
HOUSE BILL 1970

State of Washington

61st Legislature

2009 Regular Session

By Representatives Blake, Chandler, Williams, and Pearson

Read first time 02/04/09. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to marine transportation facilities for sand and
2 gravel; amending RCW 78.44.031; adding new sections to chapter 78.44
3 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the economic
6 vitality of the state of Washington is dependent, in part, on the
7 continued availability, quantity, and quality of sand and gravel for
8 public and private construction and restoration projects, including
9 federal, state, and local highways, roads, buildings, and a variety of
10 public infrastructure projects.

11 (2) The legislature further finds that marine transportation
12 facilities capable of delivering high quality, high volume supplies of
13 sand and gravel are critical to the state's ability to undertake, in
14 the very near term, infrastructure projects pursuant to federal and
15 state economic stimulus programs, including environmental,
16 transportation, and public facility projects.

17 (3) The legislature further finds that marine transportation of
18 high quality sand and gravel is more cost-effective for larger,
19 regional, or distant projects requiring greater quantities of material

1 than truck transportation, which is primarily feasible for local
2 deliveries only. Therefore by lowering transportation costs, the
3 primary factor in supplying sand and gravel for public projects, marine
4 transportation represents a significant savings for taxpayers on public
5 projects.

6 (4) The legislature further finds that marine transportation of
7 sand and gravel significantly reduces the volume of heavy truck traffic
8 on congested highways and roads, resulting in improved safety for all
9 drivers, less property damage, and reduced roadway wear and tear that
10 can extend the life of highways and roads and thereby lower taxpayer
11 costs.

12 (5) The legislature further finds that marine transportation of
13 sand and gravel is more environmentally friendly than truck
14 transportation, using less fossil fuel per vehicle mile per material
15 ton transported, and improving air quality and lessening the impact of
16 transportation systems on global warming while reducing the
17 contamination of surface water runoff.

18 (6) The legislature further finds that marine transportation of
19 sand and gravel provides a more viable, cost-effective, and
20 environmentally friendly method of delivery for broad-scale beach
21 restoration and shoreline enhancement projects.

22 (7) The legislature further finds that marine transportation of
23 sand and gravel on Puget Sound, Hood Canal, and Washington waters is an
24 issue of statewide importance and, therefore, it is not appropriate for
25 one local jurisdiction to conduct or control permit processes for
26 marine transportation facilities that can impact citizens throughout
27 the region and state, particularly when sand and gravel produced and
28 transported by facilities is delivered to and used in multiple
29 jurisdictions.

30 (8) The legislature further finds that economic development, job
31 creation, environmental protection, and environmental benefits are not
32 contradictory, and therefore will utilize the balancing tests set forth
33 in the growth management act, the shoreline management act, and all
34 other applicable federal and state statutes, to support and encourage
35 economic development and environmental projects that are deemed
36 beneficial to the people of Washington.

1 corporations or other business entities, the names and addresses of
2 their principal officers and resident agent for service of process;

3 (c) A description of the source of the sand and gravel to be used
4 by the proposed marine transportation facility;

5 (d) A description of the proposed marine transportation facility,
6 including all conveyance systems, docks, piers, and loading facilities;

7 (e) Estimated days and hours of operation for the marine
8 transportation facility;

9 (f) Any applicable documents required under the state environmental
10 policy act, chapter 43.21C RCW; and

11 (g) Other data as required by the department.

12 (3) An applicant for a marine transportation facility permit shall
13 pay a nonrefundable application fee to the department of two thousand
14 five hundred dollars.

15 NEW SECTION. **Sec. 4.** A new section is added to chapter 78.44 RCW
16 to read as follows:

17 (1) Within thirty days after receipt of a complete application for
18 a marine transportation facility permit required under section 3 of
19 this act, the department must issue notice of the application to and
20 request written comments from:

21 (a) The department of ecology;

22 (b) The county or city in which the proposed facility will be
23 located;

24 (c) Any county in the state that reasonably can be expected to
25 receive sand and gravel shipments from the proposed facility;

26 (d) Any county in the state through which shipments from the
27 proposed facility can reasonably be expected to pass;

28 (e) All property owners within five hundred feet of the proposed
29 facility;

30 (f) Any federal agency with jurisdiction; and

31 (g) Any Indian tribe or other organization that has requested that
32 the department notify them of applications for a marine transportation
33 facility permit.

34 (2) The notice required by subsection (1) of this section must
35 require that any comments on the proposed application be submitted to
36 the department within forty-five days after the notice is issued.

1 (3) The department is the lead agency for purposes of compliance
2 with chapter 43.21C RCW, pursuant to the state environmental policy act
3 rules adopted by the department.

4 (4) After completion of the state environmental policy act process
5 under chapter 43.21C RCW and review of the application by the
6 department, the department must issue a written decision on the
7 application, which must include conditions and restrictions on the
8 construction and operation of the marine transportation facility that
9 the department determines are necessary to ensure that the facility is
10 operated in a manner consistent with the public health, safety, and
11 welfare, and that any significant adverse environmental impacts have
12 been mitigated in accordance with the provisions of chapter 43.21C RCW.
13 A copy of the decision must be mailed to the applicant and to any
14 person or party identified in subsection (1) of this section who has
15 requested a copy of the decision.

16 (5) Any party aggrieved by the department's decision may file an
17 appeal to the pollution control hearings board in accordance with the
18 provisions of chapter 34.05 RCW.

19 **Sec. 5.** RCW 78.44.031 and 2000 c 11 s 22 are each amended to read
20 as follows:

21 (~~Unless the context clearly indicates otherwise,~~) The definitions
22 in this section apply throughout this chapter unless the context
23 clearly requires otherwise.

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

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

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

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

36 (5) "Disturbed area" means any place where activities clearly in
37 preparation for, or during, surface mining have physically disrupted,

1 covered, compacted, moved, or otherwise altered the characteristics of
2 soil, bedrock, vegetation, or topography that existed prior to such
3 activity. Disturbed areas may include but are not limited to: Working
4 faces, water bodies created by mine-related excavation, pit floors, the
5 land beneath processing plant and stock pile sites, spoil pile sites,
6 and equipment staging areas. Disturbed areas shall also include
7 aboveground waste rock sites and tailing facilities, and other surface
8 manifestations of underground mines.

9 Disturbed areas do not include:

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

13 (b) Lands that have been reclaimed to all standards outlined in
14 this chapter, rules of the department, any applicable SEPA document,
15 and the approved reclamation plan; and

16 (c) Subsurface aspects of underground mines, such as portals,
17 tunnels, shafts, pillars, and stopes.

18 (6) "Marine transportation facility" includes: (a) Docks, piers,
19 and related facilities for the marine transportation of sand and
20 gravel; and (b) land-based conveyance systems for delivery of sand and
21 gravel from surface mines regulated under this chapter to docks, piers,
22 and related facilities.

23 (7) "Miner" means any person or persons, any partnership, limited
24 partnership, or corporation, or any association of persons, including
25 every public or governmental agency engaged in surface mining.

26 ((+7)) (8) "Minerals" means clay, coal, gravel, industrial
27 minerals, metallic substances, peat, sand, stone, topsoil, and any
28 other similar solid material or substance to be excavated from natural
29 deposits on or in the earth for commercial, industrial, or construction
30 use.

31 ((+8)) (9) "Operations" means all mine-related activities,
32 exclusive of reclamation, that include, but are not limited to
33 activities that affect noise generation, air quality, surface and
34 ground water quality, quantity, and flow, glare, pollution, traffic
35 safety, ground vibrations, and/or significant or substantial impacts
36 commonly regulated under provisions of land use or other permits of
37 local government and local ordinances, or other state laws.

38 Operations specifically include:

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

3 (b) Blasting, equipment maintenance, sorting, crushing, and
4 loading;

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

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

10 ~~((+9))~~ (10) "Overburden" means the earth, rock, soil, and topsoil
11 that lie above mineral deposits.

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

19 ~~((+11))~~ (12) "Reclamation" means rehabilitation for the
20 appropriate future use of disturbed areas resulting from surface mining
21 including areas under associated mineral processing equipment, areas
22 under stockpiled materials, and aboveground waste rock and tailing
23 facilities, and all other surface disturbances associated with
24 underground mines. Although both the need for and the practicability
25 of reclamation will control the type and degree of reclamation in any
26 specific surface mine, the basic objective shall be to reestablish on
27 a perpetual basis the vegetative cover, soil stability, and water
28 conditions appropriate to the approved subsequent use of the surface
29 mine and to prevent or mitigate future environmental degradation.

30 ~~((+12))~~ (13) "Reclamation setbacks" include those lands along the
31 margins of surface mines wherein minerals and overburden shall be
32 preserved in sufficient volumes to accomplish reclamation according to
33 the approved plan and the minimum reclamation standards. Maintenance
34 of reclamation setbacks may not preclude other mine-related activities
35 within the reclamation setback.

36 ~~((+13))~~ (14) "Recycling" means the reuse of minerals or rock
37 products.

1 (~~(14)~~) (15) "Screening" consists of vegetation, berms or other
2 topography, fencing, and/or other screens that may be required to
3 mitigate impacts of surface mining on adjacent properties and/or the
4 environment.

5 (~~(15)~~) (16) "Segment" means any portion of the surface mine that,
6 in the opinion of the department:

7 (a) Has characteristics of topography, drainage, slope stability,
8 ownership, mining development, or mineral distribution, that make
9 reclamation necessary;

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

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

15 (~~(16)~~) (17) "SEPA" means the state environmental policy act,
16 chapter 43.21C RCW and rules adopted thereunder.

17 (~~(17)~~) (18)(a) "Surface mine" means any area or areas in close
18 proximity to each other, as determined by the department, where
19 extraction of minerals results in:

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

21 (ii) Surface mined slopes greater than thirty feet high and steeper
22 than 1.0 foot horizontal to 1.0 foot vertical; or

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

26 (b) Surface mines include areas where mineral extraction from the
27 surface or subsurface occurs by the auger method or by reworking mine
28 refuse or tailings, when the disturbed area exceeds the size or height
29 thresholds listed in (a) of this subsection.

30 (c) Surface mining occurs when operations have created or are
31 intended to create a surface mine as defined by this subsection.

32 (d) Surface mining shall exclude excavations or grading used:

33 (i) Primarily for on-site construction, on-site road maintenance,
34 or on-site landfill construction;

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

37 (iii) For the purpose of removing stockpiles;

1 (iv) For forest or farm road construction or maintenance on site or
2 on contiguous lands;

3 (v) Primarily for public works projects if the mines are owned or
4 primarily operated by counties with 1993 populations of less than
5 twenty thousand persons, and if each mine has less than seven acres of
6 disturbed area; and

7 (vi) For sand authorized by RCW 79A.05.630.

8 ((+18+)) (19) "Topsoil" means the naturally occurring upper part of
9 a soil profile, including the soil horizon that is rich in humus and
10 capable of supporting vegetation together with other sediments within
11 four vertical feet of the ground surface.

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