

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE HOUSE BILL 2521**

53rd Legislature  
1994 Regular Session

Passed by the House March 7, 1994  
Yeas 94 Nays 0

---

**Speaker of the  
House of Representatives**

Passed by the Senate March 4, 1994  
Yeas 39 Nays 10

---

**President of the Senate**

Approved

---

**Governor of the State of Washington**

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2521** as passed by the House of Representatives and the Senate on the dates hereon set forth.

---

**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

---

ENGROSSED SUBSTITUTE HOUSE BILL 2521

---

AS AMENDED BY THE SENATE

Passed Legislature - 1994 Regular Session

State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Natural Resources & Parks (originally sponsored by Representatives Dunshee, Pruitt, J. Kohl, Valle, Wolfe, L. Johnson, Ogden, Romero, Rust, Linville and Patterson)

Read first time 02/04/94.

1 AN ACT Relating to metals mining and milling operations; amending  
2 RCW 90.03.350, 90.48.090, 78.44.161, 78.44.087, and 78.44.131; adding  
3 a new section to chapter 70.94 RCW; adding a new section to chapter  
4 70.105 RCW; adding a new section to chapter 43.21C RCW; adding a new  
5 chapter to Title 78 RCW; creating new sections; prescribing penalties;  
6 providing an effective date; and declaring an emergency.

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

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

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

3        (1) "Metals mining and milling operation" means a mining operation  
4 extracting from the earth precious or base metal ore and processing the  
5 ore by treatment or concentration in a milling facility. It also  
6 refers to an expansion of an existing operation or any new metals  
7 mining operation if the expansion or new mining operation is likely to  
8 result in a significant, adverse environmental impact pursuant to the  
9 provisions of chapter 43.21C RCW. The extraction of dolomite, sand,  
10 gravel, aggregate, limestone, magnesite, silica rock, and zeolite or  
11 other nonmetallic minerals; and placer mining; and the smelting of  
12 aluminum are not metals mining and milling operations regulated under  
13 this chapter.

14        (2) "Milling" means the process of grinding or crushing ore and  
15 extracting the base or precious metal by chemical solution, electro  
16 winning, or flotation processes.

17        (3) "Heap leach extraction process" means the process of extracting  
18 base or precious metal ore by percolating solutions through ore in an  
19 open system and includes reprocessing of previously milled ore. The  
20 heap leach extraction process does not include leaching in a vat or  
21 tank.

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

25        (5) "Regulated substances" means any materials regulated under a  
26 waste discharge permit pursuant to the requirements of chapter 90.48  
27 RCW and/or a permit issued pursuant to chapter 70.94 RCW.

28        (6) "To mitigate" means:    (a) To avoid the adverse impact  
29 altogether by not taking a certain action or parts of an action; (b) to  
30 minimize adverse impacts by limiting the degree or magnitude of the  
31 action and its implementation, by using appropriate technology or by  
32 taking affirmative steps to avoid or reduce impacts; (c) to rectify  
33 adverse impacts by repairing, rehabilitating, or restoring the affected  
34 environment; (d) to reduce or eliminate adverse impacts over time by  
35 preservation and maintenance operations during the life of the action;  
36 (e) to compensate for the impact by replacing, enhancing, or providing  
37 substitute resources or environments; or (f) to monitor the adverse  
38 impact and take appropriate corrective measures.

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

4        NEW SECTION.    **Sec. 4.**    The department of ecology shall require each  
5 applicant submitting a checklist pursuant to chapter 43.21C RCW for a  
6 metals mining and milling operation to disclose the ownership and each  
7 controlling interest in the proposed operation.    The applicant shall  
8 also disclose all other mining operations within the United States  
9 which the applicant operates or in which the applicant has an ownership  
10 or controlling interest.    In addition, the applicant shall disclose and  
11 may enumerate and describe the circumstances of:    (1) Any past or  
12 present bankruptcies involving the ownerships and their subsidiaries,  
13 (2) any abandonment of sites regulated by the model toxics control act,  
14 chapter 70.105D RCW, or other similar state remedial cleanup programs,  
15 or the federal comprehensive environmental response, compensation, and  
16 liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any  
17 penalties in excess of ten thousand dollars assessed for violations of  
18 the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et  
19 seq., and (4) any previous forfeitures of financial assurance due to  
20 noncompliance with reclamation or remediation requirements.    This  
21 information shall be available for public inspection and copying at the  
22 department of ecology.    Ownership or control of less than ten percent  
23 of the stock of a corporation shall not by itself constitute ownership  
24 or a controlling interest under this section.

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

31        (2) As part of the environmental review of metals mining and  
32 milling operations regulated under this chapter, the applicant shall  
33 provide baseline data adequate to document the premining conditions at  
34 the proposed site of the metals mining and milling operation.    The  
35 baseline data shall contain information on the elements of the natural  
36 environment identified in rules adopted pursuant to chapter 43.21C RCW.

1 (3) The department of ecology, after consultation with the  
2 department of fish and wildlife, shall incorporate measures to mitigate  
3 significant probable adverse impacts to fish and wildlife as part of  
4 the department of ecology's permit requirements for the proposed  
5 operation.

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

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

21 NEW SECTION. **Sec. 7.** (1) State agencies with the responsibility  
22 for inspecting metals mining and milling operations regulated under  
23 this chapter shall conduct such inspections at least quarterly:  
24 PROVIDED, That the inspections are not prevented by inclement weather  
25 conditions.

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

35 NEW SECTION. **Sec. 8.** (1) The metals mining account is created in  
36 the state treasury. Expenditures from this account are subject to

1 appropriation. Expenditures from this account may only be used for:  
2 (a) The additional inspections of metals mining and milling operations  
3 required by section 7 of this act and (b) the metals mining coordinator  
4 established in section 6 of this act.

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

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

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

30 (4) The department of revenue shall collect the fees established in  
31 subsection (3) of this section. Chapter 82.32 RCW, insofar as  
32 applicable, applies to the fees imposed under this section. All moneys  
33 paid to the department of revenue from these fees shall be deposited  
34 into the metals mining account.

35 (5) This section shall take effect July 1, 1995, unless the  
36 legislature adopts an alternative approach based on the recommendations  
37 of the metals mining advisory group established in section 27 of this  
38 act.

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

10        In implementing the siting criteria, the department shall take into  
11 account the objectives of the proponent's application relating to  
12 mining and milling operations. These objectives shall consist of, but  
13 not be limited to (a) operational feasibility, (b) compatibility with  
14 optimum tailings placement methods, (c) adequate volume capacity, (d)  
15 availability of construction materials, and (e) an optimized embankment  
16 volume.

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

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

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

25        (b) Proximity to surface and ground water;

26        (c) Topographic setting;

27        (d) Identifiable adverse geologic conditions, such as landslides  
28 and active faults; and

29        (e) Visibility impacts of the public generally and residents more  
30 particularly.

31        (4) The department of ecology, through the primary screening  
32 process, shall reduce the available tailings facility sites to one or  
33 more feasible locations whereupon a technical site investigation phase  
34 shall be conducted by the department for the purpose of verifying the  
35 adequacy of the remaining potential sites. The technical site  
36 investigations phase shall consist of, but not be limited to, the  
37 following:

38        (a) Soil characteristics;

39        (b) Hydrologic characteristics;

1 (c) A local and structural geology evaluation, including seismic  
2 conditions and related geotechnical investigations;

3 (d) A surface water control analysis; and

4 (e) A slope stability analysis.

5 (5) Upon completion of the two phase evaluation process set forth  
6 in this section, the department of ecology shall issue a site selection  
7 report on the preferred location. This report shall address the above  
8 criteria as well as analyze the feasibility of reclamation and  
9 stabilization of the tailings facility. The siting report may  
10 recommend mitigation or engineering factors to address siting concerns.  
11 The report shall be developed in conjunction with the preparation of  
12 and contained in an environmental impact statement prepared pursuant to  
13 chapter 43.21C RCW. The report may be utilized by the department of  
14 ecology for the purpose of providing information related to the  
15 suitability of the site and for ruling on an application for a waste  
16 discharge permit.

17 (6) The department of ecology may, at its discretion, require the  
18 applicant to provide the information required in either phase one or  
19 phase two as described in subsections (3) and (4) of this section.

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

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

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

31 (ii) The tailings facility shall have a containment system that  
32 includes an engineered liner system, leak detection and leak collection  
33 elements, and a seepage collection impoundment to assure that a leak of  
34 any regulated substance under chapter 90.48 RCW will be detected before  
35 escaping from the containment system. The design and management of the  
36 facility must ensure that any leaks from the tailings facility are  
37 detected in a manner which allows for remediation pursuant to chapter  
38 90.48 RCW. The applicant shall prepare a detailed engineering report



1 setting forth the facility design and construction. The applicant  
2 shall submit the report to the department of ecology for its review and  
3 approval of a design as determined by the department. Natural  
4 conditions, such as depth to ground water or net rainfall, shall be  
5 taken into account in the facility design, but not in lieu of the  
6 protection required by the engineered liner system;

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

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

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

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

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

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

28 (c) If an interested citizen or citizen group so requests of the  
29 department of ecology, the metals mining and milling operator or  
30 applicant shall work with the department of ecology and the interested  
31 party to make arrangements for citizen observation and verification in  
32 the taking of required water samples. While it is the intent of this  
33 subsection to provide for citizen observation and verification of water  
34 sampling activities, it is not the intent of this subsection to require  
35 additional water sampling and analysis on the part of the mining and  
36 milling operation or the department. The citizen observation and  
37 verification program shall be incorporated into the applicant's,  
38 operator's, or department's normal sampling regimen and shall occur at  
39 least once every six months. There is no duty of care on the part of

1 the state or its employees to any person who participates in the  
2 citizen observation and verification of water sampling under chapter  
3 . . . , Laws of 1994 (this act) and the state and its employees shall be  
4 immune from any civil lawsuit based on any injuries to or claims made  
5 by any person as a result of that person's participation in such  
6 observation and verification of water sampling activities. The metals  
7 mining and milling operator or applicant shall not be liable for any  
8 injuries to or claims made by any person which result from that person  
9 coming onto the property of the metals mining and milling operator or  
10 applicant as an observer pursuant to chapter . . . , Laws of 1994 (this  
11 act). The results from these and all other relevant water sampling  
12 activities shall be kept on file with the relevant county and shall be  
13 available for public inspection during normal working hours; and

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

17 (2) Only those tailings facilities constructed after the effective  
18 date of this section must meet the requirement established in  
19 subsection (1) (a) of this section. Only those waste rock holdings  
20 constructed after the effective date of this section must meet the  
21 requirement established in subsection (1) (b) of this section.

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

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

29 (b) A cash deposit;

30 (c) Negotiable securities acceptable to both agencies;

31 (d) An assignment of a savings account;

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

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

36 The agencies may, for any reason, refuse any performance security  
37 not deemed adequate.

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

4 (a) Compliance with the laws of the state of Washington pertaining  
5 to metals mining and milling operations and with the related rules and  
6 permit conditions established by state and local government with  
7 respect to those operations as defined in RCW 78.44.031(17) and the  
8 construction, operation, reclamation, and closure of a metals mining  
9 and milling operation;

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

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

14 (3) The department of ecology and the department of natural  
15 resources shall jointly adopt rules for determining the amount of the  
16 performance security, requirements for the performance security,  
17 requirements for the issuer of the performance security, and any other  
18 requirements necessary for the implementation of this section.

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

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

31 (6) Any interest or appreciation on the performance security shall  
32 be held by the department of ecology until the obligations in  
33 subsection (2) of this section have been met to the satisfaction of the  
34 department of ecology and the department of natural resources. At such  
35 time, the interest shall be remitted to the operator. However, if the  
36 applicant or operator fails to comply with the obligations of  
37 subsection (2) of this section, the interest or appreciation may be  
38 used by either agency to comply with the obligations.

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

8        If the department intends to remediate or mitigate such impacts,  
9    the department shall issue an order to submit performance security  
10    requiring the permit holder or surety to submit to the department the  
11    amount of moneys posted pursuant to chapter . . . , Laws of 1994 (this  
12    act).    If the amount specified in the order to submit performance  
13    security is not paid within twenty days after issuance of the notice,  
14    the attorney general upon request of the department shall bring an  
15    action on behalf of the state in a superior court to recover the amount  
16    specified and associated legal fees.

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

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

22        (1) Remediation or mitigation;

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

25        (3) Administrative and legal expenses related to remediation or  
26    mitigation.

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

33        If the department of natural resources finds that reclamation has  
34    not occurred according to the standards required under chapter 78.44  
35    RCW in a metals mining and milling operation, then the department of  
36    natural resources may cause reclamation to occur pursuant to RCW  
37    78.44.240.    Upon approval of the department of ecology, the department  
38    of natural resources may reclaim part or all of the metals mining and  
39    milling operation using that portion of the surety posted pursuant to

1 chapter . . . , Laws of 1994 (this act) that has been identified for  
2 reclamation.

3 NEW SECTION. **Sec. 13.** (1) The legislature finds that the  
4 construction and operation of large-scale metals mining and milling  
5 facilities may create new job opportunities and enhance local tax  
6 revenues. However, the legislature also finds that such operations may  
7 also result in new demands on public facilities owned and operated by  
8 local government entities, such as public streets and roads; publicly  
9 owned parks, open space, and recreation facilities; school facilities;  
10 and fire protection facilities in jurisdictions that are not part of a  
11 fire district. It is important for these economic impacts to be  
12 identified as part of any proposal for a large-scale metals mining and  
13 milling operation. It is then appropriate for the county legislative  
14 authority to balance expected revenues, including revenues derived from  
15 taxes paid by the owner of such an operation, and costs associated with  
16 the operation to determine to what degree any new costs require  
17 mitigation by the metals mining applicant.

18 (2) An applicant for a large-scale metals mining and milling  
19 operation regulated under this chapter must submit to the relevant  
20 county legislative authority an impact analysis describing the economic  
21 impact of the proposed mining operation on local governmental units.  
22 For the purposes of this section, a metals mining operation is large-  
23 scale if, in the construction or operation of the mine and the  
24 associated milling facility, the applicant and contractors at the site  
25 employ more than thirty-five persons during any consecutive six-month  
26 period. The relevant county is the county in which the mine and mill  
27 are to be sited, unless the economic impacts to local governmental  
28 units are projected to substantially affect more than one county. In  
29 that case, the impact plan must be submitted to the legislative  
30 authority of all affected counties. Local governmental units include  
31 counties, cities, towns, school districts, and special purpose  
32 districts.

33 (3) The economic impact analysis shall include at least the  
34 following information:

35 (a) A timetable for development of the mining operation, including  
36 the opening date of the operation and the estimated closing date;

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

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

4 (d) An estimate of the increased tax or other revenues accruing to  
5 local governmental units as a result of development of the mining and  
6 milling operation.

7 (4) The county legislative authority of a county planning under  
8 chapter 36.70A RCW may assess impact fees under chapter 82.02 RCW to  
9 address economic impacts associated with development of the mining  
10 operation. The county legislative authority shall hold at least one  
11 public hearing on the economic impact analysis and any proposed  
12 mitigation measures.

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

19 (6) The county legislative authority must approve or disapprove the  
20 impact analysis and any associated proposals from the applicant to  
21 address economic impacts to local governmental units resulting from  
22 development of the mining operation. If the applicant does not submit  
23 an adequate impact analysis to the relevant county legislative  
24 authority or if the county legislative authority does not find the  
25 applicant's proposals to be acceptable because of their failure to  
26 adequately mitigate adverse economic impacts, the county legislative  
27 authority shall refuse to issue any permits under its jurisdiction  
28 necessary for the construction or operation of the mine and associated  
29 mill.

30 (7) The requirements established in this section apply to metals  
31 mining operations under construction or constructed after the effective  
32 date of this section.

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

35 NEW SECTION. **Sec. 14.** (1) Except as provided in subsections (2)  
36 and (5) of this section, any aggrieved person may commence a civil  
37 action on his or her own behalf:

1 (a) Against any person, including any state agency or local  
2 government agency, who is alleged to be in violation of a law, rule,  
3 order, or permit pertaining to metals mining and milling operations  
4 regulated under chapter . . . , Laws of 1994 (this act);

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

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

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

16 (2) No action may be commenced:

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

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

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

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

32 (3)(a) Any action respecting a violation of a law, rule, order, or  
33 permit condition pertaining to metals mining and milling operations may  
34 be brought in the judicial district in which such operation is located  
35 or proposed.

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

38 (4) The court, in issuing any final order in any action brought  
39 pursuant to subsection (1) of this section, may award costs of

1 litigation, including reasonable attorney and expert witness fees, to  
2 any prevailing party, wherever the court determines such award is  
3 appropriate. The court may, if a temporary restraining order or  
4 preliminary injunction is sought, require the filing of a bond or  
5 equivalent security in accordance with the rules of civil procedure.

6 (5) A civil action to enforce compliance with a law, rule, order,  
7 or permit may not be brought under this section if any other statute,  
8 or the common law, provides authority for the plaintiff to bring a  
9 civil action and, in such action, obtain the same relief, as authorized  
10 under this section, for enforcement of such law, rule, order, or  
11 permit. Nothing in this section restricts any right which any person,  
12 or class of persons, may have under any statute or common law to seek  
13 any relief, including relief against the state or a state agency.

14 NEW SECTION. **Sec. 15.** A milling facility which is not adjacent to  
15 or in the vicinity of the metals mining operation producing the ore to  
16 be milled and which processes precious or base metal ore by treatment  
17 or concentration is subject to the provisions of sections 1 through 9,  
18 10(1) (a), (c) and (d), 11 through 14, 18, and 19 of this act and  
19 chapters 70.94, 70.105, 90.03, and 90.48 RCW and all other applicable  
20 laws. The smelting of aluminum does not constitute a metals milling  
21 operation under this section.

22 NEW SECTION. **Sec. 16.** (1) Until June 30, 1996, there shall be a  
23 moratorium on metals mining and milling operations using the heap leach  
24 extraction process. The department of natural resources and the  
25 department of ecology shall jointly review the existing laws and  
26 regulations pertaining to the heap leach extraction process for their  
27 adequacy in safeguarding the environment and shall report their  
28 findings to the legislature by December 30, 1994.

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

31 NEW SECTION. **Sec. 17.** The department of ecology will work with  
32 the metals mining industry and relevant federal, state, and local  
33 governmental agencies to identify areas of regulatory overlap among  
34 regulators of mining and milling operations. The department will also  
35 identify possible solutions for eliminating or reducing regulatory



1 overlap. The department will report back to the legislature on its  
2 findings and possible solutions by January 1, 1995.

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

5 If a metals mining and milling operation is issued a permit  
6 pursuant to this chapter, then it will be subject to special inspection  
7 requirements. The department of ecology shall inspect these mining  
8 operations at least quarterly in order to ensure that the operation is  
9 in compliance with the conditions of any permit issued to it pursuant  
10 to this chapter. The department shall conduct additional inspections  
11 during the construction phase of the mining and milling operation in  
12 order to ensure compliance with this chapter.

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

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

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

25 Any person, corporation or association intending to construct or  
26 modify any dam or controlling works for the storage of ten acre feet or  
27 more of water, shall before beginning said construction or  
28 modification, submit plans and specifications of the same to the  
29 department for examination and approval as to its safety. Such plans  
30 and specifications shall be submitted in duplicate, one copy of which  
31 shall be retained as a public record, by the department, and the other  
32 returned with its approval or rejection endorsed thereon. No such dam  
33 or controlling works shall be constructed or modified until the same or  
34 any modification thereof shall have been approved as to its safety by  
35 the department. Any such dam or controlling works constructed or  
36 modified in any manner other than in accordance with plans and

1 specifications approved by the department or which shall not be  
2 maintained in accordance with the order of the department shall be  
3 presumed to be a public nuisance and may be abated in the manner  
4 provided by law, and it shall be the duty of the attorney general or  
5 prosecuting attorney of the county wherein such dam or controlling  
6 works, or the major portion thereof, is situated to institute abatement  
7 proceedings against the owner or owners of such dam or controlling  
8 works, whenever he or she is requested to do so by the department.

9 A metals mining and milling operation regulated under chapter  
10 . . . , Laws of 1994 (this act) is subject to additional dam safety  
11 inspection requirements due to the special hazards associated with  
12 failure of a tailings pond impoundment. The department shall inspect  
13 these impoundments at least quarterly during the project's operation  
14 and at least annually thereafter for the postclosure monitoring period  
15 in order to ensure the safety of the dam or controlling works. The  
16 department shall conduct additional inspections as needed during the  
17 construction phase of the mining operation in order to ensure the safe  
18 construction of the tailings impoundment.

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

21 The department or its duly appointed agent shall have the right to  
22 enter at all reasonable times in or upon any property, public or  
23 private, for the purpose of inspecting and investigating conditions  
24 relating to the pollution of or the possible pollution of any of the  
25 waters of this state.

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

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

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

4 The department shall have special inspection requirements for  
5 metals mining and milling operations regulated under chapter . . . ,  
6 Laws of 1994 (this act). The department shall inspect these mining  
7 operations at least quarterly, unless prevented by inclement weather  
8 conditions, in order to ensure that the permit holder is in compliance  
9 with the reclamation permit, rules, and this chapter. The department  
10 shall conduct additional inspections as needed during the construction  
11 phase of these mining operations in order to ensure compliance with the  
12 reclamation permit, rules, and this chapter.

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

15 The department shall not issue a reclamation permit until the  
16 applicant has deposited with the department an acceptable performance  
17 security on forms prescribed and furnished by the department. A public  
18 or governmental agency shall not be required to post performance  
19 security nor shall a permit holder be required to post surface mining  
20 performance security with more than one state(~~(, local, or federal)~~) or  
21 local agency.

22 This performance security may be:

- 23 (1) Bank letters of credit acceptable to the department;
- 24 (2) A cash deposit;
- 25 (3) Negotiable securities acceptable to the department;
- 26 (4) An assignment of a savings account;
- 27 (5) A savings certificate in a Washington bank on an assignment  
28 form prescribed by the department;
- 29 (6) Assignments of interests in real property within the state of  
30 Washington; or
- 31 (7) A corporate surety bond executed in favor of the department by  
32 a corporation authorized to do business in the state of Washington  
33 under Title 48 RCW and authorized by the department.

34 The performance security shall be conditioned upon the faithful  
35 performance of the requirements set forth in this chapter and of the  
36 rules adopted under it.

37 The department shall have the authority to determine the amount of  
38 the performance security using a standardized performance security

1 formula developed by the department. The amount of the security shall  
2 be determined by the department and based on the estimated costs of  
3 completing reclamation according to the approved reclamation plan or  
4 minimum standards and related administrative overhead for the area to  
5 be surface mined during (a) the next twelve-month period, (b) the  
6 following twenty-four months, and (c) any previously disturbed areas on  
7 which the reclamation has not been satisfactorily completed and  
8 approved.

9 The department may increase or decrease the amount of the  
10 performance security at any time to compensate for a change in the  
11 disturbed area, the depth of excavation, a modification of the  
12 reclamation plan, or any other alteration in the conditions of the mine  
13 that affects the cost of reclamation. The department may, for any  
14 reason, refuse any performance security not deemed adequate.

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

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

31 Except as provided in this section, no other state agency or local  
32 government shall require performance security for the purposes of  
33 surface mine reclamation and only one agency of government shall  
34 require and hold the performance security. The department may enter  
35 into written agreements with federal agencies in order to avoid  
36 redundant bonding of surface mines straddling boundaries between  
37 federally controlled and other lands within Washington state.

38 ~~((Notwithstanding any other provision of this section, nothing~~  
39 ~~shall preclude the department of ecology from requiring a separate~~

1 ~~performance security for metallic minerals or uranium surface mines~~  
2 ~~under any authority if any that may be presently vested in the~~  
3 ~~department of ecology relating to such mines.)~~) The department and the  
4 department of ecology shall jointly require performance security for  
5 metals mining and milling operations regulated under chapter . . . ,  
6 Laws of 1994 (this act).

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 25.**    A new section is added to chapter 43.21C  
2 RCW to read as follows:

3        Notwithstanding any provision in RCW 43.21C.030 and 43.21C.031 to  
4 the contrary, an environmental impact statement shall be prepared for  
5 any proposed metals mining and milling operation as required by section  
6 5 of this act.

7        NEW SECTION.    **Sec. 26.**    Sections 1 through 16 of this act shall  
8 constitute a new chapter in Title 78 RCW.

9        NEW SECTION.    **Sec. 27.**    (1) The department of ecology shall  
10 establish a metals mining advisory group, to be comprised of members  
11 representing the metals mining industry, county commissioners of  
12 affected counties, the environmental community, the department of  
13 ecology, the department of fish and wildlife, and the department of  
14 natural resources.

15        (2) The metals mining advisory group will focus on the following  
16 tasks:

17        (a) A review of the adequacy of the cost-accounting methods of the  
18 departments of ecology and natural resources in accurately identifying  
19 the costs associated with the requirements established in this act;

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

22        (c) Examination of possible new inspection requirements for the  
23 department of fish and wildlife and a means to fund any new  
24 requirements; and

25        (d) Identification and evaluation of the alternative bases for  
26 allocating the costs that may be necessitated by this act.

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

30        NEW SECTION.    **Sec. 28.**    If specific funding for the purposes of  
31 this act, referencing this act by bill number, is not provided by June  
32 30, 1994, in the omnibus appropriations act, this act shall be null and  
33 void.

34        NEW SECTION.    **Sec. 29.**    If any provision of this act or its  
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 30.** This act is necessary for the immediate  
4 preservation of the public peace, health, or safety, or support of the  
5 state government and its existing public institutions, and, with the  
6 exception of sections 6 through 8 and 18 through 22 of this act, shall  
7 take effect immediately.

8 NEW SECTION. **Sec. 31.** Sections 6 through 8 and 18 through 22 of  
9 this act shall take effect July 1, 1995.

--- END ---