

Department of Geology and Mineral Industries

Chapter 632

Division 35

OREGON MINED LAND RECLAMATION ACT — PLACER MINES, COAL MINES, AND METAL MINES USING ONLY GRAVITY SEPARATION

[632-035-0005](#)

Purpose of These Rules

(1) These rules implement ORS 517.750 to 517.951, 517.990, and 517.992 with respect to placer mines, coal mines and metal mines using only gravity separation. These rules do not apply to aggregate mines.

(2) Applicants seeking operating permits from the Department should be aware that other state, federal and local agencies may require the applicant to obtain approval prior to operation. For example, the Department of Environmental Quality (DEQ) may require air contaminant discharge permits, wastewater discharge permits, and solid waste management permits. Where feasible the Department shall coordinate with other agencies to avoid duplication on the part of applicants. An operating permit from the Department does not constitute authorization to proceed without approval of other agencies if required. It is the applicant's responsibility to obtain other necessary permits.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.517, 517.760 & 517.905

History:

DGMI 1-2014, f. & cert. ef. 4-2-14

GMI 2-1988, f. 5-12-88, cert. ef. 5-2-88

GMI 2-1985, f. 11-19-85, ef. 11-20-85

GMI 3-1984, f. & ef. 12-12-84

GMI 2-1982, f. & ef. 8-13-82

[632-035-0010](#)

Definitions

The definitions in ORS 517.750 and 517.910 apply to these rules. In addition, the following definitions apply:

(1) "Affected," as used in ORS 517.750(15)(a) means disturbed by excavation or any other surface mining or milling on any land surface during any stage of mineral production, or the covering of any land surface by surface mining refuse.

(2) A "Period of 12 Consecutive Calendar Months" as used in ORS 517.750(15)(a) begins on the date surface mining begins.

(3) "Disturbed Area" is any area within the permit area boundary where surface or ground water resources are impacted as a result of mining, milling or mine facilities.

(4) "Expansion" as used in these rules means lateral expansion consequential to surface mining into land surfaces previously not affected by surface mining.

(5) "Operating Permit" means a permit issued by the Department under ORS 517.790.

(6) "Ore Processing" means milling or other mineral concentration process.

(7) "Permit Area" is the geographical location of surface mining as defined in ORS 517.750(15). Permit area is defined by boundaries submitted on a map acceptable to the Department and means the area to be covered by an operating permit. The permit area will generally be a parcel or contiguous parcels available to the permittee for surface mining. Areas used

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for the storage or disposition of any product or waste material from the surface mining operation even though separate from the area of extraction shall be included in the permit area. The permit area may be redefined as mining progresses. In the case of exploration conducted under an operating permit, the permit area includes, but is not limited to, areas proposed for surface disturbance by drilling, drill pad construction, trenches and any roads newly constructed or improved with heavy equipment other than the road used to access the permit area.

(8) "Pre-Mine Use" when used in reference to surface or ground water means pre-mine uses that include but are not limited to:

- (a) Drinking water;
- (b) Fishery;
- (c) Agriculture;
- (d) Recreation.

(9) "Total Exemption" means surface mining that is exempted from the requirements of these rules. The Department may require certain information to be provided under OAR 632-035-0016(2) to establish exemptions.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.910

History:

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GMI 2-1982, f. & ef. 8-13-82

632-035-0015

General Information

(1) Information Requirements. The Department may require any information needed to determine the status of any surface mining. Information subject to ORS 517.901 will be held confidential. Information concerning the location and the identity of mine owners and operators are matters of public record, as are actions taken by the Department with regard to any mining operation or permit application.

(2) Inspections. As provided by ORS 517.850 the Department may, after reasonable notice, inspect any surface mining site to determine status or compliance. The Department will report the results of these inspections to the permittee in writing.

(a) Initial inspections may be conducted by the Department. Reasons for the inspections include but are not limited to:

- (A) Determining existing environmental conditions;
- (B) Reviewing the proposed mine operation;
- (C) Reviewing the proposed reclamation plan;
- (D) Collecting data to calculate a bond;
- (E) Monitoring the construction of facilities.

(b) Annual and non-scheduled inspections may be conducted by the Department. Reasons for the inspection include but are not limited to:

- (A) Reviewing operating permit compliance;
- (B) Investigating public complaints;
- (C) Evaluating the site bond level.

(3) Surface Mining on Federal Lands. Surface mining conducted on federal lands is subject to these rules. The Department shall coordinate with agencies of the federal government to minimize conflict or duplication in operating, reclamation and security requirements. The Board may enter into formal agreements with federal agencies to establish the means by which these rules are carried out.

(4) Fees. Application fees for an operating permit issued under this rule division are established by the Department as authorized by ORS 517.920. Other fees, including annual fees, are established by ORS 517.800.

(a) The application fee must accompany the application for an operating permit.

(b) Each permittee or certificate holder shall pay the required annual fee and any other accrued fees on or before the last day of the month shown on the permit as the anniversary month. Each permittee or certificate holder shall submit an annual report to the Department on a form approved by the Department by the last day of the anniversary month. As a courtesy, the Department may notify the permittee with a notice of these requirements at least 45 days prior to the due date. Failure of the permittee to pay the fee may result in the issuance of a suspension or closure order by the Department.

(c) Application fees are not refundable.

(d) Fees may be prorated at the applicant's request in order to adjust the anniversary date. The prorated fee will be on the basis of one twelfth (1/12) of the annual fee per month.

(5) Closure Orders and Invalidation.

(a) The Department may issue a closure or suspension order when it finds that an operator is conducting surface mining:

(A) For which a permit is required but has not been obtained;

(B) Where a site has expanded outside the approved permit area without approval by the Department;

(C) That is in violation of ORS 517.750 to 517.951 and the rules adopted thereunder, the reclamation plan, or permit conditions; or

(D) Without having submitted the annual fee.

(b) An operating permit may be terminated if the fees and annual report form have not been received by the Department in a timely manner, or at any time if any bond or alternate security has expired, or has been cancelled without replacement, but reclamation obligations continue until the site is reclaimed and reclamation is approved by the Department;

(c) A limited exemption certificate becomes invalid upon the expiration date if renewal has not been made.

(6) Reclamation by the Department:

(a) If the permittee fails to comply with reclamation obligations established by reclamation plan or departmental order, the Department may perform the reclamation outlined in the reclamation plan to the extent possible. The Department may perform alternative reclamation depending on site conditions and any need to reclaim to the secondary beneficial use designated in the reclamation plan.

(b) The Department may reclaim the site to:

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

(B) Eliminate or minimize any pollution or erosion;

(C) Rectify abuses of natural resources, including fish and wildlife habitat and restoring drainage;

(D) Reach a condition compatible with local comprehensive plan and with federal and state laws.

(7) Applicability of Laws and Rules. Permittees, at all times during the terms of the permit, are subject to the provisions of statutes and rules in effect at that time.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.775, 517.800, 517.850 & 517.920

History:

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GMI 2-1988, f. 5-12-88, cert. ef. 5-2-88

GMI 2-1985, f. 11-19-85, ef. 11-20-85

GMI 3-1984, f. & ef. 12-12-84

GMI 2-1982, f. & ef. 8-13-82

632-035-0016

Total Exemptions

(1) The following excavation, processing or grading activities are exempt from these rules and do not require the payment of fees, posting of bonds or submittal of reclamation plans:

(a) Beds and Banks. Excavations of materials from the beds and banks of any waters of this state are exempt from these rules when conducted pursuant to a permit issued under ORS 196.800 to 196.900;

(b) Operations producing less than 5,000 cubic yards of material per year and disturbing less than one acre of land are exempt from these rules but may require a permit from DEQ and other government agencies;

(c) Exploration. Mineral exploration activities subject to ORS 517.702 to 517.740:

(2) Applications for a total exemption certificate if desired shall be made to the Department using the established form. The Department may require the applicant claiming this exemption to provide data to establish the validity of the exemption. The data required may include but are not limited to, the name of the operator, location of the surface mine, size of the site, date of commencement of the surface mining, a summary of the preceding 12 months of surface mining, and an estimate of the activity for the succeeding 12 months.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.750

History:

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GMI 3-1984, f. & ef. 12-12-84

GMI 2-1982, f. & ef. 8-13-82

632-035-0017

Limited Exemptions

(1) Limited exempt status is available only for operations that have received and maintained a certificate of limit exemption as provided in ORS 517.770 and 517.775.

(2) Operations under a certificate of limited exemption are subject to the provisions in OAR 632-030-0017.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.770 & 517.775

History:

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GMI 3-1984, f. & ef. 12-12-84

GMI 2-1982, f. & ef. 8-13-82

632-035-0020

Procedures for Applying for an Operating Permit

Obtaining an Operating Permit:

(1) The applicant shall submit an operating permit application as defined in OAR 632-035-0025.

(2)(a) The Department may require any information needed to ascertain whether surface mining has occurred or is occurring and the status of any proposed or existing permit.

(b) The applicant shall survey the permit area, all excavation areas, setbacks, and buffers, and provide a map that shows all areas of excavation, setbacks, buffers, buildings, haul roads, stockpiles, wells, ponds, and floodways. Surveys must be conducted by a professional land surveyor as required by ORS chapter 672.

(3) The application for an operating permit must be accompanied by the fees authorized in ORS 517.800 and 517.920 as determined by the Department.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.790

History:

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GMI 2-1985, f. 11-19-85, ef. 11-20-85

GMI 3-1984, f. & ef. 12-12-84

GMI 2-1982, f. & ef. 8-13-82

Requirements for an Operating Permit Application

(1) Prior to initiating any permitting action the applicant is encouraged to meet with the Department and with the Department of Environmental Quality (DEQ). These rules apply to mine areas with ore processing facilities at or removed from the mine site, and apply to monitoring facilities. The Department shall closely coordinate its permit requirements with DEQ so as to avoid duplication of effort and unnecessary delay.

(2) An operating permit application shall contain five sections. Those sections are: Existing Environment, General Information, Operating Plan, Reclamation Plan, and Financial Security.

(a) Existing Environment:

(A) The Department may require environmental baseline information including characterization of the following:

- (i) Vegetation;
- (ii) Soil/overburden;
- (iii) Climate/air quality;
- (iv) Fish and aquatic biology*;
- (v) Wildlife* (terrestrial, avian);
- (vi) Surface and ground water;
- (vii) Area seismicity;
- (viii) Geology and geographic hazards;
- (ix) Mineralogy and chemistry;
- (x) Noise.

NOTE: *These characterizations may be necessary for determinations by the Oregon Department of Fish and Wildlife.

(B) Other state and federal agencies may have similar baseline requirements. Where possible the Department shall coordinate with agencies that have similar baseline needs, in order to avoid duplication for the applicant;

(C) The level of detail required by paragraph (2)(a)(A)(i-ix) of this rule may vary depending on location, size, scope, and type of mining operation. The applicant should contact the Department prior to baseline data collection to determine the level of detail necessary for the applicant's proposal.

(b) General Information:

(A) The name(s) and address(es) of all owners of the surface estate and mineral estate;

(B) The legal structure (e.g., corporation, partnership, individual) of the applicant;

(C) The name and mailing address of the facility for correspondence;

(D) The name and mailing address of the applicant's resident agent;

(E) The proposed starting date and expected life of the proposed operation;

(F) A description of the present land use and the proposed post-mine use of the site following mining. The proposed post-mine use must be compatible with the local comprehensive plan as determined by local land use planning agencies;

(G) Maps, aerial photographs or design drawings of appropriate scale may be required by the Department. Information that typically may be required on maps, aerial photographs or design drawings includes but is not limited to:

- (i) Permit area boundary;
- (ii) Mine location;
- (iii) Waste rock or overburden stockpiles;
- (iv) Processing facilities location(s);
- (v) Ancillary facilities location(s);
- (vi) Topsoil stockpile locations;

(viii) Typical cross sections;

(ix) Plan views and profiles;

(x) Existing watercourses and ponds;

(xi) Interim watercourses and ponds;

(xii) Reconstructed watercourses and ponds;

(xiii) Post-mining topography;

(xiv) Property lines;

(xv) General ore body location.

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

(I) Written evidence that the surface estate and mineral estate owners concur with the reclamation plan and the proposed use after reclamation and that they will allow the Department access to complete reclamation within the permit area if the permittee fails to comply with the approved reclamation plan. If the applicant can document a legal right to mine without consent of the surface estate owner, and the applicant can demonstrate to the Department's satisfaction that the Department will have a right to enter upon the permit area to complete the reclamation within the permit area if the permittee fails to complete the approved reclamation, the Department may issue an operating permit.

(c) Operating Plan. The Department may require the following in an operating plan:

(A) A detailed description of the proposed mining methods;

(B) A general list of equipment required for operation;

(C) A general schedule of construction and operation starting with the beginning of construction and ending with the completion of mining;

(D) General design assumptions plus plans profile, typical cross sections and capacities for mine facilities including but not limited to:

(i) Impoundments;

(ii) Ponds;

(iii) Diversion systems;

(iv) Disposal systems;

(v) Stockpiles and dumps;

(vi) Pits;

(vii) Tailing disposal facilities.

(E) A plan for the conservation of the pre-mine quantity and maintenance of the pre-mine quality of the surface and ground water resource so as to not degrade the pre-mine use. Any discharge of ore processing solutions off-site would be required to meet DEQ discharge permit standards;

(F) A water budget analysis including but not limited to:

(i) Precipitation/evaporation data;

(ii) Make-up water needs;

(iii) Make-up water source;

(iv) Procedures to dispose of precipitation water in excess of designed capacities, to include but not be limited to solution treatment facilities or proposed irrigation strategies. This section should be coordinated with procedures for seasonal closure and decommissioning of the operation;

(v) Surface water runoff determination for the watershed containing the mine operation;

(vi) At a minimum, projects shall be designed to handle the 100-year, 24-hour precipitation event.

(G) Seasonal closure procedures if applicable including but not limited to:

(i) Target seasonal storage volumes;

(ii) Total system storage capacity;

(iii) Procedures to handle volumes of water in excess of seasonal storage capacities;

(iv) Estimated target dates for closure.

(H) Credible accident contingency plan including but not limited to:

(i) Accidental discharge scenarios;

(ii) Immediate response strategy;

(iii) Procedures to mitigate impacts to ground water;

(iv) Procedures to mitigate impacts to surface water;

(v) Procedures to mitigate impacts to soil/overburden;

(vi) Procedures to mitigate impacts to living resources;

(vii) Notification procedures;

(I) Operational monitoring programs including but not limited to, surface and ground water monitoring systems within and outside the permit boundary, water balance of the process system and leak detection systems. Monitoring may be required after cessation of mining or milling operations to ensure compliance with decommissioning performance standards;

(J) Surface water management procedures to provide for protection against contamination of ground water and the off-site discharge of sediments into adjacent waterways;

(K) Stable storage of overburden. A vegetative cover of overburden stockpiles may be required to prevent erosion of the overburden storage or spoils area;

(L) Isolation and stable storage of the topsoil or equivalent growth media material maintained for use in revegetation;

(M) Stable storage of mine dumps. The pre-dump topography, ground preparation, method of emplacement of dump material, height of lifts, total height and final slopes shall be described. The Department may require design and review by a registered professional engineer or certified engineering geologist;

(N) Stable storage of mill tailings. Plans and specifications of all dams or impoundments proposed to be constructed for the purpose of storing mill tailings or other materials consequent to the mining and milling operation may be required by the Department to be prepared by a registered professional engineer or certified engineering geologist. Plans shall be reviewed by the Department and other regulatory agencies. Construction of such dams may be required to be reviewed by a registered professional engineer. Procedures to prevent pollution of air, water, and land shall be described.

Depending upon the commodity to be mined, tailings impoundments must meet various requirements of the Department of Environmental Quality, the Health Division of the Department of Human Resources, the Department of Fish and Wildlife, the Oregon Department of Energy Department of Water Resources, Army Corps of Engineers and the U.S. Nuclear Regulatory Commission. Details on how each tailings disposal facility will be reclaimed must be submitted;

(O) Stable storage of mined ore. Plans and specifications prepared by a registered professional engineer or certified engineering geologist of all ore storage facilities may be required by the Department. Storage facilities as used in this paragraph include but are not limited to stored ore, ore stockpiles, storage bins and silos;

(P) Subsidence Control Plan for Underground Mines.

(i) At the discretion of the Department an application for underground mining activities must include an inventory that shows whether structures, renewable or nonrenewable resources, or water resources exist within the proposed permit area and adjacent area and whether subsidence might damage, or interfere with the reasonably foreseeable uses of, such structures or resources;

(ii) If the Department finds, after reviewing the survey, that no structure or renewable or nonrenewable resources exists or no material damage or diminution could be caused in the event of mine subsidence, no further information needs to be provided under this subsection;

(iii) If the Department finds, after reviewing the survey, that any structure, renewable or nonrenewable resource, or water resource exists and that subsidence could cause material damage or diminution of value of foreseeable use of the land, then the applicant shall submit a subsidence control plan that contains:

(I) A detailed description of all proposed methods of operation that may cause subsidence, including:

(I-a) The technique of ore removal; and

(I-b) The extent, if any, to which planned and controlled subsidence is intended.

(II) A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value or reasonably foreseeable use of the surface including:

(II-a) The anticipated effects of planned subsidence, if any;

(II-b) Measures to be taken inside the mine to reduce the likelihood of subsidence; and

(III) Measures to be taken on the surface to prevent material damage to or diminution of value of reasonably foreseeable use of the surface;

(IV) A detailed description of measures to be taken to determine the degree of material damage to or diminution of value of foreseeable use of the surface, including measures such as:

(IV-a) The results of pre-subsidence surveys of all structures and surface features that might be materially damaged by subsidence; and

(IV-b) Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operations.

(Q) A list of and procedures for the handling and storage of any chemicals, acid-forming materials or radioactive material generated from or required for mining or processing at the proposed operation.

(d) Reclamation Plan. The Department may require the following in a reclamation plan:

(A) Provisions for re-contouring, stabilization and/or topsoil replacement of all disturbed areas;

(B) Provisions for the revegetation of all disturbed areas consistent with future use, including seedbed preparation, mulching, fertilizing, species selection, and seeding or planting rates and schedules. The Department may consider revegetation successful if it is comparable in stability and utility to adjacent analogous areas. In arid or semi-arid regions, the Department may allow three years of growth prior to evaluation of revegetation. Otherwise revegetation will be evaluated after one growing season. Vegetation test plots and chemical/physical soil and subsoil analysis may be required to ensure establishment feasibility. If applicable the applicant must include a plan for the control of noxious weeds;

(C) Provisions for protection of public health and safety;

(D) Provisions specifying adequate setbacks;

(E) Procedures for all stream channels and stream banks to be rehabilitated so as to minimize bank erosion, channel scour, and siltation. Disturbance within the beds and banks of streams may require a permit from the Department of State Lands;

(F) The Department may require the applicant to provide for the prevention of stagnant water;

(G) Final slopes shall be stable;

(H) Reclaimed cut banks shall not have slopes exceeding 1-1/2 horizontal to 1 vertical (1-1/2:1). The Department may grant exceptions for steeper slopes where the applicant can document that the slopes will be stable and if the steeper slopes:

(i) Blend into adjacent terrain features; or

(ii) Existed prior to mining; or

(iii) Are consistent with approved subsequent beneficial use.

(I) Fill slopes shall be 2:1 or flatter unless steeper slopes are approved by the Department. Technical data supporting steeper slope stability may be required by the Department;

(J) Procedures for the salvage, storage and replacement of topsoil or acceptable substitute;

(K) Provisions for the establishment of 3:1 in-water slopes to six feet below water level for permanent water impoundments. Reasonable alternatives may be approved by the Department when they are consistent with the reclamation plan. For example, safety benches no more than two feet below low water level and five-feet wide may be substituted for the slope requirement where the Department determines that sloping is not practical;

(L) Visual screening of the proposed operation may be required, if economically practical, when the operating area is visible from a public highway or residential area. Techniques for visual screening include, but are not limited to, vegetation, fencing or berms;

(M) Procedures for the removal or disposal of all equipment, refuse, structures and foundations from the permit area. Permanent structures may remain if they are part of an approved reclamation plan;

(N) Provisions to maintain access to utilities when a utility company right-of-way exists;

(O) Procedures for decommissioning mine facilities including but not limited to:

(i) Procedures for ore storage sites to meet decommissioning performance standards for protection of surface and ground water quality and living resources and to achieve revegetation requirements;

(ii) Procedures for tailing disposal facilities to meet decommissioning performance standards for long-term stability, protection of surface and ground water quality and living resources and provide for attainment of site land use objectives;

(iii) Procedures for solutions to meet decommissioning performance standards for discharge, containment and evaporation, or other ultimate disposal methods;

(iv) Removal of all process chemicals;

(v) Appropriate isolation or removal of waste material;

(vi) Monitoring system by which the success of the proposed reclamation can be measured for bond release.

(e) Financial Security:

(A) The applicant shall submit a permit bond or other adequate financial security for the purpose of ensuring completion of the reclamation plan, other requirements of ORS 517.750 to 517.951, and all rules and permit conditions. The financial security amount shall be determined and transmitted to the operator after comments by reviewing agencies on the proposed reclamation plan have been received and evaluated. All land shall have Department-approved and accepted financial security prior to disturbance. The Department must determine the amount of the bond or other security required by estimating the cost of reclamation if the Department were to perform the reclamation;

(B) Factors the Department will consider in determining the amount of security may include, but are not limited to, the following:

(i) Supervision;

(ii) Mobilization;

(iii) Costs of equipment;

(iv) Equipment capability;

(v) Costs of labor;

(vi) Removal or disposition of debris, junk, equipment, structures, foundations and unwanted chemicals;

(vii) Reduction of hazards such as: in-water slopes, highwalls, and landslides or other mass failure;

(viii) Disposition of oversize, rejects, scalplings, and overburden;

(ix) Backfilling, contouring or re-grading and topsoil replacement;

(x) Draining, establishment of drainage, and erosion control;

(xi) Soil tests;

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

(xiii) Tree and shrub planting;

(xiv) Fencing;

(xv) Liability insurance;

(xvi) Long-term stabilization, control, containment or disposal of waste solids and liquids;

(xvii) Final engineering design;

(xviii) Costs of remedial measures identified to clean up releases of contaminants associated with mining, processing or beneficiation that are reasonably likely to cause a threat to public health, safety, or the environment.

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

(i) Comparable costs from similar projects;

(ii) Catalog prices;

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

(iv) Operator estimates;

(v) Equipment handbooks;

(D) Seed mixes, fertilizer rates, and other requirements will be derived from departmental experience combined with advice from such sources as the Oregon Department of Agriculture, Soil Conservation Service, Oregon State University Extension Service, the Department of Transportation, the Bureau of Land Management or United States Forest Service and private sector experts;

(E) The security amount shall be based on the cost of reclamation at the time of an inspection plus the predicted disturbance within the next 12 months. Security amounts shall not account for construction of structures or comparable features such as housing developments or industrial construction even if included in a reclamation plan;

(F) The Department, in consultation with DEQ, shall make a determination of whether a threat to public health or the environment is reasonably likely to exist from a concentration of metals or minerals resulting from mining, processing or beneficiation at the proposed project.

(G) The applicant may be required to submit reclamation/decommissioning cost estimates and/or estimated costs for mitigation, reclamation and/or disposal associated with a credible accident for consideration by the Department;

(H) No permit shall be issued or renewed until all financial security for a surface mining site is on file with the Department. Financial security must be maintained until operations have ceased, reclamation has been completed, and all decommissioning performance standards have been met. Financial security must be provided by surety companies authorized to do business in Oregon and acceptable to the Department. A security submitted for multiple surface mining sites under the provisions of ORS 517.810(4) must be accompanied by a list showing the permits covered by the security, the amount of the bond applicable to each surface mining site, and the number of acres bonded at each site.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.810, 517.870, 517.890, 517.915 & 517.950

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Department Action on Operating Permit Application

(1) The Department shall approve or deny a complete application in writing within 120 days of receipt. If an application is incomplete, the Department shall notify the applicant of that fact in writing within 30 days of receipt and the Department will specify the deficiencies therein. Within 60 days of receipt of a notice of incompleteness the applicant may appeal the determination of incompleteness or may resubmit the application with deficiencies corrected.

(2) The Department will submit the draft operating permit to local planning authorities and other appropriate public agencies for review. If the operating permit cannot be reviewed and accepted or rejected by the Department within 120 days after receipt the Department will notify the applicant.

(3) If the Department refuses to approve the operating permit for any reason, the Department will notify the applicant in writing within five days of refusal stating the reasons for refusal and identifying additional requirements as may be prescribed by the Department for inclusion in the reclamation plan. Within 60 days after the receipt of such a deficiency list or permit conditions, the applicant shall comply with the additional requirements prescribed by the Department or file a written notice of appeal of the decision to the Department in accordance with OAR 632-035-0056. Failure to

comply with the additional requirements or file a notice of appeal within the 60-day period, unless an extension is granted by the Department, may result in the application for an operating permit being denied.

(4)(a) The Department will approve the applicant's operating permit if the application adequately provides for reclamation of surface mined lands and complies with the applicable statutes and these rules;

(b) If the Department finds that reclamation cannot be accomplished it shall not issue an operating permit. The applicant shall be notified in writing within five days of the decision.

(5) The Department may attach conditions to the operating permit. These conditions may be added to reflect special concerns that are not adequately addressed in the reclamation plan and fall within the scope of these rules. The permittee may appeal these conditions by filing a written notice of appeal in accordance with OAR 632-035-0056.

(6) The approval of the reclamation plan and the issuance of the operating permit by the Department do not constitute a finding of compliance with statewide planning goals or local regulations implementing acknowledged comprehensive land use plans. The operating permit may be issued prior to the local land use agency making such a determination. The permittee is responsible for obtaining local land use approval before commencing the proposed surface mining activity. When issuing the permit, the Department will inform the permittee that:

(a) Issuance of the operating permit is not a finding of compliance with the Statewide Planning Goals (ORS 197.225) or the acknowledged comprehensive plan; and

(b) The applicant is responsible for compliance with the requirements of all other agencies including land use determination by local government and compliance with the Statewide Planning Goals before commencing surface mining under the approved operating permit.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.740, 517.810 & 517.925

History:

DGMI 1-2014, f. & cert. ef. 4-2-14

GMI 2-1988, f. 5-12-88, cert. ef. 5-2-88

GMI 2-1985, f. 11-19-85, ef. 11-20-85

GMI 3-1984, f. & ef. 12-12-84

GMI 2-1982, f. & ef. 8-13-82

632-035-0035

Modification of an Operating Permit

Modification may be initiated at any time by the permittee or by the Department. An operating permit may be modified by approval of the Department after timely notice and opportunity for review as provided by ORS 517.830(4) in order to modify the requirements so that they comply with existing laws, or to accommodate unforeseen developments that may affect the reclamation plan as previously approved. Expansion of an operation beyond original permit area or significant intensification of activity may require recirculation to interested agencies for additional comment.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.740 & 517.800

History:

DGMI 1-2014, f. & cert. ef. 4-2-14

GMI 2-1988, f. 5-12-88, cert. ef. 5-2-88

GMI 2-1985, f. 11-19-85, ef. 11-20-85

GMI 2-1982, f. & ef. 8-13-82

632-035-0040

Maintaining an Operation Permit

(1) Within 30 days after completion of construction and prior to operation, the permittee shall submit a signed registered engineer's or certified engineering geologist's report, complete with accurate drawings and specifications depicting the actual construction. Alternatively, if the construction proceeded in substantial compliance with the approved plans and specifications, a statement to that effect may be submitted by the registered professional engineer or certified engineering geologist. In either case, the permittee shall make specific arrangements for inspection by the Department during construction or installation of mine facilities.

(2)(a) After issuance of the permit and prior to mining, the permittee must mark the boundaries for all excavation areas, stockpiles, setbacks, and buffers. Unless otherwise authorized by the Department in writing, the marking must be accomplished by placing clearly visible markers, approved by the Department, at a distance of no more than 200 feet on

center. The Department may grant extensions for marking areas that are subject to a phased operation plan. The Department may waive marking requirements or allow greater distances where topography or other conditions make marking unreasonable. Any extension or waiver must be approved by the Department in writing.

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

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

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

(3) Subject to the limitations in ORS 517.862, an operating permit issued by the Department will remain in effect for the period of time necessary to mine and reclaim the land described in the permit and subject to the requirements of the law. Each operating permit is to be renewed prior to the anniversary date by submitting the required annual fee, any other accrued fees, and filing the annual report. As a courtesy, the Department may notify the permittee by mail at least 45 days prior to the anniversary date of the permit and provide the necessary renewal forms and fee schedule for permit renewal. In cases of nonrenewal, a second notice may be sent prior to issuance of a closure order. The permittee shall maintain an operating permit until mining and reclamation, including revegetation (if required), have been completed.

(4)(a) If the Department determines from inspections conducted pursuant to ORS 517.850, or from any other source, that the operation is not in compliance with the approved operating permit, ORS 517.750 to 517.900, or the rules adopted thereunder, the Department shall give written notice of noncompliance to the permittee;

(b) The permittee must begin rectifying all deficiencies within 30 days of receipt of the notice of noncompliance as required in ORS 517.860(1), or file a written appeal to the notice of noncompliance in accordance with OAR 632-035-0056. If the permittee appeals the notice within 30 days of receipt, the Department will not issue a closure order or revoke the permit pending the appeal, except in cases of reasonable probability of danger to human life, property, water resources, or the environment. The Department will provide the permittee a written statement of the specific facts leading to that finding and corrective action for the elimination of such danger.

(c) The Department will notify the permittee in writing within ten days of verification of compliance.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.740 & 517.800

History:

DGMI 1-2014, f. & cert. ef. 4-2-14

GMI 2-1988, f. 5-12-88, cert. ef. 5-2-88

GMI 2-1985, f. 11-19-85, ef. 11-20-85

GMI 3-1984, f. & ef. 12-12-84

GMI 2-1982, f. & ef. 8-13-82

632-035-0045

Obtaining Bond Release

(1) The permittee shall notify the Department when the reclamation has been completed.

(2) The Department shall inspect the reclaimed site. If the Department determines that the permittee has fulfilled the requirements of the approved reclamation plan or decommissioning performance standards, the bonds or other securities will be released. The Department may authorize bond or other security reduction if the reclamation or decommissioning is partially completed.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.740

History:

DGMI 1-2014, f. & cert. ef. 4-2-14
GMI 2-1988, f. 5-12-88, cert. ef. 5-2-88
GMI 2-1985, f. 11-19-85, ef. 11-20-85
GMI 3-1984, f. & ef. 12-12-84
GMI 2-1982, f. & ef. 8-13-82

632-035-0050

Appeals

(1) Prior to the initiation of a formal appeal of any departmental order, notice, or other action, made pursuant to ORS 517.750 to 517.950 or the rules adopted thereunder, the applicant or permittee shall first request that the State Geologist informally review and resolve the matter. The State Geologist will provide a written decision within 20 days of receipt of such an informal request. If the State Geologist is unable to resolve the informal request, the applicant or permittee may request a contested case hearing. Appeals must be filed within 30 days of receipt of the State Geologist's written decision except as otherwise provided by ORS 183.435.

(2) An applicant or permittee requesting a hearing for consideration of any appeal shall state the reasons for requesting the hearing and the objections to the Department's order, notice, or other action.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.890 & 517.992

History:

DGMI 1-2014, f. & cert. ef. 4-2-14
GMI 2-1985, f. 11-19-85, ef. 11-20-85
GMI 2-1982, f. & ef. 8-13-82

632-035-0055

Penalties

(1) Any landowner or operator who conducts a surface mining operation, for coal or a metal-bearing ore, without a valid operating permit as required by ORS 517.750 to 517.955 shall be punished, upon conviction, by a fine of not more than \$10,000.

(2) Violation of any provision of ORS 517.750 to 517.955, or of any rule or order made pursuant to ORS 517.910 to 517.950, or of any conditions of an operating permit, is punishable, upon conviction, by a fine of not more than \$10,000.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.990 & 517.992

History:

DGMI 1-2014, f. & cert. ef. 4-2-14
GMI 2-1988, f. 5-12-88, cert. ef. 5-2-88
GMI 2-1985, f. 11-19-85, ef. 11-20-85
GMI 3-1984, f. & ef. 12-12-84
GMI 2-1982, f. & ef. 8-13-82

632-035-0060

Civil Penalty

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

(2) Definitions. For purposes of this section of these rules:

(a) "Compliance Schedule" is a written plan that establishes specific actions and time tables for remedying a violation. The compliance schedule may require the violator to propose specific actions that are acceptable to and approved in writing by the Department. The compliance schedule also may be used for informal disposition of proceedings through stipulation, agreed settlement, consent order or default;

(b) "Notice of Civil Penalty" is a written statement that includes the elements of a notice of violation and also imposes a civil penalty;

(c) "Notice of Violation" is a written warning that includes a short and plain statement of the facts establishing a violation and reference to the statute, rule, order, or permit condition that has been violated;

(d) "Outside a permit condition regarding boundaries, setbacks, buffers, or the placement of surface mining materials" means a violation of any permit condition that establishes or regulates the physical or geographic limits on mining operations. "Surface mining materials" means soil, rock, ore, minerals or overburden. It does not include discharges of water.

(e) "Violation" is any violation of ORS 517.700 to 517.950, or any rule, order, or permit adopted under those statutes, provided:

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

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

(3) Notice of Violation:

(a) If the Department finds that a violation does not pose an immediate threat to human health, safety or the environment, it may issue a notice of violation. The notice must give the violator a specified period of time not less than 72 hours in which to correct the violation;

(b) The notice of violation may include a compliance schedule and the notice of violation may include a requirement that a violation not be repeated within a specified period of time;

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

(4) Notice of Violation – Service. A notice of violation must either be served personally or sent by registered or certified mail. If the notice is served by mail, the period specified for compliance must not commence until four business days after the date the notice has been mailed.

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

(6) Notice of Civil Penalty – Form and Service. A notice of civil penalty must be in a form and shall be served in the manner required by ORS 183.415.

(7) Appeals – Consolidation. Any person issued a notice of violation or a notice of civil penalty shall have the right to a contested case hearing under ORS 183.413 to 183.470. The hearing must be requested in writing within 20 days of the date of service. A notice of civil penalty may be issued even though a contested case hearing is pending on the underlying notice of violation. However, if timely requests for hearings are received for a notice of violation and a notice of civil penalty arising out of the same violation, the hearings may be consolidated.

(8) Civil Penalty – Classification:

(a) Civil penalties imposed under ORS 517.992(2) must be coordinated with other agencies, to the extent practical, to avoid duplication of penalty for the same violation and be in accordance with the following schedule:

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

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

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

(D) Class 4. Violation that:

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

(ii) Causes actual human injury;

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

(iv) Causes actual damage to the environment; or

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

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

(c) In the event of a conflict between the text of this rule and the language or operation of the attached schedule, the language in the text of the rule controls.

Statutory/Other Authority: ORS 517.090 & 517.840

Statutes/Other Implemented: ORS 517.992

History:

DGMI 1-2014, f. & cert. ef. 4-2-14

GMI 1-1994, f. & cert. ef. 7-21-94

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Oregon State Archives • 800 Summer Street NE • Salem, OR 97310

Phone: 503-373-0701 • Fax: 503-373-0953 • Adminrules.Archives@sos.oregon.gov

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