

Environmental Oversight of Oregon Mine Permitting

OREGON'S COORDINATED, INTER-AGENCY REGULATORY PROGRAM FOR CHEMICAL PROCESS MINING

(If you build it, will they come?)

Introduction

For more than 20 years, Oregon has been at the ready with a highly detailed, comprehensive program for interagency review of “chemical process” mining operations. The statutory framework in ORS 517.952- 517.992 was enacted in 1991 in response to a specific proposal for gold mining in Eastern Oregon using open pit, cyanide heap leach processing. The controversial proposal caught state officials (including the Governor, agency heads and Legislative Assembly) somewhat off guard, with no program in place to adequately address the regulatory complexities and public outcry generated by the first-of-its-kind project in Oregon.

In response to legislative proposals from environmental interests that would have banned cyanide heap leach mining completely, the Governor convened a work group of agency staff, industry representatives, and affected interests to seek consensus on a new set of mining regulations. The outcome of that effort was enactment of 1991 Or Laws ch 735, which is now codified as ORS 517.952 – 517.992. The new law established a coordinated, inter-agency review and permitting process led by the Department of Geology and Mineral Industries (“DOGAMI”). At the time, the Oregon program was viewed as a ground-breaking model for coordinated regulatory review with extensive public involvement. During the next year, DOGAMI led a collaborative process to develop detailed administrative rules for implementing the new law. The resulting “Division 37” rules provide a step-by-step roadmap for the regulatory review process. All that is needed is an applicant.

No one predicted at the time of the legislative effort in 1991 that the price of gold would drop substantially not long after the statutes and rules were finally in place – making the complex regulatory scheme and procedural requirements of Oregon’s program that much more costly for potential applicants to implement. After barely beginning the process by filing a notice of intent, the state’s first potential applicant abandoned the Grassy Mountain project. Since then, the chemical process mining statutes and rules have lain dormant in Oregon, but similar regulatory schemes have been adopted in other states with more a more active metal mining industry.

Now, the scene may be changing in Oregon. With the price of gold and other precious metals skyrocketing, making alternative processing techniques more affordable, there is a renewed interest in Oregon mining. This time, Oregon agencies are ready for a full test run, and the same Grassy Mountain site appears to be the first in line.

Key Provisions

Definitions: Chemical process mine means a mining and processing operation for metal-bearing ores that uses chemicals to dissolve metals from ore. ORS 517.952 (3). The procedural requirements for chemical process mining apply only to non-aggregate minerals and do not apply to placer mining. ORS 517.954.

Legislative Policy: The statutes declare a legislative policy to protect the environmental, scenic, recreational, social, archaeological and historic resources of the state from “unacceptable adverse impacts” that may result from chemical process mining. ORS 517.953.

Standards: The statutes include general standards that are applied in addition to the permitting standards applicable under each agency’s individual permitting functions. ORS 517.956. The general standards include requirements to:

- minimize environmental damage through the use of the “best available, practicable and necessary technology”
- protect fish and wildlife resources, including an objective of “zero wildlife mortality”, on-site and off-site mitigation to ensure no overall net loss of habitat value; and no loss of critical habitat for listed species
- provide surface reclamation that ensures protection of human health and safety, livestock and fish and wildlife; environmental protection, and full or partial back-filling as determined by DOGAMI on a case-by-case basis

Public Participation: From the filing by the prospective applicant of a “Notice of Intent” through the final stages of permit approval, the statutes provide numerous opportunities for public notice and participation.

- Public notice of Notice of Intent (ORS 517.961 and 517.963)
- Public notice of baseline data collection process (ORS 517.969(a))
- Two public information meetings on baseline data (ORS 517.969(b))
- Written public comments on baseline data collection (ORS 517.969(c))
- Notice of consolidated application filing (ORS 517.971)
- Consolidated public hearing on application completeness (ORS 517.975)
- Additional public comment if additional information is needed (ORS 517.977 and 517.978)
- Public notice and comment on environmental analysis (ORS 517.979(4))
- Public notice and comment on draft permits (ORS 517.981(2))

- Consolidated public hearing on draft/proposed permits and conditions or proposed denial (ORS 517.981(2))
- Public notice of revisions to draft permits/issuance of final permits (ORS 517.982)
- Opportunity for consolidated contested case hearing at request of anyone who participated in public comment process (ORS 517.983)
- Opportunity for exceptions to proposed final order for each permit by parties to the contested case hearing (ORS 517.983(4))
- Opportunity for judicial review of final orders issued by each agency (ORS 517.983(5))

Project Coordinating Committee: After receiving a Notice of Intent, DOGAMI forms an inter-agency project coordinating committee composed of representatives from each of the “permitting” and “cooperating” agencies, local governments, and affected federal agencies. The purpose of the coordinating committee is to share information and coordinate programs to “avoid contradictory requirements, facilitate the exchange of ideas, optimize communication and avoid duplicative effort.” ORS 517.965

Technical Review Team: DOGAMI also appoints a technical review team composed of representatives from each of the permitting agencies. The purpose of the technical team is to establish methodologies for collection of baseline data; coordinate with the applicant in the use of baseline data by the permitting and cooperating agencies; and determine compliance with the general standards for the chemical process mining program and applicable agency permits. ORS 517.967

Process: The process includes several distinct phases: pre-application consultation to identify significant issues to be addressed in the review process; application review with public notice and participation as described above; and contested case hearing/judicial review.

Timelines: The statute sets a deadline of 225 days after determination of a complete application, by which the permitting agencies must provide draft permits and conditions or proposed denial documents. ORS 537.981

Fees and Cost Recovery: Applicants pay an application fee to DOGAMI, plus all application fees due to other permitting agencies. In addition, applicants pay all expenses incurred by DOGAMI and the permitting and cooperating agencies for all phases of the pre-application and application review process. Recoverable expenses may include, but are not limited to, legal fees, expenses for processing and evaluating the application, issuing a permit or final order and agency expenses for hiring a third party contractor if needed to assist with the evaluation process. ORS 517.973.

Reclamation Security: Applicant must post a reclamation bond or acceptable alternative security, based on estimate of the total cost of reclamation under the applicable approval standards. ORS 517.987.

References:

ORS 517.952 - 517.992

OAR Chapter 632, Division 037 (DOGAMI Administrative Rules)

Martha O. Pagel
Schwabe, Williamson & Wyatt, P.C.
530 Center St NE Ste 400
Salem OR 97301
Phone: (503) 540-4260
E-mail: mpagel@schwabe.com