

## **Outline for Permitting Chemical Process Mines Under ORS 517.956**

### NOTE: 1 YEAR PERMITTING DEADLINE

DOGAMI and permitting agencies are required to complete the permitting process within **1 year**. This period begins to run when the *Notice to Proceed* is issued OAR 632-037-0080. See step 18 below. The period ends at the conclusion of the contested case hearing process. See Step 36.

### PREAPPLICATION PROCESS

1. Notice of Intent (NOI) to file application filed with DOGAMI. [ORS 517.961]
  - \* Within 10 days after filing the NOI the applicant shall post the NOI on the property OAR 632-037-0035(2).
2. Pre-application cost recovery agreement with prospective applicant or special legislative appropriation would ordinarily be required before DOGAMI can proceed.
3. DOGAMI provides notice. [ORS 517.963(1)]
  - \* Mailed notice to master list - OAR 632-037-0030(1)(c).
  - \* Notice to Permitting and Cooperating Agencies - OAR 632-037-0030(1)(a).
  - \* Mailed notice to owners and unpatented mineral claimants within ½ mile - OAR 632-037-0030(1)(b) & (d).
  - \* Newspaper publications - OAR 632-037-0030(1)(e).
  - \* Other notice as needed for Permitting and Cooperating Agencies.[ORS 517.959]
4. DOGAMI identifies all Permitting and Cooperating Agencies - OAR 632-037-0020(2) & OAR 632-037-0025(2).  
[ORS 517.963(4)]
5. DOGAMI establishes and activates:
  - \* Project Coordinating Committee - OAR 632-037-0035(3)(b).
  - \* Technical Review Team - OAR 632-037-0035(3)(c).[ORS 517.963(2) and (3)]
6. DOGAMI negotiates MOAs with federal agencies that wish to participate - OAR 632-037-0015(1).  
[ORS 517.965]
7. Applicant notifies DOGAMI of readiness to begin collection of baseline data - OAR 632-037-0040(1).
8. On receipt of notice of applicant's readiness to collect baseline data - OAR 632-037-0040.  
DOGAMI:
  - \* Provides public notice - OAR 632-037-0040(2);
  - \* Accepts comments for **45 days** - OAR 632-037-0040(4);
  - \* Within **30 days** after step 7, DOGAMI must hold two informational meetings - OAR 632-037-0040(3) (one closest to proposed mine, one in a major population center).[ORS 517.969(1)]
9. Technical Review Team establishes the methodology for baseline data collection.  
OAR 632-037-0015(1); OAR 632-037-0025(1)(b)(c)(d); [ORS 517.967(1)].

10. Applicant collects baseline data.  
[ORS 517.969(4)]

### APPLICATION PROCESS

11. Applicant files consolidated application; application must include OAR 632-037-0045(1 - 5):
- \* General Information - OAR 632-037-0050
  - \* Baseline data - OAR 632-037-0055
  - \* Operating plan - OAR 632-037-0060
  - \* Reclamation and Closure Plan - OAR 632-037-0070
  - \* Alternative Analysis - OAR 632-037-0075
  - \* Additional Information as required by OAR 632-037-0077
    - Information required in statute and DOGAMI rule for surface mining;
    - Information required for other specified agency permits and approvals;
    - Information needed for land use permits;
    - Information needed for other any other state permit required for the mine.
- [ORS 517.971]
12. Applicant must pay “initial fees” required by DOGAMI and other agencies - OAR 632-037-0155(1); [ORS 517.973].
13. **Within 10 days**, DOGAMI distributes copies of the consolidated application to:
- \* Affected local governments (including local, city, county governments, school districts, PUDs, irrigation districts and road districts within the study area);
  - \* Permitting agencies;
  - \* Cooperating agencies;
  - \* Federal agencies.
- OAR 632-037-0080(1); [ORS 517.975].
14. DOGAMI provides public notice of receipt of application - OAR 632-037-0080(1).
- \* Notice must satisfy ORS 517.959.
  - \* Notice advises of future opportunities for hearing and comments.
  - \* Starts **90 day clock** – See item 17 - OAR 632-037-0080(2); [ORS 517.975]
15. Technical Review Team determines when agencies are ready to process permits - OAR 632-037-0025(1)(f) & OAR 632-037-0080(3); [ORS 517.977].
16. DOGAMI conducts public hearing and solicits comments - OAR 632-037-0080(3)
- Key issues:
- \* Is the baseline and application information sufficient;
  - \* Is the application complete.
- [ORS 517.977(1)]
17. Agencies determine whether application is complete - OAR 632-037-0080(4).
- \* Decision must be made within **90 days** after receipt of application.
  - \* DOGAMI acts in conjunction with permitting and cooperating agencies.
- [ORS 517.977(2)]
18. Notice to Proceed or Notice to provide additional information issued by DOGAMI -OAR 632-037-0080(4).
- \* If Notice to Proceed is issued, agencies must respond to comments.
  - \* Notice to Proceed triggers **225 day** deadline for action on application - OAR 632-037-0095(1); [ORS 517.977(2) and (3) ];

19. If additional information is required, additional public comment required. OAR 632-037-0080(5).  
\* No additional hearings.  
\* Additional comment period limited to 14 calendar days.  
[ORS 517.977(4)]
20. Once application is accepted it is deemed complete for processing of all permits.  
\* Limited exception for new information or information required for permits.  
[ORS 517.978]

### APPLICATION REVIEW

21. DOGAMI prepares (or has prepared) an environmental evaluation and socioeconomic impact analyses - OAR 632-037-0085 & OAR 632-037-0090.  
\* Contractor can be hired for this purpose.
  - Scope determined by TRT following consultation with Project Coordinating Committee
  - Environmental evaluation includes impact analysis, cumulative impact analysis and alternatives analyses\* If possible, the environmental evaluation should satisfy NEPA<sup>1</sup> requirements.  
\* At the same time, DOGAMI reviews baseline data and application materials.  
[ORS 517.979]
22. DOGAMI publishes notice of environmental analysis and seeks public comment.  
[ORS 517.979(4)]
23. DOGAMI responds to comments on environmental analysis.  
[ORS 517.979(4)]
24. DOGAMI provides draft operating permit to permitting agencies - OAR 632-037-0100.
25. Permitting agencies submit written concurrence or nonconcurrence to DOGAMI.  
\* Concurrence determination required **30 days** before agencies draft permit - OAR 632-037-0100(1)
26. Permitting agencies supply draft permits or permit denials to DOGAMI within 225 days after *Notice to Proceed*.  
\* This must be done within **225 days** from receipt of environmental analysis - OAR 632-037-0095(1)  
\* Unclear if period runs from date of notice or response to comments.  
[ORS 517.981(1)]
27. DOGAMI reviews for conflicting conditions refers them to Technical Review Team.  
[ORS 517.981(1)]
28. DOGAMI publishes notice and requests comments on all draft permits - OAR 632-037-0105(1)  
\* This must be scheduled within **15 days** of receipt of:
  - Draft permits from agency and
  - Completion of draft DOGAMI - MLR operating permit.Unclear if TRT conflict review tolls the 15 day period.  
[ORS 517.981(2)]

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<sup>1</sup> National Environmental Policy Act

29. DOGAMI holds (Consolidated Public Hearing) public hearing on all draft permits.
  - \* Hearing must be held between **45 days and 60 days** after notice in Step 28.  
OAR 632-037-0105(2); [ORS 517.981(2);]
30. Permitting agencies issue or deny the applicable permits - OAR 632-037-0105(7).
  - \* Permitting decisions must be made with **45 days**.  
[ORS 517.982]
31. Cooperating Agencies submit proposed permit conditions to DOGAMI - OAR 632-037-0105(3)(b) [ORS 517.982(1)]
32. DOGAMI issues operating permit - OAR 632-037-0105(9).
  - \* Financial security must be posted prior to permit issuance -OAR 632-037-0135(9)  
[ORS 517.982(2)]
33. DOGAMI issues public notice that final permits have been issued - OAR 632-037-0105(8).  
[ORS 517.982(3)]

### CONTESTED CASE REVIEW

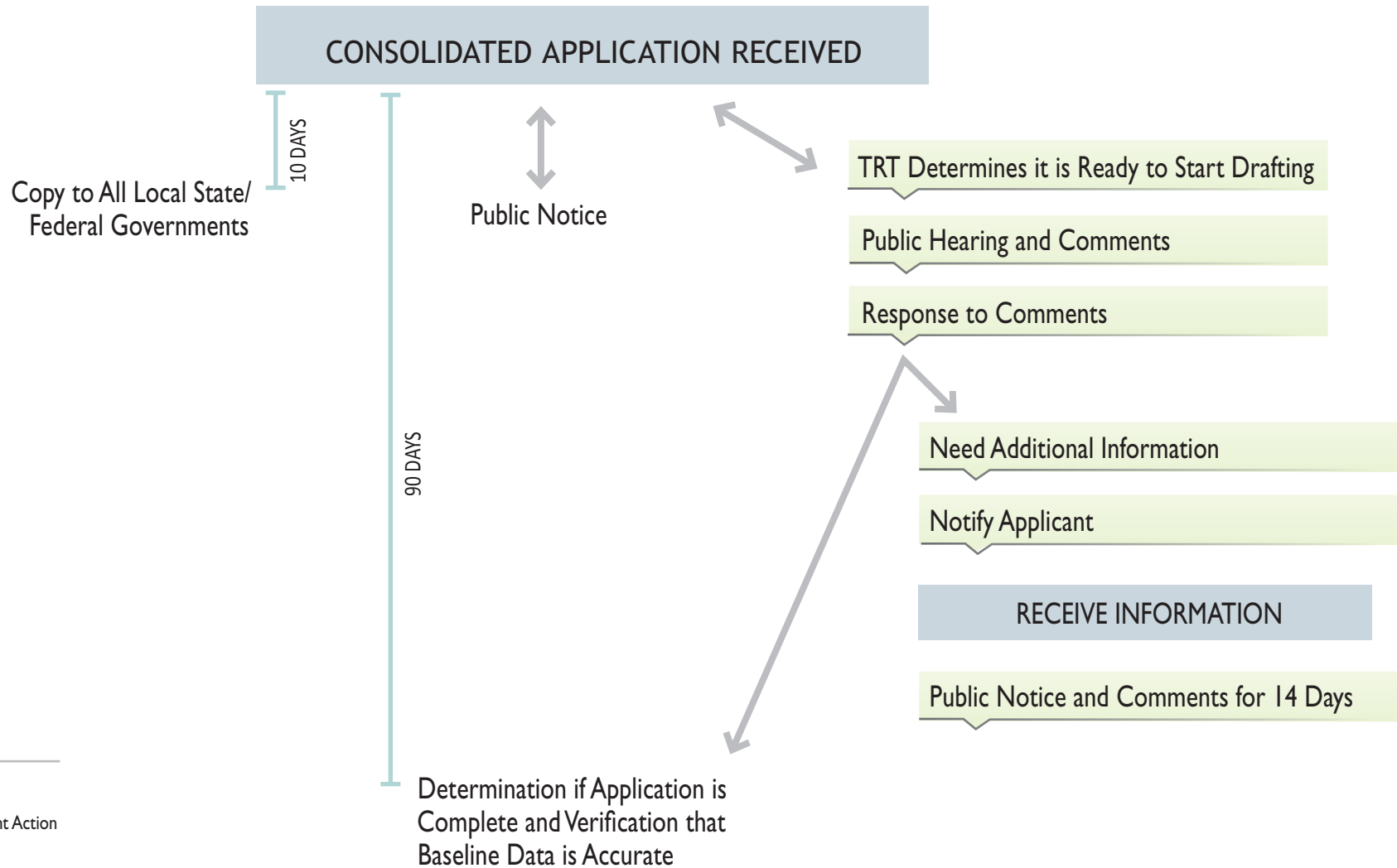
34. Opportunity for contested case review of any permit OAR 632-037-0110(1).
  - \* By applicant; or
  - \* By any person who participated in the (Consolidated Public Hearing - CHH) public hearing held under Step 29.
  - \* Request for hearing must be filed within **30 days** of notice of permit decision.
  - \* Statute appears to assume that permit action notice was issued immediately.  
[ORS 517.983(1)]
35. DOGAMI holds consolidated contested case hearing **between 60 and 75** days after permit granted or denied. OAR 632-037-0110(2).
  - \* It is not clear that this deadline can be met, given current APA<sup>2</sup> requirements.
  - \* An Administrative Law Judge would conduct the hearing.
  - \* It appears that the contested case hearing would be held under ORS 183.635.  
If so, the hearing would be subject to the Model Rules.  
[ORS 517.983(2) and (3)]
36. Final decision on the permit or permits is issued.
37. Judicial review of the final order goes directly to the Oregon Supreme Court OAR 632-037-0115.
  - \* Petition for judicial review must be filed within **60 days** of final CCH order.
  - \* Provisions for expedited judicial review.  
[OAR 517.983(5)]

*Oregon Department of Geology and Mineral Industries  
March 21, 2012*

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<sup>2</sup> Administrative Procedures Act

# Baseline Data Completed



# DOGAMI Issues Notice to Proceed

