

Chapter 517

1991 EDITION

Mining and Mining Claims

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MINERAL RESOURCES

MINING CLAIMS
(Veins or Lodes)

517.010 Location of mining claims upon veins or lodes. (1) Any person, a citizen of the United States, or one who has declared an intention to become such, who discovers a vein or lode of mineral-bearing rock in place upon the unappropriated public domain of the United States within this state, may locate a claim upon such vein or lode by posting thereon a notice of such discovery and location. The notice shall contain:

- (a) The name of the lode or claim.
- (b) The names of the locators.
- (c) The date of the location.
- (d) The number of linear feet claimed along the vein or lode each way from the point of discovery, with the width on each side of the lode or vein.

(e) The general course or strike of the vein or lode as nearly as may be, with reference to some natural object or permanent monument in the vicinity, and by defining the boundaries upon the surface of each claim so that the same may be readily traced.

(2)(a) Such boundaries shall be marked within 30 days after posting of such notice by four substantial posts, projecting not less than three feet above the surface of the ground, and made of wood measuring not less than one and one-half inch by one and one-half inch, or by substantial mounds of stone, or earth and stone, at least two feet in height, one such post or mound of rock at each corner of such claims.

(b) During the course of normal maintenance of the claim location posts or monuments, any post that requires replacement and is not constructed of naturally occurring materials shall be replaced by posts that are made of wood measuring not less than one and one-half inch by one and one-half inch on a side and that project not less than three feet above the surface of the ground.

(3) At such time as any lode mining claim is declared invalid by the United States Department of the Interior, Bureau of Land Management or is otherwise dropped by the last claim holder of record without transfer through lease or sale to another person, all claim location posts not made of natural materials shall be removed from the public domain of the United States and at the same time any post made of natural materials shall be removed or dismantled. [Amended by 1991 c.215 §1]

517.020 [Repealed by 1971 c.228 §1]

517.030 Recording copy of location notice; fee. The locator shall, within 60 days from the posting of the location notices by

the locator upon the lode or claim, record with the clerk of the county where the claim is situated, who shall be the custodian of mining records and miners' liens, a copy of the notice posted by the locator upon the lode or claim and shall pay the clerk a fee for such record, which sum the clerk shall immediately pay over to the treasurer of the county and shall take a receipt therefor, as in case of other county funds coming into the possession of such officer. The clerk shall immediately record the location notice. [Amended by 1971 c.228 §2; 1971 c.621 §33; 1973 c.598 §4; 1975 c.607 §36; 1979 c.833 §31; 1991 c.230 §25]

517.040 Abandoned claims. Abandoned claims are unappropriated mineral lands, and titles thereto shall be obtained as specified in ORS 517.010 and 517.030, without reference to any work previously done thereon.

(Placer Deposits)

517.042 "Legal subdivision" defined for ORS 517.042 to 517.052. As used in ORS 517.042 to 517.052, unless the context requires otherwise, "legal subdivision" means a subdivision of a state survey or of a United States survey which has been extended over the geographic area to be described. [1961 c.525 §1]

517.044 Location of claims upon placer deposits; posting notice. Any individual, a citizen of the United States, or one who has declared an intention to become such, who discovers a placer deposit of minerals upon the unappropriated public domain of the United States within this state, which minerals are subject to location under the mineral and mining laws of the United States, may locate a placer claim thereon by posting in a conspicuous place thereon a notice of such discovery and location. The notice shall contain:

- (1) The name of the claim.
- (2) The name of the individual or individuals locating the claim.
- (3) The date of the location of the claim.
- (4) The number of feet or acres claimed, together with a description, either by legal subdivisions, if practicable, or if not, then by reference to some natural object or permanent monument in the vicinity of the claim, which will identify the claim located. [1961 c.525 §2]

517.046 Marking boundaries of claim or locating by legal subdivisions. (1) Unless the claim for placer deposit referred to in ORS 517.044 is located by legal subdivisions, the surface boundaries of the claim must be marked so that the same may be readily traced. Such boundaries shall be marked within 30 days after the posting of the notice described in ORS 517.044 by sub-

stantial posts or other monuments of the same size, materials and dimensions as in the case of quartz claims. The boundaries of the claim shall be marked at each corner or angle, and, when any side or end of the claim extends for more than 1,320 feet without a corner or angle, then at intervals of not less than 1,320 feet along such side or end.

(2) Where the claim for placer deposit referred to in ORS 517.044 is taken by legal subdivisions, no other reference in the notice of claim required to be posted and filed under the provisions of ORS 517.042 to 517.052 than to the legal subdivisions shall be required and the boundaries of a claim so located and described need not be staked or monumented. The description by legal subdivisions in the notice required to be filed under ORS 517.052 shall be deemed the equivalent of marking the surface boundaries of the claim. [1961 c.525 §3]

517.048 [1961 c.525 §4; repealed by 1971 c.228 §1]

517.050 [Renumbered as part of 517.065]

517.052 Recording copy of location notice; fee. The individual locating a placer deposit shall, within 60 days from the posting of the location notice upon the claim, record with the clerk of the county where the claim is situated, a copy of the notice posted by the individual upon the claim. The fee for filing such location notice shall be the same as required by ORS 517.030 for recording location notices of mineral-bearing rock claims. The clerk shall immediately record the location notice in a book kept by the clerk for that purpose. [1961 c.525 §5; 1971 c.228 §3; 1991 c.230 §26]

(General Provisions)

517.060 Correcting defective notice of location. If at any time an individual who has located a mining claim within the meaning of ORS 517.010 or 517.044, or the assigns of the individual, apprehends that the original notice of location of the mining claim was defective, erroneous, or that the requirements of the law had not been complied with before the filing of the notice, such locator or assigns may post and record in the manner now provided by law, an amended notice of the location which shall relate back to the date of the original location. However, the posting and recording of the amended notice of location shall not interfere with the existing rights of others at the time of posting the amended notice. [Amended by 1961 c.525 §7; 1991 c.230 §27]

517.065 Effect of noncompliance with law in locating claim. (1) Subject to ORS 517.060, all locations or attempted locations of quartz mining claims subsequent to December 31, 1898, that do not comply with ORS 517.010 and 517.030 are void.

(2) Except as provided in ORS 517.060, all locations or attempted locations of placer mining claims made after August 9, 1961, that do not comply with the provisions of ORS 517.042 to 517.052 are void. [Subsection (1) formerly 517.050; subsection (2) enacted as 1961 c.525 §6]

517.070 Certain locations subject to prior rights. Any location of any mining claim made upon any natural stream, or contiguous or near to any placer mine, or upon or below the dump of any placer mine, shall be subject to the prior right of all mines in operation prior to the making of such location, to discharge debris, gravel, earth, and slickens which were or may be discharged at the time of making such subsequent location.

517.080 Mining claims as realty. All mining claims, whether quartz or placer, are real estate. The owner of the possessory right thereto has a legal estate therein within the meaning of ORS 105.005.

517.090 Application to claims of law governing transfers and mortgages of realty. All conveyances of mining claims or of interests therein, either quartz or placer, whether patented or unpatented, are subject to the provisions governing transfers and mortgages of other realty as to execution, recordation, foreclosure, execution sale and redemption; but such redemption by the judgment debtor must take place within 60 days from date of confirmation, or such right is lost.

517.100 Sums payable on redemption of claim; interest. In case of redemption from sale under judgment or decree, the redemptioner shall pay such sums as are now required by law for redemption under execution sale, and such additional sum as may have been expended upon the property so redeemed by the purchaser under execution, or the assigns of the purchaser, in order to keep alive the possessory right thereto after the execution sale, not exceeding \$100 for each claim, with 10 percent interest thereon from date of such expenditures.

517.110 Grubstaking contracts. All contracts of mining copartnership, commonly known as "grubstaking," shall be in writing, and recorded with the clerk of the county wherein the locations thereunder are made. Unless contracts of mining copartnership contain the names of the parties thereto and the duration thereof, the contracts are void. [Amended by 1991 c.230 §28]

MILLSITES

517.160 Location of nonmineral land as millsite. (1) The proprietor of a vein or lode, or placer claim, or the owner of a quartz mill or reduction works, may locate

not more than five acres of nonmineral land as a millsite. Such locations shall be made in the same manner as provided in ORS 517.044 for locating placer claims, except that no discovery or location work is required. Where a millsite is appurtenant to a mining claim, either lode or placer, the notice of location of such millsite shall describe by appropriate reference the mining claim to which it is appurtenant.

(2) The locator of a millsite shall, within 30 days from the date of posting a notice thereon, record a copy thereof with the same county officer and shall pay the same fee therefor, as in the case of quartz or placer claims. Such location notices shall be recorded in the same manner as location notices of quartz or placer claims but need have no affidavit of location work attached. [1963 c.123 §1]

REMOVAL OF DORMANT MINERAL ENCUMBRANCES

517.170 Policy. It is in the interest of the State of Oregon to provide a mechanism for the removal of dormant encumbrances on property which prevent a landowner from using or developing that property in a manner which contributes to the economy and increases the state's tax base. [1983 c.421 §1]

517.180 Procedure for extinguishing dormant mineral encumbrances. (1) An owner of land in which another person holds a mineral interest, may extinguish the holder's interest by publishing notice and submitting an affidavit of publication for recording as described in subsections (4) to (9) of this section, unless:

(a) Within the last 30 years, the holder of the mineral interest has submitted a statement of claim for recording in the manner set out in subsection (3) of this section;

(b) The holder of the mineral interest paid property taxes on the mineral interest for the previous tax year; or

(c) The holder of the mineral interest acquired the mineral interest within the previous 30 years.

(2) For the purposes of this section:

(a) "Mineral interest" includes any interest that is created by an instrument transferring, either by grant, assignment, reservation or otherwise, an interest of any kind in coal, oil, gas or other minerals and geothermal resources, except an interest vested in the United States, the State of Oregon or a political subdivision of the State of Oregon. A mineral interest does not include an interest in sand or gravel.

(b) "Owner of land" includes a vested fee simple owner or a contract purchaser.

(3) The statement of claim referred to in subsection (1) of this section shall be submitted for recording in the office of the clerk of the county in which the land affected by the mineral interest is located and shall contain:

(a) The name and address of the holder of the mineral interest as that name is shown in the instrument that created the original mineral interest; and

(b) The name and address of the current holder of the mineral interest.

(4) To extinguish the mineral interest held by another person, and acquire ownership of that interest, the owner of the land shall publish notice of the lapse of the mineral interest at least once each week for three consecutive weeks in a newspaper of general circulation in the county in which the lands affected by the mineral interest are located. If the address of the mineral interest holder is known or can be determined by due diligence, the notice shall also be mailed by the owner of the land to the holder of the mineral interest before the first publication.

(5) The notice required in subsection (4) of this section shall include:

(a) The name of the holder of the mineral interest, as shown of record;

(b) A reference to the instrument creating the original mineral interest, including where it is recorded;

(c) A description of the lands affected by the mineral interest;

(d) The name and address of the person giving the notice;

(e) The date of first publication of the notice; and

(f) A statement that the holder of the mineral interest must submit a statement of claim to the county clerk within 60 days after the date of the last publication or the mineral interest of the holder may be extinguished.

(6) A copy of the notice and an affidavit of publication of the notice, as described in subsection (7) of this section, shall be submitted to the county clerk within 15 days after the date of the last publication of the notice in the office of the clerk of the county where the lands affected by the mineral interest are located.

(7) The affidavit of publication shall contain either:

(a) A statement that a copy of the notice was mailed to the holder of the mineral interest and the address to which it was mailed; or

(b) If no copy of the notice was mailed, a detailed description, including dates, of the

efforts made to determine with due diligence the address of the holder of the mineral interest.

(8) If the owner of the land affected by the mineral interest gives notice as required in subsection (4) of this section and submits a copy of the notice and the affidavit of publication for recording as required by subsection (6) of this section, the mineral interest of the holder shall be extinguished and become the property of the owner of the lands, unless the holder of the mineral interest submits a statement of claim to the county clerk within 60 days after the date of the last publication of the notice.

(9) Upon receipt, the clerk of the county shall record a statement of claim or a notice and affidavit of publication of notice in the Dormant Mineral Interest Record. When possible, the clerk shall also indicate by marginal notation on the instrument creating the original mineral interest the recording of the statement of claim or notice and affidavit of publication of notice. The clerk of the county shall record a statement of claim by cross-referencing in the Dormant Mineral Interest Record the name of the current holder of the mineral interest and the name of the original holder of the mineral interest as set out in the statement of claim.

(10) The provisions of this section may not be waived at any time. [1983 c.421 §2]

ASSESSMENT WORK

517.210 Recordation of affidavit of annual labor. Within 30 days after the performance of labor or making of improvements, required by law to be annually performed or made upon any mining claim, the person in whose behalf such labor was performed or improvement made, or someone in behalf of the person, knowing the facts, shall make and have recorded in the mining records of the county in which the mining claim is situated, an affidavit setting forth:

(1) The name of the claim or claims if grouped and the book and page of the record where the location notice of each such claim is recorded.

(2) The number of days' work done and the character and value of the improvements placed thereon, together with their location.

(3) The dates of performing the labor and making the improvements.

(4) At whose instance or request the work was done or improvements made.

(5) The actual amount paid for the labor and improvements, and by whom paid, when the same was not done by the claim owner.

517.220 Affidavit or lack thereof as evidence; recording fee. The affidavit described in ORS 517.210, when so recorded, or a duly certified copy thereof, is prima facie evidence of the facts therein stated. Failure to file such affidavit within the prescribed time is prima facie evidence that such labor has not been done. The fee for recording the affidavit shall be the fee provided by ORS 205.320. Each additional claim included in the affidavit shall be recorded for an additional recording fee of 50 cents. [Amended by 1971 c.621 §34; 1975 c.607 §37; 1979 c.833 §32; 1991 c.230 §29]

517.230 Performance of assessment work by coowners. Whenever any quartz or placer mines are owned by one or more persons, or are owned in common by any persons, any person owning any legal or equitable interest in the mines may perform the annual assessment work upon them which is required by the laws of the United States and Oregon. Such work, when it complies with said laws, shall protect the mines from relocation.

517.240 Failure of coowner to contribute; notice. Upon failure of any coowner of any mine to contribute that coowner's proportion of expenditures required in assessment work, or to perform or pay for such proportion, the coowners who performed or caused to be performed the labor or assessment work, may, at the expiration of the year for which the assessment work was performed, give the delinquent coowner notice that the assessment work for that year has been performed, stating by whom performed, the amount of work performed and the dates between which it was performed; together with a statement of the amount due from the delinquent coowner for the delinquent coowner's proportion of the work, and requiring the delinquent coowner, within 90 days from the date of service of the notice, to pay to the coowners who performed or caused to be performed such work, the delinquent coowner's proportion. The notice shall further state that if the delinquent coowner fails or refuses to contribute the proportion due for the work, the interest of the delinquent coowner in the mine will become the property of the coowners who performed or caused to be performed the assessment work.

517.250 Form of notice; service; publication. The notice shall be in writing and signed by the coowner who performed or caused to be performed the assessment work. It shall be served upon the delinquent coowner personally by the sheriff of the county in which the mine is situated, if the delinquent coowner is within the county. If the delinquent coowner can be found in any

other county, then the notice shall be served by the sheriff of that county. If the delinquent coowner cannot be found within the state, or if at the time of giving the notice the delinquent coowner is without the state, service of the notice shall be made by publication thereof in the weekly newspaper published in the county nearest to where the mine is situated. If there are two or more papers published in the county at the same distance from the mine, the coowner giving notice may elect in which paper the notice shall be published. If no weekly newspaper is published within the county, service of the notice shall be made by publication in any other weekly newspaper within the state published nearest the mine. The notice shall be published at least once a week for a period of 90 days after the first publication.

517.260 Notice; return and proof of service. If the notice is served by any sheriff as provided in ORS 517.250, the sheriff shall make return by filing the notice with the return showing service with the county recorder, or if there is none, with the county clerk, for the county within which the mine is situated. If personal service cannot be had as provided in ORS 517.250, proof of service shall be made by filing with the county recorder, or if there is none, with the county clerk of the county in which the mine is situated, the notice as published, attached to an affidavit made by the printer, foreman, or publisher of the newspaper, to the effect that it is of general circulation throughout the county, is published weekly, and that the notice was published at least once a week in that newspaper for a period of not less than 90 days after the first publication of the notice.

517.270 Vesting of interest of delinquent coowner. If at the expiration of 90 days from the date of personal service of the notice upon the delinquent coowner or from the date of the last publication of the notice, the delinquent coowner has not paid the proportion of the delinquent coowner to the coowners who performed or caused to be performed the assessment work, the title to the interest of the delinquent coowner in the mine shall be immediately vested in the coowners who performed or caused to be performed the assessment work.

517.280 Certificate of ownership; issuance. The coowners who performed the assessment work may file with the county clerk of the county where the mine is situated, their affidavits that the payment has not been made. Upon the filing of such affidavits, the clerk shall record the notice, proof of service and affidavits in a book kept by the clerk for that purpose. The clerk shall then and there issue to the coowners who

performed or caused to be performed the assessment work, a certificate to the effect that the clerk has recorded the notice, proof of service and affidavits of nonpayment, and that the coowners who performed or caused to be performed the assessment work have become and are the owners of all the right, title and interest of the delinquent coowner or coowners of the property. [Amended by 1991 c.230 §30]

517.290 Fee for certificate. The certificate described in ORS 517.280 shall not be issued until the coowners entitled to it pay to the clerk a fee as set by ORS 205.320. [Amended by 1971 c.621 §35; 1975 c.607 §38; 1979 c.833 §33; 1991 c.230 §31]

517.300 Effect of certificate; certified copy of certificate, notice and return admissible as evidence. (1) A certificate issued as provided in ORS 517.280 shall be equivalent to a deed from a delinquent coowner of all the interest of the delinquent coowner in and to all mines described in the notice, and shall convey the interest of the delinquent coowner in the premises to the coowner or coowners who performed or caused to be performed the assessment work. The certificate may be introduced in evidence in any cause where ownership of the property may become material. When so introduced, it shall have the same force and effect as would a duly executed and delivered deed from the delinquent coowner.

(2) A certified copy of the certificate, and of the notice and return, when made and certified to by the county clerk, shall be admissible in evidence in any trial where it is material to establish proof of service of the notice or ownership of the property.

517.310 Recording and indexing certificate; fee; effect. The certificate given by the county clerk shall be entitled to record in the office of the officer issuing it, upon payment of the same fees as are required for recording mining conveyances. The officer shall keep a record book, showing the record of such certificates recorded by the officer. Upon recording, the officer shall index them in a book kept by the officer for that purpose and shall likewise index them in the deed records of mining conveyances kept by the officer. Such indexing and recording shall have the same force and effect as the indexing and recording of deeds to other real property, and shall give like constructive notice.

517.320 Counteraffidavits of delinquent owner; suit to quiet title; decree. If prior to the issuing of the certificate there has been filed with the county clerk an affidavit by the delinquent coowner that the payment has been made, the clerk shall not issue a certificate, but the parties shall be left to

establish such fact by suit to quiet the title to the premises. If in the suit it appears either that the assessment work was not performed by the coowners claiming to have performed it, or that the delinquent coowner has performed or paid the delinquent coowner's proportion of the assessment work, a decree shall be entered in the suit to that effect; but if it is established that the assessment has been performed by or has been caused to be performed by the coowners so claiming and that the delinquent coowner has not performed or paid the delinquent coowner's proportion, a decree shall be entered decreeing the coowners who performed the assessment work to be the owners of all the interest of the delinquent coowner in the premises. The decree shall be entitled to record in the miscellaneous records kept by the county clerk in the county, and shall be indexed in the index with the record of deeds and mining conveyances for the county.

517.330 Accounting for fees. All fees collected under ORS 517.290 and 517.310 are the property of the county in which they are collected, and shall be accounted for by the officer collecting them as other recording fees are accounted for.

MINING LEASES

517.410 [Amended by 1961 c.419 §1; part renumbered 273.920; remainder renumbered 273.355]

517.420 Location of claim on state land; limitation on claim; evidence of right to lease a located claim; application for lease. (1) No land which is owned by the state or whereon mineral rights are reserved to the state, except land or mineral rights under the jurisdiction and control of the Division of State Lands which are chiefly valuable for mineral purposes, shall be subject to mineral location. The manner of locating a lode or placer mineral claim upon such state land or upon mineral rights subject to the jurisdiction and control of the Division of State Lands shall be in accordance with the laws of this state and the United States regulating the location of lode or placer mineral claims upon government lands, but no mineral locator shall acquire any right to oil, gas or other hydrocarbons underlying any such lode or placer mineral claim, or the exclusive right to the possession of the surface of such lode or placer mineral claim.

(2) Whenever a person perfects the location of a lode or placer mineral claim upon land or mineral rights under the jurisdiction and control of the Division of State Lands, evidence of the location shall be sufficient to establish a right to lease the claim, subject to the rights of any lessee claiming under a prior, existing lease or agreement with the

Division of State Lands; provided, that application for such lease, giving a description of the claim, shall be made to the Division of State Lands within 60 days after the notice of location has been filed pursuant to ORS 517.030 or 517.052. [Amended by 1955 c.528 §1; 1961 c.419 §2; 1983 c.740 §206]

517.430 Use of timber by lessee. (1) The lessee of the Division of State Lands under ORS 273.551 may use down timber found on the premises for fuel, and may cut and use green timber in the construction of buildings required in the operation of a mine on the premises, or for lining test pits or shafts, or for timbering drifts or excavations, or for other mining purposes, but for no other purpose.

(2) The lessee of the State Forester under ORS 273.551 may use down timber found on the premises for fuel and may cut and use green timber for lining test pits or shafts, or for timbering drifts or excavations, or for other mining purposes, but for no other purpose. [Amended by 1953 c.65 §5]

517.440 Lessee, licensee, or operator of mine deemed bailee of yield until payment of lessor and workers. Any lessee, licensee, or person other than the owner, who operates or works a mine, lode, mining claim, or deposit yielding metal or mineral of any kind, has custody and control of whatever metal or mineral may be produced in such operation or work, as bailee only and not as owner, until the sum due the lessor is paid and the wages due from such lessee to the lessor or to any worker who has performed labor under contract of service on, in or about such mine, lode, mining claim, or deposit are wholly paid.

517.450 [Repealed by 1971 c.743 §432]

ROGUE RIVER COORDINATION BOARD

517.510 Rogue River Coordination Board. There is created a board to be known as the Rogue River Coordination Board, referred to in ORS 517.520 to 517.550 as the "board."

517.520 Maintenance of fishing conditions; cooperation of placer and fishing interests. It is the intent of ORS 517.510 to 517.550 that, from the standpoint of turbidity, fishing conditions in the Rogue River and its tributaries shall be maintained in Curry County comparable to such fishing conditions in Josephine County, and to provide a medium through which the placer mining interests and fishing interests on the Rogue River and its tributaries may cooperate for the mutual benefit of both. The personnel of the board shall exercise the authority conferred upon the board to that end.

517.530 Members of board; assistants; expenses; quorum. The board shall consist of three members to be appointed by the Governor. One member shall be a fisherman or angler residing in Curry County, one a miner residing in Josephine County and one member at large who shall be neither a fisherman nor a miner and who shall act as chairman of the board. The board shall select one of its members as secretary, who shall have custody of the records. The board is authorized to employ such clerks and assistants as may be necessary and to fix their compensation. Each member of the board shall be allowed and paid necessary expenses while engaged in the performance of duties. A majority of the board shall constitute a quorum to transact business and the act or decision of any two members of the board shall be deemed the act or decision of the board.

517.540 Jurisdiction of board; powers and duties. The board shall have complete jurisdiction over the placer mining operations in the waters of and along the Rogue River and each of its tributaries. In respect to the exercise of such jurisdiction it shall:

(1) Make a survey of the placer mining operations in and along the waters of Rogue River and its tributaries for the purpose of ascertaining the effect thereof upon the angling conditions in such waters.

(2) Establish from the facts found by the survey and study a system of rotating, alternating or coordinating the operations of the various placer mining activities in and along such waters to the end that suitable and favorable conditions for angling and game fishing in such waters, or any part or parts thereof, may be brought about and maintained during certain periods of time by the control or prevention of turbidity caused by placer mining operations in such waters or part or parts thereof.

(3) Cause to be suspended the placer mining operations being carried on by any person or company in or along such waters for any period or periods of time it shall deem necessary to accomplish the purposes of the system.

(4) Make such rules, regulations and orders as it shall deem necessary to carry out the purposes expressed in ORS 517.520. Such rules, regulations and orders shall have the force and effect of law.

517.550 Cooperation of police officers with board. Every state police officer and sheriff whose other duties require the officer or sheriff to be in the vicinity of the Rogue River or any of its tributaries shall cooperate with and assist the board in enforcing the

provisions of ORS 517.540 and every rule, regulation or order made pursuant thereto.

517.610 [Repealed by 1953 c.188 §2]

517.611 [1957 c.580 §1; repealed by 1987 c.260 §1]

517.620 [Repealed by 1953 c.188 §2]

517.621 [1957 c.580 §2; repealed by 1987 c.260 §1]

517.630 [Repealed by 1953 c.188 §2]

517.631 [1957 c.580 §3; repealed by 1987 c.260 §1]

517.640 [Repealed by 1953 c.188 §2]

517.641 [1957 c.580 §4; repealed by 1987 c.260 §1]

517.650 [1957 c.580 §5; repealed by 1987 c.260 §1]

517.660 [1957 c.580 §6; repealed by 1987 c.260 §1]

517.670 [1957 c.580 §7; repealed by 1987 c.260 §1]

517.680 [1957 c.580 §8; repealed by 1987 c.260 §1]

517.690 [1957 c.580 §9; repealed by 1987 c.260 §1]

517.700 [1957 c.580 §10; repealed by 1987 c.260 §1]

MINERAL EXPLORATION

517.700 Legislative findings. (1) The Legislative Assembly finds and declares that:

(a) Mineral exploration is recognized as an integral part of the mineral industry with inherently less risk to the environment than surface or underground mining operations.

(b) Mineral exploration assists in the orderly identification of mineral resources in the state.

(c) Mineral exploration activities are recognized as distinct from operational activities.

(2) The Legislative Assembly, therefore, declares that the purposes of ORS 517.700 to 517.755, 517.790, 517.810, 517.910 and 517.920 are to encourage efficient and environmentally sound identification and development of the mineral resources of this state. [Formerly 517.960]

517.705 Exploration permit; application; information required. Any person engaging in onshore exploration that disturbs more than one surface acre or involves drilling to greater than 50 feet shall obtain an exploration permit. Prior to receiving an exploration permit, an applicant shall submit a permit application on a form provided by the department. Information required shall include the information necessary to assess impacts of the proposed exploration, including but not limited to:

(1) The name and address of the surface owner and mineral owner.

(2) The names and addresses of the persons conducting the exploration.

(3) The name and address of any designated agent.

(4) A brief description of the exploration activities, including but not limited to:

(a) The amount of road to be constructed;

(b) The number, depth and location of proposed drill holes;

(c) The number, depth and location of proposed monitoring wells; and

(d) The number, length, width and depth of exploration trenches.

(5) Provisions for the reclamation of surface disturbance caused by exploration activities.

(6) Exploration drill hole or monitoring well abandonment procedures, including but not limited to:

(a) The capping of all holes;

(b) The plugging of any hole producing surface flow; and

(c) Appropriate sealing for any holes which have encountered aquifers.

(7) A map with the location of the proposed exploration and delineation of exploration boundaries. [Formerly 517.962]

517.710 Fees. (1) A fee, not to exceed \$400 shall accompany the application described in ORS 517.705. The department may renew the permit annually on the anniversary date of the issuance of the permit, provided the person conducting the exploration is not in violation of any provision of ORS 517.700 to 517.755, 517.790, 517.810, 517.910 and 517.920 and pays a renewal fee not to exceed \$300.

(2) A permit shall be subject to suspension and revocation as provided by ORS 517.700 to 517.755, 517.790, 517.810, 517.910 and 517.920. [Formerly 517.964]

517.715 Exemptions from permit requirement. (1) When exploration will result in less than one acre of surface disturbance or drilling to 50 feet or less, any person conducting exploration is exempted from the requirements of the permit procedure described in ORS 517.700 to 517.755, 517.790, 517.810, 517.910 and 517.920. However, nothing in this section exempts a person from the requirements of ORS chapter 273 or the requirements of other departments.

(2) All mineral exploration drill holes shall comply with the abandonment procedures specified in ORS 517.705 (6). [Formerly 517.966]

517.720 Persons with operating permit exempted. (1) The provisions of ORS 517.700 to 517.755, 517.790, 517.810, 517.910 and 517.920 do not apply if the applicant has obtained an operating permit, described in ORS 517.790, for the area described in the exploration permit.

(2) The information required in the application described in ORS 517.705 is confidential with the exception of the reclamation

plan as set forth in ORS 517.900. [Formerly 517.968]

517.725 Department inspection of exploration site. (1) The department may inspect the exploration site prior to initiation of exploration to review the existing environmental conditions, assess impacts of the proposed exploration and establish the amount of financial assurance required.

(2) The department may inspect lands not later than 60 days following notification by the person conducting the exploration that reclamation is complete. If the department determines that the reclamation complies with the approved reclamation plan, including establishment of vegetation, the department may release the bond or other security required by ORS 517.810 within 60 days of that determination.

(3) The department is authorized to inspect any ongoing exploration site in order to establish compliance with ORS 517.700 to 517.755, 517.790, 517.810, 517.910 and 517.920. [Formerly 517.970]

517.730 Drill hole or well abandonment; rules. (1) The department shall consult with the Water Resources Department on the development of rules covering drill hole or monitoring well abandonment procedures, including procedures for the abandonment of holes and wells for which no exploration permit is required in ORS 517.705.

(2) Nothing in ORS 517.700 to 517.755, 517.790, 517.810, 517.910 and 517.920 prohibits the conversion of exploration drill holes or monitoring wells to water wells, provided that the conversion conforms to the standards and rules of the Water Resources Department. [Formerly 517.972]

517.735 Exploration on land administered by Division of State Lands. The Division of State Lands and the department shall coordinate the regulation of any exploration project on land administered by the Division of State Lands. [Formerly 517.974]

517.740 Rules. In consultation with the Environmental Quality Commission, Water Resources Commission and the State Land Board, the department governing board shall adopt rules to carry out the provisions of ORS 517.700 to 517.755, 517.790, 517.810, 517.910 and 517.920. [Formerly 517.976]

RECLAMATION OF MINING LANDS

(Generally)

517.750 Definitions for ORS 517.700 to 517.951. As used in ORS 517.700 to 517.951, unless the context requires otherwise:

(1) "Abandonment of surface mining" means a cessation of surface mining opera-

tion that was not set forth in a permittee's plan of operation or similar written notice extending:

(a) For more than 24 consecutive months; or

(b) For a period of less than 24 consecutive months in length, determined by the department to be sufficient to characterize such cessation of the surface mining operation as an abandonment of surface mining and where the permittee fails to submit sufficient evidence to the department that such operation has not been abandoned within 30 days after receipt of written notification from the department of its intention to declare the operation abandoned.

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

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

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

(5) "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.

(6) "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.

(7) "Landowner" means the person possessing fee title to the natural mineral deposit being surface mined or explored.

(8) "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.

(9) "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.

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

(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.

(12) "Reclamation" means the employment in a surface mining operation or exploration of procedures, reasonably designed to minimize as much as practicable the disruption from the surface mining operation or exploration and to provide for the rehabilitation of any such surface resources adversely affected by such surface mining operations or exploration through the rehabilitation of plant cover, soil stability, water resources and other measures appropriate to the subsequent beneficial use of such explored or mined and reclaimed lands.

(13) "Reclamation plan" means a written proposal, submitted to the department as required by ORS 517.700 to 517.951 and subsequently approved by the department as provided in ORS 517.700 to 517.951, 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.

(14) "Spoil bank" means a deposit of excavated overburden or mining refuse.

(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 af-

ected 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 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 and excavation or grading operations conducted in the process of farming or cemetery operations, onsite road construction or other onsite construction, or nonsurface impacts of underground mines; and also does not include rock, gravel, sand, silt or other similar substances removed from the beds or banks of any waters of this state pursuant to permit issued under ORS 196.800 to 196.825 and 196.835 to 196.870.

(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 operating permit area.

(17) "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.

(18) "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. [1971 c.719 §2, 1975 c.724 §1; 1977 c.59 §1; 1981 c.622 §1; 1983 c.46 §1; 1985 c.292 §2; 1989 c.347 §12]

517.755 Mining operations affecting more than five acres. Notwithstanding the yard and acre limitations of ORS 517.750 (15), as soon as any mining operation begun after July 1, 1975, affects more than five acres of land the provisions of ORS 517.700 to 517.951 apply to the mining operation. [1975 c.724 §1a; 1979 c.435 §3; 1985 c.292 §3; 1985 c.565 §80; 1989 c.347 §13]

Note: 517.755 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 517 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

517.760 Policy. (1) The Legislative Assembly finds and declares that:

(a) The extraction of minerals by surface mining operations is a basic and essential activity making an important contribution to

the economic well-being of the state and nation.

(b) Proper reclamation of surface-mined lands is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety and property rights of the citizens of this state.

(c) Surface mining takes place in diverse areas where the geologic, topographic, climatic, biological and social conditions are significantly different and that reclamation operations and the specifications therefor must vary accordingly.

(d) It is not practical to extract minerals required by our society without disturbing the surface of the earth and producing waste materials and that the very character of many types of surface mining operations precludes complete restoration of the affected lands to their original condition.

(e) Reclamation of surface-mined lands as provided by ORS 517.700 to 517.951 will allow the mining of valuable minerals in a manner designed for the protection and subsequent beneficial use of the mined and reclaimed lands.

(2) The Legislative Assembly, therefore, declares that the purposes of ORS 517.700 to 517.951 are:

(a) To provide that the usefulness, productivity and scenic values of all lands and water resources affected by surface mining operations within this state shall receive the greatest practical degree of protection and reclamation necessary for their intended subsequent use.

(b) To provide for cooperation between private and governmental entities in carrying out the purposes of ORS 517.700 to 517.951. [1971 c.719 §1; 1985 c.292 §4]

517.770 Application of ORS 517.700 to 517.951. Nothing in ORS 517.700 to 517.951 applies to the reclamation of lands within the surfaces and contours of surface mines as of July 1, 1972, or to vertical extensions of those surfaces and contours. The surfaces and contours of surface mines shall not include those areas over which the mining operator merely leveled terrain or cleared vegetative cover. [1971 c.719 §15; 1973 c.709 §1; 1975 c.724 §2; 1985 c.292 §5; 1987 c.260 §2; 1987 c.361 §1, 1a]

517.775 Permit fee for certain landowners and operators. Notwithstanding the provisions of ORS 517.770, any landowner or operator conducting surface mining on July 1, 1972, shall pay the permit fee as provided in ORS 517.800. [1971 c.719 §17; 1979 c.435 §4; 1985 c.292 §17; 1987 c.260 §3; 1987 c.361 §2]

517.780 Effect on local zoning laws or ordinances; local reclamation permit and

fee in lieu of state permit and fee; certain operations exempt. (1) The provisions of ORS 517.700 to 517.951 and the rules and regulations adopted thereunder shall not supersede any zoning laws or ordinances in effect on July 1, 1972; however, if such zoning laws or ordinances are repealed on or after July 1, 1972, the provisions of ORS 517.700 to 517.951 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.

(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 517.700 to 517.951 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) City or county operated surface mining operations which 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 517.700 to 517.951 if the city or county adopts an ordinance which shall include 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 department. [1971 c.719 §16; 1975 c.724 §3; 1977 c.524 §1; 1979 c.435 §1; 1983 c.20 §1; 1985 c.292 §6; 1987 c.361 §9]

517.785 Withdrawal of county ordinance approval; effect. (1) The board shall review the implementation of county ordinances adopted pursuant to ORS 517.780 (2) and may withdraw approval of any such ordinance if the board finds that:

(a) Implementation of the ordinance by the county fails to comply with the standards prescribed by ORS 517.700 to 517.951, or any rules promulgated pursuant thereto; and

(b) The county governing body has been notified of such failure to comply and has not remedied such failure within a reasonable time specified by the department.

(2) If the board withdraws approval of a county ordinance pursuant to subsection (1) of this section, surface mining in that county thereafter may be conducted only in compliance with ORS 517.700 to 517.951. An order of the board withdrawing approval of a county ordinance is subject to review as provided in ORS 183.310 to 183.550. [1983 c.20 §3; 1985 c.292 §7; 1987 c.361 §8]

517.790 Operating permit required for surface mining on certain lands; application for permit; proposed reclamation plans; effect of abandonment. (1) Except as otherwise provided by ORS 517.780 (2), after July 1, 1972, no landowner or operator shall permit or engage in surface mining on land not surface mined on July 1, 1972, without having first applied for and received an operating permit from the department for such surface mining operation. A separate permit shall be required for each separate surface mining operation. Prior to receiving an operating permit from the department the landowner or operator must submit an application on a form provided by the department that contains 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 operation.

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

(e) The size and legal description of the lands that will be affected by such operation, and, if more than 10 acres of land will be affected by such operation and if the department considers the conditions to warrant it,

a map of the lands to be surface mined that shall include the boundaries of the affected lands, topographic details of such lands, the location and names of all streams, roads, railroads and utility facilities within or adjacent to such lands, the location of all proposed access roads to be constructed in conducting such 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 operation for the purpose of screening such operation from the view of persons using adjacent public highways, public parks and residential areas.

(g) The type of monitoring well abandonment procedures.

(2) 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.

(3) An operator who abandons a surface mining site shall not be issued another operating permit until the operator has completed reclamation at the abandoned mine site. [1971 c.719 §4; 1973 c.709 §2; 1987 c.361 §10; 1989 c.347 §10]

517.800 Fees. (1) Except for an application for a chemical process mining operation submitted under ORS 517.952 to 517.987, each application for an operating permit under ORS 517.700 to 517.951 shall be accompanied by a fee established by the State Geologist in an amount not to exceed \$575.

(2)(a) Annually on the anniversary date of each such operating permit, each holder of an operating permit shall pay to the department a fee established by the State Geologist in an amount not to exceed \$425.

(b) In addition to the fee prescribed in paragraph (a) of this subsection, the department may charge an additional amount not to exceed \$110 for inspections made at sites:

(A) Where surface mining was conducted without the permit required by ORS 517.790;

(B) Where surface mining has been abandoned; or

(C) Where surface mining was conducted in an area not described in the surface mining permit. [1971 c.719 §7; 1973 c.709 §3; 1977 c.524 §2; 1979 c.435 §2; 1981 c.274 §1; 1983 c.88 §1; 1985 c.292 §8; 1987 c.598 §1; 1989 c.346 §1; 1991 c.735 §28]

517.810 Bond or security deposit required of applicant; how determined; exemptions; other security in lieu of bond.

(1) Before issuing or reissuing an operating permit for any surface mining operation or issuing or reissuing an exploration permit for

any exploration activity, the department shall require that the applicant for such permit file with it a bond or security deposit in a sum to be determined by the department in consultation with the operator or explorer but in an amount not to exceed the total cost for reclamation if the department were to perform the reclamation. In the event of disagreement regarding the estimated cost of reclamation, the State Geologist may review the disagreement to resolve the conflict. The State Geologist's decision may be appealed to the board as provided in ORS 183.310 to 183.550. The bond or security deposit shall be conditioned upon the faithful performance of the reclamation plan and of the other requirements of ORS 517.700 to 517.951 and the rules adopted thereunder. In lieu of a bond, the applicant may deposit with the department cash or other security in a form satisfactory to the department.

(2) Nothing in this section shall apply to any public or governmental agency.

(3) In lieu of the bond or other security required of the applicant in subsection (1) of this section, the department may accept a similar security from the landowner, equal to the estimated cost of reclamation as determined by the department in consultation with the operator or explorer. In the event of disagreement regarding the estimated cost of reclamation, the State Geologist may review the disagreement to resolve the conflict. The State Geologist's decision may be appealed to the board as provided in ORS 183.310 to 183.550.

(4) In lieu of the bond required by subsection (1) of this section, the department may accept a blanket bond covering two or more surface mining sites or exploration projects operated by a single company or owned by a single landowner, or operated by all members of an established trade association, in an amount, established by the department, not to exceed the amount of the bonds that would be required for separate sites.

(5) The board shall:

(a) Identify by rule the procedures for the determination of the amount of the bond or other security deposit required of an applicant for an operating permit or exploration permit; and

(b) Provide an opportunity for participation by the applicant as part of the procedures.

(6) In carrying out the provisions of subsection (1) of this section, the department may reduce the bond for aggregate sites by an amount not to exceed 50 percent if the applicant has conducted the surface mining operation or exploration with a valid operat-

ing permit for a period of not less than 10 years and has demonstrated sufficient financial ability to perform the reclamation required by the applicant's approved reclamation plan. [1971 c.719 §8; 1975 c.724 §4; 1979 c.435 §5; 1983 c.497 §1; 1985 c.291 §1a; 1985 c.292 §9; 1987 c.361 §5; 1989 c.347 §11]

517.820 Extensions of time for submission of proposed reclamation plans; time limit for reclamation completion; consultation with state agencies. (1) Upon good cause shown, the department 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. [1971 c.719 §5; 1977 c.59 §2]

517.830 Inspection of operating site; approval of application for operating permit; effect of failure to approve or refusal to approve reclamation plan; appeal from denial of plan; transfer of permittee's interest. (1) Except as provided in paragraphs (a) and (b) of subsection (3) of this section, upon receipt of an application for an operating permit, the department shall cause the operating site described therein to be inspected. Within 45 days after the date on which such application is received and upon receipt of the required permit fee, the department shall issue the operating permit applied for or, if it considers such 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 period referred to in subsection (1) of this section shall not be considered 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. For all operations ongoing as of July

1, 1972, a provisional permit shall be issued except in those instances where there is reason to believe that a reclamation plan will not be approved and the operating permit ultimately denied.

(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 215.428 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 215.428 or 227.178. 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 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, 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 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 not approve an operating permit and reclamation plan if the plan amendment is denied.

(c) 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 517.900.

(d) 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, the department shall give the local jurisdiction the opportunity to review and comment on the application, and shall notify the local jurisdiction of the decision and requirements and conditions imposed by the department.

(4) If the department refuses to approve a 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 reclamation plan, including additional requirements as may be prescribed by the department for inclusion in such reclamation plan. Within 60 days after the receipt of such notice, the applicant shall comply with the additional requirements prescribed by the department for such reclamation plan or file with the department a notice of appeal from the decision of the department with respect to such reclamation plan. If a notice of appeal is filed with the department by the applicant, the department may issue a provisional permit to such 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 abandoned. Each such operating permit shall provide that 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.

(6) 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 deposit as required under ORS 517.700 to 517.951.

(7) If an application is submitted as part of the consolidated application process under ORS 517.952 to 517.987, review of the application and approval or denial of the application shall be in accordance with ORS 517.952 to 517.987. However, such review and approval or denial shall take into consideration all policy considerations for issuing a permit under ORS 517.700 to 517.951. [1971 c.719 §6; 1975 c.724 §5; 1985 c.292 §10; 1991 c.243 §2; 1991 c.735 §29]

517.840 Administration and enforcement of ORS 517.700 to 517.951. (1) The board shall administer and enforce the provisions of ORS 517.700 to 517.951 and may:

(a) 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) 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 department at its request.

(c) 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 517.700 to 517.951.

(d) In accordance with the applicable provisions of ORS 183.310 to 183.550, adopt rules considered by the board to be necessary in carrying out the provisions of ORS 517.700 to 517.951. 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.

(2) Not later than one year after October 3, 1989, the board, after consultation with the Department of Environmental Quality, shall identify initially those naturally occurring hazardous or toxic metals and minerals which, if present in sufficient concentrations at a surface mining site, subject the permittee 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. [1971 c.719 §3; 1985 c.292 §11; 1989 c.461 §1]

517.850 Inspection of permit area. At such reasonable times as the department may elect, the department, after reasonable advance notice has been given to the permittee, may cause the permit area to be inspected to determine if the permittee has complied with the reclamation plan and the rules and regulations of the department. [1971 c.719 §9]

517.860 Failure to comply with reclamation plan; notice of noncompliance; performance period; department may perform work and assess costs against bond or security deposit. (1) If from inspections conducted pursuant to ORS 517.850, or from any other source the department shall determine that the permittee has not or is not complying with the reclamation plan or the rules of the department, it shall give written notice thereof to the permittee, specifically outlining the deficiencies. Within 30 days thereafter, the permittee shall commence action to rectify those deficiencies and diligently shall proceed until they are all corrected. However, the department may extend performance periods for delays occasioned for causes beyond the permittee's control, but only when the permittee is, in the opinion of the department, making a reasonable effort to comply.

(2)(a) If the permittee has not commenced action to rectify the deficiencies within said

period of time, and after notification by the department, or

(b) If the permittee has commenced such action and fails to diligently pursue it, or

(c) If reclamation is not properly completed in conformance with the reclamation plan within three years after surface mining on any segment of the permit area has terminated, or

(d) If reclamation is not properly completed in conformance with the reclamation plan upon determination by the department that abandonment of surface mining has occurred on any segment of the permit area, then the surety on the bond or holder of the other security deposit shall pay the amount of the bond or other security deposit required for such completion to the department upon the department's demand. 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.

(3) If the landowner has given security as provided in ORS 517.810 (3) and the permittee 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. 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 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 deposit from the surety or other holder and otherwise proceed as provided in subsection (2) of this section, including requesting the Attorney General to institute proceedings to recover the amount specified in the demand.

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

(d) Comply with all federal and state laws. [1971 c.719 §10; 1975 c.724 §6; 1977 c.59 §3; 1983 c.497 §2; 1985 c.291 §3]

517.865 Effect of failure to perform reclamation and insufficient bond; lien; notice; priority; foreclosure. (1) If a permittee fails to faithfully perform the reclamation required by the reclamation plan and if the bond or security deposit required by ORS 517.810 is not sufficient to compensate the department 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. However, for any permittee which 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 deposit to compensate the department and the failure of the permittee 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. [1975 c.724 §8; 1983 c.497 §3; 1985 c.291 §4; 1987 c.361 §7]

517.870 Adjustment of bond or security deposit of permittee upon satisfactory completion of reclamation work. Upon request of the permittee, and when in the judgment of the department the reclamation has been completed in accordance with the reclamation plan, the permittee shall be notified that the work has been found to be satisfactorily performed and is acceptable and the bond or security deposit of the permittee shall be adjusted accordingly. [1971 c.719 §11]

517.880 Order for suspension of surface mining operation operating without required permit; enjoining operation upon failure of operator to comply; completion of reclamation by department. When the department finds that an operator is conducting a surface mining operation for which an operating permit is required by ORS 517.700 to 517.951, but has not been issued by the department under the provisions of ORS 517.700 to 517.951 or by the rules and

regulations adopted thereunder, it may order such operator to suspend such operation until an operating permit has been issued by the department for such surface mining operation or until such time as the department is assured that such operator will comply therewith. If the operator fails or refuses to comply with such order, the Attorney General at the request of the department shall initiate any necessary legal proceeding to enjoin such surface mining operation and to provide for the completion of the reclamation of the lands affected by such operation. [1971 c.719 §12; 1985 c.292 §12]

517.890 Appeals. Appeals from determinations made by the department in carrying out the provisions of ORS 517.700 to 517.951 and the rules and regulations adopted thereunder shall be conducted in the manner provided by the applicable provisions of ORS 183.310 to 183.550 for appeals from orders in contested cases. [1971 c.719 §13; 1985 c.292 §13]

517.900 Information submitted by operators and landowners is confidential. Operators' reports and other information submitted by operators and landowners as required under ORS 517.700 to 517.951, with the exception of the reclamation plan as approved by the department, shall be confidential. [1971 c.719 §14; 1985 c.292 §14]

Note: Section 1, chapter 243, Oregon Laws 1991, provides:

Sec. 1. (1) Consistent with the provisions of this Act [516.030 and 517.830], the Land Conservation and Development Commission shall amend Oregon Administrative Rules 660-16-000 to 660-16-025, existing on January 1, 1991, to require local governments to address ORS 517.750 to 517.900 and the rules adopted thereunder, when planning for and regulating aggregate mining

(2) Consistent with the provisions of this Act and the requirements of ORS 197.180, the State Department of Geology and Mineral Industries shall amend Oregon Administrative Rules 632-30-005 to 632-30-060, existing on January 1, 1991, to provide for coordination between the review and issuance of operating permits, total exemptions and limited exemptions by the department and acknowledged comprehensive plans and land use regulations.

(3) The provisions of subsections (1) and (2) of this section shall be carried out by December 31, 1992. [1991 c.743 §1]

(Nonaggregate Mineral Surface Mines)

517.905 Applicability of ORS 517.910 to 517.987. (1) ORS 517.910 to 517.987 only apply to surface mines for nonaggregate minerals that do not have a valid operating permit, a certificate of limited exemption or a certificate of total exemption based on the inactivity of a limited exempt site on August 16, 1981.

(2) ORS 517.910 to 517.987 do not apply to placer mining for gold or silver in which less than 5,000 cubic yards of material per year are extracted. [1981 c.622 §15]

517.910 Definitions for ORS 517.910 to 517.987. For the purposes of ORS 517.910 to 517.987:

(1) Notwithstanding ORS 517.750 (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. [1981 c.622 §3; 1987 c.158 §113; 1987 c.693 §5; 1989 c.347 §14]

517.915 Additional operating permit requirements for nonaggregate mineral mines; denial of permit if reclamation not possible. (1) In addition to any other provision of law, the department shall not issue an operating permit until:

(a) The department has received a reclamation plan that contains but is not limited to:

(A) A description of the proposed mining operation;

(B) A description of what is to be mined;

(C) The present use of the land, the planned subsequent beneficial use of the land and a list of plant species to be established;

(D) The measures that will adequately conserve the quantity and quality of the affected aquifers;

(E) A description of any toxic or radioactive materials known to be present in the ore, spoil, tailings, overburden or any other material involved in the mining operation and their approximate concentrations;

(F) A description of how the materials described in subparagraph (E) of this paragraph will be handled during mining and reclamation;

(G) Environmental baseline information as may be required by the department; and

(H) The name and address of the landowner, the owner of the surface estate, the

operator and any parent corporations of the operator.

(b) The department has received a performance bond as it may require.

(c) The department finds that reclamation is possible and that the reclamation plan as approved will achieve the reclamation of affected lands.

(2) The reclamation plan, minus proprietary information, is a public document.

(3) If the department finds that reclamation cannot be accomplished, it shall not issue an operating permit.

(4) The department shall obtain, whenever possible, a list of plant species suitable for reseeding in the area pursuant to a reclamation plan and comments on the feasibility of permanent revegetation from the soil and water conservation district in which the mined land is situated.

(5) The department shall consult with the soil and water conservation district in which the mined land is situated regarding the feasibility of reclamation, with particular attention to possible impacts on ground water aquifers. [1981 c.622 §§4, 5, 9; 1985 c.292 §18; 1987 c.361 §3]

517.920 Permit application fees under ORS 517.910 to 517.987. (1) Each application for an operating permit under ORS 517.910 to 517.987 or exploration permit under this section and ORS 517.700 to 517.755, 517.790, 517.810 and 517.910 shall be accompanied by a fee sufficient to cover the costs of the department in processing the application and monitoring compliance as determined by the department.

(2) If the application is for a chemical process mine, the application shall be accompanied by an additional fee at each stage of the process sufficient to cover the costs of the department in maintaining a regulatory permit program that allows for the extraction and processing of metals. [1981 c.622 §§8; 1989 c.347 §15; 1989 c.461 §2; 1991 c.735 §30]

517.925 Time limit for action on permit application. The department shall have 120 days to act upon a completed permit application. [1981 c.622 §6]

517.930 Department inspection. (1) Notwithstanding ORS 517.850, if the department 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 517.987, a cooperating agency also may inspect the mining operation to assure that the permittee is complying with conditions imposed on the operating permit by the cooperating agency under ORS 517.982 (2). [1981 c.622 §7; 1991 c.735 §31]

517.935 Limit on reclamation lien by department against nonaggregate mineral permittee. Notwithstanding ORS 517.865, for the purposes of ORS 517.910 to 517.987 the amount due on the lien under ORS 517.865 (1) shall not exceed \$10,000 per acre. [1981 c.622 §12]

517.940 Reclamation expenditure by department. Notwithstanding ORS 517.860, for the purposes of ORS 517.910 to 517.987 the expenditure by the department for reclamation not completed by the permittee shall not exceed \$10,000 per acre. [1981 c.622 §11; 1985 c.291 §5]

517.945 Reclamation to be done on abandoned mine before subsequent permit granted. An operator who willfully abandons a surface mining site for nonaggregate minerals shall not be issued another operating permit until the operator has completed reclamation at the abandoned mine site. [1981 c.622 §13]

517.947 [1987 c.693 §§2, 3; 1989 c.171 §68; repealed by 1991 c.735 §39]

517.949 [1987 c.693 §4; repealed by 1991 c.735 §39]

517.950 Bond or security deposit for nonaggregate mineral operating permit. (1) Notwithstanding ORS 517.810, for the purposes of ORS 517.910 to 517.987 the bond or security deposit required by ORS 517.700 to 517.951 shall not exceed \$10,000 per acre of land to be surface mined under the terms of the operating permit.

(2) The department 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 board under ORS 517.840 to a significantly higher level than that occurring naturally within the permit area; 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. [1981 c.622 §10; 1985 c.292 §15; 1989 c.461 §3]

517.951 Legislative intent not to assume exclusive jurisdiction. The Legislative Assembly declares that ORS 517.910 to 517.987 are not intended to provide the legal basis for assumption by the State of Oregon of exclusive jurisdiction over the environmental regulation of surface coal mining and reclamation operations described in section 503 of the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1253). [Formerly 517.955]

Note: 517.951 [formerly 517.955] was added to and made a part of 517.700 to 517.951 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

CHEMICAL PROCESS MINING

(Generally)

517.952 Definitions for ORS 517.700 to 517.987. As used in ORS 517.700 to 517.987:

(1) "Affected agency" includes permitting agencies, cooperating agencies and commenting agencies.

(2) "Baseline data" means information gathered to characterize the natural and cultural environments of a mining operation site before a mining operation begins.

(3) "Chemical process mine" means a mining and processing operation for metal-bearing ores that uses chemicals to dissolve metals from ore.

(4) "Commenting agency" means any agency that makes recommendations to the State Department of Geology and Mineral Industries 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 517.987.

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

(6) "Cooperating agency" means an agency that has statutory responsibility related to a chemical process mine but that does not issue a permit for the mining operation.

(7) "Environmental evaluation" means an analysis prepared under ORS 517.979 to address specific impacts of the chemical process mine operation to allow affected agencies to develop permit conditions.

(8) "Mitigation" means the reduction of adverse effects of a proposed chemical process 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.

(9) "Permitting agency" means an agency that has a separate permitting authority for a proposed chemical process mine.

(10) "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.

(11) "Project coordinating committee" means the interagency governmental committee established in accordance with ORS 517.965.

(12) "Technical review team" means the interagency group established in accordance with ORS 517.967. [1991 c.735 §3]

517.953 Policy. Notwithstanding the policy set forth in ORS 517.760, the Legislative Assembly finds and declares that 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 chemical process mining operations, while permitting operations that comply with the provisions set forth in ORS 517.952 to 517.987 and assure the protection of the public health, safety, welfare and the environment. [1991 c.735 §2]

517.954 Application of ORS 517.952 to 517.987. ORS 517.952 to 517.987 apply only to chemical process mines for nonaggregate minerals. ORS 517.952 to 517.987 do not apply to placer mining. [1991 c.735 §3a]

517.955 [1981 c.622 §16; renumbered 517.951 in 1991]

(Chemical Process Mines)

517.956 Standards for chemical process mining operation. 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 assure 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) Onsite and offsite mitigation insuring 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 department.

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

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

(b) Assure environmental protection;

(c) Require certification to the permittee, 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 habitat restoration obligations; and

(d) Include backfilling or partial backfilling as determined on a case by case basis by the department when necessary to achieve reclamation objectives that cannot be achieved through other mitigation activities. [1991 c.735 §4]

517.957 Department coordination of activities of affected agencies. The State Department of Geology and Mineral Industries shall coordinate the activities of the affected agencies related to the consolidated application process established under ORS 517.952 to 517.987. [1991 c.735 §5]

517.958 Compliance with preapplication process; purpose. Any person propos-

ing to conduct a chemical process mining operation shall comply with the requirements for the preapplication process set forth in ORS 517.961 to 517.969. The purpose of such process shall be to identify significant issues to be addressed in the consolidated application process set forth in ORS 517.971 to 517.987. [1991 c.735 §6]

517.959 Public notice requirements for ORS 517.952 to 517.987. (1) Whenever required in ORS 517.952 to 517.987, public notice shall include information sufficient to inform the public of the proposed activity or event and shall include:

(a) Notification to all permitting and cooperating agencies.

(b) Notice by mail to each owner of property located within one-half mile of the perimeter of the proposed site 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) Notice by mail to persons on the master list.

(d) Notice by mail to mineral claimants for claims located within one-half mile of the proposed chemical process mining operation or as otherwise required by rule of a permitting or cooperating agency.

(e) Notice by publication in a newspaper of general circulation in the state and in a local newspaper of general circulation in the county or counties in which the proposed chemical process mining operation is located. Notice by publication shall be given at least once each week for two weeks immediately preceding the action.

(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 established under ORS 517.952 to 517.987.

(3) As used in this section, "master list" means a consolidated list of all interested parties compiled by the State Department of Geology and Mineral Industries and each permitting and cooperating agency and maintained by the department. Any person may request in writing that the State Department of Geology and Mineral Industries add the person's name to the agency master list. The State Department of Geology and Mineral Industries may establish a procedure for establishing and maintaining an agency master list, and the governing board of the department may establish a fee to be paid by a person requesting to be added to the master list. The fee shall be sufficient to defray the department's costs of mailing notices to

persons on the master list and maintaining the master list. [1991 c.735 §7]

517.960 [1989 c.347 §2; renumbered 517.700 in 1991]

517.961 Notice of intent to submit application; posting of notice. A prospective applicant for a permit to operate a chemical process mining operation shall file with the State Department of Geology and Mineral Industries a notice of intent to submit an application and post copies of the notice along the perimeter of the location of the proposed operation. The posting shall be sufficient to inform the public of the intended action and a legal description of the proposed mining operation location and shall comply with requirements adopted by rule by the governing board of the department. [1991 c.735 §8]

517.962 [1989 c.347 §3; renumbered 517.705 in 1991]

517.963 Department duties upon receipt of notice of intent. Upon receipt of a notice of intent under ORS 517.961, the State Department of Geology and Mineral Industries shall:

(1) Provide notice as required under ORS 517.959. The notice shall be sufficient to inform the public of the nature, size and location of the proposed chemical process mining operation.

(2) Activate a project coordinating committee for the proposed mining operation and coordinate the participation of federal agencies, affected agencies, local government agencies and the prospective applicant in the activities of the project coordinating committee.

(3) Activate a technical review team for the proposed mining operation.

(4) Identify to the prospective applicant all permitting and cooperating agencies that will be participating in the consolidated application process. [1991 c.735 §9]

517.964 [1989 c.347 §4; renumbered 517.710 in 1991]

517.965 Project coordinating committee. A project coordinating committee shall be composed of representatives from the department, all permitting and cooperating agencies, local government agencies and affected federal agencies. Each permitting and cooperating agency shall designate an appropriate staff member to the committee. The project coordinating committee shall share information and coordinate county, state and federal permitting requirements in order to avoid contradictory requirements, facilitate the exchange of ideas, optimize communication and avoid duplicative effort. If a chemical process mine is proposed on federal land, the project coordinating committee shall work with the affected federal agency

in accordance with a memorandum of agreement established by the department and the federal agency to facilitate the state and federal application process and to coordinate the two processes to the fullest extent possible. In carrying out its responsibilities, the project coordinating committee shall include opportunities for public participation. [1991 c.735 §10]

517.966 [1989 c.347 §8; renumbered 517.715 in 1991]

517.967 Technical review team. (1) A technical review team shall be composed of representatives from the department and each permitting agency and cooperating agency. The technical review team shall:

(a) Establish methodology guidelines to be followed in the collection of baseline data;

(b) Coordinate with the applicant the use of baseline data collection methodologies as approved by the permitting and cooperating agencies; and

(c) Determine whether the chemical process mining operation as proposed in the consolidated application complies with the standards established in ORS 517.956 and any other applicable requirements for a permit listed under ORS 517.971.

(2) Each permitting agency and cooperating agency shall designate an appropriate staff member to serve on the technical review team. [1991 c.735 §11]

517.968 [1989 c.347 §6; renumbered 517.720 in 1991]

517.969 Collection of baseline data; public informational hearing; collection methodology. (1) Upon receipt of notice from a prospective applicant that the prospective applicant is ready to begin collecting baseline data, the State Department of Geology and Mineral Industries shall:

(a) Provide notice in accordance with ORS 517.959 that the prospective applicant intends to begin baseline data collection and the location where additional background information may be obtained or reviewed.

(b) Within 30 days after receiving the notice from the applicant, conduct two public information meetings. One public meeting shall be conducted in the population center closest to the site of the proposed mining operation and one public meeting shall be conducted in a major population center for the state, as determined by State Department of Geology and Mineral Industries.

(c) Receive written comments from the public and affected agencies for 45 days after receiving notice under this subsection.

(2) The purpose of the public informational meetings and public comment period under subsection (1) of this section shall be to:

(a) Identify the issues raised by the proposed chemical process mining operation;

(b) Receive information from the public that the State Department of Geology and Mineral Industries and the permitting and cooperating agencies may need to know in order to evaluate the application; and

(c) Determine the data that should be collected during the baseline data collection phase of the consolidated application process to address the issues identified.

(3) Upon receipt of notice under subsection (1) of this section, the technical review team activated under ORS 517.963 shall determine the specific methodologies to be applied by the applicant in collecting baseline data.

(4) The applicant shall collect data according to the methodology established by the permitting and cooperating agencies through the technical review team. The data collected shall be verified by the appropriate agency in accordance with procedures adopted by the agency. [1991 c.735 §12]

517.970 [1989 c.347 §5; renumbered 517.725 in 1991]

517.971 Consolidated application. Each applicant for a permit to operate a chemical process mining operation shall submit a consolidated application to the State Department of Geology and Mineral Industries. The department and the permitting and cooperating agencies shall not begin deliberating on whether to issue a permit until the department receives an application fee and a complete consolidated application that includes but is not limited to:

(1) Name and location of the proposed facility.

(2) Name, mailing address and phone number of the applicant and a registered agent for the applicant.

(3) The legal structure of the applicant as filed in the business registry with the Secretary of State and the legal residence of the applicant.

(4) Mineral and surface ownership status of the proposed facility.

(5) Baseline data, including but not limited to environmental, socioeconomic, historical, archeological conditions, land use designations and special use designations in the area of the state in which the proposed chemical process mining operation is located.

(6) Appropriate maps, aerial photos, cross-sections, plans and documentation.

(7) A proposed:

(a) Mine plan;

(b) Processing plan;

(c) Water budget;

(d) Fish and wildlife protection and mitigation plan;

(e) Operational monitoring and reporting plan;

(f) Reclamation and closure plan;

(g) Plan for controlling water runoff and run on;

(h) Operating plan;

(i) Solid and hazardous waste management plan;

(j) Plan for transporting and storing toxic chemicals;

(k) Employee training plan as required by agency rule;

(L) Seasonal or short term closure plan;

(m) Spill prevention and credible accident contingency plan;

(n) Post-closure monitoring and reporting plan; and

(o) Identification of special natural areas, including but not limited to areas designated as areas of critical environmental concern, research natural areas, outstanding natural areas and areas designated by the Oregon Natural Heritage Plan, as defined in state rules and federal regulations.

(8) All information required by the permitting agencies to determine whether to issue or deny the following permits as applicable to the proposed operation:

(a) Surface mining operating permits required under ORS 517.790 and 517.915;

(b) Fill and removal permits required under ORS 196.600 to 196.905;

(c) 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;

(d) National Pollutant Discharge Elimination System permit under ORS 468B.050;

(e) Water pollution control facility permit under ORS 468B.050;

(f) Air contaminant discharge permit under ORS 468.310 to 468.330;

(g) Solid waste disposal permit under ORS 459.205;

(h) Permit for use of power driven machinery on forestland under ORS 477.625;

(i) Permit to clear right of way on forestland where clearing constitutes fire hazard under ORS 477.685;

(j) Permit for placing explosives or harmful substances in waters of the state under ORS 509.140;

(k) Hazardous waste storage permit under ORS 466.005 to 466.385;

(L) Local land use permits; and

(m) Any other state permit required for the proposed chemical process mining operation.

(9) All other information required by the department, a permitting agency, a cooperating agency or the technical review team. [1991 c.735 §13]

517.972 [1989 c.347 §7; renumbered 517.730 in 1991]

517.973 Fees; payment of expenses of department and permitting and cooperating agencies. (1) In addition to any permit fee required by any other permitting agency, each consolidated application under ORS 517.971 shall be accompanied by an initial fee established by the State Geologist in an amount not to exceed \$606.

(2)(a) Annually on the anniversary date of the issuance of each such operating permit, each holder of an operating permit shall pay to the department a fee established by the State Geologist in an amount not less than \$456.

(b) In addition to the fee prescribed in paragraph (a) of this subsection, the department may charge an additional amount not to exceed \$200 for inspections made at sites:

(A) Where surface mining was conducted without the permit required by ORS 517.790;

(B) Where surface mining has been abandoned; or

(C) Where surface mining was conducted in an area not described in the surface mining permit.

(3) Subject to the provisions of subsection (5) of this section, the applicant shall pay all expenses incurred by the department and the permitting and cooperating agencies related to the consolidated application process under ORS 517.952 to 517.987. These expenses may include legal expenses, expenses incurred in processing and evaluating the consolidated application, issuing a permit or final order and expenses of hiring a third party contractor under ORS 517.979 and 517.980.

(4) Every applicant submitting a consolidated application under ORS 517.952 to 517.987 shall submit the fee required under subsection (1) of this section to the department at the same time as the consolidated application is filed under ORS 517.971. To the extent possible, the full cost of the process set forth in ORS 517.952 to 517.987 shall be paid from the application fee paid under this section. However, if such costs exceed the fee, the applicant shall pay any excess costs shown in an itemized statement prepared by the department. In no event shall the department and permitting and cooperating agencies incur evaluation expenses in excess of 110 percent of the fee initially paid

unless the department provides prior notification to the applicant and a detailed projected budget the department believes necessary to complete the process or a portion of the process under ORS 517.952 to 517.987. If the costs are less than the fee paid, the excess shall be refunded to the applicant.

(5) All expenses incurred by the department and the permitting and cooperating agencies under ORS 517.952 to 517.987 that are charged to or allocated to the fee paid by an applicant shall be necessary, just and reasonable. Upon request, the department shall provide a detailed justification for all charges to the applicant. [1991 c.735 §13a]

517.974 [1989 c.347 §9; renumbered 517.735 in 1991]

517.975 Distribution of completed consolidated application; notice of receipt of application. Upon receipt of a completed consolidated application, the State Department of Geology and Mineral Industries shall:

(1) Provide copies of the application to each affected local government, permitting agency, cooperating agency or federal agency.

(2) Provide notice of the receipt of the consolidated application in accordance with ORS 517.959. The notice shall include information about the opportunity for submitting written comments on the application and about the public hearing conducted as required under ORS 517.977. [1991 c.735 §14]

517.976 [1989 c.347 §16; renumbered 517.740 in 1991]

517.977 Preparation of draft permits; public hearing; determination of completeness of consolidated application. (1) When all members of the technical review team concur that the permitting agencies and the cooperating agencies are ready to begin preparing draft permits, the State Department of Geology and Mineral Industries 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 a permit. The date and location of the public hearing and the period allowed for written comment shall be established by the department. Notice of the public hearing and comment period shall be given in accordance with ORS 517.959.

(2) At the conclusion of the public hearing and comment period under subsection (1) of this section and within 90 days after the State Department of Geology and Mineral Industries receives a consolidated application for a chemical process mining operation, the department, in conjunction with all permitting and cooperating agencies, shall make a

determination of whether the application is complete. On the basis of the determination the department shall either:

(a) If the permitting and cooperating agencies determine that the consolidated application is complete, issue a notice to proceed with the permitting process and the preparation of draft permits; or

(b) If the permitting and cooperating agencies determine that additional information is necessary, notify the applicant of the additional information that is required.

(3) If the permitting and cooperating agencies do not require the applicant to provide additional information as suggested at the public hearing or comment period under subsection (1) of this section, the agencies shall prepare a written response explaining why the additional information is not being requested from the applicant.

(4) Upon receipt of any additional information requested, the State Department of Geology and Mineral Industries shall accept public comments related to the additional information for a period of two weeks. Except as provided in ORS 517.978, the department shall not conduct additional public hearings. [1991 c.735 §15]

517.978 Review of application; additional information. (1) After the State Department of Geology and Mineral Industries issues a notice to proceed, the consolidated application shall be considered complete unless:

(a) New information is available that could not have been presented at the time of the completeness hearing; or

(b) Additional information is necessary to allow the permitting or cooperating agencies to make a determination regarding whether to issue or deny a permit or to issue the permit with conditions attached.

(2) The permitting and cooperating agencies may continue to review an application while in the process of requesting additional information. However, the department shall conduct an additional public hearing under ORS 517.977 if the agencies determine that additional information is significant to the issuance or denial of a permit. [1991 c.735 §16]

517.979 Environmental evaluation; review of baseline data; payment of costs of third party contractor. (1) The State Department of Geology and Mineral Industries shall direct staff or shall hire a third party contractor to:

(a) Prepare an environmental evaluation;

(b) Review baseline data submitted by the applicant; and

(c) Review application material if a permitting agency or a cooperating agency lacks the expertise.

(2) The applicant shall pay costs of hiring a third party contractor. If the applicant shows cause why a particular third party contractor should not be allowed to perform a function under subsection (1) of this section, the department shall hire an alternate contractor.

(3) The contents of the environmental evaluation under subsection (1) of this section shall include:

(a) An analysis of the reasonably foreseeable impacts of an activity including catastrophic consequences even if the probability of occurrence is low, if the analysis is supported by credible scientific evidence, is not based on pure conjecture and is within the rule of reason.

(b) 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. To the extent possible, the department shall enter into a memorandum of agreement with federal agencies to insure that information required by the state in evaluating the cumulative impact of a proposed chemical process mine may be used by the applicant to satisfy federal requirements for such an assessment.

(c) A review and analysis of alternatives analyzed by the applicant or a contractor hired by the applicant that:

(A) Rigorously explores and objectively evaluates all reasonable alternatives and briefly discusses alternatives that were eliminated and the reasons the alternatives were eliminated;

(B) Treats each alternative, including the proposed action, in detail so that the permitting agencies, cooperating agencies and the public may evaluate the comparative merits of the alternatives; and

(C) Identifies all alternatives within the authority of each permitting or cooperating agency.

(4) Upon completion of the environmental evaluation, the State Department of Geology and Mineral Industries shall provide notice in accordance with ORS 517.959. The notice shall state that the environmental evaluation is complete and that the persons may respond with written comments for a period of two weeks after the notice is given. [1991 c.735 §17]

517.980 Socioeconomic impact analysis. Concurrent with the development of the environmental evaluation, the State Department of Geology and Mineral Industries shall direct staff or hire a third party contractor to prepare a socioeconomic impact analysis for the use of the applicant, local government and affected agencies. [1991 c.735 §18]

517.981 Draft permit and permit conditions; denial of permit; time limits; public hearing on draft permit. (1) Within 225 days after receiving the completed consolidated application and the environmental evaluation conducted under ORS 517.979, each permitting agency shall provide its draft permit and permit conditions or its denial document to the State Department of Geology and Mineral Industries. If a permitting agency includes in its draft permit a condition that is inconsistent with the environmental evaluation conducted pursuant to ORS 517.979, the agency shall include with its draft permit a written explanation of the condition setting forth the findings of the agency that support the condition. The State Department of Geology and Mineral Industries shall assure that the conditions imposed on the permits by the cooperating agencies do not conflict. If the department finds a conflict exists, the technical review team shall resolve the conflict.

(2) Within 15 days after receiving all draft permits and the completion of its draft operating permit, the State Department of Geology and Mineral Industries shall issue notice of an opportunity for public comment and a consolidated public hearing on all draft permits. The public hearing shall occur not sooner than 45 days after the department issues the notice. The notice shall be issued in accordance with ORS 517.959. [1991 c.735 §19]

517.982 Final permits; permit conditions submitted by cooperating agencies. (1) Based on information received at the consolidated public hearing, from persons submitting written comments, commenting agencies and the review of the affected agencies, each permitting agency shall, within 45 days after the consolidated public hearing under ORS 517.981 or within the time period required by any applicable federal law, whichever is sooner, approve, deny or modify the agency's permit with conditions necessary to assure that the chemical process mining operation allowed under a permit complies with the standards and requirements applicable to the permit.

(2) Each cooperating agency shall develop permit conditions within the expertise and authority of the cooperating agency and submit the permit conditions to the department to be included as conditions on the department's permit. The department shall not

issue a permit until each cooperating agency has submitted a written concurrence with the terms and conditions of the permit as such pertain to the statutory responsibility of each cooperating agency.

(3) Upon completion of the permits, the department shall issue a notice in accordance with ORS 517.959 to notify interested persons that the final permits are issued. [1991 c.735 §20]

517.983 Consolidated contested case hearing; judicial review; stay of permit. (1) The applicant or any person who appeared before a permitting agency at the consolidated public hearing under ORS 517.981, either orally or in writing, regarding a permit granted or denied by the permitting agency 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.

(2) Upon receipt of a request under subsection (1) of this section, the State Department of Geology and Mineral Industries shall schedule a consolidated contested case hearing which shall be held not less than 60 days or more than 75 days after the notice of permit issuance under ORS 517.982. The hearing shall be conducted in accordance with the provisions applicable to contested case proceedings under ORS 183.310 to 183.550. Any permit granted by a permitting agency shall be suspended until completion of the administrative hearings process.

(3) Each permitting agency for which a permit decision is appealed may appoint a hearings officer to participate in the formal hearing or, with the consent of all other permitting agencies, the State Department of Geology and Mineral Industries may appoint a single hearings officer.

(4) The hearings officer shall prepare a proposed order for each contested permit. A party may file written exceptions to the proposed order with the permitting agency. If the permitting agency determines that additional information may be included in the record, the agency shall remand the order to the appropriate hearings officer for further consideration. After receiving exceptions and hearing argument on the exceptions, the governing body or person within the permitting agency responsible for making a final decision on a permit may adopt the proposed order or issue a new order.

(5) Jurisdiction for judicial review of a permitting agency's issuance or denial of a permit is conferred upon the Supreme Court. Proceedings for review shall be instituted by filing a petition in the Supreme Court. The petition shall be filed within 60 days follow-

ing the date the permit is issued or denied. If the permit with prescribed conditions is approved, the filing of the petition for review shall stay the permit during the pendency of judicial review for a period of up to six months from the date the petition for review 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 under the permit could result in irreparable harm to the site. Except as otherwise provided in this subsection, the review by the Supreme Court shall be as provided in ORS 183.482. The Supreme Court shall give priority on its docket to such a petition for review.

(6) When only the applicant files a petition for judicial review, the six-month stay imposed under subsection (5) of this section may be removed by the permitting agency upon written request within 60 days after the filing of the petition and a showing by the applicant to support 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. In making such findings the permitting agency may require an additional bond or alternative security to be filed with the State Department of Geology and Mineral Industries as provided in ORS 517.987. The bond shall be in an amount the permitting agency determines necessary to assure 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. [1991 c.735 §21]

517.984 Modification of permit; project coordinating committee. (1) The permittee, the department, any other permitting agency or a cooperating agency may request modification of a permit issued under the process established under ORS 517.952 to 517.987.

(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 517.987, 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 517.987 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 517.987. [1991 c.735 §22]

517.985 Rulemaking. In accordance with applicable provisions of ORS 183.310 to 183.550, the governing board of the State Department of Geology and Mineral Industries shall adopt rules necessary to implement the provisions of ORS 517.952 to 517.987. The rules shall include but need not be limited to:

(1) The information required to be submitted in a notice of intent;

(2) The fee that the department may collect from a person requesting inclusion on the master list under ORS 517.959; and

(3) The form and content of the consolidated application. [1991 c.735 §23]

517.986 Time limit for final action on permit subject to consolidated application process. Notwithstanding any other provision of law, the State Department of Geology and Mineral Industries and any other permitting agency shall take final action to issue or deny a permit subject to the consolidated application process set forth in ORS 517.952 to 517.987 within one year after issuance of a notice to proceed under ORS 517.977. 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 or the department's decision on whether to issue or deny a permit. [1991 c.735 §24]

517.987 Reclamation bond or security; annual assessment of cost of reclamation; lien; release of security; post-reclamation security. (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 517.700 to 517.951. Using the reclamation estimate and a credible accident analysis as a guide, the department 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 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 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 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 posts the additional bond security.

(5) The department may seek a lien against the assets of the permittee 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 shall be suspended and the department shall deny immediately all pending applications of the permittee to conduct mining operations.

(6)(a) The permittee shall submit to the department a written request for the release of its reclamation bond. If the permittee has conducted concurrent reclamation, the permittee 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 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 517.987, 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. [1991 c.735 §24a]

Note: Section 37, chapter 735, Oregon Laws 1991, provides:

Sec. 37. (1) Except as provided in this section, the requirements of sections 2 to 24a of this Act [517.952 to 517.987] shall apply to any permit for a chemical process mine as defined in section 3 of this Act [517.953], if the permit process has begun but is not completed before the effective date of this Act [July 31, 1991].

(2) Any prospective applicant for one or more of the permits set forth in section 13 of this Act [517.971] for the operation of a chemical process mine that has conducted, before the effective date of this Act, a public meeting as part of the federal scoping process as set forth in 40 CFR 1501.7 and has not received a permit before the effective date of this Act shall:

(a) On or after October 1, 1991, submit a consolidated application required under section 13 of this Act that satisfies requirements as set forth in rules of the State Department of Geology and Mineral Industries. The basis of such application may be the draft environmental impact statement and plan of operations prepared by the applicant pursuant to 40 CFR 1502.

(b) Comply with the requirements of sections 4 and 13 to 24a of this Act [517.956 and 517.971 to 517.987] as modified by this section.

(c) Work with a project coordinating committee activated by the State Department of Geology and Mineral Industries upon receipt of the consolidated application to provide for public participation in the application process commensurate with the public participation under sections 8 to 12 of this Act [517.961 to 517.969] in a manner that does not impede the time period for complying with the remaining portions of the consolidated application process to which the applicant is subject. A project coordinating team activated under this paragraph may be a continuation of a similar committee previously appointed by the State Department of Geology and Mineral Industries before the effective date of this Act.

(3) Upon receipt of a consolidated application under paragraph (a) of subsection (2) of this section, the State Department of Geology and Mineral Industries and permitting and cooperating agencies as defined in section 3 of this Act shall request within 60 days any additional information necessary to complete the application.

(4) Within 30 days after the applicant provides additional information requested under subsection (3) of this section, the State Department of Geology and Mineral Industries shall issue a notice to proceed under section 15 of this Act [517.977]. After the issuance of the notice to proceed, the remaining portions of the consolidated application process shall apply to the applicant as set forth in sections 16 to 24a of this Act [517.978 to 517.987]. [1991 c.735 §37]

517.988 Permit conditions by State Department of Fish and Wildlife; violations of State Department of Fish and Wildlife conditions. (1) The State Department of Fish and Wildlife shall develop conditions for the protection of fish and wildlife resources that shall be included in any permit issued by the State Department of Geology and Mineral Industries under the process established under ORS 517.952 to 517.987.

(2) The State Department of Fish and Wildlife shall have the right of ingress and egress to and from a chemical process mine operating under a permit that includes conditions imposed pursuant to subsection (1) of this section, doing no unnecessary injury to the property of the mine operator, to determine whether the operator is complying with such conditions. If the State Department of Fish and Wildlife determines that a violation has occurred, the State Department of Fish and Wildlife shall inform the State Department of Geology and Mineral Industries of the violation and the State Department of Geology and Mineral Industries shall cooperate with the State Department of Fish and Wildlife to take appropriate enforcement action.

(3) As used in this section "chemical process mine" has the meaning given in ORS 517.953. [1991 c.735 §24b]

Note: 517.988 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 517 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

517.990 Criminal penalties. (1) Violation of any rules, regulations and orders made pursuant to ORS 517.540 (4) is punishable, upon conviction, by a fine of not less than \$25 nor more than \$250, or by imprisonment in the county jail for not more than 60 days, or both.

(2) Any landowner or operator who shall conduct a surface mining operation, for which a permit is required by ORS 517.750 to 517.900, without a valid operating permit therefor shall be punished, upon conviction, by a fine of not more than \$1,000.

(3) Violation of any provision of ORS 517.750 to 517.900, or any rules promulgated pursuant thereto, or of any conditions of an operating permit is punishable, upon conviction, by a fine of not more than \$1,000.

(4) 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.

(5) Notwithstanding any other provision of the law, any landowner or operator 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. [Amended by 1953 c.188 §2; subsection (3) enacted as 1957 c.580 §11; 1971 c.743 §398; subsection (4) enacted as 1971 c.719 §18; subsections (5) and (6) enacted as 1981 c.622 §14; 1985 c.292 §1; 1987 c.260 §4]

517.992 Civil penalties. (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 517.700 to 517.951 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 517.700 to 517.951.

(2) 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.

(3) The person to whom the notice provided for in subsection (2) 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.

(4) Any person who makes application as provided for in subsection (3) 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.

(5) Judicial review of an order made after a hearing under subsection (4) of this section shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

(6) 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.

(7) Failure to pay a civil penalty that has become final under this section shall be grounds for revocation of any permit issued under ORS 517.700 to 517.951 to the person against whom the penalty has been assessed.

(8) 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.

(9) A reclamation fund shall be established into which funds not used to administer subsection (8) 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.

(10) 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.

(11) 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.

(12) 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 meanings given in ORS 161.170. [1991 c.735 §24c]

Note: 517.992 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 517 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 36, chapter 735, Oregon Laws 1991, provides:

Sec. 36. Minerals Tax Task Force. (1) A Minerals Tax Task Force is created. The task force shall consist of 15 members to be jointly appointed by the Governor, the Director of the Department of Revenue and the State Geologist. The members shall consist of representatives from the following:

(a) Local governments, including planners and elected officials;

(b) Affected agencies, as defined in section 3 of this Act [517.953];

(c) Appropriate federal agencies;

(d) The mining industry;

(e) The private engineering and construction community;

(f) Environmental interest organizations; and

(g) The legal community.

(2) An advisory committee to the task force is created and shall consist of:

(a) The Governor or the Governor's designee as chairperson;

(b) Two Senators to be appointed by the chairperson of the Senate Revenue and School Finance Committee; and

(c) Two Representatives to be appointed by the chairperson of the House Revenue and School Finance Committee.

(3) The task force shall determine the feasibility of imposing a mineral tax within this state, and how the proceeds of such tax would be used.

(4) The task force shall study such issues as:

(a) The amount of revenue that could be raised by such a tax;

(b) The amount of such tax; and

(c) The impact of such a tax on minerals development in this state.

(5) The task force shall present a final report to the Governor, the Legislative Assembly, the Department of Revenue and the State Geologist on or before December 15, 1992. The final report shall include findings of the task force and a recommended plan for implementation of a minerals tax, if such a tax is deemed feasible. [1991 c.735 §36]

CHAPTERS 518 AND 519

[Reserved for expansion]