
SECOND SUBSTITUTE HOUSE BILL 2627

State of Washington 54th Legislature 1996 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Elliot and Sheldon)

Read first time 02/05/96.

1 AN ACT Relating to surface mining; amending RCW 78.44.031,
2 78.44.050, 78.44.085, 78.44.131, 78.44.161, and 78.44.310; adding a new
3 section to chapter 78.56 RCW; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that the
6 extraction of minerals by surface mining is an essential activity
7 making an important contribution to the economic well-being of the
8 state and nation. The citizens of the state are rapidly running out of
9 approved sites at which to conduct these activities. Therefore, the
10 available sources of these minerals are nearly exhausted.

11 While it is not possible to extract minerals without producing some
12 environmental impacts, the current structure of regulation of mining
13 operations is doing much more than preventing or mitigating conditions
14 that would be detrimental to the environment and property rights of the
15 citizens of the state. In the current regulatory environment,
16 economically viable permits simply cannot be obtained for the vast
17 majority of the sites where the minerals are located.

18 Surface mining must take place in diverse areas where the geologic,
19 topographic, climatic, biologic, and social conditions are

1 significantly different, and reclamation specifications must vary
2 accordingly. But surface mining is a finite use of the land and
3 another beneficial use must follow through reclamation.

4 Therefore, the legislature finds that a balance between appropriate
5 environmental regulation and the appropriate regulation of production
6 operations and conservation of minerals is in the best interests of the
7 citizens of the state.

8 **Sec. 2.** RCW 78.44.031 and 1993 c 518 s 4 are each amended to read
9 as follows:

10 Unless the context clearly indicates otherwise, the definitions in
11 this section apply throughout this chapter.

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

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

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

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

24 (5) "Disturbed area" means any place where activities clearly in
25 preparation for, or during, surface mining have physically disrupted,
26 covered, compacted, moved, or otherwise altered the characteristics of
27 soil, bedrock, vegetation, or topography that existed prior to such
28 activity. Disturbed areas may include but are not limited to: Working
29 faces, water bodies created by mine-related excavation, pit floors, the
30 land beneath processing plant and stock pile sites, spoil pile sites,
31 and equipment staging areas.

32 Disturbed areas do not include:

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

36 (b) Lands that have been reclaimed to all standards outlined in
37 this chapter, rules of the department, any applicable SEPA document,
38 and the approved reclamation plan.

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

4 (7) "Minerals" means clay, coal, gravel, industrial minerals,
5 metallic substances, peat, sand, stone, topsoil, and any other similar
6 solid material or substance to be excavated from natural deposits on or
7 in the earth for commercial, industrial, or construction use.

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

15 Operations specifically include:

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

18 (b) Blasting, equipment maintenance, sorting, crushing, and
19 loading;

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

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

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

27 (10) "Permit holder" means any person or persons, any partnership,
28 limited partnership, or corporation, or any association of persons,
29 either natural or artificial, including every public or governmental
30 agency engaged in surface mining and/or the operation of surface mines,
31 whether individually, jointly, or through subsidiaries, agents,
32 employees, operators, or contractors who holds a state reclamation
33 permit.

34 (11) "Reclamation" means rehabilitation for the appropriate future
35 use of disturbed areas resulting from surface mining including areas
36 under associated mineral processing equipment and areas under
37 stockpiled materials. Although both the need for and the
38 practicability of reclamation will control the type and degree of
39 reclamation in any specific surface mine, the basic objective shall be

1 to reestablish on a perpetual basis the vegetative cover, soil
2 stability, and water conditions appropriate to the approved subsequent
3 use of the surface mine and to prevent or mitigate future environmental
4 degradation.

5 (12) "Reclamation setbacks" include those lands along the margins
6 of surface mines wherein minerals and overburden shall be preserved in
7 sufficient volumes to accomplish reclamation according to the approved
8 plan and the minimum reclamation standards. Maintenance of reclamation
9 setbacks may not preclude other mine-related activities within the
10 reclamation setback.

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

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

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

17 (a) Has characteristics of topography, drainage, slope stability,
18 ownership, mining development, or mineral distribution, that make
19 reclamation necessary;

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

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

25 (16) "SEPA" means the state environmental policy act, chapter
26 43.21C RCW and rules adopted thereunder.

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

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

31 (ii) Mined slopes greater than thirty feet high and steeper than
32 1.0 foot horizontal to 1.0 foot vertical; or

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

36 (b) Surface mines include areas where mineral extraction from the
37 surface occurs by the auger method or by reworking mine refuse or
38 tailings, when these activities exceed the size or height thresholds
39 listed in (a) of this subsection.

1 (c) Surface mining shall exclude excavations or grading used:
2 (i) Primarily for on-site construction, on-site road maintenance,
3 or on-site landfill construction;
4 (ii) As part of a development plan approved by a county, city, or
5 town where (A) the county, city, or town finds that the excavation is
6 an essential part of the development; (B) the county, city, or town
7 finds that the final site and grading plans constitute complete
8 reclamation of the site; and (C) the county, city, or town and the
9 applicant for approval of a subsequent land use agree in writing. The
10 requirements of chapter 78.44 RCW shall not apply regardless of whether
11 the material being moved is sold or not;
12 (iii) For the purpose of public safety or restoring the land
13 following a natural disaster;
14 ~~((iii))~~ (iv) For the purpose of removing stockpiles;
15 ~~((iv))~~ (v) For forest or farm road construction or maintenance on
16 site or on contiguous lands;
17 ~~((v))~~ (vi) For sand authorized by RCW 43.51.685; ~~((and))~~ or
18 ~~((vi))~~ (vii) For underground mines.
19 (18) "Topsoil" means the naturally occurring upper part of a soil
20 profile, including the soil horizon that is rich in humus and capable
21 of supporting vegetation together with other sediments within four
22 vertical feet of the ground surface.

23 **Sec. 3.** RCW 78.44.050 and 1993 c 518 s 7 are each amended to read
24 as follows:

25 The department shall have the exclusive authority to regulate
26 surface mine reclamation ~~((except that, by contractual agreement, the~~
27 ~~department may delegate some or all of its enforcement authority to a~~
28 ~~county, city, or town))~~. All counties, cities, or towns shall have the
29 authority to zone surface mines and adopt ordinances regulating
30 operations pursuant to section 16 of this act, except that county,
31 city, or town operations ordinances may be preempted by the department
32 during the emergencies outlined in RCW 78.44.200 and related rules.

33 This chapter shall not alter or preempt any provisions of the state
34 fisheries laws (Title 75 RCW), the state water allocation and use laws
35 (chapters 90.03 and 90.44 RCW), the state water pollution control laws
36 (chapter 90.48 RCW), the state wildlife laws (Title 77 RCW), state
37 noise laws or air quality laws (Title 70 RCW), shoreline management
38 (chapter 90.58 RCW), the state environmental policy act (chapter 43.21C

1 RCW), state growth management (chapter 36.70A RCW), state drinking
2 water laws (chapters 43.20 and 70.119A RCW), or any other state
3 statutes.

4 **Sec. 4.** RCW 78.44.085 and 1993 c 518 s 14 are each amended to read
5 as follows:

6 (1) An applicant for a public or private reclamation permit shall
7 pay an application fee to the department before being granted a surface
8 mining permit. The amount of the application fee shall be six hundred
9 fifty dollars.

10 (2) After June 30, 1993, each public or private permit holder shall
11 pay an annual permit fee of six hundred fifty dollars. The annual
12 permit fee shall be payable to the department on the first anniversary
13 of the permit date and each year thereafter. Annual fees paid by a
14 county for small mines used exclusively for public works projects shall
15 be paid on those small mines from which the county elects to extract
16 minerals in the next calendar year and shall not exceed one thousand
17 dollars.

18 ~~(3) ((After July 1, 1995, the department may modify annual permit~~
19 ~~fees by rule if:~~

20 ~~(a) The total annual permit fees are reasonably related to the~~
21 ~~approximate costs of administering the department's surface mining~~
22 ~~regulatory program;~~

23 ~~(b) The annual fee does not exceed five thousand dollars; and~~

24 ~~(c) The mines are small mines in remote areas that are used~~
25 ~~primarily for public service, then lower annual permit fees may be~~
26 ~~established.~~

27 ~~(4))~~ Appeals from any determination of the department shall not
28 stay the requirement to pay any annual permit fee. Failure to pay the
29 annual fee may constitute grounds for an order to suspend surface
30 mining or cancellation of the reclamation permit as provided in this
31 chapter.

32 ~~((5))~~ (4) All fees collected by the department shall be deposited
33 into the surface mining reclamation account.

34 ~~((6) If the department delegates enforcement responsibilities to~~
35 ~~a county, city, or town, the department may allocate funds collected~~
36 ~~under this section to such county, city, or town.))~~

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

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

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

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

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

28 ~~((The department may by contract delegate enforcement of provisions
29 of reclamation plans to counties, cities, and towns. A county, city,
30 or town performing enforcement functions may not impose any additional
31 fees on permit holders.))~~

32 **Sec. 6.** RCW 78.44.161 and 1994 c 232 s 22 are each amended to read
33 as follows:

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

37 ~~((The department shall have special inspection requirements for
38 metals mining and milling operations regulated under chapter 232, Laws~~

1 of 1994. ~~The department shall inspect these mining operations at least~~
2 ~~quarterly, unless prevented by inclement weather conditions, in order~~
3 ~~to ensure that the permit holder is in compliance with the reclamation~~
4 ~~permit, rules, and this chapter. The department shall conduct~~
5 ~~additional inspections as needed during the construction phase of these~~
6 ~~mining operations in order to ensure compliance with the reclamation~~
7 ~~permit, rules, and this chapter.))~~

8 **Sec. 7.** RCW 78.44.310 and 1993 c 518 s 38 are each amended to read
9 as follows:

10 The department ((may)) shall establish a no-cost consulting service
11 within the department to assist miners, permit holders, local
12 government, and the public in technical matters related to mine
13 regulation, mine operations, and reclamation. The department ((may))
14 shall prepare concise, printed information for the public explaining
15 surface mining activities, timelines for permits and reviews, laws, and
16 the role of governmental agencies involved in surface mining, including
17 how to contact all regulators. The department shall not be held liable
18 for any negligent advice.

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

21 The department of natural resources may order at any time an
22 inspection of the disturbed area to determine if the miner or permit
23 holder has complied with the reclamation permit, rules, and chapter
24 78.44 RCW.

25 The department of natural resources shall inspect metals mining and
26 milling operations at least quarterly, unless prevented by inclement
27 weather conditions, in order to ensure that the permit holder is in
28 compliance with the reclamation permit, rules, and chapter 78.44 RCW.
29 The department of natural resources shall conduct additional
30 inspections as needed during the construction phase of these mining
31 operations in order to ensure compliance with the reclamation permit,
32 rules, and chapter 78.44 RCW.

33 NEW SECTION. **Sec. 9.** If specific funding for the purposes of this
34 act, referencing this act by bill or chapter number, is not provided by

1 June 30, 1996, in the omnibus appropriations act, this act is null and
2 void.

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