



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: December 13, 2012

Agenda Item No. 13: Consideration for Issuance of a 45-Day Notice to Correct Deficiencies to the City of Bakersfield Pursuant to the Surface Mining and Reclamation Act (SMARA).

INTRODUCTION: At its regular business meeting held on December 13, 2012, the State Mining and Geology Board (SMGB) received a report from the Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) dated November 21, 2012, on the overall status and performance status of the City of Bakersfield (City) Surface Mining and Reclamation Act (SMARA) program. Deficiencies were reported and the SMGB is considering issuance of a 45-Day Notice to Correct Deficiencies to the City.

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 December 2012, LART has completed review of 24 SMARA lead agencies.

The review of the City’s SMARA program was performed in 2011, with the LART report completed and forwarded to the City on May 21, 2012. The City responded to the LART report on June 18, 2012. At the time this Executive Officer’s report was prepared, no additional information has been provided to the SMGB.

City of Bakersfield SMARA Program: One surface mining operation is reported to exist within the jurisdiction of the City (Table 1). The operation, referred to as The Sand Pit (CA Mine ID 91-15-0101) is an abandoned sand and gravel mine. The deficiencies noted included, albeit not limited to, the following:

- Failure to conduct an inspection since 2001;
- Failure to approve a reclamation plan;
- Failure to submit a financial assurance cost estimate;
- Failure to obtain an Interim Management Plan (IMP); and
- Failure to submit information to the DOC as required under SMARA.

Table 1 Summary of Surface Mining Operations Situated in the City of Bakersfield								
Surface Mine Name	CA Mine Identification Number	Operator	Surface Mine Status	Last Inspection Report on File (year)	Approved Acreage	Disturbed Acreage (2008 Annual Report/ Aerial Photo)	Produced Product	Deficiencies Noted
The Sand Pit	#91-15-0101	Land Lot 1, LLC	Abandoned	2001	38	35/38	Sand and gravel	1, 2,3,4,6

EXECUTIVE OFFICER’S RECOMMENDATION: Based on the record before the Executive Officer at the time this report was prepared, the Executive Officer recommends that a 45-Day Notice to Correct Deficiencies (Notice) be issued. Should the City not correct the deficiencies to the satisfaction of the SMGB within the 45-day period, a public hearing will 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 – Do not issue a 45-Day Notice to Correct Deficiencies:

[Should the SMGB determine that the City 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 City of Bakersfield 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 – Defer issuance of a 45-Day Notice to Correct Deficiencies:

[Should the SMGB determine that the City 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 City of Bakersfield 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 City, 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 – Issuance of a 45-Day Notice to Correct Deficiencies:

[Should the SMGB determine that deficiencies and violations remain uncorrected and the City 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 City of Bakersfield pursuant to Public Resources Code Sections 2774.4(a) and (c).

Respectfully submitted:



Stephen M. Testa
Executive Officer