

CHAPTER 5.7. DRAINAGE FROM ABANDONED MINES [13397. - 13398.9.]

(Chapter 5.7 added by Stats. 1995, Ch. 878, Sec. 1.)

§ 13397. *[Legislative findings]*

(a) The Legislature finds and declares all of the following:

(1) Thousands of abandoned mines have been identified in this state.

Waste, including acid rock drainage from abandoned mines, has a devastating effect on aquatic life and has degraded some major water bodies in the state. Abandoned mines are the overwhelming source of copper loading to the Sacramento River and the San Francisco Bay/Sacramento-San Joaquin Delta. In some instances, waste from abandoned mines can cause public health and safety problems.

(2) The formation of acid rock drainage is a process that can continue for centuries after the abandonment of a mine and is difficult to control. The complete elimination of acid rock drainage is not possible at this time.

(3) Unless action is taken either by public agencies or private parties, who are not responsible for creating the waste, abandoned mines will continue to discharge waste indefinitely. The cleanup of this waste for the protection of the public and the waterways of the state should be facilitated by limiting the financial responsibility for that cleanup.

(4) Public agencies and private parties, who are not otherwise legally responsible for the abandoned mined land, are reluctant to remediate abandoned mined lands unless they are assured that they will be held responsible for completing only the remedial work that they undertake. The public agencies and private parties may be willing to implement partial remediation but they do not have sufficient resources to pay the cost of meeting all applicable regulatory standards.

(b) The Legislature further finds and declares that it is the policy of the state to establish a program that permits public agencies and cooperating private parties to reduce the threat to water quality caused by abandoned mined lands without becoming responsible for completely remediating abandoned mine waste to a point that meets water quality objectives and

related regulatory requirements. This program should provide a streamlined process for the purpose of approving an abandoned mine remediation plan in lieu of certain state permits and requirements. The implementation of this program will foster projects to improve water quality while ensuring that the taxpayers are not unfairly burdened.

(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)

§ 13397.5. [Definitions]

Unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) "Abandoned mine waste" means the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property on, or discharging from, abandoned mined lands, directly resulting from, or displaced by, surface mining operations.

(b) "Abandoned mined lands" has the same meaning as "abandoned surface mined area," as defined in clause (ii) of subparagraph (A) of paragraph (2) of subdivision (b) of Section 2796 of the Public Resources Code.

(c) "Acid rock drainage" means acid waste discharge that results from the oxidation of metal sulfide in minerals associated with mined lands.

(d) "Mined lands" has the same meaning as set forth in Section 2729 of the Public Resources Code.

(e) "Oversight agency" means either the state board or a regional board. If the remediating agency is a regional board, the state board shall be the oversight agency. If the remediating agency is the state board, the oversight agency shall be the Site Designation Committee established pursuant to Section 25261 of the Health and Safety Code. The committee shall have the powers and functions specified in Chapter 6.65 (commencing with Section 25260) of Division 20 of the Health and Safety Code, except that neither the chairperson of the state board, nor any designee, shall participate in the actions of the committee relating to the state board as a remediating agency.

(f) "Remediating agency" or "agency" means any public agency, or any private individual or entity acting under a cooperative agreement with a public agency, that prepares and submits a remediation plan in accordance with this chapter. "Remediating agency" includes, but is not limited to, a public agency that holds title to abandoned mined lands for the purpose of remediating those lands or that is engaging in remediation activities that are incidental to the ownership of the lands for other than mining purposes. "Remediating agency" does not include any person or entity that is not a public agency, that, before implementing an approved remediation plan, owns or has owned a property interest, other than a security interest, in the abandoned mined lands being remediated, or is or has been legally responsible for, or had a direct financial

interest in, or participated in, any mining operation, including exploration, associated with the abandoned mined lands being remediated.

(g) “Remediation plan” means a plan to improve the quality of the waters of the state that have been directly and adversely impacted by abandoned mine waste.

(Amended by Stats. 2000, Ch. 727, Sec. 5. Effective January 1, 2001.)

§ 13398. [Remediating agency responsibilities]

(a) Notwithstanding any other provision of law, a remediating agency that has implemented an approved remediation plan, or a public agency that is effecting reclamation of a mine site pursuant to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), shall not be deemed, based on the actions taken to implement the remediation plan or the reclamation, to be the owner or operator of the abandoned mined lands, or any structure, improvement, waste management unit, or facility on the abandoned mined lands, and shall not be deemed, based on the actions taken to implement the remediation plan or the reclamation, to be responsible for any discharge, or the results of any discharge, of abandoned mine waste on or from any abandoned mined lands, including discharges which have been affected by the activities of the remediating agency or the public agency effecting reclamation of a mine site.

(b) Except as provided in paragraph (c), Chapter 5.5 (commencing with Section 13370), and Section 13398.9, the responsibilities of a remediating agency are limited to the following:

(1) Submitting a remediation plan to the oversight agency for approval in accordance with Section 13398.3. A remediation plan may be submitted in connection with a remediation project that was commenced or completed prior to January 1, 1996.

(2) Implementing a remediation plan that has been approved by the oversight agency.

(3) If required by a remediation plan approved by the oversight agency, maintaining any structure, waste management unit, improvement, or other facility constructed, improved, or placed on the abandoned mined lands.

(4) Periodically monitoring and reporting as required by the oversight agency.

(5) (A) Determining if the remediation plan implemented by the remediating agency has been effective to provide a substantial improvement in water quality affected by abandoned mine waste.

(B) If the remediating agency determines that the remediation plan implemented by the agency is not effective, the remediating agency shall promptly report that determination to the oversight agency. If the remediating agency or the oversight agency determines that the remediation plan

implemented by the remediating agency is not effective, the remediating agency shall submit a modified remediation plan to the oversight agency which includes a proposal to improve the plan to make it effective, or a proposal to cease remedial activities on the abandoned mined lands and return those lands, including the water quality on those lands, to a condition that approximates the quality that existed prior to commencing remedial activities. The remediating agency shall implement the modified remediation plan as approved by the oversight agency.

(6) Notwithstanding any other provision of law, except as provided in Chapter 5.5 (commencing with Section 13370), if the remediating agency implements or has implemented the approved remediation plan and any modifications to the plan approved by the oversight agency, the remediating agency, with regard to any discharge of abandoned mine waste that is the subject of the plan, shall not be required to achieve water quality objectives or to comply with other requirements of this division or other laws that are administered by the state board or the regional boards, and shall not be subject to any enforcement actions pursuant to state law based on actions taken to implement the approved remediation plan, except for violations involving gross negligence, including reckless, willful, or wanton misconduct, or intentional misconduct by the remediating agency.

(c) The responsibilities of a remediating agency that engages in surface mining operations, as defined in Section 2735 of the Public Resources Code, in conjunction with the remediation or reclamation of abandoned mine waste or that performs reclamation of a surface mining operation pursuant to Section 2773.1 or 2796 of the Public Resources Code, include performing the applicable requirements of Section 2207 of the Public Resources Code and the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code). The State Mining and Geology Board may grant an exemption from the requirements of Section 2207 of the Public Resources Code or from the Surface Mining and Reclamation Act of 1975 to a remediating agency and its contractors solely for the purpose of removing abandoned mine waste in connection with the implementation of an approved remediation plan.

(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)

§ 13398.3. [Remediation plan]

The remediation plan to be submitted by a remediating agency to the oversight agency shall include all of the following:

(a) Identification of the remediating agency, and a certification that the remediating agency is a remediating agency as defined in this chapter.

(b) Identification of the abandoned mined lands (b) that are the subject of the plan.

(c) Identification of the waters of the state, if any, that are affected by the abandoned mined lands.

(d) A description of the physical conditions at the abandoned mined lands that are causing or have caused adverse water quality impacts.

(e) A description of the practices, including system design and construction plans, and operation and maintenance plans, proposed to reduce, control, mitigate, or eliminate the adverse water quality impacts and a schedule for implementing those practices. If the plan is prepared for an existing remediation project, the remediation plan shall include a description of practices that have been implemented and the practices that are proposed to improve the existing project, if any.

(f) An analysis demonstrating that the implementation of the practices described in the plan have caused, or are expected to cause, a substantial improvement in water quality for the identified waters.

(g) A description of monitoring or other assessment activities to be undertaken to evaluate the success of the implemented practices during and after implementation, including an assessment of baseline conditions.

(h) A budget and identified funding to pay for the implementation of the plan.

(i) Remediation goals and objectives.

(j) Contingency plans.

(k) A description of the remediating agency's legal right to enter and conduct remedial activities.

(l) The signature of an authorized representative of the remediating agency.

(m) Identification of the pollutants to be addressed by the plan.

(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)

§ 13398.5. [Oversight agency responsibilities]

The oversight agency shall do all of the following:

(a) Comply with the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) in connection with the review of any remediation plan.

(b) Provide an opportunity for public review of, and comment with regard to, the remediation plan.

(c) Disapprove, approve, or modify and approve a remediation plan at a public meeting.

(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)

§ 13398.7. [Approval of remediation plans]

(a) The oversight agency may approve the remediation plan if the oversight agency finds that there is substantial evidence in the record that the plan will substantially improve water quality affected by abandoned mine waste.

(b) The oversight agency may approve a remediation plan for a project that the remediating agency implemented prior to January 1, 1996, if that oversight agency finds that there is substantial evidence in the record that the project has substantially improved water quality adversely impacted by mining activities on the abandoned mined lands undertaken before the project was implemented.

(c) The remediating agency is not required to include in the remediation plan a plan to achieve water quality objectives, with regard to any discharge of abandoned mine waste that is the subject of the plan, to comply with other requirements of this division, except for Chapter 5.5 (commencing with Section 13370), or to comply with any other law that is administered by the state board or the regional boards, with regard to that discharge.

(d) The oversight agency may approve a modification of an approved remediation plan to permit additional time for completing the remediation project or to otherwise modify the plan, after an opportunity for public comment.

(e) If the oversight agency determines that a remediating agency is not implementing the approved remediation plan in substantial compliance with its terms, that oversight agency shall notify the remediating agency of its determination, including the specific causes for that determination.

(f) If the oversight agency determines that the specific causes for the determination are not adequately addressed pursuant to subdivision (e), or if a compliance plan is not submitted to, and approved by, the oversight agency within 180 days from the date of the notification pursuant to subdivision (e), the oversight agency may determine that the remediating agency is in violation of this chapter. A remediating agency that is in violation of this chapter is not protected by the limitations on responsibility for remediation of abandoned mined lands provided by this chapter and may be subject to any enforcement action authorized by law.

(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)

§ 13398.9. [Remediating agency liability; Penn Mine]

(a) This chapter has no effect on the tort liability of a remediating agency for personal injury or wrongful death.

(b) This chapter has no effect on the liability of a remediating agency based upon activities other than those undertaken in connection with the implementation of an approved remediation plan.

(c) This chapter has no effect on the liability of a remediating agency if that agency, following implementation of an approved remediation plan, benefits from, or participates in, any mining operation, including exploration, associated with the abandoned mined lands subject to the approved remediation plan.

(d) For the purposes of this chapter, the remediation plan for the Penn Mine property located in Calaveras County shall, if a memorandum of understanding is entered into by the state and other appropriate parties, include the terms and conditions set forth in that memorandum of understanding.

(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)