



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



ARNOLD
SCHWARZENEGGER
GOVERNOR

For Meeting Date: December 9, 2010

Agenda Item No. 6: Consideration for Issuance of a 45-Day Notice to Correct Deficiencies to the City of Lake Elsinore Lead Agency Program Pursuant to the Surface Mining and Reclamation Act (SMARA).

INTRODUCTION: Since 2007 the State Mining and Geology Board (SMGB) has received public complaints pertaining to the ability of the City of Lake Elsinore (City) to effectively administer mining activities within its jurisdiction pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA). Complaints received in 2007 were germane to issues related to vested rights, which the SMGB did not have authority to consider. Following receipt of a public complaint in November 2009 pertaining to certain surface mining operations located within the City's jurisdiction, the SMGB has been receiving updates from the Department of Conservation Office of Mine Reclamation (OMR) as to the nature of the surface mining operations within the City's jurisdiction, and whether issues and violations noted are being adequately addressed by the City while serving as the SMARA lead agency. Inadequate response from the City resulted in OMR issuing a 15-Day Notice to the City on September 16, 2010. The City responded in correspondence dated October 1, 2010. The SMGB is considering issuance of a 45-Day Notice to Correct Deficiencies to the City.

STATUTORY AUTHORITY: Public Resources Code (PRC) Sections 2774.4(a) and (b) provide criteria to the SMGB when considering assumption, or restoration, of certain SMARA powers of a lead agency. Specifically, PRC Section 2774.4(a) states:

“If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the board shall exercise any of the powers of that lead agency under this chapter, except for permitting authority.”

(b) If, no sooner than three years after the board has taken action pursuant to subdivision (a), the board finds, after a public hearing, that a lead agency has corrected its deficiencies in implementing and enforcing this chapter, and the rules and regulations adopted pursuant to this chapter, the board shall restore to the lead agency the powers assumed by the board pursuant to subdivision (a).”



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Public Resources Code Sections 2774.4(c) provides criteria the SMGB considers should it determine to issue a 45-Day Notice to Correct Deficiencies, and states:

“(c) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the board. If the lead agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a public hearing within the lead agency’s area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county, and directly mailed to the lead agency and to all surface mining operators within the lead agency’s jurisdiction who have submitted reports as required by Section 2207.”

Public Resources Code Sections 2774.4(d) and (e) provide an administrative process for a public hearing and adoption of findings for assumption of certain SMARA powers of the lead agency, following issuance of the 45-Day Notice of Deficiencies, and states:

“(d) Affected surface mining operators and interested persons have the right, at the public hearing, to present oral and written evidence on the matter being considered. The board may, at the public hearing, place reasonable limits on the right of affected surface mining operators and interested persons to question and solicit testimony.

(e) If, after conducting the public hearing required by subdivision (c), the board decides to take action pursuant to subdivision (a) the board shall, based on the record of the public hearing, adopt written findings which explain all of the following:

- (1) The action to be taken by the board.*
- (2) Why the board decided to take the action.*
- (3) Why the action is authorized by, and meets the requirements of, subdivision (a).*

In addition, the findings shall address the significant issues raised, or written evidence presented, by affected surface mining operators, interested persons, or the lead agency. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the board.

(f) The lead agency, any affected surface mining operator, or any interested person who has presented oral or written evidence at the public hearing before the board pursuant to subdivision (d) may obtain review of the board's action taken pursuant to subdivision (a) by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the board's decision. Section 1094.5 of the Code of Civil Procedure governs judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If a petition for a writ of mandate is not filed within the time limits set by this subdivision, the board's action under subdivision (a) shall not be subject to review by any court or agency.”



BACKGROUND: The SMGB has received public complaints pertaining to the City's ability to effectively administer mining activities within its jurisdiction pursuant to SMARA since 2007. Complaints received in 2007 were germane to issues related to vested rights, which the SMGB did not have authority to consider. However, following receipt of a public complaint pertaining to certain surface mining operations located within the jurisdiction of the City in November 2009, the SMGB has been receiving updates from the OMR as to the nature of the surface mining operations within the City's jurisdiction, and as to whether issues and violations noted are being adequately addressed by the City while serving as the SMARA lead agency.

OMR staff conducted site visits at surface mining operations within the City on March 24, 2010, and presented a summary to the SMGB at their July 10, 2010, regular business meeting. At such meeting, the SMGB expressed concern based on information provided by OMR, and requested that OMR provide more in-depth information, including inspection reports that the city had been filing during the time houses were being built within the boundaries of a mining operation, photographs taken during inspections and site visits performed by OMR, and OMR's commentary on such reports. In correspondence dated August 6, 2010, the City requested additional time to prepare and present a comprehensive report to OMR. Inadequate response from the City resulted in OMR issuing a 15-Day Notice to the City on September 16, 2010. The City responded to OMR's 15-Day Notice in correspondence dated October 1, 2010. Additionally, during its October 14, 2010, regular business meeting the SMGB heard from a representative of the firm hired by the City to conduct annual SMARA inspections, and heard from a representative of a firm hired by one of the mining operators within the City to resolve SMARA compliance issues. Such responses from the City have been deemed incomplete and inadequate.

A chronology of pertinent administrative events and activities, and correspondence received, is summarized in Table 1. A chronology of lead agency activities referenced to specific mine operations is provided by OMR in Exhibit A.



Table 1	
Chronology	
Date	Action/Activity
November 2009	Initial public complaint received ^(a)
March 24, 2010	Site visits performed by OMR
July 10, 2010	Report presented by OMR to SMGB
September 9, 2010	Additional information provided by OMR dated June 28, 2010
September 16, 2010	15-Day Notice issued by OMR to City (Exhibit A)
October 1, 2010	Additional information, and the City's response to the 15-Day Notice, dated October 1, 2010 (Exhibit B)
November 17, 2010	Site visit conducted by OMR

(a) Complaints and comments provided by same party have been persistent since originally received in November 2009 [Exhibit C].

ANALYSIS OF CITY OF LAKE ELSINORE SMARA PROGRAM: Seven surface mining operations are situated within the jurisdiction of the City. These mine sites are:

- Pacific Clay Pits (CA Mine ID #91-33-0006)
- Wyroc, Inc. (CA Mine ID #91-33-0015)
- Mountain Avenue Pit #2 (CA Mine ID #91-33-0020)
- Mountain Avenue Pit #1 (CA Mine ID 391-33-0021)
- Brighton Alberhill Clay Mine (CA Mine ID #91-33-0022)
- Murdock Alberhill Ranch (CA Mine ID #91-33-0073)
- Nichols Canyon Mine (CA Mine ID #91-33-0098)

Products produced include rock, sand and gravel, and clay.

A preliminary review of the current status for all surface mines located within the City's jurisdiction was performed. In particular, certain parameters indicative of overall SMARA lead agency performance were evaluated. These parameters reflect upon those minimal activities required by all SMARA lead agencies such as conduct of adequate inspections at least once each calendar year, review and adjustment of financial assurance cost estimates, and enforcement actions. Also noted were substantial deviations from approved reclamation plans, and mines initially reported as idle that have since become abandoned, whether that was the operator's intent or not (i.e., no SMARA lead agency approved Interim Management Plan (IMP) in place). In addition, the average estimated reclamation cost per disturbed acre was evaluated to serve as a general indicator as to whether such



costs are reasonable or otherwise significantly lower than amounts established elsewhere throughout the state.

Approval of reclamation plans or financial assurances which are not consistent with SMARA: A chronology as noted by OMR (Exhibit A), is summarized below. In review of this chronology, the City has failed to administer, or has incorrectly administered, the approval of reclamation plans and amended reclamation plans within its jurisdiction (Table 2). Financial assurances for four of the surface mining operations (CA Mine ID #91-33-0006, -0020, -0022 and -0073) were adjusted in April 2010, after being informed by OMR that such adjustments were delinquent. Considering the overall status of the various reclamation plans and need for amendment as previously discussed, the adequacy of the financial assurances remains uncertain.

In regards to the status of three surface mining operations that were at one time deemed idle the following is noted:

- Wyroc, Inc. (CA Mine ID #91-33-0015): IMP expired in January 2010; site currently deemed abandoned.
- Mountain Avenue Pit #1 (CA Mine ID #91-33-0021): Reported as Closed with No Intent to Resume since 2007; currently deemed abandoned.
- Brighton Alberhill Clay Mine (CA Mine ID #91-33-0022): IMP expired in November 2009; site currently deemed abandoned; not acted upon by City.

SMARA Mine Inspections: Pursuant to PRC Section 2774(b), SMARA requires that all surface mines be inspected at least once each calendar year. A review of five of the City's 2009 inspection reports was performed by the Executive Officer. General comments provided below pertain to adequacy of inspection reports and emphasize areas that could be improved to benefit the City in facilitating its SMARA program in an efficient and effective manner.



**Table 2
 Chronology of Certain Administrative Actions by Operators, County and City**

Reclamation Plan No.	Approval Date	Acreage Approved (Annexed)	Remarks
RP 112; CA Mine ID #91-33-0006	1978	3457	Covered all but Gladding McBean and Elsinore Ready Mix sites which were excluded.
RP 110 CA Mine ID #91-33-0020	1978 after RP 112	80; covers southern part of area excluded from RP 112.	Overlaps onto RP 112 on the west and east; some disturbed area not covered by either RP 112 or RP 110; RP 112 not amended.
SMP 108	1979	300+	Unclear if any mine ID number has been issued; operator claims CA Mine ID #91-33-0006 (RP 112), but RP 112 specifically excluded this area and was never amended; does not overlap RP 112, but excludes a wedge-shaped portion of excluded areas under RP 112. Map also shows RP 112 continuing on south border of SMP 108, which is covered by previously approved RP 110; map questionable.
	1979-1980		Pacific Clay takes over SMP 108 from Gladding McBean; SMP 108 should have been incorporated into RP 112, but no amendment was undertaken.
	1989	1853	City approves Alberhill Ranch Specific Plan; mixed use development; required amendment of the 1978 RP 112; never accomplished.
	1990 (May)	(2667)	City annexed 2667 of 3457 acres (east of Lake Street), assuming responsibility for RP 112; still three reclamation plans in effect (RP 112, RP 110 and SMP 108); the latter two within County's jurisdiction.
	1990 (June)		City approves development agreement with Brighton Homes permitting construction of 2735 homes on 1000 acres within annexation area; agreement requires an approved amendment of RP 112 – no evidence that such amendment was accomplished.
RP 90-1 CA Mine ID #91-33-0022	1990 (September)	1000	City approves Brighton Homes Alberhill RP 90-1 north of Cool Ave. and east of Lake Street; completely within RP 112 which again was never amended to reflect new footprint; RP 90-1 is for reclamation only with no mining to be conducted, and one year-limit to initiate reclamation, and five years to complete reclamation; grading plan and compaction requirements of 90% with preparation for residential development; CA Mine ID #91-33-0022 issued.
RP 90-3	1990 (December)	9.6	City approved RP 90-3 for the Wyroc, Inc. Lake Street Quarry.



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CA Mine ID #91-33-0073	1992	511	Alberhill Specific Plan amended to incorporate 511 acres of the 1853 acres in to Alberhill Ranch Specific Plan; 511 acres proposed to stay under original 1978 RP 112 until reclaimed and developed into housing; property now occupied by CA Mine ID #91-33-0073, and CA Mine ID #91-33-0006 appears to be only for mining lands within jurisdiction of County of Riverside.
	1993 (March)		CA Mine ID #91-22-0022; Brighton Homes declared bankruptcy with reported production from 1991-1997 totaling 137,800 tons within area where no mining was to be performed and only reclamation to occur; site can no longer be reclaimed in accordance with its approved reclamation plan since much of the material to be used for fill has been removed.
	1995		SMP 108 amended to include clay processing area north of original SMP 108, and which overlays RP 112, as a mechanism for City to permit a new kiln which could not be undertaken via vesting of RP 112. RP 112 was not amended to remove area annexed to SMP 108.
RP 110	2003-2004		Pacific Aggregates arrived and took over RP 110 after ERM lease expired, and in 2004 signed lease agreement with Pacific Clay to mine in RP 112 and process in RP 110.
	2004		IMP submitted for CA Mine ID #91-33-0022, even though no amended reclamation plan exists to continue mining.
	2004-2005		CA Mine ID #91-33-0073; housing development construction commences; overlies RP 112; City claims site certified reclaimed, but no record of RP 112 being amended, and no other reclamation plan in files for this mine identification number.
RP 2006-01	2006		City approves reclamation plan for Nichols Canyon Quarry (CA Mine ID #91-33-0098), which overlays RP 112, which was not amended. This parcel leased by Pacific Clay was quit claimed back to owner in 1988, who never conducted surface mining activities in this parcel; RP 112 should have been amended at this time to exclude this parcel; however, Pacific Clay or an affiliate purchased the site in 1998 and pursued a vested right based on RP 112, which the City granted.
	2008	(72)	City given lead agency responsibility for entire area.

California Code of Regulations (CCR) Section 3504.5(f) of the SMGB's regulations state:

“Inspections may include, but shall not be limited to the following: the operation’s horizontal and vertical dimensions; volumes of materials stored on the site; slope angles of stock piles, waste piles and quarry walls; potential geological hazards; equipment and other facilities; samples of materials;



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photographic or other electronic images of the operation; any measurements or observations deemed necessary by the inspector or the lead agency to ensure the operation is in compliance with Public Resources Code Chapter 9.”

CCR Section 3504.5(g) also states “*The inspection report to the lead agency shall consist of the inspection form MRRC-1...and any other reports or documents prepared by the inspector or inspection team...The lead agency shall provide a copy of the completed inspection report along with the lead agency’s statement regarding the status of compliance of the operation to the director within 30 days of completion of the inspection... ”*

Adequate inspection reports are the foundation upon which a determination for adjusting the financial assurance is made and how administrative and compliance/enforcement actions to be considered by the lead agency (City) are clearly identified. Overall, the inspection reports are inadequate and do not provide sufficient information to provide for an adequate understanding of site conditions, conditions that are deemed out-of-compliance, nor whether the lead agency needs to consider any specific compliance or enforcement actions. The following general observations are offered:

- Reference to Compliance/Enforcement Triggers: The inspection reports do not contain reference to any reclamation or performance requirements, as set forth in the approved reclamation plans, or permit requirements such as Conditions of Approval. No performance standards set forth in the reclamation plans or permit conditions are noted. Without such references, the inspection report upon review fails to assure the lead agency that the site conditions meet the requirements of the approved reclamation plan and permit requirements. It should be noted that some sites may have numerous Conditions of Approval or permit conditions, many of which are directly relevant to reclamation such as steepness of slopes, setbacks, safety requirements, and revegetation performance standards.
- Quantification of Site Conditions: The inspection reports do not include any quantification of site conditions, where applicable. SMGB regulations (CCR Section 3504.5(f)) state that “*Inspections may include, but shall not be limited to the following: the operation’s horizontal and vertical dimensions; volumes of materials stored on the site; slope angles of stock piles, waste piles and quarry walls; potential geological hazards; equipment and other facilities; sample of materials; photographic or other electronic images of the operation; any measurements or observations deemed necessary by the inspector or the lead agency to ensure the operation is in compliance with Public Resources Code Chapter 9.”* Such information was not provided in the inspection reports.
- Adequate Identification of Violations: The inspection reports do not adequately identify violations and corrective measures. Should a violation or substantial deviation from the existing approved reclamation



plan or any Conditions of Approval be determined to exist at time of inspection (i.e., encroachment of disturbed land beyond the reclamation plan boundary), a violation should be noted. The City can then determine upon review of the inspection report whether enforcement or other compliance actions are warranted. Without specific violations being noted in the inspection reports, the City acting as the SMARA lead agency is not in a position to consider and implement the appropriate SMARA compliance and/or enforcement action.

For example, in the five inspection reports reviewed, only one violation was noted. The violation was for the Murdock-Alberhill Ranch Mine, and the violation noted was for inadequate drainage maintenance. OMR staff has observed that certain operators have conducted surface mining operations outside their respective approved reclamation plan footprints and have failed to correctly amend reclamation plans to adhere to end use criteria.

- Annotated Images: The inspection reports do not adequately document violations observed during conduct of the inspection through the use of annotated photographs.

In summary, the inspection reports do not clearly reflect actual site conditions, and the need for several of the reclamation plans to be amended. Adequate mine inspections that fulfill the intent of SMARA and the SMGB's regulations need to be performed for all seven surface mine sites within the jurisdiction of the City. Such inspections should be performed by a qualified individual (or individuals) pursuant to PRC Section 2774(b), and CCR Section 3504.5(b), (c) and (d).

Financial Assurance Annual Review and Adjustment: Pursuant to PRC Section 2773.1(a)(3) SMARA requires that the financial assurance cost estimate (FACE) for each surface mining operation be reviewed and adjusted annually, as appropriate. As of January 2009, only two of seven (29 percent) mines had approved financial assurances, while four of seven (57 percent) had their respective financial assurance cost estimates updated since 2007. Financial assurances for four of the surface mining operations (CA Mine ID #91-33-0006, -0020, -0022 and -0073) were adjusted in April 2010, after being informed by OMR that such adjustments were delinquent. Due to inadequate inspection reports, financial assurances remain in questionable.

Reclamation Cost per Disturbed Acre: As of January 2009, the average estimated cost or reclamation per disturbed acre City-wide is on the order of \$1,766. This amount is considered low. In addition, the reclamation cost per acre remains in question due to inadequate inspection reports and the need for certain reclamation plans to be amended.

Enforcement: No violations have been issued by the City to any surface mining operation within its jurisdiction. This suggests that either no violations exist, violations should have been issued but were not, or the City did not have the knowledge or expertise to determine whether a violation existed and should have been issued.



AB 3098 Status: OMR periodically publishes a list of mines regulated under SMARA that meet provisions set forth under PRC 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. For OMR to place a mining operation on the AB 3098 List, the surface mining operation must meet all of the following conditions:

- The operation has an approved reclamation plan;
- The operation has an approved financial assurance;
- The operation has filed its annual report;
- The operation has paid its reporting fee; and
- The operation has had its annual inspection by the lead agency which reflects the operation is in full compliance with the law.

The surface mining operation may be on the AB 3098 List if it has a pending appeal with the SMGB regarding its reclamation plan or financial assurance, provided its appeal has not been pending for more than 180 days.

The number of surface mining operations on or off the AB 3098 list can be indicative of overall site compliance. A total of five mines within the City are noted on the AB 3098 List.

FINDINGS: The following findings are offered:

- The City, in regards to issuance of permits and approval of reclamation plans and amended reclamation plans, has either administered such actions incorrectly, or such actions were not undertaken by the City.
- Despite numerous violations observed by OMR staff during conduct of two site visits, 1) only one violation to address drainage issues on one site is noted in the inspection reports for all sites within the City's jurisdiction, and 2) no violations have been issued by the City to any operator within the City's jurisdiction. Such violations take the form of operators operating outside their approved reclamation plan footprint, inadequate erosion control, acceptance of inspection reports that do not adequately characterize current site operations and conditions, inadequate financial assurances, failure to correctly amend certain reclamation plans, and allowing certain operators to not comply with end use requirements as set forth in certain reclamation plans, etc.



- Three sites considered idle as of 2007 are currently deemed abandoned, and the City has failed to act in a timely or appropriate manner.
- Responses from the City received by OMR to date have been deemed incomplete and inadequate.
- The City to date 1) has not fulfilled its responsibilities and obligations as a SMARA lead agency, and 2) has not demonstrated an ability to administer its SMARA program in an appropriate manner consistent with the intent of SMARA and the SMGB's regulations.

EXECUTIVE OFFICER'S RECOMMENDATION: A SMARA lead agency need only fail in one of the six conditions set forth pursuant to PRC Section 2774.4(a), for the SMGB to consider commencement of the administrative process toward assumption of the lead agency's SMARA responsibilities and obligations, excluding permitting authority. The Executive Officer, based on review of the administrative record contained herein, recommends that the SMGB direct the Executive Officer to issue a 45-Day Notice to Correct Deficiencies to the City.

SUGGESTED MOTION LANGUAGE: The SMGB may consider the following motion language:

[Should the SMGB determine that the City is fulfilling its responsibilities and obligations as a lead agency pursuant to SMARA, and that no deficiencies and violations exist, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, find that the City is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and that the Board not consider issuance of a 45-Day Notice of Deficiencies.

[or]

[Should the SMGB determine that the City is making significant progress, but certain deficiencies and violations remain uncorrected, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, find that the City of Lake Elsinore is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, but note that significant deficiencies persist, and direct the Executive Officer to conduct a thorough review of current mine inspection reports for all surface mine sites within the jurisdiction of the City, and conduct on-site visits, as appropriate and deemed necessary. Upon completion, the Executive Officer will report back to the SMGB, and the SMGB can consider issuance of a 45-Day Notice of Deficiencies, if deemed necessary.



[or]

[Should the SMGB determine that deficiencies and violations remain uncorrected and the City is failing to make progress, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, direct the Executive Officer to issue a 45-Day Notice to Correct Deficiencies to City of Lake Elsinore pursuant to Public Resources Code Sections 2774.4(a) and (c).

Respectfully submitted:

Stephen M. Testa
Executive Officer
Respectfully submitted:



EXHIBITS

Exhibit A OMR Correspondence

Exhibit B City of Lake Elsinore Correspondence

Exhibit C Public Comments

