



Oregon

Theodore R. Kulongoski, Governor

Department of Geology & Mineral Industries

Mineral Land Regulation and Reclamation

229 Broadalbin Street SW

Albany, OR 97321-2246

(541) 967-2039

FAX: (541) 967-2075

www.oregongeology.com

TO:) NOTICE OF VIOLATION AND
) COMPLIANCE ORDER (ORS 517.860)
Tidewater Contractors, Inc.)
PO Box 1956) MLRR ID. No. 08-0100
Brookings OR 97415) Section 16, Township 36S, Range 14W
) Site Name: GBIP Gravel Mine

This notice is to inform you that your surface mining operation referenced above is in violation of ORS 517.860 for not complying with the approved Operating and Reclamation Plan, and ORS 517.880 for failing to comply with the Notice of Violation issued on October 26, 2010. DOGAMI understands that mining operations have excavated material below the proposed and approved mining depth as stated in 6.a) of the DOGAMI approved Operating and Reclamation Plan. Furthermore, DOGAMI understands that you have violated #2 of the Compliance Order issued on October 26, 2010, by conducting additional excavation on the morning of October 28 after being order to stop excavating by 5:00 pm on October 27, 2010. A Suspension Order has also been issued to you, under separate cover, requiring the immediate suspension of all excavation activities at this site.

COMPLIANCE ORDER

By excavating below the approved excavation depth you have created a situation that has the potential for significant environmental harm, and that if left uncorrected could result in the taking of listed endangered species, river avulsion and/or the violation of DEQ water quality standards. In order to remedy this violation and bring the site back into compliance you are hereby ordered to:

1. Cease all excavation operations at the GBIP site immediately. No excavation of any native material including overburden and sand is allowed. Material that has already been excavated or disturbed and is currently stockpiled on site may be used in reclamation.
2. Backfill the excavation to the grade required under the DOGAMI approved Operating and Reclamation Plan with sand and gravel only. Only material similar in gradation, composition and hardness to the native material that has been excavated and removed from the site is approved for use in backfilling the site to the grade required under the DOGAMI approved Operating and Reclamation Plan. No other type of material may be used to backfill the site. Document and submit documentation of all sources of material used as back fill. Conduct and submit photo documentation (at least two date stamped photos per truck), documenting the gradation and composition of the material backfilled into the pit. Backfilling operations must be completed by November 3, 2010 unless an extension is specifically granted by DOGAMI in writing. The final graded surface must consist of sand and gravel similar in gradation, composition and hardness to the native material that has been excavated and removed from the site.
3. Comply with DOGAMI Operating Permit Condition #4 by submitting the required stadia level survey and a map stamped by an Oregon Registered Land Surveyor by November 3, 2010.
4. Complete and submit stadia level survey and map stamped by an Oregon Registered Land Surveyor of the final surface elevation of the final graded surface of all areas disturbed by recent mining operations. Submit a map including scale cross sections without vertical exaggeration, both perpendicular and parallel to the axis of the adjacent slough. The map and cross sections must be submitted to DOGAMI by November 9, 2010.
5. Complete all required Best Management Practices and/or required site modifications, to be determined during the November 3, 2010 site inspection, by 5:00 pm on November 8, 2010.
6. Cease all mining operations at the GBIP site for the late fall, winter and early spring seasons of 2010-2011 (wet season) and until such a time as an on-site consultation has been completed with both DOGAMI and ODFW personnel, and written approval for continued mining operations has been received from DOGAMI.

The completion of these actions may not prevent additional enforcement actions or any liability related to potential environmental harm. If you fail to comply with this Notice of Violation and Compliance Schedule, the department intends to take further 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 and/or criminal 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.

Issued October 29, 2010

By 
Gary W. Lynch
Assistant Director

If you have questions regarding this order, contact Vaughn Balzer at (541) 967-2082, or at vaughn.g.balzer@mlrr.oregongeology.com.

cc: Curry County Planning Department
Gold Beach Investment Properties
Ranei Nomura, DEQ
Steve Mazur, ODFW

Certified Mail and Fax

Opportunity for a Contested Case Hearing

You have the right to a hearing to contest this Order. The hearing, if requested, will be conducted according the Administrative Procedures Act, ORS chapter 183. To have a hearing, you must file a **written** Request for Review with the State Geologist **within twenty (20) days from the date this Order was served on you or mailed to you**. The State Geologist will have the opportunity to review and resolve the situation informally pursuant to OAR 632-030-0056. If the State Geologist declines review, fails to provide you with a written decision within 20 days, or if the proposed informal resolution is not acceptable to you, the matter will be referred to a hearing officer and a contested case hearing will be scheduled. Your request for review must include a **written "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 be presumed to be a waiver of such claim or defense. The Request for a Hearing and the Answer must be delivered to: **229 Broadalbin Street SW Albany OR 97321**. If the matter is not resolved informally by the State Geologist as described above, you will be notified of the date, time, and place of the hearing. You will also be given information on the procedures, rights of representation and other rights of parties relating to the conduct of the contested case hearing. The Department has designated its files on this matter as the record in this case for the purpose of proving a prima facie case upon default. If you do not file a timely Request for Hearing and Answer, the Order will become final 22 days after the date it was personally served on you or mailed to you. If the Order becomes final in this manner, you will have the right to appeal the order to the Oregon Court of Appeals under ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 82 days of the date this Order was served on you or mailed to you. If you do not file a petition for review within this time, you will lose your right to appeal.