

March 20, 2019

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Ravalli County Commissioners

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INCREASED AND NEW OPENCUT FEES

Dear Operator:

Senate Bill 343 (SB 343)* by the Montana Contractors Association (MCA), and sponsored by Sen. Tom Richmond, would, among other things, increase and add new Opencut fees.

Although MCA supports this bill, it appears that only a small number of MCA members are involved. I searched the MCA Business Directory for "gravel" and 22 operators who may or may not support the bill came up. There are over 400 opencut operators in the state. I believe all of them, like you, should know about this matter and have their voices heard.

ARE YOU OK WITH PAYING ADDITIONAL AND NEW FEES?

Here is the proposed fee language from SB 343:

(2) (a) Except as provided in subsection (2)(b), each opencut operation shall submit with the annual report a fee of ~~2.5~~ 3 cents per cubic yard of materials for all operations mined during the period covered by the report.

(b) Opencut operations that mine, extract, or produce bentonite are not subject to the fee in ~~this section~~ subsection (2)(a).

(3) The department:

(a) shall require the operator to pay the following fees:

(i) **\$150** annually for each operation, including limited opencut operations provided in 82-4-431(2) and limited borrow operations provided in [section 14], in which reclamation on all affected lands is not complete or the department has not made a decision on bond release pursuant to 82-4-433 or liability release for operators excluded from bond requirements pursuant to 82-4-405;

(ii) **\$1,500** for each permit application submitted pursuant to 82-4-432(1); and

(iii) **\$1,500** for each amendment application submitted pursuant to 82-4-432(11);

(b) may require the operator to pay **\$500** for each deficiency response to a permit application or an amendment application after the department issues the third acceptability deficiency letter pursuant to 82-4-432(10);

I asked Chris Dorrington, DEQ Air, Energy, & Mining Division Administrator, to provide justification for these fees. I recommend that you read his response, which comes after this letter.

Unless convinced otherwise, my current position is to oppose SB 343 for two main reasons: 1) it appears to have been developed by a small group but will affect many hundreds of private and governmental operators across Montana, and 2) my experience with Opencut has not been good. I believe Opencut should streamline its operation, become user-friendly, and stop making unnecessary work for itself and others before receiving additional funds. If you would like more information about my experiences with Opencut, I would be happy to show you my 3-inch-thick file.

CONTACT THE SEN. NATURAL RESOURCES COMMITTEE TODAY!

This is an easy and effective thing to do.

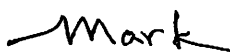
SB 343 is moving quickly. Whether you support the bill or not, it is important to participate in the process and make your voice heard. To send a message to the whole Senate Natural Resources Committee:

- Search for Montana State Legislature on the Internet
- Click Send A Message To A Montana Legislator
- Fill in your information
- Click Send Message to Committees
- In dropdown select (S) Natural Resources
- Under Bill Type use dropdown and click SB
- In the blank enter 343
- Click For or Against
- Type a short message stating your position and why you are for or against SB 343

Please send your message ASAP. I sent mine today.

Contact me if you would like to discuss an item or have a question or feedback. Thank you!

Sincerely,



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*To look up the status of a bill:

- Search for Montana Legislature Bill Lookup on the Internet
- Click on site
- Click on Bill Information For The 2019 Session
- Click Look Up Bill Information
- Enter information (such as SB 343)

See Current Bill Draft Text and Bill Actions

From: Dorrington, Christopher <CDorrington2@mt.gov>
Sent: Tuesday, March 19, 2019 2:52 PM
To: MGC Consultants - Mark Carlstrom; Coleman, Edward
Cc: Lucas, Mark; Christopherson, Sarah

Subject: RE: Sen. Richmond And LC 1016

Thanks for the questions, Mark.

Generally ...

The revenue target for the program in 2009 (\$500,000) has never been achieved. The average revenue since this time has been about \$360k per year, *and then* 15% is shaved off of that and sent to Department of Revenue and beyond to the Department of Natural Resources.

- The goal is to fund the program fully in order for current staff (filled and open) to perform work according to the already tight statutory timelines.
- The goal is also to improve upon the stability of funding, allowing a slightly broader fee structure that is less prone to boom-bust industry cycles.
- The bill amendment also removes the 15% revenue haircut.

The next portion of the plan is to work through reclamation plans/dates with operators who have expired permits or are soon-to-expire permits, provide sustained availability for pre-app meetings, and provide sustained support at public meetings for new and amended sites.

- The goal is sustain efficient program service for new applications/amendments, address the known reclamation need, and continue to staff ever-emerging complex and labor-intensive public meetings on short notice.
- The program will do this work with existing staff, filling vacancies, and possibly hire consultant services where necessary.
- The bill accomplishes this by codifying the BER's *Wagoner* decision.

The next portion is to spend wisely regarding technology solutions, hopefully work toward an e-permit system, and sustain and improve our use and utility of GIS.

- The goal is maintain and improve technology as an efficient mechanism to afford scientist to work in the area(s) of expertise, and improve the communication/gateway with stakeholders.
- Operators have explained that improved and efficient technology is a priority.

The next portion is to address the need to be in the field, overall. There is a need to be present at opencut sites on a more routine basis, and when something goes wrong to be less complaint-driven.

- The goal is to improve our field presence and effectiveness (including the use of technology, above).

Next, in this MCA opencut bill, there is a new provision for a borrow source exemption. This will require development of new processes, forms, training, and likely also increase our field demand for a few years while we become comfortable with the execution of this exemption.

- The goal is to fund the staff time and travel for the new provision.

Next, we are looking to incentivize high-quality submittals and remove unreclaimed sites from our task list by ensuring timely and quality reclamation according to plan.

- The annual fee and the 3rd-round+ deficiency will work to incentivize pit operators to invest in the process, learn from past practice and employ those lessons in future submittals, and submit quality work in early rounds of completeness and deficiency review.

Lastly, we are exposed to and have experienced sustained and increasing litigation in the opencut program as the natural resource extraction presses near existing or planned housing, underground and surface water, and other impacts (cultural, historic, protected species, etc.).

- Stable funding will allow the program flexibility to fund the program attorney in place today, who works on behalf of the agency and state to protect resources and accomplish reclamation according to the state constitution, Opencut Act, and opencut rules, and then also advise the program on necessary modifications to the same list of governing docs.
- Stable funding will allow for on-going stakeholder meetings, open dialog and coordination.

As a side note ... at 3% annual inflation, \$500k/yr in 2009 requires over \$670k/yr in 2019 for the same financial power.

I hope this helps,

Chris

From: MGC Consultants - Mark Carlstrom [mailto:mgcbiz10@hotmail.com]
Sent: Tuesday, March 19, 2019 11:31 AM
To: Dorrington, Christopher <CDorrington2@mt.gov>; Coleman, Edward <EColeman@mt.gov>
Subject: Sen. Richmond And LC 1016

Dear Chris and Ed:

I am not clear as to why Opencut seeks additional funding. Senator Richmond told me, "the goal is to improve efficiency and timeliness of the process," which is vague.

If you have something written up regarding the reasons Opencut seeks additional funding, please send that to me. If not, please send more specific information as to why Opencut seeks additional funding and what would be done with additional funds.

Thank you.

Mark