STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: September 12, 2013

Agenda Item No. 4: Report from the County of Yolo in Response to the Office of Mine Reclamation, Lead Agency Review Team (LART) Report dated October 5, 2012. Following Review, the Board may take appropriate action in accordance with Public Resources Code Section 2774.4(a).

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 plans 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 completed its lead agency review report for the County of Yolo (County) dated October 5, 2012, and provided a summary of the results of its review of this SMARA lead agency at the October 11, 2012 regular business meeting. In lieu of issuance of a 45-Day Notice to Correct Deficiencies, the SMGB requested that the County report back to the SMGB with a status of its SMARA program in 90 days.

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 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: 52 counties, 50 cities, and the SMGB.

In 2007, the SMGB published Information Report IR 2006-07 titled "*Report on SMARA Lead Agency Performance Regarding Mine Reclamation.*" This evaluation assessed the 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 primarily financial constraints, and limited or lack of technical expertise. As of March 2011, LART has commenced review of 18 SMARA lead agencies.

COUNTY OF YOLO SMARA PROGRAM: Based n the October 5, 2012 LART report, ten surface mining operations are located within the jurisdiction of the County of Yolo. Six are characterized as active, two idle, and two abandoned. The primary commodity is sand and gravel.

The LART report for the County dated October 5, 2012, reported that five of the 10 surface mining operations were visited in 2010. LART reported that 15 out of 20 violations reported were adequately addressed. Outstanding deficiencies included, but were not limited to, 1) failure to approve specific plans pursuant to PRC Section 2715.5(d) for two surface mining operations (Deficiency No. 1), 2) failure to inspect one surface mining operation (Deficiency No. 2), and 3) failure to take appropriate enforcement actions for two sites (Deficiency No. 4). In addition, two circumstances are reported to exist whereas two mine identification numbers pertaining to one surface mining operation exists (Woodland Plant and Woodland Properties, and Solano Concrete In-Channel and Solano Concrete Off-Channel). A summary is provided in Table 1.

Table 1
Summary of Surface Mining Operations Situated in the County of Yolo

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
Woodland Plant	91-57-0002	Teichert Aggregates	Abandoned	2010	100	20/100/0	Sand and gravel	1,2
Schwarzgruber and Sons, Inc.	91-57-0006	Schwarzgruber and Sons, Inc.	Active	2010	81	81/81/ ND[(a)]	Sand and Gravel	2
Solano Concrete, In-Channel	91-57-0007	Cemex Construction Materials Pacific, LLC.	Abandoned	2010	35	0/35/34	Sand and Gravel	1,2
Solano Concrete, Off-Channel	91-57-0008	Cemex Construction Materials Pacific, LLC.	Active	2010	340	261/260/340	Sand and gravel	1,2
Woodland Facility	91-57-0010	Granite Construction	Idle	2010	55	55/55/ND	Sand and gravel	2
Esparto-Reiff Property	91-57-0011	Teichert Aggregates	Idle	2010	150	148/150/ND	Sand and Gravel	2
Woodland Properties	91-57-0012	Teichert Aggregates	Active	2010	255	252/255/204	Sand and Gravel	1,2
Capay	91-57-0014	Granite Construction	Active	2010	262	236/240/262	Sand and Gravel	2
Cache Creek, Off-Channel Mining	91-57-0015	Syar Industries, Inc.	Active	2010	175	175/175/ND	Sand and Gravel	2
DWR/Cache Creek Settling Basin	91-57-0016	DWR	Active	Exempt	Exempt	17/0/ND	Sand and Gravel	2

(a) ND = Not determined.

The County, in its correspondence dated September 12, 2013, has prepared responses to issues raised by LART in their October 5, 2012 report, and reiterated in the October 11, 2012 Executive Officer's report. The County's response is structured in accordance with noted deficiencies as mentioned above, and summarized below.

<u>Failure to approve specific plans for two surface mining operations (PRC Section 2715.5(d)</u>: The County has requested that both Teichert Aggregates-Woodland (CA Mine ID #91-57-0002) and Cemex (CA Mine ID #91-57-0007) submit a Reclamation Plan Minor Modification in accordance with the County's Surface Mining and Reclamation Ordinance Section 10-5.601(d). Such documents were submitted to the County and subsequently reviewed by OMR.

Failure to inspect one surface mining operation: Although the County has performed inspections on a routine basis, such inspection reports fail to comprehensively comply with the SMGB's regulations. Inspection reports should make reference to any reclamation or performance requirements, as set forth in the approved reclamation plan, 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. The recently amended inspection report form MRRC-1 will serve as a useful tool for the County in providing more comprehensive inspection reports.

Failure to take appropriate enforcement actions for two sites: LART noted that the County failed to request an Interim Management Plan (IMP) for two sites, Teichert Aggregates-Woodland (CA Mine ID #91-57-0002) and Cemex (CA Mine ID #91-57-0007). This issue reflects there being two mine identification numbers for each operation, and is further addressed below.

There are two circumstances where two mine identification numbers pertaining to one surface mining operation exists (Woodland Plant and Woodland Properties, and Solano Concrete In-Channel and Solano Concrete Off-Channel): Both surface mine sites have separate identification numbers reflecting one for the plant site and another for previous in-channel material extraction operations. The County has made a request to OMR to consolidate the mine identification numbers for these two operations.

EXECUTIVE OFFICER'S RECOMMENDATION: It is the opinion of the Executive Officer that the County has adequately addressed the major issues identified in the LART October 5, 2012 report, and recommends that the SMGB find that the County is adequately fulfilling its responsibilities and obligations as a lead agency under SMARA. In review of the County's response to issues raised in the LART October 5, 2012 report, the County has adequately addressed such issues, or taken the appropriate actions to remedy such issues. Inspections have been routinely performed by the County; however, information provided on the form, or supplemental to the form, can be improved upon. The recently amended inspection report form MRRC-1 will serve as a useful tool for the County in providing more comprehensive inspection reports.

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. Chair, 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 Yolo is 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]

[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. Chair, 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 Yolo 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.*

[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. Chair, I move that the SMGB, in light of the evidence presented before it 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 Yolo pursuant to Public Resources Code Sections 2774.4(a) and (c).*

Respectfully submitted:

Stephen M. Testa
Executive Officer