



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



ARNOLD
SCHWARZENEGGER
GOVERNOR

For Meeting Date: January 14, 2010

Agenda Item No. 6: Approval for Site Closure, Suisun Bay Middle Ground Shoal Marine Sand Mining Operation (CA Mine ID #91-38-0010), CEMEX (Operator), Ronald Wilson (Agent), San Francisco Bay Conservation and Development Commission (BCDC).

INTRODUCTION: The State Mining and Geology Board (SMGB) acts as the lead agency pursuant to the Surface Mining and reclamation Act of 1975 (SMARA) for all marine sand dredging operations located within the jurisdiction of the San Francisco Bay Conservation and Development Commission (BCDC). The SMGB is considering approval of the closure of the CEMEX Suisun Bay Middle Ground Shoal Marine Sand Mining Operation, and considering a determination that the surface mining operation has been reclaimed in accordance with the approved reclamation plan.

STATUTORY AND REGULATORY REQUIREMENTS:

Article 5 Public Resources Code (PRC) Section 2773.1(c) states:

“Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon written notification by the lead agency, which shall be forwarded to the operator and the director, that reclamation has been completed in accordance with the approved reclamation plan...”

The SMGB's regulations, Article 11 California Code of Regulations (CCR) Section 3805, provide requirements for the release of a financial assurance, and states:

*“(a) Prior to the modification of a financial assurance amount, or to the release of the financial assurance instrument to which both the lead agency and the Department of Conservation are co-beneficiaries under Public Resources Code section 2773.1, the lead agency shall provide to the director of the department the following documents at one time:
(1) An inspection report, prepared by a qualified person as provided for in Public Resources Code section 2774, indicating that there are aspects of the surface mining operation that require modification of the existing financial assurance amount, or stating that the mined land has been reclaimed in accordance with the approved reclamation plan, and that there are no aspects of the reclaimed surface mining operation that are inconsistent with the meaning of reclamation as defined in Public*



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Resources Code section 2733, and the Surface Mining and Reclamation Act of 1975, Chapter 9, commencing with section 2710.

(2) A revised financial assurance cost estimate prepared by the operator and accepted by the lead agency, or prepared by the lead agency, in accordance with Public Resources Code section 2773.1, with supporting documentation, indicating the specific cost changes to the existing financial assurance amount, or indicating that there are no further outstanding reclamation liabilities to be included in the financial assurance.

(3) A statement by the lead agency, with supporting documentation that may include the most recent inspection report and any geological and engineering reports prepared as part of the inspection report, that the mined land remains subject to a financial assurance as modified, or that the mined land has been reclaimed in accordance with the approved reclamation plan, that there are no outstanding reclamation liabilities, and recommending to the director that the financial assurance be released.

(b) The director shall have 45 days from the date of receipt of the documents to review and comment on them as provided for in Public Resources Code section 2774, and to conduct the director's own inspection of the surface mining operation if the director determines it necessary under Public Resources Code section 2774.1, and do one of the following:

(1) Notify the lead agency of the director's concurrence that the modified financial assurance amount is adequate, or that there are no outstanding reclamation liabilities on the mined land and that the original financial assurance should be released pursuant to Public Resources Code section 2773.1, at which time the financial assurance shall be released; or,

(2) Notify the lead agency that the director has found, based upon an inspection, aspects of the surface mining operation that require additional modifications to the financial assurance amount, or aspects that are not in compliance with the approved reclamation plan and the Surface Mining and Reclamation Act of 1975; or,

(3) Commence the financial assurance forfeiture process under Public Resources Code section 2773.1.”

BACKGROUND: On February 10, 2005, the SMGB approved a reclamation plan and environmental documents for the RMC Suisun Bay Middle Ground Shoal Marine Sand Mining Operation (CA Mine ID #91-38-0010), most recently operated by CEMEX under Private Lease No. TLS 39. On January 12, 2006, the SMGB approved a financial assurance amount of zero dollars, with the condition that both the SMGB and the Department of Conservation are added as “additional insured” on the “Protection and Indemnity” insurance policy, for CEMEXs marine sand mining operations.



The subject marine sand mining operation generally consisted of extraction of fine- to coarse-grained sand by use of a trailing arm suction dredge from a portion of the eastern Suisun Bay floor near the town of Port Chicago, concurrent loading of sand material onto a barge, and subsequent transport to upland facilities for further processing and distribution. Approximately 335.1 acres of the eastern Suisun Bay bottom surface were subject to disturbance under the approved reclamation plan.

On December 31, 2008, the BCDC dredging permit for the site was terminated, and on March 18, 2009 the operator informed the SMGB that they had no intent to seek permit renewal or resume surface mining operations.

The approved reclamation plan states (Page 4) “*The mined lands natural function and proposed end use as the San Francisco Bay and Delta Estuary bottom for habitat and commerce is not and will not be impacted by the mining activities. That function will not change after the cessation of mining activities.*” The approved reclamation plan states further (Page 4) that “*A private party has granted Lease No. TLS 39 for mining purposes, and it is aware that the mined lands will return to their natural condition as San Francisco Bay and Delta Estuary bottom after cessation of mining activities.*”

No physical site inspections have been conducted for SMARA operation as the area of material extraction is under water. “Desk Review” annual inspections have been conducted by SMGB staff since late 2007, with the most recent being completed on December 28, 2009. Based on these annual reviews, no violations or corrective measures have been noted since 2007 for the subject surface mining operation.

Based on the language within the approved reclamation plan, it is understood that no additional reclamation activities are required following the termination of dredging operations.

Previously the SMGB has determined that the “Protection and Indemnity” insurance policy, with inclusion of both the SMGB and the Department of Conservation as “additional insured” on such policy, suffices for reclamation of the mine site (i.e., salvage of a dredge in the unlikely event such dredge was to sink), and is in accordance with the requirements of SMARA. Considering the uniqueness of this type of mining operation, the insurance policy serves as an “operationally equivalent” financial assurance instrument. Thus, as noted above, on January 12, 2006, the SMGB approved a financial assurance amount of zero dollars, with the condition that both the SMGB and the Department of Conservation are added as “additional insured” on the “Protection and Indemnity” insurance policy, for CEMEXs marine sand mining operations.

Because their mining permit has expired and CEMEX is neither currently operating the site, nor do they intend to resume mining activities, no financial assurance mechanism (insurance policy) is currently required. The most recent valid insurance policy on file with the SMGB expired on February 20, 2009.

Based on the most recent annual review of the subject operation, SMGB staff considers reclamation to be complete in accordance with the approved reclamation plan, and finds that no outstanding reclamation liabilities exist for the CEMEX Suisun Bay Middle Ground Shoal surface mining operation.

EXECUTIVE OFFICER RECOMMENDATION: The Executive Officer recommends that the SMGB find that the CEMEX Suisun Bay Middle Ground Shoal Marine Sand Mining Operation has been reclaimed in accordance with the approved reclamation plan, and is no longer subject to the requirements of SMARA.

SUGGESTED MOTION LANGUAGE:

To approve site closure:

Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board determine that the CEMEX Suisun Bay Middle Ground Shoal Marine Sand Mining Operation (CA Mine ID No. 91-38-0010) has been reclaimed in accordance with the approved reclamation plan, and in compliance with the requirements of SMARA and the SMGBs regulations.

Respectfully submitted:

Stephen M. Testa
Executive Officer