


TO: Ben Reed, Hearing Examiner,
Board of Environmental Review

FROM: Hillary Houle, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901 

DATE: April 5, 2016

SUBJECT: Board of Environmental Review Case No. BER 2016-04 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: LT TRUCKING, LLC,
APPEAL RIVERSIDE CONTRACTING,
INC., RECLAMATION BOND RELEASE
PERMIT #2083, CVID #17280

Case No. BER 2016-04 OC

The BER has received the attached request for hearing. Also attached is DEQ's administrative document(s) relating to this request.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

John North
Chief Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Chief
Industrial and Energy Minerals Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

LT TRUCKING, LLC

Lee Farmer
PO Box 1186
Havre, MT 59501
Phone (406) 265-5962
Fax (406) 265-4593
Cell (406) 390-0807

Hillary Houle
Board Secretary
Board of Environmental Review
1520 East 6th Avenue
Helena, MT 59601

Hillary Houle,

I received your contact information from Ed Coleman concerning my wish to file an appeal on a Reclamation Bond Release.

I have a gravel pit in Hill county that was leased by Riverside/SK Construction for a period of 5 years beginning on 12/3/2010. During the time frame of the lease a different company, Stormwater Construction, operated in the pit and their operation involved bringing app. 1.9 million pounds of salt which was dumped in the pit area. This salt has contaminated the area and nothing will grow in the area. There is a disagreement between myself and Riverside/SK regarding who allowed SWC access to the pit. I did not know SWC was going to operate in the pit until I showed up at the pit and observed Riverside/SK employees and SWC employees discussing where to put SWC's equipment. Also contained in the permit application submitted to the DEQ by Riverside/SK and approved by the DEQ it states Riverside/SK has exclusive rights to the pit and must ensure all operations in the pit are conducted in accordance with the permit, which did not allow salt to be imported to the pit. Also a letter dated June 24, 2014 from Daniel Kenney, DEQ Enforcement Division, further addresses the fact that Riverside/SK had exclusive rights and basically could override anything I did concerning the pit. Now Mr. Coleman and Mr. Kenney are saying the conditions in the permit and the letter dated June 24, 2014 are not being enforced but will not supply me with an answer as to why.

With the DEQ's release of the Reclamation Bond it basically relieves Riverside/SK from the salt contamination and puts it on me which I don't feel is right. I was under the assumption Riverside had to establish re-growth of vegetation on the site and bond could not be released for a period of 2 years following either the end of the lease or final reclamation date. Lease expired on 12/3/2015 and final reclamation was slated for November 2014. Since the bond was released on February 10, 2015 it did not adhere to the 2 year stipulation for end of lease or final reclamation date.

DEQ submitted the following reasons for why bond was released: 1) I banned Riverside from entering the area. 2) I grazed cattle on the area and was using the area in a productive manner. My rebuttal to these 2 items are as follows. I did send an email to Riverside ASKING them to stay off the area until some issues were resolved. The main issue was Riverside dug trenches around my gravel stockpiles in order to contain the salt water runoff which basically left the stockpiles un-accessible. Riverside promised to remove the trenches but failed to do so therefore my email asking them to stay off the land. As far as the cattle grazing, the pasture in which the pit is located is app. 25 acres but only app. 10 acres were disturb by Riverside. The cattle did graze the areas which were not disturb but definitely did not graze the areas contaminated by the salt as there is NO vegetation in those areas. I find it hard to believe the DEQ feels the land is productive. The salt has sterilized the area and even contaminated my lawn area from the truck traffic coming out of the pit with salt on the tires and by salt leaching thru the ground. So far I have spent app. \$35K just re-establishing my lawn area.

I have enclosed the Reclamation Bond Release and the letter dated June 24, 2014. I would like to file an appeal and would hope the Board of Environmental Review would revoke this bond release and hold Riverside/SK/SWC liable for the salt contamination and cleanup. The salt is not going to go away and will eventually end up on other peoples land and in the Milk River.

Thank You.

Lee Farmer
LT Trucking



Montana Department of
ENVIRONMENTAL QUALITY

Steve Bullock, Governor
Tracy Stone-Manning, Director

P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.mt.gov

June 24, 2014

Riverside Contracting, Inc.
5571 Alloy South
Missoula, MT 59808

Re: Complaint regarding opencut activities. [CVID 17280]

The Enforcement Division (ENFD) of the Montana Department of Environmental Quality (DEQ) received a complaint regarding opencut mining activities at the Lee Farmer Pit (Site), Riverside Contracting, Inc. (RCI) Permit No. 2083 (Permit), in Hill County, Montana.

The complaint alleged that a RCI subcontractor brought in a large amount of salt to mix with sand for use by the Montana Department of Transportation (MDT) and that the salt contaminated the Site and possibly ground water. The complainant also alleged that the area where the salt/sand mixing occurred had not been cleaned up as of February 2014.

According to information provided to ENFD, Storm Water Construction (SWC) was the contractor that conducted the salt/sand mixing activity. It's alleged that RCI had knowledge of the activity, but directed SWC to obtain permission from the landowner, Lee Farmer, to conduct the non-permitted activity.

Neither the Permit nor the March 2011 Amendment provides for any activity associated with importing and/or mixing salt at the Site. As the Permit holder and having exclusive rights to conduct opencut operations, RCI has the obligation to ensure all opencut operations at the Site were conducted in accordance with the Permit.

Pursuant to Administrative Rules of Montana (ARM), 17.24.225(1), an operator shall comply with the provisions of its permit. *See* ARM 17.24.225(1). In addition, pursuant to ARM 17.24.225(2), an operator may allow another person to mine and process mine materials at the site, as long as the operator retains control over the activities and ensures that no violations of a permit occur. *See* ARM 17.24.225(2).

Further, the Landowner Consultation form, submitted with the March 2011 Amendment application, and signed by Lee Farmer, states that the "Landowner agrees that the operator will have the exclusive right to conduct opencut operations in the permit area, and that the operator may give permission to other parties to conduct such operations in the permit area in accordance with the Plan of Operation and with the understanding that the operator remains responsible for those activities."

Riverside Contracting, Inc.

June 24, 2014

Page 2

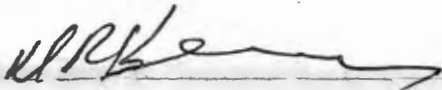
In addition, DEQ's instructions on *How to Obtain and Comply with an Opencut Mining Permit* contain the following language, "The Operator and Landowner should also discuss each detail of the *Landowner Consultation* form. Difficulties with permits often arise when a Landowner allows another party to conduct Opencut operations without the Operator's knowledge or prior approval. Make sure the Landowner understands that the Operator will have the exclusive right to conduct Opencut operations in the permit area and the Operator must retain control over operations conducted by another party (even operations conducted by the Landowner). Emphasize that under the Opencut Mining Act, its implementing rules, and the permit, the Landowner may not authorize Opencut operations by any other party until that party obtains the Operator's permission. Conversely, the Operator should make it their policy not to allow any other party to operate in the permit area without first informing the Landowner."

Based on the information provided to ENFD, it appears that RCI failed to exercise its exclusive rights when it allegedly allowed SWC to obtain landowner permission to conduct the salt/sand mixing operations; therefore, allowing the non-permitted activity to be conducted in violation of the Permit and Amendment. Therefore, RCI is in violation of the Montana Opencut Mining Act.

As the Permit has a reclamation date of November 2014, DEQ does not anticipate initiating formal enforcement actions, as long as RCI completes reclamation in accordance with the Plan of Operation, including the proper removal and disposal of all salt-impacted media by November 30, 2014. Failure to complete reclamation by November 30, 2014 could result in DEQ initiating a formal enforcement action that could include the assessment of either administrative or judicial penalties as allowed by Section 82-4-441, MCA.

If you have questions related to this matter or feel the information provided to DEQ is not factually accurate, please contact me at either dkenney@mt.gov or the telephone number listed below.

Sincerely,



Daniel R. Kenney
DEQ Enforcement Division
(406) 444-; fax (406) 444-1923

cc: Lee Farmer

cc via email: DEQ Opencut Mining Program
Dana David, DEQ Legal
Storm Water Construction

RECLAMATION BOND RELEASE

Operator name: Riverside Contracting, Inc.
Address: 5571 Alloy South
City, state, zip: Missoula, MT 59808
Permit Acreage before release: 25.6

Permit #: 2083
Site name: Lee Farmer
Legal: 48.56299, -109.54889
County: Hill

Surety: Hartford Fire Insurance Company
Address: PO Box 711
City, state, zip: Great Falls, MT 59403

Agent: Hub International Mountain States Limited
Agent X or Surety address
Bond #: 41BSBFX2449 Total \$: 88,513.00

The Department of Environmental Quality (DEQ): 1) conducted a field inspection on 12/3/2014; 2) further evaluated the site using documentation and photographs the Operator submitted via email on 10/7/15, and with the *Release Request* dated 10/23/2015; and 3) assessed reclamation requirements and objectives of the Plan of Operation (Plan). Based on this evaluation and pursuant to the Opencut Mining Act (MCA 82-4-433), the DEQ determined to proceed as indicated below at item A, B, C or D. Read the applicable conditions carefully.

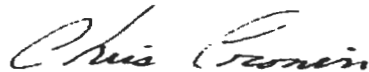
A. **Disapprove the *Release Request*** and release none of the bond, for the following reasons: . The Operator must conduct reclamation work in accordance with the Plan before submitting a new *Release Request*.

B. **Approve BOND Reduction on acres** in the amount of \$ for the following reasons: The site is re-contoured and soil has been re-applied and prepared for seeding. The following conditions apply:
1. The release area is **no longer permitted** for any Opencut operations except reclamation.
2. To conduct any other Opencut operations in the release area, the Operator must first apply to amend the permit and the DEQ must approve that amendment.
3. Bond of \$ is retained on the acres remaining in the permit for the following reasons: Establishment of vegetation. The retained bond amount is based on:
 Either: a) The attached *Reclamation Bond Spreadsheet* dated .
 Or: b) The following explanation of the amount retained: .
4. The Operator must conduct reclamation in accordance with the Plan before submitting a new *Release Request*.

C. **Approve ACREAGE Release on acres** in the amount of \$ for the following reasons: . The following conditions apply:
1. The release area is **no longer permitted** for any Opencut operations.
2. Conducting Opencut operations on the release area before obtaining an approved amendment or new permit would be a violation of the Act and its implementing rules.
3. The **remaining permit** is a total of acres and bond of \$ is retained on this acreage for the following reasons: . The bond amount retained is based on:
 Either: a) The attached *Reclamation Bond Spreadsheet* dated .
 Or: b) The following explanation of the amount retained: .
4. The Operator must conduct reclamation on the remaining permit in accordance with the Plan before submitting a new *Release Request*.

D. **Approve Total ACREAGE Release and Permit TERMINATION** for the following reasons: The site was graded, soiled, and seeded, and vegetation is established in most areas. By means of a 10/7/15 email, Riverside submitted: a) written documentation that the landowner is barring Riverside from entering the site, and b) two photographs showing that the landowner was grazing cattle on the site on 6/25/15, even though the vegetation did not have two years growth as is recommended. Since the landowner is using the site in a productive manner, reclamation to rangeland has been attained. The following conditions apply:
1. The **entire** remaining bond of **\$88,513.00** is released.
2. Conducting Opencut operations on the terminated permit before obtaining a new permit would be a violation of the Act and its implementing rules.

APPROVED BY: STATE OF MONTANA, DEPARTMENT OF ENVIRONMENTAL QUALITY



Opencut Supervisor

February 10, 2016

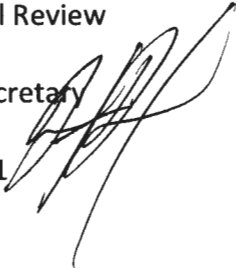
Industrial & Energy Minerals Bureau

Title

Date

Cc: Lee Farmer
Riverside Contracting Inc.

TO: Ben Reed, Hearing Examiner,
Board of Environmental Review

FROM: Hillary Houle, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901 

DATE: May 12, 2016

SUBJECT: Board of Environmental Review Case No. BER 2016-05 PWS

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: APPEAL DENIAL OF
NON-DEGRADATION REVIEW, EQ#16-1698,
SANDERS COUNTY, MT

Case No. BER 2016-05 PWS

The BER has received the attached request for hearing. Also attached is DEQ's administrative document(s) relating to this request.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

John North
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

John Dilliard Bureau Chief
Public Water Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

RECEIVED

MAY 13 2016

**DEQ DIRECTORS
OFFICE**

DM&L

Datsopoulos, MacDonald & Lind, P.C.

LAW OFFICES | EST. 1974

Missoula Offices

Central Square Building
201 W. Main Street, Suite 201
Missoula, MT 59802

Phone: 406.728.0810
Fax: 406.543.0134

www.DMLlaw.com

Hamilton Offices

Hamilton Center
1920 N. First Street, Suite C
Hamilton, MT 59840

Phone: 406.961.9003
Fax: 406.961.9004

www.DMLlaw.com

Milton Datsopoulos

Dennis E. Lind
William K. VanCanagan
Rebecca L. Summerville
David B. Cotner
Darla J. Keck
▲ Terance P. Perry
◦ Molly K. Howard
Trent N. Baker
Peter F. Lacny
Nathan G. Wagner
• Del M. Post
Joseph R. Casillas
George H. Corn
Kyle C. Ryan
◦ Brian M. Lebsock
• Jason A. Williams
▲ ▲ Anna C. Conley

May 12, 2016

Ronald B. MacDonald [1946-2002]

▲ Also admitted in Massachusetts
▶ Also admitted in North Dakota
▪ Also admitted in Arizona
◦ Also admitted in Washington
• Also admitted in Idaho
▲ ▲ Contract Counsel

Via FedEx & E-Mail:

Ms. Houle
Department of Environmental Quality
Board of Environmental Review
1520 East 6th Avenue
Helena, MT 59620

Re: Lakes at Heron Subdivision
Non-Degradation Review
Sanders County, EQ # 16-1698

Dear Ms. Houle:

I am writing on behalf of The Lakes at Heron Montana, LLC, to request an appeal hearing before the Board of Environmental Review pursuant to Mont. Code Ann. § 76-4-126 and the Montana Administrative Procedures Act. Enclosed with this letter is a copy of the decision of the Department of Environmental Quality denying my client's application for non-degradation review. My client intends to appeal this denial on the grounds that the Department's denial was improper under the applicable standards, and that the Department is requiring new and additional information that was not required when this application was previously submitted.

Please confirm that this notice of appeal has been timely received by the Board of Environmental review, and please feel free to contact me at your convenience if I can provide any additional information at this time.

Datsopoulos, MacDonald & Lind, P.C.

May 12, 2016

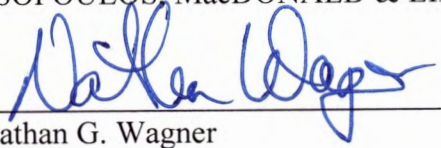
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Thank you.

Sincerely,

DATSOPOULOS, MacDONALD & LIND, P.C.

By: _____


Nathan G. Wagner

NGW/mkd

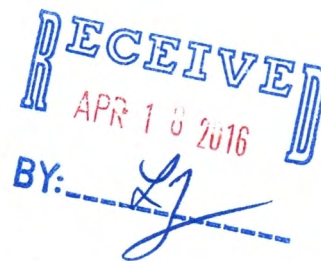
Encl. a/s



Montana Department
of Environmental Quality

Roger Nobel
Applied Water Consulting LLC
PO Box 7667
Kalispell, MT 59904

April 13, 2016



RE: Lakes at Heron Subdivision
Non Degradation Review
Sanders County
EQ # 16-1698

Dear Mr. Nobel:

The application and information regarding the non-degradation review for the above referenced subdivision was received by this office and reviewed in accordance with ARM Title 17, Chapter 36. This is to inform you that the subdivision application cannot be approved at this time. The Department is requesting additional information to demonstrate compliance with the Sanitation in Subdivisions Act (76-4-101, MCA) and regulations (ARM Title 17, Chapter 36).

Until the information required by law and regulation as specified in this letter is submitted to this office and found to be adequate, we cannot produce a statement that the subdivision is free of sanitary restriction. Because the Department must make a decision to deny or approve your application within statutory deadlines, the Department hereby denies the application until the required information is submitted for review.

If you wish to appeal the Department's denial of certification, you may request a hearing before the Board of Environmental Review, pursuant to Section 76-4-126, MCA and the Montana Administrative Procedures Act.

When you submit the additional information for our review, please use the submittal title and E.Q. # noted above to ensure that the information is placed with your particular proposal.

If you have any questions on the above, please feel free to call me at the Permitting and Compliance Division at (406) 444-5368.

Sincerely,

Barbara Kingery, PE
Environmental Engineering Specialist
Subdivision Section
Public Water and Subdivision Bureau
e-mail – Bkingery@mt.gov

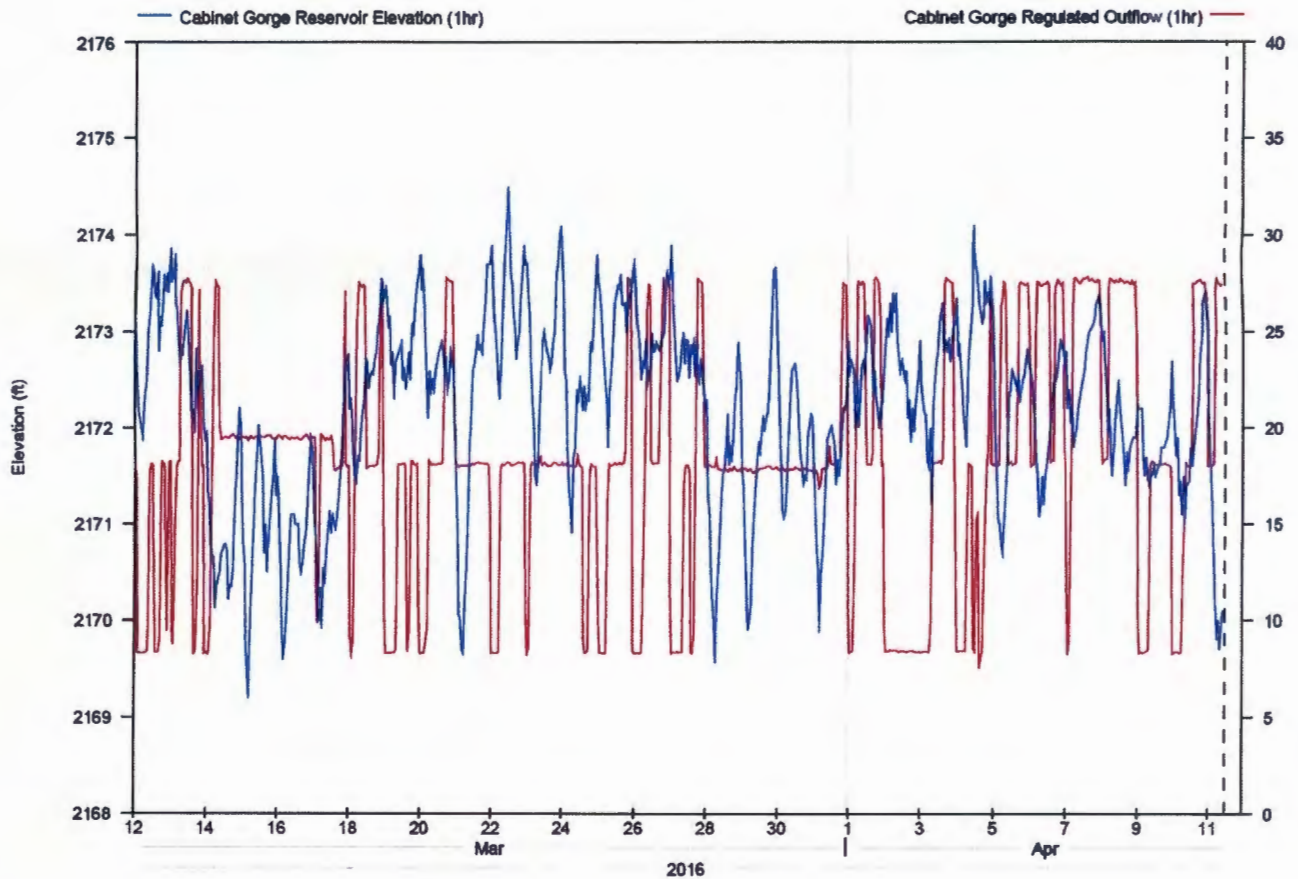
c: file
Sanders County Sanitarian
Sanders County Planner
Jeff Larsen, PO Box 2071, Kalispell, MT 59903
Jon Marcheso, 320 East Nider Avenue, Suite 103, Coeur d'Alene, ID 83815
Kim Wilson, PO Box 557, Helena, MT 59624
Greg Bryce, Hydrometrics, 3020 Bozeman Ave., Helena, MT 59601
Eric Regensberger, DEO

Additional Information:

1. The pumping test submitted for the railroad well (M:81413) does not provide hydraulic conductivity for the geologic materials in the ground water mixing zone (0 to 15 feet below the water table). The railroad well is screened at 124 to 138 feet below ground surface, which is about 45 feet lower than the ground water table. Another pumping test referenced in a February 15, 2011 report by Rowland Consulting was conducted on another onsite well (M:230029) which was also conducted well below the mixing zone, approximately 60 feet below the ground water table. To determine the appropriate hydraulic conductivity one new well should be constructed approximately in the middle of all current and potential future phases of this development. The well should be completed approximately 15 feet below the groundwater table with 20 feet of perforations at the bottom of the well casing. The well should be constructed so that a large enough pump can be used to stress the aquifer to provide a sufficient drawdown curve to calculate the hydraulic conductivity. The test should be conducted for 24 hours or until a positive hydraulic boundary is encountered and the drawdown stabilizes for two hours.
2. A water quality sample should be collected from the well required in item 1 and analyzed for nitrate. That sample should be used as the background nitrate concentration in the nitrate sensitivity analyses.
3. For future reference, when conducting a long-term pumping test, the aquifer thickness value for calculating hydraulic conductivity is different than what is typically used for short well log tests. The aquifer thickness should be based on the distance from the static water level to the bottom of the pumping well intake zone (e.g. bottom of well screen or bottom of open hole section). This is described in more detail in section 2.7.1 of the nondegradation guideline, (<http://deq.mt.gov/Water/wqinfo/Nondeg/HowToNonDeReg>).
4. The groundwater gradient at the site is possibly controlled to some degree by the level of the water in the adjacent Cabinet Gorge Reservoir. The ground water flow measurements on 9/17/2015 appear accurate and show a gradient direction of S60E at 0.0003 ft/ft. The measured gradient is

shallow and could change with small fluctuations in the reservoir level. The level of the reservoir is allowed to fluctuate approximately seven feet between 2168 and 2175 feet above sea level. Based on discussions with Avista (the owner and manager of the Noxon Rapids dam and Cabinet Gorge dam) regarding management of the dams, the water levels typically fluctuate on a daily basis between those levels and do not have any seasonal pattern (see graph below for the most recent 30 days of water elevations). Therefore, if ground water flow directions did fluctuate in response to reservoir levels it would likely be on very short term basis (hourly instead of seasonally). If the ground water flow direction has significant changes in direction over time that could potentially change the shape, size, and direction of the mixing zones, it could also affect where drinking water wells could be located. Additional monitoring needs to be conducted to determine whether the ground water flow fluctuates over time and is that fluctuation significant enough to impact the ground water mixing zones. Due to the potential for rapid changes in flow direction, frequent water level monitoring over a short time are necessary. Hourly (or more frequent) static water levels should be collected in the West Well, NRR well and Middle well (the East well could be used instead of the Middle well) for a period of at least 7 days to determine how and if the groundwater flow direction fluctuates. However, if the applicant proposes other options that would provide the same or better data, the Department will determine if that method is sufficient.

Cabinet Gorge (Pend Oreille R. Basin)



5. The mixing zone calculations submitted used a nitrate concentration of 33.6 mg/L. If level 2 systems are being used, a value of 24 mg/L can be used in the calculations.
6. The results of the phosphorus adsorption analysis from the soil sample from lot 7 has some errors and omissions:
 - a. The depth and composition of the soil sample was not submitted. Ideally, the soil sample will be a mixture of all the different soil types encountered that will be below the burial depth of the drainfield laterals (i.e. soil in the upper two feet shouldn't be part of the soil sample for a standard depth drainfield). The sample should be mixed at the proper ratio corresponding to the soil layers relative thickness (e.g. if there are two layers with layer "x" being 6 feet thick and layer

“y” being 2 feet thick, the soil sample should contain 3 parts soil “x” and three parts soil “y”). Please submit information on how the soil sample was mixed for the Department to review its applicability.

- b. The laboratory results did not indicate what fraction of the sample submitted was removed by the laboratory prior to the adsorption test. As described in section 3.8 of the nondegradation guideline, the results of the graph must be adjusted to account for the percentage of coarse material removed by the lab prior to the test being conducted. Please submit that information and adjust the adsorption values accordingly in the phosphorus breakthrough calculations.
 - c. The lab results were not interpreted correctly – the adsorption value (y value in the graphs submitted) used in the nondegradation calculations should be taken from where the graph crosses the 10.6 ug/mL Remaining (x value in the graphs submitted). 10.6 ug/mL, which is equivalent to 10.6 mg/L, is used because that is the estimated average concentration of phosphorus in domestic wastewater. This is also described in section 3.8 of the nondegradation guideline. Using this method, the phosphorus adsorption capacity of the lot 7 (ID-P2) sample is approximately 128 ug/g (ppm). However, this result may need to be reduced or rejected based on responses to the above two items related to the phosphorus adsorption results.
7. Please confirm the project is greater than ½ mile from Elk Creek. If the project is it is less than or equal to ½ mile in the groundwater flow direction to this surface water feature you will need to provide an analysis of impacts of nutrients in accordance with ARM 17.30.715. Note, to facilitate approval of future applications at this site, you may want this analysis to address all drainfields in all phases of the development, not just phase 1.