

HOUSE BILL REPORT

HB 2521

As Reported By House Committee On:
Natural Resources & Parks
Appropriations

Title: An act relating to metals mining and milling operations right permits.

Brief Description: Regulating metals mining and milling operations.

Sponsors: Representatives Dunshee, Pruitt, J. Kohl, Valle, Wolfe, L. Johnson, Ogden, Romero, Rust, Linville and Patterson.

Brief History:

Reported by House Committee on:
Natural Resources & Parks, February 4, 1994, DPS;
Appropriations, February 5, 1994, DPS(NRP-A APP).

HOUSE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Pruitt, Chair; R. Johnson, Vice Chair; Stevens, Ranking Minority Member; McMorris, Assistant Ranking Minority Member; Linville; Schoesler; Sheldon; Valle and Wolfe.

Minority Report: Do not pass. Signed by 2 members: Representatives Dunshee and B. Thomas.

Staff: Linda Byers (786-7129).

Background: Metals mining and milling operations are regulated under a number of different federal, state, and local government laws and rules. Last session, the Legislature created a Metals Mining Advisory Group to review the existing regulatory framework. Many of the topics addressed in this proposed legislation were topics of discussion by the advisory group.

Summary of Substitute Bill:

Application of New Chapter

Metals mining and milling operations are subject to the requirements established in the new chapter created by this act, in addition to requirements established in other statutes and rules. Expansions of an existing operation are subject to the requirements as well if the expansion is likely to result in a significant, adverse environmental impact. Separate metals milling operations are also subject to many of the provisions established in the new chapter.

Disclosure

Applicants for a metals mining and milling operation must disclose the ownership and each controlling interest in the proposed operation. They must also disclose all other mining operations within the United States which the applicants operate or in which the applicants have ownership or controlling interest.

State Environmental Policy Act (SEPA)

An environmental impact statement is required for any proposed metals mining and milling operation. The Department of Ecology is designated in statute to be the lead agency for the SEPA review. The SEPA review shall include the collection of baseline data adequate to document pre-mining conditions at the proposed site of the operation. The Department of Ecology shall incorporate measures to mitigate significant probable adverse impacts to fish and wildlife into the department's permit requirements for the proposed operation. In conducting the SEPA review, the department will also cooperate with affected local governments to the fullest extent practicable.

Metals Mining Coordinator

The Department of Ecology is directed to appoint a metals mining coordinator. The coordinator will maintain current information on these operations and will act as a contact person for the industry and for the public.

Inspections

State agencies with the responsibility for inspecting metals mining and milling operations shall conduct these inspections at least quarterly. The Legislature encourages these state agencies to explore opportunities for cross-training of inspectors and to look at efficient and cost-

effective ways to coordinate inspections with each other and with federal and local government agencies.

Metals Mining Account

The metals mining account is created in the state treasury. Expenditures from this account are subject to appropriation and may only be used for the additional inspections by state agencies described above and for the metals mining coordinator. The Department of Revenue is directed to assess a fee to be paid by each active and proposed metals mining and milling operation in order to generate revenue sufficient to cover these two categories of expenses.

Waste Discharge Permit Requirements

In order to receive a waste discharge permit from the Department of Ecology, a metals mining and milling operation must meet three additional requirements. First, there are specific requirements for the design and operation of the tailings facility. Second, the applicant must have an approved plan for management of the waste rock generated by the operation. Third, the operator or applicant must work with the Department of Ecology to make arrangements for citizen observation and verification of the taking of water samples, if an interested citizen or citizen group so requests.

Performance Security

The Department of Ecology and the Department of Natural Resources may not issue the necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the Department of Ecology a performance security which is acceptable to both agencies. The performance security is conditioned on the applicant or operator meeting the following obligations: (1) satisfactory compliance with the laws of the state pertaining to these operations as well as related rules and permit conditions; (2) postclosure environmental monitoring; and (3) provision of sufficient funding for cleanup of potential problems revealed during or after closure.

Economic Impact Analysis

An applicant for a large-scale metals mining and milling operation must submit to the relevant county legislative authority an impact analysis describing the economic impact of the proposed mining operation on local government units. An operation is "large-scale" if it employs more than 35 persons during any consecutive six-month period. Counties may assess impact fees pursuant to chapter 82.02 RCW. If

the applicant does not submit an adequate impact analysis or if the county does not find an applicant's proposals for mitigating any adverse economic impacts to be acceptable, the county will refuse to issue permits under its jurisdiction necessary for the construction or operation of the mine and mill.

Citizen Suits

A citizen suit provision is added to the new chapter regulating metals mining and milling operations. An aggrieved person may commence a civil action against (1) any person who is alleged to be in violation of a law, rule, order, or permit pertaining to metals mining and milling operations; (2) a state agency if there is alleged a failure of the agency to perform any non-discretionary act or duty pertaining to these operations; or (3) any person who proposes to construct or constructs one of these operations without the permits and authorizations required by state law.

Heap Leach/In Situ Mining

Until June 30, 1995, there is a moratorium on metals mining and milling operations using the heap leach extraction process. By December 1994, the Department of Natural Resources and the Department of Ecology shall jointly review existing laws and regulations pertaining to the heap leach extraction process for their adequacy in safeguarding the environment and shall report their findings to the Legislature. In situ extraction is permanently prohibited in Washington.

Regulatory Overlap

The Department of Ecology is directed to work with the mining industry and with relevant federal, state, and local government agencies to identify areas of regulatory overlap among regulators of metals mining and milling operations. The department is also to identify possible solutions to overlap problems and to report to the Legislature on its findings by January 1, 1995.

Metals Mining Advisory Group

The Department of Ecology is also to establish a metals mining advisory group, to focus on the following three tasks: (1) a review of the adequacy of the cost-accounting methods of the state agencies in accurately identifying the costs associated with the additional inspection requirements of metals mining and milling operations; (2) development of

measures to evaluate the performance of the metals mining coordinator; and (3) identification and evaluation of the alternatives for distributing the costs identified in section 7 among existing and proposed metals mining and milling operations. This group is also to report to the Legislature by January 1, 1995.

Substitute Bill Compared to Original Bill: The major differences from the original bill are as follows: a definition section is added as well as a disclosure requirement; a requirement for collection of adequate baseline data as part of the SEPA review is added; the coordinator role is expanded to track on-going operations; a fee is established to pay for the additional inspections and the coordinator; the tailings facility requirement has been re-worked; a requirement for an approved waste rock management plan is added; the original bonding section is replaced with a performance security requirement modeled on the Department of Natural Resources' reclamation performance security requirements; the specific 20 year standard for postclosure monitoring is removed; with regard to the economic impact study, the definition of "large-scale" is reduced from 75 employees to 35 employees and the section is tied specifically to the provisions of chapter 82.02 RCW; a person may not bring a citizen suit against a state agency if the agency is pursuing administrative enforcement; most provisions of the chapter apply to stand-alone metals milling operations; the open-ended moratorium on use of the heap-leach extraction process is given a time-certain for ending; and an additional advisory group is established.

Fiscal Note: Not available. Available on original bill.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For (original bill): It is important to have good bonding provisions to protect the environment and not leave taxpayers stuck with paying for a cleanup operation. The bill represents an opportunity to be proactive, before there are major problems. It is important to have frequent inspections. Citizen suits have been an effective tool in many states to empower citizens. The bill strikes a good balance between competing interests.

Testimony Against (original bill): The bill needs definitions and further clarification. The citizen suit section is too open-ended. There will be a fiscal impact on the agencies involved, and there is no provision for funding the additional workload. The quarterly inspections would be a significant increase in activity. Exploration should not be included in the bonding provisions. There are liability

questions about bringing a citizen onto the site for water sampling. The bill needs more pollution prevention measures to keep problems from happening. Siting criteria need to be added; dangerous waste standard would be appropriate. The bill does not address waste rock and the possibility of long-term contamination associated with waste rock. The bill should include disclosure requirements for applicants; it is a good business practice to check the backgrounds of those you deal with. The bill should include the awarding of civil penalties in the citizen suit provisions. There needs to be more stakeholder participation in the bill. The Department of Ecology should determine the duration of the postclosure monitoring requirement, based on site specific conditions. Dolomite mining may be covered by the bill as it stands; dolomite operation produces no tailings and has no chemical processing. The bill does not address expansions of mining operations.

Witnesses: Walt Hunt, Echo Bay Minerals; Robert Taylor, Northwest Alloys; Karl Mote, Northwest Mining; Brant E. Hinze, Battle Mountain Gold; John Ennis, City of Republic; K.O. Rosenberg, Ferry, Pend Oreille and Stevens Counties; D. J. Patin, Department of Ecology; Jennifer Belcher and Bill Lingley, Department of Natural Resources; Lesley Brines and David Mudd, Department of Wildlife; Ed Forslof, Washington Wildlife Federation; Geraldine Payton, Columbia River Bioregional Education Project; Chris Parsons and Paul Robinson, Washington Environmental Council; Richard Smith, Washington Coalition for Responsible Mining; Cathie Currie, Washington Wildlife Coalition; Laurie Smith, North Cascade Conservation Council; and Harris Dunkelberger.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Natural Resources & Parks be substituted therefor and the substitute bill as amended by Committee on Appropriations do pass. Signed by 21 members: Representatives Sommers, Chair; Appelwick; Ballasiotes; Basich; Cooke; Dorn; Dunshee; G. Fisher; Foreman; Jacobsen; Lemmon; Linville; H. Myers; Peery; Rust; Sehlin; Sheahan; Talcott; Wang; Wineberry and Wolfe.

Minority Report: Do not pass. Signed by 2 members: Representatives Silver, Ranking Minority Member; and Stevens.

Staff: Nancy Stevenson (786-7137).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Natural Resources & Parks: Civil penalties are authorized as part of the citizen suit provisions. A provision is added requiring the Department of Ecology to develop, adopt, and enforce criteria for siting tailings facilities. The section authorizing fees is deleted.

Fiscal Note: Requested for the substitute bill February 3, 1994.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: We prefer the bill include siting criteria and civil penalties. We support the coordination position at Ecology, quarterly inspections, a fee schedule, and creating the account. The bill helps focus regulation. Industry is asking the fee section be stricken. Look at an advisory group recommending fees as an alternative.

Testimony Against: None.

Witnesses: Chris Parsons, Washington Environmental Council (neutral), and Denny Eliason, Echo Bay Minerals (pro with concerns).