

Title 78

MINES, MINERALS, AND PETROLEUM

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Chapter 78.04 RCW MINING CORPORATIONS

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78.04.010 Right of eminent domain. The right of eminent domain is hereby extended to all corporations incorpo-

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rated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, and doing business in this state, for the purpose of acquiring, owning or operating mines, mills or reduction works, or mining or milling gold and silver or other minerals, which may desire to erect and operate surface tramways or elevated cable tramways for the purpose of carrying, conveying or transporting the products of such mines, mills or reduction works. [1897 c 60 § 1; RRS § 8608. FORMER PART OF SECTION: 1897 c 60 § 2; RRS § 8609 now codified as RCW 78.04.015.]

Water rights—Appropriation for industrial (mining) purposes: RCW 90.16.020 and 90.16.030.

78.04.015 Right of entry. Every corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, and doing business in this state, for the purpose of acquiring, owning or operating mines, mills or reduction works, or mining or milling gold and silver or other minerals, which may desire to erect and operate surface tramways or elevated cable tramways for the purpose of carrying, conveying or transporting the products of such mines, mills or reduction works, shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby. [1897 c 60 § 2; RRS § 8609. Formerly RCW 87.04.010, part.]

78.04.020 Manner of exercising right of eminent domain. Every such corporation shall have the right to appropriate real estate or other property for right-of-way in the same manner and under the same procedure as now is or may be hereafter provided by the law in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain. [1897 c 60 § 3; RRS § 8610.]

Eminent domain by corporations: Chapter 8.20 RCW.

78.04.030 No stock subscription necessary. In incorporations already formed, or which may hereafter be formed under *this chapter, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any mining claim in this state, for the working and development of which such corporation shall be or have been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under its bylaws will represent the value of so much of his or her interest in said mining claim, the legal title to which he or she may by deed, deed of trust, or other instrument vest, or have vested in such corporation for mining purposes; such subscription to be deemed to have been made on the execution and delivery to such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any

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assessment levied by the board of trustees of such corporation be affected by the reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section: PROVIDED, That the greater portion of said amount of capital stock shall have been so subscribed: AND, PROVIDED FURTHER, That this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed, for mining purposes as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by bylaws or express contract. [2013 c 23 § 247; Code 1881 § 2446; 1873 p 407 § 26; 1869 p 339 § 28; 1866 p 65 § 28; RRS § 8611.]

*Reviser's note: The two remaining sections of "this chapter" (Code 1881 c CLXXXV) are codified in RCW 78.04.030 above and RCW 90.16.010.

78.04.040 Right of stockholder to enter and examine property. Any owner of stock to the amount of one thousand shares, in any corporation doing business under the laws of the state of Washington for the purposes of mining, shall, at all hours of business or labor on or about the premises or property of such corporation, have the right to enter upon such property and examine the same, either on the surface or underground. And it is hereby made the duty of any and all officers, managers, agents, superintendents, or persons in charge, to allow any such stockholder to enter upon and examine any of the property of such corporation at any time during the hours of business or labor; and the presentation of certificates of stock in the corporation of the amount of one thousand shares, to the officer or person in charge, shall be prima facie evidence of ownership and right to enter upon or into, and make examinations of the property of the corporation. [1901 c 120 § 1; RRS § 8612.]

78.04.050 Penalty for violations under RCW 78.04.040. Any violation of any of the provisions of RCW 78.04.040 by any officer or agent of such corporation shall constitute a misdemeanor, and upon conviction thereof every such officer or agent shall be fined in a sum not greater than two hundred dollars for each offense. [1901 c 120 § 2; RRS § 8613.]

Chapter 78.06 RCW

MINING CLAIMS—SURVEY REPORTS

Sections

- 78.06.010 Definitions.
- 78.06.020 Duplicate survey reports to be filed with county auditor—Contents.
- 78.06.030 Auditor to forward survey reports to department of natural resources.

Holding claim by geological, etc., survey—Reports: RCW 78.08.072.

78.06.010 Definitions. Words or terms used herein have the following meanings:

(1) "Geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits.

(2) "Geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits.

(3) "Geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations. [1959 c 119 § 1.]

78.06.020 Duplicate survey reports to be filed with county auditor—Contents. All reports of geological, geophysical, or geochemical surveys on mining claims which may be filed with the auditor of any county in this state pursuant to United States Public Law 85-876 or amendments or revisions thereto shall be so filed in duplicate, and shall set forth fully:

- (1) The location of the survey performed in relation to the point of discovery and boundaries of the claim.
- (2) The nature, extent, and cost of the survey.
- (3) The date the survey was commenced and the date completed.
- (4) The basic findings therefrom.
- (5) The name, address, and professional background of the person or persons performing or conducting the survey. [1959 c 119 § 2.]

78.06.030 Auditor to forward survey reports to department of natural resources. All county auditors receiving for filing duplicate copies of geological, geochemical, and geophysical survey reports on mining claims shall forward, monthly, one copy of each report received to the department of natural resources. [1988 c 127 § 31; 1959 c 119 § 3.]

Chapter 78.08 RCW

LOCATION OF MINING CLAIMS

Sections

1887 ACT

- 78.08.005 Prior claims, how governed.
- 78.08.020 Extent of lode claims.
- 78.08.030 Rights of locators.
- 78.08.040 Recording instruments affecting claim.

1899 AND LATER ACTS

- 78.08.050 Location notices—Contents—Recording.
- 78.08.060 Staking of claim—Requisites—Right of person diligently engaged in search.
- 78.08.070 Cut, excavation, tunnel or test hole in lieu of discovery shaft.
- 78.08.072 Holding claim by geological, etc., survey—Report of survey.
- 78.08.075 "Lode" defined.
- 78.08.080 Amended certificate of location.
- 78.08.081 Assessment work, affidavit of work performed or affidavit of fees paid.
- 78.08.082 Affidavit is prima facie evidence.
- 78.08.090 Relocating abandoned claim.
- 78.08.100 Location of placer claims.
- 78.08.110 Affidavit as proof.
- 78.08.115 Application of RCW 78.08.050 through 78.08.115.

1887 ACT

78.08.005 Prior claims, how governed. All mining claims upon veins or lodes of quartz or other rock in place,

bearing gold, silver or other valuable mineral deposits heretofore located, shall be governed as to length along the vein or lode by the customs, regulations and laws in force at the date of such location. [1887 c 87 § 1; RRS § 8615.]

For earlier acts on this subject, see: 1867 pp 146-147, 1869 pp 386-388, 1873 pp 444-446, 1875 pp 126-127, 1877 pp 335-336. See also, act of congress, May 10, 1872.

78.08.020 Extent of lode claims. A mining claim located upon any vein or lode of quartz or other rock in place, bearing gold, silver or other valuable mineral deposits, after the approval of *this act by the governor, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claims located. No claims shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claims be limited by any mining regulation to less than fifty feet of surface on each side of the middle of such vein or lode at the surface, excepting where adverse rights, existing at the date of the approval of this act, shall make such limitation necessary. The end lines of each claim shall be parallel to each other. [1887 c 87 § 2; RRS § 8616.]

*Reviser's note: "this act" [1887 c 87], is codified in RCW 78.08.005 through 78.08.040; "date of the approval of this act" was February 2, 1888.

78.08.030 Rights of locators. The locators of all mining locations heretofore made or hereafter made under the provisions of RCW 78.08.005 through 78.08.040, on any mineral vein, lode or ledge on the public domain, and their heirs and assigns so long as they comply with the laws of the United States and the state and local laws relating thereto, shall have the exclusive right to the possession and enjoyment of all surface included within the lines of their location, and of all veins, lodes and ledges throughout their entire depth, and the top or apex of which lies within the surface lines of such location, extending downward vertically, although such veins, lodes or ledges may so far depart from the perpendicular in their course downward as to extend outside of the vertical side line of said surface location. [1887 c 87 § 3; RRS § 8617.]

78.08.040 Recording instruments affecting claim. All location notices, bonds, assignments and transfers of mining claims shall be recorded in the office of the county auditor of the county where the same is situated within thirty days after the execution thereof. [1979 ex.s. c 30 § 15; 1887 c 87 § 7; RRS § 8621.]

1899 AND LATER ACTS

78.08.050 Location notices—Contents—Recording. The discoverer of a lode shall within ninety days from the date of discovery, record in the office of the auditor of the county in which such lode is found, a notice containing the name or names of the locators, the date of the location, the number of feet in length claimed on each side of the discovery, the general course of the lode and such a description of the claim or claims located by reference to some natural

object or permanent monument as will identify the claim. [1899 c 45 § 1; RRS § 8622.]

For earlier acts on this subject, see: 1867 pp 146-147, 1869 pp 386-388, 1873 pp 444-446, 1875 pp 126-127, 1877 pp 335-336, 1887 c 87; see also, act of congress, May 10, 1872.

78.08.060 Staking of claim—Requisites—Right of person diligently engaged in search. (1) Before filing such notice for record, the discoverer shall locate his or her claim by posting at the discovery at the time of discovery a notice containing the name of the lode, the name of the locator or locators, and the date of discovery, and marking the surface boundaries of the claim by placing substantial posts or stone monuments bearing the name of the lode and date of location; one post or monument must appear at each corner of such claim; such posts or monuments must be not less than three feet high; if posts are used they shall be not less than four inches in diameter and shall be set in the ground in a substantial manner. If any such claim be located on ground that is covered wholly or in part with brush or trees, such brush shall be cut and trees be marked or blazed along the lines of such claim to indicate the location of such lines.

(2) Prior to valid discovery the actual possession and right of possession of one diligently engaged in the search for minerals shall be exclusive as regards prospecting during continuance of such possession and diligent search. As used in this section, "diligently engaged" shall mean performing not less than one hundred dollars worth of annual assessment work on or for the benefit of the claim or paying any fee or fees in lieu of assessment work in such year or years it is required under federal law, or any larger amount that may be designated now or later by the federal government for annual assessment work. [1995 c 114 § 1; 1965 c 151 § 1; 1963 c 64 § 1; 1949 c 12 § 1; 1899 c 45 § 2; RRS § 8623.]

78.08.070 Cut, excavation, tunnel or test hole in lieu of discovery shaft. Any open cut, excavation or tunnel which cuts or exposes a lode and from which a total of two hundred cubic feet of material has been removed or in lieu thereof a test hole drilled on the lode to a minimum depth of twenty feet from the collar, shall hold the lode the same as if a discovery shaft were sunk thereon, and shall be equivalent thereto. [1955 c 357 § 1; 1899 c 45 § 3; RRS § 8624.]

78.08.072 Holding claim by geological, etc., survey—Report of survey. Any geological, geochemical, or geophysical survey which reasonably involves a direct expenditure on or for the benefit of each claim of not less than the one hundred dollars worth of annual assessment work required under federal statute or regulations shall hold such claim for not more than two consecutive years or more than a total of five years: PROVIDED, That a written report of such survey shall be filed with the county auditor at the time annual assessment work is recorded as required under federal statute, and said written report shall set forth fully:

(1) The location of the survey performed in relation to the point of discovery or location notice and boundaries of the claim.

(2) The nature, extent, and cost of the survey.

(3) The date the survey was commenced and the date completed.

(4) The basic findings therefrom.

(5) The name, address, and professional background of the person or persons performing or conducting the survey. [1965 c 151 § 2; 1963 c 64 § 2; 1959 c 114 § 1.]

Reports of geological, etc., surveys: Chapter 78.06 RCW.

78.08.075 "Lode" defined. The term "lode" as used in RCW 78.08.050 through 78.08.115 shall be construed to mean ledge, vein or deposit. [1983 c 3 § 197; 1899 c 45 § 4; RRS § 8625. Formerly RCW 78.08.010.]

78.08.080 Amended certificate of location. If at any time the locator of any quartz or lode mining claim heretofore or hereafter located, or his or her assigns, shall learn that his or her original certificate was defective or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his or her surface boundaries or of taking in any additional ground which is subject to location, or in any case the original certificate was made prior to the *passage of this law, and he or she shall be desirous of securing the benefits of RCW 78.08.050 through 78.08.115, such locator or his or her assigns may file an amended certificate of location, subject to the provisions of RCW 78.08.050 through 78.08.115, regarding the making of new locations. [2013 c 23 § 248; 1983 c 3 § 198; 1899 c 45 § 5; RRS § 8626.]

*Reviser's note: "passage of this law": 1899 c 45 (H.B. 272) passed the house, February 27, 1899; passed the senate, March 7, 1899, and was approved by the governor March 8, 1899.

78.08.081 Assessment work, affidavit of work performed or affidavit of fees paid. Within thirty days after the expiration of the period of time fixed for the performance of annual labor or the making of improvements upon any quartz or lode mining claim or premises, the person in whose behalf such work or improvement was made or some person for him or her knowing the facts, shall make and record in the office of the county auditor of the county wherein such claims are situate either an affidavit or oath of labor performed on such claim, or affidavit or oath of fee or fees paid to the federal government in lieu of the annual labor requirement. Such affidavit shall state the exact amount of fee or fees paid, or the kind of labor, including the number of feet of shaft, tunnel or open cut made on such claim, or any other kind of improvements allowed by law made thereon. When both fee and labor requirements have been waived by the federal government, such affidavit will contain a statement to that effect and the state shall not require labor to be performed. Such affidavit shall contain the section, township and range in which such lode is located if the location be in a surveyed area. [1995 c 114 § 2; 1979 ex.s. c 30 § 16; 1955 c 357 § 3; 1899 c 45 § 6; RRS § 8627.]

78.08.082 Affidavit is prima facie evidence. Such affidavit when so recorded shall be prima facie evidence of the performance of such labor or the making of such improvements, and such original affidavit after it has been recorded, or a certified copy of record of same, shall be received as evidence accordingly by all the courts of this state. [1899 c 45 § 7; RRS § 8628.]

78.08.090 Relocating abandoned claim. The relocation of a forfeited or abandoned quartz or lode claim shall only be made by sinking a new discovery shaft, or in lieu thereof performing at least an equal amount of development work within the borders of the claim, and fixing new boundaries in the same manner and to the same extent as is required in making a new location, or the relocater may sink the original discovery shaft ten feet deeper than it was at the date of commencement of such relocation, and shall erect new, or make the old monuments the same as originally required; in either case a new location monument shall be erected. [1949 c 12 § 2; 1899 c 45 § 8; RRS § 8629.]

78.08.100 Location of placer claims. The discoverer of placers or other forms of deposits subject to location and appropriation under mining laws applicable to placers shall locate his or her claim in the following manner:

First. He or she must immediately post in a conspicuous place at the point of discovery thereon, a notice or certificate of location thereof, containing (1) the name of the claim; (2) the name of the locator or locators; (3) the date of discovery and posting of the notice hereinbefore provided for, which shall be considered as the date of the location; (4) a description of the claim by reference to legal subdivisions of sections, if the location is made in conformity with the public surveys, otherwise, a description with reference to some natural object or permanent monuments as will identify the claim; and where such claim is located by legal subdivisions of the public surveys, such location shall, notwithstanding that fact, be marked by the locator upon the ground the same as other locations.

Second. Within thirty days from the date of such discovery, he or she must record such notice or certificate of location in the office of the auditor of the county in which such discovery is made, and so distinctly mark his or her location on the ground that its boundaries may be readily traced.

Third. Within sixty days from the date of discovery, the discoverer shall perform labor upon such location or claim in developing the same to an amount which shall be equivalent in the aggregate to at least ten dollars worth of such labor for each twenty acres, or fractional part thereof, contained in such location or claim: PROVIDED, HOWEVER, That nothing in this subdivision shall be held to apply to lands located under the laws of the United States as placer claims for the purpose of the development of petroleum and natural gas and other natural oil products.

Fourth. Such locator shall, upon the performance of such labor, file with the auditor of the county an affidavit showing such performance and generally the nature and kind of work so done. [2013 c 23 § 249; 1901 c 137 § 1; 1899 c 45 § 10; RRS § 8631.]

78.08.110 Affidavit as proof. The affidavit provided for in the last section, and the aforesaid placer notice or certificate of location when filed for record, shall be prima facie evidence of the facts therein recited. A copy of such certificate, notice or affidavit certified by the county auditor shall be admitted in evidence in all actions or proceeding with the same effect as the original and the provisions of RCW 78.08.081 and 78.08.082 shall apply to placer claims as well as lode claims. [1899 c 45 § 11; RRS § 8632.]

78.08.115 Application of RCW 78.08.050 through 78.08.115. All locations of quartz or placer formations or deposits hereafter made shall conform to the requirements of RCW 78.08.050 through 78.08.115 insofar as the same are respectively applicable thereto. [1983 c 3 § 199; 1899 c 45 § 12; RRS § 8633.]

Chapter 78.12 RCW

ABANDONED SHAFTS AND EXCAVATIONS

Sections

78.12.010	Shafts, excavations to be fenced.
78.12.020	Complaint—Contents.
78.12.030	Order to serve notice.
78.12.040	Notice—Contents—Civil and criminal penalties.
78.12.050	Suit in name of state—Disposition of proceeds.
78.12.060	Procedure when shaft unclaimed.
78.12.061	Safety cage in mining shaft—Regulations.
78.12.070	Damage actions preserved.

78.12.010 Shafts, excavations to be fenced. Any person or persons, company, or corporation who shall hereafter dig, sink or excavate, or cause the same to be done, or being the owner or owners, or in the possession, under any lease or contract, of any shaft, excavation or hole, whether used for mining or otherwise, or whether dug, sunk or excavated for the purpose of mining, to obtain water, or for any other purpose, within this state, shall, during the time they may be employed in digging, sinking or excavating, or after they have ceased work upon or abandoned the same, erect, or cause to be erected, good and substantial fences or other safeguards, and keep the same in good repair around such works or shafts sufficient to securely guard against danger to persons and animals from falling into such shafts or excavations. [1890 p 121 § 1; RRS § 8857.]

78.12.020 Complaint—Contents. Three persons being residents of the county, and knowing or having reason to believe that the provisions of RCW 78.12.010 are being or have been violated within such county, may file a notice with any district or municipal court therein, which notice shall be in writing, and shall state—First, the location, as near as may be, of the hole, excavation or shaft. Second, that the same is dangerous to persons or animals, and has been left or is being worked contrary to the provisions of this chapter. Third, the name of the person or persons, company or corporation who is or are the owners of the same, if known, or if unknown, the persons who were known to be employed therein. Fourth, if abandoned and no claimant; and Fifth, the estimated cost of fencing or otherwise securing the same against any avoidable accidents. [1987 c 202 § 231; 1987 c 3 § 19; 1890 p 121 § 2; RRS § 8858.]

Intent—1987 c 202: See note following RCW 2.04.190.

Additional notes found at www.leg.wa.gov

78.12.030 Order to serve notice. Upon the filing of the notice, as provided in RCW 78.12.020, the district or municipal court shall issue an order, directed to the sheriff of the county or to any constable or city marshal therein, directing such officer to serve a notice in manner and form as is prescribed by law for service of summons upon any person or persons or the authorized agent or agents of any company or

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corporation named in the notice on file, as provided in RCW 78.12.020. [1984 c 258 § 139; 1890 p 121 § 3; RRS 8859.]

Additional notes found at www.leg.wa.gov

78.12.040 Notice—Contents—Civil and criminal penalties. The notice thus served shall require the said persons to appear before the judge issuing the same, at a time to be stated therein, not more than ten nor less than three days from the service of said notice, and show to the satisfaction of the court that the provisions of this chapter have been complied with; or if said person or persons fail to appear, judgment will be entered against said person or persons for double the amount stated in the notice on file; and all proceedings had therein shall be as prescribed by law in civil cases; and such persons, in addition to any judgment that may be rendered against them, shall be liable and subject to a fine not exceeding the sum of one hundred dollars for each and every violation of the provisions of this chapter, which judgments and fines shall be adjudged and collected as provided for by law. [1987 c 202 § 232; 1890 p 122 § 4; RRS § 8860.]

Intent—1987 c 202: See note following RCW 2.04.190.

78.12.050 Suit in name of state—Disposition of proceeds. Suits commenced under the provisions of this chapter shall be in the name of the state of Washington, and all judgments and fines collected shall be paid into the county treasury for county purposes: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 233; 1969 ex.s. c 199 § 34; 1890 p 122 § 5; RRS § 8861.]

Intent—1987 c 202: See note following RCW 2.04.190.

Disposition of costs, fines, fees, penalties, and forfeitures: RCW 10.82.070.

78.12.060 Procedure when shaft unclaimed. If the notice filed with the district or municipal court, as aforesaid, shall state that the excavation, shaft or hole has been abandoned, and no person claims the ownership thereof, the court shall notify the county legislative authority of the location of the same, and they shall, as soon as possible thereafter, cause the same to be so fenced, or otherwise guarded, as to prevent accidents to persons or animals; and all expenses thus incurred shall be paid as other county expenses: PROVIDED, That nothing herein contained shall be so construed as to compel the county commissioners to fill up, fence or otherwise guard any shaft, excavation or hole, unless in their discretion, the same may be considered dangerous to persons or animals. [1987 c 202 § 234; 1987 c 3 § 20; 1890 p 122 § 6; RRS § 8862.]

Intent—1987 c 202: See note following RCW 2.04.190.

Additional notes found at www.leg.wa.gov

78.12.061 Safety cage in mining shaft—Regulations. (1) It shall be unlawful for any person or persons, company or companies, corporation or corporations, to sink or work through any vertical shaft at a greater depth than one hundred and fifty feet, unless the shaft shall be provided with an iron-bonneted safety cage, to be used in the lowering and hoisting of the employees of such person or persons, company or

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companies, corporation or corporations. The safety apparatus, whether consisting of eccentrics, springs or other device, shall be securely fastened to the cage, and shall be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk, provided the cable shall break. The iron bonnet shall be made of boiler sheet iron of a good quality, of at least three-sixteenths of an inch in thickness, and shall cover the top of the cage in such manner as to afford the greatest protection to life and limb from any matter falling down the shaft.

(2) Any person or persons, company or companies, or corporation or corporations, who shall neglect, fail, or refuse to comply with this section is guilty of a misdemeanor and shall be fined not less than five hundred dollars nor more than one thousand dollars. [2003 c 53 § 377; 1890 p 123 § 7; RRS § 8863. Formerly RCW 78.36.850, part.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

78.12.070 Damage actions preserved. Nothing contained in this chapter shall be so construed as to prevent recovery being had in a suit for damages for injuries sustained by the party so injured, or his or her heirs or administrator or administratrix, or anyone else now competent to sue in an action of such character. [2013 c 23 § 250; 1890 p 123 § 9; RRS § 8865.]

Chapter 78.16 RCW

MINERAL AND PETROLEUM LEASES ON COUNTY LANDS

Sections

78.16.010	Leases authorized.
78.16.020	Order for lease—Terms—Option to purchase.
78.16.030	Sale and conveyance.
78.16.040	Option to surrender lands.
78.16.050	Disposition of royalties and rentals.
78.16.060	Surface rights.
78.16.070	Damages to owner.

78.16.010 Leases authorized. Whenever it shall appear to the board of county commissioners of any county in this state that it is for the best interests of said county and the taxing districts and the people thereof, that any mining claims, reserved mineral rights, or any other county owned or tax acquired property owned by the county, either absolutely or as trustee, should be leased for the purpose of exploration, development, and removal of any minerals, oil, gas and other petroleum products therefrom, said board of county commissioners is hereby authorized to enter into written leases, under the terms of which any county owned lands or county owned mineral rights, or reserved mineral rights, are leased for the aforementioned purpose, with or without an option to purchase. Any such lease shall be upon terms and conditions as said county commissioners may deem for the best interests of said county and the taxing districts, and as in this chapter provided, and may be for such primary term as said board may determine and as long thereafter as minerals, including oil, and/or gas, may be produced therefrom. [1945 c 93 § 1; 1907 c 38 § 1; Rem. Supp. 1945 § 11312.]

Additional notes found at www.leg.wa.gov

78.16.020 Order for lease—Terms—Option to purchase. When said commissioners, in their discretion, decide to lease said claims or properties as provided in RCW 78.16.010, they shall enter an order to that effect upon their records and shall fix the duration and terms and conditions of said lease, and in case an option to purchase is given shall fix the purchase price, which shall not be less than the total amount of the taxes, interest and penalties due at the time the property was acquired by the county, and may provide that any royalties paid shall apply and be credited on the purchase price, and said lease or lease and option shall be signed and executed on behalf of said county by said commissioners, or a majority of them. [1907 c 38 § 2; RRS § 11313.]

78.16.030 Sale and conveyance. Upon payment of the full purchase price, in cases where an option to purchase is given, a conveyance shall be executed to the purchaser by the chair of the board of county commissioners. Such conveyance shall refer to the order of the board authorizing such leasing with the option to purchase, and shall be deemed to convey all the estate, right, title and interest of the county in and to the property sold; and such conveyance, when executed, shall be conclusive evidence of the regularity and validity of all proceedings hereunder. [2013 c 23 § 251; 1907 c 38 § 3; RRS § 11314.]

78.16.040 Option to surrender lands. The lessee under any such petroleum lease shall have the option of surrendering any of the lands included in said lease at any time, and shall thereby be relieved of all liability with respect to such lands except the payment of accrued royalties as provided in said lease. Upon such surrender, the lessee shall have the right for a period of one hundred twenty days following the date of such surrender, to remove all improvements placed by him or her on the lands which have been surrendered. [2013 c 23 § 252; 1945 c 93 § 2; Rem. Supp. 1945 § 11314-1.]

78.16.050 Disposition of royalties and rentals. Any royalties or rentals received by the said county under any lease entered into under the provisions of this chapter, shall be divided among the various taxing districts entitled thereto, in the same proportion and manner as the purchase money for said lands would have been divided in the event the said properties had been sold. [1945 c 93 § 3; Rem. Supp. 1945 § 11314-2.]

78.16.060 Surface rights. Nothing in this chapter contained shall be construed as giving the county commissioners the right to lease the surface rights of tax acquired property, except that the lease of any property as in this chapter provided shall give the lessee the right to use such portions of the surface on said land as may be necessary or desirable to it in its business. [1945 c 93 § 4; Rem. Supp. 1945 § 11314-3.]

78.16.070 Damages to owner. In the event said lease shall be for reserved mineral rights on lands previously sold by said county with mineral rights reserved, as provided in RCW 36.34.010, said lease shall contain a provision that no rights shall be exercised under said lease by the lessee, his or her heirs, executors, administrators, successors, or assigns,

until provision has been made by the lessee, his or her heirs, executors, administrators, successors, or assigns to pay to the owner of the land upon which the rights reserved to the county are sought to be exercised, full payment for all damages to said owner by reason of entering upon said land; said rights to be determined as provided for in RCW 36.34.010: PROVIDED, HOWEVER, That in the event of litigation to determine such damage, the primary term of such lease shall be extended for a period equal to the time required for such litigation, but not to exceed three years. [2000 c 11 § 20; 1945 c 93 § 5; Rem. Supp. 1945 § 11314-4.]

**Chapter 78.22 RCW
EXTINGUISHMENT OF UNUSED MINERAL
RIGHTS**

Sections

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78.22.010 Extinguishment of unused mineral rights authorized. Any mineral interest, if unused for a period of twenty years, may be extinguished by the surface owner as set forth in RCW 78.22.050 and 78.22.060. [1984 c 252 § 1.]

78.22.020 "Mineral interest" defined. A mineral interest means the interest which is created by an instrument transferring, either by grant, assignment, or reservation, or otherwise an interest, of any kind, in any subsurface mineral. [1984 c 252 § 2.]

78.22.030 Acts constituting use of mineral interest. A mineral interest is used if:

- (1) Any minerals produced have been in connection with the mineral interest;
- (2) Operations for injection, withdrawal, storage or disposal of water, gas, or other fluid substances have been conducted in connection with the mineral interest;
- (3) Rents or royalties have been paid for the purpose of delaying or enjoying the use or exercise of the mineral interest;
- (4) The use or the exercise of the mineral interest has been carried out on any tract with which the mineral interest may be unitized or pooled for production purposes;
- (5) In the case of coal or other solid minerals, minerals have been produced from a common vein or seam;
- (6) Taxes have been paid on such mineral interest;
- (7) Any use pursuant to or authorized by the instrument creating such mineral interest has been taken;
- (8) A sale, lease, mortgage, or other transfer of the mineral interest has been recorded in the county auditor's office in the county in which the land affected by the mineral interest is located prior to the end of the twenty-year period set forth in RCW 78.22.010 or within two years after June 7, 1984, whichever is later; or

(9) A statement of claim has been filed by the owner of the mineral interest in the manner set forth in RCW 78.22.040 or 78.22.060. [1984 c 252 § 3.]

78.22.040 Statement of claim—Contents—Fees—Filing. The statement of claim referred to in RCW 78.22.030(9) shall be filed by the current owner of the mineral interest prior to the end of the twenty-year period set forth in RCW 78.22.010 or within two years after June 7, 1984, whichever is later. The statement of claim shall contain the name and address of the current owner of such interest, and the name of the original holder of the mineral interest substantially as that name is shown on the instrument that originally created the mineral interest and shall be accompanied by payment of the fees provided in RCW 36.18.010.

The statement of claim shall be filed in the county auditor's office in the county in which such land affected by the mineral interest is located. [1984 c 252 § 4.]

78.22.050 Extinguishment of mineral interest—Procedure. (1) After the later of the expiration of the twenty-year period set forth in RCW 78.22.010 or two years after June 7, 1984, the surface owner may extinguish the mineral interest held by another person and acquire ownership of that interest by providing sixty days notice of intention to file a claim of abandonment and extinguishment of the mineral interest upon the current mineral interest owner. Notice shall be served by personal service or by mailing the notice by registered mail to the last known address of the current mineral interest owner. The county treasurer shall supply the name and address of the current mineral interest owner as they appear on the county property tax records to the surface owner without charge. If the current mineral interest owner is unknown to the county treasurer, and the current mineral interest owner cannot be determined after due diligence, the surface owner may serve the notice upon the current mineral interest owner by publishing the notice at least once each week for three consecutive weeks in a newspaper of general circulation published in the county in which the property interest is located, and if there is no newspaper of general circulation in the county, then in a newspaper of general circulation published in an adjoining county, and if there is no such newspaper in an adjoining county, then in a newspaper of general circulation published at the capital of the state.

(2) The notice of intention to file a claim of abandonment and extinguishment shall contain:

- (a) The name and address, if known, of the holder of the mineral interest, as shown of record;
- (b) A reference to the instrument originally creating the mineral interest, including where it is recorded;
- (c) A description of the lands affected by the mineral interest;
- (d) The name and address of the person giving notice;
- (e) The date of the first publication of the notice if notice is by publication; and
- (f) A statement that a claim of abandonment and extinguishment of the mineral interest will be filed upon the expiration of a period of sixty days after the date of the last publication or the date service was perfected by personal service or registered mail on the current mineral interest owner, unless

Chapter 78.44 RCW SURFACE MINING

the current mineral interest owner files a statement of claim of mineral interest in the form prescribed in RCW 78.22.040.

(3) A copy of the notice of intention to file a claim of abandonment and extinguishment and an affidavit of publication shall be submitted to the county auditor within fifteen days after the date of the last publication or the date service was perfected by personal service or registered mail on the current mineral interest owner.

(4) The affidavit of publication shall contain either:

(a) A statement that a copy of the notice has been personally served upon or mailed to the owner of the current mineral interest and the address to which it was mailed; or

(b) If a copy of the notice was not mailed, a detailed description, including dates, of the efforts made to determine with due diligence the address of the current owner of the mineral interest. [1984 c 252 § 5.]

78.22.060 Presumption of extinguishment—Conditions—Statement of claim—Filing, recording, indexing. Upon payment of fees provided in RCW 36.18.010, and if the surface owner files the claim of abandonment and extinguishment, together with a copy of the notice and the affidavit of publication, as required in RCW 78.22.050, in the county auditor's office for the county where such interest is located then the mineral interest shall be conclusively presumed to be extinguished.

If a statement of claim of mineral interest is filed by the current mineral interest owner within the sixty-day period provided in RCW 78.22.050, together with payment of fees provided in RCW 36.18.010, the county auditor shall record, index, and make special notation in the index of the filing. [1984 c 252 § 6.]

78.22.070 Statement of claim—Notice and affidavit of publication—Auditor's duties. Upon receipt, the county auditor shall record a statement of claim or a notice and affidavit of publication in the dormant mineral interest index. When possible, the auditor shall also indicate by marginal notation on the instrument originally creating the mineral interest the recording of the statement of claim or notice and affidavit of publication. The county auditor shall record a statement of claim by cross-referencing in the dormant mineral interest index the name of the current owner of the mineral interest and the name of the original holder of the mineral interest as set out in the statement of claim. [1984 c 252 § 7.]

78.22.080 Exemptions from claim of abandonment and extinguishment. Mineral interests retained or owned by any public entity or mineral interests resulting from land exchanges between public and private owners shall not be subject to a claim of abandonment and extinguishment. [1984 c 252 § 8.]

78.22.090 Waiver prohibited. The provisions of this chapter may not be waived at any time prior to the expiration of the twenty-year period under RCW 78.22.010. [1984 c 252 § 9.]

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78.44.010 Legislative finding. The legislature recognizes that the extraction of minerals by surface mining is an essential activity making an important contribution to the economic well-being of the state and nation. It is not possible to extract minerals without producing some environmental impacts. At the same time, comprehensive regulation of mining and thorough reclamation of mined lands is necessary to prevent or mitigate conditions that would be detrimental to the environment and to protect the general welfare, health, safety, and property rights of the citizens of the state. Surface mining takes place in diverse areas where the geologic, topographic, climatic, biologic, and social conditions are significantly different, and reclamation specifications must vary

accordingly. Therefore, the legislature finds that a balance between appropriate environmental regulation and the production and conservation of minerals is in the best interests of the citizens of the state. [1993 c 518 § 2; 1970 ex.s. c 64 § 2.]

Additional notes found at www.leg.wa.gov

78.44.011 Intent. The legislature recognizes that the extraction of minerals through surface mining has historically included regulatory involvement by both state and local governments.

It is the intent of the legislature to clarify that surface mining is an appropriate land use, subject to reclamation authority exercised by the department of natural resources and land use and operation regulatory authority by counties, cities, and towns. [1993 c 518 § 1.]

Additional notes found at www.leg.wa.gov

78.44.020 Purposes. The purposes of this chapter are to:

(1) Provide that the usefulness, productivity, and scenic values of all lands and waters involved in surface mining within the state will receive the greatest practical degree of protection and reclamation at the earliest opportunity following completion of surface mining;

(2) Provide for the greatest practical degree of statewide consistency in the regulation of surface mines;

(3) Apportion regulatory authority between state and local governments in order to minimize redundant regulation of mining; and

(4) Ensure that reclamation is consistent with local land use plans. [2000 c 11 § 21; 1993 c 518 § 3; 1970 ex.s. c 64 § 3.]

Additional notes found at www.leg.wa.gov

78.44.031 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Approved subsequent use" means the post surface-mining land use contained in an approved reclamation plan and approved by the local land use authority.

(2) "Completion of surface mining" means the cessation of mining and directly related activities in any segment of a surface mine that occurs when essentially all minerals that can be taken under the terms of the reclamation permit have been depleted except minerals required to accomplish reclamation according to the approved reclamation plan.

(3) "Department" means the department of natural resources.

(4) "Determination" means any action by the department including permit issuance, reporting, reclamation plan approval or modification, permit transfers, orders, fines, or refusal to issue permits.

(5) "Disturbed area" means any place where activities clearly in preparation for, or during, surface mining have physically disrupted, covered, compacted, moved, or otherwise altered the characteristics of soil, bedrock, vegetation, or topography that existed prior to such activity. Disturbed areas may include but are not limited to: Working faces, water bodies created by mine-related excavation, pit floors, the land beneath processing plant and stock pile sites, spoil pile sites, and equipment staging areas. Disturbed areas shall also

include aboveground waste rock sites and tailing facilities, and other surface manifestations of underground mines.

Disturbed areas do not include:

(a) Surface mine access roads unless these have characteristics of topography, drainage, slope stability, or ownership that, in the opinion of the department, make reclamation necessary;

(b) Lands that have been reclaimed to all standards outlined in this chapter, rules of the department, any applicable SEPA document, and the approved reclamation plan; and

(c) Subsurface aspects of underground mines, such as portals, tunnels, shafts, pillars, and stopes.

(6) "Miner" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, including every public or governmental agency engaged in surface mining.

(7) "Minerals" means clay, coal, gravel, industrial minerals, metallic substances, peat, sand, stone, topsoil, and any other similar solid material or substance to be excavated from natural deposits on or in the earth for commercial, industrial, or construction use.

(8) "Operations" means all mine-related activities, exclusive of reclamation, that include, but are not limited to activities that affect noise generation, air quality, surface and ground water quality, quantity, and flow, glare, pollution, traffic safety, ground vibrations, and/or significant or substantial impacts commonly regulated under provisions of land use or other permits of local government and local ordinances, or other state laws.

Operations specifically include:

(a) The mining or extraction of rock, stone, gravel, sand, earth, and other minerals;

(b) Blasting, equipment maintenance, sorting, crushing, and loading;

(c) On-site mineral processing including asphalt or concrete batching, concrete recycling, and other aggregate recycling;

(d) Transporting minerals to and from the mine, on site road maintenance, road maintenance for roads used extensively for surface mining activities, traffic safety, and traffic control.

(9) "Overburden" means the earth, rock, soil, and topsoil that lie above mineral deposits.

(10) "Permit holder" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including every public or governmental agency engaged in surface mining and/or the operation of surface mines, whether individually, jointly, or through subsidiaries, agents, employees, operators, or contractors who holds a state reclamation permit.

(11) "Reclamation" means rehabilitation for the appropriate future use of disturbed areas resulting from surface mining including areas under associated mineral processing equipment, areas under stockpiled materials, and aboveground waste rock and tailing facilities, and all other surface disturbances associated with underground mines. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific surface mine, the basic objective shall be to reestablish on a perpetual basis the vegetative cover, soil stability, and water conditions appropriate to the approved subsequent

use of the surface mine and to prevent or mitigate future environmental degradation.

(12) "Reclamation setbacks" include those lands along the margins of surface mines wherein minerals and overburden shall be preserved in sufficient volumes to accomplish reclamation according to the approved plan and the minimum reclamation standards. Maintenance of reclamation setbacks may not preclude other mine-related activities within the reclamation setback.

(13) "Recycling" means the reuse of minerals or rock products.

(14) "Screening" consists of vegetation, berms or other topography, fencing, and/or other screens that may be required to mitigate impacts of surface mining on adjacent properties and/or the environment.

(15) "Segment" means any portion of the surface mine that, in the opinion of the department:

(a) Has characteristics of topography, drainage, slope stability, ownership, mining development, or mineral distribution, that make reclamation necessary;

(b) Is not in use as part of surface mining and/or related activities; and

(c) Is larger than seven acres and has more than five hundred linear feet of working face except as provided in a segmental reclamation agreement approved by the department.

(16) "SEPA" means the state environmental policy act, chapter 43.21C RCW and rules adopted thereunder.

(17)(a) "Surface mine" means any area or areas in close proximity to each other, as determined by the department, where extraction of minerals results in:

(i) More than three acres of disturbed area;

(ii) Surface mined slopes greater than thirty feet high and steeper than 1.0 foot horizontal to 1.0 foot vertical; or

(iii) More than one acre of disturbed area within an eight acre area, when the disturbed area results from mineral prospecting or exploration activities.

(b) Surface mines include areas where mineral extraction from the surface or subsurface occurs by the auger method or by reworking mine refuse or tailings, when the disturbed area exceeds the size or height thresholds listed in (a) of this subsection.

(c) Surface mining occurs when operations have created or are intended to create a surface mine as defined by this subsection.

(d) Surface mining shall exclude excavations or grading used:

(i) Primarily for on-site construction, on-site road maintenance, or on-site landfill construction;

(ii) For the purpose of public safety or restoring the land following a natural disaster;

(iii) For the purpose of removing stockpiles;

(iv) For forest or farm road construction or maintenance on site or on contiguous lands;

(v) Primarily for public works projects if the mines are owned or primarily operated by counties with 1993 populations of less than twenty thousand persons, and if each mine has less than seven acres of disturbed area; and

(vi) For sand authorized by RCW 79A.05.630.

(18) "Topsoil" means the naturally occurring upper part of a soil profile, including the soil horizon that is rich in humus and capable of supporting vegetation together with

other sediments within four vertical feet of the ground surface. [2000 c 11 § 22; 1999 c 252 § 1; 1997 c 142 § 1; 1993 c 518 § 4.]

Additional notes found at www.leg.wa.gov

78.44.040 Administration of chapter—Rule-making authority. The department of natural resources is charged with the administration of reclamation under this chapter. In order to implement and enforce this chapter, the department, under the administrative procedure act (chapter 34.05 RCW), may from time to time adopt those rules necessary to carry out the purposes of this chapter. [1993 c 518 § 6; 1984 c 215 § 2; 1970 ex.s. c 64 § 5.]

Additional notes found at www.leg.wa.gov

78.44.045 Surface mining reclamation account. (1) The surface mining reclamation account is created in the state treasury. Annual mining fees, funds received by the department from state, local, or federal agencies for research purposes, as well as other mine-related funds and fines received by the department shall be deposited into this account. Except as otherwise provided in this section, the surface mine [mining] reclamation account may be used by the department only to:

(a) Administer its regulatory program pursuant to this chapter;

(b) Undertake research relating to surface mine regulation, reclamation of surface mine lands, and related issues; and

(c) Cover costs arising from appeals from determinations made under this chapter.

(2) At the end of each fiscal biennium, any money collected from fees charged under RCW 78.44.085 that was not used for the administration and enforcement of surface mining regulation under this chapter must be used by the department for surveying and mapping sand and gravel sites in the state.

(3) Fines, interest, and other penalties collected by the department under the provisions of this chapter shall be used to reclaim surface mines abandoned prior to 1971. [2006 c 341 § 2; 1993 c 518 § 10.]

Additional notes found at www.leg.wa.gov

78.44.050 Exclusive authority to regulate reclamation—Department may delegate enforcement authority to counties, cities, towns—Other laws not affected. The department shall have the exclusive authority to regulate surface mine reclamation. No county, city, or town may require for its review or approval a separate reclamation plan or application. The department may, however, delegate some or all of its enforcement authority by contractual agreement to a county, city, or town that employs personnel who are, in the opinion of the department, qualified to enforce plans approved by the department. All counties, cities, or towns shall have the authority to zone surface mines and adopt ordinances regulating operations as provided in this chapter, except that county, city, or town operations ordinances may be preempted by the department during the emergencies outlined in RCW 78.44.200 and related rules.

This chapter shall not alter or preempt any provisions of the state water allocation and use laws (chapters 90.03 and

90.44 RCW), the state water pollution control laws (chapter 90.48 RCW), the state fish and wildlife laws (Title 77 RCW), state noise laws or air quality laws (Title 70 RCW), shoreline management (chapter 90.58 RCW), the state environmental policy act (chapter 43.21C RCW), state growth management (chapter 36.70A RCW), state drinking water laws (chapters 43.20 and 70.119A RCW), or any other state statutes. [2003 c 39 § 39; 1997 c 185 § 1; 1993 c 518 § 7; 1970 ex.s. c 64 § 6.]

Additional notes found at www.leg.wa.gov

78.44.055 Surface mining of coal—Preemption of chapter by federal laws, programs. In the event state law is preempted under federal surface mining laws relating to surface mining of coal or the department of natural resources determines that a federal program and its rules and regulations relating to the surface mining of coal are as stringent and effective as the provisions of this chapter, the provisions of this chapter shall not apply to such surface mining for which federal permits are issued until such preemption ceases or the department determines such chapter should apply. [1984 c 215 § 8. Formerly RCW 78.44.175.]

78.44.060 Investigations, research, etc.—Dissemination of information. The department shall have the authority to conduct, authorize, and/or participate in investigations, research, experiments, and demonstrations, and to collect and disseminate information relating to surface mining and reclamation of surface mined lands. [1993 c 518 § 8; 1970 ex.s. c 64 § 7.]

Additional notes found at www.leg.wa.gov

78.44.070 Cooperation with other agencies—Receipt and expenditure of funds. The department may cooperate with other governmental and private agencies and agencies of the federal government, and may reasonably reimburse them for any services the department requests that they provide. The department may also receive any federal funds, state funds and any other funds and expend them for reclamation of land affected by surface mining and for purposes enumerated in RCW 78.44.060. [1993 c 518 § 9; 1970 ex.s. c 64 § 8.]

Additional notes found at www.leg.wa.gov

78.44.081 Reclamation permits required—Applications. After July 1, 1993, no miner or permit holder may engage in surface mining without having first obtained a reclamation permit from the department. Operating permits issued by the department between January 1, 1971, and June 30, 1993, shall be considered reclamation permits. A separate permit shall be required for each noncontiguous surface mine. The reclamation permit shall consist of the permit forms and any exhibits attached thereto. The permit holder shall comply with the provisions of the reclamation permit unless waived and explained in writing by the department.

Prior to receiving a reclamation permit, an applicant must submit an application on forms provided by the department that shall contain the following information and shall be considered part of the reclamation permit:

(1) Name and address of the legal landowner, or purchaser of the land under a real estate contract;

(2) The name of the applicant and, if the applicants are corporations or other business entities, the names and addresses of their principal officers and resident agent for service of process;

(3) A reasonably accurate description of the minerals to be surface mined;

(4) Type of surface mining to be performed;

(5) Estimated starting date, date of completion, and date of completed reclamation of surface mining;

(6) Size and legal description of the permit area and maximum lateral and vertical extent of the disturbed area;

(7) Expected area to be disturbed by surface mining during (a) the next twelve months, and (b) the following twenty-four months;

(8) Any applicable SEPA documents; and

(9) Other pertinent data as required by the department.

The reclamation permit shall be granted for the period required to deplete essentially all minerals identified in the reclamation permit on the land covered by the reclamation plan. The reclamation permit shall be valid until the reclamation is complete unless the permit is canceled by the department. [1997 c 192 § 1; 1993 c 518 § 11.]

Additional notes found at www.leg.wa.gov

78.44.083 Reclamation permit—Refusal to issue. The department shall refuse to issue a reclamation permit if it is determined during the SEPA process that the impacts of a proposed surface mine cannot be adequately mitigated.

The department or county, city, or town may refuse to issue any other permit at any other location to any miner or permit holder who fails to rectify deficiencies set forth in an order of the department within the requisite time schedule. However, the department or county, city, or town shall issue all appropriate permits when all deficiencies are corrected at each surface mining site. [1993 c 518 § 33.]

Additional notes found at www.leg.wa.gov

78.44.085 Application fee—Annual permit fee—Confidential records—Appeals—Collection of fees. (1) An applicant for an expansion of a permitted surface mine, a new reclamation permit under RCW 78.44.081, or for combining existing public or private reclamation permits, shall pay a nonrefundable application fee to the department before being granted the requested permit or permit expansion. The amount of the application fee shall be two thousand five hundred dollars.

(2) Permit holders submitting a revision to an application for an existing reclamation plan that is not an expansion shall pay a nonrefundable reclamation plan revision fee of one thousand dollars.

(3) After June 30, 2006, each public or private permit holder shall pay an annual permit fee in an amount pursuant to this section. The annual permit fee shall be payable to the department prior to the reclamation permit being issued and on the anniversary of the permit date each year thereafter.

(4)(a) Except as otherwise provided in this subsection, each public or private permit holder must pay an annual fee under this section based on the categories of aggregate or mineral mined or extracted during the previous twelve months, as follows:

(i) Zero to fifty thousand tons: A fee of one thousand two hundred fifty dollars;

(ii) More than fifty thousand tons to three hundred fifty thousand tons: A fee of two thousand five hundred dollars;

(iii) More than three hundred fifty thousand tons: A fee of three thousand five hundred dollars.

(b) Annual fees paid by a county for mines used exclusively for public works projects and having less than seven acres of disturbed area per mine shall not exceed one thousand dollars.

(c) Annual fees are waived for all mines used primarily for public works projects if the mines are owned and primarily operated by counties with 1993 populations of less than twenty thousand persons, and if each mine has less than seven acres of disturbed area.

(5) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department are to be held as confidential and not released as part of a public records request under chapter 42.56 RCW.

(6) Appeals from any determination of the department shall not stay the requirement to pay any annual permit fee. Failure to pay the annual fees may constitute grounds for an order to suspend surface mining, pay fines, or cancel the reclamation permit as provided in this chapter.

(7) All fees collected by the department shall be deposited into the surface mining reclamation account created in RCW 78.44.045.

(8) If the department delegates enforcement responsibilities to a county, city, or town, the department may allocate funds collected under this section to the county, city, or town.

(9) Within sixty days after receipt of an application for a new or expanded permit, the department shall advise applicants of any information necessary to successfully complete the application.

(10) In addition to other enforcement authority, the department may refer matters to a collection agency licensed under chapter 19.16 RCW when permit fees or fines are past due. The collection agency may impose its own fees for collecting delinquent permit fees or fines. [2006 c 341 § 1; 2001 1st sp.s. c 5 § 1; 1997 c 413 § 1; 1996 c 70 § 1; 1993 c 518 § 14.]

Additional notes found at www.leg.wa.gov

78.44.087 Performance security required—Department authority. (1) The department should ensure that a sufficient performance security is available to reclaim each surface mine permitted under this chapter. To ensure sufficient funds are available:

(a) The department shall not issue a reclamation permit, except to public or governmental agencies, until the applicant has either deposited with the department an acceptable performance security on forms prescribed by the department that is deemed adequate by the department to cover reclamation costs or has complied with the blanket performance security option in RCW 78.44.350. A public or governmental agency shall not be required to post performance security.

(b) No person may create a disturbed area that meets or exceeds the minimum threshold for a reclamation permit without first submitting an adequate and acceptable perfor-

mance security to the department and complying with all requirements of this chapter.

(2) The department may refuse to accept any performance security that the department, for any reason, deems to be inadequate to cover reclamation costs or is not in a form that is acceptable to the department.

(3) Acceptable forms of performance security are:

(a) Bank letters of credit acceptable to the department or irrevocable bank letters of credit from a bank or financial institution or organization authorized to transact business in the United States;

(b) A cash deposit;

(c) Other forms of performance securities acceptable to the department as determined by rule;

(d) An assignment of a savings account;

(e) A savings certificate in a Washington bank on an assignment form prescribed by the department;

(f) Approved participants in a state security pool if one is established; or

(g) 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 and authorized by the department.

(4) The performance security shall be conditioned upon the faithful performance of the requirements set forth in this chapter, the rules adopted under it, and the reclamation permit.

(5)(a) The department must determine the amount of the performance security as prescribed by this subsection.

(b) The department may determine the amount of the performance security based on the estimated cost of: (i) Completing reclamation according to the requirements of this chapter; or (ii) the reclamation permit for the area to be surface mined during the upcoming thirty-six months and any previously disturbed areas that have not been reclaimed.

(c) The department may determine the amount of the performance security based on an engineering cost estimate for reclamation that is provided by the permit holder. The engineering cost estimate must be prepared using engineering principles and methods that are acceptable to the department. If the department does not approve the engineering cost estimate, the department shall determine the amount of the performance security using a standardized performance security formula developed by the department by rule.

(6) The department may recalculate a surface mine's performance security based on subsection (5) of this section. When the department recalculates a performance security, the new calculation will not be prejudiced by the existence of any previous calculation. A new performance security must be submitted to the department within thirty days of the department's written request.

(7) Liability under the performance security and the permit holder's obligation to maintain the calculated performance security amount shall be maintained until the surface mine is reclaimed, unless released as hereinafter provided. Partial drawings will proportionately reduce the value of a performance security but will not extinguish the remaining value. Liability under the performance security may be released only when the surface mine is reclaimed as evidenced by the department in writing or after the department receives and approves a substitute performance security. The

department will notify the permit holder, and surety if applicable, when reclamation is accepted by the department as complete or upon the department's acceptance of an alternate security. The liability of the surety shall not exceed the amount of security required by this section and the department's reasonable legal fees to recover the security.

(8) Any interest or appreciation on the performance security shall be held by the department until the surface mine is reclaimed. The department may collect and use appreciation or interest accrued on a performance security to the same extent as for the underlying performance security. If the permit holder meets its obligations under this chapter, rules adopted under this chapter, and its approved reclamation permit and plan by completing reclamation, the department will return any unused performance security and accrued interest or appreciation.

(9) No other state agency or local government other than the department shall require performance security for the purposes of surface mine reclamation. However, nothing in this section prohibits a state agency or local government from requiring a performance security when the state agency or local government is acting in its capacity as a landowner and contracting for extraction-related activities on state or local government property.

(10) The department may enter into written agreements with federal agencies in order to avoid redundant bonding of any surface mine that is located on both federal and nonfederal lands in Washington state. [2006 c 341 § 3; 1997 c 186 § 1; 1995 c 223 § 3; 1994 c 232 § 23; 1993 c 518 § 15.]

Additional notes found at www.leg.wa.gov

78.44.091 Reclamation plans—Approval process.

An applicant shall provide a reclamation plan and copies acceptable to the department prior to obtaining a reclamation permit. The department shall have the sole authority to approve reclamation plans. Reclamation plans or modified reclamation plans submitted to the department after June 30, 1993, shall meet or exceed the minimum reclamation standards set forth in this chapter and by the department in rule. Each applicant shall also supply copies of the proposed plans and final reclamation plan approved by the department to the county, city, or town in which the mine will be located. The department shall solicit comment from local government prior to approving a reclamation plan. The reclamation plan shall include:

(1) A written narrative describing the proposed mining and reclamation scheme with:

(a) A statement of a proposed subsequent use of the land after reclamation that is consistent with the local land use designation. Approval of the reclamation plan shall not vest the proposed subsequent use of the land;

(b) If the permit holder is not the sole landowner, a copy of the conveyance or a written statement that expressly grants or reserves the right to extract minerals by surface mining methods;

(c) A simple and accurate legal description of the permit area and disturbed areas;

(d) The maximum depth of mining;

(e) A reasonably accurate description of the minerals to be mined;

(f) A description of the method of mining;

(g) A description of the sequence of mining that will provide, within limits of normal procedures of the industry, for completion of surface mining and associated disturbance on each portion of the permit area so that reclamation can be initiated at the earliest possible time on each segment of the mine;

(h) A schedule for progressive reclamation of each segment of the mine;

(i) Where mining on floodplains or in river or stream channels is contemplated, a thoroughly documented hydrogeologic evaluation that will outline measures that would protect against or would mitigate avulsion and erosion as determined by the department;

(j) Where mining is contemplated within critical aquifer recharge areas, special protection areas as defined by chapter 90.48 RCW and implementing rules, public water supply watersheds, sole source aquifers, wellhead protection areas, and designated aquifer protection areas as set forth in chapter 36.36 RCW, a thoroughly documented hydrogeologic analysis of the reclamation plan may be required; and

(k) Additional information as required by the department including but not limited to: The positions of reclamation setbacks and screening, conservation of topsoil, interim reclamation, revegetation, postmining erosion control, drainage control, slope stability, disposal of mine wastes, control of fill material, development of wetlands, ponds, lakes, and impoundments, and rehabilitation of topography.

(2) Maps of the surface mine showing:

(a) All applicable data required in the narrative portion of the reclamation plan;

(b) Existing topographic contours;

(c) Contours depicting specifications for surface gradient restoration appropriate to the proposed subsequent use of the land and meeting the minimum reclamation standards;

(d) Locations and names of all roads, railroads, and utility lines on or adjacent to the area;

(e) Locations and types of proposed access roads to be built in conjunction with the surface mining;

(f) Detailed and accurate boundaries of the permit area, screening, reclamation setbacks, and maximum extent of the disturbed area; and

(g) Estimated depth to groundwater and the locations of surface water bodies and wetlands both prior to and after mining.

(3) At least two cross sections of the mine including all applicable data required in the narrative and map portions of the reclamation plan.

(4) Evidence that the proposed surface mine has been approved under local zoning and land use regulations.

(5) Written approval of the reclamation plan by the landowner for mines permitted after June 30, 1993.

(6) Other supporting data and documents regarding the surface mine as reasonably required by the department.

If the department refuses to approve a reclamation plan in the form submitted by an applicant or permit holder, it shall notify the applicant or permit holder stating the reasons for its determination and describe such additional requirements to the applicant or permit holder's reclamation plan as are necessary for the approval of the plan by the department. If the department refuses to approve a complete reclamation plan within one hundred twenty days, the miner or permit

holder may appeal this determination under the provisions of this chapter.

Only insignificant deviations may occur from the approved reclamation plan without prior written approval by the department for the proposed change. [1997 c 192 § 2; 1993 c 518 § 12.]

Additional notes found at www.leg.wa.gov

78.44.101 Joint reclamation plans may be required.

Where two or more surface mines join along a common boundary, the department may require submission of a joint reclamation plan in order to provide for optimum reclamation or to avoid waste of mineral resources. Such joint reclamation plans may be in the form of a single collaborative plan submitted by all affected permit holders or as individual reclamation plans in which the schedule of reclamation, finished contours, and revegetation match reclamation plans of adjacent permit holders. [1993 c 518 § 13.]

Additional notes found at www.leg.wa.gov

78.44.111 Segmental reclamation—Primary objective. The permit holder shall reclaim each segment of the mine within two years of completion of surface mining on that segment except as provided in a segmental reclamation agreement approved in writing by the department. The primary objective of a segmental reclamation agreement should be to enhance final reclamation. [1993 c 518 § 5.]

Additional notes found at www.leg.wa.gov

78.44.121 Reclamation setbacks—Exemption. Reclamation setbacks shall be as follows unless waived by the department:

(1) The reclamation setback for unconsolidated deposits within mines permitted after June 30, 1993, shall be equal to the maximum anticipated height of the adjacent working face or as determined by the department. Setbacks and buffers may be destroyed as part of final reclamation of each segment if approved by the department.

(2) The minimum reclamation setback for consolidated materials within mines permitted after June 30, 1993, shall be thirty feet or as determined by the department.

(3) An exemption from this section may be granted by the department following a written request. The department may consider submission of a plan for backfilling acceptable to the department, a geotechnical slope-stability study, proof of a dedicated source of fill materials, written approval of contiguous landowners, and other information before granting an exemption. [1993 c 518 § 18.]

Additional notes found at www.leg.wa.gov

78.44.131 Reclamation specifics—Basic objective—Modifications for metals mining and milling operations—Timeline. The need for, and the practicability of, reclamation shall control the type and degree of reclamation in any specific instance. However, the basic objective of reclamation is to reestablish on a continuing basis the vegetative cover, slope stability, water conditions, and safety conditions suitable to the proposed subsequent use consistent with local land use plans for the surface mine site.

Each permit holder shall comply with the minimum reclamation standards in effect on the date the permit was issued

and any additional reclamation standards set forth in the approved reclamation plan. The department may modify, on a site specific basis, the minimum reclamation standards for metals mining and milling operations regulated under chapter 232, Laws of 1994 in order to achieve the reclamation and closure objectives of that chapter. The basic objective of reclamation for these operations is the reestablishment on a continuing basis of vegetative cover, slope stability, water conditions, and safety conditions.

Reclamation activities, particularly those relating to control of erosion and mitigation of impacts of mining to adjacent areas, shall, to the extent feasible, be conducted simultaneously with surface mining, and in any case shall be initiated at the earliest possible time after completion of surface mining on any segment of the permit area.

All reclamation activities shall be completed not more than two years after completion or abandonment of surface mining on each segment of the area for which a reclamation permit is in force.

The department may by contract delegate enforcement of provisions of reclamation plans to counties, cities, and towns. A county, city, or town performing enforcement functions may not impose any additional fees on permit holders. [1994 c 232 § 24; 1993 c 518 § 20.]

Additional notes found at www.leg.wa.gov

78.44.141 Reclamation—Minimum standards—Waiver. Reclamation of surface mines permitted after June 30, 1993, and reclamation of surface mine segments addressed by reclamation plans modified after June 30, 1994, shall meet the following minimum standards except as waived in writing by the department.

(1) Prior to surface mining, permit holders shall carefully stockpile all topsoil on the site for use in reclamation, or immediately move topsoil to reclaim adjacent segments, except when the approved subsequent use does not require replacing the topsoil. Topsoil needed for reclamation shall not be sold as a mineral nor mixed with sterile soils. Stockpiled materials used as screening shall not be used for reclamation until such time as the appropriate county or municipal government has given its approval.

(2) The department may require that clearly visible, permanent monuments delineating the permit boundaries and maximum extent of the disturbed area be set at appropriate places around the mine site. The permit holder shall maintain the monuments until termination of the reclamation permit.

(3) All minimum reclamation standards may be waived in writing by the department in order to accommodate unique and beneficial reclamation schemes such as parks, swimming facilities, buildings, and wildlife reserves. Such waivers shall be granted only after written approval by the department of a reclamation plan describing the variances to the minimum reclamation standards, receipt of documentation of SEPA compliance, and written approvals from the landowner and by the local land use authority.

(4) All surface-mined slopes shall be reclaimed to the following minimum standards:

(a) In surface mines in soil, sand, gravel, and other unconsolidated materials, all reclaimed slopes shall:

(i) Have varied steepness;

(ii) Have a sinuous appearance in both profile and plan view;

(iii) Have no large rectilinear topographic elements;

(iv) Generally have slopes of between 2.0 and 3.0 feet horizontal to 1.0 foot vertical or flatter except in limited areas where steeper slopes are necessary in order to create sinuous topography and to control drainage;

(v) Not exceed 1.5 feet horizontal to 1.0 foot vertical except as necessary to blend with adjacent natural slopes;

(vi) Be compacted if significant backfilling is required to produce the final reclaimed slopes and if the department determines that compaction is necessary.

(b) Slopes in consolidated materials shall have no prescribed slope angle or height, but where a severely hazardous condition is created by mining and that is not indigenous to the immediate area, the slopes shall not exceed 2.0 feet horizontal to 1.0 foot vertical. Steeper slopes shall be acceptable in areas where evidence is submitted that demonstrates that the geologic or topographic characteristics of the site preclude reclamation of slopes to such angle or height or that such slopes constitute an acceptable subsequent use under local land use regulations.

(c) Surface mines in which the seasonal or permanent water tables have been penetrated, thereby creating swamps, ponds, or lakes useful for recreational, wildlife habitat, water quality control, or other beneficial wetland purposes shall be reclaimed in the following manner:

(i) For slopes that are below the permanent water table in soil, sand, gravel, and other unconsolidated materials, the slope angle shall be no steeper than 1.5 feet horizontal to 1.0 foot vertical;

(ii) Generally, solid rock banks shall be shaped so that a person can escape from the water, however steeper slopes and lack of water egress shall be acceptable in rural, forest, or mountainous areas or where evidence is provided that such slopes would constitute an acceptable subsequent use under local land use regulations;

(iii) Both standpipes and armored spillways or other measures to prevent undesirable overflow or seepage shall be provided to stabilize all such water bodies within the disturbed area; and

(iv) Where lakes, ponds, or swamps are created, the permit holder shall provide measures to establish a beneficial wetland by developing natural wildlife habitat and incorporating such measures as irregular shoreline configurations, sinuous bathymetry and shorelines, varied water depths, peninsulas, islands, and subaqueous areas less than 1.5 foot deep during summer low-water levels. Clay-bearing material placed below water level may be required to avoid creating sterile wetlands.

(d) Final topography shall generally comprise sinuous contours, chutes and buttresses, spurs, and rolling mounds and hills, all of which shall blend with adjacent topography to a reasonable extent. Straight planar slopes and right angles should be avoided.

(e) The floors of mines shall generally grade gently into postmining drainages to preclude sheet-wash erosion during intense precipitation, except where backgrading is appropriate for drainage control, to establish wetlands, or to trap sediment.

(f) Topsoil shall be restored as necessary to promote effective revegetation and to stabilize slopes and mine floors. Where limited topsoil is available, topsoil shall be placed and revegetated in such a way as to ensure that little topsoil is lost to erosion.

(g) Where surface mining has exposed natural materials that may create polluting conditions, including but not limited to acid-forming coals and metalliferous rock or soil, such conditions shall be addressed according to a method approved by the department. The final ground surface shall be graded so that surface water drains away from these materials.

(h) All grading and backfilling shall be made with non-toxic, noncombustible, and relatively incompactible solids unless the permit holder provides:

(i) Written approval from all appropriate solid waste regulatory agencies; and

(ii) Any and all revisions to such written approval during the entire time the reclamation permit is in force.

(i) Final reclaimed slopes should be left roughly graded, preserving equipment tracks, depressions, and small mounds to trap clay-bearing soil and promote natural revegetation. Where reasonable, final equipment tracks should be oriented in order to trap soil and seeds and to inhibit erosion.

(j) Pit floors should be bulldozed or ripped to foster revegetation.

(5) Drainages shall be graded and contain adequate energy dissipation devices so that essentially natural conditions of water velocity, volume, and turbidity are reestablished within six months of reclamation of each segment of the mine. Ditches and other artificial drainages shall be constructed on each reclaimed segment to control surface water, erosion, and siltation and to direct runoff to a safe outlet. Diversion ditches including but not limited to channels, flumes, tightlines and retention ponds shall be capable of carrying the peak flow at the mine site that has the probable recurrence frequency of once in twenty-five years as determined from data for the twenty-five year, twenty-four hour precipitation event published by the national oceanic and atmospheric administration. The grade of such ditches and channels shall be constructed to limit erosion and siltation. Natural and other drainage channels shall be kept free of equipment, wastes, stockpiles, and overburden.

(6) Impoundment of water shall be an acceptable reclamation technique provided that approvals of other agencies with jurisdiction are obtained and:

(a) Proper measures are taken to prevent undesirable seepage that could cause flooding outside the permitted area or adversely affect the stability of impoundment dikes or adjacent slopes;

(b) Both standpipes and armored spillways or other measures necessary to control overflow are provided.

(7) Revegetation shall be required as appropriate to stabilize slopes, generate new topsoil, reduce erosion and turbidity, mask rectilinear contours, and restore the scenic value of the land to the extent feasible as appropriate to the approved subsequent use. Although the scope of and necessity for revegetation will vary according to the geography, precipitation, and approved subsequent use of the site, the objective of segmental revegetation is to reestablish self-sustaining vegetation and conditions of slope stability, surface

water quality, and appearance before release of the reclamation permit. Revegetation shall normally meet the following standards:

(a) Revegetation shall commence during the first proper growing season following restoration of slopes on each segment unless the department has granted the permit holder a written time extension.

(b) In eastern Washington, the permit holder may not be able to achieve continuous ground cover owing to arid conditions or sparse topsoil. However, revegetation shall be as continuous as reasonably possible as determined by the department.

(c) Revegetation generally shall include but not be limited to diverse evergreen and deciduous trees, shrubs, grasses, and deep-rooted ground cover.

(i) For western Washington, nitrogen-fixing species including but not limited to alder, white clover, and lupine should be included in dry areas. In wet areas, tubers, sedges, wetland grasses, willow, cottonwood, cedar, and alder are appropriate.

(ii) In eastern Washington, lupine, white clover, Russian olive, black locust, junipers, and pines are among appropriate plants. In wet areas, cottonwood, tubers, and sedges are appropriate.

(d) The requirements for revegetation may be reduced or waived by the department where erosion will not be a problem in rural areas where precipitation exceeds thirty inches per annum, or where revegetation is inappropriate for the approved subsequent use of the surface mine.

(e) In areas where revegetation is critical and conditions are harsh, the department may require irrigation, fertilization, and importation of clay or humus-bearing soils to establish effective vegetation.

(f) The department may refuse to release a reclamation permit or performance security until it deems that effective revegetation has commenced. [1993 c 518 § 21.]

Additional notes found at www.leg.wa.gov

78.44.151 Reclamation plans—Modification, when required—SEPA. (1) The permit holder may modify the reclamation plan at any time during the term of the permit provided that the modified reclamation plan meets the protections, mitigations, and reclamation goals of RCW 78.44.091, 78.44.131, and 78.44.141.

(2) The department may require a permit holder to modify the reclamation plan if the department determines:

(a) That the previously approved reclamation plan has not been modified during the past ten years; or

(b) That the permit holder has violated or is not substantially following the previously approved reclamation plan.

(3) Modified reclamation plans shall be reviewed by the department as lead agency under SEPA. Such SEPA analyses shall consider only those impacts relating directly to the proposed modifications. Copies of proposed and approved modifications shall be sent to the appropriate county, city, or town. [1997 c 192 § 3; 1993 c 518 § 23.]

Additional notes found at www.leg.wa.gov

78.44.161 Reclamation compliance—Inspection of disturbed area—Special inspection requirements for metals mining and milling operations. The department may

order at any time an inspection of the disturbed area to determine if the miner or permit holder has complied with the reclamation permit, rules, and this chapter.

The department shall have special inspection requirements for metals mining and milling operations regulated under chapter 232, Laws of 1994. The department shall inspect these mining operations at least quarterly, unless prevented by inclement weather conditions, in order to ensure that the permit holder is in compliance with the reclamation permit, rules, and this chapter. The department shall conduct additional inspections as needed during the construction phase of these mining operations in order to ensure compliance with the reclamation permit, rules, and this chapter. [1994 c 232 § 22; 1993 c 518 § 25.]

Additional notes found at www.leg.wa.gov

78.44.171 Reclamation—Transfer of permits. Reclamation permits shall be transferred to a subsequent permit holder and the department shall release the former permit holder from the duties imposed by this chapter if:

(1) Both permit holders comply with all rules of the department addressing requirements for transferring a permit; and

(2) Unless waived by the department, the mine and all others operated by both the former and subsequent permit holders and their principal officers or owners are in compliance with this chapter and rules. [1993 c 518 § 22.]

Additional notes found at www.leg.wa.gov

78.44.181 Reclamation—Report by permit holder on anniversary date. On the anniversary date of the reclamation permit and each year thereafter until reclamation is completed and approved, the permit holder shall file a report of activities completed during the preceding year. The report shall be on a form prescribed by the department. [1993 c 518 § 24.]

Additional notes found at www.leg.wa.gov

78.44.190 Deficiencies—Order to rectify—Time extension. (1) The department may issue an order to rectify deficiencies to the following: (a) Any permit holder, miner, or other person who authorizes, directs, violates, or who directly benefits by contracting with or employing another to violate this chapter, the rules adopted by the department, a reclamation permit, or a reclamation plan; or (b) a permit holder whose surface mine is out of compliance with the provisions of this chapter, the rules adopted by the department, or the permit holder's current and valid reclamation permit or reclamation plan.

(2) The order shall describe the deficiencies and shall initially require the order recipient to correct all deficiencies by a date that is no later than sixty days after the department's issuance of the order. The department may extend the period to correct deficiencies for delays clearly beyond the order recipient's control, but only when the person is, in the opinion of the department, making every reasonable effort to comply. This order becomes final and effective after being upheld upon completion of all administrative and judicial review proceedings or following notice and a failure to timely request a hearing. [2007 c 192 § 2; 1993 c 518 § 26.]

Additional notes found at www.leg.wa.gov

78.44.200 Immediate danger—Emergency notice and order to rectify deficiencies—Emergency order to suspend surface mining. When the department finds that a permit holder is conducting surface mining in any manner not authorized by:

- (1) This chapter;
- (2) The rules adopted by the department;
- (3) The approved reclamation plan; or
- (4) The reclamation permit;

and that activity has created a situation involving an immediate danger to the public health, safety, welfare, or environment requiring immediate action, the department may issue an emergency notice and order to rectify deficiencies, and/or an emergency order to suspend surface mining. These orders shall be effective when entered. The department may take such action as is necessary to prevent or avoid the danger to the public health, safety, welfare, or environment that justifies use of emergency adjudication. The department shall give such notice as is practicable to the permit holder or miner who is required to comply with the order. The order shall comply with the requirements of the administrative procedure act.

Regulations of surface mining operations administered by other state and local agencies shall be preempted by this section to the extent that the time schedule and procedures necessary to rectify the emergency situation, as determined by the department, conflict with such local regulation. [1993 c 518 § 27.]

Additional notes found at www.leg.wa.gov

78.44.210 Suspension of a reclamation permit. The department, through the state geologist or assistant state geologist, may suspend a reclamation permit whenever a permit holder or surface mine is out of compliance with a final department order. The suspension order must be served on the permit holder by certified mail with return receipt requested or by personal service. The order must specify the final order alleged to be violated, the facts upon which the conclusion of violation is based, and the conclusions of law. This order becomes final and effective after being upheld upon completion of all administrative review proceedings or following notice and a failure to timely request a hearing. No surface mining or reclamation may occur while a permit is suspended unless under the express written authority of the department. [2007 c 192 § 5; 1993 c 518 § 28.]

Additional notes found at www.leg.wa.gov

78.44.220 Declaration of abandonment—Reclamation—Subsequent miner. The department may issue a declaration of abandonment when it determines that all surface mining has ceased for a period of one hundred eighty consecutive days not set forth in the permit holder's reclamation plan or when, by reason of inspection of the permit area, or by any other means, the department determines that the mine has in fact been abandoned by the permit holder except that abandonment shall not include normal interruptions of surface mining resulting from labor disputes, economic conditions associated with lack of smelting capacity or availability of appropriate transportation, war, social unrest, demand for minerals, maintenance and repairs, and acts of God.

(2016 Ed.)

Following a declaration of abandonment, the department shall require the permit holder to complete reclamation in accordance with this chapter. If the permit holder fails to do so, the department shall proceed to do the necessary reclamation work pursuant to RCW 78.44.240.

If another miner applies for a permit on a site that has been declared abandoned, the department may, in its discretion, cancel the reclamation permit of the permit holder and issue a new reclamation permit to the applicant. The department shall not issue a new permit unless it determines that such issuance will be an effective means of assuring that the site will ultimately be reclaimed. The applicant must agree to assume the reclamation responsibilities left unfinished by the first miner, in addition to meeting all requirements for issuance of a new permit. [1993 c 518 § 29.]

Additional notes found at www.leg.wa.gov

78.44.230 Abandonment—Cancellation of the reclamation permit. When the department determines that a surface mine has been abandoned, it may cancel the reclamation permit. The permit holder shall be informed of such actions by a department notification of illegal abandonment and cancellation of the reclamation permit. [1993 c 518 § 30.]

Additional notes found at www.leg.wa.gov

78.44.240 Reclamation by the department—Order to submit performance security—Cost recovery. The department may, with the staff, equipment, and material under its control, or by contract with others, reclaim the disturbed areas when it finds that reclamation has not occurred in any segment of a surface mine within two years of completion of mining or of declaration of abandonment and the permit holder is not actively pursuing reclamation.

If the department intends to undertake the reclamation, the department shall issue an order to submit performance security requiring the permit holder or surety to submit to the department the amount of moneys posted pursuant to RCW 78.44.087. If the amount specified in the order to submit performance security is not paid within twenty days after issuance of the notice, the attorney general upon request of the department shall bring an action on behalf of the state in a superior court to recover the amount specified and associated legal fees.

The department may proceed at any time after issuing the order to submit performance security with reclamation of the site according to the approved reclamation plan or according to a plan developed by the department that meets the minimum reclamation standards.

The department shall keep a record of all expenses incurred in carrying out any reclamation project or activity authorized under this section, including:

- (1) Reclamation;
- (2) A reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized; and
- (3) Administrative and legal expenses related to reclamation of the surface mine.

The department shall refund to the surety or permit holder all amounts received in excess of the amount of expenses incurred. If the amount received is less than the expenses incurred, the attorney general, upon request of the

department, may bring an action against the permit holder on behalf of the state in the superior court to recover the remaining costs listed in this section. [1993 c 518 § 31.]

Additional notes found at www.leg.wa.gov

78.44.250 Fines—Civil penalties—Damage recovery.

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

All fines, interest, penalties, and other damage recovery costs from mines regulated by the department shall be credited to the surface mining reclamation account. [1993 c 518 § 32.]

Additional notes found at www.leg.wa.gov

78.44.260 Operating without permit—Penalty. Any miner or permit holder conducting surface mining within the state of Washington without a valid reclamation permit shall be guilty of a gross misdemeanor. Surface mining outside of the permitted area shall constitute illegal mining without a valid reclamation permit. Each day of mining without a valid reclamation permit shall constitute a separate offense. [1993 c 518 § 34; 1970 ex.s. c 64 § 16. Formerly RCW 78.44.150.]

Additional notes found at www.leg.wa.gov

78.44.270 Appeals—Standing. Department determinations under this chapter may be appealed to the pollution control hearings board as provided in RCW 43.21B.230. Only a person aggrieved within the meaning of RCW 34.05.530 has standing and can file an appeal. [2010 c 210 § 32; 1993 c 518 § 35; 1989 c 175 § 166; 1970 ex.s. c 64 § 18. Formerly RCW 78.44.170.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Additional notes found at www.leg.wa.gov

78.44.280 Underground operation—Surface disturbances subject to chapter. Surface disturbances caused by an underground metals mining and milling operation are subject to the requirements of this chapter if the operation is proposed after June 30, 1999. An operation is proposed when an agency is presented with an application for an operation or expansion of an existing operation having a probable significant adverse environmental impact under chapter 43.21C RCW. The department of ecology shall retain authority for reclamation of surface disturbances caused by an under-

ground operation operating at any time prior to June 30, 1999, unless the operator requests that authority for reclamation of surface disturbances caused by such operation be transferred to the department under the requirements of this chapter. [1999 c 252 § 2.]

Additional notes found at www.leg.wa.gov

78.44.300 Reclamation awards—Recognition of excellence. The department shall create reclamation awards in recognition of excellence in reclamation or reclamation research. Such awards shall be presented to individuals, miners, operators, companies, or government agencies performing exemplary surface mining reclamation in the state of Washington. The department shall designate a percent of the state annual fees as funding of the awards. [1993 c 518 § 37.]

Additional notes found at www.leg.wa.gov

78.44.310 Reclamation consulting—No cost service.

The department shall establish a no-cost consulting service within the department to assist miners, permit holders, local government, and the public in technical matters related to mine regulation, mine operations, and reclamation. The department shall prepare concise, printed information for the public explaining surface mining activities, timelines for permits and reviews, laws, and the role of governmental agencies involved in surface mining, including how to contact all regulators. The department shall not be held liable for any negligent advice. [1997 c 184 § 1; 1993 c 518 § 38.]

Additional notes found at www.leg.wa.gov

78.44.320 Definitions applicable to RCW 78.44.330. The definitions in this section apply throughout RCW 78.44.330 unless the context clearly requires otherwise.

(1) "Bedrock sluice" means a wood or metal flume or trough that is permanently attached to the bedrock of the creek and is equipped with transverse riffles across the bottom of the unit and used to recover heavy mineral sands.

(2) "Dredge" means a subsurface hose from one and one-half to ten inches in diameter that is powered by an engine and is used to draw up auriferous material that is then separated in the sluice portion of the unit.

(3) "Flume" means a trough used to convey water.

(4) "Mining claim" means a portion of the public lands claimed for the valuable minerals occurring in those lands and for which the mineral rights are obtained under federal law or a right that is recognized by the United States bureau of land management and given an identification number.

(5) "Quartz mill" means a facility for processing ores or gravel.

(6) "Rocker box" means a unit constructed of a short trough attached to curved supports that allow the unit to be rocked from side to side.

(7) "Sluice box" means a portable unit constructed of a wood or metal flume or trough equipped with transverse riffles across the bottom of the unit and that is used to recover heavy mineral sands. [2003 c 335 § 1.]

78.44.330 Mineral trespass—Penalty. (1) A person commits the crime of mineral trespass if the person intentionally and without the permission of the claim holder or person conducting the mining operation:

(a) Interferes with a lawful mining operation or stops, or causes to be stopped, a lawful mining operation;

(b) Enters a mining claim posted as required in chapter 78.08 RCW and disturbs, removes, or attempts to remove any mineral from the claim site;

(c) Tampers with or disturbs a flume, rocker box, bed-rock sluice, sluice box, dredge, quartz mill, or other mining equipment at a posted mining claim; or

(d) Defaces a location stake, side post, corner post, landmark, monument, or posted written notice within a posted mining claim.

(2) Mineral trespass is a class C felony. [2003 c 335 § 2.]

78.44.340 Mineral trespass—Limitation on application. (1) RCW 78.44.330 does not apply to conduct that would otherwise constitute an offense when it is required or authorized by law or judicial decree or is performed by a public servant in the reasonable exercise of official powers, duties, or functions.

(2) As used in subsection (1) of this section, "laws or judicial decrees" includes but is not limited to:

(a) Laws defining duties and functions of public servants;

(b) Laws defining duties of private citizens to assist public servants in the performance of certain of their functions; and

(c) Judgments and orders of courts. [2003 c 335 § 3.]

78.44.350 Blanket performance security. (1) A permit holder, in lieu of an individual performance security for each mining site, may file a blanket performance security with the department for their group of permits.

(2) The department may reduce the required performance security calculated from its standard method prescribed in RCW 78.44.087, to an amount not to exceed the sum of reclamation security calculated by the department for the two surface mines with the largest performance security obligations, for nonmetal and nonfuel surface mines that meet the following conditions:

(a) The permit holder has had a valid reclamation permit for more than ten years and can demonstrate exemplary mining and reclamation practices that have been accepted by the department;

(b) The landowner agrees to allow the permit holder to hold a blanket security. The department must include, on forms to be signed by the landowner, notice of the risk of a lien on the landowner's lands; and

(c) The permit holder can demonstrate substantial financial ability to perform the reclamation in the approved reclamation plan and permit.

(3) Permit holders are not eligible for blanket securities if they are in violation of a final order of the department.

(4) The department must consider the compliance history and the state of the existing surface mines of the permit holder before approving any blanket performance security.

(5) Lands covered by a blanket performance security are subject to a lien placed by the department in the event of abandonment.

(6) In lieu of the performance security required of the permit holder, the department may accept a similar security

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from the landowner, equal to the estimated cost of reclamation as determined by the department. [2006 c 341 § 4.]

78.44.360 Performance security insufficient to cover cost of reclamation—Lien established in favor of department. (1) To the extent a performance security is insufficient to cover the cost of reclamation performed by the department, a lien shall be established in favor of the department upon all of the permit holder's real and personal property.

(2) The lien attaches upon the filing of a notice of claim of lien with the county clerk of the county in which the property is located. The notice of lien claim must contain a true statement of the demand, the insufficiency of the performance security to compensate the department, and the failure of the permit holder to perform the reclamation required.

(3) The lien becomes effective when filed.

(4) The lien created by this section may be foreclosed by a suit in the superior court in the manner provided by law for the foreclosure of other liens on real or personal property. [2006 c 341 § 5.]

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

(2) The notice of correction must describe the items that need correction and must provide a reasonable time for the recipient to make corrections. The notice of correction must identify when, where, and to whom a request to extend the time to achieve compliance may be filed. The department may grant an extension when there is good cause for the request. This notice of correction is not an enforcement action and is not subject to administrative or judicial appeal. [2007 c 192 § 1.]

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

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

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

(4) Stop work orders must be in writing, delivered by United States certified mail with return receipt requested, facsimile, or by hand to the permit holder of record. The order must state the facts supporting the violation, the law being violated, and the specific activities being stopped. Stop work orders must be signed by the state geologist or an assistant state geologist. The pollution control hearings board shall proceed as quickly as feasible to complete any requested adjudicative proceedings unless the parties stipulate to an appeal timeline or the department's stop work order states that it is not effective until after the administrative review process. If the recipient appeals the order, the recipient may file a motion for stay with the presiding officer, which will be reviewed under RCW 43.21B.320. [2010 c 210 § 33; 2007 c 192 § 3.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

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

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

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

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

(2) The department is not responsible for overseeing a site's development or reclamation when a reclamation permit is canceled under this section. [2007 c 192 § 4.]

78.44.910 Previously mined land. Miners and permit holders shall not be required to reclaim any segment where all surface mining was completed prior to January 1, 1971. However, the department shall make an effort to reclaim previously abandoned or completed surface mining segments. [1993 c 518 § 36; 1970 ex.s. c 64 § 22.]

Additional notes found at www.leg.wa.gov

78.44.920 Effective date—1970 ex.s. c 64. This act shall become effective January 1, 1971. [1970 ex.s. c 64 § 23.]

Chapter 78.52 RCW OIL AND GAS CONSERVATION

Sections

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78.52.001 Declaration of purpose. It is hereby declared to be in the public interest to foster, encourage, and promote the exploration, development, production, and utilization of oil and gas in the state in such manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such manner as to assure that the maximum economic recovery of oil and gas may be obtained and the rights of owners thereof fully protected; to conduct such oil and gas operations in a manner that will maintain a safe and healthful environment for the people of Washington and protect the state's natural resources; and to encourage, authorize, and provide for cycling, recycling, pressure maintenance and secondary recovery operations in order that the maximum economic recovery of oil and gas may be obtained to the end that landowners, royalty owners, producers, and the general public may realize and enjoy the greatest possible benefits from these vital resources. [1983 c 253 § 1; 1951 c 146 § 1.]

78.52.010 Definitions. For the purposes of this chapter, unless the text otherwise requires, the following terms shall have the following meanings:

(1) "Certificate of clearance" means a permit prescribed by the department for the transportation or the delivery of oil, gas, or product.

(2) "Department" means the department of natural resources.

(3) "Development unit" means the maximum area of a pool which may be drained efficiently and economically by one well.

(4) "Division order" means an instrument showing percentage of royalty or rental divisions among royalty owners.

(5) "Fair and reasonable share of the production" means, as to each separately-owned tract or combination of tracts, that part of the authorized production from a pool that is substantially in the proportion that the amount of recoverable oil or gas under the development unit of that separately-owned tract or tracts bears to the recoverable oil or gas or both in the total of the development units in the pool.

(6) "Field" means the general area which is underlaid by at least one pool and includes the underground reservoir or reservoirs containing oil or gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; however, "field," unlike "pool," may relate to two or more pools.

(7) "Gas" means all natural gas, all gaseous substances, and all other fluid or gaseous hydrocarbons not defined as oil in subsection (12) of this section, including but not limited to wet gas, dry gas, residue gas, condensate, and distillate, as those terms are generally understood in the petroleum industry.

(8) "Illegal oil" or "illegal gas" means oil or gas that has been produced from any well within the state in violation of this chapter or any rule or order of the department.

(9) "Illegal product" means any product derived in whole or part from illegal oil or illegal gas.

(10) "Interested person" means a person with an ownership, basic royalty, or leasehold interest in oil or gas within an existing or proposed development unit or unitized pool.

(11) "Lessee" means the lessee under an oil and gas lease, or the owner of any land or mineral rights who has the right to conduct or carry on any oil and gas development, exploration and operation thereon, or any person so operating for himself, herself, or others.

(12) "Oil" means crude petroleum, oil, and all hydrocarbons, regardless of gravity, that are in the liquid phase in the original reservoir conditions and are produced and recovered at the wellhead in liquid form.

(13) "Operator" means the person who operates a well or unit or who has been designated or accepted by the owners to operate the well or unit, and who is responsible for compliance with the department's rules and policies.

(14) "Owner" means the person who has the right to develop, operate, drill into, and produce from a pool and to appropriate the oil or gas that he or she produces therefrom, either for that person or for that person and others.

(15) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or representative of any kind and includes any governmental or political subdivision or any agency thereof.

(16) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both. Each zone of a structure which is completely separated from any other zone in the same structure such that the accumulations of oil or gas are not common with each other is considered a separate pool and is covered by the term "pool" as used in this chapter.

(17) "Pooling" means the integration or combination of two or more tracts into an area sufficient to constitute a development unit of the size for one well as prescribed by the department.

(18) "Product" means any commodity made from oil or gas.

(19) "Protect correlative rights" means that the action or regulation by the department should afford a reasonable opportunity to each person entitled thereto to recover or receive without causing waste his or her fair and reasonable share of the oil and gas in this tract or tracts or its equivalent.

(20) "Royalty" means a right to or interest in oil or gas or the value from or attributable to production, other than the right or interest of a lessee, owner, or operator, as defined herein. Royalty includes, but is not limited to the basic royalty in a lease, overriding royalty, and production payments. Any such interest may be referred to in this chapter as "royalty" or "royalty interest." As used in this chapter "basic royalty" means the royalty reserved in a lease. "Royalty owner" means a person who owns a royalty interest.

(21) "Supervisor" means the state oil and gas supervisor.

(22) "Unitization" means the operation of all or part of a field or reservoir as a single entity for operating purposes.

(23) "Waste" in addition to its ordinary meaning, means and includes:

(a) "Physical waste" as that term is generally understood in the petroleum industry;

(b) The inefficient, excessive, or improper use of, or unnecessary dissipation of, reservoir energy, and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well in a manner which results or is probable to result in reducing the quantity of oil or gas to be recovered from any pool in this state under operations conducted in

accordance with prudent and proper practices or that causes or tends to cause unnecessary wells to be drilled;

(c) The inefficient above-ground storage of oil, and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of oil or gas;

(d) The production of oil or gas in such manner as to cause unnecessary water channeling, or coning;

(e) The operation of an oil well with an inefficient gas-oil ratio;

(f) The drowning with water of any pool or part thereof capable of producing oil or gas, except insofar as and to the extent authorized by the department;

(g) Underground waste;

(h) The creation of unnecessary fire hazards;

(i) The escape into the open air, from a well producing oil or gas, of gas in excess of the amount which is reasonably necessary in the efficient development or production of the well;

(j) The use of gas for the manufacture of carbon black, except as provided in RCW 78.52.140;

(k) Production of oil and gas in excess of the reasonable market demand;

(l) The flaring of gas from gas wells except that which is necessary for the drilling, completing, or testing of the well; and

(m) The unreasonable damage to natural resources including but not limited to the destruction of the surface, soils, wildlife, fish, or aquatic life from or by oil and gas operations. [1994 sp.s. c 9 § 809; 1983 c 253 § 2; 1951 c 146 § 3.]

Additional notes found at www.leg.wa.gov

78.52.025 Hearings and meetings of department. The department shall hold hearings or meetings at such times and places as may be found by the department to be necessary to carry out its duties. The department may establish its own rules for the conduct of public hearings or meetings consistent with other applicable law. [1994 sp.s. c 9 § 810; 1983 c 253 § 3; 1951 c 146 § 5. Formerly RCW 78.52.060.]

Additional notes found at www.leg.wa.gov

78.52.030 Employment of personnel. The department shall employ all personnel necessary to carry out the provisions of this chapter. [1994 sp.s. c 9 § 811; 1951 c 146 § 6.]

Additional notes found at www.leg.wa.gov

78.52.031 Conduct of hearings—Evidence. The department may subpoena witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it. No person shall be excused from attending and testifying, or from producing books, papers, and records before the department or a court, or from obedience to the subpoena of the department or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture: PROVIDED, That nothing herein contained shall be construed as requiring any person to produce any books, papers, or records, or to testify in

response to any inquiry not pertinent to some question lawfully before the department or court for determination. No person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of his or her objection, he or she may be required to testify or produce evidence, documentary or otherwise before the department or court, or in obedience to its subpoena: PROVIDED, HOWEVER, That no person testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. [1994 sp.s. c 9 § 812; 1983 c 253 § 5; 1951 c 146 § 7. Formerly RCW 78.52.080.]

Additional notes found at www.leg.wa.gov

78.52.032 Hearing examiners. In addition to the powers and authority, either express or implied, granted to the department by virtue of the laws of this state, the department may, in prescribing its rules of order or procedure in connection with hearings or other proceedings before the department, provide for the appointment of one or more examiners to conduct a hearing or hearings with respect to any matter properly coming before the department and to make reports and recommendations to the department with respect thereto. Any employee of the department or any other person designated by the commissioner of public lands, or the supervisor when this power is so delegated, may serve as an examiner. The department shall adopt rules governing hearings to be conducted before examiners. [1994 sp.s. c 9 § 813; 1983 c 253 § 10.]

Additional notes found at www.leg.wa.gov

78.52.033 Failure of witness to attend or testify—Contempt. In case of failure or refusal on the part of any person to comply with a subpoena issued by the department or in case of the refusal of any witness to testify as to any matter regarding which the witness may be interrogated, any superior court in the state, upon the application of the department, may compel the person to comply with such subpoena, and to attend before the department and produce such records, books, and documents for examination, and to give his or her testimony and shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein. [1994 sp.s. c 9 § 814; 1951 c 146 § 8. Formerly RCW 78.52.090.]

Additional notes found at www.leg.wa.gov

78.52.035 Attorney for department. The attorney general shall be the attorney for the department, but in cases of emergency, the department may call upon the prosecuting attorney of the county where the action is to be brought, or defended, to represent the department until such time as the attorney general may take charge of the litigation. [1994 sp.s. c 9 § 815; 1951 c 146 § 9. Formerly RCW 78.52.110.]

Additional notes found at www.leg.wa.gov

78.52.037 State oil and gas supervisor—Deputy supervisors—Employment of personnel. The department shall designate a state oil and gas supervisor who shall be charged with duties as may be delegated by the department. The department may designate one or more deputy supervisors and employ all personnel necessary including the

appointment of examiners as provided in RCW 78.52.032 to carry out this chapter and the rules and orders of the department. [1994 sp.s. c 9 § 816; 1983 c 253 § 4.]

Additional notes found at www.leg.wa.gov

78.52.040 Duty and powers of department—In general. The department shall administer and enforce the provisions of this chapter by the adoption of policies, and all rules, regulations, and orders promulgated hereunder, and the department has jurisdiction, power, and authority, over all persons and property, public and private, necessary to enforce effectively such duty. [1994 sp.s. c 9 § 817; 1983 c 253 § 6; 1951 c 146 § 10.]

Additional notes found at www.leg.wa.gov

78.52.050 Rules, regulations, and orders—Time and place of hearing—Notices. The department may make such reasonable rules, regulations, and orders as may be necessary from time to time for the proper administration and enforcement of this chapter. Unless otherwise required by law or by this chapter or by rules of procedure made under this chapter, the department may make such rules, regulations, and orders, after notice, as the basis therefor. The notice may be given by publication in some newspaper of general circulation in the state in a manner and form which may be prescribed by the department by general rule. The public hearing shall be at the time and in the manner and at the place prescribed by the department, and any person having any interest in the subject matter of the hearing shall be entitled to be heard. In addition, written notice shall be mailed to all interested persons who have requested, in writing, notice of department hearings, rulings, policies, and orders. The department shall establish and maintain a mailing list for this purpose. Substantial compliance with these mailing requirements is deemed compliance with this section. [1994 sp.s. c 9 § 818; 1983 c 253 § 7; 1951 c 146 § 11.]

Additional notes found at www.leg.wa.gov

78.52.070 Hearing upon petition—Time for action. Any interested person shall have the right to have the department call a hearing for the purpose of taking action with respect to any matter within the jurisdiction of the department by filing a verified written petition therefor, which shall state in substance the matter and reasons for and nature of the action requested. Upon receipt of any such request the department, if in its judgment a hearing is warranted and justifiable, shall promptly call a hearing thereon, and after such hearing, and with all convenient speed, and in any event within twenty days after the conclusion of such hearing, shall take such action with regard to the subject matter thereof as it may deem appropriate. [1994 sp.s. c 9 § 819; 1951 c 146 § 12.]

Additional notes found at www.leg.wa.gov

78.52.100 Records—Copies as evidence—Copies to be furnished. All rules, regulations, policies, and orders of the department, all petitions, copies of all notices and actions with affidavits of posting, mailing, or publications pertaining thereto, all findings of fact, and transcripts of all hearings shall be in writing and shall be entered in full by the department in the permanent official records of the office of the commissioner of public lands and shall be open for inspection

at all times during reasonable office hours. A copy of any rule, regulation, policy, order, or other official records of the department, certified by the commissioner of public lands, shall be received in evidence in all courts of this state with the same effect as the original. The department is hereby required to furnish to any person upon request, copies of all rules, regulations, policies, orders, and amendments thereof. [1994 sp.s. c 9 § 820; 1983 c 253 § 8; 1951 c 146 § 13.]

Additional notes found at www.leg.wa.gov

78.52.120 Drilling permit required—Notice. Any person desiring or proposing to drill any well in search of oil or gas, before commencing the drilling of any such well, shall apply to the department upon such form as the department may prescribe, and shall pay to the state treasurer a fee of the following amounts for each application:

- (1) For each well the estimated depth of which is three thousand five hundred feet or less, two hundred fifty dollars;
- (2) From three thousand five hundred one feet to seven thousand feet, five hundred dollars;
- (3) From seven thousand one feet to twelve thousand feet, seven hundred fifty dollars; and
- (4) From twelve thousand one feet and deeper, one thousand dollars.

In addition, as pertains to the tract upon which the well is proposed to be located, the applicant must notify the surface landowner, the landowner's tenant, and other surface users in the manner provided by regulations of the department that a drilling permit has been applied for by furnishing each such surface landowner, tenant, and other users with a copy of the application concurrent with the filing of the application. Within fifteen days of receipt of the application, each such surface landowner, the landowner's tenant, and other surface users have the right to inform the department of objections or comments as to the proposed use of the surface by the applicant, and the department shall consider the objections or comments.

The drilling of any well is prohibited until a permit is given and such fee has been paid as provided in this section. The department may prescribe that the said form indicate the exact location of such well, the name and address of the owner, operator, contractor, driller, and any other person responsible for the conduct of drilling operations, the proposed depth of the well, the elevation of the well above sea level, and such other relevant and reasonable information as the department may deem necessary or convenient to effectuate the purposes of this chapter.

The department shall issue a permit if it finds that the proposed drilling will be consistent with this chapter, the rules and orders adopted under it, and is not detrimental to the public interest. The department shall impose conditions and restrictions as necessary to protect the public interest and to ensure compliance with this chapter, and the rules and orders adopted by the department. A person shall not apply to drill a well in search of oil or gas unless that person holds an ownership or contractual right to locate and operate the drilling operations upon the proposed drilling site. A person shall not be issued a permit unless that person prima facie holds an ownership or contractual right to drill to the proposed depth, or proposed horizon. Proof of prima facie ownership shall be

presented to the department. [1994 sp.s. c 9 § 821; 1983 c 253 § 11; 1951 c 146 § 14.]

Additional notes found at www.leg.wa.gov

78.52.125 Environmental impact statement required when drilling affects surface waters of the state—Drilling may be denied, when. Any person desiring or proposing to drill any well in search of oil or gas, when such drilling would be conducted through or under any surface waters of the state, shall prepare and submit an environmental impact statement upon such form as the department of ecology shall prescribe at least one hundred and twenty days prior to commencing the drilling of any such well. Within ninety days after receipt of such environmental statement the department of ecology shall prepare and submit to the department of natural resources a report examining the potential environmental impact of the proposed well and recommendations for department action thereon. If after consideration of the report the department determines that the proposed well is likely to have a substantial environmental impact the drilling permit for such well may be denied.

The department shall require sufficient safeguards to minimize the hazards of pollution of all surface and ground waters of the state. If safeguards acceptable to the department cannot be provided the drilling permit shall be denied. [1994 sp.s. c 9 § 822; 1971 ex.s. c 180 § 8.]

Reviser's note: The definitions of RCW 90.56.010 apply to this section. Funds for the purposes of carrying out this section are provided from the coastal protection fund, RCW 90.48.390 and 90.48.400. The authority and enforcement of rules pertaining to this section are covered in RCW 90.56.050 and 90.56.900.

Additional notes found at www.leg.wa.gov

78.52.130 Waste prohibited. Waste of oil and gas, as defined in this chapter, is prohibited. [1951 c 146 § 15.]

78.52.140 Carbon black and carbon products—Permit required. The use of gas from a well producing gas only, or from a well which is primarily a gas well, for the manufacture of carbon black or similar products predominantly carbon, is declared to constitute waste prima facie, and such gas well shall not be used for any such purpose unless it is clearly shown, at a public hearing to be held by the department, on application of the person desiring to use such gas, that waste would not take place by the use of such gas for the purpose or purposes applied for, and that gas which would otherwise be lost is not available for such purpose or purposes, and that the gas to be used cannot be used for a more beneficial purpose, such as for light or fuel purposes, except at prohibitive cost, and that it would be in the public interest to grant such permit. If the department finds that the applicant has clearly shown a right to use such gas for the purpose or purposes applied for, it shall issue a permit upon such terms and conditions as may be found necessary in order to permit the use of the gas, and at the same time require compliance with the intent of this section. [1994 sp.s. c 9 § 823; 1951 c 146 § 16.]

Additional notes found at www.leg.wa.gov

78.52.150 Investigations authorized. The department shall make such investigations as it may deem proper to

determine whether waste exists or is imminent or whether other facts exist which justify action by the department. [1994 sp.s. c 9 § 824; 1951 c 146 § 17.]

Additional notes found at www.leg.wa.gov

78.52.155 Investigations—Powers and duties. (1) The department shall make investigations as necessary to carry out this chapter.

(2) The department shall require:

(a) Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil or gas;

(b) The making and filing of well logs, core samples, directional surveys, and reports on well locations, drilling, and production;

(c) The testing of oil and gas wells;

(d) The drilling, casing, operating, and plugging of wells in such a manner as to prevent the escape of oil or gas out of the casings, or out of one pool into another, the intrusion of water into an oil or gas pool, and the pollution of freshwater supplies by oil, gas, or saltwater and to prevent blowouts, cavings, see pages, and fires;

(e) The furnishing of adequate security acceptable to the department, conditioned on the performance of the duty to plug each dry or abandoned well, the duty to reclaim and clean-up well drilling sites, the duty to repair wells causing waste, the duty to comply with all applicable laws and rules adopted by the department, orders of the department, all permit conditions, and this chapter;

(f) The operation of wells with efficient gas-oil and water-oil ratios and may fix these ratios and limit production from wells with inefficient gas-oil or water-oil ratios;

(g) The production of oil and gas from wells be accurately measured by means and upon standards prescribed by the department, and that every person who produces, sells, purchases, acquires, stores, transports, treats, or processes oil or gas in this state keeps and maintains for a period of five years within this state complete and accurate records thereof, which records shall be available for examination by the department or its agents at all reasonable times, and that every person file with the department such reports as it may prescribe with respect to the oil or gas; and

(h) Compliance with all applicable laws and rules of this state.

(3) The department shall regulate:

(a) The drilling, producing, locating, spacing, and plugging of wells and all other operations for the production of oil or gas;

(b) The physical, mechanical, and chemical treatment of wells, and the perforation of wells;

(c) Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations;

(d) Disposal of saltwater and oil field brines;

(e) The storage, processing, and treatment of natural gas and oil produced within this state; and

(f) Reclamation and clean-up of all well sites and any areas directly affected by the drilling, production, operation, and plugging of oil and gas wells.

(4) The department may limit and prorate oil and gas produced in this state and may restrict future production of oil and gas from any pool in such amounts as will offset and compensate for any production determined by the department to be in excess of or in violation of "oil allowable" or "gas allowable."

(5) The department shall classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

(6) The department shall regulate oil and gas exploration and drilling activities so as to prevent or remedy unreasonable or excessive waste or surface destruction. [1994 sp.s. c 9 § 825; 1983 c 253 § 9.]

Additional notes found at www.leg.wa.gov

78.52.200 Development units authorized for known pools. When necessary to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights including those of royalty owners, the department, upon its own motion or upon application of interested persons, shall establish development units covering any known pool. Development units shall be of uniform size and shape for the entire pool unless the department finds that it must make an exception due to geologic, geographic, or other factors. When necessary, the department may divide any pool into zones and establish development units for each zone, which units may differ in size and shape from those established in any other zone. [1994 sp.s. c 9 § 826; 1983 c 253 § 12; 1951 c 146 § 22.]

Additional notes found at www.leg.wa.gov

78.52.205 Development units to be prescribed for pool after discovery—Temporary development units. Within sixty days after the discovery of oil or gas in a pool not then covered by an order of the department, a hearing shall be held and the department shall issue an order prescribing development units for the pool. If sufficient geological or other scientific data from drilling operations or other evidence is not available to determine the maximum area that can be efficiently and economically drained by one well, the department may establish temporary development units to ensure the orderly development of the pool pending availability of the necessary data. A temporary order shall continue in force for a period of not more than twenty-four months at the expiration of which time, or upon the petition of an affected person, the department shall require the presentation of such geological, scientific, drilling, or other evidence as will enable it to determine the proper development units in the pool. During the interim period between the discovery and the issuance of the temporary order, permits shall not be issued for the drilling of direct offsets to a discovery well. [1994 sp.s. c 9 § 827; 1983 c 253 § 13.]

Additional notes found at www.leg.wa.gov

78.52.210 Development units—Size and shape. (1) The size and the shape of any development units shall be such as will result in the efficient and economical development of the pool as a whole, and the size shall not be smaller than the maximum area that can be efficiently and economically drained by one well as determined by competent geological, geophysical, engineering, drilling, or other scientific testi-

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mony, data, and evidence. The department shall fix a development unit of not more than one hundred sixty acres for any pool deemed by the department to be an oil reservoir, or of six hundred forty acres for any pool deemed by the department to be a gas reservoir, plus a ten percent tolerance in either case to allow for irregular sections. The department may, at its discretion, after notice and hearing, establish development units for oil and gas in variance of these limitations when competent geological, geophysical, engineering, drilling, or other scientific testimony, data, and evidence is presented and upon a finding that one well can efficiently and economically drain a larger or smaller area and is justified because of technical, economic, environmental, or safety considerations.

(2) The department may establish development units of different sizes or shapes for different parts of a pool or may grant exceptions to the size or shapes of any development unit or units. Where development units of different sizes or shapes exist in a pool, the department shall, if necessary, make such adjustments to the allowable production from the well or wells drilled thereon so that each operator in each development unit will have a reasonable opportunity to produce or receive his or her just and equitable share of the production. [1994 sp.s. c 9 § 828; 1983 c 253 § 14; 1951 c 146 § 23.]

Additional notes found at www.leg.wa.gov

78.52.220 Development units—Location of well. An order establishing development units for a pool shall specify the size and shape of each area and the location of the permitted well thereon in accordance with a reasonable uniform spacing plan. Upon application and after notice and a hearing, if the department finds that a well drilled at the prescribed location would not produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, the department may enter an order permitting the well to be drilled pursuant to permit at a location other than that prescribed by such development order; however, the department shall include in the order suitable provisions to prevent the production from the development unit of more than its just and equitable share of the oil and gas in the pool. [1994 sp.s. c 9 § 829; 1983 c 253 § 15; 1951 c 146 § 24.]

Additional notes found at www.leg.wa.gov

78.52.230 Development units—Order must cover entire pool—Modifications. An order establishing development units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the department from time to time to include additional areas determined to be underlaid by such pool. When the department determines that it is necessary for the prevention of waste, or to avoid the drilling of unnecessary wells, or to protect correlative rights, an order establishing development units in a pool may be modified by the department to increase or decrease the size of development units in the pool or to permit the drilling of additional wells on a reasonably uniform plan in the pool. [1994 sp.s. c 9 § 830; 1983 c 253 § 16; 1951 c 146 § 25.]

Additional notes found at www.leg.wa.gov

78.52.240 Development units—Pooling of interests.

When two or more separately-owned tracts are embraced within a development unit, or when there are separately owned interests in all or a part of the development unit, then the owners and lessees thereof may pool their interests for the development and operation of the development unit. In the absence of this voluntary pooling, the department, upon the application of any interested person, shall enter an order pooling all interests, including royalty interests, in the development unit for the development and operation thereof. Each such pooling order shall be made after notice and hearing. The applicant or applicants shall have the burden of proving that all reasonable efforts have been made to obtain the consent of, or to reach agreement with, other owners. [1994 sp.s. c 9 § 831; 1983 c 253 § 17; 1951 c 146 § 26.]

Additional notes found at www.leg.wa.gov

78.52.245 Pooling order—Allocation of production.

A pooling order shall be upon terms and conditions that are fair and reasonable and that afford to each owner and royalty owner his or her fair and reasonable share of production. Production shall be allocated as follows:

(1) For the purpose of determining the portions of production owned by the persons owning interests in the pooled unit, the production shall be allocated to the respective tracts within the unit in the proportion that the surface acres in each tract bear to the number of surface acres included in the entire unit.

(2) Notwithstanding subsection (1) of this section, if the department finds that allocation on a surface acreage basis does not allocate to each tract its fair share, the department shall allocate the production so that each tract will receive its fair share. [1994 sp.s. c 9 § 832; 1983 c 253 § 18.]

Additional notes found at www.leg.wa.gov

78.52.250 Pooled interests in well in development unit—Allocation of costs—Rights of owners. (1) Each such pooling order shall make provision for the drilling and operation of a well on the development unit, and for the payment of the reasonable actual cost thereof by the owners of interests required to pay such costs in the development unit, plus a reasonable charge for supervision and storage facilities. Costs associated with production from the pooled unit shall be allocated in the same manner as is production in RCW 78.52.245. In the event of any dispute as to such costs the department shall determine the proper costs.

(2) As to each owner who fails or refuses to agree to bear his or her proportionate share of the costs of the drilling and operation of the well, the order shall provide for reimbursement of those persons paying for the drilling and operation of the well of the nonconsenting owner's share of the costs from, and only from, production from the unit representing that person's interest, excluding royalty or other interests not obligated to pay any part of the cost thereof. The department may provide that the consenting owners shall own and be entitled to receive all production from the well after payment of the royalty as provided in the lease, if any, applicable to each tract or interest, and obligations payable from production, until the consenting owners have been paid the amount due under the terms of the pooling order or order settling any dispute.

The order shall determine the interest of each owner in the unit and shall provide that each consenting owner is entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the owner's interest in the unit, and, unless the owner has agreed otherwise, his or her proportionate part of the nonconsenting owner's share of the production until costs are recovered as provided in this subsection. Each nonconsenting owner is entitled to receive, subject to royalty or similar obligations, the share of production from the well applicable to the owner's interest in the unit after the consenting owners have recovered from the nonconsenting owner's share of production the following:

(a) In respect to every such well, one hundred percent of the nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections, including but not limited to, stock tanks, separators, treaters, pumping equipment, and piping, plus one hundred percent of the nonconsenting owner's share of the cost of operation of the well, commencing with first production and continuing until the consenting owners have recovered these costs, with the intent that the nonconsenting owner's share of these costs and equipment will be that interest which would have been chargeable to the nonconsenting owner had he or she initially agreed to pay his or her share of the costs of the well from the beginning of the operation;

(b) One hundred fifty percent of that portion of the costs and expenses of staking the location, well site preparation, rights-of-way, rigging-up, drilling, reworking, deepening or plugging back, testing, and completing, after deducting any cash contributions received by the consenting owners, and also one hundred fifty percent of that portion of the cost of equipment in the well, up to and including the wellhead connections; and

(c) If there is a dispute regarding the costs, the department shall determine the proper costs and their allocation among working interest owners after due notice to interested parties and a hearing on the costs.

(3) The operator of a well under a pooling order in which there are nonconsenting owners shall furnish the nonconsenting owners with monthly statements of all costs incurred, together with the quantity of oil or gas produced, and the amount of proceeds realized from the sale of this production during the preceding month. If and when the consenting owners recover from a nonconsenting owner's relinquished interest the amounts provided for in subsection (2) of this section, the relinquished interest of the nonconsenting owner shall automatically revert to him or her, and the nonconsenting owner shall own the same interest in the well and the production from it and be liable for the further costs of the operation as if he or she had participated in the initial drilling and operation.

(4) A nonconsenting owner of a tract in a development unit which is not subject to any lease or other contract for the development thereof for oil and gas shall elect within fifteen days of the issuance of the pooling order or such further time as the department shall, in the order, allow:

(a) To be treated as a nonconsenting owner as provided in subsections (2) and (3) of this section and is deemed to have a basic landowners' royalty of one-eighth, or twelve and one-half percent, of the production allocated to the tract,

unless a higher basic royalty has been established in the development unit. If a higher royalty has been established, then the nonconsenting owner of a nonleased tract shall receive the higher basic royalty. This presumed royalty shall exist only during the time that costs and expenses are being recovered under subsection (2) of this section, and is intended to assure that the owner of a nonleased tract receive a basic royalty free of all costs at all times. Notwithstanding anything herein to the contrary, the owner shall at all times retain his or her entire ownership of the property, including the right to execute an oil and gas lease on any terms negotiated, and be entitled to all production subject to subsection (2) of this section; or

(b) To grant a lease to the operator at the current fair market value for that interest for comparable leases or interests at the time of the commencement of drilling; or

(c) To pay his or her pro rata share of the costs of the well or wells in the development unit and receive his or her pro rata share of production, if any.

A nonconsenting owner who does not make an election as provided in this subsection is deemed to have elected to be treated under (a) of this subsection. [1994 sp.s. c 9 § 833; 1983 c 253 § 19; 1951 c 146 § 27.]

Additional notes found at www.leg.wa.gov

78.52.253 Pooling agreement, offer to pool, pooling order—Fairness to nonconsenting, unleased owners. A pooling agreement, offer to pool, or pooling order is not considered fair and reasonable as applied to nonconsenting, unleased owners only, if it provides for an operating agreement containing any of the following provisions:

(1) Preferential right of the operator to purchase mineral interests in the unit;

(2) A call on or option to purchase production from the unit;

(3) Operating charges that include any part of district or central office expense other than reasonable overhead charges; or

(4) Prohibition against nonoperators questioning the operation of the unit. [1983 c 253 § 20.]

78.52.255 Operations on development unit deemed operations on each tract—Production allocated to tract deemed produced from each tract—Shut-in well considered on each tract—Lease on part of tract excluded from unit. (1) Operations incident to the drilling of a well upon any portion of a development unit covered by a pooling order shall be deemed, for all purposes, the conduct of such operations upon each separately-owned tract in the development unit by the several owners thereof. That portion of the production allocated to each separately-owned tract included in a development unit covered by a pooling order shall, when produced, be deemed for all purposes, including the payment of royalty, to have been produced from each separately-owned tract by a well drilled thereon. If an oil or gas well on a pooled unit is shut-in, it shall be considered that the shut-in well is on each separately-owned tract in the pooled unit.

(2) If only part of the tract is included in the unit, operations on, production from, or a shut-in well on the unit shall maintain an oil and gas lease on the tract as to the part excluded from the unit only if the lease would be maintained

had the unit been created voluntarily under the lease. [1983 c 253 § 21.]

78.52.257 Dissolution of pooling order—Interests covered by terminated lease—Modification or termination of pooling order—Extension of dissolution of pooling order. (1) An order pooling a development unit shall automatically dissolve:

(a) One year after its effective date if there has been no production of commercial quantities or drilling operations on lands within the unit;

(b) Six months after completion of a dry hole on the unit; or

(c) Six months after cessation of production of commercial quantities from the unit, unless, prior to the expiration of such six-month period, the operator shall, in good faith, commence drilling or reworking operations in an effort to restore production.

(2) Upon the termination of a lease pooled by order of the department under authority granted in this chapter, interests covered by the lease are considered pooled as unleased mineral interests.

(3) Any party to a pooling order is entitled, after due notice to all parties, to a hearing to modify or terminate a previously entered pooling order upon presenting new evidence showing that the previous determination of reservoir conclusions are substantially incorrect.

(4) The department, after notice and hearing, may grant additional time, for good cause shown, before a pooling order is automatically dissolved as provided in subsection (1) of this section. In no case may such an extension be longer than six months. [1994 sp.s. c 9 § 834; 1983 c 253 § 22.]

Additional notes found at www.leg.wa.gov

78.52.260 "Wildcat" or "exploratory" well data confidential. Whenever the department requires the making and filing of well logs, directional surveys, or reports on the drilling of, subsurface conditions found in, or reports with respect to the substance produced, or capable of being produced from, a "wildcat" or "exploratory" well, as those terms are used in the petroleum industry, such logs, surveys, reports, or information shall be kept confidential by the department for a period of one year, if at the time of filing such logs, surveys, reports, or other information, the owner, lessee, or operator of such well requests that such information be kept confidential: PROVIDED, HOWEVER, That the department may divulge or use such information in a public hearing or suit when it is necessary for the enforcement of the provisions of this chapter or any rule, regulation, or order made hereunder. [1994 sp.s. c 9 § 835; 1951 c 146 § 28.]

Additional notes found at www.leg.wa.gov

78.52.270 Limitation of production to "oil allowable"—Proration. Whenever the total amount of oil which all of the pools in this state can currently produce in accordance with good operating practices, exceeds the amount reasonably required to meet the reasonable market demand, the department shall limit the oil which may be currently produced in this state to an amount, designated the "oil allowable." The department shall then prorate this "oil allowable" among the pools on a reasonable basis, avoiding undue dis-

crimination among the pools, and so that waste will be prevented. In determining the "oil allowable," and in prorating such "oil allowable" among the pools in the state, the department shall take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil and gas, and separate needs for oil of particular kinds or qualities, and shall formulate rules setting forth standards or a program for the determination of the "oil allowable," and shall prorate the "oil allowable" in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or program shall be applied to such pools or areas so that as far as practicable a uniform program will be followed: PROVIDED, HOWEVER, That if the amount prorated to a pool as its share of the "oil allowable" is in excess of the amount which the pool can efficiently produce currently, then the department shall prorate to such pool the maximum amount which can be efficiently produced currently without waste. [1994 sp.s. c 9 § 836; 1951 c 146 § 29.]

Additional notes found at www.leg.wa.gov

78.52.280 Determining market demand—No undue discrimination in proration of "allowable." The department shall not be required to determine the reasonable market demand applicable to any single pool of oil except in relation to all pools producing oil of similar kind and quality and in relation to the reasonable market demand. The department shall prorate the "allowable" in such manner as will prevent undue discrimination against any pool or area in favor of another or others resulting from selective buying or nomination by purchasers. [1994 sp.s. c 9 § 837; 1951 c 146 § 30.]

Additional notes found at www.leg.wa.gov

78.52.290 Limitation of production to "gas allowable"—Proration. Whenever the total amount of gas which all of the pools in this state can currently produce in accordance with good operating practice exceeds the amount reasonably required to meet the reasonable market demand, the department shall limit the gas which may be currently produced to an amount, designated as the "gas allowable," which will not exceed the reasonable market demand for gas. The department shall then prorate the "gas allowable" among the pools on a reasonable basis, avoiding undue discrimination among the pools, and so that waste will be prevented, giving due consideration to location of pipe lines, cost of interconnecting such pipe lines, and other pertinent factors, and insofar as applicable, the provisions of RCW 78.52.270 shall be followed in determining the "gas allowable" and in prorating such "gas allowable" among the pools therein: PROVIDED, HOWEVER, That in determining the reasonable market demand for gas as between pools, the department shall give due regard to the fact that gas produced from oil pools is to be regulated in a manner which will protect the reasonable use of gas energy for oil production and promote the most or maximum efficient recovery of oil from such pools. [1994 sp.s. c 9 § 838; 1951 c 146 § 31.]

Additional notes found at www.leg.wa.gov

78.52.300 Limitation of gas production from one pool. Whenever the total amount of gas which may be cur-

rently produced from all of the pools in this state has not been limited as hereinabove provided, and the available production from any one pool containing gas only is in excess of the reasonable market demand or available transportation facilities for gas from such pool, the department shall limit the production of gas from such pool to that amount which does not exceed the reasonable market demand or transportation facilities for gas from such pool. [1994 sp.s. c 9 § 839; 1951 c 146 § 32.]

Additional notes found at www.leg.wa.gov

78.52.310 Proration of allowable production in pool—Publication of orders—Emergency orders. Whenever the department limits the total amount of oil or gas which may be produced from any pool to an amount less than that which the pool could produce if no restrictions were imposed (whether incidental to, or without, a limitation of the total amount of oil which may be produced in the state) the department shall prorate the allowable production for the pool among the producers in the pool on a reasonable basis, so that each producer will have opportunity to produce or receive his or her just and equitable share, subject to the reasonable necessities for the prevention of waste, giving where reasonable, under the circumstances, to each pool with small wells of settled production, allowable production which prevents the premature abandonment of wells in the pool.

All orders establishing the "oil allowable" and "gas allowable" for this state, and all orders prorating such allowables as herein provided, and any changes thereof, for any month or period shall be issued by the department on or before the fifteenth day of the month preceding the month for which such orders are to be effective, and such orders shall be immediately published in some newspaper of general circulation printed in Olympia, Washington. No orders establishing such allowables, or prorating such allowables, or any changes thereof, shall be issued without first having a hearing, after notice, as provided in this chapter: PROVIDED, HOWEVER, When in the judgment of the department, an emergency requiring immediate action is found to exist, the department may issue an emergency order under this section which shall have the same effect and validity as if a hearing with respect to the same had been held after due notice. The emergency order permitted by this section shall remain in force no longer than thirty days, and in any event it shall expire when the order made after due notice and hearing with respect to the subject matter of the emergency order becomes effective. [1994 sp.s. c 9 § 840; 1951 c 146 § 33.]

Additional notes found at www.leg.wa.gov

78.52.320 Compliance with limitation or proration required. Whenever the production of oil or gas in this state or any pool therein is limited and the "oil allowable" or "gas allowable" is established and prorated by the department as provided in RCW 78.52.310, no person shall thereafter produce from any well, pool, lease, or property more than the production which is prorated thereto. [1994 sp.s. c 9 § 841; 1951 c 146 § 34.]

Additional notes found at www.leg.wa.gov

78.52.330 Unit operation of separately owned tracts.

To assist in the development of oil and gas in this state and to further the purposes of this chapter, the persons owning interests in separate tracts of land, may validly agree to integrate their interests and manage, operate, and develop their land as a unit, subject to the approval of the department. [1994 sp.s. c 9 § 842; 1951 c 146 § 35.]

Additional notes found at www.leg.wa.gov

78.52.335 Unit operation of pools. (1) The department shall upon the application of any interested person, or upon its own motion, hold a hearing to consider the need for the operation as a unit of one or more pools or parts of them in a field.

(2) The department may enter an order providing for the unit operations if it finds that:

(a) The unit operations are necessary for secondary recovery or enhanced recovery purposes. For purposes of this chapter secondary or enhanced recovery means that oil or gas or both are recovered by any method, artificial flowing or pumping, that may be employed to produce oil or gas, or both, through the joint use of two or more wells with an application of energy extrinsic to the pool or pools. This includes pressuring, cycling, pressure maintenance, or injections into the pool or pools of a substance or form of energy: PROVIDED, That this does not include the injection in a well of a substance or form of energy for the sole purpose of (i) aiding in the lifting of fluids in the well, or (ii) stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means;

(b) The unit operations will protect correlative rights;

(c) The operations will increase the ultimate recovery of oil or gas, or will prevent waste, or will prevent the drilling of unnecessary wells; and

(d) The value of the estimated additional recovery of oil and/or gas exceeds the estimated additional cost incident to conducting these operations.

(3) The department may also enter an order providing for unit operations, after notice and hearing, only if the department finds that there is clear and convincing evidence that all of the following conditions are met:

(a) In the absence of unitization, the ultimate recovery of oil or gas, or both, will be substantially decreased because normal production techniques and methods are not feasible and will not result in the maximum efficient and economic recovery of oil or gas, or both;

(b) The unit operations will protect correlative rights;

(c) The unit operations will prevent waste, or will prevent the drilling of unnecessary wells;

(d) There has been a discovery of a commercial oil or gas field; and

(e) There has been sufficient exploration, drilling activity, and development to properly define the one or more pools or parts of them in a field proposed to be unitized.

(4) Notwithstanding any of the above, nothing in this chapter may be construed to prevent the voluntary agreement of all interested persons to any plan of unit operations. The department shall approve operations upon making a finding consistent with subsection (2) (b) and (c) of this section.

(5) The order shall be upon terms and conditions that are fair and reasonable and shall prescribe a plan for unit operations that includes:

(a) A description of the pool or pools or parts thereof to be so operated, termed the unitized area;

(b) A statement of the nature of the operations contemplated;

(c) An allocation of production and costs to the separately-owned tracts in the unitized area. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no agreement, production shall be allocated in a manner calculated to ensure that each owner's correlative rights are protected, and each separately-owned tract or combination of tracts receives its fair and reasonable share of production. Costs shall be allocated on a fair and reasonable basis;

(d) A provision, if necessary, prescribing fair, reasonable, and equitable terms and conditions as to time and rate of interest for carrying or otherwise financing any person who is unable to promptly meet his or her financial obligations in connection with the unit, such carrying and interest charges to be paid as provided by the department from the person's prorated share of production;

(e) A provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the owner's interest;

(f) The time when the unit operations shall commence, the timetable for development, and the manner and circumstances under which the unit operations shall terminate; and

(g) Additional provisions which are found to be appropriate for carrying out the unit operations and for the protection of correlative rights.

(6) No order of the department providing for unit operations may become effective until:

(a) The plan for unit operations approved by the department has been approved in writing by those persons who, under the department's order, will be required to pay at least seventy-five percent of the costs of unit operations;

(b) The plan has been approved in writing by those persons such as royalty owners, overriding royalty owners, and production payment owners, who own at least seventy-five percent of the production or proceeds thereof that will be credited to interests that are free of costs; and

(c) The department has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the department shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the persons owning required percentages of interest in the unitized area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, or within such additional period or periods of time as the department prescribes, the order will become unenforceable and shall be vacated by the department.

(7) An order providing for unit operations may be amended by an order made by the department in the same

manner and subject to the same conditions as an original order, except as provided in subsection (8) of this section, providing for unit operations, but (a) if such an amendment affects only the rights and interests of the owners, the approval of the amendment by those persons who own interests that are free of costs is not required, and (b) no such amending order may change the percentage for the allocation of oil and gas as established for any separately-owned tract or combination of tracts by the original order, except with the consent of all persons owning oil and gas rights in the tract, and no such order may change the percentage for the allocation of cost as established for any separately-owned tract or combination of tracts by the original order, except with the consent of all persons owning an interest in the tract or combination of tracts. An amendment that provides for the expansion of the unit area shall comply with subsection (8) of this section.

(8) The department, by order, may provide for the unit operation of a reservoir or reservoirs or parts thereof that include a unitized area established by a previous order of the department. The order, in providing for the allocation of unit production, shall first treat the unitized area previously established as a single tract and the portion of the new unit production allocated thereto shall then be allocated among the separately-owned tracts included in the previously established unit area in the same proportions as those specified in the previous order.

(9) After the date designated by the department the unit plan shall be effective, oil and gas leases within the unit area, or other contracts pertaining to the development thereof, shall be changed only to the extent necessary to meet the requirements of the unit plan, and otherwise shall remain in full force. Operations carried on under and in accordance with the unit plan shall be regarded and considered as fulfillment of and compliance with all of the provisions, covenants, and conditions, expressed or implied, of the several oil and gas leases upon lands within the unit area, or other contracts pertaining to the development thereof, insofar as the leases or other contracts may relate to the pool or field subject to the unit plan. The amount of production apportioned and allocated under the unit plan to each separately-owned tract within the unit area, and only that amount, regardless of the location of the well within the unit area from which it may be produced, and regardless of whether it is more or less than the amount of production from the well, if any, on each separately-owned tract, shall for all purposes be regarded as production from the separately-owned tract. Lessees shall not be obligated to pay royalties or make other payments, required by the oil and gas leases or other contracts affecting each such separately-owned tract, on production in excess of that amount apportioned and allocated to the separately-owned tract under the unit plan.

(10) The portion of the unit production allocated to any tract and the proceeds from its sale are the property and income of the several persons to whom, or to whose credit, the portion and proceeds are allocated or payable under the order providing for unit operations.

(11) No division order or other contract relating to the sale, purchase, or production from a separately-owned tract or combination of tracts may be terminated by the order providing for unit operations but shall remain in force and shall

apply to oil and gas allocated to the tract until terminated by an amended division order or contract in accordance with the order.

(12) Except to the extent that parties affected so agree, an order providing for unit operations shall not be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area, and shall be the property of those owners in the proportion that the expenses of unit operations are charged.

(13) After the date designated by the order of the department that a unit plan shall become effective, the designation of one or more unit operators shall be by vote of the lessees of land in the unit area, in a manner to be provided in the unit plan, and any operations in conflict with such unit plan shall be unlawful and are prohibited.

(14) A certified copy of any order of the department entered under this section is entitled to be recorded in the auditor's office in the county or counties wherein all or any portion of the unit area is located and, if recorded, constitute notice thereof to all persons. A copy of this order shall be mailed by certified mail to all interested persons.

(15) No order for unitization may be construed to allow the drilling of a well on a tract within the unit which is not leased or under contract for oil and gas exploration or production. [1994 sp.s. c 9 § 843; 1983 c 253 § 23.]

Additional notes found at www.leg.wa.gov

78.52.345 Ratable purchase of oil from owners or operators of pool required. Each person now or hereafter purchasing or taking for transportation oil from any owner or producer shall purchase or take ratably without discrimination in favor of any owner or operator over any other owner or producer in the same pool offering to sell his or her oil produced therefrom to that person. If the person purchasing or taking for transportation oil does not have need for all such oil lawfully produced within a pool, or if for any reason is unable to purchase all of the oil, then it shall purchase from each operator in a pool ratably, taking and purchasing the same quantity of oil from each well to the extent that each well is capable of producing its ratable portion without waste. Nothing in this section may be construed to require any owner or operator to sell his or her product to only one purchaser or to require more than one pipeline connection for each producing well. If any such purchaser or person taking oil for transportation is likewise an operator or owner, the purchaser or person is prohibited from discriminating in favor of his or her own production, or production in which he or she may be interested, and his or her own production shall be treated as that of any other operator or owner. [1983 c 253 § 24.]

78.52.355 Ratable purchase of gas from owners or operators of pool required. Each person now or hereafter purchasing or taking for transportation gas produced from gas wells or from oil wells from any owner or operator shall purchase or take ratably without discrimination in favor of any owner or operator, over any other owner or operator in a pool. The person shall not discriminate in the quantities pur-

chased, the basis of measurement, or the gas transportation facilities afforded for gas of like quantity, quality, and pressure available from such wells. For the purpose of this section and RCW 78.52.345, reasonable differences in quantity taken or facilities afforded do not constitute unreasonable discrimination if the differences bear a fair relationship to differences in quality, quantity, or pressure of the gas available or the acreage attributable to the well, market requirements, or to the relative lengths of time during which the gas will be available to the purchaser. If the purchaser or person taking gas for transportation is likewise an operator or owner, the purchaser or person is prohibited from discriminating in favor of quantities taken or facilities in which he or she may be interested, and his or her own production shall be treated as that of any other operator or owner producing from gas wells in the same pool. [1983 c 253 § 25.]

78.52.365 Enforcement of RCW 78.52.345 and 78.52.355. The department may administer and enforce RCW 78.52.345 and 78.52.355 in accordance with the procedures in this chapter for its enforcement and with the rules and orders of the department. [1994 sp.s. c 9 § 844; 1983 c 253 § 26.]

Additional notes found at www.leg.wa.gov

78.52.450 Participation of public lands in unit plan.

The commissioner of public lands, or other officer or board having the control and management of state land, and the proper board or officer of any political, municipal, or other subdivision or agency of the state having control and management of public lands, may, on behalf of the state or of such political, municipal, or other subdivision or agency thereof, with respect to land and oil and gas rights subject to the control and management of such respective body, board or officer, consent to and participate in any unit plan. [1951 c 146 § 48.]

78.52.460 Unit plan not deemed monopolistic. No plan for the operation of a field or pool of oil or gas as a unit, either whole or in part, created or approved by the department under this chapter may be held to violate any of the statutes of this state prohibiting monopolies or acts, arrangements, agreements, contracts, combinations, or conspiracies in restraint of trade or commerce. [1994 sp.s. c 9 § 845; 1951 c 146 § 49.]

Additional notes found at www.leg.wa.gov

78.52.463 Suspension of operations for violation—Notice—Order—Hearing—Stay of order. (1) Any operation or activity that is in violation of applicable laws, rules, orders, or permit conditions is subject to suspension by order of the department. The order may suspend the operations authorized in the permit in whole or in part. The order may be issued only after the department has first notified the operator or owner of the violations and the operator or owner has failed to comply with the directions contained in the notification within ten days of service of the notice: PROVIDED, That the department may issue the suspension order immediately without notice if the violations are or may cause substantial harm to adjacent property, persons, or public resources, or has or may result in the pollution of waters in

violation of any state or federal law or rule. A suspension shall remain in effect until the violations are corrected or other directives are complied with unless declared invalid by the department after hearing or an appeal. The suspension order and notification, where applicable, shall specify the violations and the actions required to be undertaken to be in compliance with such laws, rules, orders, or permit conditions. The order and notification may also require remedial actions to be undertaken to restore, prevent, or correct activities or conditions which have resulted from the violations. The order and notification may be directed to the operator or owner or both.

(2) The suspension order constitutes a final and binding order unless the owner or operator to whom the order is directed requests a hearing before the department within fifteen days after service of the order. Such a request shall not in itself stay or suspend the order and the operator or owner shall comply with the order immediately upon service. The department may stay or suspend in whole or in part the suspension order pending a hearing if so requested. The hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act. [1994 sp.s. c 9 § 846; 1989 c 175 § 167; 1983 c 253 § 29.]

Additional notes found at www.leg.wa.gov

78.52.467 Illegal oil, gas, or product—Sale, purchase, etc., prohibited—Seizure and sale—Deposit of proceeds.

(1) The sale, purchase, acquisition, transportation, refining, processing, or handling of illegal oil, gas, or product is prohibited. However, no penalty by way of fine may be imposed upon a person who sells, purchases, acquires, transports, refines, processes, or handles illegal oil, gas, or product unless (a) the person knows, or is put on notice of, facts indicating that illegal oil, illegal gas, or illegal product is involved, or (b) the person fails to obtain a certificate of clearance with respect to the oil, gas, or product if prescribed by rule or order of the department, or fails to follow any other method prescribed by an order of the department for the identification of the oil, gas, or product.

(2) Illegal oil, illegal gas, and illegal product are declared to be contraband and are subject to seizure and sale as provided in this section. Seizure and sale shall be in addition to all other remedies and penalties provided in this chapter for violations relating to illegal oil, illegal gas, or illegal product. If the department believes that any oil, gas, or product is illegal, the department acting through the attorney general, shall bring a civil action in rem in the superior court of the county in which the oil, gas, or product is found, to seize and sell the same, or the department may include such an action in rem in any suit brought for an injunction or penalty involving illegal oil, illegal gas, or illegal product. A person claiming an interest in oil, gas, or product affected by an action in rem has the right to intervene as an interested party.

(3) Actions for the seizure and sale of illegal oil, illegal gas, or illegal product shall be strictly in rem and shall proceed in the name of the state as plaintiff against the oil, gas, or product as defendant. No bond or similar undertaking may be required of the plaintiff. Upon the filing of the petition for seizure and sale, the clerk of the court shall issue a summons, with a copy of the petition attached thereto, directed to the sheriff of the county or to another officer or person whom the

court may designate, for service upon all persons having or claiming any interest in the oil, gas, or product described in the petition. The summons shall command these persons to appear and answer within twenty days after the issuance and service of the summons. These persons need not be named or otherwise identified in the summons, and the summons shall be served by posting a copy of the summons, with a copy of the petition attached, on any public bulletin board or at the courthouse of a county where the oil, gas, or product involved is located, and by posting another copy at or near the place where the oil, gas, or product is located. The posting constitutes notice of the action to all persons having or claiming any interest in the oil, gas, or product described in the petition. In addition, if the court, on a properly verified petition, or affidavit or affidavits, or oral testimony, finds that grounds for seizure and for sale exist, the court shall issue an immediate order of seizure, describing the oil, gas, or product to be seized, and directing the sheriff of the county to take the oil, gas, or product into the sheriff's actual or constructive custody and to hold the same subject to further orders of the court. The court, in the order of seizure, may direct the sheriff to deliver the oil, gas, or product seized by him or her under the order to a court-appointed agent. The agent shall give bond in an amount and with such surety as the court may direct, conditioned upon compliance with the orders of the court concerning the custody and disposition of the oil, gas, or product.

(4) Any person having an interest in oil, gas, or product described in order of seizure and contesting the right of the state to seize and sell the oil, gas, or product may obtain its release prior to sale upon furnishing to the sheriff a bond approved by the court. The bond shall be in an amount equal to one hundred fifty percent of the market value of the oil, gas, or product to be released and shall be conditioned upon either redelivery to the sheriff of the released commodity or payment to the sheriff of its market value, if and when ordered by the court, and upon full compliance with further orders of the court.

(5) If the court, after a hearing upon a petition for the seizure and sale of oil, gas, or product, finds that the oil, gas, or product is contraband, the court shall order its sale by the sheriff in the same manner and upon the same notice of sale as provided by law for the sale of personal property on execution of judgment entered in a civil action, except that the court may order that the oil, gas, or product be sold in specified lots or portions and at specified intervals. Upon sale, title to the oil, gas, or product sold shall vest in the purchaser free of all claims, and it shall be legal oil, legal gas, or legal product in the hands of the purchaser.

(6) All proceeds, less costs of suit and expenses of sale, which are derived from the sale of illegal oil, illegal gas, or illegal product, and all amounts paid as penalties provided for by this chapter, shall be paid into the state treasury for the use of the department in defraying its expenses in the same manner as other funds provided by law for the use of the department. [1994 sp.s. c 9 § 847; 1983 c 253 § 30.]

Additional notes found at www.leg.wa.gov

78.52.470 Objections to order—Hearing required—Modification of order. Any person adversely affected by any order of the department may, within thirty days from the

effective date of such order, apply for a hearing with respect to any matter determined therein. No cause for action arising out of any order of the department accrues in any court to any person unless the person makes application for a hearing as provided in this section. Such application shall set forth specifically the ground on which the applicant considers the order to be unlawful or unreasonable. No party shall, in any court, urge or rely upon any ground not set forth in said application. An order made in conformity to a decision resulting from a hearing which abrogates, changes, or modifies the original order shall have the same force and effect as an original. Such hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, and shall be conducted in accordance with its provisions. [1994 sp.s. c 9 § 848; 1989 c 175 § 168; 1983 c 253 § 27; 1951 c 146 § 50.]

Additional notes found at www.leg.wa.gov

78.52.480 Appeal from order or decision—Rights of department. In proceedings for review of an order or decision of the department, the department shall be a party to the proceedings and shall have all rights and privileges granted by this chapter to any other party to such proceedings. [1994 sp.s. c 9 § 849; 1983 c 253 § 28; 1951 c 146 § 51.]

Additional notes found at www.leg.wa.gov

78.52.490 Appeal—How taken. Within thirty days after the application for a hearing is denied, or if the application is granted, then within thirty days after the rendition of the decision on the hearing, the applicant may apply to the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of petitioner's residence or place of business, or (c) in any county where the property or property rights owned by the petitioner is located for a review of such rule, regulation, order, or decision. The application for review shall be filed in the office of the clerk of the superior court of Thurston county and shall specifically state the grounds for review upon which the applicant relies and shall designate the rule, regulation, order, or decision sought to be reviewed. The applicant shall immediately serve a certified copy of said application upon the commissioner of public lands who shall immediately notify all parties who appeared in the proceedings before the department that such application for review has been filed. In the event the court determines the review is solely for the purpose of determining the validity of a rule or regulation of general applicability the court shall transfer venue to Thurston county for a review of such rule or regulation in the manner provided for in RCW 34.05.570. [1994 sp.s. c 9 § 850; 1983 c 253 § 32; 1951 c 146 § 52.]

Additional notes found at www.leg.wa.gov

78.52.530 Violations—Injunctions. Whenever it shall appear that any person is violating any provisions of this chapter, or any rule, regulation, or order made by the department under this chapter, and if the department cannot, without litigation, effectively prevent further violation, the department may bring suit in the name of the state against such person in the superior court in the county of the residence of the defendant, or in the county of the residence of any defendant if there be more than one defendant, or in the

county where the violation is alleged to have occurred, to restrain such person from continuing such violation. In such suit the department may without bond obtain injunctions prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts may warrant. [1994 sp.s. c 9 § 851; 1951 c 146 § 56.]

Additional notes found at www.leg.wa.gov

78.52.540 Violations—Injunctions by private party.

If the department fails to bring suit within thirty days to enjoin any apparent violation of this chapter, or of any rule, regulation, or order made by the department under this chapter, then any person or party in interest adversely affected by such violation, who has requested the department in writing to sue, may, to prevent any or further violation, bring suit for that purpose in the superior court of any county where the department could have instituted such suit. If, in such suit, the court should hold that injunctive relief should be granted, then the state shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the state had at all times been the complainant. [1994 sp.s. c 9 § 852; 1951 c 146 § 57.]

Additional notes found at www.leg.wa.gov

78.52.550 Violations—Penalty. Every person who shall violate or knowingly aid and abet the violation of this chapter or any valid orders, rules, and regulations issued thereunder, or who fails to perform any act which is herein made his or her duty to perform, shall be guilty of a gross misdemeanor. [2013 c 23 § 253; 1951 c 146 § 58.]

78.52.900 Short title. This chapter shall be known as the "Oil and Gas Conservation Act." [1951 c 146 § 2.]

78.52.910 Construction—1951 c 146. It is intended that the provisions of this chapter shall be liberally construed to accomplish the purposes authorized and provided for, or intended to be provided for by this chapter. [1951 c 146 § 59.]

78.52.920 Severability—1951 c 146. If any part or parts of this chapter, or the application thereof to any person or circumstances be held to be unconstitutional, such invalidity shall not affect the validity of the remaining portions of this chapter, or the application thereof to other persons or circumstances. The legislature hereby declares that it would have passed the remaining parts of this chapter if it had known that said invalid part or parts thereof would be declared unconstitutional. [1951 c 146 § 60.]

Chapter 78.56 RCW

METALS MINING AND MILLING OPERATIONS

Sections

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78.56.160	Moratorium on use of heap leach extraction process—Joint review by department of ecology and department of natural resources—Permanent prohibition of in situ extraction.
78.56.901	Effective date—1994 c 232 §§ 1-5, 9-17, and 23-29.
78.56.902	Effective date—1994 c 232 §§ 6-8 and 18-22.

78.56.010 Intent. It is in the best interests of the citizens of the state of Washington to insure the highest degree of environmental protection while allowing the proper development and use of its natural resources, including its mineral resources. Metals mining can have significant positive and adverse impacts on the state and on local communities. The purpose of this chapter is to assure that metals mineral mining or milling operations are designed, constructed, and operated in a manner that promotes both economic opportunities and environmental and public health safeguards for the citizens of the state. It is the intent of the legislature to create a regulatory framework which yields, to the greatest extent possible, a metals mining industry that is compatible with these policies. [1994 c 232 § 1.]

78.56.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Metals mining and milling operation" means a mining operation extracting from the earth precious or base metal ore and processing the ore by treatment or concentration in a milling facility. It also refers to an expansion of an existing operation or any new metals mining operation if the expansion or new mining operation is likely to result in a significant, adverse environmental impact pursuant to the provisions of chapter 43.21C RCW. The extraction of dolomite, sand, gravel, aggregate, limestone, magnesite, silica rock, and zeolite or other nonmetallic minerals; and placer mining; and the smelting of aluminum are not metals mining and milling operations regulated under this chapter.

(2) "Milling" means the process of grinding or crushing ore and extracting the base or precious metal by chemical solution, electro winning, or flotation processes.

(3) "Heap leach extraction process" means the process of extracting base or precious metal ore by percolating solutions through ore in an open system and includes reprocessing of previously milled ore. The heap leach extraction process does not include leaching in a vat or tank.

(4) "In situ extraction" means the process of dissolving base or precious metals from their natural place in the geological setting and retrieving the solutions from which metals can be recovered.

(5) "Regulated substances" means any materials regulated under a waste discharge permit pursuant to the requirements of chapter 90.48 RCW and/or a permit issued pursuant to chapter 70.94 RCW.

(6) "To mitigate" means: (a) To avoid the adverse impact altogether by not taking a certain action or parts of an action; (b) to minimize adverse impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology or by taking affirmative steps to avoid or reduce impacts; (c) to rectify adverse impacts by repairing, rehabilitating, or restoring the affected environment; (d) to reduce or eliminate adverse impacts over time by preservation and maintenance operations during the life of the action; (e) to compensate for the impact by replacing, enhancing, or providing substitute resources or environments; or (f) to monitor the adverse impact and take appropriate corrective measures. [1994 c 232 § 2.]

78.56.030 Operations subject to this chapter and other requirements. Metals mining and milling operations are subject to the requirements of this chapter in addition to the requirements established in other statutes and rules. [1994 c 232 § 3.]

78.56.040 Disclosures required with state environmental policy act checklist—Public inspection of information. The department of ecology shall require each applicant submitting a checklist pursuant to chapter 43.21C RCW for a metals mining and milling operation to disclose the ownership and each controlling interest in the proposed operation. The applicant shall also disclose all other mining operations within the United States which the applicant operates or in which the applicant has an ownership or controlling interest. In addition, the applicant shall disclose and may enumerate and describe the circumstances of: (1) Any past or present bankruptcies involving the ownerships and their subsidiaries, (2) any abandonment of sites regulated by the model toxics control act, chapter 70.105D RCW, or other similar state remedial cleanup programs, or the federal comprehensive environmental response, compensation, and liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any penalties in excess of ten thousand dollars assessed for violations of the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et seq., and (4) any previous forfeitures of financial assurance due to noncompliance with reclamation or remediation requirements. This information shall be available for public inspection and copying at the department of ecology. Ownership or control of less than ten percent of the stock of a corporation shall not by itself constitute ownership or a controlling interest under this section. [1994 c 232 § 4.]

78.56.050 Environmental impact statement required—Mitigation measures to be part of permit requirements—Department of ecology to cooperate with affected local governments. (1) An environmental impact statement must be prepared for any proposed metals mining and milling operation. The department of ecology shall be the

lead agency in coordinating the environmental review process under chapter 43.21C RCW and in preparing the environmental impact statement, except for uranium and thorium operations regulated under Title 70 RCW.

(2) As part of the environmental review of metals mining and milling operations regulated under this chapter, the applicant shall provide baseline data adequate to document the premining conditions at the proposed site of the metals mining and milling operation. The baseline data shall contain information on the elements of the natural environment identified in rules adopted pursuant to chapter 43.21C RCW.

(3) The department of ecology, after consultation with the department of fish and wildlife, shall incorporate measures to mitigate significant probable adverse impacts to fish and wildlife as part of the department of ecology's permit requirements for the proposed operation.

(4) In conducting the environmental review and preparing the environmental impact statement, the department of ecology shall cooperate with all affected local governments to the fullest extent practicable. [1994 c 232 § 5.]

78.56.060 Metals mining coordinator to be appointed—Duties. The department of ecology will appoint a metals mining coordinator. The coordinator will maintain current information on the status of any metals mining and milling operation regulated under this chapter from the preparation of the environmental impact statement through the permitting, construction, operation, and reclamation phases of the project or until the proposal is no longer active. The coordinator shall also maintain current information on postclosure activities. The coordinator will act as a contact person for the applicant, the operator, and interested members of the public. The coordinator may also assist agencies with coordination of their inspection and monitoring responsibilities. [1994 c 232 § 6.]

78.56.070 Quarterly inspections by responsible state agencies required—Cross-training and coordination of inspections encouraged. (1) State agencies with the responsibility for inspecting metals mining and milling operations regulated under this chapter shall conduct such inspections at least quarterly: PROVIDED, That the inspections are not prevented by inclement weather conditions.

(2) The legislature encourages state agencies with inspection responsibilities for metals mining and milling operations regulated under this chapter to explore opportunities for cross-training of inspectors among state agencies and programs. This cross-training would be for the purpose of meeting the inspection responsibilities of these agencies in a more efficient and cost-effective manner. If doing so would be more efficient and cost-effective, state agency inspectors are also encouraged to coordinate inspections with federal and local government inspectors as well as with one another. [1994 c 232 § 7.]

78.56.080 Estimate of costs by department of ecology and department of natural resources—Fee on operations to be established by department of ecology. (1)(a) As part of its normal budget development process and in consultation with the metals mining industry, the department of ecology shall estimate the costs required for the department to meet its

obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994. The department shall also estimate the cost of employing the metals mining coordinator established in RCW 78.56.060.

(b) As part of its normal budget development process and in consultation with the metals mining industry, the department of natural resources shall estimate the costs required for the department to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994.

(2) Based on the cost estimates generated by the department of ecology and the department of natural resources, the department of ecology shall establish the amount of a fee to be paid by each active metals mining and milling operation regulated under this chapter. The fee shall be established at a level to fully recover the direct and indirect costs of the agency responsibilities identified in subsection (1) of this section. The amount of the fee for each operation shall be proportional to the number of visits required per site. Each applicant for a metals mining and milling operation shall also be assessed the fee based on the same criterion. The department of ecology may adjust the fees established in this subsection if unanticipated activity in the industry increases or decreases the amount of funding necessary to meet agencies' inspection responsibilities.

(3) The department of ecology shall collect the fees established in subsection (2) of this section. All moneys from these fees shall be deposited into the general fund. [2012 c 198 § 15; 1997 c 170 § 1; 1994 c 232 § 8.]

Effective date—2012 c 198: See note following RCW 70.94.6532.

Additional notes found at www.leg.wa.gov

78.56.090 Initial waste discharge permits for tailings facilities—Siting criteria—Primary screening process—Technical site investigation—Site selection report. (1) In the processing of an application for an initial waste discharge permit for a tailings facility pursuant to the requirements of chapter 90.48 RCW, the department of ecology shall consider site-specific criteria in determining a preferred location of tailings facilities of metals mining and milling operations and incorporate the requirements of all known available and reasonable methods in order to maintain the highest possible standards to insure the purity of all waters of the state in accordance with the public policy identified by RCW 90.48.010.

In implementing the siting criteria, the department shall take into account the objectives of the proponent's application relating to mining and milling operations. These objectives shall consist of, but not be limited to (a) operational feasibility, (b) compatibility with optimum tailings placement methods, (c) adequate volume capacity, (d) availability of construction materials, and (e) an optimized embankment volume.

(2) To meet the mandate of subsection (1) of this section, siting of tailings facilities shall be accomplished through a two-stage process that consists of a primary alternatives screening phase, and a secondary technical site investigation phase.

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(3) The primary screening phase will consist of, but not be limited to, siting criteria based on considerations as to location as follows:

(a) Proximity to the one hundred year floodplain, as indicated in the most recent federal emergency management agency maps;

(b) Proximity to surface and ground water;

(c) Topographic setting;

(d) Identifiable adverse geologic conditions, such as landslides and active faults; and

(e) Visibility impacts of the public generally and residents more particularly.

(4) The department of ecology, through the primary screening process, shall reduce the available tailings facility sites to one or more feasible locations whereupon a technical site investigation phase shall be conducted by the department for the purpose of verifying the adequacy of the remaining potential sites. The technical site investigations phase shall consist of, but not be limited to, the following:

(a) Soil characteristics;

(b) Hydrologic characteristics;

(c) A local and structural geology evaluation, including seismic conditions and related geotechnical investigations;

(d) A surface water control analysis; and

(e) A slope stability analysis.

(5) Upon completion of the two phase evaluation process set forth in this section, the department of ecology shall issue a site selection report on the preferred location. This report shall address the above criteria as well as analyze the feasibility of reclamation and stabilization of the tailings facility. The siting report may recommend mitigation or engineering factors to address siting concerns. The report shall be developed in conjunction with the preparation of and contained in an environmental impact statement prepared pursuant to chapter 43.21C RCW. The report may be utilized by the department of ecology for the purpose of providing information related to the suitability of the site and for ruling on an application for a waste discharge permit.

(6) The department of ecology may, at its discretion, require the applicant to provide the information required in either phase one or phase two as described in subsections (3) and (4) of this section. [1994 c 232 § 9.]

78.56.100 Waste discharge permits for metals mining and milling operations tailing facilities—Pollution control standards—Waste rock management plan—Citizen observation and verification of water samples—Voluntary reduction plan—Application of this section. (1) In order to receive a waste discharge permit from the department of ecology pursuant to the requirements of chapter 90.48 RCW or in order to operate a metals mining and milling tailing facility, an applicant proposing a metals mining and milling operation regulated under this chapter must meet the following additional requirements:

(a) Any tailings facility shall be designed and operated to prevent the release of pollution and must meet the following standards:

(i) Operators shall apply all known available and reasonable technology to limit the concentration of potentially toxic materials in the tailings facility to assure the protection of wildlife and human health;

(ii) The tailings facility shall have a containment system that includes an engineered liner system, leak detection and leak collection elements, and a seepage collection impoundment to assure that a leak of any regulated substance under chapter 90.48 RCW will be detected before escaping from the containment system. The design and management of the facility must ensure that any leaks from the tailings facility are detected in a manner which allows for remediation pursuant to chapter 90.48 RCW. The applicant shall prepare a detailed engineering report setting forth the facility design and construction. The applicant shall submit the report to the department of ecology for its review and approval of a design as determined by the department. Natural conditions, such as depth to groundwater or net rainfall, shall be taken into account in the facility design, but not in lieu of the protection required by the engineered liner system;

(iii) The toxicity of mine or mill tailings and the potential for long-term release of regulated substances from mine or mill tailings shall be reduced to the greatest extent practicable through stabilization, removal, or reuse of the substances; and

(iv) The closure of the tailings facility shall provide for isolation or containment of potentially toxic materials and shall be designed to prevent future release of regulated substances contained in the impoundment;

(b) The applicant must develop a waste rock management plan approved by the department of ecology and the department of natural resources which emphasizes pollution prevention. At a minimum, the plan must contain the following elements:

(i) An accurate identification of the acid generating properties of the waste rock;

(ii) A strategy for encapsulating potentially toxic material from the environment, when appropriate, in order to prevent the release of heavy metals and acidic drainage; and

(iii) A plan for reclaiming and closing waste rock sites which minimizes infiltration of precipitation and runoff into the waste rock and which is designed to prevent future releases of regulated substances contained within the waste rock;

(c) If an interested citizen or citizen group so requests of the department of ecology, the metals mining and milling operator or applicant shall work with the department of ecology and the interested party to make arrangements for citizen observation and verification in the taking of required water samples. While it is the intent of this subsection to provide for citizen observation and verification of water sampling activities, it is not the intent of this subsection to require additional water sampling and analysis on the part of the mining and milling operation or the department. The citizen observation and verification program shall be incorporated into the applicant's, operator's, or department's normal sampling regimen and shall occur at least once every six months. There is no duty of care on the part of the state or its employees to any person who participates in the citizen observation and verification of water sampling under chapter 232, Laws of 1994 and the state and its employees shall be immune from any civil lawsuit based on any injuries to or claims made by any person as a result of that person's participation in such observation and verification of water sampling activities. The metals mining and milling operator or applicant shall not be lia-

ble for any injuries to or claims made by any person which result from that person coming onto the property of the metals mining and milling operator or applicant as an observer pursuant to chapter 232, Laws of 1994. The results from these and all other relevant water sampling activities shall be kept on file with the relevant county and shall be available for public inspection during normal working hours; and

(d) An operator or applicant for a metals mining and milling operation must complete a voluntary reduction plan in accordance with RCW 70.95C.200.

(2) Only those tailings facilities constructed after April 1, 1994, must meet the requirement established in subsection (1)(a) of this section. Only those waste rock holdings constructed after April 1, 1994, must meet the requirement established in subsection (1)(b) of this section. [1994 c 232 § 10.]

78.56.110 Performance security required—Conditions—Department of ecology authority to adopt requirements—Liability under performance security. (1) The department of ecology shall not issue necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the department of ecology a performance security which is acceptable to the department of ecology based on the requirements of subsection (2) of this section. This performance security may be:

(a) Bank letters of credit;

(b) A cash deposit;

(c) Negotiable securities;

(d) An assignment of a savings account;

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

(f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW.

The department of ecology may, for any reason, refuse any performance security not deemed adequate.

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

(a) Compliance with the environmental protection laws of the state of Washington administered by the department of ecology, or permit conditions administered by the department of ecology, associated with the construction, operation, and closure pertaining to metals mining and milling operations, and with the related environmental protection ordinances and permit conditions established by local government when requested by local government;

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

(c) Postclosure environmental monitoring as determined by the department of ecology; and

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

(3) The department of ecology may, if it deems appropriate, adopt rules for determining the amount of the performance security, requirements for the performance security, requirements for the issuer of the performance security, and any other requirements necessary for the implementation of this section.

(4) The department of ecology may increase or decrease the amount of the performance security at any time to compensate for any alteration in the operation that affects meeting the obligations in subsection (2) of this section. At a minimum, the department shall review the adequacy of the performance security every two years.

(5) Liability under the performance security shall be maintained until the obligations in subsection (2) of this section are met to the satisfaction of the department of ecology. Liability under the performance security may be released only upon written notification by the department of ecology.

(6) Any interest or appreciation on the performance security shall be held by the department of ecology until the obligations in subsection (2) of this section have been met to the satisfaction of the department of ecology. At such time, the interest shall be remitted to the applicant or operator. However, if the applicant or operator fails to comply with the obligations of subsection (2) of this section, the interest or appreciation may be used by the department of ecology to comply with the obligations.

(7) Only one agency may require a performance security to satisfy the deposit requirements of RCW 78.44.087, and only one agency may require a performance security to satisfy the deposit requirements of this section. However, a single performance security, when acceptable to both the department of ecology and the department of natural resources, may be utilized by both agencies to satisfy the requirements of this section and RCW 78.44.087. [1995 c 223 § 1; 1994 c 232 § 11.]

78.56.120 Remediation or mitigation by department of ecology—Order to submit performance security. The department of ecology may, with staff, equipment, and material under its control, or by contract with others, remediate or mitigate any impact of a metals mining and milling operation when it finds that the operator or permit holder has failed to comply with relevant statutes, rules, or permits, and the operator or permit holder has failed to take adequate or timely action to rectify these impacts.

If the department intends to remediate or mitigate such impacts, the department shall issue an order to submit performance security requiring the permit holder or surety to submit to the department the amount of moneys posted pursuant to RCW 78.56.110. If the amount specified in the order to submit performance security is not paid within twenty days after issuance of the notice, the attorney general upon request of the department shall bring an action on behalf of the state in a superior court to recover the amount specified and associated legal fees.

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

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

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

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The department shall refund to the surety or permit holder all amounts received in excess of the amount of expenses incurred. If the amount received is less than the expenses incurred, the attorney general, upon request of the department of ecology, may bring an action against the permit holder on behalf of the state in the superior court to recover the remaining costs listed in this section. [1995 c 223 § 2; 1994 c 232 § 12.]

78.56.130 Legislative finding—Impact analysis required for large-scale operations—Impact fees by county legislative authority—Application of this section—Application of chapter 82.02 RCW. (1) The legislature finds that the construction and operation of large-scale metals mining and milling facilities may create new job opportunities and enhance local tax revenues. However, the legislature also finds that such operations may also result in new demands on public facilities owned and operated by local government entities, such as public streets and roads; publicly owned parks, open space, and recreation facilities; school facilities; and fire protection facilities in jurisdictions that are not part of a fire district. It is important for these economic impacts to be identified as part of any proposal for a large-scale metals mining and milling operation. It is then appropriate for the county legislative authority to balance expected revenues, including revenues derived from taxes paid by the owner of such an operation, and costs associated with the operation to determine to what degree any new costs require mitigation by the metals mining applicant.

(2) An applicant for a large-scale metals mining and milling operation regulated under this chapter must submit to the relevant county legislative authority an impact analysis describing the economic impact of the proposed mining operation on local governmental units. For the purposes of this section, a metals mining operation is large-scale if, in the construction or operation of the mine and the associated milling facility, the applicant and contractors at the site employ more than thirty-five persons during any consecutive six-month period. The relevant county is the county in which the mine and mill are to be sited, unless the economic impacts to local governmental units are projected to substantially affect more than one county. In that case, the impact plan must be submitted to the legislative authority of all affected counties. Local governmental units include counties, cities, towns, school districts, and special purpose districts.

(3) The economic impact analysis shall include at least the following information:

(a) A timetable for development of the mining operation, including the opening date of the operation and the estimated closing date;

(b) The estimated number of persons coming into the impacted area as a result of the development of the mining operation;

(c) An estimate of the increased capital and operating costs to local governmental units for providing services necessary as a result of the development of the mining operation; and

(d) An estimate of the increased tax or other revenues accruing to local governmental units as a result of development of the mining and milling operation.

(4) The county legislative authority of a county planning under chapter 36.70A RCW may assess impact fees under chapter 82.02 RCW to address economic impacts associated with development of the mining operation. The county legislative authority shall hold at least one public hearing on the economic impact analysis and any proposed mitigation measures.

(5) The county legislative authority of a county which is not planning under chapter 36.70A RCW may negotiate with the applicant on a strategy to address economic impacts associated with development of the mining operation. The county legislative authority shall hold at least one public hearing on the economic impact analysis and any proposed mitigation measures.

(6) The county legislative authority must approve or disapprove the impact analysis and any associated proposals from the applicant to address economic impacts to local governmental units resulting from development of the mining operation. If the applicant does not submit an adequate impact analysis to the relevant county legislative authority or if the county legislative authority does not find the applicant's proposals to be acceptable because of their failure to adequately mitigate adverse economic impacts, the county legislative authority shall refuse to issue any permits under its jurisdiction necessary for the construction or operation of the mine and associated mill.

(7) The requirements established in this section apply to metals mining operations under construction or constructed after April 1, 1994.

(8) The provisions of chapter 82.02 RCW shall apply to new mining and milling operations. [1994 c 232 § 13.]

78.56.140 Citizen action suits. (1) Except as provided in subsections (2) and (5) of this section, any aggrieved person may commence a civil action on his or her own behalf:

(a) Against any person, including any state agency or local government agency, who is alleged to be in violation of a law, rule, order, or permit pertaining to metals mining and milling operations regulated under chapter 232, Laws of 1994;

(b) Against a state agency if there is alleged a failure of the agency to perform any nondiscretionary act or duty under state laws pertaining to metals mining and milling operations; or

(c) Against any person who constructs a metals mining and milling operation without the permits and authorizations required by state law.

The superior courts shall have jurisdiction to enforce metals mining laws, rules, orders, and permit conditions, or to order the state to perform such act or duty, as the case may be. In addition to injunctive relief, a superior court may award a civil penalty when deemed appropriate in an amount not to exceed ten thousand dollars per violation per day, payable to the state of Washington.

(2) No action may be commenced:

(a) Under subsection (1)(a) of this section:

(i) Prior to sixty days after the plaintiff has given notice of the alleged violation to the state, and to any alleged violator of a metals mining and milling law, rule, order, or permit condition; or

(ii) If the state has commenced and is diligently prosecuting a civil action in a court of the state or of the United States or is diligently pursuing authorized administrative enforcement action to require compliance with the law, rule, order, or permit. To preclude a civil action, the enforcement action must contain specific, aggressive, and enforceable timelines for compliance and must provide for public notice of and reasonable opportunity for public comment on the enforcement action. In any such court action, any aggrieved person may intervene as a matter of right; or

(b) Under subsection (1)(b) of this section prior to sixty days after the plaintiff has given notice of such action to the state.

(3)(a) Any action respecting a violation of a law, rule, order, or permit condition pertaining to metals mining and milling operations may be brought in the judicial district in which such operation is located or proposed.

(b) In such action under this section, the state, if not a party, may intervene as a matter of right.

(4) The court, in issuing any final order in any action brought pursuant to subsection (1) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any prevailing party, wherever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the rules of civil procedure.

(5) A civil action to enforce compliance with a law, rule, order, or permit may not be brought under this section if any other statute, or the common law, provides authority for the plaintiff to bring a civil action and, in such action, obtain the same relief, as authorized under this section, for enforcement of such law, rule, order, or permit. Nothing in this section restricts any right which any person, or class of persons, may have under any statute or common law to seek any relief, including relief against the state or a state agency. [1994 c 232 § 14.]

78.56.150 Application of requirements to milling facilities not adjacent to mining operation. A milling facility which is not adjacent to or in the vicinity of the metals mining operation producing the ore to be milled and which processes precious or base metal ore by treatment or concentration is subject to the provisions of RCW 78.56.010 through 78.56.090, 78.56.100(1) (a), (c), and (d), 78.56.110 through 78.56.140, 70.94.620, and 70.105.300 and chapters 70.94, 70.105, 90.03, and 90.48 RCW and all other applicable laws. The smelting of aluminum does not constitute a metals milling operation under this section. [1994 c 232 § 15.]

78.56.160 Moratorium on use of heap leach extraction process—Joint review by department of ecology and department of natural resources—Permanent prohibition of in situ extraction. (1) Until June 30, 1996, there shall be a moratorium on metals mining and milling operations using the heap leach extraction process. The department of natural resources and the department of ecology shall jointly review the existing laws and regulations pertaining to the heap leach extraction process for their adequacy in safeguarding the environment.

(2) Metals mining using the process of in situ extraction is permanently prohibited in the state of Washington. [1998 c 245 § 161; 1994 c 232 § 16.]

78.56.901 Effective date—1994 c 232 §§ 1-5, 9-17, and 23-29. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and, with the exception of sections 6 through 8 and 18 through 22 of this act, shall take effect immediately [April 1, 1994]. [1994 c 232 § 30.]

78.56.902 Effective date—1994 c 232 §§ 6-8 and 18-22. Sections 6 through 8 and 18 through 22 of this act shall take effect July 1, 1995. [1994 c 232 § 31.]

Chapter 78.60 RCW GEOTHERMAL RESOURCES

Sections

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78.60.010 Legislative declaration. The public has a direct interest in the safe, orderly and nearly pollution-free development of the geothermal resources of the state, as hereinafter in *RCW 79.76.030(1) defined. The legislature hereby declares that it is in the best interests of the state to further the development of geothermal resources for the benefit of all of the citizens of the state while at the same time fully providing for the protection of the environment. The development of geothermal resources shall be so conducted as to protect the rights of landowners, other owners of interests therein, and the general public. In providing for such development, it is the purpose of this chapter to provide for

the orderly exploration, safe drilling, production and proper abandonment of geothermal resources in the state of Washington. [1974 ex.s. c 43 § 1. Formerly RCW 79.76.010.]

*Reviser's note: RCW 79.76.030 was recodified as RCW 78.60.030 pursuant to 2003 c 334 § 567.

78.60.020 Short title. This chapter shall be known as the Geothermal Resources Act. [1974 ex.s. c 43 § 2. Formerly RCW 79.76.020.]

78.60.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "By-product" means any mineral or minerals, not including oil, hydrocarbon gas, or helium, which are found in solution or in association with geothermal steam and that have a value of less than seventy-five percent of the value of the geothermal resource or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves.

(2) A "completed well" is a well that has been drilled to its total depth, has been adequately cased, and is ready to be either plugged and abandoned, shut-in, or put into production.

(3) "Core holes" are holes drilled or excavations made expressly for the acquisition of geological or geophysical data for the purpose of finding and delineating a favorable geothermal area prior to the drilling of a well.

(4) "Department" means the department of natural resources.

(5) "Energy transfer system" means the structures and enclosed fluids which facilitate the utilization of geothermal energy. The system includes the geothermal wells, cooling towers, reinjection wells, equipment directly involved in converting the heat energy associated with geothermal resources to mechanical or electrical energy or in transferring it to another fluid, the closed piping between such equipment, wells and towers and that portion of the earth which facilitates the transfer of a fluid from reinjection wells to geothermal wells: PROVIDED, That the system shall not include any geothermal resources which have escaped into or have been released into the nongeothermal ground or surface waters from either man-made containers or through leaks in the structure of the earth caused by or to which access was made possible by any drilling, redrilling, reworking or operating of a geothermal or reinjection well.

(6) "Geothermal area" means any land that is, or reasonably appears to be, underlain by geothermal resources.

(7)(a) "Geothermal resources" includes the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or that may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, exclusive of helium or oil, hydrocarbon gas or other hydrocarbon substances, but including, specifically:

(i) All products of geothermal processes, including indigenous steam, and hot water and hot brines;

(ii) Steam and other bases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(iii) Heat or other associated energy found in geothermal formations; and

(iv) Any by-product derived from them.

(b) "Geothermal resources" does not include heat energy used in ground source heat exchange systems for ground source heat pumps.

(8) "Operator" means the person supervising or in control of the operation of a geothermal resource well, whether or not such person is the owner of the well.

(9) "Owner" means the person who possesses the legal right to drill, convert or operate any well or other facility subject to the provisions of this chapter.

(10) "Person" means any individual, corporation, company, association of individuals, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative, or public agency that is the subject of legal rights and duties.

(11) "Plug and abandon" means to place permanent plugs in the well in such a way and at such intervals as are necessary to prevent future leakage of fluid from the well to the surface or from one zone in the well to the other, and to remove all drilling and production equipment from the site, and to restore the surface of the site to its natural condition or contour or to such condition as may be prescribed by the department.

(12) "Pollution" means any damage or injury to ground or surface waters, soil or air resulting from the unauthorized loss, escape, or disposal of any substances at any well subject to the provisions of this chapter.

(13) "Shut-in" means to adequately cap or seal a well to control the contained geothermal resources for an interim period.

(14) "Waste," in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood and shall include:

(a) The inefficient, excessive, or improper use of, or unnecessary dissipation of, reservoir energy; or the locating, spacing, drilling, equipping, operating or producing of any geothermal energy well in a manner which results, or tends to result, in reducing the quantity of geothermal energy to be recovered from any geothermal area in this state;

(b) The inefficient above-ground transporting or storage of geothermal energy; or the locating, spacing, drilling, equipping, operating, or producing of any geothermal well in a manner causing, or tending to cause, unnecessary excessive surface loss or destruction of geothermal energy;

(c) The escape into the open air, from a well of steam or hot water, in excess of what is reasonably necessary in the efficient development or production of a geothermal well.

(15) "Well" means any excavation made for the discovery or production of geothermal resources, or any special facility, converted producing facility, or reactivated or converted abandoned facility used for the reinjection of geothermal resources, or the residue thereof underground. [2013 c 274 § 2; 1974 ex.s. c 43 § 3. Formerly RCW 79.76.030.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2013 c 274: "The legislature finds that:

(1) Because related geothermal resources may be present on contiguous private, state, and federal lands within the state, there is a need to provide greater conformity with the state's geothermal resources statutes and the federal statutes defining geothermal resources and clarify that ownership of geothermal resources resides with the surface owner unless the interest is otherwise reserved or conveyed.

(2) It is in the public interest to encourage and foster the development of geothermal resources in the state, and the legislature intends to align the state statutes defining geothermal resources with current federal law with which developers are familiar, and clarify the respective regulatory roles of state agencies.

(3) Geothermal resources suitable for energy development are located at much greater depths than the aquifers relied upon for other beneficial uses, but in the event that a geothermal well draws from the same source as other uses, a coordinated and streamlined permitting of geothermal development can better ensure that any interference with existing water uses will be addressed and eliminated. It is the intent of this act that no water uses associated with a geothermal well impair any water use authorized through appropriation under Title 90 RCW.

(4) Changes to federal law in 2005 require a distribution of a portion of geothermal energy revenues from leases on federal land directly to the county in which the lease activity occurs, and therefore it is appropriate that the additional distribution to the state be provided for statewide uses relating to geothermal energy assessment, exploration, and production." [2013 c 274 § 1.]

78.60.040 Geothermal resources deemed sui generis.

Notwithstanding any other provision of law, geothermal resources are found and hereby determined to be sui generis, being neither a mineral resource nor a water resource and as such are declared to be the private property of the holder of the title to the surface land above the resource, unless the geothermal resources have been otherwise reserved by or conveyed to another person or entity. Nothing in this section divests the people of the state of any rights, title, or interest in geothermal resources owned by the state. [2013 c 274 § 3; 1979 ex.s. c 2 § 1; 1974 ex.s. c 43 § 4. Formerly RCW 79.76.040.]

Findings—Intent—2013 c 274: See note following RCW 78.60.030.

Additional notes found at www.leg.wa.gov

78.60.050 Administration of chapter. (1) The department shall administer and enforce the provisions of this chapter and the rules, regulations, and orders relating to the drilling, operation, maintenance, abandonment and restoration of geothermal areas, to prevent damage to and waste from underground geothermal deposits, and to prevent damage to underground and surface waters, land or air that may result from improper drilling, operation, maintenance or abandonment of geothermal resource wells.

(2) In order to implement the terms and provisions of this chapter, the department under the provisions of chapter 34.05 RCW, as now or hereafter amended, may from time to time promulgate those rules and regulations necessary to carry out the purposes of this chapter, including but not restricted to defining geothermal areas; establishing security requirements, which may include bonding; providing for liens against production; providing for casing and safety device requirements; providing for site restoration plans to be completed prior to abandonment; and providing for abandonment requirements. [1974 ex.s. c 43 § 5. Formerly RCW 79.76.050.]

78.60.060 Scope of chapter. (1) This chapter is intended to preempt local regulation of the drilling and operation of wells for geothermal resources but shall not be con-

strued to permit the locating of any well or drilling when such well or drilling is prohibited under state or local land use law or regulations promulgated thereunder. Geothermal resources, by-products, or waste products which have escaped or been released from the energy transfer system or a mineral recovery process shall be subject to provisions of state law relating to the pollution of ground or surface waters (Title 90 RCW), provisions of the state fisheries law and the state game laws (Title 77 RCW), and any other state environmental pollution control laws.

(2) Authorization for a consumptive or nonconsumptive use of water associated with a geothermal well, for purposes including but not limited to power production, greenhouse heating, warm water fish propagation, space heating plants, irrigation, swimming pools, and hot springs baths, shall be subject to the appropriation procedure as provided in Title 90 RCW, except for the following:

(a) Water that is removed from an aquifer or geothermal reservoir to develop and obtain geothermal resources if the water is returned to or reinjected into the same aquifer or reservoir; or

(b) The reasonable loss of water:

(i) During a test of a geothermal well; or

(ii) From the temporary failure of all or part of a system that removes water from an aquifer or geothermal reservoir, transfers the heat from that water, and reinjects that water into the same aquifer or reservoir.

(3) The department and the department of ecology shall cooperate to avoid duplication and to promote efficiency in issuing permits and other approvals for these uses.

(4) Nothing in chapter 274, Laws of 2013 shall affect or operate to impair any existing water rights. [2013 c 274 § 4; 2003 c 39 § 40; 1974 ex.s. c 43 § 6. Formerly RCW 79.76.060.]

Findings—Intent—2013 c 274: See note following RCW 78.60.030.

78.60.070 Drilling permits—Applications—Hearing—Fees. (1) Any person proposing to drill a well or redrill an abandoned well for geothermal resources shall file with the department a written application for a permit to commence such drilling or redrilling on a form prescribed by the department accompanied by a permit fee of two hundred dollars. The department shall forward a duplicate copy to the department of ecology within ten days of filing.

(2) Upon receipt of a proper application relating to drilling or redrilling the department shall set a date, time, and place for a public hearing on the application, which hearing shall be in the county in which the drilling or redrilling is proposed to be made, and shall instruct the applicant to publish notices of such application and hearing by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the drilling or redrilling is proposed to be made and in such other appropriate information media as the department may direct.

(3) Any person proposing to drill a core hole for the purpose of gathering geothermal data, including but not restricted to heat flow, temperature gradients, and rock conductivity, shall be required to obtain a single permit for each core hole according to subsection (1) of this section, includ-

ing a permit fee for each core hole, but no notice need be published, and no hearing need be held. Such core holes that penetrate more than seven hundred and fifty feet into bedrock shall be deemed geothermal test wells and subject to the payment of a permit fee and to the requirement in subsection (2) of this section for public notices and hearing. In the event geothermal energy is discovered in a core hole, the hole shall be deemed a geothermal well and subject to the permit fee, notices, and hearing. Such core holes as described by this subsection are subject to all other provisions of this chapter, including a bond or other security as specified in RCW 78.60.130.

(4) All moneys paid to the department under this section shall be deposited with the state treasurer for credit to the general fund. [2007 c 338 § 1; 1974 ex.s. c 43 § 7. Formerly RCW 79.76.070.]

78.60.080 Drilling permits—Criteria for granting. A permit shall be granted only if the department is satisfied that the area is suitable for the activities applied for; that the applicant will be able to comply with the provisions of this chapter and the rules and regulations enacted hereunder; and that a permit would be in the best interests of the state.

The department shall not allow operation of a well under permit if it finds that the operation of any well will unreasonably decrease groundwater available for prior water rights in any aquifer or other groundwater source for water for beneficial uses, unless such affected water rights are acquired by condemnation, purchase or other means.

The department shall have the authority to condition the permit as it deems necessary to carry out the provisions of this chapter, including but not limited to conditions to reduce any environmental impact.

The department shall forward a copy of the permit to the department of ecology within five days of issuance. [1974 ex.s. c 43 § 8. Formerly RCW 79.76.080.]

78.60.090 Casing requirements. Any operator engaged in drilling or operating a well for geothermal resources shall equip such well with casing of sufficient strength and with such safety devices as may be necessary, in accordance with methods approved by the department.

No person shall remove a casing, or any portion thereof, from any well without prior approval of the department. [1974 ex.s. c 43 § 9. Formerly RCW 79.76.090.]

78.60.100 Plugging and abandonment of wells or core holes—Transfer of jurisdiction to department of ecology. Any well or core hole drilled under authority of this chapter from which:

(1) It is not technologically practical to derive the energy to produce electricity commercially, or the owner or operator has no intention of deriving energy to produce electricity commercially, and

(2) Usable minerals cannot be derived, or the owner or operator has no intention of deriving usable minerals, shall be plugged and abandoned as provided in this chapter or, upon the owner's or operator's written application to the department of natural resources and with the concurrence and approval of the department of ecology, jurisdiction over the well may be transferred to the department of ecology and, in

such case, the well shall no longer be subject to the provisions of this chapter but shall be subject to any applicable laws and rules relating to wells drilled for appropriation and use of groundwaters. If an application is made to transfer jurisdiction, a copy of all logs, records, histories, and descriptions shall be provided to the department of ecology by the applicant. [2007 c 338 § 2; 1974 ex.s. c 43 § 10. Formerly RCW 79.76.100.]

78.60.110 Suspension of drilling, shut-in or removal of equipment for authorized period—Unlawful abandonment. (1) The department may authorize the operator to suspend drilling operations, shut-in a completed well, or remove equipment from a well for the period stated in the department's written authorization. The period of suspension may be extended by the department upon the operator showing good cause for the granting of such extension.

(2) If drilling operations are not resumed by the operator, or the well is not put into production, upon expiration of the suspension or shut-in permit, an intention to unlawfully abandon shall be presumed.

(3) A well shall also be deemed unlawfully abandoned if, without written approval from the department, drilling equipment is removed.

(4) An unlawful abandonment under this chapter shall be entered in the department records and written notice thereof shall be mailed by registered mail both to such operator at his or her last known address as disclosed by records of the department and to the operator's surety. The department may thereafter proceed against the operator and his or her surety. [2013 c 23 § 254; 1974 ex.s. c 43 § 11. Formerly RCW 79.76.110.]

78.60.120 Notification of abandonment or suspension of operations—Required—Procedure. (1) Before any operation to plug and abandon or suspend the operation of any well is commenced, the owner or operator shall submit in writing a notification of abandonment or suspension of operations to the department for approval. No operation to abandon or suspend the operation of a well shall commence without approval by the department. The department shall respond to such notification in writing within ten working days following receipt of the notification.

(2) Failure to abandon or suspend operations in accordance with the method approved by the department shall constitute a violation of this chapter, and the department shall take appropriate action under the provisions of *RCW 79.76.270. [1974 ex.s. c 43 § 12. Formerly RCW 79.76.120.]

*Reviser's note: RCW 79.76.270 was recodified as RCW 78.60.270 pursuant to 2003 c 334 § 567.

78.60.130 Performance bond or other security—Required. Every operator who engages in the drilling, redrilling, or deepening of any well or core hole shall file with the department a reasonable bond or bonds with good and sufficient surety, or the equivalent thereof, acceptable to the department, conditioned on compliance with the provisions of this chapter and all rules and permit conditions adopted pursuant to this chapter. This performance bond shall be executed in favor of and approved by the department.

In lieu of a bond the operator may file with the department a cash deposit, negotiable securities acceptable to the department, or an assignment of a savings account in a Washington bank on an assignment form prescribed by the department. The department, in its discretion, may accept a single surety or security arrangement covering more than one well or core hole. [2007 c 338 § 3; 1974 ex.s. c 43 § 13. Formerly RCW 79.76.130.]

78.60.140 Termination or cancellation of bond or change in other security, when. The department shall not consent to the termination and cancellation of any bond by the operator, or change as to other security given, until the well or wells for which it has been issued have been properly abandoned or another valid bond for such well has been submitted and approved by the department. A well is properly abandoned when abandonment has been approved by the department. [1974 ex.s. c 43 § 14. Formerly RCW 79.76.140.]

78.60.150 Notification of sale, exchange, etc. The owner or operator of a well shall notify the department in writing within ten days of any sale, assignment, conveyance, exchange, or transfer of any nature which results in any change or addition in the owner or operator of the well on such forms with such information as may be prescribed by the department. [1974 ex.s. c 43 § 15. Formerly RCW 79.76.150.]

78.60.160 Combining orders, unitization programs and well spacing—Authority of department. The department has the authority, through rules and regulations, to promulgate combining orders, unitization programs, and well spacing, and establish proportionate costs among owners or operators for the operation of such units as the result of said combining orders, if good and sufficient reason is demonstrated that such measures are necessary to prevent the waste of geothermal resources. [1974 ex.s. c 43 § 16. Formerly RCW 79.76.160.]

78.60.170 Designation of resident agent for service of process. Each owner or operator of a well shall designate a person who resides in this state as his or her agent upon whom may be served all legal processes, orders, notices, and directives of the department or any court. [2013 c 23 § 255; 1974 ex.s. c 43 § 17. Formerly RCW 79.76.170.]

78.60.180 General authority of department. The department shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations, cooperate with other governmental and private agencies in making investigations, receive any federal funds, state funds, and other funds and expend them on research programs concerning geothermal resources and their potential development within the state, and to collect and disseminate information relating to geothermal resources in the state: PROVIDED, That the department shall not construct or operate commercial geothermal facilities. [1974 ex.s. c 43 § 18. Formerly RCW 79.76.180.]

78.60.190 Employment of personnel. The department shall have the authority, and it shall be its duty, to employ all personnel necessary to carry out the provisions of this chapter pursuant to chapter 41.06 RCW. [1974 ex.s. c 43 § 19. Formerly RCW 79.76.190.]

78.60.200 Drilling records, etc., to be maintained—Inspection—Filing. (1) The owner or operator of any well or core hole shall keep or cause to be kept careful and accurate logs, including but not restricted to heat flow, temperature gradients, and rock conductivity logs, records, descriptions, and histories of the drilling, re-drilling, or deepening of the well.

(2) All logs, including but not restricted to heat flow, temperature gradients, and rock conductivity logs, records, histories, and descriptions referred to in subsection (1) of this section shall be kept in the local office of the owner or operator, and together with other reports of the owner or operator shall be subject during business hours to inspection by the department. Each owner or operator, upon written request from the department, shall file with the department one paper and one electronic copy of the logs, including but not restricted to heat flow, temperature gradients, and rock conductivity logs, records, histories, descriptions, or other records or portions thereof pertaining to the geothermal drilling or operation underway or suspended. [2007 c 338 § 4; 1974 ex.s. c 43 § 20. Formerly RCW 79.76.200.]

78.60.210 Filing of logs and surveys with department upon completion, plugging, abandonment, or suspension of operations. Upon completion or plugging and abandonment of any well or core hole or upon the suspension of operations conducted with respect to any well or core hole for a period of at least six months, one paper and one electronic copy of logs, including but not restricted to heat flow, temperature gradients, and rock conductivity logs, core, electric log, history, and all other logs and surveys that may have been run on the well, shall be filed with the department within thirty days after such completion, plugging and abandonment, or six months' suspension. [2007 c 338 § 5; 1974 ex.s. c 43 § 21. Formerly RCW 79.76.210.]

78.60.220 Statement of geothermal resources produced—Filing. The owner or operator of any well producing geothermal resources shall file with the department a statement of the geothermal resources produced. Such report shall be submitted on such forms and in such manner as may be prescribed by the department. [1974 ex.s. c 43 § 22. Formerly RCW 79.76.220.]

78.60.230 Confidentiality of records—Preservation in an electronic data system. (1) The records of any owner or operator, when filed with the department as provided in this chapter, shall be confidential and shall be open to inspection only to personnel of the department for the purpose of carrying out the provisions of this chapter and to those authorized in writing by such owner or operator, until the expiration of a twenty-four month confidential period to begin at the date of commencement of production or of abandonment of the well or core hole. After expiration of the twenty-four month confidential period, the department shall ensure all

logs and surveys that may have been run on the well or core hole are preserved in an electronic data system and made available to the public.

(2) Such records shall in no case, except as provided in this chapter, be available as evidence in court proceedings. No officer, employee, or member of the department shall be allowed to give testimony as to the contents of such records, except as provided in this chapter for the review of a decision of the department or in any proceeding initiated for the enforcement of an order of the department, for the enforcement of a lien created by the enforcement of this chapter, or for use as evidence in criminal proceedings arising out of such records or the statements upon which they are based. [2007 c 338 § 6; 1974 ex.s. c 43 § 23. Formerly RCW 79.76.230.]

78.60.240 Removal, destruction, alteration, etc., of records prohibited. No person shall, for the purpose of evading the provision of this chapter or any rule, regulation or order of the department made thereunder, remove from this state, or destroy, mutilate, alter or falsify any such record, account, or writing. [1974 ex.s. c 43 § 24. Formerly RCW 79.76.240.]

78.60.250 Violations—Modification of permit, when necessary—Departmental order—Issuance—Appeal. Whenever it appears with probable cause to the department that:

(1) A violation of any provision of this chapter, regulation adopted pursuant thereto, or condition of a permit issued pursuant to this chapter has occurred or is about to occur, or

(2) That a modification of a permit is deemed necessary to carry out the purpose of this chapter, the department shall issue a written order in person to the operator or his or her employees or agents, or by certified mail, concerning the drilling, testing, or other operation conducted with respect to any well drilled, in the process of being drilled, or in the process of being abandoned or in the process of reclamation or restoration, and the operator, owner, or designated agent of either shall comply with the terms of the order and may appeal from the order in the manner provided for in RCW 78.60.280. When the department deems necessary, the order may include a shutdown order to remain in effect until the deficiency is corrected. [2013 c 23 § 256; 1974 ex.s. c 43 § 25. Formerly RCW 79.76.250.]

78.60.260 Liability in damages for violations—Procedure. Any person who violates any of the provisions of this chapter, or fails to perform any duty imposed by this chapter, or violates an order or other determination of the department made pursuant to the provisions of this chapter, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the state, shall be liable to pay the state damages including an amount equal to the sum of money necessary to restock such waters, replenish such resources, and otherwise restore the stream, lake, other water source, or land to its condition prior to the injury, as such condition is determined by the department. Such damages shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington in the superior court of the county in which such dam-

ages occurred: PROVIDED, That if damages occurred in more than one county the attorney general may bring action in any of the counties where the damage occurred. Any moneys so recovered by the attorney general shall be transferred to the department under whose jurisdiction the damaged resource occurs, for the purposes of restoring the resource. [1974 ex.s. c 43 § 26. Formerly RCW 79.76.260.]

78.60.270 Injunctions—Restraining orders. Whenever it shall appear that any person is violating any provision of this chapter, or any rule, regulation, or order made by the department hereunder, and if the department cannot, without litigation, effectively prevent further violation, the department may bring suit in the name of the state against such person in the court in the county of the residence of the defendant, or in the county of the residence of any defendant if there be more than one defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation. In such suit the department may, without bond, obtain injunctions prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts may warrant. [1974 ex.s. c 43 § 27. Formerly RCW 79.76.270.]

78.60.280 Judicial review. (1) Any person adversely affected by any rule, regulation, order, or permit entered by the department pursuant to this chapter may obtain judicial review thereof in accordance with the applicable provisions of chapter 34.05 RCW.

(2) The court having jurisdiction, insofar as is practicable, shall give precedence to proceedings for judicial review brought under this chapter. [1974 ex.s. c 43 § 28. Formerly RCW 79.76.280.]

78.60.290 Violations—Penalty. Violation of any provision of this chapter or of any rule, regulation, order of the department, or condition of any permit made hereunder is a gross misdemeanor punishable, upon conviction, by a fine of not more than two thousand five hundred dollars or by imprisonment in the county jail for not more than six months, or both. [2003 c 53 § 381; 1974 ex.s. c 43 § 29. Formerly RCW 79.76.290.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

78.60.300 Aiding or abetting violations. No person shall knowingly aid or abet any other person in the violation of any provision of this chapter or of any rule, regulation or order of the department made hereunder. [1974 ex.s. c 43 § 30. Formerly RCW 79.76.300.]