

November 10, 2006

RE: Final Environmental Assessment (EA) for the Krueger Site Application

To Interested Parties:

In response to the Draft EA that the Department of Environmental Quality (DEQ) issued on October 23, 2006 on this proposed mining operation, DEQ received comments from two parties. These comments and the DEQ responses are attached and, along with the Draft EA, they constitute DEQ's Final EA on this proposal.

Please note the following correction of an error in the Draft EA. On line one of page one under TYPE AND PURPOSE OF ACTION, "NW ¼" should read "NE ¼".

If any person wishes to challenge DEQ on the Final EA for this proposed sand and gravel mining operation, that person may do so as follows. The Montana Environmental Policy Act, which provides for the legal authority and basis for the preparation of EA's and environmental impact statements by state agencies, states at 75-1-201(6), MCA: "A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate. Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge."

DEQ has determined that Krueger's application for this site is in compliance with the provisions of the Opencut Mining Act and its pursuant rules. Therefore, DEQ has approved the application and issued a permit to the applicant, concurrent with the Final EA. Regarding the issuance of this permit, the Opencut Mining Act at 82-4-427, MCA provides: "(1) A person who is aggrieved by a final decision of the department under this part is entitled to a hearing before the board [of Environmental Review], if a written request is submitted to the board within 30 days of the department's decision. (2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section." Requests for a hearing under this provision must be submitted to: Secretary; Board of Environmental Review; P.O. Box 200901; Helena, MT 59620-0901.

This letter and the attached comment responses (the Final EA) are also available at <http://.deq.mt.gov/ea/opencut.asp>.

Please contact me if you have any questions.

Sincerely,

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NH/nh  
Attachment

## COMMENT RESPONSES

For the purpose of efficiency or for clarity, some comments have been grouped and/or paraphrased as deemed appropriate.

**1. COMMENT:** Why does DEQ ask for comments, because rarely is anything done except approve proposed mine permit applications?

**RESPONSE:** DEQ's authority on gravel mining operations is limited to that granted by the state legislature in state law, the Opencut Mining Act (Title 82, Chapter 4, Part 4) and administrative rules that DEQ has adopted (with approval of the citizen-member Board of Environmental Review) pursuant to and to implement requirements in this Act. Many aspects of the operation are regulated by DEQ (e.g., impacts to water quality and quantity and air quality, soil salvage for site reclamation, revegetation, dust control on the mine, noxious weed control, postmining land use); please see the Draft EA for discussion of these items.

DEQ has no authority regarding land use planning and zoning and the relation of these matters to the location or siting of gravel mines. Local jurisdictions (in this case, Flathead County) are the legally-authorized agencies to handle these matters. This authority has been granted by the state legislature in state law (Title 76, Chapter 2).

Finally, please re-read page 1 of the Draft EA regarding the explanation of the Montana Environmental Policy Act (MEPA) and the limitations of EA's and EIS's. As MEPA is currently written, EA's and EIS's are limited to being public disclosure documents and have no substantive decision-making authority by themselves.

**2. COMMENT:** Is there really a need for a third gravel operation in the West Valley area?

**RESPONSE:** The Opencut Mining Act does not include the "need" for a mine as a factor to apply to a permit decision. Therefore, DEQ has no authority to include this factor in its decision-making.

**3. COMMENT:** If a small crusher could crush a year's supply of gravel in 2 weeks as it says on Page 7 of the Draft EA, why not give Krueger a 2-week period only to operate, and prohibit operating the rest of the year?

**RESPONSE:** This statement in the Draft EA was intended to provide an example of how much time per year would be required to crush the quantity of materials the Krueger application indicates would be mined in the 20-year period, in relation to traffic increases from gravel trucks on public roads. DEQ does not have the authority to require this kind of specific crushing schedule in the context of the insignificant level of impacts this operation is projected to have.

**4. COMMENT:** The current public roads cannot handle the type of traffic generated by gravel trucks. Allowing more huge trucks to operate on our already narrow and dangerous roads will make them more dangerous. If you are going to approve the proposed Krueger operation, you should at least require that some of the narrow roads in that area be improved. Requiring Krueger to pave 100 feet of West Springcreek Road and 100 feet of Stillwater Road [as required by the Conditional Use Permit issued to Krueger by Flathead County] is totally inadequate.

**RESPONSE:** Please see the first two paragraphs under Traffic on pages 6 and 7 of the Draft EA regarding Montana Department of Transportation (MDT) traffic studies, current county growth policy activity, and current and potential future traffic control. DEQ has no authority to require improvements or paving on public roads due to gravel trucks using these roads. Road improvements and maintenance are the responsibilities of Flathead County for county roads and MDT for state roads.

**5. COMMENT:** It appears that our beautiful West valley is turning into a big dusty, noisy industrial area, because, in addition to the LHC and Tutvedt mining operations, the Krueger family wants another one. To rightly consider the interests of all residents of the West Valley, not just the Krueger family, DEQ should deny this permit.

**RESPONSE:** Please see the responses to Comments 1 and 4 above. DEQ must deny a permit if the application does not comply with the requirements of the Opencut Mining Act or pursuant administrative rules. Otherwise, DEQ has no legal choice but to approve it. In the Krueger case, DEQ has determined that the application complies with the Opencut Mining Act and pursuant rules.

**6. COMMENT:** There is a new housing development on Church Drive and Harvest View Lane across from the proposed gravel pit. The investors in this development and the residents in the area will see the market value of their homes decline.

**RESPONSE:** Typically, the taxable value of property surrounding a newly-opened gravel pit is not affected. However, the asking price and the number of individuals who would buy property next to a pit are probably negatively affected. DEQ acknowledges that short-term sales of land near active mining can be adversely affected, but DEQ has no statutory authority to preserve property values. DEQ does have statutory authority to preserve taxable value, which DEQ views as that value associated with long-term, reclaimed land following reclamation.

**7. COMMENT:** Water quality, air quality, wildlife, and noise levels will be adversely affected by this operation.

**RESPONSE:** These issues were addressed in Sections 2, 3, 5, 6, and 8 of the Draft EA.