

AMENDED IN SENATE MAY 3, 2011

SENATE BILL

No. 108

Introduced by Senator Rubio

January 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 amended, 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~~ *if the*

operator can demonstrate that the surface mining operation is not in fact idle.

~~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 that an operator of a surface mining
- 4 operation has curtailed production at the surface mining operation,
- 5 with the intent to resume the surface mining operation at a future
- 6 date, for a period of one year or more by more than 90 percent of
- 7 its maximum annual mineral production within any of the last five
- 8 years, except 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 limitation,~~
15 ~~force majeure events, legal action, regulatory or judicial orders,~~
16 ~~strikes, work slowdowns or stoppages, lockouts, governmental~~
17 ~~restrictions, inability to secure necessary supplies, materials or~~
18 ~~labor, or acts or failures to act of third parties upon whom the~~
19 ~~operator's ability to conduct surface mining operations is~~
20 ~~dependent.~~

21 ~~(4) The~~
22 ~~(b) A surface mining operation shall not be considered idle if~~
23 ~~the operator of the surface mining operation can otherwise~~
24 ~~demonstrate that the surface mining operation is not in fact idle.~~

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

28 SEC. 2. Section 2770 of the Public Resources Code is amended
29 to read:

30 2770. (a) Except as provided in this section, a person shall not
31 conduct surface mining operations unless a permit is obtained
32 from, a reclamation plan has been submitted to and approved by,
33 and financial assurances for reclamation have been approved by,
34 the lead agency for the operation pursuant to this article.

35 (b) A person with an existing surface mining operation who has
36 vested rights pursuant to Section 2776 and who does not have an
37 approved reclamation plan shall submit a reclamation plan to the
38 lead agency not later than March 31, 1988. If a reclamation plan
39 application is not on file by March 31, 1988, the continuation of
40 the surface mining operation is prohibited until a reclamation plan

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

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

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

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

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

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

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

39 (h) (1) Within 90 days of a surface mining operation becoming
40 idle, as defined in Section 2727.1, the operator shall submit to the

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

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

13 (A) Renew the interim management plan for an additional period
14 not to exceed five years, which may be ~~continuously~~ renewed for
15 additional five-year periods at the expiration of each five-year
16 period, if the lead agency finds that the surface mining operator
17 has complied fully with the interim 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 a longer period mutually agreed
2 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 that remains*
6 *idle for over one year after becoming idle as defined in Section*
7 *2727.1 without obtaining approval of an interim management plan*
8 *shall be considered abandoned and the operator shall commence*
9 *and complete reclamation in accordance with the approved*
10 *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 becoming~~
15 ~~idle as defined in Section 2727.1, without obtaining approval of~~
16 ~~an interim management plan, to file an interim management plan~~
17 ~~within 90 days of the order or to commence implementation of the~~
18 ~~interim management plan contained in the surface mining~~
19 ~~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) An enforcement action that may be brought against a surface
4 mining operation for operating without an approved reclamation
5 plan, financial assurance, or interim management plan; shall be
6 held in abeyance pending review pursuant to subdivision (b), (c),
7 (d), or (h), or the resolution of an appeal filed with the board
8 pursuant to subdivision (e), or with a lead agency governing body
9 pursuant to subdivision (h).