

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL REVIEW TIME FOR REPEATEDLY
7 DEFICIENT OPENCUT PERMIT APPLICATIONS; AMENDING SECTION 82-4-432, MCA; AND PROVIDING
8 AN IMMEDIATE EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 82-4-432, MCA, is amended to read:

13 **"82-4-432. Application for permit -- contents -- issuance -- amendment.** (1) An application for a
14 permit must be made using forms furnished by the department and must contain the following:

15 (a) the name of the applicant and, if other than the owner of the land, the name and address of the
16 owner;

17 (b) the type of operation to be conducted;

18 (c) the estimated volume of overburden and materials to be removed;

19 (d) the location of the proposed opencut operation by legal description and county;

20 (e) the date when the opencut operation is proposed to commence; and

21 (f) a statement that the applicant has the legal right to mine the designated materials in the lands
22 described.

23 (2) The application must be accompanied by:

24 (a) a bond or security meeting the requirements as set out in this part;

25 (b) a statement from the local governing body having jurisdiction over the area to be mined certifying that
26 the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under
27 Title 76, chapter 2;

28 (c) a plan of operation that addresses the requirements of 82-4-434 and rules adopted pursuant to this
29 part related to 82-4-434;

30 (d) written documentation that the landowner has been consulted about the proposed plan of operation;



1 and

2 (e) a list of surface owners of land located within one-half mile of the boundary of the proposed opencut
3 permit area using the most current known owners of record as shown in the records of the county clerk and
4 recorder in the county where the proposed opencut operation is located.

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

9 (4) (a) (i) Except as provided in 75-1-208(4)(b), upon receipt of an application, the department shall,
10 within 5 working days, review the application and notify the person as to whether or not the application is
11 complete. An application is complete if it contains the items listed in subsections (1) and (2). If the department
12 determines that the application is not complete, the department shall notify the applicant in writing and include
13 a detailed identification of information necessary to make the application complete.

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

16 (b) (i) A determination that an application is complete does not ensure that the application is acceptable
17 and does not limit the department's ability to request additional information or inspect the site during the review
18 process.

19 (ii) Upon determining that an application is complete, the department shall begin reviewing the application
20 for acceptability pursuant to this section.

21 (iii) The department shall accept public comment throughout the review process.

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

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

24 and

25 (ii) the department notifies the applicant of its intent to abandon the application and the applicant fails to
26 provide information within 30 days.

27 (d) The department shall notify the applicant when an application is complete and post the complete
28 application on the department's website.

29 (5) Within 15 days after the department sends notice of a complete application to the applicant, the
30 applicant shall provide public notice, which must include:

- 1 (a) the name, address, and telephone number of the applicant;
- 2 (b) a description of the acreage, the estimated volume of overburden and materials to be removed, the
3 type of materials to be removed, the facilities, the duration of activities, and the access points of the proposed
4 opencut operation;
- 5 (c) a legal description of the proposed opencut operation and a map showing the location of the
6 proposed opencut operation and immediately surrounding property; and
- 7 (d) on a form provided by the department, information on how to request a public meeting pursuant to
8 this section.
- 9 (6) To provide public notice, the applicant shall:
- 10 (a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed
11 opencut operation;
- 12 (b) mail the notice by first-class mail to the board of county commissioners of the county in which the
13 proposed opencut operation is located and to surface owners of land located within one-half mile of the boundary
14 of the proposed opencut permit area using the most current known owners of record as shown in the records of
15 the county clerk and recorder in the county where the proposed opencut operation is located;
- 16 (c) post the notice in at least two prominent locations at the site of the proposed opencut operation,
17 including near a public road if possible; and
- 18 (d) provide the department with the names and addresses of those notified pursuant to subsection (6)(b).
- 19 (7) (a) Except as provided in subsection (7)(b), the department shall accept requests for a public meeting
20 for 45 days after the department sends notice to the applicant of a complete application. Within this period, unless
21 a public meeting is required pursuant to subsection (9), the department shall notify the applicant as to whether
22 or not the application is acceptable pursuant to subsection (10).
- 23 (b) If the applicant and the department mutually agree or the applicant submits documentation to the
24 department showing that a public meeting will not be required pursuant to subsection (9), the department shall
25 inform the applicant within 30 days of the notice of a complete application as to whether or not the application is
26 acceptable pursuant to subsection (10).
- 27 (8) If a public meeting is required pursuant to subsection (9), within 30 days from the closing date of the
28 public meeting request period in subsection (7), the department shall:
- 29 (a) hold a meeting; and
- 30 (b) notify the applicant as to whether or not the application is acceptable pursuant to subsection (10) or

1 that the application requires an extended review pursuant to 82-4-439.

2 (9) (a) The department shall hold a public meeting in the area of the proposed opencut operation at the
3 request of:

4 (i) the applicant; or

5 (ii) at least 30% of the property owners or 10 property owners, whichever is greater, notified pursuant to
6 this section.

7 (b) To provide notice for a public meeting, the department shall notify by first-class mail the property
8 owners on the list provided by the applicant pursuant to this section and the board of county commissioners in
9 the county where the proposed opencut operation is located.

10 (10) (a) An application is acceptable if it complies with the requirements of subsections (1) and (2) and
11 includes a plan of operation that satisfies the requirements of 82-4-434 and rules adopted pursuant to this part
12 related to 82-4-434. If the department determines that the application is not acceptable, the department shall
13 notify the applicant in writing and include a detailed identification of all deficiencies.

14 (b) Within 10 working days of receipt of the applicant's response to the identified deficiencies or within
15 30 days of receipt if it is the applicant's third or subsequent notice of deficiencies regarding the same application,
16 the department shall review the responses and notify the applicant as to whether or not the application is
17 acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a
18 detailed identification of the deficiencies.

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

21 (11) (a) An operator may amend a permit by submitting an amendment application to the department.
22 Upon receipt of the amendment application, the department shall review it in accordance with the requirements
23 and procedures in this section. If the amendment application is acceptable, the department shall issue an
24 amendment to the original permit.

25 (b) An application for an amendment is not subject to the public notice or public meeting requirements
26 of this section or an extended review pursuant to 82-4-439 unless it proposes an increase in permitted acreage
27 of 50% or more of the amount of permitted acreage in the original permit.

28 (c) For amendment applications not subject to the public notice and public meeting requirements of this
29 section, the department shall, within 45 days of notifying the applicant that the application is complete, notify the
30 applicant as to whether or not the application is acceptable pursuant to subsection (10) or that the application

1 requires an extended review pursuant to 82-4-439.

2 (12) The department shall publish a copy of an acceptable permit or amendment on its website."

3

4 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

5 - END -