

Enrolled Senate Bill 149

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for State Department of Geology and Mineral Industries)

CHAPTER

AN ACT

Relating to the State Department of Geology and Mineral Industries; creating new provisions; amending ORS 517.750, 517.755, 517.780, 517.790, 517.800, 517.820, 517.830, 517.835, 517.840, 517.850, 517.860, 517.865, 517.870, 517.880, 517.910, 517.930, 517.940, 517.950, 517.956, 517.984, 517.987, 517.990 and 517.992; and repealing ORS 517.785.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2, 3, 4 and 4a of this 2007 Act are added to and made a part of ORS 517.750 to 517.901.

SECTION 2. (1) Except as provided in subsection (2) of this section, the State Department of Geology and Mineral Industries may not revoke, terminate or refuse to renew an operating permit if marketable reserves exist at the permitted site and if there is a significant potential for continued mining opportunities given reasonably foreseeable economic conditions.

(2) The department may revoke, terminate or refuse to renew an operating permit if the operator:

(a) Requests termination, provided that all reclamation requirements in the operating permit and reclamation plan have been satisfied;

(b) Fails to pay a fee as required by ORS 517.800 within 60 days of the due date;

(c) Fails to provide or maintain a bond or security as required by ORS 517.810;

(d) Fails to comply with an order issued under ORS 517.860; or

(e) Fails to comply with a suspension order issued under ORS 517.880.

(3) If an operating permit is revoked, terminated or not renewed, the operator may not perform any actions at the permitted site, except that the operator may, after receiving written approval from the department:

(a) Perform actions at the permitted site that are necessary to comply with reclamation requirements in the operating permit or reclamation plan, including but not limited to removal of mining-related stockpiles;

(b) Excavate materials at the permitted site that are necessary for reclamation; and

(c) Remove any excavated materials from buffers, setbacks or other areas not approved for disturbance and restore the areas to the approximate pre-mining contours with materials approved by the department.

(4) The department, in lieu of or in addition to revoking, terminating or refusing to renew an operating permit for the reasons specified in subsection (2) of this section, may recover against the bond or security filed pursuant to ORS 517.810 and reclaim the area affected by surface mining.

SECTION 3. (1) A person who by sale, assignment, lease or other means has succeeded in interest to an uncompleted surface mining operation may request that the State Department of Geology and Mineral Industries release the existing operator from any reclamation obligations and transfer the operating permit to the successor. The department shall transfer the operating permit, unless:

(a) The successor does not agree to full assumption of the reclamation requirements in the operating permit and reclamation plan;

(b) The successor fails to provide a bond or security as required by ORS 517.810;

(c) More than one person has a claim to the property or operating permit and there is a dispute between the claimants that presents a justiciable controversy; or

(d) The successor, as the operator of another permitted site in this state, has failed to substantially comply with the conditions of an operating permit or reclamation plan, the provisions of ORS 517.702 to 517.989 or the rules adopted by the department to carry out the purposes of ORS 517.702 to 517.989.

(2) The governing board of the State Department of Geology and Mineral Industries may adopt rules relating to the responsibilities and duties of a person requesting a transfer of an operating permit under this section.

SECTION 4. (1) Except as provided in subsection (2) of this section, the State Department of Geology and Mineral Industries may not modify an operating permit or reclamation plan without the consent of the operator.

(2) The department may modify an operating permit or reclamation plan without the consent of the operator if, because of changed conditions at the permitted site or because of information otherwise not available to the department at the time of permit issuance or reclamation plan establishment, the department finds, by substantial evidence, that a modification is justified due to the potential for:

(a) Substantial harm to off-site property;

(b) Harm to threatened or endangered species; or

(c) Channel changes or unstable pit walls.

(3) Modification of an operating permit or reclamation plan without the consent of the operator must be limited to the areas or matters affected by the changed conditions or new information.

(4) If the department modifies an operating permit or reclamation plan without the consent of the operator, the department must provide the operator with an opportunity for alternative dispute resolution in the manner provided in ORS 183.502.

SECTION 4a. (1)(a) The governing board of the State Department of Geology and Mineral Industries may adopt rules requiring the surveying or marking of surface mining operations.

(b) The rules may include, but are not limited to, requirements for maps or diagrams showing areas excavated or approved for excavation, setbacks or buffers established by the operating permit and the location of buildings, wells, ponds, haul roads, stockpiles, bodies of water and floodways.

(c) The rules may require that information required under this subsection be updated if the mining operations are subject to:

(A) A notice of violation under ORS 517.860;

(B) A suspension order under ORS 517.880; or

(C) A significant modification of the operating permit or reclamation plan under section 4 of this 2007 Act.

(d) **The rules may exempt mining operations from survey or marking requirements based on the size or location of the operations or on the distance of the operations from ground and surface waters.**

(e) **The rules must allow for reasonable compliance schedules for existing mining operations.**

(2) **The governing board may adopt rules requiring surface mining operators to collect and report information relating to amount and nature of materials excavated or processed at a surface mining operation and the impacts of mining operations on ground or surface water.**

SECTION 5. ORS 517.750 is amended to read:

517.750. As used in ORS 517.702 to 517.989, unless the context requires otherwise:

(1) "Board" means the governing board of the State Department of Geology and Mineral Industries.

(2) "Completion" means termination of surface mining activities including reclamation of the surface-mined land in accordance with the approved reclamation plan and operating permit.

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

(4) "Exploration" means all activities conducted on or beneath the surface of the earth for the purpose of determining presence, location, extent, grade or economic viability of a deposit. "Exploration" does not include prospecting or chemical processing of minerals.

(5) "Explorer" means, notwithstanding the provisions of ORS 517.810 (2), any individual, public or private corporation, political subdivision, agency, board or department of this state, any municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever that is engaged in exploration.

(6) "Landowner" means:

(a) The person possessing fee title to the natural mineral deposit being surface mined or explored[.]; **and**

(b) **The owner of an equitable interest in land that is subject to a deed of trust.**

(7) "Minerals" includes soil, coal, clay, stone, sand, gravel, metallic ore and any other solid material or substance excavated for commercial, industrial or construction use from natural deposits situated within or upon lands in this state.

(8) "Operator" means any individual, public or private corporation, political subdivision, agency, board or department of this state, any municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever that is engaged in surface mining operations.

(9) "Overburden" means the soil, rock and similar materials that lie above natural deposits of minerals.

(10) **"Person" means any person, any federal agency or any public body, as defined in ORS 174.109.**

[(10)] (11) "Processing" includes, but is not limited to, crushing, washing, milling and screening as well as the batching and blending of mineral aggregate into asphalt and portland cement concrete located within the operating permit area.

[(11)] (12) "Reclamation" means the employment in a surface mining operation or exploration of procedures[,] reasonably designed to:

(a) Minimize, as much as practicable [*the disruption from*], **the adverse effects of the surface mining operation or exploration on land, air and water resources;** and [*to*]

(b) Provide for the rehabilitation of [*any such*] surface resources adversely affected by [*such*] **the surface mining operations or exploration through the rehabilitation of plant cover, soil stability[,] and water resources and through other measures [*appropriate*] that contribute to the subsequent beneficial use of [*such*] the explored [*or*], mined [*and*] or reclaimed lands.**

[(12)] (13) "Reclamation plan" means a written proposal, submitted to the department as required by ORS 517.702 to 517.989 and subsequently approved by the department as provided in ORS 517.702 to 517.989, for the reclamation of the land area adversely affected by a surface mining operation or exploration and including, but not limited to the following information:

(a) Proposed measures to be undertaken by the operator in protecting the natural resources of adjacent lands.

(b) Proposed measures for the rehabilitation of the explored or surface-mined lands and the procedures to be applied.

(c) The procedures to be applied in the surface mining operation or exploration to control the discharge of contaminants and the disposal of surface mining refuse.

(d) The procedures to be applied in the surface mining operation or exploration in the rehabilitation of affected stream channels and stream banks to a condition minimizing erosion, sedimentation and other factors of pollution.

(e) The map required by ORS 517.790 (1)(e) and such other maps and supporting documents as may be requested by the department.

(f) A proposed time schedule for the completion of reclamation operations.

(g) Requirements of the exploration permit.

[(13) "Spoil bank" means a deposit of excavated overburden or mining refuse.]

(14) "Surface impacts of underground mining" means all waste materials produced by underground mining and placed upon the surface including, but not limited to, waste dumps, mill tailings, washing plant fines and all surface subsidence related to underground mining.

[(14)(a)] **(15)(a)** "Surface mining" includes all or any part of the process of mining minerals by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method by which more than 5,000 cubic yards of minerals are extracted or by which at least one acre of land is affected within a period of 12 consecutive calendar months, including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off-site borrow pits (except those constructed for use as access roads).

(b) "Surface mining" does not include:

(A) Excavations of sand, gravel, clay, rock or other similar materials conducted by the landowner or tenant for the primary purpose of construction, reconstruction or maintenance of access roads **on the same parcel or on an adjacent parcel that is under the same ownership as the parcel that is being excavated;**

(B) [and] Excavation or grading operations [conducted in the process of farming or cemetery operations, on-site road construction or other on-site construction,] **reasonably necessary for farming;**

(C) [or] Nonsurface [impacts] **effects** of underground [mines,] **mining; or**

(D) [and also does not include] **Removal of** rock, gravel, sand, silt or other similar substances removed from the beds or banks of any waters of this state pursuant to a permit issued under ORS 196.800 to [196.825 and 196.835 to 196.870] **196.900.**

[(15)] **(16)** "Surface mining refuse" means all waste materials, soil, rock, mineral, liquid, vegetation and other materials resulting from or displaced by surface mining operations within the operating permit area, including all waste materials deposited in or upon lands within [such] **the** operating permit area.

[(16) "Surface impacts of underground mining" means all waste materials produced by underground mining and placed upon the surface including, but not limited to, waste dumps, mill tailings, washing plant fines, and all surface subsidence related to underground mining.]

(17) "Underground mining" means all human-made excavations below the surface of the ground through shafts or adits for the purpose of exploring for, developing or producing valuable minerals.

SECTION 6. ORS 517.780 is amended to read:

517.780. (1) The provisions of ORS 517.702 to 517.989 and the rules and regulations adopted thereunder [shall] **do** not supersede any zoning laws or ordinances in effect on July 1, 1972. However, if [such] **the** zoning laws or ordinances are repealed on or after July 1, 1972, the provisions of ORS 517.702 to 517.989 and the rules and regulations adopted thereunder [shall be] **are** controlling. The governing board of the State Department of Geology and Mineral Industries may adopt rules and regulations with respect to matters [presently] covered by [such] zoning laws and ordinances **in effect on July 1, 1972.**

(2) *In lieu of the permit required by ORS 517.790, an operator may conduct surface mining provided such surface mining is done pursuant to a valid permit issued by the appropriate authority of a city or county in which the mining is taking place, if such authority has adopted an ordinance, approved by the board prior to July 1, 1984, requiring reclamation of land that has been surface mined. If such county ordinance is repealed on or after July 1, 1984, the provisions of ORS 517.702 to 517.989 and the rules and regulations adopted thereunder shall be controlling. The board may adopt rules and regulations with respect to matters presently covered by such zoning laws and ordinances. A county ordinance adopted for the purpose specified in this subsection may apply to surface mining within a city in the county if the city consents thereto. On or after July 1, 1984, surface mining shall be conducted only pursuant to the permit required under ORS 517.790 in all counties which have not received approval of an ordinance prior to that date.]*

(3) (2) City or county operated surface mining operations [which] **that** sell less than 5,000 cubic yards of minerals within a period of 12 consecutive calendar months[,] are exempt from the state mining permit requirements of ORS 517.702 to 517.989 if the city or county adopts an ordinance [which shall include] **that includes** a general reclamation scheme establishing the means and methods of achieving reclamation for city or county operated surface mining sites exempted from the state permit requirements by this subsection.

(4) *A city or county may determine and collect fees for any function performed pursuant to subsection (2) of this section. However, no such fee shall exceed the amounts prescribed in ORS 517.800. A city or county shall issue a permit for each regulated surface mining activity within its jurisdiction, and all such permittees are subject to the payment of any fee charged by the city or county. However, those activities described in ORS 517.770 are not required to comply with mined land reclamation plans. City or county fees shall be in lieu of any surface mining permit fees assessed by the State Department of Geology and Mineral Industries.]*

SECTION 7. ORS 517.790 is amended to read:

517.790. (1) *[Except as otherwise provided by ORS 517.780 (2), after July 1, 1972, no] A landowner or operator [shall permit] **may not allow** or engage in surface mining on land not surface mined on July 1, 1972, without [having first applied for and received an] **holding a valid** operating permit from the State Department of Geology and Mineral Industries for [such] **the** surface mining operation. A separate permit [shall be] **is** required for each separate surface mining operation. [Prior to receiving] **A person seeking** an operating permit from the department [the landowner or operator must] **shall** submit an application on a form provided by the department that contains **the following** information [considered by the department to be pertinent in its review of the application, including but not limited to]:*

(a) The name and address of the landowner and the operator and the names and addresses of any persons designated by them as their agents for the service of process.

(b) The materials for which the [surface mining] operation is to be conducted.

(c) The type of surface mining to be employed in [such] **the** operation.

(d) The proposed date for the initiation of [such] **the** operation.

(e) The size and legal description of the lands that will be affected by [such] **the** operation, and, if more than 10 acres of land will be affected by [such] **the** operation and if the department [considers] **determines that** the conditions [to] warrant it, a map of the lands to be surface mined that [shall include] **includes** the boundaries of the affected lands, topographic details of [such] **the** lands, the location and names of all streams, roads, railroads, [and] utility facilities, **wells, irrigation ditches, ponds, stockpiles, buffers, setbacks and excavation boundaries** within or adjacent to [such] **the** lands, the location of all proposed access roads to be **protected or** constructed in conducting [such] **the** operation and the names and addresses of the owners of all surface and mineral interests of the lands included within the surface mining area.

(f) If [economically] practicable, a plan for visual screening by vegetation or otherwise that will be established and maintained on the lands within [such] **the** operation for the purpose of screening [such] **the** operation from the view of persons using adjacent public highways, public parks and residential areas.

(g) The type of monitoring well abandonment procedures.

[(2)] (h) [The application referred to in subsection (1) of this section must also contain] A proposed reclamation plan that is acceptable to and approved by the department.

(i) **Any other information that the department considers pertinent in its review of the application.**

(2) **The department may waive the requirement for preparation and approval of a reclamation plan if:**

(a) **The operation is conducted as part of the on-site construction of a building, public works project or other physical improvement of the subject property;**

(b) **The operation is reasonably necessary for such construction; and**

(c) **The proposed improvements are authorized by the local jurisdiction with land use authority.**

(3) **The department may not issue an operating permit to an operator other than the owner or owners of the surface and mineral interests of the lands included within the surface mining area unless the operator:**

(a) **Has written approval from the owner or owners of all surface and mineral interests of the lands included within the surface mining area; and**

(b) **Maintains a legal interest in the lands that is sufficient to ensure that the operator has the authority to operate and reclaim the lands as provided in the operating permit and reclamation plan.**

(4) **The department may refuse to issue an operating permit to a person who has not, in the determination of the department, substantially complied with the conditions of an operating permit or reclamation plan, the provisions of this chapter or the rules adopted by the department to carry out the purposes of this chapter.**

SECTION 8. ORS 517.830 is amended to read:

517.830. (1) [Except as provided in subsection (3)(a) and (b) of this section,] Upon receipt of an application for an operating permit, the State Department of Geology and Mineral Industries shall [cause] **inspect** the operating site described [therein to be inspected] **in the application**. Within [45] **90** days after the date [on which such] **that the** application [is received] and [upon receipt of] the required permit fee **are received**, the department shall issue the operating permit applied for or, if it considers [such] **the** application incomplete, return the application to the applicant for correction of the deficiencies indicated by the department.

(2) Failure by the department to act upon the reclamation plan submitted with an application for an operating permit within the [45-day] **90-day** period referred to in subsection (1) of this section [shall not be considered] **is not** a denial by the department of the operating permit applied for. The department, pending final approval of a reclamation plan, may issue a provisional permit subject to reasonable limitations that may be prescribed by the department and conditioned upon the applicant's compliance with the bond and security requirements established by ORS 517.810.

(3)(a) Notwithstanding [the provisions of] subsections (1) and (2) of this section, if an application involves an aggregate site that requires a permit issued pursuant to ORS 215.427 or 227.178, and if the local jurisdiction requests that the application not be decided until the local jurisdiction has taken final action, the department shall make a 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 jurisdiction, unless the applicant agrees to allow additional time under ORS 215.427, 215.429, 227.178 or 227.179. If a plan amendment is required as part of issuance of a permit, the provisions of paragraph (b) of this subsection apply. The department [shall] **may** not approve an operating permit and reclamation plan if the land use application is denied.

(b) Notwithstanding [the provisions of] subsections (1) and (2) of this section, if an application involves an aggregate site that requires [a comprehensive plan] amendment **to a comprehensive plan, as defined in ORS 197.015**, and if the local jurisdiction requests that the application not be decided until the local jurisdiction has taken final action on the plan amendment, the department [shall] **may** not make a final decision on the operating permit and reclamation plan until the local

jurisdiction has taken final action on the plan amendment. The department shall make its final decision within 45 days of the date that the local jurisdiction has taken final action on the plan amendment. The department *[shall]* **may** not approve an operating permit and reclamation plan if the plan amendment is denied.

[(c)] **(4)** Conditions and requirements imposed on an operating permit and reclamation plan, and modifications thereto, issued subsequent to issuance of a local jurisdiction permit shall be compatible with the requirements and conditions of the local government permit, unless more stringent requirements are necessary to comply with the provisions of ORS 517.750 to 517.901.

[(d)] **(5)** If a local jurisdiction does not request that the department delay a decision on an operating permit and reclamation plan as provided in *[paragraphs (a) and (b) of this subsection]* **subsection (3) of this section**, the department shall:

(a) Give the local jurisdiction the opportunity to review and comment on the application^[,]; and *[shall]*

(b) Notify the local jurisdiction of the decision and requirements and conditions imposed by the department.

[(4)] **(6)** If the department refuses to approve a **submitted** reclamation plan *[in the form submitted by the applicant]*, it shall notify the applicant, in writing, of its reasons for the refusal to approve *[such]* **the** reclamation plan, including additional requirements as may be prescribed by the department for inclusion in *[such]* **the** reclamation plan. Within 60 days after the receipt of *[such]* **the** notice, the applicant shall comply with the additional requirements prescribed by the department for *[such]* **the** reclamation plan or file with the department a notice of appeal from the decision of the department with respect to *[such]* **the** reclamation plan. If a notice of appeal is filed with the department by the applicant, the department may issue a provisional permit to *[such]* **the** applicant.

[(5) An operating permit issued by the department under this section shall be granted for the period required to mine the land described in such permit and shall be valid, subject to payment of the renewal fee, until the surface mining operation described in the operating permit is completed or mining operations cease and the site is reclaimed. Each such operating permit shall provide that the operating permit and the reclamation plan described therein may be modified upon agreement between the department and the permittee to change the reclamation plan included within the operating permit. In addition, for operating permits first issued or expanded after October 23, 1999, the department may modify an operating permit and reclamation plan as necessary to address new information or changed conditions for site conditions that will result in substantial harm to off-site public or private property and that relate to slope stability, surface mining activities that will result in a taking of endangered species or channel changes that threaten pit wall stability. Upon a determination that the activity will result in substantial harm, the department shall meet with the permittee to discuss the proposed modifications to the operating permit and reclamation plan. A final determination by the department to require a unilateral modification of an operating permit and reclamation plan shall be based on clear and convincing scientific evidence. Any modification required by the department shall be limited to those areas and matters affected by the new information or changed conditions.]

[(6) The department may not require a unilateral modification of an operating permit and reclamation plan under subsection (5) of this section without first providing the permittee an opportunity for an alternative means of dispute resolution as authorized by ORS 183.502.]

[(7) When a person succeeds to the interest of a permittee in any uncompleted surface mining operation by sale, assignment, lease or other means, the department shall release the permittee from the duties imposed upon the permittee under the operating permit if a successor assumes fully the duties of the former permittee with respect to the reclamation of the surface-mined lands. Upon the assumption by such person of the duties of the permittee as provided in this subsection, the department shall transfer the operating permit to the successor upon the approval of such successor's bond or security as required under ORS 517.702 to 517.989.]

[(8)] **(7)** If an application is submitted as part of the consolidated application process under ORS 517.952 to 517.989, review of the application and approval or denial of the application shall be in

accordance with ORS 517.952 to 517.989. However, *[such]* **the** review and approval or denial shall take into consideration all policy considerations for issuing a permit under ORS 517.702 to 517.989.

SECTION 9. ORS 517.835 is amended to read:

517.835. (1) Notwithstanding *[ORS 517.830 (5)]* **section 4 of this 2007 Act**, the State Department of Geology and Mineral Industries may require conditions on any new or existing surface mining operating permit or reclamation plan sufficient to prevent or mitigate off-site impacts to ground water resources from the removal of water from surface mining operations. The department may include ground water monitoring as one of the conditions.

(2) The department shall consult with the *[permittee]* **operator** and the Water Resources Department in assessing off-site impacts and in developing prevention or mitigation measures prior to imposing any conditions on an operating permit or reclamation plan pursuant to this section.

SECTION 10. ORS 517.840 is amended to read:

517.840. (1) The governing board of the State Department of Geology and Mineral Industries shall administer and enforce the provisions of ORS 517.702 to 517.989 and:

(a) May conduct or cause to be conducted investigations, research, experiments and demonstrations and may collect and disseminate information related to surface mining and the reclamation of surface-mined lands.

(b) May cooperate with other governmental and private agencies of this state or of other states and with agencies of the federal government, including the reimbursement for any services provided by such agencies to the State Department of Geology and Mineral Industries at its request.

(c) May apply for, accept and expend public and private funds made available for the reclamation of lands affected by surface mining in accordance with the purposes of ORS 517.702 to 517.989.

(d) May, in accordance with the applicable provisions of ORS chapter 183, adopt rules *[considered by the board to be necessary in carrying]* **to carry** out the provisions of ORS 517.702 to 517.989. *[However, such rules shall be subject to existing rights under any permit, license, lease or other valid authorization granted or issued by a governmental entity.]*

(e) Shall establish by rule a program to encourage voluntary reclamation practices that exceed the normal reclamation standards to provide maximum enhancement and benefits from mined lands. The program shall include incentives and other actions that will encourage voluntary reclamation practices.

(f) May receive and manage abandoned mined land funds received for abandoned mined land reclamation from the federal government.

(2) *[Not later than one year after October 3, 1989, the board, after]* **In** consultation with the Department of Environmental Quality, **the board** shall identify *[initially]* those naturally occurring hazardous or toxic metals and minerals *[which]* **that**, if present in sufficient concentrations at a surface mining site, subject the *[permittee]* **operator** to the increased bond or security requirements of ORS 517.950. The metals and minerals shall include, but need not be limited to, arsenic, mercury, lead, uranium and asbestos.

SECTION 11. ORS 517.860 is amended to read:

517.860. (1) If, from inspections conducted pursuant to ORS 517.850[,] or from any other source, the State Department of Geology and Mineral Industries determines that the *[permittee]* **operator** has not complied with or is not complying with the operating permit, **the** reclamation plan, **the provisions of** this chapter or the rules of the department, the department may issue **either or both of the following to the operator:**

(a) Written notice of the violation *[to the permittee,]*. **The notice shall** specifically *[outlining]* **outline** the deficiencies.

(b) *[The notice]* **A compliance order. The order** may specify **a date by which the** *[a period during which the permittee shall commence action to rectify those deficiencies and diligently proceed with such action until all deficiencies are corrected. The notice may include a date by which all deficiencies must be corrected. However,]* **operator shall rectify any deficiencies.** The department may extend *[performance periods for]* **the period if** delays occasioned for causes beyond the *[permittee's]*

operator's control necessitate more time, but only when the [permittee] **operator** is, in the opinion of the department, making a reasonable effort to comply **with the order**.

(2) *[The department may issue an order requiring compliance with the operating permit, reclamation plan, this chapter or the rules of the department, or]* The department may recover against the bond or alternative form of financial security and reclaim the area affected by surface mining if the department determines that **an operator**:

(a) *[A permittee]* Has failed to comply with a department *[notice]* **order** issued under subsection (1) of this section;

(b) *[A permittee]* Fails to complete reclamation in conformance with the reclamation plan on any segment of the *[permit area]* **permitted site** or fails to complete reclamation in a timely manner; or

(c) *[A permittee]* Fails to maintain an operating permit and pay all fees required under ORS 517.800.

(3) **If the department makes a claim on the bond or security filed pursuant to ORS 517.810**, the surety on the bond or holder of the other security shall pay **to the department** the amount of the bond or other security required *[for such completion to the department upon the department's demand under subsection (2) of this section]*. The department may reclaim the surface-mined land in a manner determined by the department, including by public or private contractor. If the amount *[specified in the demand]* is not paid within 30 days, *[following such demand]* the Attorney General, upon request of the department, shall institute proceedings to recover the amount *[specified in the demand]*.

(4) If the landowner has given security as provided in ORS 517.810 (3) and the [permittee] **operator** is in default as specified in subsection (2) of this section, the landowner shall be held responsible for complying with the reclamation plan of the [permittee] **operator**. The department shall furnish written notice of the default to the landowner and require the landowner to complete the reclamation as specified in the [permittee's] **operator's** reclamation plan acceptable to the department. If the landowner has not commenced action to rectify the deficiencies within 30 days after receiving notice, or if the landowner fails to diligently pursue reclamation in conformance with the plan, the department may demand payment of the amount of the bond or other security from the surety or other holder and otherwise proceed as provided in *[subsection (2)]* **subsections (2) and (3)** of this section *[, including requesting the Attorney General to institute proceedings to recover the amount specified in the demand]*.

(5) The department, in performing reclamation of surface-mined land, shall pursue a goal for reclamation designed to *[be at the level necessary to]*:

(a) Remove hazards;

(b) Protect from drainage problems and **from** pollution;

(c) Meet local land use requirements for reclamation; and

(d) Comply with all federal and state laws.

(6) The department may *[refuse to issue or renew an operating permit to any person if the department determines that the person has not substantially complied with an operating permit, a reclamation plan, the provisions of this chapter or rules adopted by the department pursuant to this chapter]* **delay, for a reasonable time not to exceed one year, all or part of any reclamation activities if the department determines that it is likely that:**

(a) **Marketable mineral reserves exist at the permitted site; and**

(b) **A new operator will seek an operating permit for the site and assume all reclamation responsibilities.**

SECTION 12. ORS 517.880 is amended to read:

517.880. (1) When the State Department of Geology and Mineral Industries finds that an operator is conducting a surface mining operation for which an operating permit is required by ORS 517.702 to 517.989 **or by rules adopted by the department**, but has not been issued by the department *[under the provisions of ORS 517.702 to 517.989 or by the rules adopted under ORS 517.702 to 517.989]*, the department may **issue an order to** the operator to suspend *[such]* **the** operation until

an operating permit has been issued by the department for [such] **the** surface mining operation or until [such time as] the department is assured that [such] **the** operator will comply with the requirement to obtain a permit.

(2) The department may **issue an order to** an operator to suspend operations if the operator has not complied with or is not complying with the operating permit, reclamation plan, this chapter or rules of the department. **Failure to comply includes, but is not limited to, disturbing land within the permit boundary that has not been approved by the department for excavation, placement of debris or removal of vegetation.**

(3) If the operator fails or refuses to comply with a suspension order, the Attorney General, at the request of the department, shall initiate any necessary legal proceeding to enjoin [such] **the** surface mining operation and to provide for [the] completion of the reclamation of the lands affected by [such] **the** operation, **including the restoration of buffers, setbacks or other areas not approved for disturbance.**

SECTION 13. ORS 517.990 is amended to read:

517.990. (1) [Any landowner or operator] **A person** who conducts a surface mining operation[, for which a permit is required by ORS 517.750 to 517.901,] without a valid operating permit [therefor] **as required by ORS 517.750 to 517.901** commits a Class A violation.

(2) Subject to ORS 153.022, violation of any provision of ORS 517.750 to 517.901, or any rules promulgated pursuant thereto, or of any conditions of an operating permit is a Class A violation.

(3) Subject to ORS 153.022, violation of ORS 517.910 to 517.951, or any rules promulgated pursuant thereto, or of any conditions of an operating permit for a nonaggregate surface mining operation is punishable, upon conviction, by a fine of not more than \$10,000.

(4) Notwithstanding any other provision of the law, [any landowner or operator] **a person** who conducts a nonaggregate surface mining operation[,] without a valid operating permit as required by ORS 517.910 to 517.951 shall be punished, upon conviction, by a fine of not more than \$10,000.

(5) A person commits a violation subject to a fine of not more than \$10,000 if the person knowingly or recklessly causes substantial harm to human health or the environment while:

(a) Conducting a surface mining operation without a valid operating permit as required by ORS 517.750 to 517.901 or 517.905 to 517.951; or

(b) Violating an operating permit, a reclamation plan, a provision of this chapter or any rule adopted by the State Department of Geology and Mineral Industries to carry out the provisions of this chapter.

(6) For purposes of this section, “substantial harm to human health or the environment” means:

(a) Physical injury, as defined in ORS 161.015, or risk of serious physical injury, as defined in ORS 161.015, to humans; or

(b) Substantial damage to wildlife, plants, aquatic and marine life, habitat or stream buffers.

SECTION 14. ORS 517.992 is amended to read:

517.992. (1) In addition to any other sanction authorized by law, the governing board of the State Department of Geology and Mineral Industries may impose a civil penalty of not less than \$200 per day and not more than \$50,000 per day for any violation of ORS 517.702 to 517.989 related to a chemical process mine, of any rules adopted under those provisions related to a chemical process mine, of any orders issued under those provisions related to a chemical process mine or of any conditions of a permit issued under those provisions related to a chemical process mine. A penalty may be imposed under this section without regard to whether the violation occurs on property covered by a permit issued under ORS 517.702 to 517.989.

(2)(a) In addition to any other sanction authorized by law, and subject to the limitations of paragraph (b) of this subsection, the governing board of the State Department of Geology and Mineral Industries may impose a civil penalty of not more than \$10,000 per day for any violation of ORS 517.702 to **517.740, 517.750 to 517.901 and 517.905 to 517.951** not related to a chemical process mine, of any rules adopted under those provisions not related to a chemical process mine, of any orders

issued under those provisions not related to a chemical process mine or of any conditions of a permit issued under those provisions not related to a chemical process mine.

(b) A penalty may be imposed under this subsection only if a landowner or operator fails to complete erosion stabilization as required by ORS 517.775 or board rules adopted to implement that section, if the operator has failed to comply with [a final] **an** order issued under ORS 517.860 or 517.880, if the operation is being conducted in violation of conditions imposed on an operating permit or reclamation plan pursuant to ORS 517.835 or if the operation is being conducted:

(A) Without a permit;

(B) Outside the permit boundary; or

(C) Outside a permit condition regarding boundaries, setbacks, buffers or the placement of surface mining refuse.

[(3) A civil penalty imposed under this section shall become due and payable 10 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 in 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 subsection (3) of this section 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 for in subsection (4) of this section shall be entitled to a hearing. The hearing shall be conducted as a contested case hearing pursuant to the applicable provisions of ORS 183.413 to 183.470.]

[(6) Judicial review of an order made after a hearing under subsection (5) of this section shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.]

[(7) When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.]

(3) Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.

[(8) (4) Failure to pay a civil penalty that has become final under this section shall be grounds for revocation of any permit issued under ORS 517.702 to 517.989 to the person against whom the penalty has been assessed.

[(9) (5) Any civil penalty received by the State Treasurer under this section shall be deposited in the General Fund to the credit of the Geology and Mineral Industries Account and is continuously appropriated to the State Department of Geology and Mineral Industries to the extent necessary for the administration and enforcement of the laws, rules and orders under which the penalty was assessed.

[(10) (6) A reclamation fund shall be established into which funds not used [to administer] **as described in** subsection [(9) (5)] of this section shall be deposited. This money shall be used by the State Department of Geology and Mineral Industries for the purpose of the reclamation of abandoned mine and drill sites.

[(11) (7) When a single incident violates statutes, rules, board orders or permit conditions administered by more than one agency, the department shall coordinate with the other agencies having civil penalty authority before imposing a civil penalty.

[(12) (8) In implementing this section, the department shall adopt rules that provide civil penalties that are commensurate with the severity of violations. [and allow for a written warning at least 48 hours prior to imposing a penalty when there is no immediate threat to human health, safety or the environment. The written warning may be personally served on the person incurring the penalty or may be sent by registered or certified mail. The warning shall 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.]

[(13)] (9) A civil penalty may be imposed against the board of directors and high managerial agents of a corporation if those persons engage in, authorize, solicit, request, command or knowingly tolerate the conduct for which the penalty is to be imposed. As used in this subsection, “agent” and “high managerial agent” have [those] **the** meanings given **those terms** in ORS 161.170.

SECTION 15. ORS 517.755 is amended to read:

517.755. Notwithstanding the yard and acre limitations of ORS 517.750 [(14)] (15), as soon as any mining operation begun after July 1, 1975, affects more than five acres of land the provisions of ORS 517.702 to 517.989 apply to the mining operation.

SECTION 16. ORS 517.800 is amended to read:

517.800. (1)(a) Except for an application for a chemical process mining operation submitted under ORS 517.952 to 517.989, each applicant for an operating permit under ORS 517.702 to 517.989 shall pay to the State Department of Geology and Mineral Industries a fee established by the State Geologist in an amount not to exceed \$1,260.

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

(2) Annually, each holder of an operating permit shall pay to the department a base fee of \$635, plus \$0.0075 per ton of aggregate or mineral ore extracted during the previous 12-month period.

(3) If a reclamation plan is changed, the [permittee] **operator** may be assessed for staff time and other related costs an amount not to exceed \$1,260 in addition to the annual renewal fee.

(4) If, at operator request, the department responds to requests for information required by a local government in making a land use planning decision on behalf of the operator for a specific site, the State Geologist may require the operator to pay the department a fee for staff time and related costs. The department shall notify the operator in advance of the estimated costs of providing the information, and the actual amount assessed shall not exceed the estimate provided by the department.

(5) The State Geologist may require the operator of a site to pay to the department a special inspection fee in an amount not to exceed \$200 for an inspection conducted under the following circumstances:

(a) Investigation of surface mining operations conducted without the operating permit required under ORS 517.790; or

(b) Investigation of surface mining operations conducted outside the area authorized in an operating permit.

(6) Upon request of an applicant[, permittee] or operator, the department shall provide an itemized list and documentation of expenses used to determine a fee under subsection (1)(b), (3) or (4) of this section.

(7) Notwithstanding the per ton fee established in subsection (2) of this section, the governing board of the department may lower to zero or raise the per ton fee up to \$0.0085 if necessary to provide financial certainty to the department or to reflect actual expenses of the department in administering ORS 517.702 to 517.951. If the per ton fee established in subsection (2) of this section is raised by the governing board, the additional amount of money collected by the department shall be deposited in the Mined Land Regulation and Reclamation Program Subaccount within the Geology and Mineral Industries Account.

(8) The governing board of the State Department of Geology and Mineral Industries:

(a) Shall adopt by rule a procedure for the administrative review of the determinations of fees under this section.

(b) Shall adopt rules establishing the payment date for annual fees required under this section.

(c) May adopt rules establishing a late fee of up to five percent of the unpaid amount of an annual fee owed under this section if the annual fee is more than 60 days past due.

SECTION 17. ORS 517.820 is amended to read:

517.820. (1) Upon good cause shown, the State Department of Geology and Mineral Industries may grant reasonable extensions of time for the completion by the landowner or operator and the submission to the department of a proposed reclamation plan required by ORS 517.790 [(2)]. Each reclamation plan submitted to the department must provide that all reclamation activities shall be completed within three years after the termination of mineral extraction from the surface mining operation conducted within each separate area for which an operating permit is requested. Each such reclamation plan shall be approved by the department if it adequately provides for the reclamation of surface-mined lands.

(2) The department, prior to approving a proposed reclamation plan, shall consult with all other interested state agencies and appropriate local planning authorities.

SECTION 18. ORS 517.850 is amended to read:

517.850. At such reasonable times as the State Department of Geology and Mineral Industries may elect, the department, after reasonable advance notice has been given to the [permittee] **operator**, may cause the [permit area] **permitted site** to be inspected to determine if the [permittee] **operator** has complied with the operating permit, reclamation plan, this chapter and the rules of the department.

SECTION 19. ORS 517.865 is amended to read:

517.865. (1) If [a permittee] **an operator** fails to faithfully perform the reclamation required by the reclamation plan and if the bond or security required by ORS 517.810 is not sufficient to compensate the State Department of Geology and Mineral Industries for all reasonably necessary costs and expenses incurred by it in reclaiming the surface-mined land, the amount due shall be a lien in favor of the department upon all property, whether real or personal, belonging to the [permittee] **operator**. However, for any [permittee which] **operator that** is first issued a permit after June 30, 1989, the lien shall not exceed \$2,500 for each site plus \$1,500 per acre.

(2) The lien shall attach upon the filing of a notice of claim of lien with the county clerk of the county in which the property is located. The notice of lien claim shall contain a true statement of the demand, the insufficiency of the bond or security to compensate the department and the failure of the [permittee] **operator** to perform the reclamation required.

(3) The lien created by this section is prior to all other liens and encumbrances, except that the lien shall have equal priority with tax liens.

(4) The lien created by this section may be foreclosed by a suit in the circuit court in the manner provided by law for the foreclosure of other liens on real or personal property.

SECTION 20. ORS 517.870 is amended to read:

517.870. Upon request of the [permittee] **operator**, and when in the judgment of the State Department of Geology and Mineral Industries the reclamation has been completed in accordance with the reclamation plan, the [permittee] **operator** shall be notified that the work has been found to be satisfactorily performed and is acceptable and the bond or security of the [permittee] **operator** shall be adjusted accordingly.

SECTION 21. ORS 517.910 is amended to read:

517.910. For the purposes of ORS 517.910 to 517.989:

(1) Notwithstanding ORS 517.750 [(11)] (12), “reclamation” means the employment in a surface mining operation of procedures reasonably designed to minimize as much as practicable the disruption from the surface mining operation or surface mining processing operation, including cyanide leaching or any other chemical leaching processing at a processing site removed from the mining site and to provide for the rehabilitation of any such surface resources through the use of plant cover, soil stability techniques, and through the use of 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 surface mining or processing operation.

(2) “Nonaggregate minerals” means coal and metal-bearing ores, including but not limited to ores that contain nickel, cobalt, lead, zinc, gold, molybdenum, uranium, silver, aluminum, chrome, copper or mercury.

SECTION 22. ORS 517.930 is amended to read:

517.930. (1) Notwithstanding ORS 517.850, if the State Department of Geology and Mineral Industries has reason to believe that the provisions of an operating permit are being violated or that a surface mining operation is being conducted without a valid operating permit, it may inspect such surface mining areas without prior notice.

(2) In addition to the department’s authority to inspect under ORS 517.850 and subsection (1) of this section, for a chemical process mine operating under a permit issued under ORS 517.952 to 517.989, a cooperating agency also may inspect the mining operation to assure that the [*permittee*] **operator** is complying with conditions imposed on the operating permit by the cooperating agency under ORS 517.982 (2).

SECTION 23. ORS 517.940 is amended to read:

517.940. Notwithstanding ORS 517.860, for the purposes of ORS 517.910 to 517.989 the expenditure by the State Department of Geology and Mineral Industries for reclamation not completed by the [*permittee*] **operator** shall not exceed \$10,000 per acre.

SECTION 24. ORS 517.950 is amended to read:

517.950. (1) Notwithstanding ORS 517.810, for the purposes of ORS 517.905 to 517.951 the bond or security deposit required shall not exceed \$10,000 per acre of land to be surface mined under the terms of the operating permit.

(2) The State Department of Geology and Mineral Industries may increase the amount of the bond or security required under subsection (1) of this section to an amount not to exceed the lower of actual cost of reclamation or \$100,000 per acre of land to be mined under the terms of the operating permit if the operating permit applies to extraction, processing or beneficiation techniques the result of which:

(a) Will increase the concentration of naturally occurring hazardous or toxic metals and minerals identified by the governing board of the State Department of Geology and Mineral Industries under ORS 517.840 to a significantly higher level than that occurring naturally within the [*permit area*] **permitted site**; and

(b) Is reasonably likely to present a threat to public health, safety or the environment.

(3) The increased bond or security deposit under subsection (2) of this section may be required only when the department determines that a threat to surface or subsurface waters is reasonably likely to exist as a result of the permitted activity.

SECTION 25. ORS 517.956 is amended to read:

517.956. Any chemical process mining operation in Oregon shall comply with the following standards:

(1) Chemical process mining, including extraction, processing and reclamation, shall 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) Protection measures for fish and wildlife shall be consistent with policies of the State Department of Fish and Wildlife, including:

(a) Protective measures to maintain an objective of zero wildlife mortality. All chemical processing solutions and associated waste water shall be covered or contained to preclude access by wildlife or maintained in a condition that is not harmful to wildlife.

(b) On-site and off-site mitigation ensuring that there is no overall net loss of habitat value.

(c) No loss of existing critical habitat of any state or federally listed threatened or endangered species.

(d) Fish and wildlife mortality shall be reported in accordance with a monitoring and reporting plan approved by the State Department of Fish and Wildlife.

(e) The State Department of Fish and Wildlife shall establish by rule standards for review of a proposed chemical process mining operation for the purpose of developing conditions for fish and

wildlife habitat protection that satisfy the terms of this section for inclusion in a consolidated permit by the State Department of Geology and Mineral Industries.

(3) Surface reclamation of a chemical process mine site shall:

(a) Ensure protection of human health and safety, as well as that of livestock, fish and wildlife;

(b) Ensure environmental protection;

(c) Require certification to the [permittee] **operator**, by the State Department of Fish and Wildlife and the State Department of Agriculture, that a self-sustaining ecosystem, comparable to undamaged ecosystems in the area, has been established in satisfaction of the [permittee's] **operator's** habitat restoration obligations; and

(d) Include backfilling or partial backfilling as determined on a case-by-case basis by the State Department of Geology and Mineral Industries when necessary to achieve reclamation objectives that cannot be achieved through other mitigation activities.

SECTION 26. ORS 517.984 is amended to read:

517.984. (1) The [permittee] **operator**, the State Department of Geology and Mineral Industries, any other permitting agency or a cooperating agency may request modification of a permit issued under the process established under ORS 517.952 to 517.989.

(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 under the provisions of ORS 517.952 to 517.989, the agency shall notify the State Department of Geology and Mineral Industries. The department shall coordinate the organization of a project coordinating committee. The project coordinating committee shall review the proposed modification and determine those portions of ORS 517.952 to 517.989 with which the applicant must comply. The decision of the project review committee shall be:

(a) Limited to those portions of the chemical process mine operation to be modified; and

(b) Consistent with public participation as set forth in ORS 517.952 to 517.989.

SECTION 27. ORS 517.987 is amended to read:

517.987. (1) At the time of submitting a consolidated application under ORS 517.971, the applicant shall estimate the total cost of reclamation consistent with the standards imposed under ORS 517.702 to 517.989. Using the reclamation estimate and a credible accident analysis as a guide, the State Department of Geology and Mineral Industries shall make an initial determination as to the amount of the reclamation bond necessary to protect human health and the environment. The department shall distribute a bond proposal to all permitting and cooperating agencies. The amount of the bond that the department may require to cover the actual cost of reclamation shall not be limited.

(2) The reclamation bond or alternative security acceptable to the department shall be posted before the start of mining operations. The bond shall be issued by a bonding company licensed to operate in Oregon. A mining operation may not satisfy the requirements for a bond through self-insurance.

(3) 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 reclamation bond currently held by the state, the [permittee] **operator** shall post an additional bond for the difference. All reclamation calculations shall be approved by the department. Incremental surety increases shall be provided for, with the level of surety 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] **operator** shall notify the department sufficiently in advance of reaching the acreage limit specified to allow for a review of surety requirements and posting of additional surety by the [permittee] **operator** prior to exceeding the acreage limit set by the department.

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

(5) The department may seek a lien against the assets of the [permittee] **operator** to cover the cost of reclamation if the bond 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] **operator** shall be suspended and the department shall deny immediately all pending applications of the [permittee] **operator** to conduct mining operations.

(6)(a) The [permittee] **operator** shall submit to the department a written request for the release of its reclamation bond. If the [permittee] **operator** has conducted concurrent reclamation, the [permittee] **operator** shall submit an application for bond reduction which estimates the percentage of reclamation done to date and the corresponding percentage of reclamation funds that the [permittee] **operator** believes should be returned. A bond release or reduction request shall state in unambiguous terms all measures taken to reclaim the site and any problem or potential problems that may inhibit reclamation in accordance with permit requirements.

(b) The department shall distribute the request to each permitting or cooperating agency, to members of the public who participated in the consolidated application under ORS 517.952 to 517.989, and to any person who requests notification. In addition, the department shall publish a notice as provided in ORS 517.959 announcing receipt of a request for bond release or bond reduction.

(c) No sooner than 60 days after distributing the request and providing notice of the receipt of the request, the department shall conduct an informal public hearing to determine whether to allow the bond release or bond reduction.

(7) The department may require security or an annuity for post-reclamation monitoring and care to be paid before the final bond release. The security or annuity shall be sufficient to cover long-term site care and monitoring needs. The department shall determine the amount of the proposed security or annuity and distribute a proposal to all permitting and cooperating agencies.

SECTION 28. ORS 517.785 is repealed.

Passed by Senate April 23, 2007

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Secretary of Senate

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President of Senate

Passed by House May 22, 2007

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Speaker of House

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State