

AMENDED IN ASSEMBLY MAY 25, 2012

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 *either (1) the notice alleges one or more violations of the act that the board determines to be ministerial in nature and not constituting a substantial violation, in which case the appellant would have 30 days to correct the violation and achieve compliance, or (2) the specific claims asserted in the notice have been adjudicated, or are pending adjudication before the board or a lead agency 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. *The bill would authorize the board, by regulation, to establish procedures for declining to hear appeals that it determines raise only ministerial issues.*

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 1 of each year a report on the actions taken pursuant to
- 5 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

1 Department of General Services or any other state or local agency,
2 a list identifying all of the following:

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

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

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

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

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

14 (2) Surface mining operations for which an appeal is pending
15 before the board pursuant to subdivision (e) of Section 2770, if
16 the appeal has not been pending before the board for more than
17 180 days.

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

24 (4) Surface mining operations that are in compliance with an
25 order issued under Section ~~2774.1, stipulated~~ 2774.1, *stipulated*
26 order, or other agreement with the lead agency or the director,
27 addressing any noncompliance with the standards set forth in this
28 subdivision.

29 (c) The department shall give notice to a surface mining
30 operation that the department determines shall not be included in
31 the list published by the department pursuant to subdivision (b),
32 or that the department determines shall be removed from the list.
33 The notice shall be given by personal service or certified mail. The
34 surface mining operation shall have 30 days from the date of receipt
35 of service in which to file an appeal with the board. An appeal
36 shall be scheduled and heard at a public hearing within 60 days
37 from the date the appeal is filed, or a longer time as may be
38 mutually agreed upon by the board and the appellant. When a
39 timely appeal is filed on behalf of a surface mining operation to
40 remove the surface mining operation from the list prepared

1 pursuant to subdivision (b), the surface mining operation shall
2 remain on the list pending the final outcome of that appeal, if the
3 appeal has not been pending for more than 180 days.

4 (d) Notwithstanding subdivision (c), the board shall deny a
5 request for an appeal of a notice issued pursuant to subdivision (c)
6 ~~if the~~ *in either of the following circumstances:*

7 (1) *The notice alleges one or more violations of this chapter*
8 *that the board determines to be ministerial in nature and not*
9 *constituting a substantial violation, in which case the appellant*
10 *would have 30 days to correct the violation and achieve*
11 *compliance.*

12 (2) *The specific claims asserted in that notice have been*
13 *adjudicated, or are pending adjudication, before the board or a*
14 *lead agency in a separate action authorized by this chapter. If*
15 *adjudication is pending in a separate action, the surface mining*
16 *operation shall not be removed from the list until that action has*
17 *concluded, if that action has not been pending for more than 180*
18 *days.*

19 (e) In reviewing the determination of the department made
20 pursuant to subdivision (c), the record before the board shall consist
21 of the record before the department and any other relevant evidence
22 that, in the judgment of the board, should be considered. The
23 appellant may obtain a review of the board’s determination by
24 commencing an action for a writ of mandate within 90 days
25 following that determination pursuant to Chapter 2 (commencing
26 with Section 1084) of Title 1 of Part 3 of the Code of Civil
27 Procedure. In any such proceeding, the court shall exercise its
28 independent judgment.

29 (f) *The board may, by regulation, establish procedures for*
30 *declining to hear appeals that it determines to raise only ministerial*
31 *issues.*

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