



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: February 27, 2013

TO: Honorable Brad Witt, Chair
House Agriculture and Natural Resources Committee Members

FROM: Larry Knudsen, Senior Assistant Attorney General
Natural Resources Section

SUBJECT: HB 2248

Recommend Action

This testimony is presented on behalf of the Oregon Department of Geology and Mineral Industries in support of HB 2248.

Introduction

HB 2248 is intended primarily to change the permitting procedures applicable to metal mines that use processes other than gravity to separate gold or other metals from metal bearing ores. (The major types of metal ore processing are discussed below.) The bill also would eliminate some limitations on reclamation authority for other metal mines and coal mines that the Department of Geology and Mineral Industries (DOGAMI) believes to be outdated and unwarranted. Finally, the bill addresses a number of technical housekeeping matters relating to the mining statutes.

Background

At present, there are two very different regulatory systems governing mine reclamation in Oregon. The first is a basic permitting system under ORS 517.750 to 517.901 by which an operator files an application for an operating permit and a proposed reclamation plan with DOGAMI. DOGAMI reviews the application and distributes it potentially interested state and federal agencies for a short review and comment period. DOGAMI also determines the appropriate amount for the reclamation bond or alternative form of financial security. If the application is complete and the reclamation plan meets the requirements set out in DOGAMI's rule, then the operating permit is issued once the applicant has posted the reclamation bond or alternative form of financial security. The operating permit is issued for the life of the mine and permit may be modified by DOGAMI only in limited circumstances. This regulatory system was initially enacted in 1971 and, although it has been periodically updated, it remains fundamentally the same in scope and nature. It does not include procedures for public review and

comment, in-depth environmental review, or explicit requirements for coordination the operating permit and reclamation plan with other agencies' regulatory requirements.

This basic permitting system applies to all aggregate (sand and gravel) mines and coal mines. It also applies to all metal mines (e.g. gold, silver, or uranium) that do not use chemical processing to remove metal from the ore. There are a few special requirements applicable to metal mines and coal mines that were added by statutes enacted in 1981. These statutes provide impose special caps on the allowed reclamation bond (\$10,000 to \$100,000 per acre depending on the ore and type of processing used) and on reclamation liens (\$10,000 per acre).

In 1991, the Legislative Assembly enacted ORS 517.952 to 517.989 establishing a separate regulatory system for metal mines that use chemical (e.g. acids or cyanide) to leach metals from mined ore. The 1991 system establishes a consolidated permitting process for state agencies. This is a robust permitting system that includes multiple opportunities for public notice and comment, collection of baseline data, and review of environmental and socio-economic impacts. All state agency permits, approvals and other state requirements are consolidated into a single permitting process and this process in turn is designed to be coordinated with local and federal government regulatory requirements. The consolidated permitting process requires an applicant to provide all needed environmental information early in the permitting process. Once the data and analyses are produced, however, the process ensures that permits are processed relatively quickly. Specifically, permits must be issued within one year after a complete application is filed, unless the applicant requests additional time, and the various permits must not include inconsistent regulatory conditions. Finally, there is a right to a consolidated contested case hearing with a direct appeal to the Oregon Supreme Court.

The consolidated permitting process established by ORS 517.952 to 517.989 is not a super-siting process and it does not shift authority away from other agencies. DOGAMI has special procedural duties and serves as a facilitating agency, but all other agencies retain their own authorities and make their own decision. The statute establishes a technical review team established by the state agencies to review data collection and analysis and to develop and consistent permitting requirements. A project coordinating committee of agency officials is also established by the statutes to resolve any conflicting policy issues.

Legislative Proposal

For the most part, metal ores are processed using one of three processes. The most basic process uses gravity and air or water to separate metal from the ore, typically after the ore is ground up to the desired consistency. A second type of process, froth flotation, may be used as alternative or in addition to gravity separation. Froth flotation selectively separates hydrophobic materials from hydrophilic materials using surfactants or similar materials. The third option is to leach metals from the ore using chemicals like acids or cyanide. The leaching may take place out-of-doors where ore is heaped on pads and sprinkled with chemicals or may be done in tanks in enclosed facilities.

As discussed above, Oregon's current statutes use the robust consolidated permitting application process only for mines using chemical processing of ore and it excludes mines using gravity separation and froth flotation. HB 2248 would apply the consolidated permitting process to all metal mines except those using only gravity separation. There is further exemption in existing law for all placer mines in

ORS 517.954. This categorical exemption has been retained in the bill. Placer mines are excavations of alluvial deposits (e.g. sand and gravel deposited by stream flows). Placer mines include dredging, but DOGAMI's authority generally extends only to mining that occurs above the high water line.

Summary of Proposed Amendments

Section 1 clarifies the application of the special provisions in ORS 517.905 to 517.951, which would apply to metal mines using only gravity separation, placer mines, and coal mines (i.e. the basic permitting procedures would continue to apply to these mines).

Section 2 removes outdated references and makes other "housekeeping" amendments.

Section 3 clarifies DOGAMI's requirements with respect to metal mines using only gravity separation, placer mines, and coal mines.

Sections 4 and 5 remove outdated and confusing references in the existing statutes.

Section 6 is the key provision in the bill. It defines mining operations for purposes of the consolidated permit process (ORS 517.952 to 517.989) to include all metal mines other than those using gravity separation; it defines gravity separation, and it deletes the definition of and references to chemical process mining.

Sections 7 through 17 replace the term "chemical process mining" with the term "mining operations" and make other "housekeeping" changes.

Section 18 increases the base statutory fees for mines covered under the consolidated permitting process and addresses problems with the timing of the payment of these fees. Under the consolidated permitting process, applicants must pay all reasonable agency expenses, however, so the adjustment of the fee amounts is unlikely to affect the amount of the total fees. Instead, it ensures that agencies have fee revenue earlier in the process because some agencies do not have general fund revenues to use prior to the initial reimbursement of agency costs.

Sections 19 through 24 replace the term "chemical process mining" with the term "mining operations" and make other "housekeeping" changes.

Section 25 includes "housekeeping" changes to the statute governing criminal penalties for mining law violations.

Section 26 replaces the term "chemical process mining" with the term "mining operations" and makes other "housekeeping" changes to the statute governing civil penalties for mining law violations.

Section 27 removes an unused provision in the general mine land reclamation statutes.

Section 29 reconciles the existing fee provisions.

Section 28 and Sections 30 through 35 reconcile other statutes and make housekeeping changes.

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Section 36 repeals some of the special provisions that generally limited DOGAMI's permitting authority for coal mines and metal mines not subject to the consolidated permitting process.

Section 37 addresses captions.

Sections 38 through 40 address the timing for implementation of the bill.

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