
SENATE BILL 6500

State of Washington

54th Legislature

1996 Regular Session

By Senators Hargrove and Swecker

Read first time 01/16/96. Referred to Committee on Natural Resources.

1 AN ACT Relating to surface mining; amending RCW 78.44.011,
2 78.44.020, 78.44.031, 78.44.040, 78.44.050, 78.44.085, 78.44.087,
3 78.44.131, 78.44.141, 78.44.151, 78.44.161, 78.44.171, 78.44.310,
4 78.44.910, and 36.70A.060; creating a new section; and repealing RCW
5 78.44.300.

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

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

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

1 Surface mining must take place in diverse areas where the geologic,
2 topographic, climatic, biologic, and social conditions are
3 significantly different, and reclamation specifications must vary
4 accordingly. But surface mining is a finite use of the land and
5 another beneficial use must follow through reclamation.

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

10 **Sec. 2.** RCW 78.44.011 and 1993 c 518 s 1 are each amended to read
11 as follows:

12 The legislature recognizes that the extraction of mineralsthrough
13 surface mining has historically included regulatory involvement by both
14 state and local governments.

15 It is the intent of the legislature to clarify that surface mining
16 is an appropriate land use, subject to reclamation authority exercised
17 by the department of natural resources and land use (~~and operation~~)
18 regulatory authority by counties, cities, and towns. The authority for
19 any state agency or local government to regulate operations is derived
20 from this chapter and exercised only as described in this chapter.

21 **Sec. 3.** RCW 78.44.020 and 1993 c 518 s 3 are each amended to read
22 as follows:

23 The purposes of this chapter are to:

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

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

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

32 (4) Ensure that reclamation is consistent with local land use
33 plans; and

34 (5) Ensure the power of local government to regulate land use and
35 specific elements of operations (~~pursuant to section 16 of this act~~).

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

3 Unless the context clearly indicates otherwise, the definitions in
4 this section apply throughout this chapter.

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

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

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

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

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

25 Disturbed areas do not include:

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

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

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

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

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

8 Operations specifically include:

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

11 (b) Blasting, equipment maintenance, sorting, crushing, and
12 loading;

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

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

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

20 (10) "Permit holder" means any person or persons, any partnership,
21 limited partnership, or corporation, or any association of persons,
22 either natural or artificial, including every public or governmental
23 agency engaged in surface mining and/or the operation of surface mines,
24 whether individually, jointly, or through subsidiaries, agents,
25 employees, operators, or contractors who holds a state reclamation
26 permit.

27 (11) "Reclamation" means rehabilitation for the appropriate future
28 use of disturbed areas resulting from surface mining including areas
29 under associated mineral processing equipment and areas under
30 stockpiled materials. Although both the need for and the
31 practicability of reclamation will control the type and degree of
32 reclamation in any specific surface mine, the basic objective shall be
33 to reestablish on a perpetual basis the vegetative cover, soil
34 stability, and water conditions appropriate to the approved subsequent
35 use of the surface mine and to prevent or mitigate future environmental
36 degradation.

37 (12) "Reclamation setbacks" include those lands along the margins
38 of surface mines wherein minerals and overburden shall be preserved in
39 sufficient volumes to accomplish reclamation according to the approved

1 plan and the minimum reclamation standards. Maintenance of reclamation
2 setbacks may not preclude other mine-related activities within the
3 reclamation setback.

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

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

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

10 (a) Has characteristics of topography, drainage, slope stability,
11 ownership, mining development, or mineral distribution, that make
12 reclamation necessary;

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

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

18 (16) "SEPA" means the state environmental policy act, chapter
19 43.21C RCW and rules adopted thereunder.

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

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

24 (ii) Mined slopes greater than thirty feet high and steeper than
25 1.0 foot horizontal to 1.0 foot vertical; or

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

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

33 (c) Surface mining shall exclude excavations or grading used:

34 (i) Primarily for on-site construction, on-site road maintenance,
35 or on-site landfill construction;

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

38 (iii) For the purpose of removing stockpiles;

- 1 (iv) For forest or farm road construction or maintenance on site or
2 on contiguous lands;
3 (v) For sand authorized by RCW 43.51.685; and
4 (vi) For underground mines.

5 (d) Surface mines with less than three acres of disturbed area are
6 categorically exempt from the regulations of this chapter.

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

11 **Sec. 5.** RCW 78.44.040 and 1993 c 518 s 6 are each amended to read
12 as follows:

13 (1) The department of natural resources is charged with the
14 administration of reclamation and operations not regulated by local
15 governments under this chapter. In order to implement and enforce this
16 chapter, the department, under the administrative procedure act
17 (chapter 34.05 RCW), may from time to time adopt those rules necessary
18 to carry out the purposes of this chapter.

19 (2)(a) Counties, cities, and towns may regulate surface mining
20 operations only by ordinance and only in accordance with the
21 requirements and limitations of this subsection.

22 (b) Local surface mining operating standards shall:

23 (i) Be limited to those standards that address mitigation of the
24 following impacts of operations:

25 (A) Traffic;

26 (B) Light emission;

27 (C) Visual screening;

28 (D) Noise emission; and

29 (E) Other significant or substantial mining impacts that are not
30 covered by a subject area of regulation embodied in any other state or
31 federal law;

32 (ii) Be performance-based, objective standards that:

33 (A) Are directly and proportionately related to limiting surface
34 mining impacts;

35 (B) Are reasonable and generally capable of being achieved;

36 (C) Take into account existing and available technologies; and

1 (D) May be met by any lawful means selected by the applicant or
2 operator that, in the judgment of the county, city, or town, achieve
3 compliance with the standard;

4 (iii) Limit application and monitoring fees to the amount necessary
5 to pay the costs of administering, processing, monitoring, and
6 enforcing the regulation of surface mining in accordance with this
7 section;

8 (iv) Except as otherwise provided in this section, implement the
9 ordinance through an operating plan review and approval process. Such
10 approval process shall:

11 (A) Require submittal of sufficient, complete, and accurate
12 information, as specified by the local ordinance, to allow the decision
13 maker to review the plan for compliance with local standards;

14 (B) At the option of the county, city, or town, provide for
15 administrative approval subject to appeal or for initial consideration
16 through a public hearing process; and

17 (C) Require that project-specific conditions or restrictions be
18 based upon written findings of facts demonstrating their need to
19 achieve compliance with local standards;

20 (v) Subject to subsection (3) of this section, provide that
21 approvals issued will be valid for fifty years.

22 (3) Operating regulations and amendments thereto adopted pursuant
23 to this section may be applied to lawfully preexisting mining
24 operations only if the local ordinance:

25 (a) Limits application of subsection (2)(b)(i)(A) of this section
26 relating to traffic to the designation of approved haul routes;

27 (b) Exempts such preexisting operations from any operating plan
28 review and approval process;

29 (c) Provides reasonable time periods for compliance with new or
30 amended local operating standards that in no event may be less than one
31 year; and

32 (d) Includes a variance procedure to allow continuation of existing
33 operations for a nonconforming surface mining operation where strict
34 adherence to a local operating standard would be economically or
35 operationally impractical due to conditions relating to site
36 configuration, topography, or the nature of historic operations.

37 (4) Nothing in this section precludes a county, city, or town from
38 exercising the express authority delegated to it by a state agency

1 under state law, or from complying with state law when required as a
2 regulated entity.

3 **Sec. 6.** RCW 78.44.050 and 1993 c 518 s 7 are each amended to read
4 as follows:

5 The department shall have the exclusive authority to regulate
6 surface mine reclamation (~~((except that, by contractual agreement, the~~
7 ~~department may delegate some or all of its enforcement authority to a~~
8 ~~county, city, or town))~~). All counties, cities, or towns shall have the
9 authority to zone surface mines and adopt ordinances regulating those
10 operations (~~((pursuant to section 16 of this act))~~) authorized in RCW
11 78.44.040, except that county, city, or town operations ordinances may
12 be preempted by the department during the emergencies outlined in RCW
13 78.44.200 and related rules.

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

23 **Sec. 7.** RCW 78.44.085 and 1993 c 518 s 14 are each amended to read
24 as follows:

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

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

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

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

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

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

10 ~~(4))~~ Appeals from any determination of the department shall not
11 stay the requirement to pay any annual permit fee. Failure to pay the
12 annual fee may constitute grounds for an order to suspend surface
13 mining or cancellation of the reclamation permit as provided in this
14 chapter.

15 ~~((5))~~ (4) All fees collected by the department shall be deposited
16 into the surface mining reclamation account.

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

20 **Sec. 8.** RCW 78.44.087 and 1995 c 223 s 3 are each amended to read
21 as follows:

22 (1) The department shall not issue a reclamation permit until the
23 applicant has deposited with the department an acceptable performance
24 security on forms prescribed and furnished by the department. A public
25 or governmental agency shall not be required to post performance
26 security nor shall a permit holder be required to post surface mining
27 performance security with ~~((more than one))~~ any state or local agency
28 other than the department.

29 (2) This performance security may be:

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

31 (b) A cash deposit;

32 (c) Negotiable securities acceptable to the department;

33 (d) An assignment of a savings account;

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

36 (f) Assignments of interests in real property within the state of
37 Washington; or

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

4 (3) The performance security shall be conditioned upon the faithful
5 performance of the requirements set forth in this chapter and of the
6 rules adopted under it.

7 (4) The department shall have the authority to determine the amount
8 of the performance security using a standardized performance security
9 formula developed by the department. The amount of the security shall
10 be determined by the department and based on the estimated costs of
11 completing reclamation according to the approved reclamation plan or
12 minimum standards and related administrative overhead for the area to
13 be surface mined during (a) the next twelve-month period, (b) the
14 following twenty-four months, and (c) any previously disturbed areas on
15 which the reclamation has not been satisfactorily completed and
16 approved.

17 (5) The department may increase or decrease the amount of the
18 performance security at any time to compensate for a change in the
19 disturbed area, the depth of excavation, a modification of the
20 reclamation plan, or any other alteration in the conditions of the mine
21 that affects the cost of reclamation. The department may, for any
22 reason, refuse any performance security not deemed adequate.

23 (6) Liability under the performance security shall be maintained
24 until reclamation is completed according to the approved reclamation
25 plan to the satisfaction of the department unless released as
26 hereinafter provided. Liability under the performance security may be
27 released only upon written notification by the department.
28 Notification shall be given upon completion of compliance or acceptance
29 by the department of a substitute performance security. The liability
30 of the surety shall not exceed the amount of security required by this
31 section and the department's reasonable legal fees to recover the
32 security.

33 (7) Any interest or appreciation on the performance security shall
34 be held by the department until reclamation is completed to its
35 satisfaction. At such time, the interest shall be remitted to the
36 permit holder; except that such interest or appreciation may be used by
37 the department to effect reclamation in the event that the permit
38 holder fails to comply with the provisions of this chapter and the
39 costs of reclamation exceed the face value of the performance security.

1 (8) Except as provided in this section, no other state agency or
2 local government shall require performance security for ~~((the purposes~~
3 ~~of))~~ any surface mine ~~((reclamation and))~~. Only ~~((one agency of~~
4 ~~government))~~ the department shall require and hold the performance
5 security. The department may enter into written agreements with
6 federal agencies in order to avoid redundant bonding of surface mines
7 straddling boundaries between federally controlled and other lands
8 within Washington state.

9 **Sec. 9.** RCW 78.44.131 and 1994 c 232 s 24 are each amended to read
10 as follows:

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

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

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

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

36 ~~((The department may by contract delegate enforcement of provisions~~
37 ~~of reclamation plans to counties, cities, and towns. A county, city,~~

1 ~~or town performing enforcement functions may not impose any additional~~
2 ~~fees on permit holders.))~~

3 **Sec. 10.** RCW 78.44.141 and 1993 c 518 s 21 are each amended to
4 read as follows:

5 Reclamation of surface mines permitted after June 30, 1993, and
6 reclamation of surface mine segments addressed by reclamation plans
7 modified after June 30, 1994, shall meet the following minimum
8 standards except as waived in writing by the department.

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

17 (2) The department may require that clearly visible, permanent
18 monuments delineating the permit boundaries and maximum extent of the
19 disturbed area be set at appropriate places around the mine site. The
20 permit holder shall maintain the monuments until termination of the
21 reclamation permit.

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

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

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

34 (i) Have varied steepness;

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

36 (iii) Have no large rectilinear topographic elements;

37 (iv) Generally have slopes of between 2.0 and 3.0 feet horizontal
38 to 1.0 foot vertical or flatter except in limited areas where steeper

1 slopes are necessary in order to create sinuous topography and to
2 control drainage;

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

5 (vi) Be compacted if significant backfilling is required to produce
6 the final reclaimed slopes and if the department determines that
7 compaction is necessary.

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

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

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

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

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

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

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

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

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

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

19 (h) All grading and backfilling shall be made with nonnoxious,
20 noncombustible, and relatively incompactible solids unless the permit
21 holder provides:

22 (i) Written approval from all appropriate solid waste regulatory
23 agencies; and

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

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

31 (j) Pit floors should be bulldozed or ripped to foster
32 revegetation.

33 (5) Drainages shall be graded and contain adequate energy
34 dissipation devices so that essentially natural conditions of water
35 velocity, volume, and turbidity are reestablished within six months of
36 reclamation of each segment of the mine. Ditches and other artificial
37 drainages shall be constructed on each reclaimed segment to control
38 surface water, erosion, and siltation and to direct runoff to a safe
39 outlet. Diversion ditches including but not limited to channels,

1 flumes, tightlines and retention ponds shall be capable of carrying the
2 peak flow at the mine site that has the probable recurrence frequency
3 of once in twenty-five years as determined from data for the twenty-
4 five year, twenty-four hour precipitation event published by the
5 national oceanic and atmospheric administration. The grade of such
6 ditches and channels shall be constructed to limit erosion and
7 siltation. Natural and other drainage channels shall be kept free of
8 equipment, wastes, stockpiles, and overburden.

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

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

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

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

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

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

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

37 (i) For western Washington, nitrogen-fixing species including but
38 not limited to alder, white clover, and lupine should be included in

1 dry areas. In wet areas, tubers, sedges, wetland grasses, willow,
2 cottonwood, cedar, and alder are appropriate.

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

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

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

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

17 **Sec. 11.** RCW 78.44.151 and 1993 c 518 s 23 are each amended to
18 read as follows:

19 The department and the permit holder may modify the reclamation
20 plan at any time during the term of the permit for any of the following
21 reasons:

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

24 (2) If the department and permit holder jointly determine((s)) that
25 the previously adopted reclamation plan is impossible or impracticable
26 to implement and maintain; or

27 (3) The previously approved reclamation plan is not accomplishing
28 the intent of this chapter as determined by the department and permit
29 holder jointly.

30 Modified reclamation plans shall be reviewed by the department as
31 lead agency under SEPA. Such SEPA analyses shall consider only those
32 impacts relating directly to the proposed modifications. Copies of
33 proposed and approved modifications shall be sent to the appropriate
34 county, city, or town.

35 **Sec. 12.** RCW 78.44.161 and 1994 c 232 s 22 are each amended to
36 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 **Sec. 13.** RCW 78.44.171 and 1993 c 518 s 22 are each amended to
14 read as follows:

15 Reclamation permits shall be transferred to a subsequent permit
16 holder and the department shall release the former permit holder from
17 the duties imposed by this chapter if((+)

18 (1)) both permit holders comply with all rules of the department
19 addressing requirements for transferring a permit((+ and

20 (2) Unless waived by the department, the mine and all others
21 operated by both the former and subsequent permit holders and their
22 principal officers or owners are in compliance with this chapter and
23 rules)).

24 **Sec. 14.** RCW 78.44.310 and 1993 c 518 s 38 are each amended to
25 read as follows:

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

35 **Sec. 15.** RCW 78.44.910 and 1993 c 518 s 36 are each amended to
36 read as follows:

1 Miners and permit holders shall not be required to reclaim any
2 segment where all surface mining was completed prior to January 1,
3 1971. However, the department shall make an effort to reclaim
4 previously abandoned or completed surface mining segments. However,
5 the department shall not require an applicant to reclaim lands not
6 under his or her control.

7 **Sec. 16.** RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended
8 to read as follows:

9 (1) Each county that is required or chooses to plan under RCW
10 36.70A.040, and each city within such county, shall adopt development
11 regulations on or before September 1, 1991, to assure the conservation
12 of agricultural, forest, and mineral resource lands designated under
13 RCW 36.70A.170. Regulations adopted under this subsection may not
14 prohibit uses legally existing on any parcel prior to their adoption
15 and shall remain in effect until the county or city adopts development
16 regulations pursuant to RCW 36.70A.120. Such regulations shall assure
17 that the use of lands adjacent to agricultural, forest, or mineral
18 resource lands shall not interfere with the continued use, in the
19 accustomed manner and in accordance with best management practices, of
20 these designated lands for the production of food, agricultural
21 products, or timber, or for the extraction of minerals. Counties and
22 cities shall require that all plats, short plats, development permits,
23 and building permits issued for development activities on, or within
24 three hundred feet of, lands designated as agricultural lands, forest
25 lands, or mineral resource lands, contain a notice that the subject
26 property is within or near designated agricultural lands, forest lands,
27 or mineral resource lands on which a variety of commercial activities
28 may occur that are not compatible with residential development for
29 certain periods of limited duration.

30 (2) Each county and city shall adopt development regulations that
31 protect critical areas that are required to be designated under RCW
32 36.70A.170. For counties and cities that are required or choose to
33 plan under RCW 36.70A.040, such development regulations shall be
34 adopted on or before September 1, 1991. For the remainder of the
35 counties and cities, such development regulations shall be adopted on
36 or before March 1, 1992.

37 (3) Such counties and cities shall review these designations and
38 development regulations when adopting their comprehensive plans under

1 RCW 36.70A.040 and implementing development regulations under RCW
2 36.70A.120 and may alter such designations and development regulations
3 to insure consistency.

4 (4) The development regulations adopted by such counties and cities
5 regarding surface mining operations under RCW 78.44.040 shall not be
6 inconsistent with rules adopted by the department of natural resources.

7 (5) Forest land and agricultural land located within urban growth
8 areas shall not be designated by a county or city as forest land or
9 agricultural land of long-term commercial significance under RCW
10 36.70A.170 unless the city or county has enacted a program authorizing
11 transfer or purchase of development rights.

12 NEW SECTION. **Sec. 17.** RCW 78.44.300 and 1993 c 518 s 37 are each
13 repealed.

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