



Oregon

Kate Brown, Governor

Department of Geology & Mineral Industries

Mineral Land Regulation and Reclamation

229 Broadalbin Street SW

Albany, OR 97321-2246

(541) 967-2039

TO:

Westside Rock-Hayden Quarry, LLC
PO Box 487
Forest Grove OR, 97116

**NOTICE OF VIOLATION &
COMPLIANCE SCHEDULE (ORS 517.860)**

DOGAMI ID No. 34-0026
Site Name: Hayden Quarry
Washington County
TRS TL: 1S3W20 200, 1S3W20 405, 1S3W20 700

This Notice of Violation and Compliance Schedule was originally issued October 28, 2020, revised and re-issued on November 23, 2020.

On July 16, 2020, DOGAMI issued you a Notice of Violation and Compliance Schedule that required the following corrective actions:

1. **Immediately** cease importing fill material until the department has approved a detailed clean fill plan that meets the requirements of OAR 632-030-0025(bb). The clean fill plan must include the following:
 - a. Plans for the location of clean fill and construction techniques that will yield stable slopes.
 - b. Timing of earthwork activities. Topsoil and overburden are only to be moved between April 1 and October 31, and when it is dry, unless amended in the permit.
2. **Within 60 days** of this letter, submit a channel design for the final drainage through the site. All drawings must be stamped by an engineer or engineering geologist registered in Oregon.
3. **Prior to October 1**, seed and mulch all exposed soil areas and overburden piles.

On September 21, 2020, your counsel requested an extension to complete and submit the channel design for the final drainage due to delays related to local wildfires. DOGAMI granted an extension until October 7, 2020. On October 8, 2020, your counsel submitted a Reclamation Fill and Drainage Plan. Evidence of seeding and mulching of all exposed soil areas and overburden piles was not submitted. DOGAMI staff reviewed the Reclamation Fill Plan and Final Drainage Plan and find the submission deficient.

The following details the deficiencies and requirements for approval:

1. The plan does not identify the location for placement of clean fill and construction techniques that will yield stable slopes.

Requirement: As required under the NOV issued July 16, 2020, the plan must specify the location where clean fill will be stockpiled prior to placement, where fill will be placed (in sequence), the specific methods for documenting and determining the fill meets DEQ clean fill standards, and the construction techniques that will be used to yield stable slopes and meet all requirements of OAR 632-030-0025(1)(p)¹ and OAR 632-030-0025(1)(bb).²

¹OAR 632-030-0025(1)(p) Procedures for the stable storage of overburden. This may include a description of the pre-mine topography, method for placement of overburden, height of lifts, compaction standards, final height, and slope configurations, and/or a geotechnical design and construction plans for a storage pile or fill proposed as a final reclamation feature;

²OAR 632-030-0025(1)(bb) Procedures for placement of fill and protection of fill quality. (A) All fill used as reclamation backfill or other subsurface placement must meet the Oregon Department of Environmental Quality definition of clean fill as provided in OAR 340-093-0030 or the use must be specifically allowed by Department of Environmental Quality by rule, permit or other written authorization. (B) Fill material at a reclamation site must be used in accordance with a written fill plan approved by the Department or specific provisions in the approved reclamation plan. The fill plan or reclamation plan must show the locations for stockpiling and permanent placement of the fill material and provide for monitoring of the quality and quantity of the fill material. The quality, quantity and location of fill material used on the site must be consistent with local land use plans and regulations. Documentation showing compliance with the approved plan and this subsection must be provided to the Department upon request.

2. The plan does not address timing of earthwork activities. DOGAMI requires adequate engineering and design to demonstrate the movement of fill materials will not cause or contribute to documented water quality violations.

Requirement: As required under the NOV issued July 16, 2020, the plan must include timing of earthwork activities and provisions for protecting water quality.

3. Referencing section 2.5 which states: “Below is a map showing the area where the imported backfill material will be placed to complete reclamation work. The area of disturbance is approximately 56.6 acres.” The aerial image shows the entirety of the facility and does not provide specific information as to where, when, or how backfill material will be placed, nor does it provide any documentation on how the fill material will be approved by local land use. This does not meet the requirements of OAR 632-030-0025(bb)(B).

Requirement: The fill plan map must show the locations for stockpiling and permanent placement of the fill material. The fill plan must include a monitoring plan to ensure imported fill material meets the Oregon Department of Environmental Quality definition of “clean fill”.

4. Referencing section 3.1 which states: “the West Side Quarry site is reclaimed back, as close as possible, to its natural state before mining began”; the approved reclamation plan requires the site be reclaimed to forestry and not to the pre-existing natural state.

Requirement: The fill plan must be compatible with the post mining land use of forestry.

5. Referencing section 4.1. The cited Inspection Report references areas recognized as disturbed prior to 1972 which are under Limited Exemption (LE)³.

Requirement: The fill plan must be compatible with the approved LE closure plan, otherwise the LE closure plan must be revised.

6. Referencing section 4.2. The cited Beneficial Use Determination (BUD-20151217) and DEQ approval for Screened Street Sweeping Fines used as Mine Reclamation Fill are not included with the fill plan.

Requirement: The fill plan must include the BUD and DEQ approval. If importing material that requires DEQ authorization, all DEQ authorizations must be submitted to DOGAMI prior to importing the material.

7. Referencing section 5.1. The fill plan fails to describe how the quality and quantity of future fill material will be screened or monitored nor does it describe how current existing non-clean fill material will be evaluated and removed. DOGAMI recognizes the permittee proposes a “Statement of Clean Fill” be signed by all customers, however, there is no “monitoring” or “evaluation” of said fill material brought onsite.

Requirement: The fill plan must include a narrative on how future fill material will be monitored, evaluated, and documented as “clean fill” as defined by DEQ. The fill plan must be compatible with the DEQ approved Disposal Plan for all preexisting non-clean fill materials placed within the permit area.

8. Referencing section 5.2 “DOGAMI review dated 02/28/20” is not included with the plan. It is unclear why the permit condition review portion of the inspection report from February 28, 2020 is included within the fill plan as it seems irrelevant.

Requirement: If relevant to the fill plan, all referenced plans and approvals must be included.

³ Under Rule 632-030-0017, areas of surface mining in existence on or before July 1, 1972 are exempt from reclamation.

9. Referencing section 5.4. "West Side Quarry LLC will document via billing processes, the source of material accepted at the reclamation site." The source of material must be determined prior to, or at the time of, the importation of the fill to the site and not after or during the billing process.

Requirement: The fill plan must include how a determination of clean fill will be made prior to, or at the time of, importation of fill to the site.

10. Referencing section 5.6. "West Side Quarry LLC will control erosion of material by use of, but not limited to, drain weirs (barriers), erosion fences or other acceptable means to keep any back-fill material from entering surrounding waterways". This statement is vague and does not constitute an erosion and sediment control plan.

Requirement: The sites Stormwater Pollution Control Plan must clearly identify the site specific erosion and sediment control measures (BMPs) to be used, where they will be placed, and how they will be monitored to ensure efficacy at minimizing pollutants in stormwater discharged from the approved discharge locations.

11. Referencing section 5.7 regarding channel erosion. Engineering is required to determine appropriate channel design based on peak flows in combination with site characteristics. This plan lacks any hydrological calculations in consideration with armoring of the channel.

Requirement: Conveyance channels must be designed based on peak flows and hydrologic modeling. DOGAMI requires the engineered design to specify the frequency and intensity of storm event the channel is designed to withstand. Design drawings, and cross sections must be included in the report.

12. Referencing section 5.8, a holding pond is briefly mentioned. The plan does not contain details regarding pond location, establishment, maintenance, monitoring or reclamation.

Requirement: The plan must contain details regarding pond location, establishment, maintenance, monitoring and reclamation. The reclamation plan does not include ponds remaining on site. If a pond is to be left after final reclamation, the operating permit must be amended to incorporate this change.

13. Referencing section 5.9. The inspection frequency required under the NPDES 1200-A General Permit is subject to change as permit conditions change and is irrelevant to the fill plan.

Requirement: Remove irrelevant language from the fill plan or provide context for the relevancy and include the referenced documents.


14. Referencing Section 6 and Reclamation Plan drawings C1, C2, & C3. Except for the general location of the channel, the drawings lack design details including benches on final fill profiles and the subsurface drainage facilities. The drawings are not stamped by an engineer or engineering geologist registered in Oregon.

Requirement: The plan and drawings must be designed and stamped by an engineer or engineering geologist registered in Oregon. The standards used to determine engineering calculations must be specified in the plan.

As noted in the deficiencies outlined above, the Reclamation Fill and Drainage Plan is not acceptable and does not meet the requirements of the NOV issued on July 16, 2020. DOGAMI has revised the Notice of Violation issued October 28, 2020 to allow the permittee to submit a fill plan that allows for importation of fill year-round with adequate water quality protections in place. DOGAMI provided 30 days from the October 28, 2020 notice to correct all the deficiencies and to provide evidence of seeding and mulching of all exposed soil areas and overburden piles. Due to the prolonged delays in submitted required plans, DOGAMI will not grant another extension and issued a Suspension Order in conjunction with the October 28, 2020 notice. An extension is not granted with this revision, therefore, the due date to meet the corrective actions in this Notice is **November 27, 2020**. You must submit a DOGAMI approved clean fill plan and channel design for the final drainage before DOGAMI will consider lifting the Suspension Order.

If you fail to comply with this Notice of Violation and Compliance Schedule, the department intends to take enforcement action against you. This may include, but is not limited to, recovery of the Performance Bond for this site or the assessment of civil penalties for the violation of this order. If the department elects to recover the Performance Bond, the funds will be used to reclaim the property as provided in ORS 517.865. If this amount is insufficient to complete the reclamation as outlined in the Reclamation Plan, a lien may be placed against the property to cover any deficiencies.

Revised, Re-issued: November 23, 2020

By: 
Sarah L. Lewis
Program Manager

Contact Cari Buchner at (541) 967-2081 if you have questions about this order.

cc: Brent Kerr, West Side Quarry, LLC
T. Beau Ellis, General Counsel
Larry D. Moomaw, Registered Agent
Washington County Planning Department
Marvin & Carolyn Vanaken, landowner
Kerr Contractors, Inc., landowner

Opportunity to Request a Hearing or Informal Review

You have two options if you wish to challenge this Order:

Option 1 is requesting a contested case hearing conducted according to the Administrative Procedures Act, Oregon Revised Statutes (ORS) Chapter 183. If you want to proceed directly to a contested case hearing, you must file a written Request for a Hearing **within thirty (30) days from the date this Order was personally served on you or mailed to you**. A Request for a Hearing must include an **“Answer” to the allegations contained in the Order**. In the Answer, you must admit or deny each allegation of fact contained in the Order and set out any and all affirmative defenses to the violations alleged in the Order. Except for good cause shown, matters not denied in the Answer will be presumed admitted, and the failure to raise a claim or defense will waive such claim or defense. If you file a timely Request for a Hearing, DOGAMI will refer your request to an Administrative Law Judge at the Office of Administrative Hearings. The Administrative Law Judge will schedule a contested case hearing and inform you of the date, time, and place of the hearing. You will be given information on the procedures, rights of representation and other rights of parties relating to the conduct of the contested case hearing.

Option 2 is informal review by the State Geologist, followed by the opportunity to request a contested case hearing if you disagree with the State Geologist’s decision. If you want to request informal review by the State Geologist, you must file a written Request for Informal Review **within thirty (30) days from the date this order was personally served on you or mailed to you**. If you timely request informal review by the State Geologist, the State Geologist will review the matter and will issue a written decision within 30 days of receipt of your request. If you disagree with the State Geologist’s decision, you must file a written Request for a Hearing **within thirty (30) days from the date you received the State Geologist’s written decision**. A Request for a Hearing must include an **“Answer” to the allegations contained in the Order**. In the Answer, you must admit or deny each allegation of fact contained in the Order and set out any and all affirmative defenses to the violations alleged in the Order. Except for good cause shown, matters not denied in the Answer will be presumed admitted, and the failure to raise a claim or defense will waive such claim or defense. If you file a timely Request for a Hearing, DOGAMI will refer your request to an Administrative Law Judge at the Office of Administrative Hearings. The Administrative Law Judge will schedule a contested case hearing and inform you of the date, time, and place of the hearing. You will be given information on the procedures, rights of representation, and other rights of parties relating to the conduct of the contested case hearing.

Any Request for a Hearing or Request for Informal Review must be mailed to:

229 Broadalbin Street SW
Albany, OR 97321

Alternatively, you may fax your Request for Hearing or Request for Informal Review to 541-967-2075 or email it to cari.buchner@oregon.gov. Regardless of how you send your Request for Hearing or Request for Informal Review, it must be **received** by DOGAMI within 30 days of the date **this** Department Order was personally served on you or mailed to you.

NOTICE TO ACTIVE DUTY SERVICE MEMBERS: Active duty Service Members have a right to stay these proceedings under the federal Service Members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500, or the nearest United States Armed Forces Legal assistance Office through <http://legalassistance.law.af.mil>.