



# **STATE MINING AND GEOLOGY BOARD**

## **EXECUTIVE OFFICER'S REPORT**

**For Meeting Date: January 12, 2012**

**Agenda Item No. 4: Public Hearing: Consideration of Order to Comply, Brighton Alberhill Clay Mine (CA Mine ID #91-33-0022), Chad Warren (Agent), Pacific Clay Products, Inc. (Operator), City of Lake Elsinore.**

**INTRODUCTION:** On April 11, 2011, the Department of Conservation, Office of Mine Reclamation (OMR), issued an Order to Comply to Brighton Alberhill Clay Mine (CA Mine ID #91-33-0022), located in the City of Lake Elsinore (City), and operated by Pacific Clay Products, Inc. The Notice and Order addresses the operator's alleged violations 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 continued this matter at its September 23, 2011, regular business meeting. Since such time, a stipulated order has been under negotiations between the operator and OMR, but remains outstanding pending OMR's receipt of a SMARA compliant amended reclamation plan and financial assurance cost estimate. The SMGB is considering upholding the Order, or amending or rejecting the Order.

### **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.*

**BACKGROUND:** Compliance efforts implemented by the Department of Conservation Office of Mine Reclamation (OMR) were initiated with a 15-Day Notice issued to the City on September 16, 2010. OMR initiated enforcement actions with issuance of a Notice of Violation (NOV) to the operator on February 17, 2011, and an Order to Comply on April 11, 2011. During such time, OMR has been working with the operator to preparing a stipulated Order to Comply which remains outstanding.



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In review of the inspection report dated June 30, 2011, several deficiencies are noted. Minimal specific reference to performance standards contained in the approved reclamation plan or conditions of approval are noted. No violations are noted even though massive erosion and clear indication of mining is noted even though no additional mining was to be conducted under RP 90-1. The four violations noted in the NOV issued by OMR included:

- a. Conduct of surface mining operations in an area not allowed by the approved reclamation plan (RP 90-1);
- b. Inadequate soil erosion control measures by the creation of over-steepened, sparsely vegetated and highly eroded slopes;
- c. Reclamation conducted in a manner inconsistent with the approved reclamation plan; and
- d. Since the mine is deemed abandoned, the operator has failed to commence and complete reclamation in accordance with the approved reclamation plan.

The amount of disturbed acreage was determined by relying on information provided in an Interim Management Plan (IMP) dated 2004, with no determination of disturbed acreage based on actual observations made during conduct of the inspection provided.

Furthermore, the California Regional Water Quality Control Board – Santa Ana Region (CRWQCB-SAR) in correspondence dated December 16, 2011, issued an Administrative Civil Liability Complaint (ACLA) on September 23, 2011. As of the preparation of the Executive Officer's report contained herein, the violations remain outstanding. Reclamation standards require that surface mining and reclamation activities be conducted to protect on-site and downstream beneficial uses of water in accordance with the Porter-Cologne Water Quality Control Act, Water Code section 13000, et seq., and the Federal Clean Water Act, 33 U.S.C. section 1251, et seq.

#### **HEARING PROCEDURE:**

Pre-Hearing Procedures: 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:

- e. 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).
- f. The violations contained in the Order addressed the operator's alleged violations as previously mentioned.
- g. 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.

Public Hearing Procedures: 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.”*

**EXECUTIVE OFFICER’S RECOMMENDATION:** Considering that a Stipulated Order between OMR and the operator may be the most efficient means to resolve all outstanding issues related to this surface mining site, and is to my understanding near completion, it is the Executive Officer’s recommendation that the SMGB consider continuing this matter with imposition of a timeline for completion of the Stipulated Order.

**RECOMMENDED MOTION:**

To [uphold/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/amend/reject] the Order to Comply.*

Or,

To continue consideration of the Order to Comply:

*Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board continue consideration of the Order to Comply for a period of 60 days, or until a Stipulated Order is completed.*

Respectfully submitted:



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Stephen M. Testa  
Executive Officer

## **EXHIBITS**

**Exhibit A Compliance-Related Correspondence**

**Exhibit B June 30, 2011, Inspection Report**

**Exhibit C California Regional Water Quality Control Board –  
Santa Ana Region’s Compliance Documentation**

