

CIWMB Point Paper on Enforcing State Minimum Standards at Pre-Regulation Subdivided Landfills (CIA Sites)

Re: EAC Resolution 2007-05

Dated: 20 OCT 2008

(Revision 10/20/09)

PURPOSE:

Provide Board guidance to Local Enforcement Agencies on inspection, enforcement, investigation, remediation, and SWIS Administration for pre-regulation landfills that are subdivided into multiple parcels with multiple owners. Issues involving cross-jurisdictional authority are beyond the scope of this guidance and any affected jurisdictions should contact the Board's Closed, Illegal and Abandoned sites section for further guidance.

BACKGROUND

- Los Angeles and Orange County LEAs have requested more than one SWIS number for a former disposal site that has been subdivided due to performing multiple inspections for multiple landowners.
- CIWMB has issued multiple SWIS numbers for disposal sites that were subdivided; this has caused inspection record-keeping problems for LEA and Board staff (including timely input of inspection results), and more importantly result in problematic investigation and remedies for these sites. A significant amount of CIA staff time was used to sort out and manage Los Angeles County closed site inspections from the 1990s that were not input to SWIS due to problems with Site Identification and multiple SWIS numbers.
- CIA sites with multiple SWIS numbers and multiple owners increases the complexity and time required to enforce state minimum standards (these sites when treated separately take considerable staff time to resolve—hundreds of staff-hours). This can increase even further if multiple legal counsels and environmental consultants represent individual property owners.
- Incomplete field investigation data (and, therefore, incomplete remedial work scoping) can occur when the investigation is performed by a single parcel owner on only his or her portion of the footprint. Examples include incomplete waste extent delineation, gas monitoring probes within the waste footprint, drainage and erosion issues associated with a single parcel, etc.
- Board regulations only allow the LEA to hold current landowners and operators responsible for compliance with state minimum standards.
- Per the PRC, LEAs have authority to recover inspection costs from responsible parties, e.g. billing responsible parties for time.
- CIA program staff have “lessons learned” from assisting LEAs at the following sites:
 - 14th Avenue Landfill, Sacramento County (16 property owners)
 - City Dump and Salvage, L.A. County (One property owner, 4 leases)
 - Paramount Dump, L.A. County (4 property owners)
 - Sparks-Rains Landfill, Orange County (2 property owners)
 - City of Newport Dump No. 1, City of Newport Beach (237 multiple homeowners/1 HOA)
 - Cannery Street Landfill, Huntington Beach, (2 property owners/school and parks)
 - Hellyer-Eastside Landfill, City of San Jose (2 property owners/private & county)
 - Benton Dump, City of Escondido (multiple homeowners/1 home owners association)
 - Canyon Park Landfill, City of Duarte (2 property owners, private & city)

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SUGGESTED GUIDANCE

- For subdivided disposal sites, such as Sparks-Rain, 14th Avenue, etc. here is suggested guidance:
 - Treat the site as a single disposal site for the purpose of investigation, remedy and enforcement of state minimum standards, particularly with respect to global, amorphous “site-wide” violations for which all landowners owning a portion of the disposal site are jointly and severally liable, such as landfill gas migration and control issues pursuant 27 CCR 20919 and potentially 20921. (On the liability issue, landowner agreements on a “fair apportionment” of the costs, either monetarily and/or through the provision of “in-kind” services such as access or equipment, are encouraged.)
 - A single inspection report addressed to all property owners will be used to document state minimum standard violations at the site and issued to all of the property owners owning a portion of the footprint. If the inspection reports indicate on-going gas violations (for a year), these reports would be the precursor to issuing a notice and order to control gas at the property boundary and in structures. Such reports are public records that are reviewable by any person who makes a request, regardless whether the requester has any interest in the site
 - Violations with respect to grading, drainage, settlement, and security should also be done on a single inspection report (with notes on the location where the violation (or area of concern) is occurring/affecting). With respect to violations that are “non-global” and specific to a particular Assessor Parcel Number (APN), such as if settlement is only occurring on a specific structure within a discrete parcel, the LEA may in its discretion seek compliance only against that specific landowner
 - If the LEA is required to issue a Notice and Order for violations of state minimum standards (i.e., gas, grading and drainage); the LEA should at some point, preferably before order issuance, schedule and conduct a meeting of all landowners using a “town forum” format regarding the issuance of the N&O to all property owners. The N&O should include the “AB 2136 clause” advising that if the landowners do not comply by a reasonable time frame, they will be liable (along with potentially others) for clean-up costs. In cases where only some of the landowners are willing to comply but other landowners are unwilling, at the LEA’s discretion further enforcement proceedings could be instituted against only the recalcitrant landowners in an attempt to compel them to contribute to the global effort. The LEA can request the CIA program assistance by conducting a board-managed investigation, which could include, if appropriate for investigative purposes, an evaluation of potential costs for remedies
 - The LEA should try to address at the town meetings that while neither they nor their counsel can advise the landowners as to any rights and remedies the landowners may have against former owners and operators among potentially others, the landowners should consider seeking their own counsel in that regard i.e., if a landowner pursues contribution from the former operator for prospective site costs, such former operator may be conducive to instead participate now in the remediation with the present landowners (potentially achieving economies of scale on consultant and remediation costs) and avoiding further litigation later.

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- Some of the lessons learned from 14th Avenue (16 different landowners):
 - Difficult and time-consuming to investigate, remedy, and enforce state minimum standards in a piecemeal approach
 - Difficult to hold "recalcitrant or unwilling landowners" responsible (best way is to determine the work scope and costs and institute further enforcement proceedings against them [but not the cooperative landowners] in an attempt to compel them to contribute a reasonable apportionment of the costs)
 - Settlement money from lawsuits brought by certain of the landowners (14th Avenue Associates and Lukenbill Enterprises) against previous owners (Walker & Donant and City of Sacramento), was used in a "piecemeal manner" (some of it was used to correct the structural/foundation problems in Lukenbill warehouse); the money awarded could have been better estimated (the lawsuit amount) and spent against "scoped work" if the site had a single investigation and remediation plan.
 - A single environmental consultant to conduct the investigation will keep investigation costs down and provide better QA/QC of field data and a more coherent strategy for addressing violations of state minimum standards for gas, cover, drainage, and erosion control, etc.
 - Each landowner may have varying issues with respect to cover, grading, drainage, erosion, and security on their individual parcel due to post closure land-use improvements (buildings, parking lots, utilities, etc), however with 14th Avenue a more "global" engineering approach to cap and drainage design may have lessened the cost for each landowner in trying to manage their own run-on/run-off issues.
 - The LEA can still use a single inspection report and issue violations to multiple property owners.

CONCLUSION

- An integrated, coordinated approach to inspection, investigation, enforcement and remediation at subdivided CIA sites should be taken using a single SWIS number. A "piecemeal" approach should be avoided, regardless of current private owner, attorney, and consultant requests. Note: As previously addressed, if a landowner pursues contribution from the former operator for prospective site costs, such former operator may be conducive to stay the lawsuit and instead participate now in the remediation with the present landowners, so that a viable investigation and remedial scope of work can be completed by a single consultant working with approval from the LEA.
- The major advantage to a single investigation overseen by the LEA is that a remedial work scope and cost estimate can be developed from the field investigation, which in turn allows responsible parties (and their attorneys) to determine the amount of cost to recover from former owners and operators through either insurance claims or lawsuits. If the former operators are local governments, then the Solid Waste Clean-up Program Matching Grant assistance may be possible.