

## HOW TO OBTAIN AND COMPLY WITH AN OPENCUT MINING PERMIT

This document provides guidance for Operators applying for an Opencut mining permit or amendment. It also describes how to maintain compliance with the permit and request release when reclamation is completed. Permitting processes used by the Department of Environmental Quality (DEQ) conform to the Opencut Mining Act (MCA Title 82, chapter 4, part 4) and its implementing rules (ARM Title 17, chapter 24, subchapter 2). Questions, information requests, and all applications and other submittals must be sent to:

**DEQ Opencut Mining Section**  
Mail: PO Box 200901  
Helena, MT 59620-0901  
Office: 1218 East 6<sup>th</sup> Avenue  
Helena, MT 59601

**Contact Information:**  
Phone: 406-444-4970  
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Email: [DEQOpencut@mt.gov](mailto:DEQOpencut@mt.gov)

### **APPLICABILITY**

The Opencut Mining Act applies to: **a)** all land in Montana, except tribal land inside a reservation and certain federal land, and **b)** Operators who mine, or control the mining of sand, gravel, scoria, bentonite, clay, soil, peat, or mixtures of those substances, for which the primary purpose is the sale or utilization of those materials [MCA 82-4-403(7)]. The Act requires permits if Opencut operations will result in the removal of an aggregate total of 10,000 cubic yards or more of material. This 10,000 cubic yard threshold encompasses the sum of all soil, overburden, and mine materials that are stripped or excavated, regardless of location. As a result, permits are required for:

- 1. Each Operator that strips or excavates an aggregate total of 10,000 cubic yards of material.** A cumulative lifetime total applies; once an Operator removes more than 10,000 cubic yards of soil, overburden, and mine material at any site or combination of sites, a permit is required for any further Opencut operations regardless of size or location.
- 2. Each Opencut site at which an aggregate total of 10,000 cubic yards of materials are stripped or excavated.** A cumulative site total applies; once more than 10,000 cubic yards of soil, overburden, and mine material have been removed from a site, a permit is required for any further Opencut operations at that site regardless of the Operator, or the size of the operation, or whether the site was previously reclaimed.

**Note:** If an Operator intends to remove more than 10,000 cubic yard of material, a permit is required before any Opencut operations begin. The Act does not allow an Operator to begin mining toward the 10,000 cubic yard threshold and apply for a permit as that quantity is being exceeded.

When under Opencut Mining Section jurisdiction, an Operator must comply with the requirements and performance standards of the Opencut Mining Act and its implementing rules, the Opencut mining permit, and any amendments to the permit. The DEQ has authority to issue administrative penalty and compliance orders and file actions in District Court in the event requirements are violated.

To help Operators remain in compliance, the DEQ recommends that Operators conduct the following evaluation at least once a year:

- Carefully review all the components of each Opencut mining permit;
- Assess the status of mining operations and anticipate future needs; and
- If any aspects of the permit need to be updated, apply to amend the permit.

By March 1 of each year, Operators must complete and return the *Annual Production Report* that the Opencut Mining Section sends to each Operator every January. The form reports information on mining conducted on each permit during the previous calendar year. At that time, the Operator also calculates the annual fee of 2.5 cents per cubic yard of material mined from each permit and submits payment to the Opencut Mining Section along with the production report (MCA 82-4-437).

**Note:** The permitted Operator is responsible for paying the annual fee on all production from the permit area, even for material that was mined by other parties. Preparation of the *Annual Production Report* provides a good opportunity for Operators to perform a thorough review of their permits.

## **DEFINITIONS [ARM 17.24.202]**

**Access road** means an existing or proposed non-public road that connects an Opencut operation to a public road or highway. This includes the roadbed, cut and fill slopes, ditches, and other structures and disturbances related to the construction, use, and reclamation of the access road.

**Permit area** means the areas subject to a permit granted under the rules.

**Bonded area** means a portion of the permit area that is subject to a reclamation bond approved by the department under the rules.

**Non-bonded area** means that portion of a permit area where opencut operations are prohibited because a reclamation bond has not been approved by the Department.

**Amendment** means a change to an approved permit.

## **AMENDMENT**

The term “amendment” means a change to an approved permit. An Operator may apply to amend a permit at any time by submitting an updated *Plan of Operation and Application* to the Helena office. Before requesting an amendment, the Operator should carefully review the existing permit and identify all items that need to be updated.

Reasons to amend a permit include, but are not limited to:

- Add acreage
- Add an asphalt or concrete plant
- Change the postmining land use
- Increase the depth of mining
- Change other aspects of the *Plan of Operation and Application*
- Change the date of final reclamation, hours of operation, or similar procedural aspects of the permit that do not alter physical characteristics of the site.

## **HOW TO APPLY FOR A PERMIT OR AMENDMENT**

A primary purpose of the Opencut Mining Act is to ensure that Opencut sites are reclaimed to a productive use (MCA 82-4-403[13] and 434[2]). Operators who plan and conduct their operations with this final goal in mind are much more likely to meet the productive use requirement and secure full release of the permit when desired.

Operators should review the steps outlined below prior to beginning the process of applying for an Opencut mining permit or amendment. Depending on the situation, Operators may need to complete several steps simultaneously, or in a different order than listed below.

- 1. Verify if Proposed Permit is Located within a Sage Grouse Core, General Habitat or Interconnectivity Area**  
Prior to submitting an application, visit the Montana Sage Grouse Habitat Conservation Program’s website located at <https://sagegrouse.mt.gov> to verify if the proposed opencut operation would be located within a sage grouse area. If so, the applicant must submit an application to the Montana Sage Grouse Habitat Conservation Program prior to submitting an application to the Opencut Mining Section. The Opencut Mining Section will not review an application located in sage grouse habitat until a letter from the Montana Sage Grouse Habitat Conservation Program is submitted to the Opencut Mining Section that identifies any requirements.
- 2. Request a Pre-Application Meeting with DEQ** - Prior to applying for a permit or amendment, an Operator can submit a *Request for Pre-Application Meeting* form to the Helena office. The form is located at the top of

the Opencut forms webpage at <http://deq.mt.gov/Land/opencut/opencutpermitforms>. In response to this request, an Opencut Mining Section scientist will contact the Operator, attend a site meeting, provide recommendations regarding the proposed Opencut operation, and offer suggestions on completing the application process.

3. **Always Use the Current DEQ Forms** – The most up to date application forms should always be obtained at <http://deq.mt.gov/Land/opencut/opencutpermitforms>. Become familiar with the components of an Opencut permit or amendment application; these are listed on the Opencut forms webpage under “Permit and Amendment Applications.” Due to the diversity of Opencut operations, application forms are designed to cover a variety of situations, so Operators need to determine which documents are required for a particular operation.
  - a. The DEQ emphasizes the following points regarding application forms:
    - Applications must be completed on the forms furnished by the Opencut Mining Section [MCA 82-4-432(1)]. Operators are not authorized to make any changes to the text of the Opencut Mining Section forms. If altered forms are received, the Operator will be required to resubmit using unaltered forms.
    - Applications must be completed using the current Opencut Mining Section forms. If outdated forms are received, the Operator will be required to resubmit using the current forms. Operators can avoid this situation by using forms obtained from the website each and every time a new application is prepared.
    - The DEQ strongly recommends that Operators complete their application forms in electronic format. Doing so will make applying for a future amendment much easier. Operators should be sure to keep the original electronic file and one or more electronic backup copies.
4. **Consider Retaining Professional Assistance** - Operators should consider hiring an environmental consultant to assist with the preparation of application materials. A list of environmental consultants is available at <http://deq.mt.gov/Land/lust/consultantlist>.
  - a. Services provided by environmental professionals typically include:
    - Interpret environmental regulations as they pertain to the particular operations being proposed.
    - Prepare the required maps, forms, and support documents for the Operator’s approval and signature.
    - Represent the Operator at public meetings if any are required.
    - Provide assistance obtaining other permits or approvals that may be required (see **Step 5** below).
    - Assemble scientific and technical data from various sources and use this information to assess environmental impacts that may result from proposed Opencut operations.
    - Identify options to mitigate impacts and work with the Operator to design operations that will minimize environmental concerns.
5. **Obtain Other Required Permits and Approvals** - Identify, apply for, and obtain other permits and approvals that may be required for the site and proposed operations.
  - a. These may include, but are not limited to:
    - Underground utility clearance (e.g. contact the Utilities Underground Location Center at 1-800-424-5555)
    - Air Quality, Storm Water, Surface Water Discharge, and Groundwater Discharge (DEQ)
    - Floodplain (county or local)
    - Special or Conditional Land Use (county or local)

- Water Rights (Department of Natural Resources and Conservation)
  - 310 permit for work in or near a stream (local conservation district)
  - 404 permit for the excavation, discharge, or placement of dredged or fill material into waters or wetlands of the United States (U.S. Army Corps of Engineers)
  - Federal jurisdictional wetlands determination
  - Road Access\* (county or Montana Department of Transportation)
- b. Safety concerns about trucks entering and exiting Opencut operations have increased in recent years. Operators are responsible for obtaining road access permits or approvals. Operators should also:
- Verify that an Opencut operation's truck traffic is authorized under a site's existing access permit. (For example, an agricultural access may not authorize frequent truck traffic.)
  - Ensure that, over time, actual uses of an access remain consistent with the access permit. (For example, safety flaggers allowed during a road project may need to be replaced by stop signs and acceleration/deceleration lanes once the project is over.)
- c. See 10 below for local government approvals required to apply for an Opencut mining permit or amendment.
6. **Communicate with the Landowner and Secure a Written Agreement** - The Opencut Mining Act requires an Operator to certify that it has the legal right to mine the designated materials in the lands described [MCA 82-4-432(1e)]. Therefore, it is critically important for Operators to carefully research potential Opencut mine sites and communicate effectively with pertinent Landowners.
- a. The DEQ recommends that Operators verify the following before going to the trouble and expense of applying for a permit or amendment:
- Land Ownership - Confirm that the parties being engaged are the legal surface Landowners and have the authority to approve Opencut operations on all the land to be included in the permit or amendment area.
  - Mineral Rights - Ensure that the surface Landowners also own the mineral rights. Operators can inquire with government agencies involved with land administration, such as the U.S. Department of the Interior, Bureau of Land Management, and the Montana Department of Natural Resources and Conservation (DNRC). Verifying the mineral estate may also require the services of a deed researcher, professional landman, or real estate attorney. If a split-estate is identified, secure a separate agreement with the owner of the mineral estate before applying for a permit or amendment.
- b. Landowner Consultation form - Discuss each detail of the *Landowner Consultation* form with the landowner.
- Ensure the Landowner understands that the Operator will have the exclusive right to conduct Opencut operations in the permit area.
  - 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.
  - The Operator should make it their policy not to allow any other party to operate in the permit area without first informing the Landowner.
    - The *Landowner Consultation* also requires the Landowner to make important decisions about the permit area and the future condition of the site. Details of these topics are provided on the *Landowner Consultation* form. These decisions center around whether the Landowner wants:
      - Existing access roads included in the permit.
      - Access roads left at the conclusion of Opencut operations.

- Stockpiles of mine material left at the conclusion of Opencut operations.
- c. On occasion, disputes arise between Operators and Landowners and these parties turn to the DEQ to resolve the conflict. It is essential to understand that the DEQ can only enforce requirements of the Act, rules, and permit. Any other arrangements or understandings between the Landowner and Operator are private matters that should be stated in a separate written agreement between those two parties. Disputes can be avoided by reviewing the written agreement with the Landowner periodically and amending it in writing when appropriate.
- d. The Operator should consult with the Landowner throughout the permitting process regarding the proposed *Plan of Operation and Application*. Explaining in detail the operations that will be conducted and the timing of various activities helps the Landowner understand the types and magnitude of disturbances that will occur on their property. Both parties should also have a clear understanding of the postmining land use and the condition in which the property will be left at the conclusion of Opencut operations. Receiving the Landowner's input early and incorporating the landowner preferences in the proposed *Plan of Operation and Application* helps minimize the potential for conflict in the future.

## 7. Conduct Planning and Fieldwork -

- a. Plan where to locate operational features such as:
  - mine areas
  - asphalt or concrete plants
  - stockpile areas (soil, overburden, mine material, asphalt and concrete recycling)
  - erosion control structures
  - sight and sound barriers
  - water management structures
  - excess material disposal areas
  - backfill areas, etc.
- b. Identify land to be included in the permit area that will not be bonded until needed for Opencut operations. Identify such areas as Non-Bonded acreage on application materials, including maps. Plans for the development, use, and reclamation of these areas must include the same level of detail that is required for bonded areas. Benefits of permitting Non-Bonded area include:
  - Deferring the expense of bonding the area until it is needed for Opencut operations;
  - Eliminating the need to apply for an amendment if the original *Plan of Operation and Application* correctly identifies and has planned for the intended use of the Non-Bonded area.
    - **Note:** Prior to commencing any Opencut operations on Non-Bonded acreage (including parking equipment), the Operator must submit a *Request to Commence Operations in Non-Bonded Area* form, a new site map, and additional bond for the requested acreage. No operations can begin on the requested acreage until the form, map, and bond are approved in writing by the DEQ.
- c. Talk to neighboring property owners, residents, and businesses regarding the proposed operation. Listen to their concerns, refine your plans to mitigate potential impacts, and establish pathways for continued communication during site development and operation. Operators are advised to keep written records of these contacts.
- d. Clearly mark the proposed permit or amendment area so DEQ personnel and mine workers can readily locate permit boundaries [ARM 17.24.218(1)(a)]. Opencut Mining Section staff cannot inspect a site for permitting purposes unless it is appropriately marked on the ground. Further requirements are described in Section C7 of the *Plan of Operation and Application*.

- e. Follow specifications in the *Map Guideline* and obtain boundary coordinates in WGS 84 decimal degrees. These coordinates document the site's physical location and approved permit boundaries, and are required so the Operator can develop complete and accurate maps (see **Step 8** below). Boundary coordinate errors can shift data points by miles, so be sure to double-check coordinates. Submit the coordinate data to the DEQ via email using the Microsoft Excel *Boundary Coordinate Table*; refer to the *Map Guideline* for further instructions.
- f. Review soil survey information available from the Natural Resources Conservation Service (NRCS) at <http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm> . Dig test holes and examine other observation points such as road cuts to determine the thickness of soil and overburden at the site. The quantity of test holes described in ARM 17.24.218(1)(c) must be completed for each site. Clear labeled photos showing the top three feet of the soil profile with a visible scale must be taken and provided to the department for each test hole. Test holes must be representative of all topographic and geologic features of the site, and must be located in both bonded and non-bonded areas. Record the thickness data in the *Plan of Operation* and show the locations of test holes and observation points on the site map. For more information and tips on measuring and photographing soil depths, refer to the DEQ *Soil Guideline* located at <http://deq.mt.gov/Land/opencut/opencutpermitforms>.
- g. Prepare for the possibility that processing of the application may be delayed if the DEQ is unable to adequately inspect the site. Specifically, if the Department is unable to evaluate a permit application because weather or other field conditions prevent an adequate site inspection, then the application must be disapproved. In these cases, the DEQ will send the Operator a *Weather-Related Disapproval* letter. Operators should consider the following items and plan ahead to facilitate timely processing of the application.
  - Weather-related disapprovals commonly occur during periods of winter weather as the result of frigid temperatures; snow and ice; roadways that are snow-drifted, muddy, or flooded. Therefore, Operators are advised to document field information particularly well if an application will be submitted in the late fall or winter, or if the site is prone to weather-related problems (e.g. physically remote or at high elevation).
  - A DEQ scientist typically inspects a site to assess various environmental factors such as vegetation, soils, wildlife habitat, the presence of surface water, and indications of cultural artifacts. Since these factors are extremely sensitive to ground disturbance, it is not an option for Operators to expose a site by plowing snow.
  - Thorough documentation of site conditions by the Operator may prove essential if the DEQ's inspection must be delayed, or its adequacy is adversely affected by site conditions (e.g. greater than 20% snow cover). To prepare for the possibility that the DEQ may request additional site information to supplement its own field observations, Operators are advised to:
    - Submit a *Pre-Application Meeting Request* form early so a DEQ scientist has the opportunity to inspect the site before inclement weather sets in. <http://deq.mt.gov/Land/opencut/opencutpermitforms>
    - Take date-stamped digital photographs when the site is not covered with ice and snow. The DEQ recommends:
      - Photos showing the overall appearance of the site as taken from each corner of the proposed permit boundary, or other suitable locations.
      - Photos representative of typical site features (i.e. creeks, ditches, wellheads, vegetation, previously disturbed areas, etc.).
      - Photos of each test hole and observation point showing close-ups of the soil and overburden profile. Include a tape measure in these photos to document depths as required in ARM 17.24.218(1)(c).

- Stake ground features (e.g. test hole and soil observation points, ditches, wellheads, underground utilities and piping, etc.) so they can be relocated if buried by snow.
- Be ready to have a representative meet the DEQ scientist at the site if the permit area is physically remote, access may be difficult, soil pits and other ground features are not staked, or there is greater than 20% snow cover.

#### 8. Prepare Required Maps -

- a. For **permit** applications, follow the *Map Guideline* and create a Site Map, Area Map, Location Map, and Reclamation Map to show all the required features. The maps are critical components of the permit application and constitute legal documents that become a binding part of the mining permit.
- b. For **amendment** applications, follow the *Map Guideline* and create an updated Site Map, Area Map, Location Map, and Reclamation map and show all the required features. Updated maps are required for amendments except when changing only procedural aspects of the permit that do not alter physical characteristics of the site (e.g. final reclamation date, hours of operation).

#### 9. Prepare the Opencut Mining Plan of Operation and Application -

- a. For **permit** applications, complete and sign the *Plan of Operation and Application* form. Note that support documents are an integral part of the plan and must be attached. At a minimum, the following support documents are required:
  - Water Well Logs (required for wells in or within 1,000 feet of the proposed permit boundary)
  - Soil Photos
  - Site Map
  - Area Map
  - Reclamation Map
  - Location Map
  - *Boundary Coordinate Table*, available at <http://deq.mt.gov/Land/opencut/opencutpermitforms>. Submit by emailing the Microsoft Excel file to [DEQOpencut@mt.gov](mailto:DEQOpencut@mt.gov). Complete the email "Subject" line as follows:  
**BCT(Operator, Site Name)**
  - Weed Board Notification of Opencut Operation form
  - Reclamation Bond Spreadsheet
  - Any other support documents that the Operator references in the *Plan of Operation and Application* form must also be attached. These may include, but are not limited to: spill control and response plan, monitoring well installation plan, ground water monitoring plan and consultation with DNRC on water rights.
- b. For **amendments**, the Operator has two options:
  - If the amendment application is solely to extend the reclamation date for a period of no more than 5 years and is submitted no later than five years after the first approval date of the permit, the applicant can use the Department's *Request for Extension of Reclamation Date* form.
  - If the amendment does not meet the criteria above, then the Operator must update the *Plan of Operation and Application* form to indicate the changes being requested and provide additional site information as warranted. The DEQ will review the information submitted by the Operator and verify that the updated *Plan of Operation and Application* will be consistent with the amended mining operation.

10. **Obtain Approval of Zoning Compliance** - Obtain the local government approvals/notifications and submit with your application: (unless exceptions on page 1 of the *Opencut Mining Plan of Operation and Application* apply to your application).
  - a. Zoning Compliance form, available at <http://deq.mt.gov/Portals/112/Land/Opencut/Documents/Forms/Zoning.doc>. Must be filled out by the county or other local governing body. If the county or other local governing body requires a special or conditional land use permit, attach an approved copy.
  - b. Upon receipt of the approved forms, the Operator verifies they are filled out completely and correctly, and compiles them for submittal to the Opencut Mining Section in Helena along with all other required application components.
  
11. **Calculate and Obtain the Reclamation Bond** -
  - a. For a **permit** application, non-governmental Operators must calculate the appropriate bond amount for the site using the *Reclamation Bond Spreadsheet* and obtain a *Reclamation Bond* for that amount. The bond must meet requirements of one of five bonding options and must be written on forms available from the Opencut Mining Section website. Government Operators are exempt from bonding.
  - b. For an **amendment**, non-governmental Operators must obtain a revised *Reclamation Bond* or rider in the amount the Operator calculates for the updated permit area using the *Reclamation Bond Spreadsheet*. Updating the bond is required except when changing only procedural aspects of the permit that do not alter physical characteristics of the site (e.g. final reclamation date or hours of operation), unless the Department believes the bonding amount is too low.
  
12. **Confirm the Application is Complete, Accurate, and Consistent** – Under the Opencut Mining Act, the Operator is responsible for submitting a complete and acceptable application, and the DEQ is responsible for identifying technical and administrative items that are deficient with respect to requirements of the Act and its implementing rules. Therefore, the DEQ strongly recommends that Operators conduct a two-step review to confirm each application is ready for submittal:
  - a. Technical review - A technical person should confirm all required documents are present, complete, accurate, and ready for processing by the Opencut Mining Section. This includes verifying that all documents provided by other parties (e.g. *Landowner Consultation*, *Zoning Compliance*, and *Reclamation Bond*) are filled out properly and are entirely consistent with the application materials prepared by the Operator.
  - b. Administrative review - A second person should review the application to confirm:
    - All required documents are present and complete.
    - The application is free of typos, omissions, and other simple mistakes.
    - Various words and numbers are used consistently throughout the application documents and maps (e.g. Operator name; site name; landowner name; permit number; acreage; boundary coordinates; section, township and range).

13. **Submit the Application to DEQ** - Submit the completed and signed originals of all required application materials to the Opencut Mining Section in Helena as one package. Do NOT submit documents separately or in batches (except for the Microsoft Excel *Boundary Coordinate Table & Surface Landowners List* which are submitted via email). The contents of an application constitute legal documents and become part of the permit, so all required certifications and approvals must be signed and dated.

**Electronic Submittal** – The Opencut Mining Section accepts electronic submittals. Submitting electronically can save the operator time. The *Electronic Submittal of Opencut Documents* how to can be found here:

<http://deq.mt.gov/Portals/112/Land/Opencut/Documents/Forms/ElectronicSubmittalOFOCDocuments.pdf>

**Note:** Revised documents subsequently submitted to the Opencut Mining Section must be complete and signed originals indicating the revision date. The Operator only needs to resubmit documents that have been revised; do not resubmit the entire application package.

14. **Provide Public Notice** - Within 5 working days of receiving an application, DEQ will send the Operator a letter indicating whether or not the application is complete. Within 15 days after the DEQ sends a letter indicating an application is complete, the Operator must provide public notice if the application is for either:
- a. A new permit [MCA 82-4-432 (5)]; or
  - b. An amendment increasing the acreage by at least 50% of the permitted acreage [MCA 82-4-432 (11)].
- In accordance with MCA 82-4-432 (5), the public notice provided by the Operator must include:
- The name, address, and telephone number of the Operator;
  - A description of the acreage, the estimated volume of overburden and materials to be removed, the type of materials to be removed, the facilities, the duration of activities, and the access points of the proposed Opencut operation;
  - A legal description of the proposed Opencut operation and a map showing the location of the proposed Opencut operation and immediately surrounding property; and
  - A copy of the *Request for Public Meeting* form that accompanies the DEQ letter indicating the application is complete.
- In accordance with MCA 82-4-432 (6), to provide public notice, the Operator must:
- Publish the notice at least twice in a newspaper of general circulation in the locality of the proposed Opencut operation. A map is not required in the notice if, in addition to the legal description of the proposed Opencut operation, the notice provides an address for the map posted on the department's website and instructions for obtaining a paper copy of the map from the applicant. If the notice does not include a map, the applicant shall promptly provide a paper copy to a requestor. Mail the notice by first-class mail to the board of county commissioners of the county in which the proposed Opencut operation is located and to surface owners of land located within one-half mile of the boundary of the proposed Opencut permit area. Use the most current known land owners of record as shown in the paper or electronic records of the county clerk and recorder in the county where the proposed Opencut operation is located;
  - Post the notice in at least two prominent locations at the site of the proposed Opencut operation, including near a public road if possible; and
  - Provide the DEQ with a *Surface Landowners List* reporting the names and addresses of those notified.
15. **Attend Public Meeting (If One is Requested by the Operator or the Public)** - In accordance with MCA 82-4-432 (9), the DEQ will hold a public meeting in the area of the proposed Opencut operation at the request of:
- a. The Operator; or
  - b. At least 30% of the property owners or 10 property owners notified pursuant to MCA 82-4-432(6), whichever is greater
  - c. The DEQ will accept *Request for Public Meeting* forms for 45 days from the date of the letter sent to the Operator indicating an application is complete. If public meeting requests meet one of the two above criteria, the DEQ will hold a meeting within 30 days from the closing date of the public meeting request period. The DEQ will send notice of the meeting by first-class mail to the property owners on the *Surface Landowners List* provided by the Operator, and the board of county commissioners. The Operator should send a representative to the public meeting to describe the proposed operation and mitigations, answer questions, and listen to citizen's concerns and suggestions.

16. **Respond to Deficiency Notice(s) from DEQ** - After receiving a complete application, the DEQ will initiate administrative and scientific reviews to assess whether the application contains deficiencies with respect to the Opencut Mining Act and the implementing rules. If the application contains deficiencies, the DEQ will send the Operator a *Deficiency Notice* including a detailed identification of the deficiencies.
- It is the Operator's responsibility to submit revised documents that resolve the deficiencies.
  - The revised documents must be complete signed originals indicating the revision date.
  - The Operator only needs to resubmit documents that have been revised; do not resubmit the entire application package.

### **TIMEFRAME FOR DEQ TO PROCESS A PERMIT OR AMENDMENT APPLICATION**

To help minimize the time required for DEQ to process an application, Operators should determine which documents are required and confirm they are complete, accurate, and consistent prior to submittal. As noted above, within 5 working days of receiving an application, the DEQ reviews it and sends the Operator a letter indicating whether or not the application is complete.

Once a complete application is received, the DEQ reviews it to identify any deficiencies. The statutory timeframe to identify deficiencies varies based on the nature of the application, as is summarized below.

- Permit Application** - The statutory timeframes for the DEQ to identify deficiencies and issue a *Deficiency Notice* for a complete permit application are as follows:
  - 30 days if the Operator submits documentation to the DEQ showing that a public meeting will not be required, or the Operator and DEQ mutually agree that a public meeting will not be required based on the applicable criteria
  - 45 days if a public meeting is not requested by the Operator or the public and item a) above does not apply;
  - 75 days if a public meeting is required; and
  - 165 days if extended review of an application is warranted.\*
- Amendment Application** - The statutory timeframes for the DEQ to identify deficiencies and issue a *Deficiency Notice* for a complete amendment application are as follows:
  - 45 days if the application is not subject to the public notice and public meeting requirements\*\*;
  - 75 days if a public meeting is required; and
  - 165 days if extended review of an application is warranted.

\* - The DEQ may subject an application to an extended review if the DEQ determines that comments received at a public meeting held pursuant to MCA 82-4-432 reveal substantial issues not adequately satisfied in the proposed Plan of Operation.

\*\* - An amendment application is not subject to public notice and meeting requirements unless it proposes to increase the acreage by 50% or more of the permitted [MCA 82-4-432 (11)].

- Once the Operator submits revised documents addressing the deficiencies identified in a *Deficiency Notice*, the DEQ has 10 working days to review the documents and determine whether all the deficiencies have been resolved.
  - If the Operator has not resolved the deficiencies, or the Operator's response provides information which results in the identification of new deficiencies, the DEQ would issue another *Deficiency Notice*.
  - If the Operator appears to have resolved the deficiencies, the DEQ science reviewer prepares an Environmental Assessment (EA) in accordance with the Montana Environmental Policy Act (MEPA);

MCA Title 75, chapter 1, part 2) and its implementing rules (ARM Title 17, chapter 4, subchapter 6), and requests DEQ management approval of the application and EA. After management determines the application is acceptable and the EA is appropriate, the Opencut Mining Section would issue the permit and EA.

4. The DEQ can declare an application abandoned and void if:
  - a. The Operator fails to respond to the DEQ's written request for more information within 1 year; and
  - b. The DEQ notifies the Operator of its intent to abandon the application and the Operator fails to provide information within 30 days.

**MINING UNDER A LIMITED OPENCUT OPERATION** - An Operator holding an Opencut mining permit for at least one site can strip or excavate up to **10,000 cubic yards** of mine material from another site after submitting a *Limited Opencut Operation* form to the Opencut Mining Section [MCA 82-4-431(2-5)]. The total area from which these materials are stripped or excavated may not exceed **5 acres** and all Opencut operations including replacing soil must be completed **within 1-year** of submitting the form. See the *Limited Opencut Operation* form for further details, options and requirements.

**Note:** The *Limited Opencut Operation* form may be used to begin mining a site that will subsequently exceed 5 acres or 10,000 cubic yards if the Operator submits a complete application within 180 days of the Department's receipt of the limited Opencut operation form to permit the site. The 5 acre or 10,000 cubic yard volume limit cannot be exceeded for any reason until the site is fully permitted.

**ASSIGNING A PERMIT** - A permit can be assigned (transferred) from one Operator to another. The entire permit area must be assigned. The Assignee (party assuming the permit) applies for an assignment by following the instructions on the *Application for Assignment of Opencut Mining Permit* <http://deq.mt.gov/Portals/112/Land/Opencut/Documents/Forms/AssignmentApp.doc>.

1. Once the DEQ approves an assignment application, the Assignee is responsible for all Opencut operations conducted at the site, and for completing reclamation of the site in accordance with the *Plan of Operation and Application*. If the Assignee submits a *Request for Pre-Application Meeting* form prior to submitting an assignment application, a DEQ scientist will review the existing permit and attend a site meeting during which the scientist will:
  - a. Provide a preliminary assessment of:
    - Site conditions relative to current permitting requirements;
    - Whether the Assignee will be required to post a *Reclamation Bond* of greater value than the current bond; and
    - Whether the Assignee will be required to submit an amendment application concurrent with the Assignment application so that the permit will meet current requirements.
  - b. Offer recommendations for amending the permit if:
    - an amendment is required to meet current Opencut requirements, or
    - the Assignee is considering submitting a voluntary amendment application in the future.
2. Once an *Application for Assignment of Opencut Mining Permit* form is received, the DEQ reviews:
  - a. The assignment application to confirm all information is accurate, and
  - b. the *Reclamation Bond* to confirm it meets current requirements.
3. If warranted, a DEQ scientist visits the site and completes a preliminary assessment of the permit status as outlined in the bulleted list above. Based on this evaluation, the DEQ sends the Assignee a *Deficiency Notice* listing any deficiencies in the application and identifying any additional requirements (e.g. the need to amend the permit). Once the Assignee has resolved all the deficiencies and any additional requirements, the DEQ approves the assignment application and the Assignee's bond, and releases the Assignor's bond.

**REQUESTING RELEASE** - Operators can request release of a permit area that has been reclaimed. See the *Phase I* and *Phase II Release Request* forms for further details and requirements.

1. **Operator functions** - After performing reclamation work, the Operator inspects the site to assess whether the work meets requirements of the *Plan of Operation and Application* and is consistent with the postmining land use. While at the site, the Operator uses the appropriate *Release Request* form (Phase I or II) to assess site conditions relative to the release criteria the DEQ uses for most sites. At that point, the Operator has several options:
  - a. For Phase II release areas, if reclamation is **fully** complete (i.e. site is graded, soil is replaced, and vegetation is established as per the permit requirements) on part or all of the permitted area, the Operator collects WGS 84 decimal degree coordinates defining the area to be released; takes photographs documenting field conditions; and submits a *Phase II Release Request* to the DEQ. Boundary Coordinates do not need to be submitted if the entire permitted acreage is requested for Phase II release. Upon approval of Phase II release for the entire permit area, the permit would be terminated.
  - c. For Phase I release areas, if reclamation has been partially completed on a portion or all of the permitted area (i.e. grading, soil replacement, seeding), but vegetation has not yet fully established, the Operator collects WGS 84 decimal degree coordinates defining the area prepared for a Phase I Release; takes photographs documenting field conditions; and submits a *Phase I Release Request* to the DEQ. Boundary Coordinates do not need to be submitted if the entire permitted acreage is requested for Phase I release.
  - d. If upon inspection of the site, the operator finds that the reclamation is **not** yet ready for Phase I or II release, the Operator must perform the required reclamation work. Subsequently, the Operator should re-inspect the site, re-assess its condition, and submit the appropriate *Release Request* when **all** reclamation items have been addressed.
  
2. **DEQ functions** - The DEQ reviews the Phase I or Phase II *Release Request*, and has the following two options:
  - a. If the *Release Request* indicates the site does **not** meet the requirements for release, the DEQ notifies the Operator in writing that the request is disapproved. This notice explains why the request was disapproved and identifies site conditions the Operator must remedy before submitting a new *Release Request*.
  - b. If the *Release Request* suggests the site meets all requirements and **is** ready for release, a DEQ scientist inspects the site.
    - If the inspection indicates that release is **not** appropriate, the DEQ notifies the Operator in writing that the request is disapproved. This notice explains why the request was disapproved and identifies site conditions the Operator must remedy before submitting a new *Release Request*.
    - If the inspection indicates the requested release **is** appropriate, the DEQ notifies the Operator in writing that the request is approved, as follows:
  - c. For a **governmental** Operator, the DEQ issues a *Reclamation Liability Release* for the reclaimed area.
  - d. For a **non-governmental** Operator, the DEQ issues a *Reclamation Bond Release* for the reclaimed area and either releases the entire bond, or decreases the required bond amount, as warranted.