

PROGRAM DIRECTOR ACTION REQUEST

To: Ted Rauh, Deputy Director
Compliance and Enforcement Division

From: 
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Prepared On: April 26, 2011

Subject: **APPROVAL OF THE ABERNATHY ILLEGAL DISPOSAL SITE,
MENDOCINO COUNTY, SOLID WASTE DISPOSAL AND CODISPOSAL
SITE CLEANUP PROGRAM (SOLID WASTE DISPOSAL TRUST FUND,
FY 2010/11)**

Summary: Department of Resources Recycling and Recovery (Department) staff have completed an evaluation and recommend approval of a Department-managed remediation project at the Abernathy Illegal Disposal Site (IDS) pursuant to the Solid Waste Disposal and Codisposal Site Cleanup Program (Program).

Time Factor: Decision required no later than May 6, 2011.

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.

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 Location/Description: The approximately 2-acre site (Assessor Parcel Numbers 018-350-01 and 018-350-02) is located at 32401 Basin Street in Fort Bragg, which is located in the Noyo Harbor, adjacent to the Noyo River. The owners are Bruce and Jean Abernathy, who reside on the property. Bruce Abernathy, aka Lloyd Bruce Abernathy (Operator) has operated a non-permitted boat resale and salvaging operation for several years, and has collected several boats and boat-related materials on the property. Mendocino County issued a series of Notice of Violation letters to the Operator/Owners beginning in 2003. Based upon repeated failure to comply with these notices, the County issued a Notice and Order to Abate (NOTA) for the property on January 14, 2010. The Notice and Order lists several code enforcement violations, including the storage of solid waste and the operation of an unpermitted boat salvage operation. The Operator/Owners failed to comply with the NOTA by April 1, 2010. On July 19, 2010, Mendocino County requested the Department to consider the property for inclusion into the Program.

The Operator made significant, yet haphazard, efforts to remove materials from the project site in August and September, leaving a considerable amount of debris on the site. As a result, the County obtained from the Superior Court a Temporary Restraining Order issued against the Operator to cease the operation of a salvage yard, the on-site demolition of materials, and any on-site grading. The County then requested last November that the Department perform a winterization project at the site to limit impacts to the water quality in the Noyo River. In response, the Department performed work to consolidate onsite waste materials from the salvage yard area and drainage course, and install erosion control measures to limit the water quality impacts of winter rains to the river. No waste materials were removed from the site. Total Department cost of those operations was \$47,890.95. The Department did not perform a site remediation at that time, but did indicate in its original Director Action Request that it would revisit the matter for applicability and scope of a future remediation project in 2011 should the Operator/Owners continue to fail to address the situation. This now being the case, the County has requested the subject remediation.

Proposed Project: The Program will perform a remediation project to remove the previously consolidated solid waste materials from the salvage yard and any remaining solid waste materials remaining around the site buildings. Erosion control measures will be installed and the site will be hydroseeded. The Operator/Owners have provided voluntary access for the remediation project.

Fiscal Impacts: The Program-managed portion of the project will be performed on a time-and-materials basis, with a preliminary cost estimate of \$165,000. Actual costs may vary depending on a variety of factors including, but not limited to the weather conditions, quantities and/or types of materials encountered, market forces, required timeframes for cleanup, and competitive bids from subcontractors.

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 (DRR10008). The contract currently has \$942,000 in available funds from the Solid Waste Disposal Trust Fund and is adequately funded to complete this project.

Funding Information:

Fiscal Year	Fund Source	Amount Available	Amount to Fund Item	Amount Remaining	Line Item
2010/2011	Solid Waste	\$942,000	\$165,000	\$777,000	Contract

Enforcement Actions and Cost Recovery: As a result of the owner's continued non-compliance with Code Enforcement directives, Mendocino County prepared a NOTA on January 14, 2010. The owners failed to comply with the NOTA by the stipulated April 1, 2010 deadline. Based upon the Operator's haphazard efforts to remove materials from the site, the County has obtained a Temporary Restraining Order issued against the Operator to cease the operation of a salvage yard, the on-site demolition of materials, and any on-site grading.

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, due to the willful and egregious nature of the violations by the Operator, staff recommends that cost recovery be pursued to the fullest extent practicable. However, the Operator/Owners have submitted an asset declaration, under penalty of perjury, reporting that their assets are not substantial and that they thus have insufficient funds to pay themselves or reimburse the Department for the remediation of the site. Based on the foregoing, cost recovery at this juncture will be in the form of the

placement of a lien on the property, under the authority provided in PRC Section 48023.5. Prior to earlier winterization project the County advised the Operator/Owners that should they or the Department subsequently ascertain that there are any material misrepresentations in the declaration, the Department reserved the right to commence Superior Court cost recovery proceedings against them. In further consideration for the Department project, the County has committed to utilize its best efforts to obtain prior to the commencement of this project (by Stipulation or otherwise) a Superior Court Judgment against the Operator in the form of a final and permanent injunction, restraining and enjoining him, either directly or through his family, employees and/or agents, from engaging in or performing any of the following acts: (a) Demolishing or maintaining any equipment, machinery, vehicles, vessels, travel trailers or other materials from the site or the river, without a permit; (b) Operating or maintaining on the property a non-permitted marine vessel salvage yard, auto wrecking yard and/or solid waste disposal site; (c) Storing on the property unauthorized equipment, vehicles (recreational or otherwise) or vessels; (d) Burning any non-permitted materials on site; (e) Storing refuse, garbage, or incinerating refuse or garbage on the property; (f) Operating heaving equipment and/or conducting any grading or drainage activities at the site without a permit; (g) Maintaining any non-permitted or substandard housing on the property; and (h) Storing more than 400 square feet of equipment or machinery on the property. The Judgment would further provide that any violation would result in the Operator being deemed in contempt of the court order and subject to civil and criminal sanctions.

Site Prioritization: Based upon the site's proximity to the Noyo River, it is rated as an environment priority of 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. The nature of the boat demolition debris and its potential to contain boat-related fluids, and the heavily disturbed soil on a site adjacent to the Noyo River poses an immediate threat to water quality. In addition, other factors included in making the site a priority for the Program are the owner's inability and/or unwillingness to promptly and properly remediate the site without assistance and 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). A Notice of Exemption was filed by the Program staff.

Support: Staff received a request for cleanup assistance from the Mendocino County Department of Planning and Building Services, and Mendocino County Counsel's Office.

Opposition: Staff have 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.



Ted Rauh, Deputy Director
Compliance and Enforcement Division

APRIL 27, 2011

Date