

AMENDED IN ASSEMBLY SEPTEMBER 2, 2011

AMENDED IN ASSEMBLY AUGUST 26, 2011

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 *during which an interim management plan has not been approved.*

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 *in any year* prior to January 1, 2012, ~~to correct the report in~~ *attach corrected annual reports to* the 2012 annual report ~~if the~~ *so long as the corrected* 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 *prior to January 1, 2013*, if an interim management plan is approved by July 1, 2013, and upon *lead agency verification of* compliance with the above provisions. The bill would authorize the Office of Mine Reclamation to enter any mine site for which a mine operator has requested a correction of mine status in order to conduct an inspection, *as provided*, and the bill would require the mine operator to be responsible for the reasonable cost of this inspection.

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. "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

1 date, for a period of one year or more by more than 90 percent of
2 its maximum annual mineral production within any of the last five
3 years *during which an interim management plan has not been*
4 *approved.*

5 SEC. 2. Section 2770 of the Public Resources Code is amended
6 to read:

7 2770. (a) Except as provided in this section, a person shall not
8 conduct surface mining operations unless a permit is obtained
9 from, a reclamation plan has been submitted to and approved by,
10 and financial assurances for reclamation have been approved by,
11 the lead agency for the operation pursuant to this article.

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

28 (c) If a person with an existing surface mining operation has
29 received lead agency approval of its financial assurances for
30 reclamation prior to January 1, 1991, the lead agency shall
31 administratively review those existing financial assurances in
32 accordance with subdivision (d) prior to January 1, 1992. The
33 review of existing financial assurances shall not be considered a
34 project for purposes of Division 13 (commencing with Section
35 21000). A person with an existing surface mining operation that
36 does not have financial assurances that received lead agency
37 approval prior to January 1, 1991, shall submit financial assurances
38 for reclamation for review in accordance with subdivision (d).

39 (d) The lead agency's review of a reclamation plan submitted
40 pursuant to subdivision (b) or of financial assurances pursuant to

1 subdivision (c) is limited to whether the plan or the financial
2 assurances substantially meet the applicable requirements of
3 Sections 2772, 2773, and 2773.1, and the lead agency surface
4 mining ordinance adopted pursuant to subdivision (a) of Section
5 2774, but, in any event, the lead agency shall require that financial
6 assurances for reclamation be sufficient to perform reclamation
7 of lands remaining disturbed. Reclamation plans or financial
8 assurances determined to substantially meet these requirements
9 shall be approved by the lead agency for purposes of this chapter.
10 Reclamation plans or financial assurances determined not to
11 substantially meet these requirements shall be returned to the
12 operator within 60 days. The operator has 60 days to revise the
13 plan or financial assurances to address identified deficiencies, at
14 which time the revised plan or financial assurances shall be
15 returned to the lead agency for review and approval. Except as
16 specified in subdivision (e) or (i), unless the operator has filed on
17 or before July 1, 1990, an appeal pursuant to subdivision (e) with
18 regard to nonapproval of the reclamation plan, or has filed on or
19 before January 1, 1994, an appeal pursuant to subdivision (e) with
20 regard to nonapproval of financial assurances, and that appeal is
21 pending before the board, the continuation of the surface mining
22 operation is prohibited until a reclamation plan and financial
23 assurances for reclamation are approved by the lead agency.

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

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

39 (g) Appeals that the board does not decline to hear shall be
40 scheduled and heard at a public hearing within 45 days of the filing

1 of the appeal, or a longer period as may be mutually agreed upon
2 by the board and the person filing the appeal. In hearing an appeal,
3 the board shall only determine whether the reclamation plan or the
4 financial assurances substantially meet the applicable requirements
5 of Sections 2772, 2773, and 2773.1, and the lead agency surface
6 mining ordinance adopted pursuant to subdivision (a) of Section
7 2774. A reclamation plan or financial assurances determined to
8 meet these requirements shall be approved. A reclamation plan or
9 financial assurances determined not to meet these requirements
10 shall be returned to the person filing the appeal with a notice of
11 deficiencies, who shall be granted, once only, a period of 30 days,
12 or a longer period mutually agreed upon by the operator and the
13 board, to correct the noted deficiencies and submit the revised
14 reclamation plan or the revised financial assurances to the lead
15 agency for review and approval.

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

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

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

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

37 (3) The financial assurances required by Section 2773.1 shall
38 remain in effect during the period that the surface mining operation
39 is idle. If the surface mining operation is still idle after the
40 expiration of its interim management plan, the surface mining

1 operation shall commence reclamation in accordance with its
2 approved reclamation plan.

3 (4) Within 60 days of the receipt of the interim management
4 plan, or a longer period mutually agreed upon by the lead agency
5 and the operator, the lead agency shall review and approve the
6 plan in accordance with its ordinance adopted pursuant to
7 subdivision (a) of Section 2774, so long as the plan satisfies the
8 requirements of this subdivision, and so notify the operator in
9 writing. Otherwise, the lead agency shall notify the operator in
10 writing of any deficiencies in the plan. The operator shall have 30
11 days, or a longer period mutually agreed upon by the operator and
12 the lead agency, to submit a revised plan.

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

20 (6) Unless review of an interim management plan is pending
21 before the lead agency, or an appeal is pending before the lead
22 agency's governing body, a surface mining operation that remains
23 idle for over one year after becoming idle as defined in Section
24 2727.1 without obtaining approval of an interim management plan
25 shall be considered abandoned and the operator shall commence
26 and complete reclamation in accordance with the approved
27 reclamation plan.

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

35 SEC. 3. Section 2777.5 is added to the Public Resources Code,
36 to read:

37 2777.5. (a) A mine operator who has failed to properly report
38 a mine's mineral production or mine status *in any previous year*,
39 pursuant to the annual reporting requirement in Section 2207, prior
40 to January 1, 2012, may ~~correct the report in~~ *attach corrected*

1 *annual reports to the 2012 annual report if the annual report is so*
2 *long as the corrected annual reports are submitted on or before*
3 *July 1, 2013, and if the lead agency confirms in writing to the*
4 *department all of the following:*

5 (1) ~~The operator has notified~~ *provided written notification to*
6 *the lead agency and the director that it intends of their intention*
7 *to continue surface mining operations and provides evidence to*
8 *support any production modified on the corrected annual report..*

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

11 (3) (A) *The operator's reclamation plan has been approved and*
12 *is in compliance with this chapter, the mining operation is in*
13 *compliance with the approved reclamation plan or applicable*
14 *compliance order issued pursuant to this chapter, the mining*
15 *operation has an approved financial assurance in place pursuant*
16 *to Section 2770 that the lead agency determines is adequate for*
17 *reclamation pursuant to the approved reclamation plan, and the*
18 *mining operation has been inspected by the lead agency as provided*
19 *by Section 2774.*

20 (B) *The Office of Mine Reclamation may enter any mine site*
21 *for which a mine operator has requested a correction of mine status*
22 *or a return to idle status pursuant to this section in order to conduct*
23 *an inspection.*

24 (4) ~~The operator demonstrates~~ *has demonstrated that there are*
25 *commercially useful mineral reserves remaining at the permitted*
26 *surface mining operation.*

27 ~~(b)~~

28 (5) *Unpaid fees for years during which the operation's status*
29 *was not properly reported shall be have been paid to the*
30 *department.*

31 (6) *The operator provides evidence to support any modified*
32 *production reported on corrected annual reports.*

33 ~~(e)~~

34 (b) *A mining operation that became idle, as defined in Section*
35 *2727.1, that failed to prepare and have approved an interim*
36 *management plan and was thus considered abandoned pursuant to*
37 *paragraph (6) of subdivision (h) of Section 2770 may prior to*
38 *January 1, 2013, may, without prejudice, be returned to idle status*
39 *at the request of the operator if an interim management plan is*

1 approved by July 1, 2013, and upon *lead agency* verification of
2 compliance with ~~subdivisions (a) and (b)~~ *subdivision (a)*.
3 ~~(d)~~
4 (c) The mine operator shall be responsible for the reasonable
5 costs of an inspection conducted by the Office of Mine Reclamation
6 pursuant to subparagraph (B) of paragraph (3) of subdivision (a).