



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: June 13, 2013

Agenda Item No. 14: Office of Mine Reclamation, Lead Agency Review Team (LART) Report for the County of Marin, and Pursuant to the Surface Mining and Reclamation Act (SMARA), following Review, the SMGB may take appropriate action in accordance with Public Resources Code Section 2774.4(c).

INTRODUCTION: Under the California Surface Mining and Reclamation Act of 1975 (SMARA), there are currently 113 lead agencies: 52 counties, 50 cities, and the State Mining and Geology Board (SMGB). A lead agency as defined under SMARA means “the city, county, San Francisco Bay Conservation and Development Commission, or the board which has the principal responsibility for approving reclamation plan pursuant to this chapter.” SMARA lead agencies also have other responsibilities including assuring the conduct of adequate inspections at least once each calendar year, and taking appropriate enforcement actions when warranted.

In 2007, the Department of Conservation, Office of Mine Reclamation (OMR) established the Lead Agency Review Team (LART). The LART has completed its lead agency review report for the County of Marin (County). The LART will provide a summary of the results of its review of this SMARA lead agency. In addition, in review of the LART report, the SMGB may consider action in accordance with Public Resources Code section 2774.4(c).

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.”

PRC Section 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



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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."

BACKGROUND: California is the only state in the conterminous United States where surface mine reclamation is not regulated at the state level. Most states also maintain permitting authority when it comes to mining regulation; whereas, in California permitting authority is decided at the local level. SMARA, pursuant to PRC Section 2728, defines a lead agency as a city, county, San Francisco Bay Conservation and Development Commission (BCDC), or the SMGB which has the principal responsibility for approving a reclamation plan. Under SMARA, there are currently 113 lead agencies: 51 counties, 62 cities, and the SMGB.

In 2007, the SMGB published Information Report IR 2006-01 titled "*Report on SMARA Lead Agency Performance Regarding Mine Reclamation.*" This evaluation assessed lead agencies performances of periodic mine inspections, adjustment of annual financial assurances and enforcement of the preparation of Interim Management Plans (IMP) should a surface mine site be characterized as idle for a period exceeding one year. Based on this review, the overall performance of SMARA lead agencies was found to significantly vary throughout the state. For the most part, overall performance was found to be poor, reflecting a number of factors including financial constraints, and limited or lack of technical expertise. Subsequent to publication of the SMGB's Information Report IR 2007-01, the Office of Mine Reclamation (OMR) commenced the Lead Agency Review Team (LART) program.

County of Marin SMARA Program: Five surface mining operations are located within the jurisdiction of the County of Marin. Four are characterized as active and one closed with no intent to resume mining. The primary commodity is stone, with a subordinate amount of sand and gravel.

The LART report for the County dated March 13, 2013, states that three of the surface mining operations were visited in 2012. LART noted that the 2011 inspection reports were inadequate, and did not adequately update financial assurance cost estimates or mechanisms, and that the inspection reports were deemed incomplete. Outstanding deficiencies included, but are not limited to:

- Failure to amend or update financial assurance cost estimates and/or mechanism (Deficiency No. 1);
- Failure to conduct adequate and complete inspections (Deficiency No. 2); and
- Failure to take appropriate enforcement action (Deficiency No. 4).

A summary is provided in Table 1.

**Table 1
 Summary of Surface Mining Operations Situated in the County of Marin**

Surface Mine Name	California Mine Identification Number	Operator	Surface Mine Status	Last Inspection Report on File (year)	Approved Acreage	Disturbed Acreage (2011 Annual Report/Inspection Report/GPS - Aerial Photo)	Produced Product	Deficiencies Noted
Redwood/Silveira Quarry	91-21-0001	Redwood Landfill, Inc.	Active	2011	15	15/50/ ND ^(a)	Sand and gravel	1,2
Martinoni Quarry	91-21-0004	Martinoni Quarry	Active	2011	0.5	1/4/ ND ^(a)	Shale	2
Nicasio Quarry	91-21-0005	Lunny Grading & Paving, Inc.	Active	2011	2.70	3/5/7	Stone	1,2,4
Dutra Materials	91-21-0008	San Rafael Rock Quarry, Inc.	Active	2011	183	0/183/235	Stone	2
Bowman Quarry	91-21-0009	Porter Irrevocable Trust	Closed with no intent to resume mining	2011	5.17	5/18/20	Rock	2

(a) ND = Not determined.

EXECUTIVE OFFICER’S RECOMMENDATION: The information being provided by OMR is for the SMGB’s information. However, based on the current status of the SMARA program in the County as noted in the LART report, the Executive Officer recommends that a 45-Day Notice to Correct Deficiencies (Notice) be issued to the County.

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

First Option – Do not issue a 45-Day Notice to Correct Deficiencies:

[Should the SMGB determine that the County 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 the Board today and contained in the Executive Officer’s Report, find that the County of Marin is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and that the Board not consider issuance of a 45-Day Notice of Deficiencies.

[or]

Second Option – Defer issuance of a 45-Day Notice to Correct Deficiencies:

[Should the SMGB determine that the County 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 the Board today and contained in the Executive Officer's Report, find that the County of Marin is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, but note that significant deficiencies persist, and direct the Executive Officer to conduct a thorough review of current mine inspection reports for all surface mine sites within the jurisdiction of the County, and conduct on-site visits, as appropriate and deemed necessary. Upon completion, the Executive Officer will report back to the SMGB, and the SMGB can consider issuance of a 45-Day Notice of Deficiencies, if deemed necessary.

Third Option – Issuance of a 45-Day Notice to Correct Deficiencies:

[Should the SMGB determine that deficiencies and violations remain uncorrected and the County 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 the Board today and contained in the Executive Officer's Report, direct the Executive Officer to issue a 45-Day Notice to Correct Deficiencies to County of Marin pursuant to Public Resources Code Sections 2774.4(a) and (c).

Respectfully submitted:



Stephen M. Testa
Executive Officer