



# STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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## Surface Mining Operation Annual Reporting Fees Calculation

# 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: July 1, 2016

Office of Administrative Law Notice File Number: Z-2016-0621-07

**NOTICE IS HEREBY GIVEN** that the State Mining and Geology Board (SMGB), pursuant to the authority in Section 2207(d) of the Public Resources Code (PRC), proposes to amend existing regulations in Title 14 of the California Code of Regulations (CCR) after considering all comments, objections or recommendations regarding the proposed action.

### PROPOSED REGULATORY ACTION

The SMGB proposes to amend Section 3698 in Title 14 of the CCR. This section pertains to the calculation of annual fees currently imposed on surface mining operations as required by PRC Section 2207.

### 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](mailto: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 Regulation

**The written comment period closes at 5:00 p.m. on August 19, 2016.** The SMGB will consider only comments received at the SMGB office by that time.

Any interested person, or their authorized representative, may present statements or arguments orally or in writing relevant to the proposed action at a public hearing to be held at the following time and place:

Location: John Muir Conference Room  
801 K Street, Suite 2016  
Sacramento, California 95814

Date: **August 17, 2016**

Time: **1:00PM to 5:00PM**

### **AUTHORITY AND REFERENCE**

The SMGB proposes to implement, interpret, and make specific Sections 2207(d)(1), 2207(d)(2)(A), 2207(d)(2)(B) and 2207(d)(3) of the Public Resources Code that gives authority to the SMGB to impose annual reporting fees upon each active or idle mining operation. Pursuant to the authority vested by Section 2207(d) of the Public Resources Code, the SMGB is considering changes to Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations as follows: amendment of Section 3698.

### **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). Until Fiscal Year (FY) 2017-18, the total revenue generated by the reporting fees is restricted to \$3,500,000 with allowance for this amount to be adjusted for the cost of living beginning with the 2005-2006 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 collection or under collection of revenues.

In an effort to address several issues under SMARA, on April 18, 2016, the Governor signed two SMARA reform bills (AB 1142 and SB 209) into law. In anticipation of the effect that AB 1142 and SB 209 would have on the mining operation annual report fee schedules to be in effect on July 1, 2017, 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. Streamlining the method of calculating the reporting fees will provide an equitable fee schedule for all mining operations.

A further consequence of SB 209 is the adjustment of the previous maximum annual reporting fee of \$4,000. SB 209 stipulates the maximum annual fee would increase by three steps over three years starting with FY 2017-18. This affects CCR Section 3698 directly because sections of the regulation specifically refer to the maximum annual reporting fee as set to \$4,000. The SMGB is proposing to change the language pertaining to any reference of the \$4,000 maximum reporting fee and simply replace it with a reference to the maximum fee in PRC Section 2207.

#### Existing Law

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:

Current Year Reporting Fee = Prior Year Reporting Fee times (1 + Factor)

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

Current Year Reporting Fee = Prior Year Reporting Fee times (1 – Factor)

### Proposed Action

The intended purpose of the proposed rulemaking is to bring the regulation into conformance with the recently amended language of PRC section 2207, eliminate potential for confusion when calculating annual fees paid by mine operators, and provide an avenue for the most equitable fees based on the maximum reporting fee increase resulting from the passage of SB 209.

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, which will increase during the next three fiscal years as a result of the passage of SB 209.

The proposed rulemaking would delete "Formula 2" from CCR section 3698, as well as all references to "Formula 2" within CCR section 3698.

The proposed rulemaking would also delete references to annual adjustments beginning in the 2005-2006 fiscal year in line with the recently revised PRC section 2207.

### **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 amendment does not significantly change the structure of the existing fees calculation regulation which was developed through consultation with other state agencies with authority over aspects of surface mining operations. The proposed regulatory change is intended to dovetail with other state agencies jurisdictional requirements. The proposed regulatory change is not inconsistent or incompatible with existing state regulations.

### **CEQA COMPLIANCE**

This proposed regulatory amendment follows statutory changes approved by the Legislature and signed into law by the Governor (SB 209) on April 18, 2016. The proposed amended regulatory language will not result in direct or indirect physical changes to the environment. As such, 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).

### **PLAIN ENGLISH REQUIREMENT**

The SMGB staff prepared the proposed regulation changes pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Sections 11342.580 and 11346.2 (a)(1). The proposed regulations are written to be easily understood by the parties that will use them.

### **LOCAL MANDATE**

This proposal does not impose a mandate on local agencies or school districts.

### **FISCAL IMPACT**

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost or savings on local agencies. This proposal does not result in any cost or savings in federal funding to the State.

### **COST OR SAVINGS TO STATE AGENCIES**

The proposed amended regulation imposes no savings or additional expenses to state agencies.

### **EFFECT ON HOUSING COSTS**

The adoption of this amended regulation will have no significant effect on housing costs.

## **IMPACT ON BUSINESS**

Department and SMGB staff has made an initial determination that the adoption of these regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed amended regulations follow statutory changes approved by the Legislature and that were signed into law by the Governor (SB 209).

### **COST IMPACTS ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS**

The SMGB originally drafted CCR section 3698 in 1991 as an emergency regulation following implementation of PRC section 2207 which requires the imposition of annual fees and the adoption of a fee schedule for surface mining operations. The SMGB subsequently amended the regulation six times from 1992 through 2004. The SMGB drafted the proposed amendment based on the requirements of SB 209, which incrementally increases the maximum annual fee for mining operations from \$4,000 to \$10,000 over the next three years. A representative private person or business will not be adversely impacted with the adoption of these regulatory changes. Conversely, a representative private person or business may experience decreased annual costs due to the proposed simplification of the fees calculation formula.

### **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The proposed regulations satisfy the SMGB's statutory mandate to impose annual fees upon surface mining operators, and to establish a fee schedule on an equitable basis reflecting the size and type of the operation. Further, imposition of equitable annual mine fees ensures that the Department and SMGB are able to carry out the provisions of SMARA which include protection and utilization of key mineral resources and reclamation of mined lands. The proposed amended regulation meets the statutory goals of SB 209 by allowing for increased maximum annual fees for larger operations, while streamlining and simplifying fees calculation and potentially lowering annual fees for smaller operations. SMGB staff has determined that the proposed amended regulation will not result in the creation or elimination of California jobs, nor will it result in the creation or elimination of California businesses. Additionally, SMGB staff has determined that expansion of existing California businesses will not result from adoption of the proposed amended regulation. Further, Department and SMGB staff have determined that the proposed regulatory amendment will result in nonmonetary benefits such as protection of public health and safety, environmental safety, and transparency in business and government. Specifically, the benefits are as follows:

- The public will be ensured of sufficient and reliable private funding for State oversight of local implementation of surface mining law.

- Increased mine fees will stabilize existing Department and SMGB statewide programs that protect and conserve mineral resources while assuring effective reclamation of mined lands.
- Mine operators will be provided with clear and equitable methods for calculation of ongoing annual fees.

### **FINDING OF NECESSITY OF REPORTS**

SMGB staff has found that the proposed amendment is necessary to implement fair and effective regulation of the annual fee calculation of surface mines. Annual fees 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.

### **SMALL BUSINESS DETERMINATION**

The proposed amended regulations follow statutory changes approved by the Legislature and that were signed into law by the Governor (SB 209). Further, adoption of the proposed amended regulation may allow for a lowering of annual fees for relatively smaller mining operations within the state during certain years, and this has not been possible in the past. Therefore, SMGB staff has determined that the proposed regulations will not adversely affect small businesses.

### **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:

Will Arcand, Senior Engineering Geologist  
State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, California 95814  
Phone: (916) 322-1082  
Fax: (916) 445-0738  
[Will.Arcand@conservation.ca.gov](mailto:Will.Arcand@conservation.ca.gov)

OR

Amy Scott, Executive Assistant  
State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, CA 95814  
Phone: (916) 322-1082  
Fax: (916) 445-0738  
[Amy.Scott@conservation.ca.gov](mailto:Amy.Scott@conservation.ca.gov)

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

#### **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.

Copies of these documents may be obtained by contacting Will Arcand at the address and phone number listed above.

#### **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 Will Arcand 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 Will Arcand or Amy Scott 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>