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CALIFORNIA INTEGRATED WASTE
MANAGEMENT BOARD

BEFORE THE
INTEGRATED WASTE MANAGEMENT BOARD
STATE OF CALIFORNIA

In the Matter of the Penalty Order Issued to:	**No.**
WARING'S DUMP #34-CR-5017 **APN'S 038-0202-001; 038-0182-005; AND 038-0182-010**	**HEARING BRIEF**
	Date: **October 11, 2007** **Time:** **11:00 a.m.**
KRISHNA LIVING TRUST; RAGHVENDRA SINGH	
Appellant(s)	

The above referenced matter was heard by Administrative Law Judge Catherine Frink of the California Office of Administrative hearings pursuant to procedures described in California Public Resources Code 44308 and 44310. The OAH case number was N2007040062. The dates of the hearing included May 23, June 25, 26, 27 and July 13, 2007. Following the closing of evidence, the ALJ allowed for the submission of closing briefs. The record was finally closed on August 24, 2007. Judge Frink's decision was issued on September 4, 2007, and served on September 5, 2007.

On September 14, 2007, counsel for CIWMB provided Counsel for the Sacramento County LEA a copy, as an attachment to e-mail, of "appeal filed with CIWMB", signed by appellant, but undated. The accompanying e-mail indicated that appellant had filed the document with CIWMB on September 13, 2007. The LEA was never served with the appeal by appellant.

Notice of hearing was issued by CIWMB on September 18, 2007, superseded by an amended Notice of Hearing issued September 25, 2007. The appeal has been set for November 6, 2007, at 1:30 p.m. However, pursuant to Public Resources Code Section 45031, the Board will first hold a hearing at 11:00 a.m. on October 11, 2007, to determine whether or not to accept the appeal.

Also on September 25, 2007, counsel for the Board provided the parties with written procedures for Board hearing on determination of whether or not to accept the appeal. The document requested submission of any oral argument on the issue of the Board's acceptance of the appeal to be received by October 3, 2007. The following is submitted in compliance with that request.

Lastly, on September 26, 2007, the legal office of CIWMB provided all parties with a copy of the Board staff report, prepared in anticipation of the October 11, 2007, determination hearing. Reference will be made to that document herein.

Pursuant to Public Resources Code 45031, the options available to the Board on October11, 2007, will be to:

1. Determine to not hear the appeal
2. Accept the appeal and decide the matter based on the record from the hearing before the ALJ, or based on written argument or both
3. Accept the appeal and hold a hearing within 60 days of the appeal.

The recommendation of CIWMB staff is to proceed according to subdivision (c). Pursuant to the proposed procedure the Board would decide the matter based on the record from the administrative proceeding along with written arguments provided by the parties and CIWMB staff. The Board would then afford the parties an opportunity for oral presentation at the hearing to be held November 6, 2007. A briefing schedule has been proposed as part of staff's recommendation.

Proceeding in such a fashion appears to be consistent with Public Resources Code § 45032(a). The LEA and its counsel are prepared to proceed in the manner recommended by staff. The LEA makes the following specific requests:

Appellant is to be strictly limited to those seven issues identified by staff.

CIWMB staff has made a valiant effort to glean from appellant's statement of appeal the issues that appellant seems to wish reviewed. The LEA applauds this effort and is fully prepared to address the issues succinctly described by staff. The concern the LEA has is in making certain that the review is limited to those identified issues. Appellant may have other ideas.

The first two sentences of the front page of the appeal demonstrates the LEA's concern. Those sentences read: "Appellant requests for the hearing on all grounds as stated on the statement of issues filed with Environmental Management Division. Appellant presents a summary..."

Appellant only filed one statement of issues with EMD. That statement was a minimal statement, simply asking for an appeal hearing. Appellant should have been limited to those few issues. However, during the course of the five day hearing, appellant filed at least two interlocutory statements with the ALJ, introducing new, novel and incorrect theories of argument midway through the presentation of evidence. Appellant even filed a brief with the ALJ after briefing had been closed.

The concerns the LEA has are two fold. First, appellant has created for himself the impression that he has requested this Board to conduct a complete review of the entire administrative record, with the expectation that the Board will consider each minute point raised in any one of those statements and apply the record to it. In other words, he does not expect his "summary" to be all that will be considered.

Public Resources Code § 45030(b) requires that the appellant provide a brief summary statement of the legal and factual basis for the appeal. To the extent that staff have been able to decipher the seven listed arguments from appellant's statement, the LEA would agree those seven issues have been sufficiently stated. Other than those seven issues, appellant has not provided a statement of legal and factual basis by virtue of his blanket reliance on statements submitted at hearing.

Second, the LEA should not again be put in the position of having to "chase after"

all of appellant's "spur of the moment" arguments. Counsel for the LEA was repeatedly called upon to research and address issues mid-hearing that should have been identified by appellant well in advance of the hearing. While none of appellant's many legal theories proved valid, raising them mid hearing amounted to unfair surprise as well as an inefficient use of hearing time.

Allowing appellant to drift all over the legal landscape will be much more prejudicial at a hearing before the Board. Staff has recommended concurrent briefing, which means the LEA will be limiting its briefing to those issues identified by the Board on October 11, 2007. The LEA cannot anticipate the often obscure arguments raised by appellant and will not be able to adequately respond to them if raised. This is particularly true upon rebuttal briefing.

The LEA also notes that CIWMB staff will be called upon to make recommendations based on the initial written arguments. The LEA will not be able to address any issues not previously identified in its brief which will become the subject of staff's recommendations. To allow appellant free reign in the issues he chooses to raise will harm the LEA's ability to argue its case effectively.

It is requested that the Board follow staff's recommendations and direct briefing as described. The LEA does further request however that all briefing and argument be specifically limited to those seven issues identified in the staff report and that the Board direct appellant that all other issues raised will not be considered.

Dated: 10-2-07

Respectfully submitted,

ROBERT A. RYAN, JR., County Counsel
Sacramento County of California

By _____
JOHN E. REED
Deputy County Counsel

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PROOF OF SERVICE

I, Michelle Embree, declare:

I am a citizen of the United States, employed in Sacramento, California. My business address is 700 "H" Street, Suite 2650, Sacramento, CA 95814-1283. I am over the age of 18 years and not a party to the above-entitled action.

I am familiar with the practice of the Office of County Counsel of the County of Sacramento whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in the United States Mail after the close of each day's business. On October 3, 2007, I served the following:

HEARING BRIEF

☒ **mail** in accordance with CCP §1013(a), by enclosing a true copy in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with the business practices of the Office of the Sacramento County Counsel for collection and processing of correspondence for mailing with the United States Postal Service, and correspondence so collected and processed is deposited with the United States Postal Service on the same date in the ordinary course of business.

☐ **personal delivery** of a true copy thereof, in accordance with CCP §1011, to the following party(ies) at the address(es) set forth below.

☐ **overnight delivery** in accordance with CCP §1013(c), by placing a true copy thereof enclosed in a sealed envelope, with delivery fees paid or provided for, in a designated area for outgoing overnight mail, or hand delivered to the overnight delivery facility addressed as set forth below.

☐ **facsimile transmission** in accordance with CCP §1013(e), to the following party(ies) at the facsimile number(s) indicated below.

Raghvendra Singh
P.O. Box 162783
Sacramento, CA 95816

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on October 3, 2007, at Sacramento, California.

MICHELLE EMBREE

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