

# Enforcement Advisory Council

## Solid Waste Management Through Partnership

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December 16, 2015

Mark de Bie, Deputy Director  
Waste Management, Compliance, and Mitigation Division  
California Department of Resources, Recycling and Recovery (CalRecycle)

Christine Sosko, Chair  
California Conference of Directors of Environmental Health  
Solid Waste Policy Committee (CCDEH-SWPC)

Subject: Enforcement Advisory Council Resolution 2015-002 - Enforcement Agency  
Notification (EAN) Sites

Dear Mr. de Bie and Ms. Sosko:

On December 9, 2015, the Enforcement Advisory Council (EAC) adopted Resolution 2015-002 contained herein which presents options to CCDEH- SWPC and CalRecycle for consideration regarding Enforcement Agency Notification (EAN) sites.

### Introduction

The California Code of Regulations, Title 14, §18103 describes a category of solid waste operations known as Enforcement Agency Notification (EAN) sites. Unlike other solid waste operations requiring a full, standardized, or registration tier permit, an EAN operation is not required to have a permit, nor is the operation subject to review and approval by the Local Enforcement Agency (LEA) prior to commencing operations. The operator of an EAN business merely has to file a written notice with the LEA pursuant to §18103.1 and can then immediately commence operations. The LEA is responsible for inspecting and enforcing the state minimum solid waste standards at these sites.

The types of solid waste operations that fall within the EAN regulatory tier are specified in Title 14, Chapters 3 and 3.1. EAN businesses are allowed to handle significant volumes of a wide variety of solid waste materials, with all the inherent risks and impacts associated with solid waste operations, including air, surface water, groundwater, fire, litter, vectors, traffic, noise, odors, dust, and general nuisance; and, indeed, LEAs have found these very problems associated with EAN sites. The goal of diverting larger amounts of solid waste from landfill disposal will

likely increase the number of these facilities in California, which may amplify their impact on public health and the environment if not subject to a more effective review and approval process.

There are two key problems with the fact that an operating permit and review and approval prior to commencing operations are not required:

1. One of the enforcement tools available to an LEA when dealing with other types of solid waste operations if these are found non-compliant with the state minimum solid waste standards is permit revocation or suspension. This enforcement option is not available when dealing with EAN operations.
2. For other types of solid waste sites, the business is required to obtain an LEA review and approval prior to commencing operations. This review and approval process is essential to ensuring that a solid waste operation will comply with the applicable standards and does not result in hazards to public health, safety, or the environment. Oftentimes, potential problems are identified and prevented during this review process. A critically important public health principle is that it is always preferable to prevent problems rather than react and deal with them after the fact. The fact that EAN businesses can commence operations without a review and approval contravenes this principle.

### Options to Consider

The EAC has identified several options that CalRecycle and the CCDEH-SWPC may wish to consider:

1. Revision to State Regulations – Rather than require an EAN permit, require a review and approval process prior to commencing operations; i.e. the LEA gives an official affirmation that the proposed operation is consistent with the state minimum solid waste standards.

Based on the regulatory oversight afforded other solid waste facilities, it is reasonable to subject EAN sites to comparable scrutiny inherent in a review and approval process prior to the business starting operations. LEAs are typically part of a larger Environmental Health organization, and as such they subject a myriad of other types of businesses to a formal review and approval process prior these businesses commencing operation (e.g., food facilities, public pools, body art businesses, non-EAN solid waste facilities, etc.).

2. Revision to State Regulations – Require an EAN permit for some types of operations.

Require at least certain types of EAN sites to obtain and maintain a permit. Assuming the current categories of operations in the EAN group remain unchanged relative to the amounts and types of materials handled, these could be evaluated to determine which

warrant a permit. For example, those operations handling organic materials pose a greater fire hazard than a site that only processes concrete or asphalt, and therefore may justify a permit requirement.

3. Revision to State Regulations – Lower amounts of material allowed under the EAN tier.

The fire risk of EAN operations handling combustible materials generally increases as the amounts of materials handled and stored increases. Therefore, the maximum amount of material allowed for some of these EAN classifications could be lowered.

4. Local ordinances

The California Public Resources Code (PRC) §40053 would not prevent a local governing body from adopting a local health permit requirement for EAN businesses, including a process to review and approve prior to commencing operations, if the local ordinance was at least as strict as the State standards. Typically, local health permits are subject to revocation or suspension for cause. A model ordinance and/or repository of local ordinances could serve as template for a jurisdiction to use if they desired to adopt its own local ordinance.

It should be noted that the adoption of a local ordinance is commonly a very difficult process; additionally, a local ordinance adopted by a county LEA would not apply in the cities it oversees unless they adopted it as part of their municipal code.

5. Develop enforcement templates for LEAs to use

Absent any changes to the current regulations, it would helpful if CalRecycle develops Notice & Order templates and/or advisories for use by LEAs when they find an EAN site that has begun operation without filing the necessary application and associated documents.

If the EAC can be of further assistance in this matter, please feel free to contact me at (916) 876-7883 or [jamesonl@saccounty.net](mailto:jamesonl@saccounty.net).

Sincerely,



Lisa Jameson, Chair  
Enforcement Advisory Council

c: EAC Members