

1 **SHB 2521 - H AMD 1052 ADOPTED 02/14/94**

2 By Representatives Dunshee, McMorris and Pruitt

3 On page 1, strike everything after the enacting clause and
4 insert the following:

5 "NEW SECTION. **Sec. 1.** It is in the best interests of the
6 citizens of the state of Washington to insure the highest degree of
7 environmental protection while allowing the proper development and
8 use of its natural resources, including its mineral resources.
9 Metals mining can have significant positive and adverse impacts on
10 the state and on local communities. The purpose of this chapter is
11 to assure that metals mineral mining or milling operations are
12 designed, constructed, and operated in a manner that promotes both
13 economic opportunities and environmental and public health
14 safeguards for the citizens of the state. It is the intent of the
15 legislature to create a regulatory framework which yields, to the
16 greatest extent possible, a metals mining industry that is
17 compatible with these policies.

18 NEW SECTION. **Sec. 2.** The definitions set forth in this section
19 apply throughout this chapter.

20 (1) "Metals mining and milling operation" means a mining
21 operation extracting from the earth precious or base metal ore and
22 processing the ore by treatment or concentration in a milling
23 facility. It also refers to an expansion of an existing operation
24 or any new metals mining operation if the expansion or new mining
25 operation is likely to result in a significant, adverse
26 environmental impact pursuant to the provisions of chapter 43.21C
27 RCW. The extraction of dolomite, sand, gravel, and aggregate and
28 the smelting of aluminum are not metals mining and milling
29 operations regulated under this chapter.

30 (2) "Heap leach extraction process" means the process of
31 extracting base or precious metal ore by percolating solutions

1 through ore in an open system and includes reprocessing of
2 previously milled ore. The heap leach extraction process does not
3 include leaching in a vat or tank.

4 (3) "In situ extraction" means the process of dissolving base
5 or precious metals from their natural place in the geological
6 setting and retrieving the solutions from which metals can be
7 recovered.

8 (4) "Regulated substances" means any materials regulated under
9 a waste discharge permit pursuant to the requirements of chapter
10 90.48 RCW and/or a permit issued pursuant to chapter 70.94 RCW.

11 (5) "To mitigate" means (a) to avoid the adverse impact
12 altogether by not taking a certain action or parts of an action;
13 (b) to minimize adverse impacts by limiting the degree or magnitude
14 of the action and its implementation, by using appropriate
15 technology or by taking affirmative steps to avoid or reduce
16 impacts; (c) to rectify adverse impacts by repairing,
17 rehabilitating, or restoring the affected environment; (d) to
18 reduce or eliminate adverse impacts over time by preservation and
19 maintenance operations during the life of the action; (e) to
20 compensate for the impact by replacing, enhancing, or providing
21 substitute resources or environments; or (f) to monitor the adverse
22 impact and take appropriate corrective measures.

23 NEW SECTION. **Sec. 3.** Metals mining and milling operations are
24 subject to the requirements of this chapter in addition to the
25 requirements established in other statutes and rules.

26 NEW SECTION. **Sec. 4.** The department of ecology shall
27 require each applicant submitting a checklist pursuant to chapter
28 43.21C RCW for a metals mining and milling operation to disclose
29 the ownership and each controlling interest in the proposed
30 operation. The applicant shall also disclose all other mining
31 operations within the United States which the applicant operates or
32 in which the applicant has an ownership or controlling interest.
33 In addition, the applicant shall disclose and may enumerate and

1 describe the circumstances of (1) any past or present bankruptcies
2 involving the ownerships and their subsidiaries, (2) any
3 abandonment of sites regulated by the model toxics control act,
4 chapter 70.105D RCW, or other similar state remedial cleanup
5 programs, or the federal comprehensive environmental response,
6 compensation, and liability act, 42 U.S.C. Sec. 9601 et seq., as
7 amended, (3) any penalties in excess of ten thousand dollars
8 assessed for violations of the provisions of 33 U.S.C. Sec. 1251 et
9 seq. or 42 U.S.C. Sec. 7401 et seq., and (4) any previous
10 forfeitures of financial assurance due to noncompliance with
11 reclamation or remediation requirements. This information shall be
12 available for public inspection and copying at the department of
13 ecology. Ownership or control of less than ten percent of the
14 stock of a corporation shall not by itself constitute "ownership"
15 or a "controlling interest" under this section.

16 NEW SECTION. **Sec. 5.** (1) An environmental impact statement
17 must be prepared for any proposed metals mining and milling
18 operation. The department of ecology shall be the lead agency in
19 coordinating the environmental review process under chapter 43.21C
20 RCW and in preparing the environmental impact statement, except for
21 uranium and thorium operations regulated under Title 70 RCW.

22 (2) As part of the environmental review of metals mining and
23 milling operations regulated under this chapter, the applicant
24 shall provide baseline data adequate to document the premining
25 conditions at the proposed site of the metals mining and milling
26 operation. The baseline data shall contain information on the
27 elements of the natural environment identified in rules adopted
28 pursuant to chapter 43.21C RCW.

29 (3) The department of ecology, after consultation with the
30 department of fish and wildlife, shall incorporate measures to
31 mitigate significant probable adverse impacts to fish and wildlife
32 as part of the department of ecology's permit requirements for the
33 proposed operation.

1 (4) In conducting the environmental review and preparing the
2 environmental impact statement, the department of ecology shall
3 cooperate with all affected local governments to the fullest extent
4 practicable.

5 NEW SECTION. **Sec. 6.** The department of ecology will appoint
6 a metals mining coordinator. The coordinator will maintain current
7 information on the status of any metals mining and milling
8 operation regulated under this chapter from the preparation of the
9 environmental impact statement through the permitting,
10 construction, operation, and reclamation phases of the project or
11 until the proposal is no longer active. The coordinator shall also
12 maintain current information on postclosure activities. The
13 coordinator will act as a contact person for the applicant, the
14 operator, and interested members of the public. The coordinator
15 may also assist agencies with coordination of their inspection and
16 monitoring responsibilities.

17 NEW SECTION. **Sec. 7.** (1) State agencies with the
18 responsibility for inspecting metals mining and milling operations
19 regulated under this chapter shall conduct such inspections at
20 least quarterly.

21 (2) The legislature encourages state agencies with inspection
22 responsibilities for metals mining and milling operations regulated
23 under this chapter to explore opportunities for cross-training of
24 inspectors among state agencies and programs. This cross-training
25 would be for the purpose of meeting the inspection responsibilities
26 of these agencies in a more efficient and cost-effective manner.
27 If doing so would be more efficient and cost-effective, state
28 agency inspectors are also encouraged to coordinate inspections
29 with federal and local government inspectors as well as with one
30 another.

31 NEW SECTION. **Sec. 8.** (1) The metals mining account is
32 created in the state treasury. Expenditures from this account are
33 subject to appropriation. Expenditures from this account may only

1 be used for (a) the additional inspections of metals mining and
2 milling operations required by section 7 of this act and (b) the
3 metals mining coordinator established in section 6 of this act.

4 (2) (a) As part of its normal budget development process and
5 in consultation with the metals mining industry, the department of
6 ecology shall estimate the costs required for the department to
7 meet its obligations for the additional inspections of metals
8 mining and milling operations required by chapter . . . , Laws of
9 1994 (this act). The department shall also estimate the cost of
10 employing the metals mining coordinator established in section 6 of
11 this act.

12 (b) As part of its normal budget development process and in
13 consultation with the metals mining industry, the department of
14 natural resources shall estimate the costs required for the
15 department to meet its obligations for the additional inspections
16 of metals mining and milling operations required by chapter . . . ,
17 Laws of 1994 (this act).

18 (3) Based on the cost estimates generated by the department of
19 ecology and the department of natural resources, the department of
20 revenue shall establish the amount of a fee to be paid by each
21 active metals mining and milling operation regulated under this
22 chapter. The fee shall be established at a level to fully recover
23 the direct and indirect costs of the agency responsibilities
24 identified in subsection (2) of this section. The amount of the
25 fee for each operation shall be proportional to the number of
26 visits required per site. Each applicant for a metals mining and
27 milling operation shall also be assessed the fee based on the same
28 criterion. The department of revenue may adjust the fees
29 established in this subsection if unanticipated activity in the
30 industry increases or decreases the amount of funding necessary to
31 meet agencies' inspection responsibilities.

32 (4) The department of revenue shall collect the fees
33 established in subsection (3) of this section. All moneys paid to

1 the department of revenue from these fees shall be deposited into
2 the metals mining account.

3 (5) This section shall take effect July 1, 1995 unless the
4 legislature adopts an alternative approach based on the
5 recommendations of the metals mining advisory group established in
6 section 26 of this act.

7 NEW SECTION. Sec. 9. (1) In the processing of an application
8 for an initial waste discharge permit for a tailings facility
9 pursuant to the requirements of chapter 90.48 RCW, the department
10 of ecology shall consider site-specific criteria in determining a
11 preferred location of tailings facilities of metals mining and
12 milling operations and incorporate the requirements of all known
13 available and reasonable methods in order to maintain the highest
14 possible standards to insure the purity of all waters of the state
15 in accordance with the public policy identified by RCW 90.48.010.

16 In implementing the siting criteria, the department shall take
17 into account the objectives of the proponent's application relating
18 to mining and milling operations. These objectives shall consist
19 of, but not be limited to, (a) operational feasibility, (b)
20 compatibility with optimum tailings placement method, (c) adequate
21 volume capacity, (d) availability of construction materials, and
22 (e) an optimized embankment volume.

23 (2) To meet the mandate of subsection (1) of this section,
24 siting of tailings facilities shall be accomplished through a two-
25 stage process that consists of a primary alternatives screening
26 phase, and a secondary technical site investigation phase.

27 (3) The primary screening phase will consist of, but not be
28 limited to, siting criteria based on considerations as to location
29 as follows:

30 (a) Proximity to the one hundred year flood plain, as
31 indicated in the most recent federal emergency management agency
32 maps;

33 (b) proximity to surface and ground water;

1 (c) topographic setting;

2 (d) identifiable adverse geologic conditions, such as
3 landslides and active faults;

4 (e) visibility impacts of the public generally and residents
5 more particularly.

6 (4) The department of ecology, through the primary screening
7 process, shall reduce the available tailings facility sites to one
8 or more feasible locations whereupon a technical site investigation
9 phase shall be conducted by the department for the purpose of
10 verifying the adequacy of the remaining potential sites. The
11 technical site investigations phase shall consist of, but not be
12 limited to, the following:

13 (a) soil characteristics;

14 (b) hydrologic characteristics;

15 (c) a local and structural geology evaluation, including
16 seismic conditions and related geotechnical investigations;

17 (d) a surface water control analysis;

18 (e) a slope stability analysis.

19 (5) Upon completion of the two phase evaluation process set
20 forth above, the department of ecology shall issue a site selection
21 report on the preferred location. This report shall address the
22 above criteria as well as analyze the feasibility of reclamation
23 and stabilization of the tailings facility. The siting report may
24 recommend mitigation or engineering factors to address siting
25 concerns. The report shall be developed in conjunction with the
26 preparation of and contained in an environmental impact statement
27 prepared pursuant to chapter 43.21C RCW. The report may be
28 utilized by the department of ecology for the purpose of providing
29 information related to the suitability of the site and for ruling
30 on an application for a waste discharge permit.

31 (6) The department of ecology may, at its discretion, require
32 the applicant to provide the information required in either phase

1 one or phase two as described in subsections (3) and (4) of this
2 section.

3 NEW SECTION. **Sec. 10.** (1) In order to receive a waste
4 discharge permit from the department of ecology pursuant to the
5 requirements of chapter 90.48 RCW or in order to operate a metals
6 mining and milling tailing facility, an applicant proposing a
7 metals mining and milling operation regulated under this chapter
8 must meet the following additional requirements:

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

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

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

31 (iii) The toxicity of mine or mill tailings and the potential
32 for long-term release of regulated substances from mine or mill

1 tailings shall be reduced to the greatest extent practicable
2 through stabilization, removal, or reuse of the substances.

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

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

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

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

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

20 (c) If an interested citizen or citizen group so requests, the
21 metals mining and milling operator or applicant shall work with the
22 department of ecology and the interested party to make arrangements
23 for citizen observation and verification in the taking of required
24 water samples. While it is the intent of this subsection to
25 provide for citizen observation and verification of water sampling
26 activities, it is not the intent of this subsection to require
27 additional water sampling and analysis on the part of the mining
28 and milling operation or the department. The citizen observation
29 and verification program shall be incorporated into the
30 applicant's, operator's, or department's normal sampling regimen
31 and shall occur at least once every six months. The results from
32 these and all other relevant water sampling activities shall be

1 kept on file with the relevant county and shall be available for
2 public inspection during normal working hours.

3 (d) An operator or applicant for a metals mining and milling
4 operation must complete a voluntary reduction plan in accordance
5 with RCW 70.95C.200.

6 (2) Only those tailings facilities constructed after the
7 effective date of this act must meet the requirement established in
8 subsection (1) (a) of this section. Only those waste rock holdings
9 constructed after the effective date of this act must meet the
10 requirement established in subsection (1) (b) of this section.

11 NEW SECTION. **Sec. 11.** (1) The department of ecology and the
12 department of natural resources shall not issue necessary permits
13 to an applicant for a metals mining and milling operation until the
14 applicant has deposited with the department of ecology a
15 performance security which is acceptable to both agencies based on
16 the requirements of subsection (2) of this section. This
17 performance security may be:

18 (a) Bank letters of credit acceptable to both agencies;

19 (b) A cash deposit;

20 (c) Negotiable securities acceptable to both agencies;

21 (d) An assignment of a savings account;

22 (e) A savings certificate in a Washington bank; or

23 (f) A corporate surety bond executed in favor of the
24 department of ecology by a corporation authorized to do business in
25 the state of Washington under Title 48 RCW and acceptable to both
26 agencies.

27 The agencies may, for any reason, refuse any performance
28 security not deemed adequate.

29 (2) The performance security shall be conditioned on the
30 faithful performance of the applicant or operator in meeting the
31 following obligations:

32 (a) Satisfactory compliance with the laws of the state of
33 Washington pertaining to metals mining and milling operations and

1 with the related rules and permit conditions established by state
2 and local government with respect to those operations as defined in
3 RCW 78.44.031(17) and the construction, operation, reclamation, and
4 closure of a metals mining and milling operation;

5 (b) Postclosure environmental monitoring as determined by the
6 department of ecology and the department of natural resources; and

7 (c) Provision of sufficient funding for cleanup of potential
8 problems revealed during or after closure.

9 (3) The department of ecology and the department of natural
10 resources shall jointly adopt rules for determining the amount of
11 the performance security, requirements for the performance
12 security, requirements for the issuer of the performance security,
13 and any other requirements necessary for the implementation of this
14 section.

15 (4) The department of ecology and the department of natural
16 resources, acting jointly, may increase or decrease the amount of
17 the performance security at any time to compensate for any
18 alteration in the operation that affects meeting the obligations in
19 subsection (2) of this section. At a minimum, the agencies shall
20 jointly review the adequacy of the performance security every two
21 years.

22 (5) Liability under the performance security shall be
23 maintained until the obligations in subsection (2) of this section
24 are met to the satisfaction of the department of ecology and the
25 department of natural resources. Liability under the performance
26 security may be released only upon written notification by the
27 department of ecology, with the concurrence of the department of
28 natural resources.

29 (6) Any interest or appreciation on the performance security
30 shall be held by the department of ecology until the obligations in
31 subsection (2) of this section have been met to the satisfaction of
32 the department of ecology and the department of natural resources.
33 At such time, the interest shall be remitted to the operator.

1 However, if the applicant or operator fails to comply with the
2 obligations of subsection (2) of this section, the interest or
3 appreciation may be used by either agency to comply with the
4 obligations.

5 NEW SECTION. **Sec. 12.** The department of ecology may, with
6 staff, equipment, and material under its control, or by contract
7 with others, remediate or mitigate any impact of a metals mining
8 and milling operation when it finds that the operator or permit
9 holder has failed to comply with relevant statutes, rules, or
10 permits, and the operator or permit holder has failed to take
11 adequate or timely action to rectify these impacts.

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

21 The department may proceed at any time after issuing the order
22 to submit performance security to remediate or mitigate adverse
23 impacts.

24 The department shall keep a record of all expenses incurred in
25 carrying out any remediation or mitigation activities authorized
26 under this section, including:

- 27 (1) Remediation or mitigation;
- 28 (2) A reasonable charge for the services performed by the
29 state's personnel and the state's equipment and materials utilized;
30 and
- 31 (3) Administrative and legal expenses related to remediation
32 or mitigation.

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

8 If the department of natural resources finds that reclamation
9 has not occurred according to the standards required under chapter
10 78.44 RCW in a metals mining and milling operation, then the
11 department of natural resources may cause reclamation to occur
12 pursuant to RCW 78.44.240. Upon approval of the department of
13 ecology, the department of natural resources may reclaim part or
14 all of the metals mining and milling operation using that portion
15 of the surety posted pursuant to this act that has been identified
16 for reclamation.

17 NEW SECTION. **Sec. 13.** (1) The legislature finds that the
18 construction and operation of large-scale metals mining and milling
19 facilities may create new job opportunities and enhance local tax
20 revenues. However, the legislature also finds that such operations
21 may also result in new demands on public facilities owned and
22 operated by local government entities, such as public streets and
23 roads; publicly owned parks, open space, and recreation facilities;
24 school facilities; and fire protection facilities in jurisdictions
25 that are not part of a fire district. It is important for these
26 economic impacts to be identified as part of any proposal for a
27 large-scale metals mining and milling operation. It is then
28 appropriate for the county legislative authority to balance
29 expected revenues, including revenues derived from taxes paid by
30 the owner of such an operation, and costs associated with the
31 operation to determine to what degree any new costs require
32 mitigation by the metals mining applicant.

1 (2) An applicant for a large-scale metals mining and milling
2 operation regulated under this chapter must submit to the relevant
3 county legislative authority an impact analysis describing the
4 economic impact of the proposed mining operation on local
5 governmental units. For the purposes of this section, a metals
6 mining operation is "large-scale" if, in the construction or
7 operation of the mine and the associated milling facility, the
8 applicant and contractors at the site employ more than thirty-five
9 persons during any consecutive six-month period. The relevant
10 county is the county in which the mine and mill are to be sited,
11 unless the economic impacts to local governmental units are
12 projected to substantially affect more than one county. In that
13 case, the impact plan must be submitted to the legislative
14 authority of all affected counties. Local governmental units
15 include counties, cities, towns, school districts, and special
16 purpose districts.

17 (3) The economic impact analysis shall include at least the
18 following information:

19 (a) A timetable for development of the mining operation,
20 including the opening date of the operation and the estimated
21 closing date;

22 (b) The estimated number of persons coming into the impacted
23 area as a result of the development of the mining operation;

24 (c) An estimate of the increased capital and operating costs
25 to local governmental units for providing services necessary as a
26 result of the development of the mining operation; and

27 (d) An estimate of the increased tax or other revenues
28 accruing to local government units as a result of development of
29 the mining and milling operation.

30 (4) The county legislative authority of a county planning
31 under chapter 36.70A RCW may assess impact fees under chapter 82.02
32 RCW to address economic impacts associated with development of the
33 mining operation. The county legislative authority shall hold at

1 least one public hearing on the economic impact analysis and any
2 proposed mitigation measures.

3 (5) The county legislative authority of a county which is not
4 planning under chapter 36.70A RCW may negotiate with the applicant
5 on a strategy to address economic impacts associated with
6 development of the mining operation. The county legislative
7 authority shall hold at least one public hearing on the economic
8 impact analysis and any proposed mitigation measures.

9 (6) The county legislative authority must approve or
10 disapprove the impact analysis and any associated proposals from
11 the applicant to address economic impacts to local governmental
12 units resulting from development of the mining operation. If the
13 applicant does not submit an adequate impact analysis to the
14 relevant county legislative authority or if the county legislative
15 authority does not find the applicant's proposals to be acceptable
16 because of their failure to adequately mitigate adverse economic
17 impacts, the county legislative authority shall refuse to issue any
18 permits under its jurisdiction necessary for the construction or
19 operation of the mine and associated mill.

20 (7) The requirements established in this section apply to
21 metals mining operations under construction or constructed after
22 the effective date of this act.

23 (8) The provisions of chapter 82.02 RCW shall apply to new
24 mining and milling operations.

25 NEW SECTION. **Sec. 14.** (1) Except as provided in subsection
26 (2) of this section, any aggrieved person may commence a civil
27 action on his or her own behalf:

28 (a) Against any person, including any state agency or local
29 government agency, who is alleged to be in violation of a law,
30 rule, order, or permit pertaining to metals mining and milling
31 operations regulated under this act;

1 (b) Against a state agency if there is alleged a failure of
2 the agency to perform any nondiscretionary act or duty under state
3 laws pertaining to metals mining and milling operations; or

4 (c) Against any person who constructs a metals mining and
5 milling operation without the permits and authorizations required
6 by state law.

7 The superior courts shall have jurisdiction to enforce metals
8 mining laws, rules, orders, and permit conditions, or to order the
9 state to perform such act or duty, as the case may be. In addition
10 to injunctive relief, a superior court may award a civil penalty
11 when deemed appropriate in an amount not to exceed ten thousand
12 dollars per violation per day, payable to the state of Washington.

13 (2) No action may be commenced:

14 (a) Under subsection (1)(a) of this section:

15 (i) Prior to sixty days after the plaintiff has given notice
16 of the alleged violation to the state, and to any alleged violator
17 of a metals mining and milling law, rule, order, or permit
18 condition; or

19 (ii) If the state has commenced and is diligently prosecuting
20 a civil action in a court of the state or of the United States or
21 is diligently pursuing authorized administrative enforcement action
22 to require compliance with the law, rule, order, or permit. To
23 preclude a civil action, the enforcement action must contain
24 specific, aggressive, and enforceable timelines for compliance and
25 must provide for public notice of and reasonable opportunity for
26 public comment on the enforcement action. In any such court
27 action, any aggrieved person may intervene as a matter of right.

28 (b) Under subsection (1)(b) of this section prior to sixty
29 days after the plaintiff has given notice of such action to the
30 state.

31 (3)(a) Any action respecting a violation of a law, rule,
32 order, or permit condition pertaining to metals mining and milling

1 operations may be brought in the judicial district in which such
2 operation is located or proposed.

3 (b) In such action under this section, the state, if not a
4 party, may intervene as a matter of right.

5 (4) The court, in issuing any final order in any action
6 brought pursuant to subsection (1) of this section, may award costs
7 of litigation, including reasonable attorney and expert witness
8 fees, to any prevailing party, wherever the court determines such
9 award is appropriate. The court may, if a temporary restraining
10 order or preliminary injunction is sought, require the filing of a
11 bond or equivalent security in accordance with the rules of civil
12 procedure.

13 (5) A civil action to enforce compliance with a law, rule, or
14 order may not be brought under this section if any other statute,
15 or the common law, provides authority for the plaintiff to bring a
16 civil action and, in such action, obtain the same relief, as
17 authorized under this section, for enforcement of such law, rule or
18 order. Nothing in this section restricts any right which any
19 person, or class of persons, may have under any statute or common
20 law to seek any relief, including relief against the state or a
21 state agency.

22 NEW SECTION. **Sec. 15.** A milling facility which is not
23 adjacent to or in the vicinity of the metals mining operation
24 producing the ore to be milled and which processes precious or base
25 metal ore by treatment or concentration is subject to the
26 provisions of sections 1 through 9, 10(1) (a), (c) and (d), 11
27 through 14, and 18 through 24 of this act. The smelting of
28 aluminum does not constitute a metals milling operation under this
29 section.

30 NEW SECTION. **Sec. 16.** (1) Until June 30, 1996, there shall
31 be a moratorium on metals mining and milling operations using the
32 heap leach extraction process. The department of natural resources
33 and the department of ecology shall jointly review the existing

1 laws and regulations pertaining to the heap leach extraction
2 process for their adequacy in safeguarding the environment and
3 shall report their findings to the legislature by December 30,
4 1994.

5 (2) Metals mining using the process of in situ extraction is
6 permanently prohibited in the state of Washington.

7 NEW SECTION. **Sec. 17.** The department of ecology will work
8 with the metals mining industry and relevant federal, state and
9 local governmental agencies to identify areas of regulatory overlap
10 among regulators of mining and milling operations. The department
11 will also identify possible solutions for eliminating or reducing
12 regulatory overlap. The department will report back to the
13 legislature on its findings and possible solutions by January 1,
14 1995.

15 NEW SECTION. **Sec. 18.** A new section is added to chapter
16 70.94 RCW to read as follows:

17 If a metals mining and milling operation is issued a permit
18 pursuant to this chapter, then it will be subject to special
19 inspection requirements. The department of ecology shall inspect
20 these mining operations at least quarterly in order to ensure that
21 the operation is in compliance with the conditions of any permit
22 issued to it pursuant to this chapter. The department shall
23 conduct additional inspections during the construction phase of the
24 mining and milling operation in order to ensure compliance with
25 this chapter.

26 NEW SECTION. **Sec. 19.** A new section is added to chapter
27 70.105 RCW to read as follows:

28 If a metals mining and milling operation is issued a permit
29 pursuant to this chapter, then it will be subject to special
30 inspection requirements. The department of ecology shall inspect
31 these mining operations at least quarterly in order to ensure that
32 the operation is in compliance with the conditions of any permit
33 issued to it pursuant to this chapter. The department shall

1 conduct additional inspections during the construction phase of the
2 mining operation in order to ensure compliance with this chapter.

3 **Sec. 20.** RCW 90.03.350 and 1987 c 109 s 91 are each amended
4 to read as follows:

5 Any person, corporation or association intending to construct
6 or modify any dam or controlling works for the storage of ten acre
7 feet or more of water, shall before beginning said construction or
8 modification, submit plans and specifications of the same to the
9 department for examination and approval as to its safety. Such
10 plans and specifications shall be submitted in duplicate, one copy
11 of which shall be retained as a public record, by the department,
12 and the other returned with its approval or rejection endorsed
13 thereon. No such dam or controlling works shall be constructed or
14 modified until the same or any modification thereof shall have been
15 approved as to its safety by the department. Any such dam or
16 controlling works constructed or modified in any manner other than
17 in accordance with plans and specifications approved by the
18 department or which shall not be maintained in accordance with the
19 order of the department shall be presumed to be a public nuisance
20 and may be abated in the manner provided by law, and it shall be
21 the duty of the attorney general or prosecuting attorney of the
22 county wherein such dam or controlling works, or the major portion
23 thereof, is situated to institute abatement proceedings against the
24 owner or owners of such dam or controlling works, whenever he or
25 she is requested to do so by the department.

26 A metals mining and milling operation regulated under chapter
27 . . . , Laws of 1994 (this act) is subject to additional dam safety
28 inspection requirements due to the special hazards associated with
29 failure of a tailings pond impoundment. The department shall
30 inspect these impoundments at least quarterly during the project's
31 operation and at least annually thereafter for the postclosure
32 monitoring period in order to ensure the safety of the dam or
33 controlling works. The department shall conduct additional

1 inspections as needed during the construction phase of the mining
2 operation in order to ensure the safe construction of the tailings
3 impoundment.

4 **Sec. 21.** RCW 90.48.090 and 1987 c 109 s 127 are each amended
5 to read as follows:

6 The department or its duly appointed agent shall have the
7 right to enter at all reasonable times in or upon any property,
8 public or private, for the purpose of inspecting and investigating
9 conditions relating to the pollution of or the possible pollution
10 of any of the waters of this state.

11 The department shall have special inspection requirements for
12 metals mining and milling operations regulated under chapter . . . ,
13 Laws of 1994 (this act). The department shall inspect these mining
14 and milling operations at least quarterly in order to ensure
15 compliance with the intent and any permit issued pursuant to this
16 chapter. The department shall conduct additional inspections as
17 needed during the construction phase of these mining operations in
18 order to ensure compliance with this chapter.

19 **Sec. 22.** RCW 78.44.161 and 1993 c 518 s 25 are each amended
20 to read as follows:

21 The department may order at any time an inspection of the
22 disturbed area to determine if the miner or permit holder has
23 complied with the reclamation permit, rules, and this chapter.

24 The department shall have special inspection requirements for
25 metals mining and milling operations regulated under chapter . . . ,
26 Laws of 1994 (this act). The department shall inspect these mining
27 operations at least quarterly in order to ensure that the permit
28 holder is in compliance with the reclamation permit, rules, and
29 this chapter. The department shall conduct additional inspections
30 as needed during the construction phase of these mining operations
31 in order to ensure compliance with the reclamation permit, rules,
32 and this chapter.

1 **Sec. 23.** RCW 78.44.087 and 1993 c 518 s 15 are each amended
2 to read as follows:

3 The department shall not issue a reclamation permit until the
4 applicant has deposited with the department an acceptable
5 performance security on forms prescribed and furnished by the
6 department. A public or governmental agency shall not be required
7 to post performance security nor shall a permit holder be required
8 to post surface mining performance security with more than one
9 state(~~(, local, or federal)~~) or local agency.

10 This performance security may be:

- 11 (1) Bank letters of credit acceptable to the department;
- 12 (2) A cash deposit;
- 13 (3) Negotiable securities acceptable to the department;
- 14 (4) An assignment of a savings account;
- 15 (5) A savings certificate in a Washington bank on an
16 assignment form prescribed by the department;
- 17 (6) Assignments of interests in real property within the state
18 of Washington; or
- 19 (7) A corporate surety bond executed in favor of the
20 department by a corporation authorized to do business in the state
21 of Washington under Title 48 RCW and authorized by the department.

22 The performance security shall be conditioned upon the
23 faithful performance of the requirements set forth in this chapter
24 and of the rules adopted under it.

25 The department shall have the authority to determine the
26 amount of the performance security using a standardized performance
27 security formula developed by the department. The amount of the
28 security shall be determined by the department and based on the
29 estimated costs of completing reclamation according to the approved
30 reclamation plan or minimum standards and related administrative
31 overhead for the area to be surface mined during (a) the next
32 twelve-month period, (b) the following twenty-four months, and (c)

1 any previously disturbed areas on which the reclamation has not
2 been satisfactorily completed and approved.

3 The department may increase or decrease the amount of the
4 performance security at any time to compensate for a change in the
5 disturbed area, the depth of excavation, a modification of the
6 reclamation plan, or any other alteration in the conditions of the
7 mine that affects the cost of reclamation. The department may, for
8 any reason, refuse any performance security not deemed adequate.

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

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

27 Except as provided in this section, no other state agency or
28 local government shall require performance security for the
29 purposes of surface mine reclamation and only one agency of
30 government shall require and hold the performance security. The
31 department may enter into written agreements with federal agencies
32 in order to avoid redundant bonding of surface mines straddling

1 boundaries between federally controlled and other lands within
2 Washington state.

3 ~~((Notwithstanding any other provision of this section, nothing
4 shall preclude the department of ecology from requiring a separate
5 performance security for metallic minerals or uranium surface mines
6 under any authority if any that may be presently vested in the
7 department of ecology relating to such mines.))~~ The department and
8 the department of ecology shall jointly require performance
9 security for metals mining and milling operations regulated under
10 chapter . . . , Laws of 1994 (this act).

11 **Sec. 24.** RCW 78.44.131 and 1993 c 518 s 20 are each amended
12 to read as follows:

13 The need for, and the practicability of, reclamation shall
14 control the type and degree of reclamation in any specific
15 instance. However, the basic objective of reclamation is to
16 reestablish on a continuing basis the vegetative cover, slope
17 stability, water conditions, and safety conditions suitable to the
18 proposed subsequent use consistent with local land use plans for
19 the surface mine site.

20 Each permit holder shall comply with the minimum reclamation
21 standards in effect on the date the permit was issued and any
22 additional reclamation standards set forth in the approved
23 reclamation plan. The department may modify, on a site specific
24 basis, the minimum reclamation standards for metals mining and
25 milling operations regulated under chapter . . . , Laws of 1994
26 (this act) in order to achieve the reclamation and closure
27 objectives of that chapter. The basic objective of reclamation for
28 these operations is the reestablishment on a continuing basis of
29 vegetative cover, slope stability, water conditions, and safety
30 conditions.

31 Reclamation activities, particularly those relating to control
32 of erosion and mitigation of impacts of mining to adjacent areas,
33 shall, to the extent feasible, be conducted simultaneously with

1 surface mining, and in any case shall be initiated at the earliest
2 possible time after completion of surface mining on any segment of
3 the permit area.

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

7 The department may by contract delegate enforcement of
8 provisions of reclamation plans to counties, cities, and towns. A
9 county, city, or town performing enforcement functions may not
10 impose any additional fees on permit holders.

11 NEW SECTION. **Sec. 25.** Sections 1 through 16 of this act
12 shall constitute a new chapter in Title 78 RCW.

13 NEW SECTION. **Sec. 26.** (1) The department of ecology shall
14 establish a metals mining advisory group, to be comprised of
15 members representing the metals mining industry, the environmental
16 community, the department of ecology, the department of fish and
17 wildlife, and the department of natural resources.

18 (2) The metals mining advisory group will focus on the
19 following tasks:

20 (a) A review of the adequacy of the cost-accounting methods of
21 the departments of ecology and natural resources in accurately
22 identifying the costs associated with the additional inspection
23 requirements established in this act;

24 (b) Establishing a set of success measures to be used to
25 evaluate the implementation of the new coordinator role established
26 in this act;

27 (c) Examination of possible new inspection requirements for
28 the department of fish and wildlife and a means to fund any new
29 requirements; and

30 (d) Identification and evaluation of the alternative bases for
31 allocating the costs that may be necessitated by chapter . . . ,
32 Laws of 1994 (this act).

1 (3) The advisory group shall report its findings and its
2 preferred alternative among the options identified in subsection
3 (2)(d) of this section to the legislature by January 1, 1995.

4 NEW SECTION. **Sec. 27.** 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. 28.** This act is necessary for the
9 immediate preservation of the public peace, health, or safety, or
10 support of the state government and its existing public
11 institutions, and, with the exception of sections 6 through 8,
12 shall take effect immediately.

13 NEW SECTION. **Sec. 29.** Sections 6 through 8 shall take effect
14 July 1, 1995."