

III. Operating Permits (full-scale mining permits)

An individual or company is required to obtain an Operating Permit for mining if the conditions of an SMES cannot be met. The time required to obtain an Operating Permit can be quite variable, and depends upon many factors (i.e. the size and nature of the proposed project, the proposed project location, the number of agencies with jurisdiction, etc.). In general, relatively small projects with a low environmental impact potential can take 3 to 6 months; medium-sized, moderate-impact projects can take 6 to 12 months; large, high-impact potential projects can take 1 to 3+ years. Regardless of the size or impact potential of a proposed project, however, a potentially time-consuming unknown always exists: the public's perception of, or reaction to, a specific proposal. Generally, as public controversy surrounding a proposed project increases, so does the amount of time it takes to complete the required environmental analysis process.

For mines starting operations after November 3, 1998, open pit mining for gold or silver using heap leaching or vat leaching with cyanide ore-processing reagents is prohibited.

An application for an Operating Permit consists of three major parts:

- 1) Environmental Baseline information (hydrology, soils, vegetation, wildlife, cultural, etc. -- i.e., what is there now); For some disciplines (such as hydrology and wildlife), *at least one full year of baseline data is required*. It is *strongly recommended* that potential applicants meet informally with DEQ's Hard Rock Program staff to discuss site-specific informational needs prior to initiating baseline studies.
- 2) Operating Plan (type of mining/milling operation, reagents used, equipment used, tons/day, types of liners and installation procedures, location of all facilities, etc.);
- 3) Reclamation Plan (states reclamation objectives and how they would be implemented).

The Process: Once a plan is submitted, DEQ has 60 days to either call it complete (which doesn't mean the plan is approved, just that there is enough information to begin preparation of the appropriate environmental analysis document and make an informed permit decision), or incomplete. If the application is deemed incomplete (which is usually the case the first time around) a certified (or registered) "completeness review" (or "deficiency") letter is mailed on or before the 60th day. The letter "stops the clock", and contains additional informational requirements and questions to which the applicant must respond.

If the proposed project involves federal lands, the permitting and environmental analysis process become a joint state/federal action (i.e., both DEQ and the USFS and/or BLM must permit the mining operation), and a joint completeness review letter is sent within that 60-day time period. The letter contains compiled questions and comments from both DEQ/USFS (and/or BLM) technical staff, and is signed by both the appropriate DEQ and federal officials. If the proposed project involves state-owned (school trust) lands, DEQ interacts similarly (as discussed above for the federal agencies) with the Montana DNRC.

The company can take as much time as it wants preparing a response. Once they respond, the clock starts again; this time, however, DEQ has only 30 days to review the resubmitted permit application. (DEQ has signed agreements with most of the other state and federal agencies that have some degree of permitting authority, that compels those agencies to meet DEQ's statutory time frames for reviewing Operating Permit applications.) Following this 30-day review period, the application can either be called complete, or a second completeness review

letter is issued. This process continues until the application is deemed complete by the agencies. Once again, "complete" does **not** mean the company gets a permit - it means that enough information (technical and otherwise) has been supplied by the applicant for the agencies to carry out the environmental analysis process (write an Environmental Assessment [EA] or Environmental Impact Statement [EIS]) and make an informed permit decision.

Once the EA or EIS is complete, the permit is either:

- 1) Approved as submitted;
- 2) Denied*;
- 3) Approved with conditional mitigations or stipulations.

If approved, a bond is then calculated based upon the applicant's reclamation plan which is approved by the agencies. Once the bond is submitted and approved, the permit is signed and activities can begin.

***A NOTE on Permit Denial:** Under the *Metal Mine Reclamation Act*, a permit can **only** be denied for one or more of the following four reasons:

- 1) The proposed plan of operations would violate the Montana Water Quality Act; **-OR-**
- 2) the plan would violate the Montana Air Quality Act; **-OR-**
- 3) the reclamation plan is inadequate to meet standards; **-OR-**
- 4) the applicant is presently in violation of the MMRA, or any Montana or federal law or rule pertaining to mined land reclamation, water quality or air quality and is **not** working towards correcting the violation.

If a permit is denied, the applicant may reapply with a new plan. (Please see: ' ' 82-4-351, 82-4-335 (8) & (9), 82-4-352 MCA)