



COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (562) 699-7411, FAX: (562) 699-5422
www.lacsd.org

GRACE ROBINSON CHAN
Chief Engineer and General Manager

December 16, 2013

Ms. Caroll Mortensen
Director
CalRecycle
1001 I Street
Sacramento, CA 95814

Dear Ms. Mortensen:

**In the Matter of: Puente Hills Material Recovery Facility, SWIS #19-AA-1043
Real Party in Interest, County Sanitation Districts Nos. 2 and 18 of
Los Angeles County's Response to Petitioner's Appeal**

On October 21, 2013, the Los Angeles County Solid Waste Facilities Hearing Board ("Hearing Board") conducted a public hearing in response to a request by the Clean Air Coalition of North Whittier and Avocado Heights ("Coalition") pursuant to Section 44310 of the Public Resources Code ("PRC"). The purpose of the hearing was to determine if the Los Angeles County Department of Public Health, acting as the Local Enforcement Agency ("LEA"), complied with applicable laws and regulations when it deemed the County Sanitation Districts Nos. 2 and 18 of Los Angeles County's (Individually "District No. 2" or "District No. 18"; together "Districts") application for a solid waste facility permit ("SWFP") revision complete and submitted the proposed revised SWFP to CalRecycle for concurrence. The Hearing Board found that the LEA acted as required by applicable laws and regulations, and determined that there were no grounds pursuant to PRC Section 44300 to deny the proposed SWFP revision. Pursuant to PRC Section 45030, the Coalition submitted an appeal of the Hearing Board's decision to CalRecycle on October 31, 2013.

The Districts request that CalRecycle deny the Coalition's appeal and uphold the Hearing Board's decision. None of the Coalition's allegations are supported by sufficient evidence to conclude that the LEA failed to act as required by applicable laws and regulations. The Hearing Board determined that there were no grounds to deny the permit under PRC Section 44300. Denial of a permit, or the granting of the Coalition's appeal, would have required proof of one of the following deficiencies in the application:

1. The application for the permit is incomplete or otherwise inadequate;
2. The applicant has not complied with the California Environmental Quality Act;
3. The project fails to meet minimum regulatory requirements;
4. The application contains significant false or misleading information or significant misrepresentations; or that
5. The applicant has been convicted of or been issued a final order for one or more violations of Division 30, applicable regulations, or the permit during the past three years.

As stated above, the Coalition's issues are not material to, nor do they meet, the statutory requirements for denying the permit revision contained in PRC Section 44300. Nevertheless, in an effort to clarify the record and to establish the Districts' arguments with respect to each item, the Districts' responses to the issues raised by the Coalition in their October 31, 2013 letter are set forth below. Today, we received another letter submitted by the Coalition to CalRecycle dated December 13, 2013. We cannot respond to these latest arguments raised by the Coalition by CalRecycle's deadline since we just received their letter today. We can submit our responses in a separate letter if the deadline for response is extended by CalRecycle.

ISSUE NO. 1

Coalition Alleges – “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.”

Districts' Response – The Hearing Board accepted the Coalition's October 21, 2013 letter at the time of the hearing as part of the record.¹ The Hearing Board's counsel read the Coalition's October 21, 2013 letter and exhibits into the record.² Hearing Board members reviewed the letter during the hearing prior to taking action and found that no new information was presented.³ The Hearing Board clearly did review the letter and, therefore, the Coalition's contention is without merit.

ISSUE NO. 2

Coalition Alleges – “The appeal hearing conducted on October 21, 2013, failed to follow the California Ralph M. Brown Act (Section 54950 of the California Government Code).

All deliberation 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 the Sanitation Districts of Los Angeles County and their 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.”

Districts' Response – This is a procedural issue, not substantive issue. The Hearing Board followed the Brown Act requirements for an open public meeting. The appeal hearing was properly noticed; public comments were received; the petitioners (Coalition) were given time to present their case; and the Hearing Board's deliberations and action were made in the open.

The October 21, 2013 letter was new “evidence” submitted by the Coalition at the time of the hearing.⁴ The Hearing Board's counsel read the Coalition's October 21, 2013 letter and exhibits into the record.⁵ Given that the action being challenged by the Coalition pertained to the Puente Hills Materials Recovery Facility (PHMRF), the Districts are the Real Parties in Interest in this matter. Therefore, it was appropriate for any new claims made by the Coalition to be provided to the Districts.

The Brown Act allows for any member of the public or interested party to obtain copies of any portion of the administrative record, so it is not a violation of the Brown Act when the Districts' staff or counsel received a copy of the October 21, 2013 letter.

¹ See page 80 of the Appeal Hearing transcript.

² See pages 128-131 of the Appeal Hearing transcript.

³ See page 127 of the Appeal Hearing transcript.

⁴ See pages 40-48 of the Appeal Hearing transcript.

⁵ See pages 128-131 of the Appeal Hearing transcript.

Therefore, the Coalition's contentions are without merit.

ISSUE NO. 3

Coalition Alleges – “There was no written protocol for the procedures of the appeal hearing. Lauren E. Dods, [Hearing Board] Counsel, 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 rebut or clarify. We were not given this opportunity.”

Districts' Response – This is a procedural issue, not substantive issue. The Hearing Board Chair described the hearing format to the hearing audience at the beginning of the meeting.⁶ The Hearing Board Chair gave the Coalition representatives and public commenters who identified themselves as supporters and members of the Coalition every reasonable opportunity to make their case. As shown in the transcript, the hearing began at approximately 1:15 p.m.,⁷ recessed twice—for 18 minutes⁸ and 14 minutes⁹, and closed at 5:20 p.m.,¹⁰ for a total of over three hours of testimony, public comment, and deliberation. All comments were considered by the Hearing Board in their action. Therefore, the Coalition's contention is without merit.

ISSUE NO. 4

Coalition Alleges – 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.

Districts' Response – The Hearing Board conducted the meeting with sufficient order to receive both written and oral comments from the Coalition, and provided the opportunity for public comments. The Hearing Board considered the entire record prior to making a decision. Therefore, the Coalition's contention is without merit.

ISSUE NO. 5: Factual Background¹¹, Item C

Coalition Alleges – The factual background in Item C is in question and incorrect because unrestricted employee commuting Monday through Sunday is not stated in the CUP 92-251(4) 1999 and modified CUP May 13, 2013.

Districts' Response – The modified conditional use permit (CUP) dated May 13, 2013, removed the peak hour restrictions for employee commuting and allows District No. 2 to “...schedule employee shifts, as required, to accommodate 24 hour per day operation.” Consequently, there are no longer employee commuting restrictions. The Coalition's contention is, therefore, without merit.

ISSUE NO. 5: Factual Background, Item F

Coalition Alleges – “LEA's application failed to include a 5-year review.”

Districts' Response – The LEA completed all necessary actions related to the five-year permit review prior to their final action on the Districts' application for a SWFP revision. Therefore, the Coalition's contention is without merit.

⁶ See pages 4-5 of the Appeal Hearing transcript.

⁷ Id. at p. 4.

⁸ Id. at p. 45.

⁹ Id. at p. 122.

¹⁰ Id. at p. 157.

¹¹ Contained in the October 25, 2013 Letter from the County of Los Angeles to the Solid Waste Facilities Hearing Board

ISSUE NO. 5: Factual Background, Item J

Coalition Alleges – The factual background in Item J is in question and incorrect because the issues presented were not all responded to, rather the response was “noted”.

Districts’ Response – A response of “noted” is a response, indicating that no further discussion or comments are required. Therefore, the Coalition’s contention is without merit. This is not a substantive issue.

ISSUE NO. 5: Factual Background, Item M

Coalition Alleges – “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.”

Districts’ Response – Item M lists the documents submitted by the LEA to the Hearing Board. This item makes no other claims. A third party review of the documents is not required as part of the submittal. The Coalition’s comments are not material or relevant to the appeal.

The Hearing Board reviewed the actions of the LEA in sufficient detail to determine if the LEA acted in accordance with applicable laws and regulations, and if there were any grounds to deny the SWFP revision based on PRC Section 44300. The Hearing Board found that the LEA acted in accordance with law and regulation and there were no grounds to deny the SWFP revision.

ISSUE NO. 5: Factual Background, Item M.3

Coalition Alleges – “TPR June 2005 does not exist.”

Districts’ Response – The correct date for the Transfer/Processing Report (TPR) is June 2013. The June 2005 date appears to be a typographical error. The Coalition’s comments are not material or relevant to the appeal. The issue is whether or not the LEA acted in accordance with applicable laws and regulations, and if there are any grounds to deny the SWFP revision based on PRC Section 44300. The Hearing Board found that the LEA acted in accordance with law and regulation and there were no grounds to deny the SWFP revision.

ISSUE NO. 5: Factual Background, Item M.4ii

Coalition Alleges – Initial Study/Addendum to Final Environmental Impact Report (FEIR) January 2, 2013 was not included in the binder received by the Coalition.

Districts’ Response – The Districts cannot verify what information was provided to the Coalition. However, the Coalition’s comments are not material or relevant to the appeal. The issue is whether or not the LEA acted in accordance with applicable laws and regulations, and if there are any grounds to deny the SWFP revision based on PRC Section 44300. The Hearing Board found that the LEA acted in accordance with law and regulation and there were no grounds to deny the SWFP revision.

Nonetheless, the Districts provided the Coalition with electronic copies of all the California Environmental Quality Act (CEQA) documents for the Puente Hills Materials Recovery Facility prior to the Board hearing, including the Initial Study and Addendum to the FEIR dated January 2, 2013.

As indicated in Government Code Section 54954.1, any person may request in writing a copy of the agenda or all the documents constituting the agenda packet. However, failure of the requesting person to receive the agenda or agenda packet shall not constitute grounds for invalidating the actions of the legislative body.

ISSUE NO. 5: Factual Background, Item M.4iii, M.7, M.8, M.10, M.11, M.12 and M.14

Coalition Alleges – The Coalition contends that certain documents were not included in their binder.

Districts' Response – See response to Issue No. M.4ii

ISSUE NO. 5: Factual Background, Item M.12.xii

Coalition Alleges – Exhibit of tunnel connecting the Puente Hills Materials Recovery Facility and the Puente Hills Intermodal Facility was named incorrectly.

Districts' Response – A preferred exhibit title is not material to the appeal as long as the description of the exhibit adequately describes the content. This is not a substantive issue.

ISSUE NO. 5: Statement of Decision, Item 2

Coalition Alleges – “The Hearing Board did not completely review and address our findings under Division 13 of the California Public Resources Code, commencing with Section 2100 (CEQA). And the Addendum Jan. 2013 does not include Sunday employee arrival and departure as stated on page 1, item C.”

Districts' Response – The Coalition’s “findings” have no relevance to the Hearing Board’s determination of the sufficiency of the LEA’s review. As indicated in the Hearing Board’s Statement of Decision, the Hearing Board considered each element of PRC Section 44300 and found no grounds to deny the proposed solid waste permit revision. In accordance with PRC Section 44300 (b), the Board found that District No. 2 complied with CEQA.

ISSUE NO. 5: Statement of Decision, Item 4

Coalition Alleges – “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.”

Districts' Response – The Hearing Board considered the Coalition’s claims as presented in their October 21, 2013 letter and previously submitted documents and found that the Districts’ application did not contain any false or misleading information or misrepresentations.

We respectfully request that you deny the Coalition’s appeal and uphold the Hearing Board’s decision. If you have any questions regarding this matter, please contact Mr. Chris Salomon of my staff at (562) 908-4288, extension 2716, or our legal counsel Ms. Claire Hervey Collins at (213) 680-5039.

Very truly yours,

Grace Robinson Chan



Raymond L. Tremblay
Department Head
Facilities Planning

RLT:CRS:GA:ddg