

LEAD AGENCY REVIEW AND ASSISTANCE (LARA) **REVIEW PROCESS**

August 2016

Background

In 2006, the Department of Conservation's (Department) Office of Mine Reclamation (OMR) established the lead agency review program. A "Lead Agency Review Team" (LART) was formed to review the program and audit each lead agency's administration of the Surface Mining and Reclamation Act (SMARA) on a rolling 6-year basis. LART began auditing SMARA lead agencies in 2007, and continued the program until mid-2012, when the program was suspended, pending reassessment. From 2007 to 2012, LART audited forty-seven (47) SMARA lead agencies. The lead agency review program was revised and has evolved into the Lead Agency Review and Assistance program (LARA).

The LARA program is now designed as both a review of each lead agency's SMARA program and an extension of the OMR's education and outreach efforts. In December 2015 and in January 2016 the OMR held a series of LARA workshops in four cities; Redding, San Luis Obispo, Santa Ana, and Sacramento. The workshops provided an overview of the proposed LARA program, and encouraged lead agency and stakeholder program feedback. Comments received during the workshops strengthened the program, and generated a list of frequently asked questions that OMR posted on its public domain web site. The objective of this document is to introduce the LARA program, outline the purpose, and show how OMR will conduct the lead agency review.

The revised LARA program provides OMR with a consistent approach for reviewing lead agency implementation of SMARA through education and assistance. By conducting focused reviews and providing assistance to lead agencies, OMR intends to help improve local lead agency performance. The purpose of LARA is not to initiate individual enforcement actions against individual mining operations, or recommend referrals to the State Mining and Geology Board (SMGB). However, during the course of LARA engagement, if conditions observed at a mine site present an imminent and substantial endangerment to public health or the environment, appropriate enforcement actions may be pursued by OMR after conferring with the affected lead agency. The key goals and focus of LARA are to:

- Establish a complete and accurate administrative record for each mine for both the lead agency and OMR
- Improve quality/adequacy of reclamation plans and associated financial assurances to reduce liability to lead agencies, the state, the public, and the environment
- Provide one-on-one training for inspectors
- Concentrate on lead agency performance based on a representative sample of mines
- Hold an exit conference to discuss lead agency input and responses to initial findings prior to developing a final report
- Issue Final Reports, noting areas of successful SMARA implementation and where the lead agency has potential for improvement.

Previously, under the discontinued LART program, each lead agency was to be reviewed every six years. The LART program set priorities for lead agency auditing based on a risk analysis that included several selected reporting factors from the OMR electronic database and mine files including; 1) reclamation plans, 2) financial assurances, 3) inspection reports (MRRC-1), and 4) mine operation annual reports (MRRC-2).

Inspections of individual mine sites followed if any of the following were observed:

- Violations noted on Inspection Reports;
- No current Inspection Report available;
- Inspection time doesn't match the size or complexity of the mine, for example, a thirty-minute inspection reported on a 150 acre rock quarry with multiple benches having adverse jointing and fracture patterns
- Financial Assurance Cost Estimate (FACE) out-of-date and/or appears to be inadequate to cover the cost of reclamation;
- Financial Assurance Mechanism (FAM) less than FACE amount; and/or
- Operation's Annual Report not submitted.

Under the LART program, inspections typically included up to half the mines in a lead agency's jurisdiction and most if not all mines from smaller jurisdictions. The LART also added mines to its field review if there were compliance issues or other violations were discovered during audit review.

Establishing the Lead Agency Review Order under the LARA Process

The lead agency review order under the LARA process is determined from examination of OMR's lead agency mine files for each of three documents, 1) the surface mining inspection report (form MRRC-1), 2) a financial assurance cost estimate, and 3) a financial assurance mechanism, for all its unreclaimed mines during the year 2015. One "point" is given per document found in the mine files, for each unreclaimed mine.

Then, for each lead agency, add-up the total number of documents found. The review order number is an expression of the percentage of the total possible number of documents OMR has, for each unreclaimed mine.

$$\text{Review Order Number} = \left(\frac{\# \text{ of possible documents} - \# \text{ of missing documents}}{\# \text{ possible documents}} \right) 100$$

The review order number is ranked from lowest to highest, with the LARA process commencing with the lead agency having the lowest score.

Lead agencies previously reviewed under the former LART program are exempt from the first round of reviews under the new LARA program, until all lead agency reviews are completed. Then the cycle repeats after about six years.

The following sample illustration displays a score calculated in a lead agency jurisdiction with ten unreclaimed mines. In this case, there are thirty possible documents in total for submittal to OMR (three documents multiplied by 10 mines equal thirty possible documents). If, for example, a lead agency submitted twenty-six of the possible thirty documents (4 documents missing) for its mines, divided by the total possible documents (thirty), times 100, equals a review order number of 86.67 for that lead agency.

$$\text{Review Order Number} = \left(\frac{30 - 4}{30} \right) 100$$

Lead Agency Review and Assistance Program Steps

Phase I - Entrance Conference

An engagement letter that describes the LARA program process will be sent to the lead agency executive responsible for administering their local SMARA program (typically the county planning director). The lead agency will be asked to assign personnel to work with OMR to act as the primary contact within the lead agency for all purposes of the review. An entrance conference will then be held to review the purpose of the LARA program, deliver expectations, and answer questions that the lead agency may have. OMR will also designate a Senior Geologist to be the main point of contact and may include the Geologist and Reporting Analyst normally assigned to the lead agency.

Phase II - Lead Agency Review – File Comparison

During Phase II, the OMR will perform a detailed review of OMR's mine files within the lead agency's jurisdiction. This is intended to ensure that OMR's files and the lead agency's files contain up-to-date documents as well as relevant historical information for each mining operation. This effort will also ensure proper document exchange and verify integrity of both OMR's and the lead agency's mine files. The documents that will be reviewed include:

- Environmental Impact Reports
- Approved Reclamation Plans, amendments, associated comments, and response documentation
- Interim Management Plans, associated comment, and response documentation
- Permits and conditions of approval
- Lead Agency annual Inspection Reports and Inspection Notices
- Mine operator Annual Reports
- Financial Assurance Mechanisms
- Financial Assurance Cost Estimates, associated comment, and response documentation

OMR will provide the lead agency with a list of the information and documents needed to complete the review. To facilitate this data comparison process, OMR has created a File Transfer Protocol (FTP) site where it will post copies of the operative documents from its mine files for lead agencies to view. If documents are missing from OMR's mine file, lead agencies can add documents through a Box.com exchange, or via email or other media. Once the mine file comparison is complete, and the administrative record is established, OMR will begin reviewing documents.

Phase III - SMARA Lead Agency Performance Review

The review will focus on the lead agency's performance during the previous five years. The performance categories include SMARA administration, reporting, and inspections as described below.

1. **Administration** – Review OMR mine files, for the past five reporting years, to assess how the lead agency administers SMARA:
 - A. Approval of reclamation plans, financial assurances, and use permits or vested rights determinations as required by SMARA. (PRC §§ 2770(a), 2772.7, 2773.1, 2774, 2774(e))
 - i. Document lead agency's internal procedures for processing reclamation plan applications and

- amendments leading up to lead agency certification of compliance prior to submittal to OMR.
 - ii. Proof of reclamation plans and reclamation plan amendments sent to OMR for review and comment prior to approval by the lead agency.
 - iii. Response to OMR's Reclamation Plan review comments.
 - iv. A thirty-day notice of public hearings held prior to the approval of reclamation plans and amendments.
 - v. Conditional Use Permits or vested rights determinations, if applicable.
 - vi. Recording of a "Notice of Reclamation Plan Approval" with the county recorder upon approval of post 2006 reclamation plans.
- B. Prepared annual Financial Assurance Cost Estimates per SMARA (PRC 2770(a), 2773.1) (CCR 3805, 3805.5)
- i. Document lead agency's internal procedures for reviewing and approving annual financial assurance cost estimates leading up to lead agency determination of adequacy prior to submittal to OMR.
 - ii. Financial assurance cost estimates submitted annually to OMR for review and comment prior to approval by the lead agency. (CCR 3804(c))
 - iii. The lead agency response to OMR's financial assurance cost estimate review comments.
 - iv. Review a select number of financial assurance cost estimates to verify accuracy, and suggest improvements, if needed... (2773.1(a)(3))
- C. Maintain adequate Financial Assurance Mechanisms
- i. Financial Assurances Mechanisms are equal to or greater than the current financial assurance cost estimate (PRC 2773.1(a) (3) and CCR 3804(a))
 - ii. Financial Assurance Mechanisms allowing release to the operator only when authorized by the lead agency and OMR as signees. (PRC Section 2773.1(a) (1), CCR Sections 3803, and 3806 through 3806.5)
 - iii. Financial Assurance Mechanisms containing provisions to allow for the forfeiture and/or use of financial assurances to conduct or complete reclamation, or transfer to new ownership, per SMARA. (PRC Section 2773.1 (b)-(d))
 - iv. Financial Assurance Mechanisms are properly released (CCR Section 3805.5)
- 2. Reporting** – Lead Agency Review and Assistance staff will review mine files within a lead agency's jurisdiction to verify the lead agency fulfillment of the following statutory reporting requirements:
- A. Annual Reports (ARs)
- i. The lead agency has taken appropriate enforcement action to ensure timely submittal of mine operator annual reports and payment of fees (2774.1(f)(1))
- B. Inspection Reports
- i. Inspections are conducted annually. (PRC 2774, CCR 3504.5)
 - ii. Inspection reports are complete and accurate.
- C. Inspection Notices
- i. Inspection notices clearly specify which aspects of the surface mining operations, if any, are inconsistent with this chapter, and a copy of the completed inspection form to OMR within 30 days (90 days as of January 1, 2017) of the inspection date. (PRC 2774(b))

OMR will work closely with lead agency staff to ensure all parties have the same documents and the records are accurate and up to date. The performance review findings will be discussed in broad terms, not identifying issues on a document-by-document or mine-by-mine basis, but rather noting areas where the lead agency has potential for improvement of local SMARA administration.

- 3. Inspections** – OMR staff will accompany lead agencies on inspections of a representative number of mines in its jurisdiction to assess the inspector’s performance and provide one-on-one training and guidance. Selection of mines will be based on the number of and the nature or type of mining operations existing in the jurisdiction of the lead agency. The field review of lead agency inspections will be approximately one to five days.

Prior to mine inspections, OMR will meet with the lead agency SMARA inspector to review reclamation plan requirements and previous inspection reports for each site. This will provide the lead agency inspector and OMR the opportunity to discuss the reclamation requirements for each mine.

During inspections, OMR staff will accompany the lead agency inspector to observe how:

- Mines are being inspected relative to operative reclamation plan requirements.
- Violations are being identified when observed. (i.e. depth, area, slope aspects, topsoil salvage, revegetation, phasing/concurrent reclamation, offsite discharge, and erosion control)
- Whether the entire mine site was being inspected.
- The appropriate SMARA status was noted.
- Active and/or reclaimed disturbance is accurately documented.

Following field reviews of the lead agency inspectors, LARA staff will compare mine site conditions observed by OMR to those reported by the lead agency inspector. LARA staff will identify areas where the lead agency could improve the quality and performance of their inspections, thereby assisting the Lead agency in better administering SMARA. Comprehensive and accurate inspection reports are critical for developing appropriate cost estimates and securing adequate financial assurances for reclaiming the site to conditions outlined in the approved reclamation plan.

Phase IV – Initial Report and Exit Conference

Initial Report - OMR staff will prepare and provide the lead agency with an initial report outlining its findings. The lead agency will have up to 90 days to request an exit conference and provide a written response to the findings. At the exit conference, the lead agency may provide additional documents and information to address the findings in the initial report.

Phase V - Final Report

Following the exit conference, OMR will prepare a final report that includes a summarization of lead agency responses. The final report will highlight mines that have been reclaimed and adaptable to a beneficial secondary end use and list areas of SMARA administration in which the lead agency may improve their processes.

Monitoring following LARA review

OMR anticipates that lead agencies, who have primary responsibility for the enforcement of SMARA, will take appropriate enforcement actions on potential violations and non-compliance noted during the LARA process. OMR does not expect that all violations will be resolved during the LARA process, but that appropriate enforcement will be initiated, and completed to achieve compliance. OMR is aware that achieving compliance

with all issues can be challenging. The State Mining and Geology Board may begin its own review of a lead agency following completion of the LARA process, and has a standing request for copies of final LARA reports.

Positive Outcome and Conclusion

OMR anticipates the revised LARA program will improve OMR/lead agency communication and have a positive effect on SMARA implementation/administration statewide. The LARA program should:

- Ensure that a complete and accurate administrative record exists for each active mine within every lead agency jurisdiction
- Provide lead agencies with better assistance with SMARA administration based upon the unique challenges facing the particular lead agency
- Forge stronger working relationships between lead agencies and OMR

Throughout the Lead Agency Review and Assistance process, the OMR intends to provide education and assistance to lead agencies that encourages effective local administration of SMARA. The LARA process ensures that OMR mine files contain the same documents as the lead agency which is essential for establishing a complete and accurate administrative record. OMR will provide lead agencies with on-site inspector training consistent with the new SMARA statutory requirements set forth in PRC 2774(e) that take effect in 2017 and beyond.

The LARA goal is to help ensure effective local administration of SMARA, through vetted reclamation plans, comprehensive annual mine inspections and rigorously reviewed cost estimates. The LARA program envisions uniform application of SMARA throughout the State bolstering confidence in the citizens of California that mined lands will be reclaimed to a beneficial end use and that detrimental aspects of mining are minimized or eliminated.