



Opencut Act is a Reclamation Act

MONTANA CONTRACTORS ASSOC.
THE CONSTRUCTION ASSOCIATION

At a time when the nation and state are celebrating epic investments in infrastructure, including water and sewer projects, roads, bridges, and alternative energy projects, it is important to understand the role gravel plays. Gravel is a material that is critical to accomplish all the above listed infrastructure needs. It is also critically important for the construction of new housing.

Gravel for construction is only found in certain areas. As demand is created through growth of communities, construction companies look to access the land. In this process, they apply to the Department of Environmental Quality under the Opencut Act. This is a reclamation act, which in many situations puts that land back in a way that significantly benefits the neighboring property. Public parks and lakes are the majority of uses, but commercial enterprises also develop.

Gravel is sourced as close to the user as possible, which lessens the environmental impact of transportation. Gravel is mixed with oil to make roads and airport runways. It is mixed with limestone and other materials to make concrete, which is used in foundations for houses, bridges, hospitals, and water and sewer projects. Almost every home and business have some sort of decorative rock as part of its landscaping.

Addressing concerns about gravel pits:

- 1. Water discharge:** Sand and gravel operations that discharge wash water, transport water, scrubber water, pit dewatering water, or other process wastewater to state surface waters are required to obtain Montana Pollutant Discharge Elimination System (MPDES) permit coverage. DEQ Water Protection Bureau reviews the application, then issues an authorization under the sand and gravel general permit to the operator, if appropriate. Once authorized, operators must comply with all conditions of the general permit including effluent limits, monitoring, and reporting requirements. Operators must implement best management practices (BMPs) and a Storm Water Pollution Prevention Plan (SWPPP) to manage potential pollutants within their operation. Inspections and discharge monitoring are required to verify that BMPs are working and that pollutants are being minimized in discharges. More information is [here](#).
- 2. Wells/water quality:** Any monitoring or hydrologic study is left to the Operator if they feel it is needed. Water quality issues are handled by the Water Protection Bureau and wells/water rights by the DNRC.
- 3. Dust and airborne particulates:** Dust abatement is performed consistently and conscientiously to minimize impacts to the surrounding properties and general air quality. Dust control is monitored by onsite personnel during all hours of operation and is accomplished using a combination of tarps, water, and spray bars. Fugitive dust from stockpiles and the site itself may be controlled using sprinklers, water trucks and/or a combination of water and tackifier as needed. DEQ Air Quality Bureau administers all air quality permitting pertaining to the processing equipment that may operate at an Opencut site. More information is [here](#).
- 4. Notification/comments:** Operators are required to notify all landowners within 1/2 mile of the proposed site as part of the Opencut permitting process and in some cases when applying for an amendment. Lack of a public meeting does not mean there is no opportunity for comment. DEQ will allow comments as long as the application is in process, through its website or via mailed letters. Email to DEQOpencut@mt.gov (include the site name in the subject of the email).

5. **View:** When sites are proposed in close proximity to a residence, operators are required to construct a visual barrier made of natural materials that reasonably screens adjacent property owners from activities in the gravel pit. Operators are required to notify the County Weed District and adhere to the local weed management requirements.
6. **Safety:** The operator shall enforce safety measures, including preventing overfilled trucks, covering loads when required by law, education of truck drivers, and monitoring driver performance. Appropriate signage, approved by the local or state transportation department, shall be erected to alert vehicular and pedestrian traffic to the presence of heavy truck travel along all main travel routes within an appropriate distance from the site.

Facts about 2021 Legislative Changes

- It places the specific area of concern raised by a particular operation before the scientists which are best suited to protect the environment – Air Quality Bureau and Water Quality Bureau.
- It does not affect how the Air Quality Bureau regulates its program, it does not change the laws pertaining to how the Water Quality Bureau regulates water quality or storm water runoff, and it does not change how DNRC handles water rights.
- It does not diminish the State of Montana's ability from making the operator mitigate impacts to the environment by complying with its environment laws and regulations.
- It continues to protect property rights. The contract is between the owner of the land and the contractor. If government takes away the right to mine resources, it creates a 'taking' which is likely to be litigated.
- It did not prohibit members of the public from commenting on an application. DEQ is always accepting comments, even if a public meeting is not required. Submit comments to: DEQOpencut@mt.gov (include the site name in the subject of the email)

No one cares about the environment, water quality, air quality, dust, and being a good neighbor more than the Montana Contractors Association and its members. Gravel is the main component of everything that is built – roads, schools, churches, and bridges. Operators pledge to continue working closely with government agencies at all levels to ensure the history of failures of mining in Montana never happen again.

The Montana Contractors Association is the leading voice for the highway, civil and commercial construction industry, and a chapter of the Associated General Contractors of America.