Pre-Rulemaking Discussion
Surface Mine Inspection Guidance Document
And Regulations

On April 18, 2016, Governor Brown signed into law Assembly Bill 1142 (AB 1142) and Senate Bill 209 (SB 209), reforming the Surface Mining and Reclamation Act (SMARA). The SMARA reforms, which become effective on January 1, 2017, require development of corresponding regulations through the rulemaking process.

Public Resources Code (PRC) §2774(e), as amended, requires the Department of Conservation (Department) to establish a training program for all surface mine inspectors no later than December 31, 2017. The Department is also required to develop a guidance document, in consultation with the State Mining and Geology Board (SMGB) and stakeholders, to provide instruction and recommendations to those conducting surface mine inspections pursuant to PRC §2774(b), as amended. The SMGB is revising the California Code of Regulations (CCR), including section 3504.5, regarding mine inspections in response to PRC § 2774 (b), as amended.

The purpose of the pre-rulemaking discussion is to solicit input for developing the guidance document and associated revisions to the CCR. To assist in this effort, please provide comments on the discussion questions listed below. In order for your comments to best help the Department and the SMGB develop their respective guidance document and regulations, you are encouraged to provide specific suggestions and/or language. The Department will be accepting comments until December 9, 2016 at 5:00 pm. Please see the bottom of this document for information about submitting comments.

Provide your responses to the discussion questions associated with the amended language in PRC §2774:

1. **PRC §2774(b)(1): "Lead agencies shall cause surface mining operations to be inspected in intervals of no more than 12 months…"**

   Note: Currently, PRC §2774(b) requires lead agencies to inspect a surface mining operation within 6 months of receiving the operator's annual report. CCR §3504.5 requires an inspection not less than once each calendar year. Neither the current statute nor regulation requires a specific inspection interval.

   Discussion Question

   a) What new procedures might you use to implement the inspection scheduling requirements?

2. PRC §2774(b)(1) (*continued*): "…The lead agencies shall cause inspections to be conducted by a state-licensed geologist, state-licensed civil engineer, state-licensed landscape architect, state-licensed forester, or a qualified lead agency employee who has not been employed by the surface mining operation being inspected in any capacity during the previous 12 months, except that a qualified lead agency employee may inspect surface mining operations conducted by the local agency…"

Discussion Questions

a) The Department is considering guidance document instructions that provide that the evaluation and analysis of site conditions that implicate the need for licensed professions be conducted by appropriate state-licensed professionals or by an individual working under the responsible charge of a state-licensed professional, for all inspectors, including lead agency employees. This instruction is consistent with current professional practice requirements. What is your opinion about this instruction?

b) If a licensed professional was required for certain aspects of a mine inspection, where would you find that person? In another department? Would you need to use a consultant or other expertise?

c) As a lead agency, what other definitions would you add to what is a 'qualified lead agency employee'?

d) How do you recover the cost of conducting an inspection for surface mining operations in your jurisdiction?

e) If you hired a mine inspector who previously worked (within the last 12 months) for a mine operator within another county and that operator also has operations within your lead agency's jurisdiction, how would you ensure potential conflict of interest issues are avoided?

3. PRC §2774(b)(1) (continued): "…The lead agency shall provide a notice of completion of inspection to the director within 90 days of conducting the inspection. The notice shall contain a statement regarding the surface mining operation's compliance with this chapter and a copy of the completed inspection form, and shall specify, as applicable, all of the following:

(A) Aspects of the surface mining operation, if any, that were found to be inconsistent with this chapter but were corrected before the submission of the inspection form to the director.

(B) Aspects of the surface mining operation, if any, that were found to be inconsistent with this chapter but were not corrected before the submission of the inspection form to the director.

(C) A statement describing the lead agency's intended response to any aspects of the surface mining operation found to be inconsistent with this chapter but were not corrected before the submission of the inspection form to the director."

Discussion Questions

a) Do you use the SMARA Lead Agency Inspection Notice Form currently offered on the Department's website? If not, why? What suggestions can you offer to improve it?

b) What challenges, if any, do you perceive with lead agencies now having to explain how it intends to deal with violations noted during the inspection?

4. PRC §2774(c): "If an operator does not request an inspection date on the annual report filed pursuant to Section 2207 or if the lead agency is unable to cause the inspection of a given surface mining operation on the date requested by the operator, the lead agency shall provide the operator with a minimum of five days' written notice of a pending inspection or a lesser time period if agreed to by the operator."
Note: PRC §2774(c) relates to annual report requirements in PRC §2207(a) as amended by SB 209, which states, in part: "…A copy of the previously completed annual inspection form and a requested date, within 12 months of the prior inspection date, for the next annual inspection by the lead agency."

Discussion Questions

a) As a lead agency, how difficult will it be to inspect the mining operation on the date requested by the operator on the annual report?

b) What new procedures might you use to implement the inspection scheduling requirements?

6. PRC §2774(e)(1): "No later than December 31, 2017, the department shall establish a training program for all surface mine inspectors. The program shall be designed to include a guidance document, developed by the department, in consultation with the board and stakeholders, to provide instruction and recommendations to surface mine inspectors performing inspections pursuant to subdivision (b).
(2) The training program shall include inspection workshops offered by the department in different regions of the state to provide practical application of the guidance document material.

(3) On and after July 1, 2020, all inspectors shall have on file with the lead agency and the department a certificate of completion of an inspection workshop. An inspector shall attend a workshop no later than five years after the date of his or her most recent certificate.

(4) The adoption of the guidance document by the department pursuant to this subdivision shall be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code)."

Discussion Questions

a) What would you want the Department to include in its inspector training program?

b) What would you want the Department to include in a guidance document for conducting inspections?

c) How can mine inspections be improved to better protect public health and safety, and prevent or minimize adverse effects on the environment?

d) How do you coordinate your inspections and share information with other regulatory agencies, such as the Regional Water Quality Control Board and the California Department of Fish and Wildlife?

Written submissions may be provided to the Department by regular mail or email at:

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