

## Assembly Bill No. 1142

### CHAPTER 7

An act to amend Sections 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.

[ Approved by Governor April 18, 2016. Filed with Secretary of State April 18, 2016. ]

### LEGISLATIVE COUNSEL'S DIGEST

AB 1142, 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 authorize a lead agency to cause an inspection to be conducted by a qualified employee of the lead agency who meets specified criteria and who, after January 1, 2020, has completed an inspection workshop, as provided; impose new requirements on the lead agency related to the timing of inspections; and require the department to establish a training program for lead agency employees who inspect surface mining operations 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.

## DIGEST KEY

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: YES

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## BILL TEXT

### THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

#### SECTION 1.

Section 2207.2 is added to the Public Resources Code, to read:

##### **2207.2.**

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

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

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

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

(b) This section shall remain in effect only until January 1, 2026, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2026, deletes or extends that date.

#### SEC. 2.

Section 2715.5 of the Public Resources Code is amended to read:

##### **2715.5.**

(a) The Cache Creek Resource Management Plan, in conjunction with a site specific plan deemed consistent by the lead agency with the Cache Creek Resource Management Plan, until December 31, 2017, shall be considered to be a functional equivalent of a reclamation plan for the purposes of this chapter. No other reclamation plan shall be required to be reviewed and approved for any excavation project subject to the Cache Creek Resource Management Plan that is conducted in conformance with an approved site specific plan that is consistent with the Cache Creek Resource Management Plan and the standards specified in that plan governing erosion control, channel stabilization, habitat restoration, flood control, or infrastructure maintenance, if that plan is reviewed and approved by a lead agency pursuant to this chapter.

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

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

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

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

(f) This section shall remain in effect only until December 31, 2017, and as of that date is repealed, unless a later enacted statute that is enacted before December 31, 2017, deletes or extends that date.

### **SEC. 3.**

Section 2733 of the Public Resources Code is amended to read:

#### **2733.**

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

### **SEC. 4.**

Section 2736 is added to the Public Resources Code, to read:

#### **2736.**

"Financial assurances" means a current approved financial assurance cost estimate and a financial assurance mechanism that is at least equal to the current approved financial assurance cost estimate.

### **SEC. 5.**

Section 2770 of the Public Resources Code is amended to read:

#### **2770.**

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

(b) A person with an existing surface mining operation who has vested rights pursuant to Section 2776 and who does not have an approved reclamation plan shall submit a reclamation plan to the lead agency not later than March 31, 1988. If a reclamation plan application is not on file by March 31, 1988, the continuation of the surface mining operation is prohibited until a reclamation plan is submitted to the lead agency. For the purposes of this subdivision, a reclamation plan existing prior to January 1, 2017, may consist of all or the appropriate sections of any plans or written agreements previously approved by the lead agency or another agency, together with any additional documents needed to substantially meet the requirements of Sections 2772 and 2773 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, provided that all documents, which together were proposed to serve as the reclamation plan, are submitted for approval to the lead agency in accordance with this chapter.

(c) [Reserved]

(d) [Reserved]

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

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

(A) Section 2773.1.

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

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

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

(4) If the approved financial assurance cost estimate is an update to an existing approved financial assurance cost estimate, the existing financial assurance mechanism shall remain in place and shall not be adjusted until a final determination by the board on the appeal filed pursuant to this subdivision.

(f) (1) The board may decline to hear an appeal if it determines that the appeal raises no substantial issues related to the lead agency's decision to deny the approval of a reclamation plan or financial assurance, or the timeliness in reviewing a completed application. Appeals filed by the director shall be heard by the board.

(2) If the board takes up an appeal, the appeal shall be scheduled and heard at a public hearing within 45 days of the filing of the appeal, or a longer period as may be mutually agreed to by the board, the appellant, and the operator, or, if the appeal is filed by the director, by the board, the director, and the operator.

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

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

(2) (A) A reclamation plan determined not to meet the applicable requirements of Sections 2772, 2772.1, 2773, 2773.1, 2773.3, and 2773.4; Article 1 (commencing with Section 3500), Article 9 (commencing with Section 3700), and Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations; and the lead agency's surface mining ordinance adopted pursuant to subdivision (a) of Section 2774 shall be returned to the operator with a notice of deficiencies. The operator shall be granted, once only, a period of 30 days or a longer period mutually agreed upon by the operator and the board to do both of the following:

(i) Correct the noted deficiencies.

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

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

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

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

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

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

(E) The failure of the operator to submit to the lead agency a revised financial assurance cost estimate consistent with the board's determination and deadline may be grounds for the issuance of an order to comply pursuant to subdivision (a) of Section 2774.1.

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

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

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

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

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

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

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

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

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

## **SEC. 6.**

Section 2772 of the Public Resources Code is amended to read:

**2772.**

- (a) The reclamation plan shall be filed with the lead agency, on a form provided by the lead agency, by any person who owns, leases, or otherwise controls or operates on all or any portion of any mined lands and who plans to conduct surface mining operations on the lands.
- (b) The reclamation plan shall include a chart identifying the page number, chapter, appendix, or other specific location in the reclamation plan where content meeting the requirements, as applicable, of Sections 2772, 2773, and 2773.3 and Article 1 (commencing with Section 3500) and Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, is located.
- (c) The reclamation plan shall include all of the following information and documents:
- (1) The name and address of the operator and the names and addresses of any persons designated by the operator as an agent for the service of process.
  - (2) The anticipated quantity and type of minerals for which the surface mining operation is to be conducted.
  - (3) The proposed dates for the initiation and termination of the surface mining operation.
  - (4) The maximum anticipated depth of the surface mining operation.
  - (5) A reclamation plan map or maps that shall include all of the following:
    - (A) Size and legal description of the lands that will be affected by the surface mining operation and the names and addresses of the owners of all surface interests and mineral interests in the lands.
    - (B) Clearly defined and accurately drawn property lines, setbacks, and the reclamation plan boundary.
    - (C) Existing topography and final topography depicted with contour lines drawn at appropriate intervals for the site's conditions.
    - (D) Detailed geologic description of the area of the surface mining operation.
    - (E) Location of railroads, utility facilities, access roads, temporary roads to be reclaimed, and any roads remaining for the approved end use.
    - (F) All maps, diagrams, or calculations that require preparation in accordance with the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code), the Geologist and Geophysicist Act (Chapter 12.5 (commencing with Section 7800) of Division 3 of the Business and Professions Code), or the Professional Land Surveyors' Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) shall be prepared by a California-licensed professional, shall include his or her license number and name, and shall bear the signature and seal of the licensee.
  - (6) A description of and a plan for the type of surface mining to be employed and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation.
  - (7) A description of the proposed use or potential uses of the mined lands after reclamation and evidence that all owners of a possessory interest in the land have been notified of the proposed use or potential uses.
  - (8) A description of the manner in which reclamation, adequate for the proposed use or potential uses, will be accomplished, including both of the following:
    - (A) A description of the manner in which known contaminants will be controlled and mining waste will be disposed.
    - (B) A description of the manner in which affected streambed channels and streambanks will be rehabilitated to a condition that minimizes erosion and sedimentation.
  - (9) An assessment of the effect of implementation of the reclamation plan on future mining in the area.
  - (10) A statement that the person submitting the reclamation plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan.

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

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

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

## **SEC. 7.**

Section 2772.1 is added to the Public Resources Code, to read:

### **2772.1.**

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

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

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

(A) The applicable requirements of this chapter.

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

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

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

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

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

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

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

- (i) A description of how the lead agency proposes to adopt the director's comments to the reclamation plan or plan amendment.
- (ii) A detailed description of the reasons why the lead agency proposes not to adopt the director's comments.

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

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

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

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

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

(c) To the extent there is a conflict between the comments of a trustee agency or a responsible agency that are based on that agency's statutory or regulatory authority and the comments of other commenting agencies that are received by the lead agency pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) regarding a reclamation plan or plan amendments, the lead agency shall consider only the comments of the trustee agency or responsible agency.

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

## **SEC. 8.**

Section 2773.1 of the Public Resources Code is amended to read:

### **2773.1.**

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

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

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

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

(4) Financial assurance cost estimates shall be submitted to the lead agency for review on a form developed by the director and approved by the board. The form shall be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

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

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

(2) If the lead agency or the board, following the public hearing conducted pursuant to paragraph (1), determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan or has abandoned its surface mining operation without completing reclamation, either the lead agency or the director shall do all of the following:

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

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

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

(c) Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon the written concurrence of the lead agency and the director, which shall be forwarded to the operator and the institutions providing or holding the financial assurance mechanism, that reclamation has been completed in accordance with the approved reclamation plan. If a surface mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in force and shall not be released by the lead agency and the director until new financial assurances are secured from the new owner and have been approved by the lead agency in accordance with Sections 2770, 2773.1, and 2773.4. Within 90 days of the sale or transfer of a surface mining operation, the new operator shall submit an appropriate financial assurance mechanism, which may be the existing mechanism if the existing mechanism is payable in the event of the new operator's financial incapability or abandonment of the surface mining operation, that is subject to review by the lead agency and the director pursuant to subdivision (e) of Section 2773.4. Within 15 days of the sale or transfer of a surface mining operation, the new operator shall sign a new statement of reclamation responsibility in accordance with paragraph (10) of subdivision (c) of Section 2772.

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

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

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

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

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

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

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

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

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

## **SEC. 9.**

Section 2773.4 is added to the Public Resources Code, to read:

### **2773.4.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The lead agency shall send to the director its final response to the director's comments within 30 days following its approval of the financial assurance cost estimate, during which time the department retains all of its powers, duties, and authority pursuant to this chapter.

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

(B) If the lead agency fails to cause the inspection of the surface mining operation on the date requested by the operator pursuant to Section 2207 or on the date set by the lead agency pursuant to subdivision (c) of Section 2774, the operator shall provide an annual financial assurance cost estimate to the lead agency for review within 30 days of the applicable inspection date, unless the lead agency causes the inspection to occur within that time period, in which case the operator shall provide an annual financial assurance cost estimate to the lead agency within 30 days of the date of the inspection.

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

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

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

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

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

(4) Within 15 days of receiving an annual financial assurance cost estimate, the director shall notify the lead agency and the operator if the submission is incomplete. An incomplete submission is one that does not meet the content requirements of Section 2773.1, Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and the board's financial assurance guidelines adopted pursuant to subdivision (f) of Section 2773.1. The director's notice shall specifically identify all aspects of the submission that are incomplete. The director's time to review the annual financial assurance cost estimate shall commence upon the receipt of a submission that contains the aspects identified in the director's notice to the lead agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **SEC. 10.**

Section 2774 of the Public Resources Code is amended to read:

### **2774.**

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

(b) (1) The lead agency shall cause surface mining operations to be inspected in intervals of no more than 12 months, solely to determine whether the surface mining operation is in compliance with this chapter. The lead agency shall cause an inspection to be conducted by a state-licensed geologist, state-licensed civil engineer, state-licensed landscape architect, state-licensed forester, or a qualified lead agency employee who has not been employed by the surface mining operation being inspected in any capacity during the previous 12 months, except that a qualified lead agency employee may inspect surface mining operations conducted by the local agency. All inspections shall be conducted using a form developed by the department and approved by the board that includes the professional licensing and disciplinary information of the person who conducted the inspection. The operator shall be solely responsible for the reasonable cost of the inspection. The lead agency shall provide a notice of completion of inspection to the director within 90 days of conducting the inspection. The notice shall contain a statement regarding the surface mining operation's compliance with this chapter and a copy of the completed inspection form, and shall specify, as applicable, all of the following:

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

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

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

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

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

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

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

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

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

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

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

(2) The training program shall include inspection workshops offered by the department in different regions of the state to provide practical application of the guidance document material.

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

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

## **SEC. 11.**

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

**2774.1.**

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

(A) A description of the violation.

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

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

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

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

(B) An order to comply issued pursuant to this paragraph shall take effect 30 days following the service of the order to comply unless within those 30 days the operator appeals the order to comply and requests a hearing before the lead agency, if the lead agency issued the order, or the board, if the director issued the order. An order to comply issued pursuant to this paragraph shall specify all of the following:

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

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

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

(C) An appeal filed pursuant to subparagraph (B) shall be noticed and heard at a public hearing within 45 days of the filing of the appeal or a longer period as may be mutually agreed upon by the operator and the lead agency, if the lead agency issued the order, or the operator and the director, if the director issued the order.

(b) [Reserved]

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

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

(2) If after a public hearing the board or lead agency denies an appeal by the operator pursuant to subparagraph (C) of paragraph (3) of subdivision (a), the operator shall be removed 10 working days following the denial of the appeal from the list published by the department pursuant to subdivision (b) of Section 2717.

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

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

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

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

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

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

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

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

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

## **SEC. 12.**

Section 2774.2 of the Public Resources Code is amended to read:

### **2774.2.**

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

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

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

(d) An order of the legislative body or the board issued under subdivision (c) shall become effective upon its issuance unless the operator petitions the superior court for review as provided in subdivision (e). An order shall be served by personal service or by certified mail upon the operator. Payment of an administrative penalty that is specified in an order issued pursuant to subdivision (c) shall be made to the lead agency or the director within 30 days of service of the order. However, the payment shall be held in an interest bearing impound account pending the resolution of a petition for review filed pursuant to subdivision (e).

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

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

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

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

(C) Either of the following:

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

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

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

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

## **SEC. 13.**

Section 2774.4 of the Public Resources Code is amended to read:

### **2774.4.**

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

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

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

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

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

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

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

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

(c) (1) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies and allow the lead agency 45 days to provide a response to the board on the identified deficiencies. The board may review the lead agency's response at a regularly scheduled meeting.

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

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

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

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

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

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

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

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

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

(2) In addition, the board's findings shall address the significant issues raised, or written evidence presented, by affected operators, interested persons, the lead agency, or the department. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the board.

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

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

## **SEC. 14.**

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

## **SEC. 15.**

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