



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: November 10, 2010

Agenda Item No. 4: Consideration to Amend Form MRRC-4L to Include Idle Mines in Consideration of a Low Gross Exemption Pursuant to California Code of Regulations Section 3360(a).

INTRODUCTION: At the October 14 and November 10, 2010, meetings of the Policy and Legislation Committee (Committee), the Committee after hearing from stakeholders discussed the need to amend Form MRRC-4L to include idle mines when the Department of Conservation Office of Mine Reclamation (OMR) is considering granting of a Low Gross Exemption. Form MRRC-4L has been amended to include idle mines. The State Mining and Geology Board (SMGB) is considering approval of the amended form which is referenced in California Code of Regulations (CCR) Section 3699(a).

CURRENT STATUTORY AND REGULATORY AUTHORITY: In regards to permitting, the following statutory and regulatory constraints exist:

Idle Mines are defined in statute. Public Resources Code (PRC) Section 2727.1 defines an idle mine as:

“Idle” means to curtail for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.”

California Code of Regulations (CCR) Section 3698 pertains to annual fees calculations for all surface mining operations in California. CCR Section 3699 addresses criteria when considering granting of a Low Gross Exemptions and states:

“(a) For the calendar reporting year, a single operator or mining company may file with the Office of Mine Reclamation of the Department of Conservation, a written request for an exemption from the method of fee assessment set forth in Section 3698. Neither the State, nor any county, city, district or other political subdivision shall be eligible for an exemption under this Section. A request for an exemption must be filed on a form (Low Gross Exemption Fee Request, Form MRRC-4L) supplied by the Department of Conservation and received by the Department of Conservation by July 1 following the calendar reporting year. The Department of Conservation shall grant the exemption if information submitted and confirmed by the annual report form and approved reclamation plan, clearly demonstrates that the operation meets the following criteria:

(1) material is extracted from one surface mining operation, and lead agency approval of a reclamation plan and financial assurance has been obtained; and



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(2) all of the single operator or mining company's surface mining operation located in the State of California is tied to, or located on, one site; and

(3) the amount of the operator's gross income from the surface mining operation for the reporting calendar year was less than \$100,000, and proof of gross income is supplied in the form of a signed federal tax return or returns accompanied by a completed and signed Federal Internal Revenue Service Form 4506, or a report prepared and signed by a certified public accountant; and

(4) the owner or operator has submitted an annual reporting fee of four hundred dollars (\$400) as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.”

“Form MRRC-4L (Exhibit A) states “Non-Governmental operators with only one surface mining operation in the State (operation must be active) which had a gross income of less than \$100,000 for the 2009 reporting period may qualify for a reduced reporting fee of \$467, if answers to ALL of the following questions are “YES”, and this form is submitted by July 1, 1010.”

BACKGROUND: The consideration of a low gross exemption currently is restricted to active mines as noted on Form MRRC-4L (Exhibit A). An amendment to this form is proposed to allow for idle mines to be included by the Department of Conservation (DOC) Office of Mine Reclamation (OMR) when considering granting of a Low Gross Exemption.

SMARA and PRC Section 2710 et seq. was enacted to ensure that significant adverse impacts of mining to the environment are prevented or mitigated, and public health and safety are protected. Pursuant to PRC Section 2207 et seq., the SMGB imposes by regulation a reporting fee on, and method for collecting annual fees from each active or idle mining operation. Operators of surface mine sites report annually to the OMR. The SMGB has adopted by regulation a schedule of fees to cover the cost of the DOC in carrying out this section. Most importantly, fees are to be calculated on an equitable basis reflecting the size and type of operation, and the SMGB can also consider total assessed value of the mining operation, the acreage disturbed by mining activities, and the acreage subject to the reclamation plan.

Fee calculations are provided in regulation and are adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages (CCR Section 3698). CCR Section 3699 allows the DOC to grant for a Low Gross Exemption from the DOC if information submitted and confirmed by the annual report form and approved reclamation plan, clearly demonstrates that the operation meets the following criteria:

- (1) Material is extracted from one surface mining operation, and lead agency approval of a reclamation plan and financial assurance has been obtained;
- (2) All of the single operator or mining company's surface mining operation located in the State of California is tied to, or located on, one site;



- (3) The amount of the operator's gross income from the surface mining operation for the reporting calendar year was less than \$100,000, and proof of gross income is supplied in the form of a signed federal tax return or returns accompanied by a completed and signed Federal Internal Revenue Service Form 4506, or a report prepared and signed by a certified public accountant; and
- (4) The owner or operator has submitted an annual reporting fee of four hundred dollars (\$400) as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.

A request for a Low Gross Exemption from the method set forth in CCR Section 3698 must be filed on a for (Low Gross Exemption Fee Request, Form MRRC-4L). Form MRRC-4L (Exhibit A) states *“Non-Governmental operators with only one surface mining operation in the State (operation must be active) which had a gross income of less than \$100,000 for the 2009 reporting period may qualify for a reduced reporting fee of \$467, if answers to ALL of the following questions are “YES”, and this form is submitted by July 1, 1010.”*

Idle mines are those mine that have curtailed for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date. By definition, idle mines can be deemed analogous to a surface mine operation producing a low gross income of less than \$100,000. Thus, allowing the OMR to include idle mines when considering granting of a Low Gross Exemption is reasonable, equitable, and considers the total assessed value of the mining operation, assuming full compliance with all other criteria and requirements set forth for such considerations.

POLICY STATEMENT OVERVIEW: The proposed language in the amended regulation would allow the DOC to consider granting of a low gross exemption for both active and idle mines. This regulation is necessary in order to provide a fee schedule that is reasonable, equitable, and considers the size and type of operation, and total assessed value of the mining operation, assuming full compliance with all other criteria and requirements set forth for such considerations, pursuant to PRC Section 2207(d)(2)(A). Specifically, this regulation addresses CCR Section 3399(a).

CEQA COMPLIANCE: The SMGB has determined that this rule making action is not a project as defined in the California Environmental Quality Act (CEQA) and is exempt from the requirements of CEQA, Title 14, CCR, Section 15061(b)(3), no possibility of a significant effect on the environment.

DISCLOSURES REGARDING THE PROPOSED ACTION: The SMGB's Executive Officer has made the following preliminary determinations:

Mandate on local agencies and school districts: The adoption of this amended regulation does not impose any new mandates on local agencies or on local school districts.

Costs or savings to any State agency: The proposed amended regulation imposes no savings or additional expenses to state agencies.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: The proposed amended regulation does not impose any additional cost obligations on local agencies or on local school districts.

Other non-discretionary costs or savings imposed upon local agencies: No other non-discretionary costs or savings to local agencies are imposed by the proposed amended regulation.

Cost or savings in Federal funding to the State: There are no costs or savings in Federal funding to the State.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: No statewide adverse impacts to California businesses result from the adoption of this proposed amended regulatory language.

Potential cost impact on private persons or directly affected businesses: The imposition of the proposed amended language on a directly affected local mining operation will have a positive cost impact to that operation by reducing the annual fee cost for those surface mining operations deemed idle as defined pursuant to SMARA PRC Section 2727.1.

Creation or elimination of jobs in California: The adoption of this amended regulation will not:

- Create nor eliminate jobs within California;
- Create new nor eliminate existing businesses within California;
- Expand businesses currently doing business in California.

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

Effects on small businesses: The imposition of the proposed amendment will have a positive cost impact on certain surface mining operations by reducing the annual fee cost for those surface mining operations deemed idle as defined pursuant to SMARA PRC Section 2727.1.

CONSIDERATION OF ALTERNATIVES: The SMGB must determine that no reasonable alternative that it considers 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, or would be as effective and less burdensome to affected private persons than the proposed action. The SMGB's Executive Officer has not identified any adverse impacts resulting from the proposed regulation.

No alternatives have been considered by the SMGB at this time that would be more effective in carrying out the purpose for which the regulatory action is proposed, nor have any other alternatives been proposed that would be as effective and less burdensome to affected private persons, lead agencies, or small businesses.

CONFLICT 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 of Conservation, and the SMGB, SMARA and federal law are coordinated to eliminate duplication.

SPECIFIC PURPOSE: The proposed amended regulatory language is intended to allow the DOC to consider idle mines when considering granting of a Low Gross Exemption.

STATEMENT OF NECESSITY: PRC Section 2755 provides the SMGB the authority to adopt regulations that establish state policy for the reclamation of mined lands in accordance with Article 1 (commencing with Section 2710) of this chapter and pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The SMGB has adopted by regulation a schedule of fees to cover the cost of the DOC OMR in carrying out this section. Most importantly, fees are to be calculated on an equitable basis reflecting the size and type of operation, and the SMGB can also consider total assessed value of the mining operation, the acreage disturbed by mining activities, and the acreage subject to the reclamation plan. Currently, a surface mine must be active when the DOC OMR is considering granting of a Low Gross Exemption. Currently, idle mines are not included and thus, create an inequitable basis when considering such exemptions. By including idle mines as part of this consideration, fees for such operations will be equitable statewide.

IDENTIFICATION OF TECHNICAL / THEORETICAL / EMPIRICAL STUDY, REPORTS, OR DOCUMENTS UPON WHICH THE SMGB HAS RELIED: In order to determine the range, diversity, and purpose for including idle mines for a Low Gross Exemption, the SMGB's Policy and Legislative Committee held a public hearing on held a public hearing on October 14, 2010, to receive preliminary public comment to clarify and discuss the nature of the financial inequity to surface mining operations that are considered idle and thus, cannot presently be considered for a Low Gross Exemption. The Committee heard from stakeholders including surface mining operators, the California Construction and Industrial Materials Association (CalCIMA), OMR, and other stakeholders.

EXECUTIVE OFFICER'S RECOMMENDATIONS: The Executive Officer's offers the following amendment (addition) to regulatory language (underlined) provided on Form MRRC-4L.

"Form MRRC-4L (Exhibit A) states "Non-Governmental operators with only one surface mining operation in the State (operation must be active or idle) which had a gross income of less than \$100,000 for the 2009 reporting period may qualify for a reduced reporting fee of \$467, if answers to ALL of the following questions are "YES", and this form is submitted by July 1, 1010."

It is the Executive Officer's opinion that notwithstanding 14 CCR Section 3699, a single operator or mining company that is declared idle pursuant to PRC Section 2727.1, and all regulations of the SMGB, should qualify, on a calendar basis, for the annual gross

exemption, pursuant to all of the provisions of 14 CCR Section 3699 regulations, provided that the DOC determines that the operator of the surface mining operation is in compliance with all applicable provisions of this chapter, and its implementing regulations, including the provisions of an interim management plan (IMP).

The Executive Officer thus recommends that the SMGB approve the following: (1) idle mines be considered by the DOC when considering granting of a Low Gross Exemption; (2) idle mines must be in compliance with all other criteria and requirements as set forth pursuant to SMARA and the SMGB's regulations; and, (3) approve the proposed amendment language for adoption by the normal rulemaking process.

SUGGESTED MOTION LANGUAGE: (Three motions are requested)

Motion No. 1 - To approve the inclusion of idle mines for Low Gross Exemption Considerations:

Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board approve the inclusion of idle mines for Low Gross Exemption considerations by the Department of Conservation Office of Mine Reclamation when implementing Chapter 2 and Chapter 9 (SMARA) of the Public Resources Code Section 2207 and California Code of Regulations Section 3699.

Motion No. 2 - To recommend approval for inclusion of idle mines on Form MRRC-4L:

Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board approve the inclusion of idle mines on Form MRRC-4L for Low Gross Exemption considerations by the Department of Conservation Office of Mine Reclamation when implementing Chapter 2 and Chapter 9 (SMARA) of the Public Resources Code Section 2207 and California Code of Regulations Section 3699.

Motion No. 3 - To recommend approval of the proposed regulatory language:

Mr. Chairman, in light of the information before the Policy and Legislation Committee today, I move that the Board approve the proposed regulatory language amending Form MRRC-4L pursuant to its authority under PRC Section 2207 et seq. and PRC Section 2755, and instruct the Executive Officer to commence the rulemaking process.

PROPOSED REGULATION TEXT:

CCR Section 3699(a) – Low Gross Exemption

§ 3699. Low Gross Exemptions.

(a) For the calendar reporting year, a single operator or mining company may file with the Office of Mine Reclamation of the Department of Conservation, a written request for an exemption from the method of fee assessment set forth in Section 3698. Neither the State, nor any county, city, district or other political subdivision shall be eligible for an exemption under this Section. A request for an exemption must be filed on a form (Low Gross Exemption Fee Request, Form MRRC-4L) supplied by the Department of Conservation and received by the Department of Conservation by July 1 following the calendar reporting year. The Department of Conservation shall grant the exemption if information submitted and confirmed by the annual report form and approved reclamation plan, clearly demonstrates that the operation meets the following criteria:

Form MRRC-4L (Exhibit A) states “Non-Governmental operators with only one surface mining operation in the State (operation must be active or idle) which had a gross income of less than \$100,000 for the 2009 reporting period may qualify for a reduced reporting fee of \$467, if answers to ALL of the following questions are “YES”, and this form is submitted by July 1, 1010.

Note: Authority: Public Resources Code Sections 2207 et seq. and 2755.

Respectfully submitted:

Stephen M. Testa
Executive Officer