



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: January 12, 2012

Agenda Item No. 5: Assumption Consideration Following Issuance of a 45-Day Notice to Correct Deficiencies to the City of Lake Elsinore 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. At its December 9, 2010 regular business meeting, the SMGB moved to issue a 45-Day *Notice to Correct Deficiencies* to the City of Lake Elsinore (City), pursuant to Public Resources Code (PRC), Section 2774.4 (Exhibit A). The 45-Day Notice to Correct Deficiencies, dated December 21, 2010, was forwarded to the City. The City subsequently responded on February 3, 2010.

The SMGB at its May 12, 2011, regular business meeting, considered the City's response and whether the SMGB should assume none, in part or whole, the City's SMARA lead agency responsibilities, with exception to permitting. The SMGB moved to find that the City of Lake Elsinore made some progress to fulfill its responsibilities and obligations as a lead agency under SMARA, but that the SMGB would continue to monitor the City of Lake Elsinore's progress. The SMGB directed the City to comply with the performance standards set forth in the recommendations of the Executive Officer's report, and deferred consumption consideration until its scheduled regular business meeting to be held in November 2011 within the jurisdiction of Lake Elsinore. The City failed to comply with any of the performance standards set forth, and with a submittal of documents dated October 28, 2011, insufficient time existed to review and analyze such documents for the scheduled November 10, 2011. Thus, the meeting was deferred.

No additional documents were received from the City by the Executive Officer until December 28, 2011 (Documents dated December 23, 2011; includes a cover letter and approximately 1214 pages of various attachments; Exhibit B). The review and analysis provided herein by the Executive Officer is preliminary in nature, since insufficient time was available for a detailed review of all documents submitted by the City.



Executive Officer's Report

Exhibits containing information and documents from the City, from OMR, and from interested parties are attached to this report. A summary of Exhibits presented herein is provided below:

- Exhibit A SMGB 45-Day Notice to Correct Deficiencies
- Exhibit B City of Lake Elsinore Response to the 45-Day Notice dated October 28, 2011, and December 23, 2011.
- Exhibit C Other Agency Correspondence
- Exhibit D Other Pertinent Correspondence

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 states:

“(a) 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).”

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

“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: A chronology of pertinent administrative events and activities, and correspondence received, is summarized in Table 1. Pertinent activities, actions and status, are further discussed below.

Table 1	
Chronology	
Date	Action/Activity
November 2009	Initial public complaint received ^(a)
March 24, 2010	Site visits performed by OMR
April 30, 2010	OMR issued two 15 day notices to the City regarding inadequate financial assurance mechanisms at CA Mine ID #91-33-0006, 91-33-0020, 91-33-0022 and 91-33-0073.
June 28, 2010	OMR status letter to SMGB regarding a previous complaint.
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 for CA Mine ID 391-33-0006, 0020, 0022, 0073 and 0098 (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
December 7, 2010	OMR response to City's response to the 15-Day Notice.
December 9, 2010	SMGB holds public hearing to consider assumption of City's SMARA lead agency program. OMR presented information to the SMGB regarding reclamation plans, mining approvals and agency responsibilities.
December 21, 2010	SMGB issues 45-Day Notice to Correct Deficiencies to City.
January 12, 2011	The City issued a NOV to Pacific Clay/Aggregates.
January 25, 2011	SMGB Executive Officer meeting with City and site visits.
February 7, 2011	OMR notified the City that their NOV did not identify and address all SMARA violations and that OMR was continuing its own enforcement.
February 17, 2011	OMR issued Notice of Violation to CA Mine ID #91-33-0006, -0020, -0022 and -0073.
March 20, 2011	Pacific Clay Products, Inc. correspondence pertaining to CA Mine ID #91-33-0006, 0020, 0022 and 0073.



Agenda Item No. 5 – City of Lake Elsinore Assumption Consideration

January 12, 2012

Page 5 of 29

March 29, 2011	City's correspondence to County of Riverside pertaining to Notice of Violation issued to the Brighton Alberhill Clay Mine (CA Mine ID #91-33-0022).
April 11, 2011	OMR issued an Order to Comply for CA Mine ID #91-33-0006, 0020, 0022 and 0073.
May 12, 2011	SMGB holds public hearing to consider City's response to the 45-Day Notice to Correct Deficiencies. SMGB moved to continue monitoring the City's progress and directed the City to adhere to the performance standards and schedule for submittal of documents to the SMGB, as contained in the Executive Officer's report. OMR presented information to the SMGB to address the Orders to Comply issued to Pacific Clay/Aggregates.
July 22, 2011	City of Lake Elsinore Monthly Update correspondence provided.
July 29, 2011	Committee of the SMGB holds hearing in Lake Elsinore to consider Order to Comply status for CA Mine ID #91-33-0006, 0020, 0022 and 0073. Stipulated judgment reached between OMR and operators for CA Mine ID #91-33-0006, 0020 and 0073. CA Mine ID #91-33-0022 remains outstanding.
August 22, 2011	City of Lake Elsinore Monthly Update correspondence provided.
July 29, 2011	Committee of the SMGB holds hearing to review status of four Orders-to-Comply for four surface mining operations (CA Mine ID 391-33-0006, 91-33-0020, 91-33-0022 and 91-33-0073). Stipulated Orders were negotiated between the operator and OMR for three of the operations, with CA Mine ID391-33-0022 unresolved at such time.
September 23, 2011	OMR updated the SMGB on the status of enforcement at a Committee of the SMGB meeting in Lake Elsinore.
September 26, 2011	City of Lake Elsinore Monthly Update correspondence provided. Approval of RP-112 by the Planning Director (as a ministerial change) which corresponds to CA Mine ID #-91-33-0006 and #91-33-0020 (consolidate three reclamation plans RP-110, RP-112 and SMP-108).
September 27, 2011	Electronic copy of inspection reports for all surface mining operations received from the City of Lake Elsinore's consultants.
October 28, 2011	City of Lake Elsinore Response to 45-Day Notice received.
November 10, 2011	Scheduled SMGB meeting deferred.
December 23, 2011	City amended response to the 45-Day Notice received on December 28, 2011.



Overview of Surface Mining within City's Jurisdiction Prior to Issuance of December 21, 2010,

45-Day Notice: 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 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. Such responses from the City were deemed by OMR and SMGB staff as incomplete and inadequate.

Prior to the SMGB issuance of a 45-Day Notice to the City of Lake Elsinore, seven surface mining operations were situated within the jurisdiction of the City as outlined below:

- 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. An aerial showing certain mining footprints identified by reclamation plan number as of 2010 is shown in Figure 1.



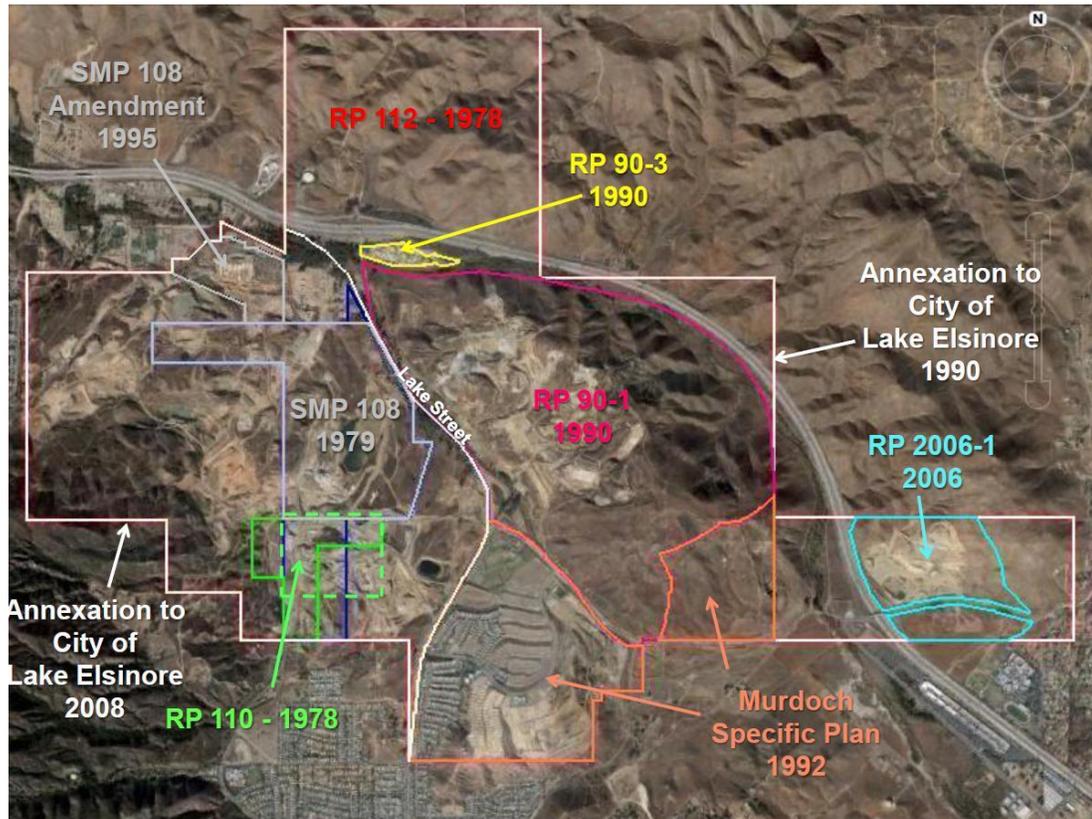


Figure 1. Overview of various surface mining operations within the jurisdiction of the City of Lake Elsinore.

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.

Analysis of City's SMARA Program (2008 to 2010): As previously presented in the Executive Officer's report for May 12, 2011, a review of the City's SMARA program from 2008-2010 was provided and is summarized below.

Approval of reclamation plans or financial assurances which were not consistent with SMARA: A chronology of administrative actions taken by the County of Riverside, City of Lake Elsinore or OMR is



summarized below (Table 2). In review of this chronology, the City had historically (since becoming the SMARA lead agency in 2008) failed to administer, or had incorrectly administered, the approval of reclamation plans and amended reclamation plans within its jurisdiction. 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 the City was informed by OMR that such adjustments were delinquent. Considering the overall status of the various reclamation plans and amendments as previously discussed, the adequacy of the financial assurances remained uncertain.

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+	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.



Agenda Item No. 5 – City of Lake Elsinore Assumption Consideration

January 12, 2012

Page 9 of 29

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, which was completely within RP 112 which again was never amended to reflect new footprint.
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.



Agenda Item No. 5 – City of Lake Elsinore Assumption Consideration

January 12, 2012

Page 10 of 29

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.

In regards to the status of three surface mining operations that were at one time deemed idle the following was 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.

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; 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...”*



Executive Officer’s Report

Adequate inspection reports are the foundation upon which a determination for adjusting the financial assurance is made, and are how administrative and compliance/enforcement actions to be considered by the lead agency (City) are clearly identified. Overall, the inspection reports were inadequate and did 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 were offered:

- Reference to Compliance/Enforcement Triggers: The inspection reports did 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 failed 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 had 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 did 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 did 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 could 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 did not adequately document violations observed during conduct of the inspection through the use of annotated photographs.

In summary, the inspection reports did not clearly reflect actual site conditions, and the need for several of the reclamation plans to be amended was deemed necessary. Adequate mine inspections that fulfill the intent of SMARA and the SMGB's regulations needed to be performed for all seven surface mine operations within the jurisdiction of the City. Such inspections needed to 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 remained questionable.

Reclamation Cost per Disturbed Acre: As of January 2009, the average estimated cost of reclamation per disturbed acre City-wide is on the order of \$1,766. This amount was determined to be inadequate to reclaim in accordance with the approved reclamation plans. 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 were issued by the City to any surface mining operation within its jurisdiction. This suggested 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 and Issuance of the December 21, 2010, 45-Day Notice to Correct Deficiencies: At the SMGB's December 9, 2010 regular business meeting, the following findings were 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 not undertaken such actions.
- Despite numerous violations observed by OMR staff during conduct of two site visits, 1) only one violation to address drainage issues on one site was noted in the inspection reports for all sites within the City's jurisdiction, and 2) no Notices of Violation were issued by the City to any operator within the City's jurisdiction. Such violations included operators operating outside their approved reclamation plan footprint, inadequate erosion control, acceptance of inspection reports that did 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 were deemed abandoned, and the City has failed to act in a timely or appropriate manner.
- Responses from the City initially received by OMR were deemed incomplete and inadequate.



- The City to date had not 1) fulfilled its responsibilities and obligations as a SMARA lead agency, and 2) demonstrated an ability to administer its SMARA program in an appropriate manner consistent with the intent of SMARA and the SMGB's regulations.

ISSUANCE OF THE 45-DAY NOTICE TO CORRECT DEFICIENCIES: At its December 9, 2010 regular business meeting, the SMGB moved to issue a 45-Day Notice to Correct Deficiencies to the City of Lake Elsinore (City), pursuant to PRC, Section 2774.4. The 45-Day Notice to Correct Deficiencies, dated December 21, 2010, was forwarded to the City. The City subsequently responded on February 3, 2010. At its May 12, 2011, regular business meeting, the SMGB moved to continue monitoring the City's SMARA program, and directed to the City to adhere to the performance standards and schedule for submittal of documents to the SMGB, as contained in the Executive Officer's report. The documents provided by the City and being considered by the SMGB are dated December 23, 2011 (received on December 28, 2011).

There are six categories of violations listed in PRC Section 2774.4 under which the SMGB may determine to assume the lead agency's responsibilities and obligations, with exception to permitting. These six categories are:

Category [1] - A lead agency has approved reclamation plans or financial assurances which are not consistent with SMARA;

Category [2] - A lead agency has failed to inspect or cause the inspection of surface mining operations as required by SMARA;

Category [3] - A lead agency has failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by SMARA;

Category [4]- A lead agency has failed to take appropriate enforcement actions as required by SMARA;

Category [5] - A lead agency has intentionally misrepresented the results of inspections required under SMARA; and

Category [6] - A lead agency has failed to submit information to the Department of Conservation as required by SMARA.

CITY'S RESPONSE TO THE 45-DAY NOTICE TO CORRECT DEFICIENCIES: In the SMGB's 45-Day Notice to Correct Deficiencies, dated December 12, 2010, deficiencies in the City's administration of SMARA were identified with respect to surface mines located within the City's jurisdiction. The deficiencies, the City's response to the 45-Day Notice to Correct Deficiencies, dated February 3, 2010, and the Executive Officer's analysis, were provided as part of the May 12, 2011,



Executive Officer's report. An updated response provided by the City, and dated December 23, 2011, is summarized below:

Deficiency 1: The City, in regards to issuance of permits and approval of reclamation plans and amended reclamation plans, has either administered such actions incorrectly, or has not undertaken (Category 1 violation pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2774(b) and 2774.1(a)). Notably, reclamation plans were not amended in a manner consistent with SMARA for the following surface mine operations:

- Pacific Clay Pits (CA Mine ID #91-33-0006)
- Mountain Avenue Pit #2 (CA Mine ID #91-33-0020)
- Mountain Avenue Pit No. 1 (CA Mine #91-33-0021)
- 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)

Executive Officer Analysis: A current status of efforts taken by OMR per surface mining operation in efforts to facilitate amended reclamation plans in compliance with SMARA and the SMGB's Regulations is summarized in Table 3.

Significant progress has been made in efforts to bring all surface mining operations within the City's jurisdiction into compliance. In consideration of the approval process for amending Reclamation Plan RP-112 (CA Mine ID #91-33-0006 and 91-33-0020), such amendment was deemed a ministerial act, and not a substantial deviation requiring not only approval of an amended reclamation plan but also an environmental study with subsequent approval by the Board of Supervisors.

Amendments to certain existing reclamation plans were required due to overlapping mining footprints, encroachment beyond their respective footprints as noted in the approved reclamation plans, among other issues. CCR Section 3502 states "*Each surface mining operation as defined in Public Resources Code Section 2735 and Title 14 California Code of Regulations Section 3501, shall have no more than one approved reclamation plan applicable to that operation except as described in subsection (i) to this section.*" One surface mining operation relying on three different reclamation plans is considered to be conflict with CCR 3502 (e) which states "*An amended reclamation plan shall be filed if the lead agency determines, after an inspection, that the surface mining operation can no longer be reclaimed in accordance with its approved reclamation plan. Such amended plan shall incorporate current reclamation standards as described in Chapter 9 (commencing with Section 2710) and Title 14 of the California code of Regulations commencing with Section 3700.*" Furthermore, violations noted by OMR for these sites included significant encroachment beyond the approved reclamation plan boundaries, inadequate erosion control measures, among other issues. Overall, these violations in the view of the Executive Officer were substantial violations pursuant to CCR Section 3502(d); notably, in regards to the conduct of surface mining activities beyond their respective mining footprint as noted in their respective reclamation plans (Figure 1). A substantial deviation is defined in the SMGB's regulations, but not restricted to:



**Table 3
Status of OMR Efforts to Facilitate Amended Reclamation
Plans in Compliance with SMARA and the SMGB's Regulations**

Surface Mining Operation	CA Mine ID Number	Status
Pacific Clay Pits	CA Mine ID #91-33-0006	Stipulated Order-to-Comply negotiated between OMR and the operator.
Mountain Avenue Pit #2	CA Mine ID #91-33-0020	Stipulated Order-to-Comply negotiated between OMR and the operator.
Mountain Avenue Pit No. 1	CA Mine #91-33-0021	Site closure anticipated in near future (SMP 101).
Brighton Alberhill Clay Mine	CA Mine ID #91-33-0022	Remains outstanding; no negotiated stipulated Order-to-Comply agreed upon between OMR and the operator.
Murdock Alberhill Ranch	CA Mine ID #91-33-0073	Stipulated Order-to-Comply negotiated between OMR and the operator.
Nichols Canyon Mine	CA Mine ID #91-33-0098	No outstanding issues identified (RP 2006-1).
Proposed Alberhill Southwest Shale Mine	No CA Mine ID established	City staff is recommending to the Planning Commission that a vested rights exist; no documentation is provided by the City to evaluate whether the process undertaken by City staff was appropriate and correct. OMR has commented on the proposed reclamation plan, but has not offered comment on City staff determination of vested rights.



- “(1) A substantial increase in the disturbance of a surface area or in the maximum depth of mining;*
(2) A substantial extension of the termination date of the mining operation as set out in the approved reclamation plan;
(3) Changes that would substantially affect the approved end use of the site as established in the reclamation plan;
(4) The consistency of any proposed change to the operation with the previously adopted environmental determinations.
(5) Any other changes that the lead agency deems substantial deviations as defined in the subsection.”

An amended reclamation plan was approved by the Planning Director (per September 23, 2011 correspondence), with no opportunity for assessment of potential adverse environmental impacts (if only restricted to the mining operations since portions of the sites were already disturbed by mining activity).

On another related matter and discussed in the City's December 23, 2011, response, is considering application of a new reclamation plan 2008-1 for the Aberhill Southwest Shale Mine. This site is located within the original boundaries of RP 112 and was deemed vested by City staff at its October 18, 2011, public hearing. A public hearing scheduled by the Planning Commission is anticipated to be held for January 2012 to consider the recommendation by City staff that the operation is vested. A summary of vesting status is provided in Table 4.



**Table 4
Summary of Vesting Status**

RP Number	Status
RP 112	Vested for Pacific Clay in 1978 by Riverside County.
RP 110	Vested for Elsinore Ready Minx in 1978 by Riverside County
SMP 108	Based on the preamble in the 1995 amendment to reclamation plan 108 (also called RP160), the area covered by SMP 108 was not vested. A permit was approved for Gladding McBean by Riverside County in 1979. It does say that the property was actively mined prior to SMARA, but no reason is given for the requirement of a permit. Pacific Clay acquired the operation in the same year. The permit was modified by the County for Pacific Clay in 1995, to address changes in the processing (new kiln). The modified permit allowed for an expansion of the reclamation plan area to the north to encompass the existing processing area. The expansion area overlies the existing RP 112.
RP 90-1	Approved for reclamation only by the City of Lake Elsinore in 1990. The reclamation plan overlies RP 112, which was vested.
SMP 108 –RP 90-1 –RP 90-3	Approved by the City of Lake Elsinore in 1990. The reclamation plan overlies RP 112, which was vested.
RP 110/LE-2	Vested for Elsinore Ready Mix in 1978 by Riverside County.
RP 2006-1	Approved by the City of Lake Elsinore in 2006. The reclamation plan overlies RP 112, which was vested. There are claims that the operator quit claimed the land, which would have affected the vesting, but currently the City considers the operation vested.

Deficiency 2: The City has failed to inspect or cause the inspection of surface mining operations as required by SMARA. The City failed to perform SMARA mine inspections for all seven surface mine sites in 2001, although the City performed annual SMARA inspections for all sites from the years 2002 through 2005. However, the inspection reports, upon review, were inadequate. The inspection reports do not contain reference to any reclamation or performance requirements, as set forth in the approved reclamation plans, nor do they cite 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 reports upon review fail to assure the lead agency that site conditions meet the requirements of the approved reclamation plans and permit requirements.

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.

Furthermore, the City failed to identify and issue any violations from 2001 through 2005 (Categories 2 and 4 violations pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2774(b) and 2774.1(a)).

Executive Officer Analysis: Inspection reports have been completed for all surface mining operations within the City’s jurisdiction, with electronic copies were submitted to the SMGB in late September 27, 2011. Upon review, the inspections reports were a significant improvement upon earlier inspections; however, the inspector neglected to note any violations on the inspection form (refer to CA Mine ID #91-33-0015 and 91-33-0073). Violations of SMARA remain violations until corrected. Although a Stipulated Order has been negotiated between OMR and the operator for certain sites, violations remain until corrected or an amended reclamation plan is approved. At the time this Executive Officer’s report was prepared, violations persist for CA Mine ID #91-33-0015 and 91-33-0073); however, no violations are noted on the respective inspection form for these specific sites with exception to one violation regarding topsoil signage for CA Mine ID #91-33-0098. In addition, reliance on disturbed acreage from a previous annual report is deemed inadequate. The purpose of the inspection is to determine, in part, the amount of disturbed acreage, and not rely on a Mining Operation Annual Report submitted by the operator.

The Regional Water Quality Control Board-Santa Ana Region’s (CRWQCBV-SAR) notice as it relates to the City’s inspections, identifies numerous violations that dare note addressed in the City’s inspection reports. Such violations include lack of Best Management Practices (BMP) and adequate sediment control, overflowing sedimentation ponds, eroding stockpiles, lack of slope and channel maintenance, basin failure and unsuccessful revegetation. Most of these were previously identified by the CRWQCB-SAR for active sites west of Lake Street, but again are not noted in the City’s inspection report. The CRWQCB-SAR only list one mine, Pacific Clay (CA Mine ID #91-33-0006), in the notice, but refer to operations occurring at least three different sites.

Furthermore, the CRWQCB-SAR in correspondence dated December 16, 2011, an Administrative Civil Liability Complaint (ACLA) was issued on September 23, 2011, for the Aberhill Brighton Clay Mine (CA Mine ID #91-33-0022). 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. No mention of these violations is noted in the inspection report.

Deficiency 3: 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, and the need for reclamation plans to be amended for certain surface mining operations within the City’s jurisdiction, financial assurances for the following surface mining operations remain questionable:

- Pacific Clay Pits (CA Mine ID #91-33-0006)
- Mountain Avenue Pit #2 (CA Mine ID #91-33-0020)
- 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)

Executive Officer Analysis: All financial assurances for all surface mining operations within the jurisdiction of the City appear to have been adequately adjusted in accordance with SMARA and the SMGB’s regulations, and are now deemed current and adequate. A summary of financial assurances is provided in Table 5.

Table 5 Summary of Financial Assurance Cost Estimates and Mechanism Amounts				
Mine ID	Mine Name	Current FACE	FACE Date	Current FAM
91-33-0006	Pacific Clay Pits	\$3,323,056.96	7/27/2010	\$3,541,526.00
91-33-0015	Wyroc	\$92,382.00	7/27/2010	\$92,382.00
91-33-0020	Mountain Avenue Pit #2	\$2,478,944.93	7/27/2010	\$2,531,569.00
91-33-0021	Mountain Avenue Pit #1	\$0.00	8/19/2009	No record
91-33-0022	Brighton Alberhill Clay Mine	\$232,203.00	4/20/2009	\$232,203.00
91-33-0073	Murdock Alberhill Ranch	\$1,953,750.10	7/27/2010	\$2,022,116.00
91-33-0098	Nichol's Canyon Mine	\$437,431.76	7/27/2010	\$459,679.00

Deficiency 4: The City failed to enforce and seek forfeiture of the financial assurances for three surface mining operations upon its abandonment by the operator, and the City has failed to act in a timely or appropriate manner (Category 3 violation pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2773.1(b)). 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. IMP expired in 2007.
- Brighton Alberhill Clay Mine (CA Mine ID #91-33-0022): The IMP for this site expired in November 2009; the site is currently deemed abandoned; and not acted upon in an appropriate manner by the City.

Executive Officer Analysis: Wyroc, Inc. (CA Mine ID #91-33-0015) attained an approved IMP dated January 5, 2005, which expired on January 5, 2010. The site became abandoned as of January 5, 2010. The City acknowledges that the request for extension of an existing approved IMP was late, but the City took it upon itself without authority under SMARA to approve the extension.

Mountain Avenue Pit #1 (formerly McVickers Canyon; CA Mine ID #91-33-0021) is anticipated to receive final closure from OMR by December 2011.

Brighton Alberhill Clay Mine (CA Mine ID #91-33-0022) was to be fully reclaimed in 1998 to residential. The City states that because the operator requested an extension to their 2005 approved IMP, and the City did not consider the extension request in a timely manner, the City subsequently approved an IMP for a site that was by then deemed abandoned. The City then rescinded the extension and requested an amended reclamation plan. The City failed to recognize that the site was abandoned when the IMP was being considered and subsequently approved. The City approved an IMP without any authority under SMARA. The City failed to have the operator commence reclamation, or seek forfeiture of the financial assurance for the purpose of commencing reclamation. A stipulated judgment continues to be negotiated between OMR and the operator.

Deficiency 5: The City failed to take appropriate enforcement actions as required by SMARA. 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.

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. No Notice of Violation or subsequent Order-to-Comply has ever been issued by the City to a surface mine operation within its jurisdiction (Category 4 violations pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2770(h)(6))



Executive Officer Analysis: The City in its December 23, 2011, correspondence (Exhibit B), states that “*our efforts demonstrates the City’s ability to administer SMRA on a local level as a lead agency.*” As of May 2011, the City’s argument was that all mining is covered by some reclamation plan; whereas, in review by OMR of specific mining operations by mine identification number, mining was clearly being conducted outside its respective boundaries for four of the sites. One NOV dated January 12, 2011, was issued by the City to Pacific Clay and Pacific Aggregates, but also included Castle & Cooke and its affiliates later in the notice. In other words, the Notice of Violation was issued to four separate surface mining operations (CA Mine ID #91-33-0006, -0020, -0022 and -0073). No clarity was provided as to what the actual violation or violations were in the Notice of Violation issued by the City. The City failed to issue NOV’s for specific operators for operating outside their respective boundaries as depicted in their respective approved reclamation plans, as previously noted by OMR staff and the Executive Officer.

In addition, the City only issued a NOV after the SMGB began its focus on citizen’s complaints about surface mining operations within the City’s jurisdiction. The City historically 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. The City failed to take appropriate enforcement actions as required by SMARA despite numerous violations observed by OMR staff during conduct of two site visits, including evidence of operators operating outside their approved reclamation plan footprint and inadequate erosion controls. Additionally, the City has tolerated inspection reports that did not adequately characterize current site operations and conditions, inadequate financial assurances, failure to correctly amend certain reclamation plans, and has allowed certain operators to not comply with end use requirements as set forth in certain reclamation plans, etc.

With no Order-to-Comply being issued by the City, OMR initiated enforcement which resulted in three negotiated Stipulated Orders, with one remaining outstanding.

Deficiency 6: The City failed to adequately respond to the 15-Day Notice issued by OMR, and to respond in a timely manner to OMR’s request for the resubmission of financial assurance cost estimates for seven out of nine mine sites (Category 6 violation pursuant to PRC Section 2774.4; deficiency pursuant to CCR Section 3805.5, and PRC Section 2774(d)):

- 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)



Executive Officer Analysis: Based on discussion with OMR and review of the City's October 28, 2011, response to the SMGB's 45-Day Notice, the City has not adequately responded to the 15-Day Notice issues by OMR for all surface mining operations within the City's jurisdiction, enforcement was initiated by OMR resulting in the issuance of a Notice of Violation and subsequently an Order-to-Comply to four surface mining operations (CA Mine ID 91-33-0006, 91-33-0020, 91-33-0022 and 91-33-0073). The City failed to initiate enforcement causing OMR to take appropriate actions to bring the above referenced sites into compliance. As previously noted, a Stipulated Order has been negotiated by OMR for CA Mine ID #91-33-0006, 91-33-0020 and 91-33-0073.

EXECUTIVE OFFICER'S FINDINGS: In regards to the specific six categories being considered as noted below, the following findings are offered:

Category [1] - A lead agency has approved reclamation plans or financial assurances which are not consistent with SMARA;

Category [2] - A lead agency has failed to inspect or cause the inspection of surface mining operations as required by SMARA;

Category [3] - A lead agency has failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by SMARA;

Category [4] - A lead agency has failed to take appropriate enforcement actions as required by SMARA;

Category [5] - A lead agency has intentionally misrepresented the results of inspections required under SMARA; and

Category [6] - A lead agency has failed to submit information to the Department of Conservation as required by SMARA.

Category [1] - Finding No. 1: The City failed to maintain adequate financial assurances as a SMARA lead agency.

This deficiency has been adequately corrected.

Category [1] - Finding No. 2: The City continues to fail to identify the key issues and formulate a strategy to effectively administer and implement SMARA in an efficient and timely manner, notably, in the combining of reclamation plans for three operations (CA Mine ID #91-33-0006, 0022 and 0073).

This deficiency has since been adequately corrected.



Category [2] - Finding No. 3: The City failed to provide adequate inspection reports while serving as a SMARA lead agency. This deficiency has been adequately corrected.

Category [3] - Finding No. 4: The City failed to recognize three sites as abandoned, failed to direct certain operators to commence reclamation, and failed to seek forfeiture of the financial assurances and commence reclamation for these sites.

This deficiency has adequately been corrected.

Category [4] - Finding No. 5: Although the City has improved its general understanding of SMARA and the SMGB's regulations, it has demonstrated an inability to administer compliance/enforcement actions, as necessary, in an appropriate manner. This is demonstrated by 1) the need for OMR to issue to the City a 15-Day Notice for failure to initiate enforcement actions for certain surface mining operations within the City's jurisdiction, and 2) the poor administration of sites that have become abandoned pursuant to PRC Section 2727.1(h)(6).

This deficiency was not adequately addressed as exemplified by enforcement action being initiated by OMR. The City has hired qualified consultants, and has attended SMARA workshops held by OMR.

Category [4] - Finding No. 6: The City failed to adequately enforce SMARA and the SMGB's regulations via the issuance of properly implemented NOV, and OTC, and Administrative penalties, if appropriate. This is demonstrated by the issuance by OMR of a 15-Day Notice to the City for failure to initiate enforcement. Furthermore, OMR has issued NOV and OTC to several surface mining operations, and during such time, only one poorly executed NOV with no follow up evident, was issued by the City.

This deficiency was not adequately addressed.

Category [6] - Finding No. 7: The City acknowledges its failure to effectively communicate with OMR in the past, and submit pertinent information as required under SMARA.

The City has adequately addressed this deficiency.

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 City has clearly met these criteria. However, the issuance of a 45-Day Notice to Correct Deficiencies by the SMGB allows for an opportunity for a lead agency to make its case that it is committed to maintaining an effective SMARA program, and fulfilling its obligations and responsibilities as a lead agency in accordance with SMARA and the SMGB's regulations.



Demonstration of the City's Ability to Enforce SMARA: Since receiving the public complaint in November 2009, the City has become better acquainted with SMARA, but the progress made to date is primarily a reflection of the efforts of OMR initiating enforcement actions, and directly interacting with certain operators. Prior to the SMGB and OMR involvement, seven surface mining operations were within the City's jurisdiction: four active sites, one idle site and 2 sites deemed abandoned. Since such time, OMR's Order to Comply resulted in stipulated judgments that combined three surface mining operations into one active operation (combination of CA Mine ID #91-33-006 and 0073 and 0020), and along with two other active operations (CA Mine ID #91-33-0015 and 91-33-0098), have worked to bring all five active surface mining operations into compliance. In addition, two sites will be reclaimed (CA Mine ID #91-33-0021 and 0022); a stipulated judgment is being negotiated between OMR and the operator for CA Mine ID #91-33-0022; whereas, final closure is anticipated for CA Mine ID #91-33-0021.

Clearly, the City failed to adequately address Category [4] - Finding No. 5. Although the City has improved its general understanding of SMARA and the SMGB's regulations, it has demonstrated an inability to administer compliance/enforcement actions, as necessary, in an appropriate manner. This is demonstrated by 1) the need for OMR to issue to the City a 15-Day Notice for failure to initiate enforcement actions for certain surface mining operations within the City's jurisdiction, and 2) the poor administration of sites that have become abandoned pursuant to PRC Section 2727.1(h)(6).

The City also failed to adequately address Category [4] - Finding No. 6. The City failed to adequately enforce SMARA and the SMGB's regulations via the issuance of properly implemented NOV, and OTC, and Administrative penalties, if appropriate. This is demonstrated by the issuance by OMR of a 15-Day Notice to the City for failure to initiate enforcement. Furthermore, OMR has issued NOV and OTC to several surface mining operations, and during such time, only one poorly executed NOV with no follow up evident, was issued by the City.

Adherence to Performance Standards: At its May 12, 2011, regular business meeting, the SMGB moved to continue monitoring the City's progress, set certain performance standards to be achieved by the City within a specific time frame, and have the City report back to the SMGB. The performance standards, and a summary of the City's response to such standards, are summarized below:

- Conduct of adequate inspections for all seven surface mining operations within the City's jurisdiction, and provide copies of such reports within three months to the SMGB for review upon completion.

This performance standard was not met. Inspection reports were not received by the SMGB until September 27 following inquiry by the Executive Officer as to the status of such reports.

- Provide the SMGB with any new or amended reclamation plans submitted by any and all mines within 15 days of certification of adequacy under PRC Section



2774(c) at the time the City provides those new or amended reclamation plans under PRC Section 2774(c) to OMR.

This performance standard was not met. The SMGB has not received one new or amended reclamation plan within 15 days of certification of adequacy.

- Provide the SMGB with all financial assurance cost estimates submitted by any and all mines within 15 days of certification of adequacy under CCR Section 3805 at the time the City provides those financial assurance cost estimates under PRC Section 2774(c) and the regulations at CCR Section 3805 to OMR.

This performance standard was not met within 15 days of certification of adequacy. No updated financial assurances were received within 15 days of certification of adequacy.

- Provide the SMGB with all responses to OMR comments and notices under PRC Section 2774(d)(1) and (d)(2) at the same time such responses are sent to OMR.

This performance standard was not met. No response correspondence and notices were received by the SMGB.

- Provide the SMGB with copies of the inspection notice requirements under PRC Section 2774(b) within 15 days of forwarding same to OMR.

This performance standard was not met. No inspection notice requirements were received by the SMGB.

- Provide the SMGB with copies of annual reports from all mining operations within 15 days of receipt of same.

This performance standard was not met. No annual reports were provided to the SMGB within 15 days of receipt.

- The SMGB will request copies of all correspondence originated by OMR to the City of Lake Elsinore relating to the City's implementation of SMARA.

This performance standard was not met. No copies of correspondence were provided to the SMGB within 15 days of receipt.

The consideration before the SMGB is whether the City has clearly demonstrated that it has the resources and commitment to adequately fulfill its SMARA responsibilities, and whether the SMGB should assume the City's lead agency responsibilities, in whole or in part, with the exception to



permitting. The City has taken some steps, including participating in OMR's SMARA and inspection workshops, and has increased its working knowledge of SMARA. The City has also shown willingness to work with OMR and the operators toward a solution in achieving compliance with those surface mining operations within its jurisdiction.

Thus, the question is whether the City is prepared to fulfill its role as a SMARA lead agency based on 1) review of the City's response to the 45-Day Notice to Correct Deficiencies, 2) review of the City's response to OMR's 15-Day Notice, 3) the City's understanding of SMARA administrative and enforcement processes, and 4) willingness to dedicate the necessary resources required for an effective SMARA program.

Due to the voluminous nature of the City's submittal, and insufficient time to review several documents of interest, the Executive Officer has no option at this time but to recommend that the SMGB continue monitoring the City's progress until the documents submitted can be further reviewed and evaluated, notably, in regards to 1) the outstanding Order-to-Comply pertaining to the Brighton Aberhill Clay Mine (CA Mine ID #91-33-0022), 2) compliance issues identified by the California Regional Water Quality Control Board-Santa Ana Region (Administrative Civil Liability Complaint to Pacific Clay Products) pertaining to Pacific Clay Pits (CA Mine ID #91-33-0006), and 3) evaluation of the documents City's staff relied on and making a recommendation to the Planning Commission that the proposed Alberhill Southwest Shale Mine has a vested right to mine (no such documentation was provided by the City, notwithstanding that the process the City undertakes to make this determination reflects on the City's understanding of SMARA and its ability to administer SMARA in an appropriate manner).

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

Motion No. 1: Accept findings set forth in the Executive Officer's report, in whole or in part.

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, accept the findings of the Executive Officer as set forth in the May 12, 2011, Executive Officer's Report.

[And]

Motion No. 2a: Determination that the City has adequately and fully addressed the 45-Day Notice to Correct Deficiencies.

[Should the SMGB determine that to its satisfaction, the deficiencies have been adequately and fully corrected]

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 has made a good faith effort in fulfilling its responsibilities and obligations as a Lead Agency under SMARA, and that the deficiencies previously noted have been adequately corrected to the satisfaction of the Board, and that no further action is required by the Board.



[Or]

Motion No. 2b: Determination that the City has made favorable progress to address the 45-Day Notice to Correct Deficiencies.

[Should the SMGB determine that the City is making significant progress, but certain deficiencies remain uncorrected, the following motion can 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 has made a good faith effort in fulfilling its responsibilities and obligations as a Lead Agency under SMARA, and that the Board continue to monitor the City's progress, until the Executive Officer has sufficient time to review the documents received from the City and allow the City to address outstanding issues, and report back to the Board within six months.

Motion No. 2c: Determination that the City has not adequately addressed the 45-Day Notice to Correct Deficiencies.

[Should the SMGB determine that deficiencies and violations remain uncorrected and the City has failed to adequately address the 45-Day Notice to Correct Deficiencies, the following motion can 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 has not made a good faith effort in fulfilling its responsibilities and obligations as a Lead Agency under SMARA, and that the deficiencies previously noted have not been corrected to the satisfaction of the Board, and that the Board shall assume, whole or in part, the City of Lake Elsinore's SMARA lead agency responsibilities and obligations.

Respectfully submitted:



Stephen M. Testa
Executive Officer



EXHIBITS

Exhibit A SMGB 45-Day Notice to Correct Deficiencies

Exhibit B City of Lake Response to 45-Day Notice

October 28, 2011, Response

December 23, 2011, Response

Exhibit C Other Agency Correspondence

Exhibit D Public Correspondence

