



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: July 11, 2013

Agenda Item No. 10: 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 Mendocino, 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: Under the Surface Mining and Reclamation Act (SMARA), lead agencies are required to fulfill certain responsibilities including conduct of site inspections, annual review and adjustment of financial assurances, review and approve new and amended reclamation plans, and take enforcement actions as appropriate, among other obligations. At its regular business meeting held on October 11, 2012, the State Mining and Geology Board (SMGB) received a report from the Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) dated July 19, 2012, on the overall status and performance of the County of Mendocino (County) surface mining program pursuant to the SMARA. Deficiencies pursuant to Public Resources Code (PRC) Section 2774.4(a) were reported. Based on the SMGB's review of the LART report, the SMGB moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the County pursuant to PRC Section 2774.4(a). The Notice was issued on December 21, 2012. The County responded in correspondence dated February 26, 2013. 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 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."

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



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“(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 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: At its regular business meeting held on October 11, 2012, the SMGB received a report from the Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) dated July 19, 2012, on the overall status and performance of the County of Mendocino (County) surface mining program pursuant to the SMARA. Deficiencies pursuant to PRC Section 2774.4(a) were reported. Based on the SMGB’s review of the LART report, the SMGB moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the County pursuant to PRC Section 2774.4(a). The Notice was issued on December 21, 2012. The County responded in correspondence dated February 26, 2013.

COUNTY OF MENDOCINO SMARA PROGRAM: The review of the County’s SMARA program was performed in 2011-2012, with the LART report completed on July 19, 2012. The County provided a response to the LART report in correspondence dated October 14, 2011.

Thirty-six (36) surface mining operations are reported to exist within the jurisdiction of the County (Table 1). Twenty-four (24) are characterized as active, eight are newly permitted, and three are closed and certified complete. Commodities produced include primarily sand and gravel, with subordinate amounts of rock and silica.

In review of the LART report for the County, several deficiencies are reported. Notably, deficiencies noted by LART reported, albeit, not limited, included failure to review and adjust financial assurance cost estimates, failure to inspect mines at least once each calendar year, preparation of inadequate inspection reports, failure to commence reclamation following site abandonment and absence of Interim Management Plans (IMPs), and failure to enforce SMARA (Table 1).

Table 1
Summary of Surface Mining Operations situated in the County of Mendocino

Surface Mine ID Number	Mine Name	Surface Mine Status	Last Inspection Report on File (year)	Approved Acreage	Disturbed Acreage (Annual Report/ Inspection Report/OMR GPS)	Produced Product	Deficiencies Noted By OMR
91-23-0002	Camp 5 Pit	Active	11/11/11	15	0/15/10	Sand and gravel	1,2,4
91-23-0003	Ford Gravel Company	Active	Uncertain	87	27/34/87	Sand and gravel	2
91-23-0008	Bed Rock, Inc.	Reclamation certified complete	Uncertain	0	3/0/50	Sand and gravel	1,2
91-23-0010	Red Rock Quarry	Active	03/21/12	4	0/4/NA ^(b)	Sand and gravel	1,2
91-23-0012	Laughlin Ridge-Shuster Quarry	Active		6	0/6/NA	Sand and gravel	2
91-23-0015	Harris Quarry	Active	12/15/11	18	8/8/18	Sand and gravel	2
91-23-0016	Dobie Lane Pit/Mill Creek Bar	Active	12/16/11	3	3/3/3	Sand and gravel	1,2,4,6
91-23-0020	10 Mile 2 nd Crossing	Active	Uncertain	18	8/18/NA	Sand and gravel	2
91-23-0021	Pietta Quarry	Active	12/15/11	7	7/7/6	Sand and gravel	2
91-23-0026	Tunzi Inc.	Active	12/02/12 (2011)	1	1/1/NA	Sand and gravel	1,2
91-23-0027	Rowland Bar	Reclamation certified complete	Uncertain	0	0/0/0	Sand and gravel	2
91-23-0028	Sherwood Road	Active	Uncertain	6	6/5/5	Sand and gravel	2,4
91-23-0029	Laytonville Rock Quarry	Active	03/20/12	16	16/8/9	Stone	2,6
91-23-0030	Cleone Sand Pit	Active	11/22/11	11	11/4/3	Sand and gravel	1, 2
91-23-0031	Redwood Valley Gravel Products, Inc.	Active	01/04/12	18	2/18/7	Sand and gravel	1,2
91-23-0032	Big River 7 Mile	Active	12/01/11	4	4/4/NA	Stone	1,2
91-23-0033	McKenzie Bar	Idle	12/16/11	5	0/5/2	Sand and gravel	2,6
91-23-0034	Bald Hills Quarry	Active	06/20/12	15	2/15/NA	Sand and gravel	1, 2
91-23-0036	Cooks Valley - Mendocino	Active	01/04/12	8	0/6/8	Sand and gravel	2
91-23-0038	Wilsey Ranch Quarry	Active	11/22/11	8	2/8/NA	Rock	2
91-23-0039	Blue Ridge Rock Products	Active	12/08/11	45	45/27/31	Stone	1,2,4
91-23-0042	Warbonnet Rock Products	Reclamation certified complete	Uncertain	0	0/0/NA	Rock	2
91-23-0043	Coal Mine	Active	01/04/12	16	0/15/16	Sand and gravel	2,4

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91-23-0047	Poonkinney Agricultural Rock	Active	12/16/11	4	4/4/NA	Silica	1,2
91-23-0048	Perry Ridge Quarry	Active	08/09/11	8	8/8/4	Stone	1,2,4,6
91-23-0049	Greenwood Aggregates	Newly permitted	12/08/11	4	4/4/NA	Sand and gravel	2,4
91-23-0050	Johnson Quarry	Newly permitted	12/02/11	4	2/4/NA	Stone	1,2
91-23-0051	John Smith Creek	Newly permitted	11/15/11	1	1/0/NA	Rock	2
91-23-0052	Snow's Mill	Newly permitted	11/15/11	1	1/1/NA	Rock	2
91-23-0053	Norden Gulch	Active	11/15/11	1	1/1/NA	Rock	2
91-23-0054	Little North Fork	Active	11/15/11	0	0/0/NA	Rock	1,2
91-23-0055	Bowman Ridge	Newly permitted	12/01/11	0	0/0/NA	Rock	2
91-23-0056	North Fork Navarro & Hwy 128	Newly permitted	11/15/11	1	1/1/NA	Rock	2
91-23-0057	Perry Gulch	Active	11/15/11	1	1/1/NA	Rock	2
91-23-0058	West Corrals	Newly permitted	Uncertain	1	0/1/NA	Rock	2
91-23-0059	Hayworth Creek	Newly permitted	05/16/12	1	1/0/NA	Rock	2

Note: (a) Twenty-six operations were identified with missing annual reports or lack of inspections.
 (b) NA = Not available.

County's Response to 45-Day Notice to Correct Deficiencies:

Deficiency No. 1 - Approved reclamation plans or financial assurances which are not consistent with this chapter: LART identified several surface mining operations that did not have an approved Interim Management Plan (IMP), and/or annually adjusted financial assurance cost estimates and/or mechanisms.

Notably, five sites were identified where they were characterized as idle pursuant to PRC Section 2727.1, and subsequently became abandoned due to failure to either approve an IMP or initiate enforcement. The sites identified are:

- Camp 5 Pit (CA Mine ID #91-23-0002)
- Tunzi Quarry (CA Mine ID #91-23-0026)
- Redwood Valley Gravel Products (CA Mine ID #91-23-0031)
- Big River 7 Mile (CA Mine ID #91-23-0032)
- Little North Fork (CA Mine ID #91-23-0054)

Failure to annually review and adjust the financial assurance cost estimate pursuant to PRC Section 2773.1(a)(3), or financial assurance mechanisms, were identified for the following sites:

Red Rock Quarry (CA Mine ID #91-23-0010)
Dobie Lane Pit/Mill Creek Bar (CA Mine ID #91-23-0016)
Cleone Sand Pit (CA Mine ID #91-23-0030)
Bald Hills Quarry (CA Mine ID #91-23-0034)
Blue Ridge Rock Products (CA Mine ID #91-23-0039)
Poonkinney Agricultural Rock (CA Mine ID #91-23-0047)
Perry Ridge Quarry (CA Mine ID #91-23-0048)
Johnson Quarry (CA Mine ID #91-23-0050)

County's Response to Deficiency: Those five sites identified as abandoned have been adequately addressed via SB 108, as noted in their response to the Notice dated February 26, 2013. In regards to the eight sites identified as not having current adjusted financial assurance cost estimates, the County has adequately addressed this deficiency as noted in their response to the Notice dated February 26, 2013.

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.

County's Response to Deficiency: Although the County has conducted inspections, inspection reports failed to identify substantial deviations from respective approved reclamation plans. 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. County staff has attended OMR's recent inspection workshop, in addition to previous SMARA workshops conducted by OMR. Furthermore, the anticipated approval by the SMGB of a revised inspection report form will serve as a useful tool for lead agencies in providing more comprehensive inspection reports.

This deficiency remains outstanding.

Deficiency No. 6 - Failed to submit information to the Department of Conservation as required by SMARA: LART identified several instances where the County failed to submit Mining Operation Annual Reports to the DOC OMR pursuant to PRC Sections 2207(b)(1) and 2774.1(c) for the following sites:

Dobie Lane Pit/Mill Creek Bar (CA Mine ID #91-23-0016)
Laytonville Rock Quarry (CA Mine ID #91-23-0029)
McKenzie Bar (CA Mine ID #91-23-0033)
Perry Ridge Quarry (CA Mine ID #91-23-0048)

County's Response to Deficiency: Based on the response to the Notice dated February 26, 2013, the County has adequately addressed this deficiency. In regards to Dobie Lane Pit/Mill Creek Bar site, the SMGB had no authority to grant an appeal since the appeal to the SMGB was not filed in a timely manner as also documented in the County's February 26, 2013, response to Notice.

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 by the SMGB of a 45-Day Notice to Correct Deficiencies allows for an opportunity for a SMARA lead agency to demonstrate that it 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 County has clearly demonstrated that it has the resources, administrative mechanisms, and commitment, to adequately fulfill its SMARA responsibilities, or whether the SMGB should proceed with appropriate action in accordance with Public Resources Code Section 2774.4(a).

Thus, the issue before the SMGB is whether the County is prepared to fulfill its role as a SMARA lead agency based on 1) review of the County's response to the 45-Day Notice to Correct Deficiencies, 2) the County's understanding of SMARA administrative and enforcement processes, and 3) the County's willingness to dedicate the necessary resources and incorporate the appropriate mechanisms required for an effective SMARA program.

It is the opinion of the Executive Officer that the County has adequately addressed many of the deficiencies, with exception to the completeness and adequacy of inspection reports. 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.

In review of the County's response to the 45-Day Notice to Correct Deficiencies, the Executive Officer does not recommend the SMGB take action in accordance with PRC Section 2774.4(a), but recognize that the County has not adequately addressed deficiency No. 2 to the satisfaction of the SMGB, and thus, direct the County to provide copies of the 2013 inspection reports for all sites within their jurisdiction for review, and have the Executive Officer bring this matter back to the SMGB if appropriate.

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

[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 Mendocino 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]

[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 Mendocino is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, but has not fully addressed the deficiencies to the satisfaction of the Board, and direct the County to provide a status report to the SMGB in six months.

[or]

[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, has determined that the County of Mendocino 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