
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5502

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Sutherland and Prentice)

Read first time 03/26/93.

1 AN ACT Relating to state and local government regulation of surface
2 mining; amending RCW 78.44.010, 78.44.020, 78.44.040, 78.44.050,
3 78.44.060, 78.44.070, 78.44.150, 78.44.170, and 78.44.910; adding a new
4 section to chapter 36.70A RCW; adding new sections to chapter 78.44
5 RCW; creating new sections; recodifying RCW 78.44.150, 78.44.170,
6 78.44.175, and 78.44.910; repealing RCW 78.44.030, 78.44.035,
7 78.44.080, 78.44.090, 78.44.100, 78.44.110, 78.44.120, 78.44.130,
8 78.44.140, 78.44.160, and 78.44.180; prescribing penalties; providing
9 an effective date; and declaring an emergency.

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

11 NEW SECTION. **Sec. 1.** The legislature recognizes that the
12 extraction of minerals through surface mining has historically included
13 regulatory involvement by both state and local governments.

14 It is the intent of the legislature to clarify that surface mining
15 is an appropriate land use, subject to reclamation authority exercised
16 by the department of natural resources and land use and operation
17 regulatory authority by counties, cities, and towns.

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

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

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

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

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

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

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

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

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

7 NEW SECTION. **Sec. 4.** DEFINITIONS. Unless the context clearly
8 indicates otherwise, the definitions in this section apply throughout
9 this chapter.

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

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

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

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

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

30 Disturbed areas do not include:

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

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

1 (6) "Miner" means any person or persons, any partnership, limited
2 partnership, or corporation, or any association of persons, including
3 every public or governmental agency engaged in mining from the surface.

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

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

15 Operations specifically include:

16 (a) The mining or extraction of rock, stone, gravel, sand, earth,
17 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 surface
24 mining activities, traffic safety, and traffic control.

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

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

34 (11) "Reclamation" means rehabilitation for the appropriate future
35 use of disturbed areas resulting from surface mining including areas
36 under associated mineral processing equipment and areas under
37 stockpiled materials. Although both the need for and the
38 practicability of reclamation will control the type and degree of
39 reclamation in any specific surface mine, the basic objective shall be

1 to reestablish on a perpetual basis the vegetative cover, soil
2 stability, and water conditions appropriate to the approved subsequent
3 use of the surface mine and to prevent or mitigate future environmental
4 degradation.

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

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

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

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

17 (a) Has characteristics of topography, drainage, slope stability,
18 ownership, mining development, or mineral distribution, that make
19 reclamation necessary;

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

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

25 (16) "SEPA" means the state environmental policy act, chapter
26 43.21C RCW and rules adopted thereunder.

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

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

31 (ii) Mined slopes greater than thirty feet high and steeper than
32 1.0 foot horizontal to 1.0 foot vertical; or

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

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

- 1 (c) Surface mining shall exclude excavations or grading used:
2 (i) Primarily for on-site construction, on-site road maintenance,
3 or on-site landfill construction;
4 (ii) For the purpose of public safety or restoring the land
5 following a natural disaster;
6 (iii) For the purpose of removing stockpiles;
7 (iv) For forest or farm road construction or maintenance on-site or
8 on contiguous lands;
9 (v) For sand authorized by RCW 43.51.685; and
10 (vi) For underground mines.

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

15 NEW SECTION. **Sec. 5.** SEGMENTAL RECLAMATION. The permit holder
16 shall reclaim each segment of the mine within two years of completion
17 of surface mining on that segment except as provided in a segmental
18 reclamation agreement approved in writing by the department. The
19 primary objective of a segmental reclamation agreement should be to
20 enhance final reclamation.

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

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

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

32 The department shall have the exclusive authority to regulate
33 surface mine reclamation except that, by contractual agreement, the

1 department may delegate some or all of its enforcement authority to a
2 county, city, or town. All counties, cities, or towns shall have the
3 authority to zone surface mines and adopt ordinances regulating
4 operations pursuant to section 16 of this act, except that county,
5 city, or town operations ordinances may be preempted by the department
6 during the emergencies outlined in section 27 of this act and related
7 rules.

8 This chapter shall not ~~((affect))~~ alter or preempt any ~~((of the))~~
9 provisions of the state fisheries laws (Title 75 RCW), the state water
10 allocation and use laws (chapters 90.03 and 90.44 RCW), the state water
11 pollution control laws ((Title 90)) chapter 90.48 RCW), the state
12 ~~((game))~~ wildlife laws (Title 77 RCW), ((or any other state laws, and
13 ~~shall be cumulative and nonexclusive))~~ state noise laws or air quality
14 laws (Title 70 RCW), shoreline management (chapter 90.58 RCW), the
15 state environmental policy act (chapter 43.21C RCW), state growth
16 management (chapter 36.70A RCW), state drinking water laws (chapters
17 43.20 and 70.119A RCW), or any other state statutes.

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

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

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

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

33 NEW SECTION. **Sec. 10.** SURFACE MINING RECLAMATION ACCOUNT. The
34 surface mining reclamation account is created in the state treasury.
35 Annual mining fees, funds received by the department from state, local,
36 or federal agencies for research purposes, as well as other mine-

1 related funds and fines received by the department shall be deposited
2 into this account. The surface mine reclamation account may be used by
3 the department only to:

4 (1) Administer its regulatory program pursuant to this chapter;

5 (2) Undertake research relating to surface mine regulation,
6 reclamation of surface mine lands, and related issues; and

7 (3) Cover costs arising from appeals from determinations made under
8 this chapter.

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

12 NEW SECTION. **Sec. 11.** RECLAMATION PERMITS REQUIRED--APPLICATIONS.

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

27 Prior to receiving a reclamation permit, an applicant must submit
28 an application on forms provided by the department that shall contain
29 the following information and shall be considered part of the
30 reclamation permit:

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

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

36 (3) A reasonably accurate description of the minerals to be surface
37 mined;

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

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

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

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

7 (8) Any applicable SEPA documents; and

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

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

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

26 (1) A written narrative describing the proposed mining and
27 reclamation scheme with:

28 (a) A statement of a proposed subsequent use of the land after
29 reclamation that is consistent with the local land use designation.
30 Approval of the reclamation plan shall not vest the proposed subsequent
31 use of the land;

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

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

37 (d) The maximum depth of mining;

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

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

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

7 (h) A schedule for progressive reclamation of each segment of the
8 mine;

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

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

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

25 (2) Maps of the surface mine showing:

26 (a) All applicable data required in the narrative portion of the
27 reclamation plan;

28 (b) Existing topographic contours;

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

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

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

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

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

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

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

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

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

10 If the department refuses to approve a reclamation plan in the form
11 submitted by an applicant or permit holder, it shall notify the
12 applicant or permit holder stating the reasons for its determination
13 and describe such additional requirements to the applicant or permit
14 holder's reclamation plan as are necessary for the approval of the plan
15 by the department. If the department refuses to approve a complete
16 reclamation plan within one hundred twenty days, the miner or permit
17 holder may appeal this determination under the provisions of this
18 chapter.

19 Only insignificant deviations may occur from the approved
20 reclamation plan without prior written approval by the department for
21 the proposed change.

22 The department retains the authority to require that the
23 reclamation plan be updated to the satisfaction of the department at
24 least every ten years.

25 NEW SECTION. **Sec. 13.** JOINT RECLAMATION PLANS. Where two or more
26 surface mines join along a common boundary, the department may require
27 submission of a joint reclamation plan in order to provide for optimum
28 reclamation or to avoid waste of mineral resources. Such joint
29 reclamation plans may be in the form of a single collaborative plan
30 submitted by all affected permit holders or as individual reclamation
31 plans in which the schedule of reclamation, finished contours, and
32 revegetation match reclamation plans of adjacent permit holders.

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

1 (2) After June 30, 1993, each public or private permit holder shall
2 pay an annual permit fee of six hundred fifty dollars. The annual
3 permit fee shall be payable to the department on the first anniversary
4 of the permit date and each year thereafter. Annual fees paid by a
5 county for small mines used exclusively for public works projects shall
6 be paid on those small mines from which the county elects to extract
7 minerals in the next calendar year and shall not exceed two thousand
8 dollars.

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

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

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

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

18 (4) Appeals from any determination of the department shall not stay
19 the requirement to pay any annual permit fee. Failure to pay the
20 annual fee may constitute grounds for an order to suspend surface
21 mining or cancellation of the reclamation permit as provided in this
22 chapter.

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

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

28 (7) Mining of minerals on federal land is exempt from this chapter
29 provided that such mining substantially meets or exceeds the provisions
30 of this chapter that are not preempted by federal law.

31 NEW SECTION. **Sec. 15.** PERFORMANCE SECURITY. The department shall
32 not issue a reclamation permit until the applicant has deposited with
33 the department an acceptable performance security on forms prescribed
34 and furnished by the department. A public or governmental agency shall
35 not be required to post performance security nor shall a permit holder
36 be required to post surface mining performance security with more than
37 one state, local, or federal agency.

38 This performance security may be:

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

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

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

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

31 Liability under the performance security shall be maintained until
32 reclamation is completed according to the approved reclamation plan to
33 the satisfaction of the department unless released as hereinafter
34 provided. Liability under the performance security may be released
35 only upon written notification by the department. Notification shall
36 be given upon completion of compliance or acceptance by the department
37 of a substitute performance security. The liability of the surety
38 shall not exceed the amount of security required by this section and
39 the department's reasonable legal fees to recover the security.

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

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

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

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

22 (1) Where the county has classified mineral lands pursuant to RCW
23 36.70A.050 and mineral resource lands of long-term commercial
24 significance exist, a county, city, or town shall designate sufficient
25 mineral resource lands in the comprehensive plans to meet the projected
26 thirty-year, county-wide need. Once designated, mineral resource uses,
27 including operations as defined in section 4 of this act, shall be
28 established as an allowed use in local development regulations subject
29 to the permit process described in this section.

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

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

37 For purposes of this section, "long-term commercial significance"
38 includes the mineral composition of the land for long-term economically

1 viable commercial production, in consideration with the mineral
2 resource land's proximity to population areas, product markets, and the
3 possibility of more intense uses of the land.

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

7 (b) Local surface mining operating standards shall:

8 (i) Address only:

9 (A) Traffic;

10 (B) Light emission;

11 (C) Visual screening;

12 (D) Noise emission; and

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

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

19 (A) Are directly and proportionately related to limiting surface
20 mining impacts;

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

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

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

26 (iii) Limit application and monitoring fees to the amount necessary
27 to pay the costs of administering, processing, monitoring, and
28 enforcing the regulation of surface mining in accordance with this
29 section.

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

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

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

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

4 (v) Subject to subsection (3) of this section, provide that
5 approvals issued will be valid through completion of surface mining.

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

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

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

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

16 (d) Includes a variance procedure to allow continuation of existing
17 operations for a nonconforming surface mining operation where strict
18 adherence to a local operating standard would be economically or
19 operationally impractical due to conditions relating to site
20 configuration, topography, or the nature of historic operations.

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

25 NEW SECTION. **Sec. 17.** A surface mining model ordinance advisory
26 committee is hereby created. The committee shall be composed of
27 representatives of local government, state agencies, surface mining
28 interests, and the environmental community. The department of natural
29 resources shall appoint the members of the committee and the department
30 shall staff the committee. This temporary advisory committee shall
31 draft model ordinances for different surface-mining settings and shall
32 assist counties, cities, and towns in developing ordinances. The
33 committee shall complete its work and shall expire by December 31,
34 1994. Participants on the committee shall pay their own expenses, and
35 the department of natural resources shall fund the department's
36 involvement.

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

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

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

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

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

25 (2) As to surface mining projects, control of surface mine water
26 shall be pursuant to chapter 90.48 RCW; water availability, hydraulic
27 continuity, allocation, and use shall be pursuant to chapters 90.03,
28 90.44, and 90.54 RCW; regulation of drinking water shall be pursuant to
29 Titles 43 and 70 RCW; and protection of fisheries and wildlife shall be
30 regulated pursuant to Title 75 RCW (fisheries laws) and Title 77 RCW
31 (wildlife laws) as well as chapters 90.03, 90.44, 90.48, and 90.54 RCW,
32 federal storm water regulations, and/or national pollutant discharge
33 elimination system regulations. The department of ecology upon request
34 by a county, city, or town, may consult with the affected parties and
35 incorporate additional site-specific requirements into individual
36 surface mine national pollutant discharge elimination system permits
37 where such requirements are appropriate.

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

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

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

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

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

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

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

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

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

9 (2) The department may require that clearly visible, permanent
10 monuments delineating the permit boundaries and maximum extent of the
11 disturbed area be set at appropriate places around the mine site. The
12 permit holder shall maintain the monuments until termination of the
13 reclamation permit.

14 (3) All minimum reclamation standards may be waived in writing by
15 the department in order to accommodate unique and beneficial
16 reclamation schemes such as parks, swimming facilities, buildings, and
17 wildlife reserves. Such waivers shall be granted only after written
18 approval by the department of a reclamation plan describing the
19 variances to the minimum reclamation standards, receipt of
20 documentation of SEPA compliance, and written approvals from the
21 landowner and by the local land use authority.

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

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

26 (i) Have varied steepness;

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

28 (iii) Have no large rectilinear topographic elements;

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

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

35 (vi) Be compacted if significant backfilling is required to produce
36 the final reclaimed slopes and if the department determines that
37 compaction is necessary.

38 (b) Slopes in consolidated materials shall have no prescribed slope
39 angle or height, but where a severely hazardous condition is created by

1 mining and that is not indigenous to the immediate area, the slopes
2 shall not exceed 2.0 feet horizontal to 1.0 foot vertical. Steeper
3 slopes shall be acceptable in areas where evidence is submitted that
4 demonstrates that the geologic or topographic characteristics of the
5 site preclude reclamation of slopes to such angle or height or that
6 such slopes constitute an acceptable subsequent use under local land
7 use regulations.

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

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

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

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

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

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

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

38 (f) Topsoil shall be restored as necessary to promote effective
39 revegetation and to stabilize slopes and mine floors. Where limited

1 topsoil is available, topsoil shall be placed and revegetated in such
2 a way as to ensure that little topsoil is lost to erosion.

3 (g) Where surface mining has exposed natural materials that may
4 create polluting conditions, including but not limited to acid-forming
5 coals and metalliferous rock or soil, such conditions shall be
6 addressed according to a method approved by the department. The final
7 ground surface shall be graded so that surface water drains away from
8 these materials.

9 (h) All grading and backfilling shall be made with nonnoxious,
10 noncombustible, and relatively incompactible solids unless the permit
11 holder provides:

12 (i) Written approval from all appropriate solid waste regulatory
13 agencies; and

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

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

21 (j) Pit floors should be bulldozed or ripped to foster
22 revegetation.

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

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

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

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

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

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

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

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

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

33 (ii) In eastern Washington, lupine, white clover, Russian olive,
34 black locust, junipers, and pines are among appropriate plants. In wet
35 areas, cottonwood, tubers, and sedges are appropriate.

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

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

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

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

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

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

18 NEW SECTION. **Sec. 23.** MODIFICATION OF RECLAMATION PLANS. The
19 department and the permit holder may modify the reclamation plan at any
20 time during the term of the permit for any of the following reasons:

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

23 (2) If the department determines that the previously adopted
24 reclamation plan is impossible or impracticable to implement and
25 maintain; or

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

28 Modified reclamation plans shall be reviewed by the department as
29 lead agency under SEPA. Such SEPA analyses shall consider only those
30 impacts relating directly to the proposed modifications. Copies of
31 proposed and approved modifications shall be sent to the appropriate
32 county, city, or town.

33 NEW SECTION. **Sec. 24.** REPORTS. On the anniversary date of the
34 reclamation permit and each year thereafter until reclamation is
35 completed and approved, the permit holder shall file a report of

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

3 NEW SECTION. **Sec. 25.** INSPECTION OF PERMIT AREA. The department
4 may order at any time an inspection of the disturbed area to determine
5 if the miner or permit holder has complied with the reclamation permit,
6 rules, and this chapter.

7 NEW SECTION. **Sec. 26.** ORDER TO RECTIFY DEFICIENCIES. The
8 department may issue an order to rectify deficiencies when a miner or
9 permit holder is conducting surface mining in any manner not authorized
10 by:

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

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

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

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

29 and that activity has created a situation involving an immediate danger
30 to the public health, safety, welfare, or environment requiring
31 immediate action, the department may issue an emergency notice and
32 order to rectify deficiencies, and/or an emergency order to suspend
33 surface mining. These orders shall be effective when entered. The
34 department may take such action as is necessary to prevent or avoid the
35 danger to the public health, safety, welfare, or environment that
36 justifies use of emergency adjudication. The department shall give

1 such notice as is practicable to the permit holder or miner who is
2 required to comply with the order. The order shall comply with the
3 requirements of the administrative procedure act.

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

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

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

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

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

27 NEW SECTION. **Sec. 29.** DECLARATION OF ABANDONMENT. The department
28 may issue a declaration of abandonment when it determines that all
29 surface mining has ceased for a period of one hundred eighty
30 consecutive days not set forth in the permit holder's reclamation plan
31 or when, by reason of inspection of the permit area, or by any other
32 means, the department determines that the mine has in fact been
33 abandoned by the permit holder except that abandonment shall not
34 include normal interruptions of surface mining resulting from labor
35 disputes, economic conditions associated with lack of smelting capacity

1 or availability of appropriate transportation, war, social unrest,
2 demand for minerals, maintenance and repairs, and acts of God.

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

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

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

22 NEW SECTION. **Sec. 31.** ORDER TO SUBMIT PERFORMANCE SECURITY--
23 RECLAMATION BY THE DEPARTMENT. The department may, with the staff,
24 equipment, and material under its control, or by contract with others,
25 reclaim the disturbed areas when it finds that reclamation has not
26 occurred in any segment of a surface mine within two years of
27 completion of mining or of declaration of abandonment and the permit
28 holder is not actively pursuing reclamation.

29 If the department intends to undertake the reclamation, the
30 department shall issue an order to submit performance security
31 requiring the permit holder or surety to submit to the department the
32 amount of moneys posted pursuant to section 15 of this act. If the
33 amount specified in the order to submit performance security is not
34 paid within twenty days after issuance of the notice, the attorney
35 general upon request of the department shall bring an action on behalf
36 of the state in a superior court to recover the amount specified and
37 associated legal fees.

1 The department may proceed at any time after issuing the order to
2 submit performance security with reclamation of the site according to
3 the approved reclamation plan or according to a plan developed by the
4 department that meets the minimum reclamation standards.

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

8 (1) Reclamation;

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

11 (3) Administrative and legal expenses related to reclamation of the
12 surface mine.

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

19 NEW SECTION. **Sec. 32.** FINES. Each order of the department may
20 impose a fine or fines in the event that a miner or permit holder fails
21 to obey the order of the department. When a miner or permit holder
22 fails to comply with an order of the department, the miner or permit
23 holder shall be subject to a civil penalty in an amount not more than
24 ten thousand dollars for each violation plus interest based upon a
25 schedule of fines set forth by the department in rule. Procedures for
26 imposing a penalty and setting the amount of the penalty shall be as
27 provided in RCW 90.48.144. Each day on which a miner or permit holder
28 continues to disobey any order of the department shall constitute a
29 separate violation. If the penalty and interest is not paid to the
30 department after it becomes due and payable, the attorney general, upon
31 the request of the department, may bring an action in the name of the
32 state of Washington to recover the penalty, interest, mitigation for
33 environmental damages, and associated legal fees. Decisions of the
34 department are subject to review by the pollution control hearings
35 board.

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

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

5 The department or county, city, or town may refuse to issue any
6 other permit at any other location to any miner or permit holder who
7 fails to rectify deficiencies set forth in an order of the department
8 within the requisite time schedule. However, the department or county,
9 city, or town shall issue all appropriate permits when all deficiencies
10 are corrected at each surface mining site.

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

13 Any (~~operator~~) miner or permit holder conducting surface mining
14 within the state of Washington without a valid (~~operating~~)
15 reclamation permit shall be guilty of a gross misdemeanor. Surface
16 mining outside of the permitted area shall constitute illegal mining
17 without a valid reclamation permit. Each day of (~~operation~~) mining
18 without a valid reclamation permit shall constitute a separate offense.

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

21 Appeals from department determinations under this chapter shall be
22 made as follows:

23 Appeals from department determinations made under this chapter
24 shall be made under the provisions of the Administrative Procedure Act
25 (chapter 34.05 RCW), and shall be considered an adjudicative proceeding
26 within the meaning of the Administrative Procedure Act, chapter 34.05
27 RCW. Only a person aggrieved within the meaning of RCW 34.05.530 has
28 standing and can file an appeal.

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

31 (~~This act shall not direct itself to the reclamation of land~~
32 ~~mined)) Miners and permit holders shall not be required to reclaim any
33 segment where all surface mining was completed prior to January 1,
34 1971. However, the department shall make an effort to reclaim
35 previously abandoned or completed surface mining segments.~~

1 NEW SECTION. **Sec. 37.** RECLAMATION AWARDS ESTABLISHED. The
2 department shall create reclamation awards in recognition of excellence
3 in reclamation or reclamation research. Such awards shall be presented
4 to individuals, miners, operators, companies, or government agencies
5 performing exemplary surface mining reclamation in the state of
6 Washington. The department shall designate a percent of the state
7 annual fees as funding of the awards.

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

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

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

35 NEW SECTION. **Sec. 40.** The code reviser may recodify, as
36 necessary, RCW 78.44.150, 78.44.170, 78.44.175, and 78.44.910 within

1 chapter 78.44 RCW to accomplish the reorganization of chapter 78.44 RCW
2 as intended in this act.

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

5 NEW SECTION. **Sec. 42.** Sections 4, 5, 10 through 15, 18 through
6 33, 37, and 38 of this act are each added to chapter 78.44 RCW.

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

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

--- END ---