

November 22, 2022

Sent via email to ctfisher@riversidecontracting.com

Riverside Contracting Inc
5571 Alloy South
Missoula, MT 59808

RE: Expiry - Deficiency Notice
Application for a Standard Opencut Mining Permit Application
Marvin Rehbein Site, Opencut #3415
Lake County
Executive Consent Order, Docket No. OC-21-11 (FID 2757)

To Whom It May Concern:

The application submitted to Opencut was to “re-permit” the site due to the previous permit expiring on November 15, 2010. Please disregard the old Opencut number as it is no longer valid. The Site has been assigned the above Opencut number. The signed Administrative Order on Consent (AOC) sets specific timeframes by which the Operator must respond to deficiencies for the Marvin Rehbein Site. In addition, the AOC specifies that Opencut is not required to follow the statutory timelines outlined in the Opencut Mining Act (Act). However, Opencut will attempt to process the application in a timely manner.

On September 22, 2022 the Department of Environmental Quality (DEQ) received your response to its August 17, 2022 Deficiency Notice on the Opencut Mining Permit application for the above referenced site.

DEQ performed an acceptability review of the application in accordance with the requirements of §§ 82-4-432 and 434 Montana Code Annotated (MCA) and of the Opencut Mining Act and its implementing rules, Administrative Rules of Montana (ARM) Title 17, Chapter 24, Subchapter 2). In accordance with § 82-4-432(10) MCA, this letter serves as notice to you that the application contains deficiencies which must be corrected before the application can be determined to be acceptable. A detailed identification of all deficiencies is provided below.

Pursuant to the provisions of § 82-4-432 of the Opencut Mining Act, you have the following options for addressing the deficiencies identified by DEQ in the application:

1. Submit revised application materials that resolve all deficiencies, and after DEQ’s review confirms the application is acceptable, the permit will be issued;
2. Submit revised application materials that do not resolve all deficiencies, and after DEQ’s review determines the application is not yet acceptable, it will be disapproved and a Deficiency Notice will be issued; or,
3. Do not submit revised application materials, and one year after the date of DEQ’s latest Deficiency Notice, DEQ may notify you that the application will be abandoned and void unless you provide the requested information within 30 days of DEQ’s notification.

Should you disagree with DEQ's decision to disapprove your application based on the identified deficiencies, you are entitled pursuant to § 82-4-427(1)(a) MCA, to appeal DEQ's decision to the Board of Environmental Review by submitting a written request to the board within 30 days of the date of this Deficiency Notice.

Upon receipt of any required materials, DEQ will review your revised application and determine whether it is acceptable or if deficiencies remain.

Submit revised application materials that resolve all the deficiencies identified below to the DEQ Opencut Mining Section in Helena as one package. Submit complete versions of any forms you revise, do not resubmit the whole application package. For example, if you make changes to the *Standard Opencut Mining Permit Application* resubmit that entire form, do not resubmit unchanged documents attached to it. The contents of an application constitute legal documents and become part of the permit; therefore, all required certifications and approvals must be signed and dated.

Note: The *italicized* deficiencies below are repeated from the Deficiency Notice dated August 17, 2022, because they were not addressed in the most recent submittal. The repeated deficiencies may contain clarification and/or additional information below them. Any deficiency items with a strike-through have been addressed. Correct the items that have not been crossed out.

Opencut Section forms are available at: <http://deq.mt.gov/mining/programs/opencut>.

Standard Opencut Mining Permit Application

- ~~1. **B4-1:** In addition to farming, check the 'Fences' box to account for the fences that occur within the permit boundary ARM 17.24.218(1).~~

Update: Check the 'Underground Utilities' box to account for the irrigation line that runs through the site.

- ~~2. **B7-1:** Based on public comment received by DEQ Opencut, both black bears and fox have been observed in the area of the proposed site. Therefore, check the 'Black Bear' and 'Fox' boxes, as well as any other applicable boxes, to account for additional wildlife occurring within or near the permit areas. Refer to the wildlife type section in the 09/23/2021 inspection report as it could be used to address this deficiency.~~

Update: Additional public comments received by DEQ Opencut indicating that Elk, Grizzly Bear, Sandhill Cranes (Waterfowl), and Wolves have also been observed in the area. Therefore, check the 'Elk', 'Grizzly Bear', 'Waterfowl' and 'Wolves' boxes to account for additional wildlife occurring within or near the permit area.

- ~~3. **C3-2:** Uncheck the 'Used for further Opencut Operations' box as there currently is no existing mining disturbance on site.~~
- ~~4. **D2-2:** It appears that ditches are located adjacent and just outside the proposed permit boundary and may, therefore, have easements that overlap into the permit boundary. Verify the width and location of the ditch easements along the west and south ditches. If~~

~~the easements are not within the proposed permit boundary, state so in the Further Information section to make it clear that no easements are within the proposed permit boundary. If the easement or ditch is within the proposed permit boundary, check the 'Water Conveyance Facility' box and include the width of any easements associated with the ditches and explain in further detail how the easements would not be impacted by Opencut operations. Provide documentation from the ditch companies stating:~~

- ~~a. setback requirements;~~
- ~~b. the maximum slope the companies allows in their easement; and~~
- ~~c. any other requirements for activities conducted under, over, or adjacent to the infrastructures (e.g. inspections, safety, excavation, stockpiling, etc.)~~

Update: Public comment received by DEQ Opencut indicates that Flathead Indian Irrigation Project ('FIIP') owns the canal that runs along the southern proposed permit boundary. Therefore, provide documentation from Flathead Indian Irrigation Project stating:

- a. Setback requirements
- b. The maximum slope FIIP allows in their easement; and
- c. Any other requirements for activities conducted under, over, or adjacent to the infrastructures (e.g. inspections, safety, excavation, stockpiling, etc.)

5. **E2-1:** Check the 'other' box in this section and supply description to account for the irrigation line (supplying the pivot) that will be removed and replaced at final reclamation.

Maps

Map(s) Note: If changes are made to the application that affects the map(s), submit a revised map(s). The map's date must be revised prior to resubmittal to reflect that the map has been changed. Map requirements can be found at ARM 17.24.221 (1-7) and in the Map Guideline at <http://deq.mt.gov/Mining/assistance>.

6. **General Map Deficiency:** The Proposed Permit Boundary and the Proposed Non-Bonded Boundary must be depicted on all maps as two different line types. Additionally, soil cannot be stockpiled in the non-bonded area. Either remove the soil stockpiles shown in the Site and Area Maps from the non-bonded area, or note on the Site and Area Maps that no Opencut Operations including stockpiling would occur in non-bonded areas until the areas are fully bonded.
7. **Site Map:** *In accordance with ARM 17.24.221(3) all required map features are not shown on the site map or are inconsistent with the application documents. Site maps must be displayed on an aerial photo base. Submit a revised map that shows all required map features including, but not limited to the following:*
 - a. Irrigation ditch/canal line and easements;
 - b. any other pertinent features that are necessary to ensure compliance with the Act and rules.

Update: Correct the following items:

- a. The easement distance (50 ft.) stated in the permit must also be stated on the map.
- b. Remove the 'Overburden' line from the map as there is no overburden to be salvaged for reclamation.

8. **Area Map:** All required map features are not shown on the area map or are inconsistent with the application documents [ARM 17.24.221(4)]. Area maps must be displayed on an aerial photo base. Submit a revised map that shows all required map features within 1,000 feet outside the permit boundary including, but not limited to the following: roads leading to the site;
- Remove the 'Overburden' line from the map as there is no overburden to be salvaged for reclamation; and
 - any other pertinent features that are necessary to ensure compliance with the Act and this subchapter.
9. **Reclamation Map:** ~~In accordance with ARM 17.24.221(5), reclamation maps must be displayed on an aerial photo base and must show and identify all the following existing and proposed features:~~
- ~~landowner material stockpile areas to remain;~~
 - ~~water collection area to remain (E4-4); and~~
 - ~~any other pertinent features that are necessary to ensure compliance with the Act and this subchapter.~~
- Update:** The irrigation line supplying the pivot that is to be replaced must also be included on the Reclamation Map.

Additional Information Needed for MEPA Analysis

10. In section C7 include additional information regarding Hours of Operation (duration and timing) and any additional lighting that is anticipated to be used during operation.

Supplemental Documents

11. Observations during a site inspection, public comments, and a referred complaint to DEQ Enforcement indicate that public notice was not posted at the site. Provide photo documentation that public notice was posted at the site.

Bond

Bond Note: It may be in the Operator's best interest to wait to address the bonding deficiency below and to obtain an updated bond until there are no remaining deficiencies for the Reclamation Bond Spreadsheet. If the acreage, dollar amount, or other bond parameters change, submit a revised Bond or an additional Bond. The Opencut Section requires the original paper Bond to be submitted before the Permit can be issued.

Timelines

This matter has been referred to the Department's Enforcement Program to go through the expiry process and obtain an Administrative Order on Consent (AOC). This process allows the Operator to continue Opencut operations within their original permit boundary only. No Opencut operations can occur outside the original permitted boundary.

Under the Consent Order, Riverside Contracting Inc agreed to respond to deficiency letters within the timeframes outlined in the AOC, and to submit any extension request to the Opencut Section in writing no less than one week prior to that deadline.

In addition, Riverside Contracting Inc agreed to waive the statutory permit application review deadlines (82-4-432 & 82-4-439, MCA). As a result, Opencut will review the application materials you submit as soon as our workload of applications with statutory deadlines allows.

The DEQ strongly recommends that you use the above-listed deficiencies as a checklist to confirm that your revised application materials are complete and acceptable prior to resubmittal.

If you have any questions, contact the Opencut Section at (406) 444-4970.

Sincerely,



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