

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: July 22, 2013

Decision Subject: **APPROVAL OF THE FORTUNA DUMP REMEDIATION PROJECT, FACILITY NO. 12-AA-0007, HUMBOLDT COUNTY, SOLID WASTE DISPOSAL AND CODISPOSAL SITE CLEANUP PROGRAM (SOLID WASTE DISPOSAL TRUST FUND, FY 2012/2013)**

Action By: July 26, 2013

Summary of Request:

The Humboldt County Division of Environmental Health [Local Enforcement Agency (LEA)] requested the Department's assistance for the Department-managed remediation of the Fortuna Dump (Site). This request is for the approval of the remediation of the site at an estimated cost of \$954,000.

Recommendation:

Department staff have completed the evaluation and recommend the approval of the Department-managed remediation of the Fortuna Dump.

Deputy Director Action:

The Department has adopted a Mitigated Negative Declaration for the Fortuna Dump Remediation Project, Humboldt County (SCH #2013032064) and has adopted mitigation measures, a Mitigation Monitoring and Reporting Program. On the basis of the information and analysis in this Request for Action, and supported by the aforementioned California Environmental Quality Act (CEQA) documents, the Department hereby approves this project, as described in the MND, under the Solid Waste Disposal and Codisposal Site Cleanup Program.



Mark De Bie
Deputy Director

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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): The Fortuna Dump Remediation Project is considered to be a project under CEQA, which requires the preparation and certification/adoption of an environmental document whenever a project requires discretionary approval by a public agency.

The Department, acting as the project Lead Agency for the purposes of CEQA, caused to be prepared an Initial Study/Mitigated Negative Declaration (IS/MND). All environmental effects analyzed were deemed “Less than Significant or No Impact” or “Less Than Significant with Mitigation.” “Less Than Significant with Mitigation” applies in specific cases where the incorporation of mitigation measures reduces an effect from a potentially significant impact to a less than significant impact.

Pursuant to CEQA Guidelines, the IS/MND was circulated for review through the State Clearinghouse and a public notice was placed in the project site area local paper (*The Times-Standard*) with copies at the Humboldt County Library at the Fortuna Branch Library located at 753 14th Street in Fortuna and the Humboldt County Library Main Library located at 1313 3rd Street in Eureka. The comment period ran from March 26, 2013, through April 24, 2013, and no comments were received. The adoption of the MND is being requested in a separate Request for Approval concurrent with this project Request for Approval.

Project Scope:

Site Location/Description: The Fortuna Dump site is owned by Mr. Patrick Thompson located at 4498 Mill Street [assessor’s parcel number (APN) 202-321-13] in Fortuna. According to LEA records, the site operated as a burn dump from the late-1950s to 1972. From 1972 to 1987, the site was used as a solid waste transfer station. From 1959 to 1972, the site was operated by Lilyann Sprout (aka Lillian Sprout), doing business as (dba) Eel River Garbage Company, and was used as a burn dump for municipal solid waste collection service in the greater Fortuna area. Wastes were deposited near the top of the slope, burned for volume reduction and then pushed down onto the side of the slope towards Mill Creek. In 1972, Lilyann Sprout dba Eel River Garbage Company ceased operating the site as a burn dump and the site became a transfer station

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for the Table Bluff Sanitary Landfill (County Central Landfill Disposal Site). Trucks brought waste to a concrete pad and dumped it through a chute into 55 CY bins located below. The bins were removed from the site and taken to the landfill daily. Activity ceased at the project site as of May 1, 1987. At that time, Lilyann Sprout sold the assets of the Eel River Garbage Company, which recommenced operations under the name Eel River Disposal Company, Inc. Efforts to locate Ms. Sprout have revealed that a Lilyann Sprout of Fortuna passed away on March 30, 1996.

Currently, it is estimated that approximately 20,000 cubic yards (CY) of waste is located within the project site. The dump area is on a steep south and southwest facing slope that extends downwards towards Mill Creek which runs along the southwestern boundary of the parcel. A single-lane paved road leading northwest from the property is the only access driveway that connects to Mill Street. Elevations at the site range from approximately 300 feet above sea level at the southwestern edge of the property near Mill Creek to approximately 500 feet above sea level at the northwestern edge of the property along a ridgeline. The dump area contains scattered pieces of debris and refuse as surficial wastes, primarily non-combustible glass, metal, pottery, and burn ash. There are also scattered household refrigerators, washing machines, tires, and car bodies along the slope.

Enforcement Actions:

Since the time of ownership under Mr. Thompson, numerous violations and areas of concern have been cited on LEA inspection reports for site security, site maintenance, scavenging, salvaging and storage of solid waste, hazardous waste management, final cover, grading, erosion/drainage control, and burning garbage. On June 2000 and May 1, 2008, two separate Notices and Orders were issued requiring Mr. Thompson to bring the site into compliance with State Minimum Standards. However, Mr. Thompson has indicated that he is unable to perform a timely remediation, as he has nominal liquid assets.

A Notice of Violation and Schedule of Compliance was issued to Mr. Thompson by the Humboldt County Certified United Program Agency in April 2004 for a violation of California Hazardous waste regulation not related to the burn dump on the site.

The LEA has observed renewed disturbance of the cover in recent years, and suspected that Mr. Thompson had resumed his earlier activity of scavenging for bottles, glass, etc., in the waste. At a meeting on June 26, 2013, Mr. Thompson denied the allegations of further scavenging and suspected that trespassers he has observed on his property were disturbing the site. Nevertheless, Mr. Thompson voluntarily accepted from the LEA service of a new Notice and Order requiring him to immediately cease and desist of all excavation, trenching, scavenging, and collection of bottles at the site; all receipt of solid waste at the property; and to refrain from disturbing the cap after remediation.

Proposed Remediation Project: The site is approximately nine acres with the inactive dump area covering 5.6 acres. The project proposes regrading the 5.6-acre burn dump area and relocating some existing waste dump material to outside of the current burn dump footprint to improve the

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burn dump's underlying slope stability. The project impact area would be capped with up to two-feet of soil. In addition, debris that is located adjacent to Mill Creek would be redistributed to other areas of the dump area to create a 30-foot buffer between the edge of the capped waste materials and Mill Creek. A new surface drainage pattern would be created by diverting the flow of storm water to the perimeter of the soil cap. In addition, two soil berms and gabion retaining walls would be constructed to further stabilize the soil cap located nearest to the creek. Upon placement of the soil cap, a vegetative cover would be established to help limit erosion of the new cap.

Fiscal Impacts:

Cost Estimate: The Solid Waste Disposal and Codisposal Site Cleanup Program's (Program) contractor has conducted a site visit with Program staff and developed a work plan with a preliminary cost estimate of \$954,000. 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: The Department-managed project will be performed on a time-and-materials basis under the Program's Northern California remediation contract (number DRR12034), which derives its funding from previously encumbered funds from the Solid Waste Disposal Trust Fund. The contract currently has approximately \$2.8 million in available funds from the Solid Waste Disposal Trust Fund and is adequately funded to complete this project.

Cost Recovery: Public Resources Code Section 48023 directs the Department to seek reimbursement for monies expended under the Program to the extent possible. Expended funds may be recoverable from the property owners and other responsible parties in a civil action brought by the Department [Public Resources Code Section 48023(c)] and/or by imposing a lien upon the real property owned by the property owners that is subject to the remedial action [Public Resources Code Section 48023.5(a)]. As the operator/owner during the time of deposition of waste (Lilyann Sprout, aka Lillian Sprout) is apparently deceased, the remaining predominant responsible party is the current owner, Patrick Thompson. Where the responsible party is cooperative and can establish through asset declarations and/or other means that they have nominal income/assets and are thus unable to conduct a timely remediation, the Department in its discretion may limit cost recovery to the imposition of a statutory lien on the remediated parcel. Here Mr. Thompson has been cooperative and has demonstrated through an asset declaration dated April 15, 2009, that he has nominal income/liquid assets, but does have equity in two other properties. Based upon appraisals conducted in or about August of 2009, it appears that this equity value was estimated at the time to be approximately \$285,000. However, Department Staff has determined that there are unusual circumstances in this case, as well as logistical and site management issues that warrant consideration of limiting cost recovery to a lien on the remediated parcel (which apparently even after remediation has little value), in exchange for certain non-monetary consideration from Mr. Thompson. These circumstances and

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issues include the difficulties in dealing with an adjoining property owner, Mr. Sean O'day, who had a small "spillover" portion of the solid waste footprint on his property. Thus Department Staff proposed that an offer be made to Mr. Thompson, where the Department would limit cost recovery to a lien on the remediated parcel in exchange for him: (a) consenting to a lot line adjustment adding that portion of the adjoining property containing the "spillover" waste to his parcel, thus simplifying responsible party and post-remediation maintenance issues; (b) providing full cooperation and consent to the Department's numerous investigations, geologic testing, design evaluations, work plans etc. for this complex remediation project; (c) committing to work with the Department in better securing the site post-remediation; and (d) accepting full responsibility for all post-remediation maintenance on the entirety of the footprint of the site. The proposal was deemed by Legal Office Management to be within Department Staff's discretion re pursuing cost recovery to the extent practicable, and the offer was made to Mr. Thompson on February 9, 2011, and accepted by him shortly thereafter. The lot line adjustment has been or is nearing full consummation and Mr. Thompson has been fully cooperative in providing access for the Department's numerous geologic testing, design evaluations, work plans etc. over the past two years since the agreement.

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.

