REQUEST FOR APPROVAL

To: Cara Morgan
Branch Chief

From: Melissa Vargas
Supervising Environmental Scientist

Request Date: November 10, 2014

Decision Subject: Amended Countywide Siting Element For Kern County

Action By: December 16, 2014

Summary of Request:
Public Resources Code (PRC) Sections 41700-41721.5 require counties to prepare a Countywide Site Element (CSE) that describes areas that may be used for developing new disposal facilities. PRC Section 50001 requires that after a Countywide Integrated Waste Management Plan (CIWMP) has been approved by the Board, no person shall establish or expand a solid waste facility, as defined in PRC Section 40194, in the County unless the solid waste facility is identified in the CSE or amendment thereto, which has been approved pursuant to PRC Section 41721 or 41721.5, respectively. In addition, PRC Section 40912(e) requires a CSE amended after January 1, 2003, to include a description of the actions taken by the county to solicit public participation by the affected communities, including, but not limited to, minority and low-income populations.

Kern County has amended its CSE by adding a discussion of EMSW facilities and separately adding the Lehigh Southwest Cement Plant as an Engineered Municipal Solid Waste Facility (EMSW) in the Unincorporated area of Kern County.

Recommendation:
Based on staff's review of the amended CSE, staff found that all of the requirements have been satisfied and the amended CSE substantially complies with PRC Sections 41700, et seq., PRC Section 40912(e), and Title 14, California Code of Regulations (14 CCR) Section 18780 and 14 CCR Section 19781. Therefore, staff recommends approval of the amended Countywide Siting Element for the County of Kern with the following caveat: As discussed in greater detail below, the portions of the CSE relating to the requirements of AB 1126 (Gordon, 2013) with respect to EMSW facilities, and the distinctions between the "amendment" and "revision" of Siting Elements will not be considered or approved as part of the RFA because they do not correctly describe the intent of the applicable statutes and regulations.

Branch Chief Action:
On the basis of the information and analysis in this Request for Action and the findings set out above, I hereby approve the amendments to Countywide Siting Element for Kern County.

Dated: 12-16-14

Cara Morga
Cara Morgan, Branch Chief
Local Assistance and Market Development

Background Information, Analysis, and Findings:

The County has adequately addressed all requirements for amending the County's CSE by submitting the information noted below:

Kern County Amended Countywide Siting Element Adequacy	YES	NO	N/A
Local Task Force comments received	X		
CEQA documentation provided	X		
Meets 15-year disposal capacity requirement	X		
Meets General Plan consistency requirement	X		
30-day notice in newspaper of general circulation of local hearings to adopt	X		
County and majority/majority of cities adopted amendment	X		X*[1]
Resolutions showing local adoption by county and cities	X		
Provided description of actions taken to solicit public participation by the affected communities	X		

Under the California Environmental Quality Act (CEQA), the Department is a Responsible Agency with respect to the amended Countywide Siting Element (the Project). The County of Kern served as Lead Agency and prepared and adopted a mitigated certified Environmental Impact Report (SCH # 2012121052) on October 28, 2014, in connection with its approval of the Project. The Department has determined the Environmental Document is adequate for its purposes and has considered the potential environmental effects of the Project as described in the Environmental Document prepared by the Lead Agency. The Department finds that the Project will not have any adverse environmental effects that are subject to mitigation or avoidance under the jurisdiction of the Department.

Despite being advised otherwise by CalRecycle legal counsel, the County included several statements in the CSE that are incorrect. These are described here so that other jurisdictions considering the addition of an EMSW facility are aware that the intent of AB 1126 was to allow for simpler siting of such facilities. In particular, the CSE contains certain statements indicating that AB 1126 amended the PRC to add a **mandatory** requirement that the CSE be "revised" to include a description of areas to be used for development of EMSW facilities;[2] and that this revision be approved by the county and a majority of the cities within the county which contain a majority of the population of the incorporated area of the county in accordance with Section 14 CCR Section 18783 (i.e., the "majority/majority" requirement). The CSE also indicates that the addition of the description of areas to be used for the development of EMSW facilities **must be completed** before the CSE is "amended" to add a particular facility, which much be approved by the county in which the facility is located.[3]

These statements are incorrect. Neither statute nor regulation distinguishes between an amendment and a revision; the terms are interchangeable. Furthermore, AB 1126 creates no requirement that the CSE be

[1] The amendment adding the Lehigh Facility to the siting element is not subject to the majority/majority requirement.
[2] These statements are contained on pages 2-3 and page 13.
[3] This discussion is contained on pages 16-17.

amended or revised first to add a general description of the areas to be used for the development of EMSW facilities before an EMSW facility can be added. While a County may choose to include additional EMSW discussion in its CSE through the normal majority/majority approval process, it is clear that the intent of AB 1126 was to allow simpler siting of EMSW facilities. *AB 1126 provides that EMSW facilities must be identified in the CSE instead of the NDFE. However, it only requires an amendment/revision when a proposed facility is added, which need only be approved by the jurisdiction in which the EMSW facility is located, instead of the typical majority/majority process that would be otherwise required.

Therefore, these portions of the amended CSE have not been considered as a part of this RFA and are not approved by the Department.

The administrative record for the Department's decision to approve the Project includes the administrative record before the Lead Agency, the proposed Project together with all of its components and supporting documentation, this staff report, the Environmental Document adopted by the Lead Agency, and all other documents and materials utilized by the Department in reaching its decision to approve the proposed Project. The custodian of the Department's administrative record is Dona Sturgess, Legal Office, Department of Resources Recycling and Recovery, P.O. Box 4025, Sacramento, CA 95812-4025.

The Department will file a Notice of Determination with the State Clearinghouse following Department approval of the Project.