

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5972

60th Legislature
2007 Regular Session

Passed by the Senate March 14, 2007
YEAS 49 NAYS 0

President of the Senate

Passed by the House April 10, 2007
YEAS 98 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5972** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5972

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Natural Resources, Ocean & Recreation
(originally sponsored by Senators Morton, Jacobsen, Swecker,
Rockefeller, Poulsen, Rasmussen, Hargrove and Shin)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to the surface mining reclamation act; amending RCW
2 78.44.190 and 78.44.210; and adding new sections to chapter 78.44 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 78.44 RCW
5 to read as follows:

6 (1) The department may issue a notice of correction to the
7 following: (a) Any permit holder, miner, or other person who
8 authorizes, directs, violates, or who directly benefits by contracting
9 with or employing another to violate this chapter, the rules adopted by
10 the department, a reclamation permit, or a reclamation plan; or (b) a
11 permit holder whose surface mine is out of compliance with the
12 provisions of this chapter, the rules adopted by the department, or the
13 permit holder's current or valid reclamation permit or reclamation
14 plan. The department's authority to issue or its issuance of a notice
15 of correction does not limit the department's authority to pursue
16 enforcement actions, except as stated in other laws.

17 (2) The notice of correction must describe the items that need
18 correction and must provide a reasonable time for the recipient to make
19 corrections. The notice of correction must identify when, where, and

1 to whom a request to extend the time to achieve compliance may be
2 filed. The department may grant an extension when there is good cause
3 for the request. This notice of correction is not an enforcement
4 action and is not subject to administrative or judicial appeal.

5 **Sec. 2.** RCW 78.44.190 and 1993 c 518 s 26 are each amended to read
6 as follows:

7 (1) The department may issue an order to rectify deficiencies
8 ((when a miner or permit holder is conducting surface mining in any
9 manner not authorized by:

- 10 (1) This chapter;
- 11 (2) The rules adopted by the department;
- 12 (3) The authorized reclamation plan; or
- 13 (4) The reclamation permit)) to the following: (a) Any permit
14 holder, miner, or other person who authorizes, directs, violates, or
15 who directly benefits by contracting with or employing another to
16 violate this chapter, the rules adopted by the department, a
17 reclamation permit, or a reclamation plan; or (b) a permit holder whose
18 surface mine is out of compliance with the provisions of this chapter,
19 the rules adopted by the department, or the permit holder's current and
20 valid reclamation permit or reclamation plan.

21 (2) The order shall describe the deficiencies and shall ((require
22 that the miner or permit holder correct all deficiencies no later than
23 sixty days from issuance of the order. The department may extend the
24 period for correction for delays clearly beyond the miner or permit
25 holder's control, but only when the miner or permit holder is, in the
26 opinion of the department, making every reasonable effort to comply))
27 initially require the order recipient to correct all deficiencies by a
28 date that is no later than sixty days after the department's issuance
29 of the order. The department may extend the period to correct
30 deficiencies for delays clearly beyond the order recipient's control,
31 but only when the person is, in the opinion of the department, making
32 every reasonable effort to comply. This order becomes final and
33 effective after being upheld upon completion of all administrative and
34 judicial review proceedings or following notice and a failure to timely
35 request a hearing.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 78.44 RCW
2 to read as follows:

3 (1) The department may issue an order to stop all surface mining to
4 any permit holder, miner, or other person who authorizes, directs, or
5 conducts such activities without a valid surface mine reclamation
6 permit. This order is effective upon issuance unless otherwise stated
7 in the order. Administrative appeal of the order to stop work does not
8 stay the stop work requirement. The department shall notify the local
9 jurisdiction of record when a stop work order has been issued for
10 operating without a valid reclamation permit.

11 (2) The department may issue an order to stop surface mining
12 occurring outside of any permit area to a permit holder that does not
13 have a legal right to occupy the affected area. This order is
14 effective upon issuance unless otherwise stated in the order. An
15 administrative appeal of the order to stop work does not stay the stop
16 work requirement.

17 (3) Where a permit holder is conducting surface mining activities
18 outside of its permit boundary, but within land that it has the right
19 to occupy, the department may issue an order to stop surface mining or
20 mining-related activities occurring outside of the authorized area
21 after the permit holder fails to comply with a notice of correction.
22 The notice of correction must specify the corrections necessary as per
23 the violation and provide a reasonable time to do so. This order is
24 effective upon issuance unless otherwise stated in the order. An
25 administrative appeal of the order to stop work does not stay the stop
26 work requirement.

27 (4) Stop work orders must be in writing, delivered by United States
28 certified mail with return receipt requested, facsimile, or by hand to
29 the permit holder of record. The order must state the facts supporting
30 the violation, the law being violated, and the specific activities
31 being stopped. Stop work orders must be signed by the state geologist
32 or an assistant state geologist. The department shall proceed as
33 quickly as feasible to complete any requested adjudicative proceedings
34 unless the parties stipulate to an appeal timeline or the department's
35 stop work order states that it is not effective until after the
36 administrative review process. If the recipient appeals the order, the
37 recipient may file a motion for stay with the presiding officer, which
38 will be reviewed under preliminary injunction standards.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 78.44 RCW
2 to read as follows:

3 (1) In addition to the department's other authority to cancel a
4 reclamation permit, a permit holder may seek cancellation of its
5 reclamation permit in favor of a local development or construction
6 permit. A permit holder may request cancellation of its reclamation
7 permit and release of its performance security when:

8 (a) The permit holder has received an approved development or
9 construction permit covering all of the existing permit area from a
10 local jurisdiction;

11 (b) The local jurisdiction and the landowner agree with the permit
12 holder's request to cancel the reclamation permit and to release the
13 performance security; and

14 (c) The local jurisdiction provides assurance in writing that the
15 construction or development permit is being actively implemented by the
16 permit holder.

17 (2) The department is not responsible for overseeing a site's
18 development or reclamation when a reclamation permit is cancelled under
19 this section.

20 **Sec. 5.** RCW 78.44.210 and 1993 c 518 s 28 are each amended to read
21 as follows:

22 (~~Upon the failure of a miner or permit holder to comply with a~~
23 ~~department order to rectify deficiencies, the department may issue an~~
24 ~~order to suspend surface mining when a miner or permit holder is~~
25 ~~conducting surface mining in any manner not authorized by:~~

26 ~~(1) This chapter;~~

27 ~~(2) The rules adopted by the department;~~

28 ~~(3) The approved reclamation plan;~~

29 ~~(4) The reclamation permit; or~~

30 ~~(5) If the miner or permit holder fails to comply with any final~~
31 ~~order of the department.~~

32 ~~The order to suspend surface mining shall require the miner or~~
33 ~~permit holder to suspend part or all of the miner's or permit holder's~~
34 ~~mining operations until the conditions resulting in the issuance of the~~
35 ~~order have been mitigated to the satisfaction of the department.~~

36 ~~The attorney general may take the necessary legal action to enjoin,~~
37 ~~or otherwise cause to be stopped, surface mining in violation of an~~

1 ~~order to suspend surface mining.)~~) The department, through the state
2 geologist or assistant state geologist, may suspend a reclamation
3 permit whenever a permit holder or surface mine is out of compliance
4 with a final department order. The suspension order must be served on
5 the permit holder by certified mail with return receipt requested or by
6 personal service. The order must specify the final order alleged to be
7 violated, the facts upon which the conclusion of violation is based,
8 and the conclusions of law. This order becomes final and effective
9 after being upheld upon completion of all administrative review
10 proceedings or following notice and a failure to timely request a
11 hearing. No surface mining or reclamation may occur while a permit is
12 suspended unless under the express written authority of the department.

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