

# **PRINCIPLES FOR ADDRESSING IDLE MINING OPERATIONS UNDER THE SURFACE MINING & RECLAMATION ACT**

*These principals, developed by the State Mining and Geology Board (SMGB) in question-and-answer format, are intended to clarify provisions of the Surface Mining and Reclamation Act ("SMARA"; Public Resources Code § 2710 et. seq.) and Public Resources Code §2207 relating to requirements for idle mines. These principles **do not** place additional requirements on mining operations, nor do they limit a lead agency's ability to regulate idle mines in accordance with state or federal law or local ordinance.*

(Adopted November 1994; Revised March 1996)

## **(1) What is an Active Mining Operation?**

Surface mining operations are defined as: "...all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine."

Surface mining operations include, but are not limited to, inplace distillation or retorting or leaching, the production and disposal of mining waste, prospecting and exploratory activities, borrow pitting, streambed skimming, and segregation and stockpiling of mined materials (and recovery of same). Surface mining operations are "active" if engaged in any of these activities on a continuous or intermittent basis, so long as interruptions in mining activities do not exceed one year.

*Reference: SMARA Section 2735 and California Code of Regulations Section 3501*

## **(2) What is an "Idle" Mining Operation?**

A surface mining operation is "idle" when operations are curtailed, for a period of one year or more, by more than 90 percent of the previous maximum annual mineral production, and where there is an intent to resume surface mining operations at a future date. A surface mine is NOT "idle" in this scenario if there is NO intent to resume operations. When there is no intent to resume operations, the mine is considered to be either "active" and reclaiming, or "abandoned."

*Reference: SMARA Section 2727.1*

## **(3) What is the purpose of an Interim Management Plan?**

When, for various reasons, a surface mining operation must significantly curtail operations for a period of time, it can be uneconomical or even counterproductive to begin reclamation of mines lands. While it would not be practicable to reclaim areas that will be re-disturbed in the near future, the public health and safety, as well as the environment, must be addressed until mining activities are resumed. An Interim Management Plan (IMP) is a temporary plan to address public health, safety, and environmental issues relevant to the site in question, e.g., drainage, erosion control, temporary fencing, etc.

*Reference: SMARA Section 2770(h)*

**(4) When is an IMP Required?**

Within 90 days of a mining operation becoming “idle,” the operator must submit an IMP to the lead agency for review and approval. If the IMP is not filed within this 90 day period, the mine will be deemed “abandoned” and the operator will be responsible for the costs of reclamation. (See Scenario numbers 1 and 2)

*Reference: SMARA Sections 2770(h), 2773.1(b)*

**(5) What are the contents of an IMP?**

SMARA requires the IMP to include a description of the measures the operator will implement to maintain the site in compliance with the Act, including, but not limited to, all permit conditions. Statute is otherwise silent as to the requirements of an IMP; however, measures to assure continued public health and safety should be identified. Lead agencies have the responsibility to determine what these measures should be. Any requirements deemed necessary to implement the Act’s requirements for idle mines and IMPs should be included in the lead agency’s SMARA ordinance, keeping in mind site-specific differences such as size, location, and type of mine operation.

*Reference: SMARA Section 2770(h)(1)*

**(6) How does an IMP relate to an approved reclamation plan?**

An IMP is considered to be an *amendment* to a lead agency approved reclamation plan. The operation must have an approved reclamation plan *before* an IMP can be submitted to the lead agency for action--an IMP cannot be used in lieu of a reclamation plan. Because an IMP is intended to be a temporary plan to maintain stable site conditions until mining activities are resumed, the submittal of an IMP for processing by the lead agency would NOT be just cause to re-examine an approved reclamation plan and/or cause the plan to be subsequently amended.

*Reference: SMARA Section 2770(h)(1)*

**(7) Is an IMP subject to environmental review?**

Statute specifically exempts IMPs from environmental review under the California Environmental Quality Act (CEQA).

*Reference: SMARA Section 2770(h)(1)*

**(8) What are the processing requirements for an IMP?**

Upon receipt of an IMP, the lead agency has 60 days (or a period mutually agreed upon by the lead agency and the operator) in which to review and approve the IMP, and notify the operator, in accordance with the lead agency’s SMARA ordinance. If the IMP

does not meet the requirements of SMARA, the lead agency must notify the operator in writing of identified deficiencies, and allow 30 days (or a longer period mutually agreed upon by the lead agency and the operator) for the operator to submit a revised IMP. The lead agency has 60 days upon receipt of the revised IMP in which to approve or to deny approval of the revised IMP.

*Reference: SMARA Section 2770(h) (4) through (5)*

Because an IMP is considered to be an amendment to an approved reclamation plan, it is subject to Department of Conservation review. Prior to approval of an IMP, the lead agency must forward the document to the Department for review. The Department is granted 30 days in which to prepare written comments on the IMP. Lead agencies must evaluate the Department's comments, if any, and if the lead agency's position differs from the Department's, the lead agency must respond, in writing, and address in detail why specific comments and suggestions were not accepted.

*Reference: SMARA Section 2770(h)(1), 2774(c)*

**(9) What appeals, if any, are available to an operator should the IMP be denied lead agency approval?**

If the lead agency denies approval of the revised IMP, SMARA guarantees the operator an appeal of that decision to the lead agency's governing body. The lead agency's governing body must schedule a public hearing on the appeal within 45 days of the filing of the appeal (or any longer period mutually agreed upon by the lead agency and the operator). Operators may not appeal unapproved IMPs to the State Mining and Geology Board or to the Department of Conservation.

*Reference: SMARA Section 2770(h)(2)*

**(10) How long may an IMP remain in effect?**

An approved IMP may remain in effect for a period not to exceed five years. Once the five-year period has ended, the lead agency may: (1) renew the IMP for up to a five-year period if the mine operator has complied fully with the IMP; or (2) require the mine operator to commence reclamation in accordance with the approved reclamation plan.

If the lead agency does not renew the IMP, then the mine operator must commence reclamation in accordance with the approved reclamation plan, or resume mining activities. SMARA states that unless review of an IMP is pending before the lead agency, or an appeal is pending before the lead agency's governing body, a mine that has been idle for over one year and has not obtained an approved IMP, shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.

*Reference: SMARA Section 2770(h)(2) and (6)*

**(11) What are the annual requirements of an “idle” mine?**

Idle mining operations must maintain lead agency approved financial assurances for reclamation. The amount of the financial assurances must be calculated, reviewed, and approved in the same manner as financial assurances for active mining operations.

*Reference: SMARA Sections 2770(h)(3) and 2773.1*

All surface mining operators, including those with “idle” mine status, are required to file an annual report with the Department of Conservation using forms furnished by the State Mining and Geology Board, together with the appropriate reporting fee. (See Scenario number 3.)

*Reference: PRC Section 2207*

Idle mining operations are subject to annual inspections to ensure the operator is complying with the permitting and IMP requirements.

*Reference: SMARA Section 2774(b)*

## **HYPOTHETICAL SCENARIOS**

### **SCENARIO No. 1**

A mining operator extracts aggregate from a dry river bed having winter flow in the past year. The next six months are unusually wet, and after the rainy season, water remains standing in some locations and is just below the surface in others. The mine operator's Department of Fish and Game 1603 Agreement prohibits the operator from mining under "wet" conditions. Therefore, no mining occurs for the entire 12 month period. The next winter also results in above normal rainfall and the same conditions exist; thus, no mining occurs for another 12 month period. Does the mine operator need an Interim Management Plan (IMP)?

#### **ANSWER:**

Under the above conditions, the mine operator would file an IMP 90 days after the first 12 month period ends if he/she intends to resume mining activities once conditions allow. The operator can specify how long, up to five years, the IMP will remain in effect. The operator may commence mining operations while an approved IMP is in effect.

### **SCENARIO No. 2**

In 1990, a mine operation produced 100,000 short tons of mined material--the largest amount of material produced by this operation to date. During calendar years 1991 through October 1993, the mine produced between 70,000 and 90,000 short tons. From November 1993 until September 1994, the operation produced no material. In October through November 1994, the operation produced 10,000 short tons of mined materials. The operation produced no mined materials in December 1994. The operator intends to actively mine the site beginning in January 1997. How would this operator file annual reports for the 1993 and 1994 reporting year? When would the operator be required to file an IMP?

#### **ANSWER:**

This operator would file as an active mine operation for the 1993 reporting (calendar) year since he/she produced more than 10% of the previous annual maximum. For the 1994 reporting year, the operator would file as idle.

Since the operator intends to resume active mining, and from November 1993 to November 1994 the mine produced less than 10% of the previous annual maximum (10,000 short tons), the operator should have an approved IMP by February 1995 (90 days after the mine operation became idle). A copy of the IMP would be filed with the 1994 annual report due on July 1, 1995.

### **SCENARIO No. 3**

A mining operator spends one calendar year mining and compiling a large stockpile. Calendar years two through five, the operator does not extract new material, but sells materials from the stockpile. Year six, the mining operator begins the cycle over by

mining new material during one calendar year to rebuild the stockpile. What are the annual reporting requirements for calendar years one through six?

**ANSWER A:**

If the stockpile is located on the SAME site minerals are extracted, the mining operator would report as an “active mine” for each calendar year. California Code of Regulations Section 3501 defines the segregation and stockpiling of mined materials, and the recovery of same, as a surface mining operation. Therefore, if a mine operator continues to remove mined materials for a stockpile on a year-round basis, the mine is considered active for annual reporting purposes.

**ANSWER B:**

The mine operator would file as “idle” for years two through six, and must obtain an approved IMP in year two, if the stockpile is on a plant site NOT located on the same site from which minerals are extracted. The mining operator may be exempt from filing an annual report for the stockpile site only. SMARA Section 2714(c) states the operation of a plant site used for on-site stockpiling and on-site recovery of mined materials may be considered exempt from SMARA and annual reporting requirements if the following conditions are met:

(1) the plant is located on lands designated for industrial or commercial uses in the applicable county or city general plan;

(2) the plant is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the applicable city or county;

(3) none of the minerals being processed are be extracted on-site;

(4) all reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred on-site after January 1, 1976.

In this instance, it is recommended that the mine operator contact the lead agency to determine whether the site qualifies for this exemption. If so, the mine operator would not file an annual report. If the site does not qualify for this exemption, the mine operator would file his/her annual report as directed in Answer A.

(Note: Regardless of whether a report is filed annually for the stockpile, the mining operator is still required to file an annual report for the site where the mined materials are being extracted.)