



Summary of Key Elements of Changes to the Surface Mining and Reclamation Act (SMARA)

Senate Bill 209 (Pavley, Chapter 8, Statutes of 2016)

Division of Mine Reclamation

- Elevates the Office of Mine Reclamation into a new Division of Mine Reclamation (Division) at the Department of Conservation, and places the Division under the direction of the Supervisor of Mine Reclamation (Supervisor).

Reporting Fees

- Raises the annual reporting fee to \$10,000 over a three-year period (\$6,000 in fiscal year 2017-18, \$8,000 in 2018-19).
- Raises the cap on revenue generated by these fees to \$8 million.
- Purpose: To ensure that the mining industry, rather than the public, pays for the State's regulatory costs.

Lead Agency Owned or Operated Borrow Pits

- Requires a lead agency that owns or operates a borrow pit to include a section on maintenance measures in the reclamation plan that addresses operations when the borrow pit becomes idle. The lead agency can also develop an interim management plan for the borrow pit 90 days after the pit becomes idle. If the lead agency chooses to do so, the interim management plan would remain in effect until the lead agency completes reclamation in accordance with the approved reclamation plan.
- Exempts the lead agency from the one-year deadline to secure approval for the interim management plan. Reduces the required frequency of inspections for these mines from at least once per year to at least once every two years.
- Purpose: To grant lead agencies greater flexibility over the operation of borrow pits and reduce unnecessary workload while ensuring their appropriate long-term management and reclamation.

Financial Assurance Mechanisms

- Authorizes operators, under specified conditions, to use corporate financial tests to cover up to 75 percent of the financial assurance cost estimate. The operator must combine the test with surety bonds, irrevocable letters of credit, or trust funds to ensure full reclamation. The test must include an assessment from an independent certified public accountant, and the lead agency and the Department must approve it annually. Prior to use, the State Mining and Geology Board (Board) must establish regulations on the use of such tests.
- Purpose: To expand flexibility for operators when purchasing financial assurance mechanisms.

Reporting Requirements for Operators or Owners

- Requires the owner or operator to include a copy of the previously completed annual inspection form and a requested date, within 12 months of the prior inspection date, for the next annual inspection by the lead agency in the annual report.
- Purpose: To facilitate the review of the owner or operator's annual report and ensure consistency for inspections.

Assembly Bill 1142 (Gray, Chapter 7, Statutes of 2016)

Mine Reclamation Account Report

- Requires the Department to submit to the Legislature a report on Mine Reclamation Account expenditures from fiscal year 2016-17 through fiscal year 2020-21 by December 31, 2021. The report must include an overview of the Account's expenditures, and information on revenue collected from metallic mineral operations and small construction aggregate providers. This reporting requirement will sunset on January 1, 2026.
- Purpose: To increase transparency on Department activities and expenditures related to SMARA.

Appeals Processes

- Specifies conditions in which the Department may appeal a lead agency's approval of a financial assurance cost estimate, and requires the Board to hear Director (of Department of Conservation) appeals. (The Board can opt not to hear operator appeals under certain conditions.) An operator is required to purchase or maintain a financial assurance mechanism, sufficient to Department standards, through the appeal process.
- Purpose: To ensure that financial assurance cost estimates cover the full cost of reclamation.

Reclamation Plan Components

- Expands and clarifies reclamation plan mapping requirements, and requires specified, licensed professionals to prepare all maps, diagrams, and calculations.
- Requires the reclamation plan to include a chart that identifies the location of all components required under SMARA and Department regulations.
- Purpose: To ensure that operators provide consistent and complete reclamation plans, to streamline the review process, and provide comprehensive final approved reclamation plan.

Reclamation Plan Review Process

- This bill provides the Director with 30 days after receipt of the reclamation plan to notify the lead agency that the reclamation plan is incomplete, and clarifies that the 30-day deadline for the Director to review and comment on a reclamation plan begins once a completed reclamation plan is submitted.
- Purpose: To ensure that the Department has adequate time to fully review and provide feedback to lead agencies on a reclamation plan's compliance with SMARA.

Financial Assurances

- Redefines financial assurance as a current approved financial assurance cost estimate *and* a financial assurance mechanism that is at least equal to the current approved financial cost estimate. Requires that financial assurance mechanisms take the form of surety bonds, irrevocable letters of credit, trust funds, or other assurances approved by the Board and that the lead agency determines are adequate to accomplish reclamation.
- Purpose: To codify existing interpretations of these terms.
- Requires the operator to adjust the financial assurance at least once every calendar year, rather than annually.
- Purpose: To ensure that financial assurances sufficient to cover reclamation remain in place until reclamation is complete.
- Specifies the time frames in which the operator must submit the financial assurance cost estimate to the lead agency, and the review process for this cost estimate. The lead agency must submit revised cost estimates to the Department that it plans to approve. The bill outlines a commenting and response process similar to that established for reclamation plans.
- Requires the lead agency and the Department to agree, in writing, that the operator has completed reclamation in accordance with the reclamation plan prior to release of the financial assurance.
- Purpose: To ensure that reclamation meets requirements specified in SMARA and the reclamation plan.
- Requires the Department and the lead agency to provide consent prior to the financial institution's release of the financial assurance mechanism.
- Purpose: To ensure that financial assurances remain in place until the operator reclaims the land as specified in SMARA and the reclamation plan.
- Eliminates the requirement that the lead agency or the Department grant the operator 60 days to commence reclamation if the operator is financially incapable of completing reclamation or has abandoned the surface mining operation.
- Purpose: Granting an operator that has abandoned the surface mining operation or is financially incapable of completing reclamation 60 days to commence reclamation results in an unnecessary delay in forfeiture of the financial assurance. This provision removes this unnecessary step and streamlines the financial assurance forfeiture process.
- Requires the new operator to sign a new statement of reclamation responsibility within 15 days of the sale or transfer of the surface mining operation and to submit a new financial assurance mechanism within 90 days.

- **Purpose:** To ensure that new owners or operators secure financial assurances adequate to ensure reclamation within an appropriate time frame.

Financial Assurance Cost Estimate Review Process

- Authorizes the Department to request a consultation with the lead agency and the operator to discuss the lead agency's rejection of the Department's comments and prohibits the lead agency from approving the cost estimate until after the requested consultation.
- **Purpose:** To ensure that cost estimates more adequately reflect the full cost of reclamation.

Inspections

- Requires the Department to establish an inspection training program that all inspectors must complete by July 1, 2020. All inspectors must retake the training at least every five years.
- **Purpose:** To improve the quality and consistency of inspections and improve compliance with SMARA.
- Allows lead agency employees, under specified conditions, to conduct inspections of lead agency owned or operated surface mining operations.
- **Purpose:** To better manage costs for these inspections.
- Extends the deadline by which lead agencies must notify the Department of completing an inspection.
- **Purpose:** To enable lead agencies to coordinate with operators to remedy minor violations prior to submittal.
- Requires lead agencies to include a description of intended enforcement actions in the notice.
- **Purpose:** To improve lead agency accountability during the enforcement process.

Lead Agency Reports

- Eliminates the requirement that the lead agency notify the Department of permit applications within 30 days of an application and clarifies the required components of the lead agency's annual report to the Department.
- **Purpose:** To eliminate redundant requirements and streamline lead agency reporting requirements.

Notices of Violation, Orders to Comply, and Administrative Penalties

- Authorizes the lead agency or the Department to enter into a stipulated order to comply with the operator if either determines that it will take the operator longer than 30 days to fix the violation. However, if the operator fails to comply with the notice of violation within a specified time frame, or does not agree to enter into a stipulated order to comply, the lead agency or Department, as specified, may issue an order to comply.
- **Purpose:** To allow mine operators to correct certain violations immediately following an inspection and identify violations that require long-term corrective actions that might be suitable for stipulated Orders to Comply.
- Authorizes the lead agency or Department to assess administrative penalties of operators who do not pay annual reporting fees. Authorizes the lead agency to apply for a court judgment to collect unpaid administrative penalties.
- **Purpose:** To enable the Department and lead agencies to efficiently collect these fees and penalties.
- Clarifies conditions in which the Department may remove the surface mining operations from the published list of mining operations that are eligible to sell sand, gravel, aggregates or other mined materials to state and local agencies.

Board Assumption of Lead Agency Responsibilities

- Specifies that the local lead agency retains vested rights determinations.
- **Purpose:** A vested rights determination is a local land use decision, and should therefore remain with the local government.
- Authorizes the Board, prior to threatening lead agency takeover, to place the lead agency on probation and to require the lead agency to develop and implement a remedial plan to correct noted deficiencies. The Board must then hold a hearing to review lead agency compliance with the remedial plan. If the Board determines that the lead agency has failed to meet the remedial plan's requirements, then the Board must hold a public hearing to make a determination on whether to assume lead agency responsibilities.

- Purpose: To enable the Board to work with lead agencies to improve compliance with SMARA, as an alternative to initiating the takeover process.