

House Bill 2121

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**.

Modifies statutes relating to mine reclamation. Revises definitions. Prohibits State Department of Geology and Mineral Industries from revoking, terminating or refusing to renew operating permit if marketable reserves exist and if mining operations will likely continue. Specifies that department must transfer operating permit to successor in interest if requested. Provides exceptions. Specifies conditions under which department may modify operating permit or reclamation plan.

Creates crime of knowingly or recklessly causing substantial harm to human health or environment. Punishes by up to one year in jail, \$6,250 fine, or both.

A BILL FOR AN ACT

1
2 Relating to the State Department of Geology and Mineral Industries; creating new provisions;
3 amending ORS 517.750, 517.755, 517.760, 517.780, 517.790, 517.800, 517.820, 517.830, 517.835,
4 517.840, 517.850, 517.860, 517.880, 517.910, 517.950, 517.988, 517.990, 517.992 and 537.625; and re-
5 pealing ORS 517.740, 517.785 and 517.952.

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

7 **SECTION 1. Sections 2, 3 and 4 of this 2005 Act are added to and made a part of ORS**
8 **517.750 to 517.901.**

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

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

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

17 **(b) Fails to pay a fee required by ORS 517.800 within 60 days of the due date.**

18 **(c) Fails to provide or maintain an acceptable bond or security as required by ORS**
19 **517.810.**

20 **(d) Fails to comply with an order issued under ORS 517.860.**

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

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

25 **(a) Perform actions at the permitted site that are necessary to comply with reclamation**
26 **requirements in the operating permit or reclamation plan, including but not limited to re-**
27 **moval of mining related stockpiles.**

28 **(b) Excavate materials at the permitted site that are necessary for reclamation.**

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

5 **SECTION 3.** (1) A person who by sale, assignment, lease or other means has succeeded
 6 in interest to an uncompleted surface mining operation may request that the State Depart-
 7 ment of Geology and Mineral Industries release the existing permittee from any reclamation
 8 obligations and transfer the operating permit to the successor. The department shall trans-
 9 fer the operating permit, unless:

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

12 (b) The successor fails to provide an acceptable bond or security as required by ORS
 13 517.810.

14 (c) More than one person has a claim to the operating permit and there is a dispute be-
 15 tween the claimants that presents a justiciable controversy.

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

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

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

26 (2) The department may modify an operating permit or reclamation plan without the
 27 consent of the permittee if, because of changed conditions at the permitted site or because
 28 of information otherwise not available to the department at the time of permit issuance,
 29 permit renewal or reclamation plan establishment, the department finds, by substantial evi-
 30 dence, that a modification is justified due to the potential for:

31 (a) Substantial harm to off-site property;

32 (b) Harm to threatened or endangered species; or

33 (c) Channel changes or unstable pit walls.

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

37 (4) If the department modifies an operating permit or reclamation plan without the con-
 38 sent of the permittee, the department must provide the permittee with an opportunity for
 39 alternative dispute resolution in the manner provided in ORS 183.502.

40 **SECTION 5.** ORS 517.750 is amended to read:

41 517.750. As used in ORS 517.702 to 517.989, unless the context requires otherwise:

42 [(1) "Board" means the governing board of the State Department of Geology and Mineral Indus-
 43 tries.]

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

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

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

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

9 [(2)] (5) **“Completion” means termination of surface mining [activities including] and related**
 10 **reclamation of the surface-mined land in accordance with the approved reclamation plan and oper-**
 11 **ating permit.**

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

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

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

16 (8) **“Environmental evaluation” means an analysis prepared under ORS 517.979 to address**
 17 **specific impacts of the chemical process mine operation to allow affected agencies to develop**
 18 **permit conditions.**

19 [(4)] (9) **“Exploration” means all activities, other than prospecting or the chemical process-**
 20 **ing of minerals,** conducted on or beneath the surface of the earth for the purpose of determining
 21 presence, location, extent, grade or economic viability of a deposit. [*“Exploration” does not include*
 22 *prospecting or chemical processing of minerals.*]

23 [(5)] (10) **“Explorer” means**[, *notwithstanding the provisions of ORS 517.810 (2), any individual,*
 24 *public or private corporation, political subdivision, agency, board or department of this state, any*
 25 *municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever that is*]
 26 **any person** engaged in exploration.

27 [(6)] (11) **“Landowner” means:**

28 (a) **The person possessing fee title to the natural mineral deposit being surface mined or ex-**
 29 **plored.**

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

31 [(7)] (12) **“Minerals” includes soil, overburden, coal, clay, stone, sand, gravel, metallic ore and**
 32 **any other solid material or substance excavated for commercial, industrial or construction use from**
 33 **natural deposits situated within or upon lands in this state.**

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

36 (a) **Avoiding the effect altogether by not taking a certain action or parts of an action;**

37 **(b) Minimizing the effect by limiting the degree or magnitude of the action and its im-**
 38 **plementation;**

39 **(c) Rectifying the effect by repairing, rehabilitating or restoring the affected environ-**
 40 **ment;**

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

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

1 [(8)] (14) “Operator” means any *[individual, public or private corporation, political subdivision,*
 2 *agency, board or department of this state, any municipality, partnership, association, firm, trust, estate*
 3 *or any other legal entity whatsoever that is]* **person** engaged in surface mining operations.

4 [(9)] (15) “Overburden” means the soil, rock and similar materials that lie above natural deposits
 5 of minerals.

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

8 (17) “**Person**” means any person, any federal agency or any public body, as defined in ORS
 9 **174.109.**

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

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

15 [(11)] (20) “Reclamation” means the employment in a surface mining operation or exploration
 16 of procedures, reasonably designed to:

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

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

23 [(12)] (21) “Reclamation plan” means a written proposal, submitted to *[the department as required*
 24 *by ORS 517.702 to 517.989 and subsequently]* **and** approved by the department as provided in ORS
 25 517.702 to 517.989, for the reclamation of the land area adversely affected by a surface mining op-
 26 eration or exploration and including, but not limited to the following information:

27 (a) Proposed measures to be undertaken by the operator in protecting the natural resources
 28 *[of]* **and** adjacent lands.

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

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

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

36 (e) The map required by ORS 517.790 *[(1)(e)]* (1)(f) and such other maps and supporting docu-
 37 ments as may be requested by the department.

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

39 (g) Requirements of the exploration permit.

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

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

44 [(14)(a)] (23)(a) “Surface mining” includes all or any part of the process of mining minerals by
 45 the removal of overburden and the extraction of natural mineral deposits thereby exposed by any

1 method by which more than 5,000 cubic yards of minerals are extracted or by which at least one
 2 acre of land is affected within a period of 12 consecutive calendar months, including open-pit mining
 3 operations, auger mining operations, processing, surface impacts of underground mining, production
 4 of surface mining refuse and the construction of adjacent or off-site borrow pits (except those con-
 5 structed for use as access roads).

6 (b) "Surface mining" does not include:

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

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

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

14 (D) [*and also does not include*] **Removal** of rock, gravel, sand, silt or other similar substances
 15 [*removed*] from the beds or banks of any waters of this state pursuant to a permit issued under ORS
 16 196.800 to [*196.825 and 196.835 to 196.870*] **196.900.**

17 [(15)] (24) "Surface mining refuse" means all waste materials, soil, rock, mineral, liquid, vege-
 18 tation and other materials resulting from or displaced by surface mining operations within the [*op-*
 19 *erating permit area*] **permitted site**, including all waste materials deposited in or upon lands within
 20 [*such operating permit area*] **the permitted site.**

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

24 (25) "**Technical review team**" means the interagency group established in accordance with
 25 **ORS 517.967.**

26 [(17)] (26) "Underground mining" means all human-made excavations below the surface of the
 27 ground through shafts or adits for the purpose of exploring for, developing or producing valuable
 28 minerals.

29 **SECTION 6.** ORS 517.780 is amended to read:

30 517.780. (1) The provisions of ORS 517.702 to 517.989 and the rules and regulations adopted
 31 thereunder [*shall*] **do** not supersede any zoning laws or ordinances in effect on July 1, 1972. How-
 32 ever, if [*such*] **the** zoning laws or ordinances are repealed on or after July 1, 1972, the provisions
 33 of ORS 517.702 to 517.989 and the rules and regulations adopted thereunder shall be controlling. The
 34 governing board of the State Department of Geology and Mineral Industries may adopt rules and
 35 regulations with respect to matters [*presently*] covered by [*such*] zoning laws and ordinances **in ef-**
 36 **fect on July 1, 1972.**

37 [(2) *In lieu of the permit required by ORS 517.790, an operator may conduct surface mining pro-*
 38 *vided such surface mining is done pursuant to a valid permit issued by the appropriate authority of a*
 39 *city or county in which the mining is taking place, if such authority has adopted an ordinance, ap-*
 40 *proved by the board prior to July 1, 1984, requiring reclamation of land that has been surface mined.*
 41 *If such county ordinance is repealed on or after July 1, 1984, the provisions of ORS 517.702 to 517.989*
 42 *and the rules and regulations adopted thereunder shall be controlling. The board may adopt rules and*
 43 *regulations with respect to matters presently covered by such zoning laws and ordinances. A county*
 44 *ordinance adopted for the purpose specified in this subsection may apply to surface mining within a*
 45 *city in the county if the city consents thereto. On or after July 1, 1984, surface mining shall be con-*

1 ducted only pursuant to the permit required under ORS 517.790 in all counties which have not received
2 approval of an ordinance prior to that date.]

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

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

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

17 517.790. (1) [*Except as otherwise provided by ORS 517.780 (2), after July 1, 1972, no*] **A** landowner
18 or operator [*shall permit*] **may not allow** or engage in surface mining on land not surface mined on
19 July 1, 1972, without [*having first applied for and received an*] **holding a valid** operating permit from
20 the State Department of Geology and Mineral Industries for [*such*] **the** surface mining operation. A
21 separate permit [*shall be*] **is** required for each separate surface mining operation. [*Prior to*
22 *receiving*] **A person seeking** an operating permit from the department [*the landowner or operator*
23 *must*] **shall** submit an application on a form provided by the department that contains **the following**
24 information [*considered by the department to be pertinent in its review of the application*], including
25 but not limited to:

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

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

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

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

31 (e) The size and legal description of the lands that will be affected by [*such*] **the** operation[,
32 *and*].

33 (f) If [*more than 10 acres of land will be affected by such operation and if*] the department [*con-*
34 *siders*] **determines that** the conditions [*to*] warrant it, a map of the lands to be surface mined that
35 [*shall include*] **includes** the boundaries of the affected lands, topographic details of [*such*] **the** lands,
36 the location and names of all streams, roads, railroads and utility facilities within or adjacent to
37 [*such*] **the** lands, the location of all proposed access roads to be constructed in conducting [*such*]
38 **the** operation and the names and addresses of the owners of all surface and mineral interests of the
39 lands included within the surface mining area.

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

44 [(g)] (h) The type of monitoring well abandonment procedures.

45 [(2)] (i) [*The application referred to in subsection (1) of this section must also contain*] A proposed

1 reclamation plan that is acceptable to and approved by the department.

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

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

8 **(3) The department may not issue an operating permit if the operating permit or recla-**
 9 **mation plan would interfere with the ownership rights of an owner of the lands that will be**
 10 **affected by the operation.**

11 **(4) The department may not issue an operating permit to an operator other than an**
 12 **owner of the lands that will be affected by the operation unless the operator:**

13 **(a) Has written approval from an owner of the land; and**

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

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

18 517.800. (1)(a) Except for an application for a chemical process mining operation submitted under
 19 ORS 517.952 to 517.989, each applicant for an operating permit under ORS 517.702 to 517.989 shall
 20 pay to the State Department of Geology and Mineral Industries a fee established by the State
 21 Geologist in an amount not to exceed \$1,200.

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

28 (2) Annually on the anniversary date of each operating permit, each holder of an operating
 29 permit shall pay to the department a fee established by the State Geologist. The State Geologist
 30 shall base the fee on the tonnage of aggregate or mineral ore extracted during the previous 12
 31 months according to the following schedule:

- 32 (a) \$670 for zero to less than 10,000 tons.
- 33 (b) \$735 for 10,000 to less than 100,000 tons.
- 34 (c) \$935 for 100,000 to less than 200,000 tons.
- 35 (d) \$1,135 for 200,000 to less than 300,000 tons.
- 36 (e) \$1,335 for 300,000 to less than 400,000 tons.
- 37 (f) \$1,535 for 400,000 to less than 500,000 tons.
- 38 (g) \$1,735 for 500,000 to less than 600,000 tons.
- 39 (h) \$1,935 for 600,000 to less than 700,000 tons.
- 40 (i) \$2,135 for 700,000 to less than 800,000 tons.
- 41 (j) \$2,335 for 800,000 to less than 900,000 tons.
- 42 (k) \$2,535 for 900,000 to less than 1,000,000 tons.
- 43 (L) \$2,735 for 1,000,000 to less than 1,100,000 tons.
- 44 (m) \$2,935 for 1,100,000 to less than 1,200,000 tons.
- 45 (n) \$3,135 for 1,200,000 to less than 1,300,000 tons.

1 (o) \$3,335 for 1,300,000 to less than 1,400,000 tons.

2 (p) \$3,535 for 1,400,000 to less than 1,500,000 tons.

3 (q) \$3,735 for 1,500,000 tons or more.

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

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

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

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

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

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

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

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

26 (b) **May adopt by rule a late fee of up to five percent of the unpaid amount for fees owed**
27 **under this section. The board may impose a late fee on a person owing a fee under this**
28 **section if the person fails to pay a required fee within 30 days after the due date.**

29 **SECTION 9.** ORS 517.830 is amended to read:

30 517.830. (1) *[Except as provided in subsection (3)(a) and (b) of this section,]* Upon receipt of an
31 application for an operating permit, the State Department of Geology and Mineral Industries shall
32 *[cause]* **inspect** the operating site described *[therein to be inspected]* **in the application.** Within *[45]*
33 **90** days after the date *[on which such]* **that the** application *[is received]* and *[upon receipt of]* the
34 required permit fee **are received,** the department shall issue the operating permit applied for or, if
35 it considers *[such]* **the** application incomplete, return the application to the applicant for correction
36 of the deficiencies indicated by the department. **If the application requires consideration of**
37 **complex regulatory issues, the department may delay the issuance of the operating permit**
38 **until a sufficient review of the application has occurred.**

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

45 *[(3)(a)]* (3) Notwithstanding *[the provisions of]* subsections (1) and (2) of this section, if an appli-

1 cation involves an aggregate site that requires:

2 (a) A permit issued pursuant to ORS 215.427 or 227.178, and if the local jurisdiction requests
3 that the application not be decided until the local jurisdiction has taken final action, the department
4 shall make a final decision on the operating permit and reclamation plan no later than 165 days
5 after the date a complete land use application is submitted to the local jurisdiction, unless the ap-
6 plicant agrees to allow additional time under ORS 215.427, 215.429, 227.178 or 227.179. *[If a plan*
7 *amendment is required as part of issuance of a permit, the provisions of paragraph (b) of this sub-*
8 *section apply.]* The department *[shall]* **may** not approve an operating permit and reclamation plan if
9 the land use application is denied.

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

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

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

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

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

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

38 *[(5)]* *An operating permit issued by the department under this section shall be granted for the period*
39 *required to mine the land described in such permit and shall be valid, subject to payment of the re-*
40 *newal fee, until the surface mining operation described in the operating permit is completed or mining*
41 *operations cease and the site is reclaimed. Each such operating permit shall provide that the operating*
42 *permit and the reclamation plan described therein may be modified upon agreement between the de-*
43 *partment and the permittee to change the reclamation plan included within the operating permit. In*
44 *addition, for operating permits first issued or expanded after October 23, 1999, the department may*
45 *modify an operating permit and reclamation plan as necessary to address new information or changed*

1 conditions for site conditions that will result in substantial harm to off-site public or private property
 2 and that relate to slope stability, surface mining activities that will result in a taking of endangered
 3 species or channel changes that threaten pit wall stability. Upon a determination that the activity will
 4 result in substantial harm, the department shall meet with the permittee to discuss the proposed mod-
 5 ifications to the operating permit and reclamation plan. A final determination by the department to
 6 require a unilateral modification of an operating permit and reclamation plan shall be based on clear
 7 and convincing scientific evidence. Any modification required by the department shall be limited to
 8 those areas and matters affected by the new information or changed conditions.]

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

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

19 [(8)] (7) If an application is submitted as part of the consolidated application process under ORS
 20 517.952 to 517.989, review of the application and approval or denial of the application shall be in
 21 accordance with ORS 517.952 to 517.989. However, [such] **the** review and approval or denial shall
 22 take into consideration all policy considerations for issuing a permit under ORS 517.702 to 517.989.

23 **SECTION 10.** ORS 517.835 is amended to read:

24 517.835. (1) Notwithstanding [ORS 517.830 (5)] **section 4 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 11.** ORS 517.840 is amended to read:

34 517.840. (1) The governing board of the State Department of Geology and Mineral Industries
 35 shall administer and enforce the provisions of ORS 517.702 to 517.989 and:

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

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

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

44 (d) May, in accordance with the applicable provisions of ORS chapter 183, adopt rules [*consid-
 45 ered by the board to be necessary in carrying*] **to carry** out the provisions of ORS 517.702 to 517.989.

1 [However, such rules shall be subject to existing rights under any permit, license, lease or other valid
 2 authorization granted or issued by a governmental entity.]

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

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

9 (2) [Not later than one year after October 3, 1989, the board, after] **In** consultation with the De-
 10 partment of Environmental Quality, **the board** shall identify [initially] those naturally occurring
 11 hazardous or toxic metals and minerals [which] **that**, if present in sufficient concentrations at a
 12 surface mining site, subject the permittee to the increased bond or security requirements of ORS
 13 517.950. The metals and minerals shall include, but need not be limited to, arsenic, mercury, lead,
 14 uranium and asbestos.

15 **SECTION 12.** ORS 517.860 is amended to read:

16 517.860. (1) If, from inspections conducted pursuant to ORS 517.850[,] or from any other
 17 source, the State Department of Geology and Mineral Industries determines that the [permittee]
 18 **operator** has not complied with or is not complying with the operating permit, **the** reclamation plan,
 19 **the provisions of** this chapter or the rules of the department, the department may issue **to the**
 20 **operator:**

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

23 (b) [The notice] **A compliance order. The order** may specify a period during which the
 24 [permittee shall commence action to rectify those deficiencies and diligently proceed with such action
 25 until all deficiencies are corrected. The notice may include a date by which all deficiencies must be
 26 corrected. However,] **operator shall rectify any deficiencies.** The department may extend [per-
 27 formance periods for] **the period if** delays occasioned for causes beyond the [permittee's] **operator's**
 28 control **necessitate more time**, but only when the [permittee] **operator** is, in the opinion of the
 29 department, making a reasonable effort to comply **with the order.**

30 (c) **A suspension order. The order may suspend operations until the department deter-**
 31 **mines that the operator will comply with the operating permit, the reclamation plan, the**
 32 **provisions of this chapter and the rules of the department. If the operator fails or refuses**
 33 **to comply with a suspension order, the Attorney General, at the request of the department,**
 34 **shall initiate any necessary legal proceeding to enjoin the surface mining and to provide for**
 35 **completion of the lands affected by such operation.**

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

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

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

44 (c) [A permittee] Fails to maintain an operating permit and pay all fees required under ORS
 45 517.800.

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

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

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

- 21 (a) Remove hazards;
- 22 (b) Protect from drainage problems and pollution;
- 23 (c) Meet local land use requirements for reclamation; and
- 24 (d) Comply with all federal and state laws.

25 (6) The department may *[refuse to issue or renew an operating permit to any person if the de-*
 26 *partment determines that the person has not substantially complied with an operating permit, a recla-*
 27 *mation plan, the provisions of this chapter or rules adopted by the department pursuant to this*
 28 *chapter.]* **delay, for a reasonable time, all or part of any reclamation activities if the depart-**
 29 **ment determines that it is likely that:**

- 30 (a) **Marketable mineral reserves exist at the permitted site; and**
- 31 (b) **A new operator will seek an operating permit for the site and assume all reclamation**
 32 **responsibilities.**

33 **SECTION 13.** ORS 517.880 is amended to read:

34 517.880. (1) When the State Department of Geology and Mineral Industries finds that an operator
 35 is conducting a surface mining operation for which an operating permit is required by ORS 517.702
 36 to 517.989, but has not been issued by the department under the provisions of ORS 517.702 to 517.989
 37 or by the rules adopted under ORS 517.702 to 517.989, the department may order the operator to
 38 suspend such operation until an operating permit has been issued by the department for such surface
 39 mining operation or until such time as the department is assured that such operator will comply
 40 with the requirement to obtain a permit.

41 *[(2) The department may order an operator to suspend operations if the operator has not complied*
 42 *with or is not complying with the operating permit, reclamation plan, this chapter or rules of the de-*
 43 *partment.]*

44 *[(3)]* **(2)** If the operator fails or refuses to comply with a suspension order, the Attorney
 45 General, at the request of the department, shall initiate any necessary legal proceeding to enjoin

1 such surface mining operation and to provide for *[the]* completion *[of the reclamation]* of the lands
2 affected by such operation.

3 **SECTION 14.** ORS 517.990 is amended to read:

4 517.990. (1) *[Any landowner or operator]* **A person** who conducts a surface mining operation¹, *for*
5 *which a permit is required by ORS 517.750 to 517.901,* without a valid operating permit *[therefor]*
6 **as required by ORS 517.750 to 517.901** commits a Class A violation.

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

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

12 (4) Notwithstanding any other provision of the law, *[any landowner or operator]* **a person** who
13 conducts a nonaggregate surface mining operation¹, without a valid operating permit as required
14 by ORS 517.910 to 517.951 shall be punished, upon conviction, by a fine of not more than \$10,000.

15 **(5) A person commits a Class A misdemeanor if the person knowingly or recklessly**
16 **causes substantial harm to human health or the environment while:**

17 **(a) Conducting a surface mining operation for which a permit is required by ORS 517.750**
18 **to 517.901 or 517.905 to 517.951; or**

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

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

24 **(a) Physical injury, as defined in ORS 161.015, or demonstrable, substantial risk of serious**
25 **physical injury, as defined in ORS 161.015, to humans; or**

26 **(b) Substantial damage to wildlife, plants, aquatic and marine life, habitat, livestock, ag-**
27 **ricultural crops or stream buffers.**

28 **SECTION 15.** ORS 517.992 is amended to read:

29 517.992. (1) In addition to any other sanction authorized by law, the governing board of the State
30 Department of Geology and Mineral Industries may impose a civil penalty of not less than \$200 per
31 day and not more than \$50,000 per day for any violation of ORS 517.702 to 517.989 related to a
32 chemical process mine, of any rules adopted under those provisions related to a chemical process
33 mine, of any orders issued under those provisions related to a chemical process mine or of any
34 conditions of a permit issued under those provisions related to a chemical process mine. A penalty
35 may be imposed under this section without regard to whether the violation occurs on property
36 covered by a permit issued under ORS 517.702 to 517.989.

37 (2)(a) In addition to any other sanction authorized by law, and subject to the limitations of
38 paragraph (b) of this subsection, the governing board of the State Department of Geology and Min-
39 eral Industries may impose a civil penalty of not more than \$10,000 per day for any violation of ORS
40 517.702 to **517.740, 517.750 to 517.901 and 517.905 to 517.951** not related to a chemical process mine,
41 of any rules adopted under those provisions not related to a chemical process mine, of any orders
42 issued under those provisions not related to a chemical process mine or of any conditions of a per-
43 mit issued under those provisions not related to a chemical process mine.

44 (b) A penalty may be imposed under this subsection only if a landowner or operator fails to
45 complete erosion stabilization as required by ORS 517.775 or board rules adopted to implement that

1 section, if the operator has failed to comply with *[a final]* **an** order issued under ORS 517.860 or
 2 517.880, if the operation is being conducted in violation of conditions imposed on an operating permit
 3 or reclamation plan pursuant to ORS 517.835 or if the operation is being conducted:

4 (A) Without a permit;

5 (B) Outside the permit boundary; or

6 (C) Outside a permit condition regarding boundaries, setbacks, buffers or the placement of sur-
 7 face mining refuse.

8 *[(3) A civil penalty imposed under this section shall become due and payable 10 days after the or-
 9 der imposing the civil penalty becomes final by operation of law or on appeal. A person against whom
 10 a civil penalty is to be imposed shall be served with a notice in the form provided in ORS 183.415.
 11 Service of the notice shall be accomplished in the manner provided by ORS 183.415.]*

12 *[(4) The person to whom the notice provided for in subsection (3) of this section is addressed shall
 13 have 20 days from the date of service of the notice in which to make written application for a hearing.
 14 If no application for a hearing is made, the agency may make a final order imposing the penalty.]*

15 *[(5) Any person who makes application as provided for in subsection (4) of this section shall be
 16 entitled to a hearing. The hearing shall be conducted as a contested case hearing pursuant to the ap-
 17 plicable provisions of ORS 183.413 to 183.470.]*

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

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

25 **(3) Civil penalties under this section shall be imposed in the manner provided by ORS**
 26 **183.745.**

27 *[(8)] (4) Failure to pay a civil penalty that has become final under this section shall be grounds
 28 for revocation of any permit issued under ORS 517.702 to 517.989 to the person against whom the
 29 penalty has been assessed.*

30 *[(9)] (5) Any civil penalty received by the State Treasurer under this section shall be deposited
 31 in the General Fund to the credit of the Geology and Mineral Industries Account and is contin-
 32 uously appropriated to the State Department of Geology and Mineral Industries to the extent nec-
 33 essary for the administration and enforcement of the laws, rules and orders under which the penalty
 34 was assessed.*

35 *[(10)] (6) A reclamation fund shall be established into which funds not used *[to administer]* **as**
 36 **described in** subsection *[(9)] (5)* of this section shall be deposited. This money shall be used by the
 37 State Department of Geology and Mineral Industries for the purpose of the reclamation of aban-
 38 doned mine and drill sites.*

39 *[(11)] (7) When a single incident violates statutes, rules, board orders or permit conditions ad-
 40 ministered by more than one agency, the department shall coordinate with the other agencies having
 41 civil penalty authority before imposing a civil penalty.*

42 *[(12)] (8) In implementing this section, the department shall adopt rules that provide civil pen-
 43 alties that are commensurate with the severity of violations. *[and allow for a written warning at
 44 least 48 hours prior to imposing a penalty when there is no immediate threat to human health, safety
 45 or the environment. The written warning may be personally served on the person incurring the penalty**

1 or may be sent by registered or certified mail. The warning shall include:]

2 [(a) A reference to the particular sections of the statute, rule, order or permit involved; and]

3 [(b) A short and plain statement of the matters asserted or charged.]

4 [(13)] (9) A civil penalty may be imposed against the board of directors and high managerial
5 agents of a corporation if those persons engage in, authorize, solicit, request, command or knowingly
6 tolerate the conduct for which the penalty is to be imposed. As used in this subsection, “agent” and
7 “high managerial agent” have [those] **the** meanings given **those terms** in ORS 161.170.

8 **SECTION 16.** ORS 517.988 is amended to read:

9 517.988. (1) The State Department of Fish and Wildlife shall develop conditions for the pro-
10 tection of fish and wildlife resources that shall be included in any permit issued by the State De-
11 partment of Geology and Mineral Industries under the process established under ORS 517.952 to
12 517.989.

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

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

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

24 537.625. (1) If, after the contested case hearing or, if a hearing is not held, after the close of the
25 period allowed to file a protest, the Water Resources Director determines that the proposed use does
26 not ensure the preservation of the public welfare, safety and health as described in ORS 537.525, the
27 director shall issue a final order rejecting the application or modifying the proposed final order as
28 necessary to ensure the preservation of the public welfare, safety and health as described in ORS
29 537.525. If, after the contested case hearing or, if a hearing is not held, after the close of the period
30 allowed to file a protest, the director determines that the proposed use would ensure the preserva-
31 tion of the public welfare, safety and health as described in ORS 537.525, the director shall issue a
32 final order approving the application or otherwise modifying the proposed final order. A final order
33 may set forth any of the provisions or restrictions to be included in the permit concerning the use,
34 control and management of the water to be appropriated for the project.

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

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

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

44 (3) If the presumption of public welfare, safety and health under ORS 537.621 (2) is overcome,
45 then before issuing a final order, the director or the Water Resources Commission, if applicable,

1 shall make the final determination of whether the proposed use or the proposed use as modified in
 2 the proposed final order would preserve the public welfare, safety and health as described in ORS
 3 537.525 by considering:

4 (a) The conservation of the highest use of the water for all purposes, including irrigation, do-
 5 mestic use, municipal water supply, power development, public recreation, protection of commercial
 6 and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic at-
 7 traction or any other beneficial use to which the water may be applied for which it may have a
 8 special value to the public.

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

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

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

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

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

17 (g) The state water resources policy.

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

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

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

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

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

32 (c) The permit shall include a condition that additional conditions may be added to the use of
 33 water when a water right certificate is issued, or when the use of water is changed pursuant to ORS
 34 540.520 and 540.530 to use for a chemical process mine operation.

35 **SECTION 18. ORS 517.905 is added to and made a part of ORS 517.910 to 517.951.**

36 **SECTION 19. ORS 517.951 is added to and made a part of ORS 517.910 to 517.951.**

37 **SECTION 20.** ORS 517.755 is amended to read:

38 517.755. Notwithstanding the yard and acre limitations of ORS 517.750 [(14)] (23), as soon as any
 39 mining operation begun after July 1, 1975, affects more than five acres of land the provisions of ORS
 40 517.702 to 517.989 apply to the mining operation.

41 **SECTION 21. ORS 517.755 is added to and made a part of ORS 517.702 to 517.755.**

42 **SECTION 22.** ORS 517.760 is amended to read:

43 517.760. (1) The Legislative Assembly finds and declares that:

44 (a) It is the policy of the State of Oregon to recognize the important and essential contribution
 45 that the extraction of minerals makes to the economic well-being of the state and the nation and to

1 prevent unacceptable adverse impacts to environmental, scenic, recreational, social, archaeological
2 and historic resources of the state that may result from mining operations, while permitting oper-
3 ations that comply with the provisions set forth in ORS 517.702 to **517.740, 517.750 to 517.901 and**
4 **517.905 to 517.951**.

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

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

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

14 (e) Reclamation of surface-mined lands as provided by ORS 517.702 to **517.740, 517.750 to 517.901**
15 **and 517.905 to 517.951** will allow the mining of valuable minerals in a manner designed for the
16 protection and subsequent beneficial use of the mined and reclaimed lands.

17 (2) The Legislative Assembly, therefore, declares that the purposes of ORS 517.702 to **517.740,**
18 **517.750 to 517.901 and 517.905 to 517.951** are:

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

22 (b) To provide for cooperation between private and governmental entities in carrying out the
23 purposes of ORS 517.702 to **517.740, 517.750 to 517.901 and 517.905 to 517.951** and reclamation of
24 abandoned mined lands that may pose a hazard to public health, safety or the environment.

25 **SECTION 23.** ORS 517.820 is amended to read:

26 517.820. (1) Upon good cause shown, the State Department of Geology and Mineral Industries
27 may grant reasonable extensions of time for the completion by the landowner or operator and the
28 submission to the department of a proposed reclamation plan required by ORS 517.790 [(2)]. Each
29 reclamation plan submitted to the department must provide that all reclamation activities shall be
30 completed within three years after the termination of mineral extraction from the surface mining
31 operation conducted within each separate area for which an operating permit is requested. Each
32 such reclamation plan shall be approved by the department if it adequately provides for the recla-
33 mation of surface-mined lands.

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

36 **SECTION 24.** ORS 517.850 is amended to read:

37 517.850. At such reasonable times as the State Department of Geology and Mineral Industries
38 may elect, the department, after reasonable advance notice has been given to the permittee, may
39 cause the [*permit area*] **permitted site** to be inspected to determine if the permittee has complied
40 with the operating permit, reclamation plan, this chapter and the rules of the department.

41 **SECTION 25.** ORS 517.910 is amended to read:

42 517.910. For the purposes of ORS 517.910 to 517.989:

43 (1) Notwithstanding ORS 517.750 [(11)] **(20)**, "reclamation" means the employment in a surface
44 mining operation of procedures reasonably designed to minimize as much as practicable the dis-
45 ruption from the surface mining operation or surface mining processing operation, including cyanide

1 leaching or any other chemical leaching processing at a processing site removed from the mining
 2 site and to provide for the rehabilitation of any such surface resources through the use of plant
 3 cover, soil stability techniques, and through the use of measures to protect the surface and subsur-
 4 face water resources, including but not limited to domestic water use and agricultural water use,
 5 and other measures appropriate to the subsequent beneficial use of any land or water resource af-
 6 fected by a surface mining or processing operation.

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

10 **SECTION 26.** ORS 517.950 is amended to read:

11 517.950. (1) Notwithstanding ORS 517.810, for the purposes of ORS 517.905 to 517.951 the bond
 12 or security deposit required [*shall*] **may** not exceed \$10,000 per acre of land to be surface mined
 13 under the terms of the operating permit.

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

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

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

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

27 **SECTION 27. ORS 517.740, 517.785 and 517.952 are repealed.**

28