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# SMARA

Surface Mining &  
Reclamation Act

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HARRISON  
TEMBLADOR  
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MINING  
LAND USE  
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# Inspection Process Enforcement FA Forfeiture Lead Agency Takeover

Inspections must occur in intervals of **no more than 12 months**.

Operator must request a date for the next annual inspection on the operator's annual report form. The requested date must be within **12 months of the prior inspection date**.

Lead Agency must inspect the operation on the date requested by the operator. If the Lead Agency is not able to conduct the inspection on that date, then the Lead Agency must inspect the operation on an alternative date set by the Lead Agency, **within 12 months of the prior inspection**, and provide the operator with a minimum of **five days' notice** of the alternative inspection date.

If the operator does not request an inspection date on its annual report form, then the Lead Agency must inspect the surface mining operation on a date set by the Lead Agency, **within 12 months of the prior inspection**, and provide the operator with a minimum of **five days' notice** of the inspection date.

Annual inspections **must be** conducted by:

- A state-licensed geologist;
- A state-licensed civil engineer;
- A state-licensed landscape architect;
- A state-licensed forester; or
- A qualified lead agency employee who has not been employed by the operation within the last 12 months, except that a lead agency employee may inspect an operation owned or operated by the Lead Agency.

# Revised Inspection Process

(PRC 2207, 2774)

Lead Agency must provide DOC with a copy of the inspection report and notice that the inspection has been completed within **90 days** after completing the inspection. The notice must include the following:

- Aspects of the operation that were found to be not in compliance with SMARA, but which were corrected before submission of the inspection report to the DOC;
- Aspects of the operation that were found to be not in compliance with SMARA, but which were not corrected before submission of the inspection report to the DOC;
- A statement describing Lead Agency's intended response to any aspects of the operation found to be not in compliance with SMARA and that were not corrected before submission of the inspection report to the DOC; and
- Indicate whether the operation has a reclamation plan, financial assurances, or interim management plan pending review before the Lead Agency, or a reclamation plan or financial assurances appeal pending before the SMGB.

# Inspection Comparison

	<b>Current SMARA</b>	<b>Revised SMARA</b>
<b>How Often</b>	Within 6 mos. of LA's receipt of operator annual report; minimum once per year. (PRC 2774(b))	Intervals of no more than 12 mos. (PRC 2774(b)(1))
<b>When</b>	LA sets inspection date w/ 10 day notice. (14 CCR 3504.5)	Operator requests inspection date; LA can set alternative w/ 5 day notice. (PRC 2207(a)(8), 2774(c))
<b>By Whom</b>	LA <u>may</u> retain state-licensed professional, or a competent person; no self-inspections. (PRC 2774(b), 14 CCR 3504.5(b))	LA <u>must</u> retain state-licensed professional, or qualified LA employee; self-inspections allowed. (PRC 2774(b)(1))
<b>After</b>	LA must notify DOC w/in 30 days after completion, include "compliance statement". (PRC 2774(b))	LA must notify DOC w/in 90 days, plus send copy of the inspection report, plus detailed compliance statement and intended follow-up action. (PRC 2774(b)(1))

# Inspector Qualifications

Annual inspections **must be** conducted by:

- A state-licensed geologist;
- A state-licensed civil engineer;
- A state-licensed landscape architect;
- A state-licensed forester; or
- A qualified lead agency employee who has not been employed by the operation within the last 12 months, except that a lead agency employee may inspect an operation owned or operated by the Lead Agency.

Inspections **can no longer** be conducted by “a person, who in the determination of the lead agency has demonstrated competence in performing inspections of surface mining operations” (14 CCR 3504.5(b)) if that person does not meet the above qualifications.

# Inspector Training

- DOC required to develop an inspection training program and guidance document by December 31, 2017.
- Beginning **July 1, 2020, all inspectors** required to have on file with the LA and DOC a certificate of completion of the DOC training program.
- Inspectors required to re-take DOC training program every five years.

(PRC 2774(e))

# Post-Inspection Notice to DOC

- Copy of inspection report and notice of completion to DOC within **90 days**
- **Notice must include the following:**
  - Aspects of the operation that were found to be not in compliance with SMARA, but which were corrected before submission of the inspection report to the DOC;
  - Aspects of the operation that were found to be not in compliance with SMARA, but which were not corrected before submission of the inspection report to the DOC;
  - A statement describing Lead Agency's intended response to any aspects of the operation found to be not in compliance with SMARA and that were not corrected before submission of the inspection report to the DOC; and
  - Indicate whether the operation has a reclamation plan, financial assurances, or interim management plan pending review before the Lead Agency, or a reclamation plan or financial assurances appeal pending before the SMGB.



# Enforcement



If a Lead Agency or the DOC determines, based on an annual inspection or after confirming by inspection, that an operation is not in compliance with SMARA, the Lead Agency or the DOC may issue a notice of violation (NOV) to the operator.

If the Lead Agency or the DOC issues an NOV to the operator, the NOV must provide the following:

- A description of the violation; and
- Actions the operator shall take to correct the violation.

The operator has **30 days** after issuance of the NOV to complete the corrective actions.

If the Lead Agency or the DOC determines that the time to correct the NOV will exceed 30 days, then the Lead Agency or DOC may enter into a stipulated order to comply (SOTC) with the operator. The SOTC must include a schedule and reasonable time for compliance.

If the operator either does not correct the NOV within **30 days** after issuance, or does not commit to enter into an SOTC within **30 days** after issuance of the NOV, then the Lead Agency or the DOC may issue an order to comply (OTC) to the operator.

# Enforcement Process

(PRC 2774.1)

The OTC will take effect **30 days** after issuance, unless the operator appeals the OTC within that time. If the Lead Agency issued the OTC, the operator must appeal the OTC to the Lead Agency; if issued by the DOC, the operator must appeal the OTC to the SMGB.

The Lead Agency or the SMGB shall hear the appeal within **45 days** after filing, or a longer period if agreed upon by the operator and the Lead Agency, or the operator and the DOC, as the case may be.

If the Lead Agency or the SMGB denies the operator's appeal, then the operation shall be removed from the AB 3098 List within **10 working days** thereafter, unless the operator agrees to enter into an SOTC that is consistent with the appealed OTC.

# Enforcement Comparison

	<b>Current SMARA</b>	<b>Revised SMARA</b>
<b>Step 1</b>	LA/DOC <u>may</u> “notify the operator” of a violation. No required contents. Operator has 30 days to resolve the NOV. (PRC 2774.1(a))	LA/DOC <u>may</u> “issue a notice of violation”. NOV must include specific details. Operator has 30 days to resolve the NOV. (PRC 2774.1(a)(1))
<b>Step 2</b>	---	If NOV not resolved in 30 days, LA/DOC <u>may</u> enter into SOTC with operator. (PRC 2774.1(a)(2))
<b>Step 3</b>	If NOV not resolved in 30 days, LA/DOC <u>may</u> issue OTC; OTC becomes effective <u>after hearing</u> .* (PRC 2774.1(a), (b))	If operator does not comply with SOTC or enter into SOTC, LA/DOC <u>may</u> issue OTC. OTC becomes effective <u>30 days after issuance</u> , unless appealed. (PRC 2774.1(a)(3))

\* Under PRC 2717(b)(4), a SOTC does not make an operator ineligible for the AB 3098 List.

# Enforcement

- A Lead Agency is **not required** to issue an NOV to an operation not in compliance with SMARA. (PRC 2774.1(a)(1) [“may”, not “shall”].)
- If Lead Agency issues an NOV, and the “fix” will take longer than 30 days, then the Lead Agency may enter into a Stipulated Order to Comply with the operator directly. (PRC 2774.1(a)(2)(A).)
- Issuance of an NOV, Stipulated Order to Comply, or Order to Comply **does not** disqualify an operator from eligibility for the AB 3098 List. (PRC 2774.1(d)(4).)



# FA Forfeiture

# FA Forfeiture Process

(PRC 2773.1)

If the Lead Agency, or SMGB when acting as lead agency, "has evidence" that an operator may be financially incapable of completing reclamation or may have abandoned the surface mining operation, the Lead Agency/SMGB **shall** conduct a public hearing to determine the same.

Lead Agency/SMGB shall provide operator and DOC with notice **at least 30 days** prior to the public hearing.

If, at the public hearing, the Lead Agency/SMGB determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan or has abandoned its operation, the Lead Agency or the DOC shall do all of the following:

- Notify the operator that the Lead Agency or DOC intends to take action to forfeit the financial assurances, and the reasons for doing so;
- Proceed to take action to forfeit the financial assurances; and
- Use the forfeited financial assurances to conduct and complete reclamation.

If the forfeited financial assurances are insufficient to reclaim the operation in accordance with its approved reclamation plan, the Lead Agency or the DOC may use forfeited financial assurances to reclaim or remediate mining disturbances as appropriate for the site conditions as determined by both the Lead Agency and the DOC.

The operator is responsible for the costs of completing reclamation in accordance with the reclamation plan or a remediation plan that are in excess of the forfeited financial assurances.

# FA Forfeiture Process

	<b>Current SMARA</b>	<b>Revised SMARA</b>
<b>Basis</b>	?	“Evidence” of financial incapability or abandonment. (PRC 2773.1(b)(1))
<b>Action</b>	LA/SMGB holds a hearing. (PRC 2773.1(b))	LA/SMGB <u>must</u> hold a hearing. (PRC 2773.1(b)(1))
<b>Inquiry</b>	Is operator financially incapable of completing reclamation; or, has operator abandoned without <u>commencing</u> reclamation? (PRC 2773.1(b))	Is operator financially incapable of completing reclamation; or, has operator abandoned without <u>completing</u> reclamation? (PRC 2773.1(b)(2))
<b>Post-Hearing</b>	<ol style="list-style-type: none"> <li>(1) Notify the operator that LA/DOC intends to forfeit FAs;</li> <li>(2) Give operator 60 days to commence reclamation;</li> <li>(3) If operator does not commence reclamation, proceed to forfeit FAs; and</li> <li>(4) LA/DOC use forfeited FAs to conduct/complete reclamation.</li> </ol> (PRC 2773.1(b))	<ol style="list-style-type: none"> <li>(1) Notify the operator that LA/DOC intends to forfeit FAs;</li> <li>(2) LA/DOC proceed to forfeit FAs; and</li> <li>(3) LA/DOC use forfeited FAs to conduct/complete reclamation.</li> </ol> (PRC 2773.1(b)(2))

# FA Forfeiture – Remediation Plan

SMARA now authorizes the LA and DOC to agree on a “**remediation plan**” where:

- The operation cannot be reclaimed in accordance with the approved reclamation plan; or
- The forfeited financial assurances are inadequate to reclaim in accordance with the approved reclamation plan.

(PRC 2773.1(b)(2)(C).)



# Lead Agency Takeover



# Lead Agency Takeover Process (PRC 2774.4)

The SMGB **shall** commence takeover proceedings if a Lead Agency has:

- Approved reclamation plans or financial assurances not in compliance with SMARA;
- Failed to conduct inspections as required;
- Failed to seek forfeiture of financial assurances and carry out reclamation as required;
- Failed to take appropriate enforcement action;
- Intentionally misrepresented the results of inspections; or
- Failed to submit information to the DOC as required.

The SMGB must notify the Lead Agency of identified deficiencies and allow the Lead Agency **45 days** to respond.

## Response Satisfactory

If the Lead Agency's response is satisfactory, then no further action will be taken.

## Response Not Satisfactory

If the Lead Agency's response is not satisfactory, then the SMGB shall hold a public hearing within the Lead Agency's jurisdiction, after giving **45 days'** notice of the hearing.

## No Deficiencies Identified At Hearing

If the SMGB determines at the hearing that no deficiencies exist, then no further action will be taken.

## Deficiencies Identified At Hearing

If the SMGB determines at the hearing that deficiencies do exist, then it shall do one of the following:

- Immediately take over some or all of the Lead Agency's authority; or
- Require the Lead Agency to develop and implement a remedial plan within a specified time.

# Lead Agency Takeover Process (PRC 2774.4)

## Deficiencies Identified At Hearing

If the SMGB determines at the hearing that deficiencies do exist, then it shall do one of the following:

- Immediately take over some or all of the Lead Agency's authority; or
- Require the Lead Agency to develop and implement a remedial plan within a specified time.

## Immediate Takeover Action

If the SMGB immediately takes over some or all of the Lead Agency's authority, then it shall adopt written findings supporting its decision.

The SMGB is required to hold another public hearing no sooner than 3 years later to determine if the Lead Agency has corrected the identified deficiencies.

## Deficiencies Corrected

If the SMGB finds that the Lead Agency has corrected the deficiencies, then it shall restore some or all of the Lead Agency's authority.

## Deficiencies Not Corrected

If the SMGB finds that the Lead Agency has not corrected the deficiencies, then it shall not restore the Lead Agency's authority.

## Remedial Plan Required

The SMGB shall hold a public hearing to review the Lead Agency's completion of the remedial plan.

## Remedial Plan Completed

If the SMGB finds that the Lead Agency has completed the remedial plan, then no further action will be taken.

## Remedial Plan Not Completed

If the SMGB finds that the Lead Agency has not completed the remedial plan, then it shall set another public hearing to determine whether to take over some or all of the Lead Agency's authorities.

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