

## FREQUENTLY ASKED QUESTIONS

### TOPIC 1 – GENERAL QUESTIONS

#### **Q1. Why is an Operator required to obtain an Opencut Mining Permit?**

- A. Permits are required under the Opencut Mining Act (MCA Title 82, chapter 4, part 4), which was originally enacted in 1973. The Act allows Operators to obtain needed materials (sand, gravel, bentonite, clay, scoria, or peat), while ensuring that mine sites are reclaimed to a productive use.

#### **Q2. What aspects of the permitting process is the Operator responsible for, and what is the DEQ's role?**

- A. Under the Opencut Mining Act, the Operator is responsible for:
- 1) Designing and describing an operation that meets the requirements of the Act and its implementing rules (ARM Title 17, chapter 24, subchapter 2); and,
  - 2) Submitting a complete and acceptable application that meets the requirements of the Act and rules.

The DEQ's role is to:

- 1) Review the initial application to determine if all the required components have been received. If so, the DEQ sends the Operator a *Complete Letter*; if not the DEQ sends an *Incomplete Letter*.
- 2) Review the complete application to identify any technical or administrative items that are deficient with respect to the Act and rules. The DEQ sends the Operator a *Deficiency Notice* that describes the deficiencies the Operator needs to resolve by submitting revised application materials. Once the Operator has resolved all deficiencies, the DEQ prepares an *Environmental Assessment* and approves the application.

#### **Q3. Why has the Opencut Mining Program been changing its procedures and forms in recent years?**

- A. The Program has been in an active process of change due to a variety of factors. Primary among these are:
- A Legislative Audit in 2008 which found the Program was not closely following the Act and rules.
  - Judicial rulings in 2008 that determined the Program is obliged to meet application processing timeframes specified in the Act.
  - Revisions to the Act during the 2009 Legislature which included the following changes:
    - a) Operators must conduct public notice for new permit applications and certain amendments;
    - b) Operators pay an annual fee on mine production which is used to fund four Program positions; and,
    - c) Timeframes for the DEQ to process applications were shortened.
  - A Stakeholder Group formed in 2010 to foster the exchange of information and ideas among the DEQ, Operators, citizens, and other interested parties. (To receive meeting agenda, email a request to [DEQOpencut@mt.gov](mailto:DEQOpencut@mt.gov); please include "Stakeholder Group" in the subject line.)

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### TOPIC 2 – APPLICABILITY - Also see *How to Obtain and Comply with an Opencut Mining Permit*.

#### **Q1. Earthwork conducted during a construction project will produce more materials than are needed for that project. Is an Opencut Mining Permit required to sell or use the surplus materials?**

- A. The answer to this question must be determined by the DEQ on a case-by-case basis. As a result, parties in any doubt need to submit a *Request for Pre-Application Meeting*, or provide the DEQ with a written description of project activities and the planned fate of surplus materials. In response the DEQ will provide a written determination on whether or not a permit is required.

In accordance with the Act's definition of "Opencut operation" (MCA 82-4-403[7]), a permit is required if the primary purpose of the activities is the sale or utilization of materials. The DEQ uses the scenarios below to evaluate the primary purpose of the Landowner, as well as any Contractor involved in the construction activities.

**Scenario 1 - Only the Landowner is involved in the construction activities.** Under this scenario, the Landowner uses materials on the Landowner's property as needed for its construction project. Surplus materials are stockpiled on the Landowner's property and the Landowner retains title to them. Eventually, the Landowner sells or otherwise transfers the surplus materials for use at Non-Landowner projects. Typically, the DEQ considers the Landowner's primary purpose to be the construction project, with the surplus materials being incidental by-products. As a result, the Landowner is not required to obtain an Opencut mining permit.

**Scenario 2 - A Contractor performs site work, but the Landowner retains title.** Under this scenario, the Contractor stockpiles surplus materials on the Landowner's property, and the Landowner retains title to them. Eventually, the Landowner sells or otherwise transfers the surplus materials for use at Non-Landowner projects. Typically, the DEQ considers the primary purpose of both the Landowner and the Contractor to be the construction project, with the surplus materials being incidental by-products. As a result, neither party is required to obtain an Opencut mining permit.

**Scenario 3 - A Contractor performs site work and takes title.** Under this scenario, the Contractor takes title to surplus materials and promptly sells or otherwise transfers them for use at Non-Landowner projects. Typically, the DEQ considers the Landowner's primary purpose to be the construction project, but the Contractor's primary purpose is selling or utilizing the surplus material. As a result, either the Landowner or the Contractor is required to obtain an Opencut mining permit.

A few examples of construction projects that would require either the Landowner or the Contractor to obtain an Opencut mining permit are provided below.

**Example 1**– A Landowner arranges for a Contractor to excavate a pond on the Landowner's property. The Contractor plans to use the surplus materials at its highway construction project. In this case, the Landowner's primary purpose is creating a pond, but the Contractor's primary purpose is obtaining material for its construction project.

**Example 2** – A Contractor is hired to excavate and grade a property to prepare it for facility construction. The Contractor plans to crush materials for use at the property, as well as at Non-Landowner projects. In this case, the Landowner's primary purpose is constructing a facility, but the Contractor's primary purpose is obtaining materials.

**Example 3** – During development of a residential subdivision, a Contractor strips soil from roadways and homesites. This produces more soil than is needed at the subdivision project. The Contractor uses some of the surplus soil at a Non-Landowner project, and hauls the rest to stockpile at another location to sell or use on its future projects. In this case, the Landowner's primary purpose is developing the subdivision, but the Contractor's primary purpose is obtaining soil.

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### **TOPIC 3 – APPLICATIONS** - Also see *How to Obtain and Comply with an Opencut Mining Permit*

#### **Q1. Where do I get application forms and guidance documents?**

- A. The most current application forms and guidance documents should always be obtained at: <http://www.deq.mt.gov/opencut/opencutpermitforms.mcp.x>. Applications must be completed on these DEQ forms. If outdated or altered forms are received, the Operator will be required to resubmit the application. The DEQ strongly recommends preparing application materials in electronic format and keeping electronic backup copies to use for future amendment applications.

#### **Q2. Where do I submit my application? Can I submit it electronically?**

- A. At this time the Program does not accept applications in electronic format so you must submit printed application materials to the address below as one package. (The only exception is that the *Boundary Coordinates Table* is submitted by emailing it in Microsoft Excel format to [DEQopencut@mt.gov](mailto:DEQopencut@mt.gov).)

<b>DEQ Opencut Mining Program</b>	<b>Contact Information:</b>
<u>Mail:</u> PO Box 200901	Phone: 406-444-4970
Helena, MT 59620-0901	Fax: 406-444-4988
<u>Office:</u> 2001 11 <sup>th</sup> Avenue	

Note: The Program is working toward accepting applications electronically. Operators will be notified when that option becomes available.

#### **Q3. How can I get help with my application?**

- A. There are several options to obtain help with the permitting process. These include:
- 1) Read the documents *How to Obtain and Comply with an Opencut Mining Permit* and *Frequently Asked Questions*, and carefully follow the directions on each application form and applicable guidance documents, such as the *Map Guideline*.

- 2) If you need help filling out application materials or compiling required scientific information, you need to retain the services of a qualified scientist or engineer. A list of consultants offering services in Montana is available at <http://www.deq.mt.gov/lust/downloadables/Consultlist/consultantlist1.pdf>.
- 3) If you want technical assistance from the Program, you must submit a completed *Request for Pre-Application Meeting* form to the Helena office prior to submitting an application. Obtain the request form at <http://www.deq.mt.gov/opencut/opencutpermitforms.mcp>; the completed request can be emailed to [DEQOpencut@mt.gov](mailto:DEQOpencut@mt.gov). In response, a Program scientist will meet you on-site to answer questions and offer recommendations on the proposed Opencut operation and the application process.

**Important:** The Act provides the pre-application meeting as the mechanism Operators can use to receive Program assistance with applications. Under the Act, once an application is received, the DEQ's response to the Operator is a written *Deficiency Notice*. As a result, Program staff are required to follow formal work procedures and cannot offer informal feedback on applications over the phone, or accept informally revised materials via email or fax. As a practical matter, this formal approach is the only way the Program can process dozens of applications simultaneously and still meet its statutory timeframes.

#### Q4. How do I know when my application will be approved?

A. The DEQ is committed to meeting the application processing timeframes specified in the Act.\* Therefore, the total duration of the permitting process is primarily determined by how quickly the Operator submits an application that is complete and acceptable with respect to requirements of the Act and rules. The Operator can identify DEQ's statutory deadlines for each application as follows:

- Once an application is determined to be complete, the DEQ sends a *Complete Letter* that includes the statutory deadline for the DEQ to provide either: **a)** the first *Deficiency Notice*, or **b)** notice that the application has no deficiencies and is therefore approved. Typically, the stated deadline is either 30 or 45 days after the date of the *Complete Letter*, but if a sufficient number of Surface Landowners request a public meeting, the Act provides the DEQ additional time.\*
- Once the DEQ receives revised application materials submitted in response to a *Deficiency Notice*, the DEQ's statutory deadline is 10 working days after the date the materials are received.\*\* By that date, the DEQ sends you either: **a)** another *Deficiency Notice*, or **b)** notice that all deficiencies have been resolved and your application is therefore approved.

\* - The statutory timeframes are summarized in *How to Obtain and Comply with an Opencut Mining Permit*.

\*\* - The DEQ date-stamps revised materials when received and posts them at <http://searchopencutpermits.mt.gov>. Operators can determine the statutory deadline by counting out 10 working days after the date received.

#### Q5. How can I get my application approved as soon as possible?

A. In short: Plan ahead and commit the Operator resources required to provide a complete and acceptable application. The following facts are at the very foundation of application approval:

- 1) The DEQ cannot approve an application that does not meet the requirements of the Act and rules.
- 2) Only the Operator can provide an application that meets the requirements of the Act and rules.

It is critical to understand that the DEQ is obliged to meet the application processing timeframes specified in the Act for every application received. As a result, Program staff are assigned to process applications in the order they are received and staff are not authorized to "expedite" your application ahead of others that were received earlier.

Since the Act does not authorize the DEQ to rearrange its priorities for your particular urgencies, each Operator needs to take ownership of its permitting process and get out in front of Opencut requirements, just as you would for any other project demand. Typical project design steps for Operators include:

- 1) Accurately forecast the schedule of when Opencut materials and operations will be needed for the project.
- 2) Build into the schedule the total amount of time the Act provides the DEQ to process the required application.
- 3) Include time to respond to at least one *Deficiency Letter* for straightforward sites, and two or three for contentious or technically complex sites.
- 4) Also build into the schedule time for Operator staff or a consultant to carefully plan the proposed Opencut operation and prepare a complete and acceptable application. Budget "extra" time for unexpected delays.
- 5) Ensure Operator staff or a consultant will be available at key points during the permitting process (e.g. to resolve an *Incomplete Letter*; meet with nearby Surface Landowners; or respond to a *Deficiency Letter*). Be prepared to allocate additional resources if necessary to stay on-schedule.
- 6) Conduct both technical and administrative reviews prior to submitting application materials to the DEQ.

**Q6. Can someone in the Program review my application before I submit it, just to see if everything looks okay?**

A. The short answer is No. The Program processes dozens of applications at the same time and does not have the staff resources to “pre-view” application materials. Instead, Operators should use the *Operator Application Checklist* to confirm applications are complete and acceptable prior to submittal.

**Q7. Who processes my application and knows what’s going on with it?**

A. Once the DEQ determines an application is complete, responsibility for processing it within statutory timeframes is assigned to one administrative professional and one scientist. (A larger team may be assigned to contentious or technically complex applications.) The staff members processing your application become very familiar with its details, whereas other Program staff are focused on processing applications assigned to them. As a result, if the staff processing your application are not available, other staff will answer general questions about the permitting process, but they will not answer detailed questions about your application. Instead, they will record your questions and have the appropriate person respond to you with accurate information.

**Q8. What should I do to resolve deficiencies identified in a *Deficiency Notice*?**

A. Under the Act, the Operator’s response to a *Deficiency Notice* is submitting revised application materials. The Program works to describe each deficiency clearly and precisely. Operators need to read each deficiency carefully and revise the deficient application material to provide the information requested by the DEQ. The DEQ strongly advises Operators to use the *Deficiency Notice* as a checklist, and conduct both technical and administrative reviews to confirm that revised application materials are complete and acceptable prior to re-submittal.

**Important:**

- 1) The Program does not have the staff resources to meet with Operators to review *Deficiency Notices*, discuss them via phone, or exchange emails with Operators. The Program processes dozens of applications simultaneously and in order to meet its statutory timeframes, staff are required to decline such interactions and to instead direct Operators to submit revised application materials.
- 2) Since applications are legal documents which become part of the permit once approved, only the Operator can submit the revised application materials required to resolve deficiencies. Operator conversations or emails with Program staff do not resolve deficiencies.