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December 16, 2013

Caroll Mortensen, Director
California Department of Resources Recycling and Recovery
1001 I Street
Sacramento, California 95814

Dear Ms. Mortensen:

PUENTE HILLS MATERIALS RECOVERY FACILITY SWIS NO. 19-AA-1043 – APPEAL HEARING ON THE ACTION OF LEA TO REVISE SOLID WASTE FACILITY PERMIT – LEA'S RESPONSE TO APPEAL HEARING REQUEST

The following is the Los Angeles County Solid Waste Management Program's (LEA) response to the October 31, 2013 letter with attached exhibits written by the Clean Air Coalition of North Whittier and Avocado Heights (CAC or Appellant). The LEA's responses are italicized.

Comment 1: "The Hearing Board did not review our letter (reference testifying on issues, exhibits) dated October 21, 2013 to the Hearing Board and Cindy Chen which was submitted at the beginning of the hearing. The letter had new information not previously submitted."

Response to Comment 1: *Los Angeles County Solid Waste Facilities Hearing Panel (Hearing Board) in its October 25, 2013 Statement of Decision (Decision) states in Factual Background – Part L that all written materials submitted prior to and at the time of the hearing were considered in reaching its Decision, inclusive of written materials described in Factual Background M 1-14. Item M 12 i-xii is the letter and attached exhibits referred to in the above comment made by the Clean Air Coalition of North Whittier and Avocado Heights (Appellant or CAC).*

Comment 2: "The appeal hearing conducted on October 21, 2013 failed to follow the California Ralph M. Brown Act (Section 54950). All deliberations should be public and the LEA requested a 20 minute recess during the hearing. In addition, our letter and exhibits dated October 21, 2013 were removed from the Hearing Board Room (from public eye) to make copies. A copy was given to Sanitation Districts of Los Angeles County and its

Attorney prior to the beginning of the hearing. (Note: Sanitation Districts was not a party of the hearing). The Hearing Board did not receive a copy of our letter/presentation until near the end of the presentation resulting in difficulty in following the issues."

Response to Comment 2: *The Appeal Hearing was held pursuant to California Public Resources Code (Public Resources Code or PRC) section 44310 et seq., as stated in the "Decision" section of the October 25, 2013 Decision and as reflected in the hearing transcript (attached).*

The Local Enforcement Agency (LEA), NOT the Hearing Board, did request a short recess so that LEA staff could confer with its legal counsel on how to address the last-minute documents submitted by the CAC at the hearing. No deliberation by the Hearing Board occurred during the recess. Therefore, there was no violation of the Brown Act.

Regarding the documents, at the beginning of the hearing Ms. Kamimura provided the LEA's counsel three sets of documents not previously submitted. These documents were addressed to the Hearing Board and Ms. Chen, of the LEA. The LEA did not know that these were the only copies that Ms. Kamimura brought to the hearing. Had that been expressed, the LEA would have asked Ms. Kamimura to submit the documents directly to the Hearing Board counsel and requested that additional copies be made.

The LEA gave one set of documents to representatives of the Sanitation Districts, a real party in interest to the matter before the Hearing Board, for their reference. It was unclear to the LEA at this point in time whether the Hearing Board would agree to accept documents submitted at this late stage and, if so, whether the Hearing Board would pose questions to the LEA regarding the contents of the documents without the LEA having been afforded the opportunity of reviewing and researching the materials prior to the Hearing. Accordingly, it was the LEA's hope that under such circumstances, it would be able to call upon representatives of the Sanitation Districts to offer factual testimony should the questions reach beyond the scope of the LEA's knowledge or review.

Moreover, said documents are public record and therefore available for distribution to those present at the hearing.

Finally, the LEA agreed to make additional copies of said documents for the Hearing Board members at the express request of Ms. Kamimura, as the record will reflect.

Comment 3: "There was no written protocol for the procedures of the appeal hearing. Lauren E Dods, Counsel Public Works, Called on October 17, 2013 and the chairperson of the Clean Air Coalition was told the process would be like a forum. That upon my testifying of issues, the LEA would be given an opportunity to reply and we would be given an opportunity to rebus [sic] or clarify. We were not given this opportunity."

Response to Comment 3: *The Appeal Hearing was held pursuant to Public Resources Code section 44310 et seq., as stated in the "Decision" section of the October 25, 2013 Decision and as reflected in the hearing transcript (attached).*

During the proceedings the Appellant was afforded many opportunities to present additional issues not included in the original statement of issues. This included, among other things, Appellant's detailed and often verbatim recitation of its October 21, 2013 letter. After listening to the Appellant's testimony (inclusive of testimony by Mr. & Mrs. Kamimura and various members of the Clean Air Coalition), and reviewing the Appellant's October 21, 2013 letter and attached exhibits, the Hearing Board determined that no new issues had been presented apart from what had already been submitted to the Hearing Board, and closed the Appellant's portion of the testimony.

Comment 4: "The hearing process was unorganized and resulted in an unfair decision on the appeal by the Clean Air Coalition of North Whittier and Avocado Heights."

Response to Comment 4: *The Hearing was conducted in accordance with Public Resources Code section 44310 et seq., as indicated in the Decision and as reflected in the hearing transcript (attached).*

Comment 5: "As Per letter dated October 25, 2013. RE: Los Angeles County Solid Waste Facilities Hearing Board Decision. Items under Factual Backgrounds [sic] are in questioned [sic] and incorrect:"

- Page1, C: "...have unrestricted employee commuting Monday thru Sunday, is not stated in the CUP 92-251(4) 1999 and modified CUP May 13, 2013."

Response: *Replacement condition 8.j (3rd bullet) of the Conditional Use Permit (CUP) states, "The permittee may schedule employee shifts, as required, to accommodate 24 hour per day operation."*

- Page 1, F: "LEA's application failed to include a 5 year review."

Response: *The LEA submitted a 5 Year Permit Review Report to CalRecycle prior to the conclusion of its concurrence review, as required to obtain concurrence on the proposed revised Solid Waste Facility Permit (SWFP).*

- Page 2, J: "issues addressed were not all responded to, it was stated as "noted.""

Response: *The documents referred to above are the Appellant's October 10, 2013 letter to the LEA outlining supplemental issues, and the LEA's October 16, 2013 response letter to the Appellant. The LEA reviewed its October 16, 2013 letter and found one reference in which the verbiage "noted" was used.*

The Appellant, in its October 10, 2013 letter, item number 2, 2nd bullet, made a request that various agencies be present at the Appeal Hearing. The LEA has no legal authority to order other agencies to attend such hearings, Moreover, Appellant carbon copied those same agencies on its October 10, 2013 letter. Accordingly, the LEA determined that no other response or action was needed. The comment "noted" was provided as a courtesy and acknowledgement.

- Page 2, M: "The binder submitted by LEA containing documents listed under "M" were not all disclosed to Clean Air Coalition via email dated October 17, 2013, therefore it is unknown to Clean Air Coalition if the statement is true."

Response: *Page 2, M: The binder in question was prepared by the LEA from public records to provide background documents to the Hearing Board, background documents the Appellant either already possessed or had access to. All the documents contained in the binder were compiled from public record and were equally available to the Appellant for review and photocopying prior to the Hearing. In fact, prior to the Hearing, the Appellant conducted several reviews of the LEA's public records.*

Moreover, Appellant made reference to the underlying CEQA documents and the June 20, 2012 letter from Dean R. Lehman to Pat Proano in its power point presentation given at the May 13, 2013 public hearing on the County's proposed issuance of a CUP to the Sanitation District for said facility. This indicates that Appellant already possessed a copy of said documents. Further, said documents are the subject of an underlying lawsuit filed by Appellant against the County. As such, the LEA had reason to believe Appellant already possessed or had previously reviewed all key documents contained in the binder.

On October 17th, 2013, as a courtesy to the Appellant, the LEA transmitted via electronic mail a copy of the remaining documents contained in the binder to the CAC. A few documents were inadvertently omitted. However, of these documents, Appellant should either already possess them as they pertain to the CAC's pending lawsuit or they are otherwise public record and, as such, were equally accessible by Appellant prior to the hearing.

- Page 2, M.3: "TPR June 2005 does not exist."

  Response: *The LEA believes that the Hearing Board is referring to the TPR dated March 2005, Amended June 2013, and that the reference of TPR June 2005 is a typographical error.*

- Page 2, M4.ii: "Initial Study/Addendum to FEIR January 2, 2013 was not submitted to the CAC as part of the binder submittal."

  Response: *See LEA's response to Page 2, M, above.*

- Page 2, M.4iii: "was not submitted to the Clean Air Coalition as part of the binder submittal."

  Response: *The document referred to above is the June 20, 2012 letter from Dean R. Lehman to Pat Proano, stating that "the project is not required to submit a traffic impact analysis..." See LEA's response to Page 2, M, above.*

- Page 3, M.7: "was not submitted to CAC as part of the binder submittal. Unsure what public comments."

  Response: *The documents referred to above are public comments received on the permit action. See LEA's response to Page 2, M, above.*

- Page 3, M.8: "was not submitted to CAC as part of the binder submittal. Unsure what responses to questions."

  Response: *The documents referred to above are LEA letters and emails sent to the public in response to their direct questions and inquiries received on the permit action. See LEA's response to Page 2, M, above.*

- Page 3, M.10: "CUP May 13, 2012 [sic] was not submitted to Clean Air Coalition as part of the binder submittal."

  Response: *The LEA believes the Appellant is referring to the CUP, Modified May 13, 2013 CUP. See LEA's response to Page 2, M, above.*

- Page 3, M.11: "correspondence dated October 18, 2013 was not submitted to Clean Air Coalition as part of the binder submittal."

  Response: *The "Correspondence dated October 18, 2013" referred to above is a letter from the Sanitation District to the Hearing Board, as a statement of its position in the matter of the Appeal Hearing. This letter was provided to the Hearing Board by the Sanitation District independent of the LEA (presumably via email or US Mail) and was never a part of the LEA's case-presentation binder.*

- Page 3, M.12: "Supplemental Package was not part of the binder submittal. It was new material to be review [sic] by the Board."

  Response: *The "Supplemental Package" referred to above is the October 21, 2013 Appellant's letter (with attached exhibits) which was presented by the Appellant at the time of the Hearing. The "Supplemental Package"*

identified in the Decision (Factual Background, section M, item 12) was never a part of the LEA's Hearing Binder. The LEA believes that the Hearing Board intended to show the LEA's Hearing Binder contents as one submittal, and the Appellant's "Supplemental Package" as another; both as received and considered by the Hearing Board in reaching its Decision.

- Page 5 (2): "The Hearing Board did not completely review and address our findings under Division 13 of the California Public Resources Code, commencing with Section 21000 (CEQA). And the Addendum Jan. 2013 does not include Sunday employee arrival and departure as stated on page 1 item C."

Response: *The Hearing Board states in its Decision that the CEQA documents provided (Factual Background, section M, Subsection 4i-iii) were considered. Furthermore, the Hearing Board's Decision (section 2) found that the District did comply with Division 13 of Public Resources Code, commencing with section 21000 (CEQA).*

Employee arrival and departure time have never been conditioned in the LEA's SWFP. The January 2013 Addendum, in its "RECOMMENDED PROJECT" section (page 2) states that "the recommended project is to change the approved project to eliminate existing restrictions between 6:00 am and 9:00 pm and between 4:00 pm and 7 pm ... on employee arrival and departure." A similar statement is repeated on page 3 in the Initial Study; section 2 "Description of Project."

- Page 5 (4): "The Districts' application is based on significant false or misleading information or misrepresentations and presented to the Board including 2 letters from Clean Air Coalition dated Oct. 21, 2013 and all previous documents of issues."

Response: *After a review of the application for SWFP revision pursuant to 27 CCR 21570, the LEA found that the application was complete and correct. The Hearing Board, after consideration of the testimony and submitted documents, in its Decision, found "no failure on the part of the LEA to act as required by law or regulation in this matter." In addition, the Decision states, "The Hearing Board did not find that the District's application contained significant false or misleading information or representations."*

Comment 6 (CAC's closing paragraph): "Per PRC 44307, Clean Air Coalition requested the Board to review the alleged failure of the agency to act as required by law or regulation. The Board limited PRC 44300 to review only the Applicant's Permit Application and disregarded to review the LEA's basis of the permit (including and not limited to EIR, CUP, CEQA) as required by law or regulations for public health and safety. Clean Air Coalition identified all the inadequate, misleading and incomplete documents per PRC 44300. On these issues, we are requesting an appeal hearing pursuant to the Public Resource Code 45030."

Response: *The Hearing Board states in its Decision "The Hearing Board finds no failure on the part of the LEA to act as required by law or regulation in this matter. The LEA's approval of the proposed revisions of the SWFP complied with applicable laws and regulations."*

In addition, the Hearing Board did consider the CEQA documents provided and found that the District had complied with CEQA (Decision - Factual Background, section M, Subsection 4i-iii; and Decision – Statement of Decision, section 2, respectively). Moreover, the CUP, being both outside the purview and the enforcement authority of the LEA, was correctly not a consideration in the Hearing Board's Decision.

Furthermore, the Hearing Board, in its Decision states, "The Hearing Board did not find that the District's application contained significant false or misleading information or representations" (Statement of Decision, section 1).

Should you have any questions, or require any additional information from the LEA, please do not hesitate to contact me by telephone at (626) 430-5540.

Respectfully submitted,

Cindy Chen, Chief
Solid Waste Management Program (LEA)

C: Jeff Hackett, CalRecycle (Via email)
Clean Air Coalition of North Whittier and Avocado Heights (Via email)
Los Angeles County Sanitation Districts (Via email)
Elliot Block, CalRecycle Chief Counsel, Hearing Officer (Via email)
Harllee Branch, CalRecycle Counsel (Via email)
Grace Chang, LEA Counsel (Via email)
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