

**RCW 78.56.110 Performance security required—Conditions—
Department of ecology authority to adopt requirements—Liability under
performance security.**

(1) The department of ecology shall not issue necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the department of ecology a performance security which is acceptable to the department of ecology based on the requirements of subsection (2) of this section. This performance security may be:

- (a) Bank letters of credit;
- (b) A cash deposit;
- (c) Negotiable securities;
- (d) An assignment of a savings account;
- (e) A savings certificate in a Washington bank; or
- (f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW.

The department of ecology may, for any reason, refuse any performance security not deemed adequate.

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

(a) Compliance with the environmental protection laws of the state of Washington administered by the department of ecology, or permit conditions administered by the department of ecology, associated with the construction, operation, and closure pertaining to metals mining and milling operations, and with the related environmental protection ordinances and permit conditions established by local government when requested by local government;

(b) Reclamation of metals mining and milling operations that do not meet the threshold of surface mining as defined by RCW 78.44.031(17);

(c) Postclosure environmental monitoring as determined by the department of ecology; and

(d) Provision of sufficient funding as determined by the department of ecology for cleanup of potential problems revealed during or after closure.

(3) The department of ecology may, if it deems appropriate, adopt rules for determining the amount of the performance security, requirements for the performance security, requirements for the issuer of the performance security, and any other requirements necessary for the implementation of this section.

(4) The department of ecology may increase or decrease the amount of the performance security at any time to compensate for any alteration in the operation that affects meeting the obligations in subsection (2) of this section. At a minimum, the department shall review the adequacy of the performance security every two years.

(5) Liability under the performance security shall be maintained until the obligations in subsection (2) of this section are met to the satisfaction of the department of ecology. Liability under the performance security may be released only upon written notification by the department of ecology.

(6) Any interest or appreciation on the performance security shall be held by the department of ecology until the obligations in subsection (2) of this section have been met to the satisfaction of the department of ecology. At such time, the interest shall be remitted to the applicant or operator. However, if the applicant or

operator fails to comply with the obligations of subsection (2) of this section, the interest or appreciation may be used by the department of ecology to comply with the obligations.

(7) Only one agency may require a performance security to satisfy the deposit requirements of RCW 78.44.087, and only one agency may require a performance security to satisfy the deposit requirements of this section. However, a single performance security, when acceptable to both the department of ecology and the department of natural resources, may be utilized by both agencies to satisfy the requirements of this section and RCW 78.44.087. [1995 c 223 § 1; 1994 c 232 § 11.]