

CERTIFICATE AND ORDER FOR FILING PERMANENT ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

RECEIVED JAN 15 12 35 PM '92

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on December 20, 1991 PENDING SECRETARY OF STATE

the Water Resources Commission (Department) Division)

become effective upon filing (Date)

The within matter having come before the Water Resources Commission (Department) (Division) after

procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

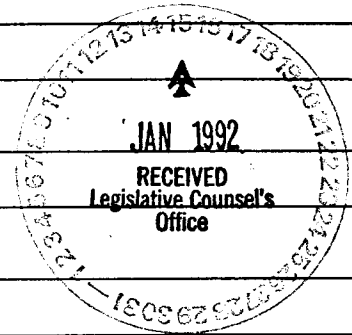
Notice of Intended Action published in Secretary of State's Bulletin: NO [] YES [X] Date Published: November 1, 1991

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

Proposed: (New Total Rules) OAR 690, Division 78

Amended: (Existing Rules)

Repealed: (Total Rules Only)



Administrative Rules of the Water Resources Commission (Department) (Division)

DATED this 15th day of January, 1992

By: William H. Young (Authorized Signer)

Title: Director

Statutory Authority: ORS Chapter 735, Oregon Laws 1991

Chapter(s) Oregon Laws 19

House Bill(s) HB 2444, 1991 Legislature; or Senate Bill(s) 19 Legislature

Subject Matter: Applications and permits for water use for chemical process mining

For Further Information Contact: Marc A. Norton (Rule Coordinator) Phone: 378-8455, Ext. 20

OREGON ADMINISTRATIVE RULES

CHAPTER 690, DIVISION 78

APPLICATIONS AND PERMITS FOR CHEMICAL PROCESS MINING

Purpose

690-78-000 (1) Chapter 735, 1991 Session Law required the Department to adopt new rules or amend existing rules for the processing of water right applications for use of water for chemical process mining. The purpose of this chapter is to describe:

- (a) The required contents of an application for a new water use permit for chemical process mining;
- (b) Department and Commission procedures for reviewing, approving, conditioning or rejecting the application; and
- (c) Procedures for the management of water use permits for chemical process mining, from approval through issuance of the confirming certificate of water right.

Definitions

690-78-010 The following definitions apply in OAR 690, Division 78 and to any permits or certificates issued under these rules:

- (1) "Chemical process mining" means a mining and processing operation for metal bearing ores that uses chemicals to dissolve metals from ore.
- (2) "Commission" means Oregon Water Resources Commission.
- (3) "Consolidated application" means the single application filed with the Department of Geology and Mineral Industries as required under section 13, Chapter 735, 1991 Oregon Laws.
- (4) "Cooperating agency" means an agency that has statutory responsibility related to a chemical process mine but that does not issue a permit for the mining process.
- (5) "Department" means Oregon Water Resources Department.
- (6) "DOGAMI" means Department of Geology and Mineral Industries.
- (7) "Environmental evaluation" means an analysis of specific impacts of the chemical process mine operation that allow affected agencies to develop permit conditions.
- (8) "Permitting agency" means an agency that has a separate permitting authority for some element of a chemical process mine.
- (9) "Project coordinating committee" means the interagency governmental committee that shares information and coordinates county, state and federal permitting requirements, facilitates the exchange of ideas, optimizes communication and avoids duplicate effort.

Adopted January 15, 1992.

- (10) "Suspension of water use permit" means that water can not be appropriated under a permit or certificate issued under these rules because the operator of the mine has not increased the bond to cover the additional reclamation costs. The suspension will be lifted when the operator posts the additional bond security.
- (11) "Technical review team" means the interagency governmental committee that determines baseline data methodology guidelines and coordinates the use of the data.

Water Use Permit Applications For Chemical Process Mining

690-78-020 (1) The State Department of Geology and Mineral Industries is responsible for coordinating the activities of affected agencies related to the consolidated application for chemical process mining.

- (2) If a water use application for chemical process mining is submitted to the Department and such use is not clearly defined as an allowable use under the applicable basin program, the Director shall review the basin program policies and objectives and determine whether the proposed use is an allowable use within one of the allowed categories of use.

If the Director is unable to make the necessary determination, or if the applicant is not satisfied with the Director's determination, the question shall be referred to the Commission for determination.

Information Required to File a Water Use Permit Application For Chemical Process Mining

690-78-030 The Department shall accept applications for filing and thereby establish a tentative date of priority to appropriate the waters of the State of Oregon for chemical process mining when the application is on forms provided or approved by the Department, is accompanied by the examination fee required by ORS 536.050, and contains or is accompanied by the following information:

- (1) Name and mailing address of the applicant(s).
- (2) Source(s) of the water from which use is proposed.
- (3) Quantity of water to be appropriated.
- (4) A map showing the location of the proposed water use, prepared by a certified water rights examiner, or such other information as may be necessary to establishing the location of the proposed point of diversion and place of use to the proper quarter-quarter section, township and range, prepared in manner described in OAR 690-78-080.
- (5) Nature of the use(s).
- (6) Name and mailing address of the legal owner of the property upon which any portion of the proposed development will occur, if other than the applicant.
- (7) An explanation of why the information listed in OAR 690-78-040 for surface and groundwater applications or in OAR 690-78-050 for reservoir applications does not apply to the proposed use.

- (8) Land use information as outlined in the Department's Land Use Planning Procedures Guide or a receipt signed and dated by a local government official acknowledging the land use information request was received by the local planning department.
- (9) Signature of the applicant(s) and if the applicant is a public agency, corporation or business, the title or authority of the signatory .

Information Required to Process a Water Use Permit Application For Chemical Process Mining

690-78-040 Prior to processing, applications to appropriate surface waters or groundwaters of the state of Oregon for chemical process mining shall include:

- (1) Proposed dates for the beginning of construction, completion of construction, and complete application of the water.
- (2) A map of the proposed place of water use prepared by a certified water right examiner in accordance with OAR 690-14-150 and 690-78-080.
- (3) A copy of the legal description of the property on which the water is to be used.
- (4) A copy of the well constructor's log, if available, for any well already constructed.
- (5) A description, including drawings if required by the Department, of the proposed means of diversion, construction, and operation of the diversion works and transmission of the appropriated waters, including provisions, if any, to measure the amount diverted, to prevent damage to aquatic life, to prevent the discharge of contaminated water to a surface stream or to prevent damage to public uses of affected surface waters.
- (6) The horizontal distance from the proposed point of groundwater appropriation to the nearest surface water source, if less than one mile, and the difference in land surface elevation between them.
- (7) Land use information as outlined in the Department's Land Use Planning Procedures Guide. If the land use information is not postmarked, or received by the Department, within 60 days of request, as evidenced by the receipt required in OAR 690-78-030 (8), the Department shall conclude that the requirement for obtaining land use information has been met and may proceed with processing the application.
- (8) A copy of written authorization or easement permitting access to land not owned by the applicant and crossed by the proposed ditch, canal or other work.
- (9) A complete water balance for the project, including but not limited to estimates of evaporation, precipitation at the site, seepage, discharge and make-up water.
- (10) Such other information as the Department or Commission deems necessary.

Information Required to Process an Application For Storing Water and Constructing a Reservoir For Chemical Process Mining

690-78-050 Information to accompany applications for chemical process mining proposing to store waters of the state of Oregon and to construct a reservoir, or multiple reservoirs on a single contiguous property on the same stream system, shall include or be accompanied by:

- (1) Proposed dates for the beginning and completion of construction of the reservoir.
- (2) A map of the proposed place of use prepared by a certified water right examiner in accordance with OAR 690-14-150 and 690-78-080.
- (3) A copy of the legal description of the property upon which the water is to be stored.
- (4) A description, including drawings if required by the Department, of the proposed means of diversion and operation of the appropriation works and transmission of the appropriated waters, including provisions, if any, to measure the amount diverted, to prevent damage to aquatic life, or to prevent damage to public uses of affected surface waters.
- (5) Plans, specifications and supporting information for the dam and impoundment area, as required in OAR 690, Division 20.
- (6) Land use information as outlined in the Department's Land Use Planning Procedures Guide. If the land use information is not postmarked, or received by the Department, within 60 days of request, as evidenced by the receipt required in OAR 690-78-030 (8), the Department shall conclude that the requirement for obtaining land use information has been met and may proceed with processing the application.
- (7) A copy of written authorization or easement permitting access to land not owned by the applicant and crossed by the proposed ditch, canal or other work.
- (8) Such other information as the Department or Commission deems necessary.

Processing Incomplete Applications For Chemical Process Mining

690-78-060 (1) For any chemical process mining applications which do not fulfill the requirements of OAR 690-78-040, and/or 690-78-050, the Department shall:

- (a) Return the application to the applicant for the curing of defects if the application form is incomplete; or,
 - (b) Send a letter to the applicant or certified water right examiner, as identified by the applicant on the application form, describing any other deficiencies or additional data being requested.
- (2) The Department's correspondence shall state a time within which the application or requested information must be returned to the Department. The time allowed shall not be less than 30 days nor more than 60 days from the date on the correspondence. Failure to return the application within the time specified shall result in the loss of the tentative priority date. Failure to return the application or the requested information may result in the rejection of the application.

- (3) Upon written request of the applicant, the Department may grant an extension of time, up to one year, for the applicant to complete the application or supply the requested information.
 - (a) The request shall state the reasons for the proposed extension.
 - (b) The request shall indicate the amount of time needed to complete the application or supply the requested information.
 - (c) The Department shall respond within 10 working days to the request indicating if the extension has/has not been granted and the date the information is due.

Process For Amending Applications For Chemical Process Mining

690-78-070 Chemical process mining applications may be replaced or amended without loss of the tentative priority date so long as the information provided in the application under OAR 690-78-030(2) and (3) is not increased and (5) does not change. If the replacement or amendment proposes additions to or increases in items listed in OAR 690-78-030(2), (3), or (5), the original proposal shall retain the original tentative priority date and the additions or increases shall be assigned a new tentative priority date, as of the date the amendment is received by the Department.

Map to Accompany an Application for Water Use Permit for Chemical Process Mining

690-78-080 Maps submitted with applications for water use in chemical process mining shall be prepared by a certified water right examiner and meet the following criteria:

- (1) The application map, which is made part of the record, shall be of permanent quality and drawn with sufficient clarity so as to be easily reproduced.
- (2) Maps shall be drawn on tracing linen, tracing vellum or mylar except that maps measuring 11" x 17" or smaller may be prepared on good-quality paper. All maps shall be drawn to a standard, even scale of not less than 4 inches = 1 mile. Small area maps may be more easily and clearly drawn to a larger scale, such as 1 inch = 400 feet.
- (3) Four permanent-quality prints of other maps, such as deed description survey maps or county assessor maps, may also be used if all the required information is clearly shown on each print. A single print of these may be used only if it is reproduced as a transparency, such as a sepia print or on mylar film.
- (4) Each copy of the map shall show clearly each of the following requirements that apply to the proposed appropriation:
 - (a) The location of each diversion point, well, or dam by reference to a recognized public land survey corner. The locations may be shown by distance and bearing or by coordinates (distance north or south and distance east or west from the corner).
 - (b) The location of all canals, ditches, pipelines, or flumes.
 - (c) The location of the place where water is to be used.
 - (d) The scale to which the map is drawn, the section number, township, and range, and a north directional symbol.

Processing An Application for Use of Water in Chemical Process Mining

690-78-090(1) The Director shall provide notice of all applications received for water use permits for chemical process mining on the Department's weekly mailing list pursuant to OAR 690-11-080(1).

(2) The Department shall not begin deliberating on whether to issue a permit until DOGAMI receives a complete consolidated application and appropriate fee. All information required under sections 030-080 of these rules shall be included as part of the consolidated application.

(3) DOGAMI is responsible for conducting a public hearing under section 15 (1) of Chapter 735, 1991, Session Laws, when the technical review team indicates that agencies are ready to begin preparing draft permits.

(a) At the conclusion of the public hearing, the Department shall assist DOGAMI in determining whether the consolidated application is complete.

(b) The Department shall begin the permitting process and preparation of draft permits when DOGAMI declares the consolidated application to be complete and issues a notice to proceed.

(c) If the applicant is not required by the Department to provide additional information as suggested at the public hearing or during the comment period on the consolidated application, the Department shall prepare a written response explaining why the additional information was not requested.

(d) The Department may continue to process the application while waiting for any required additional information.

(4) The Director shall review all applications for chemical process mining to determine if the proposed use:

(a) Complies with Water Resources Commission policies, rules and basin programs.

(b) Does not harm vested and inchoate rights.

(c) Appropriates waters likely to be available in the amount and at the times needed.

(d) Is not the subject of a request for review by a public agency or person.

(e) Is allowable under the comprehensive plans of affected local governments, and if applicable local land use approvals have been received or are pending based upon the land use information submitted pursuant to OAR 690-78-040 (7) and 690-78-050 (5), or other input from the affected jurisdiction(s).

(f) Does not raise any substantial public interest issues.

(5) If (4)(a) through (f) are satisfied, the Director shall prepare a draft permit.

(6) If one or more of (4)(a) through (f) is not satisfied, the Director shall work with the applicant and any person or agency raising the concern to determine whether the issues can be resolved through mutually agreeable conditions, provisions of the permit, or modifications of the application.

(7) If the issue cannot be resolved through negotiation, the Director shall prepare a denial document or draft a permit based on information in the file and the Department's policies, rules and basin programs.

(8) In the event of a land use dispute, as defined in OAR 690-05-015 (Definitions), the Commission or Director shall follow procedures provided in OAR 690-05-040 (Resolution of Land Use Disputes).

- (9) The Department shall provide a draft permit with conditions or a denial document to the Department of Geology and Mineral Industries within 225 days from the date the consolidated application and environmental evaluation is determined to be complete.
 - (a) The Department shall include a written explanation of any condition that is inconsistent with the environmental evaluation.
 - (b) The explanation shall set forth the findings of the agency that support the conditions set forth in the draft permit.
 - (c) The permit shall be conditioned such that additional conditions may be added when a water right certificate is issued.
- (10) The Director and Commission shall address the requirements of OAR 690-05-045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans) in evaluating and taking action on permit applications.
- (11) Based upon information received at the consolidated public hearing held by DOGAMI (Chapter 735, Section 19 (2), 1991 Session Law), the Department shall, within 45 days after the hearing or any timeline set by a federal agency (whichever is earlier), approve, deny, or modify the permit with appropriate changes or conditions.
- (12) The applicant or any person who testified at the consolidated public hearing may, within 30 days from the date the permit was issued, file with DOGAMI a written request for a contested case hearing.
 - (a) The water use permit shall be suspended until completion of the hearing process.
 - (b) Each permitting agency whose permit was appealed may appoint a hearings officer to participate in the hearing or with consent of all agencies, DOGAMI may appoint a single hearings officer.
 - (c) The appropriate hearings officer shall prepare a proposed order for each contested permit.
 - (d) A party may file with the Department written exceptions to a proposed order on a water use permit.
 - (e) If the Department determines that additional information may be included in the record, the proposed order shall be returned to the appropriate hearings officer for further consideration.
 - (f) After receiving exceptions and hearing argument on the exception, the appropriate hearings officer shall adopt as a final order the proposed order or issue a new order.
- (13) Proceedings for review of the issuance or denial of a permit is with the Supreme Court. The petition shall be filed within 60 days following the date the permit is issued or denied. Filing the petition for review shall stay the permit during judicial review for a period of up to 6 months. The Supreme Court can extend the stay.
- (14) The Department shall take final action on the permit within one year from the date of the notice to proceed as referenced in 090 (3) (b). This may be postponed with agreement of the applicant.

Modification of a permit for use of water for chemical process mining

690-78-100 The permittee, the Department, or any other permitting agency or cooperating agency may request modification of a water use permit for chemical process mining.

- (1) Chemical process mining permits may be modified without loss of the priority date so long as the information provided in the application under OAR 690-78-030(2) does not change, (3) is not increased and (5) does not change. If the replacement or amendment proposes additions to or increases in items listed in OAR 690-78-030(2), (3), or (5), the original proposal shall retain the original priority date and the additions or increases shall be assigned a new tentative priority date, as of the date the modification is received by the Department.
- (2) If the Department, permitting agency or cooperating agency determines that the permit modifications are significant under the terms of sections 2 to 24a of Chapter 735, 1991 Session Laws, the Department shall notify DOGAMI.
- (3) At DOGAMI's request, the Department shall assist DOGAMI in organizing and participating in a Project Coordinating Committee to review the proposed modifications and determine those portions of sections 2 to 24a of Chapter 735, 1991 Session Laws with which the applicant must comply.

Miscellaneous provisions

- 690-78-110 (1) If the cost of reclamation will exceed the reclamation bond posted with DOGAMI and the operator does not increase the bond, the Department shall suspend the permit until the additional bond is posted.
- (2) If DOGAMI seeks a lien for reclamation costs, the water use permit is suspended.
 - (3) All permits and certificates are subject to the provisions of OAR 690-11-090 through OAR 690-11-120 which pertain to the following:
 - (a) Well construction.
 - (b) Potential regulation of a well if it interferes with surface water.
 - (c) Cancellation of primary rights.
 - (d) Diminution of a water right.
 - (e) Supplemental rights.
 - (f) Assignment or change of ownership of permit, groundwater registration or application.
 - (g) Extension of time limits.
 - (h) Cancellation of permit.
 - (i) Proof of appropriation.
 - (j) Request for reconsideration of the contents of a proposed certificate.