



Construction Policy Bulletin

CPB 11-5 Revised Guidance for Surface Mining and Reclamation Act

References: *Construction Manual*

Section 7-1.03D (2), "Surface Mining and Reclamation Act"

Standard Specifications

Section 7, "Legal Relations and Responsibility to the Public"

Effective Date: November 2, 2011

Approved: _____

A handwritten signature in black ink, appearing to read 'Mark Leja', written over a horizontal line.

MARK LEJA

Chief

Division of Construction

Approval Date: November 1, 2011

Background

The California Legislature enacted the Surface Mining and Reclamation Act of 1975 (SMARA) to address the need for a continuing supply of mineral resources and to prevent or minimize the negative impacts of surface mining to public health, property, and the environment. The act's requirements apply to anyone engaged in California surface mining operations that disturb more than one acre or remove more than 1,000 cubic yards of material. The act covers prospecting and exploratory activities, dredging and quarrying, streambed skimming, borrow pitting, and stockpiling of mined materials.

The Department of Conservation is responsible for maintaining a list of mining operations in compliance with SMARA, also called the "AB 3098 List." Sections 10295.5 and 20676 of the Public Contract Code prohibit a state agency, including Caltrans, from acquiring or using mined materials subject to SMARA from a surface mining operation not on the AB 3098 List.

This construction policy bulletin provides for updated guidance based on Department of Conservation clarification of SMARA and on the recent revision to Section 7, "Legal Relations and Responsibility to the Public," of the *Standard Specifications*. The section requires the contractor, when proposing to use imported material from a source not on the AB 3098 List, to submit proof that the source is not subject to SMARA.

Existing Procedure

The existing procedure under Section 7-1.03D (2), "Surface Mining and Reclamation Act," of the *Construction Manual* lists types of sources for imported material that Caltrans determined complied with SMARA and thus were not required to be included in the AB 3098 List. On several projects, the Department of Conservation has determined that the material used or the material source the contractor proposed was not exempt from SMARA.

New Procedure

7-103D (2) Surface Mining and Reclamation Act

The Public Contract Code requires that Caltrans buy or accept sand, gravel, aggregates, or other mined materials (including imported borrow) from mining operations in compliance with or not subject to the SMARA. The resident engineer can obtain the AB 3098 List, which includes mining operations in compliance, from the Department of Conservation's website:

http://www.consrv.ca.gov/OMR/ab_3098_list/index.htm

The following mining operations are not subject to SMARA:

- A total amount of mined materials less than 1,000 cubic yards in any one location of one acre or less.
- Onsite excavations and onsite earth-moving activities on a Caltrans construction project that are an integral and necessary part of the project.
- Materials mined from federal lands, except for lands that the Bureau of Land Management and U.S. Forest Service regulate.
- Materials mined from Tribal Lands, except for materials mined by a non-tribal mining operator.
- Materials mined from outside California.

Review contractor proposed sources and verify that the source is on the current AB 3098 List. If the contractor proposes to use mined materials from a mining operation not on the AB 3098 List, obtain from the contractor proof that the operation is not subject to SMARA and confirm with the Department of Conservation. Contact their Office of Mine Reclamation—Reporting and Compliance Unit at OMR.calendar@conservation.ca.gov or (916) 323-9198.

SMARA allows the State Mining and Geology Board (SMGB) to exempt certain surface mining operations or construction projects. Caltrans can accept materials from exempted sources if the contractor provides proof of the SMGB-granted exemption. Contact SMGB at (916) 322-1082 with issues or questions related to a specific exempted source. In the future, SMGB will post a list of material sources granted one-time exemptions on its website:

<http://www.conservation.ca.gov/smgb/Pages/Index.aspx>

Refer challenges to the acceptance of materials to the Division of Construction field coordinator. If you have questions or comments about this bulletin, please contact Sarah Picker at sarah_picker@dot.ca.gov or (916) 653-2833.