

AMENDED IN ASSEMBLY JUNE 20, 2011

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, *and to add Section 2777.5 to*, 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 if the operator can demonstrate that the surface mining operation is not in fact idle.~~

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 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.

Existing law requires the owner or operator of a mining operation to forward to the Director of Conservation an annual report that identifies certain things about the mining operation including the mining operation's status and the type and total amount of commodities produced.

This bill would authorize a mine operator who has failed to properly report mineral production or status prior to January 1, 2012, to correct the report in the 2012 annual report if the report is submitted on or before July 1, 2013, among other things. The bill would authorize a mine to return to idle status after being considered abandoned if an interim management plan is approved by July 1, 2013, and upon compliance with the above provisions.

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).~~
- 9 ~~(b) A surface mining operation shall not be considered idle if~~
- 10 ~~the operator of the surface mining operation can demonstrate that~~
- 11 ~~the surface mining operation is not in fact idle.~~
- 12 SEC. 2. Section 2770 of the Public Resources Code is amended
- 13 to read:

1 2770. (a) Except as provided in this section, a person shall not
2 conduct surface mining operations unless a permit is obtained
3 from, a reclamation plan has been submitted to and approved by,
4 and financial assurances for reclamation have been approved by,
5 the lead agency for the operation pursuant to this article.

6 (b) A person with an existing surface mining operation who has
7 vested rights pursuant to Section 2776 and who does not have an
8 approved reclamation plan shall submit a reclamation plan to the
9 lead agency not later than March 31, 1988. If a reclamation plan
10 application is not on file by March 31, 1988, the continuation of
11 the surface mining operation is prohibited until a reclamation plan
12 is submitted to the lead agency. For purposes of this subdivision,
13 a reclamation plan may consist of all or the appropriate sections
14 of any plans or written agreements previously approved by the
15 lead agency or another agency, together with any additional
16 documents needed to substantially meet the requirements of
17 Sections 2772 and 2773 and the lead agency surface mining
18 ordinance adopted pursuant to subdivision (a) of Section 2774,
19 provided that all documents which together were proposed to serve
20 as the reclamation plan are submitted for approval to the lead
21 agency in accordance with this chapter.

22 (c) If a person with an existing surface mining operation has
23 received lead agency approval of its financial assurances for
24 reclamation prior to January 1, 1991, the lead agency shall
25 administratively review those existing financial assurances in
26 accordance with subdivision (d) prior to January 1, 1992. The
27 review of existing financial assurances shall not be considered a
28 project for purposes of Division 13 (commencing with Section
29 21000). A person with an existing surface mining operation that
30 does not have financial assurances that received lead agency
31 approval prior to January 1, 1991, shall submit financial assurances
32 for reclamation for review in accordance with subdivision (d).

33 (d) The lead agency's review of a reclamation plan submitted
34 pursuant to subdivision (b) or of financial assurances pursuant to
35 subdivision (c) is limited to whether the plan or the financial
36 assurances substantially meet the applicable requirements of
37 Sections 2772, 2773, and 2773.1, and the lead agency surface
38 mining ordinance adopted pursuant to subdivision (a) of Section
39 2774, but, in any event, the lead agency shall require that financial
40 assurances for reclamation be sufficient to perform reclamation

1 of lands remaining disturbed. Reclamation plans or financial
2 assurances determined to substantially meet these requirements
3 shall be approved by the lead agency for purposes of this chapter.
4 Reclamation plans or financial assurances determined not to
5 substantially meet these requirements shall be returned to the
6 operator within 60 days. The operator has 60 days to revise the
7 plan or financial assurances to address identified deficiencies, at
8 which time the revised plan or financial assurances shall be
9 returned to the lead agency for review and approval. Except as
10 specified in subdivision (e) or (i), unless the operator has filed on
11 or before July 1, 1990, an appeal pursuant to subdivision (e) with
12 regard to nonapproval of the reclamation plan, or has filed on or
13 before January 1, 1994, an appeal pursuant to subdivision (e) with
14 regard to nonapproval of financial assurances, and that appeal is
15 pending before the board, the continuation of the surface mining
16 operation is prohibited until a reclamation plan and financial
17 assurances for reclamation are approved by the lead agency.

18 (e) A person who, based on the evidence of the record, can
19 substantiate that a lead agency has either (1) failed to act according
20 to due process or has relied on considerations not related to the
21 specific applicable requirements of Sections 2772, 2773, and
22 2773.1, and the lead agency surface mining ordinance adopted
23 pursuant to subdivision (a) of Section 2774, in reaching a decision
24 to deny approval of a reclamation plan or financial assurances for
25 reclamation, (2) failed to act within a reasonable time of receipt
26 of a completed application, or (3) failed to review and approve
27 reclamation plans or financial assurances as required by
28 subdivisions (c) and (d), may appeal that action or inaction to the
29 board.

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

33 (g) Appeals that the board does not decline to hear shall be
34 scheduled and heard at a public hearing within 45 days of the filing
35 of the appeal, or a longer period as may be mutually agreed upon
36 by the board and the person filing the appeal. In hearing an appeal,
37 the board shall only determine whether the reclamation plan or the
38 financial assurances substantially meet the applicable requirements
39 of Sections 2772, 2773, and 2773.1, and the lead agency surface
40 mining ordinance adopted pursuant to subdivision (a) of Section

1 2774. A reclamation plan or financial assurances determined to
2 meet these requirements shall be approved. A reclamation plan or
3 financial assurances determined not to meet these requirements
4 shall be returned to the person filing the appeal with a notice of
5 deficiencies, who shall be granted, once only, a period of 30 days,
6 or a longer period mutually agreed upon by the operator and the
7 board, to correct the noted deficiencies and submit the revised
8 reclamation plan or the revised financial assurances to the lead
9 agency for review and approval.

10 (h) (1) Within 90 days of a surface mining operation becoming
11 idle, as defined in Section 2727.1, the operator shall submit to the
12 lead agency for review and approval, an interim management plan.
13 The review and approval of an interim management plan shall not
14 be considered a project for purposes of Division 13 (commencing
15 with Section 21000). The approved interim management plan shall
16 be considered an amendment to the surface mining operation's
17 approved reclamation plan, for purposes of this chapter. The
18 interim management plan shall provide measures the operator will
19 implement to maintain the site in compliance with this chapter,
20 including, but not limited to, all permit conditions.

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

24 (A) Renew the interim management plan for an additional period
25 not to exceed five years, which may be renewed for additional
26 five-year periods at the expiration of each five-year period, if the
27 lead agency finds that the surface mining operator has complied
28 fully with the interim management plan.

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

31 (3) The financial assurances required by Section 2773.1 shall
32 remain in effect during the period that the surface mining operation
33 is idle. If the surface mining operation is still idle after the
34 expiration of its interim management plan, the surface mining
35 operation shall commence reclamation in accordance with its
36 approved reclamation plan.

37 (4) Within 60 days of the receipt of the interim management
38 plan, or a longer period mutually agreed upon by the lead agency
39 and the operator, the lead agency shall review and approve the
40 plan in accordance with its ordinance adopted pursuant to

1 subdivision (a) of Section 2774, so long as the plan satisfies the
2 requirements of this subdivision, and so notify the operator in
3 writing. Otherwise, the lead agency shall notify the operator in
4 writing of any deficiencies in the plan. The operator shall have 30
5 days, or a longer period mutually agreed upon by the operator and
6 the lead agency, to submit a revised plan.

7 (5) The lead agency shall approve or deny approval of the
8 revised interim management plan within 60 days of receipt. If the
9 lead agency denies approval of the revised interim management
10 plan, the operator may appeal that action to the lead agency's
11 governing body, which shall schedule a public hearing within 45
12 days of the filing of the appeal, or a longer period mutually agreed
13 upon by the operator and the governing body.

14 (6) Unless review of an interim management plan is pending
15 before the lead agency, or an appeal is pending before the lead
16 agency's governing body, a surface mining operation that remains
17 idle for over one year after becoming idle as defined in Section
18 2727.1 without obtaining approval of an interim management plan
19 shall be considered abandoned and the operator shall commence
20 and complete reclamation in accordance with the approved
21 reclamation plan.

22 (i) An enforcement action that may be brought against a surface
23 mining operation for operating without an approved reclamation
24 plan, financial assurance, or interim management plan shall be
25 held in abeyance pending review pursuant to subdivision (b), (c),
26 (d), or (h), or the resolution of an appeal filed with the board
27 pursuant to subdivision (e), or with a lead agency governing body
28 pursuant to subdivision (h).

29 *SEC. 3. Section 2777.5 is added to the Public Resources Code,*
30 *to read:*

31 *2777.5. (a) A mine operator who has failed to properly report*
32 *a mine's mineral production or mine status, pursuant to the annual*
33 *reporting requirement in Section 2207, prior to January 1, 2012,*
34 *may correct the report in the 2012 annual report if the annual*
35 *report is submitted on or before July 1, 2013, and if the lead agency*
36 *confirms in writing to the department all of the following:*

37 *(1) The operator has notified the lead agency that it intends to*
38 *continue surface mining operations.*

39 *(2) The operator has an existing, valid permit or a vested right*
40 *to conduct surface mining operations pursuant to Section 2776.*

1 (3) *The operator's reclamation plan has been approved and is*
2 *in compliance with this chapter and had been inspected by the*
3 *lead agency as provided by Section 2774. A notice from the lead*
4 *agency to the Office of Mine Reclamation pursuant to Section 2774*
5 *shall, to the extent applicable, indicate that the operator is seeking*
6 *a correction of mine status pursuant to this section. The Office of*
7 *Mine Reclamation may enter any mine site for which a mine*
8 *operator has requested a correction of mine status pursuant to*
9 *this section in order to conduct an inspection.*

10 (4) *The operator demonstrates that there are commercially*
11 *useful mineral reserves remaining at the permitted surface mining*
12 *operation.*

13 (b) *Unpaid fees for years during which the operation's status*
14 *was not properly reported shall be paid to the department.*

15 (c) *A mining operation that became idle, as defined in Section*
16 *2727.1, that failed to prepare and have approved an interim*
17 *management plan and was thus considered abandoned pursuant*
18 *to paragraph (6) of subdivision (h) of Section 2770 may be returned*
19 *to idle status at the request of the operator if an interim*
20 *management plan is approved by July 1, 2013, and upon*
21 *verification of compliance with subdivisions (a) and (b).*