

AMENDED IN SENATE MARCH 16, 2016  
AMENDED IN SENATE SEPTEMBER 1, 2015  
AMENDED IN SENATE AUGUST 18, 2015  
AMENDED IN SENATE JULY 1, 2015  
AMENDED IN ASSEMBLY JUNE 3, 2015  
AMENDED IN ASSEMBLY MAY 5, 2015  
AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1142**

---

---

**Introduced by Assembly Member Gray**

February 27, 2015

---

---

An act to amend Sections ~~2207~~, 2715.5, 2733, 2770, 2772, 2773.1, 2774, 2774.1, 2774.2, and 2774.4 of, to add Sections 2736, 2772.1, and 2773.4 to, and to add and repeal Section 2207.2 of, the Public Resources Code, relating to mining and geology.

LEGISLATIVE COUNSEL'S DIGEST

AB 1142, as amended, Gray. Mining and geology: surface mining.

(1) The Surface Mining and Reclamation Act of 1975 prohibits a person, with exceptions, from conducting surface mining operations unless, among other things, a permit is obtained from, a specified reclamation plan is submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation of the surface mining operation.

This bill would revise and recast provisions of the act related to the approval of reclamation plans and, among other things, would require a reclamation plan filed by an operator of a surface mining operation with a lead agency to include specified reclamation maps; require a lead agency, when submitting a proposed reclamation plan to the Director of Conservation, to incorporate specified items of information and documents in the submitted reclamation plan within certain timeframes; and require the director to take certain actions upon receiving a proposed reclamation plan. By adding to the duties of a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.

This bill would revise and recast provisions of the act related to financial assurances and, among other things, would require an operator to replace an approved financial assurance only if the financial assurance cost estimate identifies a need to increase the amount of the financial assurance; require a lead agency to submit a surface mining operation's proposed financial assurance cost estimate to the director for review, as specified; and require the director to take certain actions upon receiving a financial assurance cost estimate from a lead agency. By adding to the duties of a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.

This bill also would require a lead agency or the State Mining and Geology Board to conduct a specified public hearing if the lead agency has evidence that an operator may be financially incapable of performing reclamation in accordance with its approved reclamation plan or that the operator has abandoned a surface mining operation without completing reclamation and to take appropriate actions to forfeit the operator's financial assurances if warranted following that hearing.

This bill would require the director, no later than December 31, 2021, to submit a specified report to the Legislature on the expenditure of moneys in the Mine Reclamation Account.

(2) The act requires the owner or operator of a mining operation to forward annually to the director and the lead agency a report that provides, among other things, proof of annual inspection by the lead agency. The act also requires every lead agency to adopt ordinances that establish procedures for the review and approval of reclamation plans, and, before approving a reclamation plan, to submit the plan to the director. The act requires a lead agency to inspect a surface mining operation within 6 months of receiving a specified report and to conduct an inspection no less than once every calendar year. The act authorizes

a lead agency to cause an inspection to be conducted by a state-licensed geologist, state-licensed civil engineer, state-licensed landscape architect, or state-licensed forester, as specified.

This bill would revise and recast those provisions and, among other things, ~~would require the owner or operator to provide a copy of the previously completed annual inspection form and a requested date within 12 months of the prior inspection date for the next annual inspection by the lead agency;~~ authorize a lead agency to cause an inspection to be conducted by ~~an unlicensed~~ *a qualified* employee of the lead agency who meets specified criteria and who, after January 1, 2019, 2020, has completed an inspection workshop, as provided; impose new requirements on the lead agency related to the timing of inspections; ~~impose timelines on a lead agency related to the submission of an application for a permit to conduct a surface mining operation;~~ and require the ~~director~~ *department* to ~~provide~~ *establish* a training program for lead agency employees who inspect surface mining operations ~~after January 1, 2019; no later than December 31, 2017.~~ By adding to the duties of a local government acting as a lead agency, this bill would impose a state-mandated local program.

(3) The act requires that the lead agency have primary responsibility in enforcing the act. The act authorizes, in cases where the board is not the lead agency, the director to initiate enforcement actions if the lead agency has been notified by the director, for at least 30 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. The act establishes procedures and timelines for an operator to have an order setting administrative penalties reviewed by a legislative body of a lead agency, the board, or a superior court.

This bill would revise and recast those provisions and, among other things, would revise the timelines and actions related to the issuance of an order to comply and, after the expiration of a specified review period, authorize the director or the board when it acts as a lead agency to apply to the small claims court or the superior court, as appropriate, for a judgment to collect an unpaid administrative penalty.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would make its operation contingent on the enactment and operation of Senate Bill 209 of the 2015–16 Regular Session.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1     ~~SECTION 1. Section 2207 of the Public Resources Code is~~  
2 ~~amended to read:~~  
3     ~~2207. (a) The owner or the operator of a mining operation~~  
4 ~~within the state shall forward to the director annually, not later~~  
5 ~~than a date established by the director, upon forms approved by~~  
6 ~~the board from time to time, a report that identifies and contains~~  
7 ~~all of the following:~~  
8     ~~(1) The name, address, and telephone number of the person,~~  
9 ~~company, or other owner of the mining operation.~~  
10    ~~(2) The name, address, and telephone number of a designated~~  
11 ~~agent who resides in this state, and who will receive and accept~~  
12 ~~service of all orders, notices, and processes of the lead agency,~~  
13 ~~board, director, or court.~~  
14    ~~(3) The location of the mining operation, its name, its mine~~  
15 ~~number as issued by the Office of Mine Reclamation or the~~  
16 ~~director, its section, township, range, latitude, longitude, and~~  
17 ~~approximate boundaries of the mining operation marked on a~~  
18 ~~United States Geological Survey 7½-minute or 15-minute~~  
19 ~~quadrangle map.~~  
20    ~~(4) The lead agency.~~  
21    ~~(5) The approval date of the mining operation’s reclamation~~  
22 ~~plan.~~  
23    ~~(6) The mining operation’s status as active, idle, reclaimed, or~~  
24 ~~in the process of being reclaimed.~~  
25    ~~(7) The commodities produced by the mine and the type of~~  
26 ~~mining operation.~~  
27    ~~(8) A copy of the previously completed annual inspection form~~  
28 ~~and a requested date, within 12 months of the prior inspection date,~~  
29 ~~for the next annual inspection by the lead agency.~~  
30    ~~(9) Proof of financial assurances.~~  
31    ~~(10) Ownership of the property, including government agencies,~~  
32 ~~if applicable, by the assessor’s parcel number, and total assessed~~  
33 ~~value of the mining operation.~~

- 1     ~~(11) The approximate permitted size of the mining operation~~  
2 ~~subject to Chapter 9 (commencing with Section 2710), in acres.~~
- 3     ~~(12) The approximate total acreage of land newly disturbed by~~  
4 ~~the mining operation during the previous calendar year.~~
- 5     ~~(13) The approximate total of disturbed acreage reclaimed during~~  
6 ~~the previous calendar year.~~
- 7     ~~(14) The approximate total unreclaimed disturbed acreage~~  
8 ~~remaining as of the end of the calendar year.~~
- 9     ~~(15) The total production for each mineral commodity produced~~  
10 ~~during the previous year.~~
- 11     ~~(16) A copy of any approved reclamation plan and any~~  
12 ~~amendments or conditions of approval to any existing reclamation~~  
13 ~~plan approved by the lead agency.~~
- 14     ~~(b) (1) Every year, not later than the date established by the~~  
15 ~~director, the person submitting the report pursuant to subdivision~~  
16 ~~(a) shall forward to the lead agency, upon forms furnished by the~~  
17 ~~board, a report that provides all of the information specified in~~  
18 ~~subdivision (a).~~
- 19     ~~(2) The owner or operator of a mining operation shall allow~~  
20 ~~access to the property to any governmental agency or the agent of~~  
21 ~~any company providing financial assurances in connection with~~  
22 ~~the reclamation plan in order that the reclamation can be carried~~  
23 ~~out by the entity or company, in accordance with the provisions~~  
24 ~~of the reclamation plan.~~
- 25     ~~(c) Subsequent reports shall include only changes in the~~  
26 ~~information submitted for the items described in subdivision (a),~~  
27 ~~except that, instead of the approved reclamation plan, the reports~~  
28 ~~shall include any reclamation plan amendments approved during~~  
29 ~~the previous year. The reports shall state whether review of a~~  
30 ~~reclamation plan, financial assurances, or an interim management~~  
31 ~~plan is pending under subdivision (b) or (h) of Section 2770, or~~  
32 ~~whether an appeal before the board or lead agency governing body~~  
33 ~~is pending under subdivision (c) or (h) of Section 2770. The~~  
34 ~~director shall notify the person submitting the report and the~~  
35 ~~owner's designated agent in writing that the report and the fee~~  
36 ~~required pursuant to subdivision (d) have been received, specify~~  
37 ~~the mining operation's mine number if one has not been issued by~~  
38 ~~the Office of Mine Reclamation, and notify the person and agent~~  
39 ~~of any deficiencies in the report within 90 days of receipt. That~~  
40 ~~person or agent shall have 30 days from receipt of the notification~~

1 to correct the noted deficiencies and forward the revised report to  
2 the director and the lead agency. Any person who fails to comply  
3 with this section, or knowingly provides incorrect or false  
4 information in reports required by this section, may be subject to  
5 an administrative penalty as provided in subdivision (c) of Section  
6 2774.1.

7 (d) (1) The board shall impose, by regulation, pursuant to  
8 paragraph (2), an annual reporting fee on, and method for collecting  
9 annual fees from, each active or idle mining operation. The  
10 maximum fee for any single mining operation may not exceed four  
11 thousand dollars (\$4,000) annually and may not be less than one  
12 hundred dollars (\$100) annually, as adjusted for the cost of living  
13 as measured by the California Consumer Price Index for all urban  
14 consumers, calendar year averages, using the percentage change  
15 in the previous year, beginning with the 2005-06 fiscal year and  
16 annually thereafter.

17 (2) (A) The board shall adopt, by regulation, a schedule of fees  
18 authorized under paragraph (1) to cover the department's cost in  
19 carrying out this section and Chapter 9 (commencing with Section  
20 2710), as reflected in the Governor's proposed Budget, and may  
21 adopt those regulations as emergency regulations. In establishing  
22 the schedule of fees to be paid by each active and idle mining  
23 operation, the fees shall be calculated on an equitable basis  
24 reflecting the size and type of operation. The board shall also  
25 consider the total assessed value of the mining operation, the  
26 acreage disturbed by mining activities, and the acreage subject to  
27 the reclamation plan.

28 (B) Regulations adopted pursuant to this subdivision shall be  
29 adopted by the board in accordance with the Administrative  
30 Procedure Act (Chapter 3.5 (commencing with Section 11340) of  
31 Part 1 of Division 3 of Title 2 of the Government Code). The  
32 adoption of any emergency regulations pursuant to this subdivision  
33 shall be considered necessary to address an emergency and shall  
34 be considered by the Office of Administrative Law to be necessary  
35 for the immediate preservation of the public peace, health, safety,  
36 and general welfare.

37 (3) The total revenue generated by the reporting fees may not  
38 exceed, and may be less than, the amount of three million five  
39 hundred thousand dollars (\$3,500,000), as adjusted for the cost of  
40 living as measured by the California Consumer Price Index for all

1 urban consumers, calendar year averages, using the percentage  
2 change in the previous year, beginning with the 2005-06 fiscal  
3 year and annually thereafter. If the director determines that the  
4 revenue collected during the preceding fiscal year was greater or  
5 less than the cost to operate the program, the board shall adjust  
6 the fees to compensate for the overcollection or undercollection  
7 of revenues.

8 (4) (A) The reporting fees established pursuant to this  
9 subdivision shall be deposited in the Mine Reclamation Account,  
10 which is hereby created. Any fees, penalties, interest, fines, or  
11 charges collected by the director or board pursuant to this chapter  
12 or Chapter 9 (commencing with Section 2710) shall be deposited  
13 in the Mine Reclamation Account. The money in the account shall  
14 be available to the department and board, upon appropriation by  
15 the Legislature, for the purpose of carrying out this section and  
16 complying with Chapter 9 (commencing with Section 2710), which  
17 includes, but is not limited to, classification and designation of  
18 areas with mineral resources of statewide or regional significance,  
19 reclamation plan and financial assurance review, mine inspection,  
20 and enforcement.

21 (B) (i) In addition to reporting fees, the board shall collect five  
22 dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of  
23 silver mined within the state and shall deposit the fees collected  
24 in the Abandoned Mine Reclamation and Minerals Fund  
25 Subaccount, which is hereby created in the Mine Reclamation  
26 Account. The department may expend the moneys in the  
27 subaccount, upon appropriation by the Legislature, for only the  
28 purposes of Section 2796.5 and as authorized herein for the  
29 remediation of abandoned mines.

30 (ii) Notwithstanding subdivision (j) of Section 2796.5, fees  
31 collected pursuant to clause (i) may also be used to remediate  
32 features of historic abandoned mines and lands that they impact.  
33 For the purposes of this section, historic abandoned mines are  
34 mines for which operations have been conducted before January  
35 1, 1976, and include, but are not limited to, historic gold and silver  
36 mines.

37 (5) In case of late payment of the reporting fee, a penalty of not  
38 less than one hundred dollars (\$100) or 10 percent of the amount  
39 due, whichever is greater, plus interest at the rate of 1 ½ percent  
40 per month, computed from the delinquent date of the assessment

1 until and including the date of payment, shall be assessed. New  
2 mining operations that have not submitted a report shall submit a  
3 report prior to commencement of operations. The new operation  
4 shall submit its fee according to the reasonable fee schedule  
5 adopted by the board, and the month that the report is received  
6 shall become that operation's anniversary month.

7 (e) ~~The lead agency, or the board when acting as the lead agency,~~  
8 ~~may impose a fee upon each mining operation to cover the~~  
9 ~~reasonable costs incurred in implementing this chapter and Chapter~~  
10 ~~9 (commencing with Section 2710):~~

11 (f) ~~For purposes of this section, "mining operation" means a~~  
12 ~~mining operation of any kind or character whatever in this state,~~  
13 ~~including, but not limited to, a mining operation that is classified~~  
14 ~~as a "surface mining operation" as defined in Section 2735, unless~~  
15 ~~excepted by Section 2714. For the purposes of fee collections only,~~  
16 ~~"mining operation" may include one or more mines operated by~~  
17 ~~a single operator or mining company on one or more sites, if the~~  
18 ~~total annual combined mineral production for all sites is less than~~  
19 ~~100 troy ounces for precious metals, if precious metals are the~~  
20 ~~primary mineral commodity produced, or less than 100,000 short~~  
21 ~~tons if the primary mineral commodity produced is not precious~~  
22 ~~metals.~~

23 (g) ~~Any information in reports submitted pursuant to subdivision~~  
24 ~~(a) that includes or otherwise indicates the total mineral production,~~  
25 ~~reserves, or rate of depletion of any mining operation may not be~~  
26 ~~disclosed to any member of the public, as defined in subdivision~~  
27 ~~(b) of Section 6252 of the Government Code. Other portions of~~  
28 ~~the reports are public records unless excepted by statute. Statistical~~  
29 ~~bulletins based on these reports and published under Section 2205~~  
30 ~~shall be compiled to show, for the state as a whole and separately~~  
31 ~~for each lead agency, the total of each mineral produced therein.~~  
32 ~~In order not to disclose the production, reserves, or rate of depletion~~  
33 ~~from any identifiable mining operation, no production figure shall~~  
34 ~~be published or otherwise disclosed unless that figure is the~~  
35 ~~aggregated production of not less than three mining operations. If~~  
36 ~~the production figure for any lead agency would disclose the~~  
37 ~~production, reserves, or rate of depletion of less than three mining~~  
38 ~~operations or otherwise permit the reasonable inference of the~~  
39 ~~production, reserves, or rate of depletion of any identifiable mining~~  
40 ~~operation, that figure shall be combined with the same figure of~~

1 not less than two other lead agencies without regard to the location  
2 of the lead agencies. The bulletin shall be published annually by  
3 June 30 or as soon thereafter as practicable.

4 (h) ~~The approval of a form by the board pursuant to this section  
5 is not the adoption of a regulation for purposes of the  
6 Administrative Procedure Act (Chapter 3.5 (commencing with  
7 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
8 Code) and is not subject to that act.~~

9 ~~SEC. 2.~~

10 *SECTION 1.* Section 2207.2 is added to the Public Resources  
11 Code, to read:

12 2207.2. (a) No later than December 31, 2021, the director shall  
13 report to the Legislature on the expenditure of moneys in the Mine  
14 Reclamation Account, created pursuant to Section 2207. The report  
15 shall include all of the following:

16 (1) An overview of how the moneys expended over the prior  
17 five *fiscal* years have been allocated between classification and  
18 designation of areas with mineral resources of statewide or regional  
19 significance, reclamation plan and financial assurance review,  
20 ~~mine inspection, lead agency support and assistance, annual report~~  
21 ~~processing, support for the board,~~ enforcement, and any other  
22 activities that constituted more than 5 percent of expenditures.

23 (2) Information on the portion of the fees that have been  
24 collected from small construction aggregate providers with under  
25 50,000 tons of production.

26 (3) Information on the percentage of the fees that have been  
27 paid by metallic mineral operations.

28 (b) This section shall remain in effect only until January 1, 2026,  
29 and as of that date is repealed, unless a later enacted statute, that  
30 is enacted before January 1, 2026, deletes or extends that date.

31 ~~SEC. 3.~~

32 *SEC. 2.* Section 2715.5 of the Public Resources Code is  
33 amended to read:

34 2715.5. (a) The Cache Creek Resource Management Plan, in  
35 conjunction with a site specific plan deemed consistent by the lead  
36 agency with the Cache Creek Resource Management Plan, until  
37 December 31, 2017, shall be considered to be a functional  
38 equivalent of a reclamation plan for the purposes of this chapter.  
39 No other reclamation plan shall be required to be reviewed and  
40 approved for any excavation project subject to the Cache Creek

1 Resource Management Plan that is conducted in conformance with  
2 an approved site specific plan that is consistent with the Cache  
3 Creek Resource Management Plan and the standards specified in  
4 that plan governing erosion control, channel stabilization, habitat  
5 restoration, flood control, or infrastructure maintenance, if that  
6 plan is reviewed and approved by a lead agency pursuant to this  
7 chapter.

8 (b) For the purposes of this section, the board of supervisors of  
9 the county in which the Cache Creek Resource Management Plan  
10 is to be implemented shall prepare and file the annual report  
11 required to be prepared pursuant to Section 2207.

12 (c) Nothing in this section precludes an enforcement action by  
13 the board or the department brought pursuant to this chapter or  
14 Section 2207 if the lead agency or the director determines that a  
15 surface mining operator, acting under the authority of the Cache  
16 Creek Resource Management Plan, is not in compliance with the  
17 requirements of this chapter or Section 2207.

18 (d) For purposes of this section, “site specific plan” means an  
19 individual project plan approved by the lead agency that is  
20 consistent with the Cache Creek Resource Management Plan. Site  
21 specific plans prepared in conformance with the Cache Creek  
22 Resource Management Plan shall include, at a minimum, the  
23 information required pursuant to subdivision (c) of Section 2772,  
24 shall comply with the requirements of Article 9 (commencing with  
25 Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title  
26 14 of the California Code of Regulations, and shall be provided  
27 along with a financial assurance estimate to the department for  
28 review and comment pursuant to Section 2772.1 or 2773.4, as  
29 applicable. Notwithstanding the number of days authorized by  
30 subdivision (b) of Section 2772.1 or subdivision (c) of Section  
31 2773.4, the department shall review the site specific plan and the  
32 financial assurance estimate and prepare any written comments  
33 within 15 days from the date of receipt of the plan and the estimate.

34 (e) Prior to engaging in an excavation activity in conformance  
35 with the Cache Creek Resource Management Plan, a surface mining  
36 operation shall be required to obtain financial assurances that meet  
37 the requirements of Section 2773.1.

38 (f) This section shall remain in effect only until December 31,  
39 2017, and as of that date is repealed, unless a later enacted statute

1 that is enacted before December 31, 2017, deletes or extends that  
2 date.

3 ~~SEC. 4.~~

4 *SEC. 3.* Section 2733 of the Public Resources Code is amended  
5 to read:

6 2733. “Reclamation” means the combined process of land  
7 treatment that minimizes water degradation, air pollution, damage  
8 to aquatic or wildlife habitat, flooding, erosion, and other adverse  
9 effects from surface mining operations, including adverse surface  
10 effects incidental to underground mines, so that mined lands are  
11 reclaimed to a usable condition that is readily adaptable for  
12 alternate land uses and create no danger to public health or safety.  
13 The process may extend to affected lands surrounding mined lands,  
14 and may require backfilling, grading, resoiling, revegetation, soil  
15 compaction, slope stabilization, or other measures.

16 ~~SEC. 5.~~

17 *SEC. 4.* Section 2736 is added to the Public Resources Code,  
18 to read:

19 2736. “Financial assurances” means a current approved  
20 financial assurance cost estimate and a financial assurance  
21 mechanism that is at least equal to the current approved financial  
22 assurance cost estimate.

23 ~~SEC. 6.~~

24 *SEC. 5.* Section 2770 of the Public Resources Code is amended  
25 to read:

26 2770. (a) Except as provided in this section, a person shall not  
27 conduct surface mining operations unless a permit is obtained  
28 from, a reclamation plan has been submitted to and approved by,  
29 and financial assurances for reclamation have been approved by  
30 the lead agency for the operation pursuant to this article.

31 (b) A person with an existing surface mining operation who has  
32 vested rights pursuant to Section 2776 and who does not have an  
33 approved reclamation plan shall submit a reclamation plan to the  
34 lead agency not later than March 31, 1988. If a reclamation plan  
35 application is not on file by March 31, 1988, the continuation of  
36 the surface mining operation is prohibited until a reclamation plan  
37 is submitted to the lead agency. For the purposes of this  
38 subdivision, a reclamation plan existing prior to January 1, 2016,  
39 2017, may consist of all or the appropriate sections of any plans  
40 or written agreements previously approved by the lead agency or

1 another agency, together with any additional documents needed  
2 to substantially meet the requirements of Sections 2772 and 2773  
3 and the lead agency surface mining ordinance adopted pursuant  
4 to subdivision (a) of Section 2774, provided that all documents,  
5 which together were proposed to serve as the reclamation plan,  
6 are submitted for approval to the lead agency in accordance with  
7 this chapter.

8 (c) [Reserved]

9 (d) [Reserved]

10 (e) (1) A person who can substantiate, based on the evidence  
11 of the record, that a lead agency has either (1) failed to act  
12 according to due process or has relied on considerations not related  
13 to the specific applicable requirements of Sections 2772, 2772.1,  
14 2773, 2773.1, 2773.3, and 2773.4 and the lead agency surface  
15 mining ordinance adopted pursuant to subdivision (a) of Section  
16 2774 in reaching a decision to deny approval of a reclamation plan  
17 or financial assurances for reclamation, or (2) failed to act within  
18 a reasonable time of receipt of a completed application may appeal  
19 that action or inaction to the board.

20 (2) The director may appeal a lead agency's approval of a  
21 financial assurance cost estimate to the board if the director has  
22 commented pursuant to Section 2773.4 that the financial assurance  
23 cost estimate is inadequate based on consideration of the following:

24 (A) Section 2773.1.

25 (B) Article 11 (commencing with Section 3800) of *Subchapter*  
26 *1 of Chapter 8 of Division 2* of Title 14 of the California Code of  
27 Regulations.

28 (C) The board's financial assurance guidelines adopted pursuant  
29 to subdivision (f) of Section 2773.1

30 (3) If the approved financial assurance cost estimate applies to  
31 a reclamation plan approved for a new surface mining operation,  
32 an expanded surface mining operation, or an interim financial  
33 assurance due to an order to comply, stipulated or otherwise, the  
34 operator shall provide a financial assurance mechanism pursuant  
35 to subdivision (e) of Section 2773.4 in the amount of the approved  
36 financial assurance cost estimate, notwithstanding an appeal filed  
37 pursuant to this subdivision and subject to modification pending  
38 the outcome of the appeal.

39 (4) If the approved financial assurance cost estimate is an update  
40 to an existing approved financial assurance cost estimate, the

1 existing financial assurance mechanism shall remain in place and  
2 shall not be adjusted until a final determination by the board on  
3 the appeal filed pursuant to this subdivision.

4 (f) (1) The board may decline to hear an appeal if it determines  
5 that the appeal raises no substantial issues related to the lead  
6 agency's decision to deny the approval of a reclamation plan or  
7 financial assurance, ~~on or the timeliness in reviewing a completed~~  
8 ~~application, or on the approval of a financial assurance cost~~  
9 ~~estimate that the director has commented is inadequate.~~ *application.*  
10 *Appeals filed by the director shall be heard by the board.*

11 (2) If the board takes up an appeal, the appeal shall be scheduled  
12 and heard at a public hearing within 45 days of the filing of the  
13 ~~appeal.~~ *If appeal, or a longer period as may be mutually agreed*  
14 *to by the board, the appellant, and the operator, or, if the appeal*  
15 *is filed by the director, a longer period may be mutually agreed*  
16 *upon by the board, the appellant, the director, and the operator, as*  
17 *applicable.* *operator.*

18 (g) (1) (A) When hearing an appeal filed pursuant to *paragraph*  
19 *(1) or (2) of subdivision (e), the board shall determine whether the*  
20 *reclamation plan or the financial assurance cost estimate*  
21 *substantially meets the applicable requirements of Sections 2772,*  
22 *2772.1, 2773, 2773.1, 2773.3, and* ~~2773.4~~ *2773.4; Article 1*  
23 *(commencing with Section 3500), Article 9 (commencing with*  
24 *Section 3700), and Article 11 (commencing with Section 3800) of*  
25 *Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the*  
26 *California Code of Regulations; and the lead agency's surface*  
27 *mining ordinance adopted pursuant to subdivision (a) of Section*  
28 *2774. The board shall approve or uphold a reclamation plan or*  
29 *financial assurance cost estimate determined to meet those*  
30 *applicable requirements. In any event, financial assurances for*  
31 *reclamation shall be sufficient to perform reclamation of lands*  
32 *remaining disturbed.*

33 (B) For purposes of this subdivision, "substantially" means  
34 actual compliance in respect to the substance and form  
35 requirements essential to the objectives of this chapter.

36 (2) (A) A reclamation plan determined not to meet the  
37 applicable requirements of Sections 2772, 2772.1, 2773, 2773.1,  
38 2773.3, and ~~2773.4~~ 2773.4; Article 1 (commencing with Section  
39 3500), Article 9 (commencing with Section 3700), and Article 11  
40 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of

1 *Division 2 of Title 14 of the California Code of Regulations; and*  
2 *the lead agency's surface mining ordinance adopted pursuant to*  
3 *subdivision (a) of Section 2774 shall be returned to the operator*  
4 *with a notice of deficiencies. The operator shall be granted, once*  
5 *only, a period of 30 days or a longer period mutually agreed upon*  
6 *by the operator and the board to do both of the following:*

7 (i) *Correct the noted deficiencies.*

8 (ii) *Submit the revised reclamation plan to the lead agency for*  
9 *review and approval.*

10 (B) *Within 10 days of the hearing, the board shall provide notice*  
11 *via certified mail to the lead agency, the operator, and the*  
12 *department of the board's determination. The notice shall include*  
13 *instructions to the operator to submit to the lead agency for*  
14 *approval a revised reclamation plan consistent with the board's*  
15 *determination.*

16 (3) (A) *If the board determines the lead agency's approved*  
17 *financial assurance cost estimate does not meet the requirements*  
18 *of Sections ~~2773.1~~, 2773.1 and 2773.4, Article 11 (commencing*  
19 *with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of*  
20 *Title 14 of the California Code of Regulations, and the board's*  
21 *financial assurance guidelines adopted pursuant to subdivision (f)*  
22 *of Section 2773.1, the board shall note the ~~deficiencies, and~~*  
23 *deficiencies and, based on the record, include adequate cost*  
24 *estimates for each noted deficiency.*

25 (B) *Within 10 days of the hearing, the board shall provide notice*  
26 *via certified mail to the lead agency, the operator, and the*  
27 *department of the board's determination with instructions to the*  
28 *operator to submit to the lead agency for approval a revised*  
29 *financial assurance cost estimate consistent with the board's*  
30 *determination. The instructions shall include a reasonable*  
31 *submission deadline of not less than 30 days.*

32 (C) *The lead agency shall approve the revised financial*  
33 *assurance cost estimate. That approval shall supersede and void*  
34 *the prior approved financial assurance cost estimate.*

35 (D) *A financial assurance mechanism shall be established by*  
36 *the operator pursuant to subdivision (e) of Section 2773.4 following*  
37 *the approval of the financial assurance cost estimate.*

38 (E) *The failure of the operator to submit to the lead agency a*  
39 *revised financial assurance cost estimate consistent with the*  
40 *board's determination and deadline may be grounds for the*

1 *issuance of an order to comply pursuant to subdivision (a) of*  
2 *Section 2774.1.*

3 (h) (1) Within 90 days of a surface mining operation becoming  
4 idle, as defined in Section 2727.1, the operator shall submit to the  
5 lead agency for review and approval an interim management plan.  
6 The review and approval of an interim management plan shall not  
7 be considered a project for purposes of the California  
8 Environmental Quality Act (Division 13 (commencing with Section  
9 21000)). The approved interim management plan shall be  
10 considered an amendment to the surface mining operation's  
11 approved reclamation plan for purposes of this chapter. The interim  
12 management plan shall provide measures the operator will  
13 implement to maintain the site in compliance with this chapter,  
14 including, but not limited to, all permit conditions.

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

18 (A) Renew the interim management plan for an additional period  
19 not to exceed five years, which may be renewed for one additional  
20 five-year renewal period at the expiration of the first five-year  
21 renewal period, if the lead agency finds that the surface mining  
22 operator has complied fully with the interim management plan.

23 (B) Require the operator to commence reclamation in accordance  
24 with its approved reclamation plan.

25 (3) The financial assurances required by Section 2773.1 shall  
26 remain in effect during the period that the surface mining operation  
27 is idle. If the surface mining operation is still idle after the  
28 expiration of its interim management plan, the operator shall  
29 commence reclamation in accordance with its approved reclamation  
30 plan.

31 (4) Within 60 days of the receipt of the interim management  
32 plan or a longer period mutually agreed upon by the lead agency  
33 and the operator, the lead agency shall review and approve the  
34 plan in accordance with its ordinance adopted pursuant to  
35 subdivision (a) of Section 2774, so long as the plan satisfies the  
36 requirements of this subdivision, and so notify the operator in  
37 writing. Otherwise, the lead agency shall notify the operator in  
38 writing of any deficiencies in the plan. The operator shall have 30  
39 days, or a longer period mutually agreed upon by the operator and  
40 the lead agency, to submit a revised plan.

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

8 (6) Unless review of an interim management plan is pending  
 9 before the lead agency or an appeal is pending before the lead  
 10 agency's governing body, a surface mining operation that remains  
 11 idle for over one year after becoming idle, as defined in Section  
 12 2727.1, without obtaining approval of an interim management plan  
 13 shall be considered abandoned and the operator shall commence  
 14 and complete reclamation in accordance with the approved  
 15 reclamation plan.

16 (i) An enforcement action that may be brought against a surface  
 17 mining operation for operating without an approved reclamation  
 18 plan, financial assurance, or interim management plan shall be  
 19 held in abeyance pending review pursuant to subdivision (b) or  
 20 (h), or the resolution of an appeal filed with the board pursuant to  
 21 subdivision (e), or with a lead agency governing body pursuant to  
 22 subdivision (h).

23 ~~SEC. 7.~~

24 *SEC. 6.* Section 2772 of the Public Resources Code is amended  
 25 to read:

26 2772. (a) The reclamation plan shall be filed with the lead  
 27 agency, on a form provided by the lead agency, by any person who  
 28 owns, leases, or otherwise controls or operates on all or any portion  
 29 of any mined lands and who plans to conduct surface mining  
 30 operations on the lands.

31 (b) The reclamation plan shall include a chart identifying the  
 32 page number, chapter, appendix, or other specific location in the  
 33 reclamation plan where content meeting the requirements, as  
 34 applicable, of Sections 2772, 2773, and 2773.3 and Article 1  
 35 (commencing with Section 3500) and Article 9 (commencing with  
 36 Section 3700) of *Subchapter 1* of Chapter 8 of Division 2 of Title  
 37 14 of the California Code of Regulations, is located.

38 (c) The reclamation plan shall include all of the following  
 39 information and documents:

- 1 (1) The name and address of the operator and the names and  
2 addresses of any persons designated by the operator as an agent  
3 for the service of process.
- 4 (2) The anticipated quantity and type of minerals for which the  
5 surface mining operation is to be conducted.
- 6 (3) The proposed dates for the initiation and termination of the  
7 surface mining operation.
- 8 (4) The maximum anticipated depth of the surface mining  
9 operation.
- 10 (5) A reclamation plan map or maps that shall include all of the  
11 following:
  - 12 (A) Size and legal description of the lands that will be affected  
13 by the surface mining operation and the names and addresses of  
14 the owners of all surface interests and mineral interests in the lands.
  - 15 (B) Clearly defined and accurately drawn property lines,  
16 setbacks, and the reclamation plan boundary.
  - 17 (C) Existing topography and final topography depicted with  
18 contour lines drawn at appropriate intervals for the site's  
19 conditions.
  - 20 (D) Detailed geologic description of the area of the surface  
21 mining operation.
  - 22 (E) Location of railroads, utility facilities, access roads,  
23 temporary roads to be reclaimed, and any roads remaining for the  
24 approved end use.
  - 25 (F) All maps, diagrams, or calculations that require preparation  
26 in accordance with the Professional Engineers Act (Chapter 7  
27 (commencing with Section 6700) of Division 3 of the Business  
28 and Professions Code), the Geologist and Geophysicist Act  
29 (Chapter 12.5 (commencing with Section 7800) of Division 3 of  
30 the Business and Professions Code), or the Professional Land  
31 Surveyors' Act (Chapter 15 (commencing with Section 8700) of  
32 Division 3 of the Business and Professions Code) shall be prepared  
33 by a California-licensed professional, shall include his or her  
34 license number and name, and shall bear the signature and seal of  
35 the licensee.
- 36 (6) A description of and a plan for the type of surface mining  
37 to be employed and a time schedule that will provide for the  
38 completion of surface mining on each segment of the mined lands  
39 so that reclamation can be initiated at the earliest possible time on

1 those portions of the mined lands that will not be subject to further  
2 disturbance by the surface mining operation.

3 (7) A description of the proposed use or potential uses of the  
4 mined lands after reclamation and evidence that all owners of a  
5 possessory interest in the land have been notified of the proposed  
6 use or potential uses.

7 (8) A description of the manner in which reclamation, adequate  
8 for the proposed use or potential uses, will be accomplished,  
9 including both of the following:

10 (A) A description of the manner in which known contaminants  
11 will be controlled and mining waste will be disposed.

12 (B) A description of the manner in which affected streambed  
13 channels and streambanks will be rehabilitated to a condition that  
14 minimizes erosion and sedimentation.

15 (9) An assessment of the effect of implementation of the  
16 reclamation plan on future mining in the area.

17 (10) A statement that the person submitting the reclamation  
18 plan accepts responsibility for reclaiming the mined lands in  
19 accordance with the reclamation plan.

20 (11) Any other information that the lead agency may require  
21 by ordinance.

22 (d) An item of information or a document required pursuant to  
23 subdivision (c) that has already been prepared as part of a permit  
24 application for the surface mining ~~operation~~, *operation* or as part  
25 of an environmental document prepared for the project pursuant  
26 to the California Environmental Quality Act (Division 13  
27 (commencing with Section 21000)) may be included in the  
28 reclamation plan by reference, if that item of information or that  
29 document is attached to the reclamation plan when the lead agency  
30 submits the reclamation plan to the director for review. To the  
31 extent the information, document, or component of a document  
32 referenced in the reclamation plan is used to meet the requirements  
33 of subdivision (c) or Section 2773 or 2773.3, the information,  
34 document, or component of a document shall become part of the  
35 reclamation plan and shall be subject to all other requirements of  
36 this article.

37 (e) Nothing in this section is intended to limit or expand the  
38 department's authority or responsibility to review a document in  
39 accordance with the California Environmental Quality Act  
40 (Division 13 (commencing with Section 21000)).

1     ~~SEC. 8.~~

2     ~~SEC. 7.~~ Section 2772.1 is added to the Public Resources Code,  
3 to read:

4     2772.1. (a) (1) Prior to approving a surface mining operation's  
5 reclamation plan or plan amendment, the lead agency shall submit  
6 the reclamation plan or plan amendment to the director for review.  
7 The reclamation plan or plan amendment shall be submitted to the  
8 director as early as practicable in order to facilitate the lead  
9 agency's review of the reclamation plan pursuant to the California  
10 Environmental Quality Act (Division 13 (commencing with Section  
11 21000)). All documentation for the submission shall be submitted  
12 to the director at one time.

13     (2) An item of information, document, or component of a  
14 document that has been prepared as part of a permit application  
15 for the surface mining operation or as part of an environmental  
16 document prepared for the project pursuant to the California  
17 Environmental Quality Act (Division 13 (commencing with Section  
18 21000)) shall be incorporated into the reclamation plan or plan  
19 amendment if it is used to satisfy the requirements of subdivision  
20 (c) of Section 2772, Sections 2773 and 2773.3, and Article 1  
21 (commencing with Section 3500) and Article 9 (commencing with  
22 Section 3700) of *Subchapter 1* of Chapter 8 of Division 2 of Title  
23 14 of the California Code of Regulations, as applicable. If an item  
24 of information, document, or component of a document is  
25 incorporated, reference to the item shall be added to the chart  
26 required pursuant to subdivision (b) of Section 2772 and shall be  
27 properly indexed with the corresponding appendix reference and  
28 page numbers, if applicable. The item shall be included in an  
29 appendix to and shall become part of the reclamation plan or plan  
30 amendment.

31     (3) The lead agency shall certify to the director that the  
32 reclamation plan or plan amendment is a complete submission and  
33 is in compliance with all of the following:

34     (A) The applicable requirements of this chapter.

35     (B) Article 1 (commencing with Section 3500) and Article 9  
36 (commencing with Section 3700) of *Subchapter 1* of Chapter 8 of  
37 Division 2 of Title 14 of the California Code of Regulations, as  
38 applicable.

1 (C) The lead agency's surface mining ordinance in effect at the  
2 time that the reclamation plan or plan amendment is submitted to  
3 the director for review, except if the board is the lead agency.

4 (b) (1) The director shall have 30 days from the receipt of a  
5 reclamation plan or plan amendment to notify the lead agency and  
6 operator if the submission is incomplete. An incomplete submission  
7 is one that does not meet the content requirements of ~~subdivisions~~  
8 ~~(e) and (d) of Section 2772; Sections 2773 2772, 2773, and 2773.3;~~  
9 2773.3 and Article 1 (commencing with Section 3500) and Article  
10 9 (commencing with Section 3700) of *Subchapter 1* of Chapter 8  
11 of Division 2 of Title 14 of the California Code of Regulations, as  
12 applicable. The director's notice shall specifically identify all  
13 aspects of the submission that are incomplete.

14 (2) The director shall have 30 days after the date the director is  
15 required to notify the lead agency if the submission is incomplete  
16 to prepare written comments on the reclamation plan or plan  
17 amendment if the director chooses.

18 (3) If the director has issued a notice of incomplete submission  
19 pursuant to paragraph (1), the director's time to prepare written  
20 comments on the reclamation plan or plan amendment shall not  
21 commence until the director receives each item identified in the  
22 notice. The director's time shall include any remaining time  
23 pursuant to paragraph (1) and the time allowed pursuant to  
24 paragraph (2).

25 (4) The lead agency shall review and evaluate written comments  
26 received from the director relating to the reclamation plan or plan  
27 amendment within a reasonable amount of time.

28 (5) (A) The lead agency shall prepare a written response to the  
29 director's comments received pursuant to paragraph (2) describing  
30 the disposition of the major issues raised by the comments. The  
31 lead agency shall submit its response to the director at least 30  
32 days prior to the intended approval of the reclamation plan or plan  
33 amendment. The lead agency's response shall include either of the  
34 following:

35 (i) A description of how the lead agency proposes to adopt the  
36 director's comments to the reclamation plan or plan amendment.

37 (ii) A detailed description of the reasons why the lead agency  
38 proposes not to adopt the director's comments.

1 (B) Copies of any written comments received and responses  
2 prepared by the lead agency pursuant to subparagraph (A) shall  
3 be forwarded to the operator.

4 (6) (A) The lead agency shall give the director at least 30 days'  
5 notice of the time, place, and date of the hearing at which the  
6 reclamation plan or plan amendment is scheduled to be approved  
7 by the lead agency.

8 (B) If no hearing is required by this chapter, the local ordinance,  
9 or other state law, the lead agency shall provide 30 days' notice  
10 to the director that the lead agency intends to approve the  
11 reclamation plan or plan amendment.

12 (7) (A) Within 30 days following the approval of the  
13 reclamation plan or plan amendment, the lead agency shall provide  
14 the director notice of the approval. During that period, the  
15 department retains all powers, duties, and authorities of this  
16 chapter. The lead agency shall provide, as soon as practicable but  
17 no later than 60 days after approval of the reclamation plan or plan  
18 amendment, certified copies of all maps, diagrams, or calculations,  
19 signed and sealed.

20 (B) No later than 60 days after the approval of the reclamation  
21 plan or plan amendment, the lead agency shall provide to the  
22 director an official copy of the approved reclamation plan or plan  
23 amendment. The official copy shall incorporate all approved  
24 modifications to the reclamation plan or plan amendment and shall  
25 include an index showing any permit conditions of approval or  
26 binding mitigation measures adopted or certified pursuant to the  
27 California Environmental Quality Act (Division 13 (commencing  
28 with Section 21000)) that are necessary to meet the requirements  
29 of subdivision (c) of Section 2772, Sections 2773 and 2773.3, and  
30 Article 1 (commencing with Section 3500) and Article 9  
31 (commencing with Section 3700) of *Subchapter 1* of Chapter 8 of  
32 Division 2 of Title 14 of the California Code of Regulations, as  
33 applicable. Those conditions of approval and mitigation measures  
34 shall be included in an appendix to the reclamation plan or plan  
35 amendment and shall be considered part of the reclamation  
36 compliance requirements and subject to the annual inspection  
37 requirements.

38 (c) To the extent there is a conflict between the comments of a  
39 trustee agency or a responsible agency that are based on that  
40 agency's statutory or regulatory authority and the comments of

1 other commenting agencies that are received by the lead agency  
2 pursuant to the California Environmental Quality Act (Division  
3 13 (commencing with Section 21000)) regarding a reclamation  
4 plan or plan amendments, the lead agency shall consider only the  
5 comments of the trustee agency or responsible agency.

6 (d) Nothing in this section is intended to limit or expand the  
7 department's authority or responsibility to review a document in  
8 accordance with the California Environmental Quality Act  
9 (Division 13 (commencing with Section 21000)).

10 ~~SEC. 9.~~

11 *SEC. 8.* Section 2773.1 of the Public Resources Code is  
12 amended to read:

13 2773.1. (a) Lead agencies shall require financial assurances  
14 of each surface mining operation to ensure reclamation is  
15 performed in accordance with the surface mining operation's  
16 approved reclamation plan, as follows:

17 (1) A financial assurance mechanism may take the form of  
18 surety bonds executed by an admitted surety insurer, as defined  
19 in subdivision (a) of Section 995.120 of the Code of Civil  
20 Procedure, irrevocable letters of credit, trust funds, or other forms  
21 of financial assurances specified by the board pursuant to  
22 subdivision (e) that the lead agency reasonably determines are  
23 adequate to perform reclamation in accordance with the surface  
24 mining operation's approved reclamation plan.

25 (2) The financial assurances shall remain in effect for the  
26 duration of the surface mining operation and any additional period  
27 until reclamation is completed.

28 (3) The amount of financial assurances required of a surface  
29 mining operation for any one year shall be reviewed and, if  
30 necessary, adjusted once each calendar year to account for new  
31 lands disturbed by surface mining operations, inflation, and  
32 reclamation of lands accomplished in accordance with the approved  
33 reclamation plan. An operator shall be required to replace an  
34 approved financial assurance mechanism to bond for the  
35 reclamation of the surface mining operation only if the financial  
36 assurance cost estimate identifies a need to increase the amount  
37 of the financial assurance mechanism.

38 (4) *Financial assurance cost estimates shall be submitted to the*  
39 *lead agency for review on a form developed by the director and*  
40 *approved by the board. The form shall be subject to the*

1 *requirements of the Administrative Procedure Act (Chapter 3.5*  
2 *(commencing with Section 11340) of Part 1 of Division 3 of Title*  
3 *2 of the Government Code).*

4 ~~(4)~~

5 (5) Each financial assurance mechanism shall be made payable  
6 to the lead agency and the department. A financial assurance  
7 mechanism shall not be released without the consent of the lead  
8 agency and the department. A financial assurance mechanism that  
9 was approved by the lead agency prior to January 1, 1993, and  
10 was made payable to the State Geologist shall be considered  
11 payable to the department for purposes of this chapter. However,  
12 if a surface mining operation has received approval of its financial  
13 assurances from a public agency other than the lead agency, the  
14 lead agency shall deem those financial assurances adequate for  
15 purposes of this section, or shall credit them toward fulfillment of  
16 the financial assurances required by this section, if they are made  
17 payable to the public agency, the lead agency, and the department  
18 and otherwise meet the requirements of this section. In any event,  
19 if a lead agency and one or more public agencies exercise  
20 jurisdiction over a surface mining operation, the total amount of  
21 financial assurances required by the lead agency and the public  
22 agencies for any one year shall not exceed that amount that is  
23 necessary to perform reclamation of lands remaining disturbed.  
24 For purposes of this paragraph, a “public agency” may include a  
25 federal agency.

26 (b) (1) If the lead agency, or the board when acting as a lead  
27 agency, has evidence that an operator may be financially incapable  
28 of completing reclamation in accordance with its approved  
29 reclamation plan or that the operator may have abandoned the  
30 surface mining operation without completing reclamation, the lead  
31 agency or the board, when acting as a lead agency, shall conduct  
32 a public hearing to determine whether the operator is financially  
33 capable of completing reclamation in accordance with the approved  
34 reclamation plan or has abandoned the surface mining operation.  
35 The hearing shall be noticed to the operator and the director at  
36 least 30 days prior to the hearing.

37 (2) If the lead agency or the board, following the public hearing  
38 conducted pursuant to paragraph (1), determines that the operator  
39 is financially incapable of performing reclamation in accordance  
40 with its approved reclamation plan or has abandoned its surface

1 mining operation without completing reclamation, either the lead  
2 agency or the director shall do all of the following:

3 (A) Notify the operator by personal service or certified mail  
4 that the lead agency or the director intends to take appropriate  
5 action to forfeit the financial assurances and specify the reasons  
6 for so doing.

7 (B) Proceed to take appropriate action to require forfeiture of  
8 the financial assurances.

9 (C) Use the proceeds from the forfeited financial assurances to  
10 conduct and complete reclamation in accordance with the approved  
11 reclamation plan. If the surface mining operation cannot be  
12 reclaimed in accordance with its approved reclamation plan, or  
13 the financial assurances are inadequate to reclaim in accordance  
14 with its approved reclamation plan, the lead agency or director  
15 may use forfeited financial assurances to reclaim or remediate  
16 mining disturbances as appropriate for the site conditions as  
17 determined by both the lead agency and the director. The financial  
18 assurances shall not be used for any other purpose. The operator  
19 is responsible for the costs of conducting and completing  
20 reclamation in accordance with the approved reclamation plan or  
21 a remediation plan developed pursuant to this section as determined  
22 appropriate by both the lead agency and the director that are in  
23 excess of the proceeds from the forfeited financial assurances.

24 (c) Financial assurances shall no longer be required of a surface  
25 mining operation, and shall be released, upon the written  
26 concurrence of the lead agency and the director, which shall be  
27 forwarded to the operator and the institutions providing or holding  
28 the financial assurance mechanism, that reclamation has been  
29 completed in accordance with the approved reclamation plan. If a  
30 surface mining operation is sold or ownership is transferred to  
31 another person, the existing financial assurances shall remain in  
32 force and shall not be released by the lead agency and the director  
33 until new financial assurances are secured from the new owner  
34 and have been approved by the lead agency in accordance with  
35 Sections 2770, 2773.1, and 2773.4. Within 90 days of the sale or  
36 transfer of a surface mining operation, the new operator shall  
37 submit an appropriate financial assurance mechanism, which may  
38 be the existing mechanism if the existing mechanism is payable  
39 in the event of the new operator's ~~default~~, *financial incapability*  
40 *or abandonment of the surface mining operation*, that is subject

1 to review by the lead agency and the director pursuant to  
2 subdivision (e) of Section 2773.4. Within 15 days of the sale or  
3 transfer of a surface mining operation, the new operator shall sign  
4 a new statement of reclamation responsibility in accordance with  
5 paragraph (10) of subdivision (c) of Section 2772.

6 (d) The lead agency shall have primary responsibility to seek  
7 forfeiture of financial assurances and to reclaim mine sites pursuant  
8 to subdivision (b). However, if the board is not the lead agency  
9 pursuant to Section 2774.4, the director may act to seek forfeiture  
10 of financial assurances and reclaim mine sites pursuant to  
11 subdivision (b) only if both of the following occurs:

12 (1) The financial incapability of the operator or the abandonment  
13 of the surface mining operation has come to the attention of the  
14 director.

15 (2) The lead agency has been notified in writing by the director  
16 of the financial incapability of the operator or the abandonment  
17 of the surface mining operation for at least 15 days, the lead agency  
18 has not taken appropriate measures to seek forfeiture of the  
19 financial assurances and reclaim the mine site, and one of the  
20 following has occurred:

21 (A) The lead agency has been notified in writing by the director  
22 that failure to take appropriate measures to seek forfeiture of the  
23 financial assurances or to reclaim the mine site shall result in  
24 actions being taken against the lead agency under Section 2774.4.

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

28 (C) The lead agency notifies the director in writing that its good  
29 faith attempts to seek forfeiture of the financial assurances have  
30 not been successful.

31 The director shall comply with subdivision (b) in seeking  
32 forfeiture of financial assurances and reclaiming mine sites.

33 (e) The board may adopt regulations specifying financial  
34 assurance mechanisms other than surety bonds, irrevocable letters  
35 of credit, and trust funds, which the board determines are  
36 reasonably available and adequate to ensure reclamation pursuant  
37 to this chapter, but these mechanisms shall not include financial  
38 tests or surety bonds executed by one or more personal sureties.  
39 These mechanisms may include reclamation bond pool programs.

1 (f) The board shall adopt or revise guidelines to implement this  
2 section as necessary. The guidelines are exempt from the  
3 requirements of the Administrative Procedure Act (Chapter 3.5  
4 (commencing with Section 11340) of Part 1 of Division 3 of Title  
5 2 of the Government Code), and are not subject to review by the  
6 Office of Administrative Law.

7 ~~SEC. 10.~~

8 *SEC. 9.* Section 2773.4 is added to the Public Resources Code,  
9 to read:

10 2773.4. (a) (1) Prior to approving the financial assurances for  
11 a new reclamation plan or adjustments to financial assurances  
12 based on an amendment to a reclamation plan, the lead agency  
13 shall submit the financial assurance cost estimate to the director  
14 for review.

15 (2) The lead agency shall provide the director with a  
16 determination that the financial assurance cost estimate submitted  
17 pursuant to paragraph (1) is adequate, complete, and consistent  
18 with Section 2773.1, Article 11 (commencing with Section 3800)  
19 *of Subchapter 1* of Chapter 8 of Division 2 of Title 14 of the  
20 California Code of Regulations, and the board's financial assurance  
21 guidelines adopted pursuant to subdivision (f) of Section 2773.1.

22 (3) All documentation submitted to the director pursuant to this  
23 subdivision shall be submitted at one time.

24 (b) No later than 15 days after receiving a financial assurance  
25 cost estimate, the director shall notify the lead agency and the  
26 operator if the submission is incomplete. An incomplete submission  
27 is one that does not meet the content requirements of Section  
28 2773.1, Article 11 (commencing with Section 3800) *of Subchapter*  
29 *1* of Chapter 8 of Division 2 of Title 14 of the California Code of  
30 Regulations, and the board's financial assurance guidelines adopted  
31 pursuant to subdivision (f) of Section 2773.1. The director's notice  
32 shall specifically identify all aspects of the submission that are  
33 incomplete. The director's time to review the financial assurance  
34 cost estimate shall commence upon the receipt of a submission  
35 that contains the aspects identified in the director's notice to the  
36 lead agency.

37 (c) (1) The director shall have 45 days from the date of receipt  
38 of a complete financial assurance cost estimate to prepare written  
39 comments if the director chooses.

1 (2) The lead agency shall evaluate written comments received  
2 from the director relating to the financial assurance cost estimate  
3 within a reasonable amount of time. The lead agency shall prepare  
4 a written response to the director's comments describing the  
5 disposition of the major issues raised by the director's comments.

6 (3) The lead agency shall submit its proposed response to the  
7 director at least 30 days prior to approval of the financial assurance  
8 cost estimate. The lead agency's response shall include either of  
9 the following:

10 (A) A description of how the lead agency proposes to adopt the  
11 director's comments to the financial assurance cost estimate.

12 (B) A detailed description of the reasons why the lead agency  
13 proposes to not adopt the director's comments.

14 (4) Copies of any written comments received and responses  
15 prepared by the lead agency shall be forwarded to the operator.

16 (5) (A) If the lead agency, in its written response to the  
17 director's comments, proposes to not adopt the director's comments  
18 relating to the financial assurance cost estimate, the director, within  
19 15 days of receipt of the lead agency's written response, may  
20 request in writing a consultation with the lead agency to discuss  
21 the director's comments and the lead agency's response. The  
22 request shall include an invitation to the operator to participate in  
23 the consultation. The consultation may be conducted in person,  
24 electronically, telephonically, or by any means convenient to the  
25 parties.

26 (B) If the director requests a consultation pursuant to this  
27 subdivision, the lead agency shall not approve the financial  
28 assurance cost estimate until after consulting with the director.  
29 The consultation shall occur not later than 30 days after the  
30 director's request unless an alternate timeframe is mutually agreed  
31 upon by the director, lead agency, and operator.

32 (6) (A) The lead agency shall give the director at least 30 days'  
33 notice of the time, place, and date of the hearing at which the  
34 financial assurance cost estimate is scheduled to be approved by  
35 the lead agency. If no hearing is required by this chapter, local  
36 ordinance, or other state law, then the lead agency shall provide  
37 30 days' notice to the director that it intends to approve the  
38 financial assurance cost estimate.

39 (B) The lead agency shall send to the director its final response  
40 to the director's comments within 30 days following its approval

1 of the financial assurance cost estimate, during which time the  
2 department retains all of its powers, duties, and authority pursuant  
3 to this chapter.

4 (d) (1) (A) Within 30 days of an annual inspection being  
5 conducted pursuant to Section 2774, an operator shall provide an  
6 annual financial assurance cost estimate to the lead agency for  
7 review.

8 (B) If the lead agency fails to cause the inspection of the surface  
9 mining operation on the date requested by the operator pursuant  
10 to Section 2207 or on ~~an alternate~~ *the* date set by the lead agency  
11 pursuant to subdivision (c) of Section 2774, the operator shall  
12 provide an annual financial assurance cost estimate to the lead  
13 agency for review within 30 days of the ~~missed~~ *applicable*  
14 inspection date, unless the lead agency causes the inspection to  
15 occur within that time period, in which case the operator shall  
16 provide an annual financial assurance cost estimate to the lead  
17 agency within 30 days of the date of the inspection.

18 (2) (A) Within 60 days of receiving an operator's annual  
19 financial assurance cost estimate, the lead agency shall do one of  
20 the following:

21 (i) Deny the financial assurance cost estimate pursuant to  
22 paragraph (6).

23 (ii) Submit the financial assurance cost estimate to the director  
24 for review.

25 (B) The lead agency shall provide the director with a  
26 determination that the annual financial assurance cost estimate  
27 submitted is adequate, complete, and consistent with Section  
28 2773.1, Article 11 (commencing with Section 3800) *of Subchapter*  
29 *1* of Chapter 8 of Division 2 of Title 14 of the California Code of  
30 Regulations, and the board's financial assurance guidelines adopted  
31 pursuant to subdivision (f) of Section 2773.1.

32 (3) All documentation submitted to the director pursuant to this  
33 subdivision shall be submitted at one time.

34 (4) Within 15 days of receiving an annual financial assurance  
35 cost estimate, the director shall notify the lead agency and the  
36 operator if the submission is incomplete. An incomplete submission  
37 is one that does not meet the content requirements of Section  
38 2773.1, Article 11 (commencing with Section 3800) *of Subchapter*  
39 *1* of Chapter 8 of Division 2 of Title 14 of the California Code of  
40 Regulations, and the board's financial assurance guidelines adopted

1 pursuant to subdivision (f) of Section 2773.1. The director's notice  
2 shall specifically identify all aspects of the submission that are  
3 incomplete. The director's time to review the annual financial  
4 assurance cost estimate shall commence upon the receipt of a  
5 submission that contains the aspects identified in the director's  
6 notice to the lead agency.

7 (5) (A) Within 45 days of receiving an operator's complete  
8 annual financial assurance cost estimate from the lead agency, the  
9 director shall prepare written comments on the operator's annual  
10 financial assurance cost estimate and provide the comments to the  
11 lead agency and the operator if the director so chooses.

12 (B) (i) Within 30 days from receiving the director's written  
13 comments pursuant to this subdivision, the lead agency shall  
14 evaluate the written comments and provide the director and  
15 operator its proposed response to the director.

16 (ii) The lead agency shall submit its proposed response to the  
17 director at least 30 days prior to approving the annual financial  
18 assurance cost estimate. The lead agency's response shall include  
19 either of the following:

20 (I) A description of how the lead agency proposes to adopt the  
21 director's comments to the annual financial assurance cost estimate.

22 (II) A detailed description of the reasons why the lead agency  
23 proposes not to adopt the director's comments.

24 (iii) Copies of any written comments received and responses  
25 prepared by the lead agency pursuant to this subparagraph shall  
26 be provided to the operator.

27 (C) (i) If the lead agency, in its written response to the director's  
28 comments, proposes to not adopt the director's comments  
29 concerning the annual financial assurance cost estimate, the  
30 director, within 15 days of receipt of the lead agency's written  
31 response, may request in writing a consultation with the lead  
32 agency to discuss the director's comments and the lead agency's  
33 response. The request shall include an invitation to the operator  
34 to participate in the consultation. The consultation may be  
35 conducted in person, electronically, telephonically, or by any means  
36 convenient to the parties.

37 (ii) If the director requests a consultation pursuant to this  
38 subparagraph, the lead agency shall not approve the annual  
39 financial assurance cost estimate until after consulting with the  
40 director. The consultation shall occur not later than 30 days after

1 the director's request unless an alternate timeframe is mutually  
2 agreed upon by the director, lead agency, and operator.

3 (D) (i) Within 60 days of receiving the director's written  
4 comments, or of a consultation pursuant to this subdivision,  
5 whichever is later or the due date of the director's written  
6 comments if none are received, the lead agency shall approve or  
7 deny an operator's annual financial assurance cost estimate.

8 (ii) The lead agency shall give the director at least 30 days'  
9 notice of the time, place, and date of the hearing at which the  
10 annual financial assurance cost estimate is scheduled to be  
11 approved by the lead agency.

12 (iii) If no hearing is required by this chapter, local ordinance,  
13 or other state law, the lead agency shall provide 30 days' notice  
14 to the director that it intends to approve the annual financial  
15 assurance cost estimate.

16 (E) Within 30 days of the lead agency's approval of the annual  
17 financial assurance cost estimate, the lead agency shall send the  
18 director its final response to the director's comments.

19 (6) If the lead agency determines an operator's annual financial  
20 assurance cost estimate is inadequate, the lead agency shall specify  
21 the reasons for that determination. The operator shall have 30 days  
22 to appeal that denial pursuant to subdivision (e) of Section 2770  
23 or provide a revised financial assurance cost estimate incorporating  
24 the suggested changes to the lead agency for approval by the lead  
25 agency pursuant to this section.

26 (e) (1) Within 30 days of the lead agency's approval of a  
27 financial assurance cost estimate pursuant to this section, the  
28 operator shall provide the lead agency and the director an  
29 appropriate financial assurance mechanism.

30 (2) (A) Within 15 days of receiving a financial assurance  
31 mechanism pursuant to this subdivision, or subdivision (c) of  
32 Section 2773.1 the lead agency and the director shall review the  
33 financial assurance mechanism to determine if the type of  
34 mechanism, including the release instructions, meets the  
35 requirements of this chapter.

36 (B) Financial assurance mechanisms determined to be  
37 noncompliant with this chapter shall be returned to the operator  
38 with instructions on how to correct the type or release instructions  
39 of the financial assurance mechanism.

1 (3) By July 1, ~~2017~~, 2018, the board shall adopt forms to  
2 implement this subdivision as necessary. The forms shall be subject  
3 to the requirements of the Administrative Procedure Act (Chapter  
4 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
5 Title 2 of the Government Code).

6 (f) The review and approval of financial assurances pursuant to  
7 this chapter shall not be considered a project for the purposes of  
8 the California Environmental Quality Act (Division 13  
9 (commencing with Section 21000)).

10 ~~SEC. 11.~~

11 *SEC. 10.* Section 2774 of the Public Resources Code is  
12 amended to read:

13 2774. (a) Every lead agency shall adopt ordinances in  
14 accordance with state policy that establish procedures for the  
15 review and approval of reclamation plans and financial assurances  
16 and the issuance of a permit to conduct surface mining operations,  
17 except that any lead agency without an active surface mining  
18 operation in its jurisdiction may defer adopting an implementing  
19 ordinance until the filing of a permit application. The ordinances  
20 shall establish procedures requiring at least one public hearing and  
21 shall be periodically reviewed by the lead agency and revised, as  
22 necessary, to ensure that the ordinances continue to be in  
23 accordance with state policy.

24 (b) (1) The lead agency shall cause surface mining operations  
25 to be inspected in intervals of no more than 12 months, solely to  
26 determine whether the surface mining operation is in compliance  
27 with this chapter. The lead agency shall cause an inspection to be  
28 conducted by a state-licensed geologist, state-licensed civil  
29 engineer, state-licensed landscape architect, state-licensed forester,  
30 or a *qualified* lead agency employee who ~~is qualified and~~  
31 ~~experienced in land reclamation and who~~ has not been employed  
32 by the surface mining operation being inspected in any capacity  
33 during the previous 12 months, except that a qualified lead agency  
34 employee may inspect surface mining operations conducted by  
35 ~~another department within~~ the local agency. All inspections shall  
36 be conducted using a form developed by the department and  
37 approved by the board that includes the professional licensing and  
38 disciplinary information of the person who conducted the  
39 inspection. The operator shall be solely responsible for the  
40 reasonable cost of the inspection. The lead agency shall provide

1 a notice of completion of inspection to the director within 90 days  
2 of conducting the inspection. The notice shall contain a statement  
3 regarding the surface mining operation's compliance with this  
4 chapter and a copy of the completed inspection form, and shall  
5 specify, as applicable, all of the following:

6 (A) Aspects of the surface mining operation, if any, that were  
7 found to be inconsistent with this chapter but were corrected before  
8 the submission of the inspection form to the director.

9 (B) Aspects of the surface mining operation, if any, that were  
10 found to be inconsistent with this chapter but were not corrected  
11 before the submission of the inspection form to the director.

12 (C) A statement describing the lead agency's intended response  
13 to any aspects of the surface mining operation found to be  
14 inconsistent with this chapter but were not corrected before the  
15 submission of the inspection form to the director.

16 (2) If the surface mining operation has a review of its  
17 reclamation plan, financial assurances, or an interim management  
18 plan pending under subdivision (b) or (h) of Section 2770, or an  
19 appeal pending before the board or lead agency governing body  
20 under subdivision (e) or (h) of Section 2770, the notice shall so  
21 indicate. The lead agency shall forward to the operator a copy of  
22 the notice, a copy of the completed inspection form, and any  
23 supporting documentation, including, but not limited to, any  
24 inspection report prepared by the geologist, civil engineer,  
25 landscape architect, forester, or qualified lead agency employee  
26 who conducted the inspection.

27 (c) If an operator does not request an inspection date on the  
28 annual report filed pursuant to Section 2207 or if the lead agency  
29 is unable to cause the inspection of a given surface mining  
30 operation on the date requested by the operator, the lead agency  
31 shall provide the operator with a minimum of five days' written  
32 notice of a pending inspection or a lesser time period if agreed to  
33 by the operator.

34 (d) No later than July 1 of each year, the lead agency shall  
35 submit to the director for each active or idle surface mining  
36 operation within the lead agency's jurisdiction the following  
37 information:

38 (1) A copy of any permit or reclamation plan amendments, as  
39 applicable.

1 (2) A statement that there have been no changes during the  
2 previous year, as applicable.

3 (3) The date of each surface mining operation's last inspection.

4 (4) The date of each surface mining operation's last financial  
5 assurance review pursuant to Section 2773.1 for each operation  
6 listed.

7 (e) (1) No later than December 31, ~~2016~~, 2017, the department  
8 shall establish a training program for all surface mine inspectors.  
9 The program shall be designed to include a guidance document,  
10 developed by the department, in consultation with the board and  
11 stakeholders, to provide instruction and recommendations to  
12 surface mine inspectors performing inspections pursuant to  
13 subdivision (b).

14 (2) The training program shall include ~~inspections~~ *inspection*  
15 workshops offered by the department in different regions of the  
16 state to provide practical application of the guidance document  
17 material.

18 (3) On and after July 1, ~~2019~~, 2020, all inspectors shall have on  
19 file with the lead agency and the department a certificate of  
20 completion of an inspection workshop. An inspector shall attend  
21 a workshop no later than five years after the date of his or her most  
22 recent certificate.

23 (4) The adoption of the guidance document by the department  
24 pursuant to this subdivision shall be subject to the requirements  
25 of the Administrative Procedure Act (Chapter 3.5 (commencing  
26 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
27 Government Code).

28 ~~SEC. 12.~~

29 *SEC. 11.* Section 2774.1 of the Public Resources Code is  
30 amended to read:

31 2774.1. (a) (1) Except as provided in subdivision (i) of Section  
32 2770, if the lead agency or the director determines, based upon an  
33 annual inspection pursuant to Section 2774, or otherwise confirmed  
34 by an inspection of the surface mining operation, that a surface  
35 mining operation is not in compliance with this chapter, the lead  
36 agency or the director may issue a notice of that violation to the  
37 operator by personal service or certified mail. If the lead agency  
38 issues the notice, the lead agency shall send a copy of the notice  
39 to the director. The notice shall include both of the following:

40 (A) A description of the violation.

1 (B) Actions the operator shall take to correct the violation.

2 (2) (A) If a lead agency or the director determines that the time  
 3 to correct the noticed violation will exceed 30 days, the lead agency  
 4 and the operator may enter into a stipulated order to comply, with  
 5 notice sent to the director. If the director initiated the enforcement  
 6 action, the director, after consulting with the lead agency, may  
 7 enter into a stipulated order to comply with the operator. The lead  
 8 agency may, but need not, join the stipulated order with the  
 9 director.

10 (B) A stipulated order to comply shall include a schedule and  
 11 time for compliance that the lead agency or the director, as  
 12 applicable, determines is reasonable after taking into account the  
 13 actions and legal processes required to correct the violation.

14 (3) (A) If the operator does not comply with a notice issued  
 15 pursuant to paragraph (1) within 30 days of being served the notice  
 16 or commit to enter into a stipulated order to comply pursuant to  
 17 paragraph (2) within 30 days of being served the notice, the lead  
 18 agency or the director may issue an order to comply by personal  
 19 service or certified mail requiring the operator to comply with this  
 20 chapter or, if the operator does not have an approved reclamation  
 21 plan or financial assurances, cease all further surface mining  
 22 activities.

23 (B) An order to comply issued pursuant to this paragraph shall  
 24 take effect 30 days following the service of the order to comply  
 25 unless within those 30 days the operator appeals the order to  
 26 comply and requests a hearing before the lead ~~agency~~ *agency, if*  
 27 *the lead agency issued the order*, or the board, ~~depending on who~~  
 28 ~~issued the order to comply concerning the alleged violation.~~ *if the*  
 29 *director issued the order.* An order to comply issued pursuant to  
 30 this paragraph shall specify all of the following:

31 (i) Which aspects of the surface mining operation are  
 32 inconsistent with this chapter.

33 (ii) A time for compliance that the lead agency or director  
 34 determines is reasonable, taking into account the seriousness of  
 35 the alleged violation and any good faith efforts to comply with  
 36 applicable requirements.

37 (iii) The actions and legal processes required to correct the  
 38 alleged violation.

39 (C) An appeal filed pursuant to subparagraph (B) shall be  
 40 noticed 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 operator and the lead ~~agency~~ *agency, if the lead agency*  
3 *issued the order*, or the operator and the director, ~~depending on~~  
4 ~~who issued the order to comply.~~ *if the director issued the order.*

5 (b) [Reserved]

6 (c) An operator who violates or fails to comply with an order  
7 to comply issued under subdivision (a) after the order's effective  
8 date or who fails to submit a report or pay annual fees to the  
9 director or lead agency as required by Section 2207, shall be subject  
10 to an order by the lead agency or the director imposing an  
11 administrative penalty of not more than five thousand dollars  
12 (\$5,000) per day, assessed from the original date of noncompliance  
13 with this chapter, including Section 2207, or from the date of the  
14 inspection when the violation was identified, at the discretion of  
15 the issuer of the notice of that violation. The penalty may be  
16 imposed administratively by the lead agency or the director. In  
17 determining the amount of the administrative penalty, the lead  
18 agency or the director shall take into consideration the nature,  
19 circumstances, extent, and gravity of the violation or violations,  
20 any prior history of violations, the degree of culpability, economic  
21 savings, if any, resulting from the violation, and any other matters  
22 justice may require. Orders setting administrative penalties shall  
23 become effective upon issuance of the assessment and payment  
24 shall be made to the lead agency or the director within 30 days,  
25 unless the operator petitions the legislative body of the lead agency,  
26 the board, or the superior court for review as provided in Section  
27 2774.2. An order shall be served by personal service or by certified  
28 mail upon the operator. Penalties collected by the director shall  
29 not be used for purposes other than to cover the reasonable costs  
30 incurred by the director in implementing this chapter or Section  
31 2207.

32 (d) (1) An operator who violates or fails to comply with an  
33 order to comply issued pursuant to paragraph (3) of subdivision  
34 (a) or a stipulated order to comply entered into pursuant to  
35 paragraph (2) of subdivision (a) after the order's effective date  
36 shall be removed from the list published by the department pursuant  
37 to subdivision (b) of Section 2717.

38 (2) If after a public hearing the board or lead agency denies an  
39 appeal by the operator pursuant to ~~subdivision (b), subparagraph~~  
40 *(C) of paragraph (3) of subdivision (a)*, the operator shall be

1 removed 10 working days following the denial of the appeal from  
2 the list published by the department pursuant to subdivision (b) of  
3 Section 2717.

4 (3) If the operator enters into a stipulated order to comply  
5 between the operator and the ~~lead agency~~ *agency*, *if the lead agency*  
6 *issued the order*, or the operator and the ~~director~~ *director*, *if the*  
7 *director issued the order*; within 10 working days of the denial of  
8 the appeal and the stipulated order to comply is consistent with  
9 the order to comply upheld by the board or lead agency and  
10 includes a stipulated schedule for compliance, the operator shall  
11 remain on the list published by the department pursuant to  
12 subdivision (b) of Section 2717.

13 (4) Issuance of a notice pursuant to paragraph (1) of subdivision  
14 (a) or an order to comply or stipulated order to comply pursuant  
15 to paragraph (2) or (3) of subdivision (a) shall not disqualify an  
16 operator from eligibility for placement on the list published by the  
17 department pursuant to subdivision (b) of Section 2717.

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

24 (f) Upon a complaint by the director, the department, or the  
25 board, the Attorney General may bring an action to recover  
26 administrative penalties under this section, and penalties under  
27 Section 2207, in any court of competent jurisdiction in this state  
28 against any person violating any provision of this chapter or Section  
29 2207, or any regulation adopted pursuant to this chapter or Section  
30 2207. The Attorney General may bring this action on his or her  
31 own initiative if, after examining the complaint and the evidence,  
32 he or she believes a violation has occurred. The Attorney General  
33 may also seek an order from a court of competent jurisdiction  
34 compelling the operator to comply with this chapter and Section  
35 2207.

36 (g) (1) The lead agency has primary responsibility for enforcing  
37 this chapter and Section 2207. In cases where the board is not the  
38 lead agency pursuant to Section 2774.4, enforcement actions may  
39 be initiated by the director pursuant to this section only after the

1 violation has come to the attention of the director and either of the  
2 following occurs:

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

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

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

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

15 ~~SEC. 13.~~

16 *SEC. 12.* Section 2774.2 of the Public Resources Code is  
17 amended to read:

18 2774.2. (a) Within 30 days of the issuance of an order setting  
19 administrative penalties under subdivision (c) of Section 2774.1,  
20 the operator may petition the legislative body of the lead agency,  
21 if the lead agency has issued the order, or the board for orders  
22 issued by the director, for review of the order. If the operator does  
23 not petition for review within the time limits set by this subdivision,  
24 the order setting administrative penalties shall not be subject to  
25 review by any court or agency.

26 (b) The legislative body of the lead agency or the board shall  
27 notify the operator by personal service or certified mail whether  
28 it will review the order setting administrative penalties. In  
29 reviewing an order pursuant to this section, the record shall consist  
30 of the record before the lead agency or the director and any other  
31 relevant evidence which, in the judgment of the legislative body  
32 or the board, should be considered to effectuate and implement  
33 the policies of this chapter.

34 (c) The legislative body or the board may affirm, modify, or set  
35 aside, in whole or in part, by its own order an order of the lead  
36 agency or the director setting administrative penalties reviewed  
37 by the legislative body or the board pursuant to this section.

38 (d) An order of the legislative body or the board issued under  
39 subdivision (c) shall become effective upon its issuance unless the  
40 operator petitions the superior court for review as provided in

1 subdivision (e). An order shall be served by personal service or  
2 by certified mail upon the operator. Payment of an administrative  
3 penalty that is specified in an order issued pursuant to subdivision  
4 (c) shall be made to the lead agency or the director within 30 days  
5 of service of the order. However, the payment shall be held in an  
6 interest bearing impound account pending the resolution of a  
7 petition for review filed pursuant to subdivision (e).

8 (e) An operator aggrieved by an order of the legislative body  
9 or the board issued pursuant to subdivision (c) may obtain review  
10 of the order by filing in the superior court a petition for writ of  
11 mandate within 30 days following the issuance of the order. An  
12 operator aggrieved by an order of a lead agency or the director  
13 setting administrative penalties pursuant to subdivision (c) of  
14 Section 2774.1, for which the legislative body or board denies  
15 review, may obtain review of the order in the superior court by  
16 filing in the court a petition for writ of mandate within 30 days  
17 following the denial of review. The provisions of Section 1094.5  
18 of the Code of Civil Procedure shall govern judicial proceedings  
19 pursuant to this subdivision, except that in every case the court  
20 shall exercise its independent judgment. If the operator does not  
21 petition for a writ of mandate within the time limits set by this  
22 subdivision, an order of the board or the legislative body shall not  
23 be subject to review by any court or agency.

24 (f) (1) After the expiration of the time to petition for review  
25 pursuant to subdivision (a) or (e), the director or the board acting  
26 as the lead agency may apply to the small claims court or the  
27 superior court, depending on the jurisdictional amount, in the  
28 county where the administrative penalty was imposed for a  
29 judgment to collect the unpaid administrative penalty imposed  
30 pursuant to subdivision (c) of Section 2774.1. The application shall  
31 include all of the following:

32 (A) The order setting the administrative penalty pursuant to  
33 subdivision (c) of Section 2774.1.

34 (B) A notice to the operator of the right to petition for review  
35 of the order.

36 (C) Either of the following:

37 (i) A declaration from the board that no petition was made or  
38 that the board declined to review the petition.

39 (ii) A copy of the final order of the board.

1 (2) An application submitted pursuant to this subdivision shall  
2 constitute a sufficient showing to warrant the issuance of the  
3 judgment. The court clerk shall enter the judgment immediately  
4 in conformity with the application.

5 (3) The judgment entered pursuant to this subdivision shall have  
6 the same force and effect as, and shall be subject to all the  
7 provisions of law relating to, a judgment in a civil action and may  
8 be enforced in the same manner as any other judgment of the court.  
9 The court shall make enforcement of the judgment a priority.

10 ~~SEC. 14.~~

11 *SEC. 13.* Section 2774.4 of the Public Resources Code is  
12 amended to read:

13 2774.4. (a) The board shall exercise some or all of a lead  
14 agency's powers under this chapter pursuant to subdivision (c),  
15 except for permitting authority and vested rights determinations,  
16 if the board finds that a lead agency has done any of the following:

17 (1) Approved reclamation plans or financial assurances that are  
18 not consistent with this chapter.

19 (2) Failed to inspect or cause the inspection of surface mining  
20 operations as required by this chapter.

21 (3) Failed to seek forfeiture of financial assurances and to carry  
22 out reclamation of surface mining operations as required by this  
23 chapter.

24 (4) Failed to take appropriate enforcement actions as required  
25 by this chapter.

26 (5) Intentionally misrepresented the results of inspections  
27 required under this chapter.

28 (6) Failed to submit information to the department as required  
29 by this chapter.

30 (b) The board shall conduct a public hearing no sooner than  
31 three years after the board has taken action pursuant to subdivision  
32 (a) to determine if a lead agency has corrected its deficiencies in  
33 implementing and enforcing this chapter and the rules and  
34 regulations adopted pursuant to this chapter. If the board finds the  
35 lead agency has corrected some or all of its deficiencies in  
36 implementing and enforcing this chapter, the board shall restore  
37 to the lead agency some or all of the powers assumed by the board  
38 pursuant to subdivision (a).

39 (c) (1) Before taking any action pursuant to subdivision (a),  
40 the board shall first notify the lead agency of the identified

1 deficiencies and allow the lead agency 45 days to provide a  
2 response to the board on the identified deficiencies. The board  
3 may review the lead agency's response at a regularly scheduled  
4 meeting.

5 (2) (A) If the board is not satisfied with the lead agency's  
6 response, the board shall hold a public hearing within the lead  
7 agency's area of jurisdiction, upon a 45-day written notice given  
8 to the public in at least one newspaper of general circulation within  
9 the city or county and directly mailed to the lead agency and to all  
10 operators within the lead agency's jurisdiction who have submitted  
11 reports as required by Section 2207.

12 (B) At the hearing, the board shall determine if the lead agency  
13 has engaged in the conduct described in subdivision (a). If the  
14 board finds that the lead agency has engaged in conduct described  
15 in subdivision (a), the board shall do either of the following:

16 (i) Require the lead agency to develop a remedial plan to correct  
17 the noted deficiencies. The remedial plan shall describe specific  
18 objectives and corresponding processes designed to address, at a  
19 minimum, the noted deficiencies and a time that the remedial plan  
20 will be fully implemented. The board shall set a hearing to review  
21 the completion of the remedial plan consistent with paragraph (2)  
22 and subdivisions (d) and (e).

23 (ii) Take immediate action pursuant to subdivision (a).

24 (d) Affected operators and interested persons have the right at  
25 the public hearing to present oral and written evidence on the  
26 matter being considered. At the public hearing, the board may  
27 place reasonable limits on the right of affected operators and  
28 interested persons to question and solicit testimony.

29 (e) (1) If the board decides to take action pursuant to subdivision  
30 (a) and exercise some or all of a lead agency's powers under this  
31 chapter, except for permitting authority and vested rights  
32 determinations, the board, based on the record of the public  
33 hearing, shall adopt written findings that explain all of the  
34 following:

35 (A) The action to be taken by the board.

36 (B) Why the board decided to take the action.

37 (C) Why the action is authorized by and meets the requirements  
38 of subdivision (a).

39 (2) In addition, the board's findings shall address the significant  
40 issues raised, or written evidence presented, by affected operators,

1 interested persons, the lead agency, or the department. The  
2 transcript of testimony and exhibits, together with all papers and  
3 requests filed in the proceedings, shall constitute the exclusive  
4 record for decision by the board.

5 (f) If the board finds at the hearing held pursuant to paragraph  
6 (2) of subdivision (c) that the lead agency has not completed the  
7 remedial plan prepared pursuant to clause (i) of subparagraph (B)  
8 of paragraph (2) of subdivision (c) to the board's satisfaction, the  
9 board shall follow the procedures set forth in paragraph (2) of  
10 subdivision (c) and subdivisions (d) and (e). If the board finds at  
11 the hearing held pursuant to paragraph (2) of subdivision (c) that  
12 the lead agency has completed the remedial plan prepared pursuant  
13 to clause (i) of subparagraph (B) of paragraph (2) of subdivision  
14 (c) to the board's satisfaction, the board shall conclude the action  
15 it has taken pursuant to this section.

16 (g) The lead agency, any affected operator, or any interested  
17 person who has presented oral or written evidence at the public  
18 hearing before the board pursuant to subdivision (d) may obtain  
19 review of the board's action taken pursuant to subdivision (a) by  
20 filing in the superior court a petition for writ of mandate within  
21 30 days following the issuance of the board's decision. Section  
22 1094.5 of the Code of Civil Procedure governs judicial proceedings  
23 pursuant to this subdivision, except that in every case the court  
24 shall exercise its independent judgment. If a petition for a writ of  
25 mandate is not filed within the time limits set by this subdivision,  
26 the board's action under subdivision (a) shall not be subject to  
27 review by any court or agency.

28 ~~SEC. 15.~~

29 *SEC. 14.* No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution because  
31 a local agency or school district has the authority to levy service  
32 charges, fees, or assessments sufficient to pay for the program or  
33 level of service mandated by this act, within the meaning of Section  
34 17556 of the Government Code.

35 ~~SEC. 16.~~

36 *SEC. 15.* This act shall become operative only if both this bill  
37 and Senate Bill 209 of the 2015–16 Regular Session are enacted  
38 and become ~~operative~~. *operative on or before January 1, 2017.*

O