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**SUBSTITUTE HOUSE BILL 2521**

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**State of Washington**

**53rd Legislature**

**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; and declaring an emergency.

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

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

9 (1) "Metals mining and milling operation" means a mining operation  
10 extracting from the earth precious or base metal ore and processing the  
11 ore by treatment or concentration in a milling facility. It also  
12 refers to an expansion of an existing operation if the expansion is  
13 likely to result in a significant, adverse environmental impact. The  
14 extraction of dolomite is not a metals mining and milling operation  
15 regulated under this chapter.

16 (2) "Exploration activities" means disturbing more than one acre  
17 within an eight acre area, when the disturbed area results from mineral  
18 prospecting or exploration.

1 (3) "Heap leach extraction process" means the process of extracting  
2 base or precious metal ore by percolating solutions through ore that  
3 has not been otherwise processed in a crushing or milling facility.

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

7 (5) "To mitigate" means (a) to avoid the adverse impact altogether  
8 by not taking a certain action or parts of an action; (b) to minimize  
9 adverse impacts by limiting the degree or magnitude of the action and  
10 its implementation, by using appropriate technology or by taking  
11 affirmative steps to avoid or reduce impacts; (c) to rectify adverse  
12 impacts by repairing, rehabilitating, or restoring the affected  
13 environment; (d) to reduce or eliminate adverse impacts over time by  
14 preservation and maintenance operations during the life of the action;  
15 (e) to compensate for the impact by replacing, enhancing, or providing  
16 substitute resources or environments; or (f) to monitor the adverse  
17 impact and take appropriate corrective measures.

18 NEW SECTION. **Sec. 2.** Metals mining and milling operations are  
19 subject to the requirements of this chapter in addition to the  
20 requirements established in other statutes and rules.

21 NEW SECTION. **Sec. 3.** The department of ecology shall require each  
22 applicant for a metals mining and milling operation to disclose the  
23 ownership and each controlling interest in the proposed operation. The  
24 applicant shall also disclose all other mining operations within the  
25 United States which the applicant operates or in which the applicant  
26 has an ownership or controlling interest. This information shall be  
27 available for public inspection and copying at the department of  
28 ecology. Ownership or control of less than ten percent of the stock of  
29 a corporation shall not by itself constitute "ownership" or a  
30 "controlling interest" under this section.

31 NEW SECTION. **Sec. 4.** (1) An environmental impact statement must  
32 be prepared for any proposed metals mining and milling operation. The  
33 department of ecology shall be the lead agency in coordinating the  
34 environmental review process under chapter 43.21C RCW and in preparing  
35 the environmental impact statement, except for uranium and thorium  
36 operations regulated under Title 70 RCW.

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

7 (3) The department of ecology, after consultation with the  
8 department of fish and wildlife, shall incorporate measures to mitigate  
9 significant probable adverse impacts to fish and wildlife as part of  
10 the department of ecology's permit requirements for the proposed  
11 operation.

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

16 NEW SECTION. **Sec. 5.** The department of ecology will appoint a  
17 metals mining coordinator. The coordinator will maintain current  
18 information on the status of any metals mining and milling operation  
19 regulated under this chapter from the preparation of the environmental  
20 impact statement through the permitting, construction, operation, and  
21 reclamation phases of the project or until the proposal is no longer  
22 active. The coordinator shall also maintain current information on  
23 postclosure activities. The coordinator will act as a contact person  
24 for the applicant, the operator, and interested members of the public.  
25 The coordinator may also assist agencies with coordination of their  
26 inspection and monitoring responsibilities.

27 NEW SECTION. **Sec. 6.** (1) State agencies with the responsibility  
28 for inspecting metals mining and milling operations regulated under  
29 this chapter shall conduct such inspections at least quarterly.

30 (2) The legislature encourages state agencies with inspection  
31 responsibilities for metals mining and milling operations regulated  
32 under this chapter to explore opportunities for cross-training of  
33 inspectors among state agencies and programs. This cross-training  
34 would be for the purpose of meeting the inspection responsibilities of  
35 these agencies in a more efficient and cost-effective manner. If doing  
36 so would be more efficient and cost-effective, state agency inspectors

1 are also encouraged to coordinate inspections with federal and local  
2 government inspectors as well as with one another.

3 NEW SECTION. **Sec. 7.** (1) The metals mining account is created in  
4 the state treasury. Expenditures from this account are subject to  
5 appropriation. Expenditures from this account may only be used for (a)  
6 the additional inspections of metals mining and milling operations  
7 required by section 6 of this act and (b) the metals mining coordinator  
8 established in section 5 of this act.

9 (2)(a) As part of its normal budget development process and in  
10 consultation with the metals mining industry, the department of ecology  
11 shall estimate the costs required for the department to meet its  
12 obligations for the additional inspections of metals mining and milling  
13 operations required by chapter . . . , Laws of 1994 (this act). The  
14 department shall also estimate the cost of employing the metals mining  
15 coordinator established in section 5 of this act.

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

21 (3) Based on the cost estimates generated by the department of  
22 ecology and the department of natural resources, the department of  
23 revenue shall establish the amount of a fee to be paid by each active  
24 metals mining and milling operation regulated under this chapter. The  
25 fee shall be established at a level to fully recover the direct and  
26 indirect costs of the agency responsibilities identified in subsection  
27 (2) of this section. The amount of the fee for each operation shall be  
28 proportional to the amount of raw material excavated at the operation.  
29 Each applicant for a metals mining and milling operation shall also be  
30 assessed the fee based on the amount of raw material projected to be  
31 excavated at the proposed operation. The department of revenue may  
32 adjust the fees established in this subsection if unanticipated  
33 activity in the industry increases the amount of funding necessary to  
34 meet agencies' inspection responsibilities.

35 (4) The department of revenue shall collect the fees established in  
36 subsection (3) of this section. All moneys paid to the department of  
37 revenue from these fees shall be deposited into the metals mining  
38 account.

1        NEW SECTION.    **Sec. 8.**    (1) In order to receive a waste discharge  
2 permit from the department of ecology pursuant to the requirements of  
3 chapter 90.48 RCW, an applicant proposing a metals mining and milling  
4 operation regulated under this chapter must meet the following  
5 additional requirements:

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

8        (i) Operators shall apply all known available and reasonable  
9 technology to limit the concentration of potentially toxic materials in  
10 the tailings facility to assure the protection of wildlife and human  
11 health.

12        (ii) The tailings facility shall have a containment system that  
13 includes an engineered liner system, leak detection and leak collection  
14 elements, and a seepage collection impoundment to assure that a leak of  
15 any substance regulated by a waste discharge permit will be detected  
16 before escaping from the containment system. The design and management  
17 of the facility must ensure that any leaks from the tailings facility  
18 are detected in a manner which allows for timely cleanup of any leaked  
19 regulated substances. The applicant shall prepare a detailed  
20 engineering report setting forth the facility design and construction.  
21 The applicant shall submit the report to the department of ecology for  
22 its review and approval of a design as determined by the department.  
23 Natural conditions, such as depth to ground water or net rainfall,  
24 shall be taken into account in the facility design, but not in lieu of  
25 the protection required by the engineered liner system.

26        (iii) The toxicity of mine or mill tailings and the potential for  
27 long-term release of regulated substances from mine or mill tailings  
28 shall be reduced to the greatest extent practicable through  
29 stabilization, removal, or reuse of the substances.

30        (iv) The closure of the tailings facility shall provide for  
31 isolation and containment of potentially toxic materials and shall be  
32 designed to prevent future release of regulated substances contained in  
33 the impoundment.

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

38        (i) An accurate identification of the acid generating properties of  
39 the waste rock;

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

4 (iii) A plan for reclaiming and closing waste rock sites which  
5 minimizes to the extent practicable infiltration of precipitation and  
6 runoff into the waste rock and which is designed to prevent future  
7 releases of residual potentially toxic chemicals contained within the  
8 waste rock.

9 (c) If an interested citizen or citizen group so requests, the  
10 metals mining and milling operator or applicant shall work with the  
11 department of ecology and the interested party to make arrangements for  
12 citizen observation and verification in the taking of required water  
13 samples. While it is the intent of this subsection to provide for  
14 citizen involvement and verification of water sampling activities, it  
15 is not the intent of this subsection to require additional water  
16 sampling and analysis on the part of the mining and milling operation  
17 or the department. The citizen observation and verification program  
18 shall be incorporated into the applicant's, operator's, or department's  
19 normal sampling regimen and shall occur at least once every six months.  
20 The results from these and all other relevant water sampling activities  
21 shall be kept on file with the relevant county and shall be available  
22 for public inspection during normal working hours.

23 (2) Only those metals mining and milling operations which are under  
24 construction or constructed after the effective date of this act must  
25 meet the requirements of subsection(1) (a) and (b) of this section.

26 NEW SECTION. **Sec. 9.** (1) The department of ecology and the  
27 department of natural resources shall not issue necessary permits to an  
28 applicant for a metals mining and milling operation until the applicant  
29 has deposited with the department of ecology a performance security  
30 which is acceptable to both agencies. This performance security may  
31 be:

32 (a) Bank letters of credit acceptable to both agencies;

33 (b) A cash deposit;

34 (c) Negotiable securities acceptable to both agencies;

35 (d) An assignment of a savings account;

36 (e) A savings certificate in a Washington bank; or

1 (f) A corporate surety bond executed in favor of the department of  
2 ecology by a corporation authorized to do business in the state of  
3 Washington under Title 48 RCW and acceptable to both agencies.

4 The agencies may, for any reason, refuse any performance security  
5 not deemed adequate.

6 (2) The performance security shall be conditioned on the faithful  
7 performance of the applicant or operator in meeting the following  
8 obligations:

9 (a) Satisfactory compliance with the laws of the state of  
10 Washington pertaining to metals mining and milling operations and with  
11 the related rules and permit conditions established by state and local  
12 government with respect to exploration activities, construction,  
13 operation, reclamation, and closure of the metals mining and milling  
14 operation;

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

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

19 (3) The department of ecology and the department of natural  
20 resources shall jointly adopt rules for determining the amount of the  
21 performance security, requirements for the performance security,  
22 requirements for the issuer of the performance security, and any other  
23 requirements necessary for the implementation of this section.

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

30 (5) Liability under the performance security shall be maintained  
31 until the obligations in subsection (2) of this section are met to the  
32 satisfaction of the department of ecology and the department of natural  
33 resources. Liability under the performance security may be released  
34 only upon written notification by the department of ecology, with the  
35 concurrence of the department of natural resources.

36 (6) Any interest or appreciation on the performance security shall  
37 be held by the department of ecology until the obligations in  
38 subsection (2) of this section have been met to the satisfaction of the  
39 department of ecology and the department of natural resources. At such

1 time, the interest shall be remitted to the operator. However, if the  
2 applicant or operator fails to comply with the obligations of  
3 subsection (2) of this section, the interest or appreciation may be  
4 used by either agency to comply with the obligations.

5 NEW SECTION. **Sec. 10.** The department of ecology may, with staff,  
6 equipment, and material under its control, or by contract with others,  
7 remediate or mitigate any impact of a metals mining and milling  
8 operation when it finds that the operator or permit holder has failed  
9 to comply with relevant statutes, rules, or permits, and the operator  
10 or permit holder has failed to take adequate or timely action to  
11 rectify these impacts.

12 If the department intends to remediate or mitigate such impacts,  
13 the department shall issue an order to submit performance security  
14 requiring the permit holder or surety to submit to the department the  
15 amount of moneys posted pursuant to this act. If the amount specified  
16 in the order to submit performance security is not paid within twenty  
17 days after issuance of the notice, the attorney general upon request of  
18 the department shall bring an action on behalf of the state in a  
19 superior court to recover the amount specified and associated legal  
20 fees.

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

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

- 26 (1) Remediation or mitigation;  
27 (2) A reasonable charge for the services performed by the state's  
28 personnel and the state's equipment and materials utilized; and  
29 (3) Administrative and legal expenses related to remediation or  
30 mitigation.

31 The department shall refund to the surety or permit holder all  
32 amounts received in excess of the amount of expenses incurred. If the  
33 amount received is less than the expenses incurred, the attorney  
34 general, upon request of the department of ecology, may bring an action  
35 against the permit holder on behalf of the state in the superior court  
36 to recover the remaining costs listed in this section.

37 If the department of natural resources finds that reclamation has  
38 not occurred according to the standards required under chapter 78.44

1 RCW in a metals mining and milling operation, then the department of  
2 natural resources may cause reclamation to occur pursuant to RCW  
3 78.44.240. Upon approval of the department of ecology, the department  
4 of natural resources may reclaim part or all of the metals mining and  
5 milling operation using that portion of the surety posted pursuant to  
6 this act that has been identified for reclamation.

7 NEW SECTION. **Sec. 11.** (1) The legislature finds that the  
8 construction and operation of large-scale metals mining and milling  
9 facilities may create new job opportunities and enhance local tax  
10 revenues. However, the legislature also finds that such operations may  
11 also result in new demands on public facilities owned and operated by  
12 local government entities, such as public streets and roads; publicly  
13 owned parks, open space, and recreation facilities; school facilities;  
14 and fire protection facilities in jurisdictions that are not part of a  
15 fire district. It is important for these economic impacts to be  
16 identified as part of any proposal for a large-scale metals mining and  
17 milling operation. It is then appropriate for the county legislative  
18 authority to balance expected revenues, including revenues derived from  
19 taxes paid by the owner of such an operation, and costs associated with  
20 the operation to determine to what degree any new costs require  
21 mitigation by the metals mining applicant.

22 (2) An applicant for a large-scale metals mining and milling  
23 operation regulated under this chapter must submit to the relevant  
24 county legislative authority an impact analysis describing the economic  
25 impact of the proposed mining operation on local governmental units.  
26 For the purposes of this section, a metals mining operation is "large-  
27 scale" if, in the construction or operation of the mine and the  
28 associated milling facility, the applicant and contractors at the site  
29 employ more than thirty-five persons during any consecutive six-month  
30 period. The relevant county is the county in which the mine and mill  
31 are to be sited, unless the economic impacts to local governmental  
32 units are projected to substantially affect more than one county. In  
33 that case, the impact plan must be submitted to the legislative  
34 authority of all affected counties. Local governmental units include  
35 counties, cities, towns, school districts, and special purpose  
36 districts.

37 (3) The economic impact analysis shall include at least the  
38 following information:

1 (a) A timetable for development of the mining operation, including  
2 the opening date of the operation and the estimated closing date;  
3 (b) The estimated number of persons coming into the impacted area  
4 as a result of the development of the mining operation;  
5 (c) An estimate of the increased capital and operating costs to  
6 local governmental units for providing services necessary as a result  
7 of the development of the mining operation; and  
8 (d) An estimate of the increased tax or other revenues accruing to  
9 local government units as a result of development of the mining and  
10 milling operation.

11 (4) The county legislative authority of a county planning under  
12 chapter 36.70A RCW may assess impact fees under chapter 82.02 RCW to  
13 address economic impacts associated with development of the mining  
14 operation. The county legislative authority shall hold at least one  
15 public hearing on the economic impact analysis and any proposed  
16 mitigation measures.

17 (5) The county legislative authority of a county which is not  
18 planning under chapter 36.70A RCW may negotiate with the applicant on  
19 a strategy to address economic impacts associated with development of  
20 the mining operation. The county legislative authority shall hold at  
21 least one public hearing on the economic impact analysis and any  
22 proposed mitigation measures.

23 (6) The county legislative authority must approve or disapprove the  
24 impact analysis and any associated proposals from the applicant to  
25 address economic impacts to local governmental units resulting from  
26 development of the mining operation. If the applicant does not submit  
27 an adequate impact analysis to the relevant county legislative  
28 authority or if the county legislative authority does not find the  
29 applicant's proposals to be acceptable because of their failure to  
30 adequately mitigate adverse economic impacts, the county legislative  
31 authority shall refuse to issue any permits under its jurisdiction  
32 necessary for the construction or operation of the mine and associated  
33 mill.

34 (7) The requirements established in this section apply to metals  
35 mining operations under construction or constructed after the effective  
36 date of this act.

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

1        NEW SECTION.    **Sec. 12.**    (1) Except as provided in subsection (2) of  
2 this section, any aggrieved person may commence a civil action on his  
3 or her own behalf:

4        (a) Against any person, including any state agency or local  
5 government agency, who is alleged to be in violation of a law, rule,  
6 order, or permit pertaining to metals mining and milling operations  
7 regulated under this act;

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

11       (c) Against any person who proposes to construct or constructs a  
12 metals mining and milling operation without the permits and  
13 authorizations required by state law.

14       The superior courts shall have jurisdiction to enforce metals  
15 mining laws, rules, orders, and permit conditions, or to order the  
16 state to perform such act or duty, as the case may be.

17       (2) No action may be commenced:

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

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

22       (ii) If the state has commenced and is diligently prosecuting a  
23 civil action in a court of the state or of the United States or is  
24 diligently pursuing authorized administrative enforcement action to  
25 require compliance with the law, rule, order, or permit. To preclude  
26 a civil action, the enforcement action must contain specific,  
27 aggressive, and enforceable timelines for compliance and must provide  
28 for public notice of and reasonable opportunity for public comment on  
29 the enforcement action. In any such court action, any aggrieved person  
30 may intervene as a matter of right.

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

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

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

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

8 (5) Nothing in this section restricts any right which any person,  
9 or class of persons, may have under any statute or common law to seek  
10 any relief, including relief against the state or a state agency.

11 NEW SECTION. **Sec. 13.** A milling facility which is not adjacent to  
12 or in the vicinity of the metals mining operation producing the ore to  
13 be milled and which processes precious or base metal ore by treatment  
14 or concentration is subject to the provisions of sections 3 through 7,  
15 8(1) (a) and (c), and 9 through 12 of this act.

16 NEW SECTION. **Sec. 14.** (1) Until June 30, 1995, there shall be a  
17 moratorium on metals mining and milling operations using the heap leach  
18 extraction process. The department of natural resources and the  
19 department of ecology shall jointly review the existing laws and  
20 regulations pertaining to the heap leach extraction process for their  
21 adequacy in safeguarding the environment and shall report their  
22 findings to the legislature by December 30, 1994.

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

25 NEW SECTION. **Sec. 15.** The department of ecology will work with  
26 the metals mining industry and relevant federal, state and local  
27 governmental agencies to identify areas of regulatory overlap among  
28 regulators of mining and milling operations. The department will also  
29 identify possible solutions for eliminating or reducing regulatory  
30 overlap. The department will report back to the legislature on its  
31 findings and possible solutions by January 1, 1995.

32 NEW SECTION. **Sec. 16.** A new section is added to chapter 70.94 RCW  
33 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 and milling operation in  
6 order to ensure compliance with this chapter.

7 NEW SECTION. **Sec. 17.** A new section is added to chapter 70.105  
8 RCW to read as follows:

9 If a metals mining and milling operation is issued a permit  
10 pursuant to this chapter, then it will be subject to special inspection  
11 requirements. The department of ecology shall inspect these mining  
12 operations at least quarterly in order to ensure that the operation is  
13 in compliance with the conditions of any permit issued to it pursuant  
14 to this chapter. The department shall conduct additional inspections  
15 during the construction phase of the mining operation in order to  
16 ensure compliance with this chapter.

17 **Sec. 18.** RCW 90.03.350 and 1987 c 109 s 91 are each amended to  
18 read as follows:

19 Any person, corporation or association intending to construct or  
20 modify any dam or controlling works for the storage of ten acre feet or  
21 more of water, shall before beginning said construction or  
22 modification, submit plans and specifications of the same to the  
23 department for examination and approval as to its safety. Such plans  
24 and specifications shall be submitted in duplicate, one copy of which  
25 shall be retained as a public record, by the department, and the other  
26 returned with its approval or rejection endorsed thereon. No such dam  
27 or controlling works shall be constructed or modified until the same or  
28 any modification thereof shall have been approved as to its safety by  
29 the department. Any such dam or controlling works constructed or  
30 modified in any manner other than in accordance with plans and  
31 specifications approved by the department or which shall not be  
32 maintained in accordance with the order of the department shall be  
33 presumed to be a public nuisance and may be abated in the manner  
34 provided by law, and it shall be the duty of the attorney general or  
35 prosecuting attorney of the county wherein such dam or controlling  
36 works, or the major portion thereof, is situated to institute abatement

1 proceedings against the owner or owners of such dam or controlling  
2 works, whenever he or she is requested to do so by the department.

3 A metals mining and milling operation regulated under chapter  
4 . . . , Laws of 1994 (this act) is subject to additional dam safety  
5 inspection requirements due to the special hazards associated with  
6 failure of a tailings pond impoundment. The department shall inspect  
7 these impoundments at least quarterly during the project's operation  
8 and at least annually thereafter for the postclosure monitoring period  
9 in order to ensure the safety of the dam or controlling works. The  
10 department shall conduct additional inspections as needed during the  
11 construction phase of the mining operation in order to ensure the safe  
12 construction of the tailings impoundment.

13 **Sec. 19.** RCW 90.48.090 and 1987 c 109 s 127 are each amended to  
14 read as follows:

15 The department or its duly appointed agent shall have the right to  
16 enter at all reasonable times in or upon any property, public or  
17 private, for the purpose of inspecting and investigating conditions  
18 relating to the pollution of or the possible pollution of any of the  
19 waters of this state.

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

28 **Sec. 20.** RCW 78.44.161 and 1993 c 518 s 25 are each amended to  
29 read as follows:

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

33 The department shall have special inspection requirements for  
34 metals mining and milling operations regulated under chapter . . . ,  
35 Laws of 1994 (this act). The department shall inspect these mining  
36 operations at least quarterly in order to ensure that the permit holder  
37 is in compliance with the reclamation permit, rules, and this chapter.

1 The department shall conduct additional inspections as needed during  
2 the construction phase of these mining operations in order to ensure  
3 compliance with the reclamation permit, rules, and this chapter.

4 **Sec. 21.** RCW 78.44.087 and 1993 c 518 s 15 are each amended to  
5 read as follows:

6 The department shall not issue a reclamation permit until the  
7 applicant has deposited with the department an acceptable performance  
8 security on forms prescribed and furnished by the department. A public  
9 or governmental agency shall not be required to post performance  
10 security nor shall a permit holder be required to post surface mining  
11 performance security with more than one state(~~(, local, or federal)~~) or  
12 local agency.

13 This performance security may be:

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

15 (2) A cash deposit;

16 (3) Negotiable securities acceptable to the department;

17 (4) An assignment of a savings account;

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

20 (6) Assignments of interests in real property within the state of  
21 Washington; or

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

25 The performance security shall be conditioned upon the faithful  
26 performance of the requirements set forth in this chapter and of the  
27 rules adopted under it.

28 The department shall have the authority to determine the amount of  
29 the performance security using a standardized performance security  
30 formula developed by the department. The amount of the security shall  
31 be determined by the department and based on the estimated costs of  
32 completing reclamation according to the approved reclamation plan or  
33 minimum standards and related administrative overhead for the area to  
34 be surface mined during (a) the next twelve-month period, (b) the  
35 following twenty-four months, and (c) any previously disturbed areas on  
36 which the reclamation has not been satisfactorily completed and  
37 approved.

1 The department may increase or decrease the amount of the  
2 performance security at any time to compensate for a change in the  
3 disturbed area, the depth of excavation, a modification of the  
4 reclamation plan, or any other alteration in the conditions of the mine  
5 that affects the cost of reclamation. The department may, for any  
6 reason, refuse any performance security not deemed adequate.

7 Liability under the performance security shall be maintained until  
8 reclamation is completed according to the approved reclamation plan to  
9 the satisfaction of the department unless released as hereinafter  
10 provided. Liability under the performance security may be released  
11 only upon written notification by the department. Notification shall  
12 be given upon completion of compliance or acceptance by the department  
13 of a substitute performance security. The liability of the surety  
14 shall not exceed the amount of security required by this section and  
15 the department's reasonable legal fees to recover the security.

16 Any interest or appreciation on the performance security shall be  
17 held by the department until reclamation is completed to its  
18 satisfaction. At such time, the interest shall be remitted to the  
19 permit holder; except that such interest or appreciation may be used by  
20 the department to effect reclamation in the event that the permit  
21 holder fails to comply with the provisions of this chapter and the  
22 costs of reclamation exceed the face value of the performance security.

23 Except as provided in this section, no other state agency or local  
24 government shall require performance security for the purposes of  
25 surface mine reclamation and only one agency of government shall  
26 require and hold the performance security. The department may enter  
27 into written agreements with federal agencies in order to avoid  
28 redundant bonding of surface mines straddling boundaries between  
29 federally controlled and other lands within Washington state.

30 ~~((Notwithstanding any other provision of this section, nothing~~  
31 ~~shall preclude the department of ecology from requiring a separate~~  
32 ~~performance security for metallic minerals or uranium surface mines~~  
33 ~~under any authority if any that may be presently vested in the~~  
34 ~~department of ecology relating to such mines.)) The department and the  
35 department of ecology shall jointly require performance security for  
36 metals mining and milling operations regulated under chapter . . . ,  
37 Laws of 1994 (this act).~~

1       **Sec. 22.** RCW 78.44.131 and 1993 c 518 s 20 are each amended to  
2 read as follows:

3       The need for, and the practicability of, reclamation shall control  
4 the type and degree of reclamation in any specific instance. However,  
5 the basic objective of reclamation is to reestablish on a continuing  
6 basis the vegetative cover, slope stability, water conditions, and  
7 safety conditions suitable to the proposed subsequent use consistent  
8 with local land use plans for the surface mine site.

9       Each permit holder shall comply with the minimum reclamation  
10 standards in effect on the date the permit was issued and any  
11 additional reclamation standards set forth in the approved reclamation  
12 plan. The department may modify the minimum reclamation standards for  
13 metals mining and milling operations regulated under chapter . . . ,  
14 Laws of 1994 (this act) in order to achieve the reclamation and closure  
15 objectives of that chapter.

16       Reclamation activities, particularly those relating to control of  
17 erosion and mitigation of impacts of mining to adjacent areas, shall,  
18 to the extent feasible, be conducted simultaneously with surface  
19 mining, and in any case shall be initiated at the earliest possible  
20 time after completion of surface mining on any segment of the permit  
21 area.

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

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

29       NEW SECTION.   **Sec. 23.** Sections 1 through 14 of this act shall  
30 constitute a new chapter in Title 78 RCW.

31       NEW SECTION.   **Sec. 24.** (1) The department of ecology shall  
32 establish a metals mining advisory group, to be comprised of members  
33 representing the metals mining industry, the environmental community,  
34 the department of ecology, and the department of natural resources.

35       (2) The metals mining advisory group will focus on the following  
36 tasks:

1 (a) A review of the adequacy of the cost-accounting methods of the  
2 departments of ecology and natural resources in accurately identifying  
3 the costs associated with the additional inspection requirements  
4 established in this act;

5 (b) Establishing a set of success measures to be used to evaluate  
6 the implementation of the new coordinator role established in this act;  
7 and

8 (c) Identification and evaluation of the alternative bases for  
9 allocating the costs identified in section 7 of this act among existing  
10 and proposed metals mining and milling operations.

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

14 NEW SECTION. **Sec. 25.** If any provision of this act or its  
15 application to any person or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 26.** This act is necessary for the immediate  
19 preservation of the public peace, health, or safety, or support of the  
20 state government and its existing public institutions, and shall take  
21 effect immediately.

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