



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

1001 I STREET, SACRAMENTO, CALIFORNIA 95814 • WWW.CALRECYCLE.CA.GOV • (916) 322-4027
P.O. BOX 4025, SACRAMENTO, CALIFORNIA 95812

February 19, 2016

Ms. Kathryn Cross, Chair, EAC
Orange County Health Care Agency
Environmental Health Division
1241 East Dyer Road, Suite 120
Santa Ana, CA 92705-5611

Subject: Response to Enforcement Agency Council Resolution 2015-02 – Enforcement Agency Notification (EAN) Sites

Dear Ms. Cross,

I am writing in response to Enforcement Advisory Council (EAC) Resolution 2015-02, received December 16, 2015, which was approved at the December 9, 2015 EAC meeting. The resolution identifies problems with EA Notification operations, and offers five options for CalRecycle and the CCDEH Solid Waste Policy Committee to consider.

CalRecycle is supportive of option 5 and has begun working on developing specific guidance on enforcement relative to operations. The guidance will be included in one location on the CalRecycle website and will include a notice and order template. We will keep the EAC informed on our progress.

Regarding the other options please see the following responses. For options 1, 2 and 4, neither the resolution nor the inspection/enforcement record provide a clear justification for requiring an LEA review and approval process to be included in regulations, as well as for requiring some of the activities currently under the EA Notification tier to be issued permits. Title 14 of the California Code of Regulations (14 CCR), section 18103 (d), allows the LEA to inspect an operation to verify that the operation is being conducted in a manner that qualifies for the enforcement agency notification tier and inspect to verify that the operation is in compliance with the minimum standards. If the LEA finds the site noncompliant, the LEA can issue a Notice and Order to require the operator to cease and desist or correct the violations. The enforcement guidance will provide additional assistance to LEAs to address noncompliant operations. If a local jurisdiction finds that review and approval, as well as a permit is of benefit, then the jurisdiction can develop ordinances consistent with the Integrated Waste Management Act (IWMA, Public Resources Code Section 40000 *et seq.*). CalRecycle can assist local jurisdictions developing ordinances to help ensure that they are consistent with the IWMA.

Regarding option 3, operations with the same types and amounts of material have been established throughout the State. Based on the inspection/enforcement record, very few of these operations have compliance issues associated with the amount of material on site. The example used to support this option regards fire risk. This is a specific example of how issues at operations could be addressed by other regulatory entities. The design and operation standards in Title 14 help to reduce factors that may contribute to the threat of fire, but ultimately the direct legal responsibility to ensure that an activity does not pose a threat of fire is with the local fire authority.



The fire authority can require limits on the amount of material allowed at a site. Likewise the LEA has a role in addressing some aspects of issues associated with water and air quality, traffic, noise, and nuisances but the lead role for these issues are with other regulatory entities.

The following are general comments regarding the information in the "Introduction" section of the resolution. The IWMA and associated regulations both provide a definitional distinction between solid waste "facilities" and solid waste "operations." The use of these terms consistent with the definitions in discussing issues would help ensure clarity regarding the issues. The resolution references "risks and impacts associated with solid waste operations, including air, surface water, groundwater, fire, litter, vectors, traffic, noise, odors, dust and general nuisance." Most of these areas of risk and impact are not supported by the record of inspection reports and documented enforcement actions. If the issues exist, and they do not fall directly within the enforcement of state minimum standards or other provisions of the IWMA, they could be addressed by the appropriate authorities with primary jurisdiction such as the local fire authority, the state and regional water boards, and the state and local air quality agencies. The LEA cannot extend its authority over issues outside its statutory jurisdiction. When taken in the context of the multiple local, regional, and state entities that have a regulatory role over the types of activities associated with operations in the EA Notification tier, it has been determined that the appropriate level of LEA oversight is to ensure that operations comply with specifically enumerated state minimum design and operational requirements in the IWMA.

Relative to the two key problems, it is not clear how the ability to revoke or suspend a permit would result in better compliance with design and operational standards as opposed to other enforcement mechanisms (such as Notice and Order, including requiring the operator to cease and desist) already available to LEAs in dealing with EA Notification operations that are violating state minimum standards or are exceeding limitations. The record includes very few examples of permit revocations or suspensions being used to gain compliance at permitted sites. It is expected that all operations are in areas that allow the specific activities to be conducted at the operations. If special conditions are needed to have the use be compliant with siting requirements, this would be done through a local land use authority. The level of review to make a determination of compatible use, or a conditional use, would address most, if not all, of the issues that may result from the operations. In most jurisdictions, the local approval process allows for review and comment to identify issues and suggest methods to reduce the issues. It is not clear from what is provided in the resolution why this process is not adequate.

We look forward to continuing to work with the EAC on this and other matters. Feel free to contact me at (916) 341-6331 with any questions.

Sincerely,



Mark de Bie, Deputy Director
Waste Permitting, Compliance & Mitigation Division
Department of Resource Recycling and Recovery (CalRecycle)

cc: EAC Members
Christine Sosko, Chair, CCDEH Solid Waste Policy Committee