

REQUEST FOR APPROVAL

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

From: 

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Reviewed By: Steven Levine, Legal Office

Request Date: **January 14, 2013**

Decision Subject: Approval of the Summit Sales, Inc. Disposal Site Cleanup, Solid Waste Disposal And Codisposal Site Cleanup Program (Solid Waste Disposal Trust Fund, FY 2012/13)

Action By: **January 15, 2013**

Summary of Request: Department of Resources Recycling and Recovery (Department) staff have completed an evaluation and recommend approval of the Department-managed cleanup of the Summit Sales, Inc. disposal site (Summit Disposal Site) pursuant to the Solid Waste Disposal and Codisposal Site Cleanup Program (Program). The proposed project is to expend up to \$88,500 for cleanup plus up to \$30,000 to install a permanent fence to prevent further illegal disposal at Summit.

Time Factor: Decision required no later than January 15, 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 located at 177445 South Ingomar Road, Gustine, CA 95322, in Merced County (Assessor's Parcel Number 070-212-003). The site is approximately 7.4 miles south of downtown Gustine, CA and 11.4 miles east of Interstate 5. The site is one of five parcels covering seven acres owned by Gilmar Properties, Inc. (Gilmar) (which is wholly owned by Mitch Giles), and includes a 12,200 square foot commercial building. Summit Sales, Inc. (Summit, also wholly owned by Mitch Giles) owned a plastic recycling business located at the site. Mr. Giles began stockpiling the leftover recycling material on the site not used in his plastics manufacturing activities, since his business did not have the funds for periodic removal. Thus the material now constitutes solid waste and the site has become a disposal site, as the owner is treating the waste as if it is in its final resting place. The waste accumulated until June 26, 2012, when Mr. Giles closed the business because he didn't have the funds to keep operating. The waste is mostly PVC plastic pipe, plastic/rubber bender board, five metal silos and various other manufacturing materials brought to the site as part of the manufacturing activity. The site has been vacant since the closure of the business, and the site has become an attractive nuisance for minor, illegal dumping and trespass by the homeless. Summit Sales, Inc. had received a Department Recycling Market Development Zone (RMDZ) loan in 2001, and that loan is now in default. The subject site is the collateral for the RMDZ loan, and RMDZ loan staff is intending on initiating foreclosure on its lien.

Enforcement Actions: The Merced County Department of Environmental Health (County DEH) is in the process of issuing a Notice of Violation to Gilmar under local law, directing that it remove all accumulated solid waste from the site. However, both Gilmar and Summit in their corporate capacities and Mr. Gilmar in his individual capacity have represented that they are all financially insolvent and are thus unable to perform a timely remediation of the site. Mr. Giles has agreed to sign Asset Declarations, under penalty of perjury, on behalf of his corporations and himself individually attesting to their respective dire financial straits, which would make issuance of a Citation and pursuing further enforcement at this site impracticable. Thus in lieu of the County DEH issuing a Citation, Mr. Giles on behalf of himself and his corporations has agreed to execute a "Consent To State Remediation Of Solid Waste Disposal Site In Lieu Of County Issuance Of Citation, Property Access Authorization And Waiver Of Right To Contest Imposition Of Statutory Lien" (Consent, Authorization & Waiver Document) to allow the Program to conduct the cleanup and agreeing to waive his right to contest the Department's imposition of a statutory lien on the property for cost recovery.

Proposed Remediation Project: The Program's contractor will remediate the above mentioned property by removing accumulated solid waste and other junks located throughout the property to appropriate disposal and recycling facilities. Waste will be placed in high-side trucks and hauled off to a landfill. Tires and steel will be loaded into the appropriate bins for off haul and disposal or recycling. Dilapidated silos and other structures around the site will be demolished and removed. Machinery inside the building, which is non-operational and of nominal value, will also be removed and recycled to the extent practicable. The waste volume is estimated at 200 to 300 cubic yards.

FISCAL IMPACTS

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Cost Estimate: The Department-managed project will be performed on a time-and-materials basis under the Program's Northern California remediation contract number DRRR10008. The Program's contractor conducted a site visit on August 29, 2012, with Program and RMDZ loan staff and developed a work plan with a preliminary cost estimate of \$88,500, which includes a 10 percent contingency. In addition, the installation of a permanent fence will be handled by a sub-contractor to be determined; the cost of that fence will be up to \$30,000. The total project cost is up to \$118,500. The fence will act as a deterrent for future illegal dumping. 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 Northern California remediation contract, number DRRR10008. The contract currently has \$822,000 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. For this project, staff recommends that cost recovery for the Solid Waste Disposal Trust Fund be pursued in the form of the placement of a lien on the property, under the authority provided in PRC Section 48023.5. Moreover, should the Department subsequently ascertain that there are any material misrepresentations in the aforementioned Asset Declarations, the Department reserves the right to commence Superior Court cost recovery proceedings against the parties.

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 timely remediation and where cleanup is needed to protect the public health and safety or the environment. Cleanup projects are implemented through Department-managed contracts, grants, and loans. Staff use adopted regulations and policies in determining site eligibility. Unless otherwise noted, actions proposed for this project are specifically eligible pursuant to regulations.

Site Prioritization: The site is rated as an environmental priority of A2. Priority A2 is a suspected 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. In addition, other factors used in making the site a priority for the Program include the ability of the Department to remediate the site with available funds.

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 the Program staff.

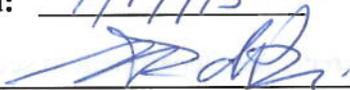
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Support: Staff has not yet received any written support at the time this document was submitted for approval.

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 the Summit Sales, Inc. site cleanup project under the Solid Waste Disposal and Codisposal Site Cleanup Program, subject to receipt of the aforementioned Consent, Authorization & Waiver Document and satisfactory Asset Declaration. In addition, the Department directs staff to prepare and file a Notice of Exemption for the project with the State Clearinghouse.

Dated: 1/14/13


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