

2 **2SSB 5502** - S AMD (S-3198.1)

3 By Senators Sutherland, Hargrove, Spanel, Amondson, McCaslin, Owen
4 and Barr

5 ADOPTED AS AMENDED BY S-3295.1, S-3214.2 - 4/14/93

6 Strike everything after the enacting clause and insert the
7 following:

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

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

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

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

1 ~~beneficial use of the mined and reclaimed land.))~~ Therefore, the
2 legislature finds that a balance between appropriate environmental
3 regulation and the production and conservation of minerals is in the
4 best interests of the citizens of the state.

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

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

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

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

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

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

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

23 NEW SECTION. **Sec. 4.** DEFINITIONS. Unless the context clearly
24 indicates otherwise, the definitions in this section apply throughout
25 this chapter.

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

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

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

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

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

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; and

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.

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

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

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

30 Operations specifically include:

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

33 (b) Blasting, equipment maintenance, sorting, crushing, and
34 loading;

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

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

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

3 (10) "Permit holder" means any person or persons, any partnership,
4 limited partnership, or corporation, or any association of persons,
5 either natural or artificial, including every public or governmental
6 agency engaged in surface mining and/or the operation of surface mines,
7 whether individually, jointly, or through subsidiaries, agents,
8 employees, operators, or contractors who holds a state reclamation
9 permit.

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

20 (12) "Reclamation setbacks" include those lands along the margins
21 of surface mines wherein minerals and overburden shall be preserved in
22 sufficient volumes to accomplish reclamation according to the approved
23 plan and the minimum reclamation standards. Maintenance of reclamation
24 setbacks may not preclude other mine-related activities within the
25 reclamation setback.

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

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

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

32 (a) Has characteristics of topography, drainage, slope stability,
33 ownership, mining development, or mineral distribution, that make
34 reclamation necessary;

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

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

1 (16) "SEPA" means the state environmental policy act, chapter
2 43.21C RCW and rules adopted thereunder.

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

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

7 (ii) Mined slopes greater than thirty feet high and steeper than
8 1.0 foot horizontal to 1.0 foot vertical; or

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

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

16 (c) Surface mining shall exclude excavations or grading used:

17 (i) Primarily for on-site construction, on-site road maintenance,
18 or on-site landfill construction;

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

21 (iii) For the purpose of removing stockpiles;

22 (iv) For forest or farm road construction or maintenance on-site or
23 on contiguous lands;

24 (v) For sand authorized by RCW 43.51.685; and

25 (vi) For underground mines.

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

30 NEW SECTION. **Sec. 5.** SEGMENTAL RECLAMATION. The permit holder
31 shall reclaim each segment of the mine within two years of completion
32 of surface mining on that segment except as provided in a segmental
33 reclamation agreement approved in writing by the department. The
34 primary objective of a segmental reclamation agreement should be to
35 enhance final reclamation.

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

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

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

10 The department shall have the exclusive authority to regulate
11 surface mine reclamation except that, by contractual agreement, the
12 department may delegate some or all of its enforcement authority to a
13 county, city, or town. All counties, cities, or towns shall have the
14 authority to zone surface mines and adopt ordinances regulating
15 operations pursuant to section 16 of this act, except that county,
16 city, or town operations ordinances may be preempted by the department
17 during the emergencies outlined in section 27 of this act and related
18 rules.

19 This chapter shall not ~~((affect))~~ alter or preempt any ~~((of the))~~
20 provisions of the state fisheries laws (Title 75 RCW), the state water
21 allocation and use laws (chapters 90.03 and 90.44 RCW), the state water
22 pollution control laws ((Title 90)) chapter 90.48 RCW), the state
23 ~~((game))~~ wildlife laws (Title 77 RCW), ((or any other state laws, and
24 ~~shall be cumulative and nonexclusive))~~ state noise laws or air quality
25 laws (Title 70 RCW), shoreline management (chapter 90.58 RCW), the
26 state environmental policy act (chapter 43.21C RCW), state growth
27 management (chapter 36.70A RCW), state drinking water laws (chapters
28 43.20 and 70.119A RCW), or any other state statutes.

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

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

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

1 The department may cooperate with other governmental and private
2 agencies (~~(in this state and other states)~~) and agencies of the federal
3 government, and may reasonably reimburse them for any services the
4 department requests that they provide. The department may also receive
5 any federal funds, state funds and any other funds and expend them for
6 reclamation of land affected by surface mining and for purposes
7 enumerated in RCW 78.44.060.

8 NEW SECTION. **Sec. 10.** SURFACE MINING RECLAMATION ACCOUNT. The
9 surface mining reclamation account is created in the state treasury.
10 Annual mining fees, funds received by the department from state, local,
11 or federal agencies for research purposes, as well as other mine-
12 related funds and fines received by the department shall be deposited
13 into this account. The surface mine reclamation account may be used by
14 the department only to:

- 15 (1) Administer its regulatory program pursuant to this chapter;
- 16 (2) Undertake research relating to surface mine regulation,
17 reclamation of surface mine lands, and related issues; and
- 18 (3) Cover costs arising from appeals from determinations made under
19 this chapter.

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

23 NEW SECTION. **Sec. 11.** RECLAMATION PERMITS REQUIRED--APPLICATIONS.
24 After July 1, 1993, no miner or permit holder may engage in surface
25 mining without having first obtained a reclamation permit from the
26 department. Operating permits issued by the department between January
27 1, 1971, and June 30, 1993, shall be considered reclamation permits
28 provided such permits substantially meet the protections, mitigations,
29 and reclamation goals of sections 12 and 20 of this act within five
30 years after the effective date of this section. State agencies and
31 local government shall be exempt from this time limit for inactive
32 sites. Prior to the use of an inactive site, the reclamation plan must
33 be brought up to current standards. A separate permit shall be
34 required for each noncontiguous surface mine. The reclamation permit
35 shall consist of the permit forms and any exhibits attached thereto.
36 The permit holder shall comply with the provisions of the reclamation
37 permit unless waived and explained in writing by the department.

1 Prior to receiving a reclamation permit, an applicant must submit
2 an application on forms provided by the department that shall contain
3 the following information and shall be considered part of the
4 reclamation permit:

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

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

10 (3) A reasonably accurate description of the minerals to be surface
11 mined;

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

13 (5) Estimated starting date, date of completion, and date of
14 completed reclamation of surface mining;

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

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

19 (8) Any applicable SEPA documents; and

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

21 The reclamation permit shall be granted for the period required to
22 deplete essentially all minerals identified in the reclamation permit
23 on the land covered by the reclamation plan. The reclamation permit
24 shall be valid until the reclamation is complete unless the permit is
25 canceled by the department.

26 NEW SECTION. **Sec. 12.** RECLAMATION PLANS. An applicant shall
27 provide a reclamation plan and copies acceptable to the department
28 prior to obtaining a reclamation permit. The department shall have the
29 sole authority to approve reclamation plans. Reclamation plans or
30 modified reclamation plans submitted to the department after June 30,
31 1993, shall meet or exceed the minimum reclamation standards set forth
32 in this chapter and by the department in rule. Each applicant shall
33 also supply copies of the proposed plans and final reclamation plan
34 approved by the department to the county, city, or town in which the
35 mine will be located. The department shall solicit comment from local
36 government prior to approving a reclamation plan. The reclamation plan
37 shall include:

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

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

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

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

12 (d) The maximum depth of mining;

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

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

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

20 (h) A schedule for progressive reclamation of each segment of the
21 mine;

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

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

32 (k) Additional information as required by the department including
33 but not limited to: The positions of reclamation setbacks and
34 screening, conservation of topsoil, interim reclamation, revegetation,
35 postmining erosion control, drainage control, slope stability, disposal
36 of mine wastes, control of fill material, development of wetlands,
37 ponds, lakes, and impoundments, and rehabilitation of topography.

38 (2) Maps of the surface mine showing:

1 (a) All applicable data required in the narrative portion of the
2 reclamation plan;

3 (b) Existing topographic contours;

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

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

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

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

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

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

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

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

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

24 If the department refuses to approve a reclamation plan in the form
25 submitted by an applicant or permit holder, it shall notify the
26 applicant or permit holder stating the reasons for its determination
27 and describe such additional requirements to the applicant or permit
28 holder's reclamation plan as are necessary for the approval of the plan
29 by the department. If the department refuses to approve a complete
30 reclamation plan within one hundred twenty days, the miner or permit
31 holder may appeal this determination under the provisions of this
32 chapter.

33 Only insignificant deviations may occur from the approved
34 reclamation plan without prior written approval by the department for
35 the proposed change.

36 The department retains the authority to require that the
37 reclamation plan be updated to the satisfaction of the department at
38 least every ten years.

1 NEW SECTION. **Sec. 13.** JOINT RECLAMATION PLANS. Where two or more
2 surface mines join along a common boundary, the department may require
3 submission of a joint reclamation plan in order to provide for optimum
4 reclamation or to avoid waste of mineral resources. Such joint
5 reclamation plans may be in the form of a single collaborative plan
6 submitted by all affected permit holders or as individual reclamation
7 plans in which the schedule of reclamation, finished contours, and
8 revegetation match reclamation plans of adjacent permit holders.

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

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

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

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

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

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

30 (4) Appeals from any determination of the department shall not stay
31 the requirement to pay any annual permit fee. Failure to pay the
32 annual fee may constitute grounds for an order to suspend surface
33 mining or cancellation of the reclamation permit as provided in this
34 chapter.

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

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

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

7 NEW SECTION. **Sec. 15.** PERFORMANCE SECURITY. The department shall
8 not issue a reclamation permit until the applicant has deposited with
9 the department an acceptable performance security on forms prescribed
10 and furnished by the department. A public or governmental agency shall
11 not be required to post performance security nor shall a permit holder
12 be required to post surface mining performance security with more than
13 one state, local, or federal agency.

14 This performance security may be:

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

16 (2) A cash deposit;

17 (3) Negotiable securities acceptable to the department;

18 (4) An assignment of a savings account;

19 (5) A savings certificate in a Washington bank on an assignment
20 form prescribed by the department;

21 (6) Assignments of interests in real property within the state of
22 Washington; or

23 (7) A corporate surety bond executed in favor of the department by
24 a corporation authorized to do business in the state of Washington
25 under Title 48 RCW and authorized by the department.

26 The performance security shall be conditioned upon the faithful
27 performance of the requirements set forth in this chapter and of the
28 rules adopted under it.

29 The department shall have the authority to determine the amount of
30 the performance security using a standardized performance security
31 formula developed by the department. The amount of the security shall
32 be determined by the department and based on the estimated costs of
33 completing reclamation according to the approved reclamation plan or
34 minimum standards and related administrative overhead for the area to
35 be surface mined during (a) the next twelve-month period, (b) the
36 following twenty-four months, and (c) any previously disturbed areas on
37 which the reclamation has not been satisfactorily completed and
38 approved.

1 The department may increase or decrease the amount of the
2 performance security at any time to compensate for a change in the
3 disturbed area, the depth of excavation, a modification of the
4 reclamation plan, or any other alteration in the conditions of the mine
5 that affects the cost of reclamation. The department may, for any
6 reason, refuse any performance security not deemed adequate.

7 Liability under the performance security shall be maintained until
8 reclamation is completed according to the approved reclamation plan to
9 the satisfaction of the department unless released as hereinafter
10 provided. Liability under the performance security may be released
11 only upon written notification by the department. Notification shall
12 be given upon completion of compliance or acceptance by the department
13 of a substitute performance security. The liability of the surety
14 shall not exceed the amount of security required by this section and
15 the department's reasonable legal fees to recover the security.

16 Any interest or appreciation on the performance security shall be
17 held by the department until reclamation is completed to its
18 satisfaction. At such time, the interest shall be remitted to the
19 permit holder; except that such interest or appreciation may be used by
20 the department to effect reclamation in the event that the permit
21 holder fails to comply with the provisions of this chapter and the
22 costs of reclamation exceed the face value of the performance security.

23 No other state agency or local government shall require performance
24 security for the purposes of surface mine reclamation and only one
25 agency of government shall require and hold the performance security.
26 The department may enter into written agreements with federal agencies
27 in order to avoid redundant bonding of surface mines straddling
28 boundaries between federally controlled and other lands within
29 Washington state.

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

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

37 (1) Where the county has classified mineral lands pursuant to RCW
38 36.70A.050 and mineral resource lands of long-term commercial

1 significance exist, a county, city, or town shall designate sufficient
2 mineral resource lands in the comprehensive plans to meet the projected
3 thirty-year, county-wide need. Once designated, mineral resource uses,
4 including operations as defined in section 4 of this act, shall be
5 established as an allowed use in local development regulations subject
6 to the permit process described in this section.

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

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

14 For purposes of this section, "long-term commercial significance"
15 includes the mineral composition of the land for long-term economically
16 viable commercial production, in consideration with the mineral
17 resource land's proximity to population areas, product markets, and the
18 possibility of more intense uses of the land.

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

22 (b) Local surface mining operating standards shall:

23 (i) Address only:

24 (A) Traffic;

25 (B) Light emission;

26 (C) Visual screening;

27 (D) Noise emission; and

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

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

34 (A) Are directly and proportionately related to limiting surface
35 mining impacts;

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

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

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

4 (iii) Limit application and monitoring fees to the amount necessary
5 to pay the costs of administering, processing, monitoring, and
6 enforcing the regulation of surface mining in accordance with this
7 section.

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

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

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

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

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

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

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

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

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

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

37 (4) Nothing in this section precludes a county, city, or town from
38 exercising the express authority delegated to it by a state agency

1 under state law, or from complying with state law when required as a
2 regulated entity.

3 NEW SECTION. **Sec. 17.** A surface mining model ordinance advisory
4 committee is hereby created. The committee shall be composed of
5 representatives of local government, state agencies, surface mining
6 interests, and the environmental community. The department of natural
7 resources shall appoint the members of the committee and the department
8 shall staff the committee. This temporary advisory committee shall
9 draft model ordinances for different surface-mining settings and shall
10 assist counties, cities, and towns in developing ordinances. The
11 committee shall complete its work and shall expire by December 31,
12 1994. Participants on the committee shall pay their own expenses, and
13 the department of natural resources shall fund the department's
14 involvement.

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

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

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

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

31 NEW SECTION. **Sec. 19.** WATER CONTROL. (1) Water control as
32 regulated by the department shall be limited to those provisions
33 necessary to effect surface mine reclamation and to protect ground and
34 surface water resources after reclamation is complete and shall be
35 consistent with existing water control laws. The department shall
36 solicit recommendations from all agencies with expertise in relevant

1 water control laws when evaluating reclamation plans for surface mines
2 in or near water.

3 (2) As to surface mining projects, control of surface mine water
4 shall be pursuant to chapter 90.48 RCW; water availability, hydraulic
5 continuity, allocation, and use shall be pursuant to chapters 90.03,
6 90.44, and 90.54 RCW; regulation of drinking water shall be pursuant to
7 Titles 43 and 70 RCW; and protection of fisheries and wildlife shall be
8 regulated pursuant to Title 75 RCW (fisheries laws) and Title 77 RCW
9 (wildlife laws) as well as chapters 90.03, 90.44, 90.48, and 90.54 RCW,
10 federal storm water regulations, and/or national pollutant discharge
11 elimination system regulations. The department of ecology upon request
12 by a county, city, or town, may consult with the affected parties and
13 incorporate additional site-specific requirements into individual
14 surface mine national pollutant discharge elimination system permits
15 where such requirements are appropriate.

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

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

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

23 NEW SECTION. **Sec. 20.** RECLAMATION. The need for, and the
24 practicability of, reclamation shall control the type and degree of
25 reclamation in any specific instance. However, the basic objective of
26 reclamation is to reestablish on a continuing basis the vegetative
27 cover, slope stability, water conditions, and safety conditions
28 suitable to the proposed subsequent use consistent with local land use
29 plans for the surface mine site.

30 Each permit holder shall comply with the minimum reclamation
31 standards in effect on the date the permit was issued and any
32 additional reclamation standards set forth in the approved reclamation
33 plan.

34 Reclamation activities, particularly those relating to control of
35 erosion and mitigation of impacts of mining to adjacent areas, shall,
36 to the extent feasible, be conducted simultaneously with surface
37 mining, and in any case shall be initiated at the earliest possible

1 time after completion of surface mining on any segment of the permit
2 area.

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

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

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

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

23 (2) The department may require that clearly visible, permanent
24 monuments delineating the permit boundaries and maximum extent of the
25 disturbed area be set at appropriate places around the mine site. The
26 permit holder shall maintain the monuments until termination of the
27 reclamation permit.

28 (3) All minimum reclamation standards may be waived in writing by
29 the department in order to accommodate unique and beneficial
30 reclamation schemes such as parks, swimming facilities, buildings, and
31 wildlife reserves. Such waivers shall be granted only after written
32 approval by the department of a reclamation plan describing the
33 variances to the minimum reclamation standards, receipt of
34 documentation of SEPA compliance, and written approvals from the
35 landowner and by the local land use authority.

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

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

3 (i) Have varied steepness;

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

5 (iii) Have no large rectilinear topographic elements;

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

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

12 (vi) Be compacted if significant backfilling is required to produce
13 the final reclaimed slopes and if the department determines that
14 compaction is necessary.

15 (b) Slopes in consolidated materials shall have no prescribed slope
16 angle or height, but where a severely hazardous condition is created by
17 mining and that is not indigenous to the immediate area, the slopes
18 shall not exceed 2.0 feet horizontal to 1.0 foot vertical. Steeper
19 slopes shall be acceptable in areas where evidence is submitted that
20 demonstrates that the geologic or topographic characteristics of the
21 site preclude reclamation of slopes to such angle or height or that
22 such slopes constitute an acceptable subsequent use under local land
23 use regulations.

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

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

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

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

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

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

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

16 (f) Topsoil shall be restored as necessary to promote effective
17 revegetation and to stabilize slopes and mine floors. Where limited
18 topsoil is available, topsoil shall be placed and revegetated in such
19 a way as to ensure that little topsoil is lost to erosion.

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

26 (h) All grading and backfilling shall be made with nonnoxious,
27 noncombustible, and relatively incompactible solids unless the permit
28 holder provides:

29 (i) Written approval from all appropriate solid waste regulatory
30 agencies; and

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

33 (i) Final reclaimed slopes should be left roughly graded,
34 preserving equipment tracks, depressions, and small mounds to trap
35 clay-bearing soil and promote natural revegetation. Where reasonable,
36 final equipment tracks should be oriented in order to trap soil and
37 seeds and to inhibit erosion.

38 (j) Pit floors should be bulldozed or ripped to foster
39 revegetation.

1 (5) Drainages shall be graded and contain adequate energy
2 dissipation devices so that essentially natural conditions of water
3 velocity, volume, and turbidity are reestablished within six months of
4 reclamation of each segment of the mine. Ditches and other artificial
5 drainages shall be constructed on each reclaimed segment to control
6 surface water, erosion, and siltation and to direct runoff to a safe
7 outlet. Diversion ditches including but not limited to channels,
8 flumes, tightlines and retention ponds shall be capable of carrying the
9 peak flow at the mine site that has the probable recurrence frequency
10 of once in twenty-five years as determined from data for the twenty-
11 five year, twenty-four hour precipitation event published by the
12 national oceanic and atmospheric administration. The grade of such
13 ditches and channels shall be constructed to limit erosion and
14 siltation. Natural and other drainage channels shall be kept free of
15 equipment, wastes, stockpiles, and overburden.

16 (6) Impoundment of water shall be an acceptable reclamation
17 technique provided that approvals of other agencies with jurisdiction
18 are obtained and:

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

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

24 (7) Revegetation shall be required as appropriate to stabilize
25 slopes, generate new topsoil, reduce erosion and turbidity, mask
26 rectilinear contours, and restore the scenic value of the land to the
27 extent feasible as appropriate to the approved subsequent use.
28 Although the scope of and necessity for revegetation will vary
29 according to the geography, precipitation, and approved subsequent use
30 of the site, the objective of segmental revegetation is to reestablish
31 self-sustaining vegetation and conditions of slope stability, surface
32 water quality, and appearance before release of the reclamation permit.
33 Revegetation shall normally meet the following standards:

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

37 (b) In eastern Washington, the permit holder may not be able to
38 achieve continuous ground cover owing to arid conditions or sparse

1 topsoil. However, revegetation shall be as continuous as reasonably
2 possible as determined by the department.

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

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

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

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

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

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

24 NEW SECTION. **Sec. 22.** PERMIT TRANSFERS. Reclamation permits
25 shall be transferred to a subsequent permit holder and the department
26 shall release the former permit holder from the duties imposed by this
27 chapter if:

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

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

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

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

3 (2) If the department determines that the previously adopted
4 reclamation plan is impossible or impracticable to implement and
5 maintain; or

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

8 Modified reclamation plans shall be reviewed by the department as
9 lead agency under SEPA. Such SEPA analyses shall consider only those
10 impacts relating directly to the proposed modifications. Copies of
11 proposed and approved modifications shall be sent to the appropriate
12 county, city, or town.

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

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

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

26 (1) This chapter;

27 (2) The rules adopted by the department;

28 (3) The authorized reclamation plan; or

29 (4) The reclamation permit.

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

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

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

9 and that activity has created a situation involving an immediate danger
10 to the public health, safety, welfare, or environment requiring
11 immediate action, the department may issue an emergency notice and
12 order to rectify deficiencies, and/or an emergency order to suspend
13 surface mining. These orders shall be effective when entered. The
14 department may take such action as is necessary to prevent or avoid the
15 danger to the public health, safety, welfare, or environment that
16 justifies use of emergency adjudication. The department shall give
17 such notice as is practicable to the permit holder or miner who is
18 required to comply with the order. The order shall comply with the
19 requirements of the administrative procedure act.

20 Regulations of surface mining operations administered by other
21 state and local agencies shall be preempted by this section to the
22 extent that the time schedule and procedures necessary to rectify the
23 emergency situation, as determined by the department, conflict with
24 such local regulation.

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

- 30 (1) This chapter;
- 31 (2) The rules adopted by the department;
- 32 (3) The approved reclamation plan;
- 33 (4) The reclamation permit; or
- 34 (5) If the miner or permit holder fails to comply with any final
35 order of the department.

36 The order to suspend surface mining shall require the miner or
37 permit holder to suspend part or all of the miner's or permit holder's

1 mining operations until the conditions resulting in the issuance of the
2 order have been mitigated to the satisfaction of the department.

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

6 NEW SECTION. **Sec. 29.** DECLARATION OF ABANDONMENT. The department
7 may issue a declaration of abandonment when it determines that all
8 surface mining has ceased for a period of one hundred eighty
9 consecutive days not set forth in the permit holder's reclamation plan
10 or when, by reason of inspection of the permit area, or by any other
11 means, the department determines that the mine has in fact been
12 abandoned by the permit holder except that abandonment shall not
13 include normal interruptions of surface mining resulting from labor
14 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."

15 **2SSB 5502** - S AMD

16 By Senators Sutherland, Hargrove, Spanel, Amondson, McCaslin, Owen
17 and Barr

18 ADOPTED 4/14/93

19 On page 1, line 2 of the title, after "mining;" strike the
20 remainder of the title and insert "amending RCW 78.44.010, 78.44.020,
21 78.44.040, 78.44.050, 78.44.060, 78.44.070, 78.44.150, 78.44.170, and
22 78.44.910; adding a new section to chapter 36.70A RCW; adding new
23 sections to chapter 78.44 RCW; creating new sections; recodifying RCW
24 78.44.150, 78.44.170, 78.44.175, and 78.44.910; repealing RCW
25 78.44.030, 78.44.035, 78.44.080, 78.44.090, 78.44.100, 78.44.110,
26 78.44.120, 78.44.130, 78.44.140, 78.44.160, and 78.44.180; prescribing
27 penalties; providing an effective date; and declaring an emergency."

--- END ---