

**STATE MINING AND GEOLOGY BOARD**

DEPARTMENT OF CONSERVATION

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DR. ZIA ZAFIR**FINAL STATEMENT OF REASONS****PROPOSED AMENDED REGULATIONS****DEPARTMENT OF CONSERVATION  
STATE MINING AND GEOLOGY BOARD****TITLE 14. NATURAL RESOURCES  
Division 2. Department of Conservation  
Chapter 8. Mining and Geology  
Subchapter 1. State Mining and Geology Board  
Article 11. Financial Assurance Mechanisms****UPDATE OF INITIAL STATEMENT OF REASONS**

1. State Mining and Geology Board (SMGB) staff prepared a report for the November 10<sup>th</sup>, 2016 SMGB regular business meeting. The report was prepared as part of the regular SMGB staff reporting process to inform the SMGB of the procedural status of rulemaking. It also provided background information and discussion of specific reasons for the SMGB to take action directing staff to commence this rulemaking process. The SMGB staff report was not relied upon for the preparation of the regulatory language, nor did it affect the regulatory language, as the language did not change based on the report itself. The report was made available to the public prior to the November 10<sup>th</sup> meeting, as is required for all reports completed for items included on SMGB public meeting agendas.
2. At its February 8, 2017, regular business meeting, the SMGB considered approval and adoption of the final version of the rulemaking package for the Financial Assurance Cost Estimate (FACE) form. One week prior, materials of the meeting were made available to the public on the SMGB website. The materials consisted of various documents related to the FACE Form agenda item including a SMGB staff report that summarized the rulemaking package to be considered. The report itself contained attachments that included the proposed language of California Code of Regulations (CCR) 3805.1, the FACE Form with associated instructions in strikeout/underline format and clean final versions of the regulatory

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*The Mission of the State Mining and Geology Board is to Provide Professional Expertise and Guidance, and to Represent the State's Interest in the Development, Utilization and Conservation of Mineral Resources, the Reclamation of Mined Lands, and the Development and Dissemination of Geologic and Seismic Hazard Information to Protect the Health and Welfare of the People of California.*

text to be adopted. The SMGB staff report was not relied upon for the preparation of the regulatory language, nor did it affect the regulatory language, as the language did not change based on the report itself.

After posting the above mentioned materials for public review and prior to the February 8, 2017 SMGB meeting, additional comments were received in regards to the regulatory language that was to be adopted. SMGB staff responded to these additional comments by preparing supplemental language to address the comments received. SMGB members were presented with the regulatory text (initially made public) and the supplemental language in response to comments received. The Chairman asked for members of the public to comment on the supplemental language. Two members of the public, one of which submitted the comments that generated the supplemental language, commented that they approved of the changes to the regulatory text. After considering both versions of the language the SMGB voted unanimously to adopt the regulatory text for CCR 3805.1 *“as amended and discussed with supplemental language.”*

The SMGB made the adopted regulatory language available to the public for a 15-day comment period from February 10, 2017 through February 27, 2017. During this time two comments were received. The first commentator asked for a final version of the regulatory text. SMGB staff responded to the commentator and provided the final version of the text as requested. The second commentator was the member of the public mentioned above, whom submitted the comments generating the supplemental language. This second commentator submitted a letter stating their “support of the modified language” and “support the approval and adoption of this form and regulation” made available for the 15-day comment period. The Executive Officer of the SMGB responded by thanking them for their support.

3. In response to comments received from the Office of Administrative Law, during the 30-day review period, the following non-substantive corrective and clarifying updates were made to the FACE-1 form and associated instructions:
  - a. The word “Equipment” in front of “Production rates” in the last sentence of the large paragraph on page 1 and page 6 of the instructions was added. This change was made and is necessary in order to provide consistency throughout the proposed regulatory language.
  - b. “Article 1 (commencing with Section 3500) and Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of...” was added to page 2 of the instructions. This change was made and is necessary to reflect that this particular sentence was not referring solely on the requirements Sections 3500 and 3700 individually but referring to the requirements beginning with those specific sections.
  - c. Added to the “Equipment Rates Used in Cost Estimate” section on page 3 of the instructions was the phrase “that include delivery and pick-up and any other equipment surcharges.” This is necessary to provide consistency throughout the proposed regulatory language.

d. Added to the "Attachments:" section on page 3 of the instructions was "-1" after "FACE." This is necessary to provide consistency throughout the proposed regulatory language.

e. On page 5 of the instructions, "V" was changed to "VI" in the sentence "List the activity being estimated at the top of Section V." This is necessary for reference to the correct Section VI (six).

f. "Section" was added on the first paragraph of page 1 of the instructions. This is necessary to provide consistency throughout the proposed regulatory language.

g. In the "Methods" section on page 5 of the instructions, "Caltrans Equipment Rental Rate and Labor Surcharge" was changed to "Caltrans Labor Surcharge and Equipment Rental Rates." This is necessary to provide consistency throughout the proposed regulatory language where this particular term is used.

h. Under "Section XI" on page 7 of the instructions, "8" was changed to "9" in the sentence "Refer to Graph 1 and Graph 2 on page 8 to determine the percentage rate to be used." This is necessary to provide correct cross reference to the proper page.

## **DETERMINATION OF LOCAL MANDATE**

Local agencies are currently required to implement portions of the Surface Mining and Reclamation Act of 1975 (SMARA) per Public Resources Code (PRC) section 2710 et seq., including regular review and approval of financial assurance cost estimates for reclamation of surface mining operations. Development and adoption of a financial assurance cost estimate form to be used by all surface mining operations is required by statute (PRC Section 2773.1(a)(4)) which became effective on January 1, 2017. Therefore, the SMGB has determined that this adopted amended regulatory language does not impose a mandate on local agencies or school districts.

## **STATEMENT OF ALTERNATIVES CONSIDERED**

The SMGB determined that no reasonable alternative it considered or that had 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. In addition, the SMGB determined that no alternative would be as effective as and less burdensome to affected private persons than the adopted regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Existing legislative and regulatory requirements provide that surface mining operators are to provide financial assurance cost estimates, based on approved reclamation plans, to the lead agency for annual review and approval. The SMGB is now required by the Legislature to adopt a form for use by surface mining operators to provide the financial assurance cost estimate to the lead agency for annual review and approval. A proposed alternative of taking no action would result in unnecessary and potentially confusing provisions of existing regulatory requirements remaining in publication.

## **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 of Conservation, and the SMGB, SMARA and its implementing regulations and federal law are coordinated to eliminate duplication.

## **INCORPORATION BY REFERENCE**

Form FACE-1 (1/17) is incorporated by reference and was made available to the public for review and comment during the initial formal comment period, November 23, 2016 through January 9, 2017. Subsequent to this comment period, substantial sufficiently related changes were made to the form based on comments received. The form was then made available to the public for review and comment for a 15-day period from February 10, 2017 through February 27, 2017. The form was mailed to the SMGB interested parties list as well as made available on the SMGB website for review for both comment periods.

Furthermore, incorporating by reference form FACE-1 (1/17) is necessary because it would be cumbersome and otherwise impractical to publish the document in the California Code of Regulations (CCR). Prior to January 1, 2017, surface mine operators were required to submit estimated costs associated with approved reclamation plans for surface mining operations in a non-specified written format. The SMGB provided operators with financial assurance guidelines available on its website. The guidelines contained a specific example of a financial assurance cost estimate form and instructions which could be utilized by the operators or their representatives in filling out such form. In many and most cases, individuals were already using this downloadable and printable example. The SMGB will have the new form available for use in the same manner on its website. The SMGB intends to provide the new form in a format that will allow operators to complete it electronically. For these reasons, the SMGB has determined the form FACE-1 (1/17) should be incorporated by reference.

## **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF NOVEMBER 23, 2016 THROUGH JANUARY 9, 2017.**

### **Commentator 1 - Peggy Barthel – Lake County**

“Will the form be available in an electronic format such as a fillable form or spreadsheet?”

**Response to Commentator 1:** Accepted. The statute does not specify the type of format nor does it require the format to be electronic. It is the SMGB’s intention to make the form available on our website as a .pdf document. The SMGB is currently exploring for providing the form as a fillable .pdf or excel-type spreadsheet document.

### **Commentator 2 - Jeff Walters, Public Works Director, Mono County**

“...In determining our financial assurance for both pits I have historically used the current county staff labor rates as they will be the ones performing the work. The new regulation will require us to calculate the labor costs based on prevailing wage when county staff will always be performing the reclamation work.

The increase in labor calculation will require a much higher financial assurance and resulting set-aside which is unnecessary in our situation. I would assume that other counties and municipalities will be in similar situations. I am asking that the requirement for prevailing wage calculations be dismissed for such agencies.”

**Response to Commentator 2:** Rejected in part and accepted in part. The intent of the language is to recognize that in the event of forfeiture, either the local lead agency, or the state must contract with third-party entities to perform reclamation, so that the expenditure of forfeited financial assurances is subject to the requirements of California Prevailing Wage Law. In the event of the state conducting reclamation on behalf of a local lead agency under forfeiture conditions, the state’s awarding of contracts for reclamation would be subject to prevailing wage requirements. Public Resources Code Section 2773.1(d) expressly provides for this possibility. As for the applicability of prevailing wage law to the performance of reclamation by lead agency employees, Section 1720, Article 1, Chapter 1, Part 7, Division 2, of the California Labor Code provides as follows:

**“1720.**

*(a) As used in this chapter, “public works” means:*

*(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds...”*

In addition, the Frequently Asked Questions page, located at <https://www.dir.ca.gov/Public-Works/PublicWorksSB854FAQ.html>, includes the following questions and responses:

***“What does public works mean?***

*Under the Labor Code, public works in general refers to:*

- *Construction, alteration, demolition, installation, maintenance, or repair work,*
- *Done under contract, and*
- *Paid for in whole or in part out of public funds*

*It can include preconstruction and post-construction activities related to a public works project.*

***Who is a public works contractor?***

*A public works contractor is anyone who bids on or enters into a contract to perform work that requires the payment of prevailing wages. It includes subcontractors who have entered into a contract with another contractor to perform a portion of the work on a public works project. It includes sole proprietors and brokers who are responsible for performing work on a public works project, even if they do not have employees or will not use their own employees to perform the work.”*

**Commentator 3: Pete Matheson, SR. Vice President, CA Group Operations, Granite Construction Company**

“Currently, the revised FACE form proposed requires equipment lien holder information, which is described in the form instructions as the “name (names) and contact information for any lien holder and the amount of any liens held on the equipment”. We note that liens are common financial tools used for many reasons, including performance guarantees,

revolving line of credits or promissory notes. Liens may be part of larger financial security arrangements and individual plant structures may be a small percentage of the overall security package. Liens may also be used for reasons other than securing debt obligations.

Granite notes that the body of law governing liens is vast and complicated. In order to determine how or to what extent, if any, a lien affects reclamation performance may require an intensive investigation into the finances and business practices of a mine operator. An investigation of this nature could make public the protected trade secrets, financials and proprietary information of a company.

We further note that in the event a lien holder exercises their lien rights, they would take possession of the asset against which a lien has been placed and likely remove it, consistent with standard reclamation practices. The final lien amount and lien holder's information may not be valuable information to the Lead Agency unless the Lead Agency intends to become a participant in the lien proceedings.

Given the complex nature of liens, Granite requests that the FACE form instructions be modified to remove entirely the requirement for lien holder information and lien values."

**Response to Commentator 3:**

Rejected in part and accepted in part. Section V of the FACE form currently reads, "Equipment Lien Holder Information." It has been revised to read, "Equipment on site wholly owned by operator?:  YES  NO (If no, please provide the name/s and contact information for any lien holder)" in order for the preparer of the FACE to indicate if the equipment on site is wholly owned by operator.

Section V of the Instructions currently states, "The operator shall provide the name (names) and contact information for any lien holder and the amount of any liens held on the equipment." In response to the change on the FACE form above, Section V of the Instructions has been revised to say, "The operator shall state whether or not equipment on site is wholly owned by the operator and provide the name/s and contact information for any lien holder. This information will assist the lead agency's assessment of the administrative costs to remove equipment and apprise them of ownership."

The requirement for stating the amount of any lien held on the equipment has been removed. Providing only contact information will reduce the operators' administrative burdens while assuring that the lead agency can contact lienholders to verify actual equipment values in light of any liens. This will allow lead agencies to adequately assess decommissioning and removal options. This will help to reduce overall reclamation costs in the event of abandonment by the operator.

**Commentator 4: Keith Hamlin, The Land Designers**

**Comment 4A:** "ITEM 1-Page 1 of FACE Form. Box stating "This financial assurance cost estimate prepared and submitted Pursuant to (choose one):

Comment: There should be an additional box that could be checked. This additional box is used when a lead agency fails to perform an annual mine inspection and the operator still needs to prepare a FACE for that year. Page 1, paragraph 2 of the FACE instructions

quotes PRC 2773.4(d)(1) which requires a FACE within 30 days of an inspection or within 30 days of the inspection date requested on the operators Annual Report if an inspection was not conducted by the lead agency. The new box could state "FACE prepared within 30 days as requested by operator on Annual Report."

**Response to Comment 4A:** Accepted in part and rejected in part. The first page of the FACE form currently states, "This financial assurance cost estimate prepared and submitted pursuant to (choose one):" with the ability to check a box and make one of two options: "A new or amended reclamation plan approved on (Date):" or "An annual mine inspection performed on (Date):" The FACE form has been revised and an additional box and fill line added to give the preparer one of three options to choose from. The new third option reads as follows: "Other: Please specify:" This will allow an operator to submit a FACE under circumstances other than for a new reclamation plan or an amendment, as well as, for operations that were not inspected on a requested date. This would also include FACES submitted within the context of an enforcement action.

As a result of the addition above, the first page of the Instructions has been updated to include the following text, "If the cost estimate is being submitted for reasons other than an amended reclamation plan or annual inspection please check 'Other: Please Specify:' This may include, but is not limited to, cost estimates prepared in response to a lead agency enforcement action or interim updates due to site expansion or reclamation."

**Comment 4B:** "ITEM 2 – Page 2 Section I "Documents made part of Reclamation Plan by Reference".

"Documents made part of Reclamation Plan by Reference" is a legal definition in SMARA. The way this section is stated is that all documents related to the reclamation plan are part of the plan which is contrary to PRC 2772(d) which states:

"(d) An item of information or a document required pursuant to subdivision (c) that has already been prepared as part of a permit application for the surface mining operation, or as part of an environmental document prepared for the project pursuant Division 13 (commencing with Section 21000), may be included in the reclamation plan by reference, if that item of information or that document is attached to the reclamation plan when the lead agency submits the reclamation plan to the director for review. To the extent that the information or document referenced in the reclamation plan is used to meet the requirement of subdivision (c), the information or document shall become part of the reclamation plan and shall be subject to all other requirements of this article."

The instructions clearly exceed this definition since permits approved after the submittal of a reclamation plan are made part of the reclamation plan. This caption could be changed to "Other documents affecting site reclamation".

**Response to Comment 4B:** Accepted in part and rejected in part. The language on Page 2 Section 1 of the FACE form currently states, "Documents made part of Reclamation Plan by Reference." It has been revised to say, "Permits and/or Environmental Documents Approved as, or Conditioned upon, the Reclamation Plan."

The last paragraph on page 1 of the Instructions currently says, "Prior to preparing the cost estimate, review the approved reclamation plan and any amendments as well as the most recent lead agency inspection report. In addition, the cost estimate must reference costs associated with other reclamation requirements included by reference, including conditions of approval, other permit requirements and supplementary documents such as environmental documents prepared for the project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) that specifically relate to reclamation of the mine site." The paragraph has been revised as a result of the above revision to the FACE form, to say "Prior to preparing the cost estimate, review the approved reclamation plan, any amendments, and reclamation requirements contained in permits and/or environmental documents and any conditions of approval, as well as the most recent lead agency inspection report. The cost estimate must reference costs associated with the approved reclamation plan, any amendments, and reclamation requirements contained in permits and/or environmental documents prepared for the project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) and any conditions of approval, that specifically relate to reclamation of the mine site."

Also, as a result of the above revision to the FACE form, the language of Page 2 Section 1 of the Instructions previously read, "Documents made part of Reclamation Plan by Reference: Provide information regarding other information, document, or component of a document, included in the reclamation plan by reference, which may include conditions of approval, other permit requirements and supplementary documents, such as environmental documents prepared for the project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) that specifically relate to reclamation of the mine site." It has been revised to state: "Permits and/or Environmental Documents Approved as, or Conditioned upon, the Reclamation Plan: Provide information regarding reclamation requirements contained in permits and/or environmental documents prepared for the project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) and any conditions of approval, that specifically relate to reclamation of the mine site."

It is the intent of this revised language to make clear that the form is requesting information regarding operative reclamation plan documents/permits, whether approved prior to, or concurrent with the reclamation plan.

**Comment 4C:** "ITEM 3 – Page 2 "Equipment Production Rates used in Cost Estimate" (Use of current Caterpillar Performance Handbook or equivalent published production rate is recommended)

There is a clear disconnect between the above statement of recommending the use of production handbooks and what is written in the instructions (page 1) which states:

"In addition, equipment costs and production rates shall be supported by verifiable third party estimates, bids, or cost calculation, and/or lead agency accepted construction estimating handbooks, such as the Caltrans Equipment Rental Rate and Labor surcharge, Caterpillar Performance Handbook, Means Heavy Construction Handbook, etc."



The instructions go from the term *recommended* in the FACE form to *shall be* which is mandatory. All the financial assurances that I deal with or know about in talking to lead agencies use the Caltrans Equipment Rate and Labor Surcharge in their estimating. This is not an issue. The problem area is the equipment production rates used in preparing the FAE. The reality is the operator and his equipment operators are the people most knowledgeable on how long it takes to do a certain type of reclamation activity. There are very few instances where the operator goes to a source such as the Caterpillar Handbook for the information. It must be noted that many reclamation activities are site specific and a handbook does not have the information. A handbook will not tell you how long it takes to remove hazardous rocks from a cliff face using an excavator or the time to resoil a quarry bench. Also, keep in mind that there are all kinds of manufacturers of equipment for mines besides Caterpillar and they have different production efficiencies.

What needs to be included in the instruction is that the operator can state that the equipment efficiencies used for reclamation are based upon his knowledge of the site. If there is a disagreement with the operator's calculation then the lead agency can refer to equipment handbooks, use personnel such as public works employees familiar with equipment operation, etc. To settle the issue. Book use is not the final answer in many cases."

**Response to Comment 4C:**

Accepted in part and rejected in part. ITEM 3 – Page 2 of the FACE form, which currently states, "Equipment Production Rates used in Cost Estimate (Use of current Caterpillar Performance Handbook or equivalent published production rate is recommended)" has been revised to state "Equipment Production Rates used in Cost Estimate (Use of current Caterpillar Performance Handbook or equivalent published production rates is required)."

In response to the change mentioned above, the Instructions, Page 1, paragraph 3, last sentence currently states, "In addition, equipment costs and production rates shall be supported by verifiable third party estimates, bids, or cost calculations, and/or lead agency accepted construction estimating handbooks, such as the Caltrans Equipment Rental Rate and Labor Surcharge, Caterpillar Performance Handbook, Means Heavy Construction Handbook, etc." This sentence has been revised to state, "Equipment costs shall be supported by the Caltrans Labor Surcharge and Equipment Rental Rates handbook or verifiable local third party rental rates that include delivery and pick-up and any other equipment surcharges. Equipment production rates shall be supported by lead agency accepted construction estimating handbooks such as Caterpillar Performance Handbook, Means Heavy Construction Handbook, etc."

Page two of Edition 46 of the Caterpillar Performance Handbook, published January 2016, has the following statement:

"Performance information in this booklet is intended for estimating purposes only. Because of the many variables peculiar to individual jobs (including material characteristics, operator efficiency, underfoot conditions, altitude, etc.) neither Caterpillar nor its dealer warrant that

machines described will perform as estimated.” In addition, the last sentence of Paragraph 1 of the Preface to Edition 46 of the Caterpillar Performance Handbook states “This Handbook is intended as an aid which, when coupled with experience and a good knowledge of local conditions, can assist in estimating true machine performance.”

Equipment efficiencies stated by an estimator are based on their knowledge of site conditions and machine capabilities. The requirement to base equipment production rates on published construction estimating handbooks is to ensure the rates described are consistent with the specific machines capabilities.

**Comment 4D:** ITEM 4 – Page 4. Equipment Lien Holder information

I am not sure how lien holder information is used by the lead agency. Does the cost go up or down in a financial assurance if there is a lien? How the lien information is used by the lead agency in determining the reclamation costs needs to be explained. An example of how the lien information is used may be helpful.

**Response to Comment 4D:**

See response to Response to Commentator 3.

**Comment 4E:** “ITEM 5 – Page 10. IX Monitoring Costs There is a problem with getting bids from consultants to do monitoring. The catch is that consultants are not going to spend a lot of time giving a bid to do consulting work on something that may occur in 10, 20, 30 or more years into the future. Consultant time is not free and they will not give a bid on something that is speculative and that they will probably not be around to do. If you can find me consultants who will prepare these types of bids, let me know and they can spend four or more hours per mine doing free bids for me. Four free bids please. Government people many times fail to realize that consulting is a business and time is money.

I would recommend that either written bids are acceptable or the operator can estimate the consultants time based upon the average hourly wage paid to various professions in the state or region they are in. The Employment Development Department (EDD) provides the yearly and hourly wage of many professions. I was able to up for instance, the hourly wage for geologist and biologist which are two professions that might be required to do reclamation monitoring. The FACE instruction should note that the EDD or other relevant agencies can provide this information.”

**Response to Comment 4E:**

Accepted in part and rejected in part. The SMGB agrees that reference to EDD's Employment and Wages by Occupation data would be beneficial to the instructions.

Language in the Instructions has been added to Section IX – Monitoring Costs to reflect this and says: “The California Employment Development Department's (EDD) current published ‘Employment and Wages by Occupation’ data may be useful in estimating the costs of scientists and professionals not subject to California prevailing wage law.”

The language in the instructions for Section IX Monitoring Costs, does not require a bid from a consultant be provided with the cost estimate.

**Commentator 5: Adam Harper, Director of Policy Analysis, CalCIMA**

**Comment 5A: Lien Holder Information (We Request Deletion)**

“We do appreciate the modifications which the Board made to the Equipment Lien Information language. However, we continue to object to its inclusion. First, the information has no impact on the value of the bond and therefore no place within a financial assurance cost estimation form whose purpose is to calculate the bond amount. Second, the information request creates a paperwork burden that could be significant on operators, lead agencies, and the State.

The information request has no cost calculation impact on the Financial Assurance Cost Estimate and is therefore outside the scope of the purpose of the form. The Contingency cost line item is where funds are placed into a financial assurance cost estimate to enable local agencies to deal with administrative and legal necessities of closure, such as the distribution of abandoned real property at a site to third parties claiming ownership rights. Having an operator’s report of liens at the time a FACE is conducted is not a document a lead agency or the State would rely upon in distributing real property to third parties. Its collection therefore serves no value to the FACE or reclamation process but imposes a significant burden on lead agencies and the director, as detailed below.

A significant change from AB 1142 is a completeness process for the review of financial assurances. Public Resources Code Sections 2773.4(b) and 2773.4(d)(2)(B)(4) require the director to make an incompleteness determination within 15 days of receipt of a FACE. Lead agencies are required on submitting a FACE to the director for review to provide a determination that the FACE is “is adequate, complete, and consistent “in 2773.4 a(2) and 2773.4(d)(2)(B). We know of no information source that can verify in any comprehensive manner whether or not private liens exist. Accordingly, there is no way a lead agency or the director can be certain that the operators list or the information submitted is complete.

We therefore believe the requested lien holder information should be stricken from FACE-1 Section V and the associated Section V instructions. At the very least, a clarifying explanation should be added stating that the request should not be interpreted as a request for detailed documentation pertaining to every lien, but rather only a request for a list of liens from the operator, the provision of which will allow lead agencies and the director to meet the requirements of state law. More detailed information would be difficult to come by, as there is no central clearinghouse that can create an authoritative report, and neither lead agencies nor the director are in a position to verify more detailed information. In short, the lien request is an information rabbit hole that should be avoided and not included within the form. If it is included, clarity that only a list of applicable liens from operators is required and intended by the language is highly desirable.”

**Response to comment 5A:**

See response to Response to Commentator 3.

**Comment 5B: Reclamation Plan Performance Standard (End Use)**

“This is a section of language that changed in the workshop process due to a request CalCIMA made to clarify that the Financial Assurance Cost Estimate applies to the

approved reclamation plan, not the regulatory performance standards that govern evaluation during the approval process of the plan consistent with statute. Specifically, the word "Plan" was inserted between "Reclamation" and "Performance" at various locations within the FACE-1 form and instructions. Was this language changed to clarify that Financial Assurance Cost Estimates apply to the approved reclamation plan as we requested in our October 19, 2016 comments?"

**Response to comment 5B:**

Accepted. The changes to this language were in response to CalCIMA's request during the workshop process.

**Comment 5C: Prevailing Wages and Consultants Clarity**

"One of the Board members had suggested that staff provide clarity to the document's prevailing wage language on the applicability of consultants and professions outside those included under prevailing wages. Was the Board's addition of the "where applicable" language within the instructions form (Section I – Supporting Documents) designed to make clear that the requirement to pay prevailing wages does not apply to an item like a biologist's report, where the labor of the biologist did not have a prevailing wage number?"

**Response to comment 5C:**

Accepted. The addition of "where applicable" was intended to make clear that prevailing wage may not apply to all labor categories.

**COMMENTS RECEIVED OUTSIDE OF THE INITIAL NOTICE PUBLIC COMMENT PERIOD OF NOVEMBER 23, 2016 THROUGH JANUARY 9, 2017.**

**Commentator 1: Forest Becket, Office Chief, Caltrans District 9**

"I have the following comments regarding this subject under review from January 13, 2017 to January 30, 2017:"

**Comment 1A:** "The current forms that I use for updating FACE's just has a cover page and the cost sheets for Plant Structure and Equipment Removal Costs, Primary Reclamation Activity Costs, Revegetation Costs, Miscellaneous Costs, Monitoring Costs, and the Summary sheet with the percentage calculations. All of the narrative that has been added to the new form seems unnecessary and duplicative given all of the other reporting requirements (i.e. Annual Reports, Inspection Reports, etc.)."

**Comment 1B:** If the SMGB is going to make changes to the FACE form and try an create consistency, please consider developing a more user friendly form. Perhaps an Excel Spreadsheet or fillable PDF with auto fill and calculation built in. Most operators with multiple sites end up having to create this form themselves to make updating FACE's a simpler task.

**Comment 1C:** The DETAILED STATEMENT OF SPECIFIC PURPOSE AND RATIONALE states the reasons for the new form, which cover the standard sections that have always been there. The added narrative sections seem unnecessary.

**Commentator 2: C.H. McMillan III, CFO BCM, LTD**

I would like to suggest that there be a provision for waiver of annual FACE recalculation for mines that are classified as Idle under an approved IMP that have no intention of resuming activities in current reporting year. It might be appropriate to require an updating of FACE coincidentally with an application to extend the IMP beyond the fifth year expiration or in the event of announced intent to resume extraction activities. Thank you for your accommodations.

**SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE FEBRUARY 10 THROUGH FEBRUARY 27, 2017 PERIOD THE MODIFIED TEXT WAS AVAILABLE.**

**Commentator 1: John Kramer, Condor Earth**

I am in receipt of your notice, below, of changes made to proposed text of regulation CCR section 3805.1. I previously submitted comments dated October 6, 2016 (attached) to proposed changes to the FACE rulemaking package but never received any response directly from SMGB as to the persuasiveness of my comments. The email notice below does not provide access to the final proposed language in the **Package #2, PRC §2773.1 (a)(4), Financial Assurance Cost Estimate (FACE) Form and guidance document**. Please provide a link to the final rule language proposed to be adopted after the comment period Feb 27, 2017.

**Response to Commentator 1:**

Accepted in part and rejected in part. On February 16, 2017, SMGB staff emailed Mr. Kramer the link to the SMGB's website containing the final proposed changes to the regulation text as requested. Two versions of the final proposed text were also attached to the email. One was the strikeout/underlined version of the final proposed text and the other was a clean version of the final proposed text. Mr. Kramer's comments, from his aforementioned October 6, 2016, letter were received during an informal pre-rulemaking period. The SMGB and the Division of Mine Reclamation took into consideration Mr. Kramer's comments, as well as all of the other comments received during the informal comment period, before revising the FACE Form and Instructions and making them available to the public during the formal comment period. The SMGB did not respond to specific comments outside of the formal November 23, 2017 through January 9, 2017 comment period. Mr. Kramer's comments from his October 6 letter regarding "prevailing wage" were also concerns of other members of the public who submitted comments during the formal comment period. Those comments regarding "prevailing wage" have been addressed above. See responses to "Commentator 2" and "Comment 5C" during the formal November 23, 2017 through January 9, 2017 comment period. Further response to this comment is not being provided as it is outside of the scope of the 15-day changes.

**Commentator 2: Adam Harper, Director of Policy Analysis, CalCIMA**

We greatly appreciate the Board's efforts in modifying the proposed language of the FACE-1 form to address comments we submitted prior to hearing before the Board on February 8, 2017. We support the modified language, which makes it clear that the approved

reclamation plan is the driving document for FACE calculations, consistent with Public Resources Code Section 2773.1.

We appreciate your consideration of our comments and are happy we can support the approval and adoption of this form and regulation.

**Response to Commentator 2:**

Accepted. Executive Officer Jeffrey Schmidt replied to Mr. Harper, via email, acknowledging receipt of the comment letter and thanked him for the support.