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Article published May 9, 2008

Court orders DEQ to issue fourth gravel pit permit

By JOHN S. ADAMS Tribune Capitol Bureau

HELENA — A District Court judge on Thursday ordered the Montana Department of Environmental Quality to issue another gravel pit permit without completing an environmental assessment.

The decision marked the fourth time in two weeks that the courts ordered the agency to issue open-cut mining permits without any environmental analysis of the potential impacts of the operation.

Environmentalists say the court decisions set a dangerous precedent that could have dire unintended environmental and health consequences for the people and property surrounding the proposed gravel pits.

"How can we allow these huge extractive operations with all the dust and the noise and the water-quality issues to be permitted without any analysis about how it's going to affect people and their property? Because that's what we've got right now," said Jeff Barber, water and mining program director for the Montana Environmental Information Center.

Barber said it's probably that the court orders will be appealed to the Montana Supreme Court.

Two Gallatin County residents sued the DEQ on Wednesday over two of the permits, saying the agency violated their constitutional right to public input and a clean and healthful environment when it issued the permits without an environmental assessment.

According to the DEQ, there are 60 open-cut mining permit applications for gravel pit operations pending approval. That number only includes permit applications deemed "complete" by the agency. The DEQ has completed environmental assessments on four of those applications.

DEQ spokeswoman Lisa Peterson said there are about 140 incomplete or abandoned applications that are not active with the agency.

On Thursday, MEIC filed a motion to intervene in the hearing, meaning the group would become a party in the case, on behalf of two other Gallatin County residents who live near the proposed gravel pit sites, but District Judge Dorothy McCarter denied that request. However, McCarter allowed MEIC's attorney, Roger Sullivan, to address the court.

Sullivan said the court should not order the DEQ to issue the permit to Three Way Mining and Gravel because his clients' interests and concerns were not adequately represented in earlier permit cases. Sullivan added that because the state never conducted the environmental analysis or provided an avenue for public input as required under the Montana's bedrock environmental law, there was never an opportunity for Rich Morse and Carol Lee-Roark to raise their concerns.

Lee-Roark's home is less than 250 feet away from an existing gravel pit, Sullivan said.

Attorneys for the four Gallatin County gravel pit operators have argued that their clients' permit applications were complete and deemed acceptable by the DEQ months ago, but the agency did not conduct environment assessments within the 60 days required by law. Helena attorney James Shuler argued Thursday that the DEQ failed its statutory obligation to issue the permits.

Attorneys for the DEQ tried to convince the court that the entire case was moot after Gallatin County commissioners instituted emergency zoning Wednesday. Attorney Jane Amdahl argued that because the

commission passed the interim zoning, the permit application was no longer acceptable because the company had not secured a conditional-use permit now required by the county.

McCarter sided with Three Way Mining, stating that if the DEQ had issued the permit on time, the company would have had it in hand before the county instituted new zoning rules.

McCarter ordered the DEQ to issue one permit to Three Way Mining and make a determination on the acceptability of two other permit applications filed by the company. The judge also urged the agency to conduct an environmental assessment after the permit is issued.

She said the DEQ was "stuck between a rock and a hard place," adding that the agency will have to seek a legislative remedy during the 2009 Legislature.

McCarter has yet to rule on DEQ motions to reconsider her rulings made last week on two other gravel pit permits. DEQ officials have said that if the court refuses to reverse its ruling, the agency will appeal to the Montana Supreme Court.

Peterson said the DEQ has not decided if it will appeal Thursday's ruling.
