



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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Mining Operation Annual Reporting Fees Calculation and Schedule

NOTICE OF PROPOSED RULEMAKING ACTION

DEPARTMENT OF CONSERVATION STATE MINING AND GEOLOGY BOARD

TITLE 14. NATURAL RESOURCES Division 2. Department of Conservation Chapter 8. Mining and Geology Subchapter 1. State Mining and Geology Board Article 8. Fees Schedule

Notice Published: September 29

Office of Administrative Law Notice File Number: Z-2017-0919-09

NOTICE IS HEREBY GIVEN that the State Mining and Geology Board (SMGB) proposes to amend the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The SMGB proposes to amend sections 3697, 3698, and 3699 in Title 14, Division 2, Chapter 8, Subchapter 1 of the California Code of Regulations (CCR). These sections address fees due and delinquent, fees calculation, and low gross exemptions pertaining to mining operations.

WRITTEN COMMENT PERIOD AND PUBLIC HEARING

Any person, or his or her authorized representative, may submit written statements, arguments, or comments related to the proposed regulatory action to the SMGB. Comments may be submitted by email to smgb@conservation.ca.gov, by facsimile (FAX) to (916) 445-0738, or by mail to:

State Mining and Geology Board
801 K Street, MS 20-15
Sacramento, CA 95814
ATTN: Fees Calculation and Schedule

The written comment period closes at 5:00 p.m. on November 13, 2017. The SMGB will consider only comments received at the SMGB office by that time.

The SMGB will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

AUTHORITY AND REFERENCE

The SMGB proposes to amend sections 3697, 3698, and 3699 of the CCR, Title 14, Division 2, Chapter 8, Subchapter 1 pursuant to the authority granted in Public Resources Code (PRC) Section 2207(d) to implement, clarify, interpret, or make specific PRC sections 2207(d)(1), 2207(d)(2)(A), 2207(d)(2)(B) and 2207(d)(3), 2207 (f).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

PRC Section 2207(d)(2)(A) requires an annual reporting fee schedule to be established on an equitable basis reflecting the size and type of mining operations in the state.

PRC Section 2207(d)(3) outlines the amount of revenue to be generated by the fee schedule approved by the SMGB. The fee schedule must provide for the collection of the amount specified in the Governor's Budget for the Department of Conservation's (Department) costs in implementing PRC section 2207 and the Surface Mining and Reclamation Act ("SMARA," PRC section 2710 et seq.). The total revenue generated by the reporting fees is restricted to \$8,000,000 with allowance for the amount to be adjusted for the cost of living beginning with the 2017-2018 Fiscal Year (FY), and annually thereafter. Cost of Living Adjustments (COLA) are addressed in statute and allow for increases to help maintain adequate funding for the SMARA programs within the Department. The COLA, or rate of inflation, is measured by the California Consumer Price Index (CPI). It is a measure of inflation experienced by consumers, and an important indicator of the condition of the economy and can be used to adjust other economic data for changes in price level and to convert them into inflation-free dollars. Various government income programs, such as Social Security, use the CPI to adjust payments or income eligibility levels.

Further, if the Director of the Department determines that the revenue collected in the preceding FY was greater or less than the cost to implement SMARA and PRC Section 2207, the SMGB shall adjust the fees to compensate for the over or under collection of revenues.

Existing Law

CCR section 3697 sets forth the requirements of when annual reporting fees are due and delinquent. It provides that mining operations are individual discrete operations per each reclamation plan required unless deemed to be a “Multiple Site Operation” by meeting certain criteria.

Annual reporting fees are calculated based on CCR section 3698, which was developed by the SMGB in 1991. In addition to establishing the minimum and maximum annual reporting fees for certain categories of mining operations, CCR section 3698 utilizes a ‘Factor’ to determine the year-to-year fee adjustments. Once calculated, the Factor is applied to one of two formulas (Formula 1 or Formula 2 – discussed further below) in order to determine the new fee schedule. Depending on the outcome of the calculation, the fee schedule is theoretically adjusted upwards or downwards.

CCR 3698 currently directs the Department to use the following formula to calculate the Factor:

$$[(AT_{RY}) - (AT_{PY})] / (AT_{PY}) = \text{Factor}$$

Where: Adjusted Total (AT) equals the Amount Requested by the Director, less a projected amount from fees set in CCR Sections 3698(a)(b)(d)(e) and CCR Section 3699, and less a projected amount from mine operations subject to the maximum fee amount in PRC Section 2207.

Where: ATRY is the Adjusted Total for the current “Reporting Year”

Where: ATPY is the Adjusted Total for the “Prior Year”

The Factor is then used in one of two formulas developed and approved by the SMGB:

Formula 1 is to be used if the Factor is positive:

$$\text{Current Year Reporting Fee} = \text{Prior Year Reporting Fee times } (1 + \text{Factor})$$

Formula 2 is to be used if the Factor is negative:

$$\text{Current Year Reporting Fee} = \text{Prior Year Reporting Fee times } (1 - \text{Factor})$$

CCR section 3699, developed by the SMGB in 1992, sets forth the criteria for a mining operation to request a low gross exemption from the method of fee assessment provided in CCR section 3698.

Proposed Action

In an effort to address several issues under SMARA, on April 18, 2016, the Governor signed SMARA reform bill SB 209 (Pavley) into law. In anticipation of the effect SB 209 (Pavley)

would have on the mining operation annual report fee schedules, and due to issues identified in calculating projected fees for the coming years, the Department and SMGB staff determined the established fee calculation formulas needed to be changed. Calculating the reporting fees by means of existing formulas currently required under CCR section 3698 results in a continued increasing fee trend for mining operators, without accounting for a decrease in the reporting fees where appropriate to help maintain a more equitable fee schedule for relatively smaller operations. In order to enact the revisions to PRC section 2207, address the fees calculation formula, and maintain a more equitable fee schedule for relatively smaller operations, the SMGB must amend CCR sections 3697, 3698, and 3699.

The intended purpose of amending CCR section 3697 is to remove “active” from the multiple site definition in order to be inclusive of “Idle” mines. Additionally, changes will clarify and make specific certain requirement to successfully be deemed a multiple site operation.

The intended purpose of amending CCR 3698 is to bring the regulation into conformance with the recently changed language of PRC section 2207, eliminate potential for confusion when calculating annual fees paid by mine operators, adjust the number of tiers in each of the commodity fee tables allowing an avenue for the most equitable fees based on the maximum reporting fee, and provide a formula, for fee calculation, for those mining operations deemed “multisite mining operations.” Additionally, the proposed rulemaking would delete existing specific references within CCR section 3698 regarding the maximum reporting fee of \$4,000, and replace them with a general reference to the maximum fee outlined in PRC section 2207. “Formula 2” would be deleted from CCR section 3698, as well as all references to it. And finally, amending CCR 3698 would delete references to annual adjustments beginning in the 2005-2006 fiscal year to keep it in line with the revisions to PRC section 2207.

The intended purpose of amending CCR 3699 is to adjust for the cost of living the operator’s gross income, based on the California CPI. The annual reporting fee associated with those operators who qualify for the low gross exemption will also be adjusted to conform with the revisions to PRC section 2207.

Anticipated Benefits of the Proposed Amended Regulations

The broad objective of the proposed amended regulatory language is to meet the statutory goals of SB 209 to improve how the SMGB, the Department, and local lead agencies oversee and implement SMARA, specifically in regards to the annual reporting fees calculation and schedule. Imposition of equitable annual mine fees ensures that the Department and SMGB are able to carry out the provisions of SMARA. The proposed amended regulation will allow for the increased maximum annual fees for larger operations, while streamlining and simplifying fees calculation and potentially lowering annual fees for smaller operations by ensuring the equitable assessment of mining operation fees.

CONSISTENCY WITH FEDERAL STATUTE AND REGULATION

This regulation change does not duplicate or conflict with existing Federal statutes or regulations. Also, by Memorandum of Understanding with the Federal Bureau of Land Management, the U. S. Forest Service, the Department of Conservation, and the SMGB, SMARA and federal law are coordinated to eliminate duplication

CONSISTENCY WITH EXISTING STATE REGULATIONS

The proposed amended regulatory language is not inconsistent or incompatible with existing regulations pertaining to the annual mining operation reporting fees calculation and schedule. After conducting a review for any regulations that would relate to or affect this area, SMGB has concluded that these are the only regulations that concern the annual reporting fees calculation and schedule for mining operations in California.

CEQA COMPLIANCE

The SMGB has determined that this rule making action is not a project as defined in Title 14, CCR, section 15378, and that this activity is not subject to the requirements of the California Environmental Quality Act (CEQA).

DISCLOSURES REGARDING THE PROPOSED ACTION

The SMGB has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Costs impacts on a representative private person or business: The SMGB is not aware of any additional cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

Statewide adverse economic impact directly affecting businesses and individuals: Although the proposed action may directly affect businesses statewide, including small businesses, the SMGB has determined that the adverse economic impact, including the

ability of California businesses to compete with businesses in other states, will not be significant.

Significant effect on housing costs: None.

Business reporting requirement: SMGB staff has found that the proposed amendment is necessary to implement fair and effective regulation of the annual fees calculation and schedule of mining operations. Annual fees and exemptions are calculated individually by operators and submitted with reports of production to the Department. Such annual reports and fees are necessary for the health, safety, and welfare of the people of the State, and therefore annual reporting and fee payment requirements should apply to mining businesses.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Creation or elimination of jobs within California: The SMGB anticipates the proposed amended regulations may have an impact on the creation of new, or the elimination of existing, jobs within California.

Creation of new businesses or the elimination of existing businesses within California: The SMGB anticipates the proposed amended regulation may have an impact on the creation, expansion, or elimination of new or existing business within California.

Benefits to the health and welfare of California residents, worker safety, and the state's environment: The SMGB anticipates that the proposed regulatory amendments will result in nonmonetary benefits such as protection of public health and safety, environmental safety, and transparency in business and government, and the prevention of discrimination, the promotion of fairness or social equity by:

- Ensuring the public will have sufficient and reliable private funding for State oversight of local implementation of surface mining law.
- Adjusting for the cost of living as measured by the California CPI for all urban consumers, calendar year averages, using the percentage change in the previous year.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the SMGB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SMGB would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The SMGB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at any hearing scheduled to take statements or arguments that are relevant to the proposed action.

CONTACT PERSONS

Inquiries concerning the substance of the proposed amended regulation should be directed to:

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AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE

The SMGB will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the initial statement of reasons, and a standard form 399.

Please direct requests for copies of the proposed text (the “express terms”) of this regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which this rulemaking is based to Nicholas Lash at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the written comment period and any hearing that may be conducted by the SMGB to accept comments and evidence regarding the adoption of the proposed amended regulation, the SMGB will consider all timely and relevant comments received. Thereafter, the SMGB may adopt the proposed regulation substantially as described in this notice. If the SMGB makes modifications that are sufficiently related to the original proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the SMGB adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Nicholas Lash at the address indicated above. The SMGB will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Nicholas Lash at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at:

<http://www.conservation.ca.gov/smgb>