

**WASTE EVALUATION & ENFORCEMENT BRANCH CHIEF
ACTION REQUEST**

To: Lorraine Van Kekerix, Branch Chief
Waste Evaluation and Enforcement Branch

From: 
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Solid Waste Enforcement Section

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Request Date: May 26, 2011

Action By: June 1, 2011

Decision Subject: Consideration of an Extension to the Final Compliance Schedule Due Date for a Facility included on the Inventory of Facilities that Violate State Minimum Standards (Inventory), Benton Crossing Landfill (26-AA-0004)

SUMMARY

On February 27, 2009, the facility was placed on the Inventory for ongoing violations of 27 CCR, Section 20921 – Gas Monitoring and Control. In response, the Mono County LEA issued a Compliance Schedule to the operator, with a final compliance date of November 27, 2009. The operator was unable to meet the timeframes outlined in the original compliance schedule, in part due to the landowner not approving the operator’s plans to remediate the landfill gas violation. The LEA submitted a letter, dated February 24, 2010 notifying CalRecycle that the LEA had extended the compliance schedule timeframes for an additional year, to February 27, 2011. In response to CalRecycle’s assistance, on April 19, 2010 the LEA issued a revised Compliance Schedule to the operator and the owner with the final compliance due date of February 27, 2011.

Because the ongoing violation for gas monitoring and control is related to waste discovered outside of the permitted disposal footprint of the facility, the operator is seeking to revise the permit and related lease agreement so that they can install a gas monitoring well in a new compliance point, outside of the waste. Although several of the steps outlined in the compliance schedule were completed, there were unexpected delays in mapping the waste and in revising the facility’s permit and related lease agreement. The owner and operator are seeking an additional year in order to complete all of the steps necessary to revise the permit, install a new gas monitor well, and take all steps necessary to bring the facility back in to compliance.

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The LEA is working with the owner and the operator to issue a stipulated Notice and Order, with associated penalties should the owner and operator fail to meet specific due dates in the revised compliance schedule.

OPTIONS

1. Approve the one year extension for the final compliance due date to February 27, 2012.
2. Conditionally approve the extension for six months, with the option to extend the compliance due date for an additional six months, if the owner and operator are adequately meeting a schedule as outlined in a compliance schedule.
3. Deny the extension to the final compliance due date. Direct the LEA to take specific further enforcement action.

ANALYSIS AND FINDINGS

Background

The Benton Crossing Landfill (26-AA-0004) was placed on the Inventory on February 27, 2009. Per 14 CCR, Section 18365, the LEA is required to issue a compliance schedule with a final compliance due date within one year from the date of the letter placing the facility on the Inventory. The enforcement agency may issue a compliance schedule for more than one year but not to exceed two years, after informing the executive director in writing. A one-year extension beyond two years may be made prior to the expiration of the two-year period upon approval by the executive director, or his or her designee.

In 2008, the facility installed perimeter gas monitoring wells to comply with requirements of 27 CCR, Section 20921. After installation, the facility discovered elevated levels of methane at perimeter gas monitoring wells GW-6 and GW-7. The facility hired a consultant, SRK Consulting to investigate the elevated gas levels. The consultant provided a Report of Findings, dated February 20, 2009, in which they reported that GW-7 was placed in waste that extends beyond the boundary of the facility's permitted waste footprint.

As a result of the Report of Findings from the consultant, the operator conducted trenching to discover the actual boundary of the waste. It was discovered that the waste extended not only beyond the permitted waste footprint but well beyond the facility's permitted boundary. The operator consulted with the Regional Water Quality Control Board (RWQCB) to determine if the waste would need to be moved or if it could remain in place. The RWQCB determined, since the facility is an unlined landfill and disturbing the waste has the potential to cause more harm to the environment than leaving it in place, the waste may be left where it is currently buried. To obtain compliance the operator decided that they would amend their permit to include the newly discovered waste within the permitted waste footprint and move GW-7 to a location near the new proposed facility boundary.

On April 10, 2009, the LEA issued the operator a compliance schedule requiring the operator to take the steps necessary to amend the permit and bring the facility into compliance by November 27, 2009. The operator was unable to meet the timelines specified in the compliance schedule due to coordination challenges with the property owner, Los Angeles Department of Water and Power (LADWP). Specifically the owner would not sign the permit revision application form, nor would they extend the expired lease unless certain conditions were met.

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Based on this, it was determined that the owner, LADWP, is a critical partner in bringing the facility into compliance and that they need to be involved in the compliance schedule process. As a result, the LEA facilitated monthly meetings involving the LEA, the LADWP, the operator (Mono County Public Works Department), and CalRecycle staff. The LEA consulted with these parties in developing and issuing a second compliance schedule to the owner and the operator, dated April 19, 2010, with a final compliance date of February 27, 2011.

Part of the operator's proposed solution to the ongoing violation involves a revised solid waste facility permit and an associated new lease agreement with the owner. The owner demanded that the operator conduct investigations by trenching around the entire permitted waste footprint to confirm the actual waste footprint before they would agree to sign a new lease agreement and revised permit application. The owner and operator completed two out of twelve steps in the April 2010 Compliance Schedule: LADWP identified issues that need to be resolved for the owner to enter into a new lease agreement for the facility, and the operator submitted a potholing plan for the owner's approval. However, several delays in conducting the required trenching around the perimeter of the facility's disposal footprint occurred by both the owner and the operator including failure of the owner to approve the potholing plan or submit a list of inadequacies to the potholing plan that needed to be addressed before implementation. The delays resulted in the facility operator not completing all of the trenching and mapping of the waste footprint before the onset of severe weather and snow. This led to further delays and it was not possible for the owner and operator to meet all of the Compliance Schedule tasks including: implementation of the potholing plan, initiation of the required CEQA review for the project, submittal of a draft lease agreement, submittal of a draft permit application package, and the development and approval of the final lease agreement and permit application package by the compliance due date.

Because the owner and operator were not able to achieve compliance within the timeframe of the current compliance schedule, the LEA considered increasing the enforcement by issuing a notice and order (N&O). After discussions with the owner's Legal counsel and the operator, the LEA consented to revise the compliance schedule rather than issuing a N&O if both the owner and the operator submit letters of commitment to comply with the compliance schedule to complete the steps necessary to bring the facility back into compliance. The LEA received signed commitment letters from the facility owner and the operator on May 6, 2011, and May 9, 2011 respectively.

If the owner and/or operator fail to achieve the schedule included in a new updated compliance schedule, the LEA is prepared to issue a N&O to the owner and/or the operator, as appropriate, with associated penalties.

Due to the uncertainty related to the next steps the owner and the operator were willing to take after the April 19, 2010 Compliance Schedule expired, and ongoing negotiations between the LEA, the operator and the owner regarding the appropriate level of enforcement, CalRecycle staff postponed recommending approval of the extension request related to the facility's inclusion on the Inventory. With the written commitment from both the facility owner and the operator and the progress the LEA has made in updating the compliance schedule, CalRecycle staff are confident in their recommendation.

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FINDINGS:

The owner and operator have made some progress in bringing the facility back into compliance. However, they continue to fail to meet specific timelines. Some of the failure stems from difficulty in coordination and communication between the owner and the operator and the high turnover of responsible staff at LADWP. Some of the delays were due to the operator's limited resources and difficulty in bringing equipment to the facility to conduct the needed work, and some delays were due to inclement weather in the area.

The LEA discussed the possibility of issuing a stipulated N&O to the owner and the operator of the facility. After discussions on the subject, the owner and operator agreed to submit letters of commitment to comply with a compliance schedule if the LEA updated the compliance schedule, rather than issuing a N&O. The LEA considered this commitment a good faith effort to reach compliance. The LEA is currently in the process of updating the facility's compliance schedule.

RECOMMENDATION

Although the owner and the operator have made some progress toward achieving compliance, they have not demonstrated an ability to work together consistently to achieve timely compliance. Therefore, CalRecycle staff recommend that the facility be conditionally granted a six month extension rather than the requested twelve months. If at the end of six months the owner and operator of the facility are meeting the compliance deadlines, as outlined in an updated compliance schedule, CalRecycle staff recommend that the facility owner and operator be granted an additional six months. If the owner and operator are not making diligent efforts to meet the compliance deadlines, as outlined in a revised compliance schedule, staff recommends that the additional six months not be granted unless the LEA pursues increased enforcement action which include a penalty for non compliance.

BRANCH CHIEF ACTION:

On the basis of the information in this Request for Action, I hereby issue, pursuant to 14 CCR, Section 18365(b), approval of a six month extension to the owner and operator of the Benton Crossing Landfill (26-AA-0004) to August 27, 2011. On or before the end of six months, the LEA may request an additional six months on behalf of the owner and operator of the facility. If both the owner and operator are making diligent progress in meeting the compliance deadlines incorporated in a revised compliance schedule I may approve an additional six month extension to February 27, 2012.

Dated: *June 1, 2011*

Lorraine Van Kekerix
Lorraine Van Kekerix

Branch Chief

Waste Evaluation and Enforcement Branch