



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: September 12, 2013

Agenda Item No. 6: 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 Monterey, 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 April 11, 2013, the State Mining and Geology Board (SMGB) received a report from the Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) dated February 22, 2013, on the overall status and performance of the County of Monterey (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 June 18, 2013. The County responded in correspondence dated July 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 April 11, 2013, the SMGB received a report from the OMR LART dated February 22, 2013, on the overall status and performance of the 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 June 18, 2013. The County responded in correspondence dated July 26, 2013.

COUNTY OF MONTEREY SMARA PROGRAM: Fifteen surface mining operations are located within the jurisdiction of the County (Table 1). Eleven are characterized as active and four as idle. The primary commodity is sand and gravel, with a subordinate amount of dolomite and lime, stone and decomposed granite.

The LART report for the County dated January 7, 2013, and February 22, 2013, states that five of the fifteen surface mining operations were visited in 2011 and 2012. LART noted that inspection reports were inadequate, and did not adequately describe the financial assurance cost estimates or financial assurance mechanisms. Outstanding deficiencies included, but are not limited to:

- Failure to approve reclamation plans and financial assurances that were consistent with SMARA (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 Monterey

Surface Mine Name	California Mine Identification Number	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
Metz Sand and Gravel – Chalone Creek	91-27-0004	Idle		157	157/27/ND ^(a)	Sand and gravel	1,2
Natividad Quarry	91-27-0005	Active		427	342/427/414	Dolomite and lime	1,2
BLM Rock Pile	91-27-0007	Active		15	4/15/15	Sand and gravel	1,2
Clark Pit	91-27-0009	Active		10	1/10/ND	Sand and gravel	1,2
Pine Canyon	91-27-0011	Idle		15	13/15/ND	Decomposed granite	1,2
Stonewall Canyon Quarry	91-27-0012	Active		71	44/30/71	Sand and gravel	1,2,4
Brinan Pit	91-27-0019	Active		37	31/6/37	Sand and gravel	1,2
Echenique Pit	91-27-0020	Active		17	17/11/ND	Sand and gravel	1,2
Jefferson Pit	91-27-0021	Idle		15	15/3/ND	Sand and gravel	2
DKD DG Pit	91-27-0023	Idle		6	0/1/6	Decomposed granite	1,2,4
Chalone Creek Pit	91-27-0025	Active		11	9/11/ND	Sand and gravel	1,2
Bradley Mine	91-27-0026	Active		38	38/38/ND	Sand and gravel	1,2
Keith Day Sand and Gravel	91-27-0027	Active		6	6/6/ND ¹	Sand and gravel	1,2
Handley Ranch Quarry	91-27-0028	Active		58	51/58/ND	Stone	1,2
Hidden Canyon Quarry	91-27-0029	Active		30	30/30/ND	Sand and gravel	1,2

(a) ND = Not determined.

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: Eight surface mining operations did not have an updated or adequate financial assurance cost estimate and included:

- Metz Sand and Gravel – Chalone Creek (CA Mine ID #91-27-0004)
- Clark Pit (CA Mine ID #91-27-0009)
- Pine Canyon (CA Mine ID #91-27-0011)
- Brinan Pit (CA Mine ID #91-27-0019)
- Jefferson Pit (CA Mine ID #91-27-0021)
- DKD DG Pit (CA Mine ID #91-27-0023)
- Chalone Pit (CA Mine ID #91-27-0025)

- Handley Ranch (CA Mine ID #91-27-0028)

In addition, no Interim Management Plan (IMP) was considered or approved for the Keith Day Sand & Gravel surface mining operation (CA Mine ID #91-27-0027).

County's Response to Deficiency: The County has updated financial assurance cost estimates for seven of the eight surface mining operations noted, and is involved in code enforcement proceedings with one operation (DKD DG Pit). In addition, an IMP has been received for the Keith Day Sand and Gravel surface mining operation and is currently under review by OMR. 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: The County has failed to inspect or cause "adequate" inspection of all surface mining operations within their jurisdiction as required by SMARA. 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: All surface mining inspection reports for 2012 were reviewed. 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 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. The recently amended inspection report form MRRC-1 will serve as a useful tool for the County in providing more comprehensive inspection reports.

This deficiency remains outstanding.

Deficiency No. 4 – The County failed to take appropriate enforcement actions as required by SMARA: The County failed to take appropriate enforcement actions as required by SMARA for the following surface mining operations:

- Stonewall Canyon Quarry (CA Mine ID #91-27-0012)
- DKD DG Pit (CA Mine ID #91-27-0023)
- Handley Ranch Quarry (CA Mine ID #91-27-0028)

In regards to the Stonewall Canyon (CA Mine ID #91-27-0012) and DKD DG Pit (CA Mine ID #91-27-0023), the County failed to take appropriate enforcement action for encroachment beyond the approved reclamation plan footprint. Slope stability issues have also been identified for these two sites. Furthermore, inadequate soil erosion control and boneyard issues have also been identified for the DKD DG Pit.

Based on violations observed by OMR LART staff during conduct of site visits to three specific surface mining operations, the County 1) has not fulfilled its responsibilities and obligations as a SMARA lead agency, and 2) has not demonstrated an ability to administer its SMARA program in an appropriate manner consistent with the intent of SMARA and the SMGB's regulations. No Notice of Violation or subsequent Order-to-Comply, to our knowledge, has been issued by the County to certain surface mine operations within its jurisdiction where substantial deviations from the approved reclamation plan have been identified (refer to Deficiency No. 2; Category 4 violations pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2770(h)(6)).

County's Response to Deficiency: In their July 26, 2013 correspondence, the County has addressed the status and enforcement actions implemented, for the three surface mining operations referred to in the Notice. The County's "Compliance Order & Notice of Intent to Record Notice of Violation" appears not to be a Notice of Violation or Order to Comply but an intent by the County to issue such a notice. Thus, it remains unclear as to whether a Notice of Violation and/or Order to Comply has been issued pursuant to PRC Section 2774.1(a) and PRC Section 2774.1(b).

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 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(c). This consideration reflects on whether the County is

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 based on the information provided in the LART report and the County's response to the Notice, the County has adequately addressed many of the deficiencies. However, the adequacy and completeness of inspection reports can be improved upon, and allow for better assessment of the need for issuance of violations when appropriate. In addition, the County may wish to review its "Compliance Order and Notice of Intent to Record Notice of Violation" in order to remove any ambiguity as to whether an actual Notice of Violation or Order to Comply has been issued.

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(c), but instead recognize that the County has not adequately addressed Deficiency No. 2, direct the County to provide copies of the 2013 inspection reports for all sites within their jurisdiction for review by SMGB staff, 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. Chair, 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 Monterey 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. Chair, 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 Monterey 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 Executive Officer to conduct a thorough review of current mine inspection reports for all surface mine sites within the jurisdiction of the County, including the conduct of on-site visits if deemed necessary, and bring this matter back to the Board if deemed 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. Chair, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, determine that the County of Monterey 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