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3 **BEFORE THE CALIFORNIA DEPARTMENT**
4 **OF RESOURCES RECYCLING AND RECOVERY**
5

6 In the Matter of:) APPEAL OF LOS ANGELES COUNTY
7 Puente Hills Material Recovery Facility,) SOLID WASTE FACILITIES HEARING
8 SWIS #19-AA-1043,) BOARD DECISION
9 Clean Air Coalition of North Whittier and) Public Resources Code Sections 45030-
10 Avocado Heights,) 45032
11 **Petitioner and Appellants**)
12 Los Angeles County Department of Public) **DECISION**
13 Health,)
14 **Respondent**)
15 Los Angeles County Sanitation District,
16 **Real Party in Interest**

17 **INTRODUCTION**

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19 This appeal is before me, pursuant to Public Resources Code (PRC) section 45030, et
20 seq., from a decision issued by the Los Angeles County Solid Waste Facilities Hearing Board on
21 October 25, 2013. In accordance with PRC section 45031(c), I directed the parties to submit
22 written arguments by December 16, 2013, and I am issuing this decision after consideration of
23 those written arguments, the record before the Hearing Board, and a transcript of that hearing.

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1 actions, not the actions of the Hearing Board. The Hearing Board is a separate entity from the
2 LEA. The majority of contentions in the appeal relate to the Appellant's complaints about how
3 the Hearing Board conducted the hearing and not about the LEA's underlying actions. Nothing
4 in the Appellants written argument, submitted on December 16, 2013, indicates that any of those
5 alleged deficiencies in the Hearing Board's process resulted in my not having before me all of
6 the information and arguments that the Appellant believes are relevant for me to consider. In the
7 absence of any evidence of prejudice, I see no reason to send this matter back to have a new
8 hearing before the Hearing Board, when I can simply consider all of the information myself.
9 Therefore, none of the contentions about the Hearing Board's process are relevant to this appeal
10 or my decision.

11 12 13 Local And Other State Requirements

14
15 The County Department of Public Health, when acting as LEA, is tasked with following
16 CalRecycle's permitting requirements for a Solid Waste Facility Permit (SWFP). In that role, it
17 is not tasked with reviewing an applicant's compliance with other state or local laws. Thus, their
18 role is not to review or evaluate local siting decisions or the wisdom or validity of local land use
19 permits. In fact, in drafting a SWFP, while the LEA may be informed by other permit
20 documents, the LEA is not required to make the SWFP consistent with all other permits. For
21 example, to the extent that the SWFP would allow something that a CUP does not, the operator
22 would not be able to engage in that activity until it had revised its CUP as well. This is not an
23 uncommon occurrence as the timelines for various state and local permits are different, this
24 allows flexible timing for an operator that may have to revise many permits prior to beginning a
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1 new activity. This is one reason why PRC 44307 limits the scope of this appeal to whether the
2 LEA complied with the IWMA.

3 Similarly, the LEA in this instance is a Responsible Agency under CEQA (not a Lead
4 Agency) and as such must assume that the Lead Agency's certification of CEQA compliance is
5 valid other than in specified circumstances. For that reason, PRC 44307 does not reference a
6 failure to act as required by CEQA. If at some point in the future, the Lead Agency's CEQA
7 determination were to be found invalid, then the permit process would be revisited at that time.
8 Therefore, allegations about incorrect information in the CUP or about inadequate CEQA for this
9 project are outside of the scope of this appeal.
10

11 **DISCUSSION OF SPECIFIC ISSUES RAISED IN APPEAL**

12 I will now address the specific issues raised in the appeal, dated October 31, 2013.

13 Allegations About Hearing Board Processes

14 The first issue raised is the allegation that the "Hearing Board did not review our letter...
15 dated October 21, 2013. ... The letter had new information not previously submitted."
16

17 For the reasons discussed above, this issue is outside of the scope of this appeal because
18 it relates to the Hearing Board process. Furthermore, I would also note that this allegation is
19 incorrect as the Hearing Board did include the letter in the record and indicated that it did
20 consider it in making its decision. The fact that the Hearing Board did not agree with the letter
21 does not mean that they did not consider it. Finally, Appellants have shown no prejudice because
22 I have a copy of it and reviewed it before making this decision.
23

24 The second issue raised is that the appeal hearing "failed to follow the California Ralph
25 M. Brown Act. The claim is based upon the fact that "the LEA requested a 20 minute recess
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1 during the hearing” and that the October 21, 2013 letter and exhibits were removed from the
2 public eye to make copies.”

3 For the reasons discussed above, this issue is outside of the scope of this appeal because
4 it relates to the Hearing Board process. Furthermore, Appellants have shown no prejudice
5 because I have a copy of these documents in the record that I reviewed. Even if this issue was
6 relevant, the facts that Appellants have alleged do not appear to constitute a violation of the
7 Brown Act.
8

9 The third issue raised on appeal is that there was “no written protocol for the procedures
10 of the appeal hearing” and the appellant was not given the opportunity to rebut or clarify.

11 For the reasons discussed above, this issue is outside of the scope of this appeal because
12 it relates to the Hearing Board process. Furthermore, Appellants have shown no prejudice
13 because the Appellants have had a full opportunity to provide any additional arguments in their
14 submitted written argument that they may not have had a chance to provide previously.
15

16 The fourth issue raised on appeal is that the “hearing process was unorganized and
17 resulted in an unfair decision.”

18 For the reasons discussed above, this issue is outside of the scope of this appeal because
19 it relates to the Hearing Board process. Furthermore, Appellants have shown no prejudice
20 because the Appellants have had a full opportunity to make any arguments that they may not
21 have been able to due to the organization of the hearing and I have considered all of them.
22

23 The fifth issue raised on appeal is actually a series of specific items in the Hearing Board
24 decision that are “in questioned (sic) and incorrect.” I will analyze them in groups using the
25 pagination used in the Appeal Request. Those items labelled as Page 2, J, Page 2, M, Page 2,
26 M.3, Page 2, M.4ii, Page 3, M,4iii, Page 3, M.7, Page 3, M.8, Page 3, M.10, Page 3, M.11, Page
27

1 3, M.12, Page 4, M.12xii, and Page 4, M. 14, all relate to documents that were allegedly not
2 provided to the Appellants in "the binder submittal" or were named incorrectly.

3 For the reasons discussed above, these issues are outside of the scope of this appeal
4 because they relate to the Hearing Board process. Furthermore, it is not clear from any of the
5 information before me, including the Appellant's written argument, that the Appellants were not
6 otherwise in possession of these documents and how they may have been prejudiced by them not
7 being in the "binder submittal." Appellants have had a full opportunity to make any arguments
8 that they may not have been able due to the organization of the hearing, and I have considered all
9 of them.
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11 The issue labelled as Page 1, C relates to the contents of the CUP regarding unrestricted
12 employee commuting.
13

14 For the reasons discussed above, this issue is outside of the scope of this appeal as the
15 LEA is not in a position to alter the CUP, nor does the SWFP have to mirror the language within
16 the CUP.

17 The issue labelled as Page 1, F states "LEA's application failed to include a 5 year
18 review."
19

20 This contention evidences a misunderstanding of the LEA's role in the process as the
21 application is not "the LEA's," it is submitted by the operator and reviewed by the LEA. As part
22 of the LEA's review of the application, the LEA will conduct a 5 year review. Furthermore, the
23 documents in the record, including exhibits submitted by the Appellant in its written argument,
24 show that the LEA did perform the 5 year review. This contention is without merit.

25 The issue labelled Page 5 (2.) contends that the Hearing Board did not completely review
26 and address CEQA issues raised by the Appellant. The appeal also contains a summary
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1 paragraph that includes an unlabeled allegation that the Hearing Board “disregarded to review
2 (sic) LEA’s basis of the permit (including and not limited to EIR, CUP, CEQA) as required by
3 law...”

4 For the reasons discussed above, EIR, CUP, and CEQA issues regarding this project are
5 outside of the scope of this appeal.

6 The issue labelled as Page 5(4.) is the only allegation that is potentially within the scope
7 of this appeal. Stated in full, Appellants contend:

8 “The District’s application is based on significant false or misleading information
9 or misrepresentations and presented to the Board including 2 letters from Clean
10 Air Coalition dated October 21, 2013 and all previous documents of issues.”
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12
13 However, Appellants have failed to provide evidence to show that this allegation is true.
14 As discussed above, the scope of this appeal is whether or not the LEA acted in accordance with
15 its duties under the IWMA. While Appellant’s submittals and arguments contains much
16 information about why they do not like the proposed project, differing opinions on the validity of
17 the CEQA analysis done by the lead agency, and arguments about the contents of the CUP, I can
18 find no specific “significant false or misleading information or misrepresentations” identified by
19 the Appellants that relate to the LEA’s duties under the IWMA.
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22 This appeal was actually filed prior to the issuance of the SWFP, so at that time, the
23 LEA’s only action had been to determine that the SWFP application was “complete and correct.”
24 As that determination is about whether or not the required information in the application is
25 complete and correct for the requirements of the SWFP, and not a separate evaluation of the
26 CUP or CEQA document, I see no evidence within the record that the LEA did not perform its
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1 duties as required by law. The vast majority of issues raised by Appellants are the type that
2 should be raised before the local land use decision-makers (CUP revision), but do not involve my
3 review of whether there was a failure of the LEA to perform its duties under the IWMA and
4 accompanying regulations.

6 **NEW ISSUES IN WRITTEN ARGUMENT**

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8 Appellants raised three new groups of issues in their written argument. Leaving aside the
9 question of whether or not this is even appropriate, I will address those issues, so my decision
10 can be complete, as they are all without merit.

11 The first new issue is that the LEA failed to schedule an appeal hearing with 30 days.
12 This issue had not been raised in the Appeal and therefore the other parties have not had a chance
13 to respond to it. However, I see no need for further briefing on this issue as it is moot. Whether
14 or not this is true is irrelevant as it can no longer be corrected. In fact, the only possible remedy I
15 could order under the statute would be to require the LEA to schedule another hearing, which, of
16 course, would still be beyond 30 days from the date of the initial Request For Hearing.
17

18 The second new issue relates to significant changes “occurring through this SWFP and by
19 not legally addressing changes makes the SWFP invalid.” Appellants then go on to list a number
20 of items to support this contention, all of which relate to future changes at the facility or an
21 adjoining one which were not part of the permit revision in question and were not authorized by
22 that revision. The SWFP revision that is the subject of this appeal was primarily for a change in
23 hours, and some updates to supporting documents. The issues that Appellants have raised in their
24 written argument are outside of the scope of this appeal.
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1 The third new issue relates to a number of items that concerning how the Hearing Board
2 conducted its hearing and what information it considered.

3 As discussed above, this is outside of the scope of the appeal and Appellants have not
4 shown any prejudice as I have the full record before me.

5 Finally, I must note that the Appellant's written argument contains a number of exhibits
6 which not only do not support their arguments, but actually undercut them, For example,
7 Appellants have included a copy of the CalRecycle Permitting and Assistance Branch Staff
8 Report, which constitutes its review of the proposed permit submitted by the LEA. That
9 document shows that the key change in the revised permit relates to hours only, not any of the
10 new issues raised in Appellants arguments; that the LEA's certification of a complete and correct
11 application was acceptable; that the LEA did complete a 5 year review as part of its review of the
12 application; and, that the facility was in compliance with State Minimum Standards when
13 inspected in October after the proposed permit was submitted.
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16 CONCLUSION

17 Based on the foregoing, I find no basis for overturning the decision of the Hearing Board
18 upholding the LEA's actions.

19 I encourage the Appellant in the future to engage with the appropriate agencies at the
20 appropriate time to be most effective in addressing their concerns.
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23 Dated: January 10, 2014

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25 
26 Carol Mortensen, Director
27 California Department of Resources Recycling and Recovery,

DECLARATION OF SERVICE BY MAIL

Case Name: **IN THE MATTER OF: APPEAL OF LOS ANGELES COUNTY SOLID WASTE FACILITIES HEARING BOARD DECISION ON PUENTE HILLS MATERIAL RECOVERY FACILITY, SWIS #19-AA-1043**

I declare:

I am employed in the Legal Office of the California Integrated Waste Management Board, which is the office of a member of the California State Bar under which member's direction this service is made. My business address is California Department of Resources Recycling and Resources, 1001 I Street, MS 24B, Sacramento, CA 95814. I am 18 years of age or older and not a party to this matter.

On January 10, 2014, I served the attached **DECISION** by placing it in a postpaid, envelope, addressed to the parties hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Sacramento, California.

Addressees: Clean Air Coalition of North Whittier and
Avocado Heights
Attn: Marilyn & Richard Kamimura
843 Caraway Drive
Whittier, CA 90601

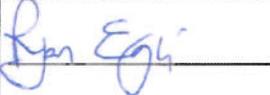
Los Angeles County Department of Public
Health
Attn: Cindy Chen
5050 Commerce Dr
Baldwin Park, CA 91706

Claire Hervey Collins
Lewis, Brisbois, Bisgaard & Smith
221 N. Figueroa Street, Suite 1200
Los Angeles, CA 90012

Department of Resources Recycling and
Recovery
Attn: Harllee Branch, Esq.
1001 I Street, MS 24-B
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 10th day of January, 2014, at Sacramento, California.



Declarant

