



State of California • Natural Resources Agency
Department of Conservation
Division of Mine Reclamation
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Edmund G. Brown Jr., *Governor*
Pat Perez, *Supervisor*

NOTICE OF PROPOSED RULEMAKING ACTION

GUIDANCE DOCUMENT FOR SURFACE MINE INSPECTORS

DEPARTMENT OF CONSERVATION DIVISION OF MINE RECLAMATION

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: July 28, 2017

Office of Administrative Law Notice File Number: Z2017-XXXX-XX

NOTICE IS HEREBY GIVEN that the Department of Conservation (Department), through the Division of Mine Reclamation (DMR) proposes to adopt the regulation described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The DMR proposes to adopt §3504.6 of Article 1 of the California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1 and adopt a Guidance Document for Surface Mine Inspectors (Guidance Document). This section and document pertain to the DMR's establishment of a training program for all surface mine inspectors as required by Public Resources Code (PRC) section 2774(e).

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 DMR. Comments may be submitted by email to DMR-submittals@conservation.ca.gov, by facsimile (FAX) to (916) 322-4862, or by mail to:

Division of Mine Reclamation
ATTN: Guidance Document
801 K Street, MS 09-06
Sacramento, CA 95814

The written comment period closes at 5:00 p.m. on September 11, 2017. The DMR will only consider comments received at the DMR office by that time.

The DMR 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 DMR is proposing to adopt §3504.6 of Article 1, Title 14, Division 2, Chapter 8, Subchapter 1 of the CCR and a Guidance Document for Surface Mine Inspectors to support an inspector training program, pursuant to the authority granted in the Surface Mining and Reclamation Act (SMARA, Public Resources Code (PRC) §2710 et seq., specifically PRC §2774(e)).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Assembly Bill 1142 (Gray, Chapter 7, Statutes of 2016) (AB 1142), signed by Governor Brown on April 18, 2016, requires the Department to establish a training program for all surface mine inspectors that includes a guidance document providing instructions and recommendations to surface mine inspectors.

Proposed Regulation and Guidance Document

The purpose of CCR section 3504.6 is to establish that the Guidance Document for Surface Mine Inspectors shall function as the basis for the DMR's inspector training program and will provide the instructions and recommendations to surface mine inspectors. This is necessary to meet the statutory requirements of PRC section 2774(e) (AB 1142), which requires the Department to develop the Guidance Document and an Inspector Training Program (ITP) by December 31, 2017.

Guidance Document for Surface Mine Inspectors, Incorporated by Reference

The Guidance Document is intended to provide instructions and recommendations to inspectors performing inspections pursuant to PRC section 2774(b). The ITP will include inspection workshops, offered by DMR in different regions of the state, where practical application of the Guidance Document's material will be presented. Mine inspections must be conducted by an inspector who has on file with the Lead Agency and the Department, a certificate of completion of an inspection workshop on or after July 1, 2020.

The Guidance Document addresses:

- The types of professionals authorized to conduct an inspection, and who must attend the ITP.

- Lead Agency responsibilities when conducting an inspection.
- Recommendations for scheduling an inspection.
- Legislative intent related to the overall goals and objectives of SMARA when conducting an inspection.
- The extensive preparation that must be completed prior to an inspection, including the review of the mine's administrative record. This record includes the approved reclamation plan, reference maps, annual reports, financial assurances, previous inspection reports and any pending enforcement actions and associated notices of violations or orders to comply.
- Recommendations for inspectors conducting an inspection, including what to bring to the inspection and what to observe and document during the inspection.
- Recommendations and requirements following the inspection.
- Filing of the Inspection Report and Notice of Completion of Inspection after the inspection has been completed.
- A summary of the requirements for inspectors to participate in the ITP.

Anticipated Benefits of the Proposed Regulation and Guidance Document

Under SMARA, Lead Agencies are required to conduct regular inspections of all surface mining operations within their jurisdiction, and 90 days after the inspection, send a completed inspection form and notice of inspection to the Department. However, prior to AB 1142, there was no formal mine inspection training program. The DMR had conducted informal inspection training workshops to assist Lead Agencies and their inspectors, but these workshops were only offered as a courtesy and were not required by statute. The implementation of a standardized, statewide training program, which includes the Guidance Document for Surface Mine Inspectors, will ensure that Lead Agencies consistently review the physical and administrative conditions of surface mining operations (SMOs) and determine the SMO's compliance with SMARA. The Guidance Document provides instructions and recommendations for inspectors to follow before, during, and after the conduct of all inspections. This includes review and confirmation of: compliance with the approved reclamation plan; compliance with pending orders to comply, if any; compliance with minimum acceptable surface mining practices for soil erosion control, water quality and watershed control, protection of fish and wildlife habitat, disposal of mine waste rock and overburden, erosion and drainage, and resoiling and revegetation when called for; assessing the reported status of SMO and reclamation; assessing the status of financial assurance cost estimates; and, assessing other conditions, if any, that preclude the SMO from achieving reclamation in accordance with the approved reclamation plan. A standardized, statewide training program should also result in a more consistent and uniform approach to the conduct of mine inspections and provide confidence to the public that surface mining operations are being properly inspected on a regular basis. A formalized Guidance Document will serve as an ongoing reference tool following attendance of required training workshops that mine inspectors can rely upon for all inspections. Better trained mine inspectors should result in an increased level of compliance with SMARA,

resulting in better protection of the public's health and safety as well as minimizing or avoiding the adverse environmental effects of mining.

CONSISTENCY WITH FEDERAL STATUTE AND REGULATION

This regulation 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 State Mining and Geology Board (SMGB), SMARA and federal law are coordinated to eliminate duplication.

CONSISTENCY WITH EXISTING STATE REGULATIONS

The proposed regulation and Guidance Document do not change the requirements of the existing inspection process described in PRC section 2774. The proposed regulatory change is not inconsistent or incompatible with existing state regulations.

CEQA COMPLIANCE

The DMR has determined that this rulemaking 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 DMR has made the following initial determinations:

Mandate on local agencies and school districts: None. The mandate for local government staff to attend ITP was established by AB 1142, not by this proposed regulation.

Cost or savings to any state agency: None.

Cost to any local agency or school district that 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 DMR 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 regulatory language incorporates by reference the Guidance Document for Surface Mine Inspectors as the documents required for the DMR's ITP. Surface mining operations are statutorily required to be inspected on an annual basis, and the proposed regulatory language and Guidance Document do not establish additional requirements for inspections. Thus, the DMR has determined the proposed regulatory language will 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 DMR by way of inspection reports. The proposed regulatory language and the Guidance Document do not establish additional requirements for inspections. Thus, the DMR has determined the proposed regulatory language may not affect business reporting requirements.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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

Expansion of businesses currently doing business within California: The DMR 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 that is readily adaptable for alternative land uses. The ITP and Guidance Document will encourage consistent application of SMARA through trained inspectors.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the DMR must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the DMR 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 DMR 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:

Paul Fry, Senior Geologist
Division of Mine Reclamation
801 K Street, MS 09-06
Sacramento, CA 95814
Phone: (916) 324-0681
Fax: (916) 322-4862
Paul.Fry@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 Paul Fry at the above address.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE

The DMR 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 Paul Fry 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 DMR to accept comments and evidence regarding the adoption of the proposed regulation, the DMR will consider all timely and relevant comments received. Thereafter, the DMR may adopt the proposed regulation substantially as described in this notice. If the DMR 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 DMR adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Paul Fry at the address indicated above. The DMR

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 Paul Fry 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 webpage at:

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