
SENATE BILL 5624

State of Washington

55th Legislature

1997 Regular Session

By Senators Morton and Snyder

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1 AN ACT Relating to mining and milling operations; amending RCW
2 78.56.010, 78.56.020, 78.56.030, 78.56.050, 78.56.060, 78.56.070,
3 78.56.080, 78.56.090, 78.56.100, 78.56.110, 78.56.120, 78.56.130,
4 78.44.131, and 78.44.161; adding new sections to chapter 78.56 RCW;
5 adding a new section to chapter 78.44 RCW; creating a new section; and
6 prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 78.56 RCW
9 to read as follows:

10 (1) The metals mining and milling operations subchapter applies to
11 all metals mining and milling operations as defined in RCW 78.56.020.
12 The surface mining of precious and base metal ores subchapter applies
13 to metals mining and milling operations that are also surface mines as
14 defined in section 17 of this act.

15 (2) The legislature intends that chapter 78.44 RCW not apply to the
16 mining and milling operations under this chapter, except for the
17 surface mining reclamation account under RCW 78.44.045.

1 **Sec. 2.** RCW 78.56.010 and 1994 c 232 s 1 are each amended to read
2 as follows:

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

15 **Sec. 3.** RCW 78.56.020 and 1994 c 232 s 2 are each amended to read
16 as follows:

17 The definitions set forth in this section apply throughout this
18 ((chapter)) subchapter.

19 (1) "Metals mining and milling operation" means a mining operation
20 extracting from the earth precious or base metal ore and processing the
21 ore by treatment or concentration in a milling facility. It also
22 refers to an expansion of an existing operation or any new metals
23 mining operation if the expansion or new mining operation is likely to
24 result in a significant, adverse environmental impact pursuant to the
25 provisions of chapter 43.21C RCW. The extraction of dolomite, sand,
26 gravel, aggregate, limestone, magnesite, silica rock, and zeolite or
27 other nonmetallic minerals; and placer mining; and the smelting of
28 aluminum are not metals mining and milling operations regulated under
29 this ((chapter)) subchapter.

30 (2) "Milling" means the process of grinding or crushing ore and
31 extracting the base or precious metal by chemical solution, electro
32 winning, or flotation processes.

33 (3) "Heap leach extraction process" in regard to a metals mining
34 and milling operation means the process of extracting base or precious
35 metal ore by percolating solutions through ore in an open system and
36 includes reprocessing of previously milled ore. The heap leach
37 extraction process does not include leaching in a vat or tank.

1 (4) "In situ extraction" in regard to a metals mining and milling
2 operation means the process of dissolving base or precious metals from
3 their natural place in the geological setting and retrieving the
4 solutions from which metals can be recovered.

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

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

20 **Sec. 4.** RCW 78.56.030 and 1994 c 232 s 3 are each amended to read
21 as follows:

22 Metals mining and milling operations are subject to the
23 requirements of this ((chapter)) subchapter in addition to the
24 requirements established in other statutes and rules.

25 **Sec. 5.** RCW 78.56.050 and 1994 c 232 s 5 are each amended to read
26 as follows:

27 (1) An environmental impact statement must be prepared for any
28 proposed metals mining and milling operation. The department of
29 ecology shall be the lead agency in coordinating the environmental
30 review process under chapter 43.21C RCW and in preparing the
31 environmental impact statement, except for uranium and thorium
32 operations regulated under Title 70 RCW.

33 (2) As part of the environmental review of metals mining and
34 milling operations regulated under this ((chapter)) subchapter, the
35 applicant shall provide baseline data adequate to document the
36 premining conditions at the proposed site of the metals mining and
37 milling operation. The baseline data shall contain information on the

1 elements of the natural environment identified in rules adopted
2 pursuant to chapter 43.21C RCW.

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

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

12 **Sec. 6.** RCW 78.56.060 and 1994 c 232 s 6 are each amended to read
13 as follows:

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

25 **Sec. 7.** RCW 78.56.070 and 1994 c 232 s 7 are each amended to read
26 as follows:

27 (1) State agencies with the responsibility for inspecting metals
28 mining and milling operations regulated under this ((chapter))
29 subchapter shall conduct such inspections at least quarterly:
30 PROVIDED, That the inspections are not prevented by inclement weather
31 conditions.

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

1 effective manner. If doing so would be more efficient and cost-
2 effective, state agency inspectors are also encouraged to coordinate
3 inspections with federal and local government inspectors as well as
4 with one another.

5 **Sec. 8.** RCW 78.56.080 and 1994 c 232 s 8 are each amended to read
6 as follows:

7 (1) The metals mining account is created in the state treasury.
8 Expenditures from this account are subject to appropriation.
9 Expenditures from this account may only be used for: (a) The
10 additional inspections of metals mining and milling operations required
11 by RCW 78.56.070 and (b) the metals mining coordinator established in
12 RCW 78.56.060.

13 (2)(a) As part of its normal budget development process and in
14 consultation with the metals mining industry, the department of ecology
15 shall estimate the costs required for the department to meet its
16 obligations for the additional inspections of metals mining and milling
17 operations required by chapter 232, Laws of 1994. The department shall
18 also estimate the cost of employing the metals mining coordinator
19 established in RCW 78.56.060.

20 (b) As part of its normal budget development process and in
21 consultation with the metals mining industry, the department of natural
22 resources shall estimate the costs required for the department to meet
23 its obligations for the additional inspections of metals mining and
24 milling operations required by chapter 232, Laws of 1994.

25 (3) Based on the cost estimates generated by the department of
26 ecology and the department of natural resources, the department of
27 revenue shall establish the amount of a fee to be paid by each active
28 metals mining and milling operation regulated under this ((chapter))
29 subchapter. The fee shall be established at a level to fully recover
30 the direct and indirect costs of the agency responsibilities identified
31 in subsection (2) of this section. The amount of the fee for each
32 operation shall be proportional to the number of visits required per
33 site. Each applicant for a metals mining and milling operation shall
34 also be assessed the fee based on the same criterion. The department
35 of revenue may adjust the fees established in this subsection if
36 unanticipated activity in the industry increases or decreases the
37 amount of funding necessary to meet agencies' inspection
38 responsibilities.

1 (4) The department of revenue shall collect the fees established in
2 subsection (3) of this section. Chapter 82.32 RCW, insofar as
3 applicable, applies to the fees imposed under this section. All moneys
4 paid to the department of revenue from these fees shall be deposited
5 into the metals mining account.

6 (5) This section shall take effect July 1, 1995, unless the
7 legislature adopts an alternative approach based on the recommendations
8 of the metals mining advisory group established in section 27, chapter
9 232, Laws of 1994.

10 **Sec. 9.** RCW 78.56.090 and 1994 c 232 s 9 are each amended to read
11 as follows:

12 (1) In the processing of an application for an initial waste
13 discharge permit for a tailings facility pursuant to the requirements
14 of chapter 90.48 RCW, the department of ecology shall consider site-
15 specific criteria in determining a preferred location of tailings
16 facilities of metals mining and milling operations and incorporate the
17 requirements of all known available and reasonable methods in order to
18 maintain the highest possible standards to insure the purity of all
19 waters of the state in accordance with the public policy identified by
20 RCW 90.48.010.

21 In implementing the siting criteria, the department of ecology
22 shall take into account the objectives of the proponent's application
23 relating to mining and milling operations. These objectives shall
24 consist of, but not be limited to (a) operational feasibility, (b)
25 compatibility with optimum tailings placement methods, (c) adequate
26 volume capacity, (d) availability of construction materials, and (e) an
27 optimized embankment volume.

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

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

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

36 (b) Proximity to surface and ground water;

37 (c) Topographic setting;

1 (d) Identifiable adverse geologic conditions, such as landslides
2 and active faults; and

3 (e) Visibility impacts of the public generally and residents more
4 particularly.

5 (4) The department of ecology, through the primary screening
6 process, shall reduce the available tailings facility sites to one or
7 more feasible locations whereupon a technical site investigation phase
8 shall be conducted by the department for the purpose of verifying the
9 adequacy of the remaining potential sites. The technical site
10 investigations phase shall consist of, but not be limited to, the
11 following:

12 (a) Soil characteristics;

13 (b) Hydrologic characteristics;

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

16 (d) A surface water control analysis; and

17 (e) A slope stability analysis.

18 (5) Upon completion of the two phase evaluation process set forth
19 in this section, the department of ecology shall issue a site selection
20 report on the preferred location. This report shall address the above
21 criteria as well as analyze the feasibility of reclamation and
22 stabilization of the tailings facility. The siting report may
23 recommend mitigation or engineering factors to address siting concerns.
24 The report shall be developed in conjunction with the preparation of
25 and contained in an environmental impact statement prepared pursuant to
26 chapter 43.21C RCW. The report may be utilized by the department of
27 ecology for the purpose of providing information related to the
28 suitability of the site and for ruling on an application for a waste
29 discharge permit.

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

33 **Sec. 10.** RCW 78.56.100 and 1994 c 232 s 10 are each amended to
34 read as follows:

35 (1) In order to receive a waste discharge permit from the
36 department of ecology pursuant to the requirements of chapter 90.48 RCW
37 or in order to operate a metals mining and milling tailing facility, an
38 applicant proposing a metals mining and milling operation regulated

1 under this ((chapter)) subchapter must meet the following additional
2 requirements:

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

5 (i) Operators shall apply all known available and reasonable
6 technology to limit the concentration of potentially toxic materials in
7 the tailings facility to assure the protection of wildlife and human
8 health;

9 (ii) The tailings facility shall have a containment system that
10 includes an engineered liner system, leak detection and leak collection
11 elements, and a seepage collection impoundment to assure that a leak of
12 any regulated substance under chapter 90.48 RCW will be detected before
13 escaping from the containment system. The design and management of the
14 facility must ensure that any leaks from the tailings facility are
15 detected in a manner which allows for remediation pursuant to chapter
16 90.48 RCW. The applicant shall prepare a detailed engineering report
17 setting forth the facility design and construction. The applicant
18 shall submit the report to the department of ecology for its review and
19 approval of a design as determined by the department. Natural
20 conditions, such as depth to ground water or net rainfall, shall be
21 taken into account in the facility design, but not in lieu of the
22 protection required by the engineered liner system;

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

27 (iv) The closure of the tailings facility shall provide for
28 isolation or containment of potentially toxic materials and shall be
29 designed to prevent future release of regulated substances contained in
30 the impoundment;

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

35 (i) An accurate identification of the acid generating properties of
36 the waste rock;

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

1 (iii) A plan for reclaiming and closing waste rock sites which
2 minimizes infiltration of precipitation and runoff into the waste rock
3 and which is designed to prevent future releases of regulated
4 substances contained within the waste rock;

5 (c) If an interested citizen or citizen group so requests of the
6 department of ecology, the metals mining and milling operator or
7 applicant shall work with the department of ecology and the interested
8 party to make arrangements for citizen observation and verification in
9 the taking of required water samples. While it is the intent of this
10 subsection to provide for citizen observation and verification of water
11 sampling activities, it is not the intent of this subsection to require
12 additional water sampling and analysis on the part of the mining and
13 milling operation or the department. The citizen observation and
14 verification program shall be incorporated into the applicant's,
15 operator's, or department's normal sampling regimen and shall occur at
16 least once every six months. There is no duty of care on the part of
17 the state or its employees to any person who participates in the
18 citizen observation and verification of water sampling under chapter
19 232, Laws of 1994 and the state and its employees shall be immune from
20 any civil lawsuit based on any injuries to or claims made by any person
21 as a result of that person's participation in such observation and
22 verification of water sampling activities. The metals mining and
23 milling operator or applicant shall not be liable for any injuries to
24 or claims made by any person which result from that person coming onto
25 the property of the metals mining and milling operator or applicant as
26 an observer pursuant to chapter 232, Laws of 1994. The results from
27 these and all other relevant water sampling activities shall be kept on
28 file with the relevant county and shall be available for public
29 inspection during normal working hours; and

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

33 (2) Only those tailings facilities constructed after April 1, 1994,
34 must meet the requirement established in subsection (1)(a) of this
35 section. Only those waste rock holdings constructed after April 1,
36 1994, must meet the requirement established in subsection (1)(b) of
37 this section.

1 **Sec. 11.** RCW 78.56.110 and 1995 c 223 s 1 are each amended to read
2 as follows:

3 (1) The department of ecology shall not issue necessary permits to
4 an applicant for a metals mining and milling operation until the
5 applicant has deposited with the department of ecology a performance
6 security which is acceptable to the department of ecology based on the
7 requirements of subsection (2) of this section. This performance
8 security may be:

9 (a) Bank letters of credit;

10 (b) A cash deposit;

11 (c) Negotiable securities;

12 (d) An assignment of a savings account;

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

14 (f) A corporate surety bond executed in favor of the department of
15 ecology by a corporation authorized to do business in the state of
16 Washington under Title 48 RCW.

17 The department of ecology may, for any reason, refuse any
18 performance security not deemed adequate.

19 (2) The performance security shall be conditioned on the faithful
20 performance of the applicant or operator in meeting the following
21 obligations:

22 (a) Compliance with the environmental protection laws of the state
23 of Washington administered by the department of ecology, or permit
24 conditions administered by the department of ecology, associated with
25 the construction, operation, and closure pertaining to metals mining
26 and milling operations, and with the related environmental protection
27 ordinances and permit conditions established by local government when
28 requested by local government;

29 (b) Reclamation of metals mining and milling operations that do not
30 meet the threshold of a surface ((mining)) mine as defined by ((RCW
31 78.44.031(17))) section 17 of this act;

32 (c) Postclosure environmental monitoring as determined by the
33 department of ecology; and

34 (d) Provision of sufficient funding as determined by the department
35 of ecology for cleanup of potential problems revealed during or after
36 closure.

37 (3) The department of ecology may, if it deems appropriate, adopt
38 rules for determining the amount of the performance security,
39 requirements for the performance security, requirements for the issuer

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

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

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

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

21 (7) Only one agency may require a performance security to satisfy
22 the deposit requirements of ((RCW 78.44.087)) section 27 of this act,
23 and only one agency may require a performance security to satisfy the
24 deposit requirements of this section. However, a single performance
25 security, when acceptable to both the department of ecology and the
26 department of natural resources, may be utilized by both agencies to
27 satisfy the requirements of this section and ((RCW 78.44.087)) section
28 27 of this act.

29 **Sec. 12.** RCW 78.56.120 and 1995 c 223 s 2 are each amended to read
30 as follows:

31 The department of ecology may, with staff, equipment, and material
32 under its control, or by contract with others, remediate or mitigate
33 any impact of a metals mining and milling operation when it finds that
34 the operator or permit holder has failed to comply with relevant
35 statutes, rules, or permits, and the operator or permit holder has
36 failed to take adequate or timely action to rectify these impacts.

37 If the department of ecology intends to remediate or mitigate such
38 impacts, the department of ecology shall issue an order to submit

1 performance security requiring the permit holder or surety to submit to
2 the department of ecology the amount of moneys posted pursuant to RCW
3 78.56.110. If the amount specified in the order to submit performance
4 security is not paid within twenty days after issuance of the notice,
5 the attorney general upon request of the department of ecology shall
6 bring an action on behalf of the state in a superior court to recover
7 the amount specified and associated legal fees.

8 The department of ecology may proceed at any time after issuing the
9 order to submit performance security to remediate or mitigate adverse
10 impacts.

11 The department of ecology shall keep a record of all expenses
12 incurred in carrying out any remediation or mitigation activities
13 authorized under this section, including:

14 (1) Remediation or mitigation;

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

17 (3) Administrative and legal expenses related to remediation or
18 mitigation.

19 The department of ecology shall refund to the surety or permit
20 holder all amounts received in excess of the amount of expenses
21 incurred. If the amount received is less than the expenses incurred,
22 the attorney general, upon request of the department of ecology, may
23 bring an action against the permit holder on behalf of the state in the
24 superior court to recover the remaining costs listed in this section.

25 **Sec. 13.** RCW 78.56.130 and 1994 c 232 s 13 are each amended to
26 read as follows:

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

1 owner of such an operation, and costs associated with the operation to
2 determine to what degree any new costs require mitigation by the metals
3 mining applicant.

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

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

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

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

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

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

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

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

1 the mining operation. The county legislative authority shall hold at
2 least one public hearing on the economic impact analysis and any
3 proposed mitigation measures.

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

15 (7) The requirements established in this section apply to metals
16 mining operations under construction or constructed after April 1,
17 1994.

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

20 NEW SECTION. **Sec. 14.** The legislature recognizes that the
21 extraction of minerals by surface mining is an essential activity
22 making an important contribution to the economic well-being of the
23 state and nation. It is not possible to extract minerals without
24 producing some environmental impacts. At the same time, comprehensive
25 regulation of mining and thorough reclamation of mined lands is
26 necessary to prevent or mitigate conditions that would be detrimental
27 to the environment and to protect the general welfare, health, safety,
28 and property rights of the citizens of the state. Surface mining takes
29 place in diverse areas where the geologic, topographic, climatic,
30 biologic, and social conditions are significantly different, and
31 reclamation specifications must vary accordingly. Therefore, the
32 legislature finds that a balance between appropriate environmental
33 regulation and the production and conservation of minerals is in the
34 best interests of the citizens of the state.

35 NEW SECTION. **Sec. 15.** The legislature recognizes that the
36 extraction of minerals from a surface mine has historically included
37 regulatory involvement by both state and local governments.

1 It is the intent of the legislature to clarify that surface mining
2 is an appropriate land use, subject to reclamation authority exercised
3 by the department of natural resources and land use and operation
4 regulatory authority by counties, cities, and towns.

5 NEW SECTION. **Sec. 16.** The purposes of this subchapter in regard
6 to surface mines are to:

7 (1) Provide that the usefulness, productivity, and scenic values of
8 all lands and waters involved in surface mining within the state will
9 receive the greatest practical degree of protection and reclamation at
10 the earliest opportunity following completion of surface mining;

11 (2) Provide for the greatest practical degree of state-wide
12 consistency in the regulation of surface mines;

13 (3) Apportion regulatory authority between state and local
14 governments in order to minimize redundant regulation of mining;

15 (4) Ensure that reclamation is consistent with local land use
16 plans; and

17 (5) Ensure the power of local government to regulate land use and
18 operations.

19 NEW SECTION. **Sec. 17.** Unless the context clearly indicates
20 otherwise, the definitions in this section apply throughout this
21 subchapter.

22 (1) "Approved subsequent use" means the post surface-mining land
23 use contained in an approved reclamation plan and approved by the local
24 land use authority.

25 (2) "Completion of surface mining" means the cessation of mining
26 and directly related activities in any segment of a surface mine that
27 occurs when essentially all minerals that can be taken under the terms
28 of the reclamation permit have been depleted except minerals required
29 to accomplish reclamation according to the approved reclamation plan.

30 (3) "Department" means the department of natural resources.

31 (4) "Determination" means any action by the department including
32 permit issuance, reporting, reclamation plan approval or modification,
33 permit transfers, orders, fines, or refusal to issue permits.

34 (5) "Disturbed area" means any place where activities clearly in
35 preparation for, or during, surface mining have physically disrupted,
36 covered, compacted, moved, or otherwise altered the characteristics of
37 soil, bedrock, vegetation, or topography that existed prior to such

1 activity. Disturbed areas may include but are not limited to: Working
2 faces, water bodies created by mine-related excavation, pit floors, the
3 land beneath processing plant and stock pile sites, spoil pile sites,
4 and equipment staging areas.

5 Disturbed areas do not include:

6 (a) Surface mine access roads unless these have characteristics of
7 topography, drainage, slope stability, or ownership that, in the
8 opinion of the department, make reclamation necessary; and

9 (b) Lands that have been reclaimed to all standards outlined in
10 this subchapter, rules of the department, any applicable SEPA document,
11 and the approved reclamation plan.

12 (6) "Miner" means any person or persons, any partnership, limited
13 partnership, or corporation, or any association of persons, including
14 every public or governmental agency engaged in mining from the surface.

15 (7) "Minerals" means precious or base metal ores to be excavated
16 from natural deposits on or in the earth for commercial, industrial, or
17 construction use. "Minerals" does not mean clay, coal, gravel,
18 industrial minerals, peat, sand, stone, topsoil, or any other similar
19 solid material or substance to be excavated from natural deposits on or
20 in the earth for commercial, industrial, or construction use.

21 (8) "Operations" means all mine-related activities, exclusive of
22 reclamation, that include, but are not limited to activities that
23 affect noise generation, air quality, surface and ground water quality,
24 quantity, and flow, glare, pollution, traffic safety, ground
25 vibrations, and/or significant or substantial impacts commonly
26 regulated under provisions of land use or other permits of local
27 government and local ordinances, or other state laws.

28 Operations specifically include:

29 (a) The mining or extraction of rock, stone, gravel, sand, earth,
30 and other minerals;

31 (b) Blasting, equipment maintenance, sorting, crushing, and
32 loading;

33 (c) On-site mineral processing including asphalt or concrete
34 batching, concrete recycling, and other aggregate recycling;

35 (d) Transporting minerals to and from the mine, on site road
36 maintenance, road maintenance for roads used extensively for surface
37 mining activities, traffic safety, and traffic control.

38 (9) "Overburden" means the earth, rock, soil, and topsoil that lie
39 above mineral deposits.

1 (10) "Permit holder" means any person or persons, any partnership,
2 limited partnership, or corporation, or any association of persons,
3 either natural or artificial, including every public or governmental
4 agency engaged in surface mining and/or the operation of surface mines,
5 whether individually, jointly, or through subsidiaries, agents,
6 employees, operators, or contractors who holds a state reclamation
7 permit.

8 (11) "Reclamation" means rehabilitation for the appropriate future
9 use of disturbed areas resulting from surface mining including areas
10 under associated mineral processing equipment and areas under
11 stockpiled materials. Although both the need for and the
12 practicability of reclamation will control the type and degree of
13 reclamation in any specific surface mine, the basic objective shall be
14 to reestablish on a perpetual basis the vegetative cover, soil
15 stability, and water conditions appropriate to the approved subsequent
16 use of the surface mine and to prevent or mitigate future environmental
17 degradation.

18 (12) "Reclamation setbacks" include those lands along the margins
19 of surface mines wherein minerals and overburden shall be preserved in
20 sufficient volumes to accomplish reclamation according to the approved
21 plan and the minimum reclamation standards. Maintenance of reclamation
22 setbacks may not preclude other mine-related activities within the
23 reclamation setback.

24 (13) "Recycling" means the reuse of minerals or rock products.

25 (14) "Screening" consists of vegetation, berms or other topography,
26 fencing, and/or other screens that may be required to mitigate impacts
27 of surface mining on adjacent properties and/or the environment.

28 (15) "Segment" means any portion of the surface mine that, in the
29 opinion of the department:

30 (a) Has characteristics of topography, drainage, slope stability,
31 ownership, mining development, or mineral distribution, that make
32 reclamation necessary;

33 (b) Is not in use as part of surface mining and/or related
34 activities; and

35 (c) Is larger than seven acres and has more than five hundred
36 linear feet of working face except as provided in a segmental
37 reclamation agreement approved by the department.

38 (16) "SEPA" means the state environmental policy act, chapter
39 43.21C RCW and rules adopted thereunder.

1 (17)(a) "Surface mine" means any area or areas in close proximity
2 to each other, as determined by the department, where extraction of
3 minerals from the surface results in:

4 (i) More than three acres of disturbed area;

5 (ii) Mined slopes greater than thirty feet high and steeper than
6 1.0 foot horizontal to 1.0 foot vertical; or

7 (iii) More than one acre of disturbed area within an eight acre
8 area, when the disturbed area results from mineral prospecting or
9 exploration activities.

10 (b) "Surface mine" means areas where mineral extraction from the
11 surface occurs by the auger method or by reworking mine refuse or
12 tailings, when these activities exceed the size or height thresholds
13 listed in (a) of this subsection.

14 (c) "Surface mine" does not mean excavations or grading used:

15 (i) Primarily for on-site construction, on-site road maintenance,
16 or on-site landfill construction;

17 (ii) For the purpose of public safety or restoring the land
18 following a natural disaster;

19 (iii) For the purpose of removing stockpiles;

20 (iv) For forest or farm road construction or maintenance on site or
21 on contiguous lands;

22 (v) For sand authorized by RCW 43.51.685; and

23 (vi) For underground mines.

24 (d) "Surface mine" does not mean the extraction of dolomite,
25 aggregate, limestone, magnesite, silica rock, or zeolite or other
26 nonmetallic minerals; placer mining; or smelting of aluminum.

27 (18) "Topsoil" means the naturally occurring upper part of a soil
28 profile, including the soil horizon that is rich in humus and capable
29 of supporting vegetation together with other sediments within four
30 vertical feet of the ground surface.

31 NEW SECTION. **Sec. 18.** The department of natural resources is
32 charged with the administration of reclamation under this subchapter.
33 In order to implement and enforce the administration of reclamation,
34 the department, under the chapter 34.05 RCW, may from time to time
35 adopt those rules necessary to carry out the purposes of this
36 subchapter.

1 NEW SECTION. **Sec. 19.** Annual mining fees received by the
2 department from surface mines, funds received by the department from
3 state, local, or federal agencies for research on surface mines, as
4 well as other mine-related funds and fines received by the department
5 under this subchapter shall be deposited into the surface mine
6 reclamation account under RCW 78.44.045.

7 NEW SECTION. **Sec. 20.** The department shall have the exclusive
8 authority to regulate surface mine reclamation except that, by
9 contractual agreement, the department may delegate some or all of its
10 enforcement authority to a county, city, or town. All counties,
11 cities, or towns shall have the authority to zone surface mines and
12 adopt ordinances regulating operations, except that county, city, or
13 town operations ordinances may be preempted by the department during
14 the emergencies outlined in section 39 of this act and related rules.

15 This subchapter shall not alter or preempt any provisions of the
16 state fisheries laws (Title 75 RCW), the state water allocation and use
17 laws (chapters 90.03 and 90.44 RCW), the state water pollution control
18 laws (chapter 90.48 RCW), the state wildlife laws (Title 77 RCW), state
19 noise laws or air quality laws (Title 70 RCW), shoreline management
20 (chapter 90.58 RCW), the state environmental policy act (chapter 43.21C
21 RCW), state growth management (chapter 36.70A RCW), state drinking
22 water laws (chapters 43.20 and 70.119A RCW), or any other state
23 statutes.

24 NEW SECTION. **Sec. 21.** In the event state law is preempted under
25 federal surface mining laws relating to surface mining of coal or the
26 department of natural resources determines that a federal program and
27 its rules and regulations relating to the surface mining of coal are as
28 stringent and effective as the provisions of this subchapter, the
29 provisions of this subchapter shall not apply to such surface mining
30 for which federal permits are issued until such preemption ceases or
31 the department determines this subchapter should apply.

32 NEW SECTION. **Sec. 22.** The department shall have the authority to
33 conduct, authorize, and/or participate in investigations, research,
34 experiments, and demonstrations, and to collect and disseminate
35 information relating to surface mining and reclamation of surface mined
36 lands.

1 NEW SECTION. **Sec. 23.** The department may cooperate with other
2 governmental and private agencies and agencies of the federal
3 government, and may reasonably reimburse them for any services the
4 department requests that they provide. The department may also receive
5 any federal funds, state funds and any other funds and expend them for
6 reclamation of land affected by surface mining under this subchapter
7 and for purposes enumerated in section 22 of this act.

8 NEW SECTION. **Sec. 24.** After July 1, 1993, no miner or permit
9 holder may engage in surface mining under this subchapter without
10 having first obtained a reclamation permit from the department.
11 Operating permits issued by the department between January 1, 1971, and
12 June 30, 1993, shall be considered reclamation permits provided such
13 permits substantially meet the protections, mitigations, and
14 reclamation goals of sections 28 through 32 of this act within five
15 years after the effective date of this act. State agencies and local
16 government shall be exempt from this time limit for inactive sites.
17 Prior to the use of an inactive site, the reclamation plan must be
18 brought up to current standards. A separate permit shall be required
19 for each noncontiguous surface mine. The reclamation permit shall
20 consist of the permit forms and any exhibits attached thereto. The
21 permit holder shall comply with the provisions of the reclamation
22 permit unless waived and explained in writing by the department.

23 Prior to receiving a reclamation permit, an applicant must submit
24 an application on forms provided by the department that shall contain
25 the following information and shall be considered part of the
26 reclamation permit:

27 (1) Name and address of the legal landowner, or purchaser of the
28 land under a real estate contract;

29 (2) The name of the applicant and, if the applicants are
30 corporations or other business entities, the names and addresses of
31 their principal officers and resident agent for service of process;

32 (3) A reasonably accurate description of the minerals to be surface
33 mined;

34 (4) Type of surface mining to be performed;

35 (5) Estimated starting date, date of completion, and date of
36 completed reclamation of surface mining;

37 (6) Size and legal description of the permit area and maximum
38 lateral and vertical extent of the disturbed area;

- 1 (7) Expected area to be disturbed by surface mining during (a) the
2 next twelve months, and (b) the following twenty-four months;
3 (8) Any applicable SEPA documents; and
4 (9) Other pertinent data as required by the department.

5 The reclamation permit shall be granted for the period required to
6 deplete essentially all minerals identified in the reclamation permit
7 on the land covered by the reclamation plan. The reclamation permit
8 shall be valid until the reclamation is complete unless the permit is
9 canceled by the department.

10 NEW SECTION. **Sec. 25.** The department shall refuse to issue a
11 reclamation permit if it is determined during the SEPA process that the
12 impacts of a proposed surface mine cannot be adequately mitigated.

13 The department or county, city, or town may refuse to issue any
14 other permit at any other location to any miner or permit holder who
15 fails to rectify deficiencies set forth in an order of the department
16 within the requisite time schedule. However, the department or county,
17 city, or town shall issue all appropriate permits when all deficiencies
18 are corrected at each surface mining site.

19 NEW SECTION. **Sec. 26.** (1) An applicant for a public or private
20 reclamation permit under section 24 of this act shall pay an
21 application fee to the department before being granted a surface mining
22 permit. The amount of the application fee shall be six hundred fifty
23 dollars.

24 (2) After June 30, 1993, each public or private permit holder shall
25 pay an annual permit fee of six hundred fifty dollars. The annual
26 permit fee shall be payable to the department on the first anniversary
27 of the permit date and each year thereafter. Annual fees paid by a
28 county for mines used exclusively for public works projects and having
29 less than seven acres of disturbed area per mine shall not exceed one
30 thousand dollars. Annual fees are waived for all mines used primarily
31 for public works projects if the mines are owned and primarily operated
32 by counties with 1993 populations of less than twenty thousand persons.

33 (3) After July 1, 1995, the department may modify annual permit
34 fees by rule if:

35 (a) The total annual permit fees are reasonably related to the
36 approximate costs of administering the department's surface mining
37 regulatory program;

1 (b) The annual fee does not exceed five thousand dollars; and
2 (c) The mines are small mines in remote areas that are used
3 primarily for public service, then lower annual permit fees may be
4 established.

5 (4) Appeals from any determination of the department shall not stay
6 the requirement to pay any annual permit fee. Failure to pay the
7 annual fee may constitute grounds for an order to suspend surface
8 mining or cancellation of the reclamation permit as provided in this
9 subchapter.

10 (5) All fees collected by the department shall be deposited into
11 the surface mining reclamation account under RCW 78.44.045.

12 (6) If the department delegates enforcement responsibilities to a
13 county, city, or town, the department may allocate funds collected
14 under this section to the county, city, or town.

15 NEW SECTION. **Sec. 27.** (1) The department shall not issue a
16 reclamation permit until the applicant has deposited with the
17 department an acceptable performance security on forms prescribed and
18 furnished by the department. A public or governmental agency shall not
19 be required to post performance security nor shall a permit holder be
20 required to post surface mining performance security with more than one
21 state or local agency.

22 (2) This performance security may be:

23 (a) Bank letters of credit acceptable to the department;

24 (b) A cash deposit;

25 (c) Negotiable securities acceptable to the department;

26 (d) An assignment of a savings account;

27 (e) A savings certificate in a Washington bank on an assignment
28 form prescribed by the department;

29 (f) Assignments of interests in real property within the state of
30 Washington; or

31 (g) A corporate surety bond executed in favor of the department by
32 a corporation authorized to do business in the state of Washington
33 under Title 48 RCW and authorized by the department.

34 (3) The performance security shall be conditioned upon the faithful
35 performance of the requirements set forth in this subchapter and of the
36 rules adopted under it.

37 (4) The department shall have the authority to determine the amount
38 of the performance security using a standardized performance security

1 formula developed by the department. The amount of the security shall
2 be determined by the department and based on the estimated costs of
3 completing reclamation according to the approved reclamation plan or
4 minimum standards and related administrative overhead for the area to
5 be surface mined during (a) the next twelve-month period, (b) the
6 following twenty-four months, and (c) any previously disturbed areas on
7 which the reclamation has not been satisfactorily completed and
8 approved.

9 (5) The department may increase or decrease the amount of the
10 performance security at any time to compensate for a change in the
11 disturbed area, the depth of excavation, a modification of the
12 reclamation plan, or any other alteration in the conditions of the mine
13 that affects the cost of reclamation. The department may, for any
14 reason, refuse any performance security not deemed adequate.

15 (6) Liability under the performance security shall be maintained
16 until reclamation is completed according to the approved reclamation
17 plan to the satisfaction of the department unless released as
18 hereinafter provided. Liability under the performance security may be
19 released only upon written notification by the department.
20 Notification shall be given upon completion of compliance or acceptance
21 by the department of a substitute performance security. The liability
22 of the surety shall not exceed the amount of security required by this
23 section and the department's reasonable legal fees to recover the
24 security.

25 (7) Any interest or appreciation on the performance security shall
26 be held by the department until reclamation is completed to its
27 satisfaction. At such time, the interest shall be remitted to the
28 permit holder; except that such interest or appreciation may be used by
29 the department to effect reclamation in the event that the permit
30 holder fails to comply with the provisions of this subchapter and the
31 costs of reclamation exceed the face value of the performance security.

32 (8) Except as provided in this section, no other state agency or
33 local government shall require performance security for the purposes of
34 surface mine reclamation under this subchapter and only one agency of
35 government shall require and hold the performance security. The
36 department may enter into written agreements with federal agencies in
37 order to avoid redundant bonding of surface mines straddling boundaries
38 between federally controlled and other lands within Washington state.

1 NEW SECTION. **Sec. 28.** An applicant shall provide a reclamation
2 plan and copies acceptable to the department prior to obtaining a
3 reclamation permit. The department shall have the sole authority to
4 approve reclamation plans. Reclamation plans or modified reclamation
5 plans submitted to the department after June 30, 1993, shall meet or
6 exceed the minimum reclamation standards set forth in this subchapter
7 and by the department in rule. Each applicant shall also supply copies
8 of the proposed plans and final reclamation plan approved by the
9 department to the county, city, or town in which the mine will be
10 located. The department shall solicit comment from local government
11 prior to approving a reclamation plan. The reclamation plan shall
12 include:

13 (1) A written narrative describing the proposed mining and
14 reclamation scheme with:

15 (a) A statement of a proposed subsequent use of the land after
16 reclamation that is consistent with the local land use designation.
17 Approval of the reclamation plan shall not vest the proposed subsequent
18 use of the land;

19 (b) If the permit holder is not the sole landowner, a copy of the
20 conveyance or a written statement that expressly grants or reserves the
21 right to extract minerals by surface mining methods;

22 (c) A simple and accurate legal description of the permit area and
23 disturbed areas;

24 (d) The maximum depth of mining;

25 (e) A reasonably accurate description of the minerals to be mined;

26 (f) A description of the method of mining;

27 (g) A description of the sequence of mining that will provide,
28 within limits of normal procedures of the industry, for completion of
29 surface mining and associated disturbance on each portion of the permit
30 area so that reclamation can be initiated at the earliest possible time
31 on each segment of the mine;

32 (h) A schedule for progressive reclamation of each segment of the
33 mine;

34 (i) Where surface mining on flood plains or in river or stream
35 channels is contemplated, a thoroughly documented hydrogeologic
36 evaluation that will outline measures that would protect against or
37 would mitigate avulsion and erosion as determined by the department;

38 (j) Where surface mining is contemplated within critical aquifer
39 recharge areas, special protection areas as defined by chapter 90.48

1 RCW and implementing rules, public water supply watersheds, sole source
2 aquifers, wellhead protection areas, and designated aquifer protection
3 areas as set forth in chapter 36.36 RCW, a thoroughly documented
4 hydrogeologic analysis of the reclamation plan may be required; and

5 (k) Additional information as required by the department including
6 but not limited to: The positions of reclamation setbacks and
7 screening, conservation of topsoil, interim reclamation, revegetation,
8 postsurface mining erosion control, drainage control, slope stability,
9 disposal of surface mine wastes, control of fill material, development
10 of wetlands, ponds, lakes, and impoundments, and rehabilitation of
11 topography.

12 (2) Maps of the surface mine showing:

13 (a) All applicable data required in the narrative portion of the
14 reclamation plan;

15 (b) Existing topographic contours;

16 (c) Contours depicting specifications for surface gradient
17 restoration appropriate to the proposed subsequent use of the land and
18 meeting the minimum reclamation standards;

19 (d) Locations and names of all roads, railroads, and utility lines
20 on or adjacent to the area;

21 (e) Locations and types of proposed access roads to be built in
22 conjunction with the surface mining;

23 (f) Detailed and accurate boundaries of the permit area, screening,
24 reclamation setbacks, and maximum extent of the disturbed area; and

25 (g) Estimated depth to ground water and the locations of surface
26 water bodies and wetlands both prior to and after mining.

27 (3) At least two cross sections of the mine including all
28 applicable data required in the narrative and map portions of the
29 reclamation plan.

30 (4) Evidence that the proposed surface mine has been approved under
31 local zoning and land use regulations.

32 (5) Written approval of the reclamation plan by the landowner for
33 surface mines permitted after June 30, 1993.

34 (6) Other supporting data and documents regarding the surface mine
35 as reasonably required by the department.

36 If the department refuses to approve a reclamation plan in the form
37 submitted by an applicant or permit holder, it shall notify the
38 applicant or permit holder stating the reasons for its determination
39 and describe such additional requirements to the applicant or permit

1 holder's reclamation plan as are necessary for the approval of the plan
2 by the department. If the department refuses to approve a complete
3 reclamation plan within one hundred twenty days, the miner or permit
4 holder may appeal this determination under the provisions of this
5 subchapter.

6 Only insignificant deviations may occur from the approved
7 reclamation plan without prior written approval by the department for
8 the proposed change.

9 The department retains the authority to require that the
10 reclamation plan be updated to the satisfaction of the department at
11 least every ten years.

12 NEW SECTION. **Sec. 29.** Where two or more surface mines join along
13 a common boundary, the department may require submission of a joint
14 reclamation plan in order to provide for optimum reclamation or to
15 avoid waste of mineral resources. Such joint reclamation plans may be
16 in the form of a single collaborative plan submitted by all affected
17 permit holders or as individual reclamation plans in which the schedule
18 of reclamation, finished contours, and revegetation match reclamation
19 plans of adjacent permit holders.

20 NEW SECTION. **Sec. 30.** The permit holder shall reclaim each
21 segment of the surface mine within two years of completion of surface
22 mining on that segment except as provided in a segmental reclamation
23 agreement approved in writing by the department. The primary objective
24 of a segmental reclamation agreement should be to enhance final
25 reclamation.

26 NEW SECTION. **Sec. 31.** Reclamation setbacks shall be as follows
27 unless waived by the department:

28 (1) The reclamation setback for unconsolidated deposits within
29 surface mines permitted after June 30, 1993, shall be equal to the
30 maximum anticipated height of the adjacent working face or as
31 determined by the department. Setbacks and buffers may be destroyed as
32 part of final reclamation of each segment if approved by the
33 department.

34 (2) The minimum reclamation setback for consolidated materials
35 within surface mines permitted after June 30, 1993, shall be thirty
36 feet or as determined by the department.

1 (3) An exemption from this section may be granted by the department
2 following a written request. The department may consider submission of
3 a plan for backfilling acceptable to the department, a geotechnical
4 slope-stability study, proof of a dedicated source of fill materials,
5 written approval of contiguous landowners, and other information before
6 granting an exemption.

7 NEW SECTION. **Sec. 32.** The need for, and the practicability of,
8 reclamation shall control the type and degree of reclamation in any
9 specific instance. However, the basic objective of reclamation is to
10 reestablish on a continuing basis the vegetative cover, slope
11 stability, water conditions, and safety conditions suitable to the
12 proposed subsequent use consistent with local land use plans for the
13 surface mine site.

14 Each permit holder shall comply with the minimum reclamation
15 standards in effect on the date the permit was issued and any
16 additional reclamation standards set forth in the approved reclamation
17 plan. The department may modify, on a site specific basis, the minimum
18 reclamation standards in order to achieve the reclamation and closure
19 objectives of this subchapter. The basic objective of reclamation for
20 these operations is the reestablishment on a continuing basis of
21 vegetative cover, slope stability, water conditions, and safety
22 conditions.

23 Reclamation activities, particularly those relating to control of
24 erosion and mitigation of impacts of mining to adjacent areas, shall,
25 to the extent feasible, be conducted simultaneously with surface
26 mining, and in any case shall be initiated at the earliest possible
27 time after completion of surface mining on any segment of the permit
28 area.

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

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

36 NEW SECTION. **Sec. 33.** Reclamation of surface mines permitted
37 after June 30, 1993, and reclamation of surface mine segments addressed

1 by reclamation plans modified after June 30, 1994, shall meet the
2 following minimum standards except as waived in writing by the
3 department.

4 (1) Prior to surface mining, permit holders shall carefully
5 stockpile all topsoil on the site for use in reclamation, or
6 immediately move topsoil to reclaim adjacent segments, except when the
7 approved subsequent use does not require replacing the topsoil.
8 Topsoil needed for reclamation shall not be sold as a mineral nor mixed
9 with sterile soils. Stockpiled materials used as screening shall not
10 be used for reclamation until such time as the appropriate county or
11 municipal government has given its approval.

12 (2) The department may require that clearly visible, permanent
13 monuments delineating the permit boundaries and maximum extent of the
14 disturbed area be set at appropriate places around the surface mine
15 site. The permit holder shall maintain the monuments until termination
16 of the reclamation permit.

17 (3) All minimum reclamation standards may be waived in writing by
18 the department in order to accommodate unique and beneficial
19 reclamation schemes such as parks, swimming facilities, buildings, and
20 wildlife reserves. Such waivers shall be granted only after written
21 approval by the department of a reclamation plan describing the
22 variances to the minimum reclamation standards, receipt of
23 documentation of SEPA compliance, and written approvals from the
24 landowner and by the local land use authority.

25 (4) All surface-mined slopes shall be reclaimed to the following
26 minimum standards:

27 (a) In surface mines in soil, sand, gravel, and other
28 unconsolidated materials, all reclaimed slopes shall:

29 (i) Have varied steepness;

30 (ii) Have a sinuous appearance in both profile and plan view;

31 (iii) Have no large rectilinear topographic elements;

32 (iv) Generally have slopes of between 2.0 and 3.0 feet horizontal
33 to 1.0 foot vertical or flatter except in limited areas where steeper
34 slopes are necessary in order to create sinuous topography and to
35 control drainage;

36 (v) Not exceed 1.5 feet horizontal to 1.0 foot vertical except as
37 necessary to blend with adjacent natural slopes;

1 (vi) Be compacted if significant backfilling is required to produce
2 the final reclaimed slopes and if the department determines that
3 compaction is necessary.

4 (b) Slopes in consolidated materials shall have no prescribed slope
5 angle or height, but where a severely hazardous condition is created by
6 surface mines and that is not indigenous to the immediate area, the
7 slopes shall not exceed 2.0 feet horizontal to 1.0 foot vertical.
8 Steeper slopes shall be acceptable in areas where evidence is submitted
9 that demonstrates that the geologic or topographic characteristics of
10 the site preclude reclamation of slopes to such angle or height or that
11 such slopes constitute an acceptable subsequent use under local land
12 use regulations.

13 (c) Surface mines in which the seasonal or permanent water tables
14 have been penetrated, thereby creating swamps, ponds, or lakes useful
15 for recreational, wildlife habitat, water quality control, or other
16 beneficial wetland purposes shall be reclaimed in the following manner:

17 (i) For slopes that are below the permanent water table in soil,
18 sand, gravel, and other unconsolidated materials, the slope angle shall
19 be no steeper than 1.5 feet horizontal to 1.0 foot vertical;

20 (ii) Generally, solid rock banks shall be shaped so that a person
21 can escape from the water, however steeper slopes and lack of water
22 egress shall be acceptable in rural, forest, or mountainous areas or
23 where evidence is provided that such slopes would constitute an
24 acceptable subsequent use under local land use regulations;

25 (iii) Both standpipes and armored spillways or other measures to
26 prevent undesirable overflow or seepage shall be provided to stabilize
27 all such water bodies within the disturbed area; and

28 (iv) Where lakes, ponds, or swamps are created, the permit holder
29 shall provide measures to establish a beneficial wetland by developing
30 natural wildlife habitat and incorporating such measures as irregular
31 shoreline configurations, sinuous bathymetry and shorelines, varied
32 water depths, peninsulas, islands, and subaqueous areas less than 1.5
33 foot deep during summer low-water levels. Clay-bearing material placed
34 below water level may be required to avoid creating sterile wetlands.

35 (d) Final topography shall generally comprise sinuous contours,
36 chutes and buttresses, spurs, and rolling mounds and hills, all of
37 which shall blend with adjacent topography to a reasonable extent.
38 Straight planar slopes and right angles should be avoided.

1 (e) The floors of mines shall generally grade gently into
2 postmining drainages to preclude sheet-wash erosion during intense
3 precipitation, except where backgrading is appropriate for drainage
4 control, to establish wetlands, or to trap sediment.

5 (f) Topsoil shall be restored as necessary to promote effective
6 revegetation and to stabilize slopes and mine floors. Where limited
7 topsoil is available, topsoil shall be placed and revegetated in such
8 a way as to ensure that little topsoil is lost to erosion.

9 (g) Where surface mining has exposed natural materials that may
10 create polluting conditions, including but not limited to acid-forming
11 coals and metalliferous rock or soil, such conditions shall be
12 addressed according to a method approved by the department. The final
13 ground surface shall be graded so that surface water drains away from
14 these materials.

15 (h) All grading and backfilling shall be made with nonnoxious,
16 noncombustible, and relatively incompactible solids unless the permit
17 holder provides:

18 (i) Written approval from all appropriate solid waste regulatory
19 agencies; and

20 (ii) Any and all revisions to such written approval during the
21 entire time the reclamation permit is in force.

22 (i) Final reclaimed slopes should be left roughly graded,
23 preserving equipment tracks, depressions, and small mounds to trap
24 clay-bearing soil and promote natural revegetation. Where reasonable,
25 final equipment tracks should be oriented in order to trap soil and
26 seeds and to inhibit erosion.

27 (j) Pit floors should be bulldozed or ripped to foster
28 revegetation.

29 (5) Drainages shall be graded and contain adequate energy
30 dissipation devices so that essentially natural conditions of water
31 velocity, volume, and turbidity are reestablished within six months of
32 reclamation of each segment of the surface mine. Ditches and other
33 artificial drainages shall be constructed on each reclaimed segment to
34 control surface water, erosion, and siltation and to direct runoff to
35 a safe outlet. Diversion ditches including but not limited to
36 channels, flumes, tightlines and retention ponds shall be capable of
37 carrying the peak flow at the surface mine site that has the probable
38 recurrence frequency of once in twenty-five years as determined from
39 data for the twenty-five year, twenty-four hour precipitation event

1 published by the national oceanic and atmospheric administration. The
2 grade of such ditches and channels shall be constructed to limit
3 erosion and siltation. Natural and other drainage channels shall be
4 kept free of equipment, wastes, stockpiles, and overburden.

5 (6) Impoundment of water shall be an acceptable reclamation
6 technique provided that approvals of other agencies with jurisdiction
7 are obtained and:

8 (a) Proper measures are taken to prevent undesirable seepage that
9 could cause flooding outside the permitted area or adversely affect the
10 stability of impoundment dikes or adjacent slopes;

11 (b) Both standpipes and armored spillways or other measures
12 necessary to control overflow are provided.

13 (7) Revegetation shall be required as appropriate to stabilize
14 slopes, generate new topsoil, reduce erosion and turbidity, mask
15 rectilinear contours, and restore the scenic value of the land to the
16 extent feasible as appropriate to the approved subsequent use.
17 Although the scope of and necessity for revegetation will vary
18 according to the geography, precipitation, and approved subsequent use
19 of the site, the objective of segmental revegetation is to reestablish
20 self-sustaining vegetation and conditions of slope stability, surface
21 water quality, and appearance before release of the reclamation permit.
22 Revegetation shall normally meet the following standards:

23 (a) Revegetation shall commence during the first proper growing
24 season following restoration of slopes on each segment unless the
25 department has granted the permit holder a written time extension.

26 (b) In eastern Washington, the permit holder may not be able to
27 achieve continuous ground cover owing to arid conditions or sparse
28 topsoil. However, revegetation shall be as continuous as reasonably
29 possible as determined by the department.

30 (c) Revegetation generally shall include but not be limited to
31 diverse evergreen and deciduous trees, shrubs, grasses, and deep-rooted
32 ground cover.

33 (i) For western Washington, nitrogen-fixing species including but
34 not limited to alder, white clover, and lupine should be included in
35 dry areas. In wet areas, tubers, sedges, wetland grasses, willow,
36 cottonwood, cedar, and alder are appropriate.

37 (ii) In eastern Washington, lupine, white clover, Russian olive,
38 black locust, junipers, and pines are among appropriate plants. In wet
39 areas, cottonwood, tubers, and sedges are appropriate.

1 (d) The requirements for revegetation may be reduced or waived by
2 the department where erosion will not be a problem in rural areas where
3 precipitation exceeds thirty inches per annum, or where revegetation is
4 inappropriate for the approved subsequent use of the surface mine.

5 (e) In areas where revegetation is critical and conditions are
6 harsh, the department may require irrigation, fertilization, and
7 importation of clay or humus-bearing soils to establish effective
8 vegetation.

9 (f) The department may refuse to release a reclamation permit or
10 performance security until it deems that effective revegetation has
11 commenced.

12 NEW SECTION. **Sec. 34.** The department and the permit holder may
13 modify the reclamation plan at any time during the term of the permit
14 for any of the following reasons:

15 (1) To modify the requirements so that they do not conflict with
16 existing or new laws;

17 (2) If the department determines that the previously adopted
18 reclamation plan is impossible or impracticable to implement and
19 maintain; or

20 (3) The previously approved reclamation plan is not accomplishing
21 the intent of this subchapter as determined by the department.

22 Modified reclamation plans shall be reviewed by the department as
23 lead agency under SEPA. Such SEPA analyses shall consider only those
24 impacts relating directly to the proposed modifications. Copies of
25 proposed and approved modifications shall be sent to the appropriate
26 county, city, or town.

27 NEW SECTION. **Sec. 35.** The department may order at any time an
28 inspection of the disturbed area to determine if the miner or permit
29 holder has complied with the reclamation permit, rules, and this
30 subchapter.

31 The department shall have special inspection requirements for
32 metals mining and milling operations regulated under chapter 232, Laws
33 of 1994. The department shall inspect these mining operations at least
34 quarterly, unless prevented by inclement weather conditions, in order
35 to ensure that the permit holder is in compliance with the reclamation
36 permit, rules, and this subchapter. The department shall conduct
37 additional inspections as needed during the construction phase of these

1 mining operations in order to ensure compliance with the reclamation
2 permit, rules, and this subchapter.

3 NEW SECTION. **Sec. 36.** Reclamation permits shall be transferred to
4 a subsequent permit holder and the department shall release the former
5 permit holder from the duties imposed by this subchapter if:

6 (1) Both permit holders comply with all rules of the department
7 addressing requirements for transferring a permit; and

8 (2) Unless waived by the department, the mine and all others
9 operated by both the former and subsequent permit holders and their
10 principal officers or owners are in compliance with this subchapter and
11 rules.

12 NEW SECTION. **Sec. 37.** On the anniversary date of the reclamation
13 permit and each year thereafter until reclamation is completed and
14 approved, the permit holder shall file a report of activities completed
15 during the preceding year. The report shall be on a form prescribed by
16 the department.

17 NEW SECTION. **Sec. 38.** The department may issue an order to
18 rectify deficiencies when a miner or permit holder is conducting
19 surface mining in any manner not authorized by:

20 (1) This subchapter;

21 (2) The rules adopted by the department;

22 (3) The authorized reclamation plan; or

23 (4) The reclamation permit.

24 The order shall describe the deficiencies and shall require that
25 the miner or permit holder correct all deficiencies no later than sixty
26 days from issuance of the order. The department may extend the period
27 for correction for delays clearly beyond the miner or permit holder's
28 control, but only when the miner or permit holder is, in the opinion of
29 the department, making every reasonable effort to comply.

30 NEW SECTION. **Sec. 39.** When the department finds that a permit
31 holder is conducting surface mining in any manner not authorized by:

32 (1) This subchapter;

33 (2) The rules adopted by the department;

34 (3) The approved reclamation plan; or

35 (4) The reclamation permit;

1 and that activity has created a situation involving an immediate danger
2 to the public health, safety, welfare, or environment requiring
3 immediate action, the department may issue an emergency notice and
4 order to rectify deficiencies, and/or an emergency order to suspend
5 surface mining. These orders shall be effective when entered. The
6 department may take such action as is necessary to prevent or avoid the
7 danger to the public health, safety, welfare, or environment that
8 justifies use of emergency adjudication. The department shall give
9 such notice as is practicable to the permit holder or miner who is
10 required to comply with the order. The order shall comply with the
11 requirements of the administrative procedure act.

12 Regulations of surface mining operations administered by other
13 state and local agencies shall be preempted by this section to the
14 extent that the time schedule and procedures necessary to rectify the
15 emergency situation, as determined by the department, conflict with
16 such local regulation.

17 NEW SECTION. **Sec. 40.** Upon the failure of a miner or permit
18 holder to comply with a department order to rectify deficiencies, the
19 department may issue an order to suspend surface mining when a miner or
20 permit holder is conducting surface mining in any manner not authorized
21 by:

- 22 (1) This subchapter;
- 23 (2) The rules adopted by the department;
- 24 (3) The approved reclamation plan;
- 25 (4) The reclamation permit; or
- 26 (5) If the miner or permit holder fails to comply with any final
27 order of the department.

28 The order to suspend surface mining shall require the miner or
29 permit holder to suspend part or all of the miner's or permit holder's
30 surface mining operations until the conditions resulting in the
31 issuance of the order have been mitigated to the satisfaction of the
32 department.

33 The attorney general may take the necessary legal action to enjoin,
34 or otherwise cause to be stopped, surface mining in violation of an
35 order to suspend surface mining.

36 NEW SECTION. **Sec. 41.** The department may issue a declaration of
37 abandonment when it determines that all surface mining has ceased for

1 a period of one hundred eighty consecutive days not set forth in the
2 permit holder's reclamation plan or when, by reason of inspection of
3 the permit area, or by any other means, the department determines that
4 the surface mine has in fact been abandoned by the permit holder except
5 that abandonment shall not include normal interruptions of surface
6 mining resulting from labor disputes, economic conditions associated
7 with lack of smelting capacity or availability of appropriate
8 transportation, war, social unrest, demand for minerals, maintenance
9 and repairs, and acts of God.

10 Following a declaration of abandonment, the department shall
11 require the permit holder to complete reclamation in accordance with
12 this subchapter. If the permit holder fails to do so, the department
13 shall proceed to do the necessary reclamation work under section 43 of
14 this act.

15 If another miner applies for a permit on a site that has been
16 declared abandoned, the department may, in its discretion, cancel the
17 reclamation permit of the permit holder and issue a new reclamation
18 permit to the applicant. The department shall not issue a new permit
19 unless it determines that such issuance will be an effective means of
20 assuring that the site will ultimately be reclaimed. The applicant
21 must agree to assume the reclamation responsibilities left unfinished
22 by the first miner, in addition to meeting all requirements for
23 issuance of a new permit.

24 NEW SECTION. **Sec. 42.** When the department determines that a
25 surface mine has been abandoned, it may cancel the reclamation permit.
26 The permit holder shall be informed of such actions by a department
27 notification of illegal abandonment and cancellation of the reclamation
28 permit.

29 NEW SECTION. **Sec. 43.** The department may, with the staff,
30 equipment, and material under its control, or by contract with others,
31 reclaim the disturbed areas when it finds that reclamation has not
32 occurred in any segment of a surface mine within two years of
33 completion of mining or of declaration of abandonment and the permit
34 holder is not actively pursuing reclamation.

35 If the department intends to undertake the reclamation, the
36 department shall issue an order to submit performance security
37 requiring the permit holder or surety to submit to the department the

1 amount of moneys posted under section 27 of this act. If the amount
2 specified in the order to submit performance security is not paid
3 within twenty days after issuance of the notice, the attorney general
4 upon request of the department shall bring an action on behalf of the
5 state in a superior court to recover the amount specified and
6 associated legal fees.

7 The department may proceed at any time after issuing the order to
8 submit performance security with reclamation of the site according to
9 the approved reclamation plan or according to a plan developed by the
10 department that meets the minimum reclamation standards.

11 The department shall keep a record of all expenses incurred in
12 carrying out any reclamation project or activity authorized under this
13 section, including:

14 (1) Reclamation;

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

17 (3) Administrative and legal expenses related to reclamation of the
18 surface mine.

19 The department shall refund to the surety or permit holder all
20 amounts received in excess of the amount of expenses incurred. If the
21 amount received is less than the expenses incurred, the attorney
22 general, upon request of the department, may bring an action against
23 the permit holder on behalf of the state in the superior court to
24 recover the remaining costs listed in this section.

25 NEW SECTION. **Sec. 44.** Each order of the department may impose a
26 fine or fines in the event that a miner or permit holder fails to obey
27 the order of the department. When a miner or permit holder fails to
28 comply with an order of the department, the miner or permit holder
29 shall be subject to a civil penalty in an amount not more than ten
30 thousand dollars for each violation plus interest based upon a schedule
31 of fines set forth by the department in rule. Procedures for imposing
32 a penalty and setting the amount of the penalty shall be as provided in
33 RCW 90.48.144. Each day on which a miner or permit holder continues to
34 disobey any order of the department shall constitute a separate
35 violation. If the penalty and interest is not paid to the department
36 after it becomes due and payable, the attorney general, upon the
37 request of the department, may bring an action in the name of the state
38 of Washington to recover the penalty, interest, mitigation for

1 environmental damages, and associated legal fees. Decisions of the
2 department are subject to review by the pollution control hearings
3 board.

4 All fines, interest, penalties, and other damage recovery costs
5 from mines regulated by the department shall be credited to the surface
6 mining reclamation account.

7 NEW SECTION. **Sec. 45.** Any miner or permit holder conducting
8 surface mining within the state of Washington without a valid
9 reclamation permit shall be guilty of a gross misdemeanor. Surface
10 mining outside of the permitted area shall constitute illegal mining
11 without a valid reclamation permit. Each day of mining without a valid
12 reclamation permit shall constitute a separate offense.

13 NEW SECTION. **Sec. 46.** Appeals from department determinations made
14 under this subchapter shall be made under the provisions of chapter
15 34.05 RCW, and are adjudicative proceedings within the meaning of
16 chapter 34.05 RCW. Only a person aggrieved within the meaning of RCW
17 34.05.530 has standing and can file an appeal.

18 NEW SECTION. **Sec. 47.** The department shall create reclamation
19 awards in recognition of excellence in reclamation or reclamation
20 research. Such awards shall be presented to individuals, miners,
21 operators, companies, or government agencies performing exemplary
22 surface mining reclamation in the state of Washington. The department
23 shall designate a percent of the state annual fees as funding of the
24 awards.

25 NEW SECTION. **Sec. 48.** The department may establish a no-cost
26 consulting service within the department to assist miners, permit
27 holders, local government, and the public in technical matters related
28 to surface mine regulation, mine operations, and reclamation under this
29 subchapter. The department may prepare concise, printed information
30 for the public explaining surface mining activities, timelines for
31 permits and reviews, laws, and the role of governmental agencies
32 involved in surface mining, including how to contact all regulators.
33 The department shall not be held liable for any negligent advice.

1 NEW SECTION. **Sec. 49.** Miners and permit holders shall not be
2 required to reclaim any segment where all surface mining was completed
3 prior to January 1, 1971. However, the department shall make an effort
4 to reclaim previously abandoned or completed surface mining segments.

5 **Sec. 50.** RCW 78.44.131 and 1994 c 232 s 24 are each amended to
6 read as follows:

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

13 Each permit holder shall comply with the minimum reclamation
14 standards in effect on the date the permit was issued and any
15 additional reclamation standards set forth in the approved reclamation
16 plan. (~~The department may modify, on a site specific basis, the
17 minimum reclamation standards for metals mining and milling operations
18 regulated under chapter 232, Laws of 1994 in order to achieve the
19 reclamation and closure objectives of that chapter. The basic
20 objective of reclamation for these operations is the reestablishment on
21 a continuing basis of vegetative cover, slope stability, water
22 conditions, and safety conditions.~~)

23 Reclamation activities, particularly those relating to control of
24 erosion and mitigation of impacts of mining to adjacent areas, shall,
25 to the extent feasible, be conducted simultaneously with surface
26 mining, and in any case shall be initiated at the earliest possible
27 time after completion of surface mining on any segment of the permit
28 area.

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

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

36 **Sec. 51.** RCW 78.44.161 and 1994 c 232 s 22 are each amended to
37 read as follows:

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

4 ~~((The department shall have special inspection requirements for
5 metals mining and milling operations regulated under chapter 232, Laws
6 of 1994. The department shall inspect these mining operations at least
7 quarterly, unless prevented by inclement weather conditions, in order
8 to ensure that the permit holder is in compliance with the reclamation
9 permit, rules, and this chapter. The department shall conduct
10 additional inspections as needed during the construction phase of these
11 mining operations in order to ensure compliance with the reclamation
12 permit, rules, and this chapter.))~~

13 NEW SECTION. **Sec. 52.** A new section is added to chapter 78.44 RCW
14 to read as follows:

15 After the effective date of this act, this chapter no longer
16 applies to metal mining and milling operations or surface mining of
17 precious and base metal ores under chapter 78.56 RCW.

18 NEW SECTION. **Sec. 53.** The following sections are designated as a
19 subchapter of chapter 78.56 RCW under the subchapter heading "metal
20 mining and milling operations":

- 21 RCW 78.56.010;
- 22 RCW 78.56.020;
- 23 RCW 78.56.030;
- 24 RCW 78.56.040;
- 25 RCW 78.56.050;
- 26 RCW 78.56.060;
- 27 RCW 78.56.070;
- 28 RCW 78.56.080;
- 29 RCW 78.56.090;
- 30 RCW 78.56.100;
- 31 RCW 78.56.110;
- 32 RCW 78.56.120;
- 33 RCW 78.56.130;
- 34 RCW 78.56.140;
- 35 RCW 78.56.150; and
- 36 RCW 78.56.160.

1 NEW SECTION. **Sec. 54.** Sections 14 through 49 of this act are
2 added to chapter 78.56 RCW under the subchapter heading "surface mining
3 of precious and base metal ores."

4 NEW SECTION. **Sec. 55.** 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.

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