



# FINAL STATEMENT OF REASONS

## PROPOSED AMENDED REGULATIONS

### DEPARTMENT OF CONSERVATION DIVISION OF MINE RECLAMATION

#### TITLE 14. NATURAL RESOURCES Division 2. Department of Conservation Chapter 8. Mining and Geology Subchapter 1. State Mining and Geology Board Article 1. Surface Mining and Reclamation Practice

#### UPDATES TO THE INITIAL STATEMENT OF REASONS

As authorized by Government Code section 11346.9, subsection (d), the Department of Conservation (Department) incorporates by reference the Initial Statement of Reasons prepared for this rulemaking.

#### NONSUBSTANTIAL CHANGES

The Department presents the following summary of grammatical changes to the Initial Statement of Reasons (ISOR).

##### ISOR Change A:

Section 1 heading requires a change.

“Section 1 “~~Who Can~~ Persons Conducting Inspections””

*This grammatical change is necessary to make subject headings consistent between the ISOR and the Guidance Document for Surface Mine Inspectors.*

##### ISOR Change B:

Section 3 heading requires a change.

“Section 3 “~~Mine Inspection~~ Goals and Objectives””

*This grammatical change is necessary to make subject headings consistent between the ISOR and the Guidance Document for Surface Mine Inspectors.*

##### ISOR Change C:

Section 5.1 heading requires a change.

“Section 5.1 “Tools and Reference Materials””

*This grammatical change is necessary to make subject headings consistent between the ISOR and the Guidance Document for Surface Mine Inspectors.*

ISOR Change D:

Section 5.3.13 requires the following change:

“Section 5.3.13 instructs the inspector on the need to observe and note actual site conditions as it relates to ongoing enforcement actions. This section implements the instructions discussed in Section 4.1.6 concerning the need to monitor ongoing compliance efforts. This is necessary to confirm compliance with SMARA and, in particular, the resolution of noncompliant issues as they relate to the reclamation plan. ~~Reminding inspectors to observe and document the presence and location of any surface openings should create consistent and uniform inspection results and a more comprehensive evaluation of a mining operation’s cost to reclaim a site in the event of the operator’s default.~~ In addition, the inspector and Lead Agency will have additional information that affects a Lead Agency’s determination to assess administrative penalties.”

*The removal of this sentence from Section 5.3.13 is grammatically necessary as the discussion for surface openings is discussed in the ISOR Section 5.3.11 and was inadvertently placed in Section 5.3.13.*

ISOR Change E:

Section 5.4 heading requires a change.

“Section ~~5.4~~ 5.5 “Discussion of Observations””

*This grammatical change is necessary to make subject heading numbers consistent between the ISOR and the Guidance Document for Surface Mine Inspectors.*

The incorporation by reference in CCR section 3504.6 of the ““Guidance Document for Surface Mine Inspectors,” effective December 31, 2017” is changed to an incorporation by reference ““Guidance Document for Surface Mine Inspectors,” dated January 1, 2018.” The differences between the December 31, 2017 and the January 1, 2018 version are nonsubstantial, grammatical in nature only, and do not materially alter the guidance document. The following is a summary of grammatical changes (that are without regulatory effect) to the Guidance Document for Surface Mine Inspectors.

Additionally, in the Text of Final Regulations, “effective” was replaced with “dated” in regards to the date of the “Guidance Document for Surface Mine Inspectors” to reduce potential confusion should future revisions be pursued by the Department. Also, the “Guidance Document for Surface Mine Inspectors” will be published during the second quarter of 2018, making an “effective” date of January 1, 2018 impractical.

Guidance Document Change A:

Section 2 requires the following changes:

“Lead agencies are responsible for ensuring that SMOs are conducted in compliance with SMARA and that mined lands are reclaimed in accordance with each SMO’s approved reclamation plan and end use. A Lead Agency must inspect each SMO subject to SMARA within its jurisdiction at least once every twelve months. Upon cessation of SMO’s mining operations, mined lands shall be inspected by the Lead Agency to verify reclamation prior to the full release of financial assurances. Annual inspections are no longer required after the mined lands have been deemed reclaimed by the Lead Agency and the DMR in accordance with the approved reclamation plan, or remediated pursuant to PRC section 2773.1(b)(2)(C).”

*This change is nonsubstantial and is a grammatical change to the syntax of the sentence, in that an acronym, “surface mining operation” is an inappropriate substitute for a verb.*

Guidance Document Change B:

Section 3 requires the following changes:

“To achieve these goals and ensure continued compliance by mining operators, PRC section 2774(b)(1) requires lead agencies to cause an annual inspection of SMOs “solely to determine whether the SMO is in compliance” with SMARA. The inspection of SMOs encourages a Lead Agency to annually review the physical, environmental, and administrative conditions of SMOs and determine the SMO’s compliance with SMARA. During the inspection process, the Lead Agency inspector should consider the SMO’s:

1. Compliance with the approved reclamation plan, including incorporated conditions of approval and mitigation measures that relate to reclamation.
2. ~~When called for, c~~ Compliance with minimum acceptable surface mining practices for soil erosion control, water quality and watershed control, protection of fish and wildlife habitat, disposal of mine waste rock and overburden, erosion and drainage, and resoiling and revegetation, as applicable.
3. Compliance with an order to comply, if any.
4. Reported status of the operation and reclamation.
5. Status of FACEs and/or financial capability of operator.
6. Other conditions, if any, that may preclude reclamation of mined lands in accordance with the approved reclamation plan.”

*This grammatical change is necessary to correct the parallel structure of the list.*

Guidance Document Change C:

Section 5.3 requires the following changes:

“The inspector should be familiar with the minimum acceptable surface mining practices as described in CCR section 3503 for soil erosion control, water quality and watershed control, protection of fish and wildlife habitat, disposal of mine waste rock and overburden, erosion and drainage, and resoiling and revegetation, when required.”

*The addition of a comma is necessary for grammatical syntax.*

Guidance Document Change D:

Section 5.3.1 requires the following changes:

“Observe, and document, in general terms, the type and extent of the mined lands that comprise the SMO. Specifics to consider include the type of material being extracted, a general description of the SMO (areas of extraction, processing, interim storage of ore, waste, and finished product, etc.), type and nature of processing or beneficiation occurring on site, and the type of products being produced and/or stored onsite.”

*The removal of a comma is necessary for grammatical syntax.*

Guidance Document Change E:

Section 5.3.8 requires the following changes:

“The determination that reclaimed surfaces, which ~~that~~ require revegetation, meet the performance standards of the approved reclamation plan may necessitate evaluation by an appropriately state-licensed professional or an appropriately qualified specialist.”

*This change is grammatical and necessary to improve the readability and syntax of the sentence.*

## **JUSTIFICATION FOR INCORPORATION BY REFERENCE**

As described in the Initial Statement of Reasons, the proposed regulations incorporate by reference the entirety of the following document:

- Guidance Document for Surface Mine Inspectors (dated January 1, 2018)

This 18-page document is intended to provide instructions and recommendations to inspectors performing inspections pursuant to the requirements of the Surface Mining and Reclamation Act (Pub. Resource Code (PRC) § 2710 et seq., hereinafter, SMARA) and in particular PRC section 2774(b). The document is a component of the Division of Mine Reclamation's Inspector Training Program. For that reason, publication of this document in the California Code of Regulations would be impractical.

This document is publicly available on the Department of Conservation's Division of Mine Reclamation website (<http://www.conservation.ca.gov/dmr>) and is also available from the Division upon request.

## **LOCAL MANDATE DETERMINATION**

Local agencies are currently required to implement SMARA per PRC section 2710 et seq. This includes inspection of surface mining operations in intervals of no more than twelve months. Pursuant to PRC section 2774(b)(1), local agencies may recoup the cost of these inspection from operators. Development of the Department's Inspection Training Program and Guidance Document for Surface Mine Inspectors is required by statute (PRC § 2774(e)(1)), which became effective January 1, 2017. There are no additional costs borne by Local agencies to attend the Inspector Training Program or obtain a copy of the Guidance Document for Surface Mine Inspectors. The Inspection Training Program is required by statute to be offered in different regions of the state. Therefore, the Department has determined that the regulation will not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Government Code, Division 4, Part 7, commencing with section 17500.

## **DETERMINATION REGARDING ALTERNATIVES CONSIDERED**

The Department has determined that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this regulatory action was taken, would be as effective and less burdensome to affected private persons than the regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Department is required, pursuant to PRC section 2774(e)(1), to establish a training program for all surface mine inspectors. The program must be designed to include a guidance document developed by the Department to provide instructions and recommendations to surface mine inspectors performing inspections pursuant to PRC section 2774(b). Establishing the Guidance Document for Surface Mine Inspectors in regulation is not only necessary for statutory compliance, but it provides the foundation of the Inspector Training Program that will be offered by the Department through workshops in different regions of the State.

## **SUMMARY OF AND RESPONSE TO PUBLIC COMMENTS RECEIVED**

The regulation text was made available for public comment for at least 45 days, from July 28, 2017 to September 12, 2017. No comments were received during the public comment period.

Three comments were received outside of the comment period on September 14, 2017.

Commenter A: Ed Gerlits, P.E., Associate Civil Engineer, Los Angeles County Public Works  
"The following are Los Angeles County Public Works comments on the Proposed Rulemaking Action."

### Comment 1:

"The Surface Mine Inspections schedule is based on 12 month intervals. Per the rule making guidelines, inspections must be scheduled within the same calendar month of each year. This will not provide enough flexibility for scheduling around conflicts due to weather, natural disaster (wild fire, flood, earth quake, etc.), and reasons beyond the operators/lead agency control. It is suggested that the guidelines provide appropriate extensions for inspection delay. This is especially important when trying to schedule inspections jointly with Federal Agencies such as the United States Forest Service."

### Response to Comment 1:

Rejected. Allowing more than the calendar month containing the last conducted annual inspection would conflict with the plain language and legislative intent PRC section 2774(b)(1), which state that inspections of a surface mining operation be conducted in intervals of no more than 12 months.

Section 2.1 of the Guidance Document clarifies that the 12-month interval to conduct annual inspections shall include the full calendar month containing the last conducted annual inspection. AB 1142 amended PRC section 2774, subdivision (b)(1), requiring Lead Agencies to "cause surface mining operations to be inspected in intervals of no more than 12 months." At each of the six pre-rulemaking workshops conducted by DMR, Lead Agencies, surface mine operators, and stakeholders all expressed concern that by not including the full calendar month for scheduling would gradually push the inspection date earlier each year. This section of the Guidance Document is necessary to clarify that inspectors can conduct inspections during the same month each year. This flexibility allows inspectors and operators to anticipate inspections, avoid scheduling conflicts, and meet statutory requirements.

### Comment 2:

"Sec. 9. Section 2773.4 contains various deadlines ranging from 15 days to 60 days related to the Financial Assurance Cost Estimate and Financial Assurance Mechanism. It is unclear how one deadline affects the other. A flow chart would help to clarify and identify the various interactions and deadlines between the Operator, Lead Agency, and Division of Mine Reclamation."

### Response to Comment 2:

Rejected. This comment is irrelevant to the Guidance Document for Surface Mine Inspectors. PRC section 2773.4 is not subject to rulemaking actions by the Department of Conservation's Division of Mine Reclamation. Other than the requirement that the mine operator provide a Financial Assurance Cost Estimate to the Lead Agency for review within 30 days of an annual inspection, the timelines associated with the review and approval of the Financial Assurance Cost Estimate and Financial Assurance Mechanism are not discussed in the Guidance Document for Surface Mine Inspectors. However, Section 6.1 of the Guidance Document for Surface Mine Inspectors provides recommended considerations for Lead Agency review of the updated Financial Assurance Cost estimate relative to the

inspector's recent observations of the surface mining operation. DMR recommends consulting with your legal counsel regarding implementation of SMARA statutes and regulations.

Comment 3:

"Sec. 10 Section 2774 (d): No Later than July 1 of each year the lead agency shall submit to the director for each active or idle surface mining operation within the lead agency's jurisdiction the following information. A statement that there has been no changes during the previous year, as applicable. *It is not clear if these changes are related only to the reclamation plan or if they pertain to other operations of the mine such as total area disturbed or reclaimed. The Lead Agencies do not receive annual reports from the operators until July 1 of each year and therefore cannot meet this deadline.*"

Response to Comment 3:

Rejected. This comment is irrelevant to the Guidance Document for Surface Mine Inspectors. PRC section 2774(d) is not subject to rulemaking actions by the Department of Conservation's Division of Mine Reclamation. DMR recommends consulting with legal counsel regarding implementation of SMARA statutes and regulations.