

Department of Geology and Mineral Industries

Chapter 632

Division 37

CONSOLIDATED PERMITTING OF MINING OPERATIONS

[632-037-0005](#)

Purpose

(1) The purpose of these rules is to implement the consolidated permitting provisions of ORS 517.952 to 517.989, applicable to metal mines, except placer mines and operations using only gravity separation to process ore. These rules address:

- (a) Implementation of a state consolidated permitting process for mining operations;
 - (b) Coordination of federal and state permitting processes as they relate to the consolidated permitting process; and
 - (c) Opportunities for public participation and comment throughout the state consolidated permitting process.
- (2) It is the policy of the State of Oregon to protect the environmental, scenic, recreational, social, archaeological and historic resources of this state from unacceptable adverse impacts that may result from mining operations, while permitting operations that comply with the provisions set forth in ORS 517.952 to 517.989, and ensure the protection of the public health, safety, welfare and the environment.
- (3) Applicants submitting a consolidated application to the Department should be aware that federal and local agencies may require the applicant to obtain additional permits and approvals prior to operation.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.750 - 517.995

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

[632-037-0010](#)

Definitions

The definitions in ORS 517.952 are hereby incorporated as the definitions to be used in interpreting these rules, unless a term is specifically defined within these rules.

- (1) "Affected Agency" includes permitting agencies, cooperating agencies and commenting agencies.
- (2) "Available Technology" means technology that is obtainable and has been demonstrated to meet environmental standards at an existing mine or a demonstration project of similar size and scale, or is reasonably expected to meet or exceed environmental standards at the proposed mine.
- (3) "Baseline Data" means information gathered to characterize the natural and cultural environments of a mining operation site before a mining operation begins.
- (4) "Chemical Processing" means a processing method for extracting metal from metal bearing ores that uses chemicals to dissolve metals from ore.
- (5) "Commenting Agency" means an agency that makes recommendations to the Department or to a permitting agency regarding permit conditions or whether to approve or deny a permit under the consolidated application process established under ORS 517.952 to 517.989. Commenting agencies may include but are not limited to the following agencies: Department of Economic Development, Emergency Management Division, Department of Energy, Department of Forestry, Health Division, Department of Land Conservation and Development, Department of Parks

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and Recreation, Public Utility Commission, Office of the State Fire Marshal, and the Department of Transportation. Commenting agencies may also be permitting and cooperating agencies that wish to comment on a permit issued by another agency.

(6) "Consolidated Application" means the single application required under ORS 517.971.

(7) "Cooperating Agency" means an agency that has statutory responsibility related to a mining operation but that does not issue a permit for the mining operation. Cooperating agencies may include but are not limited to the following agencies: Department of Agriculture and Department of Fish and Wildlife.

(8) "Credible Accident" means an unplanned discharge of ore processing solutions, ore processing solution contaminated water, or chemicals from a mine facility into surface water, ground water, soil, overburden, or living resources in sufficient quantity to impair the pre-mine quality of the receiving water, soil, overburden, or living resources, or that would exceed the discharge limitations of the Department of Environmental Quality. A credible accident may also include but is not limited to the following types of accidents: fires, unplanned detonation of explosives, equipment failures, fuel spills and accidents resulting from human errors.

(9) "Department" means the Department of Geology and Mineral Industries.

(10) "Disturbed Area" means any area within a permit area boundary where surface or subsurface resources are impacted as a result of mining, processing or mine facilities.

(11) "Environmental Evaluation" means an analysis prepared under ORS 517.979 to address specific impacts of the mining operation, to allow affected agencies to develop permit conditions.

(12) "Environmental Standards" means standards established either by statute or rule that must be met by a mining operation.

(13) "Facilitating Agency" means the Department of Geology and Mineral Industries. The Department shall coordinate the activities of the affected agencies related to the consolidated application process established in ORS 517.952 to 517.989.

(14) "Gravity Separation" means the separation of mineral particles, with the aid of water or air, according to the differences in the specific gravities of the particles.

(15) "Master List" means a consolidated list of all interested persons compiled by the Department and each permitting and cooperating agency and maintained by the Department.

(16) "Mine Facilities" includes but is not limited to the following:

- (a) Leach pads and vats;
- (b) Recovery plants and/or mill;
- (c) Process solution ponds and/or storage ponds;
- (d) Impoundments and diversions;
- (e) Tailing disposal facility;
- (f) Haul roads;
- (g) Open pits;
- (h) Related buildings;
- (i) Energy facilities at the mine site;
- (j) Disposal areas for waste rock and other mining wastes; and
- (k) Storage areas for subgrade ore.

(17) "Mining Operation" means a surface or underground mine that processes, produces, or reclaims metal ore using a method other than, or in addition to, gravity separation to process the ore.

(18) "Mitigation" means the reduction of adverse effects of a proposed mining operation by considering, in the following order:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; or
- (e) Compensating for the impact by replacing or providing comparable substitute resources or environments.
- (19) "Necessary Technology" means technology that is required to ensure compliance with environmental standards.
- (20) "Operating Permit" means a permit issued by the Department that allows for the mining and processing of metal-bearing ores and provides for reclamation.
- (21) "Permit Area" means the geographical location of a mining operation and related development activities covered by an operating permit and is defined by boundaries acceptable to the Department submitted by the applicant on a map. The permit area shall include the reasonably foreseeable extent of the mine and will generally be a parcel or contiguous parcels of land available to the permittee for mining. Areas used for the storage or disposition of any product or waste material from the mining operation, even though separate from the area of extraction, shall be included in the permit area. The permit area may be redefined as the mining operation progresses, subject to the requirements of OAR 632-037-0120.
- (22) "Permitting Agency" means an agency that has a separate permitting authority for a proposed mining operation. Permitting agencies may include but are not limited to the following agencies: Department of Environmental Quality; Department of Geology and Mineral Industries, Division of State Lands, and the Water Resources Department.
- (23) "Person" means any individual, partnership, corporation, association, public interest organization, the State of Oregon or any political subdivision, board, agency or commission of the State of Oregon.
- (24) "Practicable Technology" means available and necessary technology whose costs are not significantly disproportionate to the potential environmental benefits. A technology is not practicable if the cost is so high it renders a mining operation infeasible.
- (25) "Processing" means separating metals from ore through a method other than gravity separation, including milling and the use of chemicals to dissolve metals from ore. As used in these rules, "processing" includes, but is not limited to; cyanide heap leach processing operations, cyanide vat processing operations, and froth floatation processing operations.
- (26) "Processing Solutions" means those solutions that are used directly or indirectly to recover minerals.
- (27) "Project Coordinating Committee" means the interagency governmental committee established in accordance with ORS 517.965.
- (28) "Reclamation" means the employment in mining of procedures reasonably designed to minimize as much as practicable the disruption from the mining operation and to provide for the rehabilitation of any surface and subsurface resources through the use of plant cover, soil stability techniques, measures to protect the surface and subsurface water resources, including but not limited to domestic water use and agricultural water use, and other measures appropriate to the subsequent beneficial use of any land or water resource affected by a mining operation. Surface reclamation shall also provide for the protection of human health and safety, as well as that of livestock, fish, and wildlife; environmental protection; and the establishment of a self-sustaining ecosystem, comparable to undamaged ecosystems in the area of the mine.
- (29) "Study Area" means those areas determined by the technical review team for which baseline data must be collected and an environmental evaluation and socioeconomic impact analysis must be developed.
- (30) "Technical Review Team" means the interagency group established in accordance with ORS 517.967.
- (31) "Undamaged Ecosystem" means an ecosystem that is comparable in utility and stability to the ecosystem surrounding the mine and/or the pre-mine ecosystem, and that retains the principal ecological characteristics reasonably expected to exist under local, climatic, geological, soil, hydrological and biological conditions.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.750 & 517.952

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0015

State and Federal Agency Coordination

- (1) When a mining operation is proposed on federal land, the Department shall, when agreed to by the federal agency, enter into a memorandum of agreement with the federal agency that is designated as the lead agency for the proposed mine under the National Environmental Policy Act. The purpose of a memorandum of agreement shall be to coordinate

the state consolidated application process established in ORS 517.952 to 517.989 with the federal application process to the fullest extent possible.

(2) The memorandum of agreement may:

(a) Provide for the selection of the same third party contractor, if any, to prepare the environmental evaluation and socioeconomic impact analysis required by ORS 517.952 to 517.989 and the environmental assessment or environmental impact statement required by the National Environmental Policy Act;

(b) Coordinate the timeliness for preparation and content of the environmental evaluation and the environmental assessment or environmental impact statement;

(c) Ensure that all data, information and documents prepared in satisfaction of the requirements of ORS 517.952 to 517.989 will also satisfy to the fullest extent possible the requirements of corresponding portions of the National Environmental Policy Act; and

(d) Ensure that the state and federal financial security requirements are coordinated to the fullest extent possible.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.952 & 517.965

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0020

Project Coordinating Committee

(1) Purpose. The purpose of a project coordinating committee shall be to share information and coordinate county, state and federal permitting requirements in order to avoid contradictory requirements, facilitate the exchange of ideas, promote interdisciplinary decision making, optimize communication and avoid duplicative effort. A project coordinating committee shall also review proposed permit modifications that are deemed significant by a permitting agency or a cooperating agency under OAR 632-037-0120 and determine those portions of ORS 517.952 to 517.989 and these rules with which the applicant must comply.

(2) Committee Members. The Department shall act as the facilitating agency for a project coordinating committee. Upon receipt of a notice of intent, the Department shall request the participation of a representative of each of the following:

(a) All permitting and cooperating agencies;

(b) Affected federal agencies;

(c) Local government agencies; and

(d) Any affected Indian tribe.

(3) Staff. Each permitting and cooperating agency shall designate an appropriate staff person(s) to participate on the project coordinating committee. Each agency shall assume responsibility for those sections of the consolidated application and environmental evaluation over which the agency has permitting authority or special expertise.

(4) Meetings. The project coordinating committee shall meet at appropriate times during the consolidated application process. Any member may request a meeting of the Committee. If a majority of members concur with the request, the Department shall facilitate a meeting. All meetings of the project coordinating committee shall be open to the public and each meeting shall include an opportunity for public comment on matters before the Committee.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.965

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0025

Technical Review Team

(1) Duties. The duties of the technical review team shall include but not be limited to the following:

(a) Provide an interagency and interdisciplinary review of technical permitting issues and serve in an advisory capacity to a project coordinating committee;

(b) Approve the methodology to be used in the collection of baseline data;

- (c) Coordinate with the applicant the collection and verification of baseline data;
- (d) Determine the study areas for a proposed mine;
- (e) Identify any reasonable alternatives that were not analyzed by the applicant or contractor in a consolidated application and direct staff or a third party contractor to analyze such alternatives in accordance with the requirements of OAR 635-037-0045(5);
- (f) Determine whether any part of a consolidated application, including an environmental evaluation, is complete;
- (g) Determine whether a proposed mining operation complies with the standards established in ORS 517.952 to 517.989, these rules and the statutes and rules governing the issuance of all applicable permits set forth in ORS 517.952 to 517.989;
- (h) Reconcile contradictory permit conditions;
- (i) Advise an applicant of the application requirements relevant to a proposed mine; and
- (j) Identify the characteristics reasonably expected to exist under local conditions under OAR 632-037-0010(24).

(2) Team Members. The Department shall act as the facilitating agency for the technical review team. Upon receipt of a notice of intent, the Department shall request the participation of a representative of each permitting and cooperating agency.

(3) Staff. Each permitting and cooperating agency shall designate an appropriate staff person(s) to participate on the technical review team. Each agency shall assume responsibility over those sections of the consolidated application and environmental evaluation over which the agency has permitting authority or special expertise. When special expertise resides in more than one agency, the agencies shall coordinate their activities to avoid duplication or contradiction.

(4) Meetings. The technical review team shall meet at those times necessary and appropriate to accomplish the purposes of ORS 517.952 to 517.989 and these rules. Any member may request a meeting of the team. If a majority of other members concur with the request, the Department shall facilitate a meeting.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.967

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0030

Public Notice Procedure

(1) Whenever public notice is required by ORS 517.952 to 517.989 or these rules, the Department shall:

- (a) Mail a written notice to all permitting and cooperating agencies and affected federal and local agencies;
- (b) Mail a written notice to each owner of property located within one-half mile of the perimeter of the proposed permit area of the mining operation. As used in this paragraph, "owner" means the owner of the title to real property or the contract purchaser of real property of record as shown on the last available complete tax assessment roll;
- (c) Mail a written notice to persons on the master list;
- (d) Mail a written notice to unpatented mineral claimants for claims that are filed with the county and are located within one-half mile of the perimeter of the proposed permit area of the mining operation; and
- (e) Cause to be published a notice in at least one newspaper of general circulation in the state and in at least one local newspaper of general circulation in the county or counties in which the proposed mining permit area is located. A notice by publication shall be given at least once each week for two weeks immediately preceding an action by the Department or following an action by an applicant that requires public notice under ORS 517.952 to 517.989 or these rules. In the event that a local newspaper is not published on a weekly basis, the notice by publication shall be given in a manner that is consistent with the publishing schedule of a local newspaper.

(2) The notice provided pursuant to this section shall satisfy any notice requirement of an individual permitting or cooperating agency related to a permit included in the consolidated application process.

(3) A notice given pursuant to section (1) of this rule shall include:

- (a) The name, address and telephone number of the Department and all permitting and cooperating agencies, and, if applicable, the local government responsible for land use approval, including a contact person for each agency when known;
- (b) The name and address of the applicant;

- (c) The location of the proposed mining operation;
- (d) A description of the action or proposed action;
- (e) The location or locations where interested persons may obtain further information and inspect and copy relevant forms and documents;
- (f) A statement describing any opportunities and requirements for public comment and the date, time and location of any public meeting or hearing; and
- (g) Any other information required by ORS 517.952 to 517.989 or these rules.

(4)(a) The Department shall establish a master list for each proposed mining operation. To establish a master list, the Department shall request from each permitting and cooperating agency a list of the names and addresses of persons who have expressed interest in a proposed mining operation;

(b) The Department may charge the addressee on the master mailing list a fee of \$5 to defray the costs of maintaining the master list and mailing public notices to persons on the master list. Any person may be added to the master list by mailing or delivering a written request and, if required, the fee to the Department.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.959

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0035

Notice of Intent

(1) A prospective applicant shall file with the Department a notice of intent to submit a consolidated application. The notice shall include the following information:

(a) Name and location of the proposed mining operation, including a legal description of an area that fully encompasses the proposed boundary of the permit area and a general description of the proposed boundary of the permit area;

(b) Name, mailing address and phone number of the prospective applicant;

(c) The legal structure (e.g., corporation, partnership, individual) of the applicant as filed in the business registry with the Secretary of State and the legal address of the applicant.

(d) Brief description of the proposed mining operation.

(2) Within ten days of the filing of a notice of intent, the prospective applicant shall post a copy of the notice at each common access point and on four posts, one post at each of the four cardinal headings (north, south, east and west) along the proposed boundary of the permit area. For the purposes of this section, "common access points" shall include but not be limited to roads and trails as shown on such documents as state and county road maps and quadrangles prepared by the United States Geological Survey.

(3) Upon receipt of a notice of intent, the Department shall:

(a) Provide public notice in accordance with OAR 632-037-0030. The notice shall include the information contained in the notice of intent and information on how a person may be added to the master list;

(b) Activate a project coordinating committee for the proposed mining operation and coordinate the participation of committee members and the prospective applicant in the activities of the project coordinating committee;

(c) Activate a technical review team; and

(d) Inform the prospective applicant of the names and contact persons for all permitting and cooperating agencies that will be participating in the consolidated application process.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.958 & 517.961

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0040

Notice of Prospective Applicant's Readiness to Collect Baseline Data

(1) When a prospective applicant is ready to begin collecting baseline data for a proposed mining operation, the applicant shall notify the Department. The notice shall include a proposed baseline data collection work plan. A work plan by discipline shall include:

- (a) Data collection methodologies by discipline;
- (b) Area of study; and
- (c) Timing and duration of baseline data collection and verification.

(2) Upon receipt of a notice of a prospective applicant's readiness to begin collecting baseline data, the Department shall provide public notice that the applicant is ready to begin collecting baseline data and identify the location(s) where additional information may be obtained or reviewed.

(3) Within 30 days after receiving a notice, the Department shall conduct two public information meetings. One public meeting shall be conducted in the population center closest to the proposed mining operation and one public meeting shall be conducted in a major population center for the state, as determined by the Department. If the major population center for the state is the same as the population center closest to the proposed mining operation, the Department may conduct only one public information meeting.

(4) The Department shall accept written comments from the public and affected agencies for 45 days after receiving the notice.

(5) The purposes of the public information meetings and public comment period in sections (3) and (4) of this rule shall be to:

- (a) Identify issues raised by the proposed mining operation; and
- (b) Receive information from the public, including information related to the collection of baseline data that is relevant to the characterization of the pre-mine environment and the evaluation of a consolidated application for a proposed mining operation in order to assist the Department and the permitting and cooperating agencies.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.958 & 517.969

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0045

Content

The applicant shall submit to the Department a consolidated application that includes but is not limited to the following sections:

- (1) General Information;
- (2) Existing Environment – Baseline Data;
- (3) Operating Plan;
- (4) Reclamation and Closure Plan;
- (5) Alternatives Analysis.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.971

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0050

General Information

The General Information section of a consolidated application shall include but not be limited to the following:

- (1) The name, mailing address and phone number of the applicant and a registered agent for the applicant.
- (2) The name(s) and address(es) of all owners of the surface and mineral estate.
- (3) The legal structure (e.g., corporation, partnership, individual) of the applicant as filed in the business registry with the Secretary of State and the legal address of the applicant.

- (4) The proposed starting date and expected life of the proposed mining operation.
- (5) The name and location of the proposed facility.
- (6) The location of existing and proposed roads.
- (7) Appropriate maps, aerial photographs, cross sections, plans, design drawings and documentation of appropriate scale may be required by the technical review team. The applicant may contact the technical review team 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. Information that may typically be required on maps, aerial photographs or design drawings includes but is not limited to:
 - (a) Permit area lateral extent and proposed depth of excavation;
 - (b) Mine location;
 - (c) Waste rock, ore storage, subgrade ore or overburden stockpile locations;
 - (d) Processing facility locations;
 - (e) All other facility locations;
 - (f) Topsoil stockpile locations;
 - (g) Typical cross sections, including but not limited to, the pit, major facilities, cut and fill slopes and other disturbed areas;
 - (h) Plan views and profiles, including but not limited to, the pit, major facilities, cut and fill slopes and other disturbed areas;
 - (i) Existing watercourses and ponds;
 - (j) Interim watercourses and ponds;
 - (k) Reconstructed watercourse and ponds;
 - (l) Proposed post-mining topography;
 - (m) Property lines;
 - (n) General ore body location and area extent.
- (8) Written evidence that the surface estate and mineral estate owners concur with the proposed reclamation plan 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 the consent of the surface owner, and the applicant can ensure 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 plan, the Department may issue an operating permit. If the proposed mine is located on federal land, the requirement of this section can be satisfied by documentation from the federal government verifying that the land is open to mineral exploration and development.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.971

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0055

Existing Environment – Baseline Data

The Existing Environment – Baseline Data section of a consolidated application shall include but not be limited to the following:

- (1) Baseline data that describes the environmental, socioeconomic, historical, and archaeological conditions of the study area, and the land use designations and special use designations in the study area. Such information shall include, but not be limited to, description of the following:
 - (a) Vegetation;
 - (b) Soil/overburden;
 - (c) Climate/air quality;

- (d) Fish, fish habitat and aquatic biology;
- (e) Wildlife and wildlife habitat;
- (f) State or federally listed threatened or endangered species and habitat and state sensitive species and habitat;
- (g) Surface and groundwater;
- (h) Seismicity;
- (i) Geology and geologic hazards;
- (j) Mineralogy and chemistry;
- (k) Noise;
- (l) Existing land use and land use designations;
- (m) Cultural/historical resources;
- (n) Archaeological resources;
- (o) Socioeconomic conditions;
- (p) State scenic waterways designated under ORS 390.805 {to} 390.925 and federal wild, scenic or recreational rivers designated under 28 U.S.C. 1271 {to} 1287; and
- (q) Identification of special natural areas designated by the state or federal government, including but not limited to the following:
 - (A) Areas designated as areas of critical environmental concern as defined by the Federal Land Policy and Management Act, 43 U.S.C. 1700 et seq.;
 - (B) Research natural areas as defined by the National Forest Management Act of 1976, Public Law 94-588 as amended;
 - (C) Outstanding natural areas as defined by 43 CFR 2070; and
 - (D) Areas designated by the Oregon Natural Heritage Plan established under ORS 273.576.
- (2) The level of detail required in section (1) of this rule may vary depending upon the location, size, scope and type of mining operation. The applicant should consult with the Department and the technical review team to determine the level of detail necessary for the applicant's proposed mining operation;
- (3) The Department and the technical review team shall coordinate with appropriate federal agencies that have similar baseline data requirements, to avoid duplication for the applicant.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.971

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0060

Operating Plan

The Operating Plan section of a consolidated application shall include but not be limited to the following:

- (1) A detailed description of the proposed mining and ore processing methods.
- (2) A general list of equipment required for the proposed operation.
- (3) A general schedule of construction and operation starting with the beginning of construction and ending with the completion of mining.
- (4) General design assumptions and plan profile, cross sections and capacities for mine facilities including but not limited to:
 - (a) Leach pads;
 - (b) Impoundments;
 - (c) Ponds;
 - (d) Stormwater and surface water diversion systems;

- (e) Waste disposal systems;
 - (f) Stockpiles and dumps;
 - (g) Pits;
 - (h) Tailing disposal facilities; and
 - (i) Transportation and storage systems for hazardous chemicals.
- (5) A process water budget analysis including but not limited to:
- (a) Precipitation and evaporation data;
 - (b) Make-up water needs;
 - (c) Make-up water source;
 - (d) Procedures to dispose of precipitation and ground water in excess of designed capacities to include but not be limited to solution treatment facilities or proposed treatment, disposal or discharge strategies. This section should be coordinated with procedures for seasonal or temporary closure and decommissioning of the operation;
 - (e) Surface water runoff determination for the watershed containing the mining operation.
 - (6) Seasonal or temporary closure procedures if applicable including but not limited to:
 - (a) Target seasonal or temporary storage volumes;
 - (b) Total system storage capacity;
 - (c) Procedures to handle volumes of water in excess of seasonal or temporary storage capacities;
 - (d) Estimated schedule for closure; and
 - (e) Monitoring and reporting programs, including but not limited to:
 - (A) Surface and ground water monitoring systems within and outside of the permit area and reporting frequency;
 - (B) Water balance of the process system and leak detection systems and reporting frequency;
 - (C) Biological monitoring and reporting procedures and frequency; and
 - (D) Fish and wildlife injury and mortality monitoring and reporting frequency developed according to standards adopted by the Department of Fish and Wildlife.
 - (7) Operational monitoring and reporting programs, including but not limited to:
 - (a) Surface and ground water monitoring systems within and outside of the permit area and reporting frequency;
 - (b) Water balance of the process system and leak detection systems and reporting frequency;
 - (c) Biological monitoring and reporting procedures and frequency; and
 - (d) Fish and wildlife injury and mortality monitoring and reporting frequency developed according to standards adopted by the Department of Fish and Wildlife.
 - (8) Surface water management procedures to provide for protection against contamination of ground water and the off-site discharge of sediments into adjacent waterways.
 - (9) Plans for stable storage of the following:
 - (a) Overburden;
 - (b) Waste rock and low grade ore: 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 shall require design and review by a registered professional engineer or certified engineering geologist;
 - (c) Topsoil or suitable growth media maintained for use in revegetation;
 - (d) Mill tailings: Plans and specifications of all dams, impoundments or landfills proposed to be constructed for the purpose of storing or disposing of mill tailings, processing solutions 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. Procedures to prevent pollution of air, water and land shall be described. Details on how each tailings disposal facility will be reclaimed shall be submitted; and

(e) 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. Ore storage facilities may include but not be limited to reusable or permanent leach pads, stockpiles, storage bins and silos.

(10) A subsidence control plan for underground mines:

(a) An application for an underground mine operation 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 may in the professional judgment of the Department cause damage to, or diminution of reasonable foreseeable uses of the structures, renewable or nonrenewable resources, or water resources;

(b) If the Department finds, after reviewing the inventory, that no structure or renewable or nonrenewable resource exists and in the professional judgment of the Department no damage or diminution could be caused in the event of mine subsidence, the Department will not require further information under this subsection;

(c) If the Department finds, after reviewing the inventory, that any structure, renewable or nonrenewable resource, or water resources exists and that subsidence could in the professional judgment of the Department cause damage or diminution of value of subsequent land use, then the applicant shall submit a subsidence control plan that contains:

(A) A detailed description of all proposed methods of operation that may cause subsidence including the technique of ore removal and the extent, if any, to which planned and controlled subsidence is intended;

(B) A detailed description of the measures to be taken to mitigate or prevent damage caused by subsidence, or diminution of value of subsequent land use, including the anticipated effects of planned subsidence, if any, and measures to be taken to reduce the likelihood of subsidence;

(C) Measures to be taken on the surface to prevent damage or lessening of the value of subsequent land use;

(D) A detailed description of measures to be taken to determine the degree of damage or diminution of value of subsequent land use including measures such as the results of pre-subsidence surveys of all structures and surface features that might be damaged by subsidence and monitoring, if any, proposed to measure deformation near specified structures or features or otherwise as appropriate for the operations.

(11) A list of chemicals and the quantity of such chemicals to be used and procedures for the handling, storage and disposal of any chemicals, acid-forming materials or radioactive or hazardous material or wastes generated from or required for mining or processing at the proposed operation.

(12) A fish and wildlife protection and mitigation plan developed according to standards adopted by the Department of Fish and Wildlife.

(13) A plan for the transportation of toxic chemicals developed according to standards adopted by the State Fire Marshal.

(14) An employee safety training plan developed according to state and federal law.

(15) A spill prevention plan that includes but is not limited to initial response, safety, reporting procedures, notification to appropriate state and local agencies and a corrective action plan.

(16) Characterization and management plan for all wastes, including quantity and quality.

(17) Within 30 days after completion of construction, but before mine operation, a signed registered engineers' or certified engineering geologists' report, complete with accurate drawings and specifications depicting the actual construction shall be submitted to the Department. Specific provisions shall be made for inspections by the Department, other permitting agencies and cooperating agencies during construction and installation of any mine facilities.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.971

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0070

Reclamation and Closure Plan

The Reclamation and Closure Plan section of a consolidated application shall include but not be limited to the following provisions for the protection of public health, safety, and the environment:

(1) Procedures for the salvage, storage and replacement of topsoil or acceptable substitute.

(2) Provisions for recontouring, stabilization and topsoil replacement of all disturbed areas, where appropriate.

- (3) Provisions for the revegetation of all disturbed areas consistent with the establishment of a self-sustaining ecosystem, comparable to undamaged ecosystems in the area of the mine. This shall include but not be limited to seedbed preparation, mulching, fertilizing, species selection, seeding planting rates and schedules. If applicable, the applicant shall include a plan for control of noxious weeds as identified by the Department of Agriculture.
- (4) Characterization and management plan for all wastes, including quantity and quality.
- (5) Provisions for specifying adequate setbacks from adjacent property boundaries and from surface waters or other resources when necessary to ensure compliance with environmental standards.
- (6) Procedures for all impacted or reconstructed stream channels, riparian area vegetation and stream banks to be rehabilitated or restored so as to maximize water retention and to minimize bank erosion, channel scour, siltation, and increased water temperatures.
- (7) Provisions for prevention of stagnant water may be required by the Department.
- (8) Provisions for the establishment of required slopes, including reclaimed highwalls and in-water slopes.
- (9) Provisions for visual screening of proposed operation if the permit area is visible from a public highway or residential area. Techniques for visual screening include but are not limited to vegetation, fencing or berms.
- (10) Procedures for the removal or disposal of all equipment, refuse, structures and foundations from the permit area.
- (11) Provisions to maintain access to utilities when a utility company right-of-way exists.
- (12) Procedures or information for decommissioning mine facilities including but not limited to:
 - (a) Procedures for ore storage sites to meet decommissioning performance standards for protection of air quality, surface and ground water quantity and quality and living resources and to achieve reclamation requirements;
 - (b) Procedures for tailing disposal facility to meet decommissioning performance standards for long-term stability, protection of air quality, surface and ground water quantity and quality and living resources and to provide for attainment of reclamation objectives;
 - (c) Removal of all process chemicals;
 - (d) Appropriate isolation or removal of waste material; and
 - (e) Monitoring systems by which the success of the proposed reclamation and closure can be measured for bond release.
- (13) An estimate of the total cost of reclamation consistent with the standards imposed under ORS 517.750 to 517.955.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.971

History:

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0075

Alternatives Analysis

- (1) The alternatives analysis shall include an identification and analysis of the environmental impacts of the proposed mining operation and alternatives to avoid or minimize adverse impacts and/or enhance the quality of the human and natural environment.
- (2) The alternatives analyzed by the applicant or contractor shall include, but not be limited to, the following:
 - (a) Alternative locations for mine facilities, including heap leach pads, roads, impoundments, ponds, ore storage areas and waste disposal areas;
 - (b) Alternative designs, processes (including chemical processes), operations and scheduling for mine facilities and operations, including heap leach pads, roads, impoundments, ponds, ore storage areas and waste disposal areas;
 - (c) Alternative water supply;
 - (d) Alternative power supply; and
 - (e) Alternative reclamation procedures.
- (3) The alternatives analysis shall include sufficient detail in the description of each alternative so that affected agencies and the public may evaluate the comparative merits of each alternative.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.979

History:

DGMI 1-2014, f. & cert. ef. 4-2-14
GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0077**Additional Requirements**

In addition to the requirements in OAR 632-037-0050 to 632-037-0075, the applicant shall submit all information required by either state law or the administrative rules of a permitting agency to determine whether to issue or deny each and all of the following permits that are applicable to the proposed operation:

- (1) Fill and removal permits required under ORS 196.600 to 196.665 and 196.800 to 196.900.
- (2) Permits to appropriate surface water or ground water under ORS 537.130 and 537.615, to store water under ORS 537.400 and impoundment structure approval under ORS 540.350 to 540.390.
- (3) National Pollutant Discharge Elimination System permit under ORS 468.740.
- (4) Water pollution control facility permit under ORS 468.740.
- (5) Air contaminant discharge permit under ORS 468.310 to 468.330.
- (6) Solid waste disposal permit under ORS 459.205.
- (7) Permit for use of power driven machinery on forestland under ORS 477.625.
- (8) Permit to clear right of way on forestland where clearing constitutes a fire hazard under ORS 477.685.
- (9) Permit for placing explosives or harmful substances in waters of the state under ORS 509.140.
- (10) Hazardous waste storage permit under ORS 466.005 to 466.385.
- (11) Land use permit, if applicable consistent with the Department's state agency coordination agreement, including relevant sections of OAR chapter 632, division 001.
- (12) Any other state permit required for the proposed mining operation.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.971 & 517.978

History:

DGMI 1-2014, f. & cert. ef. 4-2-14
GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0080**Notice to Proceed**

(1) Within ten days after receiving a consolidated application, the Department shall provide a copy of the application to each affected local government, permitting agency, cooperating agency and federal agency. For the purposes of this section, "affected local government" shall mean those local city and county governments, school districts, people's utility districts, irrigation districts, and road districts, that are within the study area of the proposed mining operation. The Department shall also provide public notice of the receipt of a consolidated application. In addition, upon written request, a copy of the consolidated application shall be made available to any government that believes it will be impacted by the proposed mining operation.

(2) Within 90 days of receipt of a consolidated application, the Department, in conjunction with all permitting and cooperating agencies, shall determine whether the application is complete. A completeness determination shall include the verification of baseline data as accurate.

(3) Before determining whether or not the application is complete and after all members of the technical review team concur that the permitting and cooperating agencies are ready to begin preparing draft permits, the Department shall conduct a public hearing and accept written comments on whether the information contained in the consolidated application is complete and sufficient to allow the permitting agencies to determine whether to issue or deny a permit. The Department shall determine and provide public notice of the date and location of the hearing and the period allowed for written comment. Any person who believes an application is incomplete due to a lack of quantity or quality shall clearly identify the incomplete sections of the application and the reasons such sections are incomplete.

(4) If the permitting and cooperating agencies determine that the application is complete, the Department shall issue a Notice to Proceed with the permitting process and the preparation of draft permits. If the applicant is not required to submit additional information as suggested in oral or written comments that clearly identify the incomplete sections of

the application and the reasons such sections are incomplete, the agencies shall prepare a written response explaining why the additional information is not being requested from the applicant.

(5) If the permitting and cooperating agencies determine that additional information is necessary, the Department shall notify the applicant in writing of the additional information that is required. Upon receipt of the additional information, the Department shall provide public notice and accept written comments for a period of 14 calendar days.

(6) After the issuance of a notice to proceed, if new information becomes available or is required by a permitting agency or cooperating agency to determine whether to issue or deny a permit or issue a permit with conditions, and the agencies determine that additional information is significant to the issuance or denial of a permit, the Department shall conduct an additional public hearing to determine whether the new information is complete within 14 days of receipt of the information. The permitting and cooperating agencies may continue to review an application while in the process of requesting additional information.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.977

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0085

Environmental Evaluation

(1) The purpose of an environmental evaluation shall be to address specific impacts of a mining operation in order to allow affected agencies to make decisions on whether to issue or deny a permit and develop permit conditions. It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts and/or enhance the quality of the human and natural environment. An environmental evaluation shall focus on significant environmental issues and alternatives.

(2) For the purposes of this rule, "impacts" include both direct and indirect impacts:

(a) "Direct impacts" are those impacts that are caused by the action and occur at the same time and place as the action;

(b) "Indirect impacts" are those impacts that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.

(3) The Department shall direct staff or hire a third party contractor to prepare an environmental evaluation. The applicant shall pay costs of hiring a third party contractor. The scope of the environmental evaluation shall be determined by the technical review team following consultation with the project coordinating committee.

(4) An environmental evaluation shall be completed by Department staff or a third party contractor at least 60 days before the issuance of any draft permits. Upon receipt of a complete environmental evaluation, the Department shall provide public notice in accordance with OAR 632-037-0030 stating that the environmental evaluation is complete and receive written comments for a period of 14 calendar days after the notice is given.

(5) A complete environmental evaluation shall include the following sections:

(a) Impact Analysis;

(b) Cumulative Impact Analysis;

(c) Alternatives Analyses.

(6) Impact Analysis. An impact analysis shall include but not be limited to the following:

(a) An analysis of the reasonably foreseeable causes and impacts of the proposed mine on the environment, including but not limited to air, water, soil, vegetation, wildlife and wildlife habitat, geology, cultural resources and visual resources; and

(b) An analysis of the causes and impacts of the following types of credible accidents, including the catastrophic consequences of such accidents even if the probability of occurrence is low, provided that the analysis is supported by credible scientific evidence and is not based on pure conjecture:

(A) Releases of contaminants into the environment as a result of the mine operation or closure;

(B) Precipitation events and other natural events such as earthquakes that exceed the design standards of the mine facilities;

(C) Human error;

(D) Fire;

(E) Unplanned detonation of explosives; and

(F) Equipment failures.

(7) Cumulative Impact Analysis. A cumulative impact analysis shall include an assessment of the total cumulative impact on the environment that results from the incremental impact of an action when added with other past, present and reasonably foreseeable future actions, regardless of the agency or persons that undertake the other action, or whether the actions are on private, state or federal land:

(a) A cumulative impact analysis shall include but is not limited to the following:

(A) An identification of those resources for which an impact could occur from the proposed mining operation that could potentially combine with the impacts of other past, present or reasonably foreseeable future actions to produce a cumulative impact;

(B) An identification of past, present and reasonably foreseeable future actions that may occur in the study area, including each of the following types of actions:

(i) Similar actions. Actions that, when viewed with other reasonably foreseeable or proposed actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography;

(ii) Connected actions. Actions that cannot or will not proceed unless other actions are taken previously or simultaneously, or that are interdependent parts of a larger action and rely on the larger action for their justification;

(iii) Separate actions. Actions that affect the same environmental resources, including air, vegetation, wildlife and wildlife habitat, soil, and water resources.

(C) An analysis, by resource category identified in paragraph (A) of this subsection, of the cumulative impacts of the proposed mining operation and each of the actions identified in paragraph (B) of this subsection.

(b) The extent of a cumulative impact analysis shall be determined by a technical review team. In making such a determination, the technical review team shall consider the following:

(A) The alternatives considered for the proposed mining operation;

(B) The type of environmental impacts that are evaluated in the environmental evaluation; and

(C) The physical dimension of the proposed mining operation.

(8) Alternatives Analysis:

(a) An alternatives analysis shall include a review and analysis of the following:

(A) All alternatives analyzed by the applicant or applicant's contractor in accordance with OAR 632-037-0045(6); and

(B) Any reasonable alternatives identified by the technical review team to ensure that all alternatives within the authority of each permitting or cooperating agency are reviewed and analyzed. The alternatives identified by the technical review team may include, but not be limited to, the following:

(i) Alternative locations for mine facilities, including heap leach pads, roads, impoundments, ponds, ore storage areas and waste disposal areas;

(ii) Alternative designs, processes (including chemical processes), operations and scheduling for mine facilities and operations, including heap leach pads, roads, impoundments, ponds, ore storage areas and waste disposal areas;

(iii) Alternative water supply;

(iv) Alternative power supply; and

(v) Alternative reclamation procedures.

(b) The review and analysis required under subsection (a) of this section shall:

(A) Explore and evaluate the environmental impacts of all reasonable alternatives, and include a brief discussion of reasons a particular alternative was eliminated by the applicant;

(B) Include sufficient detail in the description of each alternative so that affected agencies and the public may evaluate the comparative merits of each alternative; and

(C) Discuss the systematic procedure used to arrive at the preferred alternative, including the decision criteria used and the information considered.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.978

History:

DGMI 1-2014, f. & cert. ef. 4-2-14
GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0090**Socioeconomic Impact Analysis**

(1) Concurrent with the development of an environmental evaluation, the Department shall direct staff or hire a third party contractor to prepare a socioeconomic impact analysis. The analysis shall include but not be limited to an identification of the major and reasonably foreseeable socioeconomic impacts on individuals and communities located in the vicinity of the proposed mine resulting from mine construction and operation. Such identification shall include the short and long term impacts on population, economics, infrastructure and fiscal structure. The Department shall make the analysis available to the public upon request.

(2) Upon completion of the socioeconomic impact analysis, the Department shall distribute a copy of the analysis to each local government within the vicinity of the proposed mine and affected agencies.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.980

History:

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0095**Permitting Agency Action on a Consolidated Application**

(1) Within 225 days of the issuance of a Notice to Proceed and not sooner than 60 days after the submittal of a complete environmental evaluation, each permitting agency shall submit to the Department its draft permit and permit conditions or permit denial document.

(2) If a permitting agency includes in its draft permit a condition that is inconsistent with the environmental evaluation, the agency shall include with its draft permits a written explanation of the conditions setting forth the findings of the agency that support the condition.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.978

History:

DGMI 1-2014, f. & cert. ef. 4-2-14
GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0100**Cooperating Agency Action on a Consolidated Application**

(1) At least 30 days before the issuance of draft permits, each cooperating agency shall submit to the Department:

(a) Written concurrence or non-concurrence with the terms and conditions of the draft operating permit as such pertain to the statutory authority of each cooperating agency; and

(b) Permit conditions within the expertise and authority of the cooperating agency.

(2) The Department shall not issue a draft permit until each cooperating agency has concurred with the terms and conditions of the draft permit as such pertain to the statutory responsibility of each cooperating agency.

(3) The Department shall include permit conditions submitted by a cooperating agency as conditions on the Department's draft operating permit.

(4) If the Department finds that a proposed permit condition imposed by a cooperating agency creates a conflict between permits, the technical review team shall resolve the conflict.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.981

History:

DGMI 1-2014, f. & cert. ef. 4-2-14
GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0105**Consolidated Public Hearing; Final Permits**

- (1) Within 15 days of receiving all draft permits and the completion of its draft operating permit, the Department shall issue public notice of the date and location of a consolidated public hearing and period for written comment on all permits.
- (2) A consolidated public hearing shall occur not sooner than 45 days and not later than 60 days after the Department issues a public notice under section (1) of this rule.
- (3) At least seven days before the issuance of a final operating permit, each cooperating agency shall submit to the Department:
 - (a) Written concurrence or non-concurrence with the terms and conditions of the final operating permit as such pertain to the statutory authority of each cooperating agency; and
 - (b) Permit conditions within the expertise and authority of the cooperating agency.
- (4) The Department shall not issue a permit until each cooperating agency has concurred with the terms and conditions of the permit as such pertain to the statutory responsibility of each cooperating agency.
- (5) The Department shall include permit conditions submitted by a cooperating agency as conditions on the Department's final operating permit.
- (6) If the Department finds that a proposed permit condition imposed by a cooperating agency creates a conflict between permits, the technical review team shall resolve the conflict.
- (7) Based on information received at a consolidated public hearing and within 45 days of the hearing, or within the time period required by applicable federal law, whichever is sooner, each permitting agency shall approve, deny or modify the agency's permit with conditions necessary to ensure that the mining operation allowed under a permit complies with the applicable standards and requirements.
- (8) Each other permitting agency shall notify the Department of the issuance of final permits. The Department shall provide public notice of the issuance of final permits.
- (9) Notwithstanding any other provisions of law, the Department and any other permitting agency shall take final action to issue or deny a permit subject to the consolidated application process within one year after issuance of a notice to proceed. However, with the concurrence of the applicant, the processing of the application may be suspended for a period of time to allow the applicant to resolve issues having a bearing on, or necessary to any permitting agency's decision on whether to issue or deny a permit.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.981

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0110

Appeals; Consolidated Contested Case Hearing

- (1) The applicant or any person who appeared before a permitting agency at the consolidated public hearing, either orally or in writing, may file with the State Geologist a written request for a consolidated contested case hearing. The request shall be filed within 30 days after the date the permit was granted or denied. The applicant or person requesting a consolidated contested case hearing shall state the reasons for requesting the hearing and the objections to the permitting agency's action in accordance with the Attorney General's Model Rules of Procedure.
- (2) Upon receipt of a request under section (1) of this rule, the Department shall schedule a consolidated contested case hearing. The hearing shall be held not less than 60 days or more than 75 days after the notice of permit issuance or denial. The hearing shall be conducted in accordance with ORS Chapter 183 and the Attorney General's Model Rules of Procedure.
- (3) Any permit granted by a permitting agency shall be suspended until completion of the administrative hearings process.
- (4) If all permitting agencies are subject to ORS 183.635(1), DOGAMI may request that a single administrative law judge be appointed to preside over the consolidated contested case hearing. If more than one hearings officer is appointed, the Department shall appoint a chief hearings officer. The role of the chief hearings officer shall be to organize the proceedings.
- (5) The hearings officer(s) shall prepare a proposed order for each contested permit.
- (6) A party may file written exceptions to the proposed order with the appropriate permitting agency. If the permitting agency determines that additional information presented in a written exception was unavailable at the time of the

consolidated contested case hearing and is significant to the adoption or modification of the proposed order, the agency shall remand the order to the appropriate hearings officer for further consideration.

(7) After receiving exceptions and hearing argument on the exceptions to the proposed order, the permitting agency may either adopt the proposed order or issue a new order.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.983

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0115

Judicial Review

(1) A petition for judicial review of a permitting agency's issuance or denial of a permit must be filed with the Supreme Court within 60 days following the date the permit is issued or denied following the entry of an order subsequent to a consolidated contested case hearing.

(2) Except as provided in section (3) of this rule, if the permit with prescribed conditions is approved, the filing of a petition for judicial review shall stay the permit during the pendency of judicial review for a period of up to six months from the date the petition is filed. The Supreme Court may extend the stay beyond the six-month period upon written request and a showing by the petitioner that the activities allowed under the permit could result in irreparable harm to the site.

(3) When only the applicant files a petition for judicial review, the six-month stay imposed under section (2) of this rule may be removed by the permitting agency upon the applicant's written request within 60 days after filing of the petition and upon a showing by the applicant that supports a finding by the permitting agency that proceeding with any or all activities under the permit will not result in irreparable harm to the site.

(4) In making findings under section (3) of this rule, the permitting agency may require an additional bond or alternative security to be filed with the Department as provided in ORS 517.987 and these rules. The bond or alternative security shall be in an amount the permitting agency determines necessary to ensure complete restoration of the site if the petitioner elects not to complete the project following judicial review. Agency denial of the request to remove the stay is subject to review by the Supreme Court under such rules as the Supreme Court may establish.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.983

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0118

Best Available Practicable and Necessary Technology

(1) Chemical process mining including extraction, processing, and reclamation, must be undertaken in a manner that minimizes environmental damage through the use of the best available, practicable, and necessary technology to ensure compliance with environmental standards.

(2) In determining the best available, practicable, and necessary technology for use in a mining operation, the technical review team shall apply in consultation with the applicant, the following process:

(a) The technical review team shall determine the necessary technologies if such technologies exist;

(b) The technical review team shall determine which, if any, of the necessary technologies is available;

(c) The technical review team shall determine which, if any, of the necessary and available technologies is practicable;

(d) The technical review team will review, determine, and rank the necessary, available and practicable technologies by their potential environmental benefits;

(e) The technical review team shall recommend to the Department, the technology that the technical review team has determined is the best available, necessary, and practicable technology to ensure compliance with environmental standards. The determination shall be made with reference to the policies expressed in ORS 517.953 and 517.956.

(3) The department will require the applicant to use the best available, practicable, and necessary technology to ensure compliance with the environmental standards. The determination must be made with reference to the policies expressed in ORS 517.953 and 517.956.

(4) If the technical review team or the Department is unable to identify a necessary technology that is available and practicable, the Department shall not issue an operating permit.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.956

History:

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

GMI 4-1991, f. & cert. ef. 12-5-91

632-037-0120

Mine Operation Standards

The Department shall require a mining operation to comply with the following mine operation standards:

- (1) Mine facilities have been designed to handle the 100-year, 24-hour precipitation event, at a minimum.
- (2) An interim vegetative cover of stockpiles of topsoil or overburden materials that will be used in reclamation shall be required to prevent erosion or fugitive dust release from the overburden storage or spoils area.
- (3) Any standard adopted by rule by any permitting or cooperating agency related to the operation of a mining operation.
- (4) No loss of existing critical habitat of any state or federally listed threatened or endangered plant species, as determined by the Department of Agriculture.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.956

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0125

Fish and Wildlife Standards

The Department shall require a mining operation to comply with protection standards for fish and wildlife consistent with policies of the Department of Fish and Wildlife, including:

- (1) Protective measures to maintain an objective of zero wildlife mortality.
- (2) All chemical processing solutions and associated wastewater must be covered or contained to preclude access by wildlife, or maintained in a condition that is not harmful to wildlife.
- (3) Onsite and offsite mitigation ensuring there is no overall net loss of habitat value.
- (4) No loss of existing critical habitat of any state or federally listed threatened or endangered fish or wildlife species.
- (5) Any other standard adopted by rule by the Department of Fish and Wildlife applicable to a mining operation.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.956 & 517.987

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0130

Reclamation and Mine Closure Standards

The Department shall require a mining operation to comply with reclamation and mine closure standards utilizing the best available, practicable and necessary technology to ensure compliance with environmental standards. The reclamation and mine closure standards shall include but not be limited to the following:

- (1) Surface reclamation shall ensure environmental protection and the protection of human health and safety, as well as livestock, fish and wildlife.
- (2) Surface reclamation of a mining operation shall require certification by the Department of Fish and Wildlife and the Department of Agriculture that a self-sustaining ecosystem, comparable to undamaged ecosystems in the area, has been established in satisfaction of the permittee's habitat restoration obligations.
- (3) Post-closure monitoring shall be required by the Department to ensure compliance with decommissioning performance standards.

(4) Revegetation shall be considered successful if it is consistent with the establishment of a self-sustaining ecosystem, comparable to undamaged ecosystems in the area of the mine. Vegetation test plots and chemical/physical soil and subsoil analysis may be required to ensure establishment feasibility.

(5) Native species shall be established unless the use of non-native species is justified and approved by the technical review team.

(6) Seed mixes, fertilizer rates and other requirements will be derived from departmental experience and advice from sources such as the Oregon Department of Agriculture, U.S. Soil Conservation Service, Oregon State University Extension Service, the Oregon Department of Transportation, the Bureau of Land Management, the Forest Service, local soil conservation districts and private sector experts.

(7) All final slopes shall be stable, blend into adjacent terrain and be compatible with the establishment of a self-sustaining ecosystem, comparable to undamaged ecosystems in the area of the mine.

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

(a) Blend into the adjacent terrain features;

(b) Existed prior to mining; or

(c) Are consistent with the establishment of a self-sustaining ecosystem, comparable to undamaged ecosystems in the area of the mine.

(9) 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.

(10) In-water slopes to six feet below water level for permanent water impoundments when necessary shall be 3:1. 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 water level and five-feet wide may be substituted for the slope requirement where the Department determines that sloping is not practical.

(11) Permanent structures may remain if they are part of the approved reclamation plan.

(12) Any standards adopted by rule by a permitting or cooperating agency related to reclamation or closure of a mining operation.

(13) Backfilling or partial backfilling of pits shall be required if the Department determines that:

(a) Backfilling is necessary to achieve the reclamation objectives set forth in ORS 517.952 to 517.989;

(b) Reclamation objectives, including but not limited to compliance with environmental standards, cannot be achieved through mitigation or other reclamation technologies; and

(c) Backfilling is the best available, practicable and necessary technology to ensure compliance with environmental standards.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.956, 517.971 & 517.987

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0135

Financial Security

(1) A reclamation bond or alternative security acceptable to the Department shall be posted before the start of any construction, excavation or other ground disturbing activity associated with mining operations, other than baseline data collection. "Alternative security" shall include certificates of deposit or irrevocable letters of credit issued by a federally-insured bank. The purpose of the financial security shall be to allow the Department to meet the requirements of the reclamation and closure plan and to provide protection of surface and subsurface resources. The amount of the financial security shall be calculated on the basis of the estimated actual cost of reclamation and closure and shall not be limited. The calculation shall also consider environmental protection costs based on the credible accident analysis and the factors listed in section (6) of this rule.

(2) The Department shall assess annually the overall cost of reclamation. If changes in the operation or modifications to a permit cause the cost of reclamation to exceed the amount of the financial security currently held by the state, the permittee shall post an additional security for the difference. All reclamation calculations shall be approved by the Department.

(3) The Department shall provide for incremental surety increases, with the level of surety required being consistent with the degree and forms of surface disturbance anticipated within a time period specified by the Department. When the actual surface area to be disturbed approaches the level expected by the Department, the permittee shall notify the Department sufficiently in advance of reaching the acreage limit specified to allow for a review of the surety requirements and posting of additional surety by the permittee prior to exceeding the acreage limit set by the Department.

(4) If reclamation costs will exceed the posted financial security and the operator does not increase the amount of the financial security, the department and other permitting agencies shall suspend all permits until the permittee posts the additional financial security.

(5) The Department may seek a lien against the assets of the permittee to cover the cost of reclamation if the financial security posted is insufficient. The amount of the lien shall be the amount of the costs incurred by the Department to complete reclamation. All current operating permits of the permittee shall be suspended and the Department shall deny immediately all pending applications of the permittee to conduct mining operations.

(6) The factors the Department shall consider in determining the amount of the security may include but are not limited to the following:

- (a) The reclamation estimate submitted by the applicant as part of the consolidated application;
- (b) The impact analysis, including the credible accident analysis;
- (c) Supervision;
- (d) Mobilization;
- (e) Costs of equipment;
- (f) Costs of labor;
- (g) Removal or disposition of debris, junk, equipment, structures, foundations and unwanted chemicals;
- (h) Reduction or stabilization of hazards such as in-water slopes, highwalls, and landslides or other mass failure;
- (i) Disposition of oversize, rejects, scalplings and 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;
- (q) Long-term stabilization, control, containment or disposition of waste solids and liquids;
- (r) Final engineering design;
- (s) Costs of remedial measure 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;
- (t) The estimated cost of detoxification or disposal of ore processing solutions and solution contaminated ore so as to meet the standards for reclamation approved for the operation in the operating permit issued by the Department and the standards established in ORS 517.952 to 517.989 and these rules;
- (u) The estimated cost of restoration of contaminated soil, surface and ground water or living resources within the standards established in ORS 517.952 to 517.989 and these rules should an accident occur at the site;
- (v) The estimated cost of removal and/or disposal of chemicals used on site;
- (w) The spill prevention plan;
- (x) Estimated Department-contracted service expenses including but not limited to supervision, mobilization, labor and equipment needs of the department for decontamination and restoration should the Department be required to perform such restoration.

(7) 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, public and private sources;
- (d) Site test and monitoring data;
- (e) Operator estimates; and
- (f) Equipment handbooks.

(8) Using the reclamation estimate submitted in the consolidated application and the impact analysis as a guide, the Department shall distribute an initial determination of the amount of financial security necessary to implement the reclamation and closure plans and to protect human health and the environment to all permitting and cooperating agencies for review and comment. After considering the comments of such agencies, the Department shall set the amount of financial security and notify the applicant.

(9) The financial security acceptable to the Department shall be posted before the start of any construction, excavation or other ground disturbing activity associated with mining activities other than baseline data collection activities. No permit shall be issued or renewed until all financial security for a mining operation is on file with the Department. Bonds or other securities shall be maintained until operations have ceased, reclamation has been completed and all decommissioning performance standards have been met. Bonds shall be United States Treasury listed, provided by surety companies licensed to operate in Oregon and acceptable to the Department. A mining operation may not satisfy the financial security requirements through self-insurance.

(10) The Department may require financial security or an annuity for post-reclamation monitoring and care.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.987

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0140

Obtaining Financial Security Release

(1) Upon completion of full reclamation, the permittee shall submit to the Department a written request for the release of its financial security.

(2) If a permittee has conducted concurrent reclamation or partial reclamation following the cessation of mine operations, the request for release of financial security must include an estimate of the percentage of reclamation done to date and the corresponding percentage of reclamation funds that the permittee believes should be released. A bond release or reduction request must state in unambiguous terms all measures taken to reclaim the site and any problems or potential problems that may inhibit reclamation in accordance with permit requirements. The Department shall consider any such problems in determining the appropriate level of financial security to be maintained.

(3) Upon receipt of a request to release financial security, the Department shall:

(a) Issue a public notice in accordance with OAR 632-037-0030; and

(b) Distribute the request to each permitting and cooperating agency, members of the public who participated in any hearing or written comment period under these rules, and to any person who requests such notification.

(4) No sooner than 60 days after taking the actions required under section (3) of this rule, the Department shall conduct an informal public hearing to determine whether to allow the release or reduction of the financial security.

(5) The Department may require security or an annuity for post-reclamation monitoring and care to be paid before final release of the financial security. The Department shall determine the amount of the security or annuity and distribute the proposal to all permitting and cooperating agencies. After considering the comments of such agencies, the Department shall set the amount of the security or annuity and notify the permittee.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.987

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0145

Permit Modifications

- (1) The permittee, the Department, or any other permitting or cooperating agency may request the modification of a permit issued under the consolidated application process at any time.
- (2) If a permitting agency is requested to make a permit modification that the permitting agency or a cooperating agency finds is a significant permit modification, the agency shall notify the Department. The Department shall coordinate the organization of a project coordinating committee.
- (3) The project coordinating committee shall review the proposed modification and determine the portions of ORS 517.952 to 517.989 and these rules with which the permittee must comply. The Committee shall limit its determination to those portions of the mine operation to be modified and shall be consistent with the public participation requirements set forth in ORS 517.952 to 517.989 and these rules.
- (4) The permittee may continue to operate under its existing permit(s) pending completion of the permit modification process.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.984

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0150

Civil Penalties

- (1) In addition to any other sanctions authorized by law, the Governing Board of the Department may impose a civil penalty as authorized by ORS 517.992
- (2) The Department shall provide a written warning of its intent to impose a civil penalty at least 48 hours prior to imposing the penalty when there is no immediate danger to human health, safety or the environment. The warning may be personally served on the person incurring the penalty or may be sent by registered or certified mail. The warning must include:
 - (a) A reference to the particular sections of the statute, rule, order or permit involved; and
 - (b) A short and plain statement of the matters asserted or charged.
- (3) A civil penalty imposed under this section is due and payable ten days after the order imposing the civil penalty becomes final by operation of law or on appeal. A person against whom a civil penalty is to be imposed shall be served with a notice in the form provided by ORS 183.415. Service of the notice shall be accomplished in the manner provided by ORS 183.415.
- (4) The person to whom the notice provided for in section (3) of this rule is addressed shall have 20 days from the date of service of the notice in which to make written application for a hearing. If no application for a hearing is made, the agency may make a final order imposing the penalty.
- (5) Any person who makes application as provided in section (4) of this rule is entitled to a hearing conducted pursuant to the applicable provisions of ORS 183.413 to 183.470.
- (6) A civil penalty shall be assessed under this rule in accordance with the following schedule:
 - (a) Class 1. Potential threat to human health or safety: warning to \$10,000;
 - (b) Class 2. Immediate threat to human health or safety: warning to \$25,000;
 - (c) Class 3. Potential threat to the environment: warning to \$10,000;
 - (d) Class 4. Immediate threat to the environment; warning to \$25,000;
 - (e) Class 5. Failure to comply with laws, rules, Governing Board orders or permit conditions, with no threat to human health, safety or the environment: warning to \$10,000;
 - (f) Class 6. Damage to health, safety or the environment: \$1,000-\$50,000;
 - (g) Failure to comply with prior warning or penalty (continued or repeat violation) within the following classes:
 - (A) Class 1: \$200-\$10,000;
 - (B) Class 2: \$200-\$50,000;
 - (C) Class 3: \$200-\$50,000;
 - (D) Class 4: \$200-\$50,000;

(E) Class 5: \$200-\$50,000;

(F) Class 6: \$2,000-\$50,000.

Statutory/Other Authority: ORS 517.750-517.995

Statutes/Other Implemented: ORS 517.992

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

632-037-0155

Fees

(1) Permit fees are established in ORS 517.973. Pursuant to ORS 517.793, a prospective applicant or applicant also must pay the Department and permitting and cooperating agencies for all expenses incurred relating to the processing and evaluation of the consolidated application process to the extent such expenses exceed the statutory fees. Recoverable expenses include, but are not limited to, the following:

Recoverable expenses include, but are not limited to, the following:

(a) Baseline data methodology review;

(b) Baseline data verification;

(c) Public meetings, except any costs related to mailing notice to parties on the master list;

(d) Completeness determination of the consolidated application, including the environmental evaluation;

(e) Permit preparation, drafting and issuance;

(f) Environmental evaluation, preparation and review;

(g) Project administration; and

(h) Legal expenses.

(3) Subject to the requirements and limitations in ORS 517.973(4), the prospective applicant or applicant shall pay the expenses of the Department and each permitting and cooperating agency within 30 days after receiving an invoice itemizing the expenses.

(4) With the agreement of a permitting or cooperating agency, the applicant or prospective applicant may arrange for invoices to be sent by and payments made to the Department on behalf of the permitting or cooperating agency.

(5) The Department and prospective applicant or applicant may agree to procedures to resolve disputes regarding payment of expenses.

(6) Subject to section (5) above, if expenses are not paid within 30 days of receiving an invoice, the Department may suspend pre-application work or decline to issue a notice to proceed under ORS 517.977. If the notice to proceed has been issued and invoices are outstanding after 30 days, the Department may deny the application unless the applicant concurs with a suspension of the permitting process under ORS 517.986.

Statutory/Other Authority: ORS 517.750 - 517.995

Statutes/Other Implemented: ORS 517.973

History:

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

GMI 2-1991, f. & cert. ef. 10-11-91

