

**STATE MINING AND GEOLOGY BOARD**

D E P A R T M E N T O F C O N S E R V A T I O N

801 K Street • Suite 2015 • Sacramento, California 95814

PHONE: 916 / 322-1082 • FAX: 916 / 445-0738 • TDD: 916 / 324-2555 • INTERNET: conservation.ca.gov/smgb**GIDEON KRACOV, CHAIR****STEPHANIE LANDREGAN, VICE CHAIR****ZIA ZAFIR****BRIAN ANDERSON****NEGAR NOUSHKAM****GEORGE KENLINE****SANDRA POTTER****Surface Mining Operation Annual Inspections****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 1. Surface Mining and Reclamation Practice**

Notice Published: April 28, 2017

Office of Administrative Law Notice File Number: Z2017-0418-01

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

PROPOSED REGULATORY ACTION

The SMGB proposes to amend §3504.5 of Article 1 of the California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1 pertaining to conduct of annual surface mine inspections.

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: Annual Inspections

The written comment period closes at 5:00 p.m. on June 12, 2017. The SMGB will only consider 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 is proposing to amend §3504.5 of Article 1, Title 14, Division 2, Chapter 8, Subchapter 1 of the CCR pursuant to the authority granted in the Surface Mining and Reclamation Act (SMARA, Public Resources Code (PRC) §2710 et seq., and specifically PRC §2755) to implement, interpret, or make specific PRC §2774.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

This rulemaking action clarifies and makes specific the conduct of annual mine inspections for surface mining operations required by PRC §2774.

SMARA was enacted to ensure that any significant adverse impacts of mining to the environment are prevented or mitigated and public health and safety are protected. Under SMARA, surface mining operators are required to submit to their respective lead agencies for approval, a plan for reclaiming lands disturbed by mining activities, as well as proof of financial assurances, to ensure that those disturbed lands are reclaimed in accordance with the approved reclamation plan. Lead agencies are responsible for ensuring their surface mining operators are in compliance with SMARA's permit, conditions of approval that relate to the reclamation plan, and financial assurance requirements. The Department of Conservation (Department) and the SMGB provide lead agency assistance and oversight. Currently, the SMGB administers certain lead agency responsibilities under SMARA for 38 individual surface mining operations by conducting annual inspections, reviewing and approving financial assurance cost estimates, and undertaking compliance and enforcement actions when deemed necessary.

Currently, 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 proposed amended regulation would ensure inspections are conducted by California state-licensed persons or qualified lead agency employees, would clarify the term “qualified lead agency employee,” and would make specific that those conducting inspections seek input from a California state-licensed person or specialist when an aspect or condition requires such. Additionally, it would include contract employees and those hired pursuant to third-party contracts to adhere to the ethical responsibilities of mine inspectors, and expand the timeframe of when the completed inspection notice is provided to the Department and mine operator.

Anticipated Benefits of the Proposed Regulation

The broad objective of the proposed amended regulatory language is to make procedural improvements and updates to the conduct of annual mine inspections based on statutory changes to PRC §2774. The proposed amended regulation is intended to provide non-monetary benefits such as protection of public health and safety, worker safety, and the environment as well as improve the integrity of statutorily required annual inspections.

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

Currently there are no other regulations pertaining to annual inspections for surface mining operations. The proposed amended regulatory language is not inconsistent or incompatible with existing regulations.

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).

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 cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

Small business determination: The proposed amended regulatory language makes procedural improvements to the conduct of annual mine inspections following statutory changes to SMARA from Assembly Bill 1142 (Gray). Surface mining operations are statutorily required to be inspected on an annual basis and the proposed amended regulatory language does not establish additional requirements for the inspections. Thus, the SMGB has determined the proposed amended regulatory language may not affect small business.

Business reporting requirement: Surface mine inspections are statutorily required to be conducted annually and the findings of those inspections are provided to the lead agency, the mine operator, and the Department by way of inspection reports. The SMGB has determined these inspection reports are necessary, and should apply to mining operations, to ensure surface mining operators are in compliance with SMARA's permit, conditions of approval that relate to the reclamation plan, and financial assurance requirements as well as for the health, safety, and welfare of the people of the State.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Creation or elimination of jobs within California: The SMGB does not anticipate the proposed amended regulations would create or eliminate jobs within California.

Creation of new businesses or the elimination of existing businesses within California: The SMGB does not anticipate the proposed amended regulations would create new businesses or eliminate existing businesses.

Expansion of businesses currently doing businesses within California: The SMGB does not anticipate the proposed amended regulations would lead to the expansion of businesses currently doing business within California.

Benefits to the health and welfare of California residents, worker safety, and the state's environment: Annual inspections are statutorily required and 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. Conducting of 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.

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:

Nick Lash, Associate Governmental Program Analyst
State Mining and Geology Board
801 K Street, Suite 2015
Sacramento, California 95814
Phone: (916) 322-1082
Fax: (916) 445-0738
Nicholas.Lash@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

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 Nick Lash 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 Nick Lash 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 Nick 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 Nick 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 proposed amended text of the regulation can be accessed through our website at:

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