

**RCW 78.56.100 Waste discharge permits for metals mining and milling operations tailing facilities—Pollution control standards—Waste rock management plan—Citizen observation and verification of water samples—Voluntary reduction plan—Application of this section.**

(1) In order to receive a waste discharge permit from the department of ecology pursuant to the requirements of chapter 90.48 RCW or in order to operate a metals mining and milling tailing facility, an applicant proposing a metals mining and milling operation regulated under this chapter must meet the following additional requirements:

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

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

(ii) The tailings facility shall have a containment system that includes an engineered liner system, leak detection and leak collection elements, and a seepage collection impoundment to assure that a leak of any regulated substance under chapter 90.48 RCW will be detected before escaping from the containment system. The design and management of the facility must ensure that any leaks from the tailings facility are detected in a manner which allows for remediation pursuant to chapter 90.48 RCW. The applicant shall prepare a detailed engineering report setting forth the facility design and construction. The applicant shall submit the report to the department of ecology for its review and approval of a design as determined by the department. Natural conditions, such as depth to groundwater or net rainfall, shall be taken into account in the facility design, but not in lieu of the protection required by the engineered liner system;

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

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

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

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

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

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

(c) If an interested citizen or citizen group so requests of the department of ecology, the metals mining and milling operator or applicant shall work with the department of ecology and the interested party to make arrangements for citizen observation and verification in the taking of required water samples. While it is the intent of this

subsection to provide for citizen observation and verification of water sampling activities, it is not the intent of this subsection to require additional water sampling and analysis on the part of the mining and milling operation or the department. The citizen observation and verification program shall be incorporated into the applicant's, operator's, or department's normal sampling regimen and shall occur at least once every six months. There is no duty of care on the part of the state or its employees to any person who participates in the citizen observation and verification of water sampling under chapter 232, Laws of 1994 and the state and its employees shall be immune from any civil lawsuit based on any injuries to or claims made by any person as a result of that person's participation in such observation and verification of water sampling activities. The metals mining and milling operator or applicant shall not be liable for any injuries to or claims made by any person which result from that person coming onto the property of the metals mining and milling operator or applicant as an observer pursuant to chapter 232, Laws of 1994. The results from these and all other relevant water sampling activities shall be kept on file with the relevant county and shall be available for public inspection during normal working hours; and

(d) An operator or applicant for a metals mining and milling operation must complete a voluntary reduction plan in accordance with RCW 70A.214.110.

(2) Only those tailings facilities constructed after April 1, 1994, must meet the requirement established in subsection (1)(a) of this section. Only those waste rock holdings constructed after April 1, 1994, must meet the requirement established in subsection (1)(b) of this section. [2021 c 65 § 86; 1994 c 232 § 10.]

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