

DIRECTOR REQUEST FOR APPROVAL

To: Mark De Bie, Deputy Director
Waste Permitting, Compliance and Mitigation Division

From: 
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Reviewed By: Steve Levine, Legal Office

Prepared On: February 25, 2013

Subject: **APPROVAL OF THE PINTO PROPERTY ILLEGAL DISPOSAL SITE, LAKE ELSINORE – RIVERSIDE COUNTY, SOLID WASTE DISPOSAL AND CODISPOSAL SITE CLEANUP PROGRAM (SOLID WASTE DISPOSAL TRUST FUND, FY 2012/2013)**

REQUESTED ACTION:

Department of Resources Recycling and Recovery (Department) staff have completed an evaluation and recommend approval of the Department-managed cleanup of the Pinto Property Disposal Site pursuant to the Solid Waste Disposal and Codisposal Site Cleanup Program (Program).

Time Factor: Decision required no later than February 26, 2013.

Options: The Deputy Director may decide to:

1. Approve the proposed project;
2. Disapprove the project; or
3. Direct staff to provide additional information and bring the project back for future consideration.

Recommendation: Staff recommends Option 1.

PROJECT SCOPE:

Site Location/Description: The Site is spread across two contiguous properties located at 14495 Temescal Canyon Road and 14509 Temescal Canyon Road, Lake Elsinore, in Riverside County (Assessor's Parcel Numbers 391-160-003 and 391-170-011, respectively) approximately 4 ¼ miles northwest of Lake Elsinore, 1 mile west of Lake Street on the south side of Interstate 15. The site is owned by Walter and Emperatriz Pinto. Sometime prior to August 2007, Mr. Pinto began stockpiling wastes on site without the proper permits from Riverside County to operate a landfill or a recycling facility. The waste is mostly demolition and construction debris brought to site as part of Mr. Pinto's unpermitted demolition business, operated in violation of County land use laws.

Enforcement Actions: Since November 2010 the Riverside County Code Enforcement Department has issued numerous Notices of Violations and Administrative Citations to Mr. Pinto. The noted violations included unpermitted land use, operating a business without a permit, excessive outside storage, and accumulated rubbish. On June 13, 2012, the Riverside County Department of Environmental Health (Local Enforcement Agency) issued a Notice and Order to Cease and Desist to Mr. Pinto to bring the site into compliance.

Proposed Remediation Project: The Program's contractor will remove the solid waste debris to appropriate facilities. General debris and green waste will be hauled to the landfill. Concrete debris, metal debris, and tires will be separated and hauled to appropriate recycling facilities.

FISCAL IMPACTS:

Cost Estimate: The Department-managed project will be performed on a time-and-materials basis under the Program's Southern California remediation contract number DRR12033. The Program's contractor has conducted a site visit with Program staff and developed a work plan with a preliminary cost estimate of \$370,000. Actual costs may vary depending on a variety of factors including, but not limited to the quantities and/or types of materials encountered, market forces, the required timeframes for cleanup, and competitive bids from subcontractors.

Funding: Funding for the project will be derived from previously encumbered funds from the Solid Waste Disposal Trust Fund in the Program's Southern California remediation contract number DRR12033. The contract currently has \$2,000,000 in available funds from the Solid Waste Disposal Trust Fund and is adequately funded to complete this project.

Cost Recovery: Public Resources Code (PRC) Section 48023 directs the Department to seek reimbursement for monies expended under the Program to the extent feasible. Where a public agency has requested Program funding to clean up a site where the violations resulted from repeated willful and egregious activities of a landowner who remains on site, efforts need to be taken by the enforcement agency to judicially enjoin the landowner from committing any further violations which could result in the resumption of unpermitted disposal activities. This is particularly needed here, since not only do the Pintos lack any substantive assets, as addressed below, but they are also "underwater" on their loan on the subject property and thus have no

monetary incentive to refrain from resumption of unpermitted activities absent injunctive relief. Moreover, a records review has disclosed at least 17 criminal and/or infraction proceedings of an unascertained nature commenced against Mr. Pinto in Superior and Administrative Courts in both the subject County of Riverside as well as Orange County, where he previously also resided. This records review has further disclosed that Mr. Pinto's construction company has been suspended by the California Secretary of State since 2009. Finally Department Staff Counsel notes that a Code Enforcement officer initially related that Mr. Pinto also engaged in unpermitted activities on at least two other sites he subsequently lost to foreclosure, but that officer retracted this disclosure once he declined to pursue further enforcement to secure the Department requested injunction. Based on the foregoing, the Department is now working with the Local Enforcement Agency (which had previously deferred further enforcement in light of the pendency of Code Enforcement proceedings) to obtain the Department requested judicial injunctive relief. Typically, this relief would be in the form of a Superior Court Judgment in the form of an injunction, restraining and enjoining Mr. Pinto from committing any further violations of State solid waste laws and regulations. Such a Judgment will likely further provide that any violation would result in Mr. Pinto being deemed in contempt of the Court order and subject to civil and criminal sanctions. The Department has disclosed in writing to the Pintos the possibility of further enforcement and injunctive relief, and their authorization to provide access for this remediation was made subsequent to this disclosure.

For this project, staff recommends that cost recovery be pursued to the fullest extent practicable. The Owners have submitted an asset declaration, under penalty of perjury, reporting that they are in dire financial straits and thus have insufficient funds to pay for the cleanup themselves or reimburse the Department for the remediation of the site. Based on the foregoing, cost recovery at this juncture will be pursued through the placement of a lien on the property under the authority provided in PRC Section 48023.5. The Department will further reiterate their request that in the alternative, Code Enforcement pursue an Abatement Lien naming CalRecycle as a third-party beneficiary, which would give the Department priority over other lienholders.

BACKGROUND:

Program Eligibility: The Program addresses cleanup of solid waste disposal and codisposal sites where the responsible party either cannot be identified or is unable or unwilling to pay for a timely remediation and where cleanup is needed to protect public health and safety or the environment. Cleanup projects are implemented through Department-managed contracts, grants, and loans. Staff uses adopted regulations and policies in determining site eligibility. Unless otherwise noted, actions proposed for this project are specifically eligible pursuant to the regulations.

Site Prioritization: The site is rated as an environment priority of A2. Priority A2 is a known condition of pollution or nuisance from solid waste based on comparison with state minimum standards with significant residential, industrial, park, recreation, or environmentally sensitive areas within one mile of the site.

California Environmental Quality Act (CEQA): Program staff has reviewed the proposed project and determined that it is categorically exempt per the Class 8 exemption (14 CCR §15308: Actions by Regulatory Agencies for Protection of the Environment). Compliance with CEQA requirements will be made with a Notice of Exemption filed by Program staff.

Support: Staff has not received any written support at the time this document was submitted for approval.

Opposition: Staff has not received any written opposition at the time this document was submitted for approval.

FINDINGS:

On the basis of the information and analysis in this Request for Action, the Department hereby approves this project under the Solid Waste Disposal and Codisposal Site Cleanup Program.

In addition, the Department directs staff to prepare and file a Notice of Exemption for the project with the State Clearinghouse.



Mark De Bie
Deputy Director
Waste Permitting, Compliance, and Mitigation Division

2/26/13
Date