

Chapter 78.44 RCW
SURFACE MINING

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RCW 78.44.010 Legislative finding. The legislature recognizes that the extraction of minerals by surface mining is an essential activity making an important contribution to the economic well-being of the state and nation. It is not possible to extract minerals without producing some environmental impacts. At the same time, comprehensive regulation of mining and thorough reclamation of mined lands is necessary to prevent or mitigate conditions that would be detrimental to the environment and to protect the general welfare, health, safety, and property rights of the citizens of the state. Surface mining takes place in diverse areas where the geologic, topographic, climatic, biologic, and social conditions are significantly different, and reclamation specifications must vary accordingly. Therefore, the legislature finds that a balance between appropriate environmental regulation and the production and conservation of minerals is in the best interests of the citizens of the state. [1993 c 518 § 2; 1970 ex.s. c 64 § 2.]

Captions—1993 c 518: "Captions used in this act do not constitute any part of the law." [1993 c 518 § 41.]

Severability—1993 c 518: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 518 § 43.]

Effective date—1993 c 518: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 518 § 44.]

RCW 78.44.011 Intent. The legislature recognizes that the extraction of minerals through surface mining has historically included regulatory involvement by both state and local governments.

It is the intent of the legislature to clarify that surface mining is an appropriate land use, subject to reclamation authority exercised by the department of natural resources and land use and operation regulatory authority by counties, cities, and towns. [1993 c 518 § 1.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.020 Purposes. The purposes of this chapter are to:

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

(2) Provide for the greatest practical degree of statewide consistency in the regulation of surface mines;

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

(4) Ensure that reclamation is consistent with local land use plans. [2000 c 11 § 21; 1993 c 518 § 3; 1970 ex.s. c 64 § 3.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.031 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

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

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

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

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

(5) "Disturbed area" means any place where activities clearly in preparation for, or during, surface mining have physically disrupted, covered, compacted, moved, or otherwise altered the characteristics of soil, bedrock, vegetation, or topography that existed prior to such activity. Disturbed areas may include but are not limited to: Working faces, water bodies created by mine-related excavation, pit floors, the land beneath processing plant and stock pile sites, spoil pile sites, and equipment staging areas. Disturbed areas shall also include aboveground waste rock sites and tailing facilities, and other surface manifestations of underground mines.

Disturbed areas do not include:

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

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

(c) Subsurface aspects of underground mines, such as portals, tunnels, shafts, pillars, and stopes.

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

(7) "Minerals" means clay, coal, gravel, industrial minerals, metallic substances, peat, sand, stone, topsoil, and any other similar

solid material or substance to be excavated from natural deposits on or in the earth for commercial, industrial, or construction use.

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

Operations specifically include:

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

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

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

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

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

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

(11) "Reclamation" means rehabilitation for the appropriate future use of disturbed areas resulting from surface mining including areas under associated mineral processing equipment, areas under stockpiled materials, and aboveground waste rock and tailing facilities, and all other surface disturbances associated with underground mines. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific surface mine, the basic objective shall be to reestablish on a perpetual basis the vegetative cover, soil stability, and water conditions appropriate to the approved subsequent use of the surface mine and to prevent or mitigate future environmental degradation.

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

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

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

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

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

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

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

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

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

(i) More than three acres of disturbed area;

(ii) Surface mined slopes greater than thirty feet high and steeper than 1.0 foot horizontal to 1.0 foot vertical; or

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

(b) Surface mines include areas where mineral extraction from the surface or subsurface occurs by the auger method or by reworking mine refuse or tailings, when the disturbed area exceeds the size or height thresholds listed in (a) of this subsection.

(c) Surface mining occurs when operations have created or are intended to create a surface mine as defined by this subsection.

(d) Surface mining shall exclude excavations or grading used:

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

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

(iii) For the purpose of removing stockpiles;

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

(v) Primarily for public works projects if the mines are owned or primarily operated by counties with 1993 populations of less than twenty thousand persons, and if each mine has less than seven acres of disturbed area; and

(vi) For sand authorized by RCW 79A.05.630.

(18) "Topsoil" means the naturally occurring upper part of a soil profile, including the soil horizon that is rich in humus and capable of supporting vegetation together with other sediments within four vertical feet of the ground surface. [2000 c 11 § 22; 1999 c 252 § 1; 1997 c 142 § 1; 1993 c 518 § 4.]

Severability—1999 c 252: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 252 § 3.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.040 Administration of chapter—Rule-making authority. The department of natural resources is charged with the administration of reclamation under this chapter. In order to implement and enforce this chapter, the department, under the administrative procedure act (chapter 34.05 RCW), may from time to time adopt those rules necessary to carry out the purposes of this chapter. [1993 c 518 § 6; 1984 c 215 § 2; 1970 ex.s. c 64 § 5.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.045 Surface mining reclamation account. (1) The surface mining reclamation account is created in the state treasury. Annual mining fees, funds received by the department from state, local, or federal agencies for research purposes, as well as other mine-related funds and fines received by the department shall be deposited into this account. Except as otherwise provided in this section, the surface mine [mining] reclamation account may be used by the department only to:

- (a) Administer its regulatory program pursuant to this chapter;
- (b) Undertake research relating to surface mine regulation, reclamation of surface mine lands, and related issues; and
- (c) Cover costs arising from appeals from determinations made under this chapter.

(2) At the end of each fiscal biennium, any money collected from fees charged under RCW 78.44.085 that was not used for the administration and enforcement of surface mining regulation under this chapter must be used by the department for surveying and mapping sand and gravel sites in the state.

(3) Fines, interest, and other penalties collected by the department under the provisions of this chapter shall be used to reclaim surface mines abandoned prior to 1971. [2006 c 341 § 2; 1993 c 518 § 10.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.050 Exclusive authority to regulate reclamation—Department may delegate enforcement authority to counties, cities, towns—Other laws not affected. The department shall have the exclusive authority to regulate surface mine reclamation. No county, city, or town may require for its review or approval a separate reclamation plan or application. The department may, however, delegate some or all of its enforcement authority by contractual agreement to a county, city, or town that employs personnel who are, in the opinion of the department, qualified to enforce plans approved by the department. All counties, cities, or towns shall have the authority to zone surface mines and adopt ordinances regulating operations as provided in this chapter, except that county, city, or town operations ordinances may be preempted by the department during the emergencies outlined in RCW 78.44.200 and related rules.

This chapter shall not alter or preempt any provisions of the state water allocation and use laws (chapters 90.03 and 90.44 RCW), the state water pollution control laws (chapter 90.48 RCW), the state fish and wildlife laws (Title 77 RCW), state noise laws or air quality laws (Title 70 [70A] RCW), shoreline management (chapter 90.58 RCW), the state environmental policy act (chapter 43.21C RCW), state growth management (chapter 36.70A RCW), state drinking water laws (chapters 43.20 and 70A.125 RCW), or any other state statutes. [2021 c 65 § 83; 2003 c 39 § 39; 1997 c 185 § 1; 1993 c 518 § 7; 1970 ex.s. c 64 § 6.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.055 Surface mining of coal—Preemption of chapter by federal laws, programs. In the event state law is preempted under federal surface mining laws relating to surface mining of coal or the department of natural resources determines that a federal program and its rules and regulations relating to the surface mining of coal are as stringent and effective as the provisions of this chapter, the provisions of this chapter shall not apply to such surface mining for which federal permits are issued until such preemption ceases or the department determines such chapter should apply. [1984 c 215 § 8. Formerly RCW 78.44.175.]

RCW 78.44.060 Investigations, research, etc.—Dissemination of information. The department shall have the authority to conduct, authorize, and/or participate in investigations, research, experiments, and demonstrations, and to collect and disseminate information relating to surface mining and reclamation of surface mined lands. [1993 c 518 § 8; 1970 ex.s. c 64 § 7.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.070 Cooperation with other agencies—Receipt and expenditure of funds. The department may cooperate with other governmental and private agencies and agencies of the federal government, and may reasonably reimburse them for any services the department requests that they provide. The department may also receive any federal funds, state funds and any other funds and expend them for reclamation of land affected by surface mining and for purposes enumerated in RCW 78.44.060. [1993 c 518 § 9; 1970 ex.s. c 64 § 8.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.081 Reclamation permits required—Applications. After July 1, 1993, no miner or permit holder may engage in surface mining without having first obtained a reclamation permit from the department. Operating permits issued by the department between January 1, 1971, and June 30, 1993, shall be considered reclamation permits. A separate permit shall be required for each noncontiguous surface mine. The reclamation permit shall consist of the permit forms and any exhibits attached thereto. The permit holder shall comply with the provisions of the reclamation permit unless waived and explained in writing by the department.

Prior to receiving a reclamation permit, an applicant must submit an application on forms provided by the department that shall contain

the following information and shall be considered part of the reclamation permit:

- (1) Name and address of the legal landowner, or purchaser of the land under a real estate contract;
- (2) The name of the applicant and, if the applicants are corporations or other business entities, the names and addresses of their principal officers and resident agent for service of process;
- (3) A reasonably accurate description of the minerals to be surface mined;
- (4) Type of surface mining to be performed;
- (5) Estimated starting date, date of completion, and date of completed reclamation of surface mining;
- (6) Size and legal description of the permit area and maximum lateral and vertical extent of the disturbed area;
- (7) Expected area to be disturbed by surface mining during (a) the next twelve months, and (b) the following twenty-four months;
- (8) Any applicable SEPA documents; and
- (9) Other pertinent data as required by the department.

The reclamation permit shall be granted for the period required to deplete essentially all minerals identified in the reclamation permit on the land covered by the reclamation plan. The reclamation permit shall be valid until the reclamation is complete unless the permit is canceled by the department. [1997 c 192 § 1; 1993 c 518 § 11.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.083 Reclamation permit—Refusal to issue. The department shall refuse to issue a reclamation permit if it is determined during the SEPA process that the impacts of a proposed surface mine cannot be adequately mitigated.

The department or county, city, or town may refuse to issue any other permit at any other location to any miner or permit holder who fails to rectify deficiencies set forth in an order of the department within the requisite time schedule. However, the department or county, city, or town shall issue all appropriate permits when all deficiencies are corrected at each surface mining site. [1993 c 518 § 33.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.085 Application fee—Annual permit fee—Confidential records—Appeals—Collection of fees. (1) An applicant for an expansion of a permitted surface mine, a new reclamation permit under RCW 78.44.081, or for combining existing public or private reclamation permits, shall pay a nonrefundable application fee to the department before being granted the requested permit or permit expansion. The amount of the application fee shall be four thousand five hundred dollars.

(2) Permit holders submitting a revision to an application for an existing reclamation plan that is not an expansion shall pay a

nonrefundable reclamation plan revision fee of two thousand five hundred dollars.

(3) After June 30, 2017, each public or private permit holder shall pay an annual permit fee in an amount pursuant to this section. The annual permit fee shall be payable to the department prior to the reclamation permit being issued and on the anniversary of the permit date each year thereafter.

(4) (a) Except as otherwise provided in this subsection, each public or private permit holder must pay an annual fee of two thousand dollars.

(b) Annual fees paid by a county for mines used exclusively for public works projects and having less than seven acres of disturbed area per mine shall not exceed one thousand dollars.

(c) Annual fees are waived for all mines used primarily for public works projects if the mines are owned and primarily operated by counties with 1993 populations of less than twenty thousand persons, and if each mine has less than seven acres of disturbed area.

(5) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department are to be held as confidential and not released as part of a public records request under chapter 42.56 RCW.

(6) Appeals from any determination of the department shall not stay the requirement to pay any annual permit fee. Failure to pay the annual fees may constitute grounds for an order to suspend surface mining, pay fines, or cancel the reclamation permit as provided in this chapter.

(7) All fees collected by the department shall be deposited into the surface mining reclamation account created in RCW 78.44.045.

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

(9) Within sixty days after receipt of an application for a new or expanded permit, the department shall advise applicants of any information necessary to successfully complete the application.

(10) In addition to other enforcement authority, the department may refer matters to a collection agency licensed under chapter 19.16 RCW when permit fees or fines are past due. The collection agency may impose its own fees for collecting delinquent permit fees or fines. [2017 3rd sp.s. c 27 § 1; 2006 c 341 § 1; 2001 1st sp.s. c 5 § 1; 1997 c 413 § 1; 1996 c 70 § 1; 1993 c 518 § 14.]

Effective date—2001 1st sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 1st sp.s. c 5 § 3.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.087 Performance security required—Department authority. (1) The department should ensure that a sufficient performance security is available to reclaim each surface mine permitted under this chapter. To ensure sufficient funds are available:

(a) The department shall not issue a reclamation permit, except to public or governmental agencies, until the applicant has either deposited with the department an acceptable performance security on forms prescribed by the department that is deemed adequate by the department to cover reclamation costs or has complied with the blanket performance security option in RCW 78.44.350. A public or governmental agency shall not be required to post performance security.

(b) No person may create a disturbed area that meets or exceeds the minimum threshold for a reclamation permit without first submitting an adequate and acceptable performance security to the department and complying with all requirements of this chapter.

(2) The department may refuse to accept any performance security that the department, for any reason, deems to be inadequate to cover reclamation costs or is not in a form that is acceptable to the department.

(3) Acceptable forms of performance security are:

(a) Bank letters of credit acceptable to the department or irrevocable bank letters of credit from a bank or financial institution or organization authorized to transact business in the United States;

(b) A cash deposit;

(c) Other forms of performance securities acceptable to the department as determined by rule;

(d) An assignment of a savings account;

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

(f) Approved participants in a state security pool if one is established; or

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

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

(5) (a) The department must determine the amount of the performance security as prescribed by this subsection.

(b) The department may determine the amount of the performance security based on the estimated cost of: (i) Completing reclamation according to the requirements of this chapter; or (ii) the reclamation permit for the area to be surface mined during the upcoming thirty-six months and any previously disturbed areas that have not been reclaimed.

(c) The department may determine the amount of the performance security based on an engineering cost estimate for reclamation that is provided by the permit holder. The engineering cost estimate must be prepared using engineering principles and methods that are acceptable to the department. If the department does not approve the engineering cost estimate, the department shall determine the amount of the performance security using a standardized performance security formula developed by the department by rule.

(6) The department may recalculate a surface mine's performance security based on subsection (5) of this section. When the department recalculates a performance security, the new calculation will not be prejudiced by the existence of any previous calculation. A new performance security must be submitted to the department within thirty days of the department's written request.

(7) Liability under the performance security and the permit holder's obligation to maintain the calculated performance security amount shall be maintained until the surface mine is reclaimed, unless released as hereinafter provided. Partial drawings will proportionately reduce the value of a performance security but will not extinguish the remaining value. Liability under the performance security may be released only when the surface mine is reclaimed as evidenced by the department in writing or after the department receives and approves a substitute performance security. The department will notify the permit holder, and surety if applicable, when reclamation is accepted by the department as complete or upon the department's acceptance of an alternate security. The liability of the surety shall not exceed the amount of security required by this section and the department's reasonable legal fees to recover the security.

(8) Any interest or appreciation on the performance security shall be held by the department until the surface mine is reclaimed. The department may collect and use appreciation or interest accrued on a performance security to the same extent as for the underlying performance security. If the permit holder meets its obligations under this chapter, rules adopted under this chapter, and its approved reclamation permit and plan by completing reclamation, the department will return any unused performance security and accrued interest or appreciation.

(9) No other state agency or local government other than the department shall require performance security for the purposes of surface mine reclamation. However, nothing in this section prohibits a state agency or local government from requiring a performance security when the state agency or local government is acting in its capacity as a landowner and contracting for extraction-related activities on state or local government property.

(10) The department may enter into written agreements with federal agencies in order to avoid redundant bonding of any surface mine that is located on both federal and nonfederal lands in Washington state. [2006 c 341 § 3; 1997 c 186 § 1; 1995 c 223 § 3; 1994 c 232 § 23; 1993 c 518 § 15.]

Effective date—1994 c 232 §§ 1-5, 9-17, and 23-31: See RCW 78.56.901.

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.091 Reclamation plans—Approval process. An applicant shall provide a reclamation plan and copies acceptable to the department prior to obtaining a reclamation permit. The department shall have the sole authority to approve reclamation plans. Reclamation plans or modified reclamation plans submitted to the department after June 30, 1993, shall meet or exceed the minimum reclamation standards set forth in this chapter and by the department in rule. Each applicant shall also supply copies of the proposed plans and final reclamation plan approved by the department to the county, city, or town in which the mine will be located. The department shall solicit comment from local government prior to approving a reclamation plan. The reclamation plan shall include:

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

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

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

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

(d) The maximum depth of mining;

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

(f) A description of the method of mining;

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

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

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

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

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

(2) Maps of the surface mine showing:

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

(b) Existing topographic contours;

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

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

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

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

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

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

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

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

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

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

Only insignificant deviations may occur from the approved reclamation plan without prior written approval by the department for the proposed change. [1997 c 192 § 2; 1993 c 518 § 12.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.101 Joint reclamation plans may be required. Where two or more surface mines join along a common boundary, the department may require submission of a joint reclamation plan in order to provide for optimum reclamation or to avoid waste of mineral resources. Such joint reclamation plans may be in the form of a single collaborative plan submitted by all affected permit holders or as individual reclamation plans in which the schedule of reclamation, finished contours, and revegetation match reclamation plans of adjacent permit holders. [1993 c 518 § 13.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.111 Segmental reclamation—Primary objective. The permit holder shall reclaim each segment of the mine within two years of completion of surface mining on that segment except as provided in a segmental reclamation agreement approved in writing by the department. The primary objective of a segmental reclamation agreement should be to enhance final reclamation. [1993 c 518 § 5.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.121 Reclamation setbacks—Exemption. Reclamation setbacks shall be as follows unless waived by the department:

(1) The reclamation setback for unconsolidated deposits within mines permitted after June 30, 1993, shall be equal to the maximum anticipated height of the adjacent working face or as determined by

the department. Setbacks and buffers may be destroyed as part of final reclamation of each segment if approved by the department.

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

(3) An exemption from this section may be granted by the department following a written request. The department may consider submission of a plan for backfilling acceptable to the department, a geotechnical slope-stability study, proof of a dedicated source of fill materials, written approval of contiguous landowners, and other information before granting an exemption. [1993 c 518 § 18.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.131 Reclamation specifics—Basic objective—Modifications for metals mining and milling operations—Timeline. The need for, and the practicability of, reclamation shall control the type and degree of reclamation in any specific instance. However, the basic objective of reclamation is to reestablish on a continuing basis the vegetative cover, slope stability, water conditions, and safety conditions suitable to the proposed subsequent use consistent with local land use plans for the surface mine site.

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

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

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

The department may by contract delegate enforcement of provisions of reclamation plans to counties, cities, and towns. A county, city, or town performing enforcement functions may not impose any additional fees on permit holders. [1994 c 232 § 24; 1993 c 518 § 20.]

Effective date—1994 c 232 §§ 1-5, 9-17, and 23-31: See RCW 78.56.901.

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.141 Reclamation—Minimum standards—Waiver.

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

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

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

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

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

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

(i) Have varied steepness;

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

(iii) Have no large rectilinear topographic elements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The department may refuse to release a reclamation permit or performance security until it deems that effective revegetation has commenced. [1993 c 518 § 21.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.151 Reclamation plans—Modification, when required—SEPA. (1) The permit holder may modify the reclamation plan at any time during the term of the permit provided that the modified reclamation plan meets the protections, mitigations, and reclamation goals of RCW 78.44.091, 78.44.131, and 78.44.141.

(2) The department may require a permit holder to modify the reclamation plan if the department determines:

(a) That the previously approved reclamation plan has not been modified during the past ten years; or

(b) That the permit holder has violated or is not substantially following the previously approved reclamation plan.

(3) Modified reclamation plans shall be reviewed by the department as lead agency under SEPA. Such SEPA analyses shall consider only those impacts relating directly to the proposed modifications. Copies of proposed and approved modifications shall be sent to the appropriate county, city, or town. [1997 c 192 § 3; 1993 c 518 § 23.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.161 Reclamation compliance—Inspection of disturbed area—Special inspection requirements for metals mining and milling operations. The department may order at any time an inspection of the disturbed area to determine if the miner or permit holder has complied with the reclamation permit, rules, and this chapter.

The department shall have special inspection requirements for metals mining and milling operations regulated under chapter 232, Laws of 1994. The department shall inspect these mining operations at least quarterly, unless prevented by inclement weather conditions, in order to ensure that the permit holder is in compliance with the reclamation permit, rules, and this chapter. The department shall conduct additional inspections as needed during the construction phase of these mining operations in order to ensure compliance with the reclamation permit, rules, and this chapter. [1994 c 232 § 22; 1993 c 518 § 25.]

Effective date—1994 c 232 §§ 6-8 and 18-22: See RCW 78.56.902.

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.171 Reclamation—Transfer of permits. Reclamation permits shall be transferred to a subsequent permit holder and the department shall release the former permit holder from the duties imposed by this chapter if:

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

(2) Unless waived by the department, the mine and all others operated by both the former and subsequent permit holders and their

principal officers or owners are in compliance with this chapter and rules. [1993 c 518 § 22.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.181 Reclamation—Report by permit holder on anniversary date. On the anniversary date of the reclamation permit and each year thereafter until reclamation is completed and approved, the permit holder shall file a report of activities completed during the preceding year. The report shall be on a form prescribed by the department. [1993 c 518 § 24.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.190 Deficiencies—Order to rectify—Time extension. (1) The department may issue an order to rectify deficiencies to the following: (a) Any permit holder, miner, or other person who authorizes, directs, violates, or who directly benefits by contracting with or employing another to violate this chapter, the rules adopted by the department, a reclamation permit, or a reclamation plan; or (b) a permit holder whose surface mine is out of compliance with the provisions of this chapter, the rules adopted by the department, or the permit holder's current and valid reclamation permit or reclamation plan.

(2) The order shall describe the deficiencies and shall initially require the order recipient to correct all deficiencies by a date that is no later than sixty days after the department's issuance of the order. The department may extend the period to correct deficiencies for delays clearly beyond the order recipient's control, but only when the person is, in the opinion of the department, making every reasonable effort to comply. This order becomes final and effective after being upheld upon completion of all administrative and judicial review proceedings or following notice and a failure to timely request a hearing. [2007 c 192 § 2; 1993 c 518 § 26.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.200 Immediate danger—Emergency notice and order to rectify deficiencies—Emergency order to suspend surface mining. When the department finds that a permit holder is conducting surface mining in any manner not authorized by:

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

and that activity has created a situation involving an immediate danger to the public health, safety, welfare, or environment requiring immediate action, the department may issue an emergency notice and order to rectify deficiencies, and/or an emergency order to suspend surface mining. These orders shall be effective when entered. The

department may take such action as is necessary to prevent or avoid the danger to the public health, safety, welfare, or environment that justifies use of emergency adjudication. The department shall give such notice as is practicable to the permit holder or miner who is required to comply with the order. The order shall comply with the requirements of the administrative procedure act.

Regulations of surface mining operations administered by other state and local agencies shall be preempted by this section to the extent that the time schedule and procedures necessary to rectify the emergency situation, as determined by the department, conflict with such local regulation. [1993 c 518 § 27.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.210 Suspension of a reclamation permit. The department, through the state geologist or assistant state geologist, may suspend a reclamation permit whenever a permit holder or surface mine is out of compliance with a final department order. The suspension order must be served on the permit holder by certified mail with return receipt requested or by personal service. The order must specify the final order alleged to be violated, the facts upon which the conclusion of violation is based, and the conclusions of law. This order becomes final and effective after being upheld upon completion of all administrative review proceedings or following notice and a failure to timely request a hearing. No surface mining or reclamation may occur while a permit is suspended unless under the express written authority of the department. [2007 c 192 § 5; 1993 c 518 § 28.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.220 Declaration of abandonment—Reclamation—Subsequent miner. The department may issue a declaration of abandonment when it determines that all surface mining has ceased for a period of one hundred eighty consecutive days not set forth in the permit holder's reclamation plan or when, by reason of inspection of the permit area, or by any other means, the department determines that the mine has in fact been abandoned by the permit holder except that abandonment shall not include normal interruptions of surface mining resulting from labor disputes, economic conditions associated with lack of smelting capacity or availability of appropriate transportation, war, social unrest, demand for minerals, maintenance and repairs, and acts of God.

Following a declaration of abandonment, the department shall require the permit holder to complete reclamation in accordance with this chapter. If the permit holder fails to do so, the department shall proceed to do the necessary reclamation work pursuant to RCW 78.44.240.

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

must agree to assume the reclamation responsibilities left unfinished by the first miner, in addition to meeting all requirements for issuance of a new permit. [1993 c 518 § 29.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.230 Abandonment—Cancellation of the reclamation permit. When the department determines that a surface mine has been abandoned, it may cancel the reclamation permit. The permit holder shall be informed of such actions by a department notification of illegal abandonment and cancellation of the reclamation permit. [1993 c 518 § 30.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.240 Reclamation by the department—Order to submit performance security—Cost recovery. The department may, with the staff, equipment, and material under its control, or by contract with others, reclaim the disturbed areas when it finds that reclamation has not occurred in any segment of a surface mine within two years of completion of mining or of declaration of abandonment and the permit holder is not actively pursuing reclamation.

If the department intends to undertake the reclamation, the department shall issue an order to submit performance security requiring the permit holder or surety to submit to the department the amount of moneys posted pursuant to RCW 78.44.087. If the amount specified in the order to submit performance security is not paid within twenty days after issuance of the notice, the attorney general upon request of the department shall bring an action on behalf of the state in a superior court to recover the amount specified and associated legal fees.

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

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

- (1) Reclamation;
- (2) A reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized; and
- (3) Administrative and legal expenses related to reclamation of the surface mine.

The department shall refund to the surety or permit holder all amounts received in excess of the amount of expenses incurred. If the amount received is less than the expenses incurred, the attorney general, upon request of the department, may bring an action against the permit holder on behalf of the state in the superior court to recover the remaining costs listed in this section. [1993 c 518 § 31.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.250 Fines—Civil penalties—Damage recovery. Each order of the department may impose a fine or fines in the event that a miner or permit holder fails to obey the order of the department. When a miner or permit holder fails to comply with an order of the department, the miner or permit holder shall be subject to a civil penalty in an amount not more than ten thousand dollars for each violation plus interest based upon a schedule of fines set forth by the department in rule. Procedures for imposing a penalty and setting the amount of the penalty shall be as provided in RCW 90.48.144. Each day on which a miner or permit holder continues to disobey any order of the department shall constitute a separate violation. If the penalty and interest is not paid to the department after it becomes due and payable, the attorney general, upon the request of the department, may bring an action in the name of the state of Washington to recover the penalty, interest, mitigation for environmental damages, and associated legal fees. Decisions of the department are subject to review by the pollution control hearings board.

All fines, interest, penalties, and other damage recovery costs from mines regulated by the department shall be credited to the surface mining reclamation account. [1993 c 518 § 32.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.260 Operating without permit—Penalty. Any miner or permit holder conducting surface mining within the state of Washington without a valid reclamation permit shall be guilty of a gross misdemeanor. Surface mining outside of the permitted area shall constitute illegal mining without a valid reclamation permit. Each day of mining without a valid reclamation permit shall constitute a separate offense. [1993 c 518 § 34; 1970 ex.s. c 64 § 16. Formerly RCW 78.44.150.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.270 Appeals—Standing. Department determinations under this chapter may be appealed to the pollution control hearings board as provided in RCW 43.21B.230. Only a person aggrieved within the meaning of RCW 34.05.530 has standing and can file an appeal. [2010 c 210 § 32; 1993 c 518 § 35; 1989 c 175 § 166; 1970 ex.s. c 64 § 18. Formerly RCW 78.44.170.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 78.44.280 Underground operation—Surface disturbances subject to chapter. Surface disturbances caused by an underground metals mining and milling operation are subject to the requirements of this chapter if the operation is proposed after June 30, 1999. An operation is proposed when an agency is presented with an application for an operation or expansion of an existing operation having a probable significant adverse environmental impact under chapter 43.21C RCW. The department of ecology shall retain authority for reclamation of surface disturbances caused by an underground operation operating at any time prior to June 30, 1999, unless the operator requests that authority for reclamation of surface disturbances caused by such operation be transferred to the department under the requirements of this chapter. [1999 c 252 § 2.]

Severability—1999 c 252: See note following RCW 78.44.031.

RCW 78.44.300 Reclamation awards—Recognition of excellence. The department shall create reclamation awards in recognition of excellence in reclamation or reclamation research. Such awards shall be presented to individuals, miners, operators, companies, or government agencies performing exemplary surface mining reclamation in the state of Washington. The department shall designate a percent of the state annual fees as funding of the awards. [1993 c 518 § 37.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.310 Reclamation consulting—No cost service. The department shall establish a no-cost consulting service within the department to assist miners, permit holders, local government, and the public in technical matters related to mine regulation, mine operations, and reclamation. The department shall prepare concise, printed information for the public explaining surface mining activities, timelines for permits and reviews, laws, and the role of governmental agencies involved in surface mining, including how to contact all regulators. The department shall not be held liable for any negligent advice. [1997 c 184 § 1; 1993 c 518 § 38.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.320 Definitions applicable to RCW 78.44.330. The definitions in this section apply throughout RCW 78.44.330 unless the context clearly requires otherwise.

(1) "Bedrock sluice" means a wood or metal flume or trough that is permanently attached to the bedrock of the creek and is equipped with transverse riffles across the bottom of the unit and used to recover heavy mineral sands.

(2) "Dredge" means a subsurface hose from one and one-half to ten inches in diameter that is powered by an engine and is used to draw up auriferous material that is then separated in the sluice portion of the unit.

(3) "Flume" means a trough used to convey water.

(4) "Mining claim" means a portion of the public lands claimed for the valuable minerals occurring in those lands and for which the mineral rights are obtained under federal law or a right that is recognized by the United States bureau of land management and given an identification number.

(5) "Quartz mill" means a facility for processing ores or gravel.

(6) "Rocker box" means a unit constructed of a short trough attached to curved supports that allow the unit to be rocked from side to side.

(7) "Sluice box" means a portable unit constructed of a wood or metal flume or trough equipped with transverse riffles across the bottom of the unit and that is used to recover heavy mineral sands. [2003 c 335 § 1.]

RCW 78.44.330 Mineral trespass—Penalty. (1) A person commits the crime of mineral trespass if the person intentionally and without the permission of the claim holder or person conducting the mining operation:

(a) Interferes with a lawful mining operation or stops, or causes to be stopped, a lawful mining operation;

(b) Enters a mining claim posted as required in chapter 78.08 RCW and disturbs, removes, or attempts to remove any mineral from the claim site;

(c) Tampers with or disturbs a flume, rocker box, bedrock sluice, sluice box, dredge, quartz mill, or other mining equipment at a posted mining claim; or

(d) Defaces a location stake, side post, corner post, landmark, monument, or posted written notice within a posted mining claim.

(2) Mineral trespass is a class C felony. [2003 c 335 § 2.]

RCW 78.44.340 Mineral trespass—Limitation on application. (1) RCW 78.44.330 does not apply to conduct that would otherwise constitute an offense when it is required or authorized by law or judicial decree or is performed by a public servant in the reasonable exercise of official powers, duties, or functions.

(2) As used in subsection (1) of this section, "laws or judicial decrees" includes but is not limited to:

(a) Laws defining duties and functions of public servants;

(b) Laws defining duties of private citizens to assist public servants in the performance of certain of their functions; and

(c) Judgments and orders of courts. [2003 c 335 § 3.]

RCW 78.44.350 Blanket performance security. (1) A permit holder, in lieu of an individual performance security for each mining site, may file a blanket performance security with the department for their group of permits.

(2) The department may reduce the required performance security calculated from its standard method prescribed in RCW 78.44.087, to an amount not to exceed the sum of reclamation security calculated by the department for the two surface mines with the largest performance security obligations, for nonmetal and nonfuel surface mines that meet the following conditions:

(a) The permit holder has had a valid reclamation permit for more than ten years and can demonstrate exemplary mining and reclamation practices that have been accepted by the department;

(b) The landowner agrees to allow the permit holder to hold a blanket security. The department must include, on forms to be signed by the landowner, notice of the risk of a lien on the landowner's lands; and

(c) The permit holder can demonstrate substantial financial ability to perform the reclamation in the approved reclamation plan and permit.

(3) Permit holders are not eligible for blanket securities if they are in violation of a final order of the department.

(4) The department must consider the compliance history and the state of the existing surface mines of the permit holder before approving any blanket performance security.

(5) Lands covered by a blanket performance security are subject to a lien placed by the department in the event of abandonment.

(6) In lieu of the performance security required of the permit holder, the department may accept a similar security from the landowner, equal to the estimated cost of reclamation as determined by the department. [2006 c 341 § 4.]

RCW 78.44.360 Performance security insufficient to cover cost of reclamation—Lien established in favor of department. (1) To the extent a performance security is insufficient to cover the cost of reclamation performed by the department, a lien shall be established in favor of the department upon all of the permit holder's real and personal property.

(2) The lien attaches upon the filing of a notice of claim of lien with the county clerk of the county in which the property is located. The notice of lien claim must contain a true statement of the demand, the insufficiency of the performance security to compensate the department, and the failure of the permit holder to perform the reclamation required.

(3) The lien becomes effective when filed.

(4) The lien created by this section may be foreclosed by a suit in the superior court in the manner provided by law for the foreclosure of other liens on real or personal property. [2006 c 341 § 5.]

RCW 78.44.370 Notice of correction. (1) The department may issue a notice of correction to the following: (a) Any permit holder, miner, or other person who authorizes, directs, violates, or who directly benefits by contracting with or employing another to violate this chapter, the rules adopted by the department, a reclamation permit, or a reclamation plan; or (b) a permit holder whose surface mine is out of compliance with the provisions of this chapter, the rules adopted by the department, or the permit holder's current or valid reclamation permit or reclamation plan. The department's authority to issue or its issuance of a notice of correction does not limit the department's authority to pursue enforcement actions, except as stated in other laws.

(2) The notice of correction must describe the items that need correction and must provide a reasonable time for the recipient to

make corrections. The notice of correction must identify when, where, and to whom a request to extend the time to achieve compliance may be filed. The department may grant an extension when there is good cause for the request. This notice of correction is not an enforcement action and is not subject to administrative or judicial appeal. [2007 c 192 § 1.]

RCW 78.44.380 Stop work orders. (1) The department may issue an order to stop all surface mining to any permit holder, miner, or other person who authorizes, directs, or conducts such activities without a valid surface mine reclamation permit. This order is effective upon issuance unless otherwise stated in the order. Administrative appeal of the order to stop work does not stay the stop work requirement. The department shall notify the local jurisdiction of record when a stop work order has been issued for operating without a valid reclamation permit.

(2) The department may issue an order to stop surface mining occurring outside of any permit area to a permit holder that does not have a legal right to occupy the affected area. This order is effective upon issuance unless otherwise stated in the order. An administrative appeal of the order to stop work does not stay the stop work requirement.

(3) Where a permit holder is conducting surface mining activities outside of its permit boundary, but within land that it has the right to occupy, the department may issue an order to stop surface mining or mining-related activities occurring outside of the authorized area after the permit holder fails to comply with a notice of correction. The notice of correction must specify the corrections necessary as per the violation and provide a reasonable time to do so. This order is effective upon issuance unless otherwise stated in the order. An administrative appeal of the order to stop work does not stay the stop work requirement.

(4) Stop work orders must be in writing, delivered by United States certified mail with return receipt requested, facsimile, or by hand to the permit holder of record. The order must state the facts supporting the violation, the law being violated, and the specific activities being stopped. Stop work orders must be signed by the state geologist or an assistant state geologist. The pollution control hearings board shall proceed as quickly as feasible to complete any requested adjudicative proceedings unless the parties stipulate to an appeal timeline or the department's stop work order states that it is not effective until after the administrative review process. If the recipient appeals the order, the recipient may file a motion for stay with the presiding officer, which will be reviewed under RCW 43.21B.320. [2010 c 210 § 33; 2007 c 192 § 3.]

Intent—Effective dates—Application—Pending cases and rules—
2010 c 210: See notes following RCW 43.21B.001.

RCW 78.44.390 Cancellation of a reclamation permit. (1) In addition to the department's other authority to cancel a reclamation permit, a permit holder may seek cancellation of its reclamation permit in favor of a local development or construction permit. A

permit holder may request cancellation of its reclamation permit and release of its performance security when:

(a) The permit holder has received an approved development or construction permit covering all of the existing permit area from a local jurisdiction;

(b) The local jurisdiction and the landowner agree with the permit holder's request to cancel the reclamation permit and to release the performance security; and

(c) The local jurisdiction provides assurance in writing that the construction or development permit is being actively implemented by the permit holder.

(2) The department is not responsible for overseeing a site's development or reclamation when a reclamation permit is canceled under this section. [2007 c 192 § 4.]

RCW 78.44.910 Previously mined land. Miners and permit holders shall not be required to reclaim any segment where all surface mining was completed prior to January 1, 1971. However, the department shall make an effort to reclaim previously abandoned or completed surface mining segments. [1993 c 518 § 36; 1970 ex.s. c 64 § 22.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

RCW 78.44.920 Effective date—1970 ex.s. c 64. This act shall become effective January 1, 1971. [1970 ex.s. c 64 § 23.]