

PROPOSED REGULATIONS

PUBLIC RESOURCES CODE SECTION 2714(f) EXEMPTION REGULATIONS

Title 14. Natural Resources

Division 2. Department of Conservation

Chapter 8. Mining and Geology

Subchapter 1. State Mining and Geology Board

Article 17. Surface Mining Operations of Infrequent Nature That Involve Minor Surface Disturbances

14 CCR § 4050

§ 4050 Purpose of Regulations. The regulations contained in this article set forth the procedures that the State Mining and Geology Board (Board) shall use for the determination of exemptions pursuant to Public Resources Code (PRC) section 2714(f).

§ 4051 Pre-submittal Consultation. The project proponent shall request a pre-submittal consultation prior to submitting the exemption application. The Board's Executive Officer shall consult with the project proponent, the Surface Mining and Reclamation Act (SMARA) lead agency, and the land use agency with jurisdiction while considering an exemption requested under PRC section 2714(f). Topics of discussion will include the following:

- a) The scope, nature, and intent of the proposed surface mining operation.
- b) The amount and type of mineral commodity or materials that will be produced as well as the proposed method of production or exploration.
- c) The project's environmental review under California Environmental Quality Act (CEQA) and/or National Environmental Policy Act (NEPA) as part of the lead agency permitting process.
- d) The condition in which the site will be left that minimizes adverse effects on the environment, protects public health and safety, and that is readily adaptable to the designed use or readily adaptable to alternative land uses.

§ 4052 Eligibility for Exemption. Only a surface mining operation that the Board determines to be of an infrequent nature and that involves only minor surface disturbances shall be eligible for the exemption.

§ 4053 Filing a Request for a Determination of Exemption. A request for exemption under PRC section 2714(f) shall be initiated by filing a request for determination of exemption with the Board. The request for determination of exemption shall include the following information:

- a. Name, address, telephone number, and email address of the applicant and any agent for contact of service;
- b. Name, address, telephone number, and email address of the subject property owner(s);
- c. Name, address, telephone number, and email address of the mineral rights owner(s);
- d. Name, address, telephone number, and email address of any lessee or lien holder to the surface mining operation;
- e. Name, address, telephone number, and email address for the land use agency with jurisdiction;
- f. Name, address, telephone number, and email address for the SMARA lead agency with jurisdiction;
- g. Name, address, telephone number, email address, and California mine identification number for each mining operation located within 60 miles of the proposed surface mining operation;

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- h. Name, address, telephone number, and email address of the owners of properties contiguous to the surface mining operation;
- i. A map, prepared by an appropriately qualified professional, indicating the location, the latitude and longitude, and the boundaries and the limits of the surface mining operation and acreage;
- j. A legal description of such property comprising the surface mining operation, such as township and range, metes and bounds, parcel numbers, or other descriptive methods to specifically identify such property;
- k. The land use agency permit documents for the surface mining operation, including, to the extent applicable, CEQA and/or NEPA review documentation prepared for the project, or any other evidence of the right to operate such as by specific zoning or ordinance;
- l. Copies of any other public agency permits associated with the surface mining operations and a statement regarding the current status of required permits which have not yet been obtained;
- m. Lead agency staff reports concerning the approval or impacts of the surface mining operation and meeting minutes of any public hearings related to the lead agency's consideration or approval of the permit to conduct the surface mining operation;
- n. The time frame planned for the proposed surface mining operations, including the start date and the estimated schedule of completion, and whether period of inactivity would occur;
- o. Approximate volume and type of material to be removed from the surface mining operation;
- p. Approximate volume of the topsoil proposed to be disturbed or salvaged by the surface mining operation and final disposition;
- q. Approximate volume of the overburden proposed to be disturbed or salvaged by the surface mining operation and final disposition;
- r. Approximate volume of residual mining waste and final disposition following the surface mining operation;
- s. Grading plans showing current topography and proposed final elevations of mined lands; and
- t. A declaration or affidavit attesting to the true and accurate nature of the materials and information provided pursuant to this section.

§ 4054 Initial Review of a Request for a Determination of Exemption. The Board's Executive Officer shall initially evaluate whether the request for determination of exemption contains the minimum applicable information specified in section 4053 of this article and shall also determine if the request for exemption is complete within thirty days of receipt of the filing. If the Board's Executive Officer determines that the request for exemption does not contain sufficient information to meet the requirements of section 4053, the request shall be rejected and the deficiencies in the request shall be identified by the Board's Executive Officer in written correspondence to the applicant. The applicant may address the deficiencies and may resubmit the request for a determination of exemption.

§ 4055 Administrative Record. The administrative record before the Board shall consist of the applicable documents specified in section 4053, Board staff reports, related materials other persons may have submitted to the Board during its consideration of the request for exemption, and any other materials the staff of the Board considered in reviewing the request.

§ 4056 Public Hearing. No determination of exemption shall be made by the Board without a public hearing and an opportunity for the applicant, the lead agency, any interested persons, and the public to comment. Notice of the public hearing will be provided to those identified in 4053(g) and (h) and posted upon the Board's website. The public hearing shall be held by the Board within ninety days of the Executive Officer's determination that the request is complete and, at its discretion, within the county where the exemption is claimed or within the county of the Board's offices (County of Sacramento).

§ 4057 Hearing Procedures.

(a) The public hearing should proceed in the following manner:

- (1) Review of the Executive Officer's informational report and the administrative record;
- (2) Statements on behalf of the applicant;
- (3) Statements on behalf of the land use and SMARA lead agency;
- (4) Statements on behalf of the public;
- (5) Rebuttal on behalf of the applicant;
- (6) Rebuttal on behalf of the land use and SMARA lead agency;
- (7) Rebuttal on behalf of the public;
- (8) The Board may ask questions of Board staff, the applicant, the land use and SMARA lead agency and members of the public as part of its deliberations. The Board shall, upon a motion, determine by a vote whether the surface mining operation is exempt from SMARA pursuant to PRC section 2714(f). The determination shall identify the specific facts that support or deny the exemption. The Board may also, within its discretion, choose to continue the request to a future Board meeting; and
- (9) Motion to close the public hearing.

(b) Notwithstanding the above, the Chair of the Board may, in the exercise of their discretion, determine the order of the proceedings, provide for additional testimony, or provide for additional rebuttal.

(c) The Chair of the Board may impose reasonable time limits upon statements and presentations.

§ 4058 Notification of Board Determination. Notification of the Board's determination shall be made by certified mail to the lead agency and the project proponent within 15 days following the public hearing at which the decision is made and shall be posted upon the Board's website.

§ 4059 Effect of a Determination of Exemption. Under PRC section 2714(f), a determination of exemption by the Board exempts the surface mining operation from the requirements of SMARA (PRC sections 2710 et. Seq.), only to the extent it is operated consistent with the request for exemption, the Board's approval of the exemption, and all applicable public agency permits. The applicant shall notify the Board within thirty days of any future modification to the surface mining operation. The Board may conduct periodic inspections of the surface mining operation. The Board shall notify the operator and the lead agency at least five days prior to conducting an inspection of the surface mining operation. If surface mining operations are modified or conducted inconsistent with the submitted documents under California Code of Regulations, Title 14, Section 4053, the Board may, within its discretion, require the steps outlined in this Article to be repeated, including resubmittal of documentation and a public hearing to reconsider its prior determination of exemption.

Authority: Section 2755, Public Resources Code. Reference: Section 2714(f), Public Resources Code.