

**DEQ AND BLM MEMORANDUM OF UNDERSTANDING
FOR HARDROCK MINERAL ACTIVITIES ON BLM-ADMINISTERED LANDS**

I **Introduction**

A. **Agencies Involved**

This Agreement is executed by the State of Montana, acting through the Director of the Department of Environmental Quality (DEQ), and the U.S. Bureau of Land Management (BLM), acting through the Montana State Director. DEQ and BLM are collectively referred to hereafter as "the agencies". This Agreement supersedes existing MOUs executed by the agencies dated April 1981, and May 1984.

B. **Authority**

The DEQ administers environmental protection requirements for hardrock mineral activity under the Montana Metal Mine Reclamation Act (MMRA) (Title 82, chapter 4, part 3, MCA) and administrative rules promulgated under the MMRA. The DEQ administers environmental protection requirements for opencut mining activity under the Opencut Mining Act (OMA) (Title 82, chapter 4, part 4, MCA) and administrative rules promulgated under the OMA. The Montana Environmental Policy Act (MEPA) (Title 75, chapter 1, parts 1-3, MCA) governs DEQ's preparation of environmental analysis for activities licensed or permitted under the MMRA and the OMA. Pursuant to House Bill No. 185 enacted by the 2005 Montana Legislature, DEQ has express authority to accept bonds payable to the State of Montana and a federal land management agency.

The BLM is responsible for the prevention of unnecessary or undue degradation of federal lands under the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701, et seq.) and under regulatory provisions at 43 CFR 3802 and 3809. These regulations require environmental analysis and documentation under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, et seq.) prior to the approval of a Plan of Operation.

43 CFR 3809 allows BLM and a state to enter into an agreement to provide for a joint Federal/State Program. 40 CFR 1506 requires federal agencies to cooperate with state agencies to the fullest extent possible. This cooperation is aimed at reducing duplication of federal and state efforts under NEPA and comparable state requirements and includes joint project planning, environmental research, public hearings, and environmental assessments.

C. Purpose

This Agreement provides a framework for reviewing hardrock and opencut mineral activities that are proposed for BLM-administered lands within the State of Montana. This Agreement also promotes a unified working relationship between the agencies during the approval process, once mining activities are approved, during operations and at closure or abandonment. Both parties seek to eliminate duplication, to share information, and to resolve problems through cooperative efforts. It is the intent of the agencies to work, both formally and informally, to the highest degree possible to meet these goals.

D. Scope

This Agreement governs all hardrock mineral activities that are regulated by BLM under 43 CFR 3802 and 3809 and by DEQ under the MMRA, and mineral activities that are regulated by BLM under 43 CFR 3802 and 3809 and by DEQ under the OMA (i.e., bentonite). Mining activities that are regulated by DEQ under the MMRA but not by BLM under 43 CFR 3802 and 3809 (i.e., phosphate) or mining activities regulated by DEQ under the OMA but not by BLM under 43 CFR 3802 and 3809 (i.e., clay, scoria, peat, sand, soil materials and gravel) are not covered by this Agreement.

E. Administration

The Permitting and Compliance Division of DEQ shall be responsible for administering this Agreement on behalf of the State. The Montana Field Offices of the BLM shall be responsible for administering this Agreement on behalf of the BLM. Disputes which are not resolved at the field level will be referred to the Director of DEQ and the Montana State Director of BLM for resolution.

Nothing in this MOU shall obligate the BLM to expend appropriations or to enter into any contract or other obligation. Specific work projects or activities that involve the transfer of funds, services, or property between the parties to this MOU will require the execution of separate agreements or contracts, contingent upon the availability of funds as appropriated by Congress. Each subsequent agreement or arrangement involving the transfer of funds, services, or property shall be made in writing and shall be independently authorized by appropriate statutory authority and regulations, including those applicable to procurement activities.

II. Processing Applications for State Operating Permits and Federal Plans of Operation for Hardrock Mineral Activities.

A. Conceptual Plans and Baseline Data Acquisition

Prior to submitting applications for a state operating permit and federal plan of operation, an operator may present to the agencies a conceptual project design and/or a baseline data acquisition plan. While no mandatory timeframes exist, the agencies shall jointly discuss

such plans and provide the operator with comments on acceptable data acquisition methods, standards, and scope of needed studies in as timely a manner as possible.

B. Application Submission

1. Receipt of Application

Applications for a state operating permit and a federal plan of operation shall be submitted by the operator to DEQ and BLM, respectively. Within 10 days of receipt of an application for a state operating permit or for a federal plan of operation, the receiving agency shall verify that the other agency has received a corresponding application and arrange for cooperative review of the applications. Each agency shall supply the other with all subsequent correspondence relative to the project. Each agency shall strive to meet the other's regulatory timeframes.

2. Lead Agency Designation

The BLM and DEQ will consult to determine which agency will have the lead in coordinating the application review and environmental analysis. The following criteria will be considered when determining the lead agency:

- a. Relative proportion of federal vs. nonfederal land involved in the project.
- b. Ownership of a parcel of land that is critical to the feasibility of the overall project.
- c. Special environmental concerns potentially requiring extended evaluation and mitigation (i.e., threatened & endangered species, American Indian Religious Freedom Act concerns, National Historic Preservation Act compliance, geotechnical design).
- d. Special area designation such as Wilderness Areas, Wilderness Study Areas, Areas of Critical Environmental Concern, Wild and Scenic Rivers, etc.
- e. Agency expertise and workload considerations.

C. Completeness Review

Completeness reviews will be conducted pursuant to the MMRA and 43 CFR 3809. An application is considered complete when the application contains all the information required under applicable state and federal law in an adequate level of detail to provide for sound analyses.

The application will be initially reviewed for completeness within 30 days of receipt. The lead agency will be the main contact for the operator during the completeness review. BLM and DEQ shall prepare a joint letter to the applicant detailing any deficiencies in the application that were identified by the agencies. Responses from the applicant to the completeness review will be reviewed in a similar manner as the initial review of the application. Subsequent submittals will be reviewed for completeness within 30 days of receipt. The cycle of completeness review, with response by the operator, shall continue until the agencies determine they have received a complete application.

The BLM and DEQ will then send the applicant a joint letter stating that the agencies consider the application to be complete and that an environmental review document is being prepared on the project. If BLM and DEQ are unable to agree that an application is complete, the joint processing of the application by the agencies under this MOU shall terminate and the agencies shall individually complete the application review process under applicable federal or state law.

D. Environmental Analysis and Documentation

1. Environmental Assessment (EA) vs. Environmental Impact Statement (EIS)

As soon as possible during the completeness review process, the agencies shall begin the environmental analysis to determine the appropriate level of environmental review (EA or EIS). This decision shall be based on both the anticipated impacts of the proposal and on the respective federal and state laws regarding the level of environmental analysis. The decision to prepare an EA does not preclude either agency from later determining that an EIS is required.

If the decision is made to prepare an EIS, the agencies shall enter into a separate agreement detailing the specifics of its joint preparation. The EIS must be prepared in compliance with both federal and state statutes and associated rules and regulations. If the agencies decide to use a third party contractor to prepare an EIS, the agencies shall jointly prepare a request for proposals and select a contractor, consistent with Section 82-4-337(1)(d)(iv), MCA, 43 CFR 3809 and state and federal contract procurement law.

2. Consultation and Coordination

The following outlines the general consultation and coordination responsibilities of the agencies that may be necessary during review of an application. These items are the responsibility of the indicated agency regardless of whether DEQ or BLM has been designated the lead agency. The results of these consultations shall be forwarded to the lead agency for incorporation into the environmental analysis.

a. BLM Responsibilities

If needed during application review and environmental analysis, BLM shall be responsible for ensuring that the following consultations and coordinations are carried out:

- i. Section 7 of the Endangered Species Act consultation with the U.S. Fish and Wildlife Service.
 - ii. Section 106 compliance with the National Historic Preservation Act and consultation with the State Historic Preservation Office (SHPO).
 - iii. Consultation with Native Americans regarding religious concerns under the American Indian Religious Freedom Act (AIRFA).
 - iv. Any consultation or coordination with the Environmental Protection Agency.
 - v. Consultation or coordination with any other federal agency or entity.
- b. DEQ Responsibilities

If needed during application review and environmental analysis, DEQ will be responsible for ensuring that the following consultations and coordinations are carried out:

- i. Review by the Montana Department of Fish, Wildlife, & Parks.
- ii. Consultation with the DEQ Air Resources Management Bureau and Water Protection Bureau.
- iii. Consultation with the Montana Department of Natural Resources and Conservation.
- iv. Consultation with the Montana Hard Rock Mining Impact Board.
- v. Consultation or coordination with any other state agency or entity.

3. Environmental Document Preparation

All documents shall conform to the requirements of both NEPA and MEPA.

The EA or EIS shall be jointly prepared by technical staff from both agencies using an interdisciplinary approach under the direction of a team leader from the lead agency. Communication and coordination between DEQ and BLM technical staffs shall be open and informal. Unresolved technical differences will be forwarded to the respective staff supervisors for resolution.

An EA or EIS prepared by a third party contractor shall be reviewed by the technical staff

in a manner similar to that used for agency prepared documents discussed above.

4. Public Involvement and Notification

Upon receipt of an application for an operating permit, the DEQ will provide notice of application to the public for three successive weeks and accept public comment. Following receipt of a complete plan of operation, the BLM will publish a notice of availability of the plan and will accept public comment for at least 30 calendar days. The agencies shall jointly decide on the need for public meetings during application review or environmental analysis. The public will be notified by both agencies of the availability of environmental and decision documents, to inform those persons and agencies who may be interested or affected.

E. Decision

1. BLM Preparation of FONSI and DEQ Preparation of Decision Document

The BLM will prepare a Finding of No Significant Impact (FONSI), or a Notice of Intent to prepare an EIS, for activity analyzed in an EA. If necessary, DEQ will prepare an EA to determine whether an EA is the appropriate level of analysis or prepare an EIS. At the conclusion of environmental analysis, BLM and DEQ will prepare appropriate decision documents. BLM and DEQ will consult during the preparation of the respective decision documents. Each agency will require the operator to adopt those stipulations for which it has legal authority.

2. Approval Issuance

The BLM and DEQ will coordinate the issuance of separate, simultaneous, or joint approval documents directly to the operator. The agencies will incorporate in the approval documents, either directly or by reference, the stipulations for which the respective agency has legal authority. The approval documents shall also contain the appropriate bonding requirements.

3. Denial or Non-Approval

The BLM and DEQ shall immediately notify the other agency of a decision to deny an application and state the reasons for the denial. An agency may, if required by law, issue its approval, but shall inform the operator that the cooperating agency's approval is being withheld and that operations may not proceed under the laws administered by the cooperating agency until the approval of the cooperating agency is received.

If both agencies deny or withhold approval of an application, the operator shall be informed of the decision by both agencies directly. The decision will cite the specific reason or justification for such action.

III. Processing State Exploration Licenses, SMESs, Placer Operations and Federal Notices or Plans of Operation for Hardrock Mineral Activities.

A. DEQ Exploration License and BLM Notice or Plan of Operation

Exploration generally will not require formal BLM approval. These activities are processed under the Notice provisions of the 3809 regulations. During the 15-day Notice review period, BLM will direct the operator to contact DEQ and consult with DEQ on appropriate resource protection requirements and bonding amounts for the operation. BLM shall subsequently inform the operator of resource protection measures required to prevent unnecessary or undue degradation and remind the operator that formal state approval may be necessary before commencing exploration activity.

The DEQ shall review and act on an application for an exploration license pursuant to the MMRA and applicable administrative rules.

The BLM will be the lead agency for activities requiring a state exploration license and a federal plan of operation. BLM shall inform the public that copies of the proposed plan of operation are available, accept comment for 30 days after the application for a plan of operation is deemed complete, and perform the NEPA review. DEQ shall hold the reclamation bond for actual costs as required by Section 82-4-332, MCA, and 43 CFR 3809.

B. DEQ SMES (non-placer) and BLM Plan of Operation

Within 10 days of the receipt by DEQ of a SMES or by BLM of an application for a plan of operation, the agency shall contact the cooperating agency to verify receipt and to arrange for agency review. The BLM shall be the lead agency for activities requiring a SMES and a federal plan of operation. BLM shall inform the public that copies of the proposed plan of operation are available, accept comment for 30 days after the application for a plan of operation is deemed complete, perform the NEPA review, and hold the bond for actual costs as required by 43 CFR 3809.

C. DEQ SMES (placer operation) and BLM Plan of Operation

Unless exempted, placer operations that do not require a state operating permit are regulated under a SMES. DEQ bonds the operations according to the following schedule: operations begun prior to July 1, 1989, are not bonded; operations begun between July 1, 1989, and July 1, 1997, are bonded up to a maximum of \$5000; operations begun after July 1, 1997, are bonded up to a maximum of \$10,000 according to Section 82-4-305, MCA.

If the operation is wholly on lands administered by the BLM, the BLM shall hold the bond. If the operation is on lands administered by the BLM and private lands and the bond is less than the schedule set forth above, the DEQ shall hold the bond. If the operation is on lands administered by the BLM and private lands and the bond is more

than the schedule set forth above, the DEQ and BLM shall agree on the total of the bond required for the operation. The agencies shall then apportion the bond between private land (to be held by the DEQ and not to exceed the schedule set forth above) and land administered by the BLM (to be held by the BLM).

Placer operations involving the use of suction dredges with an intake greater than 4 inches that do not require a state operating permit are also regulated under a SMES. The DEQ will regulate the activity in lieu of BLM as provided for in 43 CFR 3809. DEQ shall notify BLM of each application to conduct suction dredging within 10 calendar days of receipt of an application. BLM will inform DEQ whether federally proposed or listed threatened or endangered species or their habitat may be affected by the proposed activities and provide any necessary mitigation. Exceptions to this Agreement will be handled on a case-by-case basis, i.e., BLM may play a more active role in areas of special designation.

Placer operations involving the use of suction dredges are exempt if: (1) the intake is 4 inches or less in diameter; (2) the person does not operate the dredge beyond the area of the streambed that is naturally under water at the time of operation; (3) the person has obtained any necessary approval or permits required by the DEQ Water Protection Bureau, the State Department of Natural Resources and Conservation, and the County Conservation District; and (4) the person has paid applicable water quality permit fees. BLM will work with these agencies independently of this MOU for activities that are exempt from the MMRA.

D. Stockraising Homestead Act Land

For operations located on land patented under the Stockraising Homestead Act with minerals reserved to the United States, DEQ will be the authorizing agency if the operator obtains surface owner consent to explore or mine. If surface owner consent is not obtained a BLM plan of operation is required in addition to DEQ authorization.

IV. Processing State Permits and Federal Plans of Operation for Opencut Mining Activities.

A. Conceptual Plans & Baseline Data Acquisition

Prior to submitting applications for a state operating permit and federal plan of operation, an operator may present to the agencies a conceptual project design and/or baseline data acquisition plan. While no mandatory timeframes exist, the agencies shall jointly discuss such plans and provide the operator with comments on acceptable data acquisition methods, standards, and scope of needed studies in as timely a manner as possible.

B. Application Submission

Applications for a state operating permit and a federal plan of operation shall be submitted by the operator to DEQ and BLM respectively. Within 5 days of receipt of an

application for a state operating permit or for a federal plan of operation, the receiving agency shall verify that the other agency has received a corresponding application and arrange for cooperative review of the applications. Each agency shall supply the other with all subsequent correspondence relative to the project. Each agency shall strive to meet the other's regulatory timeframes.

The BLM and DEQ will consult to determine which agency will have the lead in coordinating the application review and environmental analysis using the same criteria used for determining the lead agency for processing state operating permits and federal plans of operation for hard rock activities set forth above.

C. Completeness Review

Completeness reviews will be initially conducted pursuant to the OMA and 43 CFR 3809. Under the rules and regulations of both agencies, an application is considered complete when the application contains all information required under applicable state and federal law in an adequate level of detail to provide for sound analyses.

An application containing all items required by state and federal law will be initially reviewed for completeness within 15 days of receipt. The lead agency will be the main contact for the operator during the completeness review. BLM and DEQ shall prepare a joint letter to the applicant detailing any deficiencies in the application that were identified by the agencies. Responses from the applicant to the completeness review will be reviewed in a similar manner as the initial review of the application. Subsequent submittals will be reviewed for completeness within 30 days of receipt. The cycle of completeness, with response by the operator, shall continue until the agencies determine they have received a complete application.

D. Environmental Analysis

The OMA requires DEQ to notify the applicant if it has approved or denied the application within 30 days of receipt of a complete application. DEQ may extend the period of its review for an additional 30 days. Because these statutory requirements do not allow sufficient time for preparation of an EIS, DEQ is required to make a decision on an application for an operating permit on the basis of an EA. If the preparation of an EA is not sufficient under federal law, the joint processing of the application by the agencies under this MOU shall terminate and the agencies shall individually complete the application review process under applicable federal or state law.

The EA shall be jointly prepared by technical staff from both agencies using an interdisciplinary approach under the direction of a team leader from the lead agency. The consultation and coordination responsibilities of the agencies will be as described above for review of applications for operating permits and federal plans of action for hard rock mineral activities. Communication and coordination between DEQ and BLM technical staffs shall be open and informal. Unresolved technical differences will be forwarded to the respective staff supervisors for resolution.

The level of public review shall conform to the requirements of both NEPA and MEPA. Generally, the level of public review shall be consistent with the seriousness and complexity of the environmental issues associated with the proposed mining activity and the level of public interest.

E. Decision

The BLM and DEQ will coordinate the issuance of separate, simultaneous, or joint approval documents directly to the operator. The agencies will incorporate in the approval documents, either directly or by reference, the stipulations for which the respective agency has legal authority. The approval documents shall also contain the appropriate bonding requirements. DEQ shall hold the bond for actual costs as required by Section 82-4-433, MCA, and 43 CFR 3809.

BLM and DEQ shall immediately notify the other agency of a decision to deny an application and state the reasons for denial. An agency may, if required by law, issue its approval, but shall inform the operator that the cooperating agency's approval is being withheld and that operations may not proceed under the laws administered by the cooperating agency until the approval of the cooperating agency is received.

If both agencies deny or withhold approval of an application, the operator shall be informed of the decision by both agencies directly. The decision will cite the specific reason or justification for such action.

V. Bonding

This section applies to all hard rock and open cut operations whether conducted under a state exploration license, SMES, or operating permit, and a federal notice of plan of operation. As required under 3809.203(d) and 3809.570, the BLM concurs with the following procedures for the approval, release, or forfeiture of a financial guarantee for operations on public lands.

For all authorizations where bonding is required by both agencies, the decision document will contain the following information:

1. Identify the agency designated to hold the bond;
2. Indicate that the agencies will jointly determine the bond amount;
3. Indicate that the terms of the bond must allow the bond to be forfeited by both agencies or by one agency without the concurrence of the other;
4. Indicate that the terms of the bond must require, upon forfeiture, for the bond proceeds to be payable to both DEQ and BLM whether the forfeiture was ordered by both agencies or by one agency without the concurrence of the other; and
5. Indicate that the bond may be released only upon consent by both BLM and DEQ.

BLM and DEQ shall only accept bonds allowing forfeiture by both agencies or by one agency without the concurrence of the other and, upon forfeiture, requiring bond proceeds to be payable to both BLM and DEQ whether the forfeiture was caused jointly or by one agency without the concurrence of the other.

A Bond Holder

To avoid double bonding when a bond is required by both agencies, one agency will hold the bond (DEQ is the bond holder for most operations). DEQ and BLM will both be named as obligee to the bond.

In cases where there are no state bonding requirements (i.e., non-placer SMES), but there are federal bonding requirements, BLM will hold the reclamation bond. In cases where there are state bonding requirements (i.e., > 4" intake suction dredging) and no federal bonding requirements, DEQ will hold the bond.

B. Bond Calculation

When required by both agencies, bond shall be calculated jointly and be based on the completion of both federal and state reclamation requirements. The agencies will jointly review and adjust bonds when necessary in accordance with respective state and federal law.

Nothing in this MOU shall prevent BLM or DEQ from requiring an operator to post an independent reclamation bond if at any time an agency determines that the bond amount is inadequate for the protection of certain lands or is inconsistent with an agency's policies or regulations.

C. Bond Collection

The agencies may cause forfeiture or otherwise collect a bond upon a determination that circumstances exist justifying bond forfeiture under federal or state law. The agencies may cause forfeiture of bonds naming both DEQ and BLM as obligees either jointly or without the concurrence of the other agency. Whether forfeiture is caused jointly or without the concurrence of the other agency, the bond proceeds shall be made payable to both DEQ and BLM. Proceeds from the forfeiture of bonds naming both DEQ and BLM as obligees shall be held by DEQ unless otherwise agreed to by the agencies.

The bond proceeds will be administered in a manner that allows DEQ to provide for compliance with the requirements of the MMRA or OMA, administrative rules adopted under the MMRA or OMA, and operating permits issued under the MMRA or OMA and that allows BLM to provide for compliance with federal reclamation requirements.

The agencies may use the proceeds of the bond forfeiture to initiate prompt treatment or removal of process solutions or waste materials to prevent possible discharge to the

environment or contact with humans, wildlife or livestock; to reclaim the site; or to take any other actions authorized under state or federal law to address the circumstances upon which the forfeiture was based.

Decisions relating to mining inactivity or closure (such as interim reclamation and site maintenance) and procurement of contracts shall be made jointly by BLM and DEQ.

D. Bond Release

BLM and DEQ shall immediately notify the other agency of its decision to approve or deny a request for bond release. If both agencies approve or deny the request for bond release, the operator shall be informed of the decision by both agencies directly.

If bond release is required under the laws administered by only one of the agencies, the agency denying the request for bond release shall directly inform the operator of that decision. The agency required by law to approve bond release shall directly inform the operator of that decision but state that the bond remains in effect in regard to the operator's reclamation obligations under the laws administered by the cooperating agency.

VI Inspection and Enforcement

A. Compliance Inspections

The agencies shall conduct joint compliance inspections whenever possible. When a compliance inspection is conducted by only one agency, the other agency shall accept the results of the inspection, when warranted, for efficiency and to avoid duplication. Copies of an agency's compliance inspection reports shall be sent to the other agency.

B. Enforcement

An enforcement order may be issued by an agency if an operator is in violation of the agency's regulations or operating requirements. The agencies may issue a joint enforcement order if an operator is in violation of regulations or operating requirements of both agencies. Neither agency shall issue violations based on the other agency's statutes. Coordination between the agencies is essential prior to issuing an enforcement order.

C. Project Closure - Interim and Post Closure Management

The agencies shall address, as appropriate, temporary and seasonal shutdowns of all authorized activity and assure compliance requirements are met. The agencies shall jointly determine when an operation has been abandoned and work together in matters relating to suspension or revocation of any authorizations.

In the event of bankruptcy or bond forfeiture, DEQ and BLM will mutually approve the closure plan, modifications to the closure plan, and expenditures of bond proceeds. In the event of insufficient bonding, the agencies' management will prioritize expenditure of the available funds.

VII. Documentation

The lead agency shall ensure that copies of all documents and correspondence are supplied to both agencies' records. Each agency will maintain a complete administrative record for possible use in administrative appeals or legal actions.

VIII. Field Support

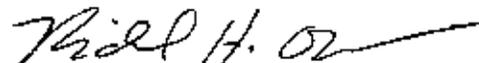
The agencies shall provide each other with equipment, personnel and office support necessary for quick responses to emergency situations or undesirable events at all project sites (private and federal) statewide.

IX. Administration of Agreement

This Agreement will expire in 5 years unless extended or renewed by agreement of the agencies. Representatives from BLM and DEQ will meet annually to discuss interagency working relationships and to evaluate the need to revise this Agreement.

BLM or DEQ, after 60 days written notice to the other agency, may terminate this agreement, in whole or in part, at any time before the date of expiration. In the event this agreement is terminated, each agency agrees to maintain the existing financial guarantees until such time as an agreement can be reached between the operator, BLM, and the DEQ to replace or release the financial guarantee.

This Agreement is effective upon signing by both the Montana State Director of BLM and the Director of DEQ.



RICHARD H. OPPER, Director
Department of Environmental Quality

9/19/05
Date



MARTIN C. OTT, Montana State Director
Bureau of Land Management

09/28/05
Date