SENATE LOCAL GOVERNMENT
EXHIBIT NO. 3
DATE 3.18.09
BILL NO. SB 433

Amendments to Senate Bill No. 433
1st Reading Copy

Requested by Senator Kelly Gebhardt

For the Senate Local Government Committee

Prepared by Leanne Heisel
March 18, 2009 (2:01pm)

1. Title, line 4 through line 6.
Strike: "LIMITING" on line 4 through "NOTICE;" on line 6

2. Title, lines 8 and 9.
Strike: "SECTIONS" on line 8 through "76-2-209, AND" on line 9
Insert: "SECTION"

3. Page 1, line 14 through page 6, line 20.
Strike: everything after the enacting clause
Insert: "Section 1. Section 82-4-432, MCA, is amended to read:
"82-4-432. Application for permit -- contents -- issuance -- amendment. (1) An application for a permit must be made using forms furnished by the department and must contain the following:
(a) the name of the applicant and, if other than the owner of the land, the name and address of the owner;
(b) the type of operation to be conducted;
(c) the estimated volume of overburden and materials to be removed;
(d) the location of the proposed opencut operation by legal description and county;
(e) the date when the opencut operation is proposed to commence; and
(f) a statement that the applicant has the legal right to mine the designated materials in the lands described.
(2) The application must be accompanied by:
(a) a bond or security meeting the requirements as set out in this part;
(b) a statement from the local governing body having jurisdiction over the area to be mined certifying that the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under Title 76, chapter 2;
(c) a plan of operation that ~~meets~~ <u>addresses</u> the requirements of 82-4-434; ~~and~~
(d) written documentation that the landowner has been consulted about the proposed plan of operation<u>; and</u>
<u>(e) a list of owners of property within one-half mile of the proposed permit boundary of the proposed opencut operation using</u>

the most current known property owners of record as shown in the records of the clerk and recorder in the county where the proposed opencut operation is located.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests that the department examine the area to be mined, the department shall examine the area and make recommendations to the person regarding the proposed opencut operation. The person may request a meeting with the department. The department shall hold a meeting if requested.

(4) (a) (i) Except as provided in 75-1-208(4)(b), upon receipt of an application containing all items listed in subsections (1) and (2), the department shall, within ~~30~~ 5 business days, review the application~~, inspect the proposed site,~~ and notify the person as to whether or not ~~the department believes that~~ the application is ~~acceptable~~ complete. An application is ~~acceptable~~ complete if it ~~complies with all requirements of~~ contains all of the items listed in subsections (1) and (2). If the department determines that the application is not ~~acceptable~~ complete, the department shall ~~include in the notification~~ notify the applicant in writing and include a detailed identification of all deficiencies.

(ii) The time limits provided in subsection (4)(a)(i) apply to each submittal of the application until the department determines that the application is complete.

(iii) A determination that an application is complete does not ensure that the application will be approved by the department and does not limit the department's ability to request additional information during the review process within the timelines provided in subsection (4)(f).

(iv) The department may declare an application abandoned and void if:

(A) the applicant fails to respond to the department's written request for more information within 1 year; and

(B) the department has provided notice to the applicant that it intends to declare the application abandoned and void and has allowed the applicant 30 days to respond.

(b) Upon determining that an application is complete, the department shall:

(i) publish notice at least twice in a newspaper of general circulation in the locality of the proposed opencut operation, except that a legal description of the opencut operation may be substituted for the map required in subsection (4)(c)(iii); and

(ii) 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 the property owners listed in the application pursuant to subsection (2)(e).

(c) The public notice required by subsection (4)(b) must be provided at the time the application is deemed complete and must include:

(i) the name, address, and telephone number of the applicant;

(ii) a description of the acreage, facilities, duration of activities, and main access point of the proposed opencut operation;

(iii) a map showing the location of the proposed opencut operation and immediately surrounding property; and

(iv) information on how to request a public meeting pursuant to this section.

(d) Upon receiving notice from the department that the department has determined that the application is complete, the applicant shall post the notice in at least two prominent locations at the site of the proposed opencut operation, including near a public road if possible.

(e) (i) The department may hold a public meeting at the applicant's request.

(ii) Property owners within one-half mile of the proposed permit boundary of the proposed opencut operation may, within 15 days of the mailing of the public notice, request a public meeting. The department shall hold a public meeting upon the request of at least 30% of the property owners.

(iii) A public meeting must be held within the time limits for the processing of the permit application.

~~(b)~~ (f) Within 30 days of ~~receipt of the applicant's responses to the identified deficiencies~~ determining that the application is complete, the department shall review the application, inspect the proposed site if the department determines an inspection is necessary, and notify the applicant ~~if~~ as to whether or not the application is acceptable ~~or not~~. ~~If the application is unacceptable, the notice must include a detailed explanation of the remaining deficiencies.~~ An application is acceptable if it complies with the requirements of subsections (1) and (2) and contains a plan of operation that meets the requirements of 82-4-434. If the application is unacceptable, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

(g) Within 30 days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

~~(c)~~ (h) The department may for sufficient cause extend ~~either or both of the 30-day~~ the review periods in subsections (4)(f) or (4)(g) for an additional 30 days if it notifies the applicant of the extension prior to the end of the respective original 30-day period. The department shall include in the notification of extension the reason for the extension.

~~(d)~~ (i) If the application is acceptable, the department

shall issue a permit to the operator that entitles the operator to engage in the opencut operation on the land described in the application.

(5) An operator may amend a permit by submitting an amendment application to the department. Upon receipt of the amendment application, the department shall review it in accordance with the requirements and procedures in subsection (4). An application for an amendment is not subject to the public notice or public meeting requirements of this section or to an extended review pursuant to [section 2] unless it proposes an increase in permitted acreage of 50% or more of the amount of permitted acreage in the original permit. If the amendment application is acceptable, the department shall issue an amendment to the original permit.

(5) If the department fails to comply with the time limits for determining acceptability of an application required under subsections (4)(f), (4)(g), and (4)(h), the department shall immediately issue the permit unless it finds in writing that there is a likelihood that issuance would violate a requirement of this part or rules adopted pursuant to this part."

{*Internal References to 82-4-432:*
x75-1-208 *x76-2-209* }"

Insert: "NEW SECTION. **Section 2. Extended review -- criteria -- timeframes.** (1) The department may subject an opencut application to an extended review if the department determines, within 10 days of a public meeting held pursuant to 82-4-432, that comments received at the public meeting reveal issues not adequately addressed in the plan of operation submitted with the application.

(2)(a) For a complete application to be subject to an extended review, the department shall, within 90 days of the department's decision to subject the opencut application to an extended review under subsection (1), inspect the proposed site if the department determines an inspection is necessary, and notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the notice must include a detailed explanation of the deficiencies. An application is acceptable if it complies with the requirements of 82-4-432(1) and (2).

(b) Within 30 days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

(c) The department may for sufficient cause extend either or both of the review periods in subsection (2)(a) or (2)(b) for an additional 30 days if it notifies the applicant of the extension prior to the end of the respective original period. The department shall include in the notification of extension the

reason for the extension.

(d) If the application is acceptable, the department shall issue a permit to the operator that entitles the operator to engage in the opencut operation on the land described in the application.

(3) If the department fails to comply with the time limits for determining acceptability of an application required under subsections (2)(a), (2)(b), or (2)(c), the department shall immediately issue the permit unless it finds in writing that there is a likelihood that issuance would violate a requirement of this part or rules adopted pursuant to this part."

Insert: "NEW SECTION. **Section 3. {standard} Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [section 2]."

Insert: "NEW SECTION. **Section 4. {standard} Effective date.** [This act] is effective on passage and approval."

Insert: "NEW SECTION. **Section 5. Applicability.** (1) Except as provided in subsection (2), [sections 1 and 2] apply to permit applications pursuant to 82-4-432 submitted after [the effective date of this act].

(2) [Section 1(8)(a)(iv)] applies to applications pending on or submitted on or after [the effective date of this act]."

- END -