

Outline for Permitting Chemical Process Mines Under ORS 517.956

NOTE: 1 YEAR PERMITTING DEADLINE

DOGAMI and permitting agencies are required to complete the permitting process within **1 year**. This period begins to run when the *Notice to Proceed* is issued OAR 632-037-0080. See step 18 below. The period ends at the conclusion of the contested case hearing process. See Step 36.

PREAPPLICATION PROCESS

1. Notice of Intent (NOI) to file application filed with DOGAMI. [ORS 517.961]
 - * Within 10 days after filing the NOI the applicant shall post the NOI on the property OAR 632-037-0035(2).
2. Pre-application cost recovery agreement with prospective applicant or special legislative appropriation would ordinarily be required before DOGAMI can proceed.
3. DOGAMI provides notice. [ORS 517.963(1)]
 - * Mailed notice to master list - OAR 632-037-0030(1)(c).
 - * Notice to Permitting and Cooperating Agencies - OAR 632-037-0030(1)(a).
 - * Mailed notice to owners and unpatented mineral claimants within ½ mile - OAR 632-037-0030(1)(b) & (d).
 - * Newspaper publications - OAR 632-037-0030(1)(e).
 - * Other notice as needed for Permitting and Cooperating Agencies.[ORS 517.959]
4. DOGAMI identifies all Permitting and Cooperating Agencies - OAR 632-037-0020(2) & OAR 632-037-0025(2).
[ORS 517.963(4)]
5. DOGAMI establishes and activates:
 - * Project Coordinating Committee - OAR 632-037-0035(3)(b).
 - * Technical Review Team - OAR 632-037-0035(3)(c).[ORS 517.963(2) and (3)]
6. DOGAMI negotiates MOAs with federal agencies that wish to participate - OAR 632-037-0015(1).
[ORS 517.965]
7. Applicant notifies DOGAMI of readiness to begin collection of baseline data - OAR 632-037-0040(1).
8. On receipt of notice of applicant's readiness to collect baseline data - OAR 632-037-0040.
DOGAMI:
 - * Provides public notice - OAR 632-037-0040(2);
 - * Accepts comments for **45 days** - OAR 632-037-0040(4);
 - * Within **30 days** after step 7, DOGAMI must hold two informational meetings - OAR 632-037-0040(3) (one closest to proposed mine, one in a major population center).[ORS 517.969(1)]
9. Technical Review Team establishes the methodology for baseline data collection.
OAR 632-037-0015(1); OAR 632-037-0025(1)(b)(c)(d); [ORS 517.967(1)].

10. Applicant collects baseline data.
[ORS 517.969(4)]

APPLICATION PROCESS

11. Applicant files consolidated application; application must include OAR 632-037-0045(1 - 5):
- * General Information - OAR 632-037-0050
 - * Baseline data - OAR 632-037-0055
 - * Operating plan - OAR 632-037-0060
 - * Reclamation and Closure Plan - OAR 632-037-0070
 - * Alternative Analysis - OAR 632-037-0075
 - * Additional Information as required by OAR 632-037-0077
 - Information required in statute and DOGAMI rule for surface mining;
 - Information required for other specified agency permits and approvals;
 - Information needed for land use permits;
 - Information needed for other any other state permit required for the mine.
- [ORS 517.971]
12. Applicant must pay “initial fees” required by DOGAMI and other agencies - OAR 632-037-0155(1); [ORS 517.973].
13. **Within 10 days**, DOGAMI distributes copies of the consolidated application to:
- * Affected local governments (including local, city, county governments, school districts, PUDs, irrigation districts and road districts within the study area);
 - * Permitting agencies;
 - * Cooperating agencies;
 - * Federal agencies.
- OAR 632-037-0080(1); [ORS 517.975].
14. DOGAMI provides public notice of receipt of application - OAR 632-037-0080(1).
- * Notice must satisfy ORS 517.959.
 - * Notice advises of future opportunities for hearing and comments.
 - * Starts **90 day clock** – See item 17 - OAR 632-037-0080(2); [ORS 517.975]
15. Technical Review Team determines when agencies are ready to process permits - OAR 632-037-0025(1)(f) & OAR 632-037-0080(3); [ORS 517.977].
16. DOGAMI conducts public hearing and solicits comments - OAR 632-037-0080(3)
- Key issues:
- * Is the baseline and application information sufficient;
 - * Is the application complete.
- [ORS 517.977(1)]
17. Agencies determine whether application is complete - OAR 632-037-0080(4).
- * Decision must be made within **90 days** after receipt of application.
 - * DOGAMI acts in conjunction with permitting and cooperating agencies.
- [ORS 517.977(2)]
18. Notice to Proceed or Notice to provide additional information issued by DOGAMI -OAR 632-037-0080(4).
- * If Notice to Proceed is issued, agencies must respond to comments.
 - * Notice to Proceed triggers **225 day** deadline for action on application - OAR 632-037-0095(1); [ORS 517.977(2) and (3)];

19. If additional information is required, additional public comment required. OAR 632-037-0080(5).
* No additional hearings.
* Additional comment period limited to 14 calendar days.
[ORS 517.977(4)]
20. Once application is accepted it is deemed complete for processing of all permits.
* Limited exception for new information or information required for permits.
[ORS 517.978]

APPLICATION REVIEW

21. DOGAMI prepares (or has prepared) an environmental evaluation and socioeconomic impact analyses - OAR 632-037-0085 & OAR 632-037-0090.
* Contractor can be hired for this purpose.
 - Scope determined by TRT following consultation with Project Coordinating Committee
 - Environmental evaluation includes impact analysis, cumulative impact analysis and alternatives analyses* If possible, the environmental evaluation should satisfy NEPA¹ requirements.
* At the same time, DOGAMI reviews baseline data and application materials.
[ORS 517.979]
22. DOGAMI publishes notice of environmental analysis and seeks public comment.
[ORS 517.979(4)]
23. DOGAMI responds to comments on environmental analysis.
[ORS 517.979(4)]
24. DOGAMI provides draft operating permit to permitting agencies - OAR 632-037-0100.
25. Permitting agencies submit written concurrence or nonconcurrence to DOGAMI.
* Concurrence determination required **30 days** before agencies draft permit - OAR 632-037-0100(1)
26. Permitting agencies supply draft permits or permit denials to DOGAMI within 225 days after *Notice to Proceed*.
* This must be done within **225 days** from receipt of environmental analysis - OAR 632-037-0095(1)
* Unclear if period runs from date of notice or response to comments.
[ORS 517.981(1)]
27. DOGAMI reviews for conflicting conditions refers them to Technical Review Team.
[ORS 517.981(1)]
28. DOGAMI publishes notice and requests comments on all draft permits - OAR 632-037-0105(1)
* This must be scheduled within **15 days** of receipt of:
 - Draft permits from agency and
 - Completion of draft DOGAMI - MLR operating permit.Unclear if TRT conflict review tolls the 15 day period.
[ORS 517.981(2)]

¹ National Environmental Policy Act

29. DOGAMI holds (Consolidated Public Hearing) public hearing on all draft permits.
 - * Hearing must be held between **45 days and 60 days** after notice in Step 28.
OAR 632-037-0105(2); [ORS 517.981(2);]
30. Permitting agencies issue or deny the applicable permits - OAR 632-037-0105(7).
 - * Permitting decisions must be made with **45 days**.
[ORS 517.982]
31. Cooperating Agencies submit proposed permit conditions to DOGAMI - OAR 632-037-0105(3)(b) [ORS 517.982(1)]
32. DOGAMI issues operating permit - OAR 632-037-0105(9).
 - * Financial security must be posted prior to permit issuance -OAR 632-037-0135(9)
[ORS 517.982(2)]
33. DOGAMI issues public notice that final permits have been issued - OAR 632-037-0105(8).
[ORS 517.982(3)]

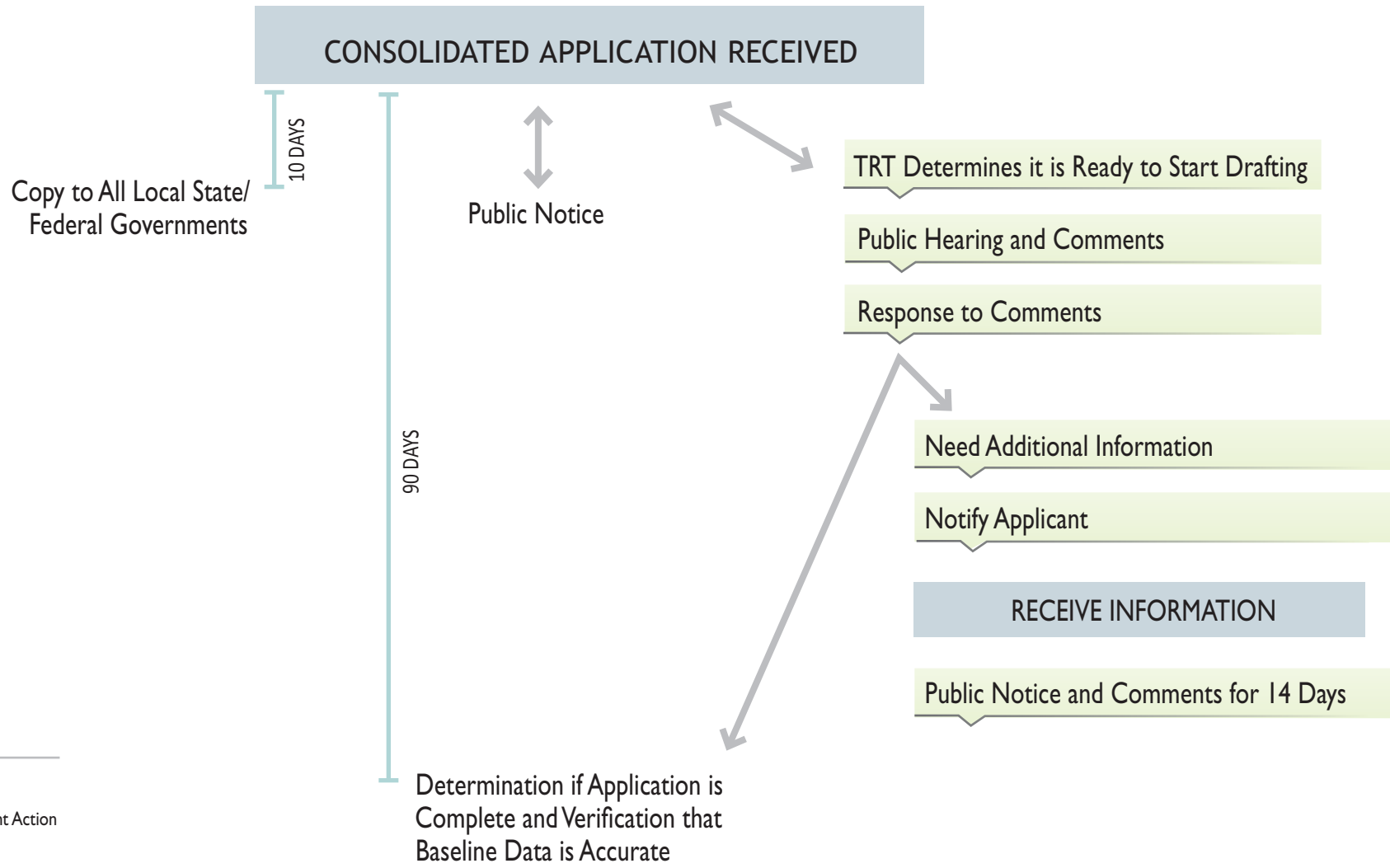
CONTESTED CASE REVIEW

34. Opportunity for contested case review of any permit OAR 632-037-0110(1).
 - * By applicant; or
 - * By any person who participated in the (Consolidated Public Hearing - CHH) public hearing held under Step 29.
 - * Request for hearing must be filed within **30 days** of notice of permit decision.
 - * Statute appears to assume that permit action notice was issued immediately.
[ORS 517.983(1)]
35. DOGAMI holds consolidated contested case hearing **between 60 and 75** days after permit granted or denied. OAR 632-037-0110(2).
 - * It is not clear that this deadline can be met, given current APA² requirements.
 - * An Administrative Law Judge would conduct the hearing.
 - * It appears that the contested case hearing would be held under ORS 183.635.
If so, the hearing would be subject to the Model Rules.
[ORS 517.983(2) and (3)]
36. Final decision on the permit or permits is issued.
37. Judicial review of the final order goes directly to the Oregon Supreme Court OAR 632-037-0115.
 - * Petition for judicial review must be filed within **60 days** of final CCH order.
 - * Provisions for expedited judicial review.
[OAR 517.983(5)]

*Oregon Department of Geology and Mineral Industries
March 21, 2012*

² Administrative Procedures Act

Baseline Data Completed



DOGAMI Issues Notice to Proceed

