

1 **E2SSB 5502 - H AMD 000676 ADOPTED 4-18-93**

2 By Representative Pruitt and others

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

5 "NEW SECTION. **Sec. 1.** The legislature recognizes that the
6 extraction of minerals through surface mining has historically
7 included regulatory involvement by both state and local
8 governments.

9 It is the intent of the legislature to clarify that surface
10 mining is an appropriate land use, subject to reclamation authority
11 exercised by the department of natural resources and land use and
12 operation regulatory authority by counties, cities, and towns.

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

15 The legislature recognizes that the extraction of minerals by
16 surface mining is ~~((a basic and))~~ an essential activity making an
17 important contribution to the economic well-being of the state and
18 nation. ~~((At the same time, proper reclamation of surface))~~ It is
19 not possible to extract minerals without producing some
20 environmental impacts. At the same time, comprehensive regulation
21 of mining and thorough reclamation of mined lands is necessary to
22 prevent ~~((undesirable land and water))~~ or mitigate conditions that
23 would be detrimental to the environment and to protect the general
24 welfare, health, safety, and property rights of the citizens of the
25 state. Surface mining takes place in diverse areas where the
26 geologic, topographic, climatic, biologic, and social conditions
27 are significantly different, and reclamation specifications must
28 vary accordingly. ~~((It is not practical to extract minerals~~
29 ~~required by our society without disturbing the surface of the earth~~
30 ~~and producing waste materials, and the very character of many types~~

1 ~~of surface mining operations precludes complete restoration of the~~
2 ~~land to its original condition. However, the legislature finds~~
3 ~~that reclamation of surface mined lands as provided in this chapter~~
4 ~~will allow the mining of valuable minerals and will provide for the~~
5 ~~protection and subsequent beneficial use of the mined and reclaimed~~
6 ~~land.))~~ Therefore, the legislature finds that a balance between
7 appropriate environmental regulation and the production and
8 conservation of minerals is in the best interests of the citizens
9 of the state.

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

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

13 (1) Provide that the usefulness, productivity, and scenic
14 values of all lands and waters involved in surface mining within
15 the state will receive the greatest practical degree of protection
16 and ~~((restoration. It is a further purpose of this chapter to~~
17 ~~provide a means of cooperation between private and governmental~~
18 ~~entities in carrying this chapter into effect))~~ reclamation at the
19 earliest opportunity following completion of surface mining;

20 (2) Provide for the greatest practical degree of state-wide
21 consistency in the regulation of surface mines;

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

24 (4) Ensure that reclamation is consistent with local land use
25 plans; and

26 (5) Ensure the power of local government to regulate land use
27 and operations pursuant to section 16 of this act.

28 NEW SECTION. **Sec. 4.** DEFINITIONS. Unless the context
29 clearly indicates otherwise, the definitions in this section apply
30 throughout this chapter.

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

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

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

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

15 (5) "Disturbed area" means any place where activities clearly
16 in preparation for, or during, surface mining have physically
17 disrupted, covered, compacted, moved, or otherwise altered the
18 characteristics of soil, bedrock, vegetation, or topography that
19 existed prior to such activity. Disturbed areas may include but
20 are not limited to: Working faces, water bodies created by mine-
21 related excavation, pit floors, the land beneath processing plant
22 and stock pile sites, spoil pile sites, and equipment staging
23 areas.

24 Disturbed areas do not include:

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

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

32 (6) "Miner" means any person or persons, any partnership,
33 limited partnership, or corporation, or any association of persons,

1 including every public or governmental agency engaged in mining
2 from the surface.

3 (7) "Minerals" means clay, coal, gravel, industrial minerals,
4 metallic substances, peat, sand, stone, topsoil, and any other
5 similar solid material or substance to be excavated from natural
6 deposits on or in the earth for commercial, industrial, or
7 construction use.

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

15 Operations specifically include:

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

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

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

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

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

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

1 (11) "Reclamation" means rehabilitation for the appropriate
2 future use of disturbed areas resulting from surface mining
3 including areas under associated mineral processing equipment and
4 areas under stockpiled materials. Although both the need for and
5 the practicability of reclamation will control the type and degree
6 of reclamation in any specific surface mine, the basic objective
7 shall be to reestablish on a perpetual basis the vegetative cover,
8 soil stability, and water conditions appropriate to the approved
9 subsequent use of the surface mine and to prevent or mitigate
10 future environmental degradation.

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

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

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

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

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

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

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

32 (16) "SEPA" means the state environmental policy act, chapter
33 43.21C RCW and rules adopted thereunder.

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

4 (i) More than three acres of disturbed area;

5 (ii) Mined slopes greater than thirty feet high and steeper
6 than 1.0 foot horizontal to 1.0 foot vertical; or

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

10 (b) Surface mines include areas where mineral extraction from
11 the surface occurs by the auger method or by reworking mine refuse
12 or tailings, when these activities exceed the size or height
13 thresholds listed in (a) of this subsection.

14 (c) Surface mining shall exclude excavations or grading used:

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

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

19 (iii) For the purpose of removing stockpiles;

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

22 (v) For sand authorized by RCW 43.51.685; and

23 (vi) For underground mines.

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

28 NEW SECTION. **Sec. 5.** SEGMENTAL RECLAMATION. The permit
29 holder shall reclaim each segment of the mine within two years of
30 completion of surface mining on that segment except as provided in
31 a segmental reclamation agreement approved in writing by the

1 department. The primary objective of a segmental reclamation
2 agreement should be to enhance final reclamation.

3 **Sec. 6.** RCW 78.44.040 and 1984 c 215 s 2 are each amended to
4 read as follows:

5 The department of natural resources is charged with the
6 administration of reclamation under this chapter. In order to
7 implement ~~((the chapter's terms and provisions))~~ and enforce this
8 chapter, the department, under the ~~((provisions of the))~~
9 administrative procedure act (chapter 34.05 RCW), ~~((as now or~~
10 ~~hereafter amended,))~~ may from time to time ~~((promulgate))~~ adopt
11 those rules ~~((and regulations))~~ necessary to carry out the purposes
12 of this chapter.

13 **Sec. 7.** RCW 78.44.050 and 1970 ex.s. c 64 s 6 are each
14 amended to read as follows:

15 The department shall have the exclusive authority to regulate
16 surface mine reclamation except that, by contractual agreement, the
17 department may delegate some or all of its enforcement authority to
18 a county, city, or town. All counties, cities, or towns shall have
19 the authority to zone surface mines and adopt ordinances regulating
20 operations pursuant to section 16 of this act, except that county,
21 city, or town operations ordinances may be preempted by the
22 department during the emergencies outlined in section 27 of this
23 act and related rules.

24 This chapter shall not ~~((affect))~~ alter or preempt any ~~((of~~
25 ~~the))~~ provisions of the state fisheries laws (Title 75 RCW), the
26 state water allocation and use laws (chapters 90.03 and 90.44 RCW),
27 the state water pollution control laws ((Title 90)) chapter 90.48
28 RCW), the state ((game)) wildlife laws (Title 77 RCW), ((or any
29 other state laws, and shall be cumulative and nonexclusive)) state
30 noise laws or air quality laws (Title 70 RCW), shoreline management
31 (chapter 90.58 RCW), the state environmental policy act (chapter

1 43.21C RCW), state growth management (chapter 36.70A RCW), state
2 drinking water laws (chapters 43.20 and 70.119A RCW), or any other
3 state statutes.

4 **Sec. 8.** RCW 78.44.060 and 1970 ex.s. c 64 s 7 are each
5 amended to read as follows:

6 The department shall have the authority to conduct ~~((or))~~,
7 authorize, and/or participate in investigations, research,
8 experiments, and demonstrations, and to collect and disseminate
9 information relating to surface mining and reclamation of surface
10 mined lands.

11 **Sec. 9.** RCW 78.44.070 and 1970 ex.s. c 64 s 8 are each
12 amended to read as follows:

13 The department may cooperate with other governmental and
14 private agencies ~~((in this state and other states))~~ and agencies of
15 the federal government, and may reasonably reimburse them for any
16 services the department requests that they provide. The department
17 may also receive any federal funds, state funds and any other funds
18 and expend them for reclamation of land affected by surface mining
19 and for purposes enumerated in RCW 78.44.060.

20 NEW SECTION. **Sec. 10.** SURFACE MINING RECLAMATION ACCOUNT.

21 The surface mining reclamation account is created in the state
22 treasury. Annual mining fees, funds received by the department
23 from state, local, or federal agencies for research purposes, as
24 well as other mine-related funds and fines received by the
25 department shall be deposited into this account. The surface mine
26 reclamation account may be used by the department only to:

- 27 (1) Administer its regulatory program pursuant to this
28 chapter;
- 29 (2) Undertake research relating to surface mine regulation,
30 reclamation of surface mine lands, and related issues; and

1 (3) Cover costs arising from appeals from determinations made
2 under this chapter.

3 Fines, interest, and other penalties collected by the
4 department under the provisions of this chapter shall be used to
5 reclaim surface mines abandoned prior to 1971.

6 NEW SECTION. **Sec. 11.** RECLAMATION PERMITS REQUIRED--
7 APPLICATIONS. After July 1, 1993, no miner or permit holder may
8 engage in surface mining without having first obtained a
9 reclamation permit from the department. Operating permits issued
10 by the department between January 1, 1971, and June 30, 1993, shall
11 be considered reclamation permits provided such permits
12 substantially meet the protections, mitigations, and reclamation
13 goals of sections 12 and 20 of this act within five years after the
14 effective date of this section. State agencies and local
15 government shall be exempt from this time limit for inactive sites.
16 Prior to the use of an inactive site, the reclamation plan must be
17 brought up to current standards. A separate permit shall be
18 required for each noncontiguous surface mine. The reclamation
19 permit shall consist of the permit forms and any exhibits attached
20 thereto. The permit holder shall comply with the provisions of the
21 reclamation permit unless waived and explained in writing by the
22 department.

23 Prior to receiving a reclamation permit, an applicant must
24 submit an application on forms provided by the department that
25 shall contain the following information and shall be considered
26 part of the reclamation permit:

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

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

1 (3) A reasonably accurate description of the minerals to be
2 surface mined;

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

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

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

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

10 (8) Any applicable SEPA documents; and

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

12 The reclamation permit shall be granted for the period
13 required to deplete essentially all minerals identified in the
14 reclamation permit on the land covered by the reclamation plan.
15 The reclamation permit shall be valid until the reclamation is
16 complete unless the permit is canceled by the department.

17 NEW SECTION. **Sec. 12.** RECLAMATION PLANS. An applicant shall
18 provide a reclamation plan and copies acceptable to the department
19 prior to obtaining a reclamation permit. The department shall have
20 the sole authority to approve reclamation plans. Reclamation plans
21 or modified reclamation plans submitted to the department after
22 June 30, 1993, shall meet or exceed the minimum reclamation
23 standards set forth in this chapter and by the department in rule.
24 Each applicant shall also supply copies of the proposed plans and
25 final reclamation plan approved by the department to the county,
26 city, or town in which the mine will be located. The department
27 shall solicit comment from local government prior to approving a
28 reclamation plan. The reclamation plan shall include:

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

31 (a) A statement of a proposed subsequent use of the land after
32 reclamation that is consistent with the local land use designation.

1 Approval of the reclamation plan shall not vest the proposed
2 subsequent use of the land;

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

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

8 (d) The maximum depth of mining;

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

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

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

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

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

24 (j) Where mining is contemplated within critical aquifer
25 recharge areas, special protection areas as defined by chapter
26 90.48 RCW and implementing rules, public water supply watersheds,
27 sole source aquifers, wellhead protection areas, and designated
28 aquifer protection areas as set forth in chapter 36.36 RCW, a
29 thoroughly documented hydrogeologic analysis of the reclamation
30 plan may be required; and

31 (k) Additional information as required by the department
32 including but not limited to: The positions of reclamation
33 setbacks and screening, conservation of topsoil, interim

1 reclamation, revegetation, postmining erosion control, drainage
2 control, slope stability, disposal of mine wastes, control of fill
3 material, development of wetlands, ponds, lakes, and impoundments,
4 and rehabilitation of topography.

5 (2) Maps of the surface mine showing:

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

8 (b) Existing topographic contours;

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

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

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

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

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

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

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

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

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

30 If the department refuses to approve a reclamation plan in the
31 form submitted by an applicant or permit holder, it shall notify
32 the applicant or permit holder stating the reasons for its
33 determination and describe such additional requirements to the

1 applicant or permit holder's reclamation plan as are necessary for
2 the approval of the plan by the department. If the department
3 refuses to approve a complete reclamation plan within one hundred
4 twenty days, the miner or permit holder may appeal this
5 determination under the provisions of this chapter.

6 Only insignificant deviations may occur from the approved
7 reclamation plan without prior written approval by the department
8 for the proposed change.

9 The department retains the authority to require that the
10 reclamation plan be updated to the satisfaction of the department
11 at least every ten years.

12 NEW SECTION. Sec. 13. JOINT RECLAMATION PLANS. Where two or
13 more surface mines join along a common boundary, the department may
14 require submission of a joint reclamation plan in order to provide
15 for optimum reclamation or to avoid waste of mineral resources.
16 Such joint reclamation plans may be in the form of a single
17 collaborative plan submitted by all affected permit holders or as
18 individual reclamation plans in which the schedule of reclamation,
19 finished contours, and revegetation match reclamation plans of
20 adjacent permit holders.

21 NEW SECTION. Sec. 14. FEES. (1) An applicant for a public
22 or private reclamation permit shall pay an application fee to the
23 department before being granted a surface mining permit. The
24 amount of the application fee shall be six hundred fifty dollars.

25 (2) After June 30, 1993, each public or private permit holder
26 shall pay an annual permit fee of six hundred fifty dollars. The
27 annual permit fee shall be payable to the department on the first
28 anniversary of the permit date and each year thereafter. Annual
29 fees paid by a county for small mines used exclusively for public
30 works projects shall be paid on those small mines from which the

1 county elects to extract minerals in the next calendar year and
2 shall not exceed one thousand dollars.

3 (3) After July 1, 1995, the department may modify annual
4 permit fees by rule if:

5 (a) The total annual permit fees are reasonably related to the
6 approximate costs of administering the department's surface mining
7 regulatory program;

8 (b) The annual fee does not exceed five thousand dollars; and

9 (c) The mines are small mines in remote areas that are used
10 primarily for public service, then lower annual permit fees may be
11 established.

12 (4) Appeals from any determination of the department shall not
13 stay the requirement to pay any annual permit fee. Failure to pay
14 the annual fee may constitute grounds for an order to suspend
15 surface mining or cancellation of the reclamation permit as
16 provided in this chapter.

17 (5) All fees collected by the department shall be deposited
18 into the surface mining reclamation account.

19 (6) If the department delegates enforcement responsibilities
20 to a county, city, or town, the department may allocate funds
21 collected under this section to such county, city, or town.

22 NEW SECTION. **Sec. 15.** PERFORMANCE SECURITY. The department
23 shall not issue a reclamation permit until the applicant has
24 deposited with the department an acceptable performance security on
25 forms prescribed and furnished by the department. A public or
26 governmental agency shall not be required to post performance
27 security nor shall a permit holder be required to post surface
28 mining performance security with more than one state, local, or
29 federal agency.

30 This performance security may be:

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

32 (2) A cash deposit;

1 (3) Negotiable securities acceptable to the department;

2 (4) An assignment of a savings account;

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

5 (6) Assignments of interests in real property within the state
6 of Washington; or

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

10 The performance security shall be conditioned upon the
11 faithful performance of the requirements set forth in this chapter
12 and of the rules adopted under it.

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

23 The department may increase or decrease the amount of the
24 performance security at any time to compensate for a change in the
25 disturbed area, the depth of excavation, a modification of the
26 reclamation plan, or any other alteration in the conditions of the
27 mine that affects the cost of reclamation. The department may, for
28 any reason, refuse any performance security not deemed adequate.

29 Liability under the performance security shall be maintained
30 until reclamation is completed according to the approved
31 reclamation plan to the satisfaction of the department unless
32 released as hereinafter provided. Liability under the performance
33 security may be released only upon written notification by the

1 department. Notification shall be given upon completion of
2 compliance or acceptance by the department of a substitute
3 performance security. The liability of the surety shall not exceed
4 the amount of security required by this section and the
5 department's reasonable legal fees to recover the security.

6 Any interest or appreciation on the performance security shall
7 be held by the department until reclamation is completed to its
8 satisfaction. At such time, the interest shall be remitted to the
9 permit holder; except that such interest or appreciation may be
10 used by the department to effect reclamation in the event that the
11 permit holder fails to comply with the provisions of this chapter
12 and the costs of reclamation exceed the face value of the
13 performance security.

14 No other state agency or local government shall require
15 performance security for the purposes of surface mine reclamation
16 and only one agency of government shall require and hold the
17 performance security. The department may enter into written
18 agreements with federal agencies in order to avoid redundant
19 bonding of surface mines straddling boundaries between federally
20 controlled and other lands within Washington state.

21 Notwithstanding any other provision of this section, nothing
22 shall preclude the department of ecology from requiring a separate
23 performance security for metallic minerals or uranium surface mines
24 under any authority if any that may be presently vested in the
25 department of ecology relating to such mines.

26 NEW SECTION. **Sec. 16.** A new section is added to chapter
27 36.70A RCW to read as follows:

28 (1) Where the county has classified mineral lands pursuant to
29 RCW 36.70A.050 and mineral resource lands of long-term commercial
30 significance exist, a county, city, or town shall designate
31 sufficient mineral resource lands in the comprehensive plans to
32 meet the projected twenty-year, county-wide need. Once designated,

1 mineral resource uses, including operations as defined in section
2 4 of this act, shall be established as an allowed use in local
3 development regulations subject to the permit process described in
4 this section.

5 The county, city, or town shall designate mineral resource
6 deposits, both active and inactive, in economically viable
7 proximity to locations where the deposits are likely to be used.

8 Through its comprehensive plan and development regulations, as
9 defined in RCW 36.70A.030, the county, city, or town shall
10 discourage the siting of incompatible uses adjacent to mineral
11 resource industries, deposits, and holdings.

12 For purposes of this section, "long-term commercial
13 significance" includes the mineral composition of the land for
14 long-term economically viable commercial production, in
15 consideration with the mineral resource land's proximity to
16 population areas, product markets, and the possibility of more
17 intense uses of the land.

18 (2)(a) Counties, cities, and towns may only regulate surface
19 mining operations by ordinance and only in accordance with the
20 requirements and limitations of this subsection.

21 (b) Local surface mining operating standards shall:

22 (i) Address only:

23 (A) Traffic;

24 (B) Light emission;

25 (C) Visual screening;

26 (D) Noise emission; and

27 (E) Other significant or substantial mining impacts that are
28 not covered by a subject area of regulation embodied in any other
29 state or federal law, including among others the subject areas
30 pertaining to water allocation, use, and control and fisheries and
31 wildlife habitat set forth in section 19 of this act.

32 (ii) Be performance-based, objective standards that:

1 (A) Are directly and proportionately related to limiting
2 surface mining impacts;

3 (B) Are reasonable and generally capable of being achieved;

4 (C) Take into account existing and available technologies; and

5 (D) May be met by any lawful means selected by the applicant
6 or operator that, in the judgment of the county, city, or town,
7 achieve compliance with the standard.

8 (iii) Limit application and monitoring fees to the amount
9 necessary to pay the costs of administering, processing,
10 monitoring, and enforcing the regulation of surface mining in
11 accordance with this section.

12 (iv) Except as otherwise provided in this section, implement
13 the ordinance through an operating plan review and approval
14 process. Such approval process shall:

15 (A) Require submittal of sufficient, complete, and accurate
16 information, as specified by the local ordinance, to allow the
17 decision maker to review the plan for compliance with local
18 standards;

19 (B) At the option of the county, city, or town, provide for
20 administrative approval subject to appeal or for initial
21 consideration through a public hearing process; and

22 (C) Require that project-specific conditions or restrictions
23 be based upon written findings of facts demonstrating their need to
24 achieve compliance with local standards.

25 (v) Subject to subsection (3) of this section, provide that
26 approvals issued will be valid for fifty years.

27 (3) Operating regulations and amendments thereto adopted
28 pursuant to this section may be applied to lawfully preexisting
29 mining operations only if the local ordinance:

30 (a) Limits application of subsection (2)(b)(i)(A) of this
31 section relating to traffic to the designation of approved haul
32 routes;

1 (b) Exempts such preexisting operations from any operating
2 plan review and approval process;

3 (c) Provides reasonable time periods for compliance with new
4 or amended local operating standards that in no event may be less
5 than one year; and

6 (d) Includes a variance procedure to allow continuation of
7 existing operations for a nonconforming surface mining operation
8 where strict adherence to a local operating standard would be
9 economically or operationally impractical due to conditions
10 relating to site configuration, topography, or the nature of
11 historic operations.

12 (4) Nothing in this section precludes a county, city, or town
13 from exercising the express authority delegated to it by a state
14 agency under state law, or from complying with state law when
15 required as a regulated entity.

16 NEW SECTION. **Sec. 17.** A surface mining model ordinance
17 advisory committee is hereby created. The committee shall be
18 composed of representatives of local government, state agencies,
19 surface mining interests, and the environmental community. The
20 department of natural resources shall appoint the members of the
21 committee and the department shall staff the committee. This
22 temporary advisory committee shall draft model ordinances for
23 different surface-mining settings and shall assist counties,
24 cities, and towns in developing ordinances. The committee shall
25 complete its work and shall expire by December 31, 1994.
26 Participants on the committee shall pay their own expenses, and the
27 department of natural resources shall fund the department's
28 involvement.

29 NEW SECTION. **Sec. 18.** RECLAMATION SETBACKS. Reclamation
30 setbacks shall be as follows unless waived by the department:

1 (1) The reclamation setback for unconsolidated deposits within
2 mines permitted after June 30, 1993, shall be equal to the maximum
3 anticipated height of the adjacent working face or as determined by
4 the department. Setbacks and buffers may be destroyed as part of
5 final reclamation of each segment if approved by the department.

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

9 (3) An exemption from this section may be granted by the
10 department following a written request. The department may
11 consider submission of a plan for backfilling acceptable to the
12 department, a geotechnical slope-stability study, proof of a
13 dedicated source of fill materials, written approval of contiguous
14 landowners, and other information before granting an exemption.

15 NEW SECTION. **Sec. 19.** WATER CONTROL. (1) Water control as
16 regulated by the department shall be limited to those provisions
17 necessary to effect surface mine reclamation and to protect ground
18 and surface water resources after reclamation is complete and shall
19 be consistent with existing water control laws. The department
20 shall solicit recommendations from all agencies with expertise in
21 relevant water control laws when evaluating reclamation plans for
22 surface mines in or near water.

23 (2) As to surface mining projects, control of surface mine
24 water shall be pursuant to chapter 90.48 RCW; water availability,
25 hydraulic continuity, allocation, and use shall be pursuant to
26 chapters 90.03, 90.44, and 90.54 RCW; regulation of drinking water
27 shall be pursuant to Titles 43 and 70 RCW; and protection of
28 fisheries and wildlife shall be regulated pursuant to Title 75 RCW
29 (fisheries laws) and Title 77 RCW (wildlife laws) as well as
30 chapters 90.03, 90.44, 90.48, and 90.54 RCW, federal storm water
31 regulations, and/or national pollutant discharge elimination system
32 regulations. The department of ecology upon request by a county,

1 city, or town, may consult with the affected parties and
2 incorporate additional site-specific requirements into individual
3 surface mine national pollutant discharge elimination system
4 permits where such requirements are appropriate.

5 A county, city, or town may regulate the impacts on water
6 through local ordinances and regulations that:

7 (a) Cover significant or substantial impacts that are not
8 covered by a subject area of regulation embodied in any other state
9 or federal law; or

10 (b) Implement regulatory and/or enforcement authority that has
11 been expressly authorized to it by a state agency.

12 NEW SECTION. **Sec. 20.** RECLAMATION. The need for, and the
13 practicability of, reclamation shall control the type and degree of
14 reclamation in any specific instance. However, the basic objective
15 of reclamation is to reestablish on a continuing basis the
16 vegetative cover, slope stability, water conditions, and safety
17 conditions suitable to the proposed subsequent use consistent with
18 local land use plans for the surface mine site.

19 Each permit holder shall comply with the minimum reclamation
20 standards in effect on the date the permit was issued and any
21 additional reclamation standards set forth in the approved
22 reclamation plan.

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

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

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

5 NEW SECTION. **Sec. 21.** MINIMUM RECLAMATION STANDARDS.
6 Reclamation of surface mines permitted after June 30, 1993, and
7 reclamation of surface mine segments addressed by reclamation plans
8 modified after June 30, 1994, shall meet the following minimum
9 standards except as waived in writing by the department.

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

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

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

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

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

3 (i) Have varied steepness;

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

5 (iii) Have no large rectilinear topographic elements;

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

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

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

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

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

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

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

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

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

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

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

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

32 (g) Where surface mining has exposed natural materials that
33 may create polluting conditions, including but not limited to acid-

1 forming coals and metalliferous rock or soil, such conditions shall
2 be addressed according to a method approved by the department. The
3 final ground surface shall be graded so that surface water drains
4 away from these materials.

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

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

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

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

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

19 (5) Drainages shall be graded and contain adequate energy
20 dissipation devices so that essentially natural conditions of water
21 velocity, volume, and turbidity are reestablished within six months
22 of reclamation of each segment of the mine. Ditches and other
23 artificial drainages shall be constructed on each reclaimed segment
24 to control surface water, erosion, and siltation and to direct
25 runoff to a safe outlet. Diversion ditches including but not
26 limited to channels, flumes, tightlines and retention ponds shall
27 be capable of carrying the peak flow at the mine site that has the
28 probable recurrence frequency of once in twenty-five years as
29 determined from data for the twenty-five year, twenty-four hour
30 precipitation event published by the national oceanic and
31 atmospheric administration. The grade of such ditches and channels
32 shall be constructed to limit erosion and siltation. Natural and

1 other drainage channels shall be kept free of equipment, wastes,
2 stockpiles, and overburden.

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

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

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

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

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

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

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

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

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

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

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

18 (f) The department may refuse to release a reclamation permit
19 or performance security until it deems that effective revegetation
20 has commenced.

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

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

27 (2) Unless waived by the department, the mine and all others
28 operated by both the former and subsequent permit holders and their
29 principal officers or owners are in compliance with this chapter
30 and rules.

1 NEW SECTION. **Sec. 23.** MODIFICATION OF RECLAMATION PLANS.

2 The department and the permit holder may modify the reclamation
3 plan at any time during the term of the permit for any of the
4 following reasons:

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

7 (2) If the department determines that the previously adopted
8 reclamation plan is impossible or impracticable to implement and
9 maintain; or

10 (3) The previously approved reclamation plan is not
11 accomplishing the intent of this chapter as determined by the
12 department.

13 Modified reclamation plans shall be reviewed by the department
14 as lead agency under SEPA. Such SEPA analyses shall consider only
15 those impacts relating directly to the proposed modifications.
16 Copies of proposed and approved modifications shall be sent to the
17 appropriate county, city, or town.

18 NEW SECTION. **Sec. 24.** REPORTS. On the anniversary date of

19 the reclamation permit and each year thereafter until reclamation
20 is completed and approved, the permit holder shall file a report of
21 activities completed during the preceding year. The report shall be
22 on a form prescribed by the department.

23 NEW SECTION. **Sec. 25.** INSPECTION OF PERMIT AREA. The

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

27 NEW SECTION. **Sec. 26.** ORDER TO RECTIFY DEFICIENCIES. The

28 department may issue an order to rectify deficiencies when a miner
29 or permit holder is conducting surface mining in any manner not
30 authorized by:

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

5 The order shall describe the deficiencies and shall require
6 that the miner or permit holder correct all deficiencies no later
7 than sixty days from issuance of the order. The department may
8 extend the period for correction for delays clearly beyond the
9 miner or permit holder's control, but only when the miner or permit
10 holder is, in the opinion of the department, making every
11 reasonable effort to comply.

12 NEW SECTION. **Sec. 27.** EMERGENCY NOTICE AND ORDER TO RECTIFY
13 DEFICIENCIES--EMERGENCY ORDER TO SUSPEND SURFACE MINING. When the
14 department finds that a permit holder is conducting surface mining
15 in any manner not authorized by:

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

20 and that activity has created a situation involving an immediate
21 danger to the public health, safety, welfare, or environment
22 requiring immediate action, the department may issue an emergency
23 notice and order to rectify deficiencies, and/or an emergency order
24 to suspend surface mining. These orders shall be effective when
25 entered. The department may take such action as is necessary to
26 prevent or avoid the danger to the public health, safety, welfare,
27 or environment that justifies use of emergency adjudication. The
28 department shall give such notice as is practicable to the permit
29 holder or miner who is required to comply with the order. The
30 order shall comply with the requirements of the administrative
31 procedure act.

1 Regulations of surface mining operations administered by other
2 state and local agencies shall be preempted by this section to the
3 extent that the time schedule and procedures necessary to rectify
4 the emergency situation, as determined by the department, conflict
5 with such local regulation.

6 NEW SECTION. **Sec. 28.** ORDER TO SUSPEND SURFACE MINING. Upon
7 the failure of a miner or permit holder to comply with a department
8 order to rectify deficiencies, the department may issue an order to
9 suspend surface mining when a miner or permit holder is conducting
10 surface mining in any manner not authorized by:

- 11 (1) This chapter;
- 12 (2) The rules adopted by the department;
- 13 (3) The approved reclamation plan;
- 14 (4) The reclamation permit; or
- 15 (5) If the miner or permit holder fails to comply with any
16 final order of the department.

17 The order to suspend surface mining shall require the miner or
18 permit holder to suspend part or all of the miner's or permit
19 holder's mining operations until the conditions resulting in the
20 issuance of the order have been mitigated to the satisfaction of
21 the department.

22 The attorney general may take the necessary legal action to
23 enjoin, or otherwise cause to be stopped, surface mining in
24 violation of an order to suspend surface mining.

25 NEW SECTION. **Sec. 29.** DECLARATION OF ABANDONMENT. The
26 department may issue a declaration of abandonment when it
27 determines that all surface mining has ceased for a period of one
28 hundred eighty consecutive days not set forth in the permit
29 holder's reclamation plan or when, by reason of inspection of the
30 permit area, or by any other means, the department determines that
31 the mine has in fact been abandoned by the permit holder except

1 that abandonment shall not include normal interruptions of surface
2 mining resulting from labor disputes, economic conditions
3 associated with lack of smelting capacity or availability of
4 appropriate transportation, war, social unrest, demand for
5 minerals, maintenance and repairs, and acts of God.

6 Following a declaration of abandonment, the department shall
7 require the permit holder to complete reclamation in accordance
8 with this chapter. If the permit holder fails to do so, the
9 department shall proceed to do the necessary reclamation work
10 pursuant to section 31 of this act.

11 If another miner applies for a permit on a site that has been
12 declared abandoned, the department may, in its discretion, cancel
13 the reclamation permit of the permit holder and issue a new
14 reclamation permit to the applicant. The department shall not
15 issue a new permit unless it determines that such issuance will be
16 an effective means of assuring that the site will ultimately be
17 reclaimed. The applicant must agree to assume the reclamation
18 responsibilities left unfinished by the first miner, in addition to
19 meeting all requirements for issuance of a new permit.

20 NEW SECTION. **Sec. 30.** CANCELLATION OF THE RECLAMATION
21 PERMIT. When the department determines that a surface mine has
22 been abandoned, it may cancel the reclamation permit. The permit
23 holder shall be informed of such actions by a department
24 notification of illegal abandonment and cancellation of the
25 reclamation permit.

26 NEW SECTION. **Sec. 31.** ORDER TO SUBMIT PERFORMANCE SECURITY--
27 RECLAMATION BY THE DEPARTMENT. The department may, with the staff,
28 equipment, and material under its control, or by contract with
29 others, reclaim the disturbed areas when it finds that reclamation
30 has not occurred in any segment of a surface mine within two years

1 of completion of mining or of declaration of abandonment and the
2 permit holder is not actively pursuing reclamation.

3 If the department intends to undertake the reclamation, the
4 department shall issue an order to submit performance security
5 requiring the permit holder or surety to submit to the department
6 the amount of moneys posted pursuant to section 15 of this act. If
7 the amount specified in the order to submit performance security is
8 not paid within twenty days after issuance of the notice, the
9 attorney general upon request of the department shall bring an
10 action on behalf of the state in a superior court to recover the
11 amount specified and associated legal fees.

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

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

20 (1) Reclamation;

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

24 (3) Administrative and legal expenses related to reclamation
25 of the surface mine.

26 The department shall refund to the surety or permit holder all
27 amounts received in excess of the amount of expenses incurred. If
28 the amount received is less than the expenses incurred, the
29 attorney general, upon request of the department, may bring an
30 action against the permit holder on behalf of the state in the
31 superior court to recover the remaining costs listed in this
32 section.

1 NEW SECTION. **Sec. 32.** FINES. Each order of the department
2 may impose a fine or fines in the event that a miner or permit
3 holder fails to obey the order of the department. When a miner or
4 permit holder fails to comply with an order of the department, the
5 miner or permit holder shall be subject to a civil penalty in an
6 amount not more than ten thousand dollars for each violation plus
7 interest based upon a schedule of fines set forth by the department
8 in rule. Procedures for imposing a penalty and setting the amount
9 of the penalty shall be as provided in RCW 90.48.144. Each day on
10 which a miner or permit holder continues to disobey any order of
11 the department shall constitute a separate violation. If the
12 penalty and interest is not paid to the department after it becomes
13 due and payable, the attorney general, upon the request of the
14 department, may bring an action in the name of the state of
15 Washington to recover the penalty, interest, mitigation for
16 environmental damages, and associated legal fees. Decisions of the
17 department are subject to review by the pollution control hearings
18 board.

19 All fines, interest, penalties, and other damage recovery
20 costs from mines regulated by the department shall be credited to
21 the surface mining reclamation account.

22 NEW SECTION. **Sec. 33.** REFUSAL TO ISSUE PERMITS. The
23 department shall refuse to issue a reclamation permit if it is
24 determined during the SEPA process that the impacts of a proposed
25 surface mine cannot be adequately mitigated.

26 The department or county, city, or town may refuse to issue
27 any other permit at any other location to any miner or permit
28 holder who fails to rectify deficiencies set forth in an order of
29 the department within the requisite time schedule. However, the
30 department or county, city, or town shall issue all appropriate
31 permits when all deficiencies are corrected at each surface mining
32 site.

1 **Sec. 34.** RCW 78.44.150 and 1970 ex.s. c 64 s 16 are each
2 amended to read as follows:

3 Any ~~((operator))~~ miner or permit holder conducting surface
4 mining within the state of Washington without a valid ~~((operating))~~
5 reclamation permit shall be guilty of a gross misdemeanor. Surface
6 mining outside of the permitted area shall constitute illegal
7 mining without a valid reclamation permit. Each day of
8 ~~((operation))~~ mining without a valid reclamation permit shall
9 constitute a separate offense.

10 **Sec. 35.** RCW 78.44.170 and 1989 c 175 s 166 are each amended
11 to read as follows:

12 Appeals from department determinations under this chapter
13 shall be made as follows:

14 Appeals from department determinations made under this
15 chapter shall be made under the provisions of the Administrative
16 Procedure Act (chapter 34.05 RCW), and shall be considered an
17 adjudicative proceeding within the meaning of the Administrative
18 Procedure Act, chapter 34.05 RCW. Only a person aggrieved within
19 the meaning of RCW 34.05.530 has standing and can file an appeal.

20 **Sec. 36.** RCW 78.44.910 and 1970 ex.s. c 64 s 22 are each
21 amended to read as follows:

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

27 NEW SECTION. **Sec. 37.** RECLAMATION AWARDS ESTABLISHED. The
28 department shall create reclamation awards in recognition of
29 excellence in reclamation or reclamation research. Such awards
30 shall be presented to individuals, miners, operators, companies, or

1 government agencies performing exemplary surface mining reclamation
2 in the state of Washington. The department shall designate a
3 percent of the state annual fees as funding of the awards.

4 NEW SECTION. **Sec. 38.** RECLAMATION SERVICE ESTABLISHED. The
5 department may establish a no-cost consulting service within the
6 department to assist miners, permit holders, local government, and
7 the public in technical matters related to mine regulation, mine
8 operations, and reclamation. The department may prepare concise,
9 printed information for the public explaining surface mining
10 activities, timelines for permits and reviews, laws, and the role
11 of governmental agencies involved in surface mining, including how
12 to contact all regulators. The department shall not be held liable
13 for any negligent advice.

14 NEW SECTION. **Sec. 39.** The following acts or parts of acts
15 are each repealed:

- 16 (1) RCW 78.44.030 and 1987 c 258 s 1, 1984 c 215 s 1, & 1970
17 ex.s. c 64 s 4;
18 (2) RCW 78.44.035 and 1987 c 258 s 3;
19 (3) RCW 78.44.080 and 1970 ex.s. c 64 s 9;
20 (4) RCW 78.44.090 and 1970 ex.s. c 64 s 10;
21 (5) RCW 78.44.100 and 1984 c 215 s 3 & 1970 ex.s. c 64 s 11;
22 (6) RCW 78.44.110 and 1987 c 258 s 2, 1984 c 215 s 4, & 1970
23 ex.s. c 64 s 12;
24 (7) RCW 78.44.120 and 1984 c 215 s 5, 1977 c 66 s 1, & 1970
25 ex.s. c 64 s 13;
26 (8) RCW 78.44.130 and 1970 ex.s. c 64 s 14;
27 (9) RCW 78.44.140 and 1989 c 230 s 1, 1984 c 215 s 6, & 1970
28 ex.s. c 64 s 15;
29 (10) RCW 78.44.160 and 1984 c 215 s 7 & 1970 ex.s. c 64 s 17;
30 and
31 (11) RCW 78.44.180 and 1970 ex.s. c 64 s 20.

1 NEW SECTION. **Sec. 40.** The code reviser may recodify, as
2 necessary, RCW 78.44.150, 78.44.170, 78.44.175, and 78.44.910
3 within chapter 78.44 RCW to accomplish the reorganization of
4 chapter 78.44 RCW as intended in this act.

5 NEW SECTION. **Sec. 41.** Captions used in this act do not
6 constitute any part of the law.

7 NEW SECTION. **Sec. 42.** Sections 4, 5, 10 through 15, 18
8 through 33, 37, and 38 of this act are each added to chapter 78.44
9 RCW.

10 NEW SECTION. **Sec. 43.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 44.** This act is necessary for the
15 immediate preservation of the public peace, health, or safety, or
16 support of the state government and its existing public
17 institutions, and shall take effect July 1, 1993."