

Enrolled
House Bill 3601

Sponsored by Representative SCHAUFLEER (at the request of Oregon Concrete and Aggregate Producers Association)

CHAPTER

AN ACT

Relating to mining; creating new provisions; and amending ORS 196.905 and 517.750.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section, “surface mining” has the meaning given that term in ORS 517.750 and “waters of this state” has the meaning given that term in ORS 196.800.

(2) The Department of State Lands and the State Department of Geology and Mineral Industries may enter into a memorandum of agreement concerning surface mining as described in subsection (3) of this section.

(3) The memorandum described in subsection (2) of this section may assign sole responsibility for permitting to the State Department of Geology and Mineral Industries when the surface mining would otherwise be under the permitting jurisdiction of both the Department of State Lands and the State Department of Geology and Mineral Industries because:

(a) Part of the surface mining is located within the beds or banks of any waters of this state; and

(b) Part of the surface mining is located upland from the beds or banks of any waters of this state.

(4) Prior to any permitting pursuant to the provisions of subsection (3) of this section, the State Department of Geology and Mineral Industries shall consult with the Department of State Lands regarding any conditions necessary to protect the waters of this state.

SECTION 2. ORS 517.750 is amended to read:

517.750. As used in ORS 517.702 to 517.989, unless the context requires otherwise:

(1) “Board” means the governing board of the State Department of Geology and Mineral Industries.

(2) “Completion” means termination of surface mining activities including reclamation of the surface-mined land in accordance with the approved reclamation plan and operating permit.

(3) “Department” means the State Department of Geology and Mineral Industries.

(4) “Exploration” means all activities conducted on or beneath the surface of the earth for the purpose of determining presence, location, extent, grade or economic viability of a deposit. “Exploration” does not include prospecting or chemical processing of minerals.

(5) “Explorer” means, notwithstanding the provisions of ORS 517.810 (2), any individual, public or private corporation, political subdivision, agency, board or department of this state, any municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever that is engaged in exploration.

(6) "Landowner" means:

(a) The person possessing fee title to the natural mineral deposit being surface mined or explored; and

(b) The owner of an equitable interest in land that is subject to a deed of trust.

(7) "Minerals" includes soil, coal, clay, stone, sand, gravel, metallic ore and any other solid material or substance excavated for commercial, industrial or construction use from natural deposits situated within or upon lands in this state.

(8) "Operator" means any individual, public or private corporation, political subdivision, agency, board or department of this state, any municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever that is engaged in surface mining operations.

(9) "Overburden" means the soil, rock and similar materials that lie above natural deposits of minerals.

(10) "Person" means any person, any federal agency or any public body, as defined in ORS 174.109.

(11) "Processing" includes, but is not limited to, crushing, washing, milling and screening as well as the batching and blending of mineral aggregate into asphalt and portland cement concrete located within the operating permit area.

(12) "Reclamation" means the employment in a surface mining operation or exploration of procedures reasonably designed to:

(a) Minimize, as much as practicable, the adverse effects of the surface mining operation or exploration on land, air and water resources; and

(b) Provide for the rehabilitation of surface resources adversely affected by the surface mining operations or exploration through the rehabilitation of plant cover, soil stability and water resources and through other measures that contribute to the subsequent beneficial use of the explored, mined or reclaimed lands.

(13) "Reclamation plan" means a written proposal, submitted to the department as required by ORS 517.702 to 517.989 and subsequently approved by the department as provided in ORS 517.702 to 517.989, for the reclamation of the land area adversely affected by a surface mining operation or exploration and including, but not limited to the following information:

(a) Proposed measures to be undertaken by the operator in protecting the natural resources of adjacent lands.

(b) Proposed measures for the rehabilitation of the explored or surface-mined lands and the procedures to be applied.

(c) The procedures to be applied in the surface mining operation or exploration to control the discharge of contaminants and the disposal of surface mining refuse.

(d) The procedures to be applied in the surface mining operation or exploration in the rehabilitation of affected stream channels and stream banks to a condition minimizing erosion, sedimentation and other factors of pollution.

(e) The map required by ORS 517.790 (1)(e) and such other maps and supporting documents as may be requested by the department.

(f) A proposed time schedule for the completion of reclamation operations.

(g) Requirements of the exploration permit.

(14) "Surface impacts of underground mining" means all waste materials produced by underground mining and placed upon the surface including, but not limited to, waste dumps, mill tailings, washing plant fines and all surface subsidence related to underground mining.

(15)(a) "Surface mining" includes:

(A) All or any part of the process of mining minerals by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method by which more than 5,000 cubic yards of minerals are extracted or by which at least one acre of land is affected within a period of 12 consecutive calendar months, including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and

the construction of adjacent or off-site borrow pits (except those constructed for use as access roads).

(B) Removal or filling, or both, within the beds or banks of any waters of this state that is the subject of a memorandum of agreement between the Department of State Lands and the State Department of Geology and Mineral Industries in which the State Department of Geology and Mineral Industries is assigned sole responsibility for permitting as described in section 1 of this 2011 Act.

(b) "Surface mining" does not include:

(A) Excavations of sand, gravel, clay, rock or other similar materials conducted by the landowner or tenant for the primary purpose of construction, reconstruction or maintenance of access roads on the same parcel or on an adjacent parcel that is under the same ownership as the parcel that is being excavated;

(B) Excavation or grading operations, reasonably necessary for farming;

(C) Nonsurface effects of underground mining;

(D) Removal of rock, gravel, sand, silt or other similar substances removed from the beds or banks of any waters of this state pursuant to a permit issued under ORS 196.800 to 196.900; or

(E) Excavations or reprocessing of aggregate material, or grading operations, within the highway right of way reasonably necessary for the construction, reconstruction or maintenance of a highway as defined in ORS 801.305.

(16) "Surface mining refuse" means all waste materials, soil, rock, mineral, liquid, vegetation and other materials resulting from or displaced by surface mining operations within the operating permit area, including all waste materials deposited in or upon lands within the operating permit area.

(17) "Underground mining" means all human-made excavations below the surface of the ground through shafts or adits for the purpose of exploring for, developing or producing valuable minerals.

SECTION 3. ORS 196.905 is amended to read:

196.905. (1) Nothing in ORS 196.600 to 196.905 applies to filling the beds of the waters of this state for the purpose of constructing, operating and maintaining dams or other diversions for which permits or certificates have been or shall be issued under ORS chapter 537 or 539 and for which preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.610.

(2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

(a) Such waterway or portion is situated within forestland; and

(b) Such removal or filling is directly connected with a forest management practice conducted in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

(3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted wetlands for normal farming and ranching activities such as plowing, grazing, seeding, planting, cultivating, conventional crop rotation or harvesting.

(4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on lands zoned for exclusive farm use as described in ORS 215.203 for the following activities:

(a) Drainage or maintenance of farm or stock ponds; or

(b) Maintenance of farm roads in such a manner as to not significantly adversely affect wetlands or any other waters of this state.

(5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for subsurface drainage by deep ripping, tiling or moling on converted wetlands that are zoned for exclusive farm use pursuant to ORS 215.203.

(6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by the Natural Resources Conservation Service of the United States Department of Agriculture, or its successor agency, so long as commercial agricultural production on the land has not been abandoned for five or more years.

(7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestablishment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831 as in effect on January 1, 2010.

(8) The exemptions in subsections (3) to (7) of this section do not apply to any fill or removal that involves changing an area of wetlands to a nonfarm use.

(9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches and tile drain systems, provided that:

(a) The structure was serviceable within the past five years; and

(b) Such maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures.

(10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable roads or transportation structures such as groins and riprap protecting roads, causeways and bridge abutments or approaches.

(11) Nothing in ORS 196.600 to 196.905 applies to removal or filling, or both, within the beds or banks of any waters of this state conducted as part of a surface mining operation, that is the subject of a memorandum of agreement between the Department of State Lands and the State Department of Geology and Mineral Industries in which the State Department of Geology and Mineral Industries is assigned sole responsibility for permitting as described in section 1 of this 2011 Act.

~~[(11)]~~ (12) The Department of State Lands may adopt a rule that exempts from the requirement to obtain a permit under ORS 196.800 to 196.900 voluntary habitat restoration projects that have only minimal adverse impact on waters of this state.

~~[(12)]~~ (13) As used in this section:

(a) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30, 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that are managed for commercial agricultural purposes.

(b) "Converted wetlands" does not include any stream, slough, ditched creek, spring, lake or any other waters of this state that are located within or adjacent to a converted wetland area.

SECTION 4. ORS 196.905, as amended by section 6, chapter 516, Oregon Laws 2001, section 13, chapter 253, Oregon Laws 2003, and section 4, chapter 342, Oregon Laws 2009, is amended to read:

196.905. (1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a permit under ORS 196.600 to 196.905 is required for any fill or removal of material in or from the waters of this state when:

(a) The fill or removal is a part of an activity whose purpose is to bring an area of state waters into a use to which it was not previously subject; and

(b)(A) The flow or circulation of the waters of this state may be impaired; or

(B) The reach of the waters may be reduced.

(2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

(a) Such waterway or portion is situated within forestland; and

(b) Such removal or filling is directly connected with a forest management practice conducted in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

(3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted wetlands for normal farming and ranching activities such as plowing, grazing, seeding, planting, cultivating, conventional crop rotation or harvesting.

(4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on lands zoned for exclusive farm use as described in ORS 215.203 for the following activities:

(a) Drainage or maintenance of farm or stock ponds; or

(b) Maintenance of farm roads, provided that:

(A) The farm roads are constructed and maintained in accordance with construction practices designed to minimize any adverse effects to the aquatic environment;

(B) Borrow material for farm road maintenance does not come from waters of this state unless authorized by the Department of State Lands; and

(C) Maintenance activities are confined to the scope of construction for the original project.

(5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by the Natural Resources Conservation Service of the United States Department of Agriculture, or its successor agency, so long as commercial agricultural production on the land has not been abandoned for five or more years.

(6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestablishment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831 as in effect on January 1, 2010.

(7) The exemptions in subsections (3) to (6) of this section do not apply to any fill or removal that involves changing an area of wetlands or converted wetlands to a nonfarm use.

(8) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches and tile drain systems, provided that:

(a) The structure was serviceable within the past five years; and

(b) Such maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures.

(9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for temporary dams constructed for crop or pasture irrigation purposes that are less than 50 cubic yards, provided the following conditions are satisfied:

(a) The removal or filling is conducted during periods that minimize adverse effects to fish and wildlife in accordance with guidance provided by the State Department of Fish and Wildlife;

(b) The removal or filling does not jeopardize a threatened or endangered species or adversely modify or destroy the habitat of a threatened or endangered species listed under federal or state law; and

(c) Temporary fills are removed in their entirety and the area is restored to its approximate original elevation.

(10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable roads or transportation structures such as groins and riprap protecting roads, causeways and bridge abutments or approaches.

(11) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance of access roads constructed to move mining equipment, subject to the following conditions:

(a) The access roads are constructed and maintained in accordance with construction practices that minimize adverse effects to the aquatic environment;

(b) Borrow material for access road maintenance does not come from waters of this state unless authorized by the Department of State Lands; and

(c) Maintenance activities are confined to the scope of construction for the original project.

(12) Nothing in ORS 196.600 to 196.905 applies to removal or filling, or both, within the beds or banks of any waters of this state conducted as part of a surface mining operation that is the subject of a memorandum of agreement between the Department of State Lands and the State Department of Geology and Mineral Industries in which the State Department of Geology and Mineral Industries is assigned sole responsibility for permitting as described in section 1 of this 2011 Act.

[(12)] (13) The department may adopt a rule that exempts from the requirement to obtain a permit under ORS 196.800 to 196.900 voluntary habitat restoration projects that have only minimal adverse impact on waters of this state.

[(13)] (14) As used in this section:

(a)(A) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30, 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that are managed for commercial agricultural purposes.

(B) "Converted wetlands" does not include any stream, slough, ditched creek, spring, lake or any other waters of this state that are located within or adjacent to a converted wetland area.

(b) "Harvesting" means physically removing crops or other agricultural products.

(c) "Plowing" includes all forms of primary tillage, including moldboard, chisel or wide-blade plowing, discing, harrowing or similar means of breaking up, cutting, turning over or stirring soil to prepare it for planting crops or other agricultural products. "Plowing" does not include:

(A) The redistribution of soil, rock, sand or other surface materials in a manner that changes areas of waters of this state into dry land; or

(B) Rock crushing activities that result in the loss of natural drainage characteristics, the reduction of water storage and recharge capability, or the overburdening of natural water filtration capacity.

(d) "Seeding" means the sowing of seed or placement of seedlings to produce crops or other agricultural products.

SECTION 5. Section 1 of this 2011 Act and the amendments to ORS 196.905 and 517.750 by sections 2 to 4 of this 2011 Act apply to permits first applied for under ORS 517.790, or renewed, on or after the effective date of this 2011 Act.

Passed by House April 25, 2011

.....
Ramona Kenady Line, Chief Clerk of House

.....
Bruce Hanna, Speaker of House

.....
Arnie Roblan, Speaker of House

Passed by Senate June 2, 2011

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

.....
Kate Brown, Secretary of State