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**SUBSTITUTE SENATE BILL 5502**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senate Committee on Natural Resources (originally sponsored by Senators Sutherland and Prentice)

Read first time 03/03/93.

1 AN ACT Relating to state and local government regulation of surface  
2 mining; amending RCW 78.44.010, 78.44.020, 78.44.040, 78.44.050,  
3 78.44.060, 78.44.070, 78.44.150, 78.44.170, and 78.44.910; adding a new  
4 section to chapter 36.70A RCW; adding new sections to chapter 78.44  
5 RCW; creating new sections; recodifying RCW 78.44.150, 78.44.170,  
6 78.44.175, and 78.44.910; repealing RCW 78.44.030, 78.44.035,  
7 78.44.080, 78.44.090, 78.44.100, 78.44.110, 78.44.120, 78.44.130,  
8 78.44.140, 78.44.160, and 78.44.180; prescribing penalties; providing  
9 an effective date; and declaring an emergency.

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

11 NEW SECTION. **Sec. 1.** The legislature recognizes that the  
12 extraction of minerals through surface mining has historically included  
13 regulatory involvement by both state and local governments.

14 It is the intent of the legislature to clarify that surface mining  
15 is an appropriate land use, subject to reclamation authority exercised  
16 by the department of natural resources and land use and operation  
17 regulatory authority by counties, cities, and towns.

1       **Sec. 2.** RCW 78.44.010 and 1970 ex.s. c 64 s 2 are each amended to  
2 read as follows:

3       The legislature recognizes that the extraction of minerals by  
4 surface mining is ~~((a basic and))~~ an essential activity making an  
5 important contribution to the economic well-being of the state and  
6 nation. ~~((At the same time, proper reclamation of surface))~~ It is not  
7 possible to extract minerals without producing some environmental  
8 impacts. At the same time, comprehensive regulation of mining and  
9 thorough reclamation of mined lands is necessary to prevent  
10 ~~((undesirable land and water))~~ or mitigate conditions that would be  
11 detrimental to the environment and to protect the general welfare,  
12 health, safety, and property rights of the citizens of the state.  
13 Surface mining takes place in diverse areas where the geologic,  
14 topographic, climatic, biologic, and social conditions are  
15 significantly different, and reclamation specifications must vary  
16 accordingly. ~~((It is not practical to extract minerals required by our~~  
17 ~~society without disturbing the surface of the earth and producing waste~~  
18 ~~materials, and the very character of many types of surface mining~~  
19 ~~operations precludes complete restoration of the land to its original~~  
20 ~~condition. However, the legislature finds that reclamation of surface~~  
21 ~~mined lands as provided in this chapter will allow the mining of~~  
22 ~~valuable minerals and will provide for the protection and subsequent~~  
23 ~~beneficial use of the mined and reclaimed land.))~~ Therefore, the  
24 legislature finds that a balance between appropriate environmental  
25 regulation and the production and conservation of minerals is in the  
26 best interests of the citizens of the state.

27       **Sec. 3.** RCW 78.44.020 and 1970 ex.s. c 64 s 3 are each amended to  
28 read as follows:

29       The purposes of this chapter ~~((is))~~ are to:  
30       (1) Provide that the usefulness, productivity, and scenic values of  
31 all lands and waters involved in surface mining within the state will  
32 receive the greatest practical degree of protection and ~~((restoration.~~  
33 ~~It is a further purpose of this chapter to provide a means of~~  
34 ~~cooperation between private and governmental entities in carrying this~~  
35 ~~chapter into effect))~~ reclamation at the earliest opportunity following  
36 completion of surface mining;  
37       (2) Provide for the greatest practical degree of state-wide  
38 consistency in the regulation of surface mines;

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

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

5       (5) Ensure the power of local government to regulate land use and  
6 operations pursuant to section 16 of this act.

7       NEW SECTION.   **Sec. 4.**   DEFINITIONS.   Unless the context clearly  
8 indicates otherwise, the definitions in this section apply throughout  
9 this chapter.

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

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

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

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

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

30       Disturbed areas do not include:

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

34       (b) Lands that have been reclaimed to all standards outlined in  
35 this chapter, rules of the department, any applicable SEPA document,  
36 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 mine-related activities, exclusive of  
9 reclamation, that include activities that affect noise, traffic, light  
10 emission, and other significant or substantial mining impacts that are  
11 not covered by a subject area of regulation embodied in any other state  
12 or federal law.

13 Operations specifically include:

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

16 (b) Blasting, equipment maintenance, sorting, crushing, and  
17 loading;

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

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

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

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

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

1 use of the surface mine and to prevent or mitigate future environmental  
2 degradation.

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

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

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

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

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

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

20 (c) Is smaller than seven acres and has less than five hundred  
21 linear feet of working face except as provided in a segmental  
22 reclamation agreement approved by the department.

23 (16) "SEPA" means the state environmental policy act, chapter  
24 43.21C RCW and rules adopted thereunder.

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

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

29 (ii) Mined slopes greater than thirty feet high and steeper than  
30 1.0 foot horizontal to 1.0 foot vertical; or

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

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

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

- 1 (i) Primarily for on-site construction, on-site road maintenance,  
2 or on-site landfill construction;  
3 (ii) For the purpose of public safety or restoring the land  
4 following a natural disaster;  
5 (iii) For the purpose of removing stockpiles;  
6 (iv) For forest or farm road construction or maintenance on-site or  
7 on contiguous lands; and  
8 (v) For underground mines.

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

13 NEW SECTION. **Sec. 5.** SEGMENTAL RECLAMATION. The permit holder  
14 shall reclaim each segment of the mine within two years of completion  
15 of surface mining on that segment except as provided in a segmental  
16 reclamation agreement approved in writing by the department. The  
17 primary objective of a segmental reclamation agreement should be to  
18 enhance final reclamation.

19 **Sec. 6.** RCW 78.44.040 and 1984 c 215 s 2 are each amended to read  
20 as follows:

21 The department of natural resources is charged with the  
22 administration of reclamation under this chapter. In order to  
23 implement ~~((the chapter's terms and provisions))~~ and enforce this  
24 chapter, the department, under the ~~((provisions of the))~~ administrative  
25 procedure act (chapter 34.05 RCW), ~~((as now or hereafter amended,))~~ may  
26 from time to time ~~((promulgate))~~ adopt those rules ~~((and regulations))~~  
27 necessary to carry out the purposes of this chapter.

28 **Sec. 7.** RCW 78.44.050 and 1970 ex.s. c 64 s 6 are each amended to  
29 read as follows:

30 The department shall have the exclusive authority to regulate  
31 surface mine reclamation. All counties, cities, or towns shall have  
32 the authority to zone surface mines and adopt ordinances regulating  
33 operations pursuant to section 16 of this act, except that county,  
34 city, or town operations ordinances may be preempted by the department  
35 during the emergencies outlined in section 27 of this act and related  
36 rules.

1 This chapter shall not ~~((affect))~~ alter or preempt any ~~((of the))~~  
2 provisions of the state fisheries laws (Title 75 RCW), the state water  
3 pollution control laws (Title 90 RCW), the state ~~((game))~~ wildlife laws  
4 (Title 77 RCW), ~~((or any other state laws, and shall be cumulative and~~  
5 ~~nonexclusive))~~ state noise laws or air quality laws (Title 70 RCW),  
6 shoreline management (chapter 90.58 RCW), the state environmental  
7 policy act (chapter 43.21C RCW), state growth management (chapter  
8 36.70A RCW) except as provided in section 16 of this act, or any other  
9 state laws.

10 **Sec. 8.** RCW 78.44.060 and 1970 ex.s. c 64 s 7 are each amended to  
11 read as follows:

12 The department shall have the authority to conduct ~~((or)),~~  
13 authorize, and/or participate in investigations, research, experiments,  
14 and demonstrations, and to collect and disseminate information relating  
15 to surface mining and reclamation of surface mined lands.

16 **Sec. 9.** RCW 78.44.070 and 1970 ex.s. c 64 s 8 are each amended to  
17 read as follows:

18 The department may cooperate with other governmental and private  
19 agencies ~~((in this state and other states))~~ and agencies of the federal  
20 government, and may reasonably reimburse them for any services the  
21 department requests that they provide. The department may also receive  
22 any federal funds, state funds and any other funds and expend them for  
23 reclamation of land affected by surface mining and for purposes  
24 enumerated in RCW 78.44.060.

25 NEW SECTION. **Sec. 10.** SURFACE MINING RECLAMATION ACCOUNT. The  
26 surface mining reclamation account is created in the state treasury.  
27 Annual mining fees, funds received by the department from state, local,  
28 or federal agencies for research purposes, as well as other mine-  
29 related funds and fines received by the department shall be deposited  
30 into this account. The surface mine reclamation account may be used by  
31 the department only to:

- 32 (1) Administer its regulatory program pursuant to this chapter;
- 33 (2) Undertake research relating to surface mine regulation,  
34 reclamation of surface mine lands, and related issues; and
- 35 (3) Cover costs arising from appeals from determinations made under  
36 this chapter.

1 Fines, interest, and other penalties collected by the department  
2 under the provisions of this chapter shall be used to reclaim surface  
3 mines abandoned prior to 1971.

4 Only the commissioner of public lands or the commissioner's  
5 designee may authorize expenditures from the account. The account is  
6 subject to chapter 43.88 RCW, but no appropriation is required for  
7 expenditures.

8 NEW SECTION. **Sec. 11.** RECLAMATION PERMITS REQUIRED--APPLICATIONS.

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

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

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

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

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

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

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

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

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

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

10 NEW SECTION. **Sec. 12.** RECLAMATION PLANS. An applicant shall  
11 provide a reclamation plan and copies acceptable to the department  
12 prior to obtaining a reclamation permit. The department shall have the  
13 sole authority to approve reclamation plans. Reclamation plans or  
14 modified reclamation plans submitted to the department after June 30,  
15 1993, shall meet or exceed the minimum reclamation standards set forth  
16 in this chapter and by the department in rule. Each applicant shall  
17 also supply copies of the proposed plans and final reclamation plan  
18 approved by the department to the county, city, or town in which the  
19 mine will be located. The department shall solicit comment from local  
20 government prior to approving a reclamation plan. The reclamation plan  
21 shall include:

22 (1) A written narrative describing the proposed mining and  
23 reclamation scheme with:

24 (a) A statement of a proposed subsequent use of the land after  
25 reclamation that is consistent with the local land use designation.  
26 Approval of the reclamation plan shall not vest the proposed subsequent  
27 use of the land;

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

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

33 (d) The maximum depth of mining;

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

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

36 (g) A description of the sequence of mining that will provide,  
37 within limits of normal procedures of the industry, for completion of  
38 surface mining and associated disturbance on each portion of the permit

1 area so that reclamation can be initiated at the earliest possible time  
2 on each segment of the mine;

3 (h) A schedule for progressive reclamation of each segment of the  
4 mine;

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

9 (j) Where mining is contemplated within critical aquifer recharge  
10 areas, special protection areas as defined by chapter 90.48 RCW and  
11 implementing rules, public water supply watersheds, sole source  
12 aquifers, wellhead protection areas, and designated aquifer protection  
13 areas as set forth in chapter 36.36 RCW, a thoroughly documented  
14 hydrogeologic analysis of the reclamation plan may be required; and

15 (k) Additional information as required by the department including  
16 but not limited to: The positions of reclamation setbacks and  
17 screening, conservation of topsoil, interim reclamation, revegetation,  
18 postmining erosion control, drainage control, slope stability, disposal  
19 of mine wastes, control of fill material, development of wetlands,  
20 ponds, lakes, and impoundments, and rehabilitation of topography.

21 (2) Maps of the surface mine showing:

22 (a) All applicable data required in the narrative portion of the  
23 reclamation plan;

24 (b) Existing topographic contours;

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

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

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

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

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

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

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

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

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

7 If the department refuses to approve a reclamation plan in the form  
8 submitted by an applicant or permit holder, it shall notify the  
9 applicant or permit holder stating the reasons for its determination  
10 and describe such additional requirements to the applicant or permit  
11 holder's reclamation plan as are necessary for the approval of the plan  
12 by the department. If the department refuses to approve a complete  
13 reclamation plan within one hundred twenty days, the miner or permit  
14 holder may appeal this determination under the provisions of this  
15 chapter.

16 Only insignificant deviations may occur from the approved  
17 reclamation plan without prior written approval by the department for  
18 the proposed change.

19 The department retains the authority to require that the  
20 reclamation plan be updated to the satisfaction of the department at  
21 least every ten years.

22 NEW SECTION. **Sec. 13.** JOINT RECLAMATION PLANS. Where two or more  
23 surface mines join along a common boundary, the department may require  
24 submission of a joint reclamation plan in order to provide for optimum  
25 reclamation or to avoid waste of mineral resources. Such joint  
26 reclamation plans may be in the form of a single collaborative plan  
27 submitted by all affected permit holders or as individual reclamation  
28 plans in which the schedule of reclamation, finished contours, and  
29 revegetation match reclamation plans of adjacent permit holders.

30 NEW SECTION. **Sec. 14.** FEES. (1) An applicant for a public or  
31 private reclamation permit shall pay an application fee to the  
32 department before being granted a surface mining permit. The amount of  
33 the application fee shall be six hundred fifty dollars.

34 (2) After June 30, 1993, each public or private permit holder shall  
35 pay an annual permit fee of six hundred fifty dollars. The annual  
36 permit fee shall be payable to the department on the first anniversary  
37 of the permit date and each year thereafter. Annual fees paid by a

1 county for small mines used exclusively for public works projects shall  
2 not exceed two thousand dollars.

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

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

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

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

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

17 (5) All fees collected by the department shall be deposited into  
18 the surface mining reclamation account.

19 NEW SECTION. **Sec. 15.** PERFORMANCE SECURITY. The department shall  
20 not issue a reclamation permit until the applicant has deposited with  
21 the department an acceptable performance security on forms prescribed  
22 and furnished by the department. A public or governmental agency shall  
23 not be required to post performance security nor shall a permit holder  
24 be required to post surface mining performance security with more than  
25 one state, local, or federal agency.

26 This performance security may be:

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

28 (2) A cash deposit;

29 (3) Negotiable securities acceptable to the department;

30 (4) An assignment of a savings account;

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

33 (6) Assignments of interests in real property within the state of  
34 Washington; or

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

1 The performance security shall be conditioned upon the faithful  
2 performance of the requirements set forth in this chapter and of the  
3 rules adopted under it.

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

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

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

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

36 No other state agency or local government shall require performance  
37 security for the purposes of surface mine reclamation and only one  
38 agency of government shall require and hold the performance security.  
39 The department may enter into written agreements with federal agencies

1 in order to avoid redundant bonding of surface mines straddling  
2 boundaries between federally controlled and other lands within  
3 Washington state.

4 NEW SECTION. **Sec. 16.** A new section is added to chapter 36.70A  
5 RCW to read as follows:

6 (1) Where the county has classified mineral lands pursuant to RCW  
7 36.70A.050 and mineral resource lands of long-term commercial  
8 significance exist, a county, city, or town shall designate sufficient  
9 mineral resource lands in the comprehensive plans to meet the projected  
10 thirty-year, county-wide need. Once designated, mineral resource uses,  
11 including operations as defined in section 4 of this act, shall be  
12 established as an allowed use in local development regulations subject  
13 to the permit process described in this section.

14 The county, city, or town shall designate mineral resource  
15 deposits, both active and inactive, in economically viable proximity to  
16 locations where the deposits are likely to be used.

17 The county, city, or town shall discourage the location of  
18 incompatible uses adjacent to mineral resource industries, deposits,  
19 and holdings.

20 For purposes of this section, "long-term commercial significance"  
21 includes the mineral composition of the land for long-term economically  
22 viable commercial production, in consideration with the mineral  
23 resource land's proximity to population areas, product markets, and the  
24 possibility of more intense uses of the land.

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

28 (b) Local surface mining operating standards shall:

29 (i) Address only:

30 (A) Traffic;

31 (B) Light emission;

32 (C) Visual screening;

33 (D) Noise emission; and

34 (E) Other significant or substantial mining impacts that are not  
35 covered by a subject area of regulation embodied in any other state or  
36 federal law.

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

1 (A) Are directly and proportionately related to limiting surface  
2 mining impacts;

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

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

5 (D) May be met by any lawful means selected by the applicant or  
6 operator that, in the judgment of the county, city, or town, achieve  
7 compliance with the standard.

8 (iii) Limit application or monitoring fees in accordance with RCW  
9 82.02.020.

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

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

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

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

22 (v) Subject to subsection (3) of this section, provide that  
23 approvals issued will be valid through completion of surface mining.

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

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

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

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

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

1        NEW SECTION.    **Sec. 17.** A surface mining model ordinance advisory  
2 committee is hereby created. The committee shall be composed of  
3 representatives of local government, state agencies, surface mining  
4 interests, and the environmental community. The department of natural  
5 resources shall appoint the members of the committee and the department  
6 shall staff the committee. This temporary advisory committee shall  
7 draft model ordinances for different surface-mining settings and shall  
8 assist counties, cities, and towns in developing ordinances. The  
9 committee shall complete its work and shall expire by December 31,  
10 1994. Participants on the committee shall pay their own expenses, and  
11 the department of natural resources shall fund the department's  
12 involvement.

13        NEW SECTION.    **Sec. 18.** RECLAMATION SETBACKS. Reclamation setbacks  
14 shall be as follows unless waived by the department:

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

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

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

29        NEW SECTION.    **Sec. 19.** WATER CONTROL. Water control as regulated  
30 by the department shall be limited to those provisions necessary to  
31 effect surface mine reclamation and to protect ground and surface water  
32 resources after reclamation is complete. The department shall solicit  
33 recommendations from all agencies with expertise in relevant water  
34 control laws when evaluating reclamation plans for surface mines in or  
35 near water. Control of surface mine water pollution, water  
36 availability, and protection of fisheries and wildlife habitats shall  
37 be regulated under the provisions of ordinances of any local

1 jurisdiction, fisheries laws (Title 75 RCW), water pollution control  
2 laws (Title 90 RCW), wildlife laws (Title 77 RCW), federal storm water  
3 regulations, and/or national pollutant discharge elimination system  
4 regulations.

5 NEW SECTION. **Sec. 20.** RECLAMATION. The need for, and the  
6 practicability of, reclamation shall control the type and degree of  
7 reclamation in any specific instance. However, the basic objective of  
8 reclamation is to reestablish on a continuing basis the vegetative  
9 cover, slope stability, water conditions, and safety conditions  
10 suitable to the proposed subsequent use consistent with local land use  
11 plans for the surface mine site.

12 Each permit holder shall comply with the minimum reclamation  
13 standards in effect on the date the permit was issued and any  
14 additional reclamation standards set forth in the approved reclamation  
15 plan.

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

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

25 NEW SECTION. **Sec. 21.** MINIMUM RECLAMATION STANDARDS. Reclamation  
26 of surface mines permitted after June 30, 1993, and reclamation of  
27 surface mine segments addressed by reclamation plans modified after  
28 June 30, 1994, shall meet the following minimum standards except as  
29 waived in writing by the department.

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

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

6 (3) All minimum reclamation standards may be waived in writing by  
7 the department in order to accommodate unique and beneficial  
8 reclamation schemes such as parks, swimming facilities, buildings, and  
9 wildlife reserves. Such waivers shall be granted only after written  
10 approval by the department of a reclamation plan describing the  
11 variances to the minimum reclamation standards, receipt of  
12 documentation of SEPA compliance, and written approvals from the  
13 landowner and by the local land use authority.

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

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

18 (i) Have varied steepness;

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

20 (iii) Have no large rectilinear topographic elements;

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

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

27 (vi) Be compacted if significant backfilling is required to produce  
28 the final reclaimed slopes and if the department determines that  
29 compaction is necessary.

30 (b) Slopes in consolidated materials shall have no prescribed slope  
31 angle or height, but where a severely hazardous condition is created by  
32 mining and that is not indigenous to the immediate area, the slopes  
33 shall not exceed 2.0 feet horizontal to 1.0 foot vertical. Steeper  
34 slopes shall be acceptable in areas where evidence is submitted that  
35 demonstrates that the geologic or topographic characteristics of the  
36 site preclude reclamation of slopes to such angle or height or that  
37 such slopes constitute an acceptable subsequent use under local land  
38 use regulations.

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

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

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

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

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

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

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

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

35 (g) Where surface mining has exposed natural materials that may  
36 create polluting conditions, including but not limited to acid-forming  
37 coals and metalliferous rock or soil, such materials shall be covered  
38 according to a method approved by the department. The final ground

1 surface shall be graded so that surface water drains away from these  
2 materials.

3 (h) All grading and backfilling shall be made with nonnoxious,  
4 noncombustible, and relatively incompactible solids unless the permit  
5 holder provides:

6 (i) Written approval from all appropriate solid waste regulatory  
7 agencies; and

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

10 (i) Final reclaimed slopes should be left roughly graded,  
11 preserving equipment tracks, depressions, and small mounds to trap  
12 clay-bearing soil and promote natural revegetation. Where reasonable,  
13 final equipment tracks should be oriented in order to trap soil and  
14 seeds and to inhibit erosion.

15 (j) Pit floors should be bulldozed or ripped to foster  
16 revegetation.

17 (5) Drainages shall be graded and contain adequate energy  
18 dissipation devices so that essentially natural conditions of water  
19 velocity, volume, and turbidity are reestablished within six months of  
20 reclamation of each segment of the mine. Ditches and other artificial  
21 drainages shall be constructed on each reclaimed segment to control  
22 surface water, erosion, and siltation and to direct runoff to a safe  
23 outlet. Diversion ditches including but not limited to channels,  
24 flumes, tightlines and retention ponds shall be capable of carrying the  
25 peak flow at the mine site that has the probable recurrence frequency  
26 of once in twenty-five years as determined from data for the twenty-  
27 five year, twenty-four hour precipitation event published by the  
28 national oceanic and atmospheric administration. The grade of such  
29 ditches and channels shall be constructed to limit erosion and  
30 siltation. Natural and other drainage channels shall be kept free of  
31 equipment, wastes, stockpiles, and overburden.

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

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

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

1 (7) Revegetation shall be required as appropriate to stabilize  
2 slopes, generate new topsoil, reduce erosion and turbidity, mask  
3 rectilinear contours, and restore the scenic value of the land to the  
4 extent feasible as appropriate to the approved subsequent use.  
5 Although the scope of and necessity for revegetation will vary  
6 according to the geography, precipitation, and approved subsequent use  
7 of the site, the objective of segmental revegetation is to reestablish  
8 self-sustaining vegetation and conditions of slope stability, surface  
9 water quality, and appearance before release of the reclamation permit.  
10 Revegetation shall normally meet the following standards:

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

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

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 22.**    PERMIT TRANSFERS.    Reclamation permits  
2 shall be transferred to a subsequent permit holder and the department  
3 shall release the former permit holder from the duties imposed by this  
4 chapter if:

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

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

11       NEW SECTION.    **Sec. 23.**    MODIFICATION OF RECLAMATION PLANS.    The  
12 department and the permit holder may modify the reclamation plan at any  
13 time during the term of the permit for any of the following reasons:

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

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

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

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

25       NEW SECTION.    **Sec. 24.**    REPORTS.    On the anniversary date of the  
26 reclamation permit and each year thereafter until reclamation is  
27 completed and approved, the permit holder shall file a report of  
28 activities completed during the preceding year. The report shall be on  
29 a form prescribed by the department.

30       NEW SECTION.    **Sec. 25.**    INSPECTION OF PERMIT AREA.    The department  
31 may order at any time an inspection of the disturbed area to determine  
32 if the miner or permit holder has complied with the reclamation permit,  
33 rules, and this chapter.

34       NEW SECTION.    **Sec. 26.**    ORDER TO RECTIFY DEFICIENCIES.    The  
35 department may issue an order to rectify deficiencies when a miner or

1 permit holder is conducting surface mining in any manner not authorized  
2 by:

- 3 (1) This chapter;
- 4 (2) The rules adopted by the department;
- 5 (3) The authorized reclamation plan; or
- 6 (4) The reclamation permit.

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

13 NEW SECTION. **Sec. 27.** EMERGENCY NOTICE AND ORDER TO RECTIFY  
14 DEFICIENCIES--EMERGENCY ORDER TO SUSPEND SURFACE MINING. When the  
15 department finds that a permit holder is conducting surface mining in  
16 any manner not authorized by:

- 17 (1) This chapter;
- 18 (2) The rules adopted by the department;
- 19 (3) The approved reclamation plan; or
- 20 (4) The reclamation permit;

21 and that activity has created a situation involving an immediate danger  
22 to the public health, safety, welfare, or environment requiring  
23 immediate action, the department may issue an emergency notice and  
24 order to rectify deficiencies, and/or an emergency order to suspend  
25 surface mining. These orders shall be effective when entered. The  
26 department may take such action as is necessary to prevent or avoid the  
27 danger to the public health, safety, welfare, or environment that  
28 justifies use of emergency adjudication. The department shall give  
29 such notice as is practicable to the permit holder or miner who is  
30 required to comply with the order. The order shall comply with the  
31 requirements of the administrative procedure act.

32 Regulations of surface mining operations administered by other  
33 state and local agencies shall be preempted by this section to the  
34 extent that the time schedule and procedures necessary to rectify the  
35 emergency situation, as determined by the department, conflict with  
36 such local regulation.

1        NEW SECTION.    **Sec. 28.**    ORDER TO SUSPEND SURFACE MINING.    Upon the  
2 failure of a miner or permit holder to comply with a department order  
3 to rectify deficiencies, the department may issue an order to suspend  
4 surface mining when a miner or permit holder is conducting surface  
5 mining in any manner not authorized by:

6            (1) This chapter;

7            (2) The rules adopted by the department;

8            (3) The approved reclamation plan;

9            (4) The reclamation permit; or

10          (5) If the miner or permit holder fails to comply with any final  
11 order of the department.

12          The order to suspend surface mining shall require the miner or  
13 permit holder to suspend part or all of the miner's or permit holder's  
14 mining operations until the conditions resulting in the issuance of the  
15 order have been mitigated to the satisfaction of the department.

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

19        NEW SECTION.    **Sec. 29.**    DECLARATION OF ABANDONMENT.    The department  
20 may issue a declaration of abandonment when it determines that all  
21 surface mining has ceased for a period of one hundred eighty  
22 consecutive days not set forth in the permit holder's reclamation plan  
23 or when, by reason of inspection of the permit area, or by any other  
24 means, the department determines that the mine has in fact been  
25 abandoned by the permit holder.    Abandonment shall not include normal  
26 interruptions of surface mining resulting from cyclical demand for  
27 minerals.

28          Following a declaration of abandonment, the department shall  
29 require the permit holder to complete reclamation in accordance with  
30 this chapter.    If the permit holder fails to do so, the department  
31 shall proceed to do the necessary reclamation work pursuant to section  
32 31 of this act.

33          If another miner applies for a permit on a site that has been  
34 declared abandoned, the department may, in its discretion, cancel the  
35 reclamation permit of the permit holder and issue a new reclamation  
36 permit to the applicant.    The department shall not issue a new permit  
37 unless it determines that such issuance will be an effective means of  
38 assuring that the site will ultimately be reclaimed.    The applicant

1 must agree to assume the reclamation responsibilities left unfinished  
2 by the first miner, in addition to meeting all requirements for  
3 issuance of a new permit.

4 NEW SECTION. **Sec. 30.** CANCELLATION OF THE RECLAMATION PERMIT.  
5 When the department determines that a surface mine has been abandoned,  
6 it may cancel the reclamation permit. The permit holder shall be  
7 informed of such actions by a department notification of illegal  
8 abandonment and cancellation of the reclamation permit.

9 NEW SECTION. **Sec. 31.** ORDER TO SUBMIT PERFORMANCE SECURITY--  
10 RECLAMATION BY THE DEPARTMENT. The department may, with the staff,  
11 equipment, and material under its control, or by contract with others,  
12 reclaim the disturbed areas when it finds that reclamation has not  
13 occurred in any segment of a surface mine within two years of  
14 completion of mining or of declaration of abandonment and the permit  
15 holder is not actively pursuing reclamation.

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

25 The department may proceed at any time after issuing the order to  
26 submit performance security with reclamation of the site according to  
27 the approved reclamation plan or according to a plan developed by the  
28 department that meets the minimum reclamation standards.

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

32 (1) Reclamation;

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

35 (3) Administrative and legal expenses related to reclamation of the  
36 surface mine.

1       The department shall refund to the surety or permit holder all  
2 amounts received in excess of the amount of expenses incurred. If the  
3 amount received is less than the expenses incurred, the attorney  
4 general, upon request of the department, may bring an action against  
5 the permit holder on behalf of the state in the superior court to  
6 recover the remaining costs listed in this section.

7       NEW SECTION.   **Sec. 32.** FINES. Each order of the department may  
8 impose a fine or fines in the event that a miner or permit holder fails  
9 to obey the order of the department. When a miner or permit holder  
10 fails to comply with an order of the department, the miner or permit  
11 holder shall be subject to a civil penalty in an amount not more than  
12 ten thousand dollars for each violation plus interest based upon a  
13 schedule of fines set forth by the department in rule. Procedures for  
14 imposing a penalty and setting the amount of the penalty shall be as  
15 provided in RCW 90.48.144. Each day on which a miner or permit holder  
16 continues to disobey any order of the department shall constitute a  
17 separate violation. If the penalty and interest is not paid to the  
18 department after it becomes due and payable, the attorney general, upon  
19 the request of the department, may bring an action in the name of the  
20 state of Washington to recover the penalty, interest, mitigation for  
21 environmental damages, and associated legal fees. Decisions of the  
22 department are subject to review by the pollution control hearings  
23 board.

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

27       NEW SECTION.   **Sec. 33.** REFUSAL TO ISSUE PERMITS. The department  
28 shall refuse to issue a reclamation permit if it is determined during  
29 the SEPA process that the impacts of a proposed surface mine cannot be  
30 mitigated.

31       The department or county, city, or town may refuse to issue any  
32 other permit at any other location to any miner or permit holder who  
33 fails to rectify deficiencies set forth in an order of the department  
34 within the requisite time schedule. However, the department or county,  
35 city, or town shall issue all appropriate permits when all deficiencies  
36 are corrected at each surface mining site.

1       **Sec. 34.** RCW 78.44.150 and 1970 ex.s. c 64 s 16 are each amended  
2 to read as follows:

3       Any (~~operator~~) miner or permit holder conducting surface mining  
4 within the state of Washington without a valid (~~operating~~)  
5 reclamation permit shall be guilty of a gross misdemeanor. Surface  
6 mining outside of the permitted area shall constitute illegal mining  
7 without a valid reclamation permit. Each day of (~~operation~~) mining  
8 without a valid reclamation permit shall constitute a separate offense.

9       **Sec. 35.** RCW 78.44.170 and 1989 c 175 s 166 are each amended to  
10 read as follows:

11       Appeals from department determinations under this chapter shall be  
12 made as follows:

13       Appeals from department determinations made under this chapter  
14 shall be made under the provisions of the Administrative Procedure Act  
15 (chapter 34.05 RCW), and shall be considered an adjudicative proceeding  
16 within the meaning of the Administrative Procedure Act, chapter 34.05  
17 RCW. A fee of five hundred dollars shall be charged for each appeal  
18 under this section. Only a person aggrieved within the meaning of RCW  
19 34.05.530 has standing and can file an appeal. This fee shall be  
20 refunded to the appellant if the department finds in favor of the  
21 appellant or waived if deemed appropriate by the department.

22       **Sec. 36.** RCW 78.44.910 and 1970 ex.s. c 64 s 22 are each amended  
23 to read as follows:

24       (~~This act shall not direct itself to the reclamation of land~~  
25 ~~mined)) Miners and permit holders shall not be required to reclaim any  
26 segment where all surface mining was completed prior to January 1,  
27 1971. However, the department shall make an effort to reclaim  
28 previously abandoned or completed surface mining segments.~~

29       NEW SECTION.       **Sec. 37.** RECLAMATION AWARDS ESTABLISHED. The  
30 department shall create reclamation awards in recognition of excellence  
31 in reclamation or reclamation research. Such awards shall be presented  
32 to individuals, miners, operators, companies, or government agencies  
33 performing exemplary surface mining reclamation in the state of  
34 Washington. The department shall designate a percent of the state  
35 annual fees as funding of the awards.

1        NEW SECTION.    **Sec. 38.**    RECLAMATION SERVICE ESTABLISHED.    The  
2 department may establish a no-cost consulting service within the  
3 department to assist miners, permit holders, local government, and the  
4 public in technical matters related to mine regulation, mine  
5 operations, and reclamation.    The department may prepare concise,  
6 printed information for the public explaining surface mining  
7 activities, timelines for permits and reviews, laws, and the role of  
8 governmental agencies involved in surface mining, including how to  
9 contact all regulators.    The department shall not be held liable for  
10 any negligent advice.

11        NEW SECTION.    **Sec. 39.**    Mining of minerals on federal land is  
12 exempt from this chapter.

13        NEW SECTION.    **Sec. 40.**    The following acts or parts of acts are  
14 each repealed:

15        (1) RCW 78.44.030 and 1987 c 258 s 1, 1984 c 215 s 1, & 1970 ex.s.  
16 c 64 s 4;

17        (2) RCW 78.44.035 and 1987 c 258 s 3;

18        (3) RCW 78.44.080 and 1970 ex.s. c 64 s 9;

19        (4) RCW 78.44.090 and 1970 ex.s. c 64 s 10;

20        (5) RCW 78.44.100 and 1984 c 215 s 3 & 1970 ex.s. c 64 s 11;

21        (6) RCW 78.44.110 and 1987 c 258 s 2, 1984 c 215 s 4, & 1970 ex.s.  
22 c 64 s 12;

23        (7) RCW 78.44.120 and 1984 c 215 s 5, 1977 c 66 s 1, & 1970 ex.s.  
24 c 64 s 13;

25        (8) RCW 78.44.130 and 1970 ex.s. c 64 s 14;

26        (9) RCW 78.44.140 and 1989 c 230 s 1, 1984 c 215 s 6, & 1970 ex.s.  
27 c 64 s 15;

28        (10) RCW 78.44.160 and 1984 c 215 s 7 & 1970 ex.s. c 64 s 17; and

29        (11) RCW 78.44.180 and 1970 ex.s. c 64 s 20.

30        NEW SECTION.    **Sec. 41.**    The code reviser may recodify, as  
31 necessary, RCW 78.44.150, 78.44.170, 78.44.175, and 78.44.910 within  
32 chapter 78.44 RCW to accomplish the reorganization of chapter 78.44 RCW  
33 as intended in this act.

34        NEW SECTION.    **Sec. 42.**    Captions used in this act do not constitute  
35 any part of the law.

1        NEW SECTION.    **Sec. 43.**    Sections 4, 5, 10 through 15, 18 through  
2    33, and 37 through 39 of this act are each added to chapter 78.44 RCW.

3        NEW SECTION.    **Sec. 44.**    If any provision of this act or its  
4    application to any person or circumstance is held invalid, the  
5    remainder of the act or the application of the provision to other  
6    persons or circumstances is not affected.

7        NEW SECTION.    **Sec. 45.**    This act is necessary for the immediate  
8    preservation of the public peace, health, or safety, or support of the  
9    state government and its existing public institutions, and shall take  
10   effect July 1, 1993.

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