

f. gravel pits

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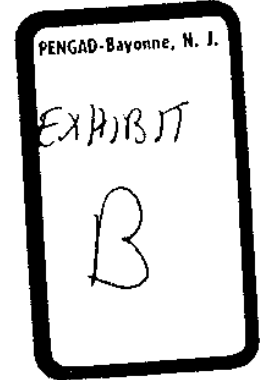


Brian Schweitzer, Governor

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June 15, 2007

Mr. Joe P. Skinner
Mr. William A. Murdock
Mr. R. Stephen White
Gallatin County Commissioners
311 West Main, Room 306
Bozeman, MT 59715



Dear Commissioners Skinner, Murdock, and White:

This letter is in response to your April 25, 2007 letter, addressed to the Billings office of the Department of Environmental Quality (DEQ), in which you expressed some concerns and recommendations regarding gravel mining operations in Gallatin County.

First, you asked that all public hearings regarding property (i.e., proposed gravel mining) in Gallatin County be held in Gallatin County. Please note that in the last five years DEQ has held three formal public hearings for proposed gravel mining operations in Gallatin County and all three were held in that county. Each of the hearings was for the purpose of receiving public comments on draft DEQ environmental assessments (EA's) prepared in connection with open-cut mining permit applications. One of these hearings was held at the Belgrade Middle School in September of 2002 relative to the proposed Cook-Lehrkind project east of the airport. The other two hearings were held in the County Courthouse in Bozeman in October of 2003 regarding: 1) the proposed Simpson operation south of Four Corners and 2) the proposed amendment to the TMC Storey Pit west of Four Corners.

DEQ does not hold public hearings on draft EA's for all proposed gravel mining operations. We only do so when there appears to be sufficient public interest, which, in the case of Gallatin County, only included the three referenced above in the last five years. DEQ has, of course, processed other gravel mining permit applications (including preparing associated EA's) in Gallatin County in the same time period, but none of these included public hearings. Any future public hearings for receiving public comment on EA's for proposed gravel mining operations in Gallatin County would, almost certainly, be held in Gallatin County.

As a footnote to the above discussion, please be aware that all applications for new gravel mining permits or amendments that propose to expand or change the postmining land use on existing operations must include zoning compliance forms from the appropriate local government zoning/planning office. In addition, all applications for

new permits must include weed compliance forms from the appropriate local government weed control office. Further, DEQ has recommended to permit applicants in Gallatin County that they contact the County Road Department about their proposals so that the Road Department has information about anticipated county road use by these mine operations. Therefore, through these procedures, three Gallatin County Departments are being informed of permit applications that require or involve county jurisdiction.

You proposed several measures to mitigate traffic, dust, and noise impacts associated with gravel mining operations. The implication was that DEQ should require these measures in opencut mining permits it issues for operations in Gallatin County. DEQ's authority is granted by the Opencut Mining Act and pursuant rules. It would be helpful for you to have a general understanding of the directions and limitations that the Act and rules provide to DEQ.

In the Opencut Mining Act, 82-4-434(2)(o), MCA states: *"The department may not approve a reclamation plan or a plan of operations unless the plans provide...that noise and visual impacts on residential areas will be minimized to the degree practicable through berms, vegetation screens, and reasonable limits on hours of operation..."* Also, in the pursuant Administrative Rules, 17.24.218(1)(d) states in part: *"The department may reasonably limit hours [of operation] to reduce adverse impacts on residential areas."* We interpret these provisions to mean that DEQ is directed to consider the location of a proposed mine site and the impact on local residents to determine "reasonable limits on hours of operation". We believe that a one-size-fits-all approach would not be consistent with this interpretation and direction. Nevertheless, please note that most of our long-term permitted gravel mining operations in Gallatin County do in fact comply with your suggested hours of operation of 7:00 am to 8:00 pm, Monday through Saturday.

Regarding your recommendation that DEQ should limit access to mine sites to existing access roads, the Opencut Mining Act does not provide DEQ with that kind of authority. The Opencut Mining Act at 82-4-434(2)(g), MCA states: *"The department may not approve a reclamation plan or a plan of operations unless the plans provide...that all access, haul, and other support roads will be located, constructed, and maintained in such a manner as to control and minimize channeling and other erosion..."* This requires DEQ to ensure that access roads are located "to minimize channeling and other erosion". Some proposed mine sites do not have existing access roads, in which case construction of a road for access is required.

Regarding your recommendations about dust control, please note the following. The Opencut Mining Act and rules do not have any specific requirements for dust control. However, the general provision in the Act cited in the previous paragraph may be interpreted to include the need for dust control measures on mine roads. Plans of operation in opencut mine permit applications normally include such measures to be used on roads and facility areas, consisting primarily of watering and sometimes the use of

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chemical dust suppressants. As for your request that the Department impose a uniform 35 mph speed limit on all mine access roads when conditions are dry, please note that DEQ has historically not required such a measure, although there is one operation in another county that voluntarily committed to a speed limit within its permit area. The Department is not convinced that a uniform speed limit on all access roads, whether operations would exist in crowded residential areas or in rural areas with few or no nearby residents who would be affected, would be appropriate. In addition, the Department believes it would be difficult to define what constitutes "dry conditions" sufficiently to make such a speed limit enforceable.

Regarding your request that DEQ prohibit overnight residential use or camping on mine sites, DEQ has no authority to impose such restrictions.

Regarding damage to county roads caused by gravel truck and other mining-related traffic, DEQ has no authority to require mitigation of such impacts.

If you wish to discuss any of these matters or have any questions, please contact me.

Sincerely,



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