



NOTICE OF PROPOSED RULEMAKING ACTION

NATURAL RESOURCES AGENCY STATE MINING AND GEOLOGY BOARD

CALIFORNIA CODE OF REGULATIONS TITLE 14. NATURAL RESOURCES Division 2. Department of Conservation Chapter 8. Mining and Geology Subchapter 1. State Mining and Geology Board Article 5. Reclamation Plan Appeals

Notice Published: **November 1, 2019**

Office of Administrative Law Notice File Number: **Z-2019-1017-01**

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

PROPOSED REGULATORY ACTION

The SMGB proposes to amend sections 3650 – 3659 of the California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1, Article 5, pertaining to the reclamation plan appeals process as provided for in Public Resources Code (PRC) Section 2770, subdivisions (e) through (g).

WRITTEN COMMENT PERIOD AND PUBLIC HEARING

Any person, or an 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 or by mail to:

State Mining and Geology Board
801 K Street, MS 20-15
Sacramento, CA 95814
ATTN: Reclamation Plan Appeals

The written comment period closes on December 16, 2019. The SMGB will only consider comments received at the SMGB office by that time.

Pursuant to Government Code (GC) section 11346.8, the SMGB will hold a public hearing if it receives a written request for a public hearing from any interested person, or an authorized representative, no later than 15 days before the close of the written comment period.

AUTHORITY AND REFERENCE

The SMGB is proposing to amend sections 3650 – 3659 of Title 14, Division 2, Chapter 8, Subchapter 1, Article 5 of the CCR pursuant to the authority granted in the Surface Mining and Reclamation Act of 1975 (SMARA), Public Resources Code (PRC) section 2710 et seq., specifically PRC sections 2755 and 2759 to implement, interpret, and make specific PRC section 2770(e)-(g).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

On April 18, 2016, Governor Brown signed Assembly Bill (AB) 1142 (Gray) into law and thereby enacted significant reform to SMARA. To enact the revisions to SMARA, SMGB must address these changes by way of regulations.

SMARA was enacted in part 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 local governments (lead agency) 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 follow SMARA's requirements, including permitting and conditions of approval that relate to the conduct of mining, the operation's reclamation plan, and financial assurance requirements.

The Department of Conservation's (DOC), Division of Mine Reclamation (DMR) 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 inspections, reviewing and approving financial assurance cost estimates, and undertaking compliance and enforcement actions when necessary.

Existing Law

PRC section 2733 provides that "reclamation" means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a useable condition that is readily adaptable for alternate land uses and create no danger to public health and safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, slope stabilization, or other measures.

PRC section 2770(a) provides the requirements to conduct surface mining operations within the State of California. A person shall not conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation.

PRC section 2770(e)(1) provides an reclamation plan appeals process to the SMGB for a person who can substantiate, based on evidence in the record, that the lead agency has either (1) failed to act

according due process or has relied on considerations not related to the specific applicable requirements of PRC sections 2773.1, 2773.4, and the lead agency surface mining ordinance adopted pursuant to PRC section 2774(a) in reaching a decision to deny approval of a reclamation plan, or (2) failed to act within a reasonable time of receipt of a completed application, may appeal that action or inaction to the SMGB.

PRC section 2770(f)(1) provides that the SMGB may decline to hear an appeal if it determines that the appeal raises no substantial issues related to the lead agency's decision to deny the approval of a reclamation plan, or the timeliness in reviewing a completed application.

PRC section 2770(f)(2) provides that if the SMGB takes up an appeal, the appeal shall be scheduled and heard at a public hearing within 45 days of the SMGB's receipt of a complete administrative record, or a longer period as may be mutually agreed to by the SMGB, the appellant, and the operator, or, if the appeal is filed by DMR, by the SMGB, DMR, and the operator.

PRC section 2770(g)(1)(A) provides that when hearing an appeal filed pursuant to PRC section 2770(e)(1) or (e)(2), the SMGB must determine whether the reclamation plan substantially meets the applicable requirements of PRC sections 2773.1, 2773.4, Article 11 (commencing with section 3800) 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 PRC section 2774(a). Additionally, the SMGB must approve or uphold a reclamation plan determined to meet those applicable requirements.

PRC section 2770(g)(2)(A) states that a reclamation plan determined not to meet the applicable requirements of Sections 2772, 2772.1, 2773, 2773.1, 2773.3, and 2773.4; Article 1 (commencing with Section 3500), Article 9 (commencing with Section 3700), and Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations; and the lead agency's surface mining ordinance adopted pursuant to subdivision (a) of Section 2774 shall be returned to the operator with a notice of deficiencies.

PRC section 2770(g)(2)(B) provides that within 10 days of the hearing, the Board shall provide notice via certified mail to the lead agency, the operator, and the DMR of the Board's determination. The notice shall include instructions to the operator to submit to the lead agency for approval a revised reclamation plan consistent with the Board's determination.

Sections 3650 – 3659 of CCR, Title 14, Division 2, Chapter 8, Subchapter 1, Article 5 govern procedures for appeals to the SMGB concerning denial of approval of reclamation plans under PRC 2770.

Proposed Action

Amend CCR sections 3650 – 3659, Reclamation Plan Appeals

The proposed regulatory action ensures the process of appealing a lead agency's denial of a reclamation plan or plan amendment or failure to act upon receipt of a proposed reclamation plan or plan amendment of a surface mining operation within the State is clearly and plainly explained to reflect changes to statute from AB 1142 and generally provide the participants with an appropriate level of due process. These sections provide the necessary steps to determine jurisdiction, producing an administrative record, and conducting the public hearing as required in PRC 2770. The amended regulations provide a detailed explanation of the procedures and criteria for the SMGB when

scheduling the hearing, noticing the hearing, the aspects of the hearing's record, the sequence of the procedures, and the determination following receipt of any testimony. Additionally, the amended regulation makes non-substantive fixes to language. To ensure gender neutrality, pronouns are removed from the language and inclusive language is used, "Chairman" becomes "Chair" and "his or her" is removed.

Anticipated Benefits of the Proposed Regulatory Action

The broad objective of the proposed regulatory action is to make procedural improvements and revisions to the reclamation plan appeals process based on statutory changes to PRC section 2770 caused by AB 1142. Furthermore, the proposed amended regulatory language is intended to ensure proper review of reclamation plans or plan amendments for surface mining operations and provide mine operators with a simple administrative appeals process prior to taking civil action against lead agencies. Proper review can in-turn ensure that the necessary review and approval of reclamation plans, or plan amendments is taken to consider the effects on health and safety of communities and the environment. An administrative appeals process before the SMGB ensures mine operators can seek remedial actions concerning reclamation plan denials or the inaction of a lead agency when processing an operator's reclamation plan or plan amendment.

CONSISTENCY WITH FEDERAL STATUTE AND REGULATION

The proposed regulatory action does not duplicate or conflict with existing Federal statutes or regulations. By Memorandum of Understanding with the Federal Bureau of Land Management, the United States Forest Service, the Department, and the SMGB, SMARA and federal law are coordinated.

CONSISTENCY WITH EXISTING STATE REGULATIONS

The proposed regulatory action is not inconsistent or incompatible with existing regulations pertaining to the appeal of denied reclamation plans or plan amendments by lead agencies, or a lead agency's failure to act upon an application for these entitlements. After conducting a review for any regulations that would relate to or affect this area, the SMGB has concluded that Article 5 in Title 14, Division 2, Chapter 8, Subchapter 1 of the CCR, contains the only regulations that concern administrative appeals to the SMGB over actions or inactions by lead agencies.

CEQA COMPLIANCE

The SMGB has determined that the proposed regulatory action is not a project as defined in CCR Title 14, section 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: None.

Statewide adverse economic impact directly affecting businesses and individuals: The SMGB has determined that the proposed regulatory action will not have an adverse economic impact on businesses and individuals statewide, **including small businesses** because the proposed action provides necessary steps to determine jurisdiction, producing an administrative record, and conducting the public hearing as required in PRC 2770 and also changes in new PRC section 2736, and caused by AB 1142.

Significant effect on housing costs: None.

Business reporting requirement: None.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Creation or elimination of jobs within California: The SMGB anticipates the proposed regulatory action will not have an impact on the creation of new, or the elimination of existing, jobs within California.

Creation of new businesses or the elimination of existing businesses within California: The SMGB anticipates the proposed regulatory action will not have an impact on the creation, expansion, or elimination of new or existing business within California.

Benefits to the health and welfare of California residents, worker safety, and the state's environment: The SMGB anticipates that the proposed regulatory action will result in non-monetary benefits to public health and welfare, and environmental safety by ensuring the public that SMARA compliant reclamation plans or plan amendments will be timely and appropriately approved or where reclamation plans or plan amendments are non-compliant with SMARA, operators and lead agencies will have sufficient instructions on what would constitute an appropriate reclamation plan or plan amendment for the particular mining operation.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5 (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 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 alternative of no action would be in direct conflict with statutory requirements set forth by AB 1142 and would result in confusing regulatory processes remaining in publication. This would further delay the appropriate approval or denial of reclamation plans or plan amendments designed to ensure an efficient entitlement approval process so that mining operations can continue to provide needed mined materials throughout California and be governed by SMARA compliant reclamation plans.

The SMGB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action 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 regulatory action should be directed to:

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State Mining and Geology Board
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Sacramento, California 95814
Phone: (916) 319-9032
Matthew.Livers@conservation.ca.gov

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801 K Street, Suite 2015
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Phone: (916) 322-1082
Jeffrey.Schmidt@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 Matthew Livers 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. Copies of the components of the rulemaking file may be obtained by contacting Matthew Livers 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 proposed regulatory action, the SMGB will consider all timely and relevant comments received. Thereafter, the SMGB may adopt the proposed amended 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 Matthew Livers at the address indicated above. The SMGB will accept written comments on the modified text of the regulation 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 Matthew Livers at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking Action, the Initial Statement of Reasons, and the proposed amended text of the regulation can be accessed through the SMGB website at:

www.conservation.ca.gov/smgb