



DEPARTMENT OF CONSERVATION

Managing California's Working Lands

OFFICE OF MINE RECLAMATION

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August 3, 2012

TO: ALL SMARA MINE OPERATORS

SUBJECT: NEW AMENDMENTS TO THE SURFACE MINING AND RECLAMATION ACT

Recent legislation amends the Surface Mining and Reclamation Act (SMARA), effective January 1, 2012. The amendments revise the definition of "idle;" adjust the period of time an interim management plan (IMP) can remain in effect; allow a mine operator to correct misreported annual reports; and allow certain mining operations, that are by definition considered abandoned, to be returned to idle status.

Senate Bill 108 (SB 108 - Rubio, Chapter 491, Statutes of 2011) amends Public Resource Code (PRC) sections 2727.1 and 2770, and adds PRC section 2777.5. A summary of the changes is provided to assist you, as a SMARA mine operator, in understanding and implementing these changes to the law.

Prior to January 1, 2012, PRC section 2727.1 defined a mine to be "idle" when the operation curtailed annual mineral production by more than 90 percent of its **previous maximum mineral production**, for a period of one year or more with the intent to resume surface mining operations at a future date. Under SB 108, the definition remains the same except for the mine's production history which will now be reduced to the **last five years of mineral production**, not including any time during which an interim management plan is approved. The full new version of PRC section 2727.1 reads as follows:

"Idle" means that an operator of a surface mining operation has curtailed production at the surface mining operation, with the intent to resume the surface mining operation at a future date, for a period of one year or more by more than 90 percent of its maximum annual mineral production within any of the last five years during which an interim management plan has not been approved.

PRC section 2770 was amended to provide for an IMP to be **renewed for additional five-year periods at the expiration of each five-year period**, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

PRC section 2777.5 was added to allow a mining operation that failed to properly report a mine's mineral production or mine status from previous production years, to correct reported production or mine's status by attaching corrected annual reports to the 2012 annual report and remit on or before July 1, 2013, but only if the lead agency confirms in writing to the Department of Conservation (Department) all of the following:

1. The mine operator has provided written notification to the Department and the lead agency of their intention to continue surface mining operations. Lead agency confirmation should include copies of the notifications provided.
2. The mine operator has an existing valid permit or a vested right to conduct surface mining operations. Confirmation should include a copy of the valid permit or a copy of the vested right determination.
3. The mining operation is in compliance with an approved reclamation plan or applicable compliance order; has an approved financial assurance in place that the lead agency determines is adequate for reclamation pursuant to the approved reclamation plan; and has been inspected by the lead agency. Confirmation should include a copy of the 2011 or later inspection report and inspection notice pursuant to PRC section 2774(b) and evidence that the annual financial assurance cost estimate (FACE) has been approved as of 2011 or later.

Upon receiving notification of an operator's intent to resume surface mining operations (item 1 above), the Office of Mine Reclamation (OMR) may conduct an inspection of the mine to confirm compliance with the conditions under new PRC section 2777.5. The mine operator requesting a correction of mine status or a return to idle status will be responsible for the reasonable costs of the inspection by OMR. A copy of OMR's inspection report will be provided to the lead agency.

If a mine is under a compliance order issued pursuant to SMARA, the lead agency shall confirm that the operator is in compliance with the terms of the order. Confirmation to the Department should include a copy of the compliance order along with a description of the operator's compliance history under the compliance order.

4. The mine operator has demonstrated that there are commercially useful mineral reserves remaining at the surface mining operation. Examples of satisfactory confirmation may include a map with cross sections of the remaining deposit, a report from a California Licensed geologist, mineral assessor, or an estimate based on the total anticipated quantity of minerals specified in the approved reclamation plan minus the sum total of reported annual production.

5. The mine operator has paid the Department any fees due for years during which the operation's mineral production or status was not properly reported. Confirmation should include written verification from the Department that fees have been paid; such confirmation of fee payment will be provided to the lead agency upon request.
6. The mine operator has provided evidence to support any modified production reported on corrected annual reports. Confirmation may include weight tickets, sales receipts, sales contracts, etc.

New PRC section 2777.5 provides that a mine operator of a mine that became idle as defined in SMARA section 2727.1 but that failed to timely file an interim manage plan may also submit to their lead agency an interim management plan that may be approved so long as the operator follows the procedures for correcting previous reported mineral production under new PRC section 2777.5(a) as set forth above.

In summary, a mining operation that is considered abandoned due to improperly reported mineral production or status and/or the failure to timely file an interim management plan may be returned to a pre-abandoned status at the request of the operator and upon lead agency verification of items 1-6 above if previously filed annual reports are properly amended and/or an interim management plan is approved, all by July 1, 2013. These changes to SMARA are effective on January 1, 2012. A copy of of SMARA as amended can be viewed on the Department's web page at <http://www.conservation.ca.gov/omr/lawsandregulations/Pages/SMARA.aspx>. A flowchart of the SB108 process is available at <http://www.conservation.ca.gov/omr/Documents/SB%20108%20Flowchart.pdf>.

Mine operators wishing to take advantage of SB108 should provide written notification to the Department and the lead agency of their intention to continue surface mining operations. For purposes of notifying the Department, please address correspondence to the attention of Sharon Grewal at:

Department of Conservation
Office of Mine Reclamation
801 K. Street, MS 09-06
Sacramento CA, 95814

If you have any questions regarding this letter or implementation of these changes to SMARA, please contact Sharon Grewal at (916) 324-0718.

Sincerely,

James S. Pompy
Assistant Director