

1 DELETIONS: STRIKETHROUGH

2 ADDITIONS: BOLD AND UNDERSCORE

3 DRAFT MLR RULES

4 DIVISION 30

5 OREGON MINED LAND RECLAMATION ACT

6 ~~Applicable to All Mineral Products Mining Except Coal and Metal Bearing Ore Operations Which Obtain Initial~~
7 ~~Permits After August 16, 1981 As Specifically Provided in Divisions 35 and 37~~

8 DIVISION 30

9 OREGON MINED LAND RECLAMATION ACT

10 ~~Applicable to All Surface Mining Except Exploration Regulated as specifically provided under OAR Chapter 632,~~
11 ~~Division 033, Coal and Metal Bearing Ore Operations Regulated under OAR Chapter 632, Division 035 (Coal and~~
12 ~~Metal-Bearing Ore Operations), and Chemical Process Mining Regulated under OAR Chapter 632, Division 037~~
13 ~~(Chemical Process Mining)~~

14 632-030-0005

15 Purpose and Application of These Rules

16 (1) These rules implement the purposes of the Mined Land Reclamation Act as declared by the Legislative Assembly:
17 established in ORS 517.760.

18 (a) ~~To provide that the usefulness, productivity, and scenic values of all lands and water resources affected by surface~~
19 ~~mining within this state receive the greatest practical degree of protection and reclamation necessary for their intended~~
20 ~~subsequent use;~~

21 (b) ~~To provide for cooperation between private and government entities in carrying out the purposes of the Mined Land~~
22 ~~Reclamation Act and reclamation of abandoned mined lands that may pose a hazard to public health, safety, or the~~
23 ~~environment.~~

24 (2) These rules prescribe procedures for obtaining an ~~Operating Permit~~ **operating permit** and for complying with the
25 other requirements of the Oregon Mined Land Reclamation Act. **These rules apply to all operating permits, including**
26 **those for non-aggregate mineral mines and chemical process mines, except where the more specific provisions of**
27 **OAR Chapter 632, Division 35 or 37 control.** These rules do not address exploration activities. The requirements for

28 exploration permits are addressed in OAR Chapter 632, Division 33. ~~An exploration permit is required for any activity~~
29 ~~that disturbs more than one cumulative acre or includes drilling to a depth of more than 50 feet.~~

30 (3) Applicants seeking ~~Operating Permits~~ **operating permits** from the Department should be aware that other state,
31 federal, and local agencies may require the applicant to obtain approval prior to operation. For example, the Department
32 of Environmental Quality may require permits for air quality and water quality. Where ~~feasible~~ **reasonable**, the
33 Department ~~shall~~ **will** coordinate with other agencies to avoid duplication on the part of applicants. An ~~Operating Permit~~
34 **operating permit** from the Department does not constitute authorization to proceed without approval of other agencies, if
35 required. It is the applicant's responsibility to obtain other necessary permits.

36 Stat. Auth.: ORS 516.090(2)(a), ORS 517.740 & ORS 517.840(1)(d)

37 Stats. Implemented: ORS 517.760

38 Hist.: GMI 5, f. 12-20-73, ef. 1-11-74; GMI 1-1980, f. 2-29-80, ef. 3-1-80; GMI 2-1982, f. & ef. 8-13-82; GMI 2-1985, f.
39 11-19-85, ef. 11-20-85; GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88; GMI 2-1997, f. & cert. ef. 10-14-97; DGMI 1-1999, f.
40 & cert. ef. 1-7-99

41 **632-030-0010**

42 **Definitions**

43 In addition to the definitions provided in ORS 517.750, the following definitions shall apply to OAR 632-030-0005
44 through 632-030-00670:

45 (1) "Affected," as used in ORS 517.750(15)(a), means the disturbance by excavation or any other surface mining of any
46 land surface during any stage of mineral production, or the covering of any land surface by surface mining refuse either by
47 intentional placement, ~~or~~ slope failure, **or deposition of eroded materials**.

48 (2) "Aggregate" means crushed or uncrushed gravel, stone, rock, or sand of a quality typically used in concrete or road
49 construction.

50 (3) "A Period of 12 Consecutive Calendar Months," as used in ORS 517.750~~(14)~~**(15)** and these rules, begins on the date
51 surface mining begins.

52 (4) ~~"Board" means the Governing Board of the Department.~~

53 ~~(5)~~**(4)** "Complete Application" means an application ~~which~~ **that** is determined to be complete by the Department ~~when the~~
54 Department has received **that includes** the appropriate fee, forms, and ~~documentation~~ **site characterization, operational**

55 and mine closure details, and other documentation that address the provisions of OAR 632-030-0025 required under
56 this rule division.

57 ~~(6)~~**(5)** "Compliance Order" means a written an order requiring compliance with an ~~Operating Permit~~ operating permit,
58 reclamation plan, the Mined Land Reclamation Act, or the rules adopted thereunder as provided in ORS 517.860 and
59 OAR 632-030-0070.

60 ~~(7)~~ "Department" means the Department of Geology and Mineral Industries.

61 ~~(8)~~**(6)** "Intensification" means a change of permitted mining activity over that approved by the local government that may
62 warrant a reconsideration of the local government land-use decision, such as a significant increase in volume of
63 production inside a mine permit boundary or the act of increasing the permit boundary. Intensification would not include
64 an increase in the bonded area to be mined, within a larger area covered in the original operating permit.

65 ~~(9)~~**(7)** "Limited Exemption area Area" means land that is exempt from reclamation requirements under ORS 517.770 and
66 OAR 632-030-0017.

67 ~~(10)~~**(8)** "Mined Land Reclamation Act" or "Act" means the statutes codified at ORS 517.702 to 517.992.

68 ~~(11)~~ "Modification" means intensification or substantial modification as defined in subsections (8) and (15) of this rule.

69 ~~(12)~~**(9)** "Permit Area" means the area covered by an ~~Operating Permit~~ operating permit issued by the Department and
70 defined by boundaries submitted on a map acceptable to the Department under OAR 632-030-0020**15**. The permit area is
71 generally a contiguous parcel and may include multiple excavation and/or processing areas. The permit area may include,
72 but is not limited to, haul roads, buffers, setbacks, reclaimed areas, and areas used for the storage or disposition of any
73 mine product or mine waste material from the surface mining operation, even though separate from the area of extraction.
74 The permit area may be redefined by a permit amendment as mining progresses.

75 ~~(13)~~ "Provisional Operating Permit," as used in ORS 517.830(2), is a preliminary permit that may be issued by the
76 Department which allows the applicant to commence operations pending final approval of a reclamation plan. A
77 provisional operating permit is subject to applicable local land use requirements.

78 ~~(14)~~ "Reclamation" means the procedures designed to minimize the disturbance from surface mining and to provide for
79 the rehabilitation of surface resources adversely affected by such mining through the use of plant cover, soil stabilization,
80 land shaping or contouring, procedures to protect the surface and subsurface water resources, and other measures
81 appropriate to the subsequent beneficial use of mined lands.

82 ~~(15)~~**(10)** "Reclamation in a ~~timely manner~~ **timely manner**" means a schedule of reclamation based on mine progression
83 and may require partial or concurrent reclamation where possible, considering the mine plan and/or available mineral
84 resources **or both. The Department may specify a timeframe within which reclamation must occur to protect**
85 **adjacent natural resources.**

86 ~~(16)~~**(11)** "Substantial Modification" includes an intensification **of,** or a significant change in, mine operation or
87 reclamation. For example, **substantial modification** includes ~~mining below ground water~~ **mine dewatering** if not
88 previously permitted as part of the original mine plan or reclamation plan approval **or mine operation activities that**
89 **render the approved reclamation plan unattainable or infeasible to implement or accomplish.**

90 ~~(17)~~**(12)** "Suspension Order" means a **written** Department order to suspend mining operations issued under ORS 517.880
91 and OAR 632-030-0040.

92 Stat. Auth.: ORS 183.341, ORS 197.180 & ORS 517.740

93 Stats. Implemented: ORS 517.750

94 Hist.: GMI 5, f. 12-20-73, ef. 1-11-74; GMI 7, f. 11-7-74, ef. 12-11-74; GMI 1-1980, f. 2-29-80, ef. 3-1-80; GMI 2-1982,
95 f. & ef. 8-13-82; GMI 2-1985, f. 11-19-85, ef. 11-20-85; GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88; GMI 1-1992, f. & cert.
96 ef. 6-17-92; GMI 2-1997, f. & cert. ef. 10-14-97; DGMI 1-1999, f. & cert. ef. 1-7-99; DGMI 1-2000, f. & cert. ef. 7-20-
97 00; DGMI 1-2001, f. & cert. ef. 8-6-01

98 **632-030-0015**

99 **Information Requirements; ~~Applicability of Laws and Rules~~ Surveys; Marking**

100 (1) Information Requirements. The Department may require any information needed to ascertain **whether surface**
101 **mining has occurred or is occurring and** the status of any **proposed or existing permit** surface mining. Any
102 production records, mineral assessments, and trade secrets submitted by a mine operator or landowner to the Department
103 ~~shall~~ **will** be **kept** confidential **as provided in ORS 517.901.**

104 ~~(2) Applicability of Laws and Rules. Permittees are subject to the provisions of statutes and rules in effect when their~~
105 ~~permits are issued. Permittees are also subject to provisions of statutes and rules enacted or adopted during the period of~~
106 ~~validity of their permits. To the extent there is a conflict, the new statutes and rules apply.~~ **Surveys and Marking.**

107 **(a) Applicants for new operating permits or amendments must survey the permit area, all excavation areas,**
108 **setbacks, and buffers, and provide a map that shows all areas of excavation, setbacks, buffers, buildings, haul**

109 roads, stockpiles, wells, ponds, and floodways. Surveys must be conducted by a professional land surveyor as
110 required by ORS 672.

111 (b) After issuance of the permit and prior to mining, the operator must mark the boundaries for all excavation
112 areas, stockpiles, setbacks, and buffers. Unless otherwise authorized by the Department in writing, the marking
113 must be accomplished by placing clearly visible markers, approved by the Department, at a distance of no more
114 than 200 feet on center. The Department may grant extensions for marking areas that are subject to a phased
115 operation plan. The Department may waive marking requirements or allow greater distances where topography
116 or other conditions make marking unreasonable. Any extension or waiver must be approved by the Department in
117 writing.

118 (c) Operators of previously permitted operations with a total disturbed area in excess of 20 acres must survey the
119 permit area and provide a map that complies with the requirements in subsection 2(a) of this rule. The survey
120 must be completed and submitted to the Department for review upon adoption of these rules and within 12 months
121 after the permit anniversary date. Upon receipt of a written request from an operator, the Department may grant
122 extensions to this requirement for good cause shown. Extensions must be authorized by the Department in writing.
123 Within three months after the Department notifies the operator that the survey is adequate, the operator must
124 mark boundaries in the permit area as provided in subsection 2(a) of this rule.

125 (d) The Department may require any operator of a previously permitted operation that is not subject to subsection
126 (2)(c) of this rule to provide a survey or marking or both if the Department determines that surveying or marking
127 is needed for effective or efficient implementation or enforcement of the permit, reclamation plan, Department
128 rules or the Act. The operator must be notified of such requirement in writing and be allowed a reasonable time to
129 accomplish the survey or marking requirements.

130 (3) The Department may require an operator to update the surveys or maps required under this rule if the
131 operation is subject to a notice of violation under ORS 517.860, a suspension order under ORS 517.880, or a
132 significant modification of the operating permit.

133 Stat. Auth.: ORS 183.341, ORS 197.180, ORS 517.740 & ORS 517.800(3) & (4)

134 Stats. Implemented: ORS 517.740, ORS 517.800 ORS & 517.850

135 Hist.: GMI 5, f. 12-20-73, ef. 1-11-74; GMI 7, f. 11-7-74, ef. 12-11-74; GMI 1-1980, f. 2-29-80, ef. 3-1-80; GMI 2-1982,

136 f. & ef. 8-13-82; GMI 2-1985, f. 11-19-85, ef. 11-20-85; GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88; GMI 4-1990, f. 9-6-
137 90, cert. ef. 10-10-90; GMI 3-1991, f. 10-21-91, cert. ef. 11-1-91; GMI 1-1992, f. & cert. ef. 6-17-92; GMI 1-1993, f. 10-
138 29-93, cert. ef. 11-4-93; GMI 2-1997, f. & cert. ef. 10-14-97; DGMI 1-1999, f. & cert. ef. 1-7-99; DGMI 1-2000, f. &
139 cert. ef. 7-20-00

140 **632-030-0016**

141 **Total Exemptions**

142 (1) For the purposes of this rule: Activities that would be included in the definition of surface mining in
143 ORS 517.750(15) except for the fact that they are under the thresholds for excavation or disturbance in
144 ORS 517.750(15)(a) and 517.755 or excluded under ORS 517.750(15)(b) are exempt from regulation under this rule
145 division.

146 (a) "Access Road," as used in ORS 517.750 (14), means a road constructed or improved to enable a user of a surface
147 mining operation to reach the site.

148 (b) "Total Exemption" means surface mining that is exempt from the requirements of the Mined Land Reclamation Act
149 and OAR Chapter 632, Division 030. The Department may require information to be provided under this rule to establish
150 a total exemption.

151 (c) "Other On Site Construction," as used in ORS 517.750 (14)(b), means the moving, adding, or shifting of sand, gravel,
152 clay, rock, or other similar materials within a construction site such as a road, a river dam and its pool, or real estate
153 development.

154 (2) The following excavation or grading activities are exempt from these rules under ORS 517.750(14) and do not require
155 the payment of fees, posting of bond, or submittal of reclamation plans:

156 (a) Excavation of sand, gravel, clay, rock, or other similar material conducted by a landowner or lessee for the primary
157 purpose of construction, reconstruction, or maintenance of roads on a contiguous parcel.

158 (b) Excavation or grading operations conducted in the process of farming and cemetery operations. The excavation and
159 grading must be for the benefit of farming or cemetery operations on the same site.

160 (c) Operations producing less than 5,000 cubic yards of material per year and disturbing less than one acre of land per
161 year. For mining operations begun after July 1, 1975, this exemption terminates as soon as mining operations affect more
162 than five acres of land. At such time as the exemption terminates, all areas and operations at the site are subject to the Act

163 and the rules adopted thereunder. When multiple mining areas are located within one parcel or contiguous parcels, the
164 yards produced and disturbed acreage shall be calculated based on the total of all sites within the contiguous parcel or
165 parcels.

166 **(a) The Department may require information to be provided by any person conducting mining activities to**
167 **establish a total exemption.**

168 **(b) For operations producing less than 5,000 cubic yards of material per year and disturbing less than one acre of**
169 **land per year that lose their total exemption under ORS 517.755 when mining operations affect more than five**
170 **acres of land, all areas and operations at the site are subject to the Act and the rules adopted thereunder. When**
171 **multiple mining areas are located within one parcel or contiguous parcels, the yards produced and disturbed**
172 **acreage shall be calculated based on the total of all sites within the parcel or contiguous parcels.**

173 **(c) Excavation or grading operations reasonably necessary for farming include only the term “farming” as used in**
174 **ORS 517.750(15)(b)(B) and means “farm use” as defined in ORS 215.203 but does not include other uses**
175 **permitted in exclusive farm-use zones under ORS 215.213 or 215.283. Farm excavation or grading operations are**
176 **reasonably necessary only if it substantially contributes to the profitability of the farm use and other alternatives to**
177 **accomplish the same objective are significantly more expensive or otherwise impractical. Farming does not**
178 **include excavation for ponds intended for recreational or aesthetics purposes or for fish or wildlife habitat.**

179 **(d) On-site construction operations. The Department may request documentation from the owner or operator establishing**
180 **that removal of the material is an essential and integral part of the construction work. This documentation shall include**
181 **evidence that the construction project has been approved by the appropriate land-use authority and a construction time**
182 **schedule has been filed. An Operating Permit must be obtained before removal of material offsite if the amount of**
183 **material exceeds 5,000 cubic yards and either:**

184 **(i) The removal of the material is not an essential and integral part of the construction project; or**

185 **(ii) The planned development will not occur after completion of mining and reclamation is needed to stabilize land,**
186 **control weeds, or to provide interim habitat values.**

187 **(e) On-site road construction. Excavation operations under this exemption must be conducted within a road right-of-way**
188 **or other easement and be for the primary purpose of road construction, reconstruction, or maintenance.**

189 **(f) Non-surface impacts of underground mining.**

190 ~~(3)~~**(2)** An operator may apply for a total exemption certificate, if desired. ~~Application shall~~ **The application must** be
191 made to the Department using the established form. The Department may require the operator claiming this exemption to
192 provide data to establish the validity of the exemption. The data required may include, but is not limited to:

- 193 (a) The name of the operator;
- 194 (b) Location of the ~~surface mining~~ **excavation**;
- 195 (c) Size of the site;
- 196 (d) Date of commencement of the ~~surface mining~~ **excavation**;
- 197 (e) A summary of the previous ~~12~~ 36 months' ~~surface mining~~ **activities** and an estimate of the activity for the succeeding
198 ~~12~~ 36 months; and
- 199 (f) An explanation of why the activity is exempt.

200 Stat. Auth.: ORS Ch. 517

201 Stats. Implemented: ORS 517.750

202 Hist.: GMI 5, f. 12-20-73, ef. 1-11-74; GMI 7, f. 11-7-74, ef. 12-11-74; GMI 1-1980, f. 2-29-80, ef. 3-1-80; GMI 2-1982,
203 f. & ef. 8-13-82; GMI 2-1985, f. 11-19-85, ef. 11-20-85; GMI 2-1986, f. 9-19-86, ef. 9-22-86; GMI 1-1988, f. 3-30-88,
204 cert. ef. 3-11-88; GMI 2-1997, f. & cert. ef. 10-14-97; DGMI 1-1999, f. & cert. ef. 1-7-99; DGMI 1-2000, f. & cert. ef. 7-
205 20-00

206 **632-030-0017**

207 **Limited Exemption**

208 (1) For the purposes of this rule:

209 (a) "Expansion" means lateral expansion consequential to surface mining into land surfaces previously not affected by
210 surface mining.

211 (b) "Lands within the surfaces and contours of surface mines in existence on July 1, 1972," means land affected by surface
212 mining before July 1, 1972, ~~which has~~ **that have** not been adequately reclaimed.

213 (2) The following mining operations are exempt from ~~the~~ reclamation except as provided in ORS 517.775:

214 (a) Lands within the surfaces and contours of surface mines in existence on July 1, 1972, or vertical extensions of those
215 surfaces and contours, provided ~~that~~ the Department ~~issues~~ **issued** a certificate of exemption to the mining operation on or
216 before October 31, 2000; and

217 (b) Lands within the surfaces and contours of surface mining operations that are owned or operated by a person ~~that~~ **who**,
218 on July 1, 1972, was a party to a surface mining contract that was valid on January 1, 1971, provided ~~that~~ the Department
219 issued a certificate of exemption to the mining operation on or before September 20, 1985.

220 ~~(3) A certificate of exemption terminates if the landowner or operator does not renew the certificate annually.~~

221 ~~(4) To apply for a Limited Exemption Certificate, an applicant must:~~

222 ~~(a) Submit the appropriate application form and fee;~~

223 ~~(b) Document with appropriate aerial photographs or other acceptable information that the site qualifies for the limited~~
224 ~~exemption; and~~

225 ~~(c) Demonstrate that the site has not been reclaimed or naturally revegetated. The applicant must demonstrate that the site~~
226 ~~has not stabilized to the point where it is at least revegetated to 50 percent of estimated original cover prior to mining,~~
227 ~~when compared to adjacent lands, or has not reverted to any beneficial use such as wildlife habitat or grazing.~~

228 ~~(5) The Department will review each request and make a determination based on the documentation provided, and on site~~
229 ~~inspection, if necessary. If the Department denies the application for a Limited Exemption Certificate, it will notify the~~
230 ~~applicant in writing specifying the reasons for the denial and give the applicant an opportunity to supply additional~~
231 ~~documentation to support the application.~~

232 ~~(6)~~**(3)** The holder of a Limited Exemption Certificate **limited exemption certificate** shall renew the limited exemption
233 annually by submitting the renewal form and fee to the Department before the certificate expires. A certificate of
234 exemption terminates if the landowner or operator does not renew the certificate annually. ~~As a courtesy, the Department~~
235 ~~may notify the holder that the certificate is due for renewal by mailing the necessary renewal forms and fee schedule at~~
236 ~~least 45 days before the renewal date. The Department may request information to determine continued eligibility.~~

237 ~~(7)~~**(4)** No surface mining is permitted outside of the Limited Exemption **limited exemption** area without an ~~Operating~~
238 ~~Permit~~ **operating permit** unless the expansion qualifies for a total exemption from regulation under ORS 517.750~~(14)~~**(15)**
239 and OAR 632-030-0016. Expansion of a site **operating under a limited exemption certificate** before the ~~Operating~~
240 ~~Permit~~ **operating permit** is issued constitutes surface mining without a permit and is prohibited by ORS 517.790. **The**
241 **operating permit issued for an expanded site applies only to the expansion area; the area within the limited**
242 **exemption boundary retains its limited exemption status so long as the limited exemption certificate is properly**
243 **maintained.**

244 ~~(8)(5)~~ At least one year prior to completion of mining at a site For sites operating under a ~~Limited Exemption Certificate~~
245 limited exemption certificate, the landowner or operator must submit a closure plan to the Department for approval
246 prior to the exemption renewal date in the year 2010, or at least one year prior to the completion of mining,
247 whichever comes first. The closure plan must be signed by the landowner and by the operator if the operator is different
248 ~~than~~ from the landowner. For purposes of this section, "landowner" means the owner of the surface of the land or the
249 owner of the mineral estate if the mineral estate owner is different ~~than~~ from the surface land owner. The closure plan
250 must reasonably control erosion and must reasonably ensure that there will be no off-site impacts to surface or ground
251 water from the mined land. The closure plan must include, but is not limited to:

- 252 (a) Name and address of the landowner;
- 253 (b) Name and address of the mine operator and holder of the ~~Limited Exemption Certificate~~ limited exemption
254 certificate if different ~~than~~ from the landowner;
- 255 (c) The commodity or commodities mined at the site;
- 256 (d) A map or maps showing the boundary of the area subject to the limited exemption, existing topography, springs,
257 surface waters, wetlands, and final slope configuration, and also showing whether final slopes are cut slopes or fill slopes
258 and how any drainage will be managed;
- 259 (e) Detailed stabilization and sediment control measures;
- 260 (f) Detailed revegetation measures including a description of soils, seed bed preparation, mulching, fertilization, plant
261 species, seeding or planting rates, and seeding or planting dates;
- 262 (g) Design plans for any sediment control structures to be constructed or installed on the site; and
- 263 (h) A description of all stockpiles, petroleum products and any toxic or hazardous substances or materials stored on the
264 site and a description of how these stockpiles, products, substances, or materials will be managed or removed from the
265 site.
- 266 (i) Removal of refuse, structures, foundations, abandoned equipment, or metal debris.

267 (6) If the limited exemption is terminated, all mining allowed under the exemption must cease immediately and the
268 landowner or operator must:

- 269 (a) Immediately begin implementation of the closure plan required under section (8) of this rule; or

270 **(b) If no closure plan has been submitted to the Department, submit a closure plan to the Department within 30**
271 **days and begin implementing the closure plan within 30 days after approval by the Department; or**
272 **(c) Within 30 days, submit an application to the Department for a new operating permit (for sites previously**
273 **operating only under a limited exemption certificate) or an amendment to the existing operating permit (for sites**
274 **operating under both a limited exemption certificate and an operating permit).**

275 Stat. Auth.: ORS 517

276 Stats. Implemented: ORS 517.770 & ORS 517.775

277 Hist.: GMI 5, f. 12-20-73, ef. 1-11-74; GMI 7, f. 11-7-74, ef. 12-11-74; GMI 1-1980, f. 2-29-80, ef. 3-1-80; GMI 2-1982,
278 f. & ef. 8-13-82; GMI 2-1985, f. 11-19-85, ef. 11-20-85; GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88; GMI 2-1997, f. & cert.
279 ef. 10-14-97; DGMI 1-1999, f. & cert. ef. 1-7-99; DGMI 1-2000, f. & cert. ef. 7-20-00; DGMI 2-2003, f. & cert. ef. 8-22-

280 03

281 **632-030-0018**

282 **County Authority; City or County Operations**

283 (1) Columbia County is the only county operating its own mined land reclamation program under ORS 517.780(1) and
284 mining operations in Columbia County are exempt from regulation under these rules.

285 (2)(a) When any city or county elects to exempt from these rules any city or county owned or operated sites according to
286 the provisions of ORS 517.780(~~32~~), it ~~shall~~ **must** adopt the required ordinance for all city and county operated sites and
287 notify the Department of its action. A copy of the ordinance ~~shall~~ **must** be provided with the notification. The city or
288 county ordinance must meet the requirements of ORS 517.780(~~32~~);

289 (b) Each city or county ~~which~~ **that** operates under its own ordinance under ORS 517.780(~~32~~) ~~shall~~ **must** annually supply
290 the Department with a list of sites covered by the exemption. The information provided for each site on the list ~~shall~~ **must**
291 include the following: legal description, land ownership, acreage affected, ~~at each site and~~ acres reclaimed, ~~at each site~~
292 and status of each site (active, inactive or reclaimed);

293 (c) Any city or county exercising an exemption under ORS 517.780(~~32~~) ~~shall~~ **must** designate a surface mining
294 administrator and notify the Department of the name of the administrator. The portion of each property mined by the city
295 or county under this exemption must be under the exclusive control of the city or county. Reclamation of each site must
296 be completed before the city or county relinquishes control of the site;

297 (d) In order to maintain an exemption under ORS 517.780(3), a city or county ~~shall~~ **may** not produce more than 5,000
298 cubic yards of material per year for a purpose other than city or county-owned projects or for on-site use by the
299 landowner.

300 **(e) A city or county surface mining operations operating under this exemption may not disturb more than one acre**
301 **of land unless the city or county has in place an ordinance that ensures an enforceable following reclamation plan**
302 **is in place that ensures that natural resources will be protected during mining and reclamation and that all**
303 **disturbed lands will be reclaimed in a timely manner returned and suitable for the beneficial use or uses allowed**
304 **under the applicable comprehensive plan and land-use regulations.**

305 Stat. Auth.: ORS 516.090(2)(a), ORS 517.740 & ORS 517.840(1)(d)

306 Stats. Implemented: ORS 517.780

307 Hist.:DGMI 1-1999, f. & cert. ef. 1-7-99

308 **632-030-0019**

309 **Surface Mining on Federal Lands**

310 **To the maximum extent permitted by law, surface** Surface mining conducted on federal lands is subject to the Act and
311 these rules. The Department shall coordinate with agencies of the federal government to minimize conflict or duplication
312 in operating, reclamation, and security requirements. The Department may enter into formal agreements with federal
313 agencies to establish the means by which these rules are carried out.

314 Stat. Auth.: ORS 516.090(2)(a), ORS 517.740 & ORS 517.840(1)(d)

315 Stats. Implemented: ORS 517.760, ORS 517.840

316 Hist.:DGMI 1-1999, f. & cert. ef. 1-7-99

317 **632-030-0020**

318 **Procedures for Applying for an Operating Permit**

319 (1) The applicant shall submit the required application forms and such additional information as may be required by the
320 Department for each separate surface mining operation.

321 (2) The applicant shall submit a reclamation plan as defined in OAR 632-030-0025. The reclamation plan ~~shall~~ **must**
322 include a map acceptable to the Department ~~which delineates the proposed permit area~~ **as provided in OAR 632-030-**
323 **0015 and 632-30-025(2).**

324 (3) The application ~~shall~~ **must** be accompanied by the application fee.

325 (4) The applicant ~~shall~~ **must** submit a performance bond or alternative form of security acceptable to the Department for

326 the purpose of assuring performance of the reclamation plan, other requirements of ORS 517.750 to 517.900, all rules

327 thereunder, and permit conditions. **A performance bond or alternative form of security must be in effect and**

328 **approved by the Department under OAR 632-030-0021** ~~All disturbed land must be bonded prior to **any** disturbance~~

329 ~~except as provided in OAR 632-030-0021(9)~~ **of the land.**

330 **(5) If the applicant fails to meet the requirements of sections (1) through (4) of this rule within 12 months after the**

331 **application is submitted, the application is deemed to have been withdrawn. The applicant may resubmit an**

332 **application without prejudice, but the new application must be accompanied by a new application fee.**

333 Stat. Auth.: ORS Ch. 517

334 Stats. Implemented: ORS 517.790 & 517.810

335 Hist.: GMI 5, f. 12-20-73, ef. 1-11-74; GMI 7, f. 11-7-74, ef. 12-11-74; GMI 1-1980, f. 2-29-80, ef. 3-1-80; GMI 2-1982,

336 f. & ef. 8-13-82; GMI 2-1985, f. 11-19-85, ef. 11-20-85; GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88; GMI 2-1997, f. & cert.

337 ef. 10-14-97; DGMI 1-2000, f. & cert. ef. 7-20-00

338 **632-030-0021**

339 **Performance Bonds and Alternative Forms of Security**

340 (1) **The Department will not issue or renew an operating permit** ~~No Operating Permit shall be issued or renewed until~~

341 a **performance** bond or alternative form of security for a **the** surface mining site is **effective and has been approved**

342 ~~accepted~~ by the Department. The bond or ~~other~~ **alternative form of** security must be maintained until the Department

343 determines that the surface mining site has been reclaimed in accordance with the approved reclamation plan.

344 (2) The Department may accept performance bonds, security deposit assignments, letters of credit, or other security as

345 authorized by ORS 517.810. Performance bonds must be provided by surety companies authorized to do business in

346 Oregon. The security document submitted must be in a form acceptable to the Department.

347 (3) A security **performance bond** submitted for multiple surface mining sites under the provisions of ORS 517.810(4)

348 must be accompanied by a list showing the permits, **by the Department's ID number,** covered by the security **bond,** the

349 amount of the bond applicable to each surface mining site, and the number of acres bonded at each site. The Department

350 may accept a multiple-site bond for sites operated by all members of an established trade association.

351 (4) The Department shall determine the amount of the bond or ~~other~~ **alternative form of** security required by estimating
352 the cost of reclamation if the Department were to perform the reclamation. The Department may seek the advice of other
353 agencies to determine the appropriate security amounts.

354 (5) **When determining the amount of security, the** The Department may consider ~~when determining the amount of~~
355 ~~security:~~

356 (a) The size and geometry of the area proposed for disturbance and the projected disturbance over the next 12 months;

357 (b) Supervision;

358 (c) Mobilization;

359 (d) Costs of equipment;

360 (e) Equipment capability;

361 (f) Costs of labor;

362 (g) ~~Removal or disposition of debris, junk, equipment, structures, foundations, and unwanted chemicals~~ **Removal of**

363 **refuse, structures, foundations, abandoned equipment, or metal debris;**

364 (h) Reduction of hazards such as in-water slopes, highwalls, landslides, or other mass failure;

365 (i) Disposition of oversize, rejects, scalplings, **and** overburden;

366 (j) Backfilling, contouring, **decompaction**, or regrading and topsoil replacement;

367 (k) Draining, establishment of drainage, and erosion control;

368 (l) Soil tests;

369 (m) Seedbed preparation, seeding, mulching, fertilizing, netting, tackifiers, or other stabilizing agents;

370 (n) Tree and shrub planting;

371 (o) Fencing;

372 (p) Liability insurance;

373 **(q) Cost of engineered structures;**

374 **(r) Any other relevant information.**

375 (6) Cost estimate information shall be derived from sources such as:

376 (a) Comparable costs from similar projects;

377 (b) Catalog prices;

378 (c) Guides and cost estimates obtained from appropriate government and private sources;

379 (d) Operator estimates;

380 (e) Equipment handbooks.

381 (7) Seed mixes, fertilizer rates, and other requirements will be derived from ~~departmental~~ **Departmental** experience

382 combined with advice from such sources as the Oregon Department of Agriculture, Natural Resources Conservation

383 Service, Oregon State University Extension Service, the Department of Transportation, the Bureau of Land Management,

384 US Forest Service, and private sector experts.

385 (8) The applicant may submit reclamation cost estimates for consideration by the Department.

386 (9) The security amount ~~shall~~ **will** be based on the total cost of reclamation. However, the Department may allow for the

387 amount of the ~~bond~~ **security** to be calculated and adjusted based upon the total area expected to be in a disturbed

388 condition in the following year as a result of the surface mining or exploration if:

389 (a) ~~The~~ **the** Department determines that it can calculate the lesser amount with reasonable accuracy, and

390 (b) ~~The applicant agrees in writing to increase the security amount as directed by the Department based upon new~~

391 ~~information or changes in the areas disturbed by surface mining.~~

392 (10) **When determining the appropriate amount of security, the Department will** ~~Security amounts shall not include~~

393 ~~construction of structures or comparable features such as "housing developments" or "industrial construction" even if~~

394 ~~included~~ **that are included** in a reclamation plan **as an element of the secondary beneficial use.**

395 (11) (a) ~~The Department may reduce the bond or alternative form of security by an amount not to exceed 50 percent for a~~

396 ~~surface mine aggregate site that meets the following conditions:~~

397 (i) ~~The permittee has had a valid Operating Permit at the site for ten years; and~~

398 (ii) ~~The permittee can demonstrate substantial financial ability to perform the reclamation in the approved reclamation~~

399 ~~plan.~~

400 (b) ~~The Department will consider the compliance history of the permittee in any bond reduction determination.~~

401 ~~(12)~~**(11)** A decision of the Department regarding the estimated cost of reclamation or the type of acceptable security may

402 be appealed to the Governing Board as provided in ORS ~~483.310 to 483.550~~ **517.890**.

403 Stat. Auth.: ORS 517

404 Stats. Implemented: ORS 517.760

405 Hist.: DGMI 1-1999, f. & cert. ef. 1-7-99; DGMI 1-2000, f. & cert. ef. 7-20-00

406 **632-030-0022**

407 **Fees**

408 (1) **The fees applicable to this rule division are the maximum fees allowed by ORS 517.800 except as provided**
409 **below.** Application Fee:

410 The fee for a new application for an operating permit is \$1,200. If a permit is not issued within one year, due to the
411 applicant's failure to provide all requested information in a timely manner or the need for extraordinary department
412 review, the applicant must pay the annual fee specified in subsection (2)(a) or resubmit the application and pay a new
413 application fee.

414 (2) Annual Fees: **are due on the anniversary date of the issuance of the operating permit unless a different renewal**
415 **date is established by the Department. The Department will provide the permittee with 180 days advance notice**
416 **before establishing a new renewal date.**

417 (a) ~~The annual fee for an operating permit is a base fee of \$635 plus \$.0075 per ton of aggregate or mineral ore extracted~~
418 ~~during the previous 12-month period.~~

419 (b) ~~Operations that have been regraded, stabilized, and acceptably seeded prior to the beginning of the annual permit~~
420 ~~period but where reclamation is not complete because the vegetation is not satisfactorily established may pay a fee of~~
421 ~~\$200 in place of the annual fee specified in subsections (2)(a) or (b) above.~~

422 (c) ~~The department~~ **Department will** in its discretion may prorate annual fees at the permittee's request to adjust **if** the
423 anniversary **a new renewal date is established.**

424 (d) ~~Each application for an Operating Permit or Limited Exemption Certificate shall be accompanied by the established~~
425 ~~fee.~~

426 (e) **(3) A permittee or holder of a limited exemption certificate** ~~Each permit and certificate shall~~ **must** be renewed
427 renew the **operating permit or limited exemption certificate** annually, on or before the last day of the month shown on
428 the permit **or certificate** as the renewal month. The annual fee shall **must** be paid and the annual report form returned
429 prior to renewal. As a courtesy, the Department may notify the permittee with a renewal notice at least 45 days prior to

430 ~~the renewal date. The A~~ permittee must pay all delinquent fees owed to this Department prior to renewal of the certificate
431 ~~or permit;~~

432 ~~(3)(4) The Department will impose a late fee equal to five percent of the amount of any annual fee that is more than~~
433 ~~60 days past due. Amendment Fee: The Department may assess an additional fee not to exceed \$625 for staff time, legal~~
434 ~~fees, and other administrative costs relating to a request for significant revisions to an operating permit or reclamation~~
435 ~~plan.~~

436 ~~(4)(5) The fees established by this rule also apply to emergency permits issued pursuant to ORS 517. 832 and~~
437 ~~temporary operating permits issued under ORS 517.834. Refunds: The State Geologist may refund a fee if the~~
438 ~~underlying application or request is withdrawn and neither significant staff time has been spent nor expenses have been~~
439 ~~incurred by the Department.~~

440 ~~(6) The Department may waive the fee for a minor amendment in those situations where significant administrative~~
441 ~~resources are not needed to process the amendment.~~

442 ~~(5) Local Land Use Decisions: If, at the request of an applicant, the department responds to requests for information~~
443 ~~required by a local government in making a land use planning decision on behalf of the applicant for a specific site, the~~
444 ~~State Geologist may require the applicant to pay the department an additional fee for staff time and related costs. The~~
445 ~~department shall will notify the applicant in advance of the estimated costs and the amount of hours necessary to provide~~
446 ~~the information. The actual amount assessed shall not exceed the estimate provided by the department.~~

447 ~~(6) Extraordinary Expenses: If an application for a new permit or amendment requires extraordinary department resources~~
448 ~~because of concerns about slope stability or proximity to waters of the state or other environmentally sensitive areas, the~~
449 ~~applicant shall pay to the department an additional fee in an amount determined by the State Geologist to be adequate to~~
450 ~~cover the additional costs for staff and other related expenses. The State Geologist shall consult with the applicant when~~
451 ~~determining the amount of the fee.~~

452 ~~(7) Special Inspection Fees: An additional fee not to exceed \$200 may be assessed for department investigations under the~~
453 ~~following situations:~~

454 ~~(a) Where surface mining is conducted without a valid Operating Permit required under ORS 517.790;~~

455 ~~(b) Where a surface mining operation has not been reclaimed in a timely manner;~~

456 ~~(c) Where surface mining operations are conducted outside the area authorized in the Operating Permit.~~

457 ~~(8) The fees assessed in subsections (3), (5), (6), and (7) shall be in addition to any fee assessed under subsections (1) and~~
458 ~~(2) of this rule.~~

459 ~~(9) The completed annual report and renewal fee required under ORS 517.775 and OAR 632-032-0022(2)(f) for any area~~
460 ~~operating under a Limited Exemption Certificate must be received by the Department within 30 days of the anniversary~~
461 ~~date of the Certificate. Failure to file the report or pay the fee within this 30 day period will result in the immediate~~
462 ~~termination of the limited exemption under ORS 517.770(2) and the revocation of the Certification. If the limited~~
463 ~~exemption is terminated; all mining allowed under the exemption must cease immediately and the landowner or operator~~
464 ~~must:~~

- 465 ~~(a) Immediately begin implementation of the closure plan required under OAR 632-0300-0017(8);~~
466 ~~(b) Or if no closure plan has been submitted to the Department, submit a closure plan to the Department within 30 days~~
467 ~~and begin implementing the closure plan within 30 days after approval by the Department; or~~
468 ~~(c) Within 30 days, submit an application to the Department for a new Operating Permit (for sites previously operating~~
469 ~~only under a Limited Exemption Certificate) or an amendment to the existing Operating Permit (for sites operating under~~
470 ~~both a Certificate and Operating Permit)~~

471 Stat. Auth.: ORS 517

472 Stats. Implemented: ORS 517.800

473 Hist.: GMI 2-1997, f. & cert. ef. 10-14-97; DGMI 1-1999, f. & cert. ef. 1-7-99; DGMI 1-2000, f. & cert. ef. 7-20-00;

474 DGMI 2-2003, f. & cert. ef. 8-22-03; DGMI 3-2003, f. 8-29-03, cert. ef. 9-1-03; DGMI 1-2005(Temp), f. & cert. ef. 8-3-

475 05 thru 1-30-06; DGMI 1-2006, f. & cert. ef. 1-10-06

476 **632-030-0024**

477 **Inspections**

478 (1) As provided by ORS 517.850, the Department may, after reasonable notice, inspect any surface mining site to
479 determine status or compliance with the Act, the rules adopted thereunder, or any permit conditions. The Department
480 may ~~will~~ report the results of these inspections to the permittee in writing.

481 (2) Initial inspections shall be conducted by the Department on all new sites that have not been previously inspected by
482 the Department. On all other sites, routine inspections may be conducted by the Department. Reasons for the inspections
483 include, but are not limited to:

- 484 (a) Determining existing environmental conditions;
- 485 (b) Reviewing the proposed mine operation;
- 486 (c) Reviewing the proposed reclamation plan;
- 487 (d) Collecting data to calculate the amount of the reclamation bond.

488 (3) Annual and compliance inspections may be conducted by the Department. Reasons for the inspection include, but are
489 not limited, to:

- 490 (a) Reviewing operating permit compliance;
- 491 (b) Investigating ~~public~~ complaints;
- 492 (c) Evaluating the site adequacy of the amount of the bond or alternative form of security bond.

493 Stat. Auth.: ORS 516.090 (2) (a), ORS 517.740 & ORS 517.840(1)(d)

494 Stats. Implemented: ORS 517.830, ORS 517.840 & ORS 517.850

495 Hist.: DGMI 1-1999, f. & cert. ef. 1-7-99

496 **632-030-0025**

497 **Requirements for a an Operating Permit and Reclamation Plan**

498 (1) An applicant for an ~~Operating Permit~~ operating permit shall submit a ~~Reclamation Plan~~ reclamation plan to the
499 Department as required in OAR 632-030-0020. The information that the Department may require in a reclamation plan
500 includes, but is not limited to, the following:

- 501 (a) The name(s) and address(es) of all owners of the surface estate and mineral estate;
- 502 (b) The legal structure (e.g., corporation, partnership, individual) of the applicant;
- 503 (c) The name and mailing address for correspondence;
- 504 (d) The name and mailing address of the applicant's resident agent;
- 505 (e) A description of the present land use and planned beneficial use of the site following mining. The applicant must
506 demonstrate that the planned beneficial use is compatible with the affected local government's acknowledged
507 comprehensive plan and land-use regulations;
- 508 (f) The identification and characterization of the soils present, including any areas that have wetlands and hydric soils;
- 509 (g) The identification of any fish or wildlife species that may be present that may be listed by either federal or state as
510 sensitive, threatened, or endangered or otherwise may require buffers for protection;

- 511 (h) A general list of equipment to be used and a description of mining methods including interim slope angles during the
512 life of the mine;
- 513 (i) Provisions for the backfilling, recontouring, **decompaction**, topsoil replacement, seedbed preparation, mulching,
514 fertilizing, selection of plant species, seeding or planting rates, and schedules;
- 515 (j) The characterization of the ground and surface water based on available wells, drill logs, location of springs, and
516 surface drainages within one mile of the proposed operation may be required. The Department may also require the
517 collection and submission of additional hydrologic data to evaluate the mine development and reclamation plan;
- 518 (k) Stream hydrology and other hydrologic information for floodplain sites;
- 519 (l) **Ground water characterization and/or measures** Measures to prevent significant adverse impacts to surface or
520 ground water quantity or quality;
- 521 (m) Other baseline information necessary to evaluate the mine development and reclamation plan;
- 522 (n) A list and procedures for the handling and use of any materials toxic to plant and/or animal life, acid forming materials
523 or radioactive material which will be at the mine site. The Department may also require an analysis of process water,
524 reagents, wastes, or other materials involved in the mining and processing operations;
- 525 (o) Procedures for the salvage, storage, and replacement of topsoil or acceptable substitute. The Department may require
526 the applicant to submit a chemical and physical analysis of the seedbed and subsoil;
- 527 (p) Procedures for the stable storage of overburden. This may include a description of the pre-mine topography, method
528 for placement of overburden, height of lifts, compaction standards, final height, and slope configurations, and/or a
529 ~~stability evaluation~~ **geotechnical design and construction plans for a storage pile or fill proposed as a final**
530 **reclamation feature**;
- 531 (q) Provisions for adequate setbacks to protect adjacent property and public safety;
- 532 (r) Provisions to protect and maintain access to utilities when a utility company right-of-way exists.
- 533 ~~(s) An estimate of the maximum amount of surface disturbed by stripping vegetation within each five-year period for each~~
534 ~~storm water outfall, including an estimate of the percentage of stripped area that will be impervious to water absorption.~~
535 ~~For sites with storm water discharges, these estimates must be updated every five years;~~

536 ~~(s)~~ Visual screening of the proposed operation may be required when the operating area is visible from a public road or
537 residential area. Techniques for visual screening include, but are not limited to, vegetation, fencing, berms, setbacks, or
538 buffer strips along the property boundary;

539 ~~(t)~~ Procedures for the **surface water, stream, and floodplain** protection, maintenance and restoration of stream
540 drainages, channels and waterways. The applicant may be required to supply the following **and operational and post-**
541 **mine hydrologic controls may include, but are not limited to:**

542 (A) Channel restoration designs based on channel hydraulics and hydrology;

543 (B) Plan and profile drawings;

544 (C) A stability evaluation of any temporary or permanent diversion structures or reclaimed channels;

545 (D) Energy dissipation structures;

546 (E) Designs for grade controls and other erosion control structures.

547 **(A) Procedures to protect surface water quality and to control erosion may include the following:**

548 **(i) rock lined ditches, rock lined haul roads, or work areas;**

549 **(ii) detention ponds and sedimentation basins;**

550 **(iii) rock check dams and grade control structures;**

551 **(iv) temporary diversions;**

552 **(v) flocculation systems and/or surface disposal systems;**

553 **(vi) runoff and pond sizing calculations.**

554 **(B) Procedures to protect or reconstruct waterways or drainage patterns impacted by mine related disturbances or**
555 **reclamation by the design and construction of a post-mine drainage control plan to convey storm water and**
556 **surface water off the property in a manner that will provide long-term stability to the reclaimed land.**

557 **(C) Procedures to protect natural resources.**

558 **The Department may determine it is in the best interest of protection of natural resources and final reclamation to**
559 **require procedures to integrate flood water passage plans, storm water controls, or fish ingress/egress plans at**
560 **adjoining mine sites. Such a requirement by the Department is not considered a permit amendment.**

561 **(D) Procedures to promote final reclamation and floodplain stability or protection of streams, riparian buffers, and**
562 **operational setbacks may require detailed engineering and planning for:**

563 **(i) pond bank and channel bank weirs or other headcut protection plans;**

564 **(ii) floodwater conveyance channels or structures;**

565 **(iii) flood berms;**

566 **(iv) protection of channel migration zone;**

567 **(v) protection or stabilization of stream channel buffers.**

568 ~~(u)~~**(u) A proposed time schedule for surface mining and reclamation **and a description of how concurrent reclamation,****
569 **if applicable, will be accomplished during the life of mine.**

570 ~~(v)~~**(v) Additional steps planned to enhance fish or wildlife habitat or to create wetlands for sites where fish or wildlife**
571 **habitat or wetland construction is part of the designated post-mining land use;**

572 ~~(w)~~**(w) Procedures for the removal or disposal of all equipment, refuse, structures, and foundations from the permit area**
573 **except permanent structures that are part of an approved reclamation plan;**

574 ~~(x)~~**(x) Final slope configurations and how they will be stabilized;**

575 ~~(y)~~**(y) Written consent from the surface estate and mineral estate owners agreeing to the reclamation plan and allowing the**
576 **Department access to complete reclamation within the permit area if the permittee fails to comply with the approved**
577 **reclamation plan. If the applicant can document a legal right to mine, including the right to grant access and reclaim,**
578 **without the consent of the surface estate owner, the Department may issue an Operating Permit.**

579 ~~(z)~~**(z) A plan for the control of noxious weeds may be required.**

580 **(aa) Provisions to protect fish and wildlife species by providing operational setbacks.**

581 **(ab) Fish ingress/egress plans for floodplain sites.**

582 **(ac) Procedures for placement of imported fill and the protection of fill quality.**

583 **(A) Imported fill placed inside an operating permit boundary and used as reclamation backfill or other subsurface**
584 **placement must meet the Oregon Department of Environmental Quality definition of clean fill as provided in OAR**
585 **340-093-0030, and includes soil, rock, seasoned asphalt, or concrete free of other contaminants.**

586 **(B) Within a 100-year floodplain, no concrete or asphalt rubble may be backfilled unless the Department**
587 **determines there is no significant risk to public health, safety, or the environment. Generally, rubble must be**
588 **placed outside of recent channel migration zones and buried a minimum of 10 feet deep. The Department must**
589 **approve the fill disposal plan in writing.**

590 **(ad) If the affected local government designates a post-mine land use or uses through a comprehensive plan**
591 **amendment or zone change, or requires a conservation easement to be established after reclamation, the plan**
592 **submitted to the Department must specifically address how the post-mine land use(s) will be established.**

593 (2) **In addition to the requirements set out in OAR 632-030-0015(2), the** The Department may also require maps,
594 aerial photographs, or design drawings of appropriate scale. Information that typically may be required on maps, aerial
595 photographs or design drawings includes but is not limited to:

596 (a) Permit area boundary, property lines, and property line setbacks;

597 (b) Maximum extraction boundary delineating mine phases and reclamation sequence;

598 (c) Waste rock, rejects, overburden, and soil storage areas and stockpiles;

599 (d) Processing plant and location of existing or proposed visual screens;

600 (e) Ancillary facilities location;

601 (f) Haul roads;

602 (g) Typical pre- and post-mine cross sections and topographic plan views;

603 (h) Existing watercourses, including irrigation ditches, streams, rivers, and ponds;

604 (i) Setback and buffer strips for wetlands and stream drainages;

605 (j) Storm and/or wastewater control structures, ponds, and ditches;

606 ~~(k) Location of discharge points or outfalls for storm water and delineation of the drainage area for each storm outfall;~~

607 **location of any engineered structures or engineered fill;**

608 (l) Reconstructed watercourses, and ponds, **and location of fish egress/ingress channels;**

609 **(m) location of the 100-year FEMA floodplain boundary or a site-specific hydrologic study that identifies the 100-**
610 **year floodplain boundary based on hydraulic modeling;**

611 ~~(n)~~ **(n)** Proposed and existing mine areas and backfill locations;

612 ~~(o)~~ **(o)** Location of existing and proposed dikes and berms;

613 ~~(p)~~ **(p)** Post-mining topography;

614 ~~(q)~~ **(q)** Location of any well within 1,000 feet of permit boundary. **Where dewatering is proposed, location of any well**
615 **within 1,500 feet of permit boundary;**

616 **(r) land-use authority boundary;**

617 **(s) Nest setbacks, to the extent they limit mineral extraction, for eagles or other species specifically protected by**
618 **city or county land-use conditions or state or federal laws.**

619 (3) The applicant should contact the Department for recommendations regarding scale and amount of detail required. The
620 applicant may be required to submit extra copies of materials to be circulated to other agencies.

621 **(4) The applicant must provide proof of ownership of surface and mineral rights or document to the satisfaction of**
622 **the Department that the requirements of ORS 517.790(3) are met.**

623 Stat. Auth.: ORS 183.341, ORS 197.180, ORS 516.090(2)(a), ORS 517.740 & ORS 517.840(1)(d)

624 Stats. Implemented: ORS 517.790

625 Hist.: GMI 5, f. 12-20-73, ef. 1-11-74; GMI 7, f. 11-7-74, ef. 12-11-74; GMI 2-1985, f. 11-19-85, ef. 11-20-85; GMI 2-
626 1986, f. 9-19-86, ef. 9-22-86; GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88; GMI 1-1992, f. & cert. ef. 6-17-92DGMI 1-1999,
627 f. & cert. ef. 1-7-99

628 **623-030-0026**

629 **On-site Construction Waiver**

630 **The Department may, in its discretion, waive the requirements for preparation and approval of a reclamation plan**
631 **if the requirements of ORS 517.790(2)(a) through (c) are satisfied and specific plans or functionally similar**
632 **requirements approved and enforced by a governmental entity are sufficient to ensure that property will be**
633 **converted to the new use in a timely fashion.**

634 **632-030-0027**

635 **Minimum Standards for a Reclamation Plan**

636 A reclamation plan submitted under 632-030-0025 must meet the following minimum standards:

637 (1) Final slopes ~~shall~~ **must** be stable. Reclaimed cutbanks ~~shall~~ **may** not have slopes exceeding 1-1/2 horizontal to 1
638 vertical (1-1/2**H**:1**V**). Final slopes may be blasted or sculpted to blend into adjacent landforms or for creation of habitat.

639 The Department may require the submission of a reclamation blast plan to assure stable slopes will be created and
640 adjacent property will be protected. The Department may also grant exceptions for slopes steeper than 1-1/2**H**:1**V** when
641 the applicant can document that the slopes will be stable and if the steeper slopes:

642 (a) Blend into the adjacent terrain;

643 (b) Existed prior to mining; or

644 (c) Are consistent with the approved subsequent beneficial use.

645 **(2) Interim and final above-water cutslopes for sites located within the boundaries of a 100-year floodplain can be**
646 **no steeper than 3H:1V.**

647 ~~(2)~~**(3) Slope requirements.**

648 **(a)** Fill slopes shall **must** be 2 horizontal to 1 vertical (**2H:1V**) or flatter.

649 **(b)** Fill slopes steeper than **2H:1V** may be approved if technical data supporting slope stability is approved by the
650 Department.

651 **(c)** In unconsolidated material or when ~~long slopes are being created~~ **slope length exceeds 100 lineal feet, 3H:1V** slopes
652 or flatter may be required to assure long-term stability.

653 **(d)** Complex slope formations may be necessary to enhance habitat and post-mine landscape diversity.

654 **(e) Flatter slopes (5H:1V to 10H:1V) will be needed where wetland creation is proposed.**

655 **(f) For sites within the 100-year floodplain, final above-water fill slopes can only be placed over cutslopes that are**
656 **3H:1V, or less, unless the Department agrees in writing to a different ratio based on a determination that the flood**
657 **potential is very low.**

658 ~~(3)~~**(4) Generally, final revegetation with native species of** Revegetation of all disturbed areas consistent with future use
659 is required **unless the Department finds it unreasonable.** The Department shall **will**, in most instances, consider
660 revegetation successful if it **provides a similar plant density in terms of ground or canopy cover and it is comparable**
661 **to undisturbed areas in similar landscape positions.** is comparable in stability and utility to adjacent areas. In arid or
662 semi-arid regions, the Department may allow three years of growth prior to a revegetation evaluation. Otherwise,
663 revegetation will be evaluated after one growing season. Vegetation test plots may be required to ensure establishment
664 feasibility and/or long-term habitat goals in the reclamation plan. **Vegetation monitoring may also be required to**
665 **insure success of the approved plan.**

666 ~~(4)~~**(5)** Establishment of **3H:1V** ~~in-water~~ slopes **from ordinary high-water level extending** to six feet below **ordinary**
667 ~~low-water level for permanent water impoundments~~ **is required.** **In addition to the 3H:1V slopes, the** The Department
668 may approve **other sloping configurations where horizontal benches are incorporated as habitat features.** reasonable
669 alternatives when they are consistent with the Reclamation Plan. All in-water slopes must be stable. For example, benches
670 no more than two feet below ordinary low water and 15 feet wide may be substituted for the slope requirement where the

671 Department determines sloping is not practical or where other slope configurations are suitable for wetland creation
672 and/or fish habitat.

673 **(a) Other above- and below-water bank sloping may be approved for constructed alcoves or other habitat features**
674 **or projects.**

675 **(b) Establishment of a stable slope angle or benching for below-water slopes to insure an adequate foundation for**
676 **the proposed in-water and above-water slopes or fills is required.**

677 **(c) A geotechnical study may be required to address slope stability.**

678 ~~(5)~~**(6)** All stream channels and stream banks shall **must** be rehabilitated by **using** procedures that minimize bank erosion,
679 channel scour, and sedimentation; and maximize habitat.

680 ~~(6)~~**(7)** Reclamation must be completed in a timely manner. If there is no production at a mine site for a period of five or
681 more consecutive years, the permittee shall submit a report to the department **Department** on the remaining reserves. The
682 report shall **must** include an estimate of the quantity of the remaining mineral reserves. The report shall **must** be signed
683 by a professional geologist or include drill logs or other quantitative analysis acceptable to the department **Department**.
684 If the submission of such data poses a financial hardship to the permittee, the department **Department** will attempt to
685 work with the permittee to provide the necessary geologic expertise as department **Department** staff resources allow **or**
686 **the Department may waive this requirement. Any waiver provided by the Department must be in writing and**
687 **must specify the duration for which the requirement is waived.**

688 ~~(7)~~**(8)** If the department **Department** determines that the reserves are insignificant or the operator is unlikely to be able to
689 economically mine the site in the reasonably foreseeable future, the department **Department** will order reclamation and
690 may establish a reasonable period for its completion.

691 Stat. Auth.: ORS 517

692 Stats. Implemented: ORS 517.800

693 Hist.: DGMI 1-1999, f. & cert. ef. 1-7-99; DGMI 1-2000, f. & cert. ef. 7-20-00; DGMI 1-2001, f. & cert. ef. 8-6-01

694 **632-030-0030**

695 **Department Action on Reclamation Plan and Operating Permit Application; Provisional Operating Permits; Local**
696 **Government Actions**

697 **(1) Within 90 days after receiving an application for an operating permit:**

698 **(a) the Department will issue the operating permit or**
699 **(b) notify the applicant** if ~~The Department shall, upon receipt of an Operating Permit application and proposed~~
700 ~~reclamation plan, conduct a review for completeness within 45 days. If the Department determines that either the permit~~
701 ~~application or the proposed reclamation plan is not complete,~~
702 **(c) If** the Department **determines the application is incomplete it will** ~~shall~~ notify the applicant of the needed
703 information or documentation **needed** to make the submittal complete. ~~The applicant shall be informed that a~~ **A** notice of
704 an incomplete submittal does not constitute a denial of the ~~Operating Permit~~ **operating permit** application and proposed
705 reclamation plan. ~~Within 45 days of the date of the Department's determination that the Operating Permit application and~~
706 ~~reclamation plan are complete, the~~
707 **(d) The** Department shall **will** determine the adequacy of the ~~Operating Permit~~ **operating permit** application and
708 proposed reclamation plan by taking the following actions:
709 ~~(a)~~**(A)** Inspect the site in accordance with OAR 632-030-0024 and file an inspection report;
710 ~~(b)~~**(B)** Circulate the complete ~~Operating Permit~~ **operating permit** application, including the proposed reclamation plan,
711 draft operating permit, an inspection report or a **an** written evaluation to appropriate federal, state, and local agencies for
712 review and comment. ~~Any production records, mineral assessments and trade secrets submitted to the Department shall~~
713 ~~be confidential and will not be circulated.~~
714 ~~(c)~~**(C)** Notify the affected local government in writing that **an** complete operating permit application and proposed
715 reclamation plan have been received by the Department, accompanied by a request that a determination be made if a local
716 land-use permit pursuant to ORS 215.428 or 227.178 or a comprehensive plan amendment is required. ~~A local~~
717 ~~government may request that the Department delay its final decision in accordance with subsection (3)(a) or (b) of this~~
718 ~~rule. Any request from an affected local government to delay a final decision must be received by the Department within~~
719 ~~15 calendar days of notification to the local government. If the local government does not provide a response or request a~~
720 ~~delay, the Department shall apply the provisions in subsection (3)(c) of this rule;~~
721 ~~(d)~~**(D)** Determine the **appropriate amount of the reclamation** bond or **alternative form of security** level; and
722 ~~(e)~~**(E)** Notify the applicant of any deficiencies that will be addressed by attaching conditions to the ~~Operating Permit~~
723 **operating permit**.
724 **(2)** A Provisional Operating Permit may be issued by the Department under the following conditions:

- 725 ~~(a) The applicant provides written evidence to the Department that no local land use approval is required, or that any~~
726 ~~necessary approval has been obtained; and~~
- 727 ~~(b) The required financial security is in effect;~~
- 728 ~~(c) The Department determines that there are no outstanding natural resource protection issues that require consultations~~
729 ~~with other agencies in order to provide adequate mitigation; and~~
- 730 ~~(d) There is sufficient documentation that requirements or approvals that are necessary to commence mining have been~~
731 ~~obtained from other agencies.~~

732 ~~(3)~~**(2) The Department will ensure consistency with local government land-use plans and regulations as follows:**

733 **Local Government Actions**

- 734 (a) Applications involving a local land-use permit and a request by the affected local jurisdiction that it act first: If the
735 affected local government informs the Department under subsection (1)(c) of this rule that the application involves an
736 aggregate site that requires a local land use permit issued pursuant to ORS 215.428 or 227.178, and the local government
737 requests that the application not be decided by the Department until the local government has taken final action, the
738 Department shall make its final decision on the ~~Operating Permit~~ **operating permit** and reclamation plan no later than
739 165 days after the date a complete land-use application is submitted to the local government, unless the applicant agrees to
740 allow additional time under ORS 215.428 or 227.178. ~~For applications for new Operating Permits or intensification or~~
741 ~~substantial modification to existing Operating Permits, received on or after October 1, 1991, the~~ **The** Department shall not
742 approve the ~~Operating Permit~~ **operating permit** and reclamation plan or modification to existing permits if the
743 application for the local land-use permit is denied by the local jurisdiction. However, in a situation where action on the
744 local land-use permit is still pending, the Department may initiate its review of the application for its technical
745 acceptability before the local government makes its final decision. The results of the Department's technical review will
746 be provided to the local government and the applicant. For the purposes of this section, a requirement for review of a site
747 plan is not a local land-use permit.
- 748 (b) Applications involving a comprehensive plan amendment: If the affected local government informs the Department
749 under subsection (1)(c) of this rule that the application involves an aggregate site that requires a comprehensive plan
750 amendment, and the local government requests that the application not be decided until the local government has taken
751 final action on the plan amendment, the Department shall not make its final decision on the ~~Operating Permit~~ **operating**

752 permit and reclamation plan until the local government has taken final action on the plan amendment. The Department
753 shall make its final decision on an application within 45 days of the date that the local government has taken final action
754 on the plan amendment unless a longer period is required under subsection (3)(a) of this rule. For applications for new
755 ~~Operating Permits~~ operating permits or intensification or substantial modification to existing ~~Operating Permits~~
756 operating permits received on or after October 1, 1991, the Department shall not approve the ~~Operating Permit~~
757 operating permit or intensification or substantial modification if the application for the comprehensive plan amendment
758 is denied by the local jurisdiction.

759 (c) If the affected local government does not request that the Department delay a decision on an ~~Operating Permit~~
760 operating permit and a reclamation plan as provided in subsection (3)(a) or (b) of this rule, the Department shall give the
761 local government opportunity to review and comment on the application in the manner described in subsection (1)(b) of
762 this rule. If the local government fails to respond in writing within 30 days of mailing, the Department shall issue its
763 decision within 45 days of receipt of complete application. Local government approval must also be obtained before
764 operation under the permit can begin.

765 (d) If no local government permit or approval is required, the applicant shall provide a written statement to that effect
766 from the local government to the Department.

767 ~~(4)~~(3) (a) The Department shall notify in writing the affected local government of the Department's decision under
768 subsections (3) (a), (b), and (c) of this rule to approve or deny an ~~Operating Permit~~ operating permit and reclamation
769 plan, including any requirements and conditions imposed by the Department.

770 (b) Any conditions and requirements imposed by the Department on an ~~Operating Permit~~ operating permit and
771 reclamation plan, including any modifications made pursuant to OAR 632-030-0035, issued subsequent to a final local
772 land-use approval shall must be compatible with the requirements and conditions of the local government land-use plan
773 and permit, including any conditions established to comply with statewide planning Goal 5, unless more stringent
774 Department requirements are necessary to comply with the provisions of ORS 517.750 to 517.900. Any issue concerning
775 the compatibility of the Department's permit decision with the requirements and conditions of the local government
776 comprehensive plan or land-use permit may be addressed in accordance with the Department's dispute resolution process
777 as set forth in OAR 632-001-0015(6).

778 ~~(5)~~**(4)** Within 60 days after the receipt of a deficiency list or permit conditions, the applicant shall comply with the
779 additional requirements prescribed by the Department or file a written notice of appeal of the decision to the Department
780 in accordance with OAR 632-030-0056. Failure to comply with the additional requirements or file a notice of appeal
781 within the 60-day period, unless an extension is granted by the Department, may result in the application for an ~~Operating~~
782 ~~Permit~~ **operating permit** being denied. The Department may issue a ~~Provisional Operating Permit~~ **provisional operating**
783 **permit** to the applicant pending the outcome of the appeal, subject to the requirements of sections (1) through (4) of this
784 rule. ~~Informal requests for reconsideration of a deficiency decision may be submitted as provided for in OAR 632-030-~~
785 ~~0056.~~

786 ~~(6)~~**(5)** The Department may determine that the applicant's reclamation plan is technically acceptable if it adequately
787 provides for reclamation of surface mined lands as required by OAR Chapter 632, Division 30, without issuing an
788 ~~Operating Permit~~ **operating permit**, and so advise the local government.

789 ~~(7)~~**(6)** The Department may attach conditions to the ~~Operating Permit~~ **operating permit**. These conditions may be added
790 to reflect special concerns which are not adequately addressed in the reclamation plan and fall within the scope of these
791 rules. The permittee may appeal these conditions by filing a written notice of appeal in accordance with OAR 632-030-
792 0056.

793 ~~(8)~~**(7)** The approval of the reclamation plan and the issuance of the ~~Operating Permit~~ **operating permit** by the
794 Department ~~do~~ **does** not constitute a finding of compliance with statewide planning goals or local regulations
795 implementing acknowledged comprehensive land-use plans. The permittee is responsible for obtaining local land-use
796 approval before commencing the proposed surface mining activity. When issued by the Department, a statement placed
797 on the ~~Operating Permit~~ **operating permit** and approved reclamation plan under subsection (3)(c) of this rule, ~~shall~~ **will**
798 inform the applicant that:

799 (a) Issuance of the ~~Operating Permit~~ **operating permit** and approval of the reclamation plan is not a finding of
800 compliance with the ~~Statewide Planning Goals~~ **statewide planning goals** (ORS 197.225) or compatibility with the
801 acknowledged comprehensive plan; and

802 (b) The applicant must receive any land-use approval required from the affected local government before commencing
803 surface mining authorized under the approved ~~Operating Permit~~ **operating permit** and reclamation plan.

804 ~~(9)~~**(8)** The Department may ~~not refuse to issue, or amend, renew, or transfer~~ an ~~Operating Permit~~ **operating permit** to
805 ~~any a~~ person if ~~the Department determines that the person~~ **is not presently complying with the terms of an operating**
806 **permit, reclamation plan, the provisions of the Act, or these rules. The Department may refuse to issue, amend,**
807 **renew or transfer an operating permit to a person that** has not substantially complied with an ~~Operating Permit~~
808 **operating permit**, a reclamation plan, the provisions of the Act, or these rules. **For purposes of this rule, a person**
809 **includes a subsidiary or other entity in which the person has a substantial financial interest.**

810 Stat. Auth.: ORS 183.341, ORS 197.180 & ORS 517.740

811 Stats. Implemented: ORS 517.740 & ORS 517.810

812 Hist.: GMI 5, f. 12-20-73, ef. 1-11-74; GMI 7, f. 11-7-74, ef. 12-11-74; GMI 1-1980, f. 2-29-80, ef. 3-1-80; GMI 2-1982,
813 f. & ef. 8-13-82; GMI 2-1985, f. 11-19-85, ef. 11-20-85; GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88; GMI 1-1992, f. & cert.
814 ef. 6-17-92; DGMI 1-1999, f. & cert. ef. 1-7-99; DGMI 1-2000, f. & cert. ef. 7-20-00

815 **632-030-0033**

816 **Reclamation by the Department**

817 (1) If a mine operator fails to comply with an order issued under ORS 517.860 or 517.880, the Department may perform
818 the reclamation outlined in the reclamation plan to the extent possible given the condition of the site.

819 (2) The Department may perform alternative reclamation depending on site conditions.

820 (3) The Department may reclaim the site to:

821 (a) Eliminate or minimize hazards to the health and safety of the public;

822 (b) Eliminate or minimize any pollution or erosion **or reestablish setbacks or buffers outside the excavation boundary;**

823 (c) Mitigate impacts to natural resources by enhancing wildlife habitat or restoring a drainage;

824 (d) Be compatible with local agency regulations or an approved secondary beneficial use and with federal and state laws.

825 Stat. Auth.: ORS 517

826 Stats. Implemented: ORS 517.800

827 Hist.: DGMI 1-1999, f. & cert. ef. 1-7-99; DGMI 1-2000, f. & cert. ef. 7-20-00

828 **632-030-0035**

829 **Modification of an Operating Permit**

830 (1) The modification of an ~~Operating Permit~~ **operating permit** may be initiated at any time by the permittee or by the
831 Department. The term "modification," as used in this rule, means any modification, including but not limited to,
832 "intensification" or "substantial modification," as defined in OAR 632-030-0010(~~86~~) and (~~161~~). The Department ~~will~~ **may**
833 circulate applications for intensification or substantial modifications to local government pursuant to ORS 517.830 and
834 OAR 632-030-0030.

835 (2) An ~~Operating Permit~~ **operating permit** may be modified by approval of the Department after timely notice and
836 opportunity for review as provided by ORS 517.830(5) and OAR 632-030-0030(~~1~~) to (~~8~~) in order to assure compliance
837 with existing laws and land-use requirements or to accommodate unforeseen developments ~~which~~ **that** may affect the
838 ~~Operating Permit~~ **operating permit** and reclamation plan as previously approved.

839 (3) **The Department may modify an operating permit or reclamation plan without the consent of the operator only**
840 **as allowed by ORS 517.830(5).**

841 **The request for modification must be based on off-site harm related to slope stability, the taking of endangered**
842 **species, or stream channel migration or avulsion that may intersect or threaten pit wall stability of a floodplain**
843 **mine. Restoring a slope, moving a stream, or replacing an endangered species cannot generally be done after the**
844 **fact. Therefore, a determination of substantial harm to off-site property may include likely effects when there is**
845 **clear and convincing scientific evidence. For the three types of sites or concerns listed here, the clear and**
846 **convincing scientific evidence may include on-site or off-site physical or biological indicators and other data:**

847 **(a) Slope stability: documentation by the Department of a loss of lateral support of a property line, slope**
848 **movement, failure planes, tension cracks, vegetation displacement, or other indicators of slope instability, or**
849 **geotechnical reports, slope measurements, or other monitoring data submitted by others.**

850 **(b) Endangered species: documentation by the Department that endangered species are likely present and mine**
851 **activities have stranded endangered fish on the floodplain or mine activities have caused harm to endangered**
852 **species or a take is likely to occur.**

853 **(c) Pit wall stability related to channel migration or channel avulsion: documentation by the Department that**
854 **stream bank erosion, channel migration, local geomorphic trends, site hydrology during flooding, and/or channel**
855 **hydraulic conditions present clear indicators that pit wall stability is in jeopardy during future flood events.**

856 **(4) Substantial harm to off-site property justifying a modification under this rule and the Act includes, but is not**
857 **limited to:**

858 **(a) loss of vegetation or other effects due to embankment failure, pit wall, or storage pile failure**

859 **(b) loss of vegetation or other effects due to erosion, headcutting, channel avulsion, and/or channel migration that**
860 **has resulted in or is likely to result in a breach into or pit capture of a floodplain gravel mine**

861 **(c) deposition of vegetation, soil, rock, other geologic materials, or mined materials or mine refuse**

862 **(d) impacts to jurisdictional wetlands, sloughs, bogs, stream channels, or other natural features or constructed**
863 **flood levees, revetments, or irrigation reservoirs, irrigation ditches, and intakes.**

864 ~~Based on new information or changed conditions, for sites first permitted or expanded after October 23, 1999, the~~
865 ~~department may modify an operating permit and reclamation plan. This action will be taken to prevent substantial harm to~~
866 ~~off-site public or private property and relates to: slope stability, surface mining activities that will result in the taking of~~
867 ~~endangered species, or channel changes that threaten pit wall stability.~~

868 ~~(a) Upon a determination that the activity will result in substantial harm, the department shall meet with the permittee to~~
869 ~~discuss the proposed modifications to the operating permit and reclamation plan.~~

870 ~~(b) A final determination by the department to require a unilateral modification of an operating permit and reclamation~~
871 ~~plan shall be based on clear and convincing scientific evidence. Any modification required by the department shall be~~
872 ~~limited to those areas and matters affected by the new information or changed conditions.~~

873 ~~(c) A permittee who disagrees with the department's final determination shall first request that the State Geologist~~
874 ~~informally review and resolve the matter in accordance with OAR 632-030-0056. If the State Geologist is unable to~~
875 ~~resolve the informal request, the permittee may request a contested case hearing by the Board or its designee or alternative~~
876 ~~dispute resolution as provided in ORS 183.503 and OAR chapter 137, division 5. Before beginning an alternative dispute~~
877 ~~resolution process, the department and permittee shall first enter into an agreement as provided in OAR 137-005-0030.~~

878 Stat. Auth.: ORS 183.341, ORS 197.180, ORS 516.090(2)(a), ORS 517.740 & ORS 517.840(1)(d)

879 Stats. Implemented: ORS 517.740 & 517.840

880 Hist.: GMI 5, f. 12-20-73, ef. 1-11-74; GMI 1-1980, f. 2-29-80, ef. 3-1-80; GMI 2-1982, f. & ef. 8-13-82; GMI 2-1985, f.
881 11-19-85, ef. 11-20-85; GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88; GMI 1-1992, f. & cert. ef. 6-17-92; DGMI 1-1999, f. &
882 cert. ef. 1-7-99; DGMI 1-2001, f. & cert. ef. 8-6-01

883 **632-030-0040**

884 **Maintaining an Operating Permit**

885 (1) ~~As provided by ORS 517.830 (5), an Operating Permit issued by the Department will be granted for the period of time~~
886 ~~required to mine the land described in the permit and shall be valid, subject to payment of the renewal fee and compliance~~
887 ~~with the reclamation plan, all conditions in the Operating Permit, the Act, and the rules adopted thereunder until the~~
888 ~~operation is completed or mining operations cease and the site is reclaimed.~~ **The Department may revoke, terminate,**
889 **or refuse to renew and operating permit as provided in ORS 517.862.**

890 (2) Prior to the anniversary date of an ~~Operating Permit~~ **operating permit**, the operator shall submit the required annual
891 fee and file the annual report. The annual report shall **must** include production figures that provide a legal and accurate
892 report of all materials mined or excavated. If requested by the Department, the operator must also submit an updated site
893 plan map. ~~As a courtesy, the Department will notify the permittee by mail at least 45 days prior to the anniversary date of~~
894 ~~the permit and will provide the necessary forms and fee schedule.~~ The permittee shall maintain an ~~Operating Permit~~
895 **operating permit** until mining and reclamation, including revegetation (if required), have been completed.

896 (3) If the Department determines that the permittee has not complied or is not complying with the approved reclamation
897 plan, permit conditions, the Act, or the rules adopted thereunder, the Department shall take appropriate action including
898 one or more of the following: a notice of violation under ORS 517.860, a compliance order under ORS 517.860, a
899 ~~suspension order under ORS 517.880,~~ **recovery against the bond or alternative form of security under ORS 517.860,**
900 and an assessment of civil penalties under ORS 517.992.

901 ~~(4) If an Operating Permit has been issued for mining on a site which is to be returned to an exempt mining use,~~
902 ~~reclamation may be waived in total or in part if approved by the Department.~~

903 ~~Any portions of sites which do not have mineable reserves remaining shall be reclaimed. The applicant shall be required~~
904 ~~to document that mineable reserves remain and that there is a probable use for those reserves.~~

905 Stat. Auth.: ORS 517

906 Stats. Implemented: ORS 517.740 & ORS 517.800

907 Hist.: GMI 5, f. 12-20-73, ef. 1-11-74; GMI 1-1980, f. 2-29-80, ef. 3-1-80; GMI 2-1982, f. & ef. 8-13-82; GMI 2-1985, f.
908 11-19-85, ef. 11-20-85; GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88; GMI 2-1997, f. & cert. ef. 10-14-97; DGMI 1-1999, f.
909 & cert. ef. 1-7-99; DGMI 1-2000, f. & cert. ef. 7-20-00

910 **632-030-0041**

911 **Permit and Exemption Transfer**

912 **(1) An operating permit may be transferred as provided in ORS 517.833, subject to the following requirements:**

913 **(a) A person requesting transfer must submit a completed application on a form prescribed by the department.**

914 **(b) The application must be signed by the applicant, current permittee, landowner, and mineral estate owner if**
915 **different from the landowner.**

916 **(c) The applicant must submit the transfer application fee as provided and not to exceed in ORS 517.800.**

917 **(d) The applicant must submit a bond or alternative form of security acceptable to the department.**

918 **(2) Prior to approving a permit transfer, the department may review the existing operating permit and reclamation**
919 **plan and the transfer of the permit may be denied or conditioned based on the failure of existing operations to**
920 **comply with the permit, plan, provisions of the Mined Land Reclamation Act, or these rules. In addition, the**
921 **department may review existing operations to determine whether an amendment to operating permit or**
922 **reclamation plan is appropriate under ORS 517.831 or 517.835.**

923 **(3) A limited exemption may be transferred subject to the following requirements:**

924 **(a) A person requesting transfer must submit a completed application on a form prescribed by the department.**

925 **(b) The application must be signed by the applicant, current exemption holder, landowner, and mineral estate**
926 **owner if different from the landowner.**

927 **(c) The applicant must submit the transfer application processing charge not to exceed \$250.**

928 **632-030-0042**

929 **Termination of Operating Permits**

930 **(1) An ~~Operating Permit~~ operating permit is deemed to terminate by operation of law if any of the conditions set out in**
931 **ORS 517.880 exist. The Department will notify the operator of the termination and the right to review.** ÷

932 **(a) ~~Fees assessed under OAR 632-030-0022 are not paid in a timely fashion; or~~**

933 **(b) ~~At any time if the bond or alternate security has expired, has been canceled without replacement, or is insufficient to~~**
934 **~~cover the cost of reclamation;~~**

935 **(2) A permittee may request termination of a permit if:**

936 **(a) A permit has never been used;**

- 937 (b) The required local land-use approvals are denied; or
- 938 (c) The requirements of an approved reclamation plan are complete.
- 939 (3) Reclamation obligations incurred prior to the date of cancellation of any bond or ~~other~~ **alternative form of** security
- 940 continue until the site is reclaimed.

941 Stat. Auth.: ORS 516.090(2)(a), ORS 517.740 & ORS 517.840(1)(d)

942 Stats. Implemented: ORS 517.800, ORS 517.810 & ORS 517.830

943 Hist.: DGMI 1-1999, f. & cert. ef. 1-7-99

944 **632-030-0045**

945 **Obtaining Bond Release**

- 946 (1) The permittee shall notify the Department in writing when the reclamation has been completed.
- 947 (2) The Department will inspect the reclaimed site. If the permittee has fulfilled the requirements of the approved
- 948 reclamation plan, the bond or ~~other~~ **alternative form of** security will be released. The Department may authorize ~~bond or~~
- 949 ~~other security~~ **a reduction in the security amount** if the reclamation is partially completed **complete**.

950 Stat. Auth.: ORS 183.341, ORS 197.180, ORS 516.090(2)(a), ORS 517.740 & ORS 517.840(1)(d)

951 Stats. Implemented: ORS 517.810, ORS 517.840 & ORS 517.870

952 Hist.: GMI 5, f. 12-20-73, ef. 1-11-74; GMI 1-1980, f. 2-29-80, ef. 3-1-80; GMI 2-1982, f. & ef. 8-13-82; GMI 2-1985, f.

953 11-19-85, ef. 11-20-85; GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88; GMI 1-1992, f. & cert. ef. 6-17-92; DGMI 1-1999, f. &

954 cert. ef. 1-7-99

955 **632-030-0049**

956 **Emergency Operating Permits**

957 **(1) The Department may issue an emergency operating permit as authorized under ORS 517.832. An emergency**

958 **operating permit is subject to the following additional limitations:**

959 **(a) The emergency operating permit may not be for a term in excess of three months and may be terminated by the**

960 **Department on 48-hour notice.**

961 **(b) The operator may continue operations at the site after three months only if the emergency operating permit is**

962 **replaced by a temporary, provisional, or regular operating permit. The operator must follow the procedures for**

963 **applying for the temporary, provisional, or regular operating permit.**

964 (c) The operator is required to provide notice of the proposed emergency operating permit to all federal agencies
965 and public bodies that may be affected by the emergency operating permit and to provide the Department with the
966 names of the agencies and public bodies notified and the manner of notification. The Department may require
967 additional notification or deny the emergency operating permit if it determines that the notice is inadequate.

968 (d) The Department will not issue or will terminate an emergency operating permit upon receipt of an objection
969 from an affected federal agency or public body.

970 (e) An operator seeking an emergency permit must pay a fee to the Department an in an amount determined by the
971 Department be adequate to cover the additional costs for staff and other related expenses.

972 (f) The Department may waive the requirement for a bond or alternate form of security for an emergency
973 operating permit.

974 632-030-0051

975 Temporary Operating Permits

976 The Department may issue a temporary operating permit as authorized under ORS 517.834. A temporary
977 operating permit is subject to the following additional limitations:

978 (1) The operator must provide 14 days' prior notice to adjacent property owners and all potentially affected
979 federal agencies and public bodies. Public notice must be published in a newspaper that is broadly circulated in
980 the areas adjacent to the proposed mine. Notice to property owners, federal agencies, and public bodies must be in
981 writing and sent by U.S. mail or comparable means. The operator must provide the Department with
982 documentation of the entities notified and the manner of notification. Notification must be in a form approved by
983 the Department and must inform the recipients of the right to submit comments on the proposed temporary
984 operating permit to the Department.

985 (2) A temporary operating permit may be issued for a term not to exceed 6 months, during which time the
986 operator must apply for a regular operating permit. The operator must cease all excavation and processing and
987 reclaim the site if the Department has not issued a provisional or regular operating permit before the term of the
988 temporary operating permit expires.

989 632-030-0056

990 Appeals

991 (1) Prior to the initiation of an administrative appeal of any ~~departmental~~ **Departmental** order, notice, **fee**, or other action
992 made pursuant to the Act or the rules adopted thereunder, the applicant or permittee ~~shall~~ **may** first request that the State
993 Geologist informally review and resolve the matter. The State Geologist will provide a written decision within ~~20~~ **30** days
994 of receipt of such an informal request. If the State Geologist is unable to resolve the informal request, the applicant or
995 permittee may request a contested case hearing by the Board or its designee for final resolution of the matter. Appeals
996 must be filed within 30 days of receipt of the order, notice, other action being appealed, or receipt of State Geologist
997 written decision except as otherwise provided by OAR 632-030-0030(~~24~~) and by the applicable provisions of ORS
998 183.310 through 183.550. A final determination by the Board must be made before any appeal for judicial review under
999 ORS 183.480 is allowed.

1000 (2) An applicant or permittee requesting a hearing for consideration of any appeal shall state the reasons for requesting the
1001 hearing and the objections to the ~~department's~~ **Department's** order, notice, or other action in accordance with ORS
1002 183.430 – 183.470.

1003 Stat. Auth.: ORS 516.090(2)(a), ORS 517.740 & ORS 517.840(1)(d)

1004 Stats. Implemented: ORS 517.890

1005 Hist.: GMI 7, f. 11-7-74, ef. 12-11-74; GMI 1-1980, f. 2-29-80, ef. 3-1-80; GMI 2-1982, f. & ef. 8-13-82; GMI 2-1985, f.
1006 11-19-85, ef. 11-20-85; GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88; DGMI 1-1999, f. & cert. ef. 1-7-99

1007 **632-030-0070**

1008 **Penalty Warning; Civil Penalty**

1009 (1) Applicability. This section of these rules applies to the imposition of civil penalties under ORS 517.992(2) for
1010 violations of statutes, rules, orders, and permit conditions not related to a chemical process mine.

1011 (2) Definitions. For purposes of this rule:

1012 (a) "Compliance ~~Schedule~~ **order**" means **an order issued under ORS 517.860(1)(b)** ~~a written plan that establishes~~
1013 ~~specific actions and time tables for remedying a violation. The compliance schedule may require the violator to propose~~
1014 ~~specific actions that are acceptable to and approved in writing by the department.~~ The compliance **schedule order** also
1015 may be used for informal disposition of proceedings through stipulation, agreed settlement, consent order, or default;

1016 (b) "Notice of Violation" means a ~~written notice that includes a short and plain statement of the facts establishing a~~
1017 ~~violation and reference to the statute, rule, order, or permit condition that has been violated~~ **issued under ORS**
1018 **517.860(1)(a)**;

1019 (c) "Notice of Civil Penalty" means a ~~written notice that includes the elements of a Notice of Violation and also imposes a~~
1020 civil penalty **under ORS 517.992(2)**;

1021 (d) "Violation" means **conduct for which a penalty may be imposed under ORS 517.992(2)**;

1022 ~~(A) A failure to comply with a compliance order issued under ORS 517.860 or a suspension order issued under ORS~~
1023 ~~517.880; or~~

1024 ~~(B) Any violation of ORS 517.700 to 517.951, or any rule, order, or permit adopted under those statutes, provided:~~

1025 ~~(i) The statute, rule, order or permit does not relate to a chemical process mine; and~~

1026 ~~(ii) The violation relates to an operation that is being conducted without a permit, outside of a permit boundary, or outside~~
1027 ~~of a permit condition regarding boundaries, setbacks, buffers, or the placement of surface mining refuse.~~

1028 ~~(3) Penalty Warning:~~

1029 ~~(a) If the department finds that a violation does not pose an immediate threat to human health, safety, or the environment,~~
1030 ~~it may issue a penalty warning. The warning shall give the violator a specified period of time, not less than 72 hours in~~
1031 ~~which to correct the violation;~~

1032 ~~(b) The penalty warning may include a compliance schedule and a requirement that a violation not be repeated within a~~
1033 ~~specified period of time;~~

1034 ~~(c) If the violation is corrected within the specified period and any requirement imposed under subsection (b) of this~~
1035 ~~section, is satisfied, a civil penalty shall not be imposed.~~

1036 ~~(4) Penalty Warning—Service. A penalty warning shall either be served personally or sent by registered or certified mail.~~
1037 ~~If the warning is served by mail, the period specified for compliance shall not commence until four business days after the~~
1038 ~~date the notice has been mailed.~~

1039 ~~(5) Notice of Civil Penalty. If the department finds that a violation poses an immediate threat to human health, safety, or~~
1040 ~~the environment, or that the violator has not complied with the requirements contained in a previously issued penalty~~
1041 ~~warning, the department may issue a Notice of Civil Penalty.~~

1042 ~~(6)~~**(3)** Notice of Civil Penalty -- Form and Service. A Notice of Civil Penalty shall be in a form and shall be served in the
1043 manner required by ORS 183.415.

1044 ~~(7)~~**(4)** Appeals -- Consolidation. Any person issued a ~~penalty warning or a~~ Notice of Civil Penalty shall have the right to a
1045 ~~Contested Case~~ **contested case** hearing ~~under ORS 183.413 to 183.470~~. The hearing must be requested in writing within
1046 20 days of the date of service. ~~A Notice of Civil Penalty may be issued even though a contested case hearing is pending~~
1047 ~~on the underlying penalty warning. However, if timely requests for hearings are received on a penalty warning and a~~
1048 ~~Notice of Civil Penalty arising out of the same violation, the hearings may be consolidated.~~

1049 ~~(8)~~**(5)** Civil Penalty -- Classification:

1050 (a) Civil penalties imposed under ORS 517.992(2) ~~shall~~ **will** be coordinated with other agencies to avoid duplication of
1051 penalty for the same violation and be in accordance with the following schedule:

1052 (A) Class 1. Violation that poses no potential threat to human health, safety, or the environment: no more than \$1,000 per
1053 day;

1054 (B) Class 2. Violation that poses a potential threat to human health, safety, or the environment, or repeat Class 1
1055 Violation: no more than \$3,000 per day. Potential threats to human health, safety, or the environment include, but are not
1056 limited to, actions that increase instability, erosion, or an unsafe condition at the site;

1057 (C) Class 3. Violation that poses an immediate but remediable threat to the environment or a repeat Class 2 violation: no
1058 more than \$6,000 per day. For the purposes of this rule, an "immediate but remediable threat to the environment" means
1059 that without a quick response and considering such factors to include, but not limited to slope and ~~erodability~~ **erodibility**,
1060 damage will occur and that upon remediation there will be no lasting effect of that damage.

1061 (D) Class 4. Violation that:

1062 (i) Poses an immediate threat to human health or safety;

1063 (ii) Causes actual human injury;

1064 (iii) Poses a threat to the environment that is immediate and not remediable;

1065 (iv) Causes actual damage to the environment; or

1066 (v) Is a repeat Class 3 violation: \$1,000 to \$10,000 per day.

1067 (b) Each day of a continuing violation may be treated as a separate violation for purposes of imposing a civil penalty;

1068 (c) In the event of a conflict between the text of this rule and the language or operation of the attached schedule, the
1069 language in the text of the rule controls.
1070 Stat. Auth.: ORS 516.090(2)(a), ORS 517.740 & ORS 517.840(1)(d)
1071 Stats. Implemented: ORS 517.992
1072 Hist.: GMI 1-1994, f. & cert. ef. 7-21-94; DGMI 1-1999, f. & cert. ef. 1-7-99

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