

REQUEST FOR APPROVAL

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

From: Wes Mindermann
Supervising Waste Management Engineer
Engineering Support Branch

Reviewed By: Steve Levine, Legal Office

Request Date: May 28, 2013

Decision Subject: **APPROVAL FOR THE PORT OF SACRAMENTO WATERWAY DISPOSAL SITES CLEANUP PROJECT, YOLO COUNTY, SOLID WASTE DISPOSAL AND CODISPOSAL SITE CLEANUP PROGRAM (SOLID WASTE DISPOSAL TRUST FUND, FY 2012/13)**

Action By: June 4, 2013

Summary of Request:

In October 2012, the Department of Resources Recycling and Recovery (CalRecycle) staff was requested by the City of West Sacramento (City) to evaluate up to 41 illegal disposal sites containing abandoned debris and vessels at Port of Sacramento. Staff requests approval of \$400,000 from the Solid Waste Disposal and Codisposal Site Cleanup Program (Program) for a Department-managed cleanup to remove waste materials at these sites at the Port of Sacramento.

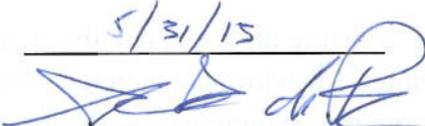
Recommendation:

CalRecycle staff have completed the evaluation and recommend the approval of \$400,000 for this project.

Deputy Director Action:

On the basis of the information and analysis in this Request for Approval and the findings set out herein, I hereby approve this project under the Solid Waste Disposal and Codisposal Site Cleanup Program.

Dated: 5/31/13



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

Background and Findings:

Statutory Authority

Public Resources Code (PRC) Section 48020 et seq. authorizes CalRecycle to expend funds from the Solid Waste Cleanup Trust Fund directly for cleanup, to provide loans to responsible parties who demonstrate the ability to repay, to provide matching grants to public entities for site cleanups, and to provide full grants to public entities for the abatement of illegal disposal sites.

Program Background

The Program addresses the 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.

Abandoned Vessels Background

Abandoned and derelict vessels and related abandoned boating structures are a pervasive environmental and public safety problem in coastal and inland waterways of California. The value of vessels decreases with age while the cost of maintaining the vessel in operating condition and the costs of storing or docking the vessels increase. The result is that vessel owners are sometimes unable to pay or decide not to pay to operate, maintain, and store their vessels. The cost to correctly destroy a vessel is over \$500 for just small vessels and increases significantly for larger commercial vessels. Vessel owners sometimes illegally abandon the vessels by leaving them at berths or docks while failing to pay the storage costs; running the vessels aground on the shores of public waterways; or sinking the vessels in public waterways.

Abandoned and derelict vessels are threats to public health and safety and the environment in communities along California's coastal and inland waterways. Abandoned vessels can impact water quality due to hazardous pollutants they contain, including oil, antifreeze, gasoline, asbestos, anti-fouling paints, heavy metals, PCBs, sewage, etc. In addition, as vessels deteriorate they become sources of debris that washes onto the shore or remain a water hazard interfering with aquatic and marine life. Finally, vessels are typically abandoned on or very near shorelines where the pollutants and debris can impact water quality and people and present attractive nuisances for additional dumping from the shore. Marinas and marine related businesses that have discontinued operations also leave sunken docks, metal pilings, cranes, barges and industrial engines that become illegal solid waste disposal sites.

The California Department of Boating and Waterways, recognizing this issue and the significant fiscal burden imposed on local agencies statewide, created the Abandoned Watercraft Abatement Program (AWAP) in 1997. The AWAP funding comes from registration fees on recreational boats, and the funding is therefore restricted to abatement projects involving recreational boats. Thus, AWAP funds cannot be used to remove abandoned commercial boats, which are

boats/ships registered in California as vessels involved in commercial enterprises, boats documents by the U.S. Coast Guard as commercial boats either from California or other states, and all boats with out of country documentation. While the U.S. Coast Guard does have resources available to deal with vessels that present navigational hazards in major waterways or that are discharging hazardous pollutants to the watercourse presenting an imminent threat to public health and safety and/or the environment, there are very limited resources for removing commercial vessels once they become abandoned and lie derelict along the shoreline or abandoned in a harbor. Likewise, there is no vessel-related funding available to remove abandoned materials related to the marine industries. There is an ongoing series of meetings between federal, state, and local agencies to identify and implement a program and funding source for abatement of commercial marine vessels, but the issue remains unresolved. CalRecycle has in the past successfully partnered with the United States Environmental Protection Agency on a vessel and marine debris pilot project and will be attempting to develop another joint task force with federal partners.

Proposed Pilot Project Scope of Work:

In October 2012, the Program was request by the City of West Sacramento (City) to assist in evaluating 41 separate abandoned pieces of marine debris and/or vessels in the turning basin at the Port of Sacramento. Based upon an initial site evaluation, there are currently 22 former military storage containers, 13 other debris sites, four abandoned vessels, one dilapidated structure, and one former floating boat manufacturing facility. Many of the storage containers and vessels are filled with industrial and commercial products that pose a significant risk to the environment. Two vessels and three storage containers are impacted by a large quantity of miscellaneous stored materials, which also adds to the complexity of the project. Two other structures have known friable asbestos-related materials. Given the depth, storage, accessibility, and types of waste on these structures, the assessment will need to be ongoing to determine the extent and types of hazards present.

To remove all of the debris sites and vessels at the site would cost the Program an estimated \$1.2 million project. The Program has approximately \$400,000 available for projects in the remediation contract for Northern California. To reduce the risk of pollution in a timely manner the project will target the vessels and sites that pose most serious risks to public health and safety and the environment. The project will address the four abandoned vessels the City has secured to the port dock, other storage/waste barges and vessels, one dilapidated structure, and possibly the floating boat manufacture facility if funding is available. Two of these vessels (e.g., 60 foot 1930 era tug boat and 1950 era sailboat) are heavily impacted by large quantities material of and will require multiple days to properly unload. The project will address the remaining vessels and debris sites based on available funds.

Request for Approval

May 28, 2013

Page 4

The City has spent \$84,400 on legal fees to complete the administrative warrant process to inspect and abate all the abandoned vessels and sites in the turning basin. The City has also incurred another \$47,000 on other direct costs (i.e., Port Manager, Police Department, Bursco Tug, patrol boat, and security costs). The Port has also committed the use of its facility to remove other abandoned vessels and debris should the need arise. The Port is currently operating with a structural deficit (approximately \$1,000,000) and is unable to remove the debris. Due to the City's enforcement process, a number of illegally moored vessels have left the port facility, however, the majority of the debris remains.

Cleanup assistance was requested from the Department of Toxic Substances Control (DTSC), U.S. EPA Region IX, and the U.S. Coast Guard. Only the DTSC was able to provide support and funding and has committed up to \$40,000 for the transportation and disposal of hazardous waste, universal wastes, and other regulated materials with the exception of petroleum products (e.g., fuels and oils) from the abandoned vessels at the port.

Site Prioritization:

Because of the location of the vessels in the Sacramento River Deep Water Channel, and the pollution and public safety threat posed by the vessels, the sites are priority category A1. Priority A1 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 1,000 feet.

California Environmental Quality Act (CEQA):

Program staff has reviewed the proposed project and determined that it is categorically exempt per Class 8, Class 21, and Class 30 exemptions (Title 14, California Code of Regulations; §15308: Actions by Regulatory Agencies for Protection of the Environment, §15321: Enforcement Actions by Regulatory Agencies, and §15330: Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances). Compliance with CEQA requirements will be made with a Notice of Exemption filed by the Program staff.

Enforcement Actions and Cost Recovery: Based on discussion with the Department's State and Local Illegal Dumping Enforcement Task Force, abandoned vessels in public waters of the state are a subset of the overall state illegal dumping problem. In 1997 the Board approved a cleanup project under the Program that was completed to remove abandoned vessels impacting Redwood Creek in San Mateo County. In November 2009, the Board (CalRecycle soon thereafter) approved a pilot project under the Program that was completed to remove abandoned vessels impacting Contra Costa County. In December 2010, CalRecycle approved a pilot project under the Program that was completed to remove abandoned vessels impacting Sonoma County.

Request for Approval

May 28, 2013

Page 5

In April 2011, CalRecycle approved a pilot project under the Program that was completed to remove abandoned vessels impacting the Petaluma River. In November 2012, CalRecycle approved a pilot project for a grant under the Program that is currently underway to remove abandoned vessels impacting Richardson's Bay in Marin County.

The Program addresses cleanup of solid waste disposal and codisposal sites, in accordance with Public Resources Code (PRC) Section 48020(2)(b). Under the Integrated Waste Management Act ("IWMA"), a "disposal site" is defined as "the place, location, tract of land, area, or premises in use, intended to be used, or which has been used for the disposal of solid wastes." (PRC Sec. 40122) The deposition of solid waste into waters of the state is addressed in the Fish and Game (F&G) Code, which makes no site specific delineations but rather collectively refers to the "waters of this state" (F&G Code Sections 5650 and 5652). Program staff submits that as the abandoned vessels and the solid wastes contained therein are located at discrete locations (i.e., sites) upon submerged lands, these lands constitute disposal sites under the IWMA. Accordingly, the Department has instituted a series of pilot projects to explore the efficacy of utilizing Program resources for these types of sites. Thus in approving this item, the Department would be furthering its endorsement of this interpretation in these pilot projects and continuing to extend the IWMA's jurisdiction to discrete submerged lands upon which solid waste has been deposited. Such an extension may also have implications on enforcement authority (as well as potential jurisdictional issues with other agencies), in that solid waste local enforcement agencies and/or the Department may be considered amongst the agencies with regulatory responsibility for such lands.

The lead agency for enforcement of state laws pertaining to abandoned vessels is local law enforcement (in this case the City of West Sacramento (City) Police Department) under Sections 510 through 527 of the Harbors and Navigation Code (HNC), as well as City nuisance abatement ordinances. Owners of vessels that are abandoned may be subject to fines and confiscation and salvage or sale by local agencies if not properly removed by the owner. In many cases no responsible parties can be identified through registration or other information. With respect to the illegal disposal sites in this item, the City Police Department has completed the enforcement of the City's nuisance abatement ordinances, and was only able to identify three vessel owners responsible for portions of the disposal. One owner, Dolan David Parker, was responsible for ten of the vessels and has settled with the City with a waiver of remediation cost recovery, and thus these sites will not be part of the Department's project. The other two identified owners, Wiley Edward Umstead and John Stubbe, are apparently indigent, as evidenced by their sworn testimony, under penalty of perjury to the Yolo County Superior Court in criminal contempt proceedings related to this matter, that they not only lacked the wherewithal to remediate the vessels, but further were in such dire financial straits that they could not afford to retain a lawyer for the proceedings, which the Court found sufficient to grant their request for Public Defenders.

Request for Approval

May 28, 2013

Page 6

Thus cost recovery against Messrs. Umstead and Stubbe does not appear practicable. Since these sites are located within public lands (i.e., the waters of the State of California), dedicated and maintained for recreational and ecological purposes for the public benefit, cost recovery will not be pursued against the public agency landowner.

Pursuant to PRC Code Section 48021(c), the City could have applied for a grant from the Department to abate the conditions at these sites; however, the City has requested a Department-managed cleanup in lieu of a grant, in accordance with PRC 48021(b)(2), on the grounds that the City does not have sufficient financial and staff resources to implement this project in a timely manner.

Fiscal Impacts:

The Department-managed project will be performed on a time-and-materials basis under the Program's Northern California remediation contract (DRR10008). The Program's contractor has completed a site visit and preliminary environmental assessment. CalRecycle costs for this project are estimated at \$400,000, including a 15 percent contingency. Actual costs may vary depending on a variety of factors including, but not limited to the quantities and/or types of solid and hazardous materials encountered, structural conditions of the abandoned vessels, tidal issues, the required timeframes for cleanup, and competitive bids from subcontractors. The contract currently has \$400,000 in available funds from the Solid Waste Disposal Trust Fund and is adequately funded to complete the abovementioned project.

Support:

Staff has received written support from the Port of West Sacramento for the project.

Opposition:

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