



INITIAL STATEMENT OF REASONS

PROPOSED AMENDED AND NEW REGULATIONS

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 Appeal Procedures

INTRODUCTION AND BACKGROUND

The Legislature adopted the Surface Mining and Reclamation Act of 1975 (Public Resources Code (PRC), section 2710 et seq., hereinafter “SMARA”) in order to, in part, provide comprehensive surface mining and reclamation policy over surface mining operations to assure that adverse environmental impacts are minimized, and mined lands are reclaimed to a usable condition. On April 18, 2016, and October 5, 2017, respectively, Governor Brown signed Assembly Bill (AB) 1142 (Gray) and Senate Bill (SB) 809 (Natural Resources Committee) into law and thereby enacted significant revisions to SMARA. This included changes to the appeals process regarding reclamation plans.

To fully enact the changes to SMARA, the State Mining and Geology Board (SMGB) must address these changes by way of regulations. Specifically, the SMGB proposes to amend sections 3650, 3651, 3652, 3653, 3655, 3656, 3658, and 3659 of the California Code of Regulations, title 14, division 2, Chapter 8, Article 5, to conform existing SMGB appeal processes to changes made by AB 1142 and SB 809.

BENEFITS

The SMGB anticipates that the proposed regulatory action will result in non-monetary benefits to public health, welfare and environmental safety by ensuring the public that reclamation plans and amended plans will be in compliance with SMARA where disputes arise between lead agencies and mine operators over proposed reclamation plan or plan amendments. In addition, mine operators, lead agencies, the public, and the Supervisor of Mine Reclamation will be adequately informed of the appeals process ensuring a level playing field and due process for all affected participants. Furthermore, the proposed regulatory action harmonizes certain provisions of AB 1142 and SB 809.

DETAILED STATEMENT OF SPECIFIC PURPOSE AND RATIONALE

Section 3650: Non-substantial changes include conforming references to the Public Resources Code by initially defining it with the acronym of “PRC” and adding the word “Section” when referring to a specific section. Phrasing “his and her rights” is eliminated to ensure gender neutrality and is replaced simply with “the right.” Additionally, all alphabetical subdivisions are reorganized starting with the first paragraph of the section which is referred to as subdivision (a) and the remaining subdivisions are changed accordingly. The phrase “notice of” is added before the word “appeal,” to clarify that a “notice of intent” to appeal constitutes the first application to the SMGB for a request for an appeal.

The term “plan amendment” is added following the term “reclamation plan.” The purpose of the addition is to clarify that reclamation plan appeals under PRC Section 2770(e) include reclamation plan amendment appeals as well as new reclamation plans under the Surface Mining and Reclamation Act of 1975 (SMARA). This is necessary to avoid confusion as to whether the application of the appeals process applies to amended reclamation plans. The phrase “Written statements with supporting documentation indicating the basis for the appellant’s challenge of the lead agency’s action or inaction regarding the submission of a reclamation plan or plan amendment based on the grounds for an appeal provided for under PRC section 2770(e)(1)” is replacing the reference to the specific grounds for an appeal because the existing provision is merely a restatement of the grounds stated in statute. This will eliminate any confusion as to what constitute appropriate grounds for an appeal by referring the appellant to the statute for the precise grounds for an appeal.

The term “certified mining ordinance” is adopted throughout this and the following provisions to provide clarity and shorten the length of the reference to a “surface mining and reclamation ordinance.” The term “of intent to appeal shall be sent” is added following the term “notice” to clarify the nature of the initial notice to the SMGB. This first notice of intent to appeal is designed to open the appeal with the SMGB, which is then followed by the submission of the administrative record to the SMGB which constitutes the records of a lead agencies’ actions relating to reclamation plans or plan amendments. The section is amended to require operators to send the notice of intent to appeal to the Supervisor of Mine Reclamation. This is necessary to provide advanced notice of the appeal to the supervisor since technical staff within the Department of Mine Reclamation (DMR) will be providing technical assistance to the SMGB at the hearing.

Finally, the reference to “Failure to submit all the required, completed documents to the SMGB within the 15-day filing period will result in an incomplete filing of intent and an automatic rejection of the appeal,” has been moved to the end of the section to improve organizational structure.

Section 3651: Non-substantial changes include replacing “Chairman” for “Chair” and replacing “he or she” for “Chair” to establish gender neutrality. The term “plan amendment” is added following the term “reclamation plan” and is changed for the reasons explained above. The reference to “the rules of the Board” is deleted as the term is an outdated reference to regulatory language. All alphabetical/numerical subdivisions are reorganized starting with the first paragraph of the section which is referred to as subdivision (a) and the remaining subdivisions are changed accordingly.

When determining whether the SMGB has jurisdiction regarding an appeal, the Chair or the Chair’s designee is now required to determine “Whether the appellant exhausted all appeal remedies before the lead agency,” which is added. This is necessary to make that requirement consistent with Section 3650 and the requirement that the appellant must exhaust their administrative remedies at the local level.

Section 3652: Non-substantial changes include deleting “certified” and adding “certified by the lead agency as being a complete record of the following documents regarding the appellant’s reclamation plan or plan amendment.” This is necessary to clarify that the lead agency is responsible for certifying the record it relied upon in taking the action relative to a reclamation plan or plan amendment. This phrasing also offers a definition of “certified” to ensure there is no confusion of what certification entails. The phrase “but not be limited to” was removed because it is added language and removing the wording provides a more succinct explanation. The term “plan amendment” is added following the term “reclamation plan” and is changed for the same reasons as explained above.

The term “certified” is added before “surface mining and reclamation ordinance” to clarify that the reference is to the lead agency’s ordinance certified under Public Resources Code section 2774(a). The word “deemed” is deleted as unnecessary. The phrase “or plan amendment, including any comment by the supervisor that were submitted pursuant to PRC Section 2772.1,” is added to the list of documents comprising the lead agency’s administrative record. This is necessary to clarify the content of the administrative record which should include comments from the Supervisor of Mine Reclamation if comments were submitted pursuant to Public Resources Code section 2772.1. The phrasing “may be” and “may” are replaced with “shall be” and “shall” to emphasize the Boards responsibilities and to remove confusion on whether the Board must accomplish a requirement. The phrasing “without undue delay” is removed from subdivision (d) because it is just added language that does not add relevant information.

Finally, the reference to “PRC Section 15045” is corrected to read “PRC Section 21089.” This is necessary to refer to the correct statutory section under the California Environmental Quality Act (CEQA), PRC Sections 21000 et seq., that allows a lead agency to charge and collect a reasonable fee from project applicants. This change is necessary to clarify that when the SMGB acts as a lead agency under SMARA, it has the same authority to collect costs associated with compliance with CEQA, as does any other lead agency.

Section 3653: Non-substantial changes include adding a reference to Public Resources Code section 2772.1, deleting reference to the “Board rules” and revising the citation to Title 14 of the California Code of Regulations and adding the phrase “of 1975” following reference to the Surface Mining and Reclamation Act. This is necessary because Public Resources Code section 2772.1 affects the content of reclamation plans and plan amendments and was added under AB 1142. The reference to the Board’s rules is outdated and confusing and revising the citation to the associated regulations is to provide consistency throughout the regulations. Finally, adding “of 1975” to SMARA conforms the entire reference to Public Resources Code section 2710.

Section 3655: Non-substantial changes include replacing “Chairman of the Board” with “Chair” to achieve gender neutrality.

Section 3656: The phrase “or plan amendment” is added to clarify that the appeals process applies to both original reclamation plans as well as amendments to reclamation plans. Reference to the mailing of the notice of hearing now includes notifying the Supervisor of Mine Reclamation. This is necessary because the Supervisor, while not a party to the appeal, acts in a technical advisory role by providing comments to lead agencies when assessing a reclamation plan or plan amendments’ compliance with the appropriate provisions of SMARA. Finally, the phrase, “A statement inviting the supervisor to provide comments on the adequacy of the proposed reclamation plan or plan amendment whether or not the supervisor had previously provided comments to the lead agency

pursuant to PRC Section 2772.1” is added to clarify that the Supervisor may provide input into the appeals process, specifically concerning the proposed reclamation plan or plan amendments’ compliance with SMARA and the associated regulations.

Section 3658: Non-substantial changes include replacing “Chairman” with “Chair” to achieve gender neutrality. The hearing process is amended to add to the sequence of presentations to include both the Supervisor and the lead agency. This is necessary because both the lead agency and the Supervisor play a critical role in the appeals process and should be included as invitees to provide input for the SMGB’s consideration. Also, the subdivisions of 3658(a) are renumbered to include steps within the hearing procedures sequencing.

Finally, participants who want to provide written statements must now file those statements with the SMGB ten days in advance of the hearing. This is necessary to give the SMGB members additional time to prepare for the SMGB meeting and clarify procedural requirements.

Section 3659: A reference to Public Resources Code section 2772.1 is added and the citations relating to title 14 of the California Code of Regulations is amended. This is necessary because Public Resources Code section 2772.1 affects the content of reclamation plans and plan amendments and was added under AB 1142. Revising the citations to the associated regulations is to provide consistency throughout the regulations. The phrase “or plan amendment” is added to clarify that the appeals process applies to both original reclamation plans as well as amendments to reclamation plans.

The term “and supervisor” is added to the list of recipients of the SMGB’s determination following the hearing. This is necessary to clarify who will receive notice of the SMGB’s determination including any noted deficiencies the SMGB identifies because of the hearing. The term “certified” is added in reference to the lead agency’s mining ordinance as required under Public Resources Code section 2774. This is necessary because the reclamation plan or plan amendment must be measured, in part, against a certified mining ordinance.

Finally, the phrase “The SMGB shall also follow the provisions of PRC Section 2772.1(b)(7)(B) and provide the supervisor with an official copy of the approved reclamation plan or plan amendment,” is added. This is necessary because the SMGB acts in the capacity of a lead agency where it approves a reclamation plan or plan amendment pursuant to Public Resources Code section 2770(g)(2)(A). This is to clarify that when the SMGB, acting like a lead agency, approves the reclamation plan or plan amendment, it must provide an official copy of the approved reclamation plan or plan amendment to the Supervisor of Mine Reclamation as required by any lead agency approving reclamation plans or plan amendments under Public Resources Code section 2772.1(b)(7)(B).

IDENTIFICATION OF TECHNICAL / THEORETICAL / EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS UPON WHICH THE SMGB HAS RELIED

No studies or reports have been relied upon by the SMGB in preparing the proposed amendments to existing regulations.

CEQA COMPLIANCE

The SMGB has determined that this rule making action is not a project as defined in Title 14, CCR, section 15378, and that this activity is not subject to the requirements of the California Environmental Quality Act (CEQA).

ECONOMIC IMPACT ASSESSMENT

Public Resources Code section 2770(a) provides that 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 operations. Public Resources Code section 2770(e) – (g) provide a process for appeals of reclamation plans and plan amendments to the SMGB. Existing CCR sections 3650 – 3659 govern procedures for an appellant to appeal lead agency action or inaction regarding reclamation plans and plan amendments. The SMGB notes that the proposed regulatory action follows specific changes made to Public Resources Code sections 2770, 2772, and 2772.1, by the Legislature, in regards to the approval of reclamation plans and plan amendments as discussed above – and does not establish new or additional requirements. Thus, in accordance with Government Code Section 11346.3(b) the SMGB has made the following assessments regarding the proposed regulatory action: The SMGB does not anticipate the proposed regulatory action would have an impact on the creation of new, or the elimination of existing, jobs within California. The SMGB does not anticipate the proposed regulatory action would have an impact on the creation, expansion, or elimination of new or existing business within California.

The SMGB does not anticipate the proposed regulatory action would have an impact on the expansion of businesses currently doing business in California.

The SMGB anticipates the proposed regulatory action would continue to benefit the health and welfare of California residents, and the state's environment by ensuring the public that reclamation plans and amended plans will be in compliance with SMARA where disputes arise between lead agencies and mine operators over proposed reclamation plan or plan amendments. In addition, mine operators, lead agencies, the public, and the Supervisor of Mine Reclamation will be adequately informed of the appeals process ensuring a level playing field and due process for all affected participants. The proposed regulatory action harmonizes certain provisions of AB 1142 and SB 809.

Furthermore, the proposed regulatory action will meet the statutory goals of AB 1142 to improve how the SMGB, DMR, and local lead agencies oversee and implement SMARA, specifically in regards to reclamation plan and plan amendment appeals.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

SMARA requires that 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 operations. In addition, PRC section 2770(e) provides operators with an option to appeal to the SMGB, an action or inaction by the lead agency relating to reclamation plans or plan amendments. AB 1142 and SB 809 amended the appeals provisions of PRC section 2770(e). The proposed regulatory action conforms terminology to changes enacted under AB 1142 and SB 809 and provides specific procedures for operators, DMR,

the SMGB, and the lead agency to follow throughout the appeal process. No significant changes are necessary to conform the specific appeals processes to the existing appeals process, which has been in effect since 1991. Thus, the SMGB concludes the proposed regulatory action does not have a significant adverse economic impact directly affecting business.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE SMGB REASONS FOR REJECTING THOSE ALTERNATIVES

A proposed alternative of taking no action would result in unnecessary and potentially confusing provisions of existing regulatory requirements remaining in publication and be contrary to statute as revised by AB 1142 and SB 809.

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.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

The proposed regulatory action does not propose new or additional requirements that duplicate or conflict with existing Federal statutes or regulations. By Memorandum of Understanding with the Federal Bureau of Land Management, the U. S. Forest Service, the Department, and the SMGB, SMARA and federal law are coordinated.