

Chapter 332-18 WAC

SURFACE MINE RECLAMATION

WAC

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332-18-110	6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. Water impoundment. [Order 86, § 332-18-110, filed 10/27/70, effective 11/28/70.] Repealed by WSR 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.
332-18-140	Interest in real property in lieu of other performance security. [Statutory Authority: RCW 78.44.040, 34.05.-220, 43.21C.135 and 78.44.250. WSR 94-14-051, § 332-18-140, filed 6/30/94, effective 8/2/94.] Repealed by WSR 14-17-077, filed 8/18/14, effective 9/18/14. Statutory Authority: RCW 34.05.220.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-18-01005	Annual permit fees for county governments. [Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. WSR 94-14-051, § 332-18-01005, filed 6/30/94, effective 8/2/94.] Repealed by WSR 14-17-077, filed 8/18/14, effective 9/18/14. Statutory Authority: RCW 34.05.220.
332-18-015	Compliance with local regulations. [Order 94, § 332-18-015, filed 4/6/71.] Repealed by WSR 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.
332-18-020	Provisional permit. [Order 86, § 332-18-020, filed 10/27/70, effective 11/28/70.] Repealed by WSR 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.
332-18-030	Combined operating permits. [Order 86, § 332-18-030, filed 10/27/70, effective 11/28/70.] Repealed by WSR 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.
332-18-040	Multiple operations at one site. [Order 86, § 332-18-040, filed 10/27/70, effective 11/28/70.] Repealed by WSR 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.
332-18-05007	Civil penalties—Mitigation, appeals. [Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-05007, filed 6/30/94, effective 8/2/94.] Repealed by WSR 14-17-076, filed 8/18/14, effective 9/18/14. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135, and 78.44.250.
332-18-060	Confidential material. [Order 86, § 332-18-060, filed 10/27/70, effective 11/28/70.] Repealed by WSR 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.
332-18-070	Time extensions. [Order 86, § 332-18-070, filed 10/27/70, effective 11/28/70.] Repealed by WSR 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.
332-18-080	Preplanning. [Order 86, § 332-18-080, filed 10/27/70, effective 11/28/70.] Repealed by WSR 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.
332-18-090	Revegetation. [Order 86, § 332-18-090, filed 10/27/70, effective 11/28/70.] Repealed by WSR 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.
332-18-100	Water control. [Order 86, § 332-18-100, filed 10/27/70, effective 11/28/70.] Repealed by WSR 94-14-051, filed

WAC 332-18-010 Definitions. The following definitions shall apply to these rules:

(1) "The act" means the Washington Surface Mining Act, chapter 78.44 RCW.

(2) "Buffers" are synonymous with screening as used in the act.

(3) "Completed application" means receipt and approval by the department of all information required in the act, including:

- (a) A reclamation plan;
- (b) Performance security;
- (c) The application fee; and
- (d) Evidence that SEPA review has been completed.

(4) "Completed reclamation" as referred to in the act means final reclamation that has been approved by the department. Prior to approval, the department shall assure that the vegetative cover, soil stability, and water conditions of the reclaimed segment are appropriate to the approved subsequent use of the site. After July 1, 1995, final approval shall be given in writing by the department.

(5) "Enforcement" as used in these rules and the act means the regulatory authority to identify and document the status of compliance of a surface mine, and authority to impose sanctions under the act and these rules.

(6) "Land use plan" and "land use designation" refer to approval of the site for mining and for the use after mining by the appropriate city, town, or county government.

(7) "Simple and accurate legal description" in the act means the Government Land Office grid location (quarter section(s), section, Township, Range, and Meridian). Alternatively, the applicant or reclamation permit holder may provide a certified land survey. Metes and bounds descriptions are generally unacceptable for permits issued or revised after July 1, 1994.

Other terms used in these rules are defined in the act.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-010, filed 6/30/94, effective 8/2/94; Order 86, § 332-18-010, filed 10/27/70, effective 11/28/70.]

WAC 332-18-01001 Delegation of enforcement to counties. (1) The department may delegate enforcement of surface mine reclamation to a county: Provided, That the county agrees to:

(a) Enforce all provisions of the act, these rules, and the approved reclamation plan;

(b) Continuously employ enough qualified mine regulatory personnel to achieve the purposes of the act and these rules;

(c) Assume full responsibility for all aspects of enforcement that are described in the contract between the department and the county;

(d) Provide the department with copies of all documents related to enforcement; and

(e) Comply with all related written policies of the department.

(2) Such delegation shall be through a contract with the county.

(3) The department shall audit the performance of the county to assure that there is compliance with the enforcement provisions of the act and these rules. If the department determines that the county has failed to adequately and fairly enforce the act and these rules to the department's satisfaction, then the county shall be given written notice describing the deficiencies. If the county is unable to correct the deficiencies within the following six months, then the department may revoke the delegation.

(4) The department shall maintain sole authority to approve reclamation plans, to issue reclamation permits, to issue declarations of abandonment, to cancel reclamation permits, and to develop reclamation regulations and standards.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-01001, filed 6/30/94, effective 8/2/94.]

WAC 332-18-01002 Land use approval and regulation of operations. (1) For reclamation permits issued after July 1, 1994, approval of mining and of the subsequent use of the mine site shall be verified with a Form SM-6; except that such approval may not be required for mines on state or federal lands. The Form SM-6 must be signed by a responsible official from the appropriate city, town, or county.

(2) The department will not accept a Form SM-6 that obligates the department to regulate any "operation" except as necessary to assure timely reclamation.

(3) Conditions on any state surface mine operating permit issued prior to July 1, 1993, that cause the department to regulate "operations," that are not directly related to reclamation are invalid, except those conditions that were properly adopted pursuant to the department's SEPA substantive authority.

(4) After July 1, 1995, the department will attempt to notify the appropriate local government or state agency of surface mines affected by subsection (3) of this section.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-01002, filed 6/30/94, effective 8/2/94.]

WAC 332-18-01003 Issuing reclamation permits. (1) After July 1, 1994, the department shall not issue a reclamation permit until the applicant has:

(a) Met all requirements of these rules and the act;

(b) Provided documentation of SEPA review sufficient for the department to determine that the impacts of the proposal can be adequately mitigated;

(c) Received the following approvals if required by state or local governments:

(i) Approvals under local zoning and land use regulations;

(ii) A shoreline permit;

(iii) A hydraulic project approval; and/or

(iv) All solid waste permits.

(2) When an applicant has met all provisions of subsection (1) of this section, these rules, and the act, the department shall issue a reclamation permit within thirty days. Appeals of any existing permits listed in subsection (1) of this section shall not stay the timely issuance of a reclamation permit.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-01003, filed 6/30/94, effective 8/2/94.]

WAC 332-18-01004 Denial of an application for a reclamation permit. The department may refuse to issue a reclamation permit or revised reclamation permit only if the applicant:

(1) Fails to provide a complete application;

(2) Provides a proposal that the department determines should be denied pursuant to RCW 43.21C.060 and WAC 332-41-665; or

(3) Is not in compliance with an order or notice of the department.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-01004, filed 6/30/94, effective 8/2/94.]

WAC 332-18-050 Inspections and cancellations of permits. The department shall have the right to inspect any property at any time as it determines is necessary to ensure there is compliance with the act, these rules, and the reclamation plan. Inspections shall be limited to those lands and the permit holder's records that pertain to surface mine reclamation. All deficiencies shall be brought to the attention of the miner or permit holder.

The department, at its option, may refuse to issue another permit to a miner or permit holder who is in noncompliance with an order of the department until all deficiencies are corrected to the satisfaction of the department.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-050, filed 6/30/94, effective 8/2/94; Order 86, § 332-18-050, filed 10/27/70, effective 11/28/70.]

WAC 332-18-05001 Orders and notices of the department. (1) The department may issue orders and notices as described in the act and these rules. Before issuing the initial order related to a specific violation, the department shall attempt to hold a conference with the miner or permit holder. The purpose of the conference is to determine if a violation has occurred and, if so, to develop a plan to correct the violation and mitigate its impacts insofar as practicable.

(2) Orders and notices of the department shall set forth:

(a) The nature and extent, and if known, the time of the violation(s);

(b) The rights of the miner or permit holder to appeal; and

(c) Applicable time frames for corrective action and appeal.

(3) Orders and notices of the department shall be in writing and delivered to the miner or permit holder by mail or personal service.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-05001, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05002 Time extensions and additional performance security. The department may grant an extension of the applicable compliance timetables if failure to comply with the permit, rules, or the act resulted from circumstances clearly beyond the control of the miner or permit holder. The extension may be granted for up to eighteen months. However, the extension may be revoked if the miner or permit holder is not, in the opinion of the department, making every reasonable effort to comply.

Additional performance security in a form acceptable to the department may be required if it is determined to be necessary to assure that the deficiencies are rectified.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-05002, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05003 Civil penalties—Procedures. (1) If a miner or permit holder fails to comply with the act, these rules, the permit, the reclamation plan, or any order or emergency order of the department, the miner or permit holder may be subject to a civil penalty for each violation based upon the schedule of fines set forth in WAC 332-18-05004 and calculated according to WAC 332-18-05005.

(2) The penalty shall be imposed by a notice of penalties delivered by certified mail with return receipt requested or by personal service.

(3) The notice of penalties shall explain the base penalty and penalty calculation as outlined in WAC 332-18-05004 and 332-18-05005.

(4) If the penalty and interest are not paid to the department after these are due and payable, the attorney general, at the request of the department, may bring an action in accordance with RCW 78.44.250.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-05003, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05004 Fines, base penalties schedule. In setting the amount of a civil penalty imposed under RCW 78.44.087, the department shall consider the following base penalty schedule:

(1) Category I. Fines of two hundred fifty dollars may be levied for each violation of the following:

(a) Failure to post the reclamation plan at the mine site if directed to do so by the department;

(b) Failure to install or maintain monuments;

(c) Failure to provide a new reclamation plan upon request;

(d) Failure to provide requisite solid waste permits to the department;

(e) Failure to route or provide drainage so that reclaimed surfaces are protected from erosion or mass wasting; and/or

(f) Excavation within the reclamation setbacks.

(2) Category II. Fines of five hundred dollars may be levied for each violation of the following:

(a) Failure to pay annual fees;

(b) Unauthorized sale of, or backfilling with, topsoil needed for reclamation;

(c) Failure to revegetate a segment within the first appropriate growing season;

(d) Surface mining outside the reclamation permit area;

(e) Failure to protect adjacent properties from erosion or slope failure;

(f) Failure to compact fill used for reclamation if such failure results in slope failure; and/or

(g) Any violation of an order of the department.

(3) Category III. Fines of one thousand dollars per day to a maximum of ten thousand dollars per day may be levied seven days per week for each violation of the following:

(a) Surface mining without a reclamation permit;

(b) Failure to provide performance security upon request;

(c) Failure to remove noxious, combustible, or compactible materials from the mine site;

(d) Failure to complete reclamation of a segment within two years after cessation of operations;

(e) Failure to comply with an emergency order of the department; and/or

(f) Failure to comply when more than one order of the department has been issued for the same violation.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-05004, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05005 Calculation of penalty. Fines shall be calculated using the following steps:

(1) The base penalty shall be the minimum fine in each category as set forth in WAC 332-18-05004.

(2) The department may adjust the fine by multiplying the Category II and III base penalties by factors specific to the incident, miner or permit holder, and/or site. The following factors shall not be imposed unless the department explains in writing how each factor was determined:

(a) Severity: The department shall adjust the penalty to reflect the extent or magnitude and difficulty of repairing the damage to lands, waters, and neighboring properties. This factor shall increase the base penalty by not more than 5.0 times the base penalty.

(b) Previous violation(s): The department shall consider whether the violator has had previous significant violations of the act, rules, permit, or reclamation plan as documented by an enforcement action. This factor shall increase the base penalty by not more than 3.0 times the base penalty.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135, and 78.44.-250. WSR 14-17-076, § 332-18-05005, filed 8/18/14, effective 9/18/14. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. WSR 94-14-051, § 332-18-05005, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05006 Penalties due. (1) Penalties imposed under this section shall become due and payable thirty days after receipt of a notice imposing the fine unless the miner or permit holder files an appeal.

(2) Thirty days after the miner or permit holder is notified that administrative review of penalties is complete, the penalty shall become due and payable.

(3) Thirty days after a penalty becomes due and payable, interest shall accrue at the maximum rate allowed by RCW 19.52.020 until the penalty is paid to the department.

[Statutory Authority: RCW 78.44.404, 34.05.220, 43.21C.135, and 78.44.-250. WSR 14-17-076, § 332-18-05006, filed 8/18/14, effective 9/18/14. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. WSR 94-14-051, § 332-18-05006, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05008 Enforcement of penalties. If the penalty and/or applicable interest are not paid to the department within thirty days after these become due and payable, the attorney general, upon the request of the department, may bring an action in superior court to recover the penalty or interest. In all such actions, the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise provided in the act.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-05008, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05009 Adjudicative proceedings—Standing. A person has standing to obtain review of a department action concerning surface mining under chapter 78.44 RCW only if that person is aggrieved by the department's action. A person is aggrieved only when all three of the following conditions are present:

- (1) The department's action has prejudiced or is likely to prejudice that person;
- (2) That person's asserted interests are among those that the department was required to consider when it took the action being challenged; and
- (3) A decision in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the department's action.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-05009, filed 6/30/94, effective 8/2/94.]

WAC 332-18-120 Performance security. (1) The performance security required by RCW 78.44.087 may be in the form of a corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under Title 48 RCW.

(2) After July 1, 1995, performance bonds required by RCW 78.44.087 shall be substantially in the following form, unless, in considering any reclamation permit, the department determines that a different form is desirable or required.

SURFACE MINING RECLAMATION BOND

Permit No.

KNOW ALL PEOPLE BY THESE PRESENTS, That we,, as Principal, and, a corporation organized and existing under the laws of the State of [,] and authorized to transact business in the State of Washington, as Surety, are held and firmly bound unto the State of Washington, acting through the Department of Natural Resources, in the sum of (\$) U.S. DOLLARS, for the payment of which sum we bind ourselves, and each of our legal representatives, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal has received from the Department of Natural Resources, State of Washington, an operating or reclamation permit to conduct surface mining on the Premises whose legal description is in the portion of:

Sec(s)...., ..., ..., T, ..., N, R... (E)(W) W.M. (circle one):
Sec(s)...., ..., ..., T, ..., N, R... (E)(W) W.M. (circle one):
Sec(s)...., ..., ..., T, ..., N, R... (E)(W) W.M. (circle one):
Sec(s)...., ..., ..., T, ..., N, R... (E)(W) W.M. (circle one):
. (counties)
.
.
.
.

NOW, THEREFORE, The conditions of this obligation are such that if the Principal, in conducting such surface mining operations, faithfully performs the requirements of the permit, these rules, and the act, then this obligation shall be void; otherwise the obligation shall remain in full force and effect. In accordance with RCW 78.44.087, this bond secures completion of reclamation for the area to be surface mined and related costs after the signature date of this bond and any previously disturbed areas on the Premises on which reclamation has not been satisfactorily completed and approved.

PROVIDED, However, the Surety shall not be liable under this bond for an amount greater in the aggregate than the sum designated in the first paragraph hereof and any reasonable legal fees that the department may incur to recover the security under RCW 78.44.240. The Surety shall not be liable for surface mining performed on the Premises after a date sixty days after the Surety mails a cancellation notice to the Principal and the Department of Natural Resources, Olympia, Washington. The bond shall remain in full force and effect as respects obligations related to surface mining performed on the Premises before that date unless the Principal files a substitute bond or other performance security, approved by the Department of Natural Resources, or unless the Department of Natural Resources otherwise releases the Surety in writing.

Signed, sealed and dated this day of,

(3) Bonds submitted under RCW 78.44.087 shall contain a legal description of the area for which a reclamation permit has been issued. An acceptable legal description for bonds takes this form: "a portion of sec. 15 T2N R3E." After July 1, 1994, the department will generally not accept metes and bounds descriptions.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-120, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040. WSR 92-20-059 (Order 605), § 332-18-120, filed 10/2/92, effective 11/2/92; Order 86, § 332-18-120, filed 10/27/70, effective 11/28/70.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 332-18-130 Bank letters of credit. The performance security required by RCW 78.44.087 may be in the form of a bank letter of credit.

(1) The department will accept a bank letter of credit under RCW 78.44.087 only if the letter of credit is established in an amount equal to the estimated cost of completing reclamation according to the approved reclamation plan or

minimum reclamation standards and related administrative overhead for the area to be surface mined during the next thirty-six month period and any previously disturbed areas for which a reclamation permit has been issued and on which the reclamation has not been satisfactorily completed and approved.

(2) If the letter of credit is issued by a bank that has an office within the state of Washington, the department may accept the letter of credit if it:

(a) Is issued by a bank that is financially sound and is authorized to do business in the state of Washington;

(b) Does not state that it is subject to the uniform customs and practice for documentary credits; and

(c) Is in the form described in subsection (4) of this section.

(3) If the letter of credit is issued by a bank that does not have an office within the state of Washington, the department may accept the letter of credit if it:

(a) Is in the form described in subsection (4) of this section; and

(b) Is accompanied by a letter of confirmation that:

(i) Is issued by a bank that is financially sound, that is authorized to do business in the state of Washington, and that has an office within the state of Washington;

(ii) States that the confirming bank will honor the letter of credit; and

(iii) States that the letter of confirmation is subject to the Uniform Customs and Practice for Documentary Credits, 1983 revision, ICC Publication No. 400.

(4) Unless the department determines that a different form is desirable or required, any letter of credit filed with the department under RCW 78.44.087 shall:

(a) Be in writing;

(b) Be signed by the issuer;

(c) Conspicuously state that it is a letter of credit and is issued on behalf of the person whose performance it is intended to secure;

(d) Identify the reclamation permit number to which it pertains;

(e) Identify the department of natural resources, state of Washington, as the sole beneficiary;

(f) State that it is irrevocable;

(g) State the date upon which it will expire and provide that the expiration date will be automatically extended for one year from that date or any future expiration date unless, no later than sixty days before any expiration date, the issuing bank notifies the department in writing by registered mail of the bank's election not to renew; and shall

(h) Expressly provide that any draft or demand for payment must be accompanied by the department's signed statement that the person whose performance the credit is intended to secure is in default of the obligations imposed by chapter 78.44 RCW.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-130, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040. WSR 92-20-059 (Order 605), § 332-18-130, filed 10/2/92, effective 11/2/92.]

WAC 332-18-145 Blanket performance security— Rules to obtain and maintain a blanket performance security for multiple surface mines. (1) A permit holder or

landowner may use a blanket performance security for multiple surface mines if authorized by DNR under RCW 78.44.-350 and this rule. The amount must equal the sum of the estimated reclamation cost calculated by DNR for the two covered surface mines with the largest performance security obligations. The process for obtaining DNR's approval includes a preliminary review, submittal of a complete request, and DNR review of a complete request.

(2) A permit holder or landowner must first request DNR's preliminary review of eligibility and the state of the proposed surface mines. The request shall identify permit holders and proposed surface mines by permit number, if any. DNR will issue a preliminary review decision on each mine indicating which mines would be eligible within sixty days. The preliminary review period may be extended by DNR with written notice to the applicant. If any requested sites are denied after the preliminary review, the DNR will state in writing why the site was denied and the applicant may request a meeting and/or reapply for preliminary review.

(a) A permit holder must meet the following conditions for it or the landowner to be eligible to submit and continue to use a blanket performance security:

(i) The permit holder must not be in violation of any final order of DNR;

(ii) The permit holder must have held at least one valid reclamation permit for longer than ten years;

(iii) The permit holder must demonstrate exemplary mining and reclamation practices that have been accepted by DNR. For purposes of this rule, "exemplary" means that the permit holder is substantially complying with chapters 78.44 RCW and 332-18 WAC, its effective reclamation permit and plan, and department orders for each of its surface mines and that the permit holder has not received more than two enforcement orders within the most recent calendar year;

(iv) The permit holder must, before obtaining a blanket performance security and every other year thereafter, submit a sworn statement by a responsible company official under penalty of perjury for false or misleading statements that the permit holder is financially able to pay for the DNR-approved estimated reclamation cost of all covered surface mines within one year; and

(v) The permit holder must before obtaining and every other year thereafter, submit an updated reclamation cost estimate on DNR's Standard Performance Security Calculation Form (SM-10) for each covered surface mine.

(b) Proposed sites must not include metal or fuel surface mines.

(c) To determine the likelihood of approval, DNR shall consider the permit holder's current and past compliance history in addition to the state of the existing surface mines of the permit holder. DNR may deem a surface mine "inappropriate" for coverage if inconsistent with (b) of this subsection or any of the following factors:

(i) The reclamation plan for the surface mine should be appropriate for the site's conditions and chapter 78.44 RCW;

(ii) The surface mine should be in substantial compliance with its effective reclamation permit and plan;

(iii) The surface mine condition should satisfy all of the topsoil requirements stated in the applicable reclamation permit and plan.

(3) If eligible, a permit holder or landowner may request DNR's acceptance of a blanket performance security by submitting all of the following items:

(a) An acceptable and adequate performance security on a DNR-approved form that equals the sum of the reclamation security calculated by the DNR for the two covered surface mines with the largest performance security obligations.

(b) A DNR Risk of Lien Form, signed by all landowners; and

(c) The estimated reclamation cost on a DNR Standard Performance Security Calculation Form (SM-10) for each included surface mine. Thereafter, the permit holder providing the blanket performance security shall submit documentation per subsection (2)(a)(iv) and (v) of this section. DNR shall review and confirm or correct each estimated reclamation cost according to its form and RCW 78.44.087.

(4) DNR may only approve a request for a blanket performance security when the request contains all required documents, is accurate, complete, and is submitted by or on behalf of eligible permit holders. DNR shall further consider the factors identified in subsection (2)(b) and (c) of this section. DNR will provide a written decision approving or disapproving the request, which is appealable.

(5) If surface mine conditions change so that the cumulative estimated reclamation cost for any two covered surface mines is greater than the initially calculated amount, the blanket performance security must be increased. DNR may recalculate estimated reclamation costs and may require a new blanket performance security under RCW 78.44.087 and 78.44.350.

(6) DNR may require substitute individual performance securities for all covered surface mines if the permit holder loses eligibility under subsection (2) of this section. Further, DNR may require a substitute individual performance security for each surface mine that becomes inappropriate for blanket coverage. The permit holder shall comply with the DNR written substitute performance security demand within thirty days of notice. DNR may require the substitute performance security until the permit holder regains eligibility or the surface mine is restored to an appropriate condition for blanket coverage. DNR may use the blanket security for the reclamation of any originally covered surface mine unless DNR approves cancellation of the original blanket performance security or approves a substitute blanket performance security excluding that surface mine.

[Statutory Authority: RCW 78.44.350 and 78.44.040. WSR 08-01-006, § 332-18-145, filed 12/6/07, effective 1/6/08.]

WAC 332-18-150 Permit transfers. (1) The department shall approve permit transfers under the provisions of RCW 78.44.171 if the new permit holder provides the following documents:

(a) A revised reclamation plan together with:

(i) Written approval of all persons having a possessory interest in the land;

(ii) A revised Form SM-6 approved by the local government if a new subsequent use of the permit area is proposed;

(iii) A SEPA checklist. This checklist shall address only those impacts relating to the revised reclamation plan.

(b) Acceptable performance security as determined by the department pursuant to RCW 78.44.120.

(c) Written approval of the permit transfer signed by the former permit holder. The department may transfer the reclamation permit without the permission of the former permit holder if a declaration of abandonment has been issued according to RCW 78.44.220.

(d) Written notification from the new permit holder that they assume all duties of the former permit holder to reclaim the surface mine.

(2) The department may waive the requirement for a revised reclamation plan when it finds that the existing reclamation plan meets the minimum reclamation requirements.

(3) The department shall not transfer the reclamation permit until this permit and all others held by both the former and the new permit holders are in compliance with the act, these rules, the reclamation permit, and any orders of the department. This requirement may be waived upon approval of a plan and schedule that will result in compliance within eighteen months of the permit transfer date. This plan and schedule shall be considered as part of the reclamation plan, and failure to comply with the plan and schedule shall constitute violations of this chapter.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.-250. WSR 94-14-051, § 332-18-150, filed 6/30/94, effective 8/2/94.]