

**DIVISION 140**  
**DEPARTMENT OF STATE LANDS**

**Rules Governing the Placement of Ocean Energy Conversion Devices On, In or  
Over State-Owned Land Within the Territorial Sea**

**141-140-0010**

**Applicability and Purpose**

(1) These rules apply to:

- (a) Ocean energy monitoring equipment and ocean energy facilities placed on, in or over state-owned submerged and submersible land in the Territorial Sea for a research project, demonstration project or commercial operation; and
- (b) Other equipment and structures that are necessary for ocean energy monitoring equipment or an ocean energy conversion device.

(2) The purpose of these rules is to describe the requirements for, and process of issuing proprietary authorizations for the construction, installation, operation, maintenance and removal of ocean energy monitoring equipment and ocean energy facilities located on, in or over state-owned submerged and submersible land in the Territorial Sea.

(3) These rules do not apply to docks, infrastructure, facilities or structures on, in or over state-owned submerged and submersible land in the Territorial Sea that are not related or supporting structures. Proprietary authorizations for such docks, infrastructure, facilities or structures which are not defined as related or supporting structures are governed by the provisions of OAR 141-082 (Rules Governing the Management of, and Issuing of Leases, Authorizations, Temporary Use Permits and Registrations for Structures on, and Uses of State-Owned Submerged and Submersible Land).

(4) Prior to constructing, installing, operating, maintaining or removing ocean energy monitoring equipment or an ocean energy facility on, in or over state-owned submerged and submersible land in the Territorial Sea a person shall obtain a temporary use authorization or an ocean energy facility lease from the Department.

(5) The issuance of a temporary use authorization or an ocean energy facility lease provides the holder with the State of Oregon's proprietary authorization for the ocean energy monitoring equipment or ocean energy facility to occupy the authorized area specified in the temporary use authorization or lease. Regulatory approvals for the construction, installation, operation, maintenance or removal of the ocean energy monitoring equipment or ocean energy facility also may be required.

(6) A temporary use authorization and an ocean energy facility lease issued by the Department shall be conditional and shall not authorize the use of the authorized area until the holder has received all other authorizations required by the Department (such as a Removal-Fill Authorization under ORS 196.800 to 196.990) and other local, state, and federal entities (such as a preliminary permit or similar authorization from the Federal Energy Regulatory Commission) for the installation, construction, operation, maintenance or removal of ocean energy monitoring equipment or the ocean energy facility.

(7) Except for educational/research institutions conducting research projects, the holder of a temporary use authorization to conduct a demonstration project shall be given a first right to apply for an ocean energy facility lease for the authorized area specified in the

temporary use authorization. If such first right to apply is not exercised within 30 calendar days of the expiration date of the temporary use authorization, the first right to apply shall expire.

Stat. Auth.: ORS 183, ORS 273

Stats. Implemented: ORS 591

**141-140-0020**

**Definitions**

(1) “Applicant” is any person applying for a temporary use authorization or ocean energy facility lease.

(2) “Asset Management Plan” is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short and long-term management by the Department of State Lands (Department) of the Common School Fund’s real estate assets.

(3) “Authorized Area” is the area of state-owned land on, in or over which the Department will allow a person to construct, operate, maintain or remove ocean energy monitoring equipment or an ocean energy facility under the terms and conditions of a temporary use authorization or ocean energy facility lease. Included within the authorized area are:

(a) Any corridors on state-owned submerged and submersible land within the Territorial Sea for a related or supporting structure, including but not limited to electricity transmission or other cables necessary to connect the ocean energy monitoring equipment or ocean energy facility to land-based facilities; and

(b) Any required exclusionary or safety zones.

(4) “Closure” means the permanent cessation of operation of all or part of a research project or ocean energy facility and the subsequent removal of ocean energy conversion devices and ocean energy monitoring equipment authorized by a temporary use authorization or an ocean energy facility lease granted by the Department.

(5) “Commercial Operation” is when an ocean energy facility is:

(a) Operated for, or associated with any monetary consideration or gain (as contrasted to being operated as a research project or a demonstration project);

(b) Connected to the regional power grid and used to meet local or regional demand for electricity;

(c) Used to meet all or a part of the electricity demand by a person who may otherwise have to purchase the electricity from another source; or

(d) Operated as a commercial operation under a license or similar authorization granted by the Federal Energy Regulatory Commission.

(6) “Corrective Action” is an activity performed by the holder of a temporary use authorization or an ocean energy facility lease, or their agent, to comply with the terms and conditions of their temporary use authorization or ocean energy facility lease, or to correct a violation or threatened violation, or meet a requirement of applicable local, state or federal law.

(7) “Demonstration Project” is a limited duration, non-commercial activity authorized under a temporary use authorization granted by the Department to a person for the construction, installation, operation, or removal of an ocean energy facility on, in or over state-owned submerged and submersible land in the Territorial Sea to test the economic and/or technological viability of establishing a commercial operation. A demonstration

project may be temporarily connected to the regional power grid for testing purposes without being a commercial operation.

(8) “Department” means the Department of State Lands.

(9) “Educational/Research Institution” is any accredited public or private university or college, or non-profit research organization.

(10) “Director” means the Director of the Department of State Lands or designee.

(11) “Gross Revenue” is defined as all revenues earned, whether or not received, relating to the power generated by the holder of a temporary use authorization or an ocean energy facility lease.

(12) “Lessee” refers to a person holding an ocean energy facility lease.

(13) “Non-Commercial” means a use that does not result in or is not associated with any monetary gain.

(14) “Ocean Energy Conversion Device” is the equipment or structure that converts the kinetic or potential energy from one or more of the following sources into electrical energy: waves, currents, tides, or the temperature differences found at different ocean depths.

(15) “Ocean Energy Facility” means an ocean energy conversion device and any related or supporting structure.

(16) “Ocean Energy Facility Lease” is a written authorization issued by the Department to a person to occupy an authorized area for one or more ocean energy facilities comprising a commercial operation.

(17) “Ocean Energy Monitoring Equipment” means the test buoys, floats, platforms, and/or other similar devices and any related or supporting structures for such equipment that are:

(a) Placed on, in or over the state-owned submerged and submersible land in the Territorial Sea; and

(b) Used in a research project or demonstration project to collect data including, but not limited to the heights, contours and frequency of waves as well as environmental conditions.

(18) “Ocean Users” include, but are not limited to persons using the Territorial Sea for commerce, navigation, fishing or recreation as well as for the conservation of resources and the provision of ecological services.

(19) “Person” includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.

(20) “Related or Supporting Structure” includes, but is not limited to any buoy, anchor, energy collector, cable, control or transmission line, energy collector or hub, acoustic harassment and avoidance devices, or other equipment or structure that is:

(a) Placed on, in or over state-owned submerged and submersible land in the Territorial Sea; and

(b) Required for the installation, construction, operation, maintenance or removal of ocean energy monitoring equipment or an ocean energy conversion device.

(21) “Research Project” is a limited duration, non-commercial activity authorized under a temporary use authorization granted by the Department to an educational/research institution for the placement of ocean energy monitoring equipment and/or an ocean energy facility on, in or over state-owned submerged and submersible land in the

Territorial Sea. The purpose of a research project is to obtain scientific data relating to ocean wave energy and/or to test the technology used in, or functionality of an experimental ocean energy conversion device.

(22) "Statewide Planning Goal 19" or "Goal 19" is the Statewide Planning Goal of the Oregon Land Conservation and Development Commission to conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.

(23) "Submerged Land" means land lying below the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(24) "Submersible Land" means land lying between the line of ordinary high water and the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(25) "Temporary Use Authorization" is a written authorization issued by the Department to a person to use an authorized area for ocean energy monitoring equipment or an ocean energy facility comprising a research project or demonstration project.

(26) "Territorial Sea" has the same meaning as provided in ORS 196.405(6). It includes the waters and seabed extending three geographical miles seaward from the line of mean low water to the extent of state jurisdiction.

(27) "Territorial Sea Plan" has the same meaning as provided in ORS 196.405(6). It is the plan for managing Oregon's Territorial Sea and ocean shore as required under ORS 196.405 through 196.580.

Stat. Auth.: ORS 183, ORS 273

Stats. Implemented: ORS 591

### **141-140-0030 Policies**

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Department, manages all land (Trust and Non-Trust) under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."

(2) The Department will manage temporary use authorizations and ocean energy facility leases with the goal of ensuring the collective rights of the public to fully use and enjoy the Territorial Sea for commerce, navigation, fishing, recreation, and other related public purposes consistent with applicable federal and state laws including but not limited to ORS 273.051.

(3) The Department will follow the guiding principles and resource-specific management prescriptions contained in its Asset Management Plan, and consider the comments received from various local, state and federal agencies, other interested persons including, but not limited to tribal governments, port districts, business and community organizations, and fisher, recreationist and conservation groups, and the holders of Department-issued authorizations within or immediately adjacent to the requested area when determining whether to authorize or condition a temporary use authorization or ocean energy facility lease.

(4) The Department shall not grant a temporary use authorization or an ocean energy facility lease if it determines that the proposed use or development:

(a) Does not meet the requirements of Statewide Planning Goal 19 and the Oregon Ocean Resources Management Plan and the Territorial Sea Plan; or

(b) Substantively impairs lawful uses or developments already occurring within the proposed authorized area. This determination will be made by the Department after consulting with holders of leases, authorizations, permits and easements in, and immediately adjacent to the requested area, and other interested persons.

Stat. Auth.: ORS 183, ORS 273

Stats. Implemented: ORS 591

#### **141-140-0040**

##### **Pre-Application Requirements**

Before submitting an application to the Department, a person wanting to install, construct, operate, maintain or remove ocean energy monitoring equipment or an ocean energy conversion facility for a research project, demonstration project or commercial operation shall meet with:

- (a) Department staff to discuss the proposed project; and
- (b) Affected ocean users and other government agencies having jurisdiction in the Territorial Sea to discuss possible use conflicts, impacts on habitat, and other issues related to the proposed use of an authorized area for the installation, construction, operation, maintenance or removal of ocean energy monitoring equipment or an ocean energy facility.

Stat. Auth.: ORS 183, ORS 273

Stats. Implemented: ORS 591

#### **141-140-0050**

##### **Application Requirements**

(1) Any person wanting to install, construct, operate, maintain or remove ocean energy monitoring equipment or an ocean energy facility for a research project, demonstration project or commercial operation on, in or over state-owned submerged and submersible land in the Territorial Sea shall:

- (a) Comply with the provisions of OAR 141-140-0040;
- (b) Apply in writing to the Department for either a temporary use authorization or an ocean energy facility lease using a form provided by the Department; and
- (c) Submit a non-refundable application processing fee of \$750 payable to the Department to cover the administrative costs of processing the application and issuing the authorization.

(2) Notwithstanding the provisions of OAR 141-140-0050(1)(c), the non-refundable application processing fee for a temporary use authorization for an educational/research institution to install, construct, operate, maintain or remove ocean energy monitoring equipment or an ocean energy facility is \$250 if the equipment or facility is:

- (a) Operated by the education/research institution; and
- (b) Used exclusively for a research project and is/are not part of a commercial operation.

(3) An applicant shall include with their application an analysis of, and any relevant supporting documents or studies that demonstrate how the use requested for authorization by the proposed temporary use authorization or energy facility lease will comply with the provisions of OAR 141-140-0030, the requirements of Statewide Planning Goal 19, the Oregon Ocean Resources Management Plan, and the Territorial Sea Plan.

(4) Any person holding a temporary use authorization for a research project or demonstration project is required to submit a new application and the required application processing fee to the Department pursuant to the provisions of these rules if they want to:

- (a) Apply for a new temporary use authorization;
  - (b) Apply for an ocean energy facility lease to install, construct, operate, maintain or remove a commercial operation; or
  - (c) Substantially change the scope of a research or demonstration project that has been previously authorized by the Department.
- (5) Unless otherwise allowed by the Director, a fully completed application for:
- (a) A temporary use authorization for a demonstration project, or an ocean energy facility lease for a commercial project shall be submitted to the Department at least 180 calendar days prior to the proposed installation, construction, operation, maintenance or removal of the ocean energy monitoring equipment or ocean energy facility.
  - (b) A temporary use authorization for a research project shall be submitted to the Department at least 90 calendar days prior to the proposed installation, construction, operation, maintenance or removal of the ocean energy monitoring equipment or ocean energy facility.

Stat. Auth.: ORS 183, ORS 273

Stats. Implemented: ORS 591

#### **141-140-0060**

##### **Application Review Process**

- (1) Upon receipt of an application for a temporary use authorization or ocean energy facility lease, the Department will determine if it is complete. Applications determined by the Department to be incomplete may be returned to the applicant with an explanation of the reason(s) for rejection.
- (2) If a rejected application is resubmitted within 120 calendar days from the date that the Department returned it to the applicant (as indicated by the date of the postmark) with all deficiencies noted by the Department corrected, no additional application fee will be assessed.
- (3) If more than one application for an authorized area is received by the Department for the same or conflicting uses, the Department reserves the right to determine which proposed use(s) best fulfills the policies specified in OAR 141-140-0030, and accept and proceed with that application and deny the other(s).
- (4) The Department may, at its discretion, deny an application for a temporary use authorization or ocean energy facility lease if the applicant's financial status or past business or management practices indicate that the applicant may not:
  - (a) Fully meet the terms and conditions of the authorization or lease; or
  - (b) Use the authorized area applied for in a way that meets the provisions of OAR 141-140-0030.
- (5) Upon acceptance by the Department as complete, the application will be circulated to various local, state and federal agencies, other interested persons including, but not limited to tribal governments, port districts, business and community organizations, and fisher, recreationist and conservation groups, and the holders of Department-issued authorizations within or immediately adjacent to the requested area for review and comment. As part of this review, the Department will specifically request comments concerning:
  - (a) Conformance of the proposed use with:
    - (A) The policies described in OAR 141-140-0030;
    - (B) Other local, state, and federal laws and rules;

- (C) The requirements of Statewide Planning Goal 19, the Oregon Ocean Resources Management Plan, and the Territorial Sea Plan; and
- (b) Potential conflicts between the proposed use and existing uses that occur within the requested authorized area.
- (6) After receipt of agency and public comment concerning the application, the Department will advise the applicant in writing:
  - (a) If changes in the requested area are necessary to respond to agency or public comment; and
  - (b) If additional information is required from the applicant.
- (7) The Department will not grant a temporary use authorization or an ocean energy facility lease until it has received:
  - (a) All fees and compensation specified in these rules;
  - (b) Evidence of financial assurance required for the cost of closure and post-closure maintenance of the ocean energy monitoring equipment and ocean energy facility as provided in OAR 141-140-0080(10) through (13), and the cost of any action(s) required to be taken at the site; and
  - (c) Evidence of any required insurance and/or surety bond under OAR 141-140-0090.
- (8) No authorization will be given until the requirements of OAR 141-140-0080(4) of these rules have been met.
- (9) Should the Department, in consultation with the applicant and other interested parties, determine that it is necessary to conduct environmental or other studies necessary to assist in evaluating the project's compliance with the requirements of Statewide Planning Goal 19, the Oregon Ocean Resources Management Plan, and the Territorial Sea Plan, the applicant shall be directly responsible for retaining and paying for the consultants and completing the required research.

Stat. Auth.: ORS 183, ORS 273

Stats. Implemented: ORS 591

#### **141-140-0070**

##### **Compensation**

- (1) The holder of a temporary use authorization to conduct a research project or demonstration project shall annually remit to the Department a payment in the greater amount of \$500 or \$5.00 per acre of land within the authorized area. This annual payment shall be due to the Department until such time that the:
  - (a) Research project or demonstration project is completed and the ocean energy monitoring equipment and ocean energy facility is removed from the authorized area pursuant to the terms and conditions of the temporary use authorization and these rules;
  - (b) Temporary use authorization authorizing the research project or demonstration project expires or is terminated by either the holder of the authorization or the Department and the ocean energy monitoring equipment and/or the ocean energy facility is removed pursuant to the terms and conditions of the temporary use authorization and these rules;or
  - (c) Placement of an ocean energy facility for commercial operation is authorized by an ocean energy facility lease issued by the Department.
- (2) The amount of compensation owed to the Department for an ocean energy facility lease shall be established by the Director.

- (3) To determine the amount of compensation owed for an ocean energy facility lease, the Director shall consider, among other factors, the:
- (a) Provisions of OAR 141-140-0030(1);
  - (b) Annual compensation received by other persons for the placement of ocean energy facilities on, in or over land under their jurisdiction; and
  - (c) The amount of electricity generated by the ocean energy facility, the value of the electricity produced, and gross revenue resulting from that generation.
- (4) Compensation is not owed to the Department for electricity generated when an ocean energy facility is connected to the regional power grid for testing purposes during a demonstration project if the holder of the temporary use authorization does not receive any revenue from the sale of that electricity. However, if the holder of the temporary use authorization does receive revenue from the sale of that electricity, the electricity produced shall be subject to payment of compensation at a rate to be determined by the Director.
- (5) Data concerning the amount of generation and its value will be recorded and reported by the holder of a temporary use authorization or lessee to the Department on a basis to be determined by the Department and contained in the authorization or lease.
- (6) In addition to the compensation required under OAR 141-140-0070(1), (2) and (4), the holder of a temporary use authorization or lessee is required to pay the compensation due for any uses of state-owned land that are not within the area authorized by the temporary use authorization or ocean energy facility lease.

Stat. Auth.: ORS 183, ORS 273

Stats. Implemented: ORS 591

#### **141-140-0080**

##### **General Terms and Conditions**

- (1) Except for temporary use authorizations granted to an educational/research institution for a research project, the term of a temporary use authorization shall be determined by the Director based on the policies in OAR 141-140-0030 and the nature of the proposed project.
- (2) The term of a temporary use authorization granted to an educational/research institution for a research project shall not be more than five calendar years.
- (3) Temporary use authorizations and ocean energy facility leases shall be offered by the Department for an authorized area that is the minimum amount of area (including whatever exclusionary or safety zones may be necessary) determined by the Department to be required for the proposed ocean energy monitoring equipment or proposed ocean energy facility.
- (4) A temporary use authorization and an ocean energy facility lease shall be on a form supplied by the Department that has been approved for legal sufficiency by the Department of Justice pursuant to ORS 291.045 to 291.0476 (Public Contract Approval).
- (5) The holder of a temporary use authorization or lessee shall:
- (a) Take all reasonable precautions to protect persons, property and equipment from harm;
  - (b) Dispose of all waste in a proper manner and shall not permit debris, garbage or other refuse to either accumulate within the authorized area or be discharged into any waters of the state;



(c) Conduct all operations within the authorized area in a manner that conserves fish and wildlife habitat and protects marine water and air quality pursuant to the requirements of Statewide Planning Goal 19.

(d) Maintain all buildings, machinery, equipment and similar structures and improvements located within the authorized area in a good state of repair.

(e) Remove ocean energy monitoring equipment, ocean energy facilities and any other material, substance or related or supporting structure from the authorized area as directed by the Department within a period of time to be established by the Department as a condition of the authorization. If the holder of the temporary use authorization or lessee fails or refuses to remove such equipment, facility or other material, substance or related or supporting structure, the Department may remove them or cause them to be removed, and the holder of the authorization or lessee shall be liable for all costs incurred by the State of Oregon for such removal.

(6) The holder of a temporary use authorization or lessee may request the Department to close all or portions of the authorized area to the public, or to cooperate with other state and federal agencies to accomplish such a closure. However, the issuance of a temporary use authorization or an ocean energy facility lease does not, by itself, grant the holder or lessee the right to use the authorized area to the exclusion of other public uses.

(7) The holder of a temporary use authorization or lessee shall not change the number or types of ocean energy conversion devices or make any use of the authorized area that is not specifically authorized by a prior written authorization issued by the Department.

(8) The Department and its authorized representative(s) shall have the right to enter into and upon the authorized area at any time for any purpose.

(9) The Department shall require that an applicant for a temporary use authorization or an ocean energy facility lease present evidence to the Department prior to commencing the use that they have obtained:

(a) All authorizations required by applicable local, state and federal entities to undertake the proposed use;

(b) Any authorization that may be required to obtain access to, or cross land belonging to a person other than that managed by the Department to undertake the use;

(c) A surety bond and/or comprehensive or commercial general liability insurance as required by the Department or Oregon state law; and

(d) Financial assurance as required in OAR 141-140-0080(10).

(10) The holder of a temporary use authorization or lessee must maintain cost estimates of the amount of financial assurance that is necessary, and demonstrate to the Department evidence that the holder or lessee has in effect the amount and form of required financial assurance, for:

(a) The costs of closure and post-closure maintenance, excluding the removal of anchors that lie beneath submerged lands in the Territorial Sea, of ocean energy monitoring equipment and ocean energy facilities; and

(b) Any corrective action required by the Department or any other local, state or federal government agency with jurisdiction over the site to be taken at the site of the ocean energy monitoring equipment or ocean energy facility.

(11) Such cost estimates and evidence of the required financial assurance must be provided in writing to the Department:

(a) Prior to the granting of the temporary use authorization or ocean energy facility lease; and

(b) On an annual basis to be received by the Department by January 31 of every calendar year following the granting of the temporary use authorization or ocean energy facility lease by the Department or, if necessary, on a more frequent basis as required by the Department.

(12) The required financial assurance required by OAR 141-140-0080(10) may be satisfied by any one, or a combination of the following:

(a) Insurance;

(b) Establishment of a trust fund;

(c) Surety bond;

(d) Letter of credit; or

(e) Qualification as a self-insurer.

(13) The Department:

(a) Shall determine the amount of, and terms of financial assurance required based on the cost estimates of the holder or lessee, and consider the nature and location of the use in relation to other uses and resources, any requirements of law, and any other unique factors of the proposed use or holder determined to be relevant by the Department; and

(b) May consult with the Risk Management Division of the Oregon Department of Administrative Services in determining the amount of, and terms of financial assurance required.

(14) The Department has the right to audit the records of a holder of a temporary use authorization or lessee to ensure compliance with these rules and the terms and conditions of an authorization granted under the provisions of these rules. Additionally, holders of temporary use authorizations or lessees shall make their records available to Department staff or agents for such audit following receipt of a written request by the Department.

(15) The holder of a temporary use authorization or lessee shall indemnify the State of Oregon and the Department of State Lands against any claim, liability or costs arising from or related to an action by the holder of the authorization or lease, or failure of the holder to act with respect to the ocean energy monitoring equipment or ocean energy facility. Such indemnification shall specifically include any release of a hazardous substance on or from the ocean energy monitoring equipment or an ocean energy facility or physical damage caused by any part of the ocean energy monitoring equipment or ocean energy facility to persons or coastal structures.

Stat. Auth.: ORS 183, ORS 273

Stats. Implemented: ORS 591

#### **141-140-0090**

#### **Insurance and Bond**

(1) The Department may require the holder of a temporary use authorization or lessees to obtain liability insurance in specified amounts if the use, in the opinion of the Department, constitutes a risk to other uses of the ocean or the ocean shore, to public safety or to the State of Oregon, or if required by Oregon state law. The Department may require that the State of Oregon be named as an additional insured party in any such policy.

(2) The Department:

(a) Shall determine the coverages and amounts of the insurance the holder of a temporary use authorization and lessees must obtain based on the nature and location of the use, any requirements of law, and any other unique factors of the proposed use determined to be relevant by the Department, and

(b) May consult with the Risk Management Division of the Oregon Department of Administrative Services to determine the amount of insurance coverage required.

(3) The Department may, at its discretion, require that the holder of a temporary use authorization or lessee obtain a surety or bid bond in an amount specified by the Department (or a cash deposit which has the equivalent face or cash-in value as the surety bond and which names the State of Oregon as co-owner) or as required by Oregon state law to secure performance of all terms and conditions of a temporary use authorization or an ocean energy facility lease.

Stat. Auth.: ORS 183, ORS 273

Stats. Implemented: ORS 591

#### **141-140-0100**

##### **Termination of a Temporary Use Authorization or Energy Facility Lease**

(1) If the holder of a temporary use authorization or lessee fails to comply with these rules or the terms and conditions of a temporary use authorization or an ocean energy facility lease, or violates other laws covering the use of their authorized area, the Department shall notify the holder of the temporary use authorization or lessee in writing of the default and demand correction within a specified time frame.

(2) If the holder of a temporary use authorization or lessee fails to correct the default within the time frame specified, the Department may:

(a) Modify or terminate the temporary use authorization or an ocean energy facility lease; and/or

(b) Request the Attorney General to take or cause to be taken appropriate legal action against the lessee or holder of the temporary use authorization.

Stat. Auth.: ORS 183, ORS 273

Stats. Implemented: ORS 591

#### **141-140-0110**

##### **Assignment**

(1) A temporary use authorization is not assignable.

(2) An ocean energy facility lease in good standing is assignable with prior written consent of the Department.

(3) To assign an ocean energy facility lease, the lessee shall submit to the Department a:

(a) Notice of proposed assignment on a form provided by the Department at least 60 calendar days prior to the date that the assignment is to occur; and

(b) Non-refundable assignment processing fee of \$750 payable to the Department.

(4) The Department may request additional information concerning the proposed assignment.

(5) The Department may condition the assignment on the assignor retaining responsibility for some or all of the terms and conditions in the lease or guaranteeing the performance of the assignee.

(6) An assignment does not take effect until the Department authorizes it in writing.

Stat. Auth.: ORS 183, ORS 273

Stats. Implemented: ORS 591

## **141-140-0120**

### **Reconsideration of Decision**

An applicant for a temporary use authorization or ocean energy facility lease, or any other person adversely affected by the issuance or denial of temporary use authorization or an ocean energy facility lease may request that the Director or the State Land Board, depending on which entity made the decision, reconsider the decision. A request for reconsideration must be filed in compliance with ORS 183.482 or 183.484.

Stat. Auth.: ORS 183, ORS 273

Stats. Implemented: ORS 591

## **141-140-0130**

### **Enforcement Actions; Civil Penalties; and Other Remedies**

(1) The Department may:

(a) Conduct field inspections to determine if uses of, and developments on, in or over state-owned submerged and submersible land are authorized by, or conform with the terms and conditions of a temporary use authorization or an ocean energy facility lease and, if not,

(b) Pursue whatever remedies are available under law to ensure that any use that is in violation of the terms or conditions of a temporary use authorization, an ocean energy facility lease, or other Department issued authorizations is either brought into compliance with the requirements of these rules or other applicable law, or removed.

(2) In addition to any other penalty or sanction provided by law, the Director may assess a civil penalty of not more than \$1,000 per day of violation for the following:

(a) Violations of any provision of OAR 141-040 or ORS 273 or 274 in connection with ocean energy monitoring equipment or an ocean energy facility; or

(b) Violations of any term or condition of a written authorization granted by the Department under ORS 273 and 274.

(3) The Director shall give written notice of a civil penalty by registered or certified mail to the person incurring the penalty. The notice shall include, but not be limited to the following:

(a) The particular section of the statute, rule, or written authorization involved;

(b) A short and clear statement of the matter asserted or charged;

(c) A statement of the party's right to request a hearing within 20 calendar days of the notice;

(d) The time allowed to correct a violation; and

(e) A statement of the amount of civil penalty which may be assessed and terms and conditions of payment if the violation is not corrected within the time period stated.

(4) The person incurring the penalty may request a hearing within 20 calendar days of the date of service of the notice provided in OAR 141-140-0130(3). Such a request must be in writing. If no written request for a hearing is made within the time allowed, or if the party requesting a hearing fails to appear, the Director may make a final order imposing the penalty.

(5) In imposing a penalty under OAR 141-140-0130 of these rules, the Director shall consider the following factors as specified in ORS 274.994:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

- (b) Any prior violations of statutes, rules, orders and authorizations pertaining to submerged and submersible land;
  - (c) The impact of the violation on public trust uses of commerce, navigation, fishing and recreation; and
  - (d) Any other factors determined by the Director to be relevant and consistent with the policy of these rules.
- (6) Pursuant to ORS 183.090(2), a civil penalty imposed under OAR 141-140-0130 shall become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.
- (7) If a civil penalty is not paid as required by OAR 141-140-0130, interest shall accrue at the maximum rate allowed by law from the date first due.

Stat. Auth.: ORS 183, ORS 273

Stats. Implemented: ORS 591