
SENATE BILL 5972

State of Washington 60th Legislature 2007 Regular Session

By Senators Morton, Jacobsen, Swecker, Rockefeller, Poulsen, Rasmussen, Hargrove and Shin

Read first time 02/09/2007. Referred to Committee on Natural Resources, Ocean & Recreation.

1 AN ACT Relating to the surface mining reclamation act; amending RCW
2 78.44.190, 78.44.210, and 78.44.250; adding new sections to chapter
3 78.44 RCW; and prescribing penalties.

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

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

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

18 (2) The notice of correction must describe the items that need
19 correction and must provide a reasonable time for the recipient to make

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

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

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

11 ~~(1) This chapter;~~

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

13 ~~(3) The authorized reclamation plan; or~~

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

22 (2) The order shall describe the deficiencies and shall ~~((require~~
23 ~~that the miner or permit holder correct all deficiencies no later than~~
24 ~~sixty days from issuance of the order. The department may extend the~~
25 ~~period for correction for delays clearly beyond the miner or permit~~
26 ~~holder's control, but only when the miner or permit holder is, in the~~
27 ~~opinion of the department, making every reasonable effort to comply))~~
28 initially require the order recipient to correct all deficiencies by a
29 date that is no later than sixty days after the department's issuance
30 of the order. The department may extend the period to correct
31 deficiencies for delays clearly beyond the order recipient's control,
32 but only when the person is, in the opinion of the department, making
33 every reasonable effort to comply. This order becomes final and
34 effective after being upheld upon completion of all administrative and
35 judicial review proceedings or following notice and a failure to timely
36 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.

13 **Sec. 6.** RCW 78.44.250 and 1993 c 518 s 32 are each amended to read
14 as follows:

15 ~~((Each order of the department may impose a fine or fines in the~~
16 ~~event that a miner or permit holder fails to obey the order of the~~
17 ~~department. When a miner or permit holder fails to comply with an~~
18 ~~order of the department, the miner or permit holder shall be subject to~~
19 ~~a civil penalty in an amount not more than ten thousand dollars for~~
20 ~~each violation plus interest based upon a schedule of fines set forth~~
21 ~~by the department in rule. Procedures for imposing a penalty and~~
22 ~~setting the amount of the penalty shall be as provided in RCW~~
23 ~~90.48.144. Each day on which a miner or permit holder continues to~~
24 ~~disobey any order of the department shall constitute a separate~~
25 ~~violation. If the penalty and interest is not paid to the department~~
26 ~~after it becomes due and payable, the attorney general, upon the~~
27 ~~request of the department, may bring an action in the name of the state~~
28 ~~of Washington to recover the penalty, interest, mitigation for~~
29 ~~environmental damages, and associated legal fees. Decisions of the~~
30 ~~department are subject to review by the pollution control hearings~~
31 ~~board.))~~

32 (1) When a permit holder, miner, or other person who authorizes,
33 directs, violates, or who directly benefits by contracting with or
34 employing another fails to comply with an order of the department or
35 any final order of the department, they are subject to a civil penalty.
36 The department's issuance of any civil penalty must be in accordance
37 with chapter 43.05 RCW.

1 (2) The department, through the state geologist or assistant state
2 geologist, may issue a civil penalty order to any permit holder, miner,
3 or other person who authorizes, directs, violates, or who directly
4 benefits by contracting with or employing another to violate any order
5 of the department.

6 (3) The civil penalty order must be served on the person who
7 authorizes, directs, conducts, violates, or who directly benefits by
8 contracting with or employing another, thereby incurring the civil
9 penalty, by certified mail with return receipt requested or by personal
10 service. The order must specify each provision alleged to be violated,
11 the facts upon which the alleged violation is based, and the
12 conclusions of law.

13 (4) The department shall determine the amount of each civil penalty
14 in consideration of the alleged violation's circumstances and the
15 department's rules. A civil penalty for any violation may include a
16 specific violation's base penalty as adjusted by a multiplication
17 factor. Base penalties for categories of violations and multiplication
18 factors must be set by the department in rule. When establishing
19 multiplication factors, the department shall consider factors specific
20 to the incident, the severity of the incident, the alleged violator's
21 compliance history, and the cooperation of the alleged violator. No
22 more than a ten thousand dollar civil penalty may be imposed per
23 violation.

24 (5) Each day that a permit holder, miner, or other person who
25 authorizes, directs, conducts, violates, or who directly benefits by
26 contracting with or employing another, performs surface mining without
27 a valid surface mine reclamation permit or violates a final order of
28 the department may be treated as a separate violation, with a maximum
29 fine of ten thousand dollars per day for each separate violation.

30 (6) The department's civil penalty order becomes final and
31 effective after being upheld upon completion of all administrative and
32 judicial review proceedings or following notice and a failure to timely
33 request a hearing. Payment of any civil penalty is due within thirty
34 calendar days of the order becoming final.

35 (7) All fines, interest, penalties, and other damage recovery costs
36 from mines regulated by the department shall be credited to the surface

1 mining reclamation account.

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