

House Bill 2119

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for State Department of Geology and Mineral Industries)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Revises definitions that apply to mining exploration, mining and reclamation of mining lands. Requires annual report to be submitted to State Department of Geology and Mineral Industries by person holding operating permit. Specifies information to be included in annual report.

Allows department to issue temporary operating permits and emergency operating permits.

Allows governing board of department to direct department to revise anniversary dates of operating permits to renew all permits on same date. Directs department to prorate fees.

A BILL FOR AN ACT

1
2 Relating to mining; creating new provisions; amending ORS 517.750, 517.755, 517.790, 517.800,
3 517.810, 517.830, 517.835, 517.910, 517.988 and 537.625; and repealing ORS 517.952.

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

5 **SECTION 1. Sections 2, 3, 4 and 5 of this 2005 Act are added to and made a part of ORS**
6 **517.750 to 517.901.**

7 **SECTION 2. A person holding an operating permit issued pursuant to ORS 517.830 shall,**
8 **no later than December 31 of each year, file an annual report with the State Department of**
9 **Geology and Mineral Industries. The annual report shall include the following information**
10 **regarding activities conducted by the permittee during the 12-month period ending December**
11 **31:**

12 (1) **The number of acres subject to mining or mining related activities in the current**
13 **reporting period that were not subject to mining or mining related activities in the previous**
14 **reporting period;**

15 (2) **The total number of acres subject to mining or mining related activities in the cur-**
16 **rent reporting period;**

17 (3) **The number of acres on which final grading was completed;**

18 (4) **The number of tons of overburden removed;**

19 (5) **The number of acres on which topsoil was replaced and reseeded;**

20 (6) **The number of tons of minerals produced;**

21 (7) **The number of tons of topsoil that were replaced and whether the topsoil was ob-**
22 **tained from on-site or off-site sources;**

23 (8) **Conversion factors to convert tons to cubic yards;**

24 (9) **The name and telephone number of a contact person; and**

25 (10) **The signature of the preparer of the annual report.**

26 **SECTION 3. (1) An operating permit issued pursuant to ORS 517.830 shall provide that**
27 **the operating permit and the reclamation plan described in the operating permit may be**
28 **modified upon agreement between the State Department of Geology and Mineral Industries**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 and the permittee.

2 (2) For operating permits first issued or expanded after October 23, 1999, the department
3 may modify an operating permit and reclamation plan as necessary to address new infor-
4 mation or changed conditions that:

- 5 (a) Will result in substantial harm to off-site property;
- 6 (b) Relate to slope stability;
- 7 (c) Will result in a taking of endangered species; or
- 8 (d) Will result in channel changes that threaten pit wall stability.

9 (3) If the department determines that an activity conducted under an operating permit
10 or reclamation plan will result in substantial harm to off-site property, the department shall
11 meet with the permittee to discuss the proposed modifications to the operating permit and
12 reclamation plan.

13 (4) A final determination by the department to unilaterally modify an operating permit
14 and reclamation plan must be based on clear and convincing evidence.

15 (5) Any modification of an operating permit and reclamation plan that is required by the
16 department shall be limited to those areas and matters affected by the new information or
17 changed conditions.

18 (6) The department may not unilaterally modify an operating permit and reclamation plan
19 under this section without first providing the permittee an opportunity for an alternative
20 means of dispute resolution as authorized by ORS 183.502.

21 **SECTION 4.** (1) Notwithstanding ORS 517.830, at the request of any federal agency or any
22 public body, as defined in ORS 174.109, the State Department of Geology and Mineral Indus-
23 tries may issue an emergency operating permit if:

- 24 (a) A natural disaster, including but not limited to a flood or an earthquake, or the ef-
25 fects of a natural disaster threaten significant damage to property or to natural resources;
26 and
- 27 (b) A surface mining operation is necessary to abate the threat.

28 (2) An emergency operating permit issued under this section expires when the depart-
29 ment determines that the operation has abated the threat to property or natural resources.

30 (3) The entity that requests an emergency operating permit under this section must pay
31 any applicable fee pursuant to ORS 517.800 within 30 days after the expiration of the permit.

32 **SECTION 5.** (1) Notwithstanding ORS 517.810 and 517.830, the State Department of
33 Geology and Mineral Industries may issue a temporary operating permit to a person if:

- 34 (a) After consultation, the local jurisdiction with land use authority over the permitted
35 site does not object to the issuance of the permit;
- 36 (b) All interested state agencies approve of the permit issuance; and
- 37 (c) There is no objection from persons owning property adjacent to the permitted site.

38 (2) A temporary operating permit issued under this section is subject to reasonable lim-
39 itations that may be prescribed by the department.

- 40 (3) Within 30 days after issuing the temporary operating permit, the operator shall:
 - 41 (a) Comply with the bond and security requirements established by ORS 517.810;
 - 42 (b) Pay any applicable fee pursuant to ORS 517.800; and
 - 43 (c) Submit a reclamation plan to the department.

44 **SECTION 6.** ORS 517.750 is amended to read:

45 517.750. As used in ORS 517.702 to 517.989, unless the context requires otherwise:

1 (1) “Affected agency” includes permitting agencies, cooperating agencies and commenting
2 agencies.

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

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

7 (4) “Commenting agency” means an agency that makes recommendations to the State
8 Department of Geology and Mineral Industries or to a permitting agency regarding permit
9 conditions or whether to approve or deny a permit under the consolidated application process
10 established under ORS 517.952 to 517.989.

11 [(1) “Board” means the governing board of the State Department of Geology and Mineral Indus-
12 tries.]

13 [(2)] (5) “Completion” means termination of surface mining [*activities including*] and related
14 reclamation of the surface-mined land in accordance with the approved reclamation plan and oper-
15 ating permit.

16 (6) “Consolidated application” means the single application required under ORS 517.971.

17 (7) “Cooperating agency” means an agency that has statutory responsibility related to a
18 chemical process mine but that does not issue a permit for the mining operation.

19 (8) “Environmental evaluation” means an analysis prepared under ORS 517.979 to address
20 specific impacts of the chemical process mining operation to allow affected agencies to de-
21 velop permit conditions.

22 [(3) “Department” means the State Department of Geology and Mineral Industries.]

23 [(4)] (9) “Exploration” means all activities, **other than prospecting or the chemical process-**
24 **ing of minerals**, conducted on or beneath the surface of the earth for the purpose of determining
25 the presence, location, extent, grade or economic viability of a deposit. [*“Exploration” does not in-*
26 *clude prospecting or chemical processing of minerals.*]

27 [(5)] (10) “Explorer” means[, *notwithstanding the provisions of ORS 517.810 (2), any individual,*
28 *public or private corporation, political subdivision, agency, board or department of this state, any*
29 *municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever] **any**
30 **person** that is engaged in exploration.*

31 [(6)] (11) “Landowner” means the person possessing fee title to the natural mineral deposit being
32 surface mined or explored.

33 [(7)] (12) “Minerals” includes soil, coal, clay, stone, sand, gravel, metallic ore and any other
34 solid material or substance excavated for commercial, industrial or construction use from natural
35 deposits situated within or upon lands in this state.

36 (13) “Mitigation” means the reduction of the adverse effects of the operation of a pro-
37 posed mine by considering, in the following order:

38 (a) Avoiding the effect altogether by not taking a certain action or part of an action;

39 (b) Minimizing the effect by limiting the degree or magnitude of the action and its im-
40 plementation;

41 (c) Rectifying the effect by repairing, rehabilitating or restoring the affected environ-
42 ment;

43 (d) Reducing or eliminating the effect over time by preservation and maintenance oper-
44 ations during the life of the action by monitoring and taking appropriate corrective meas-
45 ures; or

1 **(e) Compensating for the effect by replacing or providing comparable substitute re-**
 2 **sources or environments.**

3 [(8)] **(14) “Operator”** means any *[individual, public or private corporation, political subdivision,*
 4 *agency, board or department of this state, any municipality, partnership, association, firm, trust, estate*
 5 *or any other legal entity whatsoever]* **person** that is engaged in surface mining operations.

6 [(9)] **(15) “Overburden”** means the soil, rock and similar materials that lie above natural deposits
 7 of minerals.

8 **(16) “Permitting agency”** means an agency that has a separate permitting authority for
 9 a proposed chemical process mine.

10 **(17) “Person”** means any person, any federal agency or any public body, as defined in ORS
 11 **174.109.**

12 [(10)] **(18) “Processing”** includes, but is not limited to, crushing, washing, milling and screening
 13 as well as the batching and blending of mineral aggregate into asphalt and portland cement concrete
 14 located within the *[operating permit area]* **permitted site.**

15 **(19) “Project coordinating committee”** means the interagency governmental committee
 16 established in accordance with ORS 517.965.

17 [(11)] **(20) “Reclamation”** means the employment in a surface mining operation or exploration
 18 of procedures, reasonably designed to:

19 **(a)** Minimize, as much as practicable, the disruption from the surface mining operation or ex-
 20 ploration; and *[to]*

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

25 [(12)] **(21) “Reclamation plan”** means a written proposal, submitted to *[the department as required*
 26 *by ORS 517.702 to 517.989]* and *[subsequently]* approved by the department as provided in ORS
 27 517.702 to 517.989, for the reclamation of the land area adversely affected by a surface mining op-
 28 eration or exploration and including, but not limited to, the following information:

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

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

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

35 **(d)** The procedures to be applied in the surface mining operation or exploration in the rehabili-
 36 tation of affected stream channels and stream banks to a condition minimizing erosion,
 37 sedimentation and other factors of pollution.

38 **(e)** The map required by ORS 517.790 (1)(e) and such other maps and supporting documents *[as]*
 39 **that** may be requested by the department.

40 **(f)** A proposed time schedule for *[the]* completion *[of reclamation operations].*

41 **(g)** Requirements of the exploration permit.

42 [(13)] *“Spoil bank” means a deposit of excavated overburden or mining refuse.*

43 **(22) “Surface impacts of underground mining”** means all waste materials produced by
 44 **underground mining and placed upon the surface, including but not limited to waste dumps,**
 45 **mill tailings, washing plant fines, and all surface subsidence related to underground mining.**

1 [(14)(a)] **(23)(a)** “Surface mining” includes all or any part of the process of mining minerals by
 2 the removal of overburden and the extraction of natural mineral deposits thereby exposed by any
 3 method by which more than 5,000 cubic yards of minerals are extracted or by which at least one
 4 acre of land is affected within a period of 12 consecutive calendar months, including open-pit mining
 5 operations, auger mining operations, processing, surface impacts of underground mining, production
 6 of surface mining refuse and the construction of adjacent or off-site borrow pits (except those con-
 7 structed for use as access roads).

8 (b) “Surface mining” does not include:

9 **(A)** Excavations of sand, gravel, clay, rock or other similar materials conducted by the land-
 10 owner or tenant for the primary purpose of construction, reconstruction or maintenance of access
 11 roads **on the same or adjacent lots or parcels under the same ownership;**

12 **(B)** [and] Excavation or grading operations conducted in the process of [farming or cemetery
 13 operations, on-site road construction or other] on-site construction **of buildings and related con-
 14 struction activities, provided there is approval by the appropriate land use authority;**

15 **(C)** [, or] Nonsurface [impacts] **effects** of underground [mines; and also does not include] **mining;**
 16 **or**

17 **(D) Removal of** rock, gravel, sand, silt or other similar substances [removed] from the beds or
 18 banks of any waters of this state pursuant to a permit issued under ORS 196.800 to [196.825 and
 19 196.835 to 196.870] **196.900.**

20 [(15)] **(24)** “Surface mining refuse” means all waste materials, soil, rock, mineral, liquid, vege-
 21 tation and other materials resulting from or displaced by surface mining operations within the [op-
 22 erating permit area] **permitted site**, including all waste materials deposited in or upon lands within
 23 [such operating permit area] **the permitted site.**

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

27 **(25) “Technical review team” means the interagency group established in accordance with
 28 ORS 517.967.**

29 [(17)] **(26)** “Underground mining” means all human-made excavations below the surface of the
 30 ground through shafts or adits for the purpose of exploring for, developing or producing valuable
 31 minerals.

32 **SECTION 7.** ORS 517.790 is amended to read:

33 517.790. (1) Except as otherwise provided by ORS 517.780 (2), after July 1, 1972, [no] a landowner
 34 or operator [shall] **may not** [permit] **allow** or engage in surface mining on land not surface mined
 35 on July 1, 1972, without [having first applied for and received an] **holding a valid** operating permit
 36 from the State Department of Geology and Mineral Industries for [such] **the** surface mining opera-
 37 tion. A separate **operating** permit [shall be] **is** required for each [separate] surface mining operation.
 38 [Prior to receiving] **A person seeking** an operating permit from the department [the landowner or
 39 operator must] **shall** submit an application on a form provided by the department that contains in-
 40 formation [considered by the department to be pertinent in its review of the application,] including, but
 41 not limited to, **the following:**

42 (a) The name and address of the landowner and the operator, **the name of any mineral estate
 43 owner within the proposed permit boundary if different from the landowner or operator** and
 44 the names and addresses of any persons designated by [them] **the landowner, operator or mineral
 45 estate owner** as [their] agents for the service of process.

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

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

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

4 (e) The size and legal description of the lands that will be affected by *[such]* **the** operation[, *and, if more than 10 acres of land will be affected by such operation and if the department considers the*
 5 *conditions to warrant it,*] **and** a map of the lands to be *[surface]* mined that *[shall include the*
 6 *boundaries of the affected lands]* **includes the proposed permit boundary, the** topographic details
 7 of *[such]* **the** lands, the location and names of all streams, roads, railroads and utility facilities
 8 within or adjacent to *[such]* **the** lands, the location of all proposed access roads to be constructed
 9 in conducting *[such]* **the** operation and the names and addresses of the owners of all surface and
 10 mineral interests of the lands *[included within the surface mining area]*.

11
 12 (f) If *[economically]* practicable, a plan for visual screening by vegetation or otherwise that will
 13 be established and maintained on the lands within such operation for the purpose of screening such
 14 operation from the view of persons using adjacent public highways, public parks and residential
 15 areas.

16 (g) The type of monitoring well abandonment procedures.

17 **(h) The number of acres within the proposed permit boundary.**

18 **(i) The number of acres proposed to be excavated.**

19 **(j) For sites within a 100-year floodplain, an Order 1 soil survey.**

20 **(k) If native plants or seeds are not to be used in reclamation, an analysis explaining why**
 21 **nonnative plants or seeds will be used and the effect on reclamation.**

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

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

26 **SECTION 8.** ORS 517.800 is amended to read:

27 517.800. (1)(a) Except for an application for a chemical process mining operation submitted under
 28 ORS 517.952 to 517.989, each applicant for an operating permit under ORS 517.702 to 517.989 shall
 29 pay to the State Department of Geology and Mineral Industries a fee established by the State
 30 Geologist in an amount not to exceed \$1,200.

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

37 (2) Annually on the anniversary date of each operating permit, each holder of an operating
 38 permit shall pay to the department a fee established by the State Geologist. The State Geologist
 39 shall base the fee on the tonnage of aggregate or mineral ore *[extracted]* **excavated** during the
 40 previous 12 months according to the following schedule:

41 (a) \$670 for zero to less than 10,000 tons.

42 (b) \$735 for 10,000 to less than 100,000 tons.

43 (c) \$935 for 100,000 to less than 200,000 tons.

44 (d) \$1,135 for 200,000 to less than 300,000 tons.

45 (e) \$1,335 for 300,000 to less than 400,000 tons.

- 1 (f) \$1,535 for 400,000 to less than 500,000 tons.
- 2 (g) \$1,735 for 500,000 to less than 600,000 tons.
- 3 (h) \$1,935 for 600,000 to less than 700,000 tons.
- 4 (i) \$2,135 for 700,000 to less than 800,000 tons.
- 5 (j) \$2,335 for 800,000 to less than 900,000 tons.
- 6 (k) \$2,535 for 900,000 to less than 1,000,000 tons.
- 7 (L) \$2,735 for 1,000,000 to less than 1,100,000 tons.
- 8 (m) \$2,935 for 1,100,000 to less than 1,200,000 tons.
- 9 (n) \$3,135 for 1,200,000 to less than 1,300,000 tons.
- 10 (o) \$3,335 for 1,300,000 to less than 1,400,000 tons.
- 11 (p) \$3,535 for 1,400,000 to less than 1,500,000 tons.
- 12 (q) \$3,735 for 1,500,000 tons or more.

13 (3) If a reclamation plan is changed to address significant revision or intensification, the
 14 permittee may be assessed for staff time and other related costs an amount not to exceed \$625 in
 15 addition to the annual renewal fee.

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

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

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

27 (b) Investigation of surface mining operations conducted outside the area authorized in an op-
 28 erating permit.

29 (6) Upon request of an applicant, permittee or operator, the department shall provide an item-
 30 ized list and documentation of expenses used to determine a fee under subsection (1)(b), (3) or (4)
 31 of this section.

32 (7) The governing board of the State Department of Geology and Mineral Industries shall adopt
 33 by rule a procedure for the administrative review of the determinations of fees under this section.

34 **SECTION 9.** ORS 517.810 is amended to read:

35 517.810. (1) Before issuing or reissuing an operating permit for any surface mining operation or
 36 issuing or reissuing an exploration permit for any exploration activity, the State Department of
 37 Geology and Mineral Industries shall require that the applicant for [*such*] **the** permit file with it a
 38 bond or security acceptable to the department in a sum to be determined by the department but in
 39 an amount not to exceed the total cost for reclamation if the department were to perform the rec-
 40 lamation. The decision of the department may be appealed to the governing board of the State De-
 41 partment of Geology and Mineral Industries as provided in ORS chapter 183. The bond or security
 42 shall be conditioned upon the faithful performance of the reclamation plan and of the other re-
 43 quirements of ORS 517.702 to 517.989 and the rules adopted thereunder.

44 (2) Nothing in this section shall apply to any public [*or governmental agency*] **body, as defined**
 45 **in ORS 174.109.**

1 (3) In lieu of the bond or other security required of the applicant in subsection (1) of this sec-
 2 tion, the department may accept a similar security from the landowner, equal to the estimated cost
 3 of reclamation as determined by the department in consultation with the operator or explorer. The
 4 decision of the department may be appealed to the governing board as provided in ORS chapter 183.

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

10 (5) The **governing** board shall identify by rule the procedures for the determination of the
 11 amount of the bond or other security required of an applicant for an operating permit or exploration
 12 permit. The rules:

13 (a) Shall provide an opportunity for participation by the applicant as part of the procedures; and

14 (b) May allow for the amount of the bond to be calculated and adjusted based upon the total
 15 area expected to be in a disturbed condition in the following year as a result of the surface mining
 16 or exploration operation.

17 *[(6) In carrying out the provisions of subsection (1) of this section, the department may reduce the*
 18 *bond for aggregate sites by an amount not to exceed 50 percent if the applicant has conducted the*
 19 *surface mining operation or exploration with a valid operating permit for a period of not less than 10*
 20 *years and has demonstrated sufficient financial ability to perform the reclamation required by the ap-*
 21 *plicant's approved reclamation plan.]*

22 **SECTION 10.** ORS 517.830 is amended to read:

23 517.830. (1) *[Except as provided in subsection (3)(a) and (b) of this section,]* Upon receipt of an
 24 application for an operating permit, the State Department of Geology and Mineral Industries shall
 25 *[cause]* **inspect** the operating site described *[therein]* **in the application** *[to be inspected]*. Within
 26 *[45]* **90** days after the date on which *[such]* **the** application *[is received]* and *[upon receipt of]* the re-
 27 quired permit fee **are received**, the department shall issue the operating permit applied for or, if it
 28 considers *[such]* **the** application incomplete, *[return the application to]* **notify** the applicant *[for cor-*
 29 *rection]* of the deficiencies *[indicated by the department]*.

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

36 *[(3)(a)]* **(3)** Notwithstanding *[the provisions of]* subsections (1) and (2) of this section, if an appli-
 37 cation involves an aggregate site that requires:

38 **(a)** A **local jurisdiction** permit issued pursuant to ORS 215.427 or 227.178, and if the local ju-
 39 risdiction requests that the application not be decided until the local jurisdiction has taken final
 40 action, the department shall make a final decision on the operating permit and reclamation plan no
 41 later than 165 days after the date **on which** a complete land use application is submitted to the local
 42 jurisdiction, unless the applicant agrees to allow additional time under ORS 215.427, 215.429, 227.178
 43 or 227.179. *[If a plan amendment is required as part of issuance of a permit, the provisions of para-*
 44 *graph (b) of this subsection apply.]* The department *[shall]* **may** not approve an operating permit and
 45 reclamation plan if the land use application is denied.

1 (b) *[Notwithstanding the provisions of subsections (1) and (2) of this section, if an application in-*
 2 *volves an aggregate site that requires a comprehensive plan]* **Amendment to a comprehensive plan,**
 3 **as defined in ORS 197.015,** and if the local jurisdiction requests that the application not be decided
 4 until the local jurisdiction has taken final action on the plan amendment, the department *[shall]*
 5 **may** not make a final decision on the operating permit and reclamation plan until the local juris-
 6 diction has taken final action on the plan amendment. The department shall make its final decision
 7 within *[45]* **90** days of the date that the local jurisdiction has taken final action on the plan amend-
 8 ment. The department *[shall]* **may** not approve an operating permit and reclamation plan if the plan
 9 amendment is denied.

10 *[(c)]* **(4)** Conditions and requirements imposed on an operating permit and reclamation plan, and
 11 modifications thereto, issued subsequent to issuance of a local jurisdiction permit **pursuant to ORS**
 12 **215.427 and 227.178** shall be compatible with the requirements and conditions of the local *[govern-*
 13 *ment]* **jurisdiction** permit, unless more stringent requirements are necessary to comply with the
 14 provisions of ORS 517.750 to 517.901.

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

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

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

22 *[(4)]* **(6)** If the department refuses to approve a **submitted** reclamation plan *[in the form sub-*
 23 *mitted by the applicant],* it shall notify the applicant, in writing, of its reasons for the refusal to ap-
 24 prove *[such]* **the** reclamation plan, including additional requirements as may be prescribed by the
 25 department for inclusion in *[such]* **the** reclamation plan. Within 60 days after the receipt of *[such]*
 26 **the** notice, the applicant shall comply with the additional requirements prescribed by the depart-
 27 ment for *[such]* **the** reclamation plan or file with the department a notice of appeal from the decision
 28 of the department with respect to *[such]* **the** reclamation plan. If a notice of appeal is filed with the
 29 department by the applicant, the department may issue a provisional **operating** permit to *[such]* **the**
 30 applicant.

31 *[(5)]* **(7)** An operating permit issued by the department under this section shall be granted for
 32 the period required to mine the land described in *[such]* **the operating** permit. *[and shall be]* **An**
 33 **operating permit is** valid, subject to payment of the renewal fee **and submission of an annual**
 34 **report,** until:

35 **(a)** The surface mining operation described in the operating permit is completed or mining op-
 36 erations cease; and

37 **(b)** The site is reclaimed. *[Each such operating permit shall provide that the operating permit and*
 38 *the reclamation plan described therein may be modified upon agreement between the department and*
 39 *the permittee to change the reclamation plan included within the operating permit. In addition, for op-*
 40 *erating permits first issued or expanded after October 23, 1999, the department may modify an operat-*
 41 *ing permit and reclamation plan as necessary to address new information or changed conditions for*
 42 *site conditions that will result in substantial harm to off-site public or private property and that relate*
 43 *to slope stability, surface mining activities that will result in a taking of endangered species or channel*
 44 *changes that threaten pit wall stability. Upon a determination that the activity will result in substantial*
 45 *harm, the department shall meet with the permittee to discuss the proposed modifications to the oper-*

1 *ating permit and reclamation plan. A final determination by the department to require a unilateral*
 2 *modification of an operating permit and reclamation plan shall be based on clear and convincing sci-*
 3 *entific evidence. Any modification required by the department shall be limited to those areas and mat-*
 4 *ters affected by the new information or changed conditions.]*

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

8 [(7)] (8) When a person succeeds to the interest of a permittee in any uncompleted surface
 9 mining operation by sale, assignment, lease or other means, the department shall release the
 10 permittee from the duties imposed upon the permittee under the operating permit if a successor as-
 11 sumes fully the duties of the former permittee with respect to the reclamation of the surface-mined
 12 lands. Upon the assumption by [*such person*] **the successor** of the duties of the permittee as pro-
 13 vided in this subsection, the department shall transfer the operating permit to the successor upon
 14 the approval of [*such*] **the successor's** bond or security as required under ORS 517.702 to 517.989.

15 [(8)] (9) If an application is submitted as part of the consolidated application process under ORS
 16 517.952 to 517.989, review of the application and approval or denial of the application shall be in
 17 accordance with ORS 517.952 to 517.989. However, [*such*] **the** review and approval or denial shall
 18 take into consideration all policy considerations for issuing a permit under ORS 517.702 to 517.989.

19 **SECTION 11.** ORS 517.755 is amended to read:

20 517.755. Notwithstanding the yard and acre limitations of ORS 517.750 [(14)] (23), as soon as any
 21 mining operation begun after July 1, 1975, affects more than five acres of land, the provisions of
 22 ORS 517.702 to 517.989 apply to the mining operation.

23 **SECTION 12.** ORS 517.835 is amended to read:

24 517.835. (1) Notwithstanding [*ORS 517.830 (5)*] **section 3 of this 2005 Act**, the State Department
 25 of Geology and Mineral Industries may require conditions on any new or existing surface mining
 26 operating permit or reclamation plan sufficient to prevent or mitigate off-site impacts to ground
 27 water resources from the removal of water from surface mining operations. The department may
 28 include ground water monitoring as one of the conditions.

29 (2) The **State Department of Geology and Mineral Industries** shall consult with the permittee
 30 and the Water Resources Department in assessing off-site impacts and in developing prevention or
 31 mitigation measures prior to imposing any conditions on an operating permit or reclamation plan
 32 pursuant to this section.

33 **SECTION 13.** ORS 517.910 is amended to read:

34 517.910. For the purposes of ORS 517.910 to 517.989:

35 (1) Notwithstanding ORS 517.750 [(11)] (20), "reclamation" means the employment in a surface
 36 mining operation of procedures reasonably designed to minimize as much as practicable the dis-
 37 ruption from the surface mining operation or surface mining processing operation, including cyanide
 38 leaching or any other chemical leaching processing at a processing site removed from the mining
 39 site and to provide for the rehabilitation of any such surface resources through the use of plant
 40 cover, soil stability techniques, and through the use of measures to protect the surface and subsur-
 41 face water resources, including but not limited to domestic water use and agricultural water use,
 42 and other measures appropriate to the subsequent beneficial use of any land or water resource af-
 43 fected by a surface mining or processing operation.

44 (2) "Nonaggregate minerals" means coal and metal-bearing ores, including but not limited to
 45 ores that contain nickel, cobalt, lead, zinc, gold, molybdenum, uranium, silver, aluminum, chrome,

1 copper or mercury.

2 **SECTION 14.** ORS 517.988 is amended to read:

3 517.988. (1) The State Department of Fish and Wildlife shall develop conditions for the pro-
4 tection of fish and wildlife resources that shall be included in any permit issued by the State De-
5 partment of Geology and Mineral Industries under the process established under ORS 517.952 to
6 517.989.

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

15 (3) As used in this section “chemical process mine” has the meaning given in ORS [517.952]
16 **517.750.**

17 **SECTION 15.** ORS 537.625 is amended to read:

18 537.625. (1) If, after the contested case hearing or, if a hearing is not held, after the close of the
19 period allowed to file a protest, the Water Resources Director determines that the proposed use does
20 not ensure the preservation of the public welfare, safety and health as described in ORS 537.525, the
21 director shall issue a final order rejecting the application or modifying the proposed final order as
22 necessary to ensure the preservation of the public welfare, safety and health as described in ORS
23 537.525. If, after the contested case hearing or, if a hearing is not held, after the close of the period
24 allowed to file a protest, the director determines that the proposed use would ensure the preserva-
25 tion of the public welfare, safety and health as described in ORS 537.525, the director shall issue a
26 final order approving the application or otherwise modifying the proposed final order. A final order
27 may set forth any of the provisions or restrictions to be included in the permit concerning the use,
28 control and management of the water to be appropriated for the project.

29 (2) If a contested case hearing is not held:

30 (a) Where the final order modifies the proposed final order, the applicant may request and the
31 Water Resources Department shall schedule a contested case hearing as provided under ORS 537.622
32 (3) by submitting the information required for a protest under ORS 537.621 (7) within 14 days after
33 the director issues the final order. However, the issues on which a contested case hearing may be
34 requested and conducted under this paragraph shall be limited to issues based on the modifications
35 to the proposed final order.

36 (b) Only the applicant or a protestant may appeal the provisions of the final order in the manner
37 established in ORS chapter 183 for appeal of order other than contested cases.

38 (3) If the presumption of public welfare, safety and health under ORS 537.621 (2) is overcome,
39 then before issuing a final order, the director or the Water Resources Commission, if applicable,
40 shall make the final determination of whether the proposed use or the proposed use as modified in
41 the proposed final order would preserve the public welfare, safety and health as described in ORS
42 537.525 by considering:

43 (a) The conservation of the highest use of the water for all purposes, including irrigation, do-
44 mestic use, municipal water supply, power development, public recreation, protection of commercial
45 and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic at-

1 traction or any other beneficial use to which the water may be applied for which it may have a
 2 special value to the public.

3 (b) The maximum economic development of the waters involved.

4 (c) The control of the waters of this state for all beneficial purposes, including drainage, sani-
 5 tation and flood control.

6 (d) The amount of waters available for appropriation for beneficial use.

7 (e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters
 8 involved.

9 (f) All vested and inchoate rights to the waters of this state or to the use of the waters of this
 10 state, and the means necessary to protect such rights.

11 (g) The state water resources policy.

12 (4) Upon issuing a final order, the Water Resources Department shall notify the applicant and
 13 each person who submitted written comments or protests or otherwise requested notice of the final
 14 order and send a copy of the final order to any person who requested a copy and paid the fee re-
 15 quired under ORS 536.050 (1)(p).

16 (5) A right to appropriate ground water under a permit has a priority from the date when the
 17 application was filed with the department.

18 (6) If the use of water under the permit is for operation of a chemical process mine as defined
 19 in ORS [517.952] **517.750**:

20 (a) Review of the application and approval or denial of the application shall be coordinated with
 21 the consolidated application process under ORS 517.952 to 517.989. However, such review and ap-
 22 proval or denial shall take into consideration all policy considerations for the appropriation of water
 23 as set forth in this chapter and ORS chapter 536.

24 (b) The permit may be issued for exploration under ORS 517.702 to 517.740, but the permit shall
 25 be conditioned on the applicant's compliance with the consolidated application process.

26 (c) The permit shall include a condition that additional conditions may be added to the use of
 27 water when a water right certificate is issued, or when the use of water is changed pursuant to ORS
 28 540.520 and 540.530 to use for a chemical process mine operation.

29 **SECTION 16. (1) The governing board of the State Department of Geology and Mineral**
 30 **Industries may direct the department to modify the manner in which the department issues**
 31 **and renews operating permits, other than operating permits for a chemical process mining**
 32 **operation submitted under ORS 517.952 to 517.989, by changing the anniversary dates of all**
 33 **operating permits to the same date.**

34 **(2) If the governing board directs the department to change the anniversary dates of**
 35 **operating permits, the department shall, notwithstanding ORS 517.800, prorate the fees es-**
 36 **tablished in ORS 517.800 for permit renewal based on the number of months remaining on**
 37 **the existing permit.**

38 **SECTION 17. Section 16 of this 2005 Act is repealed on January 2, 2008.**

39 **SECTION 18. ORS 517.952 is repealed.**

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