



# STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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## NOTICE OF PROPOSED RULEMAKING ACTION & INITIAL STATEMENT OF REASONS

### PROPOSED AMENDED SURETY BOND FORMS

#### DEPARTMENT OF CONSERVATION STATE MINING AND GEOLOGY BOARD

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

#### WRITTEN COMMENT PERIOD

Any person, or his or her 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](mailto:smgb@conservation.ca.gov), by facsimile (FAX) to (916) 445-0738, or by mail to:

State Mining and Geology Board  
801 K Street, MS 20-15  
Sacramento, CA 95814  
ATTN: Surety Bond Forms

**The written comment period closes at 5:00 p.m. on October 30, 2017.** The SMGB will only consider comments received at the SMGB office by that time.

#### INTRODUCTION

The Legislature adopted the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code (PRC), section 2710 et seq.) in order to provide a comprehensive surface

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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.*

mining and reclamation policy with the regulation of surface mining operations to assure that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition. SMARA requires surface mining operators to obtain a lead agency approved financial assurance cost estimate and a financial assurance mechanism (FAM) covering the amount of the approved financial assurance cost estimate for the reclamation of mined lands affected by mining activities. A lead agency or the Department of Conservation (Department) may seize the FAM in the event the operator abandons the operation or is found to be financially incapable of completing reclamation. The types of FAMs approved by the SMGB include surety bonds, Letters of Credit, and cash deposits such as a Certificate of Deposit. A surety bond is an indemnity agreement in a certain amount executed by an admitted surety insurer as defined in subdivision (a) of Section 995.120 of the California Code of Civil Procedure. SMARA allows for the use of surety bonds for FAMs and requires that all bonds be made payable to both the lead agency and the Department.

## **PROBLEM STATEMENT**

On April 18, 2016, Governor Brown signed AB 1142 (Gray) into law and thereby enacted significant reforms to SMARA. PRC section 2773.4 (e)(3) now requires the SMGB to formally adopt FAM forms, subject to the requirements of the Administrative Procedure Act (APA), for the implementation of FAM requirements. This includes, but is not limited to, surety bond forms, irrevocable letters of credit, and certificate of deposit establishment and encashment instructions. The SMGB must adopt these forms by July 1, 2018.

On its website, the SMGB currently makes available its Financial Assurance Guidelines (Guidelines). The Guidelines, and included appendices, serve to clarify and supplement statute relating to financial assurances and financial mechanisms. The SMGB's Guidelines are exempt from the APA pursuant to PRC section 2773.1(f). The Guidelines appendices include example surety bond forms for corporations, partnerships, sole proprietorships, as well as two versions of surety bond rider forms. The SMGB intends to make specific, clarify, and interpret PRC section 2773.4 (e)(3) by revising the current surety bond forms in accordance with the APA. Specifically, updated language in the forms will address the revisions to SMARA by preventing FAMs in the form of surety bonds from being released, cancelled, or reduced without the concurrence of both the lead agency and the Department. Pursuant to California Government Code section 11110, the form of all bonds of licensees, permittees, and all persons other than public officers and employees, furnishing bonds to a State department, office, board, commission or bureau in pursuance of State law shall be on a form which form has been approved as to conformity with applicable law by the Attorney General.

## **BENEFITS**

The SMGB anticipates non-monetary benefits from the proposed action such as the protection of the environment by ensuring that mine operators are complying with their permits, conditions of approval that relate to the reclamation plan, and SMARA. Furthermore, the proposed regulatory action will meet the statutory requirements of AB 1142 (Gray) to improve how the SMGB, the Department, and local lead agencies oversee and implement SMARA, specifically in regards to financial assurance mechanisms in the form of surety bonds.

## DETAILED STATEMENT OF SPECIFIC PURPOSE AND RATIONALE

Draft amended regulatory language for all surety bond forms were made public for an informal pre-rulemaking comment period. SMGB staff sent a notice to stakeholders, lead agencies, various surety companies and associations, and notary associations throughout the state and country inviting the them to provide input for the development and revisions to the forms. Valuable feedback was received from comments submitted and adjustments were made.

For each revision in ~~strikeout~~/underline form below, a statement of purpose and rationale is provided. The revisions apply to all the following SMGB surety bond forms: corporations, partnerships, sole proprietorships, and the two versions of bond rider forms.

- CA Mine ID No.  
Bond No.  
Permit No.  
Reclamation Plan No.

Headers on the forms have been updated to include additional pertinent information associated with the bond. (i.e. Permit No. (if applicable), and Reclamation Plan No.)

- ~~the City/County of~~ \_\_\_\_\_ and, ~~in the alternative,~~ the  
(Name of LEAD AGENCY)  
Department of Conservation, ~~Office~~ Division of Mine Reclamation, and, ~~in the alternative,~~ the \_\_\_\_\_  
(Third Party Additional Public Agency Entity, if applicable)

“County/City of \_\_\_\_\_” has been removed. The forms will now ask for the “Name of the Lead Agency.” This is necessary to be inclusive of the SMGB in cases when it acts as a lead agency pursuant to PRC sections 2774.4 or 2774.5, as it is neither a county or city. “In the alternative” has been removed when listing the Lead Agency, Department of Conservation, Division of Mine Reclamation, and the Additional Public Entity, if applicable. This is necessary to ensure concurrence by all entities that may be involved that obligations are met prior to the release, cancellation, or reduction of the bond pursuant to the revisions of PRC section 2773.1 (a)(5) and (c). These portions of statutes state FAMS shall not be released without consent and written concurrence of the lead agency and the Department. “Office of Mine Reclamation” is changed to “Division of Mine Reclamation.” This is necessary pursuant to revisions of PRC section 607 (d) renaming the Office of Mine Reclamation to Division of Mine Reclamation.

- Whereas, the above-named Principal has submitted an approved \_\_\_\_\_ permit, No. \_\_\_\_\_ and/or claims a vested (Permit or Reclamation Plan Application) right, including an mining and approved reclamation plan, No. \_\_\_\_\_, to reclaim a surface mining operation mined lands...

“Approved” has been added in all instances when referencing permits and reclamation plans. This is necessary to clarify PRC section 2732.5 and PRC section 2770 (a) which describe the requirements of an approved permit and approved reclamation plan prior to conducting surface mining operations. Additionally, where “permit” is mentioned the language has been changed to address and be inclusive of vested rights. “Surface mining operation” has been changed to “mined lands.” This is necessary to clarify and make specific requirements of PRC section 2772 (c) involving the reclamation plan.

- (Insert legal description or Assessor’s Parcel No.)

“Assessor’s Parcel No.” was added as a result of a comment from a lead agency asking for clarity on what is meant by and acceptable for a “legal description.” The comment specifically suggested adding “Assessor’s Parcel No.”

- ~~Now,~~ Only upon receipt of written concurrence by \_\_\_\_\_ and the Department of Conservation, (Name of LEAD AGENCY) Division of Mine Reclamation, and the \_\_\_\_\_ if (Additional Public Entity, if applicable) ~~that~~ the Principal faithfully completes has completed all reclamation requirements set forth in the Act, the regulations, and all conditions of the permit related to reclamation, including the ~~mining and~~ reclamation plan, then shall this obligation ~~shall~~ be void; otherwise, it shall remain in full force and effect...

This change was made and is necessary to ensure concurrence by the lead agency, the Department, and Additional Public Entity, if applicable that all reclamation requirements are met prior to release of the bond pursuant to PRC section 2773.1 (a)(5) and (c).

- (b) until the bond is released or replaced, ~~or until the permit has been sold, reassigned or otherwise transferred~~ in accordance with the Act and its attendant regulations...

This wording was removed because revisions PRC section 2773.1 (c) now discuss the requirements for FAMs when a surface mining operation is sold or ownership is transferred.

- The Surety will give notice of cancellation of the bond at least 120 days prior to such cancellation
- and prompt notice... ,3) the Principal has failed to renew or pay associated premiums causing the bond to lapse.

This language was added as a result of comments received from a lead agency during the pre-rulemaking comment period. The lead agency describes concerns of operators altering the amount of the FAM without proper notice to lead agency. This revision addresses the comment and is necessary to ensure concurrence by all entities that may be involved that obligations are met prior to the release, cancellation, or reduction of the bond pursuant to the revisions of PRC section 2773.1 (a)(5) and (c).

- Please identify the agent acting on behalf of the surety who will accept notices, papers, and other documents, if applicable.

AGENT \_\_\_\_\_ PHONE \_\_\_\_\_  
ADDRESS \_\_\_\_\_

This language was relocated from the end of the document and placed just under the section calling for endorsement by the Surety company. This change was necessary as it seemed out of place when located at the very end of the document.

- NOTARIZED ACKNOWLEDGMENT OF \_\_\_\_\_ – PERMITTEE  
[PRINCIPAL]

[Attach loose notarial certificate]

~~State of~~

~~SS.~~

~~County of~~

~~On this \_\_\_\_\_ of \_\_\_\_\_, in the year \_\_\_\_\_, before me,~~

~~(name and quality of officer), personally appeared \_\_\_\_\_,~~

~~personally~~

~~known to me (or proved to me on the basis of satisfactory evidence) to be the~~

~~person(s) whose name(s) is/are subscribed to the within instrument and~~

~~acknowledged to me that he/she/they executed the same in his/her/their authorized~~

~~capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or~~

~~the entity upon behalf of which the person(s) acted, executed the instrument.~~

~~WITNESS my hand and official seal.~~

~~L.S.~~

~~Notary's Signature~~

~~My Commission Expires:~~

- NOTARIZED ACKNOWLEDGMENT OF SURETY

[Attach loose notarial certificate]

~~State of~~

~~SS.~~

~~County of~~

~~On this \_\_\_\_\_ of \_\_\_\_\_, in the year \_\_\_\_\_, before me,~~

~~(name and quality of officer), personally appeared \_\_\_\_\_,~~

~~personally~~

~~known to me (or proved to me on the basis of satisfactory evidence) to be the~~

~~person(s) whose name(s) is/are subscribed to the within instrument and~~

~~acknowledged to me that he/she/they executed the same in his/her/their authorized~~

~~capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or~~

~~the entity upon behalf of which the person(s) acted, executed the instrument.~~

~~WITNESS my hand and official seal.~~

~~L.S.  
Notary's Signature  
My Commission Expires:~~

These language revisions stem from comments received from a California notary public. Pursuant to California Civil Code section 1189 all certificates of acknowledgement must be worded exactly the same. It is not acceptable to affix a notary public seal and signature to a document without the correct notarial wording. This wording can change as often as every year. The new language "Attach loose notarial certificate" is added and necessary to account for the possibility of future changes to California's notarial wording and allow for notarization of the forms in states other than California. Notaries themselves must ensure the certificate complies with law and add the certificate statement. Additional information regarding notarization was found on the websites of the National Notary Association and the California Secretary of State.

The following revisions apply only to the two versions of bond rider forms:

- Whereas, ~~the above-named Principal has a permit of a surface mining operation, no. \_\_\_\_\_, approved by the County/City of \_\_\_\_\_ dated on \_\_\_\_\_, and renewals and revisions numbered and dated \_\_\_\_\_ pursuant to the application of the Principal, and/or claims a vested right, issued approval of a surface mining and reclamation project, Permit No. \_\_\_\_\_, dated on \_\_\_\_\_, and renewals and revisions numbered and dated \_\_\_\_\_ pursuant to the application of the Principal, and/OR or~~
- ...under the above mentioned permit and/ ~~reclamation plan~~ or the reclamation plan, and ~~revisions and~~ renewals ~~and amendments~~ respectively, since the date of the issuance of the permit and/ ~~reclamation plan~~ or the reclamation plan...

These changes differ from the other surety bond forms as "County/City of \_\_\_\_\_" still exists. This is done intentionally because the rider forms distinguish a difference in referring to approved permits and reclamation plans. The revisions are necessary because permits are approved at the local level by a County or City. The SMGB does not have authority to do so. The SMGB does have authority to review and approve reclamation plans when it acts as the lead agency pursuant to PRC sections 2774.4 or 2774.5. Revised language is also added and is necessary to be inclusive of vested rights. Additionally, language was updated and is necessary for clarity to reflect that "revisions" are associated with permits and "amendments" are associated with reclamation plans.

**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 revised text of each surety bond form

## **CEQA COMPLIANCE**

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

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

A proposed alternative of taking no action would result in unnecessary, potentially confusing, and contradictory provisions of existing surety bond forms remaining in publication.

The SMGB invites interested persons to present statements or arguments with respect to alternatives to the proposed revisions of the surety bond forms during the written comment period.

## **CONTACT PERSONS**

Inquiries concerning the proposed revised text of each surety bond form should be directed to:

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State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, California 95814  
Phone: (916) 322-1082  
Fax: (916) 445-0738  
[Nicholas.Lash@conservation.ca.gov](mailto:Nicholas.Lash@conservation.ca.gov)

OR

Amy Scott, Executive Assistant  
State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, CA 95814  
Phone: (916) 322-1082  
Fax: (916) 445-0738  
[Amy.Scott@conservation.ca.gov](mailto:Amy.Scott@conservation.ca.gov)

**AVAILABILITY OF INITIAL STATEMENT OF REASONS AND RULEMAKING FILE**

The SMGB will have the entire rulemaking file available for inspection and copying at its office at the above address. As of the date this notice, the rulemaking file consists of this notice & initial statement of reasons and the proposed revised text of each surety bond form.

Copies of these documents may be obtained by contacting Nick Lash at the address and phone number listed above.

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice & Initial Statement of Reasons and the proposed revised text of each surety bond form can be accessed through our website at:

<http://www.conservation.ca.gov/smgb>