

LEGISLATIVE AUDIT DIVISION

Tori Hunthausen, Legislative Auditor
Monica Huyg, Legal Counsel



Deputy Legislative Auditors:
James Gillett
Angie Grove

MEMORANDUM

TO: Legislative Audit Committee

FROM: Angie Grove, Deputy Legislative Auditor

CC: Richard Opper, Director, Department of Environmental Quality
Tom Livers, Deputy Director
Judy Hanson, Administrator, Permitting and Compliance Division
Neil Harrington, Chief, Industrial and Energy Materials Bureau

DATE: September 2009

RE: Performance Audit Follow-up 10SP-05: Improving Montana's Opencut Mine Permitting Process (orig. 08P-04)

Attachments: Original Performance Audit Summary

Introduction

In June 2008, we presented our performance audit *Improving Montana's Opencut Mine Permitting Process*. The audit made seven recommendations to the Department of Environmental Quality (DEQ). This memo summarizes audit findings in the report and the results of our follow-up work.

Overview

Audit recommendations focused on improving DEQ's process for permitting opencut mines, which are typically sand and gravel mines. Recommendations included establishing a new process for permitting opencut mines, establishing timeframes, and improving public notification. DEQ implemented five of seven recommendations, and two recommendations are being implemented.

Background

The Department of Environmental Quality is responsible for permitting opencut mines. Opencut mining is used to extract a number of products. As of November 2007, there were 1,787 active opencut mines in the state. Sand and gravel mining operations account for most of the opencut mines. Approximately 53 percent of opencut mines were operated by federal, state, or local government agencies and approximately 47 percent were operated by private sector businesses.

Title 82, Section 4, MCA, governs opencut mining activities, including requirements and processes for obtaining mining permits from DEQ and statutory timeframes for DEQ to approve or deny permit applications.

Follow-up Audit Findings

The performance audit report included seven recommendations to the department. The recommendations focused on improving program documentation, clarifying the application process, improving data collection and reporting capabilities, and improving public notification of permit applications. The following summarizes information relating to follow-up audit work and the implementation status of the recommendations.

Recommendation #1

We recommend the department establish formal controls including checklists and formal management file reviews to ensure Opencut Mining Program files contain documentation necessary to support issuance of opencut mining permits.

Implementation Status – Implemented

The department had limited internal controls in its application process to ensure permit file documentation was complete. Consequently, the department could not demonstrate compliance with state laws for issuing opencut mining permits. Incomplete file documentation could also impact the department's ability to pursue enforcement action for opencut mine permit violations. The department implemented a formal checklist to help ensure applications have complete documentation. Additionally, the department established a manager review process that verifies opencut mine permitting activities are complete before permitting new mining activities or approving requests for permit amendments.

Recommendation #2

We recommend the department take timely and formal action to clarify the application process and propose administrative rules to improve consistency.

Implementation Status – Being Implemented

The department did not have a clearly defined application process, resulting in weaknesses and inefficiencies in the application process. For example, department personnel would process incomplete applications, although some applicants did not complete the application process. The department mapped the application process and published a guide for opencut operators that describes the new process. The department plans to contract with a business process consultant to work with opencut mining stakeholders to evaluate changes to permitting processes. Department management stated they have not proposed new administrative rules, pending evaluation of the new processes and procedures.

Recommendation #3

We recommend the department establish formal policy and procedures, and propose administrative rules clarifying the role of program personnel and operators in the opencut mining permitting process.

Implementation Status – Implemented

While the department had an extensive backlog of applications, department personnel performed tasks that were not required by statute, such as creating maps and drafting and editing proposed plans of operation for mining operators. These practices created the potential for conflicts of interest and unnecessarily increased workload.

The program redesigned application materials and created a master guidance document for opencut permit applicants to address this recommendation. Department management also stated they continue to work with department staff to ensure they act in an objective and neutral manner with respect to processing applications. While the department has not promulgated new administrative rules as recommended, the department responded it will consider new rules if conditions warrant it.

To address the backlog of applications, in addition to clarifying the role of department personnel, the department hired additional staff, including a temporary employee who is focusing on the application backlog. From March 2009 through July 2009, the program reduced the backlog of applications from 289 to 220 applications.

Recommendation #4

We recommend the Department of Environmental Quality coordinate data-sharing needs with the Department of Revenue to help ensure identification of all opencut mining operators required to pay the Resource Indemnity and Groundwater Assessment Tax.

Implementation Status – Implemented

Some opencut operators were not paying the Resource Indemnity and Groundwater Assessment Tax (RIGWAT). The department collected opencut operator information that would have assisted the Department of Revenue (DOR) collect RIGWAT. The department and DOR coordinated efforts to improve collection of RIGWAT. The 2009 Legislature exempted opencut mining operations from paying RIGWAT, and implemented an annual fee system based on the volume of material mined.

Recommendation #5

We recommend the department identify information needs and develop a system capable of addressing Opencut Mining Program operational needs.

Implementation Status – Being Implemented

The department did not have a management information system capable of meeting information needs and was not tracking key information necessary for efficient and effective program management. The department implemented a database for collecting and reporting program information. To further enhance management information capabilities, the department is in the process of implementing an electronic documentation management system for the electronic storage of program documentation. The department is also expanding capabilities for public access to pending and approved opencut applications and amendments via the internet.

The department continues to track application information and timeframes in an electronic spreadsheet. However, the spreadsheet has limited automated reporting capabilities. The spreadsheet is currently designed to track various steps during the application process, such as receipt of application to completeness date, deficiency dates and deficiency response information. Department management stated application information and timeframes will be tracked by the new electronic documentation management system.

Recommendation #6

We recommend the department establish formal policy, procedures, and propose administrative rules for prioritizing opencut mining permit application processing to ensure all applications are handled fairly and equitably.

Implementation Status – Implemented

As previously mentioned, the department has substantially modified program documentation to address various recommendations in the original audit report. While the department did not specifically establish formal policies and procedures, implementation of guidelines in program documentation appears to have met the intent of the recommendation. The department has not promulgated new administrative rules pending evaluation of recently implemented changes to program activities.

Recommendation #7

We recommend the department seek legislation clarifying whether public notification of opencut mine applicants should be required.

Implementation Status – Implemented

Competing land uses between residential and opencut mining areas can increase public interest in opencut mine permitting. While other department programs had public notification requirements, opencut mining laws did not require public notification of new applications or amendments to existing permits. House Bill 678 was passed by the 2009 Legislature and addressed this issue. State law now mandates public notification through notices in area newspapers, contacting landowners, signing proposed opencut mines, and setting conditions for conducting public meetings.

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