



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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INITIAL STATEMENT OF REASONS

PROPOSED AMENDED REGULATIONS

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 1. Surface Mining and Reclamation Practice

PROBLEM STATEMENT

The Legislature adopted the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code (PRC), §2710 et seq.) in order to provide a comprehensive surface mining and reclamation policy with the regulation of surface mining operations to assure that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition. On April 18, 2016, Governor Brown signed AB 1142 (Gray) into law and thereby enacted significant reform to SMARA. In order to enact the revisions to SMARA, the State Mining and Geology Board (SMGB) must address these changes by way of regulations.

Effective January 1, 2017, PRC §2774 requires inspections for surface mine operations to occur in intervals of no more than 12 months. It requires inspections to be conducted by a state-licensed geologist, state-licensed civil engineer, state-licensed landscape architect, state-licensed forester, or a qualified lead agency employee. A qualified lead agency employee may only conduct the inspection if he/she has not been employed by the surface mining operation in any capacity during the previous 12 months, except that a qualified lead agency may inspect surface mining operations conducted by the local agency. The lead agency shall provide a notice of completion to the director within 90 days of conducting the inspection.

The Mission of the State Mining and Geology Board is to Provide Professional Expertise and Guidance, and to Represent the State's Interest in the Development, Utilization and Conservation of Mineral Resources, the Reclamation of Mined Lands, and the Development and Dissemination of Geologic and Seismic Hazard Information to Protect the Health and Welfare of the People of California.

BENEFITS

The SMGB anticipates specific non-monetary benefits from the proposed action such as the protection of public health and safety, worker safety, and the environment by ensuring that mine operators are complying with their permits, conditions of approval that relate to the reclamation plan, and SMARA, eventually making progress towards final reclamation.

Furthermore, the proposed regulatory action will meet the statutory goals of AB 1142 (Gray) to improve how the SMGB, the Department of Conservation (Department), and local lead agencies oversee and implement SMARA, specifically in regards to the conduct of annual mine inspections.

DETAILED STATEMENT OF SPECIFIC PURPOSE AND RATIONALE

§3504.5 (a) is amended. This subsection makes specific that annual mine inspections shall be conducted by certain California state-licensed professionals or a qualified lead agency employee. It makes specific that qualified lead agency employees must have demonstrated competence in performing inspections of surface mine operations in the eyes of the lead agency. This subsection interprets that qualified lead agency employees may include contract employees and those hired pursuant to third-party contracts. This is necessary to allow various lead agencies to continue the standard practice of using those hired by third-party contracts to complete mine inspections. In those cases, the lead agency either does not have the proper budget or simply does not have a particular licensed professional or qualified lead agency employee on staff.

Additionally, the subsection clarifies and makes specific that the evaluation of certain aspects or conditions of a mining operation, that constitute the practice of those that require state-licensure under California law, must be done, or under supervision of, a California state-licensed person. It makes specific that the mine inspector shall indicate on the mine inspection report that certain aspects or conditions of the operation may require further evaluation by appropriate California state-licensed persons or specialists. This provides a mechanism for the mine inspector conducting the inspection to follow up on the report. This is necessary to ensure these evaluations are performed competently and in accordance with the California Business and Professions Code.

Original subsection (a) is necessary for removal completely because of duplication of statute caused by Assembly Bill 1142 (Gray). PRC §2774 was amended to include inspections intervals and the timeframe written notice to the operator prior to the inspection.

§3504.5 (b) is added. This subsection clarifies that California state-licensed persons or specialists providing an evaluation of a particular aspect of a surface mining operation are not conducting the inspection in its entirety. This special class of inspectors are not required to, but can obtain a certificate of completion of an inspection workshop conducted by the Department. PRC §2774 (e)(1)-(3) requires the Department to establish a training program for all inspectors conducting an inspection, pursuant to PRC §2774 (b)(1), and to obtain a certificate of completion of an inspection workshop. The subsection is necessary to allow this special class of inspectors the opportunity to improve the quality of annual inspections overall.

Original subsection (b) was amended and converted to subsection (a) mentioned above.

§3504.5 (c) is amended. This subsection makes specific the ethical responsibilities of the mine inspector by prohibiting any person who holds a financial interest in the surface mine operation, or who has been employed by the surface mine operation within the previous 12 months, from conducting the inspection. This applies to both licensed persons and non-licensed persons. It also clarifies that contract employees and those hired pursuant to third-party contracts are included. A qualified lead agency employee may inspect mining operations owned and operated by the lead agency. This is necessary to ensure the inspector has no conflicts of interest which might compromise the adequacy and integrity of the inspection.

§3504.5 (d) is amended. This subsection makes specific that the annual mine inspection form to be used by inspectors, required by PRC §2774 (b)(1), is the annual Surface Mining Inspection Report. It clarifies that the Surface Mining Inspection Report may include attachments prepared by California state-licensed persons or specialists to document aspects or conditions of the mining operation as mentioned in amended subsection (a) above. It also clarifies that that a copy of the Surface Mining Inspection Report, any supporting reports or documents, and the notice of completion must be provided to the mine operator, in addition to the Department as statutorily required, within 90 days of conducting the inspection.

Original subsection (d) was removed completely. This is necessary because pertinent aspects from this original subsection (d) are now addressed in amended subsections (a) and (b) above.

§3504.5 (e) is removed. This subsection is necessary for removal completely because of duplication of statute. PRC §2774 (b)(1) states the operator shall be solely responsible for the reasonable cost of the inspection.

§3504.5 (f) is removed. This subsection is necessary for removal completely because it gives specific examples of evaluations that may be included in surface mine inspections. Aspects and/or conditions of mining operations may be complex and beyond the knowledge of one individual, thereby requiring the knowledge, experience, and/or professional expertise of a variety of California state-licensed persons or specialists as mentioned above in amended subsection (a). In 2013, the Surface Mining Inspection Report was revised and expanded to address these aspects and/or conditions, required by original subsection (f), for those California state-licensed persons or specialists conducting the inspection. This is necessary to ensure these aspects and/or evaluations are performed in accordance with the California Business and Professions Code.

§3504.5 (g) is amended and now removed. This is necessary for removal because pertinent aspects of original subsection (g) are now found in amended subsection (d). See justification for amended subsection (d).

STATEMENT OF NECESSITY

Surface mines have been statutorily required to be inspected annually, since 1991, in order to ensure mine operators are complying with their permits, conditions of approval that relate to reclamation plans, and SMARA. The proposed amended regulatory language is necessary to ensure there is uniformity in the scope, nature, and adequacy of annual mine inspections as well as to address the statutory changes to PRC §2774 and goals of AB 1142 (Gray).

IDENTIFICATION OF TECHNICAL / THEORETICAL / EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS UPON WHICH THE SMGB HAS RELIED

No studies or reports have been relied upon by the SMGB in preparing the proposed amended regulatory text.

CEQA COMPLIANCE

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

ECONOMIC IMPACT ASSESSMENT

Currently, surface mining operations are statutorily required to be inspected on an annual basis. The SMGB notes that the proposed amended regulatory language follows specific changes made to PRC §2774, by the Legislature, in regards to conduct of annual mine inspections as discussed above – and does not establish additional requirements for inspections.

In accordance with Government Code Section 11346.3(b) the SMGB has made the following assessments regarding the proposed amended regulation:

The SMGB does not anticipate the proposed amended regulation would have an impact on the creation of new, or the elimination of existing, jobs within California.

The SMGB does not anticipate the proposed amended regulation would have an impact on the creation, expansion, or elimination of new or existing business within California.

The SMGB does not anticipate the proposed amended regulation would have an impact on the expansion of businesses currently doing business in California.

The SMGB anticipates the proposed amended regulation would continue to benefit the health and welfare of California residents, worker safety, and the state's environment. Annual inspections are statutorily required and specifically intended to ensure that mined lands are continually on the correct path to be reclaimed to a usable condition which is readily adaptable for alternative land uses. Annual inspections are intended to prevent or minimize adverse environmental effects of surface mines and play a vital role in ensuring compliance with other environmental laws.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The SMGB anticipates that the proposed amended regulation does not have a significant adverse economic impact directly affecting business as the inspection process is currently a statutory requirement. Annual inspections have been statutorily required since 1991 and revisions to PRC §2774, amended by AB 1142 (Gray), require surface mining operations to be inspected to determine whether the operation is in compliance with their permits, conditions of approval that relate to reclamation plans, and SMARA. No additional requirements for inspections are established by the regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE SMGB REASONS FOR REJECTING THOSE ALTERNATIVES

Without amending CCR §3504.5, a proposed alternative of taking no action would result in unnecessary and potentially confusing provisions of existing regulatory requirements remaining in publication and be contrary to PRC §2774.

A proposed alternative of removing CCR §3504.5 in its entirety was considered by the SMGB. Much of the information in current CCR §3504.5 is now in statute (AB 1142 Gray) and/or maybe more appropriate for removal in future regulatory actions. The SMGB rejected this alternative and ultimately determined to make specific, clarify, and interpret portions of PRC §2774 pertaining to qualified lead agency employees, aspects of mine inspections requiring California state-licensed persons or specialists, expanded education of inspectors, ethical responsibilities of mine inspectors, and content and distribution of the annual mine inspection report.

No alternatives have been proposed that would lessen any adverse impact on small business.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

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, and the SMGB, SMARA and its implementing regulations and federal law are coordinated to eliminate duplication.