

AB 3098 Purchase Preference List Update for Lead Agencies

In 1992, Assembly Bill 3098 was passed with the intent of promoting better compliance with state mining laws by establishing the State's preference of buying mined materials from operations that met certain minimum legal requirements. To carry out that intent, the Division of Mine Reclamation (formerly known as the Office of Mine Reclamation) was tasked with creating and maintaining a list (the "List") of mining operations that at a minimum, established a reclamation plan and financial assurances. Public Contracts Code §10295.5 restricts the purchase of sand, gravel, aggregate, and other mined materials by State agencies to those surface mining operations on the List. The Division of Mine Reclamation provides updates to the Department of General Services, the agency responsible for enforcing the provisions of the Public Contracts Code §10295.5, to identify those operations that meet the listing requirements of Public Resources Code §2717. Additionally, Public Contracts Code §20676 prohibits contractors and surface mining operators from selling mined materials to local governments if they are not identified on the List.

Recently, AB 3257 was signed into law to clarify the criteria to be used by the Division of Mine Reclamation to generate and maintain the List. AB 3257 clarifies that to be eligible for the List, an operation must report its status to the Division of Mine Reclamation as either newly permitted, active, or idle. Operations reported as closed with no intent to resume will **no longer** be eligible for the List. AB 3257 also revised the criteria used by the Division of Mine Reclamation to determine List eligibility. Below are the criteria from Public Resources Code §2717 (b)(1)-(6) that each operation must meet in order to become, and remain, List-eligible:

- (1) A reclamation plan has been approved.
- (2) A financial assurance mechanism that is at least equal to the current approved financial assurance cost estimate, as described in Section 2736, has been approved.
- (3) A financial assurance cost estimate required under Section 2773.4 has been submitted, as indicated on a notice of completion of inspection submitted by the lead agency pursuant to subdivision (b) of Section 2774. Operators may also confirm submission of their annual financial assurance cost estimate as required by Section 2773.4 by providing a copy of the first page of the financial assurance cost estimate (FACE-1) form to the supervisor.
- (4) The annual report required under Section 2207 has been submitted.
- (5) All fees required under Section 2207, including all past-due fees, administrative penalties, and interest have been paid.
- (6) The operation is not out of compliance with an order to comply or stipulated order to comply.

The changes to statute enacted by AB 3257 will take effect January 1, 2019.