
SENATE BILL 6119

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By Senators Amondson, Sutherland, L. Smith, Bauer, McCaslin, Metcalf, Saling and Barr

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1 AN ACT Relating to mining; amending RCW 78.44.010, 78.44.020,
2 78.44.040, 78.44.050, 78.44.060, 78.44.070, 78.44.150, 78.44.170, and
3 78.44.910; adding new sections to chapter 78.44 RCW; creating new
4 sections; repealing RCW 78.44.030, 78.44.035, 78.44.080, 78.44.090,
5 78.44.100, 78.44.110, 78.44.120, 78.44.130, 78.44.140, 78.44.160, and
6 78.44.180; prescribing penalties; and providing an effective date.

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

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

10 The legislature recognizes that the extraction of minerals by
11 surface mining is ~~((a basic and))~~ an essential activity making an
12 important contribution to the economic well-being of the state and
13 nation. ~~((At the same time, proper reclamation of surface))~~ It is not
14 possible to extract minerals without producing some environmental

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

20 **Sec. 2.** RCW 78.44.020 and 1970 ex.s. c 64 s 3 are each amended to
21 read as follows:

22 The purposes of this chapter ~~((is))~~ are to:

23 (1) Provide that the usefulness, productivity, and scenic values of
24 all lands and waters involved in surface mining within the state will
25 receive the greatest practical degree of protection and ~~((restoration.~~
26 ~~It is a further purpose of this chapter to provide a means of~~
27 ~~cooperation between private and governmental entities in carrying this~~
28 ~~chapter into effect))~~ reclamation at the earliest opportunity following
29 excavation;

1 (2) Provide for local regulation of mining operations in order to
2 prevent or mitigate environmental and social impacts of surface mining
3 operations;

4 (3) Provide for the greatest practical degree of state-wide
5 consistency in the regulation of surface mines;

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

8 (5) Ensure the right of local government to regulate land use and
9 operations; and

10 (6) Ensure that reclamation plans be consistent with local land
11 uses proposed following actual reclamation.

12 NEW SECTION. Sec. 3. DEFINITIONS. Unless the context clearly
13 indicates otherwise, the definitions in this section apply throughout
14 this chapter.

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

18 (2) "Completion of surface mining" means the cessation of mining
19 and related activities in any segment of a surface mine that occurs
20 when all minerals identified in the permit application have been
21 depleted except minerals required to accomplish reclamation according
22 to the approved reclamation plan.

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

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

28 (5) "Disturbed area" means any place where activities clearly in
29 preparation for, or during, surface mining physically disrupt, cover,

1 compact, move, or otherwise alter the characteristics of soil, bedrock,
2 or topography that existed prior to such activity. Disturbed areas may
3 include but are not limited to: Working faces, water bodies created by
4 mine-related excavation, pit floors, the land beneath processing plant
5 and stock pile sites, spoil pile sites, and equipment staging areas.

6 Disturbed areas do not include:

7 (a) Mine access roads unless these have characteristics of
8 topography, drainage, slope stability, or ownership that, in the
9 opinion of the department, require reclamation, and

10 (b) Lands that have been reclaimed to all standards outlined in
11 this chapter, any applicable SEPA document, and the approved
12 reclamation plan.

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

16 (7) "Minerals" means clay, coal, gravel, metallic substances, sand,
17 stone, topsoil, and any other similar solid material or substance to be
18 excavated from natural deposits on or in the earth for commercial,
19 industrial, or construction use.

20 (8) "Operations" means all mine-related activities, exclusive of
21 reclamation, that include, but are not limited to activities that
22 affect noise generation, air quality, surface and ground water quality
23 and quantity, glare, pollution, traffic safety, ground vibrations,
24 and/or public safety impacts commonly regulated under provisions of
25 land use or operating permits and local ordinances, or other state
26 laws. Operations specifically include:

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

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

1 (c) On-site mineral processing including heap leaching, asphalt or
2 concrete batching, concrete recycling, and other aggregate recycling;
3 and

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

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

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

16 (11) "Reclamation" means rehabilitation for the appropriate future
17 use of disturbed areas resulting from surface mining including areas
18 under associated mineral processing equipment and stockpiled materials.
19 Although both the need for and the practicability of reclamation will
20 control the type and degree of reclamation in any specific mine, the
21 basic objective shall be to reestablish on a perpetual basis the
22 vegetative cover, soil stability, and water conditions appropriate to
23 the approved subsequent use of the minesite and to prevent or mitigate
24 future environmental degradation.

25 (12) "Reclamation setbacks" include those lands along the margins
26 of surface mines wherein rocks and sediments are preserved in
27 sufficient volumes to accomplish reclamation according to the approved
28 plan and the minimum reclamation standards. Maintenance of reclamation
29 setbacks shall not preclude other mine-related activities within the
30 reclamation setback.

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

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

5 (15) "Segment" means contiguous portions of the permit area that
6 must be reclaimed within two years of completion of surface mining in
7 that area. Segments shall include the portion of the mine that have
8 characteristics of topography, drainage, slope stability, ownership,
9 mining development, or mineral distribution that, in the opinion of the
10 department, require reclamation and are not in use as part of mining
11 and/or related activities as determined by the department. The
12 department must pursue the reclamation of the smallest feasible
13 reclaimable segments, but not less than one acre or ten percent
14 whichever is greater, or must adopt an approved long-term reclamation
15 plan that includes a segmental reclamation agreement.

16 (16) "SEPA" means the state environmental policy act, chapter
17 43.21C RCW and rules adopted thereunder.

18 (17) "Surface mining" means all or any part of the processes
19 involved in mining from the surface which collectively result in more
20 than two acres of disturbed area or that result in mined slopes greater
21 than thirty feet high and steeper than 1.0 foot horizontal to 1.0 foot
22 vertical.

23 (a) Surface mining also includes mineral extraction from the
24 surface:

25 (i) By the auger method or from mining refuse when these exceed the
26 size or height thresholds listed in this subsection; or

27 (ii) As part of prospecting and exploration activities when these
28 are of such nature and extent as to disturb one acre in eight. The
29 department shall issue permits for exploration purposes in a timely
30 fashion.

1 (b) Surface mining shall not include:

2 (i) Excavation or grading conducted on site primarily for
3 construction, road maintenance, forestry, or farming on site or on
4 contiguous lands unless such excavation or grading is for surface
5 mining as evidenced by minerals leaving the property; or

6 (ii) Excavations or grading for the purpose of public safety or
7 restoring the land following an emergent natural disaster.

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

12 NEW SECTION. **Sec. 4.** ADMINISTRATION OF CHAPTER. (1) The
13 department is charged with the administration and enforcement of
14 reclamation under this chapter.

15 (2) Counties, cities, and towns may regulate surface mining
16 operations and mine siting pursuant to the authority granted local
17 government.

18 **Sec. 5.** RCW 78.44.040 and 1984 c 215 s 2 are each amended to read
19 as follows:

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

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

3 The department shall have the exclusive authority to regulate
4 surface mine reclamation. All counties and municipalities shall have
5 the authority to zone mines and regulate mine siting pursuant to local
6 authority and ordinances adopted pursuant to section 15 of this act,
7 except that county or municipality operating ordinances may be
8 preempted by the department during the emergencies outlined in section
9 24 of this act and related rules.

10 This chapter shall not ~~((affect))~~ alter or preempt any ~~((of the))~~
11 provisions of the state fisheries laws (Title 75 RCW), the state water
12 pollution control laws (Title 90 RCW), the state ~~((game))~~ wildlife laws
13 (Title 77 RCW), ~~((or any other state laws, and shall be cumulative and~~
14 ~~nonexclusive))~~ state noise laws or air quality laws (Title 70 RCW),
15 shoreline management (chapter 90.58 RCW), the state environmental
16 policy act (chapter 43.21C RCW), state growth management (chapter
17 36.70A RCW), or any other state laws, and shall be cumulative and
18 nonexclusive.

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

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

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

27 The department may cooperate with other governmental and private
28 agencies ~~((in this state and other states))~~ and agencies of the federal

1 government, and may reasonably reimburse them for any services the
2 department requests that they provide. The department may also receive
3 any federal funds, state funds and any other funds and expend them for
4 reclamation of land affected by surface mining and for purposes
5 enumerated in RCW 78.44.060.

6 NEW SECTION. **Sec. 9.** SURFACE MINING RECLAMATION ACCOUNT. The
7 surface mining reclamation account is created in the state treasury.
8 Annual mining fees, funds received by the department from state, local,
9 or federal agencies for research purposes, as well as other mine-
10 related funds and fines received by the department shall be deposited
11 into this account. The surface mine reclamation account may be used by
12 the department only to:

- 13 (1) Administer its regulatory program pursuant to this chapter;
- 14 (2) Undertake research relating to surface mine regulation,
15 reclamation of surface mine lands, and related issues; and
- 16 (3) Cover costs arising from administrative appeals to
17 determinations made under this chapter.

18 Fines, interest, and other penalties collected under the provisions
19 of this chapter shall be used to reclaim surface mines abandoned prior
20 to 1971.

21 Only the commissioner of public lands or the commissioner's
22 designee may authorize expenditures from the account. The account is
23 subject to chapter 43.88 RCW, but no appropriation is required for
24 expenditures.

25 NEW SECTION. **Sec. 10.** RECLAMATION PERMITS REQUIRED--APPLICATIONS.
26 After July 1, 1992, a person may not engage in surface mining without
27 having first obtained a reclamation permit from the department.
28 Operating permits issued by the department between January 1, 1971, and

1 June 30, 1992, shall be considered reclamation permits provided such
2 permits substantially meet the protections, mitigations, and
3 reclamation goals of sections 11, 15, 17, and 18 of this act within
4 five years after the effective date of this act. A separate permit
5 shall be required for each noncontiguous surface mine. The reclamation
6 permit shall consist of the permit forms and any exhibits attached
7 thereto. The permit holder shall comply with the reclamation permit
8 unless otherwise waived and explained in writing by the department.

9 Prior to receiving a reclamation permit, a miner must submit an
10 application on forms provided by the department that shall contain the
11 following information and shall be considered part of the reclamation
12 permit:

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

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

18 (3) A reasonably accurate description of the minerals to be surface
19 mined;

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

21 (5) Estimated starting date, date of completion, and date of
22 completed reclamation of surface mining;

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

25 (7) Expected area to be disturbed by surface mining during (a) the
26 next twelve months, and (b) the following twenty-four months;

27 (8) Any applicable SEPA determination; and

28 (9) Other pertinent data as required by the department.

29 The reclamation permit shall be granted for the period required to
30 deplete essentially all minerals identified in the reclamation permit

1 on the land covered by the reclamation plan. The reclamation permit
2 shall be valid until the reclamation is complete unless the permit is
3 canceled by the department. The department retains the authority to
4 require that the reclamation plan be updated at least every ten years.

5 NEW SECTION. **Sec. 11.** RECLAMATION PLANS. An applicant shall
6 provide a reclamation plan and copies acceptable to the department
7 prior to obtaining a reclamation permit. The department shall have the
8 sole authority to approve reclamation plans. Reclamation plans or
9 modified reclamation plans submitted to the department after June 30,
10 1992, shall meet or exceed the minimum reclamation standards set forth
11 by the department by rule. Each applicant shall supply three copies of
12 the final reclamation plans to the county, city, or town in which the
13 mine will be located. The reclamation plan shall include:

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

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

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

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

25 (d) The maximum depth of mining;

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

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

28 (g) A description of the sequence of mining that will provide,
29 within limits of normal procedures of the industry, for completion of

1 surface mining and associated disturbance on each segment of the permit
2 area so the reclamation can be initiated at the earliest possible time
3 on each segment of the mine;

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

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

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

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

22 (2) Maps of the surface mine showing:

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

25 (b) Existing topographic contours;

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

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

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

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

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

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

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

12 (5) Written approval of the reclamation plan by the landowner for
13 mines permitted after June 30, 1992.

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

16 The applicant shall provide the department with copies of the
17 reclamation plan including maps and cross sections.

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

27 Only insignificant deviations may occur from the approved
28 reclamation plan without prior written approval for the proposed
29 change.

1 NEW SECTION. **Sec. 12.** RECLAMATION PERMITS--TIME LIMITS. The
2 county shall issue a SEPA threshold determination within one hundred
3 eighty days of receipt of a complete permit application including the
4 reclamation plan acceptable to the department. Reclamation permits
5 shall not be issued until SEPA review of the entire proposal is
6 complete.

7 NEW SECTION. **Sec. 13.** FEES. After June 30, 1992, the annual
8 reclamation permit fee for both public and private mines regulated by
9 the department shall be based on the size of the disturbed area and
10 shall be set forth in rule. The schedule for determining the size of
11 the disturbed area shall be set forth in rule. Fees shall not exceed
12 ten thousand dollars per year nor the approximate cost of administering
13 the department's surface mine regulatory program; except that:

14 (1) The total annual fee for each separate reclamation permit when
15 the disturbed area is less than seven acres shall be five hundred
16 dollars. The department may waive this annual fee for inactive sites.
17 Such waiver shall require the permittee to notify the department when
18 the site is activated.

19 (2) Fees may be waived for a one-year period for recipients of a
20 surface mine reclamation award as specified by the department.

21 The fee shall be payable with submission of the application and
22 annually thereafter with submission of the report required in this
23 chapter. Failure to pay the annual fee may constitute grounds for
24 fines and/or an order to suspend surface mining or cancellation of the
25 reclamation permit as outlined in this chapter. All fees collected by
26 the department shall be deposited into the surface mining reclamation
27 account.

1 NEW SECTION. **Sec. 14.** PERFORMANCE SECURITY. The department shall
2 not issue a reclamation permit until the applicant has deposited with
3 the department an acceptable performance security on forms prescribed
4 and furnished by the department. A public or governmental agency shall
5 not be required to post performance security nor shall a permit holder
6 be required to post surface mining performance security with more than
7 one state, local, or federal agency.

8 This performance security may be:

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

10 (2) A cash deposit;

11 (3) Negotiable securities acceptable to the department;

12 (4) An assignment of a savings account;

13 (5) A savings certificate in a Washington bank on an assignment
14 form prescribed by the department; or

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

18 The performance security shall be conditioned upon the faithful
19 performance of the requirements set forth in this chapter and of the
20 rules and regulations adopted under it.

21 The department shall have the authority to determine the amount of
22 the performance security using a standardized performance security
23 formula developed by the department. The amount of the security shall
24 be determined by the department and based on the estimated costs of
25 completing reclamation according to the approved plan or minimum
26 standards and related administrative overhead for the area to be
27 surface mined during (a) the next twelve-month period, (b) the
28 following twenty-four months, and (c) any previously disturbed areas on
29 which the reclamation has not been satisfactorily completed and
30 approved.

1 The department may increase or decrease the amount of the
2 performance security at any time to compensate for a change in the
3 disturbed area, the depth of excavation, a modification of the
4 reclamation plan, or any other alteration in the conditions of the mine
5 that affects the cost of reclamation.

6 The amount of the performance security shall not be subject to
7 appeal. The department for any reason may refuse any performance
8 security not deemed adequate.

9 Liability under the performance security shall be maintained until
10 reclamation is completed according to the approved reclamation plan to
11 the satisfaction of the department unless released as hereinafter
12 provided. Liability under the performance security may be released
13 only upon written notification from the department. Notification shall
14 be given upon completion of compliance or acceptance by the department
15 of a substitute performance security. The liability of the surety
16 shall not exceed the amount of security required by this section and
17 the department's reasonable legal fees to recover the security.

18 Any interest or appreciation on the performance security shall be
19 held by the department until reclamation is completed to their
20 satisfaction. At such time, the interest shall be remitted to the
21 permit holder; except that such interest or appreciation may be used by
22 the department to effect reclamation in the event that the permit
23 holder fails to comply with the provisions of this chapter and the
24 costs of reclamation exceed the face value of the performance security.

25 No other state or local agency shall require performance security
26 for the purposes of reclamation and only one agency shall require and
27 hold the performance security. The department may enter into written
28 agreements with federal agencies in order to avoid redundant bonding of
29 mines straddling boundaries between federally controlled and other
30 lands within Washington state.

1 NEW SECTION. **Sec. 15.** OPERATING STANDARDS. (1) Cities having
2 surface mining within their jurisdictions and all counties shall
3 regulate surface mining operations in accordance with the standards and
4 limitations of this section.

5 (2) Local zoning and land use ordinances shall provide that surface
6 mining operations are permitted uses within mineral resource lands
7 designated pursuant to RCW 36.70A.170. Such ordinance shall require
8 operating permit approval of mining operations to insure compliance
9 with applicable standards.

10 (3) A county may by general ordinance adopt performance-based
11 regulations governing surface mining operations that are more stringent
12 than applicable state and federal standards. All permitted mining
13 operations shall comply with applicable state and federal standards and
14 revisions to such standards.

15 (a) Examples of applicable state and federal regulations include
16 but are not limited to the following:

17 (i) Washington state fisheries laws (Title 75 RCW);

18 (ii) Washington state wildlife laws (Title 77 RCW);

19 (iii) Washington state water pollution control laws (Title 90 RCW)
20 and department of ecology rules;

21 (iv) Washington state noise standards (Title 70 RCW) and department
22 of ecology rules;

23 (v) Washington state air quality standards (Title 70 RCW) and
24 department of ecology rules;

25 (vi) Federal storm water and national pollutant discharge
26 elimination system regulations and department of ecology rules;

27 (vii) Federal mine safety and health administration and the federal
28 office of safety health administration rules.

29 (b) Any county developing an ordinance to regulate the operation of
30 a mine pursuant to this chapter shall:

1 (i) Consider provisions to:

2 (A) Vest historical permitted mining uses such as mineral
3 processing but update the operations to be in compliance with this
4 chapter and new operating standards;

5 (B) Preserve peace, quiet, and safety in residential areas and
6 schools;

7 (C) Accommodate emergency twenty-four-hour operations;

8 (D) Allow for adequate illumination for extended hours of
9 operations;

10 (E) Allow on-site storage of replacement machinery and mining
11 apparatus;

12 (F) Establish separate standards for rural and urban area mines
13 including buffering zones;

14 (G) Encourage concrete and other recycled aggregate production; and

15 (H) Implement department of ecology best management practices for
16 ground water protection at surface mines.

17 (ii) Be performance-based and generally applicable to other land
18 use activities having similar impacts in similar situations in similar
19 land use designated areas.

20 (iii) Limit exactions and other standards to those which are both
21 authorized by state law and which are proportional to the direct
22 operational impacts sought to be mitigated.

23 (iv) Require that exactions or special restrictions be based upon
24 written findings of fact demonstrating compliance with locally adopted
25 performance standards.

26 (v) Provide for the public safety and quality of life, particularly
27 in close proximity to existing residential areas.

28 (vi) Provide that approvals issued thereunder will be valid through
29 completion of surface mining subject to the conditions of the
30 reclamation permit.

1 (4) Control of blast-flyrock, fencing, traffic control, noise, air
2 quality, light emission, and other public safety restrictions should be
3 established during mine siting pursuant to local zoning and land use
4 control or operating permit process.

5 (5) All surface mines currently operating under land use permits
6 issued by local government pursuant to local zoning ordinances shall be
7 allowed to be maintained and operated in conformance to the conditions
8 set forth in the existing land use approval and in accordance with the
9 ordinances adopted under this section.

10 NEW SECTION. **Sec. 16.** A surface mining model ordinance advisory
11 committee is hereby created. The committee shall be composed of
12 representatives of local government, state agencies, surface mining
13 interests, and the environmental community. The department of natural
14 resources shall appoint the members of the committee and the department
15 shall staff the committee. This temporary advisory committee shall
16 draft model ordinances for different surface-mining settings and shall
17 assist counties, cities, and towns in developing ordinances. The
18 committee shall also consider various mechanisms for funding the
19 closure of surface mines. The committee shall complete its work and
20 shall expire by July 1, 1993.

21 NEW SECTION. **Sec. 17.** WATER CONTROL. Water control as regulated
22 by the department shall be limited to those provisions necessary to
23 effect mine reclamation and to protect ground and surface water
24 resources after reclamation is complete. The department shall solicit
25 recommendations from all agencies with expertise in relevant water
26 control laws when evaluating reclamation plans for mines in or near
27 water. Control of mine site water pollution, water availability, and
28 protection of fisheries and wildlife habitats shall be regulated under

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

5 NEW SECTION. **Sec. 18.** MINIMUM RECLAMATION STANDARDS. The
6 department shall establish by rule minimum reclamation standards. The
7 need for, and the practicability of, reclamation shall control the type
8 and degree of reclamation in any specific instance. The basic
9 objective of the standards is to reestablish on a continuing basis the
10 vegetative cover, slope stability, water conditions, and safety
11 conditions suitable to the proposed subsequent use under local land use
12 planning of the mine site.

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

17 (1) The minimum standards shall provide that:

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

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

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

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

10 (2) 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, and
13 wildlife reserves. Such waivers shall be granted only after written
14 approval from the department of a reclamation plan describing the
15 variances to the minimum reclamation standards, receipt of
16 documentation of SEPA compliance, and written approvals from the
17 landowner and by the local land use authority.

18 (3) The minimum reclamation standards shall provide for reclamation
19 of some working faces excavated in solid rock as cliffs in order to
20 achieve topography harmonious with nearby or preexisting natural
21 topography.

22 NEW SECTION. **Sec. 19.** PERMIT TRANSFERS. Reclamation permits
23 shall be transferred to a subsequent permit holder and the department
24 shall release the former permit holder from the duties imposed by this
25 chapter if:

26 (1) Both miners comply with all rules addressing requirements for
27 transferring a permit; and

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

1 principal officers or owners are in compliance with this chapter and
2 rules.

3 The department shall not require that a reclamation permit be
4 transferred without the written agreement of the permit holder; except
5 that, in the event the legal interest or right of use of a permit
6 holder expires and is not renewed in property owned by a public agency,
7 the permit shall be transferred to the public agency provided that all
8 other requirements for transferring the permit are satisfied. In such
9 case, the department shall not require the consent of the former permit
10 holder.

11 NEW SECTION. **Sec. 20.** MODIFICATION OF RECLAMATION PLANS. The
12 department and the permit holder jointly may modify the reclamation
13 plan at any time during the term of the permit for any of the following
14 reasons:

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

17 (2) The previously adopted reclamation plan is impossible or
18 impracticable to implement and maintain; or

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

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

25 NEW SECTION. **Sec. 21.** REPORTS. Within thirty days after each
26 annual anniversary date of the reclamation permit and each year
27 thereafter until reclamation is completed and approved, the permit

1 holder shall file a report of activities completed during the preceding
2 year. The report shall be on a form prescribed by the department.

3 NEW SECTION. **Sec. 22.** INSPECTION OF PERMIT AREA. Any time the
4 department may elect, the department may order the permit area to be
5 inspected to determine if the permit holder has complied with the
6 reclamation permit, rules, and this chapter.

7 NEW SECTION. **Sec. 23.** ORDER TO RECTIFY DEFICIENCIES. The
8 department may issue an order to rectify deficiencies when a miner or
9 permit holder is conducting surface mining in any manner not authorized
10 by:

- 11 (1) This chapter;
- 12 (2) The rules adopted by the department;
- 13 (3) The authorized reclamation plan; or
- 14 (4) The reclamation permit.

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

21 NEW SECTION. **Sec. 24.** EMERGENCY NOTICE AND ORDER TO RECTIFY
22 DEFICIENCIES; EMERGENCY ORDER TO SUSPEND SURFACE MINING. When the
23 department finds that a permit holder is conducting surface mining in
24 any manner not authorized by:

- 25 (1) This chapter;
- 26 (2) The rules adopted by the department;
- 27 (3) The approved reclamation plan; or

1 (4) The reclamation permit;
2 and that activity has created a situation involving an immediate danger
3 to the public health, safety, or welfare requiring immediate action,
4 the department may issue an emergency notice and order to rectify
5 deficiencies, and/or an emergency order to suspend surface mining.
6 These orders shall be effective when entered. The department may take
7 such action as is necessary to prevent or avoid the danger to the
8 public health, safety, or welfare that justifies use of emergency
9 adjudication. The department shall give such notice as is practicable
10 to the permit holder or miner who is required to comply with the order.
11 The order shall comply with the requirements of the administrative
12 procedure act.

13 Regulations of mining operations administered by other state and
14 local agencies shall be preempted by this section to the extent that
15 the time schedule and procedures necessary to rectify the emergency
16 situation, as determined by the department, conflict with such local
17 regulation.

18 NEW SECTION. **Sec. 25.** ORDER TO SUSPEND SURFACE MINING. The
19 department or county may issue an order to suspend surface mining when
20 a miner or permit holder is conducting surface mining in any manner not
21 authorized by:

- 22 (1) This chapter;
- 23 (2) The rules adopted by the department;
- 24 (3) Ordinances adopted by the local government;
- 25 (4) Provisions of the local operating permit;
- 26 (5) The approved reclamation plan;
- 27 (6) The reclamation permit; or
- 28 (7) If the miner or permit holder fails to comply with any final
29 order of the department or county.

1 The order to suspend surface mining shall require the miner or
2 permit holder to suspend part or all of the miner's or permit holder's
3 surface mine until the conditions resulting in the issuance of the
4 order have been mitigated to the satisfaction of the department or
5 county.

6 The attorney general or county prosecutor may take the necessary
7 legal action to enjoin, or otherwise cause to be stopped, surface
8 mining in violation of an order to suspend surface mining.

9 NEW SECTION. **Sec. 26.** DECLARATION OF ABANDONMENT. The department
10 shall issue a declaration of abandonment when it determines that all
11 surface mining has ceased for a period of one hundred eighty
12 consecutive days not set forth in the permit holder's reclamation plan
13 or when, by reason of inspection of the permit area, or by any other
14 means, it becomes the opinion of the department that the mine has in
15 fact been abandoned by the permit holder. Abandonment shall not
16 include normal interruptions of surface mining resulting from cyclical
17 demand for minerals.

18 Following a declaration of abandonment, the department shall
19 require the permit holder to complete reclamation in accordance with
20 this chapter. If the permit holder fails to do so within two years,
21 the department shall proceed to do the necessary reclamation work
22 pursuant to section 28 of this act.

23 If another miner applies for a permit on a site that has been
24 declared abandoned, the department may, in its discretion, cancel the
25 reclamation permit of the permit holder and issue a new reclamation
26 permit to the applicant. The department shall not issue a new permit
27 unless it determines that such issuance will be an effective means of
28 assuring that the site will ultimately be reclaimed. The applicant
29 must agree to assume the reclamation responsibilities left unfinished

1 by the first miner, in addition to meeting all requirements for
2 issuance of a new permit.

3 A permit holder shall have the right to appeal the department's
4 abandonment decision pursuant to RCW 78.44.170.

5 NEW SECTION. **Sec. 27.** CANCELLATION OF THE RECLAMATION PERMIT.
6 When the department determines that a mine has been illegally
7 abandoned, it may cancel the reclamation permit. The miner or permit
8 holder shall be informed of such actions by a department notification
9 of illegal abandonment and cancellation of the reclamation permit.

10 NEW SECTION. **Sec. 28.** ORDER TO SUBMIT PERFORMANCE SECURITY--
11 RECLAMATION BY THE DEPARTMENT. The department shall, with the staff,
12 equipment, and material under its control, or by contract with others,
13 reclaim the disturbed areas when it finds that reclamation has not
14 occurred in any segment of a mine within two years of completion of
15 mining or of declaration of abandonment and the miner is not actively
16 pursuing reclamation.

17 If the department intends to undertake the reclamation, the
18 department shall issue an order to submit performance security
19 requiring the permit holder or surety to submit to the department the
20 amount of moneys posted pursuant to section 11 of this act. If the
21 amount specified in the order to submit performance security is not
22 paid within twenty days after issuance of the notice, the attorney
23 general upon request of the department shall bring an action on behalf
24 of the state in a superior court to recover the amount specified and
25 associated legal fees.

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

1 department that meets the minimum reclamation standards set forth in
2 the reclamation permit.

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

6 (1) Reclamation;

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

9 (3) Administrative and legal expenses related to reclamation of the
10 surface mine.

11 The department shall refund to the surety or permit holder all
12 amounts received in excess of the amount of expenses incurred. If the
13 amount received is less than the expenses incurred, the attorney
14 general, upon request of the department, may bring an action against
15 the permit holder on behalf of the state in the superior court to
16 recover the remaining costs listed in this section.

17 NEW SECTION. **Sec. 29.** FINES. Each order of the department or
18 county may include a fine or fines in the event that a miner or permit
19 holder fails to obey the order of the department or county. When a
20 miner or permit holder fails to comply with an order of the department
21 or county, the miner or permit holder shall be subject to a civil
22 penalty in an amount not more than ten thousand dollars for each
23 violation plus interest based upon a schedule of fines set forth by the
24 department or county in rule or ordinance. Each day on which a miner
25 or permit holder continues to disobey any order of the department or
26 county shall constitute a separate violation. If the penalty and
27 interest is not paid to the department or county after it becomes due
28 and payable, the attorney general or prosecutor, upon the request of
29 the department or county, may bring an action in the name of the state

1 of Washington to recover the penalty, interest, mitigation for
2 environmental damages, and associated legal fees.

3 All fines, interest, penalties, and other damage recovery costs
4 from mines regulated by the department shall be credited to the surface
5 mining reclamation account. Fines levied by counties, cities, and
6 towns shall go to the county, city, or town.

7 NEW SECTION. **Sec. 30.** REFUSAL TO ISSUE PERMITS. The department
8 may refuse to issue a reclamation permit if it determines during the
9 SEPA process that the impacts of a proposed mine cannot be mitigated.

10 The department or county may refuse to issue any other permit at
11 any other location to any miner or permit holder who fails to rectify
12 deficiencies set forth in an order of the department or county within
13 the requisite time schedule. However, the department or county shall
14 issue all appropriate permits when all deficiencies are corrected at
15 each surface mining site.

16 **Sec. 31.** RCW 78.44.150 and 1970 ex.s. c 64 s 16 are each amended
17 to read as follows:

18 Any ~~((operator))~~ miner or permit holder conducting surface mining
19 within the state of Washington without a valid ~~((operating))~~
20 reclamation permit shall be guilty of a gross misdemeanor. Mining
21 outside of the permitted area shall constitute illegal mining without
22 a valid reclamation permit. Each day of ~~((operation))~~ mining without
23 a valid reclamation permit shall constitute a separate offense.

24 **Sec. 32.** RCW 78.44.170 and 1989 c 175 s 166 are each amended to
25 read as follows:

26 Appeals from department determinations under this chapter shall be
27 made as follows:

1 (1) Appeals from department determinations made under this chapter
2 shall be made under the provisions of the Administrative Procedure Act
3 (chapter 34.05 RCW), and shall be considered an adjudicative proceeding
4 within the meaning of the Administrative Procedure Act, chapter 34.05
5 RCW. A fee of five hundred dollars shall be charged for each
6 appeal under this section. Only a party of record or agent for such
7 party of record has standing and can file an appeal. This fee shall be
8 refunded to the appellant if the department finds in favor of the
9 appellant or waived if deemed appropriate by the department.

10 (2) Appeals from determinations under subsection (1) of this
11 section shall be made to an administrative law judge.

12 All appeals to the administrative law judge shall be on the record
13 only.

14 A party of record pursuant to this chapter may seek review under
15 this section by submitting a request in writing that must be received
16 by the environmental hearings office within thirty calendar days after
17 the action.

18 (3) Appeals to decisions of the administrative law judge may be
19 made only to the superior court pursuant to the judicial review
20 provisions of chapter 34.05 RCW.

21 **Sec. 33.** RCW 78.44.910 and 1970 ex.s. c 64 s 22 are each amended
22 to read as follows:

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

1 NEW SECTION. **Sec. 34.** RECLAMATION AWARDS ESTABLISHED. The
2 department shall create reclamation awards in any permitted mine in
3 recognition of excellence in reclamation or reclamation research. Such
4 awards shall be presented to individuals, miners, operators, companies,
5 or government agencies performing exemplary surface mining reclamation
6 in the state of Washington. The department shall designate a percent
7 of the state annual fees as funding of the awards.

8 NEW SECTION. **Sec. 35.** RECLAMATION SERVICE ESTABLISHED. The
9 department shall establish a no-cost consulting service within the
10 division of geology and earth resources to assist miners, permit
11 holders, local government, and the public in technical matters related
12 to mine regulation, mine operations, and reclamation. The department
13 shall prepare concise, printed information for the public explaining
14 surface mining activities, laws, and the role of governmental agencies
15 involved in surface mining, including how to contact all regulators.
16 The department shall not be held liable for any negligent advice.

17 NEW SECTION. **Sec. 36.** The following acts or parts of acts are
18 each repealed:

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

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

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

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

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

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

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

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

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

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

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

6 NEW SECTION. **Sec. 37.** The code reviser may recodify, as
7 necessary, RCW 78.44.150, 78.44.170, 78.44.175, and 78.44.910 within
8 chapter 78.44 RCW to accomplish the reorganization of chapter 78.44 RCW
9 as intended in this act.

10 NEW SECTION. **Sec. 38.** Captions used in this act do not constitute
11 any part of the law.

12 NEW SECTION. **Sec. 39.** Sections 3, 4, 9 through 15, 17 through 30,
13 34, and 35 of this act are each added to chapter 78.44 RCW.

14 NEW SECTION. **Sec. 40.** This act shall take effect July 1, 1992.