



# **STATE MINING AND GEOLOGY BOARD**

## **EXECUTIVE OFFICER'S REPORT**

**For Meeting Date: September 23, 2011**

**Agenda Item No. 1: Public Hearing: Consideration of Order to Comply, Pacific Clay Pits (CA Mine ID #91-33-0006), Chad Warren (Agent), Pacific Clay Products, Inc. (Operator), City of Lake Elsinore.**

**INTRODUCTION:** On April 11, 2011, the Director of the Department of Conservation, Office of Mine Reclamation (OMR), issued an Order to Comply to Pacific Clay Pits (CA Mine ID #91-33-0006), operator Pacific Clay Products, Inc. The Notice and Order addresses the operator's alleged violations to of the Surface Mining and Reclamation Act (SMARA, Public Resources Code Section 2710 et seq.), specifically Public Resources Code Section 2770. An order issued by the Director is subject to an automatic hearing (appeal) before the State Mining and Geology Board (SMGB) prior the order becoming effective (reference PRC Section 2774.1[b]). The SMGB considered and continued this matter at its May 12, 2011, regular business meeting. Since such time, a signed stipulation has been negotiated between the operator and OMR. The SMGB is considering upholding the stipulation as the Order, amending or rejecting the Order.

**BACKGROUND:** Before the SMGB can hear the Order, the Chairman (or his designee) must determine the following within 15 days of receipt of the Order from the Director (Article 14 California Code of Regulations (CCR) Section 3940):

1. Is the review of the Order within the jurisdiction of the SMGB?
2. Is the violation contained in the Order related to SMARA, and has it been confirmed by findings during an annual inspection or by another physical site inspection?
3. Has the violation extended beyond 30 days from the date of receipt by the operator of notification of the violation?

As related to the above three issues:

1. In review of the Order, the SMGB Chairman determined that the Order was within the jurisdiction of the SMGB. Under PRC Section 2774.1(b), the SMGB is required to review Orders issued by the Director that relate to SMARA, provided that the review is more than 30 days after the date of the Order (Order is dated April 11, 2011).



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2. The violations contained in the Order addressed the operator's alleged failure to:
  - a. Seek appropriate lead agency approval through appropriate amendments of the applicable reclamation plan(s), thus, operate within the boundaries of its approved reclamation plan;
  - b. Consolidate and amend reclamation plans SMP 108, RP 110 or RP 112; and
  - c. Surface mining operations have encroached into two areas not covered by an approved reclamation plan.
3. The operator was sent via certified mail a Notice of Violation (NOV) addressing the violations on February 17, 2011. The violations contained in the Order have not been corrected at the time the Order was issued by OMR. The violations have extended beyond 30 days.

The Order was determined to be within the jurisdiction of the SMGB. There are no past SMGB actions in regards to this review.

**STATUTORY AUTHORITY:**

Public Resources Code Section 2774.1(a) *The board when acting as lead agency, or the director, may issue orders to comply with the Act;*

Public Resources Code Section 2774.1(b) *Any order of the board or the director does not become effective until a public hearing is conducted by the board concerning the alleged violations.*

Public Resources Code Section 671: *The director shall have no power to amend or repeal any order, ruling, or directive of the board.*

**HEARING PROCEDURE:**

The purpose of this Hearing is to allow the Petitioner and the Department of Conservation to hear arguments regarding the issuance by the Director of an Order to Comply. Pursuant to PRC Section 2774.1, Orders to Comply do not become effective until the SMGB has conducted a public hearing concerning the alleged violation. Following the presentations, the SMGB will consider the issues before it, and may ask questions of the participants.

CCR Section 3947 set forth hearing procedures as follows:



- (1) Identification of the record;
- (2) Statements on behalf of the operator subject to the order;
- (3) Statements on behalf of the director, or the board if acting as the lead agency;
- (4) Statements on behalf of the public;
- (5) Rebuttal on behalf of the operator; and
- (6) Rebuttal on behalf of the director, or the SMGB if acting as if the lead agency;
- (7) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman or the Chairman's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements (12 copies) must be submitted to the SMGB at least five days prior to the hearing.

(d) The public hearing shall be recorded.

**CONSIDERATION OF THE SMGB:** Pursuant to Article 14 California Code of Regulations (CCR) Section 3948, the SMGB is to determine:

First: Based on evidence presented, were the statements of violations in the Director's or SMGB's Order substantially true and correct at the time of issuance of the Order;

Second: If the statements of violations contained in the Order were substantially true and correct at the time of issuance, the SMGB shall sustain the Order as issued and announce an Effective Date for the Order;

Third: If the statements of violations contained in the Order were NOT substantially true and correct at the time of issuance, the SMGB shall indicate specifically which allegations were incorrect,



remand the order back to the Director or the SMGB for corrections, and shall not set an Effective Date.

Furthermore, CCR Section 3948 set forth hearing and determination procedures and states:

*“Following the public hearing, the Board shall determine whether, based on the record before it, the evidence before the Director for orders issued by the Director, or the Board for orders issued by the Board, substantially supports the basis for the order at the time the order was issued. If the Board finds that the evidence in the record supports the issuance of the order, the Board shall uphold the order and any effective date contained in the order. If no effective date is contained in the order, then the Board shall set a date upon which the order takes effect. If the Board finds that the evidence in the record does not substantially support the order, then the Board shall not uphold the order and shall notify the Director of the specific reasons for not upholding the Director’s order. Notification of the Board’s determination shall be made by certified mail or personal service to the operator and the Director within 15 days following the regular business meeting of the Board at which the determination is made.”*

**RECOMMENDED MOTION:**

To [uphold the stipulation as/amend/reject] the Order to Comply:

*Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board [uphold the stipulation as/amend/reject] the Order to Comply.*

Respectfully submitted:

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Stephen M. Testa  
Executive Officer

