

Testimony for Proposed Amendments (HB 361) to the Opencut Mining Act (the Act)

Mr. Chairman and members of the committee, my name is Neil Harrington and I am representing the Department of Environmental Quality, which administers the Opencut Mining Act. This Act regulates mining of sand, gravel, bentonite, clay, scoria, peat, and soil, and related activities, and reclamation of lands disturbed by these actions. The Department requested this bill, which proposes an extensive and diverse array of amendments to the Act. On behalf of the Department, I provide the following testimony in support of it.

Text that currently provides the Department with the authority to apply the policy and purpose provisions of the Act to permit decisions would be deleted. The reason for proposing this is that the policy and purpose provisions are very broad in most cases, and being able to apply them to specific permit decisions could lead to inconsistent and highly subjective decisions. These provisions need to be implemented through the development of defined standards and requirements in administrative rules; this is and would remain possible through other text in the Act.

A fee system would be enacted, starting in calendar year 2006. This would be an annual fee required of all opencut mining permittees, and would be based on the number of permitted acres or categories of permitted acreage. The purpose of the fee would be to pay for an addition of 2.5 staff requested in the Department's budget for the next biennium. Two new environmental (reclamation) specialists are being requested to bring the program to a staffing level to more effectively deal with the heavy workload that is expected to continue in this program. A half-time assistant is also requested to administer the fee program.

Revision of the permit application review and response time frames is proposed to provide more reasonable periods for permit processing. In general, we propose to change the initial 15-day response period to 30 days and clarify and better define the additional 30-day review time periods the already-allowed-for extension of time frames to additional 30-day periods (for good cause as the statute currently reads). Some of the mining applications are of great interest and concern to the public, which can render application and environmental review processes very lengthy.

A number of proposed amendments involve compliance and enforcement. New text would: (a) clarify and solidify the Department's authority to enforce and administer the program; (b) provide for administrative review of violations, including the procedures for such review, if the operator requests it; (c) provide the Department with the authority to issue orders of corrective action for violations and to provide the procedures, including administrative review, for such actions; and (d) provide Department authority, standards, and procedures, including administrative review, for permit suspension and revocation.

Another category of amendments would revise, clarify, simplify, correct, and update terms and text throughout the Act. For example, where appropriate, text involving the terms "reclamation permit", "reclamation plan", "reclamation", and similar language

would be revised to reflect the fact that mining and processing, as well as reclamation, are part of the opencut regulatory program.

All other amendments are for the purposes of internal consistency, better definition, more logical organization, rendering certain requirements more realistic or logical. Examples in this category are: (a) changing the description of an amendment to allow for any change in the permit, not merely to add land to the permit area; (b) allowing more time, with good justification, for an operator to provide for a substitute bond, if the original bonding company loses its license; (c) revising and defining more clearly who may request a hearing on a Department decision, and the grounds on which such a request may be made; and (d) replacing the definition of "progress report" with a new section called "Annual Report" that provides for general annual reporting requirements to be defined by the rules.