
SENATE BILL 5513

State of Washington

52nd Legislature

1991 Regular Session

By Senator Sutherland.

Read first time February 4, 1991. Referred to Committee on Environment & Natural Resources.

1 AN ACT Relating to surface mining; amending RCW 78.44.030,
2 78.44.070, 78.44.080, 78.44.090, 78.44.100, 78.44.110, 78.44.130,
3 78.44.140, and 78.44.160; adding new sections to chapter 78.44 RCW;
4 creating new sections; and declaring an emergency.

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

6 **Sec. 1.** RCW 78.44.030 and 1987 c 258 s 1 are each amended to read
7 as follows:

8 As used in this chapter, unless the context indicates otherwise:

9 (1) "Surface mining" shall mean all or any part of the process
10 involved in mining of minerals by removing the overburden and mining
11 directly from the mineral deposits thereby exposed, including open-pit
12 mining of minerals naturally exposed at the surface of the earth,
13 mining by the auger method, and including the production of surface
14 mining refuse. Surface mining shall not include on-site processing of
15 minerals such as concrete batching or rock crushing operations. For

1 the purpose of this chapter surface mining shall mean those operations
2 described in this paragraph which collectively result in more than
3 three acres of land being disturbed or that result in pit walls more
4 than thirty feet high and steeper than one horizontal to one vertical.
5 Surface mining shall not include disturbances of greater than three
6 acres of land during any time period if the cumulative area that has
7 not been rehabilitated according to the reclamation requirements
8 outlined in this chapter is less than three acres. Surface mining
9 shall not include excavation or removal of sand, gravel, clay, rock,
10 top soil, or other materials in remote areas by an owner or holder of
11 a possessory interest in land for the primary purpose of construction
12 or maintenance of access roads to or on such landowner's property.
13 Surface mining shall not include excavation or grading conducted for
14 farming, on-site road construction or other on-site construction, but
15 shall include adjacent or off-site borrow pits except those on
16 landowner's property for use on access roads on such property.
17 Prospecting and exploration activities shall be included within the
18 definition of surface mining when they are of such nature and extent as
19 to exceed the qualifying sizes listed above or when collectively they
20 disturb more than one acre per eight acres of land area.

21 (2) "Unit of surface mined area" shall mean the area of land and
22 water covered by each operating permit that is actually newly disturbed
23 by surface mining during each twelve-month period of time, beginning at
24 the date of issuance of the permit, and shall comprise the area from
25 which overburden and/or minerals have been removed, the area covered by
26 spoil banks, and all additional areas used in surface mining operations
27 which by virtue of such use are thereafter susceptible to excessive
28 erosion.

29 (3) "Abandonment of surface mining" shall mean a cessation of
30 surface mining, not set forth in an operator's plan of operation or by

1 any other sufficient written notice, extending for more than six
2 consecutive months or when, by reason of examination of the premises or
3 by any other means, it becomes the opinion of both the department of
4 natural resources and the county legislative authority that the
5 operation has in fact been abandoned by the operator: PROVIDED, That
6 the operator does not, within thirty days of receipt of written
7 notification from the department and county legislative authority of
8 ((his)) an intent to declare the operation abandoned, submit evidence
9 to the department's and county legislative authority's satisfaction
10 that the operation is in fact not abandoned.

11 (4) "Minerals" shall mean coal, clay, stone, sand, gravel, metallic
12 ore, and any other similar solid material or substance to be excavated
13 from natural deposits on or in the earth for commercial, industrial, or
14 construction uses.

15 (5) "Overburden" shall mean the earth, rock, and other materials
16 that lie above a natural deposit of mineral.

17 (6) "Surface mining refuse" shall mean all waste soil, rock,
18 mineral, liquid, vegetation, and other material directly resulting from
19 or displaced by the mining, cleaning, or preparation of minerals during
20 the surface mining operations on the operating permit area, and shall
21 include all waste materials deposited on or in the permit area from
22 other sources.

23 (7) "Spoil bank" shall mean a deposit of excavated overburden or
24 mining refuse.

25 (8) "Operator" shall mean 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 operations, whether individually,
29 jointly, or through subsidiaries, agents, employees, or contractors.

30 (9) "Department" means the department of natural resources.

1 (10) "Reclamation" shall mean the reasonable protection of all
2 surface resources subject to disruption from surface mining and
3 rehabilitation of the surface resources affected by surface mining
4 including the area under stockpiled materials. Although both the need
5 for and the practicability of reclamation will control the type and
6 degree of reclamation in any specific instance, the basic objective
7 will be to reestablish on a continuing basis the vegetative cover, soil
8 stability, water conditions, and safety conditions appropriate to the
9 intended subsequent use of the area.

10 (11) "Reclamation plan" shall mean the operator's written proposal,
11 as required and approved by the department and reviewed by the county
12 legislative authority, for reclamation of the affected resources which
13 shall include, but not be limited to:

14 (a) A statement of the proposed subsequent use of the land after
15 reclamation which is signed by all individuals with a possessory
16 interest in the land, or a copy of the conveyance that expressly grants
17 or reserves the right to extract the mineral by surface mining methods,
18 or if the conveyance does not expressly grant the right to extract the
19 mineral by surface mining methods, then documentation that under
20 applicable state law, the operator has the legal authority to extract
21 the mineral by those methods: PROVIDED, That the applicant must
22 provide notice reasonably calculated to advise all individuals with a
23 possessory interest of the intent to remove minerals and the proposed
24 subsequent use. If any individual with a possessory interest does not
25 respond to the notice within sixty days, that person's signature shall
26 not be required;

27 (b) Evidence that this subsequent use would not be illegal under
28 local zoning regulations;

29 (c) Proposed practices to protect adjacent surface resources;

1 (d) Specifications for surface gradient restoration to a surface
2 suitable for the proposed subsequent use of the land after reclamation
3 is completed, and proposed method of accomplishment;

4 (e) Manner and type of revegetation or other surface treatment of
5 disturbed areas;

6 (f) Method of prevention or elimination of conditions that will
7 create a public nuisance, endanger public safety, damage property, or
8 be hazardous to vegetative, animal, fish, or human life in or adjacent
9 to the area;

10 (g) Method of control of contaminants and disposal of surface
11 mining refuse;

12 (h) Method of diverting surface waters around the disturbed areas;

13 (i) Method of restoration of stream channels and stream banks to a
14 condition minimizing erosion and siltation and other pollution;

15 (j) Such maps and other supporting documents as reasonably required
16 by the department; and

17 (k) A time schedule for reclamation that meets the requirements of
18 RCW 78.44.090.

19 **Sec. 2.** RCW 78.44.070 and 1970 ex.s. c 64 s 8 are each amended to
20 read as follows:

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

1 **Sec. 3.** RCW 78.44.080 and 1970 ex.s. c 64 s 9 are each amended to
2 read as follows:

3 (~~After January 1, 1971, no~~) An operator shall not engage in
4 surface mining without having first obtained ((an)) operating permits
5 from the department and from the county legislative authority. Except
6 as otherwise permitted in this section a separate permit shall be
7 required for each separate surface mining operation. Prior to
8 receiving an operating permit from the department and from the county
9 legislative authority an operator must submit an application on a form
10 provided by the department(~~(, which))~~ and one provided by the county
11 legislative authority. The department form shall contain the following
12 information and any other pertinent data required by the department:

13 (1) Name and address of the legal landowner, any purchaser of the
14 land under a real estate contract, and the operator and, if any of
15 these are corporations or other business entities, the names and
16 addresses of their principal officers and resident agent for service of
17 process;

18 (2) Materials to be surface mined;

19 (3) Type of surface mining to be performed;

20 (4) Expected starting date of surface mining;

21 (5) Anticipated termination date of the surface mining project;

22 (6) Expected amount of mineral to be surface mined;

23 (7) Maximum depth of surface mining;

24 (8) Size and legal description of the area that will be disturbed
25 by surface mining. If more than (~~ten~~) five acres will be disturbed
26 by surface mining or, regardless of the amount of land to be disturbed,
27 if the department or the county legislative authority finds that
28 conditions warrant it and so requests, a map of the area to be surface
29 mined shall be submitted. The map shall show the boundaries of the
30 area of land which will be affected; topographic detail; the location

1 and names of all streams, roads, railroads, and utility lines on or
2 immediately adjacent to the area; location of proposed access roads to
3 be built in conjunction with the surface mining operation; and the
4 names of the surface and mineral owners of all lands within the surface
5 mining area;

6 (9) A plan of surface mining that will provide, within limits of
7 normal operational procedure of the industry, for completion of surface
8 mining and associated disturbances on each segment of the area for
9 which a permit is requested so that reclamation can be initiated at the
10 earliest possible time on those portions of the surface mined area that
11 will not be subject to further disturbance by the mining operation.
12 Whenever feasible, visual screening, vegetative or otherwise, will be
13 maintained or established on the property containing the surface mining
14 to screen the view of the operation from public highways, public parks,
15 and residential areas.

16 (10) A reclamation plan that must be acceptable to and approved by
17 the department and must be reviewed by the county legislative
18 authority, except as provided in RCW 78.44.100. An operator may not
19 depart from an approved plan without having previously obtained from
20 the department and the county legislative authority written approval of
21 ~~((his))~~ the proposed change.

22 The department and the county legislative authority may adopt rules
23 and regulations permitting an operator of more than one surface mining
24 operation to submit a single application for a combined operating
25 permit covering all ~~((of his))~~ the surface mining operations within a
26 single county. Such application may require detailing of information
27 required by this section for each separate location. An operator
28 operating under such a combined permit may submit a consolidated
29 reclamation program covering ~~((all his))~~ the operations within each
30 county under rules and regulations prescribed by the department, but

1 may be required to furnish specific information relative to reclamation
2 of any single operating area if the department or the county
3 legislative authority determines that such is necessary to carry out
4 the purposes of this chapter.

5 The county legislative authority permit shall contain all
6 information the county needs to meet zoning and other local
7 requirements.

8 NEW SECTION. Sec. 4. A new section is added to chapter 78.44 RCW
9 to read as follows:

10 The county legislative authority shall regulate the ongoing affairs
11 of a surface mining operation, including but not limited to:

12 (1) The level of noise;

13 (2) Traffic, including ingress and egress of vehicles from the
14 operation site;

15 (3) Hours of operation; and

16 (4) Dust created by the operation;

17 (5) Public safety;

18 (6) All county, and if applicable, city land use requirements; and

19 (7) Business permits.

20 NEW SECTION. Sec. 5. The county legislative authority shall
21 work with cities affected by a surface mining operation to insure that
22 the cities' interests are protected. If a surface mining activity is
23 conducted wholly within a city than the city shall have the power
24 vested in the county legislative authority under this chapter.

25 **Sec. 6.** RCW 78.44.090 and 1970 ex.s. c 64 s 10 are each amended to
26 read as follows:

1 The reclamation plan shall provide that reclamation activities,
2 particularly those relating to control of erosion, shall, to the extent
3 feasible, be conducted simultaneously with surface mining and in any
4 case shall be initiated at the earliest possible time after completion
5 or abandonment of mining on any segment of the permit area. he plan
6 shall provide that reclamation activities shall be completed not more
7 than two years after completion or abandonment of surface mining on
8 each segment of the area for which a permit is requested.

9 A reclamation plan will be approved by the department and the
10 county legislative authority if it adequately provides for the
11 accomplishment of the activities specified in the definition of
12 "reclamation plan", RCW 78.44.030(11), has been reviewed by the county
13 legislative authority, and meets those of the following minimum
14 standards that are applicable:

15 ~~((1) Excavations made to a depth not less than two feet below the~~
16 ~~low groundwater mark, which will result in the establishment of a lake~~
17 ~~of sufficient area and depth of water to be useful for residential,~~
18 ~~recreational, game, or wildlife purposes, shall be reclaimed in the~~
19 ~~following manner:~~

20 ~~(a) All banks in soil, sand, gravel, and other unconsolidated~~
21 ~~materials shall be sloped to two feet below the low groundwater line at~~
22 ~~a slope no steeper than one and one half feet horizontal to one foot~~
23 ~~vertical;~~

24 ~~(b) Portions of solid rock banks shall be stepped or other measures~~
25 ~~be taken to permit a person to escape from the water.~~

26 ~~(2) In all other excavations in soil, sand, gravel, and other~~
27 ~~unconsolidated materials, the side slopes and the slopes between~~
28 ~~successive benches shall be no steeper than one and one half feet~~
29 ~~horizontal to one foot vertical for their entire length.~~

1 ~~(3) The sides of all strip pits and open pits in rock and other~~
2 ~~consolidated materials shall be no steeper than one foot horizontal to~~
3 ~~one foot vertical, or other precautions must be taken to provide~~
4 ~~adequate safety.~~

5 ~~(4) The slopes of quarry walls in rock or other consolidated~~
6 ~~materials shall have no prescribed angle of slope, but where a~~
7 ~~hazardous condition is created that is not indigenous to the immediate~~
8 ~~area, the quarry shall be either graded or backfilled to a slope of one~~
9 ~~foot horizontal to one foot vertical or other precautions must be taken~~
10 ~~to provide adequate safety.~~

11 ~~(5) In strip mining operations the peaks and depressions of the~~
12 ~~spoil banks shall be reduced to a gently rolling topography which will~~
13 ~~minimize erosion and which will be in substantial conformity with the~~
14 ~~immediately surrounding land area.~~

15 ~~(6) In no event shall any provision of this section be construed to~~
16 ~~allow stagnant water to collect or remain on the surface mined area.~~
17 ~~Suitable drainage systems shall be constructed or installed to avoid~~
18 ~~such conditions if natural drainage is not possible.~~

19 ~~(7) All grading and backfilling shall be made with nonnoxious,~~
20 ~~nonflammable, noncombustible solids unless approval has been granted by~~
21 ~~the director for a supervised sanitary fill.~~

22 ~~(8) In all types of surface mining, in order to prevent water~~
23 ~~pollution, all acid-forming surface mining refuse shall be disposed of~~
24 ~~by covering all acid-forming materials with at least two feet of clean~~
25 ~~fill. The final surface covering shall be graded so that surface water~~
26 ~~will drain away from the disposal area.~~

27 ~~(9) Vegetative cover will be required in the reclamation plan as~~
28 ~~appropriate to the future use of the land.~~

29 ~~(10) All surface mining that will disturb streams must comply with~~
30 ~~the requirements of the state fisheries laws (Title 75 RCW), and every~~

1 application for an operating permit for such operations must have a
2 reclamation plan that shall have been approved by the department of
3 fisheries with regard to operations in streams as required by Title 75
4 RCW.) (1) Reclamation activities, particularly those relating to
5 control of erosion, shall, to the extent feasible, be conducted
6 simultaneously with surface mining, and in any case shall be initiated
7 at the earliest possible time after completion or abandonment of mining
8 on any segment of the permit area;

9 (2) All reclamation activities shall be completed not more than two
10 years after completion or abandonment of surface mining on each segment
11 of the area for which a permit is in force;

12 (3) Mining operations may not deviate from the approved reclamation
13 plan without prior written approval for the proposed change;

14 (4) Prior to mining, topsoil on the site shall be stockpiled for
15 use in reclamation, except when the approved subsequent use of the land
16 does not require revegetation;

17 (5) During operations, contaminants, garbage, and other noxious
18 wastes shall be removed from the pit based on the waste plan required
19 under section 16 of this act;

20 (6) All grading and backfilling shall be made with nonnoxious,
21 nonflammable, noncombustible solids unless approval has been granted by
22 the county health district for a locally supervised land fill;

23 (7) In excavations in soil, sand, gravel, and other unconsolidated
24 materials, all reclaimed slopes shall be no steeper than two feet
25 horizontal to one foot vertical for their entire length;

26 (8) Slopes in rock shall have no prescribed slope angle, but where
27 a hazardous condition is created that is not indigenous to the
28 immediate area, the slopes shall be backfilled to a slope of two feet
29 horizontal to one foot vertical. However, steeper slopes are

1 acceptable in remote areas or where evidence is submitted that such
2 slopes would not be illegal under local zoning regulations; and

3 (9) Excavations that penetrate seasonal or permanent water tables,
4 which will result in the establishment of a wetland, pond, or lake
5 useful for residential, recreational, or wildlife purposes, shall be
6 reclaimed in the following manner:

7 (a) All banks in soil, sand, gravel, and other unconsolidated
8 materials shall be sloped to five feet below the minimum ground water
9 level at a slope no steeper than two feet horizontal to one foot
10 vertical;

11 (b) Solid rock banks shall be formed to allow a person to escape
12 from the water. However, steeper slopes shall be acceptable in remote
13 areas or where evidence is provided that such slopes would not be
14 illegal under local zoning regulations;

15 (c) Spillways and measures to prevent undesirable seepage shall be
16 provided to stabilize all such water bodies within the mine; and

17 (d) Lakes, ponds, and wetlands shall be created to maximize
18 potential for natural wildlife habitat by incorporating such measures
19 as irregular shapes, sinuous contours, variable depths, and artificial
20 peninsulas and islands. Clay-bearing material placed below water level
21 may be required to avoid establishing sterile wetlands.

22 (10) Final topography shall generally comprise sinuous contours,
23 chutes and buttresses, gently rolling mounds and hills, all of which
24 shall conform with adjacent topography. Straight planar slopes and
25 right angles shall be avoided;

26 (11) Sinuous natural-appearing channels will be established for
27 postmining drainage. Drainages shall be graded and contain adequate
28 energy dissipation devices such that essentially natural conditions of
29 water velocity, volume, and turbidity are reestablished within six
30 months of cessation of operations.

1 (12) The floors of mines shall be graded at gentle slopes into
2 postmining drainages to preclude sheet-wash erosion during intense
3 precipitation;

4 (13) Topsoil shall be restored as necessary to promote effective
5 revegetation and to stabilize slopes. Where limited topsoil is
6 available, topsoil shall be placed and revegetated in such a way as to
7 ensure that it is not lost to erosion;

8 (14) Acid-forming rock exposures such as sulfurous coal or acid-
9 forming mine wastes shall be isolated by covering such materials with
10 at least two feet of clay-bearing fill. The final surface covering
11 shall be graded so that surface water will drain away from the acid-
12 forming materials;

13 (15) Revegetation shall be required as appropriate to stabilize
14 slopes, reduce erosion and turbidity, mask rectilinear contours, and
15 restore the appearance of the land to the extent feasible as
16 appropriate to the subsequent use. Generally, revegetation shall
17 include a multispecies ground cover and trees appropriate to
18 impoverished soils such as pines, junipers, and alders;

19 (16) Some or all minimum reclamation standards may be waived in
20 writing by the department in order to accommodate unique and beneficial
21 reclamation schemes such as parks, swimming facilities, buildings,
22 wildlife reserves, and so forth. However, waivers are granted only
23 after written approval of a reclamation plan describing the variances
24 to the minimum reclamation standards, receipt of a favorable state
25 environmental protection agency declaration, and approval by the
26 landowner and by the local land use authority.

27 NEW SECTION. Sec. 7. An environmental impact statement as
28 provided for under chapter 43.21C RCW is required for either a new
29 surface mining site or operator after the effective date of this act.

1 An environmental impact statement is required for an expansion of
2 either an existing site or operation after the effective date of this
3 act.

4 NEW SECTION. **Sec. 8.** A new section is added to chapter 78.44 RCW
5 to read as follows:

6 The board of natural resources shall create a graduated state
7 permit fee schedule sufficient to offset the cost of the program. The
8 schedule shall be presented to the natural resources committee of the
9 legislature for review by January 1, 1992.

10 NEW SECTION. **Sec. 9.** The department, in cooperation with
11 local government, shall require compliance with the following minimum
12 reclamation standards:

13 (1) Reclamation activities, particularly those relating to control
14 of erosion, shall, to the extent feasible, be conducted simultaneously
15 with surface mining, and in any case shall be initiated at the earliest
16 possible time after completion or abandonment of mining on any segment
17 of the permit area;

18 (2) All reclamation activities shall be completed not more than two
19 years after completion or abandonment of surface mining on each segment
20 of the area for which a permit is in force;

21 (3) Mining operations may not deviate from the approved reclamation
22 plan without prior written approval for the proposed change;

23 (4) Prior to mining, topsoil on the site shall be stockpiled for
24 use in reclamation, except when the approved subsequent use of the land
25 does not require revegetation;

26 (5) During operations, contaminants, garbage, and other noxious
27 wastes shall be removed from the pit based on the waste plan required
28 under section 16 of this act;

1 (6) All grading and backfilling shall be made with nonnoxious,
2 nonflammable, noncombustible solids unless approval has been granted by
3 the county health district for a locally supervised land fill;

4 (7) In excavations in soil, sand, gravel, and other unconsolidated
5 materials, all reclaimed slopes shall be no steeper than two feet
6 horizontal to one foot vertical for their entire length;

7 (8) Slopes in rock shall have no prescribed slope angle, but where
8 a hazardous condition is created that is not indigenous to the
9 immediate area, the slopes shall be backfilled to a slope of two feet
10 horizontal to one foot vertical. However, steeper slopes are
11 acceptable in remote areas or where evidence is submitted that such
12 slopes would not be illegal under local zoning regulations; and

13 (9) Excavations that penetrate seasonal or permanent water tables,
14 which will result in the establishment of a wetland, pond, or lake
15 useful for residential, recreational, or wildlife purposes, shall be
16 reclaimed in the following manner:

17 (a) All banks in soil, sand, gravel, and other unconsolidated
18 materials shall be sloped to five feet below the minimum ground water
19 level at a slope no steeper than two feet horizontal to one foot
20 vertical;

21 (b) Solid rock banks shall be formed to allow a person to escape
22 from the water. However, steeper slopes shall be acceptable in remote
23 areas or where evidence is provided that such slopes would not be
24 illegal under local zoning regulations;

25 (c) Spillways and measures to prevent undesirable seepage shall be
26 provided to stabilize all such water bodies within the mine; and

27 (d) Lakes, ponds, and wetlands shall be created to maximize
28 potential for natural wildlife habitat by incorporating such measures
29 as irregular shapes, sinuous contours, variable depths, and artificial

1 peninsulas and islands. Clay-bearing material placed below water level
2 may be required to avoid establishing sterile wetlands.

3 (10) Final topography shall generally comprise sinuous contours,
4 chutes and buttresses, gently rolling mounds and hills, all of which
5 shall conform with adjacent topography. Straight planar slopes and
6 right angles shall be avoided;

7 (11) Sinuous natural-appearing channels will be established for
8 postmining drainage. Drainages shall be graded and contain adequate
9 energy dissipation devices such that essentially natural conditions of
10 water velocity, volume, and turbidity are reestablished within six
11 months of cessation of operations.

12 (12) The floors of mines shall be graded at gentle slopes into
13 postmining drainages to preclude sheet-wash erosion during intense
14 precipitation;

15 (13) Topsoil shall be restored as necessary to promote effective
16 revegetation and to stabilize slopes. Where limited topsoil is
17 available, topsoil shall be placed and revegetated in such a way as to
18 ensure that it is not lost to erosion;

19 (14) Acid-forming rock exposures such as sulfurous coal or acid-
20 forming mine wastes shall be isolated by covering such materials with
21 at least two feet of clay-bearing fill. The final surface covering
22 shall be graded so that surface water will drain away from the acid-
23 forming materials;

24 (15) Revegetation shall be required as appropriate to stabilize
25 slopes, reduce erosion and turbidity, mask rectilinear contours, and
26 restore the appearance of the land to the extent feasible as
27 appropriate to the subsequent use. Generally, revegetation shall
28 include a multispecies ground cover and trees appropriate to
29 impoverished soils such as pines, junipers, and alders;

1 (16) Vegetative cover will be required in the reclamation plan as
2 appropriate to the future use of the land.

3 (17) All surface mining that will disturb or in any way impact
4 streams, riparian zones, or wetlands must comply with the requirements
5 of the state fisheries laws, Title 75 RCW, and every application for an
6 operating permit for such operations must have a reclamation plan that
7 shall have been approved by the departments of fisheries and wildlife
8 with regard to operations in streams, riparian zones, or wetlands as
9 required by Title 75 RCW.

10 (18) Some or all minimum reclamation standards may be waived in
11 writing by the department in order to accommodate unique and beneficial
12 reclamation schemes such as parks, swimming facilities, buildings,
13 wildlife reserves, and so forth. However, waivers are granted only
14 after written approval of a reclamation plan describing the variances
15 to the minimum reclamation standards, receipt of a favorable state
16 environmental protection agency declaration, and approval by the
17 landowner and by the local land use authority.

18 **Sec. 10.** RCW 78.44.100 and 1984 c 215 s 3 are each amended to read
19 as follows:

20 Upon receipt of an application for a permit, the surface mining
21 site must be inspected by a representative of the department and the
22 county legislative authority. Within twenty-five days of receipt of
23 the application and reclamation plan by the department and receipt of
24 the permit fee, the department and the county legislative authority
25 shall either issue an operating permit to the applicant or return any
26 incomplete or inadequate application to the applicant along with a
27 description of the deficiencies.

28 Failure to act within the twenty-five day period on the reclamation
29 plan shall not be cause for a denial of a permit. The department shall

1 set the amount of the bond or other security required for a permit
2 governing the surface mining operation set forth in the application.

3 If the department or the county legislative authority refuses to
4 approve a reclamation plan in the form submitted by the operator, it
5 shall notify the operator, in writing, stating the reasons for its
6 refusal and listing such additional requirements to the operator's
7 reclamation plan as are necessary for the approval of the plan by the
8 department or the county legislative authority. Within thirty days,
9 the operator shall either accept such additional requirements as part
10 of the reclamation plan or file notice of appeal.

11 The operating permit shall be granted for the period required to
12 mine the land covered by the plan and shall be valid until the surface
13 mining authorized by the permit is completed or abandoned, unless the
14 permit is suspended by the department or the county legislative
15 authority as provided in this chapter. The operating permit shall
16 provide that the reclamation plan may be modified, after timely notice
17 and opportunity for hearing, at any time during the term of the permit
18 for any of the following reasons:

19 (1) To modify the requirements so that they will not conflict with
20 existing laws;

21 (2) The department determines that the previously adopted
22 reclamation plan is clearly impossible or impracticable to implement
23 and maintain;

24 (3) The department determines that the previously adopted
25 reclamation plan is obviously not accomplishing the intent of this
26 chapter; or

27 (4) The operator ~~((and))~~, the department ~~((mutually))~~, and the
28 county legislative authority agree to change the reclamation plan.

29 When one operator succeeds to the interest of another in any
30 uncompleted surface mining operation by sale, assignment, lease, or

1 otherwise, the department and the county legislative authority may
2 release the first operator from the duties imposed upon him by this
3 chapter as to such operation: PROVIDED, That both operators have
4 complied with the requirements of this chapter and the successor
5 operator assumes the duty of the former operator to complete the
6 reclamation of the land, in which case the department and the county
7 legislative authority shall transfer the permit to the successor
8 operator upon approval of the successor operator's bond as required
9 under this chapter.

10 **Sec. 11.** RCW 78.44.110 and 1987 c 258 s 2 are each amended to read
11 as follows:

12 The permit fees required under this chapter shall be as follows:

13 (1) The basic fee for the department's permit shall be (~~two~~
14 ~~hundred fifty dollars per permit year~~) established by the board of
15 natural resources for each separate location, payable with submission
16 of the application and annually thereafter with submission of the
17 report required in RCW 78.44.130: PROVIDED, That a person who has held
18 a valid surface mining permit and whose property has never been
19 disturbed for surface mining may keep such permit in effect by paying
20 an annual fee of (~~fifty~~) one hundred dollars. Before a person
21 holding a (~~fifty~~) one hundred dollar permit begins surface mining
22 during any permit year, that person shall pay the remainder of the
23 (~~two hundred fifty dollar~~) established fee.

24 (2) In addition, there shall be a five dollar per acre fee for all
25 acreage exceeding ten acres which was newly disturbed by surface mining
26 during the previous permit year, which acreage fee shall be paid at the
27 time of submission of the report required in RCW 78.44.130.

28 (3) All fees collected shall be deposited in the general fund.

1 (4) The county legislative authority may set reasonable fees to
2 cover county expenses.

3 **Sec. 12.** RCW 78.44.130 and 1970 ex.s. c 64 s 14 are each amended
4 to read as follows:

5 Within thirty days after completion or abandonment of mining on an
6 area under permit or within thirty days after each annual anniversary
7 date of the operating permit, whichever is earlier, or at such later
8 date as may be provided by department rules (~~and regulations~~), and
9 each year thereafter until reclamation is completed and approved, the
10 operator shall file a report of activities completed during the
11 preceding year on a form prescribed by the department to the department
12 and the county legislative authority, which report shall:

13 (1) Identify the operator and permit number;

14 (2) Locate the operation by subdivision, section, township, and
15 range, and with relation to the nearest town or other well known
16 geographic feature;

17 (3) Estimate acreage to be newly disturbed by surface mining in the
18 next twelve-month period; and

19 (4) Update any maps previously submitted or provide such maps as
20 may be specifically requested by the department. Such maps shall show:

21 (a) The operating permit area;

22 (b) The unit of surface mined area;

23 (c) The area to be surface mined during the next twelve-month
24 period;

25 (d) If completed, the date of completion of surface mining;

26 (e) If not completed, the area that will not be further disturbed
27 by the mining operations; and

28 (f) The date of beginning, amount, and current status of
29 reclamation performed during the previous twelve months. An operator

1 operating under a combined operating permit may submit a single annual
2 report, but such report shall include the data required in this section
3 for each separate operating area.

4 **Sec. 13.** RCW 78.44.140 and 1989 c 230 s 1 are each amended to read
5 as follows:

6 Upon receipt of the operator's report, and at any other reasonable
7 time the department may elect, the department shall cause the permit
8 area to be inspected to determine if the operator has complied with the
9 reclamation plan and the department's and the county legislative
10 authority's rules ((and regulations)).

11 The operator shall proceed with reclamation as scheduled in the
12 reclamation plan. Following any written notice by the department
13 noting deficiencies, the operator shall commence action within thirty
14 days, or as directed by the department or the county legislative
15 authority if it has determined that emergency actions are required, to
16 rectify these deficiencies and shall diligently proceed until the
17 deficiencies are corrected: PROVIDED, That deficiencies that also
18 violate other laws that require earlier rectification shall be
19 corrected in accordance with the applicable time provisions of such
20 laws. The department may extend performance periods referred to in
21 this section and in RCW 78.44.090, for delays clearly beyond the
22 operator's control, but only when the operator is, in the opinion of
23 the department, making every reasonable effort to comply.

24 Within thirty days after notification by the operator and when in
25 the judgment of the department and the county legislative authority
26 reclamation of a unit of surface mined area is properly completed, the
27 mining operator shall be notified in writing and his or her bond on
28 said area shall be released or decreased proportionately.

1 If reclamation of surface mined land is not proceeding in
2 accordance with the reclamation plan and the operator has not commenced
3 action to rectify deficiencies within thirty days after notification by
4 the department or as directed by the department, or if reclamation is
5 not properly completed in conformance with the reclamation plan within
6 two years after completion or abandonment of surface mining on any
7 segment of the permit area, the department is authorized, with the
8 staff, equipment and material under its control, or by contract with
9 others, to take such actions as are necessary for the reclamation of
10 the surface mined areas. If the department intends to undertake the
11 reclamation, the department shall ascertain the probable costs of
12 reclamation and shall notify the operator, the surety, the county
13 legislative authority, and the owner of the probable costs. The
14 operator or surety, or both, shall pay that amount to the department
15 for reclaiming the surface mined land. The department shall keep a
16 record of all necessary expenses incurred in carrying out any project
17 or activity authorized under this section, including a reasonable
18 charge for the services performed by the state's personnel and the
19 state's equipment and materials utilized.

20 The department shall notify the operator, the owner, the county
21 legislative authority, and the surety by order. The order shall state
22 the amount of necessary expenses incurred by the department in
23 reclaiming the surface mined land and a notice that the amount is due
24 and payable to the department by the operator and the surety to the
25 extent that the amount has not already been paid. The department shall
26 refund all amounts received above the amount of expenses incurred.

27 If the amount specified in the notice or order is not paid within
28 thirty days after receipt of the notice, the attorney general, upon
29 request of the department, shall bring an action on behalf of the state
30 in the superior court for Thurston county or any county in which the

1 persons to whom the notice or order is directed do business to recover
2 the amount specified. The surety shall be liable to the state to the
3 extent of the bond.

4 In addition to the other liabilities imposed by this chapter,
5 failure to commence action to rectify deficiencies in reclamation
6 within thirty days after notification by the department or failure
7 satisfactorily to complete reclamation work on any segment of the
8 permit area within two years after completion or abandonment of surface
9 mining on any segment of the permit area shall constitute sufficient
10 grounds for cancellation of a permit and refusal to issue another
11 permit to the delinquent operator until such deficiencies are corrected
12 by the operator.

13 **Sec. 14.** RCW 78.44.160 and 1984 c 215 s 7 are each amended to read
14 as follows:

15 When the department finds that an operator is conducting surface
16 mining on an area for which a valid operating permit is not in effect,
17 or is conducting surface mining in any manner not authorized by his or
18 her operating permit or by the rules and regulations adopted by the
19 department or the county legislative authority, the department or the
20 county legislative authority may forthwith order such operator to
21 suspend all such operations until compliance is effected or assured to
22 the satisfaction of the department and the county legislative
23 authority. In the event the operator fails or declines to obey such
24 order, the operator shall be subject to a civil penalty in an amount of
25 not more than five hundred dollars for each violation by both the
26 department and the county legislative authority. Every day on which a
27 failure or declining to obey the order continues is a separate
28 violation.

1 The penalty provided for in this section shall be imposed by notice
2 in writing, either by certified mail with return receipt requested or
3 by personal service, to the person incurring the penalty. Within
4 fifteen days after the notice is received, the person incurring the
5 penalty may apply in writing to the department and the county
6 legislative authority for the remission or mitigation of the penalty.
7 Upon receipt of the application, the department and the county
8 legislative authority may remit or mitigate the penalty upon whatever
9 terms the department and the county legislative authority in its
10 discretion considers proper, provided the department and the county
11 legislative authority considers the remission or mitigation to be in
12 the best interests of carrying out the purposes of this chapter.

13 A person incurring a penalty under this section may appeal the
14 penalty as provided in RCW 78.44.170. The appeal shall be filed within
15 thirty days of receipt of notice imposing the penalty unless an
16 application for remission or mitigation is made to the department and
17 the county legislative authority. When an application for remission or
18 mitigation is made, the appeal shall be filed within thirty days of
19 receipt of notice from the department and the county legislative
20 authority setting forth the disposition of the application.

21 A penalty imposed under this section becomes due and payable thirty
22 days after receipt of a notice imposing the penalty unless application
23 for remission or mitigation is made or an appeal is filed. When an
24 application for remission or mitigation is made, the penalty becomes
25 due and payable thirty days after receipt of notice setting forth the
26 disposition of the application unless an appeal is filed from the
27 disposition. If an appeal of the penalty is filed, the penalty becomes
28 due and payable only upon completion of all review proceedings provided
29 for in RCW 78.44.170 and the issuance of a final decision by the
30 department confirming the penalty in whole or in part.

1 If the penalty is not paid to the department or the county
2 legislative authority within thirty days after it becomes due and
3 payable, the attorney general, upon the request of the department or
4 the county prosecuting attorney, upon request of the county legislative
5 authority, shall bring an action in the name of the state of Washington
6 in the superior court of Thurston county or any county in which the
7 person incurring the penalty does business, to recover the penalty. In
8 all such actions the procedures and rules of evidence shall be the same
9 as in an ordinary civil action except as otherwise provided in this
10 chapter. The attorney general or the county prosecuting attorney shall
11 forthwith take the necessary legal action to enjoin, or otherwise cause
12 to be stopped, such conduct of surface mining.

13 NEW SECTION. Sec. 15. A new section is added to chapter 78.44 RCW
14 to read as follows:

15 The county legislative authority shall have the power to conduct or
16 authorize investigations, research, experiments, and demonstrations,
17 and to collect and disseminate information relating to surface mining
18 and operation of and reclamation of surface mined lands.

19 NEW SECTION. Sec. 16. The department of natural resources and
20 the department of ecology shall jointly develop a mandatory waste
21 removal plan for each public and private surface mining site. The cost
22 of such plan is to be paid by the site operator. The department of
23 ecology shall inspect sites as needed to insure compliance with the
24 waste removal plan. The department of ecology may charge reasonable
25 site inspection fees to cover costs of inspection.

1 NEW SECTION. **Sec. 17.** A person domiciled within the state of
2 Washington has standing to seek administrative or judicial relief under
3 this chapter.

4 NEW SECTION. **Sec. 18.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 19.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and shall take
11 effect immediately.