

DEQ OPENCUT FREQUENTLY ASKED QUESTIONS (FAQ)

1. Why did Opencut determine that this application was complete?

- An Operator has the right to submit an application to Opencut at any time. Opencut must deem the application “complete” if it contains all the information and materials required by MCA 82-4-432(4), regardless of the content and quality of the application.
- As stated in MCA 82-4-432(4)(b), “*A determination that an application is complete does not ensure that the application is acceptable and does not limit the Department's ability to request additional information or inspect the site during the review process.*”
 - “Completeness” means that all required and necessary documents are submitted, not that they are acceptable.
- Opencut is the agency tasked by the Opencut Act to review the Operator submitted application within the timelines specified in the Act. Opencut is seeking comments about the site from the public to access citizens’ personal and historic knowledge of the area to help inform Opencut of potential issues.

2. Is there anything I can do to prevent this permit from being issued?

- The application was deemed “complete”. It has not been deemed “acceptable” (i.e. the proposed operation has not been approved).
- Opencut will accept public comment throughout the application process. These comments will provide Opencut with a better understanding of local issues pertaining to the site and allow Opencut to better conduct its review.
- Opencut does not have the authority to disapprove an application if it meets the requirements of the Opencut Act. If the application meets those requirements, it must be approved. If the application does not meet the requirements of the Act, deficiencies must be identified in a deficiency letter.

3. What will Opencut do if my property values are affected?

- The Opencut Act indicates that one of its purposes is to protect and perpetuate the taxable value of land subjected to opencut operations through reclamation MCA 82-4-402(2).
- The Act does not provide Opencut with statutory authority to regulate with regard to offsite residential or commercial property values.

4. What about my water source (well, spring, other nearby surface water)?

- MCA 82-4-434(3)(l) requires “*that surface water and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the opencut operation*”
- There are numerous factors that may or may not affect a nearby well or spring. The more local knowledge citizens can provide, the better Opencut can ensure surface water and groundwater will be given appropriate protection.
- Please provide your comment and knowledge of water issues in the area for Opencut’s consideration.

5. If the permit is issued and my water quality and/or quantity are affected, what should I do?

- ARM 17.24.218(1)(h)(ii)(B) requires “*an explanation of proposed measures to protect the water rights of other parties or to replace an adversely affected water source that has a beneficial use,*”
- File a complaint with DEQ Enforcement by either calling 406-444-0379 or visiting the website at: <http://deq.mt.gov/reporting>
 - In response Enforcement would assess the complaint.
 - DEQ would require the Operator to conduct investigations and subsequent corrective actions if necessary.
- The person affected may seek legal counsel.

6. If the permit is issued, what can I do to appeal it?

The Opencut Act provides the option to appeal a final permitting decision. Specifically, Section 82-4-427(1), MCA indicates that:

- A person whose interests are, or may be, adversely affected by a final decision of the department to approve a permit application and accompanying material is entitled to a hearing before the Board of

Environmental Review (<http://deq.mt.gov/DEQA1dmin/ber>).

- To do so, the person must submit to the Board a written request stating the reasons for the appeal within 30 days of the department's decision.
- To be eligible to file for an appeal of a permit application that was noticed publicly, a person must have either:
 - submitted comments to the department on the application, or
 - submitted comments at the public meeting.

7. What about safety issues from gravel trucks on public roads (County & MDT roads)?

- The Opencut Act does not provide Opencut with statutory authority to regulate traffic on public roads.
- Public roads are regulated by the County and/or Montana Department of Transportation (MDT).
- Please contact the County or MDT for questions pertaining to roads affected by the proposed Opencut application.

8. Does the Operator need a permit from the Water Protection Bureau?

- The DEQ Water Protection Bureau has created a pamphlet that helps the Operator determine if a permit is needed.
- The brochure is located in section "I" of the Opencut website's "Forms" page at the following link: <http://deq.mt.gov/Mining/opencut>.

9. What about dust control and air quality at the site?

- The word "dust" does not appear in the Opencut Act or its rules. Opencut does not have the statutory authority to regulate dust.
- While an Opencut permit identifies the types of equipment to be used in the permit boundary (Section A1-10 of the Opencut Mining Plan of Operation and Application), it is DEQ Air Quality that regulates the actual equipment with the potential to discharge air pollutants (e.g. crusher; asphalt plant).

10. What can be done about equipment and operating noise at an Opencut site?

- MCA 82-4-434(3)(m) requires that *"noise and visual impacts on residential areas will be minimized to the degree practicable through berms, vegetative screens, and reasonable limits on hours of operation."*
- Refer to the Hours of Operation section (C5 of the Opencut Mining Plan of Operation and Application) for further information.
- Citizens comments about local conditions and potential options to minimize noise may be provided to Opencut verbally at the public meeting, in writing and/or via email.

11. What can be done about visual impacts to my viewshed?

- MCA 82-4-434(3)(m) requires that *"noise and visual impacts on residential areas will be minimized to the degree practicable through berms, vegetative screens, and reasonable limits on hours of operation."*
- Section D10 of the Opencut Mining Plan of Operation and Application depicts restrictions Opencut can impose on the Operator to mitigate visual impacts on neighboring properties.
- Citizen comments about local conditions and potential options to minimize visual impacts may be provided to Opencut verbally at the public meeting, in writing and/or via email.

12. Who regulates land use/zoning?

- Opencut has no statutory authority over zoning.
- Zoning is typically regulated by the County or City.
- The Opencut Act requires the Operator to submit a Zoning Compliance form signed by the County with any zoning restriction noted on the form. The Zoning Compliance form is found here: <http://deq.mt.gov/Mining/opencut> (section B3)

Note: The Opencut Act and Rules referenced in this document are located in the "Laws/Rules" section on our website: <http://deq.mt.gov/Mining/opencut>.