
SENATE BILL 5662

State of Washington

53rd Legislature

1993 Regular Session

By Senators Owen, Erwin, Spanel, Franklin, Haugen, Fraser, Sutherland and Williams

Read first time 02/08/93. Referred to Committee on Natural Resources.

1 AN ACT Relating to metals mining; amending RCW 77.08.010,
2 78.44.030, 78.44.080, 90.03.260, and 90.48.020; adding a new section to
3 chapter 90.48 RCW; adding a new section to chapter 77.12 RCW; adding a
4 new chapter to Title 78 RCW; creating a new section; prescribing
5 penalties; providing an effective date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature declares that it is the
8 policy of the state of Washington to:

9 (1) Prevent the degradation of the state's environmental,
10 aesthetic, recreational, social, community, archaeological, and
11 historic resources by metals mining operations;

12 (2) Require all metals mining operations in the state of Washington
13 to assume the social and environmental costs associated with their
14 operation;

15 (3) In issuing permits to allow metals mining operations, consider
16 the cumulative impacts of the proposed operation as a decisive factor
17 in permit issuance. Each proposed operation shall be evaluated while
18 taking into consideration existing, planned, or reasonably foreseeable

1 development and natural resource extraction activities and natural
2 occurrences on or off the site;

3 (4) Before a concerned agency issues a permit, require an applicant
4 to provide clear and convincing evidence demonstrating that a proposed
5 mining operation will have no detrimental effect on humans or the
6 environment;

7 (5) Authorize all state agencies responsible for protecting the
8 environment of the state to limit, postpone, or prohibit a metals
9 mining operation if the operation presents a danger to the natural,
10 human, or social environment;

11 (6) Impose substantial monetary, civil, and criminal penalties for
12 unauthorized mining activities or for conducting a metals mining
13 operation in a manner that does not comply with permit requirements.

14 NEW SECTION. **Sec. 2.** As used in this chapter:

15 (1) "Agency" means the department of ecology, department of
16 fisheries, department of wildlife, department of labor and industries,
17 department of transportation, and department of community development.

18 (2) "Concerned agency" means an agency or the department that must
19 issue a permit or otherwise approve a metals mining operation at the
20 completion of the consolidated application process under sections 3
21 through 11 of this act in order for a metals mining operation to
22 operate lawfully.

23 (3) "Consolidated application" means a single document, containing
24 environmental and social impact analysis, strategies for site
25 operation, emergency response and reclamation, and other information
26 required by concerned agencies in order for the agencies to make
27 permitting and approval decisions, that substantially conforms to the
28 requirements for a statement under section 4332 of the national
29 environmental policy act.

30 (4) "Cumulative impact" means the total impact on the environment
31 that results from the incremental impact of an action if added to other
32 past, present, and reasonably foreseeable future actions, regardless of
33 the agency or person that undertakes the other actions. "Cumulative
34 impacts" may result from individually minor but collectively
35 significant actions taking place over time.

36 (5) "Department" means the Washington state department of natural
37 resources.

1 (6) "Detoxification" means removal of all solvents, sulfides, metal
2 or other contaminants from process water, tailings, overburden, or
3 other waste material. For process water, "detoxification" means the
4 process water meets national ambient water quality standards adopted
5 under this chapter. For solid waste, "detoxification" means that when
6 water comes into contact with the solid waste, any resulting
7 contamination of the water does not exceed rules established under RCW
8 90.48.035 or revised rules based on new scientific data.

9 (7) "Metals mining" means mining, except placer mining or panning,
10 conducted on state, federal, or private lands for the extraction of
11 metallic ore, including the transportation of materials between the:

12 (a) Extraction site;

13 (b) Solvent recovery site; or

14 (c) Interim containment site.

15 (8) "Ore" means a mineral or an aggregate of minerals mixed with
16 gangue, that can be treated.

17 (9) "Permittee" means a person operating a metals mining operation
18 after obtaining the necessary permits under the consolidated
19 application process set forth in sections 3 through 11 of this act.

20 (10) "Worst case scenario" means the reasonably foreseeable impacts
21 of an activity including catastrophic consequences even if the
22 probability of occurrence is low, if the analysis is supported by
23 credible scientific evidence, is not based on pure conjecture, and is
24 within the rule of reason.

25 (11) "Parent" means an individual, partnership, corporation, or
26 other organization holding financial interest in an applicant or
27 permittee or holding a controlling financial interest in another
28 parent.

29 NEW SECTION. **Sec. 3.** Each applicant for a permit to operate a
30 metals mining operation shall submit a six-part consolidated
31 application. The completed application shall include information
32 required under this section and additional information required by rule
33 under section 4 of this act. The six parts of the consolidated
34 application shall consist of:

35 (1) General information requirements, which shall include:

36 (a) Name, location, and mailing address of the facility;

37 (b) Name, mailing address, and phone number of the applicant and a
38 registered agent for the applicant;

1 (c) The legal structure and legal residence of the applicant;
2 (d) List of the applicant's parents;
3 (e) Name and location of all mining operations in the United States
4 owned by the applicant's parents;
5 (f) Land ownership status of the facility;
6 (g) All applications for the patenting of federal lands by the
7 applicant;
8 (h) Complete review and full documentation of all previous mining
9 activity and impacts of the activity in the area of the proposed
10 operation;
11 (i) An assessment of the cumulative environmental impacts on
12 existing, currently proposed, and reasonably foreseeable development in
13 the area;
14 (j) An assessment of all alternatives to the plan of operation, the
15 size and scope of the proposed activity, and the location of the
16 proposed activity that minimize or eliminate harm to the human and
17 natural environment, including, but not limited to, as applicable,
18 consideration of:
19 (i) Operation of an underground operation instead of an open pit;
20 (ii) Variations in the operating schedule to lengthen the lifetime
21 of the operation;
22 (iii) Contained chemical leaching instead of heap leaching;
23 (iv) Mechanical processing instead of chemical processing;
24 (v) The no-action alternative in which the operation does not take
25 place;
26 (k) A complete assessment of the economic benefits and costs over
27 time to affected communities of all alternatives considered in (j) of
28 this subsection (1), including an economic assessment of the value of
29 the minerals to be mined against the costs of mitigation measure and
30 other resources lost versus the value of an undisturbed, intact
31 ecosystem to those communities;
32 (l) A surface and subsurface description of the proposed facility
33 site and areas to where operation expansion is a possibility to
34 characterize the local hydrologic and geological regimes, including
35 characterization of ores present;
36 (m) A topographic site map and aerial photos extending at least
37 fifteen miles beyond the outer limits of the facility site, identifying
38 and showing the following features:

1 (i) All wells, springs, wetlands, surface waters, and irrigation
2 ditches within fifteen miles of the site boundary;

3 (ii) All process water supply sources;

4 (iii) All public and private drinking water supply sources within
5 fifteen miles of the site boundary;

6 (iv) All United States geologic survey identified flood plain areas
7 as shown on sectional quadrangle maps;

8 (v) All service roads and public roads currently in existence and
9 the location of service roads proposed for construction;

10 (vi) All historic records of precipitation and temperature;

11 (vii) All buildings and structures within five miles of the site
12 boundary and their function; and

13 (viii) All results of exploratory mineral surveys within the site
14 boundary and lands adjacent to or within fifteen miles of the site
15 boundary;

16 (n) Identification of threatened, endangered, or candidate species
17 under the endangered species act, 16 U.S.C. Secs. 1531-1543 found
18 within fifteen miles of the site boundary and the likely impacts upon
19 these species by the proposed operation;

20 (o) Topographic maps, aerial photos, and an accompanying
21 engineering report with drawings showing the location and design of
22 those portions of the facility intended to contain or detoxify process
23 water;

24 (p) Topographic maps, aerial photos and an accompanying engineering
25 report with drawings showing the location and design of those portions
26 of the facility designed to contain, on a permanent or temporary basis,
27 all mine spoils, tailings, and overburden generated. The applicant
28 shall supply data to support the conclusion that methods chosen use the
29 best available technology and the best management practices for the
30 control of acidic and toxic contamination of ground and surface waters.
31 All methods adopted shall be consistent with the requirements of
32 chapter . . . , Laws of 1993 (this act);

33 (q) Consideration of potential seismic occurrences and their
34 implications and impacts on the proposed operation;

35 (r) The information provided in paragraphs (i) and (j) of this
36 subsection (1) shall be sufficiently detailed to allow the concerned
37 agencies to make necessary factual determinations concerning design
38 competence and environmental protection and shall include the
39 following:

- 1 (i) A drawing that shows surface gradients and flow of runoff and
2 run-on;
- 3 (ii) Design criteria and processing schematic;
- 4 (iii) Leach pad and pond cross sections;
- 5 (iv) Details of the liner system for pads, ponds, and process
6 related impoundments;
- 7 (v) Treatment process schematics;
- 8 (vi) Leak detection and monitoring system details;
- 9 (vii) A hydraulic survey identifying ground and surface water
10 relationships, ground water flow, and estimated aquifer recharge rates;
- 11 (viii) An estimate of the projected rate of aquifer drawdown;
- 12 (ix) A water quality profile for all affected and potentially
13 affected aquifers and provisions for testing at a variety of depths and
14 locations;
- 15 (x) A survey of fish and wildlife within fifteen miles of the site
16 boundaries that includes a detailed description of existing habitat
17 upon which the fish and wildlife are dependent;
- 18 (xi) Current population of local communities and population growth
19 rate projections for the next fifty years; and
- 20 (xii) An estimate of current land and water use requirements of
21 local communities and projected use over the next fifty years.
- 22 (2) Operating plans, which shall include:
 - 23 (a) A general ore processing overview that accurately identifies
24 all planned construction and excavation;
 - 25 (b) A plan for habitat and wildlife protection. The wildlife
26 protection plan shall be based on a no-death standard;
 - 27 (c) An outline of the methods to be used to minimize disturbance of
28 ground and surface water during excavation;
 - 29 (d) A plan for backfilling and grading all excavations, including
30 open pits and shafts, using all available overburden and other spoils
31 and waste material in order to restore the approximate original contour
32 of the area;
 - 33 (e) A plan for concurrent reclamation of at least twenty-five
34 percent of the area to be disturbed for each year of operation;
 - 35 (f) A plan for revegetation with native flora species and for
36 ongoing ecosystem maintenance. Flora density and diversity shall be
37 comparable to undamaged ecosystems in the area. A decision to
38 broadcast seed rather than plant seedlings must be justified;
 - 39 (g) A water management strategy that describes:

1 (i) The process water balance and the methods to manage all process
2 water, process-containment water, run-off or run-on water, excess water
3 due to flood, rain, snow melt, or other similar event and emergency
4 release;

5 (ii) The basis for impoundment volumes and all estimations;

6 (iii) The strategy for ground and surface water quality monitoring
7 to ensure that the water remains of potable quality;

8 (iv) If applicable, a seasonal closure strategy that describes
9 procedures, methods, and schedules to be implemented for the
10 detoxification of process water, the control of drainage from the
11 facility during the period of closure, the control of drainage from the
12 surrounding area, and the secure storage of chemicals; and

13 (v) A permanent closure plan that describes procedures, methods,
14 and schedules to be implemented for the detoxification of process
15 water, and the control and monitoring of potential discharges;

16 (h) A plan for storage of cyanide and other hazardous material;

17 (i) A plan for employee orientation and ongoing education that
18 stresses emergency clean-up response, effective monitoring, and the
19 proper handling of cyanide and other hazardous material;

20 (j) A plan for tracking hazardous material that is transferred to
21 disposal sites off the mine premises to ensure proper disposal;

22 (k) A plan for baseline air quality sampling. If an operation is
23 located in an area designated a "class I" airshed, the operator must
24 outline steps to be taken to prevent violation of standards adopted
25 pursuant to the federal clean air act, as amended;

26 (l) A plan for noise and light pollution reduction;

27 (m) A plan to respond to potential seismic occurrences and their
28 implications and impacts on the operation.

29 (3) A local impact analysis, which shall include an impact plan
30 describing the economic impact the proposed mining operation will have
31 on owners of land within fifteen miles of the site boundaries and
32 affected cities, counties, or special districts. An impact plan shall
33 include but need not be limited to:

34 (a) A timetable for development of the project;

35 (b) The estimated number of persons coming into the impacted area
36 as a result of the mine;

37 (c) The effect on local social services, infrastructure demands,
38 land values, and demographics;

1 (d) The increased capital and operating costs to cities, counties,
2 or special service districts for providing services that can be
3 expected as a result of development;

4 (e) Financial or other assistance, the permittee will give to
5 cities, counties, or special service districts to meet the increased
6 need for services;

7 (f) An evaluation of the compatability of the operation's impact
8 with a comprehensive plan adopted by an affected region, county, or
9 locality under chapters 36.70 and 36.70A RCW.

10 (4) A worst-case scenario analysis.

11 (5) All other information required by rule under section 5 of this
12 act.

13 (6) A meaningful synopsis of the information required by
14 subsections (1) through (5) of this section of no more than sixty
15 pages, useful to concerned lay people who wish to assess the proposed
16 operation and comment on the application.

17 NEW SECTION. **Sec. 4.** (1) The department shall establish by rule
18 additional information requirements to be submitted as part of the
19 consolidated application. The application shall be designed to include
20 all information required to determine whether to issue the following
21 permits or approvals as they may be needed for the proposed operation:

22 (a) Approval of forest practices under chapter 76.09 RCW;

23 (b) Explosives use license under chapter 70.74 RCW;

24 (c) Transportation permit under chapter 46.44 RCW;

25 (d) Shoreline substantial development permit under chapter 90.58
26 RCW;

27 (e) Waste disposal permits and approvals under chapters 90.48,
28 90.52, and 90.54 RCW;

29 (f) Permits to appropriate water under chapter 90.44 or 90.03 RCW;

30 (g) Hydraulic project approval under chapter 75.20 RCW;

31 (h) Landfill or dumping approval under chapter 70.95 RCW;

32 (i) Hazardous waste disposal permit under chapter 70.105 RCW and
33 the federal resource conservation and recovery act;

34 (j) Air pollution permits under chapters 43.21A and 70.94 RCW;

35 (k) Burning permit under chapter 76.04 RCW and the federal clean
36 air act;

37 (l) Archeological excavation permit under chapter 27.53 RCW;

38 (m) Game fish mitigation approval under chapter 77.18 RCW;

1 (n) Wildlife protection permit under chapter 77.12 RCW;

2 (o) Flood plain management approval under chapter 86.16 RCW.

3 (2) In addition to developing the content of the consolidated
4 application, the department also shall establish an initial
5 nonrefundable application fee to be submitted with the application.

6 (3) After the department receives the consolidated application and
7 distributes the application to all concerned agencies and after the
8 scoping process required under section 8 of this act is complete, each
9 concerned agency shall submit an estimate of the agency's anticipated
10 application review costs, including estimated costs to the department
11 for a report required by section 5 of this act and chapter 43.21C RCW.
12 The department shall compile a processing fee schedule to be paid by
13 the applicant before any further action is taken by the concerned
14 agencies. The processing fee shall not be lower than the sum of all
15 costs submitted by the concerned agencies. The applicant also shall be
16 responsible for payment of unanticipated costs incurred by a concerned
17 agency in processing the application.

18 (4) In adopting the application under subsection (1) of this
19 section, the department shall consult with the department of ecology
20 and the department of wildlife in order to coordinate rules adopted
21 under this section with rules adopted by those agencies relating to the
22 consolidated application process established under sections 3 through
23 11 of this act. If there is a conflict between the provisions of
24 chapter . . . , Laws of 1993 (this act) and any other statutory
25 provision or a rule adopted by an agency, the more stringent statute or
26 rule shall apply. The department shall include all information
27 reporting requirements of any agency in the consolidated application.

28 (5) The applicant may not directly contract with consultants to
29 conduct studies necessary to satisfy the information requirements of
30 the consolidated application. The department shall contract with
31 consultants to gather the information needed at the expense of the
32 applicant.

33 (6) Each concerned agency shall take into consideration
34 environmental or social impact review required by the federal
35 government and other information generated that is not included in the
36 consolidated application process, but information or a study
37 commissioned by a concerned agency shall take precedence.

1 NEW SECTION. **Sec. 5.** (1) The approval by the department of a
2 permit to operate a metals mining operation shall be considered a major
3 action having a probable significant, adverse environmental impact
4 under chapter 43.21C RCW. Before the department may approve such a
5 permit, the department shall make a report and recommendation as
6 required under RCW 43.21C.030.

7 (2) The applicant shall pay the costs of a report required by
8 subsection (1) of this section above the costs for a report estimated
9 by the department and included in the application processing fee.

10 NEW SECTION. **Sec. 6.** Within five days after each of the following
11 actions, the department shall give public notice of:

12 (1) Receipt by the department of a notice of intent to file a
13 metals mining application;

14 (2) Receipt of a completed consolidated application acceptable to
15 all agencies;

16 (3) Determination of the date of the informal hearing required
17 under section 13 of this act;

18 (4) Determination of the date of the formal hearing required under
19 section 14 of this act;

20 (5) A determination by the department or a concerned agency to
21 issue a notice of intent to issue a permit or to deny the application
22 for a permit;

23 (6) The notice of an appeal granted or denied;

24 (7) The scheduling of a public meeting related to a proposed or
25 operating metals mining operation;

26 (8) An application for modification of the permit conditions or for
27 modification of permitted activities.

28 NEW SECTION. **Sec. 7.** (1) The notice required under section 6 of
29 this act shall be reasonably calculated to give actual notice to all
30 affected persons. Written notice shall be mailed by first class mail
31 to:

32 (a) The applicant;

33 (b) All persons on the department's mailing list who request to be
34 notified, which shall include persons who have contacted the department
35 and concerned state or federal agencies; and

36 (c) All affected agencies and other concerned government
37 authorities.

1 (2) In addition to the notice provided under subsection (1) of this
2 section, the department shall publish the notice each day for at least
3 one week in a newspaper of general circulation in the county or
4 counties nearest to the proposed metals mining operation. The notice
5 shall include information regarding where a person may obtain a copy of
6 the consolidated application or impact analysis. These documents shall
7 be made available to concerned persons at numerous locations in the
8 affected county or counties and across the state.

9 (3) The permittee for a metals mining site or exploration site that
10 is established in anticipation of metals mining activity shall post
11 signs along the perimeter of the operations at intervals of not more
12 than one hundred feet. The sign shall provide the department and
13 United States bureau of land management or forest service permit
14 numbers and the name and location of the mine. The signs shall be
15 clearly visible and state:

16 "WARNING: The environment behind this sign may be severely disturbed as
17 the result of a (company name) metals mining operation. Concerned
18 person should contact the Washington Department of Natural Resources at
19 (department phone number) for further information."

20 NEW SECTION. **Sec. 8.** (1) A person who intends to apply for a
21 metals mining permit under section 10 of this act shall file with the
22 department a notice of intent to file an application for a metals
23 mining permit. The notice of intent must describe the proposed mining
24 operation with sufficient detail to enable the department to identify
25 the proposed site and understand the proposed operation.

26 (2) The department shall cause notice to be given as required under
27 section 6 of this act whenever a notice of intent is filed and provide
28 a description of the proposed operation in sufficient detail to inform
29 the public of its location and possible impact.

30 NEW SECTION. **Sec. 9.** (1) Upon receipt of a notice of intent under
31 section 8 of this act, the department shall initiate a preapplication
32 scoping process in which agencies and the public shall identify areas
33 of concern that must be addressed in the consolidated application.

34 (2) A concerned agency may amend the data required on the
35 consolidated application developed under section 3 of this act to
36 include concerns raise by persons or agencies during the preapplication

1 scoping process or to include additional information relevant to the
2 decision-making process.

3 (3) The preapplication scoping process shall begin ninety days
4 after the department issues a notice of intent to establish a metals
5 mining operation. The scoping process shall take place for a period of
6 forty-five days. The concerned agencies shall have an additional
7 forty-five days to add additional information reporting requirements to
8 the consolidated application. The applicant shall be allowed as much
9 time as needed to comply with the agency information requirements.

10 NEW SECTION. **Sec. 10.** (1) A person proposing to conduct a metals
11 mining operation shall complete and submit the consolidated application
12 developed under section 3 of this act. An application shall not be
13 processed:

14 (a) Until all concerned agencies verify that the application is
15 complete;

16 (b) If an applicant, its parent, or any subsidiary of an
17 applicant's parent is currently in violation of or noncompliance with
18 a federal law or regulation or a statute or regulation of a state
19 relating to a mining operation;

20 (c) If the applicant, its parent, or a subsidiary of an applicant's
21 parent was found in violation of or in noncompliance with a federal
22 statute or regulation or a statute or rule of the state related to a
23 mining operation during the two-year period immediately preceding the
24 date the applicant filed a notice of intent under section 8 of this
25 act.

26 (2) An expansion or significant modification of an existing metals
27 mining facility that was not anticipated in the consolidated
28 application and addressed by a condition in the permit of a concerned
29 agency shall be approved through the consolidated application process
30 described in section 3 of this act. The department of ecology, in
31 consultation with other concerned agencies, shall determine whether a
32 proposed modification is significant.

33 (3) A permit authorizing an activity related to a metals mining
34 operation is valid for a period of not more than five years. Upon
35 expiration of a permit, the permittee shall submit a new consolidated
36 application and comply with the process set forth in sections 3 through
37 9 of this act.

1 (4) A concerned agency may, at its discretion, revoke a permit
2 prior to the expiration of the permit or add a new permit condition to
3 an existing permit if the action is considered necessary to protect
4 human health or the environment.

5 (5) If there is a reasonable doubt as to the validity, quality, or
6 quantity of information provided by an applicant in the consolidated
7 application, the applicant shall resolve the doubt to the satisfaction
8 of the concerned agency that included the information reporting
9 requirement in the consolidated application. If the applicant fails to
10 resolve the doubt, the concerned agency shall deny the permit.
11 Consistent with the requirement of a cumulative impact analysis, a
12 concerned agency that believes there is a reasonable doubt as to the
13 validity or quality of information necessary to the permitting decision
14 of another concerned agency may request that the other concerned agency
15 verify the information. If reasonable doubt exists, a member of the
16 public may also request verification of the application information.
17 In addition, if a member of the public has a reasonable doubt, the
18 person may petition a concerned agency to review the validity of the
19 information. The petition shall become part of the public record and
20 the concerned agency shall either act on the petition or address the
21 petitioner's concern in the agency's decision document.

22 NEW SECTION. **Sec. 11.** (1) The applicant shall provide a copy of
23 the completed application to:

24 (a) Each concerned agency from whom the applicant must obtain a
25 permit; and

26 (b) Persons or organizations that have expressed an interest in
27 reviewing the consolidated application.

28 (2) An agency shall return without processing an incomplete
29 application, even if the portion of the application the agency is
30 responsible for is complete.

31 (3) Each completed application shall be a public record and shall
32 be available for public inspection at several locations in the affected
33 county or counties and across the state.

34 (4) The department shall maintain the mailing list of interested
35 persons to whom an applicant must provide copies of the consolidated
36 application under subsection (1) of this section.

37 (5) Each application shall be accompanied by the fee established
38 under section 4 of this act.

1 (6) Upon acceptance of a completed consolidated application
2 approved by all concerned agencies, the department shall issue a public
3 notice in accordance with section 6 of this act advising the public
4 that the application has been accepted for processing.

5 NEW SECTION. **Sec. 12.** Before issuing an operating permit to an
6 applicant, the concerned agencies shall calculate the administrative
7 costs of regulating the proposed metals mining operation for a period
8 of one year. The costs shall include but need not be limited to
9 construction and reclamation oversight, inspections, and thorough,
10 effective, and regular monitoring. The concerned agencies shall also
11 estimate the long-term monitoring costs for the site beyond the life of
12 the operation. The total amount of all such administrative costs and
13 a pro rata portion of the long-term monitoring costs, calculated so
14 that the whole estimated long-term monitoring costs shall be paid over
15 the life of the operation, shall be the annual operating permit fee,
16 and shall be paid by the permittee before a permit is issued. The
17 concerned agencies shall review the fee annually to ensure that the
18 annual operating fee is adequate to pay the expenses of the concerned
19 agencies. If an applicant fails to pay the annual operating fee, the
20 permit shall be revoked.

21 NEW SECTION. **Sec. 13.** (1) Not less than thirty days after the
22 department provides public notice of acceptance of an application, the
23 department, in conjunction with other agencies responsible for issuing
24 a permit or for approving the issuance of a permit, shall conduct an
25 informal public hearing.

26 (2) The purpose of the informal public hearing shall be to:

27 (a) Establish the agenda for the formal hearing conducted under
28 section 14 of this act; and

29 (b) Allow persons an opportunity to comment on the proposed metals
30 mining operation.

31 (3) All testimony, whether written or oral, received at the
32 informal hearing shall become a public record and, upon request of a
33 party or an agency, may be made a part of the record of the formal
34 hearing conducted under section 14 of this act.

35 (4) In addition to the comments received at the informal hearing,
36 a person or agency may submit written comments within thirty days after
37 the close of the informal hearing.

1 NEW SECTION. **Sec. 14.** (1) No sooner than six months after each
2 concerned agency has completed a draft permit and decision documents,
3 the department shall conduct a formal hearing on the metals mining
4 application. Except as provided in this section, the hearing shall be
5 conducted according to the provisions under chapter 34.05 RCW
6 applicable to adjudicative proceedings.

7 (2) Each concerned agency may appoint a hearings officer to
8 participate in the formal hearing or a single hearings officer may be
9 appointed by the department with the consent of all other concerned
10 agencies.

11 (3) Information received in the informal hearing conducted under
12 section 13 of this act may be used by the participants in the formal
13 hearing.

14 NEW SECTION. **Sec. 15.** (1) An organization or coalition
15 representing twenty or more persons, or a person who may be distinctly
16 affected by the proposed operation, may participate in the formal
17 hearing process under section 14 of this act. An organization
18 representative, an individual, or an attorney for an organization or
19 individual may present witnesses, cross-examine hostile witnesses, and
20 submit other evidence required to support the position of the
21 organization or individual.

22 (2) Funding shall be provided to community or environmental
23 organizations wishing to improve the quality of its participation in
24 the formal hearing. Funding will be made available through public
25 participation grants offered in chapter 70.105D RCW.

26 NEW SECTION. **Sec. 16.** (1) All concerned agency decisions
27 regarding whether to issue a permit shall be based on evidence in the
28 formal hearing record.

29 (2) Notwithstanding subsection (1) of this section, all concerns of
30 participants in the informal hearing shall be addressed. The
31 department shall determine the concerned agency that is best able to
32 respond to the participant's concern.

33 NEW SECTION. **Sec. 17.** Nothing in sections 13 through 16 of this
34 act is intended to limit the right of informal or formal hearing
35 participants to pursue an administrative or court appeal.

1 NEW SECTION. **Sec. 18.** (1) The department and agencies shall
2 incorporate into the permit commitments that a permittee makes
3 regarding plans of operation and technical design criteria during the
4 permit approval process. The commitments shall be binding on all
5 subsequent mine owners or mining right lease holders.

6 (2) Before the department or agencies authorize the assumption of
7 a metals mining permit by a subsequent mine owner or mining right lease
8 holder, the subsequent owner or lease holder shall provide proof of
9 financial ability and intent to comply with all terms of the original
10 permit, all conditions attached to subsequent plan and permit
11 modification, and all written and oral agreements with concerned
12 agencies or third parties.

13 (3) Notwithstanding any other provisions of chapter . . . , Laws of
14 1993 (this act) no permit shall be issued:

15 (a) If an applicant, a parent, or a parent's subsidiary is
16 currently in violation of or noncompliance with federal statutes or
17 regulations or statutes or rules of a state relating to a mining
18 operation.

19 (b) If the applicant, a parent, or a parent's subsidiary was found
20 in violation of or noncompliance with a federal statute or regulation
21 or a statute or rule of a state related to a mining operation during
22 the two-year period immediately preceding the date the applicant filed
23 a notice of intent under section 8 of this act.

24 NEW SECTION. **Sec. 19.** (1) All exploration in anticipation of
25 conducting a metals mining operation as defined in section 2 of this
26 act shall be conducted in a manner that minimizes impacts to water
27 quality, wildlife, vegetation, and the natural beauty of the land.

28 (2) All exploration in anticipation of conducting a metals mining
29 operation shall comply with all reclamation, monitoring, and waste
30 handling requirements applicable to a permitted, operating metals
31 mining site under chapter . . . , Laws of 1993 (this act). In addition,
32 the department shall adopt rules that address any unusually destructive
33 activities associated with metals mining exploration and provide for
34 public participation in the exploration permitting process.

35 (3) Any person conducting exploration in anticipation of a metals
36 mining operation shall pay a fee in an amount determined by the
37 department to be adequate to cover the cost of investigating and
38 monitoring the exploratory activity.

1 NEW SECTION. **Sec. 20.** (1) A person engaging in exploration for
2 the purposes of a metals mining operation shall obtain an exploration
3 permit regardless of the size of the exploration site.

4 (2) Prior to receiving an exploration permit, an applicant shall
5 submit a permit application on a form provided by the department.
6 Information required shall include the information necessary to assess
7 impacts of the proposed exploration, including but not limited to:

8 (a) The name and address of the surface owner and mineral owner;

9 (b) The names and addresses of the persons conducting the
10 exploration;

11 (c) The name and address of designated agents;

12 (d) A brief description of the exploration activities, including
13 but not limited to:

14 (i) The amount of road to be constructed;

15 (ii) The number, depth, and location of proposed drill holes;

16 (iii) The number, depth, and location of proposed monitoring wells;

17 and

18 (iv) The number, length, width, and depth of exploration trenches;

19 (e) Provisions for the reclamation of surface disturbance caused by
20 exploration activities;

21 (f) Exploration drill hole or monitoring well abandonment
22 procedures, including but not limited to:

23 (i) The capping of all holes;

24 (ii) The plugging of holes producing surface flow; and

25 (iii) Appropriate sealing for holes that have encountered aquifers;

26 (g) A map with the location of the proposed exploration and
27 delineation of exploration boundaries.

28 (3) Notwithstanding the provisions of subsections (1) and (2) of
29 this section, a person engaged in exploration for purposes of a metals
30 mining operation shall follow the procedure established under section
31 19 of this act.

32 NEW SECTION. **Sec. 21.** (1) At least monthly, for a period of two
33 years previous to the start up of a facility, the department shall
34 gather baseline data on the following aspects of the site area:

35 (a) Surface and ground water quantity;

36 (b) Surface and ground water quality;

37 (c) Air quality;

38 (d) Noise levels;

- 1 (e) Light levels;
- 2 (f) Species and frequency of flora;
- 3 (g) Species and frequency of fauna; and
- 4 (h) Other aspects as designated by a concerned agency.

5 (2) In determining locations in and around the area of the facility
6 for the taking of baseline data and the means to be used and measures
7 to be taken for the gathering of baseline data, the department shall
8 consult with the department of ecology and the department of wildlife.

9 (3) The permittee shall reimburse the department for costs of
10 gathering the baseline data prior to start up of a facility.

11 (4) Baseline data gathered shall be made available upon request to
12 concerned citizens.

13 NEW SECTION. **Sec. 22.** The permittee shall notify the department
14 and all concerned agencies of the permittee's intent to construct,
15 start up, seasonally close, or close a facility. The permittee shall
16 provide such notice at least thirty days before the action is to begin.

17 NEW SECTION. **Sec. 23.** A new section is added to chapter 90.48 RCW
18 to read as follows:

19 (1) A permit issued under RCW 90.48.160 for discharge resulting
20 from a metals mining operation shall include at least the following
21 conditions:

22 (a) Protective measures required by the department of wildlife
23 after reviewing the proposed operation;

24 (b) An eight-foot high chain link fence and hardware cloth
25 extending two feet below and two feet above ground must encircle all
26 artificial bodies of water;

27 (c) All artificial bodies of water must be wholly contained or
28 covered fully with netting approved by the department of wildlife to
29 prevent harm to or death of wildlife;

30 (d) All metals and acidity levels within the mill tailings and
31 tailing ponds must be neutralized and detoxified to a level not lethal
32 to wildlife, humans, or the environment;

33 (e) All ore heaps and chemical solvent distribution systems must be
34 covered to prevent the creation of a pool and subsequent attraction of
35 wildlife;

36 (f) A requirement that the holder of the permit must immediately
37 report to the department of wildlife each death or contamination of

1 bird or wildlife associated with the artificial body of water for which
2 the permit is issued; and

3 (g) A provision granting the department of natural resources and
4 concerned agencies unlimited access without prior notice to enter the
5 site of the metals mining operation.

6 (2) A one and one-half mile buffer zone shall be established
7 between the metals mining operation and a residence, business
8 establishment, farm or community, state or federal wildlife refuge or
9 area, park, monument, scenic waterway, wilderness, wilderness study
10 area, or other state or federal preservation area.

11 (3) If the conditions required under subsections (1) and (2) of
12 this section are imposed under a permit issued under this chapter, the
13 conditions need not be duplicated in a permit issued under RCW
14 90.48.160 for the same operation.

15 NEW SECTION. **Sec. 24.** A new section is added to chapter 77.12 RCW
16 to read as follows:

17 The state wildlife commission shall establish by rule a process by
18 which the department of wildlife may issue a permit to an applicant for
19 a metals mining operation. The rules shall include guidelines,
20 procedures, and standards of operation that a metals mining operation
21 must comply with in order to protect wildlife. The guidelines,
22 procedures, and standards shall be consistent with the provisions of
23 chapter ..., Laws of 1993 (this act).

24 NEW SECTION. **Sec. 25.** (1) The department of ecology shall
25 establish by rule design criteria to assure that all metals mining
26 operation facilities are designed to contain the maximum expected
27 operating capacity including capacity required to contain the probable
28 maximum flood, as determined by the national weather service, with a
29 safety factor of fifty percent. The capacity requirement also shall
30 take into consideration capacity required to contain snow melts.
31 Containment design shall be based on data supplied by the national
32 weather service.

33 (2) Impoundments, tanks, pipes, pumps, or mechanisms designed to
34 contain or convey process water, mine tailings, or overburden, shall
35 include a leachate monitoring and collection system and an overflow
36 containment and spill detection system.

1 NEW SECTION. **Sec. 26.** (1) The permittee shall ensure that
2 construction, operation, and maintenance of the metals mining operation
3 proceeds according to the design plans and specifications and operating
4 and reclamation plans as approved by the department and concerned
5 agencies.

6 (2) Not more than ten days after completion of each major component
7 of the metals mining operation as determined by the department, the
8 permittee shall submit to the department complete and accurate record
9 drawings and specifications, signed by a registered, professional
10 engineer depicting actual construction.

11 (3) For those portions of the metals mining operation facility that
12 have the potential to cause environmental and human health impacts, the
13 permittee must show the actual construction is in complete compliance
14 with the design requirements. A permittee may show substantial
15 compliance with regard to design specifications for other parts of the
16 facility if a professional engineer certifies that the deviation does
17 not affect any portion of the facility with the potential to cause
18 environmental or human harm and if the department, in consultation with
19 other concerned agencies, grants approval.

20 NEW SECTION. **Sec. 27.** (1) During activities associated with a
21 metals mining operation, there shall be minimum disturbance to ground
22 and surface water. The permittee shall use best available technology
23 and best management practices to prevent any acidic and toxic
24 contamination of the water resources.

25 (2) The permittee shall conduct the excavation in a manner that
26 assures that any water that comes into contact with a disturbed area is
27 contained. The excavation shall form a depression large enough to trap
28 any ground water, surface water run off, or precipitation.

29 NEW SECTION. **Sec. 28.** (1) All leach pads and ponds, leachate
30 conducting ditches, pipes, and pumps shall be equipped with liners that
31 meet the following minimum standards:

32 (a) Each pad, pond, ditch, pipe, or pump shall be equipped with
33 three synthetic hydraulic liners.

34 (b) Each liner shall be designed for a maximum coefficient of
35 permeability of 10^{-7} cm/sec.

36 (c) The synthetic liners shall be chemically compatible with all
37 material that comes into contact with the liners.

1 (d) A leachate monitoring and collection system shall be installed
2 between the synthetic liners and between the bottom synthetic liner and
3 the clay base.

4 (e) All monitoring systems shall be electronic so that data
5 retrieval regarding containment status is immediately available and
6 detailed.

7 (f) A minimal hydraulic head above the liner must be established.

8 (g) If a leak is detected in either the upper, middle, or lower
9 liner, leaching operations shall cease immediately and shall not resume
10 until the liner is repaired.

11 (h) Each liner shall rest on a minimum of three feet of recompacted
12 clay with a maximum coefficient of permeability of 10^{-7} cm/sec.

13 (2) Leach pad and pond foundations shall be designed to withstand
14 projected static and dynamic loading and to prevent liner fractures or
15 stress due to differential settlement.

16 (3) All tailing ponds shall either comply with the standards set
17 forth in this section or all solvents, sulfides, and sediments must be
18 removed from the process water so that the process water is totally
19 detoxified.

20 (4) A department of ecology inspector shall supervise all stages of
21 artificial water impoundment construction. The permittee shall be
22 responsible for all costs of the department of ecology oversight.

23 NEW SECTION. **Sec. 29.** (1) The permittee shall stabilize and
24 protect all surface areas, including spoil piles, in order to control
25 erosion, prevent pollution of the water resources of the state, and
26 prevent contamination by siltation, chemicals, and toxic substances.

27 (2) If an interim disposal area is located near springs or other
28 natural or artificial bodies of water, the permittee shall prevent
29 ground water, surface water, or precipitation from infiltrating the
30 spoil material.

31 (3) The permittee shall construct all waste piles in compact
32 layers, including piles consisting of tailings and overburden, using an
33 impervious cap to prevent infiltration.

34 (4) The permittee shall cover or detoxify all acidic or toxic
35 spoils to prevent ground water and surface water contamination.

36 NEW SECTION. **Sec. 30.** (1) The department of ecology shall conduct
37 a ground water and surface water monitoring program for all metals

1 mining operation facilities and excavation sites. The department of
2 ecology shall use best available technology to gather information on
3 the metals mining operation's effect on ground water and surface water
4 contamination. The monitoring program also shall be designed to give
5 the earliest possible warning of contamination.

6 (2) If a leak or spill is detected, the permittee shall cease all
7 processing operations until the problem is resolved. If the cause of
8 the leak or spill is a pad tear, the permittee shall either clear the
9 pad and repair the tear or use best available technology to seal the
10 tear.

11 (3) The department of ecology shall use an automated electronic
12 monitoring system to collect daily water quality records. These
13 records shall reflect any increase in ground water or surface water
14 pollutants above a baseline contamination level established before the
15 metals mining operation began. In addition, the department of ecology
16 shall record known discharges, liner tears, and the permittee's intent
17 to repair liner tears. The department of ecology shall make the
18 records available for public inspection

19 (4) If a permittee knows, should have known, or has cause to
20 suspect that a leak has developed or a spill has occurred and fails to
21 immediately report the leak or spill to the department of ecology
22 within six hours, the permittee shall be subject to fines, permit
23 revocation, and criminal penalties.

24 (5) The department of ecology shall oversee all liner repairs or
25 any other repairs or modifications that have the potential to cause
26 harm to the human or natural environment. The permittee shall be
27 responsible for payment of all costs for the department of ecology
28 oversight and monitoring.

29 NEW SECTION. **Sec. 31.** (1) Liquid cyanide or other liquid solvent
30 intended for use in the metals mining process shall be transported
31 within the state of Washington by methods as established by the
32 department of ecology by rule. The rules shall address standards
33 relating to quantity of liquid being transported, road conditions, time
34 of day, climatic conditions, and availability of emergency response and
35 cleanup equipment.

36 (2) The permittee shall keep cyanide and other leaching compounds
37 in storage physically separated and protected from other substances,

1 including but not limited to acids and strong oxidants, that are not
2 chemically compatible.

3 NEW SECTION. **Sec. 32.** The department of ecology by rule shall
4 establish rules for monitoring and controlling fugitive dust emissions
5 generated by mining activities. The rules shall be consistent with
6 requirements of the federal Clean Air Act, as amended (P.L. 101-549).

7 NEW SECTION. **Sec. 33.** (1) The permittee shall design and
8 implement an orientation program for new employees and a continuing
9 education program for all employees. The programs shall stress
10 effective monitoring, emergency discharge response, proper handling of
11 cyanide storage containers, equipment associated with cyanide leaching,
12 and the importance of using caution in a metals mining operation.

13 (2) The orientation program shall be a minimum of sixteen hours and
14 the continuing education program shall be at least eight hours a year.
15 The department of ecology, in conjunction with the department of labor
16 and industries, shall oversee the programs. The permittee shall be
17 responsible for payment of all costs for the department of ecology
18 oversight.

19 NEW SECTION. **Sec. 34.** (1) A permittee shall prepare a manifest
20 for all process-related waste transported from the operation. The
21 manifest shall designate the licensed waste disposal site at which the
22 waste will be disposed.

23 (2) If the permittee does not receive a copy of the completed
24 manifest from the designated waste disposal site, the permittee shall
25 determine whether the waste was received at the disposal site for
26 proper disposal.

27 (3) The permittee shall report all manifest discrepancies to the
28 department of ecology within twenty-four hours.

29 (4) The permittee shall be subject to fines and permit revocation
30 for manifest discrepancies.

31 NEW SECTION. **Sec. 35.** (1) In addition to other rights of access,
32 an agency investigator or a department investigator and any person
33 accompanied by such an investigator may enter a metals mining operation
34 at any time for the purpose of ensuring compliance with the rules of
35 the agency.

1 (2) An agency investigator or a department investigator shall have
2 access to all documents or records, kept on or off the premises,
3 pertaining to the maintenance or operation of the facility. An
4 investigator may copy the documents.

5 (3) An investigator may test equipment and perform other monitoring
6 activity required on the premises even if the testing or monitoring
7 activity requires the temporary interruption of the metals mining
8 operation.

9 NEW SECTION. **Sec. 36.** (1) A permittee shall have a seasonal and
10 temporary close procedure designed to ensure that there is no movement
11 of contaminants from leach pads, ponds, or equipment or from leaching
12 solution storage areas into ground water or surface water during
13 periods of short-term closure of the metals mining operation. The
14 seasonal and temporary close procedure shall include, at a minimum:

15 (a) A daily automated monitoring program for all potentially
16 hazardous aspects of the closed facility;

17 (b) Monitoring records that shall be kept and weekly reports that
18 shall be submitted to the department of ecology;

19 (c) An emergency response strategy for problems that may occur
20 during closure to the permitting agencies. The emergency response
21 strategy shall demonstrate that sufficient resources are available to
22 implement an emergency response during the closure period. The
23 emergency response strategy for closure periods shall be submitted as
24 part of the consolidated application submitted under section 10 of this
25 act.

26 (2) Before finally closing a metals mining operation on a seasonal
27 or temporary basis, the operator shall notify the department and the
28 department of ecology. The department and the department of ecology
29 shall inspect the site and issue a seasonal or temporary closure permit
30 if:

31 (a) The site is properly secured;

32 (b) A daily monitoring plan is in place; and

33 (c) The operator's emergency response strategy developed under
34 subsection (1) of this section is operable.

35 (3) In order to maintain an operating permit, a metals mining
36 operation must operate at full capacity for at least six months of any
37 twelve-month period. The department or the department of ecology shall
38 require permanent closure for sites that have been temporarily closed

1 for more than six months. If a metals mining operation that has been
2 seasonally closed does not resume operations within two months after a
3 seasonal change that allows the resumption of mining operations, the
4 department or the department of ecology may require permanent closure.

5 NEW SECTION. **Sec. 37.** (1) Before issuing a permit, the department
6 of ecology shall determine whether overburden and other spoils and
7 waste material can be backfilled without causing a threat to human
8 health or the environment. If the department of ecology determines
9 that the material cannot be safely backfilled, no permit shall be
10 issued by the department of ecology and the permit process shall be
11 discontinued. In making a determination under this subsection, the
12 department of ecology shall consider at a minimum, the following
13 factors:

14 (a) The potential for acid generation;

15 (b) The potential for ground water contamination;

16 (c) Whether the geologic and chemical properties of the waste
17 material would permit the material to be totally detoxified; and

18 (d) Whether the angle of repose of the proposed backfill site is
19 too steep to prevent erosion of waste material.

20 (2) At the time of permanent closure of a metals mining operation,
21 or when feasible during the operation of a metals mine, the permittee
22 shall backfill and grade excavations, including open pits and shafts,
23 using all available overburden and other spoils and waste material in
24 order to restore the site to the approximate original contour and
25 characteristics of the land. If the department of ecology determines
26 that backfilling this material may adversely affect human health or the
27 environment, the permittee shall detoxify the waste to the extent
28 necessary to eliminate the threat before backfilling.

29 (3) At the time of permanent closure of a metals mining operation,
30 or during concurrent reclamation efforts, the site shall be vegetated
31 with native species of flora through the use of both broadcast seeding
32 and through the planting of seedlings. Flora density shall be
33 comparable to undamaged ecosystems in the area. If necessary, the
34 permittee shall transport additional topsoil to the site. A permittee
35 shall not be relieved of its habitat restoration obligations until the
36 department of wildlife and the department certify that a
37 self-sustaining ecosystem has been established.

1 (4) The continuity, integrity, quality, and mutual isolation of
2 preexisting aquifers, ground water, and surface water courses shall be
3 restored to their original condition. This requirement includes
4 aquifers that, though dry at the time mining operations began, could
5 potentially recharge.

6 (5) A permittee shall begin site reclamation within one week after
7 permanent closure and shall complete the reclamation within a
8 reasonable time as determined by the department. Except for
9 revegetation under subsection (3) of this section, an applicant shall
10 complete total reclamation within three years after permanent closure.

11 NEW SECTION. **Sec. 38.** (1) At the time of submitting a
12 consolidated application under section 10 of this act, the applicant
13 shall estimate the total cost of reclamation consistent with the
14 standards imposed under chapter ..., Laws of 1993 (this act). Using
15 the reclamation estimate and the worst case scenario as described in
16 the consolidated application as a guide, the department shall make an
17 initial determination as to the amount of the reclamation bond
18 necessary to protect human health and the environment. The department
19 shall distribute a bond proposal to all concerned agencies. If all
20 concerned agencies concur in the proposal, the proposed bond amount
21 shall be adopted. The department shall require a minimum five hundred
22 thousand dollars reclamation bond for all metals mining operations and
23 the amount of the bond that the department may require shall not be
24 limited.

25 (2) The reclamation bond shall be posted before the start of mining
26 operations. The bond shall be issued by a bonding company licensed to
27 operate in Washington. In lieu of a bond, an irrevocable letter of
28 credit may be issued from a federally insured bank. A mining operation
29 may not satisfy the requirements for a bond through self-insurance.

30 (3) The permittee shall assess annually the overall cost of
31 reclamation. If changes in the operation or modifications to a permit
32 cause the cost of reclamation to exceed the amount of the reclamation
33 bond currently held by the state, the permittee shall post an
34 additional bond for the difference. All reclamation calculations shall
35 be approved by all concerned agencies.

36 (4) If reclamation costs will exceed the posted bond and the
37 operator does not increase the bond amount, the department and

1 concerned agencies shall suspend all permits until the permittee posts
2 the additional bond security.

3 (5) All expenses incurred by the department that exceed the posted
4 bond amount shall be charged to the permittee. If additional funds
5 cannot be collected from the permittee, the department shall complete
6 the reclamation in accordance with the provisions of the original
7 reclamation plan. The amount that the department must spend to
8 complete reclamation shall not be limited.

9 (6) The department may seek a lien against the assets of the
10 permittee to cover the cost of reclamation if the bond posted is
11 insufficient. The amount of the lien shall be the amount of the costs
12 incurred by the department to complete reclamation. All current
13 operating permits of the permittee shall be suspended and the
14 department shall deny immediately all pending applications of the
15 permittee to conduct mining operations.

16 (7)(a) The permittee shall submit a written request for the release
17 of its reclamation bond to the department. If the permittee has
18 conducted concurrent reclamation, the permittee shall submit an
19 application for bond reduction which estimates the percentage of
20 reclamation done to date and the corresponding percentage of
21 reclamation funds that the permittee believes should be returned. A
22 bond release or reduction request shall state in unambiguous terms all
23 measures taken to reclaim the site and any problem or potential
24 problems that may inhibit restoration in accordance with permit
25 requirements.

26 (b) The department shall distribute the request to each concerned
27 agency, to members of the public who participated in the informal or
28 formal hearings for the consolidated permit application, and to persons
29 who requested notification. In addition, the department shall publish
30 a notice announcing receipt for bond release or bond reduction in a
31 newspaper of general circulation in the county or counties nearest the
32 metals mining operation. The newspaper publication shall occur each
33 day for one week.

34 (c) No sooner than 60 days after distributing the request and
35 providing notice of the receipt of the request, the department and all
36 concerned agencies shall conduct an informal public hearing to
37 determine whether to allow the bond release or reduction before funds
38 may be returned to the permittee.

1 (8) The department shall require security for perpetual monitoring
2 and care to be paid before the start of mining operations. The
3 security shall be in an amount sufficient to generate enough interest
4 to cover all site care and monitoring needs in perpetuity. The
5 department shall determine the amount of the proposed security and
6 distribute a proposal to all concerned agencies. If the concerned
7 agencies concur, the proposed security amount shall be adopted.

8 NEW SECTION. **Sec. 39.** (1) The department shall establish and
9 manage a metals mining reclamation local fund to pay reclamation costs
10 incurred by the department when reclamation costs at a closed metals
11 mining operation site exceed the posted reclamation bond amount and the
12 additional funds cannot be easily collected from the permittee.

13 (2) If the department uses funds from the metals mining reclamation
14 local fund, the department shall make every effort to recover the
15 amount spent from the permittee to replenish the metals mining
16 reclamation local fund.

17 (3) The amount the department must spend to complete reclamation in
18 accordance with the provisions of the original reclamation plan shall
19 not be limited to the amount in the metals mining reclamation local
20 fund.

21 (4) Each metal mining operation permittee shall pay sixty thousand
22 dollars annually into the metals mining reclamation local fund. The
23 first payment shall be due one month after the department's approval of
24 the permit. Annual payments shall be due on that date each year until
25 permanent closure of the metals mining operation. The permittee shall
26 pay a pro rata amount for the portion of a year between the payment
27 date and the closure date in the year of permanent closure. A metal
28 mining operation permittee whose operation is three acres or less is
29 exempt from the sixty thousand dollar annual fee.

30 (5) The department may suspend a permittee's operating permit if
31 the permittee fails to make a payment in compliance with subsection (4)
32 of this section within a reasonable time of its due date.

33 NEW SECTION. **Sec. 40.** (1) Any person or agency or the department
34 may maintain an action in King county superior court or the superior
35 court of the defendant's or plaintiff's residence against a metals
36 mining operator or an agency for injunctive relief to enforce any
37 provision of, or prohibit any violation of sections 1 through 39 of

1 this act or rules adopted under sections 1 through 39 of this act or
2 the terms of any permit issued that pertains to the operation of a
3 metals mining operation.

4 (2) Any person or agency or the department that successfully brings
5 an action under subsection (1) of this section is entitled to recover
6 all reasonable attorney fees and expenses incurred, including expenses
7 relating to the use of expert witnesses and the preparation of
8 supporting studies imposed on the permittee as a result of a successful
9 action under this section shall be awarded to the party that brought
10 the action.

11 (3) The remedies and causes of action provided in this section
12 shall not limit any other remedy or cause of action otherwise available
13 to any person or agency.

14 NEW SECTION. **Sec. 41.** (1) The department shall establish a
15 citizen's advisory committee for each metals mining operation. The
16 committee shall consist of seven members selected from the county or
17 counties nearest the operation and four members, having a strong
18 interest or expertise in some aspect of the operation, from anywhere in
19 Washington state. The committee membership shall reflect a diversity
20 of social and environmental protection views. Actual or potential
21 conflict of interest or affiliation with the mining operation shall
22 preclude membership on the committee.

23 (2) The committee shall oversee the implementation of permit
24 conditions and agreements that the permittee is obligated to perform.

25 (3) Committee members shall have unrestricted access to the
26 operation and any records pertaining to the operation. Officials of
27 the operation shall participate in meetings of the advisory committee
28 at the request of the advisory committee.

29 (4) The expenses of the advisory committee shall be paid by the
30 permittee.

31 NEW SECTION. **Sec. 42.** A permittee who fails to report or attempts
32 to cover wildlife deaths that are discovered shall be subject to
33 immediate revocation of all operating permits for a period of two
34 years.

35 NEW SECTION. **Sec. 43.** (1) A person who conducts without a permit
36 an exploratory operation for metals that disrupts surface land,

1 involves the use of explosives or leaching solution or employs methods
2 that threaten the water resources of the state, plant species, or
3 wildlife shall, upon conviction, be subject to:

4 (a) A civil penalty of not less than twenty-five thousand dollars
5 per violation per day;

6 (b) Forfeiture to the state of all mining-related equipment; and

7 (c) Payment of all reclamation costs.

8 (2) A person who conducts without a permit metals mining operations
9 shall, upon conviction, be subject to:

10 (a) A civil penalty of not less than fifty thousand dollars per
11 violation per day;

12 (b) Forfeiture to the state of all mining-related equipment;

13 (c) Imprisonment for not more than five years.

14 (3) A person who knowingly or intentionally falsifies information
15 on an exploratory permit or application or a metals mining operation
16 permit or application shall, upon conviction, be subject to:

17 (a) A criminal penalty of not less than fifty thousand dollars per
18 incident;

19 (b) Revocation of the permit;

20 (c) Payment of all reclamation costs; and

21 (d) Imprisonment for not less than one year.

22 **Sec. 44.** RCW 77.08.010 and 1989 c 297 s 7 are each amended to read
23 as follows:

24 As used in this title or rules adopted pursuant to this title,
25 unless the context clearly requires otherwise:

26 (1) "Director" means the director of wildlife.

27 (2) "Department" means the department of wildlife.

28 (3) "Commission" means the state wildlife commission.

29 (4) "Person" means and includes an individual, a corporation, or a
30 group of two or more individuals acting with a common purpose whether
31 acting in an individual, representative, or official capacity.

32 (5) "Wildlife agent" means a person appointed and commissioned by
33 the director, with authority to enforce laws and rules adopted pursuant
34 to this title, and other statutes as prescribed by the legislature.

35 (6) "Ex officio wildlife agent" means a commissioned officer of a
36 municipal, county, state, or federal agency having as its primary
37 function the enforcement of criminal laws in general, while the officer
38 is in the appropriate jurisdiction. The term "ex officio wildlife

1 agent" includes fisheries patrol officers, special agents of the
2 national marine fisheries commission, state parks commissioned
3 officers, United States fish and wildlife special agents, department of
4 natural resources enforcement officers, and United States forest
5 service officers, while the agents and officers are within their
6 respective jurisdictions.

7 (7) "To hunt" and its derivatives means an effort to kill, injure,
8 capture, or harass a wild animal or wild bird.

9 (8) "To trap" and its derivatives means a method of hunting using
10 devices to capture wild animals or wild birds.

11 (9) "To fish" and its derivatives means an effort to kill, injure,
12 harass, or catch a game fish.

13 (10) "Open season" means those times, manners of taking, and places
14 or waters established by rule of the commission for the lawful hunting,
15 fishing, or possession of game animals, game birds, or game fish.
16 "Open season" includes the first and last days of the established time.

17 (11) "Closed season" means all times, manners of taking, and places
18 or waters other than those established as an open season.

19 (12) "Closed area" means a place where the hunting of some species
20 of wild animals or wild birds is prohibited.

21 (13) "Closed waters" means all or part of a lake, river, stream, or
22 other body of water, where fishing for game fish is prohibited.

23 (14) "Game reserve" means a closed area where hunting for all wild
24 animals and wild birds is prohibited.

25 (15) "Bag limit" means the maximum number of game animals, game
26 birds, or game fish which may be taken, caught, killed, or possessed by
27 a person, as specified by rule of the commission for a particular
28 period of time, or as to size, sex, or species.

29 (16) "Wildlife" means all species of the animal kingdom whose
30 members exist in Washington in a wild state. This includes but is not
31 limited to mammals, birds, reptiles, amphibians, fish, and
32 invertebrates. The term "wildlife" does not include feral domestic
33 mammals, the family Muridae of the order Rodentia (old world rats and
34 mice), or those fish, shellfish, and marine invertebrates classified by
35 the director of fisheries. The term "wildlife" includes all stages of
36 development and the bodily parts of wildlife members.

37 (17) "Wild animals" means those species of the class Mammalia whose
38 members exist in Washington in a wild state and the species *Rana*
39 *catesbeiana* (bullfrog). The term "wild animal" does not include feral

1 domestic mammals or the family Muridae of the order Rodentia (old world
2 rats and mice).

3 (18) "Wild birds" means those species of the class Aves whose
4 members exist in Washington in a wild state.

5 (19) "Protected wildlife" means wildlife designated by the
6 commission that shall not be hunted or fished.

7 (20) "Endangered species" means wildlife designated by the
8 commission as seriously threatened with extinction.

9 (21) "Game animals" means wild animals that shall not be hunted
10 except as authorized by the commission.

11 (22) "Fur-bearing animals" means game animals that shall not be
12 trapped except as authorized by the commission.

13 (23) "Game birds" means wild birds that shall not be hunted except
14 as authorized by the commission.

15 (24) "Predatory birds" means wild birds that may be hunted
16 throughout the year as authorized by the commission.

17 (25) "Deleterious exotic wildlife" means species of the animal
18 kingdom not native to Washington and designated as dangerous to the
19 environment or wildlife of the state.

20 (26) "Game farm" means property on which wildlife is held or raised
21 for commercial purposes, trade, or gift. The term "game farm" does not
22 include publicly owned facilities.

23 (27) "Person of disability" means a permanently disabled person who
24 is not ambulatory without the assistance of a wheelchair, crutches, or
25 similar devices.

26 (28) "Metals mining" means the same as defined in section 2 of this
27 act.

28 **Sec. 45.** RCW 78.44.030 and 1987 c 258 s 1 are each amended to read
29 as follows:

30 As used in this chapter, unless the context indicates otherwise:

31 (1) "Surface mining" shall mean all or any part of the process
32 involved in mining of minerals by removing the overburden and mining
33 directly from the mineral deposits thereby exposed, including open-pit
34 mining of minerals naturally exposed at the surface of the earth,
35 mining by the auger method, and including the production of surface
36 mining refuse. Surface mining shall not include on-site processing of
37 minerals such as concrete batching or rock crushing operations. For
38 the purpose of this chapter surface mining shall mean those operations

1 described in this paragraph which collectively result in more than
2 three acres of land being disturbed or that result in pit walls more
3 than thirty feet high and steeper than one horizontal to one vertical.
4 Surface mining shall not include disturbances of greater than three
5 acres of land during any time period if the cumulative area that has
6 not been rehabilitated according to the reclamation requirements
7 outlined in this chapter is less than three acres. Surface mining
8 shall not include excavation or removal of sand, gravel, clay, rock,
9 top soil, or other materials in remote areas by an owner or holder of
10 a possessory interest in land for the primary purpose of construction
11 or maintenance of access roads to or on such landowner's property.
12 Surface mining shall not include excavation or grading conducted for
13 farming, on-site road construction or other on-site construction, but
14 shall include adjacent or off-site borrow pits except those on
15 landowner's property for use on access roads on such property.
16 Prospecting and exploration activities shall be included within the
17 definition of surface mining when they are of such nature and extent as
18 to exceed the qualifying sizes listed above or when collectively they
19 disturb more than one acre per eight acres of land area.

20 (2) "Unit of surface mined area" shall mean the area of land and
21 water covered by each operating permit that is actually newly disturbed
22 by surface mining during each twelve-month period of time, beginning at
23 the date of issuance of the permit, and shall comprise the area from
24 which overburden and/or minerals have been removed, the area covered by
25 spoil banks, and all additional areas used in surface mining operations
26 which by virtue of such use are thereafter susceptible to excessive
27 erosion.

28 (3) "Abandonment of surface mining" shall mean a cessation of
29 surface mining, not set forth in an operator's plan of operation or by
30 any other sufficient written notice, extending for more than six
31 consecutive months or when, by reason of examination of the premises or
32 by any other means, it becomes the opinion of the department of natural
33 resources that the operation has in fact been abandoned by the
34 operator: PROVIDED, That the operator does not, within thirty days of
35 receipt of written notification from the department of his intent to
36 declare the operation abandoned, submit evidence to the department's
37 satisfaction that the operation is in fact not abandoned.

38 (4) "Minerals" shall mean coal, clay, stone, sand, gravel, metallic
39 ore, and any other similar solid material or substance to be excavated

1 from natural deposits on or in the earth for commercial, industrial, or
2 construction uses.

3 (5) "Overburden" shall mean the earth, rock, and other materials
4 that lie above a natural deposit of mineral.

5 (6) "Surface mining refuse" shall mean all waste soil, rock,
6 mineral, liquid, vegetation, and other material directly resulting from
7 or displaced by the mining, cleaning, or preparation of minerals during
8 the surface mining operations on the operating permit area, and shall
9 include all waste materials deposited on or in the permit area from
10 other sources.

11 (7) "Spoil bank" shall mean a deposit of excavated overburden or
12 mining refuse.

13 (8) "Operator" shall mean any person or persons, any partnership,
14 limited partnership, or corporation, or any association of persons,
15 either natural or artificial, including every public or governmental
16 agency engaged in surface mining operations, whether individually,
17 jointly, or through subsidiaries, agents, employees, or contractors.

18 (9) "Department" means the department of natural resources.

19 (10) "Reclamation" shall mean the reasonable protection of all
20 surface resources subject to disruption from surface mining and
21 rehabilitation of the surface resources affected by surface mining
22 including the area under stockpiled materials. Although both the need
23 for and the practicability of reclamation will control the type and
24 degree of reclamation in any specific instance, the basic objective
25 will be to reestablish on a continuing basis the vegetative cover, soil
26 stability, water conditions, and safety conditions appropriate to the
27 intended subsequent use of the area.

28 (11) "Reclamation plan" shall mean the operator's written proposal,
29 as required and approved by the department, for reclamation of the
30 affected resources which shall include, but not be limited to:

31 (a) A statement of the proposed subsequent use of the land after
32 reclamation which is signed by all individuals with a possessory
33 interest in the land, or a copy of the conveyance that expressly grants
34 or reserves the right to extract the mineral by surface mining methods,
35 or if the conveyance does not expressly grant the right to extract the
36 mineral by surface mining methods, then documentation that under
37 applicable state law, the operator has the legal authority to extract
38 the mineral by those methods: PROVIDED, That the applicant must
39 provide notice reasonably calculated to advise all individuals with a

1 possessory interest of the intent to remove minerals and the proposed
2 subsequent use. If any individual with a possessory interest does not
3 respond to the notice within sixty days, that person's signature shall
4 not be required;

5 (b) Evidence that this subsequent use would not be illegal under
6 local zoning regulations;

7 (c) Proposed practices to protect adjacent surface resources;

8 (d) Specifications for surface gradient restoration to a surface
9 suitable for the proposed subsequent use of the land after reclamation
10 is completed, and proposed method of accomplishment;

11 (e) Manner and type of revegetation or other surface treatment of
12 disturbed areas;

13 (f) Method of prevention or elimination of conditions that will
14 create a public nuisance, endanger public safety, damage property, or
15 be hazardous to vegetative, animal, fish, or human life in or adjacent
16 to the area;

17 (g) Method of control of contaminants and disposal of surface
18 mining refuse;

19 (h) Method of diverting surface waters around the disturbed areas;

20 (i) Method of restoration of stream channels and stream banks to a
21 condition minimizing erosion and siltation and other pollution;

22 (j) Such maps and other supporting documents as reasonably required
23 by the department; and

24 (k) A time schedule for reclamation that meets the requirements of
25 RCW 78.44.090.

26 (12) "Metals mining" means the same as defined in section 2 of this
27 act.

28 **Sec. 46.** RCW 78.44.080 and 1970 ex.s. c 64 s 9 are each amended to
29 read as follows:

30 (~~After January 1, 1971,~~) No operator shall engage in surface
31 mining without having first obtained an operating permit from the
32 department. Except as otherwise permitted in this section a separate
33 permit shall be required for each separate surface mining operation.
34 No operator shall engage in a metals mining operation without having
35 first obtained the permits required under sections 1 through 22 and 25
36 through 43 of this act. Prior to receiving an operating permit from
37 the department an operator must submit an application on a form

1 provided by the department, which shall contain the following
2 information and any other pertinent data required by the department:

3 (1) Name and address of the legal landowner, any purchaser of the
4 land under a real estate contract, and the operator and, if any of
5 these are corporations or other business entities, the names and
6 addresses of their principal officers and resident agent for service of
7 process;

8 (2) Materials to be surface mined;

9 (3) Type of surface mining to be performed;

10 (4) Expected starting date of surface mining;

11 (5) Anticipated termination date of the surface mining project;

12 (6) Expected amount of mineral to be surface mined;

13 (7) Maximum depth of surface mining;

14 (8) Size and legal description of the area that will be disturbed
15 by surface mining. If more than ten acres will be disturbed by surface
16 mining or, regardless of the amount of land to be disturbed, if the
17 department finds that conditions warrant it and so requests, a map of
18 the area to be surface mined shall be submitted. The map shall show
19 the boundaries of the area of land which will be affected; topographic
20 detail; the location and names of all streams, roads, railroads, and
21 utility lines on or immediately adjacent to the area; location of
22 proposed access roads to be built in conjunction with the surface
23 mining operation; and the names of the surface and mineral owners of
24 all lands within the surface mining area;

25 (9) A plan of surface mining that will provide, within limits of
26 normal operational procedure of the industry, for completion of surface
27 mining and associated disturbances on each segment of the area for
28 which a permit is requested so that reclamation can be initiated at the
29 earliest possible time on those portions of the surface mined area that
30 will not be subject to further disturbance by the mining operation.
31 Whenever feasible, visual screening, vegetative or otherwise, will be
32 maintained or established on the property containing the surface mining
33 to screen the view of the operation from public highways, public parks,
34 and residential areas.

35 (10) A reclamation plan that must be acceptable to and approved by
36 the department, except as provided in RCW 78.44.100. An operator may
37 not depart from an approved plan without having previously obtained
38 from the department written approval of his proposed change.

1 The department may adopt rules and regulations permitting an
2 operator of more than one surface mining operation to submit a single
3 application for a combined operating permit covering all of his surface
4 mining operations. Such application may require detailing of
5 information required by this section for each separate location. An
6 operator operating under such a combined permit may submit a
7 consolidated reclamation program covering all his operations under
8 rules and regulations prescribed by the department, but may be required
9 to furnish specific information relative to reclamation of any single
10 operating area if the department determines that such is necessary to
11 carry out the purposes of this chapter.

12 **Sec. 47.** RCW 90.03.260 and 1987 c 109 s 84 are each amended to
13 read as follows:

14 Each application for permit to appropriate water shall set forth
15 the name and post office address of the applicant, the source of water
16 supply, the nature and amount of the proposed use, the time during
17 which water will be required each year, the location and description of
18 the proposed ditch, canal, or other work, the time within which the
19 completion of the construction and the time for the complete
20 application of the water to the proposed use. If for agricultural
21 purposes, it shall give the legal subdivision of the land and the
22 acreage to be irrigated, as near as may be, and the amount of water
23 expressed in acre feet to be supplied per season. If for power
24 purposes, it shall give the nature of the works by means of which the
25 power is to be developed, the head and amount of water to be utilized,
26 and the uses to which the power is to be applied. If for construction
27 of a reservoir, it shall give the height of the dam, the capacity of
28 the reservoir, and the uses to be made of the impounded waters. If for
29 municipal water supply, it shall give the present population to be
30 served, and, as near as may be, the future requirement of the
31 municipality. If for mining purposes, it shall give the nature of the
32 mines to be served and the method of supplying and utilizing the water
33 and shall describe any impacts on local seeps, springs, or wells used
34 by wildlife or humans; also ((~~their~~)) the location by legal
35 subdivisions. All applications shall be accompanied by such maps and
36 drawings, in duplicate, and such other data, as may be required by the
37 department, and such accompanying data shall be considered as a part of
38 the application.

1 **Sec. 48.** RCW 90.48.020 and 1987 c 109 s 122 are each amended to
2 read as follows:

3 Wherever the words "artificial body of water" are used in this
4 chapter, they shall mean any uncovered lake, pond, reservoir, pool,
5 puddle, sump, or other type of water or process water used in metals
6 mining that is impounded by a person or any type of mechanism used to
7 transport, apply, or store process water, including a ditch or stream.

8 Wherever the words "chemical or substance" are used in this
9 chapter, they shall mean any human-made or natural material or element
10 used in or resulting from a metals mining operation that may occur in
11 sufficient concentration to cause the death of any wildlife.

12 Wherever the words "metals mining" are used in this chapter, they
13 shall have the meaning given them in section 2 of this act.

14 Wherever the words "process water" are used in this chapter, they
15 shall mean any water containing a chemical, contaminant, or substance
16 used in or resulting from the metals mining operation.

17 Whenever the word "person" is used in this chapter, it shall be
18 construed to include any political subdivision, government agency,
19 municipality, industry, public or private corporation, copartnership,
20 association, firm, individual or any other entity whatsoever.

21 Wherever the words "waters of the state" shall be used in this
22 chapter, they shall be construed to include lakes, rivers, ponds,
23 streams, inland waters, underground waters, salt waters and all other
24 surface waters and watercourses within the jurisdiction of the state of
25 Washington.

26 Whenever the word "pollution" is used in this chapter, it shall be
27 construed to mean such contamination, or other alteration of the
28 physical, chemical or biological properties, of any waters of the
29 state, including change in temperature, taste, color, turbidity, or
30 odor of the waters, or such discharge of any liquid, gaseous, solid,
31 radioactive, or other substance into any waters of the state as will or
32 is likely to create a nuisance or render such waters harmful,
33 detrimental or injurious to the public health, safety or welfare, or to
34 domestic, commercial, industrial, agricultural, recreational, or other
35 legitimate beneficial uses, or to livestock, wild animals, birds, fish
36 or other aquatic life.

37 Wherever the word "department" is used in this chapter it shall
38 mean the department of ecology.

1 Whenever the word "director" is used in this chapter it shall mean
2 the director of ecology.

3 NEW SECTION. **Sec. 49.** Sections 1 through 22 and 25 through 43 of
4 this act shall constitute a new chapter in Title 78 RCW.

5 NEW SECTION. **Sec. 50.** Rules required under this act, including
6 rules required to be adopted by the department, state wildlife
7 commission, and department of ecology to implement the consolidated
8 application process must be adopted on or before two years after the
9 effective date of this act. No permit for a metals mining operation
10 may be issued by the department or a concerned agency as defined in
11 section 2 of this act until all rules required by this act are adopted.

12 NEW SECTION. **Sec. 51.** All provisions of this act shall be fully
13 applicable to any metals mining operation not fully permitted under
14 previous laws regardless of the date of original application or any
15 pending status. All provisions of this act shall be fully applicable
16 to any metals mining operation permitted under previous laws upon
17 expiration or revocation of the existing permit.

18 NEW SECTION. **Sec. 52.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 53.** This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and shall take
25 effect July 1, 1993.

--- END ---