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BEFORE THE
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the Matter of:)	APPEAL OF SAN DIEGO COUNTY
)	LOCAL ENFORCEMENT AGENCY
Pala Band of Mission Indians,)	HEARING PANEL DECISION ON
)	GREGORY CANYON LANDFILL,
Petitioner)	ISSUED SEPTEMBER 26, 2014
)	
San Diego County Department of)	
Environmental Health, Solid Waste Local)	DECISION
Enforcement Agency,)	
)	
Respondent)	Public Resources Code Sections 44307,
)	45030 et seq.

1. This matter came before me based upon an appeal filed pursuant to Public Resources Code (PRC) section 45030. Petitioner, Pala Band of Mission Indians ("Pala Band"), was represented by Walter Rusinek, attorney at law. The San Diego County Department of Environmental Health, Local Enforcement Agency ("LEA"), was represented by Rodney Lorang, attorney at law.
2. The Pala Band appealed a decision by the County of San Diego Solid Waste Hearing Panel ("Hearing Panel") that its Requests for Hearing were time-barred. I accepted the appeal solely for the purpose of deciding whether that determination was correct. Therefore, I also decided, pursuant to PRC section 45031(c), that I would review this matter based upon the record before the hearing panel and on written arguments submitted by the parties. The written record and arguments were submitted by November 20, 2014.
3. Having considered the arguments of legal counsel and the documents submitted by the parties, and for good cause appearing, I have made the following determinations:

1
2 **The Hearing Panel Decision**

- 3 4. The Hearing Panel consolidated two Requests for Hearing and heard both matters on
4 September 22, 2014. The first request was filed on July 28, 2014 alleging that the LEA
5 had failed to require Gregory Canyon Landfill Ltd. (GCL) to remove concrete and other
6 debris disposed on the GCL property and to adequately identify the area of the GCL
7 property that is included in its permit. The second request was filed on August 27, 2014
8 alleging that the LEA in issuing a Notice and Compliance Schedule had failed to order an
9 immediate removal of concrete and other debris disposed on the GCL property and
10 adequate identification of the area of the GCL property that is included in its permit.
11
12 5. The allegations regarding concrete and other debris disposed involved two separate
13 areas, one identified as “bunker debris” and the other related to concrete being used as a
14 “vehicle barrier.” By the time of the hearing, the “bunker debris” had been removed and
15 was no longer an issue and is not an issue that is before me.
16
17 6. The Hearing Panel determined that the claim regarding the “vehicle barrier” was time-
18 barred because the Pala Band discovered or reasonably should have discovered the facts
19 on which the allegation was based from inspection reports dating back to 2008 that
20 identified the concrete vehicle barrier, and the fact that the barrier was visible from State
21 Route 76.
22
23 7. The Hearing Panel determined that the claim regarding the failure to adequately
24 identify the area of the GCL property that is included in its permit was time-barred
25 because Pala Band discovered or reasonably should have discovered the facts on which
26
27

1 the allegation was based as part of its previous litigation regarding the permit in 2012.
2 This claim was not included in the appeal filed with CalRecycle.
3
4

5 Relevant Statutes

6 8. PRC section 44307, under which this matter was filed provides, in part, that:

7 ...The enforcement agency shall also hold a hearing upon a petition to the
8 enforcement agency from any person requesting the enforcement agency to
9 review an alleged failure of the agency to act as required by this part, Part 5
10 (commencing with Section 45000), or Part 6 (commencing with Section 45030)
11 or a regulation adopted by the department pursuant to this part, Part 5
(commencing with Section 45000), or Part 6 (commencing with Section
45030). A hearing shall be held in accordance with the procedures
specified in Section 44310.

12 9. PRC section 44310 provides, in part, that:

13 ... (a) (1) The hearing shall be initiated by the filing of a written
14 request for a hearing with a statement of the issues.

15 (A) If the hearing request is made by the person subject to the
16 action, the request shall be made within 15 days from the date that
person is notified, in writing, of the enforcement agency's intent to
act in the manner specified.

17 (B) If the hearing request is made by a person alleging that the
18 enforcement agency failed to act as required by law or regulation
pursuant to Section 44307, the person shall file a request for a
19 hearing within 30 days from the date the person discovered or
reasonably should have discovered, the facts on which the allegation
20 is based.

21 (2) The enforcement agency shall, within 15 days from the date of
receipt of a request for a hearing, provide written notice to the
22 person filing the request notifying the person of the date, time, and
place of the hearing.

23 (3) If that person fails to request a hearing or to timely file a
statement of issues, the enforcement agency may take the proposed
24 action without a hearing or may, at its discretion, proceed with a
hearing before taking the proposed action. ...
25
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Hearing Panel Decision

- 1
- 2 10. At the hearing, the LEA introduced inspection reports from 2008, 2009, and 2010
- 3 which noted that the concrete in question was being used as a barrier and might also be
- 4 used for future construction. The 2010 report included the sentence: "No issues noted
- 5 with this material." The Hearing Panel also heard testimony that the concrete barrier
- 6 could be seen from State Highway Route 76.
- 7
- 8 11. Based on this information, and the record before it, the Hearing Panel accepted the
- 9 LEA's argument that the appeal was barred by the 30 day statute of limitations contained
- 10 in PRC section 44310.
- 11

Pala Band's Argument

- 12
- 13 12. In its appeal, the Pala Band argues that its Requests for Hearing were timely filed
- 14 because the July 28, 2014 request was prompted by a June 30, 2014 letter from the LEA
- 15 explaining that it was not going to order removal of the "vehicle barrier", and the August
- 16 27, 2014 request was prompted by the LEA Compliance Schedule which was issued on
- 17 August 7, 2014.
- 18
- 19 13. The Pala Band argues that "mere preparation" of a document that could be obtained as
- 20 a public record (an inspection report) does not trigger the 30 day period under PRC
- 21 44310. Pala Band further argues that the visibility of the Vehicle Barrier from State
- 22 Route 76 does not start the 30 day period, but that the statute requires "some public
- 23 action" to trigger the limitations period.
- 24
- 25 14. Furthermore, the Pala Band argues that since the LEA's failure to act in accordance
- 26 with law by ordering an immediate cleanup of the "vehicle barrier" is still on-going, that
- 27 there is an "on-going" violation by the LEA and therefore, the 30 day statute of

1 limitations would not be a bar to its action as each day the LEA does not act is the
2 beginning of a new 30 day time period.

3 LEA's Argument

- 4
5 15. The LEA has argued that the language of PRC 44310 is clear that the 30 day period
6 commenced when Pala Band "reasonably should have discovered ... facts on which the
7 allegation is based." The LEA notes that the facts are that the barrier was visible for four
8 years and that Pala Band, which has been in various administrative and civil arenas of
9 litigation about GCL before and during that time period cannot claim that it should not
10 have reasonably discovered that the LEA was not requiring that the Vehicle Barrier be
11 removed.
12
13 16. The LEA denies that the June 30, 2014 letter and the August 7, 2014 Compliance
14 Schedule "re-started" the 30 day time period because those were not new LEA actions or
15 failures to act on the Vehicle Barrier. The LEA also argues that those communications
16 did not "suddenly reveal" to the Pala Band the facts on which their petition is based.
17
18 17. Finally, the LEA argues that Pala Band's argument about a continuing violation cannot
19 be accepted because it would effectively nullify the statute of limitations contained in
20 PRC section 44310.

21 DISCUSSION

22 Continuing Violation

- 23 18. The statutory limitation at issue herein is explicit: "...the person **shall file a request**
24 **for a hearing within 30 days** from the date the person discovered or reasonably should
25 have discovered, the facts on which the allegation is based." (emphasis added).
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1 19. I am rejecting the Pala Band's assertion that this expressly stated statute of limitations
2 can be read out of existence based upon the concept of a "continuing violation." While
3 the Pala Band goes to great lengths to argue policy issues and case-law from other types
4 of statutes, I am not persuaded that I should reject the Legislature's clear language in the
5 statute. This appeal is a special procedure to compel an administrative agency to act
6 regarding another party's action, rather than a direct action against the party whose action
7 has given rise to the dispute. This statute must first be viewed by its own words in its own
8 context and I find none of the Pala Band's arguments by analogy to be persuasive.

9
10 20. Standard rules of statutory construction provide that if the words of a statute are clear
11 and unambiguous, there is no need for judicial construction. *People v. Zambia* (2011) 51
12 Cal. 4th 965. The legislature is presumed to have meant what it said. *Pineda v. Williams-*
13 *Sonoma Stores, Inc.* (2011) 51 Cal. 4th 524. To read this statute in the manner suggested
14 by the Pala Band would mean that there would be no statute of limitations in those cases
15 where the "failure to act as required" involved a lack of action by the LEA. Such an
16 interpretation does not comport with the plain meaning of the statute.

17
18 21. Furthermore, accepting the Pala Band's arguments would still have me apply the 30
19 day limitation to affirmative actions by the LEA ("some public action"), but no time limit
20 at all when the LEA did not take an action. I simply cannot read a statute to have two
21 different limits where it makes no such distinction.

22 **Discovery of Facts**

23
24 22. The statutory language at issue herein is also explicit: "...the person shall file a request
25 for a hearing within 30 days from the date the person **discovered or reasonably should**
26 **have discovered, the facts** on which the allegation is based." (emphasis added).
27

1 23. The Parties have provided ample arguments about what should have been reasonably
2 discovered and when. The courts have interpreted this type of “discovery” language to
3 mean that the period begins when a person has notice or information of circumstances
4 that would put a reasonable person on inquiry. *April Enterprises, Inc. v. KTTV* (1983) 147
5 Cal. App. 3d 805, 832. Of course, the sophistication of the person, *Moreno v. Sanchez*
6 (2003) 106 Cal. App. 4th 1415, 1428, and the type of information, such as visual
7 evidence, *Lyles v. State* (2007) 153 Cal. App. 4th 281, or public records, *Utility Cost*
8 *Management v. Indian Wells Water Dist.* (2001) 26 Cal. 4th 1185, 1197, or other
9 information, would be relevant in determining what is “reasonable.” Therefore, I want to
10 make clear that my determination in this matter is not necessarily determinative in other
11 situations where the circumstances may be different. Thus, for example, language in an
12 inspection report is not enough to meet this standard without some other evidence that the
13 party knew or should have known about that report.

16 24. As noted above, the parties have argued back and forth about whether notations in an
17 inspection report, litigation over the GCL permit, and/or the visibility of the vehicle
18 barrier from the highway triggered the beginning of the 30 day limitation for filing an
19 action.

21 25. Normally, such a determination might require a lot of analysis weighing various facts
22 and circumstances in this case. However, the Pala Band has made this determination
23 much simpler. Its June 9, 2014 letter to the LEA, which was included in the record before
24 me, states as follows:

26 “Another issue that the LEA needs to address regarding the GCL site is that (sic)
27 fact that GCL has illegally stored large amounts of construction debris on the site

1 which apparently was generated during the installation of a natural gas pipeline in
2 2009. This concrete ... constitutes "demolition and construction wastes," which
3 are "solid wastes" that can be disposed only in the permitted area of a permitted
4 facility. ...this material has been disposed outside the permitted area under that
5 SWFP...**for more than four years**, GCL has stored this construction debris
6 ...**The LEA has not enforced these rules even though it acknowledged the**
7 **presence of the construction debris in its January 2010 Inspection Report."**
8
9 (emphasis added)

- 10 26. I therefore find, as evidenced by its own letter of June 9, 2014, that the Pala Band had
11 discovered the facts giving rise to this proceeding more than 30 days before filing the
12 Requests for Hearing on July 28 and August 27, 2014.
- 13 27. I note that although the Pala Band objected to the LEA's evidence that it had in its
14 possession inspection reports, and to the testimony that the Vehicle Barrier was visible
15 from State Route 76, the Pala Band offered no evidence of its own (as opposed to its
16 attorney's written arguments), in a declaration or otherwise, that it did not have the
17 inspection reports, that it did not understand the meaning of those inspection reports, and
18 that the Vehicle Barrier was not visible from State Route 76.
- 19 28. Furthermore, I note that the Pala Band is a sophisticated party as it relates to GCL with
20 ample understanding of the relevant laws, its own rights, and the ongoing condition and
21 status of the site. This is evidenced by its years-long focus on GCL involving multiple
22 requests for hearings, appeals, and Public Records Act requests to this Department and its
23 predecessor Board on other issues, as well as its previous civil litigation regarding the
24 site. Even without the June 9, 2014 letter indicating actual discovery of the facts, I find
25 there are grounds to impute the Pala Band with constructive knowledge of the Vehicle
26 Barrier and the LEA's decision not to require its removal given the evidence in the record
27

1 indicating the debris had long been in plain view from a public highway and its status had
2 been reflected in an available public record from a number of years ago. With its
3 sophistication and longstanding focus on GCL, the Pala Band thus reasonably should
4 have discovered the facts underlying its Requests for Hearing long ago.
5

6 **ORDER**

7 Based upon the foregoing, I hereby uphold the LEA's determination that these two Requests for
8 Hearing were time-barred.
9

10 This Decision shall be effective upon service.
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13 Dated: 1/8/2015

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Carroll Mortensen, Director
17 Department of Resources Recycling and Recovery (CalRecycle)
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DECLARATION OF SERVICE BY MAIL

Case Name: **IN THE MATTER OF: APPEAL OF SAN DIEGO COUNTY LOCAL ENFORCEMENT AGENCY HEARING
PANEL DECISION ON GREGORY CANYON LANDFILL, ISSUED SEPTEMBER 26, 2014**

I declare:

I am employed in the Legal Office of the California Department of Resources Recycling and Recovery, 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 8, 2015, 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:

Walter E. Rusinek
Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101

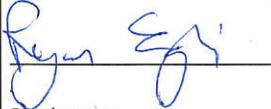
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Attn: Harllee Branch, Esq.
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Sacramento, CA 95814

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

Executed on this 8th day of January, 2015, at Sacramento, California.



Declarant

