



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: March 14, 2013

Agenda Item No. 4: Review of Lead Agency Response to the State Mining and Geology Board's Issuance of a 45-Day Notice to Correct Deficiencies to the City of Bakersfield Pursuant to the Surface Mining and Reclamation Act (SMARA). Following Review, the Board may take appropriate action in accordance with Public Resources Code Section 2774.4(a).

INTRODUCTION: At its regular business meeting held on December 13, 2012, the State Mining and Geology Board (SMGB) received a report from the Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) dated November 21, 2012, on the overall status and performance status of the City of Bakersfield (City) Surface Mining and Reclamation Act (SMARA) program. Based on deficiencies identified in the LART report, the SMGB at its December 13, 2012 regular business meeting, decided to issue a 45-Day Notice to Correct Deficiencies (Notice) to the City of Bakersfield. The Notice was issued on December 20, 2012. The SMGB will 1) assess whether the City has adequately addressed all outstanding deficiencies, and 2) consider, following review of the response from the City, whether the SMGB wishes to take appropriate action in accordance with PRC Section 2774.4(a).

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(a) states that if certain deficiencies exist, the SMGB can assume certain SMARA lead agency responsibilities as follows:

"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."

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

"(c) 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



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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."

BACKGROUND: One surface mining operation is reported to exist within the jurisdiction of the City (Table 1). The operation, referred to as The Sand Pit (CA Mine ID 91-15-0101), is an abandoned sand and gravel mine. The deficiencies noted included, albeit not limited to, the following:

- Failure to conduct an inspection since 2001;
- Failure to approve a reclamation plan;
- Failure to submit a financial assurance cost estimate;
- Failure to obtain an Interim Management Plan (IMP); and
- Failure to submit information to the DOC as required under SMARA.

Table 1 Summary of Surface Mining Operations Situated in the City of Bakersfield								
Surface Mine Name	CA Mine Identification Number	Operator	Surface Mine Status	Last Inspection Report on File (year)	Approved Acreage	Disturbed Acreage (2008 Annual Report/ Aerial Photo)	Produced Product	Deficiencies Noted
The Sand Pit	#91-15-0101	Land Lot 1, LLC	Abandoned	2001	38	35/38	Sand and gravel	1, 2,3,4,6

The review of the City's SMARA program was performed in 2011, with the LART report completed and forwarded to the City on May 21, 2012. The City responded to the LART report on June 18, 2012. In correspondence dated February 12, 2013, the site informed OMR that based on an inspection conducted on January 25, 2013, the site has been reclaimed in accordance with the approved reclamation plan. Since there is no financial assurance in place, thus, request for release of a financial assurance mechanism is no longer germane to the site closure request.

EXECUTIVE OFFICER'S RECOMMENDATION: A SMARA lead agency need only fail in one of the six categories 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. However, the issuance of a 45-Day Notice to Correct Deficiencies by the SMGB allows for an opportunity for a lead agency to take appropriate actions and make a demonstration that the lead agency is committed to maintaining an effective SMARA program, and to fulfilling its obligations and responsibilities as a lead agency in accordance with SMARA and the SMGB's regulations.

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 proceed with assumption of the City's lead agency responsibilities, in whole or in part, with the exception to permitting. Since receiving the LART Report in November 2012 and subsequent Notice in December 2012, the City has taken appropriate actions to resolve the outstanding deficiencies.

The issue before the SMGB is whether the City is adequately fulfilling 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) the City's understanding of SMARA administrative and enforcement processes, and 3) the City's willingness to dedicate the necessary resources and incorporate the appropriate mechanisms required for an effective SMARA program.

The Executive Officer, based on review of the administrative record contained herein, recommends that the SMGB finds that the City has made a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and allow the opportunity for the City to resolve any outstanding issues in coordination with OMR. The Executive Officer does not recommend that the SMGB consider assumption in accordance with PRC Section 2774.4(a).

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

Option No. 1 – Deficiencies corrected:

[Should the SMGB determine that the City is fulfilling its responsibilities and obligations as a lead agency pursuant to SMARA, and that no deficiencies and violations exist, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before it today and contained in the Executive Officer's Report, find that the City of Bakersfield is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and that the City has addressed the deficiencies to the satisfaction of the Board.

[or]

Option No. 2 – Defer action:

[Should the SMGB determine that the City is making significant progress, but certain deficiencies and violations remain uncorrected, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before it today and contained in the Executive Officer's Report, find that the City of Bakersfield is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, but note that an adequate financial assurance mechanism has not been attained to date, and that the City report back to the SMGB within 90 days to report on the status of its efforts.

[or]

Option No. 3 – Deficiencies not corrected and need to schedule a public hearing:

[Should the SMGB determine that deficiencies and violations remain uncorrected and the City is failing to make progress, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before it today and contained in the Executive Officer's Report, find that it has determined that the City of Bakersfield has not corrected the deficiencies to the satisfaction of the board, and direct the Executive Officer to schedule a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public, pursuant to Public Resources Code Sections 2774.4(c).

Respectfully submitted:



Stephen M. Testa
Executive Officer