
ENGROSSED SUBSTITUTE HOUSE BILL 2521

State of Washington

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1994 Regular Session

By House Committee on Natural Resources & Parks (originally sponsored by Representatives Dunshee, Pruitt, J. Kohl, Valle, Wolfe, L. Johnson, Ogden, Romero, Rust, Linville and Patterson)

Read first time 02/04/94.

1 AN ACT Relating to metals mining and milling operations; amending
2 RCW 90.03.350, 90.48.090, 78.44.161, 78.44.087, and 78.44.131; adding
3 a new section to chapter 70.94 RCW; adding a new section to chapter
4 70.105 RCW; adding a new chapter to Title 78 RCW; creating new
5 sections; prescribing penalties; providing an effective date; and
6 declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** It is in the best interests of the citizens
9 of the state of Washington to insure the highest degree of
10 environmental protection while allowing the proper development and use
11 of its natural resources, including its mineral resources. Metals
12 mining can have significant positive and adverse impacts on the state
13 and on local communities. The purpose of this chapter is to assure
14 that metals mineral mining or milling operations are designed,
15 constructed, and operated in a manner that promotes both economic
16 opportunities and environmental and public health safeguards for the
17 citizens of the state. It is the intent of the legislature to create
18 a regulatory framework which yields, to the greatest extent possible,
19 a metals mining industry that is compatible with these policies.

1 NEW SECTION. **Sec. 2.** The definitions set forth in this section
2 apply throughout this chapter.

3 (1) "Metals mining and milling operation" means a mining operation
4 extracting from the earth precious or base metal ore and processing the
5 ore by treatment or concentration in a milling facility. It also
6 refers to an expansion of an existing operation or any new metals
7 mining operation if the expansion or new mining operation is likely to
8 result in a significant, adverse environmental impact pursuant to the
9 provisions of chapter 43.21C RCW. The extraction of dolomite, sand,
10 gravel, and aggregate and the smelting of aluminum are not metals
11 mining and milling operations regulated under this chapter.

12 (2) "Heap leach extraction process" means the process of extracting
13 base or precious metal ore by percolating solutions through ore in an
14 open system and includes reprocessing of previously milled ore. The
15 heap leach extraction process does not include leaching in a vat or
16 tank.

17 (3) "In situ extraction" means the process of dissolving base or
18 precious metals from their natural place in the geological setting and
19 retrieving the solutions from which metals can be recovered.

20 (4) "Regulated substances" means any materials regulated under a
21 waste discharge permit pursuant to the requirements of chapter 90.48
22 RCW and/or a permit issued pursuant to chapter 70.94 RCW.

23 (5) "To mitigate" means: (a) To avoid the adverse impact
24 altogether by not taking a certain action or parts of an action; (b) to
25 minimize adverse impacts by limiting the degree or magnitude of the
26 action and its implementation, by using appropriate technology or by
27 taking affirmative steps to avoid or reduce impacts; (c) to rectify
28 adverse impacts by repairing, rehabilitating, or restoring the affected
29 environment; (d) to reduce or eliminate adverse impacts over time by
30 preservation and maintenance operations during the life of the action;
31 (e) to compensate for the impact by replacing, enhancing, or providing
32 substitute resources or environments; or (f) to monitor the adverse
33 impact and take appropriate corrective measures.

34 NEW SECTION. **Sec. 3.** Metals mining and milling operations are
35 subject to the requirements of this chapter in addition to the
36 requirements established in other statutes and rules.

1 NEW SECTION. **Sec. 4.** The department of ecology shall require each
2 applicant submitting a checklist pursuant to chapter 43.21C RCW for a
3 metals mining and milling operation to disclose the ownership and each
4 controlling interest in the proposed operation. The applicant shall
5 also disclose all other mining operations within the United States
6 which the applicant operates or in which the applicant has an ownership
7 or controlling interest. In addition, the applicant shall disclose and
8 may enumerate and describe the circumstances of: (1) Any past or
9 present bankruptcies involving the ownerships and their subsidiaries,
10 (2) any abandonment of sites regulated by the model toxics control act,
11 chapter 70.105D RCW, or other similar state remedial cleanup programs,
12 or the federal comprehensive environmental response, compensation, and
13 liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any
14 penalties in excess of ten thousand dollars assessed for violations of
15 the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et
16 seq., and (4) any previous forfeitures of financial assurance due to
17 noncompliance with reclamation or remediation requirements. This
18 information shall be available for public inspection and copying at the
19 department of ecology. Ownership or control of less than ten percent
20 of the stock of a corporation shall not by itself constitute ownership
21 or a controlling interest under this section.

22 NEW SECTION. **Sec. 5.** (1) An environmental impact statement must
23 be prepared for any proposed metals mining and milling operation. The
24 department of ecology shall be the lead agency in coordinating the
25 environmental review process under chapter 43.21C RCW and in preparing
26 the environmental impact statement, except for uranium and thorium
27 operations regulated under Title 70 RCW.

28 (2) As part of the environmental review of metals mining and
29 milling operations regulated under this chapter, the applicant shall
30 provide baseline data adequate to document the premining conditions at
31 the proposed site of the metals mining and milling operation. The
32 baseline data shall contain information on the elements of the natural
33 environment identified in rules adopted pursuant to chapter 43.21C RCW.

34 (3) The department of ecology, after consultation with the
35 department of fish and wildlife, shall incorporate measures to mitigate
36 significant probable adverse impacts to fish and wildlife as part of
37 the department of ecology's permit requirements for the proposed
38 operation.

1 (4) In conducting the environmental review and preparing the
2 environmental impact statement, the department of ecology shall
3 cooperate with all affected local governments to the fullest extent
4 practicable.

5 NEW SECTION. **Sec. 6.** The department of ecology will appoint a
6 metals mining coordinator. The coordinator will maintain current
7 information on the status of any metals mining and milling operation
8 regulated under this chapter from the preparation of the environmental
9 impact statement through the permitting, construction, operation, and
10 reclamation phases of the project or until the proposal is no longer
11 active. The coordinator shall also maintain current information on
12 postclosure activities. The coordinator will act as a contact person
13 for the applicant, the operator, and interested members of the public.
14 The coordinator may also assist agencies with coordination of their
15 inspection and monitoring responsibilities.

16 NEW SECTION. **Sec. 7.** (1) State agencies with the responsibility
17 for inspecting metals mining and milling operations regulated under
18 this chapter shall conduct such inspections at least quarterly.

19 (2) The legislature encourages state agencies with inspection
20 responsibilities for metals mining and milling operations regulated
21 under this chapter to explore opportunities for cross-training of
22 inspectors among state agencies and programs. This cross-training
23 would be for the purpose of meeting the inspection responsibilities of
24 these agencies in a more efficient and cost-effective manner. If doing
25 so would be more efficient and cost-effective, state agency inspectors
26 are also encouraged to coordinate inspections with federal and local
27 government inspectors as well as with one another.

28 NEW SECTION. **Sec. 8.** (1) The metals mining account is created in
29 the state treasury. Expenditures from this account are subject to
30 appropriation. Expenditures from this account may only be used for:
31 (a) The additional inspections of metals mining and milling operations
32 required by section 7 of this act and (b) the metals mining coordinator
33 established in section 6 of this act.

34 (2) (a) As part of its normal budget development process and in
35 consultation with the metals mining industry, the department of ecology
36 shall estimate the costs required for the department to meet its

1 obligations for the additional inspections of metals mining and milling
2 operations required by chapter . . . , Laws of 1994 (this act). The
3 department shall also estimate the cost of employing the metals mining
4 coordinator established in section 6 of this act.

5 (b) As part of its normal budget development process and in
6 consultation with the metals mining industry, the department of natural
7 resources shall estimate the costs required for the department to meet
8 its obligations for the additional inspections of metals mining and
9 milling operations required by chapter . . . , Laws of 1994 (this act).

10 (3) Based on the cost estimates generated by the department of
11 ecology and the department of natural resources, the department of
12 revenue shall establish the amount of a fee to be paid by each active
13 metals mining and milling operation regulated under this chapter. The
14 fee shall be established at a level to fully recover the direct and
15 indirect costs of the agency responsibilities identified in subsection
16 (2) of this section. The amount of the fee for each operation shall be
17 proportional to the number of visits required per site. Each applicant
18 for a metals mining and milling operation shall also be assessed the
19 fee based on the same criterion. The department of revenue may adjust
20 the fees established in this subsection if unanticipated activity in
21 the industry increases or decreases the amount of funding necessary to
22 meet agencies' inspection responsibilities.

23 (4) The department of revenue shall collect the fees established in
24 subsection (3) of this section. All moneys paid to the department of
25 revenue from these fees shall be deposited into the metals mining
26 account.

27 (5) This section shall take effect July 1, 1995, unless the
28 legislature adopts an alternative approach based on the recommendations
29 of the metals mining advisory group established in section 26 of this
30 act.

31 NEW SECTION. **Sec. 9.** (1) In the processing of an application for
32 an initial waste discharge permit for a tailings facility pursuant to
33 the requirements of chapter 90.48 RCW, the department of ecology shall
34 consider site-specific criteria in determining a preferred location of
35 tailings facilities of metals mining and milling operations and
36 incorporate the requirements of all known available and reasonable
37 methods in order to maintain the highest possible standards to insure

1 the purity of all waters of the state in accordance with the public
2 policy identified by RCW 90.48.010.

3 In implementing the siting criteria, the department shall take into
4 account the objectives of the proponent's application relating to
5 mining and milling operations. These objectives shall consist of, but
6 not be limited to (a) operational feasibility, (b) compatibility with
7 optimum tailings placement methods, (c) adequate volume capacity, (d)
8 availability of construction materials, and (e) an optimized embankment
9 volume.

10 (2) To meet the mandate of subsection (1) of this section, siting
11 of tailings facilities shall be accomplished through a two-stage
12 process that consists of a primary alternatives screening phase, and a
13 secondary technical site investigation phase.

14 (3) The primary screening phase will consist of, but not be limited
15 to, siting criteria based on considerations as to location as follows:

16 (a) Proximity to the one hundred year flood plain, as indicated in
17 the most recent federal emergency management agency maps;

18 (b) Proximity to surface and ground water;

19 (c) Topographic setting;

20 (d) Identifiable adverse geologic conditions, such as landslides
21 and active faults; and

22 (e) Visibility impacts of the public generally and residents more
23 particularly.

24 (4) The department of ecology, through the primary screening
25 process, shall reduce the available tailings facility sites to one or
26 more feasible locations whereupon a technical site investigation phase
27 shall be conducted by the department for the purpose of verifying the
28 adequacy of the remaining potential sites. The technical site
29 investigations phase shall consist of, but not be limited to, the
30 following:

31 (a) Soil characteristics;

32 (b) Hydrologic characteristics;

33 (c) A local and structural geology evaluation, including seismic
34 conditions and related geotechnical investigations;

35 (d) A surface water control analysis; and

36 (e) A slope stability analysis.

37 (5) Upon completion of the two phase evaluation process set forth
38 in this section, the department of ecology shall issue a site selection
39 report on the preferred location. This report shall address the above

1 criteria as well as analyze the feasibility of reclamation and
2 stabilization of the tailings facility. The siting report may
3 recommend mitigation or engineering factors to address siting concerns.
4 The report shall be developed in conjunction with the preparation of
5 and contained in an environmental impact statement prepared pursuant to
6 chapter 43.21C RCW. The report may be utilized by the department of
7 ecology for the purpose of providing information related to the
8 suitability of the site and for ruling on an application for a waste
9 discharge permit.

10 (6) The department of ecology may, at its discretion, require the
11 applicant to provide the information required in either phase one or
12 phase two as described in subsections (3) and (4) of this section.

13 NEW SECTION. **Sec. 10.** (1) In order to receive a waste discharge
14 permit from the department of ecology pursuant to the requirements of
15 chapter 90.48 RCW or in order to operate a metals mining and milling
16 tailing facility, an applicant proposing a metals mining and milling
17 operation regulated under this chapter must meet the following
18 additional requirements:

19 (a) Any tailings facility shall be designed and operated to prevent
20 the release of pollution and must meet the following standards:

21 (i) Operators shall apply all known available and reasonable
22 technology to limit the concentration of potentially toxic materials in
23 the tailings facility to assure the protection of wildlife and human
24 health;

25 (ii) The tailings facility shall have a containment system that
26 includes an engineered liner system, leak detection and leak collection
27 elements, and a seepage collection impoundment to assure that a leak of
28 any regulated substance under chapter 90.48 RCW will be detected before
29 escaping from the containment system. The design and management of the
30 facility must ensure that any leaks from the tailings facility are
31 detected in a manner which allows for remediation pursuant to chapter
32 90.48 RCW. The applicant shall prepare a detailed engineering report
33 setting forth the facility design and construction. The applicant
34 shall submit the report to the department of ecology for its review and
35 approval of a design as determined by the department. Natural
36 conditions, such as depth to ground water or net rainfall, shall be
37 taken into account in the facility design, but not in lieu of the
38 protection required by the engineered liner system;

1 (iii) The toxicity of mine or mill tailings and the potential for
2 long-term release of regulated substances from mine or mill tailings
3 shall be reduced to the greatest extent practicable through
4 stabilization, removal, or reuse of the substances; and

5 (iv) The closure of the tailings facility shall provide for
6 isolation or containment of potentially toxic materials and shall be
7 designed to prevent future release of regulated substances contained in
8 the impoundment;

9 (b) The applicant must develop a waste rock management plan
10 approved by the department of ecology and the department of natural
11 resources which emphasizes pollution prevention. At a minimum, the
12 plan must contain the following elements:

13 (i) An accurate identification of the acid generating properties of
14 the waste rock;

15 (ii) A strategy for encapsulating potentially toxic material from
16 the environment, when appropriate, in order to prevent the release of
17 heavy metals and acidic drainage; and

18 (iii) A plan for reclaiming and closing waste rock sites which
19 minimizes infiltration of precipitation and runoff into the waste rock
20 and which is designed to prevent future releases of regulated
21 substances contained within the waste rock;

22 (c) If an interested citizen or citizen group so requests, the
23 metals mining and milling operator or applicant shall work with the
24 department of ecology and the interested party to make arrangements for
25 citizen observation and verification in the taking of required water
26 samples. While it is the intent of this subsection to provide for
27 citizen observation and verification of water sampling activities, it
28 is not the intent of this subsection to require additional water
29 sampling and analysis on the part of the mining and milling operation
30 or the department. The citizen observation and verification program
31 shall be incorporated into the applicant's, operator's, or department's
32 normal sampling regimen and shall occur at least once every six months.
33 The results from these and all other relevant water sampling activities
34 shall be kept on file with the relevant county and shall be available
35 for public inspection during normal working hours; and

36 (d) An operator or applicant for a metals mining and milling
37 operation must complete a voluntary reduction plan in accordance with
38 RCW 70.95C.200.

1 (2) Only those tailings facilities constructed after the effective
2 date of this section must meet the requirement established in
3 subsection (1) (a) of this section. Only those waste rock holdings
4 constructed after the effective date of this section must meet the
5 requirement established in subsection (1) (b) of this section.

6 NEW SECTION. **Sec. 11.** (1) The department of ecology and the
7 department of natural resources shall not issue necessary permits to an
8 applicant for a metals mining and milling operation until the applicant
9 has deposited with the department of ecology a performance security
10 which is acceptable to both agencies based on the requirements of
11 subsection (2) of this section. This performance security may be:

- 12 (a) Bank letters of credit acceptable to both agencies;
- 13 (b) A cash deposit;
- 14 (c) Negotiable securities acceptable to both agencies;
- 15 (d) An assignment of a savings account;
- 16 (e) A savings certificate in a Washington bank; or
- 17 (f) A corporate surety bond executed in favor of the department of
18 ecology by a corporation authorized to do business in the state of
19 Washington under Title 48 RCW and acceptable to both agencies.

20 The agencies may, for any reason, refuse any performance security
21 not deemed adequate.

22 (2) The performance security shall be conditioned on the faithful
23 performance of the applicant or operator in meeting the following
24 obligations:

25 (a) Satisfactory compliance with the laws of the state of
26 Washington pertaining to metals mining and milling operations and with
27 the related rules and permit conditions established by state and local
28 government with respect to those operations as defined in RCW
29 78.44.031(17) and the construction, operation, reclamation, and closure
30 of a metals mining and milling operation;

31 (b) Postclosure environmental monitoring as determined by the
32 department of ecology and the department of natural resources; and

33 (c) Provision of sufficient funding for cleanup of potential
34 problems revealed during or after closure.

35 (3) The department of ecology and the department of natural
36 resources shall jointly adopt rules for determining the amount of the
37 performance security, requirements for the performance security,

1 requirements for the issuer of the performance security, and any other
2 requirements necessary for the implementation of this section.

3 (4) The department of ecology and the department of natural
4 resources, acting jointly, may increase or decrease the amount of the
5 performance security at any time to compensate for any alteration in
6 the operation that affects meeting the obligations in subsection (2) of
7 this section. At a minimum, the agencies shall jointly review the
8 adequacy of the performance security every two years.

9 (5) Liability under the performance security shall be maintained
10 until the obligations in subsection (2) of this section are met to the
11 satisfaction of the department of ecology and the department of natural
12 resources. Liability under the performance security may be released
13 only upon written notification by the department of ecology, with the
14 concurrence of the department of natural resources.

15 (6) Any interest or appreciation on the performance security shall
16 be held by the department of ecology until the obligations in
17 subsection (2) of this section have been met to the satisfaction of the
18 department of ecology and the department of natural resources. At such
19 time, the interest shall be remitted to the operator. However, if the
20 applicant or operator fails to comply with the obligations of
21 subsection (2) of this section, the interest or appreciation may be
22 used by either agency to comply with the obligations.

23 NEW SECTION. **Sec. 12.** The department of ecology may, with staff,
24 equipment, and material under its control, or by contract with others,
25 remediate or mitigate any impact of a metals mining and milling
26 operation when it finds that the operator or permit holder has failed
27 to comply with relevant statutes, rules, or permits, and the operator
28 or permit holder has failed to take adequate or timely action to
29 rectify these impacts.

30 If the department intends to remediate or mitigate such impacts,
31 the department shall issue an order to submit performance security
32 requiring the permit holder or surety to submit to the department the
33 amount of moneys posted pursuant to chapter . . . , Laws of 1994 (this
34 act). If the amount specified in the order to submit performance
35 security is not paid within twenty days after issuance of the notice,
36 the attorney general upon request of the department shall bring an
37 action on behalf of the state in a superior court to recover the amount
38 specified and associated legal fees.

1 The department may proceed at any time after issuing the order to
2 submit performance security to remediate or mitigate adverse impacts.

3 The department shall keep a record of all expenses incurred in
4 carrying out any remediation or mitigation activities authorized under
5 this section, including:

6 (1) Remediation or mitigation;

7 (2) A reasonable charge for the services performed by the state's
8 personnel and the state's equipment and materials utilized; and

9 (3) Administrative and legal expenses related to remediation or
10 mitigation.

11 The department shall refund to the surety or permit holder all
12 amounts received in excess of the amount of expenses incurred. If the
13 amount received is less than the expenses incurred, the attorney
14 general, upon request of the department of ecology, may bring an action
15 against the permit holder on behalf of the state in the superior court
16 to recover the remaining costs listed in this section.

17 If the department of natural resources finds that reclamation has
18 not occurred according to the standards required under chapter 78.44
19 RCW in a metals mining and milling operation, then the department of
20 natural resources may cause reclamation to occur pursuant to RCW
21 78.44.240. Upon approval of the department of ecology, the department
22 of natural resources may reclaim part or all of the metals mining and
23 milling operation using that portion of the surety posted pursuant to
24 chapter . . . , Laws of 1994 (this act) that has been identified for
25 reclamation.

26 NEW SECTION. **Sec. 13.** (1) The legislature finds that the
27 construction and operation of large-scale metals mining and milling
28 facilities may create new job opportunities and enhance local tax
29 revenues. However, the legislature also finds that such operations may
30 also result in new demands on public facilities owned and operated by
31 local government entities, such as public streets and roads; publicly
32 owned parks, open space, and recreation facilities; school facilities;
33 and fire protection facilities in jurisdictions that are not part of a
34 fire district. It is important for these economic impacts to be
35 identified as part of any proposal for a large-scale metals mining and
36 milling operation. It is then appropriate for the county legislative
37 authority to balance expected revenues, including revenues derived from
38 taxes paid by the owner of such an operation, and costs associated with

1 the operation to determine to what degree any new costs require
2 mitigation by the metals mining applicant.

3 (2) An applicant for a large-scale metals mining and milling
4 operation regulated under this chapter must submit to the relevant
5 county legislative authority an impact analysis describing the economic
6 impact of the proposed mining operation on local governmental units.
7 For the purposes of this section, a metals mining operation is large-
8 scale if, in the construction or operation of the mine and the
9 associated milling facility, the applicant and contractors at the site
10 employ more than thirty-five persons during any consecutive six-month
11 period. The relevant county is the county in which the mine and mill
12 are to be sited, unless the economic impacts to local governmental
13 units are projected to substantially affect more than one county. In
14 that case, the impact plan must be submitted to the legislative
15 authority of all affected counties. Local governmental units include
16 counties, cities, towns, school districts, and special purpose
17 districts.

18 (3) The economic impact analysis shall include at least the
19 following information:

20 (a) A timetable for development of the mining operation, including
21 the opening date of the operation and the estimated closing date;

22 (b) The estimated number of persons coming into the impacted area
23 as a result of the development of the mining operation;

24 (c) An estimate of the increased capital and operating costs to
25 local governmental units for providing services necessary as a result
26 of the development of the mining operation; and

27 (d) An estimate of the increased tax or other revenues accruing to
28 local governmental units as a result of development of the mining and
29 milling operation.

30 (4) The county legislative authority of a county planning under
31 chapter 36.70A RCW may assess impact fees under chapter 82.02 RCW to
32 address economic impacts associated with development of the mining
33 operation. The county legislative authority shall hold at least one
34 public hearing on the economic impact analysis and any proposed
35 mitigation measures.

36 (5) The county legislative authority of a county which is not
37 planning under chapter 36.70A RCW may negotiate with the applicant on
38 a strategy to address economic impacts associated with development of
39 the mining operation. The county legislative authority shall hold at

1 least one public hearing on the economic impact analysis and any
2 proposed mitigation measures.

3 (6) The county legislative authority must approve or disapprove the
4 impact analysis and any associated proposals from the applicant to
5 address economic impacts to local governmental units resulting from
6 development of the mining operation. If the applicant does not submit
7 an adequate impact analysis to the relevant county legislative
8 authority or if the county legislative authority does not find the
9 applicant's proposals to be acceptable because of their failure to
10 adequately mitigate adverse economic impacts, the county legislative
11 authority shall refuse to issue any permits under its jurisdiction
12 necessary for the construction or operation of the mine and associated
13 mill.

14 (7) The requirements established in this section apply to metals
15 mining operations under construction or constructed after the effective
16 date of this section.

17 (8) The provisions of chapter 82.02 RCW shall apply to new mining
18 and milling operations.

19 NEW SECTION. **Sec. 14.** (1) Except as provided in subsection (2) of
20 this section, any aggrieved person may commence a civil action on his
21 or her own behalf:

22 (a) Against any person, including any state agency or local
23 government agency, who is alleged to be in violation of a law, rule,
24 order, or permit pertaining to metals mining and milling operations
25 regulated under chapter . . . , Laws of 1994 (this act);

26 (b) Against a state agency if there is alleged a failure of the
27 agency to perform any nondiscretionary act or duty under state laws
28 pertaining to metals mining and milling operations; or

29 (c) Against any person who constructs a metals mining and milling
30 operation without the permits and authorizations required by state law.

31 The superior courts shall have jurisdiction to enforce metals
32 mining laws, rules, orders, and permit conditions, or to order the
33 state to perform such act or duty, as the case may be. In addition to
34 injunctive relief, a superior court may award a civil penalty when
35 deemed appropriate in an amount not to exceed ten thousand dollars per
36 violation per day, payable to the state of Washington.

37 (2) No action may be commenced:

38 (a) Under subsection (1)(a) of this section:

1 (i) Prior to sixty days after the plaintiff has given notice of the
2 alleged violation to the state, and to any alleged violator of a metals
3 mining and milling law, rule, order, or permit condition; or

4 (ii) If the state has commenced and is diligently prosecuting a
5 civil action in a court of the state or of the United States or is
6 diligently pursuing authorized administrative enforcement action to
7 require compliance with the law, rule, order, or permit. To preclude
8 a civil action, the enforcement action must contain specific,
9 aggressive, and enforceable timelines for compliance and must provide
10 for public notice of and reasonable opportunity for public comment on
11 the enforcement action. In any such court action, any aggrieved person
12 may intervene as a matter of right; or

13 (b) Under subsection (1)(b) of this section prior to sixty days
14 after the plaintiff has given notice of such action to the state.

15 (3)(a) Any action respecting a violation of a law, rule, order, or
16 permit condition pertaining to metals mining and milling operations may
17 be brought in the judicial district in which such operation is located
18 or proposed.

19 (b) In such action under this section, the state, if not a party,
20 may intervene as a matter of right.

21 (4) The court, in issuing any final order in any action brought
22 pursuant to subsection (1) of this section, may award costs of
23 litigation, including reasonable attorney and expert witness fees, to
24 any prevailing party, wherever the court determines such award is
25 appropriate. The court may, if a temporary restraining order or
26 preliminary injunction is sought, require the filing of a bond or
27 equivalent security in accordance with the rules of civil procedure.

28 (5) A civil action to enforce compliance with a law, rule, or order
29 may not be brought under this section if any other statute, or the
30 common law, provides authority for the plaintiff to bring a civil
31 action and, in such action, obtain the same relief, as authorized under
32 this section, for enforcement of such law, rule or order. Nothing in
33 this section restricts any right which any person, or class of persons,
34 may have under any statute or common law to seek any relief, including
35 relief against the state or a state agency.

36 NEW SECTION. **Sec. 15.** A milling facility which is not adjacent to
37 or in the vicinity of the metals mining operation producing the ore to
38 be milled and which processes precious or base metal ore by treatment

1 or concentration is subject to the provisions of sections 1 through 9,
2 10(1) (a), (c) and (d), 11 through 14, 18, and 19 of this act and RCW
3 90.03.350, 90.48.090, 78.44.161, 78.44.087, and 78.44.131. The
4 smelting of aluminum does not constitute a metals milling operation
5 under this section.

6 NEW SECTION. **Sec. 16.** (1) Until June 30, 1996, there shall be a
7 moratorium on metals mining and milling operations using the heap leach
8 extraction process. The department of natural resources and the
9 department of ecology shall jointly review the existing laws and
10 regulations pertaining to the heap leach extraction process for their
11 adequacy in safeguarding the environment and shall report their
12 findings to the legislature by December 30, 1994.

13 (2) Metals mining using the process of in situ extraction is
14 permanently prohibited in the state of Washington.

15 NEW SECTION. **Sec. 17.** The department of ecology will work with
16 the metals mining industry and relevant federal, state, and local
17 governmental agencies to identify areas of regulatory overlap among
18 regulators of mining and milling operations. The department will also
19 identify possible solutions for eliminating or reducing regulatory
20 overlap. The department will report back to the legislature on its
21 findings and possible solutions by January 1, 1995.

22 NEW SECTION. **Sec. 18.** A new section is added to chapter 70.94 RCW
23 to read as follows:

24 If a metals mining and milling operation is issued a permit
25 pursuant to this chapter, then it will be subject to special inspection
26 requirements. The department of ecology shall inspect these mining
27 operations at least quarterly in order to ensure that the operation is
28 in compliance with the conditions of any permit issued to it pursuant
29 to this chapter. The department shall conduct additional inspections
30 during the construction phase of the mining and milling operation in
31 order to ensure compliance with this chapter.

32 NEW SECTION. **Sec. 19.** A new section is added to chapter 70.105
33 RCW to read as follows:

34 If a metals mining and milling operation is issued a permit
35 pursuant to this chapter, then it will be subject to special inspection

1 requirements. The department of ecology shall inspect these mining
2 operations at least quarterly in order to ensure that the operation is
3 in compliance with the conditions of any permit issued to it pursuant
4 to this chapter. The department shall conduct additional inspections
5 during the construction phase of the mining operation in order to
6 ensure compliance with this chapter.

7 **Sec. 20.** RCW 90.03.350 and 1987 c 109 s 91 are each amended to
8 read as follows:

9 Any person, corporation or association intending to construct or
10 modify any dam or controlling works for the storage of ten acre feet or
11 more of water, shall before beginning said construction or
12 modification, submit plans and specifications of the same to the
13 department for examination and approval as to its safety. Such plans
14 and specifications shall be submitted in duplicate, one copy of which
15 shall be retained as a public record, by the department, and the other
16 returned with its approval or rejection endorsed thereon. No such dam
17 or controlling works shall be constructed or modified until the same or
18 any modification thereof shall have been approved as to its safety by
19 the department. Any such dam or controlling works constructed or
20 modified in any manner other than in accordance with plans and
21 specifications approved by the department or which shall not be
22 maintained in accordance with the order of the department shall be
23 presumed to be a public nuisance and may be abated in the manner
24 provided by law, and it shall be the duty of the attorney general or
25 prosecuting attorney of the county wherein such dam or controlling
26 works, or the major portion thereof, is situated to institute abatement
27 proceedings against the owner or owners of such dam or controlling
28 works, whenever he or she is requested to do so by the department.

29 A metals mining and milling operation regulated under chapter
30 . . . , Laws of 1994 (this act) is subject to additional dam safety
31 inspection requirements due to the special hazards associated with
32 failure of a tailings pond impoundment. The department shall inspect
33 these impoundments at least quarterly during the project's operation
34 and at least annually thereafter for the postclosure monitoring period
35 in order to ensure the safety of the dam or controlling works. The
36 department shall conduct additional inspections as needed during the
37 construction phase of the mining operation in order to ensure the safe
38 construction of the tailings impoundment.

1 **Sec. 21.** RCW 90.48.090 and 1987 c 109 s 127 are each amended to
2 read as follows:

3 The department or its duly appointed agent shall have the right to
4 enter at all reasonable times in or upon any property, public or
5 private, for the purpose of inspecting and investigating conditions
6 relating to the pollution of or the possible pollution of any of the
7 waters of this state.

8 The department shall have special inspection requirements for
9 metals mining and milling operations regulated under chapter . . . ,
10 Laws of 1994 (this act). The department shall inspect these mining and
11 milling operations at least quarterly in order to ensure compliance
12 with the intent and any permit issued pursuant to this chapter. The
13 department shall conduct additional inspections as needed during the
14 construction phase of these mining operations in order to ensure
15 compliance with this chapter.

16 **Sec. 22.** RCW 78.44.161 and 1993 c 518 s 25 are each amended to
17 read as follows:

18 The department may order at any time an inspection of the disturbed
19 area to determine if the miner or permit holder has complied with the
20 reclamation permit, rules, and this chapter.

21 The department shall have special inspection requirements for
22 metals mining and milling operations regulated under chapter . . . ,
23 Laws of 1994 (this act). The department shall inspect these mining
24 operations at least quarterly in order to ensure that the permit holder
25 is in compliance with the reclamation permit, rules, and this chapter.
26 The department shall conduct additional inspections as needed during
27 the construction phase of these mining operations in order to ensure
28 compliance with the reclamation permit, rules, and this chapter.

29 **Sec. 23.** RCW 78.44.087 and 1993 c 518 s 15 are each amended to
30 read as follows:

31 The department shall not issue a reclamation permit until the
32 applicant has deposited with the department an acceptable performance
33 security on forms prescribed and furnished by the department. A public
34 or governmental agency shall not be required to post performance
35 security nor shall a permit holder be required to post surface mining
36 performance security with more than one state(~~(, local, or federal)~~) or
37 local agency.

1 This performance security may be:

2 (1) Bank letters of credit acceptable to the department;

3 (2) A cash deposit;

4 (3) Negotiable securities acceptable to the department;

5 (4) An assignment of a savings account;

6 (5) A savings certificate in a Washington bank on an assignment
7 form prescribed by the department;

8 (6) Assignments of interests in real property within the state of
9 Washington; or

10 (7) A corporate surety bond executed in favor of the department by
11 a corporation authorized to do business in the state of Washington
12 under Title 48 RCW and authorized by the department.

13 The performance security shall be conditioned upon the faithful
14 performance of the requirements set forth in this chapter and of the
15 rules adopted under it.

16 The department shall have the authority to determine the amount of
17 the performance security using a standardized performance security
18 formula developed by the department. The amount of the security shall
19 be determined by the department and based on the estimated costs of
20 completing reclamation according to the approved reclamation plan or
21 minimum standards and related administrative overhead for the area to
22 be surface mined during (a) the next twelve-month period, (b) the
23 following twenty-four months, and (c) any previously disturbed areas on
24 which the reclamation has not been satisfactorily completed and
25 approved.

26 The department may increase or decrease the amount of the
27 performance security at any time to compensate for a change in the
28 disturbed area, the depth of excavation, a modification of the
29 reclamation plan, or any other alteration in the conditions of the mine
30 that affects the cost of reclamation. The department may, for any
31 reason, refuse any performance security not deemed adequate.

32 Liability under the performance security shall be maintained until
33 reclamation is completed according to the approved reclamation plan to
34 the satisfaction of the department unless released as hereinafter
35 provided. Liability under the performance security may be released
36 only upon written notification by the department. Notification shall
37 be given upon completion of compliance or acceptance by the department
38 of a substitute performance security. The liability of the surety

1 shall not exceed the amount of security required by this section and
2 the department's reasonable legal fees to recover the security.

3 Any interest or appreciation on the performance security shall be
4 held by the department until reclamation is completed to its
5 satisfaction. At such time, the interest shall be remitted to the
6 permit holder; except that such interest or appreciation may be used by
7 the department to effect reclamation in the event that the permit
8 holder fails to comply with the provisions of this chapter and the
9 costs of reclamation exceed the face value of the performance security.

10 Except as provided in this section, no other state agency or local
11 government shall require performance security for the purposes of
12 surface mine reclamation and only one agency of government shall
13 require and hold the performance security. The department may enter
14 into written agreements with federal agencies in order to avoid
15 redundant bonding of surface mines straddling boundaries between
16 federally controlled and other lands within Washington state.

17 ~~((Notwithstanding any other provision of this section, nothing~~
18 ~~shall preclude the department of ecology from requiring a separate~~
19 ~~performance security for metallic minerals or uranium surface mines~~
20 ~~under any authority if any that may be presently vested in the~~
21 ~~department of ecology relating to such mines.)) The department and the
22 department of ecology shall jointly require performance security for
23 metals mining and milling operations regulated under chapter . . . ,
24 Laws of 1994 (this act).~~

25 **Sec. 24.** RCW 78.44.131 and 1993 c 518 s 20 are each amended to
26 read as follows:

27 The need for, and the practicability of, reclamation shall control
28 the type and degree of reclamation in any specific instance. However,
29 the basic objective of reclamation is to reestablish on a continuing
30 basis the vegetative cover, slope stability, water conditions, and
31 safety conditions suitable to the proposed subsequent use consistent
32 with local land use plans for the surface mine site.

33 Each permit holder shall comply with the minimum reclamation
34 standards in effect on the date the permit was issued and any
35 additional reclamation standards set forth in the approved reclamation
36 plan. The department may modify, on a site specific basis, the minimum
37 reclamation standards for metals mining and milling operations
38 regulated under chapter . . . , Laws of 1994 (this act) in order to

1 achieve the reclamation and closure objectives of that chapter. The
2 basic objective of reclamation for these operations is the
3 reestablishment on a continuing basis of vegetative cover, slope
4 stability, water conditions, and safety conditions.

5 Reclamation activities, particularly those relating to control of
6 erosion and mitigation of impacts of mining to adjacent areas, shall,
7 to the extent feasible, be conducted simultaneously with surface
8 mining, and in any case shall be initiated at the earliest possible
9 time after completion of surface mining on any segment of the permit
10 area.

11 All reclamation activities shall be completed not more than two
12 years after completion or abandonment of surface mining on each segment
13 of the area for which a reclamation permit is in force.

14 The department may by contract delegate enforcement of provisions
15 of reclamation plans to counties, cities, and towns. A county, city,
16 or town performing enforcement functions may not impose any additional
17 fees on permit holders.

18 NEW SECTION. Sec. 25. Sections 1 through 16 of this act shall
19 constitute a new chapter in Title 78 RCW.

20 NEW SECTION. Sec. 26. (1) The department of ecology shall
21 establish a metals mining advisory group, to be comprised of members
22 representing the metals mining industry, the environmental community,
23 the department of ecology, the department of fish and wildlife, and the
24 department of natural resources.

25 (2) The metals mining advisory group will focus on the following
26 tasks:

27 (a) A review of the adequacy of the cost-accounting methods of the
28 departments of ecology and natural resources in accurately identifying
29 the costs associated with the additional inspection requirements
30 established in this act;

31 (b) Establishing a set of success measures to be used to evaluate
32 the implementation of the new coordinator role established in this act;

33 (c) Examination of possible new inspection requirements for the
34 department of fish and wildlife and a means to fund any new
35 requirements; and

36 (d) Identification and evaluation of the alternative bases for
37 allocating the costs that may be necessitated by this act.

1 (3) The advisory group shall report its findings and its preferred
2 alternative among the options identified in subsection (2)(d) of this
3 section to the legislature by January 1, 1995.

4 NEW SECTION. **Sec. 27.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 28.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and, with the
11 exception of sections 6 through 8 of this act, shall take effect
12 immediately.

13 NEW SECTION. **Sec. 29.** Sections 6 through 8 of this act shall take
14 effect July 1, 1995.

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