



Surface Mining Regulation: Activities Covered and Types of Permits

Overview

Surface mining is defined in ORS 517.750 15 (a)(A) as:

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).

And minerals are defined by ORS 517.750 15 (a)(A) as:

“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.

The excavation of a sufficient quantity of any earth material, for any commercial, industrial or construction use, is considered surface mining. **Operating permits** are required for surface mining that excavates *more than* 5,000 cubic yards per year, or disturbs *more than* 1 acre per year or *more than* a total of 5 acres. All surface mining that falls below the operating permit thresholds are required to obtain an **exclusion certificate**.

The exceptions to the permit requirements are:

- Excavation by a landowner of aggregate for road construction or maintenance on the same or an adjacent parcel owned by the same landowner
- Non-surface effects of underground mining
- Aggregate mined from the bed or banks of waters of the state permitted by DSL
- Excavation or processing of aggregate for highway construction or maintenance within the highway right of way

DOGAMI has received legal advice from the Department of Justice to the effect that construction projects are engaged in surface mining if they make use of the material excavated for commercial, industrial or construction purposes.

Operating Permit Requirements

For Mines. Operating permits are required for surface mining that excavates *more than* 5,000 cubic yards per year, or disturbs *more than* 1 acre per year or *more than* a total of 5 acres. Aggregate Mines are permitted under Division 30 rules, and non-aggregate mines (coal, placer gold, industrial minerals) are permitted under Division 35 rules.

- Minimum permitting costs are approximately \$10,000-\$15,000, including:

- Application fee of at least \$1,750
- A surveyed site map is required, at a cost of at least \$3,000
- Site reclamation security is required, at a cost of at least \$5,000
- Local land use approval is required; costs varying by county, and range from several hundred to tens of thousands
- Additional permitting considerations:
 - Storm or process water permit may be required from DEQ, at a cost of hundreds to thousands of dollars
 - If on USFS or BLM land, special use permit or operating plan may be required
 - A cultural resource survey, or studies of floodplain, ground water, or slope stability may be required at an additional cost of thousands of dollars
 - Division 35 mines may require extensive additional technical details and review
 - Permit applications are circulated to state and federal agencies and tribal governments for review and comment
 - Permits are conditioned to protect resources, minimize offsite impacts, and ensure reclamation
- The annual permit renewal fee is \$850, plus a production fee
- Reclamation is required

For Construction Projects. DOGAMI has received legal advice from the Department of Justice to the effect that construction projects are engaged in surface mining if they sell or make construction use of the material excavated.

- DOGAMI is still researching what can be required for Operating Permits for construction projects, but at a minimum it will include:
 - Application fee of \$1,750
 - Local land use approval (which will typically have been required to proceed with the project)
 - Conditions to protect resources, minimize offsite impacts such as dust
- The annual permit renewal fee is \$850. DOGAMI is still researching whether a production fee is required and how it might be calculated.
- For such permits DOGAMI may waive the requirement for preparation and approval of a reclamation plan if:
 - a) The operation is conducted as part of the on-site construction of a building, public works project or other physical improvement of the subject property;
 - b) The operation is reasonably necessary for such construction; and
 - c) The proposed improvements are authorized by the local jurisdiction with land use authority.

Exclusion Certificate Requirements

All small-scale mines falling below operating permit thresholds are required to obtain an exclusion certificate. DOGAMI has received legal advice from the Department of Justice that exclusion certificate requirements apply to construction projects that make use of the material excavated.

Requirements for exclusion certificates went into effect on January 1, 2016 in ORS 517.753. Certificates are required after September 30, 2016 for aggregate mines, and after July 31, 2017 for non-aggregate mines; it is not yet clear which date applies to construction projects.

- Exclusion certificate requirements:
 - o \$80 application fee
 - o Application that provides the location and size of the site, operator and landowner's names, date of the commencement of mining and a summary of the activity during the preceding 36 months
 - o Annual renewal requires a fee of \$150 and reporting of the amount of minerals extracted, overburden disturbed and increased area of the site, and the total acreage affected
 - o No protective measures, reclamation, or reclamation security are required

Permitting of Construction Projects

A statutory change passed in 2007 removed an exemption for "on-site road construction or other on-site construction." This change went into effect in 2008.

- There is limited awareness of the requirement within the construction community
 - o DOGAMI has not conducted outreach to encourage compliance
 - o Only a handful of operating permits have been applied for or issued for construction projects. These have primarily been for landfills and primarily as the result of complaints.
 - o There have been no applications for Exclusion Certificates for construction projects; there is virtually no awareness in the construction community of the requirement.

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