

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 447

Introduced by Senator Lara

February 21, 2013

An act to amend Section 10295.5 of the Public Contract Code, and to amend Sections 2717 and 2774.1 of the Public Resources Code, relating to surface mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 447, as amended, Lara. Surface mining operations.

(1) Existing law, the Surface Mining and Reclamation Act of 1975, prohibits, with certain exceptions, 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, as defined, for the operation. For purposes of compliance with specified provisions of the Public Contract Code, the act requires the Department of Conservation to, at a minimum, quarterly publish in the California Regulatory Notice Register, or otherwise make available, upon request, to the Department of General Services or any other state or local agency, a list identifying certain surface mining operations, ~~including surface mining operations that are subject to inspection, as specified.~~ Existing law also prohibits a state agency from acquiring or utilizing mined material, or from contracting with a person utilizing these materials, as specified, unless the material is produced from a mining operation on that list ~~and that~~ meets certain requirements.

This bill would revise the requirements for those surface mining operations that are included on the list, as prescribed, in regards to mined materials a state agency may acquire or utilize, would remove the condition that the surface mining operation meet certain

requirements, and instead require that the mined material be produced from a surface mining operation on the above-described list. This bill would also delete the requirement that the list identify surface mining operations that are subject to inspection and instead require the this list to identify surface mining operations whose reclamation plan has been approved and is in compliance with the act, whose mining operation is in compliance with the approved reclamation plan or an applicable compliance order, and whose mining operation has an approved financial assurance plan, as specified.

(2) Existing law requires that the lead agency have primary responsibility in enforcing the act. The act permits, in cases where the State Mining and Geology Board is not the lead agency, the Director of Conservation to initiate enforcement actions if the lead agency has been notified *by the director*, for at least 15 days, of ~~the a violation by the director~~ and has not taken appropriate enforcement action, or the director determines there is a violation which ~~amounts to~~ *presents an* imminent and substantial endangerment to the public health or safety, or the environment.

This bill would require that the lead agency be notified of ~~the a violation~~ for at least 30 days *before the director could initiate enforcement actions*, and ~~that appropriate enforcement action may include failing~~ *would provide that a lead agency's failure to issue an order to comply within a reasonable time after issuing a notice of violation may be a failure to take appropriate enforcement action that permits the initiation of an enforcement action by the director.*

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 10295.5 of the Public Contract Code is
2 amended to read:
3 10295.5. (a) Notwithstanding any other provision of law, ~~no~~
4 *a state agency shall not* acquire or utilize sand, gravel, aggregates,
5 or other minerals produced from a surface mining operation subject
6 to the Surface Mining and Reclamation Act of 1975 (Chapter 9
7 (commencing with Section 2710) of Division 2 of the Public
8 Resources Code), unless the operation is identified in the list
9 published pursuant to subdivision (b) of Section 2717 of the Public
10 Resources Code

1 (b) Notwithstanding any other provision of law, ~~no~~ a state
2 agency shall *not* contract with a person who is not a surface mining
3 operator, but who is supplying or utilizing sand, gravel, aggregates,
4 or other minerals, to perform work for, or supply materials to, a
5 state agency, unless the operation is identified in the list published
6 pursuant to subdivision (b) of Section 2717 of the Public Resources
7 Code

8 (c) For purposes of this section, “minerals” means any naturally
9 occurring chemical element or compound, or groups of elements
10 and compounds, formed from inorganic processes and organic
11 substances, including, but not limited to, coal, peat, and bituminous
12 rock, but excluding geothermal resources, natural gas, and
13 petroleum.

14 (d) The requirements of this section shall apply to mining
15 operations on federal lands or Indian lands that are subject to the
16 Surface Mining and Reclamation Act of 1975 (Chapter 9
17 (commencing with Section 2710) of Division 2 of the Public
18 Resources Code) pursuant to a memorandum of understanding
19 between the Department of Conservation and the federal agency
20 having jurisdiction over the lands.

21 ~~SEC. 2. Section 2717 of the Public Resources Code is amended~~
22 ~~to read:~~

23 ~~2717. (a) Notwithstanding Section 10231.5 of the Government~~
24 ~~Code, the board shall submit to the Legislature on December 1st~~
25 ~~of each year a report on the actions taken pursuant to this chapter~~
26 ~~during the preceding fiscal year. The report shall include a~~
27 ~~statement of the actions, including legislative recommendations,~~
28 ~~that are necessary to carry out more completely the purposes and~~
29 ~~requirements of this chapter.~~

30 ~~(b) For purposes of ensuring compliance with Sections 10295.5~~
31 ~~and 20676 of the Public Contract Code, the department shall, at a~~
32 ~~minimum, quarterly publish in the California Regulatory Notice~~
33 ~~Register, or otherwise make available upon request to the~~
34 ~~Department of General Services or any other state or local agency,~~
35 ~~a list identifying all of the following:~~

36 ~~(1) Surface mining operations for which a report is required and~~
37 ~~has been submitted pursuant to Section 2207 that indicates all of~~
38 ~~the following:~~

39 ~~(A) The reclamation plan and financial assurances have been~~
40 ~~approved pursuant to this chapter.~~

1 ~~(B) Compliance with state reclamation standards developed~~
2 ~~pursuant to Section 2773.~~

3 ~~(C) Compliance with the financial assurance guidelines~~
4 ~~developed pursuant to Section 2773.1.~~

5 ~~(D) The annual reporting fee has been submitted to the~~
6 ~~Department of Conservation.~~

7 ~~(2) Surface mining operations for which an appeal is pending~~
8 ~~before the board pursuant to subdivision (e) of Section 2770, if~~
9 ~~the appeal was not pending before the board for more than 180~~
10 ~~days.~~

11 ~~(3) Surface mining operations that meet all of the following:~~

12 ~~(A) The reclamation plan has been approved and is in~~
13 ~~compliance with this chapter.~~

14 ~~(B) The mining operation is in compliance with the approved~~
15 ~~reclamation plan or an applicable compliance order issued pursuant~~
16 ~~to this chapter.~~

17 ~~(C) The mining operation has an approved financial assurance~~
18 ~~plan in place that the lead agency determines is adequate for~~
19 ~~reclamation pursuant to the approved reclamation plan.~~

20 ~~(e) A report submitted pursuant to subdivision (a) shall be~~
21 ~~submitted in compliance with Section 9795 of the Government~~
22 ~~Code.~~

23 *SEC. 2. Section 2717 of the Public Resources Code is amended*
24 *to read:*

25 2717. (a) ~~The~~ *Notwithstanding Section 10231.5 of the*
26 *Government Code, the board shall submit to the Legislature on*
27 *December 1st of each year a report on the actions taken pursuant*
28 *to this chapter during the preceding fiscal year. The report shall*
29 *include a statement of the actions, including legislative*
30 *recommendations, that are necessary to carry out more completely*
31 *the purposes and requirements of this chapter.*

32 (b) For purposes of ensuring compliance with Sections 10295.5
33 and 20676 of the Public Contract Code, the department shall, at a
34 minimum, quarterly publish in the California Regulatory Notice
35 Register, or otherwise make available upon request to the
36 Department of General Services or any other state or local agency,
37 a list identifying all of the following:

38 (1) Surface mining operations for which a report is required and
39 has been submitted pursuant to Section 2207 that indicates all of
40 the following:

1 (A) The reclamation plan and financial assurances have been
2 approved pursuant to this chapter.

3 (B) Compliance with state reclamation standards developed
4 pursuant to Section 2773.

5 (C) Compliance with the financial assurance guidelines
6 developed pursuant to Section 2773.1.

7 (D) The annual reporting fee has been submitted to the
8 Department of Conservation.

9 (2) Surface mining operations for which an appeal is pending
10 before the board pursuant to subdivision (e) of Section 2770,
11 ~~provided that if the appeal shall~~ *was not have been* pending before
12 the board for more than 180 days.

13 (3) Surface mining operations for which an inspection is required
14 and for which an inspection notice has been submitted by the lead
15 agency pursuant to Section 2774 that indicates both compliance
16 with the approved reclamation plan and that sufficient financial
17 assurances, pursuant to Section 2773.1, have been approved and
18 secured.

19 (4) *Surface mining operations that meet all of the following:*

20 (A) *The reclamation plan has been approved and is in*
21 *compliance with this chapter.*

22 (B) *The mining operation is in compliance with the approved*
23 *reclamation plan or an applicable compliance order.*

24 (C) *The mining operation has an approved financial assurance*
25 *in place that the lead agency determines is adequate for*
26 *reclamation pursuant to the approved reclamation plan.*

27 (c) *A report submitted pursuant to subdivision (a) shall be*
28 *submitted in compliance with Section 9795 of the Government*
29 *Code.*

30 SEC. 3. Section 2774.1 of the Public Resources Code is
31 amended to read:

32 2774.1. (a) Except as provided in subdivision (i) of Section
33 2770, if the lead agency or the director determines, based upon an
34 annual inspection pursuant to Section 2774, or otherwise confirmed
35 by an inspection of the mining operation, that a surface mining
36 operation is not in compliance with this chapter, the lead agency
37 or the director may notify the operator of that violation by personal
38 service or certified mail. If the violation extends beyond 30 days
39 after the date of the lead agency's or the director's notification,
40 the lead agency or the director may issue an order by personal

1 service or certified mail requiring the operator to comply with this
2 chapter or, if the operator does not have an approved reclamation
3 plan or financial assurances, cease all further mining activities.

4 (b) An order issued under subdivision (a) shall not take effect
5 until the operator has been provided a hearing before the lead
6 agency for orders issued by the lead agency, or board for orders
7 issued by the director, concerning the alleged violation. ~~Any~~ An
8 order issued under subdivision (a) shall specify which aspects of
9 the surface mine's activities or operations are inconsistent with
10 this chapter, shall specify a time for compliance that the lead
11 agency or director determines is reasonable, taking into account
12 the seriousness of the violation and any good faith efforts to comply
13 with applicable requirements, and shall set a date for the hearing,
14 which shall not be sooner than 30 days after the date of the order.

15 (c) An operator who violates or fails to comply with an order
16 issued under subdivision (a) after the order's effective date, as
17 provided in subdivision (b), or who fails to submit a report to the
18 director or lead agency as required by Section 2207, shall be subject
19 to an order by the lead agency or the director imposing an
20 administrative penalty of not more than five thousand dollars
21 (\$5,000) per day, assessed from the original date of noncompliance
22 with this chapter or Section 2207. The penalty may be imposed
23 administratively by the lead agency or the director. In determining
24 the amount of the administrative penalty, the lead agency or the
25 director shall take into consideration the nature, circumstances,
26 extent, and gravity of the violation or violations, any prior history
27 of violations, the degree of culpability, economic savings, if any,
28 resulting from the violation, and any other matters justice may
29 require. Orders setting administrative penalties shall become
30 effective upon issuance ~~thereof~~ *of the order* and payment shall be
31 made to the lead agency or the director within 30 days, unless the
32 operator petitions the legislative body of the lead agency, the board,
33 or the superior court for review as provided in Section 2774.2.
34 ~~Any~~ An order shall be served by personal service or by certified
35 mail upon the operator. Penalties collected by the director shall
36 *not* be used for ~~no purpose~~ *purposes* other than to cover the
37 reasonable costs incurred by the director in implementing this
38 chapter or Section 2207.

39 (d) If the lead agency or the director determines that the surface
40 mine is not in compliance with this chapter, so that the surface

1 mine presents an imminent and substantial endangerment to the
2 public health or the environment, the lead agency or the Attorney
3 General, on behalf of the director, may seek an order from a court
4 of competent jurisdiction enjoining that operation.

5 (e) Upon a complaint by the director, the department, or the
6 board, the Attorney General may bring an action to recover
7 administrative penalties under this section, and penalties under
8 Section 2207, in any court of competent jurisdiction in this state
9 against any person violating any provision of this chapter or Section
10 2207, or any regulation adopted pursuant to this chapter or Section
11 2207. The Attorney General may bring ~~such an~~ *this* action on his
12 or her own initiative if, after examining the complaint and the
13 evidence, he or she believes a violation has occurred. The Attorney
14 General may also seek an order from a court of competent
15 jurisdiction compelling the operator to comply with this chapter
16 and Section 2207.

17 (f) (1) The lead agency has primary responsibility for enforcing
18 this chapter and Section 2207. In cases where the board is not the
19 lead agency pursuant to Section 2774.4, enforcement actions may
20 be initiated by the director pursuant to this section only after the
21 violation has come to the attention of the director and either of the
22 following occurs:

23 (A) The lead agency has been notified by the director in writing
24 of the violation for at least 30 days, and has not taken appropriate
25 enforcement action, which may include failing to issue an order
26 to comply within a reasonable time after issuing a notice of
27 violation.

28 (B) The director determines that there is a violation which
29 amounts to an imminent and substantial endangerment to the public
30 health or safety, or to the environment.

31 (2) The director shall comply with this section in initiating
32 enforcement actions.

33 (g) Remedies under this section are in addition to, and do not
34 supersede or limit, any and all other remedies, civil or criminal.

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