

Introduced by Senator RubioJanuary 13, 2011

An act to amend Sections 2727.1 and 2770 of the Public Resources Code, relating to surface mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 108, as introduced, Rubio. Surface mining: idle mines.

The Surface Mining and Reclamation Act of 1975, with exceptions, prohibits a person from conducting a surface mining operation unless, among other things, a reclamation plan has been submitted to and approved by the lead agency for the operation. The act requires an operator, within 90 days of a surface mining operation becoming idle, to submit to the lead agency for review and approval, an interim management plan. The act defines idle to mean a curtailment for a period of one year or more of surface mining operations by more than 90% of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

This bill would instead define idle to mean that an operator of a surface mining operation has curtailed production at the surface mining operation, with the intent to resume the surface mining operation at a future date, for a period of one year or more by more than 90% of its maximum annual mineral production within any of the last 5 years. The bill would exempt from being considered idle certain surface mining operations, including those operations where the operator has expended in the prior 2 years \$25,000 or more on capital improvements or operating costs in connection with the surface mining operation.

The act requires a surface mining operation that remains idle for over one year after becoming idle, without obtaining approval of an interim

management plan, in certain circumstances, to be considered abandoned and requires the operator to commence and complete reclamation in accordance with the approved reclamation plan.

This bill would instead authorize, among other things, a lead agency to order, in certain circumstances, a surface mining operation that remains idle for over one year after becoming idle, without obtaining approval of an interim management plan, to file an interim management plan within 90 days of the order, or commence implementation of any interim management plan contained in the surface mining operation’s approved reclamation plan. If the operator does not act as specified, the bill would authorize the lead agency to order the operator to promptly commence and complete reclamation in accordance with the approved reclamation plan.

The act authorizes an interim management plan to remain in effect for a period not to exceed 5 years, after which, the lead agency is authorized to take certain actions, including renewing the interim management plan for another period not to exceed 5 years, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

This bill would authorize the lead agency to continuously renew the interim management plan for additional 5-year periods, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

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 2727.1 of the Public Resources Code is
 2 amended to read:
 3 2727.1. (a) “Idle” means ~~to curtail for a period of one year or~~
 4 ~~more surface mining operations by more than 90 percent of the~~
 5 ~~operation’s previous maximum annual mineral production, with~~
 6 ~~the intent to resume those surface mining operations at a future~~
 7 ~~date that an operator of a surface mining operation has curtailed~~
 8 ~~production at the surface mining operation, with the intent to~~
 9 ~~resume the surface mining operation at a future date, for a period~~
 10 ~~of one year or more by more than 90 percent of its maximum~~
 11 ~~annual mineral production within any of the last five years, except~~
 12 ~~as provided in subdivision (b).~~

1 (b) A surface mining operation shall not be considered idle in
2 any of the following circumstances:

3 (1) The surface mining operation has produced, during any
4 12-month period in the prior two years, either 25,000 or more of
5 combined tons of mineral and waste or 10 percent or more of the
6 operation's previous maximum annual combined production of
7 mineral and waste within any of the last five years.

8 (2) The operator of the surface mining operation has expended
9 in the prior two years twenty-five thousand dollars (\$25,000) or
10 more on capital improvements or operating costs in connection
11 with the surface mining operation.

12 (3) The operator of the surface mining operation has curtailed
13 production at the surface mine as a result of circumstances beyond
14 the reasonable control of the operator, including, without
15 limitation, force majeure events, legal action, regulatory or judicial
16 orders, strikes, work slowdowns or stoppages, lockouts,
17 governmental restrictions, inability to secure necessary supplies,
18 materials or labor, or acts or failures to act of third parties upon
19 whom the operator's ability to conduct surface mining operations
20 is dependent.

21 (4) The operator of the surface mining operation can otherwise
22 demonstrate that the surface mining operation is not in fact idle.

23 (c) This section does not preclude a surface mining operation
24 that was deemed idle prior to January 1, 2012, from seeking a
25 redetermination of idle status pursuant to this section.

26 SEC. 2. Section 2770 of the Public Resources Code is amended
27 to read:

28 2770. (a) Except as provided in this section, ~~no~~ a person shall
29 not conduct surface mining operations unless a permit is obtained
30 from, a reclamation plan has been submitted to and approved by,
31 and financial assurances for reclamation have been approved by,
32 the lead agency for the operation pursuant to this article.

33 (b) ~~Any~~ A person with an existing surface mining operation who
34 has vested rights pursuant to Section 2776 and who does not have
35 an approved reclamation plan shall submit a reclamation plan to
36 the lead agency not later than March 31, 1988. If a reclamation
37 plan application is not on file by March 31, 1988, the continuation
38 of the surface mining operation is prohibited until a reclamation
39 plan is submitted to the lead agency. For purposes of this
40 subdivision, reclamation plans may consist of all or the appropriate

1 sections of any plans or written agreements previously approved
 2 by the lead agency or another agency, together with any additional
 3 documents needed to substantially meet the requirements of
 4 Sections 2772 and 2773 and the lead agency surface mining
 5 ordinance adopted pursuant to subdivision (a) of Section 2774,
 6 provided that all documents which together were proposed to serve
 7 as the reclamation plan are submitted for approval to the lead
 8 agency in accordance with this chapter.

9 (c) If a person with an existing surface mining operation has
 10 received lead agency approval of its financial assurances for
 11 reclamation prior to January 1, 1991, the lead agency shall
 12 administratively review those existing financial assurances in
 13 accordance with subdivision (d) prior to January 1, 1992. The
 14 review of existing financial assurances shall not be considered a
 15 project for purposes of Division 13 (commencing with Section
 16 21000). ~~Any~~ A person with an existing surface mining operation
 17 ~~which~~ *that* does not have financial assurances that received lead
 18 agency approval prior to January 1, 1991, shall submit financial
 19 assurances for reclamation for review in accordance with
 20 subdivision (d).

21 (d) The lead agency’s review of reclamation plans submitted
 22 pursuant to subdivision (b) or of financial assurances pursuant to
 23 subdivision (c) is limited to whether the plan or the financial
 24 assurances substantially meet the applicable requirements of
 25 Sections 2772, 2773, and 2773.1, and the lead agency surface
 26 mining ordinance adopted pursuant to subdivision (a) of Section
 27 2774, but, in any event, the lead agency shall require that financial
 28 assurances for reclamation be sufficient to perform reclamation
 29 of lands remaining disturbed. Reclamation plans or financial
 30 assurances determined to substantially meet these requirements
 31 shall be approved by the lead agency for purposes of this chapter.
 32 Reclamation plans or financial assurances determined not to
 33 substantially meet these requirements shall be returned to the
 34 operator within 60 days. The operator has 60 days to revise the
 35 plan or financial assurances to address identified deficiencies, at
 36 which time the revised plan or financial assurances shall be
 37 returned to the lead agency for review and approval. Except as
 38 specified in subdivision (e) or (i), unless the operator has filed on
 39 or before July 1, 1990, an appeal pursuant to subdivision (e) with
 40 regard to nonapproval of the reclamation plan, or has filed on or

1 before January 1, 1994, an appeal pursuant to subdivision (e) with
2 regard to nonapproval of financial assurances, and that appeal is
3 pending before the board, the continuation of the surface mining
4 operation is prohibited until a reclamation plan and financial
5 assurances for reclamation are approved by the lead agency.

6 (e) ~~Any~~A person who, based on the evidence of the record, can
7 substantiate that a lead agency has either (1) failed to act according
8 to due process or has relied on considerations not related to the
9 specific applicable requirements of Sections 2772, 2773, and
10 2773.1, and the lead agency surface mining ordinance adopted
11 pursuant to subdivision (a) of Section 2774, in reaching a decision
12 to deny approval of a reclamation plan or financial assurances for
13 reclamation, (2) failed to act within a reasonable time of receipt
14 of a completed application, or (3) failed to review and approve
15 reclamation plans or financial assurances as required by
16 subdivisions (c) and (d), may appeal that action or inaction to the
17 board.

18 (f) The board may decline to hear an appeal if it determines that
19 the appeal raises no substantial issues related to the lead agency's
20 review pursuant to this section.

21 (g) Appeals that the board does not decline to hear shall be
22 scheduled and heard at a public hearing within 45 days of the filing
23 of the appeal, or ~~any~~ a longer period as may be mutually agreed
24 upon by the board and the person filing the appeal. In hearing an
25 appeal, the board shall only determine whether the reclamation
26 plan or the financial assurances substantially meet the applicable
27 requirements of Sections 2772, 2773, 2773.1, and the lead agency
28 surface mining ordinance adopted pursuant to subdivision (a) of
29 Section 2774. A reclamation plan or financial assurances
30 determined to meet these requirements shall be approved. A
31 reclamation plan or financial assurances determined not to meet
32 these requirements shall be returned to the person filing the appeal
33 with a notice of deficiencies, who shall be granted, once only, a
34 period of 30 days, or a longer period mutually agreed upon by the
35 operator and the board, to correct the noted deficiencies and submit
36 the revised reclamation plan or the revised financial assurances to
37 the lead agency for review and approval.

38 (h) (1) Within 90 days of a surface mining operation becoming
39 idle, as defined in Section 2727.1, the operator shall submit to the
40 lead agency for review and approval, an interim management plan.

1 The review and approval of an interim management plan shall not
2 be considered a project for purposes of Division 13 (commencing
3 with Section 21000). The approved interim management plan shall
4 be considered an amendment to the surface mining operation's
5 approved reclamation plan, for purposes of this chapter. The
6 interim management plan shall provide measures the operator will
7 implement to maintain the site in compliance with this chapter,
8 including, but not limited to, all permit conditions.

9 (2) The interim management plan may remain in effect for a
10 period not to exceed five years, at which time the lead agency shall
11 do one of the following:

12 (A) Renew the interim management plan for ~~another~~ *an*
13 *additional* period not to exceed five years, *which may be*
14 *continuously renewed for additional five-year periods at the*
15 *expiration of each five-year period*, if the lead agency finds that
16 the surface mining operator has complied fully with the interim
17 management plan.

18 (B) Require the surface mining operator to commence
19 reclamation in accordance with its approved reclamation plan.

20 (3) The financial assurances required by Section 2773.1 shall
21 remain in effect during the period that the surface mining operation
22 is idle. If the surface mining operation is still idle after the
23 expiration of its interim management plan, the surface mining
24 operation shall commence reclamation in accordance with its
25 approved reclamation plan.

26 (4) Within 60 days of the receipt of the interim management
27 plan, or a longer period mutually agreed upon by the lead agency
28 and the operator, the lead agency shall review and approve the
29 plan in accordance with its ordinance adopted pursuant to
30 subdivision (a) of Section 2774, so long as the plan satisfies the
31 requirements of this subdivision, and so notify the operator in
32 writing. Otherwise, the lead agency shall notify the operator in
33 writing of any deficiencies in the plan. The operator shall have 30
34 days, or a longer period mutually agreed upon by the operator and
35 the lead agency, to submit a revised plan.

36 (5) The lead agency shall approve or deny approval of the
37 revised interim management plan within 60 days of receipt. If the
38 lead agency denies approval of the revised interim management
39 plan, the operator may appeal that action to the lead agency's
40 governing body, which shall schedule a public hearing within 45

1 days of the filing of the appeal, or any a longer period mutually
2 agreed upon by the operator and the governing body.

3 ~~(6) Unless review of an interim management plan is pending
4 before the lead agency, or an appeal is pending before the lead
5 agency's governing body, a surface mining operation which
6 remains idle for over one year after becoming idle as defined in
7 Section 2727.1 without obtaining approval of an interim
8 management plan shall be considered abandoned and the operator
9 shall commence and complete reclamation in accordance with the
10 approved reclamation plan.~~

11 *(6) (A) Unless review of an interim management plan is pending
12 before the lead agency, or an appeal is pending before the lead
13 agency's governing body, the lead agency may order a surface
14 mining operation that remains idle for over one year after
15 becoming idle as defined in Section 2727.1, without obtaining
16 approval of an interim management plan, to file an interim
17 management plan within 90 days of the order or to commence
18 implementation of the interim management plan contained in the
19 surface mining operation's approved reclamation plan.*

20 *(B) If the operator files an interim management plan within 90
21 days or commences implementation of any interim management
22 plan contained in the surface mining operation's approved
23 reclamation plan in accordance with an order pursuant to
24 subparagraph (A), the plan shall have the same effect as an interim
25 management plan filed pursuant to paragraph (1), and it shall
26 remain in effect for five years from the date that the surface mining
27 operation became idle.*

28 *(C) The lead agency shall provide the operator of a surface
29 mining operation ordered to file or commence implementation of
30 an interim management plan pursuant to subparagraph (A) the
31 right to appeal the order to the governing body of the lead agency
32 within 30 days following the operator's receipt of notice of the
33 relevant order on grounds that the surface mining operation is not
34 idle or on other grounds as the operator may deem relevant.*

35 *(D) If the operator does not file, or commence implementation
36 of, an interim management plan within 90 days in accordance with
37 an order pursuant to subparagraph (A), or does not file an appeal
38 of the order pursuant to subparagraph (C), or does not file an
39 interim management plan within 90 days of a final, adverse
40 decision of an appeal, the lead agency may order the operator to*

1 *promptly commence and complete reclamation in accordance with*
2 *the approved reclamation plan.*

3 (i) ~~Any~~An enforcement action~~which~~ *that* may be brought
4 against a surface mining operation for operating without an
5 approved reclamation plan, financial assurance, or interim
6 management plan, shall be held in abeyance pending review
7 pursuant to subdivision (b), (c), (d), or (h) or the resolution of an
8 appeal filed with the board pursuant to subdivision (e), or with a
9 lead agency governing body pursuant to subdivision (h).