



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814

Policy and Legislation Committee

Brian Baca, Chair; Erin Garner; Benjamin Licari; Kathy Lund

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CONFORMED MINUTES

THE POLICY AND LEGISLATION COMMITTEE (Brian Baca, Chair; Erin Garner; Benjamin Licari; Kathy Lund) OF THE STATE MINING AND GEOLOGY BOARD

Conducted a Meeting on:

Draft

Thursday, January 13, 2011

10:00 A. M.

Assembly Hearing Room #444
State Capitol
Sacramento, CA 95814

AGENDA

For questions regarding this Agenda, please contact the SMGB office by telephone at (916) 322-1082, or by facsimile at (916) 445-0738. This Notice and associated staff reports can be accessed electronically at the SMGB's Internet web site at: <http://www.consrv.ca.gov/smgb/> (note: Agenda reports should be available electronically approximately one week prior to the scheduled meeting/hearing date).

The SMGB requires that all lengthy comments be submitted in writing in advance of the meeting date where this matter is to be decided. To ensure that the SMGB has the opportunity to fully preview written material, comments should be received in the SMGB office located at 801 K Street, Sacramento, CA, 95814, no later than 5:00 P.M., 15 calendar days prior to the scheduled meeting date, and must identify the Agenda Item to which it relates. For written materials in excess of two pages, or that contains large maps, photos, foldouts, or other documents requiring special handling, please submit 15 copies. The SMGB will not reproduce these types of documents. Comments on Agenda Items will be accepted by electronic mail, and are subject to the same conditions set forth for other written submissions.

New submittals received after 15 calendar days prior to the scheduled meeting date will be marked as late, and the SMGB will decide whether new submittals will be considered or not during the public hearing. Late submittals, received by the SMGB at least 48 hours prior to the scheduled meeting, will be included in a late document submittal listing. Late submittals, received after 48 hours prior to the scheduled meeting, will not be included on the late document submittal list. The SMGB would accept a two-page written summary of testimony, or final comments based on, and limited to, review of the SMGB's packet and/or Executive Officer's report, at the time of the public hearing. Such two-page summaries would be included as part of the

administrative record before the SMGB. This policy does not apply to quasijudicial proceedings (i.e., appeals, petitions, etc.) where administrative procedures for the submittal of documents are set forth in statute and regulation.

Individuals are responsible for presenting their own projects at the meeting.

[NOTE: Times are approximate. The chairman may alter the hearing start time or agenda item order during the meeting]

I. Call to Order (Baca)

II. Roll Call and Declaration of a Quorum

The committee meeting was called to order at 10:05 A. M. All committee members were present at the time of roll call, and a quorum was declared.

III. Consent Items [Action]

[All the items appearing under this section will be acted upon by the committee by one motion and without discussion; however, any committee member wishing to discuss a particular item may request the Chairman to remove the item from the Consent Calendar and consider it separately under Continued Business or New Business]

1. Approval of Minutes, December 9, 2010, Committee Meeting.

Committee Member Lund moved to approve the minutes. Committee Member Garner seconded and the motion carried with a unanimous voice vote.

IV. Continued Business [Action]

[These business items have been continued from a previous meeting/hearing]

2. Language for Regulatory Due Process for the Placement of Mining Operations on, or Removal from, the AB 3098 List.

Executive Officer Testa informed the Committee that OMR periodically publishes a list of mines regulated under SMARA that meet provisions set forth under California's Public Resources Code, Section 2717(b). This list is generally referred to as the AB 3098 List, in reference to the 1992 legislation, that established it. Sections 10295.5 and 20676 of the Public Contract Code preclude mining operations that are not on the AB 3098 List from selling sand, gravel, aggregates, or other mined materials, to state or local agencies. Although what is required to be on the list is clearly spelled out, procedures for removal or subsequent reinstatement to the list are less clearly defined. The SMGB, at its July 2010 regular business meeting, directed this matter to the Committee, and requested that the Executive Officer provide draft regulatory language for the Committee's consideration. In October and November, additional opportunity was offered to allow stakeholders to provide comment. Draft language is currently being prepared by the SMGB's legal counsel.



- Rick Thalhammer, Deputy Attorney General and legal counsel for the SMGB, summarized the concepts and obstacles being considered in the preparation of proposed regulatory language.
- Barry Chang, Councilmember for the City of Cupertino, offered comment.

No action was taken by the Committee.

3. Discussion of Proposed Regulations Pertaining to the Initiation of Enforcement Actions Pursuant to Public Resources Code Section 2774.1(f).

Executive Testa stated that at its December 9, 2010, meeting, Committee Chairman Baca requested that this item be placed on its January agenda. Pursuant to PRC Section 2774.1(f), the Director of the Department of Conservation (DOC) can initiate enforcement actions when a lead agency (with exception to when the SMGB is serving as a lead agency) has failed to meet this fundamental responsibility. When such obligations are initially recognized by the DOC Office of Mine Reclamation (OMR) as not being met, Public Resources Code (PRC) Section 2774.1(f) states:

“The lead agency has primary responsibility for enforcing this chapter and Section 2207. In cases where the board is not the lead agency pursuant to Section 2774.4, enforcement actions may be initiated by the director pursuant to this section only after the violation has come to the attention of the director and either of the following occurs:

(1) The lead agency has been notified by the director in writing of the violation for at least 15 days, and has not taken appropriate enforcement action.

(2) The director determines that there is a violation which amounts to an imminent and substantial endangerment to the public health or safety, or to the environment...”

Lead agencies under SMARA have certain obligations and responsibilities to fulfill. Should such responsibilities and obligations not be fulfilled, PRC Section 2774.4(a) provides statutory authority for the SMGB to assume certain lead agency responsibilities. Administrative procedures in the initiation of enforcement actions to a surface mining operation by the Director are being considered.

- Dennis O’Bryant, Assistant Director and Manager of the Office of Mine Reclamation (OMR), provided an overview of the administrative process associated with the issuance of a 15-Day Notice to a lead agency when appropriate enforcement action has not been taken by the lead agency.



- Adam Harper, representing the California Construction and Industrial Materials Association (CalCIMA), offered comment and noted that an Order to Comply issued by the Director can be appealed to the SMGB.
- Barry Chang, Councilmember for the City of Cupertino, offered comment.
- Committee Member Garner expressed the need for development of an enforcement policy, analogous to that developed for the State Water Resources Board, noting different levels of violations and how enforcement is pursued per level. This discussion after review of other similar programs should come back to this Committee for further discussion.

It was concluded by the Committee that the tabulation of enforcement actions being taken by OMR as it pertains to lead agencies failure to enforce SAMRA was very informative, and receipt of a periodic factual update as part of OMR's information report to the SMGB of enforcement actions (i.e., 15-Day Notices being issued by OMR to lead agencies pursuant to PRC Section 2774.4(a)) would be beneficial. No motion was made.

4. Discussion of the Allocation of the SMARA Mine Reclamation Fund in the Implementation of the Surface Mining and Reclamation Act (SMARA). Executive Officer Testa stated that at its November 10, 2010, regular business meeting, the SMGB approved its revised Strategic Plan, and noted that administrative procedures for annual reporting requirements and reporting fees for operators of surface mining operations have been established. Such fees established are deposited in the Mine Reclamation Account and shall be made available to the Department and the SMGB. In fulfilling its obligations and responsibilities pursuant to SMARA, the Committee is reviewing the SMGB's overall budgetary needs, and how such funds are dispersed among the various SMARA programs. The SMGB receives funding from two sources: the Mine Reclamation Account (CGS/OMR/SMGB) and the Renewable Resources Investment Fund (OMR/SMGB).

- Committee Member Garner requested an understanding as to how the funds are used and dispersed by the DOC.
- Acting Director Chernow stated that budget information has been provided in the past, and can be provided again and will be scheduled for either the next scheduled meeting of the Committee, or at the next scheduled regular business meeting of the whole SMGB.

No action was taken by the Committee.



5. Approval of the SMGB's Information Report 2010-07 on a Review of Issues Pertaining to Idle Mines under the Surface Mining and Reclamation Act (SMARA).
(To Include Discussion of Proposed Language on the Definition of Idle Mines)

Executive Officer Testa stated that at the request of SMGB Member Tepel, SMGB Information Report 2010-07 titled "*A Review of Issues Pertaining to Idle Mines under the Surface Mining and Reclamation Act*" has been prepared. This information was presented, in part, at the SMGB's Surface Mining Standards Committee meetings held on March 8, April 12, May 10, June 14, July 12 and September 13, 2007. This matter was further discussed at the Committee's December 9, 2010 meeting. All comments received from the SMGB, this Committee, DOC and other stakeholders have been considered and incorporated, as appropriate. SMGB Information Report SMGB IR 2010-07 does not set forth policy, but rather presents information that the SMGB considers in setting policy. The Policy and Legislation Committee is considering accepting this report pertaining to a review of issues pertaining to idle mines under SMARA for publication on the SMGB's website.

- Adam Harper, representing the California Construction and Industrial Materials Association (CalCIMA), offered additional comments on the draft Information Report.
- Kerry Shapiro, on behalf of CalCIMA, also offered comment and concurred with comments made by Mr. Harper.
- Brad Johnson, attorney with Diepenbrock Harrison, offered comments.

Committee Member Licari moved to accept the report. Committee Member Lund seconded and the motion carried with a unanimous voice vote.

V. New Business [Action]

VI. Good of the Meeting [Information]

[This time is scheduled to provide the public with an opportunity to address non-agenda items. Those wishing to speak should do so at this time. All persons wishing to address the Committee should fill out a speaker card and present it to the Secretary so that the Chair can determine the number of persons who wish to speak. Speakers are limited to three minutes except by special consent of the Chairman]

- Barry Chang, Councilmember for the City of Cupertino, expressed concerns and issues related to the Lehigh Southwest Cement Company (formerly Hansen Permanente Cement, Inc.) surface mining operation located in the Santa Clara County.
- Arthur Plonowski, resident of the City of Cupertino, concurred with the concerns expressed by Mr. Chang.
- Sean Hungerford, attorney with Diepenbrock Harrison and legal counsel for Lehigh Southwest Cement Company, briefly responded to some of comments raised by local residents and Councilmember Chang.



- Gary Rudholm, Senior Planner for Santa Clara County, provided correspondence and documentation addressing some of the issues raised by local residents and Councilmember Chang.

VII. Continuing Business [Information]

[This item is provided as an opportunity for any SMGB Committee member to receive information on or any items of continuing interest to the SMGB.]

No continued business was discussed.

VIII. New Business [Information]

[This item is provided as an opportunity for any SMGB Committee member to bring any item of new business to the Committee's attention for further discussion and further action.]

No new business was discussed.

IX. Announcements of Future Meetings

The next meeting of the Policy and Legislation Committee was scheduled to be held in Sacramento on February 10, 2011.

X. Adjournment

The Committee meeting was adjourned at 12:10 P.M.

APPROVED

Brian Baca, Committee Chairman

Stephen M. Testa, Executive Officer

