

DRAFT PROPOSED

DIVISION DEPARTMENT OF STATE LANDS

DIVISION 100

**RULES FOR OREGON SCENIC WATERWAY REMOVAL/FILL PERMITS
~~INCLUDING RECREATIONAL PROSPECTING AND PLACER MINING~~**

141-100-0000

Definitions

For purposes of these rules, the definitions contained in [ORS 390.805](#) apply. In addition, the following definitions apply:

(1) "Activity" means any action(s) or project(s) involving the filling, removal or alteration of the bed or banks of the waters of a Scenic Waterway, regardless of the amount of material involved or area disturbed. Types of Activities¹ include:

- (a) Riverbank Erosion Control/Wetland Restoration;
- (b) Bridge;
- (c) Pipeline;
- (d) Sand and Gravel Removal;
- (e) Irrigation Diversion Work (permanent and temporary);
- (f) Fishery Enhancement Structure²;
- (g) Temporary Construction Works (e.g., cofferdams);
- (h) Dredge Material Disposal;
- (i) Stream Gauging Station³;
- (j) Oil and Gas Exploration and Development;
- (k) Bulkhead;
- (l) Utility Crossing;
- (m) Boat Ramp;
- (n) Water Intake;
- (o) Channel Access Dredging;
- (p) Boat Dock;
- (q) Road Fill;
- (r) Fills for Structures;
- (s) Underwater Blasting;
- (t) Riverbank Excavation (e.g., bank sloping/reshaping);
- (u) Stormwater, Waste Water;
- (v) Sewer Outfall;
- ~~(w) Prospecting;~~
- ~~(x) Recreational Placer Mining.~~

NOTES:

-1- This is not an exhaustive list of activities that could result in fill, removal, or alteration of the bed and banks of a Scenic Waterway.

-2- ORS 390.835(45) allows the Oregon Department of Fish and Wildlife to undertake these projects without Scenic Waterway review. However, a removal/fill permit, lease, easement, or license may be needed.

-3- ORS 390.835(56) allows the Water Resources Commission to undertake these projects without Scenic Waterway review. However, a removal/fill permit, and/or lease, easement, or license may be needed.

(2) "Bankfull Stage" is the state or elevation at which water overflows the natural banks of the Scenic Waterway and begins to inundate the upland. In the absence of physical evidence, the two-year recurrence interval flood elevation may be used to approximate the bankfull stage. (OAR 141-085-0010(211)).

(3) "Bed and/or Banks" means the land lying beneath the waters of the Scenic Waterway and extending to the bankfull stage.

(4) "Demonstrated Need" means the proposed activity is clearly and convincingly required.

(5) "Director" is the Director of the ~~Division~~Department of State Lands ([ORS 196.800\(23\)](#)) or designate.

(6) "~~Division~~Department" means the Oregon ~~Division~~Department of State Lands and/or its Director or designate.

(7) "Easement" is a property right granted by the ~~Division~~Department to use state-owned land for a specific purpose and time period.

(8) "Emergency Circumstances" are immediate natural or human caused events such as, but not limited to fire, flood, or hazardous substance spills, the effects of which require prompt action to prevent irreparable harm, injury or damage to persons or property.

(9) "Filling" is the act of depositing material onto the bed and/or banks of a Scenic Waterway.

(10) "Irreparable" means without reasonable possibility of repair or restoration, or an extreme condition which cannot be corrected.

(11) "Lease" is an agreement between a person and the ~~Division~~Department allowing a specific use of state-owned land for a specific period of time, subject to specified terms and conditions.

(12) "License" is a temporary, short-term (usually less than one year) authorization from the ~~Division~~Department for a particular use or activity on state-owned land.

(13) "Material" is rock, gravel, sand, silt and other substances, organic or inorganic, removed from or used to fill waters of this state.

(14) "Navigable Waterway" is any waterbody within the State of Oregon that has been declared navigable for purposes of state ownership by a federal court, or meets the following criteria generally established by federal courts to determine title navigability:

(a) The waterbody must be capable of, or susceptible to, use as a highway for the transportation of people or goods;

(b) Transportation must be conducted in customary modes of trade and travel on water;

(c) Waters must be navigable in their natural and ordinary condition;

(d) Title navigability is determined as of the date of statehood (February 14, 1859).

(15) "Ordinary High Water" is the line on the bank or shore of a waterway to which the water ordinarily rises annually. Ordinary high water is established by the ~~Division~~Department by reference to historical data, vegetation, field observations, survey, or other generally accepted methods under [ORS 274.015](#).

(16) "Person" is an individual, political subdivision, or government agency; or any corporation, association, firm, partnership, joint stock company; or quasi-public corporation registered to do business in the State of Oregon.

~~(17) "Prospecting/Recreational Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.~~

~~(18) "Recreational Placer Mining" includes, but is not limited to, the use of nonmotorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-installed noise reduction standards. "Recreational placer mining" does not include recreational prospecting that does not require a permit.~~

(19) "Related Adjacent Land" is all land within 1/4 of one mile of the bank of Waldo Lake, or any river or segment of river within a Scenic Waterway, except land that, in the Oregon Parks and Recreation Department's (OPRD) ~~judgement~~judgment, does not affect the view from the waters within a Scenic Waterway.

(20) "Removal" is the taking or movement of material from the bed and/or banks of a Scenic Waterway.

(21) "Repair" means to restore or reconstruct to a safe, sound, or original condition in order to protect persons or property from loss as a result of an unforeseeable event, such as, but not limited to, fire, flood, or hazardous substance spills.

(22) "Scenic Waterway" as described in [ORS 390.805](#)(~~23~~) includes Waldo Lake, or any river segment that has been designated under [ORS 390.805](#) to 390.925 or any subsequent act, and includes related adjacent lands.

(23) "Scenic Waterway Emergency Removal/Fill Permit" is an authorization issued by the Director for temporary, emergency-specific removal/fill activity in a Scenic Waterway upon a finding of emergency circumstances.

(24) "Scenic Waterway Removal/Fill Permit" is an authorization issued by the ~~Division~~Department for any removal, filling or alteration of the bed and banks of a Scenic Waterway.

(25) "Special Attribute" means an aesthetic, scenic, environmental, scientific, recreational or similar feature(s) identified by OPRD in a Scenic Waterway Management Plan as the value that caused a particular waterway to be included in the Oregon Scenic Waterway Program. (ORS 390.845)

(26) "Waters of a Scenic Waterway" are any waters within a designated Scenic Waterway, including its related adjacent lands, that are subject to the jurisdiction of the ~~Division~~Department.

~~(27) "Wet Perimeter" means the area of the stream that is underwater, or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.~~

Stat. Auth.: [ORS 196.800](#) - [ORS 196.990](#), [ORS 390.835](#), [ORS 478](#) & [ORS 223](#)

Stats. Implemented: [ORS 390.835](#), [ORS 478](#) & [ORS 223](#), 1997 Law

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98

141-100-0010

Purpose

Pursuant to ORS 390.835(2) and (3), these rules establish procedures for the consideration of permit applications for fill, removal, and other alterations of the beds and banks of Scenic Waterways.

Stat. Auth.: [ORS 196.800](#) - [ORS 196.990](#), [ORS 274](#) .040 & [ORS 390.835](#)(2) & (3)

Stats. Implemented: [ORS 196.800](#) - [ORS 196.990](#), [ORS 274](#) , [ORS 390.805](#) & [ORS 390.835](#)
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94

141-100-0020

Policy

The ~~Division~~Department shall:

- (1) Preserve and protect the natural setting, water quality, and free flowing condition of Scenic Waterways. [ORS 390.815](#)
- (2) Recognize recreation, fish and wildlife uses as the highest and best uses of the waters of a Scenic Waterway. [ORS 390.835\(1\)](#)
- (3) Protect and enhance scenic, aesthetic, natural, historic, archaeological, recreation, scientific, and fish and wildlife values along Scenic Waterways by protecting the special attributes (as listed in each Scenic Waterway Management Plan prepared by OPRD) that caused the waterway to be included in the Scenic Waterway system.
- (4) Not authorize activities prohibited by the Scenic Waterway Act (dams, reservoirs, impoundments, and all types of ~~large-scale~~ placer mining).
- (5) Require applicants to employ streambank stabilization and rehabilitation techniques utilizing native riparian vegetation and other nonstructural alternatives, unless it can be demonstrated such approaches are unlikely to be effective for the given situation under consideration by the ~~Division~~Department.
- (6) Prohibit filling, removal, or alteration of the beds and banks of Scenic Waterways except as permitted by the Director as provided in these rules.
- (7) Recognize the interrelated nature of regulatory activities affecting Scenic Waterways and the need to achieve coordinated management and protection of Scenic Waterway values. The ~~Division~~Department shall work in close cooperation with state, local, and federal agencies, particularly OPRD, Water Resources Department (WRD), Department of Environmental Quality (DEQ), Oregon Department of Fish and Wildlife (ODFW), U.S. Army Corps of Engineers (COE), affected Tribes, and local government land use planning agencies.
- (8) Recognize the high level of public interest in Oregon Scenic Waterway management by providing opportunities for comment on proposed policies or rules and individual applications.
- (9) Adhere to the ~~Division~~Department's State Agency Coordination Program (OAR 141-095-0000), to assure compliance with the statewide planning goals and compatibility with acknowledged city and county comprehensive land use plans.
- (10) Review and evaluate the effectiveness of this rule on a biennial basis. The review shall include a report of actions taken, identification and definition of issues/problems raised over the biennium, and recommendations, if any, for changes to make the program more effective.

Stat. Auth.: [ORS 196.800](#) - [ORS 196.990](#), [ORS 390.835](#), [ORS 478](#) & [ORS 223](#)

Stats. Implemented: [ORS 390.835](#), [ORS 478](#) & [ORS 223](#), 1997 Law

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98

141-100-0030

Coordination with Key Agencies Involved in Scenic Waterway Management

- (1) Managing the Scenic Waterway Program is a cooperative effort of the OPRD, WRD and the ~~Division~~Department. In addition, ODFW, DEQ, the Department of Forestry (DOF) and the Oregon State Marine Board play key roles. Therefore, the ~~Division~~Department shall:

- (a) Coordinate the review and issuance of all Scenic Waterway removal/fill permits with the affected state agencies;
- (b) Coordinate the investigation of alleged Scenic Waterway removal/fill violations with affected agencies;
- (c) Advise applicants of the need to obtain concurrence from OPRD for projects on related adjacent lands; and
- (d) Seek to utilize the expertise of other agency staff.

(2) Because many Scenic Waterways are also included in the federal Wild and Scenic River system or similar designations on tribal lands, the ~~Division~~Department will work closely with the appropriate federal agencies (U.S. Forest Service (USFS), Bureau of Land Management (BLM), and COE) and affected Tribes as follows:

(a) Fully coordinate the review and issuance of all Scenic Waterway removal/fill permits with the analysis outlined in the Review Procedures for Scenic Waterway Removal/Fill Permits (OAR 141-100-0050(2)), and participate in National Environmental Protection Act review or any similar evaluations conducted by federal agencies; and

(b) Immediately notify the appropriate federal agency or affected Tribe of alleged Scenic Waterway removal/fill violations.

Stat. Auth.: [ORS 196.800](#) - [ORS 196.990](#), [ORS 274.040](#) & [ORS 390.835\(2\)](#) & (3)

Stats. Implemented: [ORS 196.800](#) - [ORS 196.990](#), [ORS 274](#), [ORS 390.805](#) & [ORS 390.835](#)

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94

141-100-0040

Permit Types

One of the following types of permits is required prior to undertaking any removal/fill activity within waters of a Scenic Waterway:

- (1) Scenic Waterway Removal/Fill Permit; or
- (2) Scenic Waterway Emergency Removal/Fill Permit.

Stat. Auth.: [ORS 196.800](#) - [196.990](#), [274.040](#) & [390.835\(2\)](#) & (3)

Stats. Implemented: [ORS 196.800](#) - [196.990](#), [274](#), [390.805](#) & [390.835](#)

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94

141-100-0050

Scenic Waterway Removal/Fill Permits ~~(except for Recreational Placer Mining)~~

(1) Application Procedures. Applications for approval of removal/fill activities in Scenic Waterways shall be submitted to the ~~Division~~Department in writing, in advance of the proposed activity, and shall include all information needed to evaluate the request. The application shall be submitted on the Joint Permit Application Form of the COE and the ~~Division~~Department and must meet the standards for completed applications in OAR 141-085-0025.

(2) Review Standards. The ~~Division~~Department shall issue Scenic Waterway removal/fill permits only upon written findings that:

(a) The proposed activity is consistent with:

(A) The Scenic Waterway Act ([ORS 390.805](#) to [390.925](#)) (i.e., maintenance of free-flowing character, and highest and best uses of the water for fish, wildlife, and recreation), and these rules;

(B) Any applicable OPRD Scenic Waterway Management Plan or interim classification. The ~~Division~~Department shall coordinate with OPRD and WRD prior to making this determination.

- (b) The proposed activity is consistent with [ORS 196.800](#) to 196.825 and 196.840 to 196.870, as well as associated rules related to removal of materials from the beds and/or banks and filling of any waters of this state, for projects greater than or equal to 50 cubic yards in volume;
- (c) The proposed activity meets a demonstrated need and minimizes adverse impacts to special attributes of designated Scenic Waterways;
- (d) The proposed activity, individually or collectively, would not degrade fish, wildlife or recreation values; and
- (e) For activities within navigable waterways, any required lease, license, easement, or right of entry has been or shall be obtained from the ~~Division~~[Department](#).
- (3) Review Procedures:
- (a) Applications shall be reviewed and processed in a manner consistent with OAR 141-085-0005 to 141-085-~~00900176~~, the ~~Division~~[Department](#)'s rules for removal and fill permits;
- (b) In reviewing an application, the ~~Division~~[Department](#) shall conduct the necessary investigations to develop a rational basis for a decision consistent with the requirements of the Review Standards and policies of this rule;
- (c) The ~~Division~~[Department](#) may consult with any person, group, or agency interested in or affected by a permit decision. Recommendations and comments regarding the project shall generally be required to be submitted in writing to the Director within 21 calendar days from the date the application notice is mailed by the ~~Division~~[Department](#);
- (d) The ~~Division~~[Department](#) shall provide application notice for comment to the Department of Fish and Wildlife, Department of Environmental Quality, Department of Land Conservation and Development, Department of Agriculture, Water Resources Department, Economic Development Department, State Parks and Recreation Department, State Historic Preservation Office, Department of Geology and Mineral Industries, Department of Transportation, Department of Forestry, and any other affected state or federal agency and Tribe. The ~~Division~~[Department](#) shall also provide application notice to adjacent property owners listed on the application and interested persons who request notice;
- (e) In accordance with the procedures in the ~~Division~~[Department](#)'s State Agency Coordination Program, the ~~Division~~[Department](#) shall provide application notice to the appropriate local government planning department(s) for a determination of the proposed activity's compatibility or non-compatibility with the affected city and county comprehensive plan(s) and land use regulations. If it is necessary to adopt findings of compliance with the statewide planning goals, the ~~Division~~[Department](#) will act in accordance with Coordination Procedure III.A.2. of its State Agency Coordination Program;
- (f) The ~~Division~~[Department](#) shall give reasonable consideration to permit conditions or comments offered by any person;
- (g) The ~~Division~~[Department](#) shall endeavor to render permit decisions within 45 days of receiving a completed application for removal and 90 days for fill.
- (h) The Director shall deny any permit application, based upon written findings, if the proposed activity does not comply with one or more of the Review Standards in this rule;
- (i) Permits may be issued for multi-year projects in the same manner as OAR 141-085-~~00320031~~.

Stat. Auth.: [ORS 196.800](#) - [ORS 196.990](#), [ORS 390.835](#), [ORS 478](#) & [ORS 223](#)

Stats. Implemented: [ORS 390.835](#), [ORS 478](#) & [ORS 223](#), 1997 Law

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98

141-100-0055

Scenic Waterway Removal/Fill Permit (Recreational Placer Mining)

~~(1) To be eligible for a Scenic Waterway removal/fill permit, recreational placer mining operations must conform to the following:~~

- ~~(a) The activity must be for recreational placer mining as defined in these rules;~~
- ~~(b) The activity shall not dam or divert a waterway or obstruct fish passage;~~
- ~~(c) Nozzling, sluicing, or digging shall not occur outside the wet perimeter, nor extend the wet perimeter;~~
- ~~(d) The activity shall not involve disturbance of rooted or embedded woody plants including trees and shrubs, regardless of their location (for example, on gravel bars);~~
- ~~(e) The activity shall not include excavation from the streambank;~~
- ~~(f) The activity shall not include movement of boulders, logs, stumps, or other woody material from the wet perimeter other than movement by hand and non-motorized equipment;~~
- ~~(g) Upon completion of the mining activity all piles, pits, furrows or potholes outside the main channel of the waterway created by the activity shall be leveled.~~
- ~~(h) The recreational placer miner shall obtain landowner permission before operating on private property;~~
- ~~(i) The recreational placer miner shall obtain prior permission, as applicable, before operating on public lands;~~
- ~~(j) Use of a motorized suction dredge must have a suction dredge waste discharge permit from the Department of Environmental Quality, as applicable;~~
- ~~(k) The activity shall occur only during the recommended in-water work period identified in the Oregon Department of Fish and Wildlife's "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources";~~
- ~~(l) The activity must comply with other applicable local, state, and federal laws and regulations, including the federal Endangered Species Act;~~
- ~~(m) The activity shall not impede recreational boating;~~
- ~~(n) Use of motorized suction dredges shall be restricted to the hours between 8 a.m. and 6 p.m. within five hundred (500) feet of a residence or within five hundred (500) feet of a campground except within a federally designated recreational mining site; and~~
- ~~(o) The activity shall not occur within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.~~

~~(2) To qualify for a Scenic Waterway removal/fill permit for recreational placer mining under these rules, the applicant shall, before beginning operation, submit to the Division an application on a form provided by the Division, or in a letter that includes the following information:~~

- ~~(a) The stream(s) and the location(s) the operator will be working;~~
- ~~(b) The type of equipment to be used (including nozzle size, and horsepower rating of the engine); and~~
- ~~(c) The approximate amount of material to be moved by the activity and the anticipated number of days per year the activity will occur at each location.~~

~~(3) Within fifteen (15) working days of receipt of a completed application, the Division will review the application for compliance with the requirements in OAR 141-100-0055(1)(a) - (n) of these rules and notify the applicant of approval, denial, or modification. Where it determines that a proposed recreational placer mining activity qualifies for approval the Division will approve~~

~~the application by letter. Where it determines that a proposed recreational placer mining activity does not meet the eligibility requirements the Division will:~~

~~(a) Deny the application and inform the applicant; or~~

~~(b) Request that the applicant modify the activity to conform with the requirements in OAR 141-100-0055(1)(a)-(e) of these rules.~~

~~(4) No permit approval for recreational placer mining will be issued with an expiration date beyond December 31, 1999, unless otherwise authorized by statute.~~

~~(5) No person shall be required to obtain a permit for recreational prospecting resulting in the fill, removal or other alteration of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single Scenic Waterway in a single year. Recreational prospecting shall not occur at any site where fish eggs are present.~~

~~(6) For the purposes of review and issuance of Scenic Waterway removal/fill permits for recreational placer mining, "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.~~

~~Stat. Auth.: ORS 196.800 ORS 196.990, ORS 390.835, ORS 478 & ORS 223~~

~~Stats. Implemented: ORS 390.835, ORS 478 & ORS 223, 1997 Law~~

~~Hist.: DSL 3-1998, f. & cert. ef. 4-22-98~~

141-100-0060

Scenic Waterway Emergency Removal/Fill Permits

(1) Application Procedures. Applications for a Scenic Waterway emergency removal/fill permit may be made verbally (e.g., by phone), or by written application, including facsimile, by the following procedures:

(a) Applicants shall provide the ~~Division~~Department the following information:

(A) Location of emergency;

(B) A description of the emergency;

(C) The proposed action to be taken; and

(D) The potential consequences of taking no action.

(b) Within five days of receiving a verbal confirmation of an emergency permit for removal/fill activities, the applicant shall submit to the ~~Division~~Department a written emergency permit application, in accord with the procedures herein.

(2) Review Standards. The Director shall issue Scenic Waterway emergency removal/fill permits only after determination that:

(a) Natural or human-caused situation(s) exist which cause the emergency circumstance(s), such as, but not limited to, flooding, landslides, wildfire, and hazardous substance spills;

(b) It is necessary to make repairs or take action to prevent irreparable harm, injury, or damage to persons or property.

(3) Review Procedures. The Director shall conduct the review of Scenic Waterway emergency removal/fill permit applications by:

(a) Consulting with ODFW and OPRD prior to issuance of a temporary permit as provided by ORS 390.835(3)(a) and DEQ, and WRD (if applicable). Consultation may be achieved by Memorandum of Agreement with the applicable agencies and/or case-by-case permit review;

(b) Completing an investigation sufficient to develop a rational basis for a decision consistent with the requirements of the Review Standards;

(c) Consulting with others ~~&endash;~~ such as Tribes, federal land managers and regulators (e.g., if the proposed activity is within a Wild and Scenic River) ~~&endash;~~; depending upon circumstances and time constraints, and by reasonable consideration to recommendations for temporary permit conditions; and

(d) Assuring compatibility of the project, to the extent practical, with the affected local government(s) comprehensive plan and land use regulations.

(4) Permit Decisions:

(a) The Director may issue an emergency permit, only if all the Review Standards for emergency permits are met. Emergency permit issuance by the Director may be made by written confirmation to the applicant, verbally (to be followed by written confirmation), or through procedures established in Memoranda of Agreement with other agencies (e.g., through the Oregon Emergency Response System);

(b) The ~~Division~~Department shall visit the site of the emergency permitted activity as soon as practical following permit issuance;

(c) Following the issuance of an emergency permit, the ~~Division~~Department shall review the emergency permit and determine if any further action is necessary to modify the permit conditions after the emergency has passed.

Stat. Auth.: [ORS 196.800](#) - [ORS 196.990](#), [ORS 390.835](#), [ORS 478](#) & [ORS 223](#)

Stats. Implemented: [ORS 390.835](#), [ORS 478](#) & [ORS 223](#), 1997 Law

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98

141-100-0070

Appeals

(1) Any applicant whose application to the ~~Division~~Department for a permit has been denied, or who objects to any of the permit conditions imposed by the Director, may, within ten days of the denial of the permit or the imposition of any condition, request a hearing from the Director. The hearing shall be conducted as a contested case hearing in accordance with ORS 196.825(6).

(2) Any person, excluding permit applicants, aggrieved or adversely affected by issuance or denial of permits by the Director may request a contested case hearing within 60 days after the date of the permit decision in the manner provided by [ORS 196.835](#).

Stat. Auth.: [ORS 196.800](#) - [ORS 196.990](#), [ORS 390.835](#), [ORS 478](#) & [ORS 223](#)

Stats. Implemented: [ORS 390.835](#), [ORS 478](#) & [ORS 223](#), 1997 Law

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98

141-100-0080

Enforcement

The Director is authorized to take civil, criminal, or administrative action to enforce the Removal/Fill Law as provide in [ORS 196.860](#) to 196.875:

(1) In the event of unauthorized removal/fill activities greater than or equal to 50 cubic yards in volume, all the policies and procedures of the Removal/Fill Law concerning enforcement of removal/fill violations apply in Scenic Waterways. However, for Scenic Waterway violations, restoration of the affected area to predisturbance conditions, to the maximum extent practicable, shall be required.

(2) In the event of removal/fill activities less than 50 cubic yards in volume:

(a) A Cease and Desist Order may be issued to halt activity as provided in ORS 196.860(2), if the ~~Division~~Department determines the removal/fill activity threatens to exceed 50 cubic yards in volume;

(b) The ~~Division~~Department may coordinate with and assist other state agencies with explicit enforcement authority for Scenic Waterway violations by executing an Interagency Memoranda of Agreement for enforcement.

Stat. Auth.: [ORS 196.800](#) - [ORS 196.990](#), [ORS 390.835](#), [ORS 478](#) & [ORS 223](#)

Stats. Implemented: [ORS 390.835](#), [ORS 478](#) & [ORS 223](#), 1997 Law

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98

141-100-0090

Appeals of Enforcement Orders

Any person aggrieved by a proposed enforcement order of the Director for a removal/fill violation in a Scenic Waterway may request a contested case hearing within 20 days of the date of personal service or mailing of the notice of order. However, requesting a contested case hearing on a Cease and Desist Order must be made within ten days of the date of personal service or mailing of the notice of order. Hearing procedures are the same as for other Removal/Fill Law violations as provided in OAR 141-085-0075.

Stat. Auth.: [ORS 196.800](#) - [ORS 196.990](#), [ORS 390.835](#), ~~[ORS 478](#) & [ORS 223](#)~~

Stats. Implemented: [ORS 390.835](#), [ORS 478](#) & [ORS 223](#), 1997 Law

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98