



# **STATE MINING AND GEOLOGY BOARD**

## **EXECUTIVE OFFICER'S REPORT**

For Meeting Date: December 6, 2011

**Agenda Item No. 6: Imposition of an Administrative Penalty (AP #91-58-0015-09-AR) to the Blue Point Mine (CA Mine ID #91-58-0021), Blue Point Partners, LLC (Operator), Brian Bisnett (Agent), County of Yuba.**

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**INTRODUCTION:** The State Mining and Geology Board (SMGB) has received petitions for appeals for administrative penalties issued by the Department of Conservation Office of Mine Reclamation (OMR). One such appeal was for the Blue Point Mine (CA Mine ID #91-58-0021), Yuba County, Blue Point Partners (Operator), Brian Bisnett (Agent). The SMGB is the lead agency for Yuba County pursuant to the Surface Mining and Reclamation Act (SMARA). An administrative penalty was issued to the operator of the Blue Point Clark Mine 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. OMR will be presenting the case on behalf of the SMGB.

**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 #91-58-0021-09-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 Blue Point Mine (CA Mine ID #91-58-0021), Yuba County, Blue Point Partners (Operator), Brian Bisnett (Agent), Case No. AP #91-58-0021-09-AR.*

Respectfully submitted:



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Stephen M. Testa  
Executive Officer