



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: July 11, 2013

Agenda Item No. 11: 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 San Mateo, 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 October 3, 2012, on the overall status and performance of the County of San Mateo (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 of San Mateo (County) pursuant to Public Resources Code (PRC) Section 2774.4(a). The Notice was issued on October 16, 2012. The County responded in correspondence dated January 18, 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: The review of the County’s SMARA program was performed from August through November 2011, with two of the County’s four surface mining operations visited in September 2011. The County responded to the LART report on April 23, 2012. At its regular business meeting held on October 11, 2012, the SMGB received a report from OMR LART dated October 3, 2012, on the overall status and performance of the County of San Mateo (County) surface mining program pursuant to 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 of San Mateo (County) pursuant to Public Resources Code (PRC) Section 2774.4(a). The Notice was issued on October 16, 2012. The County responded in correspondence dated January 18, 2013.

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

Following completion of the LART report, LART reported outstanding deficiencies which included, but not limited to, 1) failure to approve a financial assurance mechanism for the Pescadero Quarry (CA Mine ID #91-41-0004; Deficiency No. 1), and 2) failure to conduct adequate surface mine inspections (Deficiency No. 2). In addition, the County is the owner and operator of the Pescadero Quarry (CA Mine ID #91-41-0004) and thus a financial conflict of interest exists. As such, the County may not inspect the Pescadero Quarry under the provisions of Title 14, Division 2, Chapter 8, Subchapter 1, Section 3504.5(c) of the California Code of Regulations (CCR). In these instances the SMGB inspects such sites and invoices the SMARA lead agency for costs incurred. A summary is provided in Table 1.

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

Deficiency 1: Several issues related to the Pescadero Quarry (CA Mine ID #91-41-0004) were reported. LART noted that uncertainty remained in the County’s position that the Pescadero Quarry was closed with no intent to resume mining, and fully reclaimed as of December 3, 2007, and reclamation liabilities still outstanding (as previously documented when OMR inspected the site in 2008).

County’s Response to Deficiency: The County notes that this site is owned by the County, and has been closed for over 15 years, with the majority of the required reclamation activities completed. However, several actions remain including



conduct of a geotechnical investigation, placement of additional barriers to prohibit access, and conduct of a Pampas Grass eradication program. In addition, an updated financial assurance cost estimate will be prepared to address the above aforementioned issues, albeit, no such cost estimate has been provided at the time this Executive Officer’s report was prepared.

Table 1 Summary of Surface Mining Operations Situated in the County of San Mateo								
Surface Mine Name	California Mine Identification Number	Operator	Surface Mine Status	Last Inspection Report on File (year)	Approved Acreage	Disturbed Acreage (2010 Annual Report/Inspection Report/GPS - Aerial Photo)	Produced Product	Deficiencies Noted
Guadalupe Valley Quarry	91-41-0002	Evans Brothers, Inc. (EBI)	Active	2010	86	58/70/86	Sand and gravel	2
Langley Hill Quarry	91-41-0003	Michael Dempsey	Active	2010	10	7/10/ND ^(a)	Stone	2
Pescadero Quarry	91-41-0004	San Mateo County Public Works	Closed with no intent to resume mining	2010	25	0/0/25	Stone	1,2
Pilarcitos Quarry	91-41-0005	West Coast Aggregates, Inc.	Active	2010	38	36/38/ND ^(a)	Sand and gravel	2

(a) ND = Not determined.

Deficiency 2: The County has failed to inspect or cause “adequate” inspection of all surface mining operations within its jurisdiction as required by SMARA. Inspection reports must make reference to any reclamation or performance requirements, as set forth in the approved reclamation plans, or permit requirements such as Conditions of Approval. 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.*”

County’s Response to Deficiency: Although the County has conducted inspections, inspection reports failed to identify substantial deviations from respective approved reclamation plan. The Surface Mining Inspection Reports for 2012 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. 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.

In addition, the County is the owner and operator of the Pescadero Quarry (CA Mine ID #91-41-0004) and thus a financial conflict of interest exists. As such, the County may not inspect the Pescadero Quarry under the provisions of Title 14, Division 2, Chapter 8, Subchapter 1, Section 3504.5(c) of the California Code of Regulations (CCR). In these instances the SMGB should inspect such sites and invoice the SMARA lead agency for costs incurred.

This deficiency remains outstanding.

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 committed to fulfilling 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 all deficiencies, with exception to the completeness and adequacy of inspection reports. The Surface Mining Inspection Reports for 2012 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 the deficiencies 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 San Mateo 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 San Mateo 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 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.

[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 San Mateo 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