

**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:** August 2, 2013

**Decision Subject:** **APPROVAL FOR THE OAKLAND ESTUARY ENHANCEMENT PROJECT, ALAMEDA COUNTY, UNDER THE SOLID WASTE DISPOSAL AND CODISPOSAL SITE CLEANUP PROGRAM (SOLID WASTE DISPOSAL TRUST FUND, FY 2013/14)**

**Action By:** August 9, 2013

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**Summary of Request:**

Staff requests approval of \$1.3 million from the Solid Waste Disposal and Codisposal Site Cleanup Program (Program) for a Department-managed cleanup to remove waste materials at disposal sites in the Oakland Estuary, the authority to enter into a grant with the National Fish and Wildlife Foundation (NFWF) for reimbursement of up to \$650,000 in cleanup costs, and to enter into a Memorandum of Agreement (MOA) with Bay Ship and Yatch Company (BSY) for \$75,000 in mitigation funds and use of the shipyard for vessel demolition.

**Recommendation:**

CalRecycle staff have completed a review of the grant agreement and recommend accepting the \$650,000 NFWF grant and immediately implementing the project using Program remediation contract funding of \$1.3 million dollars. Staff also recommends executing a MOA with BSY to accept the \$75,000 in mitigation funds and use of BSY facility to dismantle the two former vessels.

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**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.

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

Dated: 8/7/13

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### **Background and Findings:**

#### Statutory Authority

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. 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.

#### 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, barges, and other industrial equipment. 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 vessels and abandoned industrial marine structures and marine debris are threats to public health and safety and the environment in communities along California's coastal and inland waterways. These abandoned vessels, structures, and marine debris can impact water quality due to hazardous pollutants present, including oil, antifreeze, gasoline, asbestos, anti-fouling paints, heavy metals, PCBs, sewage, etc. In addition, as vessels deteriorate they become additional 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 documented by the U.S. Coast Guard as commercial boats either from California or other states, all boats with out of country documentation, industrial marine equipment such as barges, cranes, or marine debris. While the U.S. Coast Guard (USCG) and the U.S. Army Corps of Engineers (USACE) have some resources to deal with vessels and marine debris that present navigational hazards in major waterways or that are discharging hazardous pollutants to the watercourse

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presenting an imminent threat to public health and safety and/or the environment, their resources are limited. Current federal funding for removing vessels once they become abandoned and lie derelict along the shoreline or abandoned in a harbor is not sufficient. Moreover, notwithstanding the aforementioned State AWAP funding for abatement of recreational boats, over the course of this pilot program it has become increasingly evident that parts and pieces of former recreational vessels occasionally become a part of our projects, particularly when a removal action uncovers such debris either under or adjacent to the commercial vessel and/or debris which are the subject of the action and are accordingly removed as well. 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 U.S. Environmental Protection Agency (USEPA) on a vessel and marine debris pilot project and also be developing another joint task force with federal partners, USEPA, USCG, and USACE in the Oakland Estuary.

### **Proposed Pilot Project Scope of Work:**

In late 2011 CalRecycle staff was approached by USEPA about submitting a grant for the removal of marine debris in the San Francisco Bay Area based on past successful cleanup projects on the Petaluma and Sacramento Rivers. After reviewing the grant requirements, staff determined that the USEPA funds were not sufficient and too restrictive to allow for a substantial project to be completed; however, USEPA forwarded an additional grant program managed by the NFWF that derived funding from the settlement for the 2011 Cosco Busan spill. During this time, CalRecycle staff was also contacted by City of Oakland Police Department (OPD) and requested cleanup assistance in the Oakland Estuary and surrounding areas. Since this grant was focused on mitigating impacts in the eastern San Francisco Bay, staff focused in on the Oakland Estuary with OPD. After a preliminary site visit, staff determined the estuary and surrounding area contained enough solid waste in the form of disposal sites consisting of marine debris, abandoned vessels and docks, industrial marine equipment, and other navigational hazards to develop an initial grant request for the NFWF's 2012 Cosco Busan Oils Spill Settlement - Recreational Use Grant Program.

In April 2012, staff submitted an initial grant request for a 50 percent funding match by NFWF for the proposed \$1.3 million dollar cleanup. The proposal concept was to remove disposal sites consisting of marine debris, abandoned vessels, old piers and docks, and navigational hazards from the estuary to provide health and safety and visual enhancements to the public and the estuary environment. The long-term outcome of the project was to increase the level of safe recreational opportunities by the public by removing this debris and navigational hazards and to return more of the estuary to a beneficial use. The enhancement project will target the inlets of the Oakland Middle and Inner Harbors south to the San Leandro Bay and end at the Bay Farm Island Bridge. In September 2012, staff was notified that NFWF received 78 pre-proposals requesting a total of \$34.5 million and only 40 projects were asked for full proposals. CalRecycle's Oakland Estuary Enhancement Project was one of the projects asked to submit a full proposal. In April 2013 CalRecycle was awarded a \$650,000 grant from the National Fish and Wildlife Foundation.

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Additionally, CalRecycle staff has been diligently working with local, state, and federal agencies concerning the permitting and mitigation of the solid waste in the estuary. On April 18, 2013, the San Francisco Bay Conservation and Development Commission (BCDC) was also able to contribute to the estuary project by approving a dry dock development for Bay Ship and Yatch Company (BSY) in the Oakland Estuary. As part of the BSY project, the BCDC included impacts mitigation that obligated BSY to provide \$75,000 in funds to CalRecycle's cleanup project in the Oakland Estuary. Specifically, these funds and in-kind services would be directed to remove a derelict dock and marine debris at Union Point Park and two derelict vessels. In addition to funding, BSY would make its facilities available for the salvaging and dismantling of two derelict vessels that are submerged offshore of Union Point Park. The use of these funds would be separate from the NFWF grant and tracked separately.

CalRecycle staff has also been working with USCG, USACE, and USEPA regarding additional resources, permits and hazardous waste issues. Based on past removals, CalRecycle requested its federal partners perform a hazardous waste assessment on four derelict vessels. On May 31, 2013, USEPA notified CalRecycle staff that the results were positive for PCBs, heavy metals, and asbestos on the former vessels and agreed to further assist CalRecycle in removing these vessels.

The proposed project includes the removal of disposal sites, including up to eighteen sites containing illegal marine debris sites, thirty seven sites containing sunken vessels, two sites containing sunken barges, three sites containing abandoned docks, and 20 to 25 sites containing derelict vessels illegally moored vessels in the estuary, which include recreational as well as commercial vessels. Cleanup assistance was requested from the USACE, USEPA, and the USCG to investigate the abandoned vessels for, remove, and dispose hazardous waste, universal wastes, and other regulated wastes, including petroleum products. All three other federal agencies have committed to assist CalRecycle in this project. Their involvement will depend on the type and amount of hazardous materials encountered. Staff has worked with OPD and its stakeholders to develop a removal priority list and will implement each site based on the environmental impact, navigational hazard, and cost effectiveness of each site. Additionally, CalRecycle has partnered with the State Lands Commission and the City of Oakland District Attorney's Office to assist with the enforcement on the illegally moored derelict vessels in the estuary and cost recovery issues.

### **Site Prioritization:**

Because of the location of the vessels in the Oakland Estuary 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 disposal sites consisting of 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 sites consisting of abandoned vessels impacting Contra Costa County. In December 2010, CalRecycle approved a pilot project under the Program that was completed to remove sites consisting of abandoned vessels impacting Sonoma County. In April 2011, CalRecycle approved a pilot project under the Program that was completed to remove sites consisting of 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 sites consisting of abandoned vessels impacting Richardson's Bay in Marin County. In May 2013 CalRecycle approved a pilot project that is currently underway to remove sites consisting of abandoned debris and vessels impacting the Port of Sacramento in the City of West Sacramento.

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.

Typically the lead agency for enforcement of state laws pertaining to abandoned vessels is local law enforcement under Sections 510 through 527 of the Harbors and Navigation Code (HNC). However, for this project, CalRecycle will use both the Oakland Police Department and the State Lands Commission to remove vessels from areas under their respective jurisdictions that pose a significant threat to the public health, safety, or welfare or to sensitive habitat, wildlife, or water quality or that constitutes a public nuisance. 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. To date, two vessels and one barge have been identified by the USCG. From discussions with the USCG and USEPA, the owners do not appear to have the assets to or the ability to remove the debris. Overall the project is targeting 7 to 15 recreational vessels out of 55 to 65 sites. The State Lands Commission and/or the Oakland Police Department will be notifying the 7 to 15 recreational vessel owners they are not properly moored in the estuary and are trespassing on State lands or public waterways. Each owner will have 35 days to move out of the estuary or find a legal mooring. Vessels that fail to comply will be seized and CalRecycle will remove the vessel for proper disposal.

In many cases no responsible parties can be identified through registration or other information. 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.

Should any substantial cost be recovered through enforcement proceedings, the agencies will confer and attempt to equitably apportion the collected funds.

**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. The NFWF grant is solely based on reimbursement of expenditures. CalRecycle's match for this project is \$650,000, including a 15 percent contingency. CalRecycle's remediation contract for Northern California currently has sufficient funds to cover the estimated \$1.3 million project cost. 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.

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### **Support:**

Staff has received many written letter of support for the project. Letters of support include:

1. Oakland Police Department
2. Alameda Marina
3. San Francisco Baykeeper
4. East Bay Regional Park District
5. County of Alameda, Board of Supervisors, District 3
6. Department of Boating and Waterways
7. Port of Oakland
8. San Francisco Bay Conservation and Development Commission Coastal Conservancy
9. San Francisco Bay Regional Water Quality Control Board
10. Local Residences

The project has also received kind services and support from the following agencies:

1. State Lands Commission
2. USEPA
3. USCG
4. USACE
5. California Department of Fish and Wildlife
6. Oakland Police Department
7. Alameda County Sheriff's Office
8. East Bay Regional Park District
9. City of Alameda Police Department
10. Oakland Attorney's Office

### **Opposition:**

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

