

## Article 14. Appeals of Orders to Comply with the Surface Mining and Reclamation Act of 1975

### § 3940. Purpose of Regulations

The regulations contained in this article govern procedures affecting the ~~review appeal to the Board of~~ orders to comply with the Surface Mining and Reclamation Act of 1975 (~~Act~~SMARA) issued by the ~~director-supervisor of the department~~ Division of Mine Reclamation (DMR), or by the ~~Board~~ when acting in the capacity of lead agency pursuant to Public Resources Code Section 2774.4 or 2774.5.

#### NOTE

*Authority: Section 2755, Public Resources Code. Reference: Sections 2774.1, ~~and~~ 2774.4, and 2774.5, Public Resources Code.*

### § 3940.5. Filing of an Appeal

(a) An operator filing an appeal to the Board pursuant to Public Resources Code Section 2774.1(a)(3)(B) concerning the issuance of an order to comply from the supervisor of DMR, or from the Board, shall, within 30 days of the date of the service of the order to comply, file with the Board, the appeal and request for hearing. The appeal and request for hearing shall include items (1) through (3) below. Failure to submit all the following documents within the 30-day filing period will result in an incomplete filing and an automatic rejection of the appeal.

(1) Written statements indicating specifically the basis for the appellant's challenge of the order to comply;

(2) All documents and reports supporting the basis of the appeal;

(3) A written statement advising the Board of the name, address, and telephone number of the appellant's representative for the appeal, if any;

(b) A copy of the appeal and supporting document shall be mailed to the supervisor and the lead agency having jurisdiction over the mining operation.

### § 3941. Determination of Jurisdiction

(a) The Chairman of the Board, or the Chairman's designee, shall determine whether, based on the information required by Section 3940.5 of this article, the appeal of the order to comply is within the jurisdiction of the Board for the purposes of hearing the appeal and determine whether the appeal raises substantial issues related to the validity of the allegations contained in the order to comply. ~~the review of the order is within the jurisdiction of the board for the purposes of hearing the alleged violation. If the Chairman or the Chair's designee finds based on that the criteria listed in (1) and (2) below, that the appeal raises no substantial issues with respect to the allegations supporting the order to comply, or has not been filed within statutory time limits, then no hearing shall be scheduled and the appeal shall be denied. have been satisfied, then he or she shall schedule a hearing of the order before the board, otherwise he or she shall refuse to grant a hearing.~~ In making this determination, the Chairman, or the Chairman's designee, shall consider the following:

(1) Whether the filing of the appeal with the Board is within the time limits provided for in Public Resources Code Section 2774.1(a)(3)(B); ~~order addresses violations related to the Act which have been confirmed by findings during an annual inspection or as the result of another physical site inspection of the mine;~~

(2) Whether the appeal specifically addresses the alleged violations contained in the order to comply, and together with any supporting documentation, is reasonably sufficient to substantiate

~~the operator's appeal of the order to comply. alleged violation has extended beyond 30 days from the date of receipt by the operator of notification from the director or the board.~~

(b) The Chairman of the ~~the~~ Board or Chair's designee shall make such a determination within 15 days of receipt of an appeal of an order to comply issued by the director. ~~Where the board issues the order to comply pursuant to its lead agency authority under Public Resources Code Section 2774.4, no independent determination by the Chairman or the designee is required.~~ The ~~the~~ Board shall notify the appellant and the ~~director~~ supervisor of its determination by certified mail or personal service.

NOTE

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

**§ 3942. Administrative Record**

The administrative record shall consist of the information that was before the ~~director~~ supervisor for an order to comply issued by the ~~director~~ supervisor, or before the ~~the~~ Board for an order to comply issued by the ~~the~~ Board, at the time the order to comply was issued and which comprised the basis for the order to comply. The information before the ~~director~~ supervisor, or the ~~the~~ Board, shall consist of but may not be limited to the following:

(a) The name and address of the surface mining operator and the name and address of ~~any the person designated by the operator as an agent for the service of process pursuant to Public Resources Code 2207(a)(2);~~

(b) A general description of the surface mining operation;

(c) The information submitted pursuant to subdivisions (a)(1) and (a)(2) of Section 3940.5 of this Article, including, Aa description of the alleged violation(s) specifying which aspects of the surface mine's mining operation's activities or operations are inconsistent not in compliance with the ActSMARA;

(d) A time for achieving compliance that the ~~director~~ supervisor, or the ~~the~~ Board, has determined to be reasonable.

NOTE

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

**§ 3943. Hearing Procedures – Scheduling**

The ~~the~~ Board shall schedule and hold a public hearing on an appeal pursuant to PRC Section 2774.1(a)(3)(C). ~~order no sooner than 30 days from the date of issuance of the order. In no case shall the hearing be scheduled beyond 60 days after the issuance of the order. Any mutually agreed upon scheduling of the hearing shall take into consideration the time provided the Board to determine jurisdiction under Section 3941 of this article, and the Board's regular meeting schedule.~~ The hearing may be scheduled as part of a regular business meeting of the ~~the~~ Board or may be conducted by a committee of the ~~the~~ Board.

NOTE

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

**§ 3944. Hearing Procedures – Authority for Delegation**

The ~~h~~Board may delegate conduct of the hearing to a committee of at least ~~two~~ 2 members of the ~~h~~Board to be appointed for that hearing by the Chairman of the ~~h~~Board. The Chairman ~~of the board~~ or the Chairman's designee shall conduct the hearing; the recommendations of the hearing committee shall be presented to a quorum of the ~~h~~Board at its next ~~regular~~ business meeting for a decision of the full ~~h~~Board consistent with the procedures set forth in Section 3948 of these regulations.

*NOTE*

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

**§ 3945. Hearing Procedures – Notice**

(a) At least 10 days prior to the hearing, the ~~h~~Board shall give public notice as follows:

(1) Mailing the notice to the lead agency (if the ~~h~~Board is not the lead agency), the ~~operator~~ subject to the order to comply appellant, and the ~~director~~ supervisor;

(2) Mailing the notice to any person who requests notice of the hearing;

(b) The notice of hearing shall include the following:

(1) The name of the ~~operator~~ subject to the order to comply appellant;

(2) Identification of the ~~proposed~~ surface mining operation and a brief description of the location of the operation by reference to any commonly known landmarks in the area;

(3) A statement that the ~~operator~~ appellant has been issued an order to comply ~~with specific identifying those~~ aspects of the mining operation that are not in compliance with SMARA Act;

(4) A statement inviting the ~~operator~~ appellant, the lead agency, and the public to make statements at the hearing regarding the decision of ~~h~~Board; and,

(5) The time, date, and location of the public hearing.

*NOTE*

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

**§ 3946. Hearing Procedures – Record**

The record before the ~~h~~Board at the public hearing shall be the administrative record submitted pursuant to Section 3942 of this article.

*NOTE*

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

**§ 3947. Hearing Procedures – Sequence**

(a) The public hearing should normally proceed in the following manner:

(1) Identification of the ~~record~~ appeal case number and parties;

(2) Statements on behalf of the ~~operator~~ subject to the order appellant;

- (3) Statements on behalf of the ~~director~~ supervisor, or the ~~Board~~ Board if acting as the lead agency;
- (4) Statements on behalf of the public;
- (5) Rebuttal on behalf of the ~~operator~~ appellant; and
- (6) Rebuttal on behalf of the ~~director~~ supervisor, or the ~~Board~~ Board if acting as the lead agency;
- (7) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman or the Chairman's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements (12 copies) must be submitted to the ~~Board~~ Board at least ~~five~~ 5 days prior to the hearing.

(d) The public hearing shall be recorded electronically. Cost of transcription or reproduction of the electronic recording, if requested, shall be borne by the party making the request.

*NOTE*

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

**§ 3948. Hearing Procedures – Determination**

Following the public hearing, the ~~Board~~ Board shall determine whether, ~~based on the record before it, the alleged violations cited in the supervisor's order to comply evidence before the director for orders issued by the director supervisor, or the Board for orders issued by the Board, are supported by substantial evidence in light of the whole record. substantially supports the basis for the order at the time the order was issued.~~ If the ~~Board~~ Board finds that the evidence in the record supports the issuance of the order to comply, the ~~Board~~ Board shall uphold the order to comply. The supervisor may agree to modify specific terms of the order to comply prior to the Board issuing its determination. and any effective date contained in the order. If no effective date is contained in the order, then the board shall set a date upon which the order takes effect. If the ~~Board~~ Board finds that the evidence in the record does not substantially support the order, then the ~~Board~~ Board shall not uphold the order and shall notify the ~~director supervisor~~ supervisor of the specific reasons for not upholding the ~~director's supervisor's~~ supervisor's order. Notification of the ~~Board's~~ Board's determination shall be made by certified mail or personal service to the ~~operator appellant and the director supervisor~~ appellant and the supervisor within 15 days following the regular business meeting of the ~~Board~~ Board at which the determination is made.

*NOTE*

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*