



# STATE MINING AND GEOLOGY BOARD

## EXECUTIVE OFFICER'S REPORT



ARNOLD  
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For Meeting Date: February 11, 2010

### Agenda Item No. 6: Report on AB 3098 Program (Information).

**INTRODUCTION:** The Department of Conservation, Office of Mine Reclamation (OMR) periodically publishes a list of mines regulated under the Surface Mining and Reclamation Act (SMARA) that meet provisions set forth under California's Public Resources Code, Section 2717(b). This list is generally referred to as the AB 3098 List, in reference to the 1992 legislation, that established it. Sections 10295.5 and 20676 of the Public Contract Code preclude mining operations that are not on the AB 3098 List from selling sand, gravel, aggregates, or other mined materials, to state or local agencies.

**STATUTORY AUTHORITY:** To assure compliance with the Public Contract Code, Public Resources Code Section 2717(b) states

*"For purposes of ensuring compliance with Sections 10295.5 and 20676 of the Public Contract Code, the department shall, at a minimum, quarterly publish in the California Regulatory Notice Register, or otherwise make available upon request to the Department of General Services or any other state or local agency, a list identifying all of the following:*

*(1) Surface mining operations for which a report has been submitted pursuant to Section 2207 that indicates all of following:*

*(A) The reclamation plan and the financial assurances have been approved pursuant to this chapter.*

*(B) Compliance with state reclamation standards developed pursuant to Section 2773.*

*(C) Compliance with the financial assurance guidelines developed pursuant to Section 2773.1.*

*(D) The annual reporting fee has been submitted to the Department of Conservation.*

*(2) Surface mining operations for which an appeal is pending before the board pursuant to subdivision (e) of Section 2770, provided that the appeal shall not have been pending before the board for more than 180 days.*

*(3) Surface mining operations for which an inspection is required and for which an inspection notice has been submitted by the lead agency pursuant to Section 2774 that indicates both compliance with the approved reclamation plan and that sufficient financial assurances, pursuant to Section 2773.1, have been approved and secured."*



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Article 2 Approval of Contracts, of the Public Contracts Code, Section 10295.5 states:

*“(a) Notwithstanding any other provision of law, no state agency shall acquire or utilize sand, gravel, aggregates, or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code as having either of the following:*

*(1) An approved reclamation plan and financial assurances covering the affected surface mining operation.*

*(2) An appeal pending before the State Mining and Geology Board pursuant to subdivision (e) of Section 2770 of the Public Resources Code with respect to the reclamation plan or financial assurances.*

*(b) The department shall revise its procedures and specifications for the acquisition of sand, gravel, aggregates, and other minerals to ensure maximum compliance with this section.*

*(c) For purposes of this section, "minerals" means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.*

*(d) The requirements of this section shall apply to mining operations on federal lands or Indian lands that are subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code) pursuant to a memorandum of understanding between the Department of Conservation and the federal agency having jurisdiction over the lands.”*

**DISCUSSION:** OMR periodically publishes a list of mines regulated under SMARA that meet provisions set forth under California’s Public Resources Code, Section 2717(b). This list, referred to as the AB 3098 List, preclude mining operations that are not on the AB 3098 List from selling sand, gravel, aggregates or other mined materials, to state or local agencies.

**Placement of a surface mining operation on the AB 3098 List:** For OMR to place a mining operation on the AB 3098 List, the operation must meet all of the following conditions:

- The operation must have an approved reclamation plan;
- The operation must have an approved financial assurance;

- The operation must have filed its annual report;
- The operation must have paid its reporting fee;
- The operation must have had its annual inspection by the lead agency which reflects the operation is in full compliance with the law.

The operation may remain on the AB 3098 List if it has a pending appeal with the State Mining and Geology Board (SMGB) regarding its reclamation plan or financial assurance, provided its appeal has not been pending for more than 180 days.

The AB 3098 List is updated frequently, but no less often than quarterly. Surface mines can become eligible between publications of this list. Should an operator of a surface mining operation may have been excluded from this list inappropriately, the operator is advised to contact OMR.

Removal of surface mining operation from the AB 3098 List: Procedures for a surface mining operation that was on the AB 3098 List, but since removed, are less clear to the mining industry and general public, and have recently been questioned. Various stakeholders have expressed the need for:

- Written criteria and procedures for removing a mine from the AB 3098 List;
- Written requirements to provide notice and a hearing to affected mine operators prior to being removed from the AB 3098 List;
- Written procedures for a process appealing a delisting decision to the Board;
- Written standard pursuant to which a mining operation may be added back to the AB 3098 List; and
- Interim policies to allow operators to appeal removal or reinstatement to the SMGB to avoid operators being impacted by the lack of procedural safeguards.

In addition, a site may have been removed from the AB 3098 List for non-compliance issues. The operator may have subsequently taken all reasonable steps to address the site specific issues, but have not essentially resolve such issues because the administrative process could take several weeks to months to accomplish this objective. Under this situation, the site could remain off the AB 3098 List, which can result in significant adverse economic impact on the surface mining operation, and existing contracts between the operator and their clients.



**EXECUTIVE OFFICER'S RECOMMENDATIONS:** The SMGB will hear from the OMR as to their procedures for removal of a surface mining operation from the AB 3098 List. The protocol being provided by OMR is for the SMGB's general information. The SMGB, however, based on the information being provided, may wish to direct the Executive Officer to schedule a meeting of the Policy and Legislation Committee to further discuss this matter and provide recommendations to the whole SMGB, which may include proposed regulatory language outlining the administrative process for removal and reinstatement of a surface mining operation from the AB 3098 List.

**SUGGESTED MOTION LANGUAGE:** The Executive Officer offers the following motions for the SMGB's consideration:

Motion – To direct this matter to the Policy and Legislation Committee for deliberation and consideration:

*Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board direct this matter to the Policy and Legislation Committee, for further discussion and if appropriate, consideration of the development of administrative processes for the inclusion, removal and reinstatement of a surface mining operation from the AB 3098 List.*

Respectfully submitted:

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Stephen M. Testa  
Executive Officer