



A publication of the
Oregon Independent Aggregate Association
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Oregon Independent Aggregate Association Newsletter

February 2024

On December 29, 2023, the Oregon Department of Geology and Mineral Industries (DOGAMI) placed an official solicitation for public comment, regarding proposed amendments to OAR 632-030-0056 (Appeals Process For Orders In Other Than Contested Cases). Our Past Chair Erick Staley was enlisted to provide clear, concise, and constructive feedback to DOGAMI. Erick's comments, as representation of OIAA's opinion(s) on the matter, can be found below in a letter that was dated January 31, 2023.

"The Oregon Independent Aggregate Association (OIAA) supports reasonable regulation of mining operations in the State of Oregon, and our members desire a good working relationship with the Oregon Department of Geology and Mineral Industries (DOGAMI). Currently, DOGAMI is proposing amendments to Oregon Administrative Rules (OAR) 632-030-0056 related to the appeals process available for permittees. The proposed rulemaking does not appear to be authorized or supported under current law, is not reasonable or necessary, and will have significant detrimental impacts on mine operators.

OIAA is composed mostly of small and family-run mining operations that will be most severely impacted by this rulemaking. For the following reasons, OIAA opposes the rulemaking:

- 1) ***The Proposed Rule Changes Hamper Efficient Engagement and Appeals*** – The proposed amendments to OAR 632-030-0056 are a major departure from the current appeal rules that provide informal review by the State Geologist, followed by opportunity for a contested case, for all DOGAMI preliminary orders including Suspension Orders. This two-step process is critical as it provides a prompt way to engage with the agency to clarify potential facts or circumstances and, if necessary, provide evidence to a neutral administrative law judge before a Suspension Order becomes final. Operators should not be faced with their business being completely shut down, with the only appeal option being a year or more for a lawsuit in the Oregon courts. This will be particularly unfair to operators if the Suspension Order is based on inaccurate or dated information, a historically common problem with permit file records.

- 2) ***The Proposed Amendments Change the Rules to “Guilty Until Proven Innocent”*** – Under the current DOGAMI appeal rules, an operator has the chance to provide evidence that they are not in violation of the rules before a Suspension Order becomes final. The proposed changes will presume all operators are “guilty until proven innocent” for however long it takes to get a court to make a ruling.
- 3) ***The Proposed Rule Changes Conflict with Appeal Rights under the Oregon APA*** – The proposed rule amendments are in direct conflict with the Oregon Administrative Procedures Act (APA), ORS 183.310, which guarantees opportunity for contested cases for all agency actions that suspend or revoke a right or privilege or license. A business that has an operating permit, a reclamation plan, or is conducting an activity authorized under DOGAMI rules is entitled to a contested case to challenge a Suspension Order alleging violation of such permit/plan/activity. DOGAMI cannot simply take that right away via rulemaking.
- 4) ***DOGAMI has not Provided a Valid “Need for the Rule”*** – DOGAMI asserts in its rulemaking notice that the “rule is being amended to align the rule text with Oregon Revised Statute 517.880.” However, nothing in the text of ORS 517.880 says that a Suspension Order must be an “order in other than a contested case” and the statute is silent on what kind of appeals are provided for Suspension Orders. DOGAMI’s asserted “need for the rule” does not appear to be accurate or supportable.
- 5) ***Small Operators could Experience Significant Financial Burden*** – DOGAMI’s rulemaking notice fails to address the potentially significant financial and operational burdens that mine operators could face if all Suspension Orders are automatically treated as “final orders in other than contested cases.” The “Fiscal Economic Impact” and “Cost of Compliance” analysis in the notice states that the amendments would “not result in any fiscal or economic impact” and, specifically for small businesses, that “the rule change will not result in any changes to small business costs including professional services, equipment, supplies, labor, and increased administration required to comply with the rule.” But for the approximately 315 small businesses that DOGAMI says will be subject to the rule, each recipient of a Suspension Order will be shut down for the duration of a costly court proceeding - with impacts to revenue, contracts that cannot be met, employee layoffs; along with the higher costs of hiring legal counsel, experts, and other expenses related to a formal court hearing versus the lower cost of informal discussion with the agency potentially followed by a contested case. This could be devastating to small businesses like many of the members of OIAA, and an extended shut-down could end family mines that have been passed down through several generations.

In light of the deficiencies and errors in the proposed rulemaking, and the significant impact this could have on small businesses, OIAA requests that DOGAMI withdraw the rulemaking proposal and revert to the common-sense appeal rules under the current OAR 632-030-0056.”

It was the intention of the Board to have Vaughn Balzer (DOGAMI) as a guest speaker at our first quarter meeting; however, it was delayed due to seasonal illness. Stay tuned for updates on this topic.

\$afepro 2024 June Law Institute:

Even in the current situation MSHA is still doing inspections and writing citations. Understanding the laws and regulations that govern the mining industry are vital to managing your compliance and safety programs. \$afepro covers the 1977 Act as amended by 2006 mine act in detail along with 30 CFR and program policies which give guidance to how the laws and regulations are to be enforced. The upcoming institute in Savannah June 11-13 will give you the knowledge coupled with your mining experience that allows you to improve on your current safety program and prepare for the imminent MSHA inspection. The Institute information will help you avoid bad citations and the knowledge to comply with the law and protect your people. The Safepro Institute information will add value to attendees and to their company.

Spouses are welcome if your company allows you to bring them. Shopping in Savannah is considered excellent. Malls and quaint shoppes are within easy walking distance from the hotel. Walking and riding tours of the city can be arranged during the week you are here. If you have any questions or wish to register, just contact us at safeproinc.com. We want you to have a good time as well as a good learning experience. I look forward to seeing you Savannah Ga.

Yours in Safe Production

Best Regards,
Dean Beam

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May 8th 10AM KPD Insurance Conference Room

Our next Board meeting will be held at the offices of KPD Insurance 1111 Gateway Loop Springfield, Oregon. All members are welcome.