

August 17, 2022

Sent via email to [ctfisher@riversidecontracting.com](mailto:ctfisher@riversidecontracting.com)

Riverside Contracting Inc  
5571 Alloy South  
Missoula, MT 59808

RE: Expiry - Deficiency Notice  
Application for a Standard Opencut Mining Permit Application  
Marvin Rehbein Site, Opencut #3415  
Lake County  
Executive Consent Order, Docket No. OC-21-11 (FID 2757)

To Whom It May Concern:

The application submitted to Opencut was to “re-permit” the site due to the previous permit expiring on November 15, 2010. Please disregard the old Opencut number as it is no longer valid. The Site has been assigned the above Opencut number. The signed Administrative Order on Consent (AOC) sets specific timeframes by which the Operator must respond to deficiencies for the Marvin Rehbein Site. In addition, the AOC specifies that Opencut is not required to follow the statutory timelines outlined in the Opencut Mining Act (Act). However, Opencut will attempt to process the application in a timely manner.

The Department of Environmental Quality (DEQ) deemed this application “complete” on April 15, 2022. For administrative purposes, this site has been assigned Opencut number 3415. Please include this Opencut number on all future correspondence about the site.

DEQ performed an acceptability review of the application in accordance with the requirements of §§ 82-4-432 and 434 Montana Code Annotated (MCA) and of the Opencut Mining Act and its implementing rules, Administrative Rules of Montana (ARM) Title 17, Chapter 24, Subchapter 2). In accordance with § 82-4-432(10) MCA, this letter serves as notice to you that the application contains deficiencies which must be corrected before the application can be determined to be acceptable. A detailed identification of all deficiencies is provided below.

Pursuant to the provisions of § 82-4-432 of the Opencut Mining Act, you have the following options for addressing the deficiencies identified by DEQ in the application:

1. Submit revised application materials that resolve all deficiencies, and after DEQ’s review confirms the application is acceptable, the permit will be issued;
2. Submit revised application materials that do not resolve all deficiencies, and after DEQ’s review determines the application is not yet acceptable, it will be disapproved and a Deficiency Notice will be issued; or,
3. Do not submit revised application materials, and one year after the date of DEQ’s latest Deficiency Notice, DEQ may notify you that the application will be abandoned and void unless you provide the requested information within 30 days of DEQ’s notification.

Should you disagree with DEQ's decision to disapprove your application based on the identified deficiencies, you are entitled pursuant to § 82-4-427(1)(a) MCA, to appeal DEQ's decision to the Board of Environmental Review by submitting a written request to the board within 30 days of the date of this Deficiency Notice.

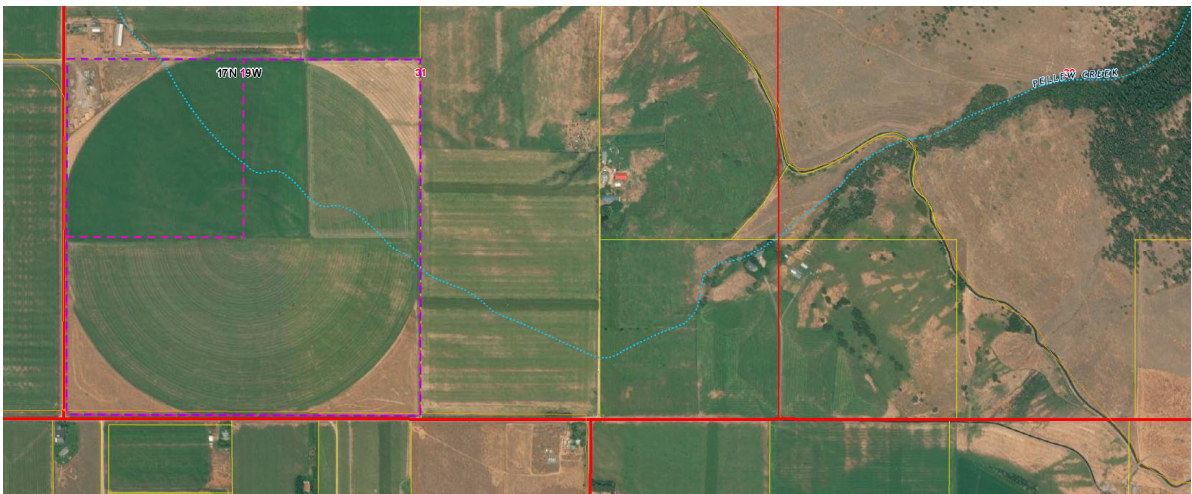
Upon receipt of any required materials, DEQ will review your revised application and determine whether it is acceptable or if deficiencies remain.

Submit revised application materials that resolve all the deficiencies identified below to the DEQ Opencut Mining Section in Helena as one package. Submit complete versions of any forms you revise, do not resubmit the whole application package. For example, if you make changes to the *Standard Opencut Mining Permit Application* resubmit that entire form, do not resubmit unchanged documents attached to it. The contents of an application constitute legal documents and become part of the permit; therefore, all required certifications and approvals must be signed and dated.

Opencut Section forms are available at: <http://deq.mt.gov/mining/programs/opencut>.

### Standard Opencut Mining Permit Application

1. **A1-6:** The County was left blank.
2. **B4-1:** In addition to farming, check the 'Fences' box to account for the fences that occur within the permit boundary ARM 17.24.218(1).
3. **B5-1:** Check the 'Stream/Creek' box to account for Pellew Creek that appears to bisect the permit area, (see below picture). Any water features and associated setbacks must be shown on the site map [ARM 17.24.218(1) & 17.24.221].

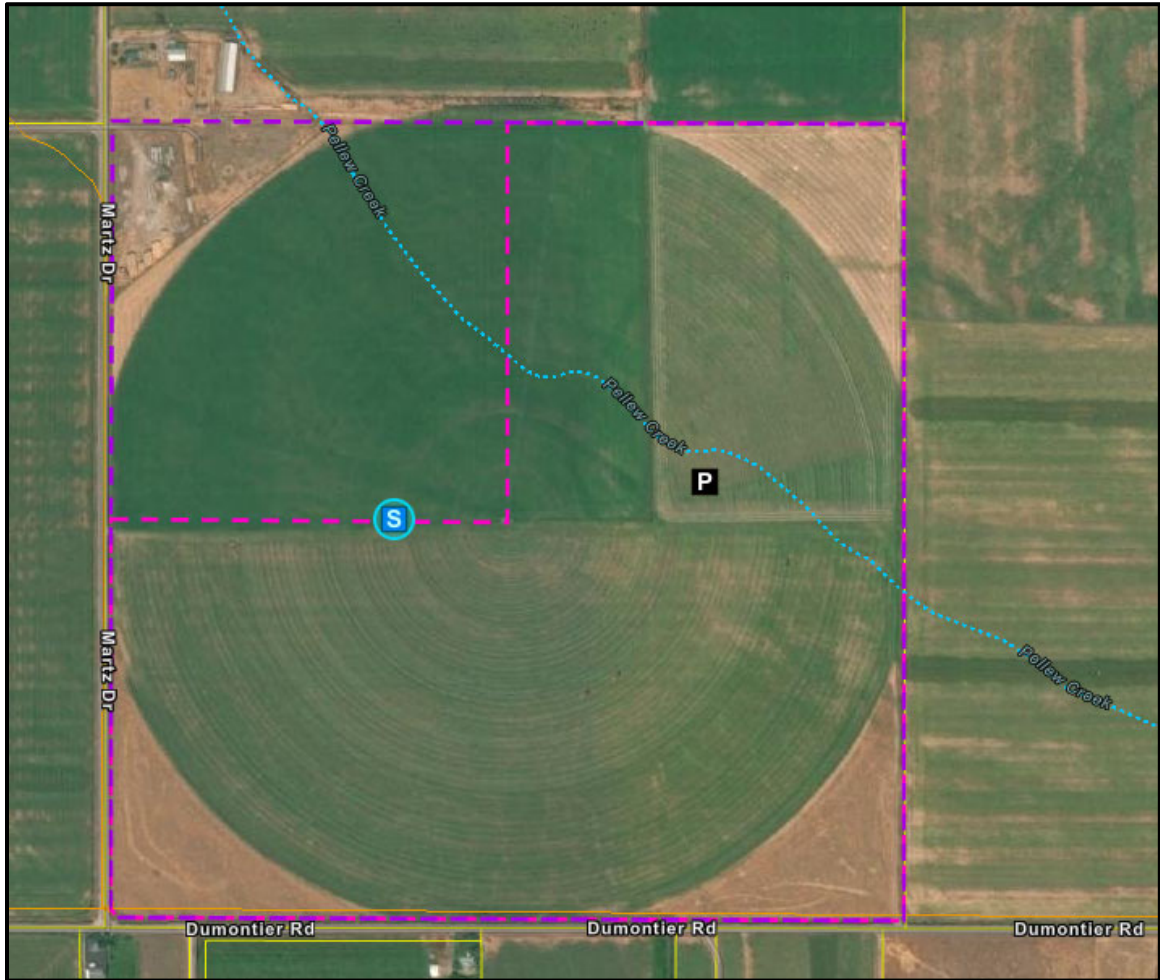


4. **B5-2:** In addition to 'Irrigation Ditch/Canal' check the 'Drainage' and 'Stream/Creek' box to account for the surface water features located within 1,000 feet of the permit area. Also, check the "Stream/Creek" box, (refer to B5-1 above). All water features and associated setbacks must be shown on the Area Map [ARM 17.24.218(1) & 17.24.221].

5. **B6-1:** Based on public comment received by DEQ Opencut and observations during the 9/23/2021 site inspection, weeds may be present at the proposed site. Therefore, verify the weeds present at the site and check the applicable boxes to account for weeds present in the permit area [ARM 17.24.222]. Refer to the vegetation type section in the 09/23/2021 inspection report as it could be used to address this deficiency (i.e. cheatgrass, etc.).
6. **B7-1:** Based on public comment received by DEQ Opencut, both black bears and fox have been observed in the area of the proposed site. Therefore, check the 'Black Bear' and 'Fox' boxes, as well as any other applicable boxes, to account for additional wildlife occurring within or near the permit areas. Refer to the wildlife type section in the 09/23/2021 inspection report as it could be used to address this deficiency.
7. **C1:** Information provided by public comment, and on the USGS map, indicates that Pellew Creek (a stream draining northwestward from the mountains to the east that empties onto alluvial deposits before reaching the Jocko River as a direct surface water tributary) potentially becomes a subsurface stream that flows through the area of the proposed site. See image below. It is unclear, based on aerial photos and information provided by the operator in the application, whether this stream surfaces on the proposed site or is entirely subsurface.

Information provided as part of public comments received by DEQ Opencut indicates that seasonal high groundwater levels in the area of the proposed site may be higher than 30 feet below ground surface (bgs) in some areas of the site. The information provided to confirm water levels is not adequate.

It appears that the proposed dryland post mining land use specified in section E2-1 of the application may not be achievable in the area of the site where Pellew Creek may be present and with a maximum proposed mine depth of 12 feet. Therefore, the operator is required to provide additional information and analysis on the Determining Depth to Groundwater Worksheet located at: <https://deq.mt.gov/files/Land/OpenCut/Forms/2021-Worksheet-DeterminingDepthtoGroundwater.docx?ver=2021-05-17-075320-953> supporting a dry post mining land use with a maximum 12-foot mine depth. Ensure worksheet Sections A, B, and C are completed with 1 or more methods selected in C. Revise Section C1 answers to ensure consistency with the Determining Depth to Groundwater worksheet answers and method(s). If appropriate, check the box in C1-4c indicating that Riverside would ensure the minimum of 3 feet of material is maintained above seasonal high groundwater or check "Other/Additional Information" and provide additional information in this section. Ensure that both exemption boxes are not checked.



8. **C3-1:** There is an existing historic landowner disturbance onsite as noted in the 09/23/2021 Inspection Report. Therefore, check “Yes” and complete this section. Ensure this section is completely filled out as these items pertain to how the existing disturbance would be reclaimed and provides details on the proposed mine plan for the site [ARM 17.24.218(1)(e)].
9. **D2-1:** Refer to the deficiency for C1 above and revise this section, if appropriate.
10. **D2-2:** It appears that ditches are located adjacent and just outside the proposed permit boundary and may, therefore, have easements that overlap into the permit boundary. Verify the width and location of the ditch easements along the west and south ditches. If the easements are not within the proposed permit boundary, state so in the *Further Information* section to make it clear that no easements are within the proposed permit boundary. If the easement or ditch is within the proposed permit boundary, check the ‘Water Conveyance Facility’ box and include the width of any easements associated with the ditches and explain in further detail how the easements would not be impacted by Opencut operations. Provide documentation from the ditch companies stating:
  - a. setback requirements;
  - b. the maximum slope the companies allows in their easement; and
  - c. any other requirements for activities conducted under, over, or adjacent to the infrastructures (e.g. inspections, safety, excavation, stockpiling, etc.)



Revise this section, provide applicable further explanations, attach documentation, and ensure that all easements and/or required setbacks are shown on the site map and/or area map [ARM 17.24.218(1)(j)].

11. **D2-3:** Refer to the deficiency for C1 above and revise this section to include a setback for an “Intermittent of Perennial Stream”, if applicable.
12. **E2-1:** The *Landowner Consultation* form indicates that mine material would be left at the conclusion of Opencut operations. Therefore, in accordance with ARM 17.24.219(1)(b), check the *Landowner Material Stockpile Area* box and ensure this section, the *Landowner Consultation* form, and the *Reclamation Map* are consistent.
13. **E4-4a(ii):** As you have checked the “Yes” box in this section and the “Water collection area is  $\leq$  ½ acre in size” box, you must also check the ‘Runoff collection area(s) in bottom of depression’ box.

## Maps

**Map(s) Note:** If changes are made to the application that affects the map(s), submit a revised map(s). The map’s date must be revised prior to resubmittal to reflect that the map has been changed. Map requirements can be found at ARM 17.24.221 (1-7) and in the Map Guideline at <http://deq.mt.gov/Mining/assistance>.

14. **Site Map:** In accordance with ARM 17.24.221(3) all required map features are not shown on the site map or are inconsistent with the application documents. Site maps must be displayed on an aerial photo base. Submit a revised map that shows all required map features including, but not limited to the following:
  - a. water system including:
    - i. Pellev Creek and any associated setback, if applicable;
  - b. Irrigation ditch/canal line and easements;
  - c. Historic landowner disturbance;
  - d. Concrete stockpile location; and
  - e. any other pertinent features that are necessary to ensure compliance with the Act and rules.
15. **Area Map:** In accordance with ARM 17.24.221(4), the area map must be displayed on an aerial photo base and must show and identify the following features within 1,000 feet outside of the permit boundary (including but not limited to):
  - a. water wells;
  - b. irrigation ditch/canals along the west and south proposed boundaries and their associated setbacks; and
  - c. any other pertinent features that are necessary to ensure compliance with the Act and this subchapter.
16. **Reclamation Map:** In accordance with ARM 17.24.221(5), reclamation maps must be displayed on an aerial photo base and must show and identify all the following existing and proposed features:
  - a. landowner material stockpile areas to remain;
  - b. water collection area to remain (E4-4); and

- c. any other pertinent features that are necessary to ensure compliance with the Act and this subchapter.

## Supplemental Documents

17. **Reclamation Bond Spreadsheet:** Ensure the following items are consistent with changes made in the application and that the latest spreadsheet form is downloaded before submitting the revisions [ARM 17.24.220].
  - a. Soil and overburden depths do not match section C2-3; and
  - b. Any other pertinent items

## Bond

**Bond Note:** It may be in the Operator's best interest to wait to address the bonding deficiency below and to obtain an updated bond until there are no remaining deficiencies for the Reclamation Bond Spreadsheet. If the acreage, dollar amount, or other bond parameters change, submit a revised Bond or an additional Bond. The Opencut Section requires the original paper Bond to be submitted before the Permit can be issued.

## Timelines

This matter has been referred to the Department's Enforcement Program to go through the expiry process and obtain an Administrative Order on Consent (AOC). This process allows the Operator to continue Opencut operations within their original permit boundary only. No Opencut operations can occur outside the original permitted boundary.

Under the Consent Order, Riverside Contracting Inc agreed to respond to deficiency letters within the timeframes outlined in the AOC, and to submit any extension request to the Opencut Section in writing no less than one week prior to that deadline.

In addition, Riverside Contracting Inc agreed to waive the statutory permit application review deadlines (82-4-432 & 82-4-439, MCA). As a result, Opencut will review the application materials you submit as soon as our workload of applications with statutory deadlines allows.

The DEQ strongly recommends that you use the above-listed deficiencies as a checklist to confirm that your revised application materials are complete and acceptable prior to resubmittal.

If you have any questions, contact the Opencut Section at (406) 444-4970.

Sincerely,



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Department of Environmental Quality  
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