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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 632
DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES

FILED
04/15/2021 4:59 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Aggregate Mining on High Value Farmland in the Willamette Valley

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/24/2021 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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229 Broadalbin Street Southwest
Albany, OR 97321

Filed By:
Vaughn Balzer
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 05/17/2021

TIME: 3:30 PM - 5:00 PM

OFFICER: Vaughn Balzer

ADDRESS: See Special Instructions for
virtual Public Hearing

229 Broadalbin Street SW

Albany, OR 97321-2246

SPECIAL INSTRUCTIONS:

To participate in the Public Hearing to
provide verbal comments on the
proposed rule and related rule
amendments please contact Becky
Johnson at (541) 967-2083 or
mlrr.info@oregon.gov for web meeting
and call-in information. Written
comments on the proposed rule and
related rule amendments can be
submitted to DOGAMI's Rules
Coordinator, Vaughn Balzer, at
mlrr.info@Oregon.gov.

NEED FOR THE RULE(S):

The new rule and related amendments are needed to ensure the requirements for new or amended Operating Permit applications for surface mining of aggregate on high value farmland in the Willamette Valley are clearly defined following the passage of House Bill 2202 in the 2013 legislative session. The term aggregate as used in the new rule and in this notice refers to aggregate derived from sand and gravel deposits and not aggregate derived from rock quarries of

basalt or other hard rock formations. The passage of HB 2202 (2013) resulted in the enactment of ORS 517.825 which became effective on August 1st of 2013. The new rule clearly defines the plan requirements for applications for new or amended surface mine permits to mine aggregate on high value farmland in the Willamette Valley. The new rule provides a time limitation for department action on applications subject to the new rule. The new rule also clearly defines the agency requirements that must be met prior to issuing or closing a Surface Mine Operating Permit subject to the new rule.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Enrolled House Bill 2202 (2013), Oregon State Legislature
Oregon Revised Statute 517.825, Oregon State Legislature

FISCAL AND ECONOMIC IMPACT:

The Oregon Department of Geology and Mineral Industries (DOGAMI) and the Department of Land Conservation and Development (DLCDD) are the only agencies that were anticipated to have direct fiscal impacts resulting from the passage of HB 2202 (2013). Going forward, the rule proposed under this filing is expected to only have fiscal impacts to DOGAMI and those impacts are anticipated to be minor and can be absorbed within existing agency resources.

There will be fiscal impacts associated with this new rule to aggregate extraction construction materials businesses that apply for new or amended Surface Mining Operating Permits to mine aggregate on high value farmland in the Willamette Valley. The fiscal impact to aggregate extraction construction materials businesses is considered moderate with respect to the substantial existing permitting requirements needed to complete the application process to mine aggregate on high value farmland in the Willamette Valley. The fiscal impacts anticipated under this rule include:

- 1) The cost of preparing a gravel extraction plan as part of the permit application package documenting that the mine operator has the mechanical ability, including equipment, and a feasible plan to remove substantially all of the significant aggregate resource approved to be mined at the site.
- 2) Record keeping requirements related to documenting the removal of substantially all of the significant aggregate resource may include keeping detailed excavation logs or other records documenting the depth of mining throughout the mine excavation area prior to the placement of any proposed reclamation backfill.
- 3) The cost of preparing a report at the end of mining documenting that substantially all of the significant aggregate resource has been removed from the site. This report would utilize the records kept during the mine excavation process and may require professional services such as obtaining Public Land Surveys or bathymetric surveys of water filled excavation pits to document the removal of substantially all of the significant aggregate resource prior to the placement of reclamation backfill.

Aggregate extraction construction materials businesses may be represented by the Oregon Concrete & Aggregate Producers Association (OCAPA) and/or the Oregon Independent Aggregate Association (OIAA). Both trade groups were invited to be part of the Rules Advisory Committee (RAC) that DOGAMI consulted on this proposed new rule, and OCAPA participated in the RAC meetings directly. DOGAMI consulted the RAC to identify areas of flexibility in how the requirements of compliance with the new rule are met in order to limit the costs of compliance to the greatest extent practicable.

The enactment of this rule may have a long term positive fiscal impact on farming businesses in the Willamette Valley, many of which are small businesses, by preserving high value farmland soils. Alternatively, the enactment of this rule

may have a long term negative fiscal impact to aggregate extraction construction materials businesses, some of which may be small businesses, that conduct aggregate mining on high value farmland in the Willamette Valley.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1) The following agencies may be indirectly impacted by the new rule: Department of State Lands, Department of Land Conservation & Development, Oregon Department of Fish and Wildlife, Oregon Department of Agriculture, and local government land use authorities.

Aggregate extraction construction materials businesses that operate aggregate mines on high value farmland in the Willamette Valley and plan to permit new or expand existing mine sites will be directly impacted by the enactment of this rule.

2) a) DOGAMI consulted a Rules Advisory Committee (RAC) to assist in estimating the number of small businesses that could be affected by this new rule. Based on RAC input fewer than 10 current mine sites operated by small aggregate extraction construction materials businesses could be affected by the new rule. The rule will add administrative and operational requirements and related expenses for future mine sites in the Willamette Valley, which could have a negative fiscal impact on small mining businesses.

2) b) The reporting, recordkeeping and administrative activities associated with the requirements of the new rule are considered moderate when compared to the substantial existing requirements for applications for aggregate mine sites on high value farmland in the Willamette Valley. Note that DOGAMI is not including the costs of exploration work and/or consulting services needed to document that a site meets the Goal 5 land use qualifications to be identified as a significant aggregate resource site as those requirements are pre-existing and not directly impacted by this rule. The requirements of this rule in terms of small businesses include the fiscal impacts referenced above in the Fiscal and Economic Impact section of this Notice.

2) c) The costs associated with these requirements depend on the site-specific details of the mine site and the techniques used to obtain the necessary information. The initial gravel extraction plan may be completed by the mine operator provided they have the qualified staff with the expertise to prepare detailed plans and maps or professional consultants. The cost range for the initial gravel removal plan is estimated to cost between \$3,000 and \$8,000. The record keeping costs associated with the new rule also depend on the site-specific plans that are proposed within the application package. These costs could range from \$0 - \$200 a month for the life of the mining operation.

The report required under this rule, to be submitted following the extraction of the significant aggregate resource and prior to the placement of any reclamation backfill would likely require some professional consulting services and is estimated to cost between \$5,000 and \$15,000.

The total costs to comply with this rule over the life of a mining operation is estimated to be between \$15,000 and \$25,000.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

DOGAMI invited the OCAPA and the OIAA to participate in the Rules Advisory Committee, however, OIAA was unable to participate directly on the Rules Advisory Committee. DOGAMI consulted with the OIAA Executive Chairman, Erick Staley periodically throughout the rule writing process to help determine the potential impacts to small businesses that could result from the enactment of this rule.

The Oregon Concrete and Asphalt Producers Association (OCAPA) participated in the Rules Advisory Committee process and they estimated that less than 10 current small businesses that may be affected by the rule. DOGAMI sought input from OCAPA specifically on the best way to limit the fiscal impact on small businesses. Based on that input DOGAMI added flexibility regarding the types of information, reports, and/or studies needed for aggregate mine operators to maintain compliance with this rule. Even with that flexibility, there are expected to be moderate costs to small businesses should they submit an application to mine aggregate on high value farm soils in the Willamette Valley that triggers the requirements of this rule.

The Rules Advisory Committee meetings were advertised via Public Notices, Press Releases, in DOGAMI's "ENGAGe" newsletter which is mailed out to individual operators and posted on our websites at:

<https://www.oregon.gov/dogami/Pages/> and <https://www.oregongeology.org/mlrr/>. The Public Notices and Press Releases documents for each RAC meeting were also advertised on the DOGAMI Rules Listserv and posted in the Oregon Newsroom and Flash Alert outlets. The Rules Advisory Committee meetings were open to members of the public, including small business owners, so they could listen in on the RAC discussions.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

632-030-0010, 632-030-0020, 632-030-0021, 632-030-0023, 632-030-0030

AMEND: 632-030-0010

RULE SUMMARY: 632-030-0010 is amended to add the definition of the "Willamette Valley" as the term is directly related to the adoption of the new rule OAR 632-030-0023. OAR 632-030-0023 is proposed for adoption following the passage of HB 2202 (2013) and the enactment of ORS 517.825.

CHANGES TO RULE:

632-030-0010

Definitions ¶¶

In addition to the definitions provided in ORS 517.750, the following definitions apply to OAR 632-030-0005 through 632-030-0070:¶¶

- (1) "Affected," as used in ORS 517.750(15)(a), means the disturbance by excavation or any other surface mining of any land surface during any stage of mineral production, or the covering of any land surface by surface mining refuse either by intentional placement, slope failure, or deposition of eroded materials.¶¶
- (2) "Aggregate" means crushed or uncrushed gravel, stone, rock, or sand of a quality typically used in concrete or road construction.¶¶
- (3) "A Period of 12 Consecutive Calendar Months," as used in ORS 517.750(15) and these rules, begins on the date surface mining begins.¶¶
- (4) "Complete Application" means an application that is determined to be complete by the Department that

includes the appropriate fee, forms, and site characterization, operational and mine closure details, and other documentation required under this rule division.¶¶

(5) "Compliance Order" means an order requiring compliance with an operating permit, reclamation plan, the Mined Land Reclamation Act, or the rules adopted thereunder as provided in ORS 517.860 and OAR 632-030-0070.¶¶

(6) "Intensification" means a change of permitted mining activity over that approved by the local government that may warrant a reconsideration of the local government land-use decision, such as a significant increase in volume of production inside a mine permit boundary or the act of increasing the permit boundary. Intensification would not include an increase in the bonded area to be mined, within a larger area covered in the original operating permit.¶¶

(7) "Limited Exemption Area" means land that is exempt from reclamation requirements under ORS 517.770 and OAR 632-030-0017.¶¶

(8) "Mined Land Reclamation Act" or "Act" means the statutes codified at ORS 517.702 to 517.992.¶¶

(9) "Permit Area" means the area covered by an operating permit issued by the Department and defined by boundaries submitted on a map acceptable to the Department under OAR 632-030-0015. The permit area is generally a contiguous parcel and may include multiple excavation and/or processing areas. The permit area may include, but is not limited to, haul roads, buffers, setbacks, reclaimed areas, and areas used for the storage or disposition of any mine product or mine waste material from the surface mining operation, even though separate from the area of extraction. The permit area may be redefined by a permit amendment.¶¶

(10) "Reclamation in a timely manner" means a schedule of reclamation based on mine progression and may require partial or concurrent reclamation where possible, considering the mine plan and available mineral resources or both. The Department may specify a timeframe within which reclamation must occur to protect adjacent natural resources.¶¶

(11) "Substantial Modification" includes an intensification of, or a significant change in, mine operation or reclamation. For example, substantial modification includes mine dewatering if not previously permitted as part of the original mine plan or reclamation plan approval or mine operation activities that render the approved reclamation plan unattainable or infeasible to implement or accomplish.¶¶

(12) "Suspension Order" means a written Department order to suspend mining operations issued under ORS 517.880 and OAR 632-030-0040.¶¶

(13) "Willamette Valley" means Clackamas, Columbia, Linn, Marion, Multnomah, Polk, Washington, and Yamhill counties and the portions of Lane and Benton Counties east of the summit of the Coast Range.

Statutory/Other Authority: ~~ORS 183.341, 197.180, 517.740~~517

Statutes/Other Implemented: ORS 517.750, ORS 517.825

AMEND: 632-030-0020

RULE SUMMARY: 632-030-0020 is amended to include the requirements of 632-030-0023 in the materials that must be submitted as part of a complete application for a Surface Mining Operating Permit and acknowledge that additional reclamation security is not required to meet the requirements of 632-030-0023. OAR 632-030-0023 is proposed for adoption following the passage of HB 2202 (2013) and the enactment of ORS 517.825.

CHANGES TO RULE:

632-030-0020

Procedures for Applying for an Operating Permit ¶

- (1) The applicant shall submit the required application forms and such additional information as may be required by the Department for each separate surface mining operation.¶
- (2) The applicant shall submit a reclamation plan as defined in OAR 632-030-0025. The reclamation plan must include a map acceptable to the Department as provided in 632-030-0015 and 632-030-0025(2).¶
- (3) The application must be accompanied by the application fee.¶
- (4) For applications on high value farmland in the Willamette Valley subject to OAR 632-030-0023, the applicant must also provide the information as outlined in OAR 632-030-0023(4).¶
- (5) The applicant must submit a performance bond or alternative form of security acceptable to the Department for the purpose of assuring performance of the reclamation plan, other requirements of ORS 517.750 to 517.900, all rules thereunder, and permit conditions. A performance bond or alternative form of security must be in effect and approved by the Department under OAR 632-030-0021 prior to any disturbance of the land. The performance bond or alternate form of financial security is not required to cover the costs of excavation required by OAR 632-030-0023(3).¶
- (56) If the applicant fails to meet the requirements of sections (1) through (4) of this rule within 12 months after the application is submitted, the application is deemed to have been withdrawn. The applicant may resubmit an application without prejudice, but the new application must be accompanied by a new application fee.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.790, ORS 517.810, ORS 517.825

AMEND: 632-030-0021

RULE SUMMARY: 632-030-0021 is amended to acknowledge that additional reclamation security is not required to meet the requirements of 632-030-0023. OAR 632-030-0023 is proposed for adoption following the passage of HB 2202 (2013) and the enactment of ORS 517.825.

CHANGES TO RULE:

632-030-0021

Performance Bonds and Alternative Forms of Security ¶¶

- (1) No Operating Permit shall be issued or renewed until a bond or alternative form of security for a surface mining site is accepted by the Department. The bond or other security must be maintained until the Department determines that the surface mining site has been reclaimed in accordance with the approved reclamation plan.¶¶
- (2) The Department may accept performance bonds, security deposit assignments, letters of credit, or other security as authorized by ORS 517.810. Performance bonds must be provided by surety companies authorized to do business in Oregon. The security document submitted must be in a form acceptable to the Department.¶¶
- (3) A security submitted for multiple surface mining sites under the provisions of ORS 517.810(4) must be accompanied by a list showing the permits covered by the security, the amount of the bond applicable to each surface mining site, and the number of acres bonded at each site. The Department may accept a multiple site bond for sites operated by all members of an established trade association.¶¶
- (4) The Department shall determine the amount of the bond or other security required by estimating the cost of reclamation if the Department were to perform the reclamation. The Department may seek the advice of other agencies to determine the appropriate security amounts.¶¶
- (5) The Department may consider when determining the amount of security:¶¶
- (a) The size and geometry of the area proposed for disturbance and the projected disturbance over the next 12 months;¶¶
 - (b) Supervision;¶¶
 - (c) Mobilization;¶¶
 - (d) Costs of equipment;¶¶
 - (e) Equipment capability;¶¶
 - (f) Costs of labor;¶¶
 - (g) Removal or disposition of debris, junk, equipment, structures, foundations, and unwanted chemicals;¶¶
 - (h) Reduction of hazards such as in-water slopes, highwalls, landslides, or other mass failure;¶¶
 - (i) Disposition of oversize, rejects, scalplings, overburden;¶¶
 - (j) Backfilling, contouring, or regrading and topsoil replacement;¶¶
 - (k) Draining, establishment of drainage, and erosion control;¶¶
 - (l) Soil tests;¶¶
 - (m) Seedbed preparation, seeding, mulching, fertilizing, netting, tackifiers, or other stabilizing agents;¶¶
 - (n) Tree and shrub planting;¶¶
 - (o) Fencing;¶¶
 - (p) Liability insurance.¶¶
- (6) Cost estimate information shall be derived from sources such as:¶¶
- (a) Comparable costs from similar projects;¶¶
 - (b) Catalog prices;¶¶
 - (c) Guides and cost estimates obtained from appropriate government and private sources;¶¶
 - (d) Operator estimates;¶¶
 - (e) Equipment handbooks.¶¶
- (7) Seed mixes, fertilizer rates, and other requirements will be derived from departmental experience combined with advice from such sources as the Oregon Department of Agriculture, Natural Resources Conservation Service, Oregon State University Extension Service, the Department of Transportation, the Bureau of Land

Management, US Forest Service, and private sector experts.¶¶

(8) The applicant may submit reclamation cost estimates for consideration by the Department.¶¶

(9) The security amount shall be based on the total cost of reclamation. However, the Department may allow for the amount of the bond to be calculated and adjusted based upon the total area expected to be in a disturbed condition in the following year as a result of the surface mining or exploration if:¶¶

(a) The Department determines that it can calculate the lesser amount with reasonable accuracy, and¶¶

(b) The applicant agrees in writing to increase the security amount as directed by the Department based upon new information or changes in the areas disturbed by surface mining.¶¶

(10) Security amounts shall not include construction of structures or comparable features such as "housing developments" or "industrial construction" even if included in a reclamation plan.¶¶

(11)(a) The Department may reduce the bond or alternative form of security by an amount not to exceed 50 percent for a surface mine aggregate site that meets the following conditions:¶¶

(iA) The permittee has had a valid Operating Permit at the site for ten years; and¶¶

(iiB) The permittee can demonstrate substantial financial ability to perform the reclamation in the approved reclamation plan.¶¶

(b) The Department will consider the compliance history of the permittee in any bond reduction determination.¶¶

(12) A decision of the Department regarding the estimated cost of reclamation or the type of acceptable security may be appealed to the Governing Board as provided in ORS 183.310 to 183.550.¶¶

(13) The performance bond or alternate form of financial security is not required to cover the costs of excavation required by OAR 632-030-0023(3).

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.760, ORS 517.825

ADOPT: 632-030-0023

RULE SUMMARY: OAR 632-030-0023 is proposed for adoption following the passage of House Bill 2202 (2013 Legislative Session) and the enactment of ORS 517.825 (August 1, 2013).

CHANGES TO RULE:

632-030-0023

Aggregate Mining on High Value Farmland in the Willamette Valley

(1) For the purposes of this rule, the following definitions apply:¶

(a) "Significant aggregate resource" means the average minimum depth of aggregate, determined by rule of the Land Conservation and Development Commission, that is required for a local government to find that the aggregate resource is significant pursuant to a statewide land use planning goal that protects natural resources and conserves scenic, historic and open space resources.¶

(b) "Substantially all" in the context of this rule means; approximately 90% of the significant aggregate resource anticipated to be available for excavation at the time an application is submitted to DOGAMI, or approximately 90% of the significant aggregate resource actually found within all or a specific portion of the approved excavation area.¶

(c) "Thickness of the aggregate layer" means the depth of the water-lain deposit of sand, stones, and pebbles of sand-sized fraction or larger, minus the depth of the topsoil and nonaggregate overburden.¶

(2) This rule applies to the following:¶

(a) Applications for new operating permits when all of the following circumstances exist:¶

(A) The applicant proposes to mine an aggregate resource.¶

(B) The proposed mining operation is located within the Willamette Valley.¶

(C) Excavation for the proposed mine will disturb high value farmland composed predominately of Class I and Class II soils; And¶

(D) The area where the proposed mining operation will be located has been listed as a significant aggregate resource site by the local government with jurisdiction and the listing is based in part on the thickness of the aggregate layer pursuant to the rules of the Land Conservation and Development Commission OAR 660-023-0180.¶

(b) Applications for amended operating permits for mine sites where this rule is already applicable, or where the amendment proposes to expand the excavation area onto land not already approved for mine excavation when all of the following circumstances exist:¶

(A) The applicant proposes to mine an aggregate resource.¶

(B) The proposed mining operation is located within the Willamette Valley.¶

(C) Excavation for the proposed mine will disturb high value farmland composed predominately of Class I and Class II soils; And¶

(D) The area where the proposed mining operation will be located has been listed as a significant aggregate resource site by the local government with jurisdiction and the listing is based in part on the thickness of the aggregate layer pursuant to the rules of the Land Conservation and Development Commission OAR 660-023-0180.¶

(3) An operating permit for a mining operation subject to Section (2) of this rule must require the operator to excavate substantially all of the significant aggregate resource, except in any of the following areas:¶

(a) Areas designated as buffers or setbacks established in the operating permit.¶

(b) Areas needed to meet sloping requirements in the operating permit or reclamation plan.¶

(c) Areas where aggregate removal is limited by other operating permit requirements or permit conditions that are imposed to protect health, safety, or the environment; And¶

(d) Areas where aggregate removal is limited by the requirements imposed under the regulatory authority of a federal agency, local government, or other state agency.¶

(4) Before the Department issues a new or amended operating permit subject to Section (2) of this rule, the applicant must demonstrate to the satisfaction of the Department that the applicant has the mechanical ability to

comply with the requirements established in Section (3) of this rule. An applicant must demonstrate mechanical ability to comply with the rule by providing the following: ¶¶

(a) A detailed plan describing the equipment, techniques, and order or sequence of mining operations that will be used to complete the excavation of substantially all of the significant aggregate resource except where excavation is limited as provided for in Sections (3)(a) - (3)(d) of this rule. The plan may be based on geotechnical borings, geophysical surveys, direct observations, or other methods acceptable to the Department; And¶¶

(b) Include a detailed contour map showing the proposed geometry of the excavation area following the removal of the significant aggregate resource throughout the mine site prior to the placement of any proposed reclamation backfill material.¶¶

(c) The plan required under Sections (4)(a) - (4)(b) of this rule does not require the applicant to address the excavation of aggregate below the depth of the significant aggregate resource.¶¶

(5) The Department will not approve partial or final reclamation, including final closure of an operating permit subject to this rule, unless the operator has demonstrated compliance with Section (3) except where excavation is limited as provided for in Sections (3)(a) - (3)(d). If any portion of the excavation area is proposed to be backfilled as part of the reclamation plan, the permittee must demonstrate to the Departments satisfaction that the significant aggregate resource has been removed in compliance with Section (3) of this rule prior to the placement of any reclamation backfill material. Documentation of compliance with Section (3) of this rule must be submitted to the Department for approval prior to the Department considering any partial or final reclamation including final closure of the operating permit. The documentation must demonstrate, to the satisfaction of the Department, the final excavation depth throughout the mine site, including individual mine cells, and removal of substantially all of the significant aggregate resource in compliance of Section (3) of this rule. Documentation may include but not be limited to:¶¶

(a) Post mining bathymetric surveys, excavation logs, or other documentation of adequate resolution and precision acceptable to the Department, in cases where mining resulted in a water filled excavation pit; Or¶¶

(b) Remote sensed data, topographic surveys, or other documentation of adequate resolution and precision acceptable to the Department, in cases where mining resulted in a dry excavation pit.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.825

AMEND: 632-030-0030

RULE SUMMARY: 632-030-0030 is amended to acknowledge that the time limitations imposed on the department under ORS 517.830 do not apply to applications subject to OAR 632-030-0023 and to provide alternative time limitations time for department action on applications subject to OAR 632-030-0023. 632-030-0023 is proposed for adoption following the passage of House Bill 2202 (2013 Legislative Session) and the enactment of ORS 517.825 (August 1, 2013).

CHANGES TO RULE:

632-030-0030

Department Action on Reclamation Plan and Operating Permit Application; Provisional Operating Permits; Local Government Actions ¶

(1) Within 90 days after receiving an application for an operating permit:¶

(a) The Department will issue the operating permit or¶

(b) Notify the applicant if the Department determines that either the permit application or the proposed reclamation plan is not complete.¶

(c) If the Department determines the application is incomplete it will notify the applicant of the information or documentation needed to make the submittal complete. A notice of an incomplete submittal does not constitute a denial of the operating permit application and proposed reclamation plan.¶

(d) The Department will determine the adequacy of the operating permit application and proposed reclamation plan by taking the following actions:¶

(A) Inspect the site in accordance with OAR 632-030-0024 and file an inspection report;¶

(B) Circulate the complete operating permit application, including the proposed reclamation plan, draft operating permit, an inspection report or an evaluation to appropriate federal, state, and local agencies for review and comment.¶

(C) Notify the affected local government in writing that an operating permit application and proposed reclamation plan have been received by the Department, accompanied by a request that a determination be made if a local land-use permit pursuant to ORS 215.428 or 227.178 or a comprehensive plan amendment is required.¶

(D) Determine the appropriate amount of the reclamation bond or alternative form of security; and¶

(E) Notify the applicant of any deficiencies that will be addressed by attaching conditions to the operating permit.¶

(2) The Department will ensure consistency with local government land-use plans and regulations as follows:¶

(a) Applications involving a local land-use permit and a request by the affected local jurisdiction that it act first: If the affected local government informs the Department under subsection (1)(d)(C) of this rule that the application involves an aggregate site that requires a local-land use permit issued pursuant to ORS 215.428 or 227.178, and the local government requests that the application not be decided by the Department until the local government has taken final action, the Department will make its final decision on the operating permit and reclamation plan no later than 165 days after the date a complete land-use application is submitted to the local government, unless the applicant agrees to allow additional time under ORS 215.428 or 227.178. The Department will not approve the operating permit and reclamation plan or modification to existing permits if the application for the local land-use permit is denied by the local jurisdiction. However, in a situation where action on the local land-use permit is still pending, the Department may initiate its review of the application for its technical acceptability before the local government makes its final decision. The results of the Department's technical review will be provided to the local government and the applicant. For the purposes of this section, a requirement for review of a site plan is not a local land-use permit.¶

(b) Applications involving a comprehensive plan amendment: If the affected local government informs the Department under subsection (1)(d)(C) of this rule that the application involves an aggregate site that requires a comprehensive plan amendment, and the local government requests that the application not be decided until the local government has taken final action on the plan amendment, the Department will not make its final decision on

the operating permit and reclamation plan until the local government has taken final action on the plan amendment. The Department will make its final decision on an application within 45 days of the date that the local government has taken final action on the plan amendment unless a longer period is required under subsection (2)(a) of this rule. For applications for new operating permits or intensification or substantial modification to existing operating permits the Department will not approve the operating permit or intensification or substantial modification if the application for the comprehensive plan amendment is denied by the local jurisdiction.¶

(c) If the affected local government does not request that the Department delay a decision on an operating permit and a reclamation plan as provided in subsection (2)(a) or (b) of this rule, the Department will give the local government opportunity to review and comment on the application in the manner described in subsection (1)(d)(B) of this rule. If the local government fails to respond in writing within 30 days of mailing, the Department will issue its decision within 45 days of receipt of complete application. Local government approval must also be obtained before operation under the permit can begin.¶

(d) If no local government permit or approval is required, the applicant shall provide a written statement to that effect from the local government to the Department.¶

(3)(a) The Department will notify the affected local government of the Department's decision under subsections (2) (a), (b), and (c) of this rule to approve or deny an operating permit and reclamation plan, including any requirements and conditions imposed by the Department.¶

(b) Any conditions and requirements imposed by the Department on an operating permit and reclamation plan, including any modifications made pursuant to OAR 632-030-0035, issued subsequent to a final local land-use approval must be compatible with the requirements and conditions of the local government land-use plan and permit, including any conditions established to comply with statewide planning Goal 5, unless more stringent Department requirements are necessary to comply with the provisions of ORS 517.750 to 517.900. Any issue concerning the compatibility of the Department's permit decision with the requirements and conditions of the local government comprehensive plan or land-use permit may be addressed in accordance with the Department's dispute resolution process as set forth in OAR 632-001-0015(6).¶

(4) Within 60 days after the receipt of a deficiency list or permit conditions, the applicant shall comply with the additional requirements prescribed by the Department or file a written notice of appeal of the decision to the Department in accordance with OAR 632-030-0056. Failure to comply with the additional requirements or file a notice of appeal within the 60-day period, unless an extension is granted by the Department, may result in the application for an operating permit being denied. As provided in ORS 517.830(2), the Department may issue a provisional operating permit to the applicant pending the outcome of the appeal, subject to the requirements of sections (1) through (3) of this rule.¶

(5) The Department may determine that the applicant's reclamation plan is technically acceptable if it adequately provides for reclamation of surface mined lands as required by OAR chapter 632, division 30, without issuing an operating permit, and so advise the local government.¶

(6) The Department may attach conditions to the operating permit. These conditions may be added to reflect special concerns which are not adequately addressed in the reclamation plan and fall within the scope of these rules. The permittee may appeal these conditions by filing a written notice of appeal in accordance with OAR 632-030-0056.¶

(7) The approval of the reclamation plan and the issuance of the operating permit by the Department does not constitute a finding of compliance with statewide planning goals or local regulations implementing acknowledged comprehensive land-use plans. The permittee is responsible for obtaining local land-use approval before commencing the proposed surface mining activity. When issued by the Department, a statement placed on the operating permit and approved reclamation plan under subsection (2)(c) of this rule, will inform the applicant that:¶

(a) Issuance of the operating permit and approval of the reclamation plan is not a finding of compliance with the statewide planning goals (ORS 197.225) or compatibility with the acknowledged comprehensive plan; and¶

(b) The applicant must receive any land-use approval required from the affected local government before commencing surface mining authorized under the approved operating permit and reclamation plan.¶

(8) The Department may not issue, amend, renew, or transfer an operating permit to a person if person is not complying with the terms of an operating permit, reclamation plan, the provisions of the Act, or these rules. The Department may refuse to issue, amend, renew or transfer an operating permit to a person that has not substantially complied with an operating permit, a reclamation plan, the provisions of the Act, or these rules. For purposes of this rule, a person includes a subsidiary or other entity in which the person has a substantial financial interest.¶

(9) The minimum time periods for Department action established by this rule do not apply to applications on high value farmland in the Willamette Valley that are subject to OAR 632-030-0023. The Department will process applications subject to OAR 632-030-0023, in a timely manner by making a completeness determination within 120 days of receipt of an application and, making a permit decision within 90 days after determining the application is complete.

Statutory/Other Authority: ~~ORS 183.341~~, 197.180, ~~517.740~~ ORS 517

Statutes/Other Implemented: ORS 517.74810, ORS 517.8125, ORS 517.790