



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: December 13, 2012

Agenda Item No. 7: Approval of an Interim Financial Assurance Cost Estimate for Santa Paula Materials (CA Mine ID #91-56-0034), Santa Paula Materials, Inc. (Operator), Mr. Mile Grbic (Agent), City of Santa Paula.

INTRODUCTION: The State Mining and Geology Board (SMGB) serves as the lead agency for the City of Santa Paula pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code (PRC) Section 2710, et seq.). SMARA requires that each surface mining operation maintain a financial assurance in an amount adequate to reclaim, in accordance with the requirements of an approved reclamation plan, the land disturbed by the mining operation at the conclusion of mining activities. SMARA lead agencies are required to annually review the financial assurance amounts for each surface mining operation, and adjust the amount, as necessary, to account for new land disturbed, inflation, or land reclaimed. In any event, the lead agency must ensure that the approved amount is adequate to reclaim the mine site according to the reclamation plan requirements (PRC Sections 2770 and 2773.1, and California Code of Regulations (CCR) Section 3804).

STATUTORY AND REGULATORY AUTHORITY: Financial assurance cost estimate adjustment requirements are discussed under SMARA, and within the SMGB's regulations and guidelines. Lead agencies are required to assure that financial assurances for reclamation are sufficient pursuant to Division 2, Chapter 9, Article 5 of PRC Section 2770(d) which states:

"The lead agency's review of reclamation plans submitted pursuant to subdivision (b) or of financial assurances pursuant to subdivision (c) is limited to whether the plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, but, in any event, the lead agency shall require that financial assurances for reclamation be sufficient to perform reclamation of lands remaining disturbed. Reclamation plans or financial assurances determined to substantially meet these requirements shall be approved by the lead agency for purposes of this chapter. Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. The



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operator has 60 days to revise the plan or financial assurances to address identified deficiencies, at which time the revised plan or financial assurances shall be returned to the lead agency for review and approval.”

In addition, PRC Section 2773.1(a) states:

“...Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:

(3) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.”

Furthermore, the SMGB's regulations pursuant to Article 11 of CCR Section 3804, Calculation of Financial Assurance Amount, states:

“(a) The Financial Assurance Amount shall be calculated as prescribed in Public Resources Code Section 2773.1 and based on:

- (1) an analysis of the physical activities and materials necessary to implement the approved reclamation plan;*
- (2) the lead agency's unit costs, or costs for third party contracting, for each of these activities, if applicable;*
- (3) the number of units of each of these activities, if applicable;*
- (4) a contingency amount not to exceed 10% of the reclamation costs.*

(b) The calculated amount should not include the cost of completing mining of the site.

(c) In order for the lead agency or the Department of Conservation to determine what annual adjustments, if any, are appropriate to the Financial Assurance Amount, the operator shall annually submit to the lead agency a revision of the written calculation required under Section 3804(a).”

BACKGROUND: On September 29, 2009, the USACE awarded a contract for the Santa Paula Creek Improvements Sediment Removal Project to Rick Garcia Construction Company (RGCC). Such contract involved the removal of approximately 330,000 cubic yards of accumulated alluvial material from Santa Paula Creek for the purposes of restoring hydraulic capacity and fish passage to the engineered channel and decreasing flood risk to the adjacent community. On October 29, 2009, the City of Santa Paula granted a Temporary



Use Permit (TUP) to the Hawkstone Company doing business as Santa Paula Rock to stockpile, screen, sort and sell alluvial material excavated from Santa Paula Creek by RGCC. The TUP allowed for the processing and selling of approximately 330,000 cubic yards of aggregate material over a period of two years.

In February of 2010, the SMGB office was copied on correspondence (dated 2/8/2010) from Stoel Rives, LLP to the Office of Mine Reclamation (OMR) alleging that illegal and unpermitted surface mining operations were occurring at the Santa Paula Rock site. On March 16, 2010, the SMGB received notification from Stoel Rives, LLP of pending litigation, in the form of a Verified Petition for Writ of Mandate filed by the Coalition for Responsible Development against the City of Santa Paula. The Petition alleged that the City of Santa Paula violated the California Environmental Quality Act (CEQA) in issuing the Santa Paula Rock TUP without conducting required environmental review and analysis of potentially significant impacts. Finally, in early April 2010, the SMGB office received copies of additional correspondence (dated April 6, 2010) from Stoel Rives, LLP to OMR, again alleging illegal surface mining operations were occurring at the Santa Paula Rock site, and requesting that OMR take enforcement actions.

Based on the correspondence received as noted above, on discussions with OMR staff and City of Santa Paula staff in April of 2010, and on a subsequent review of the City of Santa Paula's status as a SMARA lead agency, SMGB staff made the following preliminary findings on May 4, 2010:

- 1) The Santa Paula Rock project, which involved, in part, stockpiling, processing and export of aggregate materials for commercial purposes, was subject to SMARA.
- 2) On August 23, 1998, the SMGB assumed SMARA lead agency authority from the City of Santa Paula after finding that their existing SMARA Ordinance was deficient.
- 3) On March 7, 2005, the Santa Paula City Council adopted Ordinance No. 1103, which updated the City Municipal Code with regards to Mining and Reclamation. However, there is no record of the SMGB reviewing or certifying the City's revised Ordinance. As such, the SMGB is currently the SMARA lead agency for the City of Santa Paula.
- 4) A preliminary review by the SMGB's Executive Officer of the City's Ordinance No. 1103 determined that it does not fully comply with SMARA and the SMGB's regulations. Once a revised Ordinance is submitted to the SMGB, it will be placed on the SMGB's agenda for certification consideration.
- 5) SMGB staff requested to conduct an inspection of the site, and indicated that enforcement actions, as appropriate, would follow.



- 6) SMGB staff understood that the project applicant/operator had applied for a Conditional Use Permit (CUP) to cover mining activities, and had also retained a consultant in order to conduct and complete required CEQA analysis. The SMGB requested to review all existing and future documents relating to the CUP and CEQA.
- 7) The SMGB required the operator to submit a proposed reclamation plan and financial assurance cost estimate for SMGB and OMR review, and subsequent SMGB approval consideration.

A brief chronology of pertinent events and actions pertaining to the Santa Paula Materials site since May of 2010 is as follows:

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| June 8, 2010 | Notice of Violation (NOV) issued to operator for conducting surface mining operations without possession of an approved Reclamation Plan, Financial Assurance, and Permit to Mine. |
| June 8, 2010 | SMGB received a draft Reclamation Plan and preliminary financial assurance cost estimate (FACE) for the site. |
| September 9, 2010 | SMGB approves interim financial assurance amount of \$887,168.00 for ongoing operations at Santa Paula Rock. |
| January 10, 2011 | Revised Reclamation Plan provided to SMGB. |
| May 24, 2011 | City of Santa Paula Planning Commission certifies <i>Santa Paula Rock, Gravel and Sand LLC Conditional Use Permit and Reclamation Plan Final EIR</i> . Such action appealed to Santa Paula City Council on June 2, 2011. |
| June 28, 2011 | City of Santa Paula Planning Commission approves Conditional Use Permit 2010-CUP-01 for Santa Paula Rock. Such action appealed to Santa Paula City Council on July 7, 2011. |
| November 2, 2011 | SMGB receives revised proposed Reclamation Plan from Santa Paula Materials, Inc., the new operator for the site. |
| November 7, 2011 | Santa Paula City Council votes to deny the appeals of both the CUP approval and the FEIR certification for the subject project |



December 8, 2011 SMGB approves FEIR, Reclamation Plan, and interim financial assurance in the amount of \$887,168.00 for Santa Paula Materials surface mining operation.

January 12, 2012 Interim financial assurance in the amount of \$887,168.00 received by SMGB.

DISCUSSION: On May 30, 2012, the operator of the Santa Paula Materials surface mining operation provided SMGB staff with a revised financial assurance cost estimate in the total amount of \$127,060.00. This revised estimate was deemed inadequate, and after review, SMGB staff provided comments and suggestions to the operator in October of 2012. At such time, the operator requested that the SMGB consider revising the previously approved interim financial assurance amount, as there would not be sufficient time for SMGB staff and OMR staff review of a revised financial assurance cost estimate prior to maturation and automatic renewal of their current financial assurance bond mechanism. After several consultations with SMGB staff, on December 4, 2012, the operator provided SMGB staff with an updated estimate of the volume of material stockpiled on the mine site that would need to be removed to reclaim the site, and a revised interim financial assurance cost estimate in the amount of \$466,828.00.

An annual inspection of the Santa Paula Materials surface mining operation was performed by SMGB staff on October 26, 2012. No violations or corrective measures were noted at time of the 2012 annual inspection, and approximately 12 acres were deemed disturbed. Based on conditions observed at the site during the 2012 annual inspection, and on the information provided by the operator regarding volume of material currently stockpiled on site, on December 5, 2012, SMGB staff calculated a revised interim financial assurance cost estimate in the amount of \$460,182.00.

As noted above, the existing financial assurance on file for the Santa Paula Materials mine is in the amount of \$887,168.00. The site remains subject to a financial assurance, and based on our recent analysis and review of site conditions and submitted documents, SMGB staff considers the revised interim financial assurance cost estimate in the amount of \$460,182.00 to be adequate to conduct and complete reclamation of the mined lands in accordance with the approved reclamation plan. The following table summarizes the recently calculated interim financial assurance amount:



FINANCIAL ASSURANCE COST ESTIMATE (FACE) ADJUSTMENT:

I.	Primary Reclamation Activities	\$ 313,664.00
II.	Revegetation	\$ 4,088.00
III.	Plant Structures and Equipment Removal	\$ 0.00
IV.	Miscellaneous Costs	\$ 1,000.00
V.	Monitoring	\$ 3,000.00
	Total Direct Cost	\$ 321,752.00
VI.	Supervision/Overhead/Contingencies	
	a. Supervision (5.2%)	\$ 16,731.00
	b. Profit/Overhead (10.5%)	\$ 33,784.00
	c. Contingencies (10%)	\$ 32,175.00
	d. Mobilization (2.0%)	\$ 6,435.00
	Total Indirect Cost	\$ 89,125.00
	Total Direct and Indirect Costs	\$ 410,877.00
	Lead Agency administrative cost (12%)	\$ 49,305.00
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	Total Estimated Cost for Reclamation	\$ 460,182.00

CONSIDERATIONS BEFORE THE SMGB: The SMGB may take the following actions:

1. Approve as adequate the adjusted interim financial assurance cost estimate, without additions;

[or]
2. Modify the adjusted interim financial assurance cost estimate, and then accept it as adequate;

[or]
3. Reject the adjusted interim financial assurance cost estimate as inadequate and order it to be redone.

EXECUTIVE OFFICER'S RECOMMENDATION: The proposed adjusted interim financial assurance cost estimate for the Santa Paula Materials surface mining operation has been reviewed for its consistency and completeness in meeting the minimum requirements of SMARA, and the SMGB's regulations and guidelines. SMGB staff considers the adjusted interim financial assurance cost estimate in the amount of \$460,182.00 to be adequate to reclaim the site in accordance with the approved reclamation plan. The Executive Officer recommends that the SMGB approve the proposed adjusted interim financial assurance cost estimate.

SUGGESTED MOTION LANGUAGE:

To approve the proposed interim financial assurance cost estimate:

Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the SMGB approve an interim financial assurance cost estimate in the amount of \$460,182.00 for the Santa Paula Materials surface mining operation, CA Mine ID #91-56-0034, located in the City of Santa Paula, as adequate to reclaim the site in accordance with the approved reclamation plan, and as adequate in meeting the minimum requirements of SMARA and the SMGB's regulations.

Respectfully submitted:



Stephen M. Testa
Executive Officer