

2 **ESSB 5662** - H COMM AMD **ADOPTED 4/4/95**  
3 By Committee on Natural Resources

4

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

7 "Sec. 1. RCW 78.56.110 and 1994 c 232 s 11 are each amended to  
8 read as follows:

9 (1) The department of ecology (~~and the department of natural~~  
10 ~~resources~~) shall not issue necessary permits to an applicant for a  
11 metals mining and milling operation until the applicant has deposited  
12 with the department of ecology a performance security which is  
13 acceptable to (~~both agencies~~) the department of ecology based on the  
14 requirements of subsection (2) of this section. This performance

15 3

16 security may be:

17 (a) Bank letters of credit (~~acceptable to both agencies~~);

18 (b) A cash deposit;

19 (c) Negotiable securities (~~acceptable to both agencies~~);

20 (d) An assignment of a savings account;

21 (e) A savings certificate in a Washington bank; or

22 (f) A corporate surety bond executed in favor of the department of  
23 ecology by a corporation authorized to do business in the state of  
24 Washington under Title 48 RCW (~~and acceptable to both agencies~~).

25 The (~~agencies~~) department of ecology may, for any reason, refuse  
26 any performance security not deemed adequate.

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

30 (a) Compliance with the environmental protection laws of the state  
31 of Washington administered by the department of ecology, or permit  
32 conditions administered by the department of ecology, associated with  
33 the construction, operation, and closure pertaining to metals mining  
34 and milling operations, and with the related (~~rules~~) environmental  
35 protection ordinances and permit conditions established by (~~state~~  
36 and)) local government (~~with respect to those operations as defined in~~

1 ~~RCW 78.44.031(17)~~ and the construction, operation, reclamation, and  
2 closure of a metals mining and milling operation)) when requested by  
3 local government;

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

6 (c) Postclosure environmental monitoring as determined by the  
7 department of ecology (~~and the department of natural resources~~); and

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

11 (3) The department of ecology (~~and the department of natural~~  
12 ~~resources shall jointly~~) may, if it deems appropriate, adopt rules for  
13 determining the amount of the performance security, requirements for  
14 the performance security, requirements for the issuer of the  
15 performance security, and any other requirements necessary for the  
16 implementation of this section.

17 (4) The department of ecology (~~and the department of natural~~  
18 ~~resources, acting jointly,~~) may increase or decrease the amount of the  
19 performance security at any time to compensate for any alteration in  
20 the operation that affects meeting the obligations in subsection (2) of  
21 this section. At a minimum, the (~~agencies~~) department shall  
22 (~~jointly~~) review the adequacy of the performance security every two  
23 years.

24 (5) Liability under the performance security shall be maintained  
25 until the obligations in subsection (2) of this section are met to the  
26 satisfaction of the department of ecology (~~and the department of~~  
27 ~~natural resources~~). Liability under the performance security may be  
28 released only upon written notification by the department of ecology (~~or~~  
29 ~~with the concurrence of the department of natural resources~~).

30 (6) Any interest or appreciation on the performance security shall  
31 be held by the department of ecology until the obligations in  
32 subsection (2) of this section have been met to the satisfaction of the  
33 department of ecology (~~and the department of natural resources~~). At  
34 such time, the interest shall be remitted to the applicant or operator.  
35 However, if the applicant or operator fails to comply with the  
36 obligations of subsection (2) of this section, the interest or  
37 appreciation may be used by (~~either agency~~) the department of ecology  
38 to comply with the obligations.

39 (7) Only one agency may require a performance security to satisfy

1 the deposit requirements of RCW 78.44.087, and only one agency may  
2 require a performance security to satisfy the deposit requirements of  
3 this section. However, a single performance security, when acceptable  
4 to both the department of ecology and the department of natural  
5 resources, may be utilized by both agencies to satisfy the requirements  
6 of this section and RCW 78.44.087.

7 **Sec. 2.** RCW 78.56.120 and 1994 c 232 s 12 are each amended to read  
8 as follows:

9 The department of ecology may, with staff, equipment, and material  
10 under its control, or by contract with others, remediate or mitigate  
11 any impact of a metals mining and milling operation when it finds that  
12 the operator or permit holder has failed to comply with relevant  
13 statutes, rules, or permits, and the operator or permit holder has  
14 failed to take adequate or timely action to rectify these impacts.

15 If the department intends to remediate or mitigate such impacts,  
16 the department shall issue an order to submit performance security  
17 requiring the permit holder or surety to submit to the department the  
18 amount of moneys posted pursuant to (~~chapter 232, Laws of 1994~~) RCW  
19 78.56.110. If the amount specified in the order to submit performance  
20 security is not paid within twenty days after issuance of the notice,  
21 the attorney general upon request of the department shall bring an  
22 action on behalf of the state in a superior court to recover the amount  
23 specified and associated legal fees.

24 The department may proceed at any time after issuing the order to  
25 submit performance security to remediate or mitigate adverse impacts.

26 The department shall keep a record of all expenses incurred in  
27 carrying out any remediation or mitigation activities authorized under  
28 this section, including:

- 29 (1) Remediation or mitigation;  
30 (2) A reasonable charge for the services performed by the state's  
31 personnel and the state's equipment and materials utilized; and  
32 (3) Administrative and legal expenses related to remediation or  
33 mitigation.

34 The department shall refund to the surety or permit holder all  
35 amounts received in excess of the amount of expenses incurred. If the  
36 amount received is less than the expenses incurred, the attorney  
37 general, upon request of the department of ecology, may bring an action  
38 against the permit holder on behalf of the state in the superior court

1 to recover the remaining costs listed in this section.

2 ~~((If the department of natural resources finds that reclamation has  
3 not occurred according to the standards required under chapter 78.44  
4 RCW in a metals mining and milling operation, then the department of  
5 natural resources may cause reclamation to occur pursuant to RCW  
6 78.44.240. Upon approval of the department of ecology, the department  
7 of natural resources may reclaim part or all of the metals mining and  
8 milling operation using that portion of the surety posted pursuant to  
9 chapter 232, Laws of 1994 that has been identified for reclamation.))~~

10 **Sec. 3.** RCW 78.44.087 and 1994 c 232 s 23 are each amended to read  
11 as follows:

12 (1) The department shall not issue a reclamation permit until the  
13 applicant has deposited with the department an acceptable performance  
14 security on forms prescribed and furnished by the department. A public  
15 or governmental agency shall not be required to post performance  
16 security nor shall a permit holder be required to post surface mining  
17 performance security with more than one state or local agency.

18 (2) This performance security may be:

19 ~~((+1))~~ (a) Bank letters of credit acceptable to the department;

20 ~~((+2))~~ (b) A cash deposit;

21 ~~((+3))~~ (c) Negotiable securities acceptable to the department;

22 ~~((+4))~~ (d) An assignment of a savings account;

23 ~~((+5))~~ (e) A savings certificate in a Washington bank on an  
24 assignment form prescribed by the department;

25 ~~((+6))~~ (f) Assignments of interests in real property within the  
26 state of Washington; or

27 ~~((+7))~~ (g) A corporate surety bond executed in favor of the  
28 department by a corporation authorized to do business in the state of  
29 Washington under Title 48 RCW and authorized by the department.

30 (3) The performance security shall be conditioned upon the faithful  
31 performance of the requirements set forth in this chapter and of the  
32 rules adopted under it.

33 (4) The department shall have the authority to determine the amount  
34 of the performance security using a standardized performance security  
35 formula developed by the department. The amount of the security shall  
36 be determined by the department and based on the estimated costs of  
37 completing reclamation according to the approved reclamation plan or  
38 minimum standards and related administrative overhead for the area to

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

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

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

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

28 (8) Except as provided in this section, no other state agency or  
29 local government shall require performance security for the purposes of  
30 surface mine reclamation and only one agency of government shall  
31 require and hold the performance security. The department may enter  
32 into written agreements with federal agencies in order to avoid  
33 redundant bonding of surface mines straddling boundaries between  
34 federally controlled and other lands within Washington state.

35 (~~The department and the department of ecology shall jointly~~  
36 ~~require performance security for metals mining and milling operations~~  
37 ~~regulated under chapter 232, Laws of 1994.))"~~

1 By Committee on Natural Resources

2

3 On page 1, line 3 of the title, after "operations;" strike the  
4 remainder of the title and insert "and amending RCW 78.56.110,  
5 78.56.120, and 78.44.087."

--- END ---