

AMENDED IN SENATE JULY 15, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2453

Introduced by Assembly Member Tran

February 19, 2010

An act to amend Sections 3225, 3236.5, 3743, and 3744 of, to add ~~Section 3763 to, and to repeal and add Sections 3350, 3351, 3352, 3353, 3354, 3355, 3356, 3762, 3764, 3765, 3766, 3767, and 3768 of, the Section 3763 to, to repeal Sections 3352, 3353, 3764, and 3765 of, and to repeal and add Sections 3350, 3351, 3354, 3355, 3356, 3762, 3766, 3767, and 3768 of, the~~ Public Resources Code, relating to oil and gas.

LEGISLATIVE COUNSEL'S DIGEST

AB 2453, as amended, Tran. Oil and gas: operations: enforcement actions.

Under existing law, the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation regulates the operation of oil, gas, and geothermal wells in specified districts of the state. Existing law establishes procedures for an operator of a well or owner of a rig, derrick, or other operating structure to appeal from an order of the State Oil and Gas Supervisor or a district deputy regarding the operation of a well, or drilling or testing operations.

This bill would make numerous changes to the appeal process and procedures. The bill would require an order of the supervisor or a district deputy to state the factual basis for the order, the statutory and regulatory basis of the action, and the penalties and requirements imposed on the operator. The bill would also require a cease and desist order to specify the operations to cease and a detailed explanation of the action to be taken by the operator to permit operations to resume.

The bill would, among other things, provide for review of an order of the supervisor imposing a civil penalty by the director, revise the requirements for filing a notice of appeal, provide that the filing of an appeal does not stay an order for remedial work or a cease and desist order issued under emergency circumstances and, in these circumstances, require an expedited hearing before the director. The bill requires the division to reimburse an operator for required remedial work if an order is invalidated on appeal.

The bill, would also, among other things, require ~~certain~~ *all* appeals to be heard in a formal hearing process before an administrative law judge, instead of in an informal hearing before the director of the department, ~~specify certain procedures for a hearing before the director,~~ *except for certain emergency orders,* and *would* revise the scope of the judicial review of an appealed order.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3225 of the Public Resources Code is
- 2 amended to read:
- 3 3225. (a) An order of the supervisor or a district deputy issued
- 4 pursuant to this chapter shall provide a clear and concise recitation
- 5 of the acts or omissions with which the operator is charged. The
- 6 order shall state all penalties and requirements imposed on the
- 7 operator in connection with the acts or omissions charged and the
- 8 order shall provide references to the provisions of this code and
- 9 the regulations that support the imposition of the penalties and
- 10 requirements.
- 11 (b) An order requiring an operator to cease and desist operations
- 12 pursuant to Section 3270.3 shall specify the operations that the
- 13 operator is required to cease and desist and shall provide a detailed
- 14 explanation of the steps that the operator shall take before the
- 15 supervisor will permit the operations to resume.
- 16 (c) An order of the supervisor or a district deputy shall be in
- 17 writing and shall be served on the operator by personal service or
- 18 by certified mail.
- 19 (d) ~~Whenever~~ *When* the supervisor or a district deputy issues a
- 20 written order concerning an operation, an appeal may be made
- 21 from the order pursuant to the procedures contained in Article 6

1 (commencing with Section 3350). The order shall inform the
2 operator of its right to appeal the order.

3 SEC. 2. Section 3236.5 of the Public Resources Code is
4 amended to read:

5 3236.5. (a) A person who violates this chapter or a regulation
6 implementing this chapter is subject to a civil penalty not to exceed
7 twenty-five thousand dollars (\$25,000) for each violation. An act
8 of God and an act of vandalism beyond the reasonable control of
9 the operator shall not be considered a violation. The civil penalty
10 shall be imposed by an order of the supervisor pursuant to Section
11 3225 upon a determination that a violation has been committed by
12 the person charged. The imposition of a civil penalty under this
13 section shall be in addition to any other penalty provided by law
14 for the violation. When establishing the amount of the civil penalty
15 pursuant to this section, the supervisor shall consider, in addition
16 to other relevant circumstances, all of the following:

17 (1) The extent of harm caused by the violation.

18 (2) The persistence of the violation.

19 (3) The pervasiveness of the violation.

20 (4) The number of prior violations by the same violator.

21 (b) An order of the supervisor imposing a civil penalty shall be
22 reviewable pursuant to Article 6 (commencing with Section 3350).
23 When the order of the supervisor has become final and the penalty
24 has not been paid, the supervisor may apply to the appropriate
25 superior court for an order directing payment of the civil penalty.
26 The supervisor may also seek from the court an order directing
27 that production from the well or use of the production facility that
28 is the subject of the civil penalty order be discontinued until the
29 violation has been remedied to the satisfaction of the supervisor
30 and the civil penalty has been paid.

31 (c) Any amount collected under this section shall be deposited
32 in the Oil, Gas, and Geothermal Administrative Fund.

33 SEC. 3. Section 3350 of the Public Resources Code is repealed.

34 SEC. 4. Section 3350 is added to the Public Resources Code,
35 to read:

36 3350. (a) The operator of a well or a production facility to
37 whom the supervisor or district deputy has issued an order pursuant
38 to this chapter may file a notice of appeal to the director from that
39 order. The notice of appeal shall be in writing and shall be filed
40 with the supervisor or with the district deputy who issued the order.

1 The operator shall file the appeal within 10 days of the service of
2 the order, or within 10 days of the posting of a copy of an order
3 made pursuant to Section 3308. Failure of the operator to file an
4 appeal from the order within the 10-day period shall be a waiver
5 by the operator of its rights to challenge the order. If the order,
6 other than an order made pursuant to Section 3308, is served by
7 mail, the time for responding shall be determined as provided in
8 Section 1013 of the Code of Civil Procedure.

9 (b) The filing of a written notice of appeal shall operate as a
10 stay of the order, except when an order for remedial work or an
11 order to cease and desist operations is issued as an emergency
12 order pursuant to Section 3226. If the order is an emergency order,
13 the operator shall immediately cease and desist the specified
14 operations and shall perform whatever work is required by the
15 order to alleviate the emergency or shall permit the agents
16 appointed by the supervisor to perform that work. If the order is
17 set aside or modified on appeal, the costs incurred by the operator
18 for whatever work is not required by the set aside or modified
19 order shall be refunded to the operator by the supervisor or the
20 costs incurred by the supervisor for the work shall not be imposed
21 on the operator. If the operator believes that it will be irretrievably
22 injured by the performance of the work required to alleviate the
23 emergency pending the outcome of the appeal, the operator may
24 seek an order from the appropriate superior court restraining the
25 enforcement of the order pending the outcome of the appeal.

26 SEC. 5. Section 3351 of the Public Resources Code is repealed.

27 SEC. 6. Section 3351 is added to the Public Resources Code,
28 to read:

29 3351. (a) ~~Except as provided in subdivision (c), a hearing~~
30 ~~shall be provided in accordance with Chapter 5 (commencing with~~
31 ~~Section 11500) of Part 1 of Division 3 of Title 2 of the Government~~
32 ~~Code only in an appeal from an order in the following~~
33 ~~circumstances:~~

34 ~~(1) Issued pursuant to a Section 3237 finding that the operator's~~
35 ~~wells are deserted and should be plugged and abandoned.~~

36 ~~(2) Imposing civil penalties totaling more than ten thousand~~
37 ~~dollars (\$10,000).~~

38 ~~(3) Rescinding an injection project approval for a project that~~
39 ~~has already commenced.~~

1 ~~(4) Imposing a life-of-well bond or a life-of-production facility~~
2 ~~bond. 3 of Title 2 of the Government Code for an appeal from any~~
3 ~~order.~~

4 (b) An order issued pursuant to Section 3225 shall satisfy the
5 requirement of Section 11503 of the Government Code that an
6 accusation be filed.

7 ~~(e) For an appeal of an order that is not described in subdivision~~
8 ~~(a), a hearing shall be conducted by the director in accordance with~~
9 ~~Sections 3352 and 3353.~~

10 ~~(d) For an appeal of an order that is described in subdivision~~
11 ~~(a) and is also an emergency order for remedial work or to cease~~
12 ~~and desist operations, a hearing shall be conducted by the director~~
13 ~~in accordance with Sections 3352 and 3353 for the limited purpose~~

14 *(c) For an appeal of an order that is also an emergency order*
15 *for remedial work or to cease and desist operations, a hearing*
16 *shall be conducted in accordance with Article 13 (commencing*
17 *with Section 11460.10) of Chapter 4.5 of Part 1 of Division 3 of*
18 *Title 2 of the Government Code for the limited purpose of*
19 *considering the emergency order for remedial work or to cease*
20 *and desist operations. All other penalties and requirements imposed*
21 *by the order shall be considered at a hearing provided in accordance*
22 *with Chapter 5 (commencing with Section 11500) of Part 1 of*
23 *Division 3 of Title 2 of the Government Code.*

24 SEC. 7. Section 3352 of the Public Resources Code is repealed.

25 ~~SEC. 8. Section 3352 is added to the Public Resources Code,~~
26 ~~to read:~~

27 ~~3352. (a) A hearing conducted by the director shall adhere to~~
28 ~~the following:~~

29 ~~(1) When an order is not issued as an emergency order, within~~
30 ~~30 days from the date of the service of the notice of appeal, the~~
31 ~~director shall provide to the operator notice of the time and place~~
32 ~~of the hearing. The hearing shall take place within 30 days after~~
33 ~~the date of the director's notice. The notice shall inform the~~
34 ~~operator that the director may extend the date of the hearing for~~
35 ~~up to 60 days for good cause upon application of the operator or~~
36 ~~the supervisor.~~

37 ~~(2) When an order has been issued as an emergency order, within~~
38 ~~10 days from the date of the service of the notice of appeal, the~~
39 ~~director shall provide to the operator notice of the time and place~~
40 ~~of the hearing. The hearing shall take place within 20 days after~~

1 ~~the date of the director's notice. The notice shall inform the~~
 2 ~~operator that the director may extend the date of the hearing for~~
 3 ~~up to 30 days for good cause upon application of the operator or~~
 4 ~~the supervisor.~~

5 ~~(b) The director shall conduct the hearing within the district~~
 6 ~~where the majority of the wells or production facilities that are the~~
 7 ~~subject of the order are located, or the hearing may be conducted~~
 8 ~~at a location outside of that district upon application of the operator.~~

9 ~~(c) The notice of hearing shall inform the operator of its right~~
 10 ~~to file a written answer to the charges no later than 10 days before~~
 11 ~~the date of the hearing. The notice also shall inform the operator~~
 12 ~~that it has the right to present oral and documentary evidence at~~
 13 ~~the hearing.~~

14 ~~SEC. 9.~~

15 ~~SEC. 8.~~ Section 3353 of the Public Resources Code is repealed.

16 ~~SEC. 10.~~ Section 3353 is added to the Public Resources Code,
 17 to read:

18 ~~3353. (a) Within 30 days after the close of a hearing conducted~~
 19 ~~by the director, the director shall issue a written decision affirming,~~
 20 ~~setting aside, or modifying the order from which the appeal was~~
 21 ~~taken. The director's written decision shall be based upon the~~
 22 ~~preponderance of the evidence and shall set forth the director's~~
 23 ~~factual findings, legal conclusions, and rationale for the result. The~~
 24 ~~director may extend the 30-day period for issuing the written~~
 25 ~~decision if the extension is agreed to by the operator.~~

26 ~~(b) The director shall file the written decision with the supervisor~~
 27 ~~and serve it on the operator as soon as it has been completed, at~~
 28 ~~which time the decision shall be deemed final. The director's~~
 29 ~~decision shall supersede the order of the supervisor from which~~
 30 ~~the appeal was made. If the director affirmed or modified the order,~~
 31 ~~the director shall retain jurisdiction until the operator has completed~~
 32 ~~the work required to be performed by the order.~~

33 ~~SEC. 11.~~

34 ~~SEC. 9.~~ Section 3354 of the Public Resources Code is repealed.

35 ~~SEC. 12.~~

36 ~~SEC. 10.~~ Section 3354 is added to the Public Resources Code,
 37 to read:

38 ~~3354. (a) Following a hearing conducted by the director~~
 39 ~~pursuant to Sections 3352 and 3353, the operator may obtain~~
 40 ~~judicial review of the decision of the director by filing a petition~~

1 ~~for writ of administrative mandamus in the superior court of the~~
2 ~~county where the division's district office from which the order~~
3 ~~was issued is located. The operator shall file the petition within~~
4 ~~30 days after the date the operator was served with the decision.~~

5 ~~(b) Following a hearing conducted in accordance with Chapter~~
6 ~~3354. Following a hearing conducted in accordance with~~
7 ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division~~
8 ~~3 of Title 2 of the Government Code, or a hearing conducted in~~
9 ~~accordance with Article 13 (commencing with Section 11460.10)~~
10 ~~of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government~~
11 ~~Code, the operator may obtain judicial review of the decision~~
12 ~~pursuant to Section 11523 of the Government Code.~~

13 ~~SEC. 13.~~

14 ~~SEC. 11.~~ Section 3355 of the Public Resources Code is
15 repealed.

16 ~~SEC. 14.~~

17 ~~SEC. 12.~~ Section 3355 is added to the Public Resources Code,
18 to read:

19 3355. When an operator seeks judicial review of a decision of
20 the director, ~~including a decision~~ following a hearing conducted
21 in accordance with Chapter 5 (commencing with Section 11500)
22 of Part 1 of Division 3 of Title 2 of the Government Code, the
23 court shall hear the cause on the record before the director or an
24 administrative law judge. New or additional evidence shall not be
25 introduced in court. The court's inquiry shall extend to whether
26 the director acted without or in excess of jurisdiction, whether
27 there was a fair hearing, and whether there is any prejudicial abuse
28 of discretion. Abuse of discretion is established if the administrative
29 proceeding has not been conducted in the manner required by law,
30 the decision is not supported by the findings, or the findings are
31 not supported by substantial evidence in light of the whole record.

32 ~~SEC. 15.~~

33 ~~SEC. 13.~~ Section 3356 of the Public Resources Code is
34 repealed.

35 ~~SEC. 16.~~

36 ~~SEC. 14.~~ Section 3356 is added to the Public Resources Code,
37 to read:

38 3356. If the operator does not appeal an order, if the operator
39 does not timely seek judicial review of a decision affirming or
40 modifying an order within the time provided in Section 3354, or

1 if the operator has timely sought and obtained judicial review and
 2 the court has affirmed the decision, then any charge, including
 3 penalty and interest, that the decision permits the supervisor to
 4 impose on the operator for work performed by the supervisor or
 5 the supervisor’s agents shall constitute a state tax lien against the
 6 real and personal property of the operator pursuant to Section 3423.

7 ~~SEC. 17.~~

8 *SEC. 15.* Section 3743 of the Public Resources Code is
 9 amended to read:

10 3743. (a) An order of the supervisor or a district deputy issued
 11 pursuant to this chapter shall provide a clear and concise recitation
 12 of the acts or omissions with which the operator is charged. The
 13 order shall state all penalties and requirements imposed on the
 14 operator in connection with the acts or omissions charged and the
 15 order shall provide citations to the provisions of this code and the
 16 regulations that support the imposition of the penalties and
 17 requirements.

18 (b) An order of the supervisor or a district deputy shall be in
 19 writing and shall be served on the operator by personal service or
 20 by certified mail.

21 (c) ~~Whenever~~ *When* the supervisor or a district deputy makes
 22 or gives any written direction concerning the drilling, testing, or
 23 other operations in any well drilled, in process of drilling, or being
 24 abandoned, and the operator, owner, or representative of either,
 25 serves written notice, either personally or by mail, addressed to
 26 the supervisor, or to the district deputy at his or her office in the
 27 district, requesting that a definite order be made upon the subject,
 28 the supervisor or the district deputy shall, within five days after
 29 receipt of the notice, deliver a final written order on the subject
 30 matter.

31 (d) ~~Whenever~~ *When* the supervisor or a district deputy issues
 32 any written order concerning an operation, an appeal may be made
 33 from the order pursuant to Sections 3762 to 3768, inclusive. The
 34 order shall inform the operator of its right to appeal the order.

35 ~~SEC. 18.~~

36 *SEC. 16.* Section 3744 of the Public Resources Code is
 37 amended to read:

38 3744. (a) Within 30 days from the date of service of an order
 39 made pursuant to Section 3743, or if there has been an appeal from
 40 the order to the director, within 30 days after service of the decision

1 of the director, or if a review has been taken of the order of the
2 director, within 10 days after the affirmance of the order, the
3 operator shall commence in good faith the work ordered and
4 continue it until completion. If the work has not been commenced
5 and continued to completion, the supervisor may appoint necessary
6 agents to enter the premises and perform the work. An accurate
7 account of the expenditures shall be kept. Any amount so expended
8 constitutes a lien against the real or personal property of the
9 operator upon which the work is done and the lien has the force,
10 effect, and priority of a judgment lien pursuant to Section 3772.

11 (b) Notwithstanding Section 3741, 3743, or 3755, if the
12 supervisor determines that an emergency exists, the supervisor
13 may make formal or emergency orders or undertake any other
14 action that the supervisor determines to be necessary for the
15 protection of life, health, property, or natural resources.

16 ~~SEC. 19.~~

17 *SEC. 17.* Section 3762 of the Public Resources Code is
18 repealed.

19 ~~SEC. 20.~~

20 *SEC. 18.* Section 3762 is added to the Public Resources Code,
21 to read:

22 3762. (a) The operator of a well to whom the supervisor or
23 district deputy has issued an order pursuant to this chapter may
24 file a notice of appeal to the director from that order. The notice
25 of appeal shall be in writing and shall be filed with the supervisor
26 or with the district deputy who issued the order. The operator shall
27 file the appeal within 10 days of the service of the order. Failure
28 of the operator to file an appeal from the order within the 10-day
29 period shall be a waiver by the operator of its rights to challenge
30 the order. If the order is served by mail, the time for responding
31 shall be determined as provided in Section 1013 of the Code of
32 Civil Procedure.

33 (b) The filing of a written notice of appeal shall operate as a
34 stay of the order, except when an order for remedial work is issued
35 as an emergency order pursuant to Section 3744. If the order is an
36 emergency order, the operator shall immediately perform whatever
37 work is required by the order to alleviate the emergency or shall
38 permit the agents appointed by the supervisor to perform that work.
39 If the order is set aside or modified on appeal, the costs incurred
40 by the operator for whatever work is not required by the set aside

1 or modified order shall be refunded to the operator by the
 2 supervisor or the costs incurred by the supervisor for the work
 3 shall not be imposed on the operator. If the operator believes that
 4 it will be irretrievably injured by the performance of the work
 5 required to alleviate the emergency pending the outcome of the
 6 appeal, the operator may seek an order from the appropriate
 7 superior court restraining the enforcement of the order pending
 8 the outcome of the appeal.

9 ~~SEC. 21.~~

10 *SEC. 19.* Section 3763 is added to the Public Resources Code,
 11 to read:

12 3763. (a) ~~Except as provided in subdivision (c), a hearing~~
 13 shall be provided in accordance with Chapter 5 (commencing with
 14 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
 15 Code ~~only in an appeal from an order in the following~~
 16 ~~circumstances:~~

17 ~~(1) Issued pursuant to a Section 3755 finding that the operator's~~
 18 ~~wells are deserted and should be plugged and abandoned.~~

19 ~~(2) Rescinding an injection project approval for a project that~~
 20 ~~has already commenced. 3 of Title 2 of the Government Code for~~
 21 ~~an appeal from any order.~~

22 (b) An order issued pursuant to Section 3743 shall satisfy the
 23 requirement of Section 11503 of the Government Code that an
 24 accusation be filed.

25 ~~(e) For an appeal of an order that is not described in subdivision~~
 26 ~~(a), a hearing shall be conducted by the director in accordance with~~
 27 ~~Sections 3764 and 3765.~~

28 ~~(d) For an appeal of an order that is described in subdivision~~
 29 ~~(a) and is also an emergency order for remedial work, a hearing~~
 30 ~~shall be conducted by the director in accordance with Sections~~
 31 ~~3352 and 3353 for the limited purpose of considering the~~

32 (c) *For an appeal of an order that is also an emergency order*
 33 *for remedial work, a hearing shall be conducted in accordance*
 34 *with Article 13 (commencing with Section 11460.10) of Chapter*
 35 *4.5 of Part 1 of Division 3 of Title 2 of the Government Code for*
 36 *the limited purpose of considering the emergency order for*
 37 *remedial work. All other penalties and requirements imposed by*
 38 *the order shall be considered at a hearing provided in accordance*
 39 *with Chapter 5 (commencing with Section 11500) of Part 1 of*
 40 *Division 3 of Title 2 of the Government Code.*

1 ~~SEC. 22.~~

2 ~~SEC. 20.~~ Section 3764 of the Public Resources Code is
3 repealed.

4 ~~SEC. 23.~~ Section 3764 is added to the Public Resources Code,
5 to read:

6 ~~3764. (a) A hearing conducted by the director shall adhere to~~
7 ~~the following:~~

8 ~~(1) When an order is not issued as an emergency order, within~~
9 ~~30 days from the date of the service of the notice of appeal, the~~
10 ~~director shall provide to the operator notice of the time and place~~
11 ~~of the hearing. The hearing shall take place within 30 days after~~
12 ~~the date of the director's notice. The notice shall inform the~~
13 ~~operator that the director may extend the date of the hearing for~~
14 ~~up to 60 days for good cause upon application of the operator or~~
15 ~~the supervisor.~~

16 ~~(2) When an order has been issued as an emergency order, within~~
17 ~~10 days from the date of the service of the notice of appeal, the~~
18 ~~director shall provide to the operator notice of the time and place~~
19 ~~of the hearing. The hearing shall take place within 20 days after~~
20 ~~the date of the director's notice. The notice shall inform the~~
21 ~~operator that the director may extend the date of the hearing for~~
22 ~~up to 30 days for good cause upon application of the operator or~~
23 ~~the supervisor.~~

24 ~~(b) The director shall conduct the hearing within the district~~
25 ~~where the majority of the wells that are the subject of the order~~
26 ~~are located, or the hearing may be conducted at a location outside~~
27 ~~of that district upon application of the operator.~~

28 ~~(c) The notice of hearing shall inform the operator of its right~~
29 ~~to file a written answer to the charges no later than 10 days before~~
30 ~~the date of the hearing. The notice also shall inform the operator~~
31 ~~that it has the right to present oral and documentary evidence at~~
32 ~~the hearing.~~

33 ~~SEC. 24.~~

34 ~~SEC. 21.~~ Section 3765 of the Public Resources Code is
35 repealed.

36 ~~SEC. 25.~~ Section 3765 is added to the Public Resources Code,
37 to read:

38 ~~3765. (a) Within 30 days after the close of a hearing conducted~~
39 ~~by the director, the director shall issue a written decision affirming,~~
40 ~~setting aside, or modifying the order from which the appeal was~~

1 taken. The director's written decision shall be based upon the
2 preponderance of the evidence and shall set forth the director's
3 factual findings, legal conclusions, and rationale for the result. The
4 director may extend the 30-day period for issuing the written
5 decision provided that the extension is agreed to by the operator.

6 (b) The director shall file the written decision with the supervisor
7 and serve it on the operator as soon as it has been completed, at
8 which time the decision shall be deemed final. The director's
9 decision shall supersede the order of the supervisor from which
10 the appeal was made. If the director affirmed or modified the order,
11 the director shall retain jurisdiction until the operator has completed
12 the work required to be performed by the order.

13 ~~SEC. 26.~~

14 *SEC. 22.* Section 3766 of the Public Resources Code is
15 repealed.

16 ~~SEC. 27.~~

17 *SEC. 23.* Section 3766 is added to the Public Resources Code,
18 to read:

19 *3766.*—(a) Following a hearing conducted by the director
20 pursuant to Sections 3764 and 3765, the operator may obtain
21 judicial review of the decision of the director by filing a petition
22 for writ of administrative mandamus in the superior court of the
23 county where the division's district office from which the order
24 was issued is located. The operator shall file the petition within
25 30 days after the date the operator was served with the decision.

26 (b) Following a hearing conducted in accordance with Chapter
27 *3766. Following a hearing conducted in accordance with*
28 *Chapter 5 (commencing with Section 11500) of Part 1 of Division*
29 *3 of Title 2 of the Government Code, or a hearing conducted in*
30 *accordance with Article 13 (commencing with Section 11460.10)*
31 *of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government*
32 *Code, the operator may obtain judicial review of the decision*
33 pursuant to Section 11523 of the Government Code.

34 ~~SEC. 28.~~

35 *SEC. 24.* Section 3767 of the Public Resources Code is
36 repealed.

37 ~~SEC. 29.~~

38 *SEC. 25.* Section 3767 is added to the Public Resources Code,
39 to read:

1 3767. When an operator seeks judicial review of a decision of
2 the director, ~~including a decision~~ following a hearing conducted
3 in accordance with Chapter 5 (commencing with Section 11500)
4 of Part 1 of Division 3 of Title 2 of the Government Code, the
5 court shall hear the cause on the record before the director or an
6 administrative law judge. New or additional evidence shall not be
7 introduced in court. The court's inquiry shall extend to whether
8 the director acted without or in excess of jurisdiction, whether
9 there was a fair hearing, and whether there is any prejudicial abuse
10 of discretion. Abuse of discretion is established if the administrative
11 proceeding has not been conducted in the manner required by law,
12 the decision is not supported by the findings, or the findings are
13 not supported by substantial evidence in light of the whole record.

14 ~~SEC. 30.~~

15 *SEC. 26.* Section 3768 of the Public Resources Code is
16 repealed.

17 ~~SEC. 31.~~

18 *SEC. 27.* Section 3768 is added to the Public Resources Code,
19 to read:

20 3768. If the operator does not appeal an order, if the operator
21 does not timely seek judicial review of a decision affirming or
22 modifying an order within the time provided in Section 3766, or
23 if the operator has timely sought and obtained judicial review and
24 the court has affirmed the decision, then any charge, including
25 penalty and interest, that the decision permits the supervisor to
26 impose on the operator for work performed by the supervisor or
27 the supervisor's agents shall constitute a state tax lien against the
28 real and personal property of the operator pursuant to Section 3772.

29 ~~SEC. 32.~~

30 *SEC. 28.* The director may adopt emergency regulations for
31 the purposes of implementing Sections 3225, 3236.5, 3350, 3351,
32 ~~3352, 3353,~~ 3354, 3355, 3356, 3743, 3744, 3762, 3763, ~~3764,~~
33 ~~3765,~~ 3766, 3767, and 3768. Any emergency regulations, if
34 adopted, shall be adopted in accordance with Chapter 3.5
35 (commencing with Section 11340) of Part 1 of Division 3 of Title
36 2 of the Government Code, and for the purposes of that chapter,
37 including Section 11349.6 of the Government Code, the adoption
38 of these regulations is an emergency and shall be considered by
39 the Office of Administrative Law as necessary for the immediate
40 preservation of the public peace, health and safety, and general

1 welfare. Notwithstanding Chapter 3.5 (commencing with Section
2 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
3 including subdivision (e) of Section 11346.1 of the Government
4 Code, any emergency regulations adopted pursuant to this section
5 shall be filed with, but not be repealed by, the Office of
6 Administrative Law and shall remain in effect until revised by the
7 director.

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10 **CORRECTIONS:**

11 **Text—Page 10.**

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