
INTERNAL MANAGEMENT DIRECTIVE

CIVIL PENALTIES

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MISSION:

The Oregon Department of Geology and Mineral Industries
provides earth science information and regulation
to make Oregon safe and prosperous.

Table of Contents

DISCLAIMER..... 2

Section 1 - Introduction..... 3

 1.1 Civil Penalties..... 3

 1.2 Purpose and Applicability..... 3

 1.3 Enforcement Goals..... 3

Section 2 – Implementation of Civil Penalties 3

 2.1 Civil Penalty Authority 3

 2.2 Determination of Violation Classification..... 4

 2.3 Penalty Matrix 5

 2.4 Notice of Civil Penalty Packet..... 5

 2.5 Process for Issuance of Notice of Civil Penalty 5

 2.6 Prioritization..... 6

Section 3 - Directive 6

Section 4 - Interpretation..... 6

Section 5 - Effective Period and Location 7

Related Links 7

Appendices 7

DOCUMENT DEVELOPMENT:

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DISCLAIMER

This Internal Management Directive (IMD) directs the Oregon Department of Geology and Mineral Industries (DOGAMI) staff in determining and assessing civil penalties for violations of statutes, rules, department orders, operating permits and reclamation plans. This directive is not a final agency action and does not create any rights, duties, obligations,

or defenses, implied or otherwise, in any third parties. This directive should not be construed as rule, nor should the recommendations contained in this directive be construed as a requirement of rule or statute. DOGAMI anticipates revising this document from time to time as conditions warrant.

Section 1 - Introduction

1.1 CIVIL PENALTIES

ORS 517.992 grants the department authority, under specific circumstances, to impose a civil penalty for violations of ORS 517.750-517.901, of any rules adopted under those provisions (OAR 632-030), of any orders issued under those provisions, or of any conditions of a permit issued under those provisions.

1.2 PURPOSE AND APPLICABILITY

This Internal Management Directive (IMD) establishes procedures and priorities for determining violations and assessing civil penalties. The purpose is to provide staff with guidance for consistent and appropriate enforcement in accordance with rule and statute. This directive applies to all staff working on compliance actions.

1.3 ENFORCEMENT GOALS

The goals of enforcement are to:

- Obtain and maintain compliance with applicable statutes, rules, permits and orders.
- Deter future violators and violations.
- Ensure an appropriate and consistent statewide enforcement program.

Section 2 - Implementation of Civil Penalties

2.1 CIVIL PENALTY AUTHORITY

ORS 517.992 grants the State Department of Geology and Mineral Industries the authority to impose a civil penalty of not more than \$10,000 per day for any violation of ORS 517.750-517.901, of any rules adopted under those provisions [OAR 630-030-0010 through OAR 632-030-0070], of any orders issued under those provisions or of any conditions of a permit issued under those provisions only when one of the following circumstances applies:

- 1) A landowner or operator fails to complete erosion stabilization as required by ORS 517.755 or board rules adopted to implement that section. (Limited Exemptions)
- 2) The operator has failed to comply with an order issued under ORS 517.860 or 517.880.
- 3) The operation is being conducted in violation of conditions imposed on an operating permit or reclamation plan pursuant to ORS 517.835. (groundwater)
- 4) The operation is being conducted:
 - a. Without a permit;

- b. Outside the permit boundary; or
- c. Outside a permit condition regarding boundaries, setbacks, buffers or the placement of surface mining refuse.

2.2 DETERMINATION OF VIOLATION CLASSIFICATION

Staff are directed to gather and preserve information regarding violations utilizing the tools available, such as inspection reports, photos, videos, aerial imagery, etc.

Staff are to determine the appropriate classification of each violation using the Violation Classification Decision Tree (Appendix A). Class 1 violations are the lowest severity and Class 4 violations are the highest severity.

A Class 1 violation does not pose a potential threat to human health and safety or the environment. A civil penalty cannot be assessed for a Class 1 violation until a Department Order has been issued and not complied with.

A Class 2 violation poses a potential, not immediate, threat to either human health and safety or the environment. Repeat Class 1 violations may also be treated as Class 2 violations.

A Class 3 violation poses an immediate but remediable threat to the environment. Repeat Class 2 violations may be treated as Class 3 violations.

A Class 4 violation poses an immediate threat to human health or safety, causes actual human injury, poses a threat to the environment that is immediate and not remediable, or causes actual damage to the environment. Repeat Class 3 violations may be treated as Class 4 violations.

Examples of each classification of violations can be found in the Violation Classification document (Appendix B).

Compliance staff shall calculate the appropriate penalty based on the classification of violation and the adverse effect(s) or potential adverse effects at the time of the incident(s) giving rise to the violation.

Compliance staff shall assess the median penalty unless an adjustment is warranted due to aggravating or mitigating factors.

Compliance staff may increase civil penalties when certain aggravating factors are present. Such aggravating factors include, but are not limited to:

- 1) Situations where the civil penalty assessed is not substantially equivalent to or greater than the violator's economic benefit derived from the violation;
- 2) The number of separate alleged violations contained within a single notice of violation;

- 3) The high magnitude of the harm, or potential harm, including quantity and/or degree, to humans, animals, plants, property or the environment caused by the violation(s);
- 4) The similarity of the current alleged violation to previous violations committed within the last three years;
- 5) The extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

Compliance staff may decrease civil penalties when certain mitigating factors are present. Such mitigating factors include, but are not limited to:

- 1) Situations involving voluntary disclosure of a violation;
- 2) Situations involving a low magnitude of the harm, or potential harm, including quantity and/or degree, caused by the violation;
- 3) Voluntary taking of remedial measures that will result in increased public protection, or that will result in a decreased likelihood that the violation will be repeated.

2.3 PENALTY MATRIX

	Reduced (EEO*)	Median	Maximum
Class I	\$ 250.00	\$ 500.00	\$ 1,000.00
Class II	\$ 750.00	\$ 1,500.00	\$ 3,000.00
Class III	\$ 1,500.00	\$ 3,000.00	\$ 6,000.00
Class IIII	\$ 3,000.00	\$ 5,000.00	\$ 10,000.00

*EEO – Expedited Enforcement Offer

2.4 NOTICE OF CIVIL PENALTY PACKET

The Notice of Civil Penalty Packet must contain the following documents:

- 1) Certificate of Service (Appendix C)
- 2) Notice of Civil Penalty Cover Letter (Appendix D)
- 3) Notice of Civil Penalty (Appendix E)
- 4) Contested Case Statement of Rights and Procedures (Appendix F)

2.5 PROCESS FOR ISSUANCE OF NOTICE OF CIVIL PENALTY

ORS 517.992(3) requires the Department to assess civil penalties in the manner provided by ORS 183.745. If the Department determines that a civil penalty is suitable it will draft the notice of civil penalty and present it to the Board for a vote. If approved, the Department issues a notice of civil penalty packet to a respondent (permittee).

The notice of civil penalty packet must be served on the respondent personally or by registered or certified mail (document with Certificate of Service). The respondent will be afforded at least 20 days from the date of service of the notice to request a hearing.

If the respondent does not request a hearing, then the Department may issue a final order imposing the civil penalty by default. The penalty is due within 10 days of issuance of the final order by default.

If the respondent requests a hearing, the Department will refer the case to the Office of Administrative Hearings, which will assign an Administrative Law Judge to conduct the hearing. At the hearing, the Administrative Law Judge will hear testimony from witnesses, receive exhibits, and listen to the parties' legal arguments.

Following the hearing, the Administrative Law Judge will issue a proposed order containing findings of fact and conclusions of law. The Department will then issue a final order, which, under certain circumstances, may differ from the Administrative Law Judge's proposed order. If the final order imposes a civil penalty, the respondent has 60 days to appeal it by filing a petition for review with the Oregon Court of Appeals. The court will review the final order as provided in ORS 183.480 – ORS 183.497 and will issue an opinion and an appellate judgment.

Once a civil penalty becomes final by operation of law or on appeal, it is due within 10 days. Thus, if the respondent requests a hearing but does not file a petition for review of the final order that results, the penalty is due 70 days after the final order is issued. If the respondent requests a hearing and also files a petition for review of the final order, and the Court of Appeals upholds the penalty, the penalty is due 10 days after the appellate judgment is issued.

A flow chart summarizing the process of issuing a civil penalty can be found in Appendix G.

2.6 PRIORITIZATION

Assessment of Civil Penalties will be prioritized as follows:

- 1) Class 1 violations that require a disproportionate amount of staff time.
- 2) Class 4 violations.

Examples of each classification of violations can be found in the Violation Classification document in Appendix B.

Section 3 - Directive

Upon approval of this IMD, DOGAMI staff participating in aggregate mine compliance may implement the civil penalty program as described above.

Section 4 - Interpretation

The terms and provisions of the IMD are subject to reasonable interpretations of DOGAMI.

Section 5 - Effective Period and Location

This IMD is effective from the date signed above until DOGAMI terminates the directive.

Related Links

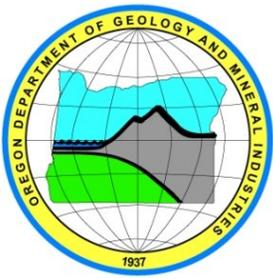
Government Ethics: [ORS Chapter 244](#)

Prohibited Activities: [ORS 516.133](#)

OR Government Ethics Law: [A Guide for Public Officials](#)

Appendices

- A. Violation Classification Decision Tree
- B. Violation Classification Examples
- C. Certificate of Service
- D. Notice of Civil Penalty Cover Letter
- E. Notice of Civil Penalty
- F. Contested Case Statement of Rights and Procedures
- G. Process for Assessing Civil Penalties Flow Chart



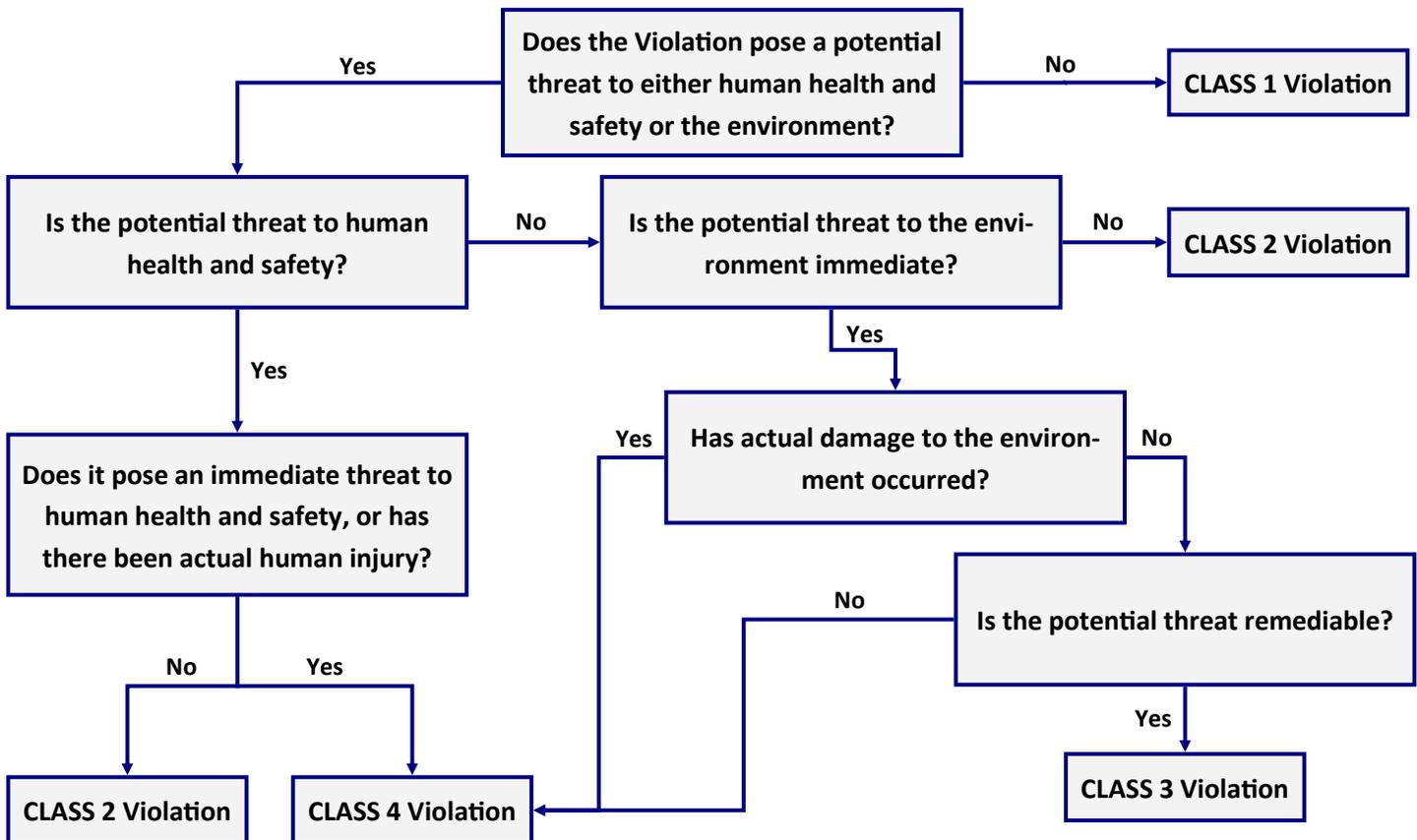
Violation Classification Decision Tree

Aggregate Surface Mines - ORS 517.992 & OAR 632-030-0070

Nonaggregate Mineral Surface Mine - ORS 517.992 & OAR 632-035-0060

Per ORS 517.992(2)(b) a penalty may be imposed only if one of the circumstances below applies:

- A landowner or operator fails to complete erosion stabilization as required by ORS 517.775 or board rules adopted to implement that section; or
- The operator has failed to comply with an order issued under ORS 517.860 or 517.880; or
- The operation is being conducted in violation of conditions imposed on an operating permit or reclamation plan pursuant to ORS 517.835; or
- The operation is being conducted without a permit; or
- The operation is being conducted outside the permit boundary; or
- The operation is being conducted outside a permit condition regarding boundaries, setbacks, buffers, or the placement of surface mining refuse.



Violation Classifications	Reduced (EEO*)	Median	Maximum
Class 1	\$ 250.00	\$ 500.00	\$ 1,000.00
Class 2 (Includes repeat Class 1 Violations)	\$ 750.00	\$ 1,500.00	\$ 3,000.00
Class 3 (Includes repeat Class 2 Violations)	\$ 1,500.00	\$ 3,000.00	\$ 6,000.00
Class 4 (Includes repeat Class 3 Violations)	\$ 3,000.00	\$ 6,000.00	\$ 10,000.00

* Expedited Enforcement Offer (EEO)

Violation Classification Examples:

The following is intended to provide guidance for staff as to classification of standard violations.

Class 1 Violations (least severe) are limited to violations that pose no potential threat to human health, safety, or the environment [OAR 632-030-0070(5)(A)]. A civil penalty can only be imposed for a Class 1 Violation if the operator has failed to comply with an order issued under ORS 517.860 or 517.880.

Class 1 violations include but are not limited to:

Failure to submit an Exclusion Certificate application when the requirement has been conveyed by the department. [ORS 517.753(2), OAR 632-030-0016(1)]

Failure to pay the annual renewal fee for an Exclusion Certificate. [ORS 517.753(3), OAR 632-030-0016(6), OAR 632-030-0022(1)]

Failure to report the amount of minerals extracted pursuant to an Exclusion Certificate during the previous 12 months. [ORS 517.753(3)(a), OAR 632-030-0016(6)(a)]

Failure to report the total acreage of surface disturbance by the mining operation pursuant to an Exclusion Certificate as of the date that the renewal is submitted. [ORS 517.753(3)(b), OAR 632-030-0016(6)(c)]

Failure to provide additional information requested by the department to determine continuing eligibility for an Exclusion Certificate. [ORS 517.753(3)(c), OAR 632-030-0016(2)(h)]

Failure to submit a Limited Exemption Closure Plan upon request of the department. [ORS 517.755, OAR 632-030-0017(5)]

Failure to provide a copy of the city or county ordinance for reclamation. [ORS 517.780(1), OAR 632-030-0018(2)(a)]

Failure to provide a list of exempt city or county sites. [ORS 517.780(1), OAR 632-030-0018(2)(b)]

Failure to pay the annual renewal base fee. [ORS 517.800(2), OAR 632-030-0020(3)]

Failure to pay the annual tonnage fee. [ORS 517.800(2), OAR 632-030-0020(3)]

Failure to pay the department fee for staff time and related costs to respond to request for information required by local government. [ORS 517.800(4), OAR 632-030-0020(3)]

Failure to pay the special inspection fee not to exceed \$500 for investigation of mining without an Operating Permit as required by ORS 517.790. [ORS 517.800(5)(a)]

Failure to pay the special inspection fee not to exceed \$500 for investigation of mining outside authorized area. [ORS 517.800(5)(b)]

Failure to maintain a reclamation security. [ORS 517.810(1), OAR 632-030-0021(1)]

Failure of operator to excavate substantially all of the significant aggregate resource on high value farm land, within the boundary and not including any buffer, setback, or sloping areas. [ORS 517.825(2)(a) or (c)]

Failure to submit a survey map for a site with over 20 acres of disturbance. [ORS 517.836, OAR 632-030-0015(2)(c)]

Failure to submit a survey map upon request of the department for the purpose of enforcement. [ORS 517.836, OAR 632-030-0015(2)(d)]

Failure to submit an updated site plan map upon request of the department. [OAR 632-030-0040(2)]

Failure to file an annual report. [ORS 517.837, OAR 632-030-0040(2)]

Class 2 Violations are limited to violations that pose a potential threat to human health, safety, or the environment or repeat Class 1 Violations [OAR 632-030-0070(5)(B)]. Potential threats to human health, safety, or the environment include, but are not limited to, actions that increase instability, erosion, or an unsafe condition at the site.

Class 2 violations include but are not limited to:

Engaging in surface mining below Operating Permit thresholds without holding a valid Exclusion Certificate. [ORS 517.753(1), OAR 632-030-0016(1)]

Impacting greater than one acre per 12 consecutive calendar months without holding a valid Operating Permit. [ORS 517.753(1), OAR 632-030-0016(1)]

Producing more than 5,000 cubic yards (cy) within 12 consecutive calendar months without holding a valid Operating Permit. [ORS 517.753(1), OAR 632-030-0016(1)]

Failure to implement Limited Exemption closure plan immediately upon termination, or to submit an Operating Permit application within 30 days of termination. [ORS 517.770, OAR 632-030-0017(6)(c)]

City or county operating a site that sells less than 5,000 cy per 12-month period without an ordinance that includes reclamation. [ORS 517.780(2), OAR 632-030-0018(2)(d)]

City or county operating a site that has disturbed more than one acre without an ordinance for reclamation. [ORS 517.780(2), OAR 632-030-0018(2)(d)]

City or county operating an exempt site that sells more than 5,000 cy per 12-month period. [ORS 517.780(2), OAR 632-030-0018(2)(e)]

Operating a surface mine without landowner and mineral interest owner approval. [ORS 517.790(1)(a)]

Failure of a Provisional Operating Permit holder to complete an amendment to conform with a subsequently obtained third party approval. [ORS 517.790(5)(b)(B)(i)]

Class 3 Violations are violations that pose an immediate but remediable threat to the environment or repeat Class 2 Violations. For the purposes of this rule, an “immediate but remediable threat to the environment” means that without a quick response and considering such factors to include, but not limited to slope and erodibility, damage will occur and that upon remediation there will be no lasting effect of that damage.

Class 3 violations include but are not limited to:

Operating a surface mine without legal interest in the land sufficient to ensure authority to operate and reclaim. [ORS 517.790(3)(b)]

Failure to mark boundaries for excavation areas, stockpiles, setbacks and buffers prior to mining. [ORS 517.836, OAR 632-030-0015(2)(b)]

Removing for profit any valuable mineral from any portion of mining property preserved from mining. [ORS 517.855]

Class 4 Violations (most severe) are violations that pose an immediate threat to human health or safety; cause actual human injury; pose a threat to the environment that is immediate and not remediable; cause actual damage to the environment; or a repeat Class 3 Violation.

Class 4 violations include but are not limited to:

Affecting more than five acres of land at any mining operation begun after July 1, 1975 without an Operating Permit. [ORS 517.755]

Failure to cease mining in a Limited Exempt area upon termination of the exemption. [ORS 517.771, OAR 632-030-0017(6)]

Failure to complete erosion stabilization in Limited Exemption areas. [ORS 517.775(2)]

Failure of Limited Exempt closure plan to control erosion and ensure no offsite impacts to surface or groundwater. [OAR 632-030-0017(5)]

Allowing surface mining on land not mined prior to July 1, 1972 without a valid operating permit. [ORS 517.790(1)]

Engaging in surface mining on land not mined prior to July 1, 1972 without a valid operating permit. [ORS 517.790(1)]

Failure to fulfill reclamation obligations incurred prior to cancellation of any bond or alternative form of security. [ORS 517.810(1), OAR 632-030-0042(3)]

The classification of violations of permit conditions, reclamation plans, or otherwise unclassified violations will be determined using the violation classification decision tree.