
SUBSTITUTE SENATE BILL 6119

State of Washington

52nd Legislature

1992 Regular Session

By Senate Committee on Environment & Natural Resources (originally sponsored by Senators Amondson, Sutherland, L. Smith, Bauer, McCaslin, Metcalf, Saling and Barr)

Read first time 02/07/92.

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

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

10 NEW SECTION. **Sec. 1.** The legislature recognizes that recent
11 court decisions have affected the ability of some counties, cities, and
12 towns to exercise regulatory oversight regarding surface mining
13 operations. The legislature also recognizes that the extraction of

1 minerals through surface mining has historically included regulatory
2 involvement by both state and local government agencies.

3 It is the intent of the legislature to clarify that surface mining
4 is an appropriate land use, subject to reclamation authority exercised
5 by the department of natural resources and land use and operations
6 regulatory authority exercised by counties, cities, and towns.

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

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

1 legislature finds that a balance between appropriate environmental
2 regulation and the production and conservation of minerals is in the
3 best interests of the citizens of the state.

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

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

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

14 (2) Provide for local regulation of mining operations as authorized
15 in section 18 of this act in order to prevent or mitigate environmental
16 and social impacts of surface mining operations;

17 (3) Provide for the greatest practical degree of state-wide
18 consistency in the regulation of surface mines;

19 (4) Apportion regulatory authority between state and local
20 governments in order to minimize redundant regulation of mining;

21 (5) Ensure the power of local government to regulate land use
22 pursuant to section 17 of this act and operations pursuant to section
23 18 of this act; and

24 (6) Ensure that reclamation is consistent with local land use plans
25 proposed following actual reclamation.

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

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

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

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

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

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

22 Disturbed areas do not include:

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

26 (b) Lands that have been reclaimed to all standards outlined in
27 this chapter, rules, any applicable SEPA document, and the approved
28 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 gravel, sand, stone, topsoil, and any other
5 similar solid material or substance to be excavated from natural
6 deposits on or in the earth for commercial, industrial, or construction
7 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
11 quality, quantity, and flow, glare, pollution, traffic safety, ground
12 vibrations, and/or public safety impacts commonly regulated under
13 provisions of land use or other permits of local government and local
14 ordinances, or other state laws. Operations specifically include:

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

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

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

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

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

26 (10) "Permit holder" means any person or persons, any partnership,
27 limited partnership, or corporation, or any association of persons,
28 either natural or artificial, including every public or governmental
29 agency engaged in surface mining and/or the operation of surface mines,
30 whether individually, jointly, or through subsidiaries, agents,

1 employees, operators, or contractors who holds a state reclamation
2 permit.

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

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

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

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

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

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

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

1 (c) Are smaller than seven acres and have less than five hundred
2 linear feet of working face except as provided in a segmental
3 reclamation agreement approved by the department.

4 (16) "SEPA" means the state environmental policy act, chapter
5 43.21C RCW and rules adopted thereunder.

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

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

10 (ii) Mined slopes greater than thirty feet high and steeper than
11 1.0 foot horizontal to 1.0 foot vertical; or

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

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

19 (c) Surface mines shall not include:

20 (i) Excavations, removal, or grading used primarily for
21 construction or road maintenance for forestry or farming on the same
22 landowner's property or on contiguous lands;

23 (ii) Excavations or graded areas used solely for the purpose of
24 restoring the land immediately following a natural disaster; or

25 (iii) Underground mines.

26 (18)(a) "Surface mining" means all or any part of the processes
27 involved in maintaining a reclamation permit or operating a surface
28 mine, or both.

29 (b) Surface mining shall not include:

1 (i) Excavations, removal, or grading used primarily for
2 construction or road maintenance for forestry or farming on the same
3 landowner's property or on contiguous lands;

4 (ii) Excavations or grading for the purpose of public safety or
5 restoring the land following an emergent natural disaster;

6 (iii) Excavations or graded areas used primarily for construction,
7 road maintenance, forestry, or farming on-site or on contiguous lands;
8 or

9 (iv) Excavation or grading for the purpose of removing stockpiles
10 of previously mined materials.

11 (19) "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 mining on that segment except as provided in a segmental reclamation
18 agreement approved in writing by the department. The primary objective
19 of a segmental reclamation agreement should be to enhance final
20 reclamation.

21 NEW SECTION. **Sec. 6.** ADMINISTRATION OF CHAPTER. (1) The
22 department is charged with the administration and enforcement of
23 reclamation under this chapter.

24 (2) Counties, cities, and towns may regulate surface mining
25 operations and surface mine siting pursuant to the authority granted
26 local government.

1 **Sec. 7.** RCW 78.44.040 and 1984 c 215 s 2 are each amended to read
2 as follows:

3 The department of natural resources is charged with the
4 administration of reclamation under this chapter. In order to
5 implement ~~((the chapter's terms and provisions))~~ and enforce this
6 chapter, the department, under the ~~((provisions of the))~~ administrative
7 procedure act (chapter 34.05 RCW), ~~((as now or hereafter amended,))~~ may
8 from time to time ~~((promulgate))~~ adopt those rules ~~((and regulations))~~
9 necessary to carry out the purposes of this chapter. Counties, cities,
10 and towns may adopt ordinances as provided in section 18 of this act.

11 **Sec. 8.** RCW 78.44.050 and 1970 ex.s. c 64 s 6 are each amended to
12 read as follows:

13 The department shall have the exclusive authority to regulate
14 surface mine reclamation. All counties, cities, or towns shall have
15 the authority to zone surface mines and regulate surface mine siting
16 pursuant to section 17 of this act and ordinances regulating operations
17 adopted pursuant to section 18 of this act, except that county, city,
18 or town operations ordinances may be preempted by the department during
19 the emergencies outlined in section 27 of this act and related rules.

20 This chapter shall not ~~((affect))~~ alter or preempt any ~~((of the))~~
21 provisions of the state fisheries laws (Title 75 RCW), the state water
22 pollution control laws (Title 90 RCW), the state ~~((game))~~ wildlife laws
23 (Title 77 RCW), ~~((or any other state laws, and shall be cumulative and~~
24 ~~nonexclusive))~~ state noise laws or air quality laws (Title 70 RCW),
25 shoreline management (chapter 90.58 RCW), the state environmental
26 policy act (chapter 43.21C RCW), state growth management (chapter
27 36.70A RCW), or any other state laws, and shall be cumulative and
28 nonexclusive.

1 **Sec. 9.** RCW 78.44.060 and 1970 ex.s. c 64 s 7 are each amended to
2 read as follows:

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

7 **Sec. 10.** RCW 78.44.070 and 1970 ex.s. c 64 s 8 are each amended to
8 read as follows:

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

16 NEW SECTION. **Sec. 11.** SURFACE MINING RECLAMATION ACCOUNT. The
17 surface mining reclamation account is created in the state treasury.
18 Annual mining fees, funds received by the department from state, local,
19 or federal agencies for research purposes, as well as other mine-
20 related funds and fines received by the department shall be deposited
21 into this account. The surface mine reclamation account may be used by
22 the department only to:

- 23 (1) Administer its regulatory program pursuant to this chapter;
- 24 (2) Undertake research relating to surface mine regulation,
25 reclamation of surface mine lands, and related issues; and
- 26 (3) Cover costs arising from administrative appeals to
27 determinations made under this chapter.

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

4 Only the commissioner of public lands or the commissioner's
5 designee may authorize expenditures from the account. The account is
6 subject to chapter 43.88 RCW, but no appropriation is required for
7 expenditures.

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

9 After July 1, 1992, a person may not engage in surface mining without
10 having first obtained a reclamation permit from the department.
11 Operating permits issued by the department between January 1, 1971, and
12 June 30, 1992, shall be considered reclamation permits provided such
13 permits substantially meet the protections, mitigations, and
14 reclamation goals of sections 13, 18, 20, and 21 of this act within
15 five years after the effective date of this act. State agencies shall
16 be exempt from this time limit for inactive sites. Prior to the use of
17 an inactive site, the reclamation plan must be brought up to current
18 standards. A separate permit shall be required for each noncontiguous
19 surface mine. The reclamation permit shall consist of the permit forms
20 and any exhibits attached thereto. The permit holder shall comply with
21 the provisions of the reclamation permit unless waived and explained in
22 writing by the department.

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

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

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

4 (3) A reasonably accurate description of the minerals to be surface
5 mined;

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

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

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

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

13 (8) Any applicable SEPA determination; and

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

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

20 NEW SECTION. **Sec. 13.** RECLAMATION PLANS. An applicant shall
21 provide a reclamation plan and copies acceptable to the department
22 prior to obtaining a reclamation permit. The department shall have the
23 sole authority to approve reclamation plans. Reclamation plans or
24 modified reclamation plans submitted to the department after June 30,
25 1992, shall meet or exceed the minimum reclamation standards set forth
26 in this chapter and by the department in rule. Each applicant shall
27 also supply copies of the proposed plans and final reclamation plan
28 approved by the department to the county, city, or town in which the
29 mine will be located. The department shall solicit comment from local

1 government prior to approving a reclamation plan. The reclamation plan
2 shall include:

3 (1) A written narrative describing the proposed mining and
4 reclamation scheme with:

5 (a) A statement of a proposed subsequent use of the land after
6 reclamation that is consistent with the local land use designation.
7 Approval of the reclamation plan shall not vest the proposed subsequent
8 use of the land;

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

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

14 (d) The maximum depth of mining;

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

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

17 (g) A description of the sequence of mining that will provide,
18 within limits of normal procedures of the industry, for completion of
19 surface mining and associated disturbance on each segment of the permit
20 area so the reclamation can be initiated at the earliest possible time
21 on each segment of the mine;

22 (h) A schedule for progressive reclamation of each segment of the
23 mine;

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

28 (j) Where mining is contemplated within critical aquifer recharge
29 areas, special protection areas as defined by chapter 90.48 RCW and
30 implementing rules, public water supply watersheds, sole source

1 aquifers, wellhead protection areas, and designated aquifer protection
2 areas as set forth in chapter 36.36 RCW, a thoroughly documented
3 hydrogeologic analysis of the reclamation plan shall be required; and

4 (k) Additional information including but not limited to: The
5 positions of reclamation setbacks and screening, conservation of
6 topsoil, interim reclamation, revegetation, postmining erosion control,
7 drainage control, slope stability, disposal of mine wastes, control of
8 fill material, development of wetlands, ponds, lakes, and impoundments,
9 and rehabilitation of topography.

10 (2) Maps of the surface mine showing:

11 (a) All applicable data required in the narrative portion of the
12 reclamation plan;

13 (b) Existing topographic contours;

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

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

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

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

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

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

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

1 (5) Written approval of the reclamation plan by the landowner for
2 mines permitted after June 30, 1992.

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

5 The applicant shall provide the department with copies of the
6 reclamation plan including maps and cross sections.

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

16 Only insignificant deviations may occur from the approved
17 reclamation plan without prior written approval by the department for
18 the proposed change.

19 The department retains the authority to require that the
20 reclamation plan be updated to the satisfaction of the department at
21 least every ten years.

22 NEW SECTION. **Sec. 14.** RECLAMATION PERMITS--TIME LIMITS. The
23 county shall issue a SEPA threshold determination within one hundred
24 eighty days of receipt of a complete permit application. Reclamation
25 permits shall not be issued until SEPA review of the entire proposal is
26 complete.

27 NEW SECTION. **Sec. 15.** FEES. (1) The applicant shall pay an
28 application fee to the department prior to being granted each new

1 reclamation permit. The amount of the application fee shall be based
2 on the acreage to be permitted.

3 (2) Each permit holder shall pay an annual reclamation permit fee
4 to the department on the first anniversary of the permit date and each
5 year thereafter.

6 (3) The department shall set forth in rule the methods and schedule
7 for assessing annual reclamation permit fees based on the following
8 criteria:

9 (a) No annual fee shall exceed ten thousand dollars;

10 (b) Annual fees assessed between June 30, 1992, and December 31,
11 1993, shall be based on the permitted acreage;

12 (c) After December 31, 1993, annual fees shall be based on the
13 permitted area minus a significant credit for any acreage reclaimed to
14 the standards set forth in the approved reclamation plan and the
15 minimum reclamation standards, as determined by the department;

16 (d) The department shall establish lower fee rates for small
17 surface mines:

18 (i) Used primarily for infrequent infrastructure maintenance and
19 other public service work; or

20 (ii) That have never been disturbed but have held reclamation
21 permits for more than two years;

22 (e) The department may waive annual fees for recipients of a
23 surface mine reclamation award;

24 (f) The total annual permit fees shall be reasonably related to the
25 approximate cost of administering the department's surface mine
26 regulatory program.

27 The annual fee shall be submitted with the report required in this
28 chapter. Appeal of the department's determination of the disturbed
29 area shall not stay the requirement to pay any annual fee within the
30 time frame established by the department. Failure to pay the annual

1 fee may constitute grounds for fines or an order to suspend surface
2 mining or cancellation of the reclamation permit as outlined in this
3 chapter. All fees collected by the department shall be deposited into
4 the surface mining reclamation account.

5 NEW SECTION. **Sec. 16.** PERFORMANCE SECURITY. The department shall
6 not issue a reclamation permit until the applicant has deposited with
7 the department an acceptable performance security on forms prescribed
8 and furnished by the department. A public or governmental agency shall
9 not be required to post performance security nor shall a permit holder
10 be required to post surface mining performance security with more than
11 one state, local, or federal agency.

12 This performance security may be:

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

14 (2) A cash deposit;

15 (3) Negotiable securities acceptable to the department;

16 (4) An assignment of a savings account;

17 (5) A savings certificate in a Washington bank on an assignment
18 form prescribed by the department; or

19 (6) A corporate surety bond executed in favor of the department by
20 a corporation authorized to do business in the state of Washington
21 under Title 48 RCW and authorized by the department.

22 The performance security shall be conditioned upon the faithful
23 performance of the requirements set forth in this chapter and of the
24 rules adopted under it.

25 The department shall have the authority to determine the amount of
26 the performance security using a standardized performance security
27 formula developed by the department. The amount of the security shall
28 be determined by the department and based on the estimated costs of
29 completing reclamation according to the approved plan or minimum

1 standards and related administrative overhead for the area to be
2 surface mined during (a) the next twelve-month period, (b) the
3 following twenty-four months, and (c) any previously disturbed areas on
4 which the reclamation has not been satisfactorily completed and
5 approved.

6 The department may increase or decrease the amount of the
7 performance security at any time to compensate for a change in the
8 disturbed area, the depth of excavation, a modification of the
9 reclamation plan, or any other alteration in the conditions of the mine
10 that affects the cost of reclamation.

11 The amount of the performance security shall not be subject to
12 appeal. The department for any reason may refuse any performance
13 security not deemed adequate.

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

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

1 No other state agency or local government shall require performance
2 security for the purposes of reclamation and only one agency of
3 government shall require and hold the performance security. The
4 department may enter into written agreements with federal agencies in
5 order to avoid redundant bonding of surface mines straddling boundaries
6 between federally controlled and other lands within Washington state.

7 NEW SECTION. **Sec. 17.** A new section is added to chapter 36.70A
8 RCW to read as follows:

9 Where mineral resource lands of long-term commercial significance
10 exist, a county, city, or town shall designate sufficient mineral
11 resource lands to meet the projected twenty-year, county-wide need.
12 Once designated, mineral resource uses, including operations as defined
13 in section 4 of this act, shall be established as a permitted use in
14 local development regulations. Regulation of mineral resource uses
15 shall be accomplished under this chapter.

16 The county shall designate mineral resource deposits, both active
17 and inactive, in economically viable proximity to locations where the
18 deposits are likely to be used.

19 The county shall discourage the location of incompatible uses
20 adjacent to mineral resource industries by careful designation of those
21 lands around mineral resource industries, deposits, and holdings.

22 For purposes of this section, "long-term commercial significance"
23 includes the mineral composition of the land for long-term economically
24 viable commercial production, in consideration with the mineral
25 resource land's proximity to population areas, product markets, and the
26 possibility of more intense uses of the land.

1 NEW SECTION. **Sec. 18.** OPERATING STANDARDS. (1) Counties, cities,
2 or towns may only regulate surface mining operations in accordance with
3 the standards and limitations of this section.

4 (2) A county may by general ordinance adopt performance-based
5 regulations governing surface mining operations in accordance with
6 provisions of this section. Operation ordinances shall:

7 (a) Control blast-flyrock, fencing, traffic, noise, air quality,
8 and light emission.

9 (b) Require compliance with applicable state and federal standards
10 and revisions to such standards.

11 (c) Be performance-based standards directly and proportionally
12 related to surface mining impacts.

13 (d) Provide specific conditions, fees, and restrictions which are
14 both authorized by law and which are proportional to the direct
15 operational impacts sought to be mitigated.

16 (e) Require that project-specific conditions or restrictions be
17 based upon written findings of fact demonstrating compliance with
18 locally adopted performance-based standards.

19 (f) Provide that approvals issued thereunder will be valid through
20 completion of surface mining subject to the conditions of the
21 reclamation permit.

22 (3) A city, town, or county that adopts general ordinances
23 authorized in subsection (2) of this section shall implement the
24 ordinance or ordinances through an operational plan review and approval
25 process.

26 The approval process may at the option of the city or county
27 include an administrative review, which is subject to appeal, or public
28 hearing and review by a hearings officer or legislative authority.

29 Operational plans submitted for review and approval shall include
30 sufficient, complete, and accurate information to allow the city or

1 county to review the plan for compliance with the performance-based
2 standards and regulations contained in the general ordinance or
3 ordinances adopted pursuant to this section.

4 (4) All surface mines operating on June 30, 1992, under land use
5 permits issued by local government pursuant to local zoning ordinances
6 shall be allowed to be maintained and operated in conformance with the
7 conditions set forth in the existing land use approval. However, a
8 city or county may impose the following additional requirements on
9 preexisting surface mining operations:

10 (a) The submittal of a haul route analysis within five years of the
11 effective date of this act and no more often than every ten years
12 thereafter.

13 (b) For surface mining operations located adjacent to residentially
14 zoned property the submittal of an operational plan for approval by the
15 city or county demonstrating compliance with the establishment of
16 mining set backs not to exceed fifty feet in width, within which
17 fencing, berming, or vegetation, or any combination thereof, selected
18 by the operator may be required, that is reasonably sufficient to
19 generally screen the mining operation from the view of such adjacent
20 residentially zoned properties.

21 (5) For purposes of this section a "performance-based" standard is
22 an objective standard limiting the impacts of surface mining
23 operations. A miner or permit holder may choose to meet the standard
24 by any means, in the judgment of the county, city, or town, that
25 achieves compliance with the standard.

26 NEW SECTION. **Sec. 19.** A surface mining model ordinance
27 advisory committee is hereby created. The committee shall be composed
28 of representatives of local government, state agencies, surface mining
29 interests, and the environmental community. The department of

1 community development shall appoint the members of the committee and
2 the department shall staff the committee. This temporary advisory
3 committee shall draft model ordinances for different surface-mining
4 settings and shall assist counties, cities, and towns in developing
5 ordinances. The committee shall also consider various mechanisms for
6 funding the closure of surface mines. The committee shall complete its
7 work and shall expire by July 1, 1993. Participants on the committee
8 shall pay their own expenses, and the department of natural resources
9 shall fund the involvement of both the department of natural resources
10 and the department of community development.

11 NEW SECTION. **Sec. 20.** WATER CONTROL. Water control as regulated
12 by the department shall be limited to those provisions necessary to
13 effect surface mine reclamation and to protect ground and surface water
14 resources after reclamation is complete. The department shall solicit
15 recommendations from all agencies with expertise in relevant water
16 control laws when evaluating reclamation plans for surface mines in or
17 near water. Control of surface mine water pollution, water
18 availability, and protection of fisheries and wildlife habitats shall
19 be regulated under the provisions of ordinances of any local
20 jurisdiction, fisheries laws (Title 75 RCW), water pollution control
21 laws (Title 90 RCW), wildlife laws (Title 77 RCW), federal storm water
22 regulations, and/or national pollutant discharge elimination system
23 regulations.

24 NEW SECTION. **Sec. 21.** MINIMUM RECLAMATION STANDARDS. The
25 department shall establish by rule minimum reclamation standards. The
26 need for, and the practicability of, reclamation shall control the type
27 and degree of reclamation in any specific instance. However, the basic
28 objective of the standards is to reestablish on a continuing basis the

1 vegetative cover, slope stability, water conditions, and safety
2 conditions suitable to the proposed subsequent use consistent with
3 local land use planning of the mine site.

4 Each permit holder shall comply with the minimum reclamation
5 standards in effect on the date the permit was issued and any
6 additional reclamation standards set forth in the approved reclamation
7 plan.

8 (1) The minimum standards shall provide that:

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

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

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

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

1 (2) Some or all minimum reclamation standards may be waived in
2 writing by the department in order to accommodate unique and beneficial
3 reclamation schemes such as parks, swimming facilities, buildings, and
4 wildlife reserves. Such waivers shall be granted only after written
5 approval from the department of a reclamation plan describing the
6 variances to the minimum reclamation standards, receipt of
7 documentation of SEPA compliance, and written approvals from the
8 landowner and by the local land use authority.

9 (3) The minimum reclamation standards shall provide for reclamation
10 of some working faces excavated in solid rock as cliffs in order to
11 achieve topography harmonious with nearby or preexisting natural
12 topography.

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

17 (1) Both permit holders comply with all rules addressing
18 requirements for transferring a permit; and

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

23 The department shall not require that a reclamation permit be
24 transferred without the written agreement of the permit holder; except
25 that, in the event the legal interest or right of use of a permit
26 holder expires and is not renewed in property owned by a public agency,
27 the permit shall be transferred to the public agency provided that all
28 other requirements for transferring the permit are satisfied. In such

1 case, the department shall not require the consent of the former permit
2 holder.

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

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

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

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

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

17 NEW SECTION. **Sec. 24.** REPORTS. On the anniversary date of the
18 reclamation permit and each year thereafter until reclamation is
19 completed and approved, the permit holder shall file a report of
20 activities completed during the preceding year. The report shall be on
21 a form prescribed by the department.

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

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

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

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

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

- 19 (1) This chapter;
- 20 (2) The rules adopted by the department;
- 21 (3) The approved reclamation plan; or
- 22 (4) The reclamation permit;

23 and that activity has created a situation involving an immediate danger
24 to the public health, safety, or welfare requiring immediate action,
25 the department may issue an emergency notice and order to rectify
26 deficiencies, and/or an emergency order to suspend surface mining.
27 These orders shall be effective when entered. The department may take
28 such action as is necessary to prevent or avoid the danger to the
29 public health, safety, or welfare that justifies use of emergency

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

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

10 NEW SECTION. **Sec. 28.** ORDER TO SUSPEND SURFACE MINING. The
11 department may issue an order to suspend surface mining when a miner or
12 permit holder is conducting surface mining in any manner not authorized
13 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 shall issue a declaration of abandonment when it determines that all

1 surface mining has ceased for a period of one hundred eighty
2 consecutive days not set forth in the permit holder's reclamation plan
3 or when, by reason of inspection of the permit area, or by any other
4 means, the department determines that the mine has in fact been
5 abandoned by the permit holder. Abandonment shall not include normal
6 interruptions of surface mining resulting from cyclical demand for
7 minerals.

8 Following a declaration of abandonment, the department shall
9 require the permit holder to complete reclamation in accordance with
10 this chapter. If the permit holder fails to do so, the department
11 shall proceed to do the necessary reclamation work pursuant to section
12 31 of this act.

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

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

27 NEW SECTION. **Sec. 31.** ORDER TO SUBMIT PERFORMANCE SECURITY--
28 RECLAMATION BY THE DEPARTMENT. The department shall, with the staff,

1 equipment, and material under its control, or by contract with others,
2 reclaim the disturbed areas when it finds that reclamation has not
3 occurred in any segment of a surface mine within two years of
4 completion of mining or of declaration of abandonment and the permit
5 holder is not actively pursuing reclamation.

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

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

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

22 (1) Reclamation;

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 reclamation of the
26 surface mine.

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, may bring an action against

1 the permit holder on behalf of the state in the superior court to
2 recover the remaining costs listed in this section.

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

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

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

24 The department or county, city, or town may refuse to issue any
25 other permit at any other location to any miner or permit holder who
26 fails to rectify deficiencies set forth in an order of the department
27 within the requisite time schedule. However, the department or county,

1 city, or town shall issue all appropriate permits when all deficiencies
2 are corrected at each surface mining site.

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

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

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

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

15 (1) Appeals from department determinations made under this chapter
16 shall be made under the provisions of the Administrative Procedure Act
17 (chapter 34.05 RCW), and shall be considered (~~an~~) a brief
18 adjudicative proceeding within the meaning of the Administrative
19 Procedure Act, chapter 34.05 RCW. A fee of five hundred dollars shall
20 be charged for each appeal under this section. Only a party of record
21 or agent for such party of record has standing and can file an appeal.
22 This fee shall be refunded to the appellant if the department finds in
23 favor of the appellant or waived if deemed appropriate by the
24 department.

25 (2) Appeals from determinations under subsection (1) of this
26 section shall be made to an administrative law judge.

27 All appeals to the administrative law judge shall be on the record
28 only.

1 A party of record pursuant to this chapter may seek review under
2 this section by submitting a request in writing that must be received
3 by the environmental hearings office within thirty calendar days after
4 the action.

5 (3) Appeals to decisions of the administrative law judge may be
6 made only to the superior court pursuant to the judicial review
7 provisions of chapter 34.05 RCW.

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

10 ~~((This act shall not direct itself to the reclamation of land~~
11 ~~mined)) Miners and permit holders shall not be required to reclaim any
12 segment where all surface mining was completed prior to January 1,
13 1971. However, the department shall make an effort to reclaim
14 previously abandoned or completed surface mining segments.~~

15 NEW SECTION. **Sec. 37.** RECLAMATION AWARDS ESTABLISHED. The
16 department shall create reclamation awards in recognition of excellence
17 in reclamation or reclamation research. Such awards shall be presented
18 to individuals, miners, operators, companies, or government agencies
19 performing exemplary surface mining reclamation in the state of
20 Washington. The department shall designate a percent of the state
21 annual fees as funding of the awards.

22 NEW SECTION. **Sec. 38.** RECLAMATION SERVICE ESTABLISHED. The
23 department shall establish a no-cost consulting service within the
24 division of geology and earth resources to assist miners, permit
25 holders, local government, and the public in technical matters related
26 to mine regulation, mine operations, and reclamation. The department
27 shall prepare concise, printed information for the public explaining

1 surface mining activities, timelines for permits and reviews, laws, and
2 the role of governmental agencies involved in surface mining, including
3 how to contact all regulators. The department shall not be held liable
4 for any negligent advice.

5 NEW SECTION. **Sec. 39.** Metallic and industrial minerals mining
6 is exempt from this chapter. Surface mines producing metallic and
7 industrial minerals, as defined by rule of the department of natural
8 resources, shall be exempt from all provisions of this chapter.

9 NEW SECTION. **Sec. 40.** The following acts or parts of acts are
10 each repealed:

11 (1) RCW 78.44.030 and 1987 c 258 s 1, 1984 c 215 s 1, & 1970 ex.s.
12 c 64 s 4;

13 (2) RCW 78.44.035 and 1987 c 258 s 3;

14 (3) RCW 78.44.080 and 1970 ex.s. c 64 s 9;

15 (4) RCW 78.44.090 and 1970 ex.s. c 64 s 10;

16 (5) RCW 78.44.100 and 1984 c 215 s 3 & 1970 ex.s. c 64 s 11;

17 (6) RCW 78.44.110 and 1987 c 258 s 2, 1984 c 215 s 4, & 1970 ex.s.
18 c 64 s 12;

19 (7) RCW 78.44.120 and 1984 c 215 s 5, 1977 c 66 s 1, & 1970 ex.s.
20 c 64 s 13;

21 (8) RCW 78.44.130 and 1970 ex.s. c 64 s 14;

22 (9) RCW 78.44.140 and 1989 c 230 s 1, 1984 c 215 s 6, & 1970 ex.s.
23 c 64 s 15;

24 (10) RCW 78.44.160 and 1984 c 215 s 7 & 1970 ex.s. c 64 s 17; and

25 (11) RCW 78.44.180 and 1970 ex.s. c 64 s 20.

26 NEW SECTION. **Sec. 41.** The code reviser may recodify, as
27 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. 42.** Captions used in this act do not
4 constitute any part of the law.

5 NEW SECTION. **Sec. 43.** Sections 4 through 6, 11 through 16, 18,
6 20 through 33, and 37 through 39 of this act are each added to chapter
7 78.44 RCW.

8 NEW SECTION. **Sec. 44.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

12 NEW SECTION. **Sec. 45.** This act shall take effect July 1, 1992.