



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: June 9, 2011

Agenda Item No. 10: Review of the Order of Administrative Penalties Assessed to the Following Six Surface Mining Operations Pursuant to Public Resources Code Section 2774.2 and California Code of Regulations, Section 3900, et seq.

INTRODUCTION: The State Mining and Geology Board (SMGB) has received petitions for appeals of the administrative penalties issued by the Department of Conservation Office of Mine Reclamation (OMR) for six surface mining operations. Six Administrative Penalty Appeals will be appearing before the SMGB today pursuant to PRC Section 2774.1(c) for failure to submit a report to the Department of Conservation as required by PRC Section 2207. Two appeals, CA Mine ID #91-15-0095 and #91-18-0047, have been requested by OMR to be continued.

- **Public Hearing Case No. AP #91-03-0029-09-AR** of the Notice and Order of Administrative Penalty, South Arkansas Creek Project Mine (CA Mine ID #91-03-0029), Amador County, High Country Aggregates, LLC (Operator), Gable Payne (Agent), assessed pursuant to PRC Section 2774.1(c) for failure to submit a 2009 Mining Operation Annual Report to the Department of Conservation as required by PRC Section 2207.
- **Public Hearing Case No. AP #91-23-0033-09-AR** of the Notice and Order of Administrative Penalty, McKenzie Bar (CA Mine ID #91-23-0033), Mendocino County, Garman Construction (Operator), Bud Garman (Agent), assessed pursuant to PRC Section 2774.1(c) for failure to submit the 2008 and 2009 Mining Operation Annual Reports to the Department of Conservation as required by PRC Section 2207.
- **Public Hearing Case No. AP #91-32-0033-09-AR** of the Notice and Order of Administrative Penalty, CBS Aggregates, LLC (CA Mine ID #91-32-0033), Riverside County, CBS Aggregates, LLC (Operator), John Ochipinti (Agent), assessed pursuant to PRC Section 2774.1(c) for failure to submit a 2009 Mining Operation Annual Report to the Department of Conservation as required by PRC Section 2207.
- **Public Hearing Case No. AP #91-33-0042-09-AR** of the Notice and Order of Administrative Penalty, Shamrock Sand and Gravel, LLC (CA Mine ID #91-33-0042), Riverside County, Shamrock Sand and Gravel, LLC (Operator), Arnold Veldkamp (Agent), assessed pursuant to PRC Section 2774.1(c) for



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failure to submit a 2009 Mining Operation Annual Report to the Department of Conservation as required by PRC Section 2207.

- **Public Hearing Case No. AP #91-36-0074-09-AR** of the Notice and Order of Administrative Penalty, B and B Mine Group (CA Mine ID #91-36-0074), San Bernardino County, Caltaic, Inc. (Operator), John Duncan (Agent), assessed pursuant to PRC Section 2774.1(c) for failure to submit a 2009 Mining Operation Annual Report to the Department of Conservation as required by PRC Section 2207.
- **Public Hearing Case No. AP #91-47-0053-09-AR** of the Notice and Order of Administrative Penalty, Lor “O” (CA Mine ID #91-47-0053), Siskiyou County, Belle Terre Discoveries, Inc. (Operator), Tom Bosley (Agent), assessed pursuant to PRC Section 2774.1(c) for failure to submit the 2008 and 2009 Mining Operation Annual Reports to the Department of Conservation as required by PRC Section 2207.

ADMINISTRATIVE PROCEDURE:

[Note: Pursuant to PRC Section 207(g) regarding the prohibition of public disclosure of proprietary information and the California appellate court decision in General American Transportation Corp v. State Board of Equalization, 193 Cal.App.3d 1175 (1987), the SMGB may conduct a closed hearing for the purposes of reviewing the following administrative penalties.]

Administrative Record: Pursuant to CCR Section 3903, the record before the SMGB shall consist of the:

- The record before the Director;
- Evidence which, in the judgment of the SMGB, considers to be applicable; and
- Evidence presented during the hearing on the petition.

Open Meetings Act: Pursuant to the Bagley-Keene Act, the reviews of the noticed Orders Imposing Administrative Penalties shall be conducted in open session. However, the Petitioner/Appellant may request the review be conducted in a closed session, albeit, it is the Petitioner/Appellant’s burden of proof to demonstrate the necessity of a closed hearing. One ground by which a review may be conducted during a closed session is if it is substantiated that proprietary information will be disclosed. PRC Section 2207(g) prohibits the public disclosure of proprietary information. If the SMGB decides to conduct a closed session for the purpose of reviewing the Order, those present that are NOT immediately involved with the case will be requested to leave the room.



Review Sequence: The review sequence for each case will be according to the procedures stated in the SMGB's regulations, Article 12 of CCR Title 14, Chapter 8, Subdivision 1. Only relevant information regarding the administrative penalties will be received.

Swear In Procedures: Those wishing to present testimony before the SMGB today in these administrative hearings will stand and be sworn in.

Order of the Hearings: Pursuant to the SMGB's regulations, CCR Section 3909, the order of the hearings will be as follows:

- I. Identification of the Record by OMR**
- II. Statements on Behalf of the Petitioner**
- III. Statements on Behalf of the Director or SMGB**
- IV. Statements on Behalf of the Public**
- V. Rebuttal on Behalf of the Petitioner**
- VI. Rebuttal on Behalf of the Director or SMGB**
- VII. Motion to Close the Public Hearing**

SMGB Chairman Discretion: Pursuant to CCR Section 3909, notwithstanding the above, the Chairman or the Chairman's designee for the purposes of conducting these procedures may, in the exercise of discretion, determine the order of these proceedings, and set time limits.

SMGB Determination Procedures: Pursuant to CCR Section 3910, following the public hearing, the SMGB shall determine:

1. Whether the alleged violations cited in the Director's order are supported by substantial evidence in light of the whole record before it; and
2. The action the SMGB should take to affirm, modify, or set aside, in whole or in part, the administrative penalty issued by the Director.

The SMGB shall issue its own order upholding its determination. The SMGB can, but is not limited to modifying the administrative penalty from its original construction by the Director, whole or in part, as the SMGB deems appropriate, which includes increasing or decreasing



the penalty, establishing compliance deadlines, and structuring a method for payment of the penalty.

Notification of Determination: Notification of the SMGB's determination will be made via certified mail or personal service to the petitioner, the lead agency, and the Director, within 15 days following the regular business meeting of the SMGB at which the decision is made.

SUGGESTED MOTION LANGUAGE:

To uphold the Department's determination - Case No. AP #91-03-0029-09-AR:

Mr. Chairman, in light of the information before the Board today, I move that the Board uphold, modify or set aside the Director's order, in the matter of South Arkansas Creek, South Arkansas Creek Project Mine (CA Mine ID #91-03-0029), Amador County, High Country Aggregates, LLC(Operator), Gable Payne (Agent), Case No. AP #91-03-0029-09-AR.

To uphold the Department's determination - Case No. AP #91-23-0033-09-AR:

Mr. Chairman, in light of the information before the Board today, I move that the Board uphold, modify or set aside the Director's order, in the matter of McKenzie Mine, McKenzie Bar (CA Mine ID #91-23-0033), Mendocino County, Garman Construction (Operator), Bud Garman (Agent), Case No. #91-23-0033-09-AR.

To uphold the Department's determination - Case No. AP #91-32-0033-09-AR:

Mr. Chairman, in light of the information before the Board today, I move that the Board uphold, modify or set aside the Director's order, in the matter of CBS Aggregates, LLC (CA Mine ID #91-32-0033), Riverside County, CBS Aggregates, LLC (Operator), John Ochipinti (Agent), Case No. AP #91-23-0033-09-AR.



To uphold the Department's determination - Case No. AP #91-33-0042-09-AR:

Mr. Chairman, in light of the information before the Board today, I move that the Board uphold, modify or set aside the Director's order, in the matter of Shamrock Sand and Gravel, LLC (CA Mine ID #91-33-0042), Riverside County, Shamrock Sand and Gravel, LLC (Operator), Arnold Veldkamp (Agent), Case No. AP #91-33-0042-09-AR.

To uphold the Department's determination - Case No. AP #91-36-0074-09-AR:

Mr. Chairman, in light of the information before the Board today, I move that the Board uphold, modify or set aside the Director's order, in the matter of B and B Mine Group (CA Mine ID #91-36-0074), San Bernardino County, Caltaic, Inc. (Operator), John Duncan (Agent), Case No. AP #91-36-0074-09-AR.

To uphold the Department's determination - Case No. AP #91-47-0053-09-AR:

Mr. Chairman, in light of the information before the Board today, I move that the Board uphold, modify or set aside the Director's order, in the matter of Lor "O", Siskiyou County, Belle Terre Discoveries, Inc, (Operator), Tom Bosley, (Agent), Case No. AP #91-47-0053-09-AR.

Respectfully submitted:

Stephen M. Testa
Executive Officer

