



# Overview of 2016 SMARA Modernization: AB 1142 (Gray) and SB 209 (Pavley)

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**Overview**

- **Why SMARA modernization now?**
  - SMARA “reform” over the years
  - SB 447 Signing Letter
  - SB 1270
- **What is the current status of legislative reforms?**
  - AB 1142
  - SB 209
- **What is the scope of changes to SMARA?**
  - Administrative
  - Implementation (compliance)
- **What new rules and guidance are expected?**
- **What can you do to prepare for SMARA changes?**

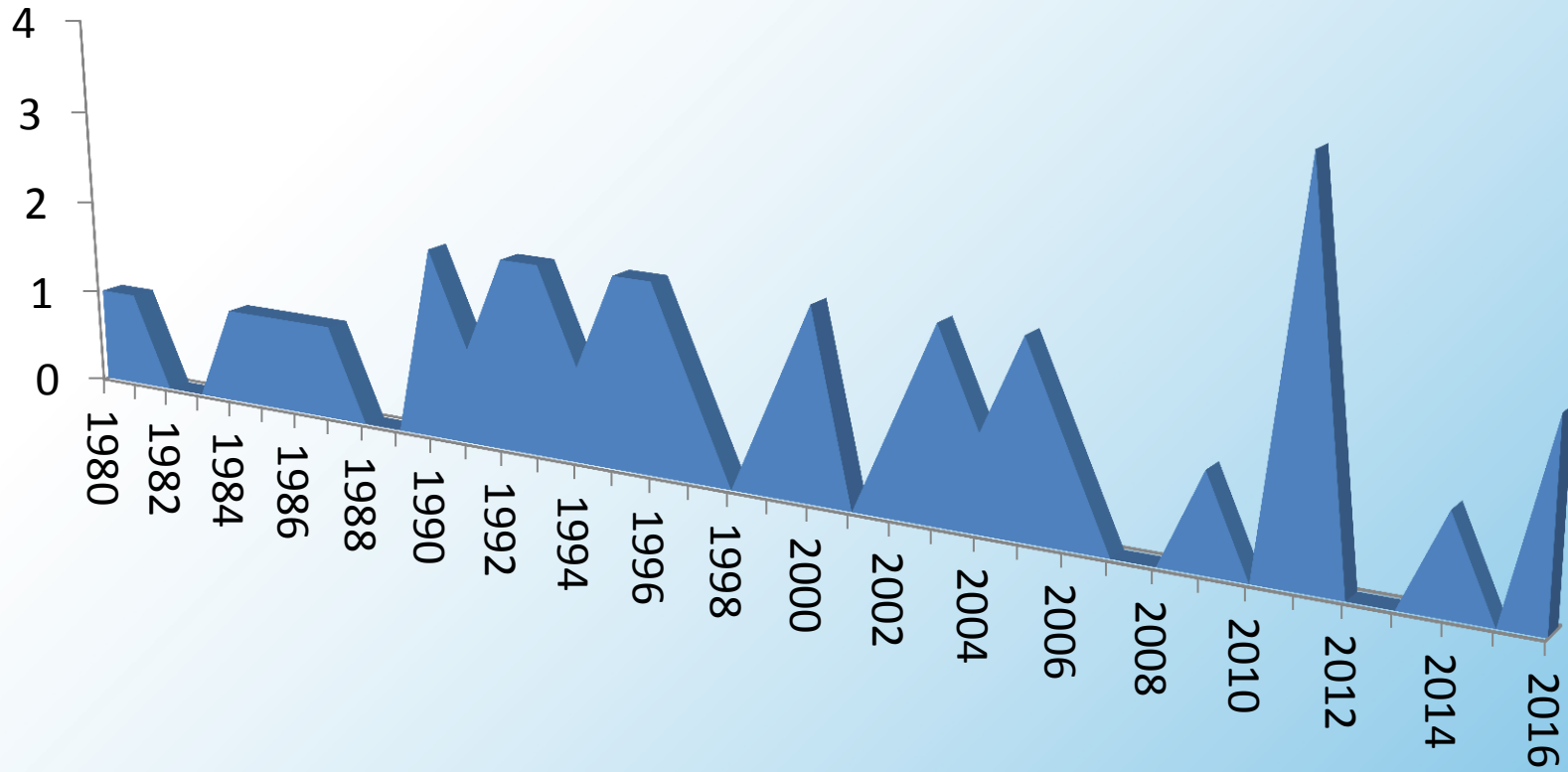
### Why SMARA modernization now?

- **SMARA reform over the years: amending bills** (by year codified into law)
  - More than 35 amendments since SMARA's enactment in 1975

Year	Sponsor	Bill	Year	Sponsor	Bill
1980-1981	Nejedy	SB 1300, AB 1111	1999	Thomson	AB 297
1984	Areias	AB 110	2000	Solis	SB 244
1985	Royce	SB 593	2000	Sher	SB 666
1986	Seymour	SB 1261	2002	Sher	SB 483
1987	Sher	AB 747	2003	Sher	SB 22
1990	Sher	AB 3551	2003	Kuehl	SB 649
1990	Sher	AB 3903	2004	Wolk	AB 1984
1991	Sher	AB 1506	2005	Fiscal & Budget Committee	SB 71
1992	Rogers	SB 1569	2005	Natural Resources Committee	SB 1110
1992	Sher	AB 3098	2006	Kuehl	SB 668
1993	Sher	AB 723	2009	Natural Resources Committee	SB 833
1993	Sher	AB 904	2011	Wolk	SB 133
1994	Sher	AB 867	2011	Rubio	SB 108
1995	Leslie	SB 273	2011	Galgiani	AB 566
1995	Craven, et al.	SB 614	2011	Steinberg	SB 792
1996	Olberg	AB 1373	2014	Lara	SB 447
1996	Monteith	SB 1549	2016	Pavley	SB 209
1997	Sher	SB 1664	2016	Gray	AB 1142

Why SMARA modernization now?

- SMARA reform over the years: number of bills/year



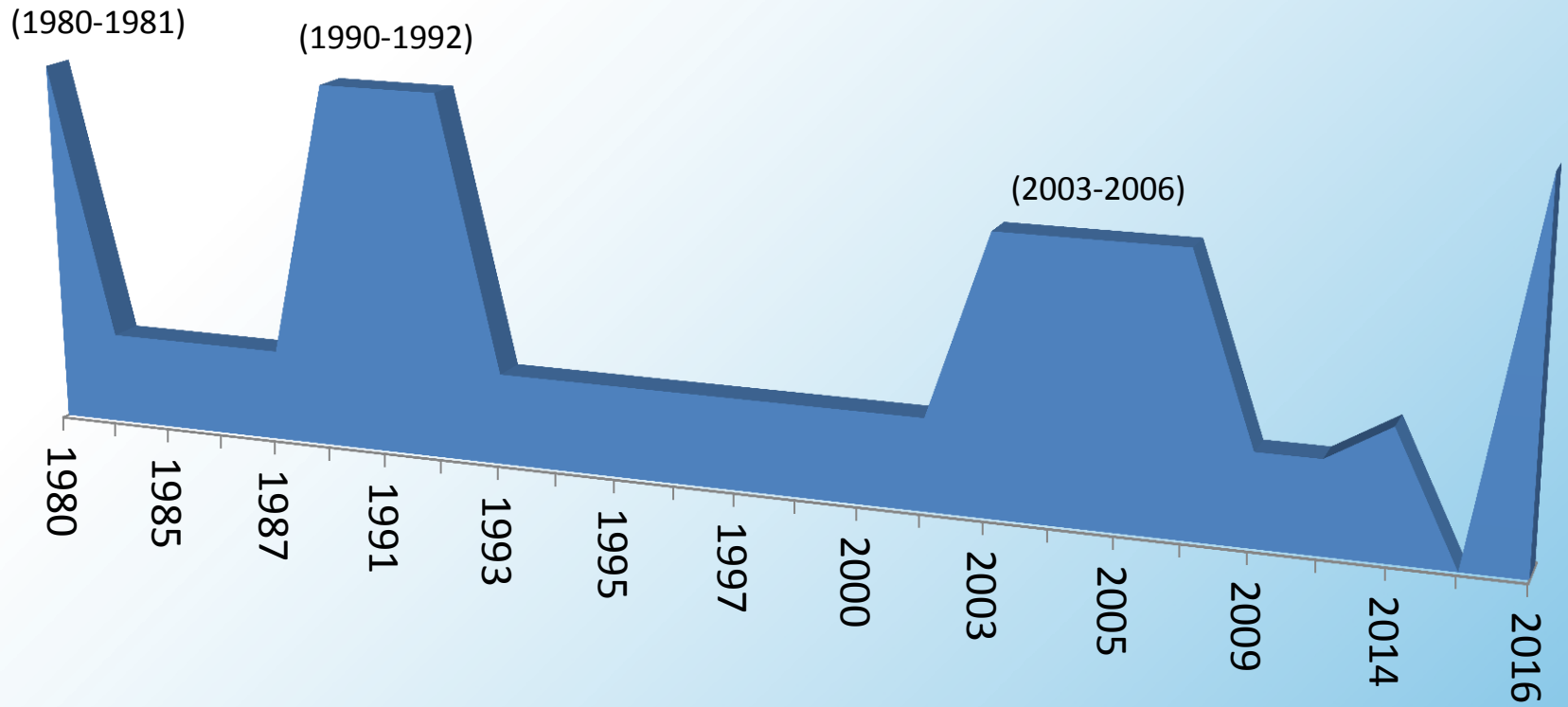
### Why SMARA modernization now?

- SMARA reform over the years: not all amendments are created equal

Year	Sponsor	Bill	Year	Sponsor	Bill
<b>1980-81</b>	<b>Nejeldy</b>	<b>SB 1300, AB 1111</b>	1999	Thomson	AB 297
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1996	Olberg	AB 1373	2014	Lara	SB 447
1996	Monteith	SB 1549	<b>2015</b>	<b>Pavley (Chap. 8 (2016))</b>	<b>SB 209</b>
1997	Sher	SB 1664	<b>2015</b>	<b>Gray (Chap. 7 (2016))</b>	<b>AB 1142</b>

Why SMARA modernization now?

- SMARA reform over the years: periods of significant amendments



## Why SMARA modernization now?

- **SMARA reform over the years: significant amendments**
  - **1980-1981 (SB 1300, AB 1111):**
    - Added Section 3500 regulations (reclamation plans and inspections)
    - Expanded SMGB's oversight role
  - **1990-1992 (AB 3551, AB 3903, AB 1506, SB 1569, AB 3098):**
    - Changed financial assurances
    - Added Section 3098 "good-guy" list (operators able to sell to public agencies)
    - Required IMPs, increased reporting responsibilities
    - Revised reclamation standards
  - **2003-2006 (SB 22, SB 649, AB 1984, SB 71, SB 1110, SB 668):**
    - Doubled reporting fees (\$4,000 max), tripled statewide cap from \$1 to \$3.5 million
    - Created new abandoned gold mine fee
    - Expanded State authority
    - Mandatory backfilling for metallic mine reclamation
    - Made Section 3098 qualification more difficult
    - Expanded definition of "mining operations" subject to SMARA

## Why SMARA modernization now?

- **SMARA reform over the years: recent amendments**
  - **2011 (SB 108, AB 566, SB 798):**
    - Clarified definition of “idle”
    - Allowed additional extensions for IMPs
    - Allowed operators to submit corrected annual reports
    - Allowed mines “considered abandoned” to return to “idle” status
    - Additional legislative findings regarding importance of resources
    - Mineral resources conservation enhanced
  - **2014 (SB 447):**
    - Allowed operators to remain on the Section 3098 “good guy” list while correcting violations under an order to comply (through 2019)
    - Allowed operators to negotiate and stipulate to terms of order to comply (through 2019)
    - Made minor revisions to how quickly and under what circumstances the Director of Conservation can initiate enforcement actions



Why SMARA modernization now?

SB 447 Signing Letter



*“This interim leniency is only acceptable as we take the time to reform the Surface Mining and Reclamation Act – from top to bottom.”*

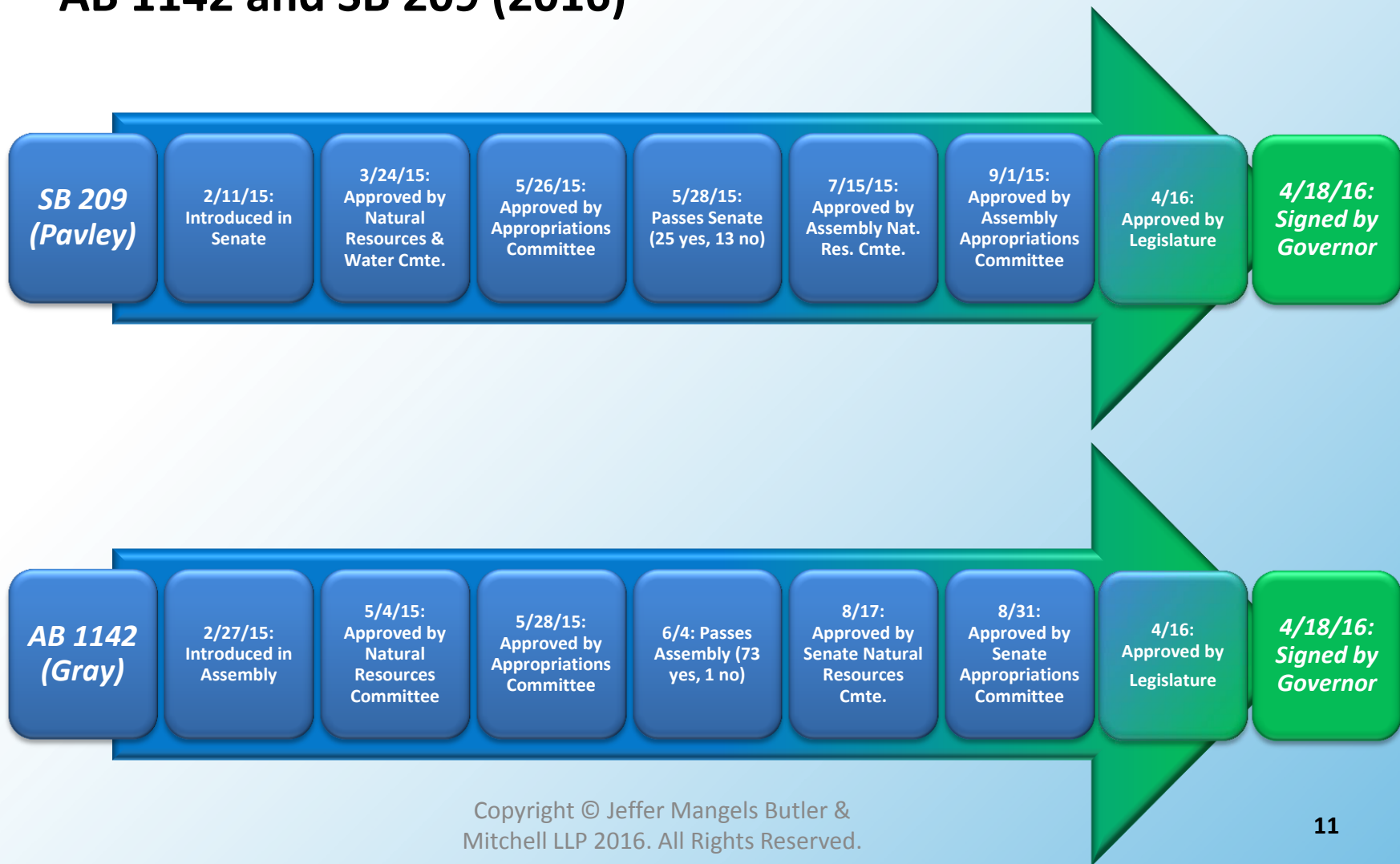
- Governor Brown, September 28, 2013 (SB 447 signing letter)

## Why SMARA modernization now?

- **SB 447 signing letter Results In: SB 1270 (Pavley)**
  - SMARA under SB 1270 (introduced 2014):
    - State authority: local agencies would have lost much oversight, e.g., SB 1270 would have:
      - Required **re-approval by a “State Mine Inspector” of already-approved reclamation plans** where State asserted lead agency authority
      - Given State Mine Inspector authority to **issue cease-and-desist / closure orders for minor violations**
      - Allowed lead agencies and State Mine Inspector to **set period for reclamation** when seeking to forfeit financial assurances
    - Appeal rights: would have created **new right for third parties to administratively appeal** reclamation plan approvals, financial assurance approvals, and Section 3098 “good guy” decisions
    - Reclamation: sought to compel **“current” RecPlan** to conduct surface mining
  - SB 1270 was opposed by labor, local government, and the mining industry, and failed to be moved out of the Senate

**Current status of legislation**

- **AB 1142 and SB 209 (2016)**



**Scope of SMARA changes**

# **AB 1142 and SB 209: What is the new landscape under SMARA?**

**Scope of SMARA changes: administrative**

- **Bills are effective January 1, 2017.**
- **Administrative changes**
  - DOC organization
  - Fiscal provisions
  - Director appeal authority
  - Inspector qualifications
  - Enforcement
  - Local agency benefits
  - Lead agency takeover

## Scope of SMARA changes: administrative

- **DOC organization**
  - **PRC § 607**: OMR renamed “Division of Mine Reclamation”
  - **PRC § 2006.5 [new]**: New position “Supervisor of Mine Reclamation” created to direct the Division of Mine Reclamation.

**Scope of SMARA changes: administrative****• Fiscal provisions**

- PRC § 2207 (SB 209): max fee raised from \$4K to \$10K
  - \$6K in 2017-2018 fiscal year
  - \$8K in 2018-2019 fiscal year
  - \$10K in 2020-2021 and beyond, adjusted for California Cost-of-Living Adjustment (COLA)
- PRC § 2207 (SB 209): total revenue cap from reporting fees raised from \$3.5 million to \$8 million (COLA-adjusted)
- PRC § 2207.2 [new] (AB 1142): new DOC Director report to Legislature on 2207 fees, both allocation (classification/designation vs. reclamation/financial assurances) and source (large vs. small operators)

**Scope of SMARA changes: administrative**

- **Appeal authority** [SMARA § 2770(e)-(g)]
  - **[New]** Director may appeal LA approval of FACE to SMGB
    - Only if Director first comments on FACE under § 2773.4
    - If FACE is for new/amended RecPlan, Operator must provide the FAM pending the appeal
    - If FACE is an update to existing FACE, operator must maintain existing FAM pending appeal
  - Clarifies standard of review: SMGB determines if RecPlan or FACE “substantially” meets applicable requirements
  - New remand requirements if SMGB upholds appeal



**Scope of SMARA changes: administrative**

- **Inspector qualifications [SMARA § 2774]**
  - Heightened state-license inspector qualifications
  - Lead Agency employees are now listed with licensed professionals as eligible inspectors
  - Establishes DOC training program, to include guidance document adopted per APA rulemaking process
  - All inspectors must complete training by 1/20/2020
    - Within every 5 years thereafter
  - Conflict-of-interest reduced: inspector may inspect mine unless employed there within the last 12 months
    - Lead Agency inspectors may inspect lead agency mines

**Scope of SMARA changes: administrative**

- **Enforcement [SMARA § 2774.1]**
  - Maintains discretion in current law to issue Notice of Violation (NOV)
  - Requires greater specificity of NOV content, including corrective actions
  - Allows Stipulated Order to Comply (OTC), with compliance schedule, if time to correct exceeds 30 days
  - If no corrective actions or Stipulated OTC within 30 days, OTC issued, subject to 30-day appeal
  - IF OTC appeal fails, 2nd chance to enter into Stipulated OTC, which would allow operator to remain on SMARA § 2717(b) list (AB 3098 “good guy” list)

**Scope of SMARA changes: administrative****• Local agency benefits**

- Lead Agency borrow pits
  - Idle mines put on 2-year (not annual) compliance schedule
  - Can remain idle indefinitely (no 5-year period)
  - Self-inspection okay
- Lead Agency staff, trained as inspector under SMARA § 2774(e), can inspect any Lead Agency operation

**Scope of SMARA changes: administrative**

- **Lead agency takeover [SMARA § 2774.4]**
  - Excludes vested right determinations from scope of lead agency authority subject to takeover
  - Re-organized and detailed process, including:
    - Overall revisions create multiple options short of full state assumption of SMARA Lead Agency (LA) authority to compel compliance
    - 45-day process for LA to respond re alleged deficiencies
    - 45-day SMGB public hearing process following LA response
    - SMGB may allow Lead Agency to submit and implement remedial plan in lieu of takeover
    - Follow-up hearing to assess completion of remedial plan to the SMGB's "satisfaction"

**Scope of SMARA changes: implementation**

- **AB 1142/SB 209: implementation changes**
  - Annual Inspection Process
  - Reclamation Plan Content
  - Reclamation Plan Process
  - Financial Assurances
  - Financial Assurance Process

**Scope of SMARA changes: implementation**

- **Annual inspections** [PRC § 2207; SMARA § 2774]
  - Overall: improved frequency/adequacy of inspections
  - Operator now requests, on annual report, an inspection date within 12 months of prior inspection
  - LA may re-schedule inspection date with 5 days' notice
  - Within 30 days of inspection, operator must submit annual FACE for review
  - Within 90 days of inspection, LA must provide notice of completion of inspection to DOC
  - Inspection form must note: (i) SMARA inconsistencies, (ii) whether inconsistency corrected, and (iii) if not corrected, what is LA's intended response to inconsistency

**Scope of SMARA changes: implementation**

- **Reclamation plan content** [SMARA § 2772]
  - Overall: RecPlan content is being consolidated into one document, with heightened quality of content
  - RecPlan must include a Chart identifying where required content is located (page number, chapter, appendix, etc.)
  - Maps, calculations, etc. must, where relevant, be stamped by licensed engineers, geologists, land surveyors, etc.
  - All or part of documents, such as permit conditions or CEQA mitigation measures, may be included in RecPlan by reference
  - If used to meet RecPlan requirements, such documents become part of the RecPlan (and subject to all SMARA requirements)

**Scope of SMARA changes: implementation****• Reclamation plan process**

[SMARA § 2772.1 (was § 2774)]

- Process similar to existing law but revised timelines, etc.
- Lead Agency submit RecPlan for Director review “as early as practicable” to facilitate CEQA review
- New process to (i) require Lead Agency to certify RecPlan submittal complete, and (ii) resolve Director determination of incompleteness
- LA must provide DOC, within 60 days after approval, with “official” copy of approved RecPlan, with:
  - Final index updating locations of all incorporated documents (permit conditions, mitigation, etc.)
  - Include all indexed documents in appendix that form part of reclamation obligation, annual inspections, etc.



## Scope of SMARA changes: implementation

- **Financial assurances** [SMARA § 2773.1]

- Corporate self-bonding (based on financial tests) allowed only for companies with net worth  $\geq$  \$35 million (see next slide)
- FAM not released without Lead Agency *and* Department consent (conforms statute to regulation)
- Modifies hearing and seizure requirements for cases of abandonment or financial incapability
  - Eliminates 60-day period to “commence” reclamation
  - Lead Agency/DOC reclaims (or remediates if bond inadequate to reclaim)
- Within 90 days of sale/transfer, buyer submits FA to Lead Agency and Director
- Within 15 days of sale/transfer, new owner signs new statement of reclamation responsibility

**Scope of SMARA changes: implementation**

- **Corporate self-bonding** [SMARA § 2773.1.5]
  - Corporate self-bonding (based on financial tests) allowed per (future) SMGB regulation assessing financial status.
  - Criteria:
    - Net worth at least \$35 million (adjusted annually per CPI)
    - Income and U.S. assets
    - Liabilities, including “other environmental assurances”
    - Assessed by certified public accountant
  - Other provisions/requirements:
    - “Additional measures” to recover funds for reclamation
    - Self-bonding limited to 75% of FACE (especially for companies with multiple operations)
    - Annual review/approval required by Lead Agency and DOC
    - Multiple operations can combine FACEs to pass financial test

## Scope of SMARA changes: implementation

- **Financial assurance process**

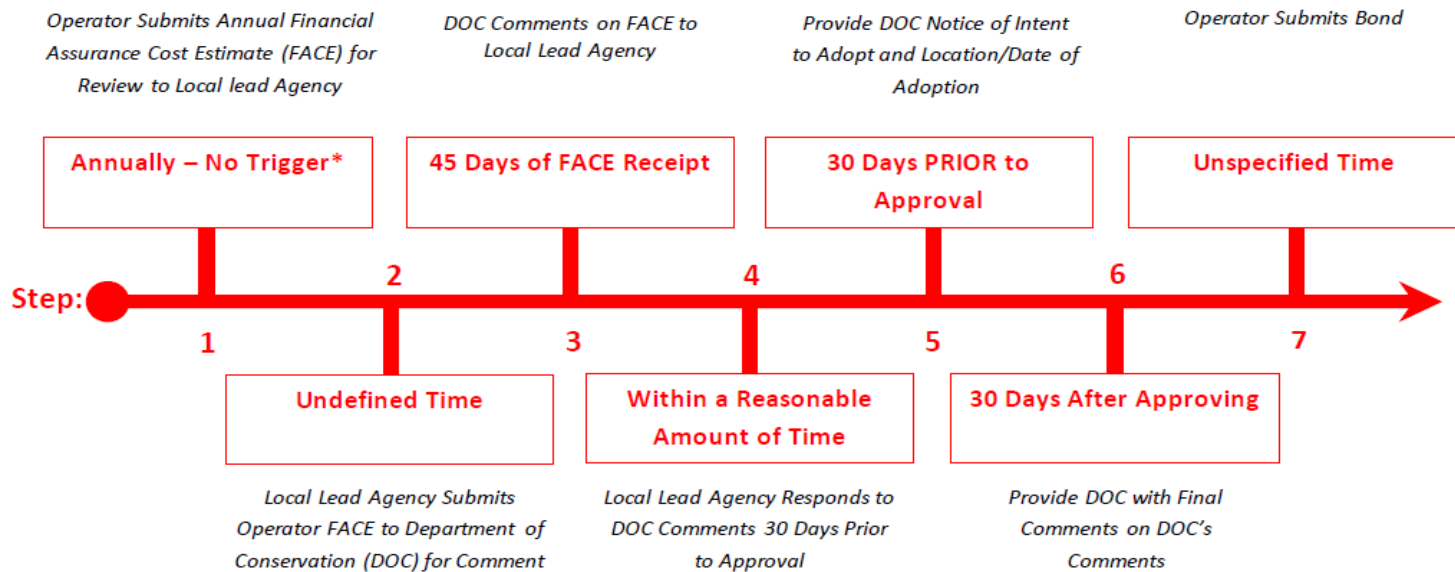
[SMARA § 2773.4 (**was § 2774**)]

- Creates two separate Financial Assurance Cost Estimate (FACE) processes:
  - 1) New RecPlan or Amendment FACE submittal review; and
  - 2) Annual FACE submittal review: multiple new deadlines keyed off facility inspection date, including deadlines for operators to submit annual FACE for review and timelines for lead agency submittal to DOC.
- Four significant changes (apply to both processes)
  - Process for Director to determine FACE submittal incomplete and remand
  - Director “consultation” with LA/operator if director comments not adopted
  - Submit Financial Assurance Mechanism (FAM) within 30 days of FACE approval (15-day review period for sufficiency of FAM submittal)
  - **New** DOC appeal rights to SMGB for FA approvals (see § 2770(e)-(g))

Scope of SMARA changes: implementation

- Existing FACE approval process

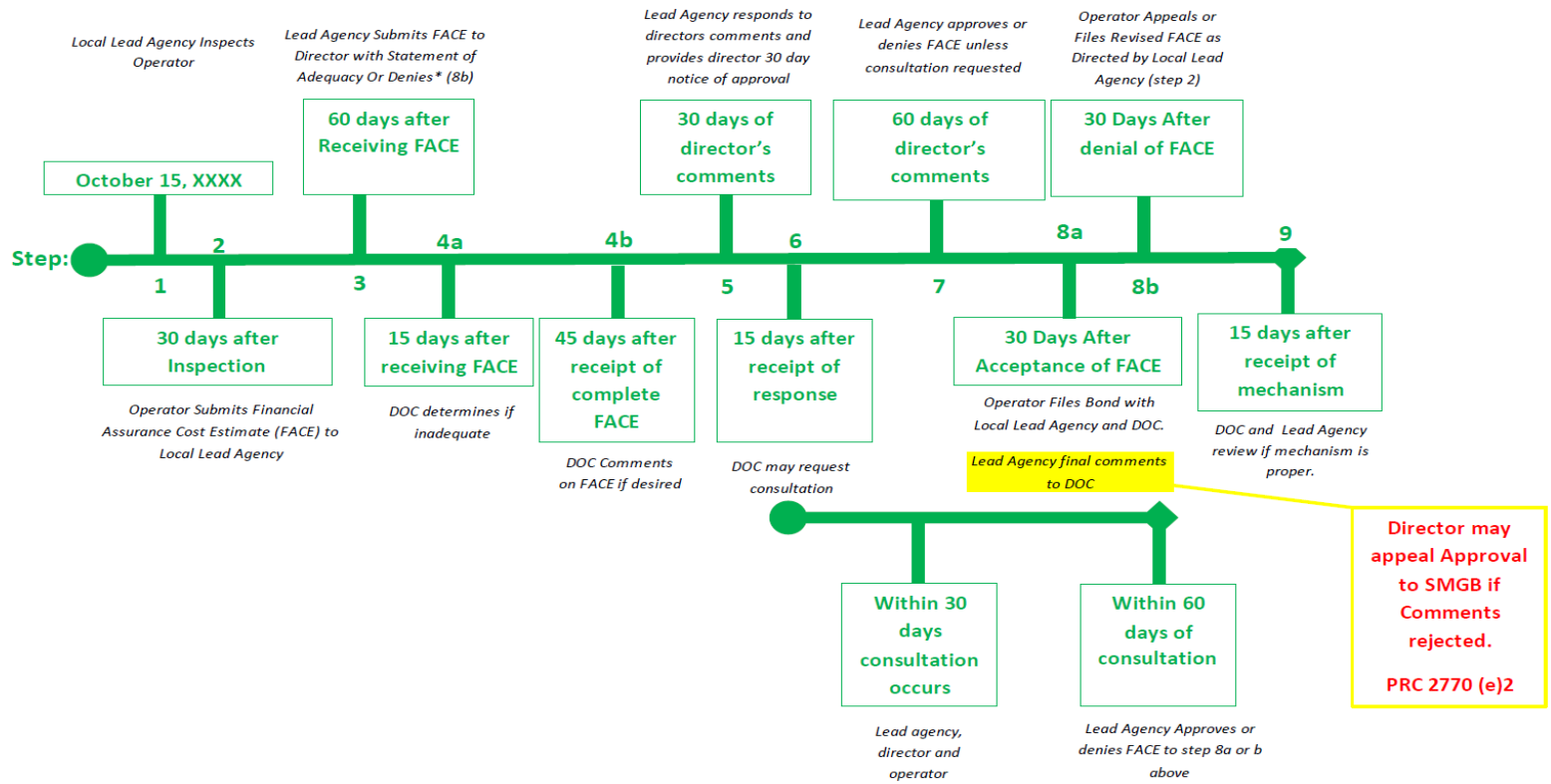
Existing Annual Financial Assurance Cost Estimate (FACE) Timeline



Scope of SMARA changes: implementation

• New ANNUAL FACE approval process

AB 1142 Annual Financial Assurance Cost Estimate Timeline  
Hypothetical October 15<sup>th</sup> Inspection Date



## Preparing for SMARA modernization

- **What new State agency rules and guidance are expected as a result of AB 1142 and SB 209?**
  - Explicitly required by legislation:
    - Revised annual FACE form (§ 2773.1(a)(4), 2773.4(e)(3));
      - DOC develops, SMGB approves.
      - Deadline: July 1, 2018.
    - Training program and guidance for SMARA inspectors (§ 2774(e)(4));
    - Regulations for corporate self-bonding.
  - Implicitly required:
    - Modified FACE appeal regulations (14 C.C.R. §§ 3680-3690), including new regulation for appeals by DOC of FACE approvals per revised § 2770;
    - Modified inspection regulation (14 C.C.R. § 3504.5) per revised §§ 2207, 2774.

## Preparing for SMARA modernization

- **What can operators do to prepare? Among other things:**
  - **Figure out your ideal timing for inspections and the financial assurances process**
    - Transition towards the new schedule in the 2016 inspections cycle
  - **Shore up your FACE**
  - For projects in process, **review the technical and organizational requirements for Rec Plans** (§ 2772), e.g., maps, index, etc.

**Preparing for SMARA modernization**

- **For more information:**

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