

Reclamation Plan and Financial Assurance Cost Estimate (FACE) Appeals Regulation Workshop

**California Department of Conservation
State Mining and Geology Board (SMGB)**

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Background and Purpose

- Brief overview of changes to the Surface Mining and Reclamation Act (SMARA) as they pertain to Reclamation Plan and FACE appeals
- Development of appeals regulations
- Obtain stakeholder input on developing Reclamation Plan and FACE appeals regulations

Desired Outcomes

- Obtain early input, suggestions and comments prior to opening formal rulemaking
- Identify any outstanding questions, issues, or challenges that need to be addressed
- Generate healthy dialogue

Prior to January 1, 2017

- **PRC Section 2770(e)** stated, “a person with evidence on the record may appeal to the SMGB the action of a lead agency if the person can substantiate the following: the lead agency failed to act according to due process, the lead agency relied on considerations not related to specific applicable requirements of Reclamation Plans and FACEs and a certified lead agency surface mining ordinance to deny approval, or the lead agency failed to act within a reasonable time of receipt.”

Current California Code of Regulations (CCR)

- **CCR Sections 3650 through 3659** were developed by the SMGB in 1989 to clarify and make specific the nature of Reclamation Plan Appeals pursuant to PRC Section 2770(e).
- **CCR Sections 3680 through 3690** were developed by the SMGB in 1991 to govern procedures for appeals concerning FACEs, pursuant to PRC Section 2770(e).

Amended PRC Section 2770 (e) – (g) Effective January 1, 2017

- **(e)(1)**: clarifies a person's right to appeal to the SMGB a lead agency's decision to deny approval of a reclamation plan or financial assurances, or failure to timely review and process an application for either.
- **(e)(2)**: creates a right for the Department of Conservation (Department) to appeal a lead agency's approval of a FACE to the SMGB **(NEW)**
 - The Department may only pursue an appeal where it submitted comments on the proposed FACE to the lead agency pursuant to PRC Section 2773.4 and stated in those comments the FACE was inadequate based on PRC Section 2773.1, CCR Sections 3800 – 3806.5, and the SMGB's financial assurance guidelines adopted pursuant to subdivision (f) of PRC Section 2773.1.

Amended PRC Section 2770 (e) – (g) Effective January 1, 2017

- **(f)(1)**: allows the SMGB to decline to hear an appeal if the appeal raises no substantial issues related to the lead agency's decision to deny the approval of the Reclamation Plan or FACE. **Also requires the SMGB to hear all appeals filed by the Department.**
- **(f)(2)**: requires the appeal hearing to be scheduled within 45 days of the filing, or a longer period mutually agreed to by the SMGB, the appellant, **and the operator**; or the SMGB, the Department, and the operator if the appeal is filed by the Department.

Amended PRC Section 2770 (e) – (g) Effective January 1, 2017

- **(g)(1)(A):** when hearing an appeal, the SMGB shall determine whether the reclamation plan or the FACE substantially meets applicable requirements of PRC Sections 2772, 2772.1, 2773, 2773.1, 2773.3, and 2773.4; Article 1, Article 9, and Article 11 of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the CCR, and the lead agency’s surface mining ordinance adopted pursuant to subdivision (a) of PRC Section 2774.
 - The SMGB shall approve or uphold a reclamation plan or FACE determined to meet those applicable requirements.
- **(g)(1)(B):** “substantially” means actual compliance in respect to the substance and form requirements essential to the objectives of this chapter.

Amended PRC Section 2770 (e) – (g) Effective January 1, 2017

SMGB's decision a Reclamation Plan does not meet applicable requirements

- **(g)(2)(A)**: requires the SMGB to grant the operator one 30 day period, or longer if mutually agreed upon by the SMGB and the operator, to correct the deficiencies and resubmit the Reclamation Plan to the lead agency for review and approval.
- **(g)(2)(B)**: requires the SMGB to provide notice of the determination via certified mail to the lead agency, the operator, and the Department within **10 days** of the hearing. Instructions for the operator to submit, to the lead agency for approval, the revised Reclamation Plan consistent with the determination must be included in the notice.

Amended PRC Section 2770 (e) – (g) Effective January 1, 2017

SMGB's decision a FACE does not meet applicable requirements

- **(g)(3)(A)**: requires the SMGB to note deficiencies and, based on the record, include adequate cost estimates for each noted deficiency.
- **(g)(3)(B)**: requires the SMGB to provide notice of the determination via certified mail to the lead agency, the operator, and the Department within **10 days** of the hearing. Instructions for the operator to submit, to the lead agency for approval, a revised FACE consistent with the determination must be included in the notice. The instructions must include a reasonable submission deadline of **not less than 30 days**.

Amended PRC Section 2770 (e) – (g) Effective January 1, 2017

- **(g)(3)(C):** requires the lead agency to approve the revised FACE and that approval shall supersede and void the prior approved FACE.
- **(g)(3)(D):** requires a financial assurance mechanism to be established by the operator pursuant to subdivision (e) of PRC Section 2773.4 following the approval of the FACE.
- **(g)(3)(E):** the failure of an operator to submit to the lead agency a revised FACE consistent with the SMGB's determination and deadline may be grounds for the issuance of an order to comply pursuant to subdivision (a) of PRC Section 2774.1.

Discussion

- 1) Are there parts of the existing Reclamation Plan and FACE appeals process that are challenging for Operators and/or Lead Agencies?

Do you have any recommendations for the existing process?

Discussion

2) Pursuant to PRC 2770 (e)(2), the Division of Mine Reclamation now has a right to appeal a Lead Agency's approval of a FACE to the SMGB.

- As an operator, are there recommendations you would like considered for this process?
- As a Lead Agency, are there recommendations you would like considered for this process?

Discussion

3) To what extent, if any, should the “consultation process,” of the FACE, be a part of the appeals process?

Discussion

4) What should the role of professional individuals, such as licensed grading contractors, licensed civil engineers, licensed surveyors, licensed geologists, licensed landscape architects, and licensed foresters be in the appeals process?

Are there specific issues, such as cut/fill volumetric analysis or revegetation, which might require analysis by a licensed professional?

Thank You for Attending!

Written submissions may be provided to the SMGB by regular mail or email at:

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