

Article 11.5. Forfeiture of Financial Assurance Mechanisms

§ 3810. Purpose

The purpose of this article is to define the procedures to be followed by the lead agency, or the ~~b~~Board acting at the request of the ~~director~~supervisor, or when the ~~b~~Board is acting as lead agency pursuant to Public Resources Code (PRC) Section 2774.4 or Section 2774.5, in determining whether a surface mine operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without ~~commencing~~ completing reclamation, and should therefore forfeit its financial assurance mechanism(s) pursuant to ~~Public Resources Code~~ PRC Section 2773.1(b).

NOTE

Authority: Section 2755, Public Resources Code. Reference: Sections 2773.1, 2774.4 and 2774.5, Public Resources Code.

§ 3811. Circumstances Leading to a Hearing

In addition to the lead agency, supervisor, or Board's obtaining 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, A lead agency or the ~~b~~Board may conduct a hearing to determine the forfeiture of financial assurances mechanisms when any of the following circumstances has occurred:

(a) Unless an appeal of a financial assurance ~~amount~~cost estimate is pending before the ~~b~~Board pursuant to ~~Public Resources Code~~PRC Section 2770, an operator has failed to provide an acceptable financial assurance mechanism in accordance with PRC Section 2773.4(e)(1). ~~within 30 days of notification by the lead agency of its approval of an adequate financial assurance amount~~. Acceptable financial assurance mechanisms are described in Title 14, California Code of Regulations (CCR) Section 3803.

(b) The operator has failed to provide the lead agency with a ~~revised~~ financial assurance cost estimate as required by ~~Public Resources Code~~PRC Sections 2773.1 and 2773.4(d)(1)(A) that adequately addresses the criteria contained in PRC 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 CCR and the Board's financial assurance guidelines adopted pursuant to subdivision (f) of PRC Section 2773.1. ~~Section 3804 within 30 days of receipt of notification to provide a revised cost estimate~~.

(c) An acceptable financial assurance mechanism will lapse without adequate evidence from the operator that it can and will be replaced prior to its lapse, or has lapsed and has not been renewed or replaced by another acceptable mechanism within 30 days and any remaining financial assurance ~~coverage is~~ mechanisms are not, according to the lead agency as demonstrated by a currently approved financial assurance cost estimate, adequate by itself to ensure the reclamation of the mine site according to the approved reclamation plan.

(d) The lead agency, Board, or supervisor, is unable to contact the mine operator or the ~~mine's~~ operator's agent of record after 90 days of the mine's becoming idle as defined in ~~Public Resources Code~~PRC Section 2727.1.

(e) The surface mining operation meets the criteria stated under ~~Public Resources Code~~PRC Section 2770(h)(6) or there is evidence that the operator has physically abandoned the mining operation. Submitting Submittal of an interim management plan after the operator has been notified that ~~his or her~~ the mine meets the criteria in PRC Section 2770(h)(6) shall not prevent the lead agency or the ~~b~~Board from proceeding with its hearing.

NOTE

Authority: Section 2755, Public Resources Code. Reference: Sections 2727.1, 2770, and 2773.1 and 2773.2, Public Resources Code.

§ 3812. Public Hearing

The determination by the lead agency or the ~~h~~Board that a surface mine operator is financially incapable of reclaiming according to an approved reclamation plan, or that an operator has abandoned a mine site without ~~commencing~~ completing reclamation, shall be made during a public hearing. The hearing may be conducted as part of a regularly scheduled business meeting of the lead agency, or may be held during a special meeting. Where the ~~h~~Board is the lead agency, the ~~h~~Board may delegate the hearing to a committee composed of not less than ~~two~~ 2 ~~h~~Board members selected by the ~~h~~Board's Chairman or the Chairman's designee. The determination of the ~~h~~Board committee shall be reported to the full ~~h~~Board for its action at its next meeting. In cases where the Board committee conducts the hearing, and the financial assurance mechanism may lapse or expire before the full Board receives the committee's determination, the committee may take any immediate action necessary to secure full seizure of the financial assurance mechanism(s).

NOTE

Authority: Section 2755, Public Resources Code. Reference: Section 2773.1, Public Resources Code.

§ 3813. Hearing Procedure – Notice

(a) The local lead agency shall ~~give~~ provide at least ~~30-days~~ 30-days prior notice of the public hearing to the operator and the supervisor, in accordance with the addition to any other provisions of its local ordinances.

(b) Where the ~~h~~Board is the lead agency, at least ~~40~~ 30-days prior to the hearing date, public notice shall be given as follows:

- (1) Mailing the notice to the operator and to the ~~director-supervisor~~;
- (2) Mailing the notice to any person who requests notice of the hearing;
- (3) Mailing the notice to the ~~board's~~ Board's regular mailing list; and,
- (4) Mailing the notice to the city or county jurisdiction within which the surface mining operation is located.

(c) The notice of hearing from the lead agency, or the Board if the Board is the lead agency, shall include the following:

- (1) The name of the surface mine operator or agent of record;
- (2) Identification of the surface mining operation, and a brief description of the location of the operation by reference to any commonly known landmarks in the area;
- (3) A statement that the purpose of the hearing is to determine either the financial capability of the operator to reclaim ~~his or her~~ the mining operation in accordance with the approved reclamation plan or the abandonment of the surface mining operation, or both;
- (4) A statement inviting the operator, public agencies, and other interested persons to make statements at the hearing regarding the decision of the lead agency; and,
- (5) The time, date, and location of the public hearing.

(d) If the surface mining operation is located wholly or partly on federal land, at least 30-days' notice shall also be given to the federal land management entity that has jurisdiction over the surface mining operation.

(e) A 30-day notice shall also be given to any other state or federal governmental entity that holds a bond or other financial assurance guarantee related to the reclamation or remediation of any aspect of the surface mining operation.

NOTE

Authority: Section 2755, Public Resources Code. Reference: Section 2773.1, Public Resources Code.

§ 3814. Administrative Record

The administrative record shall consist of, but not be limited to, the following:

- (a) The approved reclamation plan for the mining operation;
- (b) The currently approved financial assurance mechanism(s) in an amount certain;
- (c) ~~The name and address of the surface mining operator's annual reports for the 3 years immediately preceding the date of the hearing and the name and address of any person designated by the operator as an agent for the service of process;~~
- (d) ~~A detailed cost estimate provided by the operator and supporting a~~ The most recently approved financial assurance amount cost estimate prepared by a qualified individual, such as a licensed grading contractor, licensed civil engineer, or a licensed geologist, who must be licensed in the state of California, and prepared not more than six months from the last annual inspection of the mine conducted by the lead agency;
- (e) A copy of the last annual inspection report conducted by the lead agency pursuant to ~~Public Resources Code PRC~~ Section 2774, ~~or and~~ any other more recent inspection reports conducted by the lead agency or the ~~Department of Conservation~~ supervisor.
- (f) Any other report(s), analysis, testimony or documents from any local, state or federal agency having jurisdiction over the mining operation that contain relevant evidence relating to: the cost to complete reclamation in accordance with the operation's approved reclamation plan; the operator's financial capacity to complete reclamation in accordance with the operation's approved reclamation plan; or, the abandonment of the surface mining operation.

NOTE

Authority: Section 2755, Public Resources Code. Reference: Sections 2773.1 and 2774, Public Resources Code.

§ 3815. Criteria for Determining Financial Capability

The lead agency or the ~~b~~Board shall use, but not be limited to, the following criteria when determining the financial capability of a mine operator to perform reclamation. It is the sole responsibility of the surface mine operator to provide the lead agency or the ~~b~~Board with sufficient information to reasonably demonstrate ~~his or her~~ financial capability. An operator shall be found financially incapable if the lead agency or the ~~b~~Board makes any of the following findings:

- (a) The operator is incapable of providing, or refuses to provide, a financial assurance cost estimate in an amount deemed adequate by the lead agency or the ~~b~~Board; or,
- (b) The operator is incapable of providing, or refuses to provide, a financial assurance mechanism approved by the ~~b~~Board in Section 3803 of this subchapter; or,
- (c) The operator is incapable of providing or fails to provide sufficient evidence of financial capability such that in light of all the evidence, it appears more likely than not that the operator cannot fully complete reclamation in accordance with the operator's approved reclamation plan; or,

(~~ed~~) The lead agency, the ~~b~~Board, or the ~~director-supervisor~~, is unable to contact the mine operator or the mine's agent of record after 90 days of the mine's becoming idle as defined in ~~Public Resources Code-PRC~~ Section 2727.1; or,

(~~de~~) The mine operation meets the criteria stated in ~~Public Resources Code-PRC~~ Section 2770(h)(6) or there is sufficient evidence that the operator has physically abandoned the mining operation.

NOTE

Authority: Section 2755, Public Resources Code. Reference: Sections 2727.1, 2770 and 2773.1, Public Resources Code.

§ 3816. Hearing Procedures – Sequence

(a) The public hearing conducted before the ~~b~~Board shall normally proceed in the following manner; a local lead agency may conduct the hearing sequence according to its locally adopted procedures:

(1) Identification of the record;

(2) Statements on behalf of the supervisor;

(~~23~~) Statements on behalf of the lead agency;

(4) Statements on behalf of any other state or federal governmental entity holding an interest in a financial guarantee related to the mining operation;

(~~35~~) Statements on behalf of the operator;

(~~46~~) Statements on behalf of the public;

(7) Rebuttal on behalf of the supervisor;

(~~58~~) Rebuttal on behalf of the lead agency;

(9) Rebuttal on behalf of any other state or federal governmental entity holding an interest in a financial guarantee related to the mining operation;

(~~610~~) Rebuttal on behalf of the operator; and

(~~711~~) Motion to close the public hearing.

(b) Notwithstanding the above, the ~~Chairman of the board~~ or the Chairman's designee for purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(c) The ~~Chairman~~ or the ~~Chairman's~~ designee shall have the authority to impose time limits upon statements and presentations and accept written statements in lieu of oral statements. Written statements (12 copies) must be submitted to the ~~b~~Board at least ~~five~~10 days prior to the hearing.

(d) The public hearing conducted before the ~~b~~Board or a lead agency shall be recorded.

NOTE

Authority: Section 2755, Public Resources Code. Reference: Section 2773.1, Public Resources Code.

§ 3817. Hearing Procedures – Determination

Following the public hearing, the lead agency or the ~~b~~Board shall determine whether, based on the record before it and the criteria described in Section 3815 of this Article, the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without ~~commencing-completing~~ reclamation. If the operator is determined to be financially incapable of performing reclamation or to have abandoned the operation, then the following shall occur:

(a) The lead agency, or the ~~director~~ supervisor in cases where the Board is the lead agency, shall notify the operator within 10 days of the date of determination of its intent to take appropriate actions to cause forfeiture of the operator's financial assurances. Notification shall be made by personal service or certified mail.

(b) The lead agency, or the supervisor in cases where the Board is the lead agency, shall notify any other state or federal governmental entity holding an interest in a financial guarantee related to the mining operation within 10 days of the date of determination of its intent to take appropriate actions to cause forfeiture of the operator's financial assurances. Notification may be made by personal service or certified mail.

(~~b~~c) The lead agency, or the ~~director~~ supervisor, or the ~~Board~~ in cases where the ~~Board~~ is the lead agency, shall follow the procedures described in ~~Public Resources Code~~ PRC Sections 2773.1(b)(1) through 2773.1(b)(2)(C). Beginning on the date of determination of financial incapacity or abandonment, lead agencies shall provide annual status reports on the progress of reclamation to the supervisor and the Board, until reclamation is complete in accordance with the approved reclamation plan.

NOTE

Authority: Section 2755, Public Resources Code. Reference: Section 2773.1, Public Resources Code.