

FINAL STATEMENT OF REASONS

STATE MINING AND GEOLOGY BOARD

TITLE 14. NATURAL RESOURCES, CALIFORNIA CODE OF REGULATIONS Division 2. Department of Conservation, Chapter 8. Mining and Geology, Subchapter 1. State Mining and Geology Board Article 14. Appeals of Orders to Comply with SMARA

UPDATE OF INITIAL STATEMENT OF REASONS

For new section 3940.5: Add a period to the end of the section title to conform with regulatory language standards.

Within subdivision (a)(1), replace “specifically the” with “the specific” to conform with correct language usage.

Add required authority section to subdivision to read, “*Note: Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*”

For section 3942: In subdivision (c), replace the comma after “Article” with a semicolon.

Also, remove “including,”.

Renumber remainder of former subdivision (c) as subdivision (d).

Then add “and” to end of renumbered subdivision (d) because old subdivision (d) will also be renumbered as (e).

For section 3945: Within subdivision (a)(4), add “the” before Board to allow the sentence to read properly.

For section 3947: Remove “and” at the end of subdivision (a)(5) and add “and” to the end of subdivision (a)(6) to allow for correct language usage.

In subdivision (d), remove the letter “p” at the beginning of the word “preproduction” to make the word “reproduction.” This is a typo that needs to be fixed.

For section 3948: The first sentence of the section must be revised to allow for correct grammar and language. In the third line, change “or the Board for orders issued by the Board,” to “or the Board’s order to comply issued by the Board.” This language change is not substantive because it is correcting the language of the sentence to reflect correct usage and grammar.

DETERMINATION OF LOCAL MANDATE

Local agencies are currently required to implement portions of the Surface Mining and Reclamation Act of 1975 (SMARA) through Public Resources Code (PRC) section 2710 et. seq., including an approved reclamation plan, financial assurance cost estimate (FACE), and financial assurance mechanisms (FAM). If during an annual inspection the mining operation is found to not be compliant with SMARA, an enforcement process exists to facilitate correction of the violation(s). PRC 2774.1 lays out the in-depth process that can include writing a Notice of Violation and/or OTC, a public hearing, administrative penalties, and even involvement of the Superior Court of California.

The proposed amended regulations provide changes to the automatic review process of an Order to Comply (OTC) to an appeal of an OTC involving filing, determining jurisdiction, the administrative record, and the various hearing procedures. The purpose of the regulations pertains to OTCs written by the Supervisor or the Board when acting as a lead agency. For local lead agencies, the compliance and enforcement process does not change through the addition of these regulatory changes. Therefore, the State Mining and Geology Board (Board) has determined that this new and amended regulatory language does not impose a mandate on local agencies or school districts.

STATEMENT OF ALTERNATIVES CONSIDERED

The Board has determined that no reasonable alternatives it considered or that had otherwise been identified and brought to their attention would be more effective in carrying out the purpose for which the action is proposed. In addition, the Board determined that no alternative would be as effective and less burdensome to affected private persons than the adopted regulations or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

A reasonable alternative does not exist because existing legislative and regulatory requirements provide the compliance and enforcement process within PRC Section 2774.1. This section of statute delegates compliance and enforcement duties to the jurisdictional lead agency. The regulatory changes included in this regulatory package simply provide the steps for an appeal when the Supervisor or Board acting as a lead agency issue the OTC.

A proposed alternative of taking no action would result in ignoring recent statutory changes regarding appeals of orders to comply issued by the Supervisor or the Board acting as a lead agency. NO action would keep the OTC review process intact and not allow for an operator to plead their case to the Board if they believe an OTC was issued unfairly. This would result in confusion within the regulated community because the current circumstances leading to an appeal review is altered statutorily to become an appeal making the appeal process for operators inconsistent with existing statute.

DUPLICATION OR CONFLICTS 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, and the SMGB, SMARA and its implementing regulations and federal law are coordinated.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE EXTENDED INITIAL 45-DAY NOTICE PERIOD OF NOVEMBER 1, 2019 THROUGH DECEMBER 31, 2019

No comments were received during this comment period.