

## GRAVEL LAWSUITS

A. Opencut Act--82-4-434(4) provides:

"(4) (a) 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 days**, review the application, inspect the proposed site, and notify the person whether or not the department believes that the application is acceptable. An application is acceptable if it complies with all requirements of subsections (1) and (2). If the department determines that the application is not acceptable, the department shall include in the notification a detailed identification of all deficiencies.

(b) Within 30 days of receipt of the applicant's responses to the identified deficiencies, the department shall notify the applicant if the application is acceptable or not. If the application is unacceptable, the notice must include a detailed explanation of the remaining deficiencies.

(c) The department may for sufficient cause extend either or both of the 30-day review periods 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) **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."**

B. Writ of Mandamus--Mandamus is a writ that a court may issue to a public officer requiring the officer to perform a clear legal duty.

C. Applications

-Cameron Springs Pit--Application for new permit submitted on December 3, 2007. DEQ formally deemed application acceptable on January 30, 2008.

-NOG Pit--Application for new pit submitted on March 29, 2007. Application acceptable for more than 60 days prior to filing of lawsuit.

-Spanish Peaks Pit--Application for new pit submitted August 28, 2007. Application acceptable for more than 60 days prior to filing of lawsuit.

-Storey Pit--Application for extension of existing pit submitted on August 29, 2007. On November 7, 2007, DEQ formally determined the application to be acceptable.

-Nuss Pit--Application for extension of existing pit submitted on November 7, 2007. No acceptability determination made.

-Morgan Pit--Application for new pit submitted November 19, 2007. DEQ has not made acceptability determination.

D. Gallatin County Zoning Proposed--On April 10, the Gallatin County Commission voted to commence interim zoning for the Belgrade Area. The interim zoning would regulate the proposed Cameron Springs and Spanish Peaks gravel pits for which permit applications were pending before the Department. Decision on zoning was set for May 7.

#### E. The Lawsuits

1. On April 11, Cameron Springs filed for writ of mandamus in Helena district court ordering DEQ to issue permit.
2. On April 21, Nog, LLC., filed for writ of mandamus in Helena district court ordering DEQ to issue permit.
3. On April 25, Spanish Peaks filed for writ of mandamus in Helena district court ordering DEQ to issue permit.
4. On April 28, TMC filed for writs of mandamus in Helena district court ordering DEQ to issue its Storey, Nuss, and Morgan pit permits.

#### F. The Orders

1. On April 23, Judge Sherlock issued a writ of mandamus ordering DEQ to issue the Cameron Springs permit forthwith.
2. On April 29, Judge McCarter issued a writ of mandamus ordering DEQ to issue the NOG and Spanish Peaks permits
3. On May 6, Judge McCarter issued writs of mandamus ordering DEQ issue Storey pit permit forthwith and to determine acceptability or nonacceptability of applications for Nuss and Morgan pits.

#### G. DEQ Responses

1. On May 2, DEQ moved for reconsideration of April 23 and 29 orders.
2. On May 6, DEQ issued Cameron Springs, NOG, and Spanish Peak permits with condition that, if April 23 and April 29 orders are withdrawn or overturned, permits are void.

H. Zoning Adopted-- On May 7, the Gallatin County Commissioner adopted county-wide zoning regulations. The zoning regulations require gravel mining operations to obtain a conditional use permit before they may operate.

I. Landowner Lawsuits--On May 7, two landowners filed suit against DEQ and Cameron Springs and Spanish Peaks in Gallatin County. They seek injunctions prohibiting operation of the pits against the companies and declarations that the permits are invalid because, among other things, DEQ did not prepare EAs or circulate them for public comment. On May 7, Judge Brown denied motions for temporary restraining orders and for preliminary injunctions.