

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2521

Chapter 232, Laws of 1994

53rd Legislature
1994 Regular Session

METALS MINING--GOLD MINING--OPERATIONS REGULATION

EFFECTIVE DATE: 4/1/94 - Except Sections 6 through 8 & 18 through 22 which take effect 7/1/95

Passed by the House March 7, 1994
Yeas 94 Nays 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Passed by the Senate March 4, 1994
Yeas 39 Nays 10

JOEL PRITCHARD

President of the Senate

Approved April 1, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2521** as passed by the House of Representatives and the Senate on the dates hereon set forth.

MARILYN SHOWALTER

Chief Clerk

FILED

April 1, 1994 - 10:27 a.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2521

AS AMENDED BY THE SENATE

Passed Legislature - 1994 Regular Session

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 section to chapter 43.21C RCW; adding a new
5 chapter to Title 78 RCW; creating new sections; prescribing penalties;
6 providing an effective date; and declaring an emergency.

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

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

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

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

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

17 (3) "Heap leach extraction process" means the process of extracting
18 base or precious metal ore by percolating solutions through ore in an
19 open system and includes reprocessing of previously milled ore. The
20 heap leach extraction process does not include leaching in a vat or
21 tank.

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

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

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

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

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

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

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

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

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

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

21 NEW SECTION. **Sec. 7.** (1) State agencies with the responsibility
22 for inspecting metals mining and milling operations regulated under
23 this chapter shall conduct such inspections at least quarterly:
24 PROVIDED, That the inspections are not prevented by inclement weather
25 conditions.

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

35 NEW SECTION. **Sec. 8.** (1) The metals mining account is created in
36 the state treasury. Expenditures from this account are subject to

1 appropriation. Expenditures from this account may only be used for:
2 (a) The additional inspections of metals mining and milling operations
3 required by section 7 of this act and (b) the metals mining coordinator
4 established in section 6 of this act.

5 (2) (a) As part of its normal budget development process and in
6 consultation with the metals mining industry, the department of ecology
7 shall estimate the costs required for the department to meet its
8 obligations for the additional inspections of metals mining and milling
9 operations required by chapter . . . , Laws of 1994 (this act). The
10 department shall also estimate the cost of employing the metals mining
11 coordinator established in section 6 of this act.

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

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

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

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

1 NEW SECTION. **Sec. 9.** (1) In the processing of an application for
2 an initial waste discharge permit for a tailings facility pursuant to
3 the requirements of chapter 90.48 RCW, the department of ecology shall
4 consider site-specific criteria in determining a preferred location of
5 tailings facilities of metals mining and milling operations and
6 incorporate the requirements of all known available and reasonable
7 methods in order to maintain the highest possible standards to insure
8 the purity of all waters of the state in accordance with the public
9 policy identified by RCW 90.48.010.

10 In implementing the siting criteria, the department shall take into
11 account the objectives of the proponent's application relating to
12 mining and milling operations. These objectives shall consist of, but
13 not be limited to (a) operational feasibility, (b) compatibility with
14 optimum tailings placement methods, (c) adequate volume capacity, (d)
15 availability of construction materials, and (e) an optimized embankment
16 volume.

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

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

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

25 (b) Proximity to surface and ground water;

26 (c) Topographic setting;

27 (d) Identifiable adverse geologic conditions, such as landslides
28 and active faults; and

29 (e) Visibility impacts of the public generally and residents more
30 particularly.

31 (4) The department of ecology, through the primary screening
32 process, shall reduce the available tailings facility sites to one or
33 more feasible locations whereupon a technical site investigation phase
34 shall be conducted by the department for the purpose of verifying the
35 adequacy of the remaining potential sites. The technical site
36 investigations phase shall consist of, but not be limited to, the
37 following:

38 (a) Soil characteristics;

39 (b) Hydrologic characteristics;

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

3 (d) A surface water control analysis; and

4 (e) A slope stability analysis.

5 (5) Upon completion of the two phase evaluation process set forth
6 in this section, the department of ecology shall issue a site selection
7 report on the preferred location. This report shall address the above
8 criteria as well as analyze the feasibility of reclamation and
9 stabilization of the tailings facility. The siting report may
10 recommend mitigation or engineering factors to address siting concerns.
11 The report shall be developed in conjunction with the preparation of
12 and contained in an environmental impact statement prepared pursuant to
13 chapter 43.21C RCW. The report may be utilized by the department of
14 ecology for the purpose of providing information related to the
15 suitability of the site and for ruling on an application for a waste
16 discharge permit.

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

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

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

28 (i) Operators shall apply all known available and reasonable
29 technology to limit the concentration of potentially toxic materials in
30 the tailings facility to assure the protection of wildlife and human
31 health;

32 (ii) The tailings facility shall have a containment system that
33 includes an engineered liner system, leak detection and leak collection
34 elements, and a seepage collection impoundment to assure that a leak of
35 any regulated substance under chapter 90.48 RCW will be detected before
36 escaping from the containment system. The design and management of the
37 facility must ensure that any leaks from the tailings facility are
38 detected in a manner which allows for remediation pursuant to chapter

1 90.48 RCW. The applicant shall prepare a detailed engineering report
2 setting forth the facility design and construction. The applicant
3 shall submit the report to the department of ecology for its review and
4 approval of a design as determined by the department. Natural
5 conditions, such as depth to ground water or net rainfall, shall be
6 taken into account in the facility design, but not in lieu of the
7 protection required by the engineered liner system;

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

12 (iv) The closure of the tailings facility shall provide for
13 isolation or containment of potentially toxic materials and shall be
14 designed to prevent future release of regulated substances contained in
15 the impoundment;

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

20 (i) An accurate identification of the acid generating properties of
21 the waste rock;

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

25 (iii) A plan for reclaiming and closing waste rock sites which
26 minimizes infiltration of precipitation and runoff into the waste rock
27 and which is designed to prevent future releases of regulated
28 substances contained within the waste rock;

29 (c) If an interested citizen or citizen group so requests of the
30 department of ecology, the metals mining and milling operator or
31 applicant shall work with the department of ecology and the interested
32 party to make arrangements for citizen observation and verification in
33 the taking of required water samples. While it is the intent of this
34 subsection to provide for citizen observation and verification of water
35 sampling activities, it is not the intent of this subsection to require
36 additional water sampling and analysis on the part of the mining and
37 milling operation or the department. The citizen observation and
38 verification program shall be incorporated into the applicant's,
39 operator's, or department's normal sampling regimen and shall occur at

1 least once every six months. There is no duty of care on the part of
2 the state or its employees to any person who participates in the
3 citizen observation and verification of water sampling under chapter
4 . . . , Laws of 1994 (this act) and the state and its employees shall be
5 immune from any civil lawsuit based on any injuries to or claims made
6 by any person as a result of that person's participation in such
7 observation and verification of water sampling activities. The metals
8 mining and milling operator or applicant shall not be liable for any
9 injuries to or claims made by any person which result from that person
10 coming onto the property of the metals mining and milling operator or
11 applicant as an observer pursuant to chapter . . . , Laws of 1994 (this
12 act). The results from these and all other relevant water sampling
13 activities shall be kept on file with the relevant county and shall be
14 available for public inspection during normal working hours; and

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

18 (2) Only those tailings facilities constructed after the effective
19 date of this section must meet the requirement established in
20 subsection (1) (a) of this section. Only those waste rock holdings
21 constructed after the effective date of this section must meet the
22 requirement established in subsection (1) (b) of this section.

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

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

30 (b) A cash deposit;

31 (c) Negotiable securities acceptable to both agencies;

32 (d) An assignment of a savings account;

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

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

37 The agencies may, for any reason, refuse any performance security
38 not deemed adequate.

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

4 (a) Compliance with the laws of the state of Washington pertaining
5 to metals mining and milling operations and with the related rules and
6 permit conditions established by state and local government with
7 respect to those operations as defined in RCW 78.44.031(17) and the
8 construction, operation, reclamation, and closure of a metals mining
9 and milling operation;

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

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

14 (3) The department of ecology and the department of natural
15 resources shall jointly adopt rules for determining the amount of the
16 performance security, requirements for the performance security,
17 requirements for the issuer of the performance security, and any other
18 requirements necessary for the implementation of this section.

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

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

31 (6) Any interest or appreciation on the performance security shall
32 be held by the department of ecology until the obligations in
33 subsection (2) of this section have been met to the satisfaction of the
34 department of ecology and the department of natural resources. At such
35 time, the interest shall be remitted to the operator. However, if the
36 applicant or operator fails to comply with the obligations of
37 subsection (2) of this section, the interest or appreciation may be
38 used by either agency to comply with the obligations.

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

8 If the department intends to remediate or mitigate such impacts,
9 the department shall issue an order to submit performance security
10 requiring the permit holder or surety to submit to the department the
11 amount of moneys posted pursuant to chapter . . . , Laws of 1994 (this
12 act). If the amount specified in the order to submit performance
13 security is not paid within twenty days after issuance of the notice,
14 the attorney general upon request of the department shall bring an
15 action on behalf of the state in a superior court to recover the amount
16 specified and associated legal fees.

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

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

22 (1) Remediation or mitigation;

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

25 (3) Administrative and legal expenses related to remediation or
26 mitigation.

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

33 If the department of natural resources finds that reclamation has
34 not occurred according to the standards required under chapter 78.44
35 RCW in a metals mining and milling operation, then the department of
36 natural resources may cause reclamation to occur pursuant to RCW
37 78.44.240. Upon approval of the department of ecology, the department
38 of natural resources may reclaim part or all of the metals mining and
39 milling operation using that portion of the surety posted pursuant to

1 chapter . . . , Laws of 1994 (this act) that has been identified for
2 reclamation.

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

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

33 (3) The economic impact analysis shall include at least the
34 following information:

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

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

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

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

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

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

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

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

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

35 NEW SECTION. **Sec. 14.** (1) Except as provided in subsections (2)
36 and (5) of this section, any aggrieved person may commence a civil
37 action on his or her own behalf:

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

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

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

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

16 (2) No action may be commenced:

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

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

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

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

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

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

38 (4) The court, in issuing any final order in any action brought
39 pursuant to subsection (1) of this section, may award costs of

1 litigation, including reasonable attorney and expert witness fees, to
2 any prevailing party, wherever the court determines such award is
3 appropriate. The court may, if a temporary restraining order or
4 preliminary injunction is sought, require the filing of a bond or
5 equivalent security in accordance with the rules of civil procedure.

6 (5) A civil action to enforce compliance with a law, rule, order,
7 or permit may not be brought under this section if any other statute,
8 or the common law, provides authority for the plaintiff to bring a
9 civil action and, in such action, obtain the same relief, as authorized
10 under this section, for enforcement of such law, rule, order, or
11 permit. Nothing in this section restricts any right which any person,
12 or class of persons, may have under any statute or common law to seek
13 any relief, including relief against the state or a state agency.

14 NEW SECTION. **Sec. 15.** A milling facility which is not adjacent to
15 or in the vicinity of the metals mining operation producing the ore to
16 be milled and which processes precious or base metal ore by treatment
17 or concentration is subject to the provisions of sections 1 through 9,
18 10(1) (a), (c) and (d), 11 through 14, 18, and 19 of this act and
19 chapters 70.94, 70.105, 90.03, and 90.48 RCW and all other applicable
20 laws. The smelting of aluminum does not constitute a metals milling
21 operation under this section.

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

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

31 NEW SECTION. **Sec. 17.** The department of ecology will work with
32 the metals mining industry and relevant federal, state, and local
33 governmental agencies to identify areas of regulatory overlap among
34 regulators of mining and milling operations. The department will also
35 identify possible solutions for eliminating or reducing regulatory

1 overlap. The department will report back to the legislature on its
2 findings and possible solutions by January 1, 1995.

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

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

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

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

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

25 Any person, corporation or association intending to construct or
26 modify any dam or controlling works for the storage of ten acre feet or
27 more of water, shall before beginning said construction or
28 modification, submit plans and specifications of the same to the
29 department for examination and approval as to its safety. Such plans
30 and specifications shall be submitted in duplicate, one copy of which
31 shall be retained as a public record, by the department, and the other
32 returned with its approval or rejection endorsed thereon. No such dam
33 or controlling works shall be constructed or modified until the same or
34 any modification thereof shall have been approved as to its safety by
35 the department. Any such dam or controlling works constructed or
36 modified in any manner other than in accordance with plans and

1 specifications approved by the department or which shall not be
2 maintained in accordance with the order of the department shall be
3 presumed to be a public nuisance and may be abated in the manner
4 provided by law, and it shall be the duty of the attorney general or
5 prosecuting attorney of the county wherein such dam or controlling
6 works, or the major portion thereof, is situated to institute abatement
7 proceedings against the owner or owners of such dam or controlling
8 works, whenever he or she is requested to do so by the department.

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

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

21 The department or its duly appointed agent shall have the right to
22 enter at all reasonable times in or upon any property, public or
23 private, for the purpose of inspecting and investigating conditions
24 relating to the pollution of or the possible pollution of any of the
25 waters of this state.

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

34 **Sec. 22.** RCW 78.44.161 and 1993 c 518 s 25 are each amended to
35 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 . . . ,
6 Laws of 1994 (this act). The department shall inspect these mining
7 operations at least quarterly, unless prevented by inclement weather
8 conditions, in order to ensure that the permit holder is in compliance
9 with the reclamation permit, rules, and this chapter. The department
10 shall conduct additional inspections as needed during the construction
11 phase of these mining operations in order to ensure compliance with the
12 reclamation permit, rules, and this chapter.

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

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

22 This performance security may be:

- 23 (1) Bank letters of credit acceptable to the department;
24 (2) A cash deposit;
25 (3) Negotiable securities acceptable to the department;
26 (4) An assignment of a savings account;
27 (5) A savings certificate in a Washington bank on an assignment
28 form prescribed by the department;
29 (6) Assignments of interests in real property within the state of
30 Washington; or
31 (7) 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 The performance security shall be conditioned upon the faithful
35 performance of the requirements set forth in this chapter and of the
36 rules adopted under it.

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

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

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

38 ~~((Notwithstanding any other provision of this section, nothing~~
39 ~~shall preclude the department of ecology from requiring a separate~~

1 ~~performance security for metallic minerals or uranium surface mines~~
2 ~~under any authority if any that may be presently vested in the~~
3 ~~department of ecology relating to such mines.)~~) The department and the
4 department of ecology shall jointly require performance security for
5 metals mining and milling operations regulated under chapter . . . ,
6 Laws of 1994 (this act).

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

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

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

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

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

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

1 NEW SECTION. **Sec. 25.** A new section is added to chapter 43.21C
2 RCW to read as follows:

3 Notwithstanding any provision in RCW 43.21C.030 and 43.21C.031 to
4 the contrary, an environmental impact statement shall be prepared for
5 any proposed metals mining and milling operation as required by section
6 5 of this act.

7 NEW SECTION. **Sec. 26.** Sections 1 through 16 of this act shall
8 constitute a new chapter in Title 78 RCW.

9 NEW SECTION. **Sec. 27.** (1) The department of ecology shall
10 establish a metals mining advisory group, to be comprised of members
11 representing the metals mining industry, county commissioners of
12 affected counties, the environmental community, the department of
13 ecology, the department of fish and wildlife, and the department of
14 natural resources.

15 (2) The metals mining advisory group will focus on the following
16 tasks:

17 (a) A review of the adequacy of the cost-accounting methods of the
18 departments of ecology and natural resources in accurately identifying
19 the costs associated with the requirements established in this act;

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

22 (c) Examination of possible new inspection requirements for the
23 department of fish and wildlife and a means to fund any new
24 requirements; and

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

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

30 NEW SECTION. **Sec. 28.** If specific funding for the purposes of
31 this act, referencing this act by bill number, is not provided by June
32 30, 1994, in the omnibus appropriations act, this act shall be null and
33 void.

34 NEW SECTION. **Sec. 29.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 30.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and, with the
6 exception of sections 6 through 8 and 18 through 22 of this act, shall
7 take effect immediately.

8 NEW SECTION. **Sec. 31.** Sections 6 through 8 and 18 through 22 of
9 this act shall take effect July 1, 1995.

Passed the House March 7, 1994.

Passed the Senate March 4, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.