

AMENDED IN ASSEMBLY APRIL 25, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1609

Introduced by Assembly Member Lara

February 7, 2012

An act to amend Section 2717 of the Public Resources Code, relating to surface mining.

LEGISLATIVE COUNSEL'S DIGEST

AB 1609, as amended, Lara. Surface mining: determinations: appeals.

Existing law, the Surface Mining and Reclamation Act of 1975, prohibits, with certain exceptions, a person from conducting a surface mining operation unless, among other things, a reclamation plan has been submitted to and approved by the lead agency, as defined, for the operation. The act requires the owner or operator of a mining operation to submit an annual report containing information regarding the operation.

For purposes of compliance with specified provisions of the Public Contract Code, the act requires the Department of Conservation to, at a minimum, quarterly publish in the California Regulatory Notice Register, or otherwise make available, upon request, to the Department of General Services or any other state or local agency, a list identifying surface mining operations that have submitted the annual report and it indicates compliance with specified standards, guidelines, and requirements or that there is a pending appeal.

This bill would require the department to give notice by personal service or certified mail to a surface mining operation that it determines shall not be included in the above-described list or shall be removed from the above-described list. The bill would specify that the surface

mining operation shall have 30 days from the date of receipt of service within which to file an appeal of the department's determination with the State Board of Mining and Geology. The bill would require that an appeal be scheduled and heard at a public hearing within 60 days from the date the appeal is filed, or a longer time if mutually agreed upon by the board and the appellant. The bill would require that when a timely appeal is filed on behalf of a surface mining operation pursuant to the provisions of the bill, the operation shall remain on the list pending the final outcome of the appeal, *if the appeal has not been pending for more than 180 days. The bill would require the board to deny a request for an appeal of a notice issued pursuant to those provisions if the specific claims asserted in the notice have been adjudicated, or are pending adjudication before the board in a separate action authorized by the act.* The bill would prescribe requirements for the review of information and evidence pertaining to the appeal, as specified.

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

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

- 1 SECTION 1. Section 2717 of the Public Resources Code is
- 2 amended to read:
- 3 2717. (a) The board shall submit to the Legislature on
- 4 December ~~1st~~ 1 of each year a report on the actions taken pursuant
- 5 to this chapter during the preceding fiscal year. The report shall
- 6 include a statement of the actions, including legislative
- 7 recommendations, that are necessary to carry out more completely
- 8 the purposes and requirements of this chapter.
- 9 (b) For purposes of ensuring compliance with Sections 10295.5
- 10 and 20676 of the Public Contract Code, the department shall, at a
- 11 minimum, quarterly publish in the California Regulatory Notice
- 12 Register, or otherwise make available upon request to the
- 13 Department of General Services or any other state or local agency,
- 14 a list identifying all of the following:
- 15 (1) Surface mining operations for which a report is required and
- 16 has been submitted pursuant to Section 2207 that indicates all of
- 17 the following:
- 18 (A) The reclamation plan and financial assurances have been
- 19 approved pursuant to this chapter.

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

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

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

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

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

17 (4) Surface mining operations that are in compliance with an
18 order issued under Section 2774.1, ~~or that are subject to~~ *astipulated*
19 order, or other agreement with the lead agency or the director,
20 addressing any noncompliance with the standards set forth in this
21 subdivision.

22 (c) The department shall give notice to a surface mining
23 operation that the department determines shall not be included in
24 the list published by the department pursuant to subdivision (b),
25 or that the department determines shall be removed from the list.
26 The notice shall be given by personal service or certified mail. The
27 surface mining operation shall have 30 days from the date of receipt
28 of service in which to file an appeal with the board. An appeal
29 shall be scheduled and heard at a public hearing within 60 days
30 from the date the appeal is filed, or a longer time as may be
31 mutually agreed upon by the board and the appellant. When a
32 timely appeal is filed on behalf of a surface mining operation to
33 remove the surface mining operation from the list prepared
34 pursuant to subdivision (b), the surface mining operation shall
35 remain on the list pending the final outcome of that appeal, *if the*
36 *appeal has not been pending for more than 180 days.*

37 (d) *Notwithstanding subdivision (c), the board shall deny a*
38 *request for an appeal of a notice issued pursuant to subdivision*
39 *(c) if the specific claims asserted in that notice have been*
40 *adjudicated, or are pending adjudication, before the board in a*

1 *separate action authorized by this chapter. If adjudication is*
2 *pending in a separate action, the surface mining operation shall*
3 *not be removed from the list until that action has concluded, if that*
4 *action has not been pending for more than 180 days.*

5 ~~(d)~~

6 (e) In reviewing the determination of the department made
7 pursuant to subdivision (c), the record before the board shall consist
8 of the record before the department and any other relevant evidence
9 that, in the judgment of the board, should be considered. The
10 appellant may obtain a review of the board's determination by
11 commencing an action for a writ of mandate within 90 days
12 following that determination pursuant to Chapter 2 (commencing
13 with Section 1084) of Title 1 of Part 3 of the Code of Civil
14 Procedure. In any such proceeding, the court shall exercise its
15 independent judgment.