



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: September 13, 2012

Agenda Item No. 6: Issuance of a 45-Day Notice to Correct Deficiencies to the County of Mono Lead Agency Program Pursuant to the Surface Mining and Reclamation Act (SMARA).

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 and Reclamation Act (SMARA) program. Deficiencies were reported and the SMGB directed its Executive Officer to schedule a progress report from the County in the fall of 2011.

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 agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a



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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 surface mining operation or reclamation plan. Under the California Surface Mining and Reclamation Act of 1975 (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 agency’s status and performance of periodic mine inspections, adjustment of annual financial assurances and enforcement of the preparation of Interim Management Plans 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, limited or lack of internal technical expertise, and overall low priority. As of March 2011, LART has commenced review of 18 SMARA lead agencies.

The review of the County’s SMARA program was performed in 2010, with the LART report completed and forwarded to the County on October 28, 2010. The County responded to the LART report in correspondence dated May 27, 2011. At the time this Executive Officer’s report was prepared, no additional information has been provided to the SMGB.

County of Mono SMARA Program: Nineteen surface mining operations are 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.

In review of the LART report for the County, several deficiencies are reported. Notably, deficiencies noted by LART reported (Table 1), 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	Produced Product	Deficiencies Noted
Black Point Cinder, Inc.	CA Mine ID#91-26-0001	Sierra Aggregate Company	Active		330	10	Cinder	1, 2,4
Holt Creek Kaolin Mine	CA Mine ID#91-26-0002	Standard Industrial Minerals	Active (Abandoned)		15	20	Clay	1,2,4
Pacific Sericite Mine	CA Mine ID#91-26-0003	Standard Industrial Minerals	Active (Idle)		5	5	Sericite	1,2,4
Frank Sam Mine	CA Mine ID#91-26-0004	U. S. Pumice Company	Active (Idle)		219	0.90	Pumice	1,2,4
#24A North Benton	CA Mine ID#91-26-0007	Caltrans	Closed		4	0	Sand and gravel	
#116-12 Baseline	CA Mine ID#91-26-0010	Caltrans	Closed		0	0	Sand and Gravel	
#117 Pole Line Sites	CA Mine ID#91-26-0011	Caltrans	Closed		40	0	Sand and Gravel	
#135 Convict Creek	CA Mine ID#91-26-0013	Caltrans	Closed		40	0.90	Sand and Gravel	
#189 Sweetwater	CA Mine ID#91-26-0015	Caltrans	Closed		2.3	0	Sand and Gravel	
#190 Baseline	CA Mine ID#91-26-0016	Caltrans	Closed		37	0	Sand and Gravel	
#205 Green Lakes	CA Mine ID#91-26-0017	Caltrans	Closed		4.40	0	Sand and Gravel	
#210 Milner Fan	CA Mine ID#91-26-0018	Caltrans	Closed		32	2	Sand and Gravel	

#213 Benton Hill	CA Mine ID#91-26- 0021	Caltrans	Closed		7	0	Sand and Gravel	
#250 Rickey Ditch	CA Mine ID#91-26- 0024	Caltrans	Active		40	1.7	Sand and Gravel	1, 2,4
#273 Burcham Flates	CA Mine ID#91-26- 0026	Caltrans	Closed		2.7	0	Sand and Gravel	
Desert Aggregates	CA Mine ID#91-26- 0029	Caltrans	Active		30	0	Sand and Gravel	1, 2,4
Cain Ranch	CA Mine ID#91-26- 0035	Marzano & Sons General Engineering Contractor	Active		14	30	Uncertain	1, 2,4
Sonora Pit	CA Mine ID#91-26- 0037	Mono County Department of Public Works	Active		3	4	Decomposed Granite	1, 2,4
Harris Flat	CA Mine ID#91-26- 0044	Kiewit Pacific Company	Closed		25	0	Fill Dirt	

EXECUTIVE OFFICER'S RECOMMENDATION: The information being provided by OMR is for the SMGB's information. However, based on the current status of the County's SMARA program, the Executive Officer recommends that a 45-Day Notice to Correct Deficiencies (Notice) be issued. Should the County not correct the deficiencies to the satisfaction of the SMGB within the 45-day period, a public hearing be scheduled at such time pursuant to PRC Section 2774.4(c).

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

First Option – County of Mono

[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 Mono is making a good faith effort in 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]

Second Option – County of Mono

[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, 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]

Third Option - County of Mono

[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, direct the Executive Officer to issue a 45-Day Notice to Correct Deficiencies to County of Mono pursuant to Public Resources Code Sections 2774.4(a) and (c).

Respectfully submitted:



Stephen M. Testa
Executive Officer