



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: June 13, 2013

Agenda Item No. 8: Review of Lead Agency Response to the State Mining and Geology Board's Issuance of a 45-Day Notice to Correct Deficiencies to the County of Mono 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 June 9, 2011, the State Mining and Geology Board (SMGB) received a report from the Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) on the overall status and performance status of the County of Mono (County) surface mining program pursuant to the Surface Mining and Reclamation Act (SMARA) dated February 28, 2011. Deficiencies pursuant to PRC Section 2774.4(a) were reported. Based on the SMGB's review of the LART report, the SMGB issued a 45-Day Notice to Correct Deficiencies (Notice) to the County dated October 16, 2012, with a response to the Notice received from the County dated January 15, 2013. The County's response also incorporated reference to previous information and documentation submitted to the SMGB following issuance of the Notice. The SMGB will 1) assess whether the County has adequately addressed all outstanding deficiencies, and 2) consider, based on the response received from the County, whether the SMGB will take appropriate action in accordance with Public Resources Code (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



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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: The review of the County's SMARA program was performed in 2009, with the LART report completed and forwarded to the County on October 28, 2010. The County responded to the LART report in correspondence dated November 1, 2010. At its regular business meeting held on June 9, 2011, the State Mining and Geology Board (SMGB) received a report from the Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) on the overall status and performance status of the County of Mono (County) surface mining program pursuant to the Surface Mining and Reclamation Act (SMARA) dated February 28, 2011. Deficiencies pursuant to PRC Section 2774.4(a) were reported. Based on the SMGB's review of the LART report, the SMGB issued a 45-Day Notice to Correct Deficiencies (Notice) to the County dated October 16, 2012, with a response to the Notice received from the County dated January 15, 2013. The County's response also incorporated reference to previous information and documentation submitted to the SMGB following issuance of the Notice.

COUNTY OF MONO SMARA PROGRAM: Nineteen surface mining operations were originally reported to exist within the jurisdiction of the County (Table 1). Eleven of the operations are operated by Caltrans. Eight operations are characterized as active, with the remainder being closed. Commodities produced include primarily sand and gravel, with subordinate amounts of cinder, clay, decomposed granite, fill dirt, sericite and pumice. Since issuance of the LART report, five surface mining operations have been reclaimed and closed, and one new mine approved, thus, the current number of surface mining operations within the jurisdiction of the County is fifteen.

In review of the LART report for the County and responses provided by the County, several deficiencies were reported. Notably, deficiencies noted by LART reported albeit, not limited, included:

- Failure to update and adjust financial assurances cost estimates on an annual basis for two operations;
- Failure to notify OMR of reclamation plan approval for six operations (including failure to respond to OMR's comments for five of these operations);
- Failure to inspect one operation since 2003;
- Failure to conduct adequate inspections;
- Failure to adequately close certain operations that have no intent to resume mining; and
- Failure to request an Interim Management Plan for one idle operation, among other issues.

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

| Surface Mine Name | 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 |
|--------------------------|----------------------------|---|---------------------|---------------------------------------|------------------|--|--------------------|--------------------|
| Black Point Cinder, Inc. | CA Mine ID # 91-26-0001 | Sierra Aggregate Company | Active | 08/10/11 | 31 | 10/34.3 | Cinder | 2,4 |
| Hot Creek Kaolin Mine | CA Mine ID # 91-26-0002 | Standard Industrial Minerals | Active (Abandoned) | 08/24/11 | 34 | 20/58 | Clay | 1,2,3,4 |
| Pacific Sericite Mine | CA Mine ID # 91-26-0003 | Standard Industrial Minerals | Active (Idle) | 09/19/11 | 5 | 5/11.6 | Sericite | 1,2,3,4 |
| Frank Sam Mine | CA Mine ID # 91-26-0004 | U. S. Pumice Company | Active (Idle) | | 219 | 0.90/380 | Pumice | 2 |
| #24A North Benton | CA Mine ID # 91-26-0007 | Caltrans | Closed | | 4.2 | 0/NA ^(a) | Sand and gravel | |
| #116-12 Baseline | CA Mine ID # 91-26-0010 | Caltrans | Closed | | 4.5 | 0/NA | Sand and Gravel | |
| #117 Pole Line Sites | CA Mine ID # 91-26-0011 | Caltrans | Closed | | 29 | 0/NA | Sand and Gravel | |
| #135 Convict Creek | CA Mine ID # 91-26-0013 | Caltrans | Closed | | 21 | 0/21 | Sand and Gravel | |
| #189 Sweetwater | CA Mine ID # 91-26-0015 | Caltrans | Closed | | 2.3 | 0/2.3 | Sand and Gravel | |
| #190 Baseline | CA Mine ID # 91-26-0016 | Caltrans | Closed | | 39.6 | 0/39.6 | Sand and Gravel | |
| #205 Green Lakes | CA Mine ID # 91-26-0017 | Caltrans | Closed | | 5.2 | 0/5.2 | Sand and Gravel | 4 |
| #210 Milner Fan | CA Mine ID # 91-26-0018 | Caltrans | Closed | | 47 | 2/47 | Sand and Gravel | |
| #213 Benton Hill | CA Mine ID # 91-26-0021 | Caltrans | Closed | | 7.7 | 0/7.7 | Sand and Gravel | |
| #250 Rickey Ditch | CA Mine ID # 91-26-0024 | Caltrans | Active | | 40 | 1.7/NA | Sand and Gravel | 1, 2,4 |
| #273 Burcham Flats | CA Mine ID # 91-26-0026 | Caltrans | Closed | | 2.0 | 0/2 | Sand and Gravel | |
| Desert Aggregates | CA Mine ID # 91-26-0029 | Caltrans | Active | | 75 | 64/79.8 | Sand and Gravel | 2,4 |
| Cain Ranch | CA Mine ID # 91-26-0035 | Marzano & Sons General Engineering Contractor | Active | | 35.3 | 30/44 | Uncertain | 2 |
| Sonora Pit | CA Mine ID # 91-26-0037 | Mono County Department of Public Works | Active | | 3 | 4/4 | Decomposed Granite | 2 |
| Harris Flat | CA Mine ID # 91-26-0044 | Kiewit Pacific Company | Closed | | 25 | 0/25 | Fill Dirt | |

(a) NA = Not available.

Specific deficiencies are summarized below:

Deficiency No. 1 - Approved reclamation plans or financial assurances which are not consistent with this chapter: Prior to the mine operator cashing the financial assurance instrument, the financial assurance mechanism (FAM) for the Hot Creek Kaolin Mine (CA Mine ID #91-26-0002) was listed for only \$30,000 although the financial assurance cost estimate (FACE) was for the amount of \$110,000. For the Pacific Sericite Mine (CA Mine ID #91-26-0003), the FAM was for only \$10,000, although the FACE was for \$64,000. The cashing out of the financial assurance instruments for the Hot Creek Kaolin Mine and Pacific Sericite Mine reflects lack of timely action by the County. The two sites are now abandoned without sufficient monies to reclamation the sites in accordance with the approved reclamation plans.

Review of County's Response: Based on the County's January 15, 2013, response, appropriate enforcement actions to remedy inadequate financial assurances for both the Hot Creek Kaolin Mine and the Pacific Sericite Mine have been implemented. A Notice of Violation dated July 13, 2009, Order to Comply (Notice of Order dated August 30, 2011), and most recently Administrative Penalties dated November 1, 2012, have been issued by the County to the operator. The operator has since appealed the Administrative Penalties. This deficiency has been adequately addressed.

Deficiency No. 2 - Failed to inspect or cause the inspection of surface mining operations as required by this chapter: Although inspections have been performed, such inspection reports fail to comply with the SMGB's regulations. Inspection reports should make reference to any reclamation or performance requirements, as set forth in the approved reclamation plans, or permit requirements such as Conditions of Approval. Furthermore, such inspection reports must also 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 must be provided in the inspection reports.

Review of County's Response: The 2011 Surface Mining Inspection Reports for all surface mining operations within the jurisdiction of the County were reviewed. Although completely filled out, the inspection reports lack supportive documentation and information per CCR Section 3504.4(f), and could be significantly improved upon. Based on the County's January 15, 2013, response, it is the County's position that such requirements per CCR Section 3504.5(f) are permissive in nature and do not need to be incorporated as part of the inspection report should the County feel such site specific information is not deemed necessary. Thus, the County elected to not include any such documentation as part of the inspection reports for all surface mining

operations within its jurisdiction. The anticipated approval by the SMGB of a revised inspection report form will serve as a useful tool for all lead agencies in providing more informative reports. This deficiency currently remains outstanding.

Deficiency No. 3 - Failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter: The mine operator for the Hot Creek Kaolin Mine (CA Mine ID #91-26-0002) was able to cash the financial assurance instrument for two of his mines (91-26-0002 and 91-26-0003) without reclamation being performed. The mine operator has since abandoned both of the mines. The cashing out of the financial assurance instruments for the Hot Creek Kaolin Mine and Pacific Sericite Mine reflects lack of timely action of the County. The two sites are now abandoned without sufficient monies to reclamation the sites in accordance with the approved reclamation plans.

In addition, the County issued a Notice and Order on August 30, 2011, and provided a due date of November 11, 2012, to complete reclamation. As of the 2012 inspection of both mine sites, reclamation has not commenced.

Review of County's Response: Based on the County's January 15, 2013, response to Deficiency No. 1, this Deficiency has been adequately addressed.

Deficiency No. 4 - Failed to take appropriate enforcement actions as required by this chapter: Failure to commence enforcement is demonstrated by:

- High wall slopes in contrast to what is provided in the approved reclamation plan exists at Black Point Cinder (CA Mine ID #91-0026-0001), Hot Creek Kaolin Mine (CA Mine ID #91-26-0002) and Pacific Sericite (CA Mine ID #91-26-0003).
- No stockpiling of topsoil at the Pacific Sericite Mine (CA Mine ID #91-26-0003).
- Possible reclamation boundary and depth issues at the Black Point Cinder (CA Mine ID #91-0026-0001), Hot Creek Kaolin Mine (CA Mine ID #91-26-0002) and Desert Aggregates (CA Mine ID #91-26-0029).
- Sidecasting was performed at Pacific Sericite Mine (CA Mine ID #91-26-0003).
- Poor access road grading at the Pacific Sericite Mine (CA Mine ID #91-26-0003).
- Inadequate revegetation efforts that do not meet the requirements of the approved reclamation plan are reported for Green Lakes (CA Mine ID #91-26-0017) and Desert Aggregates (CA Mine ID #91-26-0029).
- The high wall is locally over steepened at Desert Aggregates (CA Mine ID #91-26-0029).

- The pond access road traps run-off and is actively eroding at Desert Aggregates (CA Mine ID #91-26-0029).

In addition, at Black Point Cinder (CA Mine ID #91-26-0001), the mine operator has submitted an application to amend the reclamation plan, but since the United States Forest Service has not approved the Plan of Operation, the amendment process is on hold.

For the Hot Creek Kaolin Mine (CA Mine ID #91-26-0002) and Pacific Sericite Mine (CA Mine ID #91-26-0003), the County issued a Notice and Order on August 30, 2011, and provided a due date of November 1, 2012, to complete reclamation. As of the 2012 inspection at both mine sites, reclamation has not commenced.

In regard to Green Lakes (CA Mine ID #91-26-0017), the County issued a Notice of Violation on June 20, 2011. CalTrans has repeatedly asserted that reclamation has been completed at this site. The County disagrees with CalTrans claim. CalTrans submitted a 2011 FACE for \$4,000 which the County rejected as insufficient. On February 2, 2012, CalTrans produced a letter from the Bureau of Land Management (BLM) asserting BLM's desire to take control of the site as a borrow pit. The County has asked OMR for guidance on how to officially transfer the pit over to BLM.

In regards to Desert Aggregates (CA Mine ID #91-26-0029), the County issued a Notice of Violation (NOV) on July 19, 2011, requiring the operator to create new test plots, conduct a survey to establish whether the toe of the slope encroaches into the 100 feet setback, install a culvert at the bottom of the dip in the pond access road at the north property boundary to prevent further erosion on the access road, and immediately revegetate the former area of a pond. There was no response from County regarding the steep slopes at this site.

No information has been provided at the time this Executive Officer Report was prepared to demonstrate that the County understands the administrative process pertaining to enforcement of SMARA, and has taken any enforcement actions via issuance of a Notice of Violation, Order to Comply or Administrative Penalty.

Review of County's Response: Based on the County's January 15, 2013, response to Deficiency No. 1, this Deficiency has been adequately addressed.

EXECUTIVE OFFICER'S RECOMMENDATIONS: It is the opinion of the Executive Officer that the County has adequately addressed all deficiencies, with exception to the completeness and adequacy of inspection reports, and has implemented actions within its authority to resolve outstanding site specific issues. The Surface Mining Inspection Reports for 2011 were reviewed. Although completely filled out, the inspection reports lack supportive documentation and information per CCR Section 3504.4(f), and could be significantly improved upon. Thus, it is recommended that the County provide the SMGB copies of all 2013 inspection reports, upon completion by the County, for review and comment, and that the Executive Officer can bring this matter back to the SMGB should any issues remain unresolved.

In review of the County's response to the 45-Day Notice to Correct Deficiencies, the Executive Officer does not recommend the SMGB commence action in accordance with PRC Section 2774.4(a), and recognize that the County has adequately addressed the deficiencies to the satisfaction of the SMGB.

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

Option No. 1 – Deficiencies addressed to the satisfaction of the SMGB:

[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 it today and contained in the Executive Officer's Report, find that the County of Mono is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and that the County has addressed the deficiencies to the satisfaction of the Board.

[or]

Option No. 2 – Deficiencies partially corrected to the satisfaction of the SMGB:

[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 Mono is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and can address remaining deficiencies to the satisfaction of the SMGB by working with the Executive Officer, provide copies of all 2013 inspection reports to the Executive Officer for review upon completion, and that the Executive Officer bring this matter back to the SMGB should any issues remain unresolved.

[or]

Option No. 3 – Deficiencies not corrected to the satisfaction of the SMGB:

[Should the SMGB determine that deficiencies and violations remain uncorrected and the County has failed 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, has determined that the County of Mono 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