit.

Photo by TOM BAUER/Missoulian

The Montana Department of Environmental Quality has told developers of a controversial subdivision near the mouth of Rock Creek to stop mining gravel without a permit.

The state also is looking into allegations the company dumped water laden with sediment into the Clark Fork River.

In a violation notice mailed last week, the DEQ told Oregon-based LEMB Co. LLC that it was in violation of the state's Open Cut Mining Act. The law requires a permit whenever more than 10,000 cubic yards of sand or gravel are mined.

The developers have already excavated most of a 5-acre pond in the middle of the 200-acre parcel at the confluence of Rock Creek and the Clark Fork River. The resulting large pile of gravel caught the attention of neighbors and others.

Their complaints to the state resulted in the violation letter and a subsequent on-site inspection Tuesday.

DEQ received aerial photographs of the site from the Rock Creek Protective Association this week, said Scott McCollough of the DEQ's enforcement division.

"The photographs emphasized the size of the operation," McCollough said. "We could see they were still stripping top soil on Saturday. We consider that open-cut mining."

The photographs also showed turbid water being discharged into the Clark Fork River from the site, he said.

The developer, Michael Barnes of Salem, Ore., could face escalating penalties if he chooses to continue mining on the property without the proper permits, McCollough said. DEQ will probably follow up the violation letter with either an administrative or judicial order, he said.

The department took a closer look at the water quality issue during an on-site inspection Tuesday, McCollough said.

"I consider the water quality violation more urgent than the opening mining violation," he said. "It needs to be addressed right away."

Barnes' attorney, Allan McCormick of Missoula, said workers have already fixed the water quality problem by diverting the ground water pumped out of the pond away from the river.

The turbid water reached the Clark Fork River after some silt fencing failed, McCormick said. The problem was short-lived, he said.

"There never was any intent of water going into the Clark Fork," McCormick said.

While the developer plans to get a mining permit, he maintains the pile of gravel is simply the product of building the pond, McCormick said.

"We don't believe there was any mining activity," he said.

Some of the excavated material will eventually be crushed and used for gravel, McCormick said. The developer plans to obtain an air quality permit before that activity begins, he said.

Reporter Perry Backus can be reached at 523-5259 or at pbackus@missoulian.com