

Senate Bill No. 447

CHAPTER 417

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

[Approved by Governor September 28, 2013. Filed with
Secretary of State September 28, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 447, 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. 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 that meets certain requirements.

This bill, in regard 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. The bill, until January 1, 2019, as specified, would also require 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 order to comply, as specified, and whose mining operation has an approved financial assurance, as specified. The bill would require the Department of Conservation to submit a specified report to the Legislature between July 1, 2017, and January 1, 2018.

(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 a violation and has not taken appropriate enforcement action, or the director determines there is a violation that 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 a violation for at least 30 days before the director could initiate enforcement actions, and 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.

The people of the State of California do enact as follows:

SECTION 1. Section 10295.5 of the Public Contract Code is amended to read:

10295.5. (a) Notwithstanding any other law, a state agency shall not acquire or utilize sand, gravel, aggregates, or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code.

(b) Notwithstanding any other law, a state agency shall not contract with a person who is not a surface mining operator, but who is supplying or utilizing sand, gravel, aggregates, or other minerals, to perform work for, or supply materials to, a state agency, unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code.

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

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

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

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

(b) For purposes of ensuring compliance with Sections 10295.5 and 20676 of the Public Contract Code, the department shall, 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 all of the following:

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

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

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

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

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

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

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

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

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

(B) The mining operation is in compliance with either of the following:

(i) The approved reclamation plan.

(ii) An order to comply issued prior to January 1, 2019, pursuant to this chapter and that is being complied with by the operator. An order to comply may be stipulated to as follows:

(I) By the department, lead agency, and operator if the enforcement action was initiated by the director.

(II) By the lead agency and the operator, with notice of the stipulation provided to the director if the enforcement action was initiated by the lead agency.

(C) In accordance with Section 2773.1 and Article 11 (commencing with Section 3800) of Title 14 of the California Code of Regulations, as amended, the surface mining operation has an approved financial assurance in place that is adequate for reclamation pursuant to the approved reclamation plan.

(c) Between July 1, 2017, and January 1, 2018, the department shall submit to the Legislature a report on the activities of lead agencies and surface mining operations. This report shall include, but is not limited to, all of the following:

(1) Number of financial assurance cost estimates reviewed and approved each year by each lead agency.

(2) Number of annual mine inspections performed by each lead agency.

(3) Information on idle mines and interim management plans approved by each lead agency.

(4) Number and location of mining operations that are no longer in operation with no intent to resume and are in the process of reclamation and how many years each of these mining operations has claimed that status.

(5) Information on approved mineral resources management plans across the state from the board.

(6) Number and location of mines with reclamation plans approved prior to the adoption of the 1993 reclamation standards.

(7) Percentage of mining operations on the list published pursuant to subdivision (b) and the number and location of mining operations that have been placed on the list pursuant to clause (ii) of subparagraph (B) of paragraph (4) of subdivision (b).

(8) Number of historic abandoned mines remediated by the department and locations of known remaining hazards.

(9) Number, types, and status of notices of violations and orders to comply issued by the department organized by location.

(10) Number of administrative penalties issued by the department and amounts, as well as information on the amounts actually collected by the department organized by location.

(d) A report submitted pursuant to subdivision (a) or (c) shall be submitted in compliance with Section 9795 of the Government Code.

(e) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 3. Section 2717 is added to the Public Resources Code, to read:

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

(b) For purposes of ensuring compliance with Sections 10295.5 and 20676 of the Public Contract Code, the department shall, 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 all of the following:

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

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

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

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

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

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

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

(4) Surface mining operations to which an order to comply was issued pursuant to this chapter prior to January 1, 2019, and that is being complied with. An order to comply may have been stipulated to as follows:

(A) By the department, lead agency, and operator if the enforcement action was initiated by the director.

(B) By the lead agency and the operator, with notice of the stipulation provided to the director if the enforcement action was initiated by the lead agency.

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

(d) This section shall become operative January 1, 2019.

SEC. 4. Section 2774.1 of the Public Resources Code is amended to read:

2774.1. (a) Except as provided in subdivision (i) of Section 2770, if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's or the director's notification, the lead agency or the director may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities.

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

(c) An operator who violates or fails to comply with an order issued under subdivision (a) after the order's effective date, as provided in subdivision (b), or who fails to submit a report to the director or lead agency as required by Section 2207, shall be subject to an order by the lead agency or the director imposing an administrative penalty of not more than five

thousand dollars (\$5,000) per day, assessed from the original date of noncompliance with this chapter or Section 2207. The penalty may be imposed administratively by the lead agency or the director. In determining the amount of the administrative penalty, the lead agency or the director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require. Orders setting administrative penalties shall become effective upon issuance of the order and payment shall be made to the lead agency or the director within 30 days, unless the operator petitions the legislative body of the lead agency, the board, or the superior court for review as provided in Section 2774.2. An order shall be served by personal service or by certified mail upon the operator. Penalties collected by the director shall not be used for purposes other than to cover the reasonable costs incurred by the director in implementing this chapter or Section 2207.

(d) If the lead agency or the director determines that the surface mine is not in compliance with this chapter, so that the surface mine presents an imminent and substantial endangerment to the public health or the environment, the lead agency or the Attorney General, on behalf of the director, may seek an order from a court of competent jurisdiction enjoining that operation.

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

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

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

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

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

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

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