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Chapter 632

Division 30

OREGON MINED LAND RECLAMATION ACT — APPLICABLE TO ALL SURFACE MINING EXCEPT AS SPECIFICALLY PROVIDED UNDER OAR CHAPTER 632, DIVISION 035 (COAL AND METAL-BEARING ORE OPERATIONS), AND OAR CHAPTER 632, ^[1]~~SEPI~~ DIVISION 037 (CHEMICAL PROCESS MINING)

[632-030-0005](#)

Purpose and Application of These Rules

(1) These rules implement the purposes of the Mined Land Reclamation Act as established in ORS 517.760.

(2) These rules prescribe procedures for obtaining an operating permit and for complying with the other requirements of the Oregon Mined Land Reclamation Act. These rules apply to all operating permits, including those for non-aggregate mineral mines and chemical process mines, except where the provisions of OAR chapter 632, division 35 or 37 control. These rules do not address exploration activities. The requirements for exploration permits are addressed in OAR chapter 632, division 33.

(3) 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 may require permits for air quality and water quality. Where reasonable, the Department will 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 516.090(2)(a), 517.740 & 517.840(1)(d)

Statutes/Other Implemented: ORS 517.760

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

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

GMI 2-1997, f. & cert. ef. 10-14-97

GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88

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

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

GMI 1-1980, f. 2-29-80, ef. 3-1-80

GMI 5, f. 12-20-73, ef. 1-11-74

[632-030-0010](#)

Definitions

In addition to the definitions provided in ORS 517.750, the following definitions apply to OAR 632-030-0005 through 632-030-0070:

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

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

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

(4) "Complete Application" means an application that is determined to be complete by the Department that includes the appropriate fee, forms, and site characterization, operational and mine closure details, and other documentation required under this rule division.

(5) "Compliance Order" means an order requiring compliance with an operating permit, reclamation plan, the Mined Land Reclamation Act, or the rules adopted thereunder as provided in ORS 517.860 and OAR 632-030-0070.

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

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

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

(9) "Permit Area" means the area covered by an operating permit issued by the Department and defined by boundaries submitted on a map acceptable to the Department under OAR 632-030-0015. The permit area is generally a contiguous parcel and may include multiple excavation and/or processing areas. The permit area may include, but is not limited to, haul roads, buffers, setbacks, reclaimed areas, and areas used for the storage or disposition of any mine product or mine waste material from the surface mining operation, even though separate from the area of extraction. The permit area may be redefined by a permit amendment.

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

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

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

Statutory/Other Authority: ORS 183.341, 197.180 & 517.740

Statutes/Other Implemented: ORS 517.750

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

DGMI 1-2001, f. & cert. ef. 8-6-01

DGMI 1-2000, f. & cert. ef. 7-20-00

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

GMI 2-1997, f. & cert. ef. 10-14-97

GMI 1-1992, f. & cert. ef. 6-17-92

GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88

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

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

GMI 1-1980, f. 2-29-80, ef. 3-1-80

GMI 7, f. 11-7-74, ef. 12-11-74

GMI 5, f. 12-20-73, ef. 1-11-74

632-030-0015

Information Requirements; Surveys; Marking

(1) Information Requirements. 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. Any production records, mineral assessments, and trade secrets submitted by a mine operator or landowner to the Department will be kept confidential as provided in ORS 517.901.

(2) Surveys and Marking.

(a) Applicants for new operating permits or amendments must 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 672.

(b) After issuance of the permit and prior to mining, the operator 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.

(c) 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 an operator, 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 operator that the survey is adequate, the operator must mark boundaries in the permit area as provided in subsection (2)(b) of this rule.

(d) The Department may require any operator of a previously permitted operation that is not subject to subsection (2)(c) 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 operator will be notified of such requirement in writing and will be allowed a reasonable time to accomplish the survey or marking requirements.

(3) The Department may require an operator 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.

Statutory/Other Authority: ORS 183.341, 197.180, 517.740, 517.800(3) & (4)

Statutes/Other Implemented: ORS 517.740, 517.800 & 517.850

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

DGMI 1-2000, f. & cert. ef. 7-20-00

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

GMI 2-1997, f. & cert. ef. 10-14-97

GMI 1-1993, f. 10-29-93, cert. ef. 11-4-93

GMI 1-1992, f. & cert. ef. 6-17-92

GMI 3-1991, f. 10-21-91, cert. ef. 11-1-91

GMI 4-1990, f. 9-6-90, cert. ef. 10-10-90

GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88

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

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

GMI 1-1980, f. 2-29-80, ef. 3-1-80

GMI 7, f. 11-7-74, ef. 12-11-74

GMI 5, f. 12-20-73, ef. 1-11-74

632-030-0016

Exclusion Certificates

(1) Pursuant to ORS 517.753, an exclusion certificate is required for a surface mining operation that falls under the yard and acre thresholds for which an operating permit is required. A person seeking an exclusion certificate must file an application as provided in section (2) of this rule and the application must be accompanied by the nonrefundable fee required under OAR 632-030-0022. The application must be filed in accordance with the schedule established in section (3) of this rule.

(a) When a mining operation that is subject to an exclusion certificate loses its eligibility and is required to obtain an operating permit, all areas and operations at the site are subject to the Act and the rules adopted thereunder. When multiple mining areas are located within one parcel or contiguous parcels, the yards produced and disturbed acreage will be calculated based on the total of all sites within the parcel or contiguous parcels.

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

(2) An application for an exclusion certificate must be made on the form approved by the Department. The application must include the following information:

(a) The name of the operator;

(b) Location of the excavation;

- (c) The ownership of the property; if the operator is not the landowner, the operator will provide written proof of land owner's permission to mine the site on the landowner's property;
 - (d) Size of the site;
 - (e) Date of commencement of the excavation;
 - (f) A summary of the previous 36 months' activities and an estimate of the activity for the succeeding 36 months;
 - (g) An explanation of why the activity is exempt; and
 - (h) Any other information that the Department determines to be useful to determine whether an operation is properly excluded from permitting and reclamation requirements.
- (3) Applications for nonaggregate mineral surface mining operations (including placer mines) must be filed no later than July 31, 2017, or within 90 days after excavation commences, whichever is later.
- (4) Applications for sand, gravel, aggregate, or crushed stone mining operations must be received no later than September 30, 2016, or within 90 days after excavation commences, whichever is later.
- (5) The Department will review an application upon receipt and notify the applicant whether the application is complete. If an application is deemed incomplete it will be returned to the applicant with a description of the missing information.
- (6) The holder of an exclusion certificate must file an annual report on the anniversary date of the issuance of the certificate. The annual report must be accompanied by the annual fee established in ORS 517.753 and must include the following information:
- (a) Volume of minerals extracted, or mineral deposits and overburden disturbed during the previous year;
 - (b) Amount of additional lands affected by mining during the previous year; and
 - (c) Total number of acres affected by the operation.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.750

History:

DGMI 2-2016, f. & cert. ef. 6-27-16
 DGMI 1-2016(Temp), f. & cert. ef. 1-14-16 thru 6-30-16
 DGMI 1-2009, f. & cert. ef. 5-15-09
 DGMI 1-2000, f. & cert. ef. 7-20-00
 DGMI 1-1999, f. & cert. ef. 1-7-99
 GMI 2-1997, f. & cert. ef. 10-14-97
 GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88
 GMI 2-1986, f. 9-19-86, ef. 9-22-86
 GMI 2-1985, f. 11-19-85, ef. 11-20-85
 GMI 2-1982, f. & ef. 8-13-82
 GMI 1-1980, f. 2-29-80, ef. 3-1-80
 GMI 7, f. 11-7-74, ef. 12-11-74
 GMI 5, f. 12-20-73, ef. 1-11-74

632-030-0017

Limited Exemption

- (1) For the purposes of this rule:
- (a) "Expansion" means lateral expansion consequential to surface mining into land surfaces previously not affected by surface mining.
 - (b) "Lands within the surfaces and contours of surface mines in existence on July 1, 1972," means land affected by surface mining before July 1, 1972, that have not been adequately reclaimed.
- (2) The following mining operations are exempt from reclamation except as provided in ORS 517.775:
- (a) Lands within the surfaces and contours of surface mines in existence on July 1, 1972, or vertical extensions of those surfaces and contours, provided the Department issued a certificate of exemption to the mining operation on or before October 31, 2000; and
 - (b) Lands within the surfaces and contours of surface mining operations that are owned or operated by a person who, on July 1, 1972, was a party to a surface mining contract that was valid on January 1, 1971, provided the Department issued a certificate of exemption to the mining operation on or before September 20, 1985.

(3) The holder of a limited exemption certificate shall renew the limited exemption annually by submitting the renewal form and fee to the Department before the certificate expires. A certificate of exemption terminates if the landowner or operator does not renew the certificate annually. The Department may request information to determine continued eligibility.

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

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

(a) Name and address of the landowner;

(b) Name and address of the mine operator and holder of the limited exemption certificate if different from the landowner;

(c) The commodity or commodities mined at the site;

(d) A map or maps showing the boundary of the area subject to the limited exemption, existing topography, springs, surface waters, wetlands, and final slope configuration, and also showing whether final slopes are cut slopes or fill slopes and how any drainage will be managed;

(e) Detailed stabilization and sediment control measures;

(f) Detailed revegetation measures including a description of soils, seed bed preparation, mulching, fertilization, plant species, seeding or planting rates, and seeding or planting dates;

(g) Design plans for any sediment control structures to be constructed or installed on the site;

(h) A description of all stockpiles, petroleum products and any toxic or hazardous substances or materials stored on the site and a description of how these stockpiles, products, substances, or materials will be managed or removed from the site; and

(i) Removal of refuse, structures, foundations, abandoned equipment, or metal debris.

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

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

(b) If no closure plan has been submitted to the Department, submit a closure plan to the Department within 30 days and begin implementing the closure plan within 30 days after approval by the Department; or

(c) Within 30 days, submit an application to the Department for a new operating permit (for sites previously operating only under a limited exemption certificate) or an amendment to the existing operating permit (for sites operating under both a limited exemption certificate and an operating permit).

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.770 & 517.775

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

DGMI 2-2003, f. & cert. ef. 8-22-03

DGMI 1-2000, f. & cert. ef. 7-20-00

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

GMI 2-1997, f. & cert. ef. 10-14-97

GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88

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

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

GMI 1-1980, f. 2-29-80, ef. 3-1-80

GMI 7, f. 11-7-74, ef. 12-11-74

GMI 5, f. 12-20-73, ef. 1-11-74

632-030-0018

County Authority; City or County Operations

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

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

(b) Each city or county that operates under its own ordinance under ORS 517.780(2) must annually supply the Department with a list of sites covered by the exemption. The information provided for each site on the list must include the following: legal description, land ownership, acreage affected, acres reclaimed, and status;

(c) Any city or county exercising an exemption under ORS 517.780(2) must designate a surface mining administrator and notify the Department of the name of the administrator. The portion of each property mined by the city or county under this exemption must be under the exclusive control of the city or county. Reclamation of each site must be completed before the city or county relinquishes control of the site;

(d) In order to maintain an exemption under ORS 517.780(2), a city or county may not produce more than 5,000 cubic yards of material per year for a purpose other than city or county-owned projects or for on-site use by the landowner.

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

Statutory/Other Authority: ORS 516.090(2)(a), 517.740 & 517.840(1)(d)

Statutes/Other Implemented: ORS 517.780

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

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

632-030-0019

Surface Mining on Federal Lands

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

Statutory/Other Authority: ORS 516.090(2)(a), 517.740 & 517.840(1)(d)

Statutes/Other Implemented: ORS 517.760 & 517.840

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

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

632-030-0020

Procedures for Applying for an Operating Permit

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

(2) The applicant shall submit a reclamation plan as defined in OAR 632-030-0025. The reclamation plan must include a map acceptable to the Department as provided in 632-030-0015 and 632-030-0025(2).

(3) The application must be accompanied by the application fee.

(4) The applicant must submit a performance bond or alternative form of security acceptable to the Department for the purpose of assuring performance of the reclamation plan, other requirements of ORS 517.750 to 517.900, all rules thereunder, and permit conditions. A performance bond or alternative form of security must be in effect and approved by the Department under OAR 632-030-0021 prior to any disturbance of the land.

(5) If the applicant fails to meet the requirements of sections (1) through (4) of this rule within 12 months after the application is submitted, the application is deemed to have been withdrawn. The applicant may resubmit an application without prejudice, but the new application must be accompanied by a new application fee.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.790 & 517.810

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

DGMI 1-2000, f. & cert. ef. 7-20-00

GMI 2-1997, f. & cert. ef. 10-14-97

GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88

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

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

GMI 1-1980, f. 2-29-80, ef. 3-1-80

GMI 7, f. 11-7-74, ef. 12-11-74

GMI 5, f. 12-20-73, ef. 1-11-74

632-030-0021

Performance Bonds and Alternative Forms of Security

(1) No Operating Permit shall be issued or renewed until a bond or alternative form of security for a surface mining site is accepted by the Department. The bond or other security must be maintained until the Department determines that the surface mining site has been reclaimed in accordance with the approved reclamation plan.

(2) The Department may accept performance bonds, security deposit assignments, letters of credit, or other security as authorized by ORS 517.810. Performance bonds must be provided by surety companies authorized to do business in Oregon. The security document submitted must be in a form acceptable to the Department.

(3) 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. The Department may accept a multiple site bond for sites operated by all members of an established trade association.

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

(5) The Department may consider when determining the amount of security:

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

(b) Supervision;

(c) Mobilization;

(d) Costs of equipment;

(e) Equipment capability;

(f) Costs of labor;

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

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

(i) Disposition of oversize, rejects, scalplings, overburden;

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

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

(l) Soil tests;

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

(n) Tree and shrub planting;

(o) Fencing;

(p) Liability insurance.

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

(a) Comparable costs from similar projects;

(b) Catalog prices;

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

(d) Operator estimates;

(e) Equipment handbooks.

(7) 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, Natural Resources Conservation Service, Oregon State University Extension Service, the Department of Transportation, the Bureau of Land Management, US Forest Service, and private sector experts.

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

(9) The security amount shall be based on the total cost of reclamation. However, the Department may allow for the amount of the bond to be calculated and adjusted based upon the total area expected to be in a disturbed condition in the following year as a result of the surface mining or exploration if:

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

(b) The applicant agrees in writing to increase the security amount as directed by the Department based upon new information or changes in the areas disturbed by surface mining.

(10) Security amounts shall not include construction of structures or comparable features such as "housing developments" or "industrial construction" even if included in a reclamation plan.

(11)(a) The Department may reduce the bond or alternative form of security by an amount not to exceed 50 percent for a surface mine aggregate site that meets the following conditions:

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

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

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

(12) A decision of the Department regarding the estimated cost of reclamation or the type of acceptable security may be appealed to the Governing Board as provided in ORS 183.310 to 183.550.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.760

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

DGMI 1-2000, f. & cert. ef. 7-20-00

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

632-030-0022

Fees

(1) The fees applicable to this rule division are pursuant to ORS 517.753 and 517.800. The application fee for an exclusion certificate is \$80. Each holder of an exclusion certificate will annually pay to the department a renewal fee of \$150 pursuant to ORS 517.753.

(2) Annual fees are due on the anniversary date of the issuance of the operating permit, limited exemption certificate, or exclusion certificate unless a different renewal date is established by the Department. The Department will provide the permittee or certificate holder with 60 days advance notice before establishing a new renewal date. The Department will prorate annual fees at the permittee's or certificate holder's request if a new renewal date is established.

(3) A permittee or certificate holder must renew their permit or certificate annually, on or before the last day of the month shown on the permit or certificate as the renewal month. Operators that hold both a limited exemption certificate and an operating permit on the same property, or contiguous properties that are operated as a single mining activity, will pay a single annual renewal fee pursuant to ORS 517.800, based upon the total reported production from all sites within the parcel or contiguous parcels. The non refundable annual fee must be paid and the annual report form returned prior to renewal. A permittee or certificate holder must pay all delinquent fees and accrued interest owed to this Department prior to renewal, transfer, or amendment of the permit or certificate.

(4) The Department will impose a late fee equal to five percent of the amount of any annual fee that is more than 60 days past due.

(5) The fees established by this rule also apply to emergency permits issued pursuant to ORS 517.832 and temporary operating permits issued under ORS 517.834.

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

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.800

History:

DGMI 2-2016, f. & cert. ef. 6-27-16

DGMI 1-2016(Temp), f. & cert. ef. 1-14-16 thru 6-30-16

DGMI 1-2009, f. & cert. ef. 5-15-09

DGMI 1-2006, f. & cert. ef. 1-10-06

DGMI 1-2005(Temp), f. & cert. ef. 8-3-05 thru 1-30-06

DGMI 3-2003, f. 8-29-03, cert. ef. 9-1-03

DGMI 2-2003, f. & cert. ef. 8-22-03

DGMI 1-2000, f. & cert. ef. 7-20-00

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

GMI 2-1997, f. & cert. ef. 10-14-97

632-030-0024

Inspections

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

(2) Initial inspections will be conducted by the Department on all new sites that have not been previously inspected by the Department. On all other sites, routine 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; and
- (d) Collecting data to calculate the amount of the reclamation bond.

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

- (a) Reviewing operating permit compliance;
- (b) Investigating complaints; and
- (c) Evaluating the adequacy of the amount of the bond or alternative form of security.

Statutory/Other Authority: ORS 516.090(2)(a), 517.740 & 517.840(1)(d)

Statutes/Other Implemented: ORS 517.830, 517.840 & 517.850

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

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

632-030-0025

Requirements for an Operating Permit and Reclamation Plan

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

- (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 for correspondence;
- (d) The name and mailing address of the applicant's resident agent;
- (e) A description of the present land use and planned beneficial use of the site following mining. The applicant must demonstrate that the planned beneficial use is compatible with the affected local government's acknowledged comprehensive plan and land-use regulations;
- (f) The identification and characterization of the soils present, including any areas that have wetlands and hydric soils;

- (g) The identification of any fish or wildlife species that may be present that is listed or proposed for listing by either federal or state as sensitive, threatened, or endangered or otherwise may require buffers for protection;
- (h) A general list of equipment to be used and a description of mining methods including interim slope angles during the life of the mine;
- (i) Provisions for the backfilling, recontouring, decompaction, topsoil replacement, seedbed preparation, mulching, fertilizing, selection of plant species, seeding or planting rates, weed control, and schedules;
- (j) The characterization of the ground and surface water based on available wells, drill logs, location of springs, and surface drainages within one mile of the proposed operation may be required. The Department may also require the collection and submission of additional hydrologic data to evaluate the mine development and reclamation plan;
- (k) Stream hydrology and other hydrologic information for floodplain sites;
- (l) Ground water characterization and/or measures to prevent significant adverse impacts to surface or ground water quantity or quality;
- (m) Other baseline information necessary to evaluate the mine development and reclamation plan;
- (n) A list and procedures for the handling and use of any materials toxic to plant and/or animal life, acid forming materials or radioactive material which will be at the mine site. The Department may also require an analysis of process water, reagents, wastes, or other materials involved in the mining and processing operations;
- (o) Procedures for the salvage, storage, and replacement of topsoil or acceptable substitute. The Department may require the applicant to submit a chemical and physical analysis of the seedbed and subsoil;
- (p) Procedures for the stable storage of overburden. This may include a description of the pre-mine topography, method for placement of overburden, height of lifts, compaction standards, final height, and slope configurations, and/or a geotechnical design and construction plans for a storage pile or fill proposed as a final reclamation feature;
- (q) Provisions for adequate setbacks to protect adjacent property and public safety;
- (r) Provisions to protect and maintain access to utilities when a utility company right-of-way exists;
- (s) Visual screening of the proposed operation may be required when the operating area is visible from a public road or residential area. Techniques for visual screening include, but are not limited to, vegetation, fencing, berms, setbacks, or buffer strips along the property boundary;
- (t) Procedures for surface water, stream, and floodplain protection and operational and post-mine hydrologic controls may include, but are not limited to:
 - (A) Procedures to protect surface water quality and to control erosion include the following:
 - (i) Rock lined ditches, rock lined haul roads, or work areas;
 - (ii) Detention ponds and sedimentation basins;
 - (iii) Rock check dams and grade control structures;
 - (iv) Temporary diversions;
 - (v) Flocculation systems and/or surface disposal systems;
 - (vi) Runoff and pond sizing calculations.
 - (B) Procedures to protect or reconstruct waterways or drainage patterns impacted by mine related disturbances or reclamation by the design and construction of a post-mine drainage control plan to convey storm water and surface water off the property in a manner that will provide long-term stability to the reclaimed land.
 - (C) Procedures to protect natural resources.

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

- (D) Procedures to promote final reclamation and floodplain stability or protection of streams, riparian buffers, and operational setbacks may require detailed engineering and planning for:
 - (i) Pond bank and channel bank weirs or other headcut protection plans;
 - (ii) Floodwater conveyance channels or structures;
 - (iii) Flood berms;

- (iv) Protection of channel migration zone;
 - (v) Protection or stabilization of stream channel buffers.
- (u) A proposed time schedule for surface mining and reclamation and a description of how concurrent reclamation, if applicable, will be accomplished during the life of mine.
- (v) Additional steps planned to enhance fish or wildlife habitat or to create wetlands for sites where fish or wildlife habitat or wetland construction is part of the designated post-mining land use;
 - (w) Procedures for the removal or disposal of all equipment, refuse, structures, and foundations from the permit area except permanent structures that are part of an approved reclamation plan;
 - (x) Final slope configurations and how they will be stabilized;
 - (y) A plan for the control of noxious weeds may be required;
 - (z) Provisions to protect fish and wildlife species by providing operational setbacks;
 - (aa) Fish ingress/egress plans for floodplain sites; and
 - (bb) Procedures for placement of fill and protection of fill quality.
- (A) All fill used as reclamation backfill or other subsurface placement must meet the Oregon Department of Environmental Quality definition of clean fill as provided in OAR 340-093-0030 or the use must be specifically allowed by Department of Environmental Quality by rule, permit or other written authorization.
- (B) Fill material at a reclamation site must be used in accordance with a written fill plan approved by the Department or specific provisions in the approved reclamation plan. The fill plan or reclamation plan must show the locations for stockpiling and permanent placement of the fill material and provide for monitoring of the quality and quantity of the fill material. The quality, quantity and location of fill material used on the site must be consistent with local land use plans and regulations. Documentation showing compliance with the approved plan and this subsection must be provided to the Department upon request.
- (cc) If the affected local government designates a post-mine land use or uses through a comprehensive plan amendment or zone change, or requires a conservation easement to be established after reclamation, the plan submitted to the Department must specifically address how the post-mine land use(s) will be established.
- (2) In addition to the requirements set out in OAR 632-030-0015(2), the Department may require maps, aerial photographs, or design drawings of appropriate scale. Information that typically may be required on maps, aerial photographs or design drawings includes but is not limited to:
- (a) Permit area boundary, property lines, and property line setbacks;
 - (b) Maximum extraction boundary delineating mine phases and reclamation sequence;
 - (c) Waste rock, rejects, overburden, and soil storage areas and stockpiles;
 - (d) Processing plant and location of existing or proposed visual screens;
 - (e) Ancillary facilities location;
 - (f) Haul roads;
 - (g) Typical pre- and post-mine cross sections and topographic plan views;
 - (h) Existing watercourses, including irrigation ditches, streams, rivers, and ponds;
 - (i) Setback and buffer strips for wetlands and stream drainages;
 - (j) Storm and/or wastewater control structures, ponds, and ditches;
 - (k) Location of any engineered structures or engineered fill;
 - (l) Reconstructed watercourses, ponds, and location of fish egress/ingress channels;
 - (m) Location of the 100-year FEMA floodplain boundary or a site-specific hydrologic study that identifies the 100-year floodplain boundary based on hydraulic modeling;
 - (n) Proposed and existing mine areas and backfill locations;
 - (o) Location of existing and proposed dikes and berms;
 - (p) Post-mining topography;

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

(r) Land-use authority boundary; and

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

(3) 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.

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

Statutory/Other Authority: ORS 183.341, 197.180, 516.090(2)(a), 517.740 & 517.840(1)(d)

Statutes/Other Implemented: ORS 517.790

History:

DGMI 1-2015, f. & cert. ef. 1-7-15

DGMI 2-2014(Temp), f. & cert. ef. 9-10-14 thru 3-9-15

DGMI 1-2009, f. & cert. ef. 5-15-09

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

GMI 1-1992, f. & cert. ef. 6-17-92

GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88

GMI 2-1986, f. 9-19-86, ef. 9-22-86

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

GMI 7, f. 11-7-74, ef. 12-11-74

GMI 5, f. 12-20-73, ef. 1-11-74

632-030-0026

On-Site Construction Waiver

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

Statutory/Other Authority: ORS 516.090, 517.810 & 517.840

Statutes/Other Implemented: ORS 517.750 - 517.992

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

632-030-0027

Minimum Standards for a Reclamation Plan

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

(1) Final slopes must be stable. Reclaimed cutbanks may not have slopes exceeding 1-1/2 horizontal to 1 vertical (1-1/2H:1V). Final slopes may be blasted or sculpted to blend into adjacent landforms or for creation of habitat. The Department may require the submission of a reclamation blast plan to assure stable slopes will be created and adjacent property will be protected. The Department may also grant exceptions for slopes steeper than 1-1/2H:1V when the applicant can document that the slopes will be stable and if the steeper slopes:

(a) Blend into the adjacent terrain;

(b) Existed prior to mining; or

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

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

(3) Slope requirements.

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

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

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

- (d) Complex slope formations may be necessary to enhance habitat and post-mine landscape diversity.
- (e) Flatter slopes (5H:1V to 10H:1V) will be needed where wetland creation is proposed.
- (f) For sites within the 100-year floodplain, final above-water fill slopes can only be placed over cutslopes that are 3H:1V, or flatter, unless the Department agrees in writing to a different ratio based on a determination that the flood potential is very low.
- (4) Generally, final revegetation with native species of all disturbed areas consistent with future use is required unless the Department finds it unreasonable. The Department will, in most instances, consider revegetation successful if it provides a similar plant density in terms of ground or canopy cover and it is comparable to undisturbed areas in similar landscape positions. In arid or semi-arid regions, the Department may allow three years of growth prior to a revegetation evaluation. Otherwise, revegetation will be evaluated after one growing season. Vegetation test plots may be required to ensure establishment feasibility and/or long-term habitat goals in the reclamation plan. Vegetation monitoring may also be required to insure success of the approved plan.
- (5) Establishment of 3H:1V slopes from ordinary high-water level extending to six feet below ordinary low-water level for permanent water impoundments is required. In addition to the 3H:1V slopes, the Department may approve other sloping configurations where horizontal benches are incorporated as habitat features.
- (a) Other above- and below-water bank sloping may be approved for constructed alcoves or other habitat features or projects.
- (b) Establishment of a stable slope angle or benching for below-water slopes to insure an adequate foundation for the proposed in-water and above-water slopes or fills is required.
- (c) A geotechnical study may be required to address slope stability.
- (6) All stream channels and stream banks must be rehabilitated using procedures that minimize bank erosion, channel scour, and sedimentation; and maximize habitat.
- (7) Reclamation must be completed in a timely manner. If there is no production at a mine site for a period of five or more consecutive years, the permittee shall submit a report to the Department on the remaining reserves. The report must include an estimate of the quantity of the remaining mineral reserves. The report must be signed by a professional geologist or include drill logs or other quantitative analysis acceptable to the Department. If the submission of such data poses a financial hardship to the permittee, the Department will attempt to work with the permittee to provide the necessary geologic expertise as Department staff resources allow or the Department may waive this requirement. Any waiver provided by the Department must be in writing and must specify the duration for which the requirement is waived.
- (8) If the Department determines that the reserves are insignificant or the operator is unlikely to be able to economically mine the site in the reasonably foreseeable future, the Department will order reclamation and may establish a reasonable period for its completion.

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.800

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

DGMI 1-2001, f. & cert. ef. 8-6-01

DGMI 1-2000, f. & cert. ef. 7-20-00

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

632-030-0030

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

- (1) Within 90 days after receiving an application for an operating permit:
- (a) The Department will issue the operating permit or
- (b) Notify the applicant if the Department determines that either the permit application or the proposed reclamation plan is not complete.
- (c) If the Department determines the application is incomplete it will notify the applicant of the information or documentation needed to make the submittal complete. A notice of an incomplete submittal does not constitute a denial of the operating permit application and proposed reclamation plan.
- (d) The Department will determine the adequacy of the operating permit application and proposed reclamation plan by taking the following actions:
- (A) Inspect the site in accordance with OAR 632-030-0024 and file an inspection report;

(B) Circulate the complete operating permit application, including the proposed reclamation plan, draft operating permit, an inspection report or an evaluation to appropriate federal, state, and local agencies for review and comment.

(C) Notify the affected local government in writing that an operating permit application and proposed reclamation plan have been received by the Department, accompanied by a request that a determination be made if a local land-use permit pursuant to ORS 215.428 or 227.178 or a comprehensive plan amendment is required.

(D) Determine the appropriate amount of the reclamation bond or alternative form of security; and

(E) Notify the applicant of any deficiencies that will be addressed by attaching conditions to the operating permit.

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

(a) Applications involving a local land-use permit and a request by the affected local jurisdiction that it act first: If the affected local government informs the Department under subsection (1)(d)(C) of this rule that the application involves an aggregate site that requires a local-land use permit issued pursuant to ORS 215.428 or 227.178, and the local government requests that the application not be decided by the Department until the local government has taken final action, the Department will make its final decision on the operating permit and reclamation plan no later than 165 days after the date a complete land-use application is submitted to the local government, unless the applicant agrees to allow additional time under ORS 215.428 or 227.178. The Department will not approve the operating permit and reclamation plan or modification to existing permits if the application for the local land-use permit is denied by the local jurisdiction. However, in a situation where action on the local land-use permit is still pending, the Department may initiate its review of the application for its technical acceptability before the local government makes its final decision. The results of the Department's technical review will be provided to the local government and the applicant. For the purposes of this section, a requirement for review of a site plan is not a local land-use permit.

(b) Applications involving a comprehensive plan amendment: If the affected local government informs the Department under subsection (1)(d)(C) of this rule that the application involves an aggregate site that requires a comprehensive plan amendment, and the local government requests that the application not be decided until the local government has taken final action on the plan amendment, the Department will not make its final decision on the operating permit and reclamation plan until the local government has taken final action on the plan amendment. The Department will make its final decision on an application within 45 days of the date that the local government has taken final action on the plan amendment unless a longer period is required under subsection (2)(a) of this rule. For applications for new operating permits or intensification or substantial modification to existing operating permits the Department will not approve the operating permit or intensification or substantial modification if the application for the comprehensive plan amendment is denied by the local jurisdiction.

(c) If the affected local government does not request that the Department delay a decision on an operating permit and a reclamation plan as provided in subsection (2)(a) or (b) of this rule, the Department will give the local government opportunity to review and comment on the application in the manner described in subsection (1)(d)(B) of this rule. If the local government fails to respond in writing within 30 days of mailing, the Department will issue its decision within 45 days of receipt of complete application. Local government approval must also be obtained before operation under the permit can begin.

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

(3)(a) The Department will notify the affected local government of the Department's decision under subsections (2) (a), (b), and (c) of this rule to approve or deny an operating permit and reclamation plan, including any requirements and conditions imposed by the Department.

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

(4) Within 60 days after the receipt of 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 632-030-0056. 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. As provided in ORS 517.830(2), the Department may issue a provisional operating permit to the applicant pending the outcome of the appeal, subject to the requirements of sections (1) through (3) of this rule.

(5) The Department may determine that the applicant's reclamation plan is technically acceptable if it adequately provides for reclamation of surface mined lands as required by OAR chapter 632, division 30, without issuing an

operating permit, and so advise the local government.

(6) The Department may attach conditions to the operating permit. These conditions may be added to reflect special concerns which 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 632-030-0056.

(7) The approval of the reclamation plan and the issuance of the operating permit by the Department does not constitute a finding of compliance with statewide planning goals or local regulations implementing acknowledged comprehensive land-use plans. The permittee is responsible for obtaining local land-use approval before commencing the proposed surface mining activity. When issued by the Department, a statement placed on the operating permit and approved reclamation plan under subsection (2)(c) of this rule, will inform the applicant that:

(a) Issuance of the operating permit and approval of the reclamation plan is not a finding of compliance with the statewide planning goals (ORS 197.225) or compatibility with the acknowledged comprehensive plan; and

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

(8) The Department may not issue, amend, renew, or transfer an operating permit to a person if person is not complying with the terms of an operating permit, reclamation plan, the provisions of the Act, or these rules. The Department may refuse to issue, amend, renew or transfer an operating permit to a person that has not substantially complied with an operating permit, a reclamation plan, the provisions of the Act, or these rules. For purposes of this rule, a person includes a subsidiary or other entity in which the person has a substantial financial interest.

Statutory/Other Authority: ORS 183.341, 197.180 & 517.740

Statutes/Other Implemented: ORS 517.740 & 517.810

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

DGMI 1-2000, f. & cert. ef. 7-20-00

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

GMI 1-1992, f. & cert. ef. 6-17-92

GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88

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

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

GMI 1-1980, f. 2-29-80, ef. 3-1-80

GMI 7, f. 11-7-74, ef. 12-11-74

GMI 5, f. 12-20-73, ef. 1-11-74

632-030-0033

Reclamation by the Department

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

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

(3) 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 or reestablish setbacks or buffers outside the excavation boundary;

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

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

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.800

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

DGMI 1-2000, f. & cert. ef. 7-20-00

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

632-030-0035

Modification of an Operating Permit

(1) The modification of an operating permit may be initiated at any time by the permittee or by the Department. The term "modification," as used in this rule, means any modification, including but not limited to, "intensification" or

"substantial modification," as defined in OAR 632-030-0010(6) and (11). The Department may circulate applications for intensification or substantial modifications to local government pursuant to ORS 517.830 and OAR 632-030-0030.

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

(3) The Department may modify an operating permit or reclamation plan without the consent of the operator only as allowed by ORS 517.831. The Department initiation of a modification must be based on the potential for: substantial harm to off-site property, harm to threatened or endangered species, or channel changes or unstable pit walls. Therefore, a determination of substantial harm to off-site property may include likely effects when there is substantial evidence. For the three types of sites or concerns listed here, the substantial evidence may include on-site or off-site physical or biological indicators and other data:

(a) Substantial harm to off-site property: documentation by the Department of a loss of lateral support of a property line, slope movement, failure planes, tension cracks, vegetation displacement, or other indicators of slope instability, or geotechnical reports, slope measurements, or other monitoring data submitted by others.

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

(c) Channel changes or unstable pit walls: documentation by the Department that stream bank erosion, channel migration, local geomorphic trends, site hydrology during flooding, and/or channel hydraulic conditions present clear indicators that pit wall stability is in jeopardy during future flood events.

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

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

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

(c) Deposition of vegetation, soil, rock, other geologic materials, or mined materials or mine refuse

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

Statutory/Other Authority: ORS 183.341, 197.180, 516.090(2)(a), 517.740 & 517.840(1)(d)

Statutes/Other Implemented: ORS 517.740 & 517.840

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

DGMI 1-2001, f. & cert. ef. 8-6-01

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

GMI 1-1992, f. & cert. ef. 6-17-92

GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88

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

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

GMI 1-1980, f. 2-29-80, ef. 3-1-80

GMI 5, f. 12-20-73, ef. 1-11-74

632-030-0040

Maintaining an Operating Permit

(1) The Department may revoke, terminate, or refuse to renew an operating permit as provided in ORS 517.862.

(2) Prior to the anniversary date of an operating permit, the operator shall submit the required annual fee and file the annual report. The annual report must include production figures that provide a legal and accurate report of all materials mined or excavated. If requested by the Department, the operator must also submit an updated site plan map. The permittee shall maintain an operating permit until mining and reclamation, including revegetation (if required), have been completed.

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

Statutory/Other Authority: ORS 517

Statutes/Other Implemented: ORS 517.740 & 517.800

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

DGMI 1-2000, f. & cert. ef. 7-20-00

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

GMI 2-1997, f. & cert. ef. 10-14-97

GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88

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

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

GMI 1-1980, f. 2-29-80, ef. 3-1-80

GMI 5, f. 12-20-73, ef. 1-11-74

632-030-0041

Permit and Exemption Transfer

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

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

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

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

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

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

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

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

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

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

Statutory/Other Authority: ORS 516.090, 517.810, 517.833 & 517.840

Statutes/Other Implemented: ORS 517.750 - 517.992

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

632-030-0042

Termination of Operating Permits

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

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

(a) A permit has never been used;

(b) The required local land-use approvals are denied; or

(c) The requirements of an approved reclamation plan are complete.

(3) Reclamation obligations incurred prior to the date of cancellation of any bond or alternative form of security continue until the site is reclaimed.

Statutory/Other Authority: ORS 516.090(2)(a), 517.740 & 517.840(1)(d)

Statutes/Other Implemented: ORS 517.800, 517.810 & 517.830

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

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

632-030-0045

Obtaining Bond Release

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

Statutory/Other Authority: ORS 183.341, 197.180, 516.090(2)(a), 517.740 & 517.840(1)(d)

Statutes/Other Implemented: ORS 517.810, 517.840 & 517.870

History:

DGMI 1-2009, f. & cert. ef. 5-15-09
DGMI 1-1999, f. & cert. ef. 1-7-99
GMI 1-1992, f. & cert. ef. 6-17-92
GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88
GMI 2-1985, f. 11-19-85, ef. 11-20-85
GMI 2-1982, f. & ef. 8-13-82
GMI 1-1980, f. 2-29-80, ef. 3-1-80
GMI 5, f. 12-20-73, ef. 1-11-74

632-030-0049

Emergency Operating Permits

The Department may issue an emergency operating permit as authorized under ORS 517.832. An emergency operating permit is subject to the following additional limitations:

- (1) The emergency operating permit may not be for a term in excess of three months and may be terminated by the Department on 48-hour notice.
- (2) The operator may continue operations at the site after three months only if the emergency operating permit is replaced by a temporary, provisional, or regular operating permit. The operator must follow the procedures for applying for the temporary, provisional, or regular operating permit.
- (3) The operator is required to provide notice of the proposed emergency operating permit to all federal agencies and public bodies as defined in ORS 174.109 that may be affected by the emergency operating permit and to provide the Department with the names of the agencies and public bodies notified and the manner of notification. The Department may require additional notification or deny the emergency operating permit if it determines that the notice is inadequate.
- (4) The Department will not issue or will terminate an emergency operating permit upon receipt of an objection from an affected federal agency or public body.
- (5) An operator seeking an emergency permit must pay a fee to the Department in an amount determined by the Department be adequate to cover the additional costs for staff and other related expenses.
- (6) The Department may waive the requirement for a bond or alternate form of security for an emergency operating permit.

Statutory/Other Authority: ORS 516.090, 517.800, 517.810, 517.832 & 517.840

Statutes/Other Implemented: ORS 517.750 - 517.992

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

632-030-0052

Temporary Operating Permits

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

- (1) The operator must provide 14 days' prior notice to adjacent property owners and all potentially affected federal agencies and public bodies. Public notice must be published in a newspaper that is broadly circulated in the areas adjacent to the proposed mine. Notice to property owners, federal agencies, and public bodies must be in writing and sent by U.S. mail or comparable means. The operator must provide the Department with documentation of the entities notified and the manner of notification. Notification must be in a form approved by the Department and must inform the recipients of the right to submit comments on the proposed temporary operating permit to the Department.
- (2) A temporary operating permit may be issued for a term not to exceed 6 months, during which time the operator must apply for a regular operating permit. The operator must cease all excavation and processing and reclaim the site if the

Department has not issued a provisional or regular operating permit before the term of the temporary operating permit expires.

Statutory/Other Authority: ORS 516.090, 517.810, 517.834 & 517.840

Statutes/Other Implemented: ORS 517.750 - 517.992

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

632-030-0056

Appeals

(1) Prior to the initiation of an administrative appeal of any Departmental order, notice, fee, or other action made pursuant to the Act or the rules adopted thereunder, the applicant or permittee may first request that the State Geologist informally review and resolve the matter. The State Geologist will provide a written decision within 30 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 by the Board or its designee for final resolution of the matter. Appeals must be filed within 30 days of receipt of the order, notice, other action being appealed, or receipt of State Geologist written decision except as otherwise provided by OAR 632-030-0030(4) and by the applicable provisions of 183.310 through 183.550. A final determination by the Board must be made before any appeal for judicial review under ORS 183.480 is allowed.

(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, fee, or other action in accordance with ORS 183.430-183.470.

Statutory/Other Authority: ORS 516.090(2)(a), 517.740 & 517.840(1)(d)

Statutes/Other Implemented: ORS 517.890

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

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

GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88

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

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

GMI 1-1980, f. 2-29-80, ef. 3-1-80

GMI 7, f. 11-7-74, ef. 12-11-74

632-030-0070

Penalty Warning; 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 rule:

(a) "Compliance Order" means an order issued under ORS 517.860(1)(b). The compliance order also may be used for informal disposition of proceedings through stipulation, agreed settlement, consent order, or default;

(b) "Notice of Violation" means a notice issued under ORS 517.860(1)(a);

(c) "Notice of Civil Penalty" means a notice that imposes a civil penalty under ORS 517.992(2);

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

(3) Notice of Civil Penalty — Form and Service. A Notice of Civil Penalty shall be in a form and shall be served in the manner required by ORS 183.415.

(4) Appeals — Consolidation. Any person issued a Notice of Civil Penalty shall have the right to a contested case hearing. The hearing must be requested in writing within 20 days of the date of service.

(5) Civil Penalty — Classification:

(a) Civil penalties imposed under ORS 517.992(2) will be coordinated with other agencies 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 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, erosion, or 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. 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.

(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.

Statutory/Other Authority: ORS 516.090(2)(a), 517.740 & 517.840(1)(d)

Statutes/Other Implemented: ORS 517.992

History:

DGMI 1-2009, f. & cert. ef. 5-15-09

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

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

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