STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

CALIFORNIA WASTE MANAGEMENT BOARD
1020 NINTH STREET, SUITE 300
SACRAMENTO, CALIFORNIA 95814

Meeting of the
CALIFORNIA WASTE MANAGEMENT BOARD
Hearing Room
River City Bank Building
1020 Ninth Street, Suite 300
Sacramento, CA 95814

January 13-14, 1988

NOTICE AND AGENDA

Note: The Board will convene at 10:00 a.m., January 13, 1988. This agenda represents the order in which items are scheduled to be considered. Since the Chairman, however, may change this order, participants and other interested parties are advised to be available during the entire meeting. Items not considered on January 13, may be continued until January 14, beginning at 9:00 a.m.

If written comments are to be submitted to the Board, 15 copies should be provided.

		MINUTES
1.	CONTINUATION OF PUBLIC HEARING ON PROPOSED CHANGES IN BOARD REGULATIONS CONCERNING COLLECTION SERVICE PROVIDERS: TITLE 14, CALIFORNIA ADMINISTRATIVE CODE, SECTION 17332	90
2.	CONSIDERATION OF THE CONTRA COSTA COUNTY SOLID WASTE MANAGEMENT PLAN REVISION	30
3.	CONSIDERATION OF PLUMAS COUNTY SOLID WASTE MANAGEMENT PLAN REVISION	15
4.	STATUS OF COUNTY SOLID WASTE MANAGEMENT PLANS	10
5.	CONSIDERATION OF DETERMINATION OF CONFORMANCE FOR THE SOUTHEAST RESOURCE RECOVERY FACILITY, LOS ANGELES COUNTY	20
6.	CONSIDERATION OF CONCURRENCE WITH REVISION OF THE SOLID WASTE FACILITIES PERMIT TO REFLECT CLOSURE FOR THE OZENA MODIFIED LANDFILL, VENTURA COUNTY	15
7.	CONSIDERATION OF REMOVAL OF CITY OF ALAMEDA LANDFILL (CLOSED), ALAMEDA COUNTY, FROM THE EPA RCRA OPEN DUMP LIST	15
8.	REPORT TO THE BOARD ON THE ENFORCEMENT ADVISORY COUNCIL MEETINGS	15
9.	CONSIDERATION OF BOARD'S ENFORCEMENT GUIDELINES	20

10.	PRESENTATION BY VENTURA REGIONAL SANITATION DISTRICT ON STATUS OF WASTE DISPOSAL SYSTEM IN VENTURA COUNTY	20
11.	OVERVIEW OF THE FINANCING AND CURRENT COURT ACTIONS RELATED TO THE LASSEN COLLEGE COGENERATION FACILITY	20
12.	PRESENTATION OF STAFF REVIEW OF LOS ANGELES COUNTY RESIDENTIAL SOURCE SEPARATION FEASIBILITY REPORT FROM THE LOS ANGELES COUNTY SANITATION DISTRICTS	15
13.	REPORT BY GILDEA RESOURCE CENTER ON CONFERENCE: **RECYCLING WASTES: CALIFORNIA AND THE PACIFIC RIM**	20
14.	CONSIDERATION OF COMMENTS ON BOARD STAFF'S DRAFT VERSION OF "CURBSIDE RECYCLING IN CALIFORNIA, A SPECIAL REPORT"	30
15.	CONSIDERATION OF COMMENTS AND DISCUSSION OF THE PROPOSED RECYCLING PROGRAMS AND MARKET DEVELOPMENT ACT OF 1988	30
16.	UPDATE ON STUDY OF WASTE DISPOSAL REGIONS IN LOS ANGELES COUNTY REQUIRED BY AB 223 (TANNER)	10
17.	PRESENTATION ON STAFF ATTENDANCE AT THE 34TH ANNUAL MEETING OF KEEP AMERICA BEAUTIFUL	15
18.	UPDATE ON THE CALIFORNIA LITTER EDUCATION AND ACTION NETWORK (CLEAN) COMMUNITY ACHIEVEMENT AWARDS CONFERENCE	15
19.	UPDATE ON BOARD'S "CALIFORNIA CLEANIN'" CAMPAIGN	15
20.	UPDATE ON DEPARTMENT OF HEALTH SERVICES APPLICATION TO IMPLEMENT THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT HAZARDOUS WASTE PROGRAM IN CALIFORNIA	15
21.	UPDATE AND CONSIDERATION OF LEGISLATION	15
22.	REPORT ON SIGNIFICANT STAFF ACTIVITIES	10
23.	REVIEW OF FUTURE BOARD AGENDA ITEMS	5
24.	OPEN DISCUSSION	
25.	ADJOURNMENT	

Note: **The Board may hold a closed session to discuss personnel, as authorized by State Agency Open Meeting Act, Government Code section 11126(a), and litigation, pursuant to the attorney-client privilege, Evidence Code section 950-962, and Government Code section 11126(q).**

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CALIFORNIA WASTE MANAGEMENT BOARD

Agenda Item # 1

January 13-14, 1988

Item: Continuation of Public Hearing on Proposed Changes in Board Regulations Concerning Collection Service Providers: Title 14, California Administrative Code, Section 17332

Key Issues:

* Continuation of Public Hearing begun on December 3, 1987

* Findings on testimony, recommendations, facts and law must be made by Board before adopting a change in regulations

Background:

On December 3, 1987, the Board convened a Noticed Public Hearing on proposed changes in board regulations concerning Collection Service Providers: Title 14, California Administrative Code, Section 17332. After hearing the staff presentation and receiving testimony from interested persons, the Board approved a minor wording change in the proposed language, and continued the hearing to this meeting to allow for further discussion and the participation of Board Members. The minor language change was to change the word, "duties," on line four, to "services." This change was made without other approval of the entire regulation so that full consideration of the proposed regulation could be made at this Board meeting without further delay to make the minor change available to the public.

Included in this agenda item are the following items:

* the Proposed Text of the Regulation, including the minor change, noted above.

* Agenda Item #5 and its Supplement from the December 3-4, 1987 Board Meeting.

* A letter from Public Advocacy Advocates, presented before the December 3-4, 1987 Meeting, but not bound into the supplemental agenda item.

* the Reporter's Transcript of Agenda Item #5 from the December 3-4, 1987 Meeting.

* Resolution #88-3, which is the resolution from Agenda Item #5, renumbered for the current year.

The Board will be asked to consider the proposed regulation change at this meeting based on the staff presentation from the December 3-4, 1987 Meeting.

Attachments

Text of Proposed Amendment to Title 14, California Administrative Code (CAC), Section 17332

17332. Regulation of Operators. No ~~Each~~ person shall provide~~ing~~ residential, commercial, or industrial solid waste collection services unless he or she is duly authorized to perform such ~~duties~~ services by local governing or regulating authorities and unless he or she ~~shall~~ comply~~ies~~ with all local government licenses, permits or written approval requirements applicable to the city or county in which such services are provided. Such written approval shall be contingent upon the operator's demonstrated capability to comply with these standards and use of equipment which is safe and sanitary. Each enforcement agency of solid waste collection shall maintain a complete listing of all persons holding written approvals to provide solid waste collection services within its jurisdiction. The listings shall contain the name, office, address, telephone number and emergency telephone number if different of each such person, the number and types of vehicles employed by such person in providing such solid waste collection services, and the types of materials authorized for handling.

Note: Authority cited: Section 66790(f), Government Code.

Reference: Section 66770, Government Code.

draft, December 3, 1987

CALIFORNIA WASTE MANAGEMENT BOARD
Agenda Item # 5
December 3-4, 1987

Item: Public Hearing on Proposed Changes in Board Regulations Concerning Collection Service Providers: Title 14, California Administrative Code, Section 17332

Background:

In late 1986, the Board became aware of certain refuse collection practices, which consisted of refuse being collected from households in certain gated condominium communities by persons who were not professionally engaged in the refuse collection business. At the Board meeting of March 26-27, 1987, the Board considered an informational item (attached) on this matter. At the conclusion of the item, the Chairman appointed an ad hoc committee, comprised of Board Members Ginger Bremberg and John Moscone and Attorney Z. Harry Astor, Esq., to study the matter and report to the Board within 90 days.

On May 13, 1987, Board Member Bremberg made a report to the Board (attached), and recommended as the consensus of the ad hoc committee that the subject collection practices continue to be regulated locally, and that a supportive regulatory change be made to Title 14, California Administrative Code (Cal. Admin. Code), Section (§) 17332, to enhance the existing requirement of that regulation that persons providing refuse collection services comply with all local government requirements, including obtaining business licenses or other written approvals, complying with all local and state minimum standards and using equipment which is safe and sanitary.

Board counsel drafted amendatory language to the regulation consistent with Board Member Bremberg's report and upon the procedural trail noted in the "Procedure" comments below:

Procedure:

On September 30, 1987, Board counsel submitted to the Office of Administrative Law (OAL) a Notice, Informative Digest, Text and Initial Statement of Reasons for the amendment of Title 14, Cal. Admin. Code, § 17332. OAL returned a copy of the Notice with the endorsement that it would be published on October 9, 1987, in the Notice Register publication of OAL.

OAL made a minor change to the Notice by including a statement concerning nondiscretionary costs or savings imposed on local agencies. OAL did so by including a paragraph F. on page two. Counsel, following OAL's oral request annotated the text of the notice on page two, to accomplish the same thing. This means that the form of the copy of the Notice returned by OAL differs slightly from the form of the copy of the notice which Board counsel distributed along with the Text and Initial Statement of Reasons to the Board's entire mailing list.

The other difference between OAL's endorsed copy and the copy Counsel sent out for distribution is that Counsel's copy showed a projected publication date of October 16, 1987, while OAL's endorsed copy showed a corrected publication date of October 9, 1987. OAL had originally made a mistake when receiving the Notice, and later corrected the stamp-date endorsement. Both copies of the Notice and Informative Digest, along with the Text, the Initial Statement of Reasons, and the OAL filing face sheet are attached to this item for your information.

The discussion, deliberation and action by the Board on this proposed regulatory change are governed by the California Administrative Procedure Act (CalAPA). This means that this item has been separately noticed under CalAPA rules, as well as in the regular Notice of the Board Meeting. This item will be considered in the context of a public hearing.

If the Board decides to adopt the regulation change, it must make several findings. It must make certain economic and fiscal impact findings listed and described below. It must also make findings on the comments from the public which have and may be submitted in this proceeding. Commentors may present oral comments and, as of the time of preparation of this item, six written comments and four telephone comments have been received. Some of the written comments were also preceded by telephone calls. The written comments are attached to this item and all of the comments will be summarized below, along with Counsel's recommendations on disposition of the comments by the Board.

Also, OAL will review the adopted regulation change against the statutory criteria of the CalAPA: Necessity, Authority, Clarity, Consistency, Reference, and Nonduplication. The Board, in its deliberations, should include specific findings for the record concerning these criteria. Specifically, the Board should confirm the facts justifying the purpose and necessity of the regulation change, so that they may be included in a Final Statement of Reasons. Counsel will advise the board on its Authority, Government Code § 66790(f), to adopt regulations, and the statutory Reference, Government Code § 66770, which the

regulation implements. Furthermore, the Board must only adopt the regulation change if it determines the text is **clear, consistent** with existing statutes, court decisions and other provisions of law, and does **not duplicate** or serve the same purpose as a state or federal statute or other regulation. Counsel will further advise the Board on compliance with these criteria.

Discussion:

PURPOSE AND NECESSITY:

The most important aspect of any regulatory proceeding is demonstration on the record of the purpose and necessity for amendment to or adoption of a regulation. The main function of the Initial and Final Statement of Reasons is to officially state the **facts and purpose** constituting the **necessity** for the proposed regulation. In the Initial Statement of Reasons, the facts were stated that in certain circumstances persons who are not professional refuse collectors are providing solid waste collection services, and are not known to local government officials as solid waste collection providers. Furthermore, it has been observed that these persons are violating the state minimum standards for solid waste collection and disposal, specifically the standards for storage, removal and collection, and for safe collection and transportion equipment.

It is, therefore, the purpose of the the regulation change, to amplify and clarify the existing requirement of 14 Cal. Admin. Code 17332 that these nonprofessional and all solid waste collection service providers must comply with local approvals and the minimum standards. The regulation change does not actually propose a new or higher level of regulation. It is intended to amplify and clarify what is already in existing regulation. This point needs to be made in the Final Statement of Reasons. By adopting this change, it will be clearer to all those who would be regulated that they are bound by state and local standards if they perform solid waste collection services. Although this is already in the law, it has not been historically clearly stated to cause the factual situation driving this proceeding to have been abated to this point.

COMMENTS:

1. John Scholtes, R.S., Environmental Health Officer III, County of San Luis Obispo, Health Agency, Department of Public Health.

   Mr. Scholtes suggests concern that the regulation additionally be clarified to differentiate between collection services and self/hauling.

   Recommendation: This regulation has always intended to impose its requirements on persons who provide collection services to others, not upon home- or business owners who haul their own trash. By its terms, the regulation does not apply to self/haulers. To the extent that some of the discussion of this matter has centered around large-scale condominium developments, apartment complexes, planned unit developments and some shopping centers and industrial park facilities, the problem has been perceived as one involving the hauling of trash by one person for another or others. Individuals hauling their own trash are not intended to be covered by this regulation. Mr. Scholtes' reference to 14 Cal. Admin. Code 17225.55 does not create an inconsistency in the regulatory purpose of the subject regulation. **Counsel recommends that no change is necessary due to this comment.**

2. James D. Wheaton, City Manager, City of Corona.

   Mr. Wheaton asks for modification of the proposed text to assure that confusion over who is entitled to provide solid waste collections services does not occur when cities annex previously unincorporated areas.

   Recommendation: Health and Safety Code § 4272 provides for the short-term continuation of a previously authorized service provider when a city, which may choose to provide for solid waste services differently, annexes a new area. Nothing in the subject regulation contemplates implementing or altering the implementation of the above statute. It is self-implementing. The purpose of this regulation is to support local regulation, whatever jurisdiction may be undertaking it. It would be beyond the scope of this regulation and the Board's authority to add language to this regulation pertinent to Health and Safety Code § 4272. **Counsel recommends that no change is necessary or allowable due to this comment.**

3. John Fanning, Chairman, Solid Waste Enforcement Agency, County of Riverside.

An annotated copy of the Text of the regulation change was transmitted to Board counsel by Board Member Arakalian, requesting three changes to the proposed text. Counsel understands that these changes were requested by Mr. Fanning. The first requested change was to insert the words, "transportation and disposal" after the word collection on line 3. The second requested change was to change the word, "duties," to "services," on line 4. The third requested change was to insert on line 9 a reference to §§ 17341-17345, concerning collection equipment, to clarify the term, "these standards," which also appears on line 9.

Recommendation: The first requested change exceeds the stated scope of the regulation as it has existed and as it is proposed to be changed. The regulation specifically is meant to apply to collection service providers. "Transportation and disposal" are the separate topics of later regulations in the chapter containing the subject regulation. If the Board were to choose to adopt this suggested change, it would be beyond the scope of the notice proceeding. Adoption of this change would not be possible at this hearing. New 45-day notice would have to be written and published. **Counsel recommends that this change should not be implemented because it is beyond the scope of the regulation and the intended amendment.**

The second requested change is sufficiently related to the text of the proposed text that it could be adopted after only a 15-day waiting period. No new formal notice would be required, but the change would have to be made available for 15 more days before the Board could act. This would mean that the Board would have to reconvene after December 18 in order to complete the adoption of a regulatory change as contemplated by this item and Notice. **Counsel recommmends that this change would add clarity and should be adopted if the Board is willing to wait through the addition 15-day period before adopting the regulation.**

The third requested change would narrow the applicability of the term, "these standards." That term refers to the entire Chapter 3, not equipment safety. Such a change could be inserted to modify the phrase, "use of equipment which is safe and sanitary." It would also be a change sufficiently related to the original text which was noticed that no new 45-day notice is required, but 15-day availability of the

changed text would have to be made before the Board could act on the regulation. If the commentor intended to clarify the use of the term, "these standards," a change should be made to refer to all of the State Minimum Standards which apply. This arguably could require a new 45-day notice, because there is no written historical record of the Board's original intent is adopting those words. It is Counsel's opinion that reference to the entire set of minimum standards in this context makes the most sense in light of the entire regulatory schema. This opinion is at least speculative. **Counsel recommends that this change does not appear to add clarity or strength to the regulation concerning equipment safety, but should be considered in the general regulations rewriting project being undertaken by Board staff.**

4. Robert L. Tremewan, R.S., Environmental Health Specialist III, Tuolumne County Health Department, Division of Environmental Health.

   Mr. Tremewan suggests that the regulatory change not be adopted. He believes that the change would require "an additional layer of governmental approvals," and that it "would conflict with the excellent refuse collection regulatory structure... in Tuolumne County."

   Recommendation: Mr. Tremewan appears incorrectly to understand the purpose of the regulation and the proposed change. The purpose of the proposed regulation change is not to add another layer of required approvals, but to amplify the original purpose of the regulation. That purpose was to assure that any person providing refuse collection services be the subject of whatever regulatory program was in place in a particular jurisdiction. Neither this regulation nor the proposed change would require Tuolumne County to issue or any person in the County to obtain more or different permits than are already required. The intent is to amplify this regulation to provide local government clarified authority to regulate, as it sees fit, collection service providers. **Counsel recommends that this clarification be transmitted to Mr. Tremewan, but that his request not to adopt this regulatory change not be granted.**

5. Robert Lewon, Executive Vice-President, LMC Corp., Richmond, CA.

Mr. Lewon requests additional language to clarify that the regulation is not intended to apply to collectors of recyclables.

Recommendation: The regulation and the proposed change have always referred to "solid waste." This means discarded waste materials intended for disposal, not separated materials intended to be reused and recycled. State solid waste law is replete with statutory references which differentiate solid waste and reclaimable recyclables. As a matter of law, these references are adequate for the Board to make a finding that this regulation does not apply to collectors of separated recyclables, where no or insignificant quantities of putrescible or other discarded solid waste are included in such operations. If the Board feels that clarification is needed, Counsel recommends that it be included in the general regulations rewriting project, after investigating which other regulations might need such clarification. **Counsel recommends that the Board make a finding as a result of this public hearing that this regulation does not apply to collectors of separated recyclables, but that no change pursuant to this request be made to the noticed text presented for Board consideration.**

6. Donald H. Otterman, City Manager, City of La Cañada Flintridge.

Mr. Otterman initially asks two questions, and may offer substantive comments when he reviews the answers Counsel has provided. Mr. Otterman asks, "Will the proposed regulations change the requirements that are currently in State law regarding franchising of trash haulers, i.e. the five year notice ordinance which must be passed before a city can franchise?", and "whether cities that do not have franchises can impose certain regulations on trash haulers and be able to enforce those regulations without the franchise mechanism?" The answer to the former question is "No;" to the latter, "Yes." Counsel additionally commented that in general, this proposed regulation change does not contemplate any impact on Health and Safety Code § 4272, the state law you reference. Nor does the regulation require local government to regulate haulers in any manner different from that in which it has regulated them in the past. Other regulatory requirements, such as business licenses, the State Minimum Standards for Solid Waste Handling and

Disposal, of which the subject regulation is a part, can be imposed upon refuse haulers whether or not a local jurisdiction implements a franchise system. The existing and continuing text of the regulation, "...shall comply with all local government licenses, permits or written approval requirements **applicable** [emphasis added]...," is based on the factual and legal context that local governments use different arrangements in providing solid waste services in their communities. State law preserves local government control in this area. Neither the existing nor proposed language of the regulation would alter that autonomy.

Recommendation: **Counsel recommends that the Board discuss and acknowledge on the record the issues raised by Mr. Otterman, and that any statements, declarations or findings by the Board be included in the Final Statement of Reasons of this proceeding.**

7. George Lynch, Sacramento County Public Works.

Mr. Lynch telephoned with a comment that the proposed redrafting of this regulation might create a "local mandate," which must be funded by the state. After consulting staff at the Department of Finance and the Commission on State Mandates, Counsel advises that the proposed language does not create a mandated new or higher level of service. The Notice and the Initial Statement of Reasons describe this proposed regulation change as not increasing costs to local government and not creating a new regulatory program, but enhancing, clarifying and amplifying language in the existing regulation to make it easier for local government to apply, to the extent that local governments have in place local regulatory programs for solid waste collection service providers. **Counsel recommends that the Board make the required findings concerning fiscal impact (to be explained below), but not alter the proposed text of the regulation in this regard.**

8. Three other phone calls were received with questions and comments. At the conclusion of the conversations, the callers appeared satisfied with the text of the proposed regulation change, and did not request changes.

FISCAL EFFECT:

Among the findings required of an adopting agency are various aspects of fiscal and economic impact of a proposed regulation. In its requirements for notice, OAL has listed several items, upon which the Board must make findings in taking a regulatory action. This items are the following:

A. Fiscal Effect on Local Government
B. Fiscal Effect on State Government
C. Fiscal Effect on Funding of State Programs
D. Fiscal Effect on Private Persons or Business Directly Affected
E. Fiscal Effect on Small Businesses
F. Nondiscretionary Costs or Savings Imposed on Local Agencies
G. Fiscal Impact on Housing Costs
H. Imposition of a Mandate on Local Agencies and School Districts

In preparing the Notice for publication, Counsel recommended to the Chief Executive Officer that there were no fiscal impacts or significant adverse effects regarding the above items. This recommendation was made because the proposed regulatory change does not create a new or higher level of regulation. By rewording the regulation, the Board would be acting only to clarify and amplify the original intent and purpose of the regulation. This may focus attention on persons who previously were performing solid waste collection services without local approvals, but who always have been required to obtain such approvals and were operating illegally. Counsel found that a significant economic impact does not occur when the proper subject of a regulation becomes subject to such regulation, even though he or she may have been able, even inadvertently, to avoid the imposition of a regulation.

Recommendation: Counsel recommends that the Board find no impact or no significant impact in the above categories.

Options:

1. Make the required findings and adopt the proposed regulatory change.

2. Make any changes sufficiently related to the proposed text of the regulation which the Board deems necessary, and make such changes available to the public for at least 15 days before adopting the regulation.

3. Make any changes of a substantial nature to the proposed text of the regulation which the Board deems necessary, and direct Counsel to draft new Notice, Informative Digest, Text and Initial Statement of Reasons for republication for at least 45 days before convening a public hearing and taking any action.

4. Not adopt the proposed regulation change and terminate the proceeding.

Conclusion:

Counsel recommends that the Board conduct the public hearing, receive and consider any additional comments which may be submitted orally or in writing, and select one of the Options listed above.

Attachments

ATTACHMENTS TO AGENDA ITEM # 5

BOARD MEETING OF DECEMBER 3-4, 1987

IN ORDER OF MENTION

(for convenience, TEXT OF PROPOSED CHANGE appears first)

Text of Proposed Amendment to Title 14, California Administrative Code (CAC), Section 17332

17332. **Regulation of Operators.** No ~~Each~~ person shall provide~~ing~~ residential, commercial, or industrial solid waste collection services unless he or she is duly authorized to perform such duties by local governing or regulating authorities and unless he or she ~~shall~~ comply~~ies~~ with all local government licenses, permits or written approval requirements applicable to the city or county in which such services are provided. Such written approval shall be contingent upon the operator's demonstrated capability to comply with these standards and use of equipment which is safe and sanitary. Each enforcement agency of solid waste collection shall maintain a complete listing of all persons holding written approvals to provide solid waste collection services within its jurisdiction. The listings shall contain the name, office, address, telephone number and emergency telephone number if different of each such person, the number and types of vehicles employed by such person in providing such solid waste collection services, and the types of materials authorized for handling.

Note: Authority cited: Section 66790(f), Government Code.
Reference: Section 66770, Government Code.

draft, September 30, 1987

CALIFORNIA WASTE MANAGEMENT BOARD

Agenda Item # 17

March 26-27, 1987

Item:

Consideration of Relationship between Collection and Storage Practices in Riverside County to Board Statutes and Regulations

Key Issues:

1 - Policy decision on Riverside County collection and storage practices can affect Board regulatory program statewide.

2 - Does the use of 30-yard roll-off bodies for centralized residential collection in a condominium constitute a Small Volume Transfer Station under Board regulations?

3 - Does the hauling of the individual refuse from the residences by landscape contractors to the roll-off body violate state laws regarding who may pick up and haul refuse?

4 - Can public health and safety standards be maintained and enforced unless the practice is permitted as a Solid Waste Facility (Small Volume Transfer Station)?

Background:

During 1986, the Board became aware, through contacts by the Riverside County Local Enforcement Agency (LEA) and others, of certain collection and storage practices at two condominium developments Palm Desert. Specifically, at The Lakes (within the City of Palm Desert) and Palm Valley (in the unincorporated area near Palm Desert) Country Clubs, 30-yard roll-off bodies, left on the premises from the construction and development period, were being used for collection and storage of residential, as well as corporate, refuse, until picked up by the permitted collection company, Palm Desert Disposal.

The question was raised as to whether this practice constituted a Small Volume Transfer Station, which is regulated pursuant to Title 14, California Administrative Code (CAC), Sections 17421-17426. Board Counsel prepared an opinion on this issue on January 13, 1987, finding that the above-described practice did not constitute a Small Volume Transfer Station, pursuant to the exclusion provided by 14 CAC 17421. A copy of this opinion is attached to this Agenda Item as Attachment A.

Another question was raised as to whether the practice of having the landscape contractors pick up residential trash and deposit

it in the roll-off bodies violated any state laws regarding who may pick up or haul refuse. Board Counsel prepared a memo on this issue on January 27, 1987, finding that the practice as described did not violate state law, and that state law gives local governments maximum discretion and flexibility to determine almost all aspects of how or whether solid waste handling and disposal services would be provided to local citizens. A copy of this memo is attached to this Agenda Item as Attachment B.

On January 8, 1987, the Riverside County LEA requested a legal opinion on the practice from Kerry Jones, Enforcement Manager. Board Counsel provided a copy of the January 13 memo to the LEA. On January 13, Richard V. Skodacek, R.S., of the LEA, wrote Board Counsel, describing the situation and its history.

On January 14, Mr. Skodacek wrote Jack Dahlstrum, attorney for Sunrise Corporation, documenting unacceptable conditions with the roll-off bodies, and ordering their replacement with covered dumpsters. On March 4, Mr. Skodacek again wrote Board Counsel, describing the current situation, which now consists of the use of the dumpsters, which are removed twice a week by Palm Desert Disposal. Copies of the correspondence noted in the above two paragraphs are attached together as Attachment C.

On March 11, 1987, Lisa Dernbach, of the Board's Southern California Office, reported a telephone call to Mr. Skodacek. According to Ms. Dernbach, Mr. Skodacek wrote the local landscaping contractors, retained by The Lakes and Palm Valley Country Clubs, expressing the LEA's concerns. Those letters, dated March 4, 1987, and a letter to Attorney Dahlstrum, same date, received as this item was in final preparation, are appended to this item as Attachment E. Mr. Skodacek reports through Ms. Dernbach that Sunshine Landscaping Service (The Lakes) contacted Mr. Skodacek directly and stated that it would not be hauling refuse directly to the landfill anymore, and that six 3-yard dumpsters had been ordered for The Lakes. Mr. Skodacek further reported that, while Southview Landscaping, Inc., (Palm Valley) had not contacted Mr. Skodacek, he learned from Palm Desert Disposal that six 3-yard boxes had also been ordered for Palm Valley, and that Southview would also not be hauling refuse directly to the landfill.

Ms. Dernbach will have visited the area on March 12, and we intend to have slides of the collection and storage area and facilities available for view at the Board meeting. We anticipate that Mr. Skodacek will also be present and available to answer questions.

Analysis:

The Board has regulatory authority over Key Issues Numbers 1, 2 and 4. Key Issue Number 3 is governed by local collection ordinances under virtually complete delegation of authority by state law.. Counsel's January 27 memo discusses Key Issue Number 3. The Board has promulgated regulations governing the definition and regulation of transfer stations and the regulation of the public health and environmental aspects of collection and storage. Selected Board regulations, which are referred to herein, are attached to this Item as Attachment D. The definition of a Small Volume Transfer Station (and exclusions from that definition) appear at 14 CAC 17421. Although fully discussed in the January 13 memo from Counsel, several aspects bear repeating here. Small Volume Transfer Stations are those which receive less than 100 cubic yards a day. Certain types of transfer and storage practices are excluded from regulation as Small Volume Transfer Stations, as follows:

1- Community or multi-residence receptacles in locations where there is less than 15-cubic yards of combined container volume;

2- Storage receptacles (with no size limitation) for waste from multi-residential buildings or for commercial solid wastes;

3- Containers used to store salvaged materials.

The intent of the exclusions of 14 CAC 17421 was to exclude all apartment house and shopping center boxes, but to include--in order to regulate--all rural community centrally located refuse boxes. In the final version of the regulation, adopted in 1978, rural roll-off boxes were granted the 15-cubic yard exemption. The factual distinction between the rural and urban use of the roll-off boxes was that there is less supervision and control in the rural areas, because of the low density and distances among users. Although large-scale apartment complexes were considered, large condominium developments had not been specifically contemplated during the regulations drafting stage in 1977 and 1978.

Consideration of a change in the policy of including or excluding regulated facilities should contemplate a regulatory change. In that manner, a change can be drawn as narrowly or as broadly as the Board might wish, without inadvertently bringing under or excluding from regulation other types of operations not contemplated by this discussion.

Existing Board regulations provide support for local regulatory attention to the Riverside-Palm Desert practices: 14 CAC 17331 requires removal of the waste at least weekly or more frequently if the LEA requires, and 14 CAC 17311-17317 establish public health and environmental standards for safe storage of refuse, pending removal. Enforcement of these standards is provided by law, even though no solid waste facilities permits are issued. Government Code Section 66796.51 provides for a $1000.00 daily civil penalty for each violation of Board regulations.

It is important to note that the factual situation which gave rise to this issue may have substantially changed. It appears that uncovered 30-cubic yard roll-off bodies are no longer being used. The LEA has stated that multiple 3-yard dumpsters are in place, and that the landscaping contractors will not be hauling refuse directly to the landfill.

Options:

This is an informational item, intended to be discussed in a workshop-like forum. The Board may articulate existing policy and statutory and regulatory interpretations, may formulate new policy on storage, collection and transfer practices, may direct further study, legislative and regulatory development on the issues, and/or may take no action.

Recommendation:

Inasmuch as this is a workshop item, staff and Counsel make no recommendations pending verification of the facts by Southern California Board staff and the LEA, and pending the discussion by the Board. Counsel's findings on the legal status of certain aspects of this issue have been stated above and are attached hereto.

Attachments

State of California THE RESOURCES AGENCY

Memorandum

To : George T. Eowan
Chief Executive Officer

Date: January 13, 1987

cc: Sherman E. Roodzant, Chairman

Original Signed by:
Robert F. Conheim

Robert F. Conheim

From : CALIFORNIA WASTE MANAGEMENT BOARD

Subject : Status of 30-Cubic Yard Roll-Off Containers at The Lakes and Palm Valley Country Club

Question: You have asked me to investigate the legal status of the practice of the two above-subject condominium developments using 30-cubic yard roll-off boxes as a storage facility for the residential refuse of the owners and tenants.

Answer: These facilities are excluded from regulation, under the State Minimum Standards, as small volume transfer stations, per the exclusions listed in Title 14, California Administrative Code (CAC) Section 17421.

Discussion:

The situation has been described as above, with these additional facts:

1. This practice has replaced individual residential refuse collection by the franchised, permitted or licensed hauler (this same hauler does pick up the roll-off box);

2. The roll-off boxes have been observed frequently to be in an overflow, unkempt state;

3. The residents leave their refuse in plastic and paper sacks outside;

4. The groundskeepers of the developments collect the refuse and place it in the roll-off boxes.

Title 14, CAC Section 17421 excludes the following transfer stations from having the State Minimum Standards for Solid Waste Handling and Disposal for small volume transfer stations applied to them:

ATTACHMENT A

1. Community or multi-residence receptacles in locations where there is less than 15 cubic yards of combined container volume;

2. Storage receptacles (with no size limitation) for waste from multi-residential buildings or for commercial solid wastes;

3. Containers used to store salvaged materials.

The roll-off box locations, which are the subject of this memo, are transfer stations within the meaning of the statute, Government Code Section 66723. The regulation simply excludes them from being regulated as small volume transfer stations. As excluded facilities, they are not technically also exempt from being required to obtain permits. This means that, while there are no standards which apply to these facilities as transfer stations, they may, nevertheless be permitted. That appears to be an oversight in unintended regulation. The Board has not applied the permit requirement to other transfer facilities more commonly excluded from the State Minimum Standards. The permit requirement appears in a different area of the law, and has not been conformed to 14 CAC 17421.

This reading of 14 CAC 17421 may uncover other situations where LEAs have been regulating certain small volume transfer stations, which are, in fact, identical or so similar to the situations described above, that they, too, would be excluded from small volume transfer station regulation. The explanation for this situation lies in the fact that the exclusions listed above have never, in practice, been counted as three, but construed as two, with the first and second combined so as to apply the 15-cubic-yard-limit to both of them.

A close reading of the regulation requires the conclusion that the first and second exclusions are separate and different. While there is no explanation for this which is obvious from a literal reading of the text, it would appear that the first refers to on- or off-premise collection bins for use by the inhabitants of multiple residences in a single or multi-unit community. The second exclusion refers to multi-residence buildings, such as joined-unit condominiums, and to commercial refuse containers, such as large roll-off boxes at commercial or industrial "park" sites. There is no volumetric or weight limit attached to this second exclusion. I informally checked with the original drafter of the regulation, Bill Cullen. He indicated that the "intent" was to exclude all apartment house and shopping center boxes, but to include (for regulation) all rural community central refuse boxes. The final version of the regulation almost achieved that, except for excluding regulation of community central refuse boxes of less than 15 cubic yards.

There is an LEA enforcement issue involving the unkempt and overflow condition of the boxes. The Board's standard at 14 CAC 17315 requires property owners and tenants to use

proper storage containers to avoid overflowing. Another minimum standard, 14 CAC 17331 requires pick-up and collection at least weekly unless more frequent collection is required by the LEA. These standards can be enforced, but loss of the permit is not a sanction. The LEA can require more frequent collection of the 30-yard box or the use of additional storage capacity to eliminate the overflow conditions. Civil enforcement with a maximum penalty of $1000.00 a day, per Government Code Section 66796.51 is available.

Any issues concerning whether local contracts or franchises require individual collection as opposed to this centralized collection are beyond the scope of the Board's jurisdiction. In any event, I have not received enough facts to render a gratuitous opinion on such issues.

It should be noted that the Chairman of the LEA, John Fanning, wrote Kerry Jones on January 8, 1987, requesting a legal opinion from the Board. Upon further inquiry, I was informed that the Riverside County Counsel has not been asked, because of LEA perceptions about the workload of that office. The letter from the LEA is attached for your information.

Attachment

State of California THE RESOURCES AGENCY

Memorandum

To : Sherman E. Roodzant, Chairman Date: January 27, 1987

Original Signed by:
Robert F. Conheim

Robert F. Conheim

From : CALIFORNIA WASTE MANAGEMENT BOARD

Subject : Palm Desert Collection Practices

You have asked whether the practice of having the groundskeepers at the above-noted condominium developments conforms to or violates any state laws regarding who may pick up and haul refuse.

My answer is that, based on the facts discussed in earlier memos on this subject, the practice does not appear to violate state laws regarding the provision of solid waste handling and disposal services.

The practice must be filtered through the Riverside County Ordinance (for Palm Valley) and the Palm Desert City Ordinance (for The Lakes). The County Ordinance (Section 8.16.060) requires refuse haulers to have a county permit for hauling on the public streets. It provides some exceptions, namely, the following:

1. contractors or builders removing debris, rubbish and trash from construction sites;

2. nurserymen or gardeners holding valid city business licenses;

3. anyone removing shrubbery, grass, tree cuttings or trimmings or other agricultural debris from property owned or operated by the person; and

4. anyone removing industrial wastes or any person removing large or oversized items from their premises.

The City ordinance (Section 5 of Ordinance 513, as read to me by Dick Skodacek of the LEA) requires a permit under much the same framework, with exceptions, as follows:

ATTACHMENT B

1. persons who haul their own trash from their own residences;

2. refuse produced in the course of conducting one's own business;

3. persons performing occasional hauling for others without compensation.

Neither of the ordinances was enacted in contemplation of the activities under scrutiny here, but both ordinances can be interpreted broadly enough to allow the activities as exempt from the permit requirement. Determination of exemption or nonapplicability of the ordinances would be a local matter, well beyond the scope of this or any state agency. Both ordinances tie the permit to hauling on the public streets. It is my understanding that the activities we are analyzing occur within the boundaries of a closed community and not on the public streets. Exemption 2 of the County ordinance and exemptions 1 and 2 of the City ordinance might apply, although stretching those exemptions to cover these activities was not contemplated by the drafters of these ordinances.

State law has long-allowed local governments to determine almost all aspects of how or, indeed, whether solid waste handling and disposal services would be provided to local citizens. The Health and Safety Code (H&SC) allows counties to allow, permit or contract for refuse services (H&SC Section 4200 et seq.). H&SC Section 4250 allows cities to contract for solid waste handling and disposal services. Government Code (Gov C) Section 66755 et seq., which appear in "our codes," establish the right and power of all local governments to provide or not provide for solid waste handling services by virtually any means, e.g., public operations, or by solid waste enterprises. Local government may also determine how such services, if to be provided at all, are to be provided. Gov C Section 66757 suggests several methods of obtaining and providing such services which might be used, specifically:

> ...nonexclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding, or, if in the opinion of the governing body, the public health, safety and well-being so require, by partially exclusive or wholly exclusive franchise, contract license, permit, or otherwise, either with or without competitive bidding.

In conclusion, there does not appear to be a state law which would prevent local government from controlling this field of activity completely. The local ordinances in question do not appear to have intended to regulate this matter, the most salient

point of both ordinances being their relation to hauling on the public streets. If it is determined by these local governments that this activity were to fall under the ambit of these ordinances, the exclusions which are listed do not seem to apply directly, and the activity would seem to violate at least the spirit of the schema to grant area-wide permission to one company to provide professional refuse hauling services. I have not actually seen the permits granted to Palm Desert Disposal by the county and the city, nor have I seen any documents stating the company's contract or franchise rights.

JAN 1 2 8

local solid waste management enforcement agency for riverside county

AGENCY MEMBERS:
XXXXXXXXXX - CHAIRMAN
Deputy Director of Health for Environmental Health
XXXXXXXXXX Representative of Riverside County Mayors' & Councilmen's Assn.
XXXXXXXXXX, Land Use Administrator - Department of Building & Safety
XXXXXXXXXX Waste Disposal Director - Road Department Representative
XXXXXXXXXX, Representative of C-VAG
AGENCY SECRETARY:
XXXXXXXXXX

January 8, 1987

Mr. Kerry Jones
California Waste Management Board
1020 9th Street, Suite 300
Sacramento, CA 95814

Dear Mr. Jones:

RE: Illegal Transfer Facilities at Palm Valley Country Club and The Lakes Country Club

In prior correspondence, Local Enforcement Agency staff outlined the controversy regarding the operation procedures in the removal of household solid waste from a condominium development in the city of Palm Desert (The Lakes) and in the unincorporated area (Palm Valley Country Club). The procedures involve the use of 30 cu. yd. roll-off containers utilized by the maintenance people hired by the homeowners associations to pick up the residential trash and rubbish.

Prior to taking any formal action, the Local Enforcement Agency would like a legal opinion from the California Waste Management Board as to whether the planned community homeowners association would be considered a commercial enterprise or multi-residential building under the Title 14, Section 17421 exclusions.

If you have any questions regarding this correspondence, please feel free to contact this office at (714) 787-2316.

Very truly yours,

John M. Fanning, Chairman
Local Enforcement Agency
for Riverside County

ATTACHMENT C

JMF:RVS:dh
cc: Gary King

MADE OF 100% RECYCLED PAPER

JAN 15 1987

local solid waste management enforcement agency for riverside county

AGENCY MEMBERS:
[redacted] - CHAIRMAN
Deputy Director of Health for Environmental Health
[redacted] Representative of Riverside County Mayors' & Councilmen's Assn.
[redacted] Land Use Administrator - Department of Building & Safety
[redacted] Waste Disposal Engineer - Road Department Representative
[redacted] Representative of C - VAG
AGENCY SECRETARY
[redacted]

January 13, 1987

California Waste Management Board
1020 9th Street, Suite 300
Sacramento, CA 95814

Attn: Mr. Conheim

Gentlemen:

RE: Transfer Stations at The Lakes and Palm Valley Country Clubs - Palm Desert Vicinity

In reference to our telephone conversation regarding the roll-off containers used for rubbish and garbage storage at The Lakes and Palm Valley Country Clubs in Palm Desert, I will try to answer any questions you may have.

There were several gated communities of condominium type resorts which during the construction and landscaping stages were using roll-off bins of 30 cubic yard capacity for storage of waste materials prior to pickup. Four of the communities continued to use these containers after the houses were built and the landscaping maintenance people would collect the bagged or containerized garbage whenever they saw the containers in front of the homes - five or six days a week.

The hauler, Palm Desert Disposal (Waste Management, Inc.), notified this office of the situation. Letters were sent to the four homeowner associations involved. Two of the associations obtained individual collection. However, Palm Valley and The Lakes Country Club communities did not. Both are Sunrise Company developments.

This is when Sam Arakalian noticed the maintenance people, i.e., Vista Verde Landscaping Contractors, picking up bags of trash, placing them into their stake bodied trucks, and hauling it away (presumably to the roll-off container).

MADE OF 100% RECYCLED PAPER

A meeting was held after unsuccessful attempts to have the city enforce the city code. Alternate solutions were discussed. An alternative to individual pickup was discussed. My suggestion to have dumpsters placed within the community, accessible to the occupants, was not feasible because of lack of availability of proper locations.

In December, we were informed by Mr. Arakalian that use of any vehicle to transport to the bin would be considered a violation due to the transfer station definition. The subsequent letters were sent with that in mind (the only solution was individual pickup to remain within Title 14 requirements, the city ordinance of Palm Desert, and Riverside County Ordinance 513).

Palm Desert Disposal will abide by any decision made. If asked to remove the bin, they will do so. Sunrise Company is continuing to add to these two communities. The total residences now constructed total approximately 1200. Any final decision made here will have repercussions throughout the state in how waste is handled.

The units are resort type, that is, not all are occupied at the same time. However, there would be no reason why Monday morning would not be a good time for a standard normal pickup by the hauler and another day selected for the excess as a feasible solution for all concerned.

Please contact me if you need any further details to assist you in your determination. I can be reached at (714) 787-6543.

Very truly yours,

Richard V. Skodacek

Richard V. Skodacek, R.S.
Supervising Sanitarian

RVS:dh

AGENCY MEMBERS:
[redacted] - CHAIRMAN
Deputy Director of Health for Environmental Health
[redacted], Representative of Riverside County Mayors' & Councilmen's Assn.
[redacted] Land Use Administrator - Department of Building & Safety
[redacted] Waste Disposal Engineer - Road Department Representative
[redacted], Representative of C - VAG
AGENCY SECRETARY:
[redacted]

local solid waste management enforcement agency for riverside county

January 14, 1987

Mr. Jack Dahlstrum
74-133 El Paseo, Suite C
Palm Desert, CA 92260

Dear Mr. Dalstrum:

RE: The Lakes and Palm Valley Country Clubs

We are continuing contact with the California Waste Management Board regarding the transfer station issue. In the meatime, recent investigations made of the solid waste storage facilities of Palm Valley and The Lakes Country Clubs reveal unacceptable facilities.

Until final agreements are made regarding the collection of solid waste from the individual homes, the replacement of the 30 cubic yard roll-off boxes with covered dumpster type containers will be necessary. Please make the arrangements as soon as possible and not later than February 1, 1987.

If you have any questions regarding this correspondence or the placement of the containers, please feel free to contact this office at (714) 787-6543.

Very truly yours,

Richard V. Skodacek

Richard V. Skodacek, R.S.
Supervising Sanitarian

RVS:dh
cc: Ray Burke, Palm Desert Disposal Co.
Wayne Ramsey, Code Enforcement Officer
City of Palm Desert

28

MADE OF 100% RECYCLED PAPER

AGENCY MEMBERS:
[illegible] - CHAIRMAN
Deputy Director of Health for Environmental Health
LORI GREGG, Representative of Riverside County Mayors' & Councilmen's Assn.
WILLIAM HARVEY, Land Use Administrator - Department of Building & Safety
RAYMOND E. JOHNSON, Waste Disposal Engineer - Road Department Representative
ROLAND TAATGES, Representative of C-VAG
AGENCY SECRETARY:
PAULINE SWAIN

local solid waste management enforcement agency for riverside county

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March 4, 1987

Mr. Robert Conheim, Counsel
California Waste Management Board
1020 9th Street, Suite 300
Sacramento, CA 95814

Dear Mr. Conheim:

RE: The Lakes and Palm Valley Country Clubs Update

The use of rolloff bins has been discontinued since it was not an acceptable method for solid waste storage on the premises of the two country clubs in question.

The Lakes is currently utilizing four dumpster containers which are removed two to three times a week by Palm Desert Disposal (Waste Management, Inc.). It was decided that the maintenance people in the course of their acitivities of trimming, weeding, removing debris, and old furniture, etc., would utilize these containers for deposit of household trash and garbage deposited by the driveways of the occupants of this home type condominium complex. The handling of this household waste is done twice: once to place it on the vehicle and once to remove it from the vehicle and place it into the dumpsters. Since these people are responsible to keep the area clean, the handling is done in a safe, sanitary manner.

Several things could occur in this type of situation: The double handling could be construed as execessive handling, potentially unsafe; or, when the dumpsters become filled, the maintenance crew could decide to haul it to the landfill which would constitute a violation of Riverside County Ordinance 513.

It is the opinion of the LEA staff that the handling of solid waste in the manner described above does not conflict with state guidelines, is not detrimental to the public health, and is within the guidelines of Government Code, Section 66732 and 66757.

MADE OF 100% RECYCLED PAPER

If you need more information, please contact me at (714) 787-654 .

Very truly yours,

Richard V. Skodacek

Richard V. Skodacek, R.S.
Supervising Sanitarian

RVS:dh

cc: J. Fanning, LEA Chairman

17225.69. Solid Wastes / Wastes.

History: 1. Repealer filed 2-21-78; effective thirtieth day thereafter (Register 78, No. 8).

17225.70. Solid Waste Management. "Solid Waste Management" includes a planned program for effectively controlling the generation, storage, collection, transportation, processing and reuse, conversion or disposal of solid wastes in a safe, sanitary, aesthetically acceptable, environmentally sound and economical manner. It includes all administrative, financial, environmental, legal and planning functions as well as the operational aspects of solid waste handling, disposal and resource recovery systems necessary to achieve established objectives.

17225.71. Street Refuse. "Street Refuse" includes materials picked up by manual or mechanical sweeping of alleys, streets or sidewalks, litter from public litter receptacles and material removed from catch basins.

17225.72. Transfer/Processing Station or Station.

History: 1. Repealer filed 2-21-78; effective thirtieth day thereafter (Register 78, No. 8).

17225.73. Vector. "Vector" includes any insect or other arthropod, rodent, or other animal capable of transmitting the causative agents of human disease, or disrupting the normal enjoyment of life by adversely affecting the public health and well being.

17225.74. Written Approval.

History: 1. Repealer filed 2-21-78; effective thirtieth day thereafter (Register 78, No. 8).

Article 5. Solid Waste Storage and Removal Standards

GENERAL

17301. Applicability of Standards. The standards in this Article shall apply to all facilities, equipment, or vehicles used for storage, removal, transport, and other handling of solid wastes.

History: 1. Amendment filed 2-21-78; effective thirtieth day thereafter (Register 78, No. 8).

17302. Conformance with Plan. After the effective date of the county solid waste management plan required by Section 66780 of the Government Code, solid waste storage and removal shall be in conformance with said plan.

STORAGE OF SOLID WASTES

17311. General. The owner, operator and/or occupant of any premise, business establishment, industry, or other property, vacant or occupied, shall be responsible for the safe and sanitary storage of all solid waste accumulated on the property.

17312. Storage. (H) In all cases in which garbage and rubbish are combined, the standards for garbage shall prevail. The property owner or occupant shall store solid waste on his premises or property or shall require it to be stored or handled in such a manner so as not to promote the propagation, harborage, or attraction of vectors, or the creation of nuisances.

ATTACHMENT D

17313. **Design Requirements.** The design of any new, substantially remodeled or expanded building or other facility shall provide for proper storage or handling which will accommodate the solid waste loading anticipated and which will allow for efficient and safe waste removal or collection. The design shall demonstrate to local land use and building permit issuing authorities that it includes the required provisions.

17314. **Operator Responsibility.** Where the collection operator furnishes storage containers, he is responsible for maintaining the containers in good condition (ordinary wear and tear excepted) unless they are furnished under other terms, conditions, or agreements. He shall plan with the property owner and/or occupant as to placement of storage containers to minimize traffic, aesthetic and other problems both on the property and for the general public.

17315. **Garbage Containers.** (H) Property owners and tenants shall deposit all garbage and putrescible matter or mixed garbage and rubbish in containers which are either non-absorbent, water-tight, vector-resistant, durable, easily cleanable, and designed for safe handling, or in paper or plastic bags having sufficient strength and water tightness and which are designed for the containment of refuse. Containers for garbage and rubbish should be of an adequate size and in sufficient numbers to contain without overflowing, all the refuse that a household or other establishment generates within the designated removal period. Containers when filled shall not exceed reasonable lifting weights for an average physically fit individual except where mechanical loading systems are used. Containers shall be maintained in a clean, sound condition free from putrescible residue.

17316. **Identification of Containers.** Containers of one cubic yard or more owned by the collection service operator shall be identified with the name and telephone number of the agent servicing the container.

17317. **Use of Container.** No person shall tamper with, modify, remove from, or deposit solid wastes in any container which has not been provided for his use, without the permission of the container owner.

SOLID WASTE REMOVAL AND COLLECTION

17331. (H). **Frequency of Refuse Removal.** The owner or tenant of any premises, business establishment or industry shall be responsible for the satisfactory removal of all refuse accumulated by him on his property or his premises. To prevent propagation, harborage, or attraction of flies, rodents or other vectors and the creation of nuisances, refuse, except for inert materials, shall not be allowed to remain on the premises for more than seven days, except when: .

(a) disruptions due to strikes occur, or

(b) severe weather conditions or "Acts of God" make collection impossible using normal collection equipment, or

(c) official holidays interrupt the normal seven day collection cycle in which case collection may be postponed until the next working day. Where it is deemed necessary by the local health officer because of the propagation of vectors and for the protection of public health, more frequent removal of refuse shall be required.

History: 1. Amendment filed 7-25-78; effective thirtieth day thereafter (Register 78, No. 30).

17332. **Regulation of Operators.** Each person providing residential, commercial, or industrial solid waste collection services shall comply with all local government licenses, permits or written approval requirements applicable to the city or county in which such services are provided. Such written approval shall be contingent upon the operator's demonstrated capability to comply with these standards and use of equipment which is safe and sanitary. Each enforcement agency of solid waste collection shall maintain a complete listing of all persons holding written approvals to provide solid waste collection services within its jurisdiction. The listings shall contain the name, office, address, telephone number and emergency telephone number if different of each such person, the number and types of vehicles employed by such person in providing such solid waste collection services, and the types of materials authorized for handling.

History: 1. Amendment filed 7-25-78; effective thirtieth day thereafter (Register 78, No. 30).

17333. **Operator Qualifications.** When a city, county or special district authorizes or designates a person or firm to provide solid waste collection services within the territory under its jurisdiction through contract, franchise, permit, or license the local government shall obtain proof that such person or firm has adequate financial resources and experience to properly conduct the operation authorized. The facts needed to establish proof shall include but not be limited to the following:

(a) The filing of a performance bond or equivalent security with the local government in a reasonable amount, together with

(b) Evidence submitted to the local government and to the enforcement agency that the person or firm has experience sufficient to meet the needs of the situation within the jurisdiction.

History: 1. Amendment filed 7-25-78; effective thirtieth day thereafter (Register 78, No. 30).

17334. **Ownership of Waste Materials.** Solid wastes subject to collection by a collection service operator shall become the property of the collection service operator subject to local ordinances or contract conditions after such time as the authorized collector takes possession of the wastes.

17412. **Compliance with Conditions.**

History 1. Repealer filed 2-21-78; effective thirtieth day thereafter (Register 78, No. 8)

17413. **Conformance with Plan.** Each station constructed, substantially remodeled or substantially expanded after the date of approval of the county solid waste management plan, as required by Section 66780 of the Government Code, shall be in conformance with said plan.

STANDARDS FOR SMALL VOLUME TRANSFER STATIONS

17421. **Exclusions.** These standards shall not be construed to apply to those locations where less than 15 cubic yards of combined container volume is provided to serve as community or multi-residence receptacles for residential refuse, nor do they apply to storage receptacles for waste from multi-residential buildings or for commercial solid wastes; a container used to store construction or demolition wastes at the place of generation; or containers used to store salvaged materials.

17422. **Design.** The engineering design of proposed new small volume transfer stations shall be in accordance with the principles and disciplines in the State of California generally accepted for design of this type of facility. The design of each new small volume transfer station shall be submitted to the Enforcement Agency for review.

17423. **Plan of Operation.** Each operator of a small volume transfer station shall prepare and submit to the Enforcement Agency a plan of operation for the station summarizing procedures for handling complaints, maintenance, health and safety, site controls, and frequency of removal of wastes from the station.

17424. **Records.** An annual report shall be made to the Enforcement Agency, reporting the estimated weights or volumes handled during the previous year and listing special occurrences such as fires, injury, property damage, accidents, explosions, incidents regarding hazardous wastes, flooding, and other unusual occurrences.

17425. **Small Volume Transfer Station Operation.** (H) Small volume transfer stations shall be operated in conformance with good operating practices which result in minimal public health and safety hazards, minimal vector propagation, containment of waste materials, pickup of litter, control of drainage and nuisances, and shall comply with those requirements of the Enforcement Agency adopted to achieve these results.

17426. (H). **Cleaning and Waste Removal Frequency.** The small volume transfer station shall be thoroughly cleaned weekly or as required in the solid waste facilities permit. Any solid wastes deposited at the site shall be removed weekly or as required in the solid waste facilities permit.

History: 1. Amendment filed 7-25-78; effective thirtieth day thereafter (Register 78, No. 30)

local solid waste management enforcement agency for riverside county

AGENCY MEMBERS:
D. R. BOLING - CHAIRMAN
Deputy Director of Health for Environmental Health
LORI GREGG, Representative of Riverside County Mayors' & Councilmen's Assn.
WILLIAM HARVEY, Land Use Administrator - Department of Building & Safety
RAYMOND E. JOHNSON, Waste Disposal Engineer - Road Department Representative
ROLAND TAITOES, Representative of C-VAG
AGENCY SECRETARY:
PAULINE SWAIN

REPLY TO: P.O. Box 1370
Riverside, CA 92502

March 4, 1987

Sunshine Landscaping Service
P.O. Box 1008
Rancho Mirage, CA 92270

Gentlemen:

On June 25, 1986, your company was notified that hauling of household trash and garbage was a violation of Riverside County Ordinance 513.2, Section 5. On March 2, 1987, a vehicle (License # 2K35945) was loaded with household trash collected at The Lakes Country Club in the city of Palm Desert. The same vehicle was observed dumping its load at the county landfill at Edom Hill on the morning of March 3, 1987.

You are hereby directed to cease and desist this practice immediately or the matter will be turned over to the District Attorney for legal action.

If you have any questions regarding this correspondence, please feel free to contact this office at (714) 787-6543.

Very truly yours,

Richard V. Skodacek

Richard V. Skodacek, R.S.
Supervising Sanitarian

RVS:dh
cc: Jack Dahlstrum, Attorney for
Lakes and Palm Valley Country Clubs
Carlos Ortega, City Manager, Palm Desert

ATTACHMENT E

AGENCY MEMBERS:
D. R. DOLLING - CHAIRMAN
Deputy Director of Health for Environmental Health
LORI GREGG, Representative of Riverside County Mayors' & Councilmen's Assn.
WILLIAM HARVEY, Land Use Administrator - Department of Building & Safety
RAYMOND E. JOHNSON, Waste Disposal Engineer - Road Department Representative
ROLAND TAATGES, Representative of C - VAG
AGENCY SECRETARY:
PAULINE DWAIN

March 4, 1987

Mr. Jack Dahlstrum, Attorney
74-133 El Paseo, Suite C
Palm Desert, CA 92260

Dear Mr. Dahlstrum:

RE: Palm Valley and The Lakes Country Clubs

At the meeting on November 4, 1986, it was decided that dumpsters were to be utilized for the deposit of trash and garbage from the individual households at The Lakes Country Club, and we were assured that the landscaping contractors or maintenance personnel would collect the trash and garbage, utilize the dumpsters and definitely not haul to the landfill in violation of existing codes of the city of Palm Desert and the County of Riverside.

During a recent investigation, Environmental Health staff found that the 12 cubic yards of containers at The Lakes were adequate with two or three times a week pickup. Upon further investigation, Sunshine Landscape Service and Vista Verde (Southview Landscaping) were observed and photographed hauling this trash to the landfill.

This item has been placed on the California Waste Management Board agenda, and I had hoped to finalize the report and close out the file at that time.

Unless we receive cooperation from management of The Lakes Country Club and Palm Valley Country Club, we must revert to the only alternative: individual pickup by the legally licensed contractor, Palm Desert Disposal.

Please notify this office of your intentions as soon as possible.

If you have any questions regarding this correspondenc please feel free to contact me at (714) 787-6543.

Very truly yours,

Richard V. Skodacek

Richard V. Skodacek, R.S.
Supervising Sanitarian

RVS:dh

local solid waste management enforcement agency for riverside county

AGENCY MEMBERS:
~~D. R. BOLING~~ - CHAIRMAN
Deputy Director of Health for Environmental Health
~~LORI GREGG~~, Representative of Riverside County Mayors' & Councilmen's Assn.
~~WILLIAM HARVEY~~, Land Use Administrator - Department of Building & Safety
~~RAYMOND E. JOHNSON~~, Waste Disposal Engineer - Road Department Representative
~~ROLANDO TAATGES~~, Representative of C-VAG
AGENCY SECRETARY
~~PAULINE GWAIN~~

REPLY TO: P.O. Box 1370
Riverside, CA 92502

March 4, 1987

Southview Landscaping, Inc.
(Vista Verde Corp.)
40-495 Eldorado Drive
Indian Wells, CA 92260

Gentlemen:

On June 25, 1986, your company was notified that hauling of household trash and garbage was a violation of Riverside County Ordinance 513.2, Section 5. On March 3, 1987, a vehicle (License # 2F51675) exited Palm Valley Country Club and hauled household trash and garbage to Coachella Landfill.

You are hereby directed to cease and desist this practice immediately or the matter will be turned over to the District Attorney for legal action.

If you have any questions regarding this correspondence, please feel free to contact this office at (714) 787-6543.

Very truly yours,

Richard V. Skodacek

Richard V. Skodacek, R.S.
Supervising Sanitarian

RVS:dh
cc: Jack Dahlstrum, Attorney for
Lakes and Palm Valley Country Clubs

AD HOC COMMITTEE REPORT

MEETING: 5/13/87

TOPIC:

Consideration of relationship between collection and storage practices in Riverside County to Board Statutes and Regulations

PRESENT:

Ginger Bremberg
John Moscone
Harry Astor

The major focus of the discussion centered on the situation at The Lakes (within the City of Palm Desert).

We felt the major issues to be decided/clarified were:

1. Should local control and regulations prevail?

Answer: Yes. (In conformance with State Regulations)

2. Should statewide standards (minimum) regulating small transfer stations, exemptions under 14 CAC 17421, Health Standards, and permitting practices apply to the issue being addressed?

Answer: While each LEA, City Council, or Board of Supervisors has primary enforcement and regulating authority, each must conform to minimum state standards. We felt that an insertion of a clarifying phrase on Line 2 of Sec. 17332 Regulation of Operators following the word services to read: BE DULY AUTHORIZED TO PERFORM SUCH DUTIES BY LOCAL GOVERNING/REGULATING AUTHORITY. This would allow the local jurisdiction to license operators, require financial responsibility, require safe equipment, and to regulate frequency of collections.

Although we didn't discuss in any great depth the private roads issue, my personal opinion is that the same rules and/or permission that govern shopping mall parking lots would prevail. Each owner (in this case a condominium) would make its own determination by contract.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

CALIFORNIA WASTE MANAGEMENT BOARD
1020 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE CALIFORNIA WASTE MANAGEMENT BOARD REGARDING REGULATION OF COLLECTION SERVICE PROVIDERS

The California Waste Management Board (Board) will hold a public hearing commencing at 11:00 a.m., on December 3, 1987, in the Board Room at Board headquarters, 1020-9th Street, Sacramento, California, at which time any person may present statements or arguments orally or in writing relevant to the proposed administrative action summarized below. The action is proposed pursuant to the authority vested by Section 66790(f) of the Government Code, and is to implement, interpret or make specific Section 66770 of the Government Code.

INFORMATIVE DIGEST:

Section 66770 requires the Board to adopt minimum state standards for solid waste handling and disposal for the protection of air, water and land from pollution. Pursuant to that mandate, the Board adopted regulations concerning refuse collection service systems operation in 1978.

Section 17332, Title 14, California Administrative Code (C.A.C.) currently requires that each person who provides residential, commercial or industrial solid waste collection services must comply with all local government licenses, permits or written approvals required. The regulation further requires that the collection system provider must demonstrate capability to comply with local standards and must use safe and sanitary equipment. The regulation further requires the local solid waste enforcement agency to maintain a list of all persons holding written local approvals to provide solid waste collection services, and the regulation specifies the information to be included on the list, including name, office address, telephone number and emergency telephone number, the number and types of vehicles used by the collection service provider, and the types of waste materials which the collection service provider is authorized to provide.

The regulation is being amended to clarify the requirement that collection service providers must have local approvals. The amended regulation prohibits a person from providing collection services unless he or she is duly authorized to perform such services by the local governing or regulating authority.

FISCAL IMPACT ESTIMATE:

A. Fiscal Effect on Local Government: No additional costs or savings.

B. Fiscal Effect on State Government: No fiscal impact exists.

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SEP 30 '87 OCT 09 '87

Office of Administrative Law

C. Fiscal Effect on Federal Funding of State Programs: No fiscal impact exists.

D. Fiscal Effect on Private Persons or Businesses Directly Affected: No fiscal impact exists.

E. Fiscal Effect on Small Businesses: No fiscal impact exists.

The Board has determined that the proposed regulations would not impose a mandate on local agencies or school districts.

The Board has determined that the proposed regulations would not have a significant adverse impact on small businesses.

The Board has prepared and has available for public review an initial Statement of Reasons for the proposed action, all the information upon which the proposal is based, and the express terms of the proposed action. A copy of the initial Statement of Reasons and a copy of the express terms of the proposed action are available upon request by writing to the California Waste Management Board, ATTN: Office of the General Counsel, 1020-9th Street, Ste. 300, Sacramento, CA 95814, which address will also be the location of public records, including reports, documentation and other materials related to the proposed action.

The Board, upon its own motion or at the instance of any interested person, may, after the above-noticed public hearing, take the proposed action without further notice. The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Board's Office of the General Counsel at least 15 days prior to the date on which the Board takes the proposed action.

Other regulation changes may be scheduled for hearing at the same time appointed for public hearing on the proposed action described in this notice. An agenda for the public hearing will be posted at the time and place of hearing designated above.

It is requested but not required that any written comments or arguments be submitted by 4:00 p.m. on December 2, 1987. In any event, December 3, 1987, 11:00 a.m., is hereby designated as the close of the written comment period. It is requested but not required that written statements or arguments be submitted with 15 copies.

Inquiries concerning the proposed administrative action may be directed to Robert F. Conheim, General Counsel, at (916) 322-3330.

Date: September 30, 1987 CALIFORNIA WASTE MANAGEMENT BOARD

George T. Eowan
Chief Executive Officer

F. ~~Nondiscretionary~~ OTHER cost or savings imposed on local agencies:
None

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

CALIFORNIA WASTE MANAGEMENT BOARD
1020 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE CALIFORNIA WASTE MANAGEMENT BOARD REGARDING REGULATION OF COLLECTION SERVICE PROVIDERS

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INFORMATIVE DIGEST:

Section 66770 requires the Board to adopt minimum state standards for solid waste handling and disposal for the protection of air, water and land from pollution. Pursuant to that mandate, the Board adopted regulations concerning refuse collection service systems operation in 1978.

Section 17332, Title 14, California Administrative Code (C.A.C.) currently requires that each person who provides residential, commercial or industrial solid waste collection services must comply with all local government licenses, permits or written approvals required. The regulation further requires that the collection system provider must demonstrate capability to comply with local standards and must use safe and sanitary equipment. The regulation further requires the local solid waste enforcement agency to maintain a list of all persons holding written local approvals to provide solid waste collection services, and the regulation specifies the information to be included on the list, including name, office address, telephone number and emergency telephone number, the number and types of vehicles used by the collection service provider, and the types of waste materials which the collection service provider is authorized to provide.

The regulation is being amended to clarify the requirement that collection service providers must have local approvals. The amended regulation prohibits a person from providing collection services unless he or she is duly authorized to perform such services by the local governing or regulating authority.

FISCAL IMPACT ESTIMATE:

A. Fiscal Effect on Local Government: No additional costs or savings.

B. Fiscal Effect on State Government: No fiscal impact exists.

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Office of Administrative Law

C. Fiscal Effect on Federal Funding of State Programs: No fiscal impact exists.

D. Fiscal Effect on Private Persons or Businesses Directly Affected: No fiscal impact exists.

E. Fiscal Effect on Small Businesses: No fiscal impact exists.

The Board has determined that the proposed regulations would not impose a mandate on local agencies or school districts, and would also not impost any other nondiscretionary costs or savings upon local agencies.

The Board has determined that the proposed regulations would not have a significant adverse impact on small businesses.

The Board has prepared and has available for public review an initial Statement of Reasons for the proposed action, all the information upon which the proposal is based, and the express terms of the proposed action. A copy of the initial Statement of Reasons and a copy of the express terms of the proposed action are available upon request by writing to the California Waste Management Board, ATTN: Office of the General Counsel, 1020-9th Street, Ste. 300, Sacramento, CA 95814, which address will also be the location of public records, including reports, documentation and other materials related to the proposed action.

The Board, upon its own motion or at the instance of any interested person, may, after the above-noticed public hearing, take the proposed action without further notice. The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Board's Office of the General Counsel at least 15 days prior to the date on which the Board takes the proposed action.

Other regulation changes may be scheduled for hearing at the same time appointed for public hearing on the proposed action described in this notice. An agenda for the public hearing will be posted at the time and place of hearing designated above.

It is requested but not required that any written comments or arguments be submitted by 4:00 p.m. on December 2, 1987. In any event, December 3, 1987, 11:00 a.m., is hereby designated as the close of the written comment period. It is requested but not required that written statements or arguments be submitted with 15 copies.

Inquiries concerning the proposed administrative action may be directed to Robert F. Conheim, General Counsel, at (916) 322-3330.

Date: September 30, 1987 CALIFORNIA WASTE MANAGEMENT BOARD

George T. Eowan

George T. Eowan
Chief Executive Officer

INITIAL STATEMENT OF REASONS FOR PROPOSED CHANGES IN REGULATIONS OF THE CALIFORNIA WASTE MANAGEMENT BOARD REGARDING REGULATION OF COLLECTION SERVICE PROVIDERS

Government Code Section 66770 requires the California Waste Management Board (Board) to adopt state minimum standards for solid waste handling and disposal for the protection of the environment from pollution. In compliance with this mandate, the Board adopted regulations concerning refuse collection service systems operation in 1978.

Section 17332, Title 14, California Administrative Code (C.A.C.) currently requires that each person who provides residential, commercial or industrial solid waste collection services must comply with all local government licenses, permits or written approvals required. The regulation further requires that the collection system provider must demonstrate capability to comply with local standards and must use safe and sanitary equipment. In addition the regulation requires the local solid waste enforcement agency to maintain a list of all persons holding written local approvals to provide solid waste collection services, and the regulation specifies the information to be included on the list, including name, office address, telephone number and emergency telephone number, the number and types of vehicles used by the collection service provider, and the types of waste materials which the collection service provider is authorized to provide.

FACTS

In several jurisdictions, it has been observed by Board and local enforcement personnel that collection services have been provided by persons who are not waste management professionals, who do not have experience in the safe handling of solid waste and who do not use equipment in which to collect and haul solid waste which complies with Board regulations and industry standards. This has resulted in overflowing dumpsters, and transportation in vehicles such as flat- or stake-bed trucks which do not contain the solid waste. This situation has been observed in large-scale condominium developments, apartment complexes, planned unit developments and some shopping centers and industrial park facilities. In these types of residential and business facilities, where much of the service and maintenance is performed by employees or contractors of the facilities, these same personnel, who do not have experience in the waste management field, collect the solid waste.

The existing regulation relies on an honor-system of self-compliance with state and local minimum public health and safety standards of those who would provide solid waste collection services. Enforcement of Board standards occurs only upon the filing of complaints. This is because local governing and regulating authorities do not learn about these solid waste

collection service providers before they commence to provide the service, as the authorities would, if the collector were the franchised, contracted or permitted collector in the jurisdiction. Violations of Board regulations establishing standards for storage, removal and collection of solid waste, and collection and transportation equipment have been observed.

PURPOSE

The purpose of this regulatory action is to adopt a requirement whereby those solid waste collection service providers, who are not already authorized by franchise, contract or permit, must also obtain the authorization of the local governing and regulating authorities before commencing to provide such services. In this manner, the local governing and regulating authorities can advise the prospective collector on the proper health and safety standards, or condition their operation upon compliance with those health and safety standards. With this regulatory change, local control is not only preserved, but enhanced, because the local governing and regulating authorities will be able to assure the public's health and safety before violations occur, rather than just being able to respond to complaints after an alleged violation has occurred.

State of California
STD 398 (REV. 3/85)

(See Instructions on Reverse)

FACE SHEET
FOR FILING NOTICE OF PROPOSED REGULATORY ACTION FOR PUBLICATION IN THE CALIFORNIA ADMINISTRATIVE NOTICE REGISTER

Z-87-0930-01

AGENCY
California Waste Management Board

CONTACT PERSON
Robert F. Conheim, General Counsel

TELEPHONE NUMBER
(916) 322-3330

TYPE OF NOTICE
Check one or more of the boxes below to indicate the type of notice submitted

REGULAR NOTICES

- ☒ NOTICE OF PROPOSED ACTION TO ADOPT, AMEND OR REPEAL
- ☐ NOTICE OF PROPOSED AMENDMENTS OR REPEALS IDENTIFIED IN THE STATEMENT OF REVIEW COMPLETION SUBMITTED IN CONJUNCTION WITH AGENCY REVIEW OF EXISTING REGULATIONS (GOV. CODE REGULATION SEC. 11349.7)
- ☐ NOTICE FOLLOWING ADOPTION OF EMERGENCY REGULATIONS (GOV. CODE SEC. 11346.1(e))
- ☐ NOTICE AS A RESULT OF CHANGES REQUIRING NEW 45-DAY NOTICE PERIOD (GOV. CODE SEC. 11346.8(c))

OTHER TYPES OF NOTICES

- ☐ NOTICE OF REVIEW OF EXISTING REGULATIONS
- ☐ NOTICE FOLLOWING REQUEST FOR A PUBLIC HEARING (GOV. CODE SEC. 11346.8(a))
- ☐ NOTICE OF INTENT TO DEVELOP REGULATIONS
- ☐ NOTICE OF GENERAL PUBLIC INTEREST
- ☐ NOTICE OF AVAILABILITY MODIFIED TEXT (GOV. CODE SEC. 11346.8(c))

IS THIS A BUILDING STANDARD REGULATION?
☐ Yes ☒ No

Notices of regulatory change involving building standards must be accompanied by the written approval of the Building Standards Commission of the date, time and place of the hearing.

NOTICE FILING REQUIREMENTS
A notice must be received by the Office of Administrative Law (OAL) at least 10 calendar days prior to the desired publication date of the California Administrative Notice Register. The Notice Register is published every Friday. Notices submitted to OAL before 5:00 p.m. on Tuesday will be published on the second Friday following that Tuesday. The 45-day notice period required by Government Code section 11346.4 begins with the day following the publication date. (See Gov. Code sec. 6800.) When filing the notice, the following must be submitted:

- ONE FACE SHEET FOR FILING NOTICE OF PROPOSED REGULATORY ACTION (STD 398).
- FOUR COPIES OF THE NOTICE WITH THE TEXT APPEARING ON ONE SIDE ONLY (PLACE STD 398 ON TOP OF THE NOTICE COPIES).
- ONE COPY OF THE INITIAL STATEMENT OF REASONS.
- ONE COPY OF THE PROPOSED REGULATIONS. USE UNDERLINE/ITALICS AND STRIKEOUT TO INDICATE CHANGES IN AN EXISTING SECTION. FOR ADOPTION OF NEW SECTIONS, UNDERLINE OR ITALICIZE NEW TEXT. THE REPEAL OF AN ENTIRE SECTION MAY BE INDICATED BY PLACING A DIAGONAL SLASH THROUGH THE TEXT TO BE REPEALED.
- ONE COPY OF THE LIST OF THE SMALL BUSINESS ENTERPRISES OR THEIR REPRESENTATIVES TO WHOM THE NOTICE OF PROPOSED REGULATORY ACTION WILL BE MAILED.

OFFICE OF ADMINISTRATIVE LAW (OAL) APPROVAL
OAL reviews the notice of the proposed action for compliance with the requirements of the Government Code for the purpose of publication only. OAL may refuse to publish a notice if the agency has not complied with the provisions of Government Code sections 11346.4 through 11346.8. OAL will contact the agency within three business days to discuss any deficiencies. If deficiencies cannot be corrected by the agency within the three-day period, OAL will promptly notify the agency that the notice cannot be published.

Please note that approval of the notice for publication does not constitute approval of the notice, the proposed regulation, amendment, order of repeal, or the initial statement of reasons for purposes of the review required by Government Code section 11349.1. When the regulation, amendment, or order of repeal is submitted to OAL along with the rulemaking file, OAL will conduct a complete review of the regulatory action and the rulemaking file pursuant to Government Code section 11349.1 at that time.

COUNTY OF SAN LUIS OBISPO
HEALTH AGENCY
Department of Public Health
2191 Johnson Avenue • P.O. Box 1489
San Luis Obispo, California 93406
(805) 549-5500

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OCT 22 1987

Reply to: Division of Environmental Health
549-5544

October 20, 1987

California Waste Management Board
1020 - 9th Street, Suite 300
Sacramento, CA 95814

Attn: George T. Eowan, Chief Executive Officer

Subject: Proposed Changes in Regulations - Title 14, CAC Section 17332

The proposed changes may not, in their present form, address problems noted in the "Facts" portion of the Initial Statement of Reasons. Specifically, problems with transportation vehicles hauling solid wastes from large-scale condominum developments, apartment complexes, planned unit developments and some shopping centers and industrial park facilities."

As mentioned in the Statement, frequently employees, contractors or other personnel may be collecting/removing the waste without adequate experience or equipment. Collection/removal personnel may be acting for or on behalf of the person in control of the premises.

In the definition portion of Title 14, CAC, Section 17225.55 "Removal" there appears to be an allowance for "a person in control of the premises" to remove solid waste. Wouldn't this also allow for the person in control to have his employees or agents remove the waste? Would the person in control be limited to waste removal from a single area or would a number of areas be "collected" for removal?

As long as changes are being proposed, I feel that additional clarification is needed to differentiate between collection services and self-hauling / clean-up work.

Thank you for this opportunity to comment. Should you have any questions regarding this matter, contact the Solid Waste Section at (805) 549-5548.

TIM MAZZACANO, R.S., Director
Division of Environmental Health

John Scholtes

JOHN SCHOLTES, R.S.
Environmental Health Officer III

TM/JS:mt

OFFICE OF: **Management Services**

(714) 736-2371

P. O. Box 940
Corona, Ca 91718

815 WEST SIXTH STREET (P.O. BOX 940), COR NA, CALIFORNIA 91718-0090

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October 21, 1987

California Waste Management Board
1020 Ninth Street, Suite 300
Sacramento, California 95814

Gentlemen:

This is in response to the notice of proposed changes received recently. The changes relate to authorization to perform collection services.

Corona supports the proposed changes. However, one additional thought is suggested for your consideration. Upon annexation of inhabited area, current law allows a collector to continue to serve the annexed area for up to 5 years before the City's franchised operator may establish service. Corona is a rapidly growing city, some of which may involve such annexations in the future and the confusion of service, in addition to the question of quality of service, does create a disharmony in the annexed area. Perhaps the need for "local approvals" can be modified to assure annexing cities that such service confusion doesn't have to occur.

Sincerely,

JAMES D. WHEATON
City Manager

JDW:ts

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Text of Proposed Amendment to Title 14, California Administrative Code (CAC), Section 17332

1 17332. **Regulation of Operators.** No ~~Each~~ person shall
2 provide~~ing~~ residential, commercial, or industrial solid waste
3 collection *-1 services unless he or she is duly authorized to
4 perform such *-2 duties by local governing or regulating authorities
5 and unless he or she ~~shall~~ complies with all local government
6 licenses, permits or written approval requirements applicable to
7 the city or county in which such services are provided. Such
8 written approval shall be contingent upon the operator's
9 demonstrated capability to comply with *-3 these standards and use of
10 equipment which is safe and sanitary. Each enforcement agency of
11 solid waste collection shall maintain a complete listing of all
12 persons holding written approvals to provide solid waste
13 collection services within its jurisdiction. The listings shall
14 contain the name, office, address, telephone number and emergency
15 telephone number if different of each such person, the number and
16 types of vehicles employed by such person in providing such solid
17 waste collection services, and the types of materials authorized
18 for handling.
19 Note: Authority cited: Section 66790(f), Government Code.
20 Reference: Section 66770, Government Code.

*-1 line 3 - insert - transportation & disposal -
*-2 line 4 change "duties" to services for consistency -
draft, September 30, 1987
*-3 line 9 insert prescribed regulations contained in T-14 Sec —
relating to operation standards for equip

Tuolumne County Health Department

105 E. Hospital Road
Sonora, CA 95370
(209) 533-7151

Clifton T. White
Human Services Agency Director

Robert E. Marshall, M.D.
Health Officer

Kent E. Skellenger
Health Administrator

Maureen F. Woods
Director of Public Health Nursing

Ken Perkins
Director of Environmental Health
2 So. Green Street
Sonora, CA 95370
(209) 533-5990

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October 29, 198

California Waste Manage..ent Board
1020 Ninth Street, Suite 300
Sacramento, CA 95814

ATTN: Robert F. Conheim, General Councel

RE: Proposed Management, Section 17332, Title 14, CAC

Dear Bob:

Please accept this as the Tuolumne County's response to the notice of proposed changes in the law relating to regulation of Collection Services Providers. We understand the Board's concern that all those who collect waste should be professionals, but we believe your legislation would conflict with excellent refuse collection regulatory structure we maintain in Tuolumne County. Two of the main features of our ordinances are that only one permit to collect refuse can be awarded in a given geographical area, and that the owner of a property may collect and transport his own refuse. Accordingly, several entities such as recreation districts, school districts, the City of San Francisco, U.S. Forest Service, certain mobile home parks, among others, collect wastes from their own properties that are often located within commercial refuse collection permit areas.

Commercial packer units are used to haul the wastes, and we have never had a complaint relating to unsafe operation. We are already aware of each entity doing this, and each truck bears identification. Legalizing freedom to collect waste from one's own property was one of the principal contributors to acceptance of our ordinance by County residents. It is therefore our position that requiring an additional layer of governmental approvals is far more trouble than it is worth.

Sincerely,

Kenneth A. Perkins, Director KAP
Division of Environmental Health

by: Robert L. Tremewan
Robert L. Tremewan, R.S.
Environmental Health Specialist III

KAP:RLT:dmp

cc: Robert Marshall, M.D., Health Officer
Paul Griebel, County Counsel
Cliff White, HSA Director

LMC CORP.

600 South Fourth Street ▫ Richmond, CA 94804 ▫ (415) 236-0606 ▫ Telex 261298 LMC UR

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October 31, 1987

Mr. Robert Conheim
General Council
California Waste Management Board
1020 Ninth Street
Suite 300
Sacramento, California 95814

Reference: Proposed changes in regulations of the California Waste Management Board regarding regulations of collection service providers

Dear Mr. Conheim:

Thank you for sharing information with me on above subject during our recent telephone conversation. As we discussed, I am concerned that this regulation may be inadvertantly applied to material already being recycled by the private sector.

Many companies throughout the State have containers of various sorts placed at locations and business' that generate recyclable material such as metals, cardboard, plastic, etc. Many companies operate a pick up service in several counties. There is no reason to include these companies or products in this regulation. Our industry does not view recyclable material as waste and we should be excluded. In addition, the State of California and the California Waste Management Board are on record as desiring maximum recycling as an alternative to land fill. The added hardship and expense of licensing under this regulation would discourage recycling rather than promoting it. This obviously is not in public interest.

As you indicated in our conversation, it was not your intent to include recyclable materials, and we appreciate your help in correcting the language to avoid this problem.

Please let me know if I may answer questions or help in any way as this is of vital concern to many of us. Denny Valentine is also available to help.

Yours truly,

LMC CORPORATION

Robert Lewon
Executive Vice President

cc: Mr. Gary Cope, President
ISRI No. California Chapter
Mr. George Adams, President
ISRI So. California Chapter
Mr. Bud Kramer
Mr. Dennis Valentine
Mr. Reuben Weiner

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NOV 16 1987

November 12, 1987

CITY OF LA CAÑADA FLINTRIDGE

Mayor
J. Bixby Smith

Mayor Pro Tem
John W. Hastings

City Council
Joan C. Feehan
O. Warren Hillgren
Edmund J. Krause

City Manager
Donald H. Otterman

California Waste Management Board
1020 Ninth Street
Suite 300
Sacramento, California
95814

Gentlemen:

The City of La Canada Flintridge has received your notice of proposed changes in the regulations regarding collection service providers. Before our City can comment on these regulations, there are some questions that need to be answered. The City does not at this time franchise any collection service providers. Will the proposed regulations change the requirements that are currently in State law regarding franchising of trash haulers, i.e. the five year notice ordinance which must be passed before a city can franchise?

The second question is whether cities that do not have franchises can impose certain regulations on trash haulers and be able to enforce those regulations without the franchise mechanism?

Once these questions have been answered, the City will be in the position to be able to comment on your proposed regulations.

Sincerely,

Donald H. Otterman

Donald H. Otterman
City Manager

1327 Foothill Boulevard
La Cañada Flintridge
California 91011-2137
(818) 790-8880

CALIFORNIA WASTE MANAGEMENT BOARD

Resolution # 87-64

December 3-4, 1987

Adoption of Amendment to Regulations of the California Waste Management Board Title 14, California Administrative Code Section 17332

WHEREAS, the California Waste Management Board (Board) proposed a regulation change to Title 14, California Administrative Code (Cal. Admin. Code), Section 17332, in its Notice, Informative Digest, Text and Initial Statement of Reasons (Notice, et al.), dated September 30, 1987;

WHEREAS, the Notice was published in the Administrative Register on October 9, 1987, and was distributed to the Board's mailing list on October 17, 1987, greater than 45 days before Board action on the regulation change;

WHEREAS, the Board conducted a public hearing on the regulation change on December 3, 1987, in which it received and considered written and oral comments;

WHEREAS, the Board considered the proposed regulation change in light of the statutory criteria for the review and approval of state regulations, Necessity, Authority, Clarity, Consistency, Reference, and Nonduplication;

WHEREAS, the Board considered the fiscal effect of the regulation on local and state government, federal funding of state programs, small business, businesses and persons directly affected, housing, local agencies and school districts;

NOW, THEREFORE BE IT RESOLVED, that the proposed regulation change meets the statutory standards of Necessity, Authority, Clarity, Consistency, Reference, and Nonduplication;

BE IT FURTHER RESOLVED, that the proposed regulation change will not have a significant fiscal impact on local and state government, federal funding of state programs, small business, businesses and persons directly affected, housing, local agencies and school districts;

BE IT FURTHER RESOLVED, that the Board adopts the text of the regulation change to Title 14, Cal. Admin. Code, Section 17332, as originally proposed in the Notice of this proceeding, and further directs staff to prepare the Final Statement of Reasons and other required documents, and to compile the official file of the regulatory proceeding, and to file the regulation change with the Office of Administrative Law forthwith.

CERTIFICATION

The undersigned Chief Executive Officer of the California Waste Management Board does hereby certify that the foregoing is a full, true and correct copy a resolution duly and regularly adopted at a meeting of the California Waste Management Board held on December 3-4, 1987.

Dated:

George T. Eowan
Chief Executive Officer

CALIFORNIA WASTE MANAGEMENT BOARD
Agenda Item # 5 (Supplement)
December 3-4, 1987

Item: Public Hearing on Proposed Changes in Board Regulations Concerning Collection Service Providers: Title 14, California Administrative Code, Section 17332

Supplemental Comments:

The following comment was received after the printing of the original agenda item.

1. John F. Nolan, Esq., Sheppard, Mullin, Richter & Hampton, San Francisco, CA; representing U.S. Eagle, Inc.

   Mr. Nolan requests that the language of the proposed regulation change be further amended to exclude "persons providing such services to Federal installations." Mr. Nolan's client is U.S. Eagle, Inc., a company which provides refuse collection and custodial services to federal military installations in California and other Western states. Mr. Nolan reads this proposed regulation change potentially to require that providers of refuse collection service to military installations must be the exclusive franchised collector for the locality in which the military installation exists, if the locality requires exclusive franchising. This could put his client out of business.

   Recommendation: This proposed regulation change amplifies and clarifies the original regulation. It does not add new requirements for permitting or franchising. The Board does not exercise authority over local franchising, pursuant to Government Code §§ 66755-66757 and 66771. If the proposed regulation change can be read to apply local franchising to military installation providers, then the original regulation also implied that authority. It has not been the intent of the Board, either in the original regulation or in the proposed change, to regulate this aspect of franchising.

   Furthermore, to the extent that there is a statewide interest in applying a Board interest to all persons in the state, firmly established law holds that state solid waste environmental and public health and safety laws and regulations, authorized under the federal Resource Conservation and Recovery Act (RCRA), apply to and are

enforceable against the federal government and its installations.

Counsel recommends that the suggested language should not be included in the regulation. It too broadly excludes the federal government from the aegis of Board regulations, contrary to established federal and state law. The issue Mr. Nolan is discussing here is already the subject of federal appellate litigation, the **Parola case**, which he has referenced in his letter. It would be inappropriate to address this matter in Board regulations.

2. Thomas R. Walters, Vice-President, Waste Management of California, Empire Waste Management, Santa Rosa, CA.

Mr. Walter's letter is in support of the proposed amendment. He further states that "only recognized professionals [should] manage California wastes." He further suggests that all County Solid Waste Management Plans (CoSWMPs) should address this issue, that existing licensed contracts should be grandfathered by and as of the effective date of this amendment, and that all future applicants should meet performance criteria, financial tests, and other criteria.

Recommendation: Mr. Walters' suggestion to create a regulatory scheme with specific standards and performance criteria for solid waste collectors is beyond the scope of the proposed amendment, and would be the proper subject of a separate regulatory proceeding. Also amending requirements involving CoSWMPs would require amendment of regulations in another chapter of Board regulations. These types of amendments would require new 45-day notice, preventing the Board from acting on the proposed amendment, if it chose to incorporate these suggestions in the current proceeding. Adding grandfather clause language, which appears to be an integral part of Mr. Walter's total proposal, would, if taken separately, exceed the Board's authority to impose standards on a subject reserved under the statute to local control.

Counsel recommends that the Board direct staff to study the proposal made by Mr. Walters, and incorporate recommendations thereon in the regulations review currently being undertaken by Board staff.

Shea Tanghe

3. A Resolution from The Lakes Country Club Association, Palm Desert, CA 92260.

The resolution paragraph of the document states that the Association feels "that any amendments to or interpretations of existing regulations concerning refuse collection systems which are intended to preclude a collection system on private property which meets or exceeds minimum health and safety concerns and which is approved at the local municipal level and monitored by the Local Waste management Board would be administratively irresponsible and possible legally unsupportable."

Recommendation: Nothing in the language of the existing or proposed regulation establishes a state standard which precludes case-by-case analysis of individual collection service situations by local authorities. This regulation does not per se preclude the gardening subcontractor from continuing to provide refuse collection service. The existing regulation has always required all collection service providers to conform to state and local laws and regulations. The proposed clarifying and amplifying amendment has already had its intended effect of focussing attention on the requirements of existing standards for collections service providers. **Counsel recommends that these findings on the intent and effect of the proposed regulation be made by the Board, but that no language change be adopted as a result of these comments.**

Attachments

SHEPPARD, MULLIN, RICHTER & HAMPTON
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW
SEVENTEENTH FLOOR
FOUR EMBARCADERO CENTER
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE (415) 434-4914
TELECOPIER (415) 434-3947
LOS ANGELES OFFICE
CABLE SHEPLAW TELEX 19-4424

LOS ANGELES OFFICE
FORTY-EIGHTH FLOOR
333 SOUTH HOPE STREET
LOS ANGELES, CALIFORNIA 90071
(213) 620-1780

NEWPORT BEACH OFFICE
SEVENTH FLOOR
4695 MACARTHUR COURT
NEWPORT BEACH, CALIFORNIA 92660
(714) 752-6400

SAN DIEGO OFFICE
TENTH FLOOR
701 B STREET
SAN DIEGO, CALIFORNIA 92101
(619) 239-3669

AVV-33114
OUR FILE NUMBER

November 25, 1987

HAND-DELIVERED

Mr. Sherman E. Roodzant, Chairman
California Waste Management Board
1020 Ninth Street, Suite 300
Sacramento, California 95814

Re: Comments re Notice of Proposed Amendment to Title 14, California Administrative Code, Section 17332

Dear Mr. Roodzant:

We represent U.S. Eagle, a Washington corporation, which has its principal place of business in Suisun, California. Based on its average annual revenues, U.S. Eagle qualifies as a "small business concern" under the Small Business Act (15 U.S.C. §631, et. seq.)

For the past twenty-seven years, U.S. Eagle has performed refuse collection and custodial work on Federal military installations throughout California and other western states. During that 27-year period, U.S. Eagle has had an exemplary record in the industry, having never been cited for a violation of any Federal, state or local laws governing refuse collection. In successfully bidding on government contracts both within and without California, U.S. Eagle has been required by government regulation to comply with all local licensing and permit requirements respecting refuse collection; in addition, U.S. Eagle has fully complied with all other government contract requirements respecting proper and safe procedures for waste collection. The government requirements in this regard are both strict and pervasive, governing every facet of the waste collection industry from types of trucks and containers to personnel, insurance and bonding requirements. I have attached

hereto portions of the government's Contract for refuse removal at the Long Beach Naval Shipyard in California. The provisions of this contract are, with minor exceptions, standard for all government contracts let out for bid in California and elsewhere. Note particularly Section 5, paragraphs 4-4.3, and Section 4, paragraphs 4-4.2, which address respectively the contractor's ability to perform the job in an efficient and competent manner and the necessity of compliance with all local permit and licensing requirements. U.S. Eagle's economic survival compelled it to adhere to all these government requirements; its long-standing and successful history as a government contractor firmly evidences U.S. Eagle's commitment to excellence in the refuse collection industry.

With this background, U.S. Eagle has grave concerns with the California Waste Management Board's ("Board") proposed amendments to section 17332 of Title 14 of the California Administrative Code. These concerns, I note preliminarily, are neither with the Board's statutory authority nor the underlying purpose of the proposed amendment; indeed, U.S. Eagle shares the Board's concern with shoddy or substandard collection services performed by persons who are not waste management professionals. We commend the Board for its efforts to remedy the problem of unlicensed operators who, through unsafe and unsanitary equipment and practices, render substandard services resulting in overflowing dumpsters and transportation of waste in vehicles not suitable for proper containment of solid waste, all to the detriment of the health and welfare of the public. Further control is clearly necessary, in particular at condominium developments, apartment complexes and other such industrial facilities.

However, the proposed amendment to Section 17332 -- in remedying this acknowledged problem -- may also restrain competition for government waste collection contracts, a result potentially catastrophic to small businesses like U.S. Eagle. This is so because of the amendment's language requiring "authorization" and "approval" of the local governing authorities, before performing any waste collection services within the regulated city or county. As the Board is no doubt aware, many Federal facilities in California are located within city and county limits; hence, U.S. Eagle's ability to continue contracting with these facilities would depend on authorization of the local governing entity. Recent experience has shown that such authorization is dependent more on a contractor's success in obtaining an exclusive refuse collection franchise than a demonstrated capability to comply with local standards and use safe and sanitary equipment. For example, in the City of Monterey, a local ordinance required two Federal facilities

within the city limits to contract with the municipality's franchisee, who under the government's competitive procurement practices was not a viable competitor. The case -- Gary Parola and Monterey City Disposal Service v. Casper Weinberger, Secretary of the Department of Defense, et al. -- is presently pending in the Ninth Circuit Court of Appeals.

Monterey is one of several cities throughout California that rely exclusively on franchisees for refuse collection services within city limits. Thus, if Section 17332 is amended, as proposed, qualified businesses such, as U.S. Eagle, may be foreclosed from providing waste collection services for Federal facilities within a city that has duly authorized only its franchisee to perform such services. Such an unintended result is, we submit, at odds with the purpose of the proposed amendment, which was not to stifle competition, but rather to ensure that all potential competitors in the refuse collection field operate in compliance with law.

Accordingly, U.S. Eagle respectfully requests that any amendment to Section 17332 include the highlighted language in the attached proposed amendment.

Very truly yours,

John F. Nolan

for SHEPPARD, MULLIN, RICHTER & HAMPTON

JFN:ced
cc: Robert Conheim, Esq. (w/enclosures)

4. EQUIPMENT AND REFUSE CONTAINERS: The Contractor shall use such methods, materials and equipment for performing the services as he may know to be efficient, subject to approval of the Officer in Charge and the following conditions. Refuse and garbage collection is considered a sanitary operation and all equipment, trucks and containers shall be new or in as good as new condition, and maintained in a sanitary and good mechanical condition. All vehicle equipment shall have the contractor's sign on both sides. All fluid leaks from trucks and equipment shall be cleaned up within two hours after being spilled. Trucks and equipment that are not in good mechanical condition, and that smoke shall be replaced with standby equipment by direction of the Contracting Officer.

4.1 Sufficient personnel including standby equipment shall be readily available for exceptional peak work loads and when equipment breakage occurs.

4.2 Methods used for collection shall be consistent with modern practice. (The use of automatic loading systems during collection operations and the use of closed vehicles to haul refuse shall be considered as modern practice.) It will be permissible to use open vehicles in removing refuse that is either too large for loading automatically or that cannot be compacted efficiently, such as scrap lumber or that material described as Harbor Debris. All open vehicles shall be covered with a tarpaulin or other device to prevent spillage. Garbage shall be collected in a closed, watertight container. Any spillage that is present or occurs during collection operations shall be cleaned up immediately.

4.3 Containers: Containers shall be of sturdy construction and adequately reinforced and braced as specified herein. Containers shall be leakproof and fireproof in accordance to applicable codes, and shall hold all types of refuse or garbage without the contents being blown by the wind. The Contractor shall remove and replace within 3 hours all damaged unserviceable containers, containers in need of painting, or containers determined to be unsanitary by Health Authorities or a Government Inspector.

3. NO WAIVER BY GOVERNMENT: The failure by the Government in any one or more instances to insist upon strict performance of any of the terms of this contract or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment to any extent to the right to assert or rely upon any such terms or option on any future occasion.

4. PERMITS AND RESPONSIBILITIES FOR WORK: The Contractor shall, without additional expense to the Government, obtain all licenses and permits required for the prosecution of the work. He shall be responsible for all damages to persons and/or property that occur as a result of his fault or negligence in connection with the prosecution of the work. He shall also be responsible for all work performed until completion and final acceptance.

4.1 Copies of permits from the State of California, Department of Food and Agriculture, and the United States Department of Agriculture to operate equipment and to dispose of foreign garbage shall be furnished to the Officer in Charge prior to the start of the contract.

4.2 Copies of permits from the Enviromental Protection Agency to transport hazardous waste material to the disposal site shall be furnished to the Officer in Charge prior to the start of the contract.

Text of Proposed Amendment to Title 14, California Administrative Code (CAC), Section 17332

17332. Regulation of Operators. No Each person shall provide~~ing~~ residential, commercial, or industrial solid waste collection services ~~(excepting therefrom persons providing such services to Federal installations)~~ unless he or she is duly authorized to perform such duties by local governing or regulating authorities and unless he or she ~~shall~~ comply~~ies~~ with all local government licenses, permits or written approval requirements applicable to the city or county in which such services are provided. Such written approval shall be contingent upon the operator's demonstrated capability to comply with these standards and use of equipment which is safe and sanitary. Each enforcement agency or solid waste collection shall maintain a complete listing of all persons holding written approvals to provide solid waste collection services within its jurisdiction. The listings shall contain the name, office, address, telephone number and emergency telephone number if different of each such person, the number and types of vehicles employed by such person in providing such solid waste collection services, and the types of materials authorized for handling.

Note: Authority cited: Section 66790(f), Government Code.

Reference: Section 66770, Government Code.

draft, September 30, 1987

Empire Waste Management
P.O. Box 697
Santa Rosa, CA 95402
707/585-0291

A Waste Management Company

November 27, 1987

California Waste Management Board
1020 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Proposed Changes - Regulations
Government Code Section 66770 CAC 17332, Title 14

As responsible professional Waste Management contractors we support the proposed amendments.

Financial responsibility, employee rights to know, stringent driving record requirements, bonding and insurance, weight and vehicle safety, special waste handling procedures, mandate that only recognized professionals manage California wastes.

I suggest the Board require all CoSWMP's to address the issue, grandfather existing licensed contracts with the effective date of this regulation amendment, require all future applicants to meet performance criteria, financial tests, etc.

Waste Management of California looks forward to a continued working relationship with the Board on this and other regulation revisions.

Sincerely,

Thomas R. Walters
Vice President
Waste Management of Calif.

TRW:dm

cc: E.W. Cities
Tom Blackman
Frank Moore
Harry Astor

RESOLUTION OF THE LAKES COUNTRY CLUB ASSOCIATION, INC.

REGARDING SOLID WASTE MANAGEMENT COLLECTION SERVICES

WHEREAS, this Association is comprised of 902 condominium owners of a private country club community within the City of Palm Desert, California, the substantial majority of whom occupy their residences as second homes, at various times and for varying periods on a non-scheduled, primarily seasonal basis, and

WHEREAS, a per door collection of solid waste without considering the actual occupancy status of the residences and hence actual services necessary violates good health and safety practices, and

WHEREAS, the irregular periods and durations of occupancy by our owners with no uniform departure days or times makes a weekly scheduled pick-up of solid waste unworkable and

WHEREAS, more frequent scheduled pick-up by the franchised operator of the City of Palm Desert would be fiscally unreasonable and would create unnecessary disruption of the privacy of the community and

WHEREAS, for several months the Association has been accomplishing daily pick-up of individual residential solid waste and the deposit thereof in centrally located approved bins within the confines of our private community by our gardening subcontractor, and

WHEREAS, a flexible schedule geared to holidays and seasonal demands for pick-up of said containers and removal thereof to appropriate public disposal sites by the franchised collection services operator has been adopted by the Association and the franchised operator, and

161 Old Ranch Road, Palm Desert, California 92260, Telephone (619) 568-0161

WHEREAS, said program has been approved by the City of Palm Desert as meeting the needs and concerns of the City, the franchised operator and the Association, both fiscally and in regard to public health and safety;

NOW THEREFORE, be it resolved that it is the feeling of this Association that any amendments to or interpretations of existing regulations concerning refuse collection systems which are intended to preclude a collection system on private property which meets or exceeds minimum health and safety concerns and which is approved at the local municipal level and monitored by the Local Waste management Board would be administratively irresponsible and possibly legally unsupportable.

Adopted by the membership at its annual meeting this 28th day of November, 1987.

EDWARD ETHELL, PRESIDENT
BOARD OF DIRECTORS

The above represents a true and correct copy of the resolution duly adopted by the Association at its annual meeting on November 28, 1987. Dated this 28th day of November, 1987.

ATTEST: Earl Wallace
SECRETARY

PUBLIC POLICY ADVOCATES

FREDERICK J. TAUGHER

1100 11th Street, Suite 311
Sacramento, California 95814
Telephone 916 441 0702

December 3, 1987

Chair and Members
California Waste Management Board
1020 9th Street, Suite 300
Sacramento, California 95814

ATTN: Robert F. Conheim, General Counsel

Dear Mr. Chairman and Members of the Board:

On behalf of our client, The Lakes Country Club, we wish to oppose the adoption of the proposed amendment to Section 17332 (Title 14, C.A.C.).

We believe the adoption and subsequent enforcement of the proposed amendments will have both adverse health & safety and economic consequences for homeowners at The Lakes as well as many other homeowners and even businesses.

The proposed amendments would not only jeopardize the current trash collection procedure now followed at The Lakes and similar communities, but we expect it would prohibit commonly employed janitorial practices. The proposed amended regulation states that "no person shall provide...collection services unless he or she is duly authorized...and unless he or she complies with all local government licenses, permits or written approval requirements...."

The apparent intent of the proposed amendments are to prohibit persons and entities, not having official authorizations, from carrying a third party's trash on a private road to a central collection point. However, the literal meaning of the proposed amendments would also prohibit janitors in multi-tenant office buildings from carrying trash in private corridors and elevators.

Currently (in compliance with a three-way agreement amongst the City of Palm Desert, Palm Desert Disposal, and the homeowners' association) household trash is collected daily by agents of the association from the curbside of each home and temporarily placed in covered dumpster containers. Palm Desert Disposal then, at least weekly, removes the dumpster contents and hauls the trash to the county landfill.

There are clear advantages to this procedure:

1. Trash is removed daily. The Lakes is a resort community with numerous part time residents. When a resident leaves The Lakes to return to his or her permanent home, the trash can be left at curbside with the assurance that it will be removed the next day. The alternatives to daily collection are unacceptable. Either:

PUBLIC POLICY ADVOCATES

a. The trash is left within the home for extended periods thereby causing foul odors and attracting rodents, etc. or,

b. Trash is left at the curbside (often for an extended period) between the time the homeowner leaves The Lakes to return to his or her permanent residence and the time it would be collected on a weekly schedule. This unacceptable alternative has, in turn, two drawbacks. Either:

   i. The trash is left in plastic bags which can be easily broken by roving dogs and other animals in search of food, or

   ii. The trash is left in closed metal or hard plastic containers which remain at curbside after the scheduled collection until the temporary resident returns (which could be weeks or months later). While these types of containers would minimize the problems caused by animals, the empty container would signal burglars that the home is vacant.

2. The daily curbside collection of trash is economically feasible, but only as long as grounds maintenance personnel can continue to collect it. Already The Lakes pays a $70,000 annual fee to Palm Desert Disposal for transportation to the county landfill. Clearly the cost of a daily collection fee paid to Palm Desert Disposal would be an exorbitant and unaffordable increase.

The Lakes Country Club is a private gated community with no public streets. The current system of trash collection provides excellent sanitary protections and is affordable. We believe the proposed amendment to existing regulations would economically bar daily collection and is therefore contrary to the health and safety requirements of the community. Accordingly we urge your rejection of the proposal.

Sincerely,

Frederick J. Taugher

MEETING

STATE OF CALIFORNIA

CALIFORNIA WASTE MANAGEMENT BOARD

EXCERPT

RIVER CITY BANK BUILDING

1020 NINTH STREET

SUITE 300

SACRAMENTO, CALIFORNIA

THURSDAY, DECEMBER 3, 1987

10:00 A.M.

Eileen Jennings, C.S.R.
License No. 5122

COPY

BOARD MEMBERS PRESENT

Mr. Sherman E. Roodzant, Chairman

Mr. John P. Moscone, Vice-Chairman

Mr. Sam Arakalian

Mr. Phillip A. Beautrow

Ms. Ginger Bremberg

Mr. Les Brown

Mr. James W. Calloway

Mr. John E. Gallagher

Mr. E. L. "Skeet" Varner

STAFF PRESENT

Mr. George T. Eowan, Chief Executive Officer

Mr. Herbert Iwahiro, Chief Deputy Executive Officer

Mr. Alan A. Oldall, Deputy Executive Officer

Ms. Jo-Ellen Jackson, Director of Legislation and Public Affairs

Mr. Robert F. Conheim, General Counsel

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1 P R O C E E D I N G S

2 --oOo--

3 CHAIRMAN ROODZANT: Call the Board back to order.

4 Next item is Item No. 5, Public Hearing on the

5 Proposed Changes in Board Regulations Concerning Collection

6 Service Providers: Title 14, California Administrative Code,

7 Section 17332.

8 Mr. Conheim.

9 MR. CONHEIM: Yes. We'll try the microphone again

10 for awhile.

11 Mr. Chairman, this item constitutes a formal public

12 hearing. I'm going to turn off the microphone, because it's

13 going to start up again. Or I can continue until it gets

14 intolerable. It's getting intolerable.

15 This item constitutes a formal public hearing under

16 the California Administrative Procedures Act for the

17 adoption, amendment or repeal -- in this case the

18 amendment -- of a regulation of the Board.

19 I usually attempt and am not successful to be brief

20 in the presentation of staff comment on an item. However, in

21 this item I am constrained because of the requirements of the

22 California Administrative Procedures Act, the APA, not even

23 to try to be brief. I have to go through for the benefit of

24 the public and for the record the highlights of all the

25 comments that were made and the reasons for the proposed

1 regulation and I need to also point out to you the required
2 findings that you are required to make in order to
3 successfully move this through the Office of Administrative
4 Law, OAL. But I will try to move it along.
5 As you are aware, about a year ago the issue
6 concerning certain refuse collection practices came to the
7 attention of the Board. Because within the boundaries of
8 certain multi-residence gated communities refuse was being
9 collected from individual doorsteps by the gardening
10 subcontractors of these certain condominium developments on a
11 daily basis and then placed in at the time open dumpsters,
12 open 30 or 40-yard boxes in the work yard of the condominium
13 development. Later I understand the use of closed three or
14 four-yard dumpsters was instituted, but the practice has
15 continued to this date.
16 As the issue came to the Board about a year ago,
17 there was a recommendation before you that the use of these
18 boxes constituted an unpermitted transfer station. That was
19 an issue that was discussed through the winter and spring of
20 this year.
21 In March there was a full discussion of the facts of
22 this issue, which is included in today's agenda item, and the
16
23 Chairman appointed an ad hoc committee comprised of Board
24 Members Bremberg and Moscone and attorney Harry Astor to
25 study the matter and report to the Board. On May 13th Board

1 Member Bremberg reported to the Board and recommended,
2 basically, the amended regulatory language which is the
3 subject of today's hearing.
4 The written documentation for today's hearing
5 consists of the Agenda Item No. 5, which number pages 26
6 through 78, and a supplemental item which has additional
7 comments from the public which were made available to me on
8 your behalf after the item went to press.
9 The important thing that I need to advise you today
10 is that the Board must make several findings in order to
11 adopt an amendment to any regulation. It must make certain
12 economic and fiscal findings that are required by law and
13 were listed and summarized on the notice for this proceeding.
14 It must also make specific findings for the record concerning
15 the statutory criteria for adopting any regulation.
16 Under the APA, the Administrative Procedures Act,
17 the regulation must be necessary, the Board must have
18 authority to adopt the regulation, the Board must find that
19 it is clear regulation, consistent with existing law, it
20 implements -- it refers to and implements law that is within
21 the Board's authority to implement, and it does not duplicate
22 existing regulation or other law to the extent that the Board
23 has already regulated in that area.
24 This criterion often is the subject of some
25 confusion, because especially in the waste management field

1 many agencies -- several agencies -- have seemingly
2 overlapping authority to regulate certain aspects of waste
3 management and the Board would be allowed to adopt a
4 regulation under its own authority.
5 The most important finding that the Board must make
6 today is on the purpose and necessity of the regulation. I
7 have prepared -- a part of my writing discusses this on page
8 28 of the Board packet in which I refer to the Initial
9 Statement of Reasons distributed with the notice in which I
10 stated what I believed to be the Board's sense of the purpose
11 of this item.
12 It is mainly that the Board felt that this
13 regulation was necessary to clarify existing law, existing
14 regulation, Section 17332 of the Administrative Code, Title
15 14, to amplify and clarify the responsibility of local
16 government to treat all solid waste collection service
17 providers the same, whether they are professional so stated
18 in that business or whether they are in fact gardening
19 subcontractors or maintenance people and do the same thing.
20 So the text of the regulation makes a simple
21 clarifying change to amplify that existing requirement that
22 if you are a collection service provider by any color, you
23 are still, as a rose is a rose, a collection service provider
24 and should fall under the same regulation in any given local
25 community that any other collection service provider is

1 subject to.

2 This was perceived by the Board and the staff in
3 earlier discussions not to be clearly defined. The ad hoc
4 committee characterized the situation that had been discussed
5 involving the Palm Desert area as a collection matter and, as
6 a result, there was a direction to me to prepare and notice
7 the regulation to enhance the ability of local government and
8 to further put collection service providers on notice that
9 they need to be treated like collection service providers.

10 This regulation does not actually propose a new or
11 higher level of regulation. It merely amplifies and
12 clarifies what is already in the existing law.

13 At the time we close the public hearing and if the
14 Board decides to act on this matter at the close of the
15 public hearing, I will need to go back and ask you for the
16 specific findings that I feel are required under the law.

17 Perhaps the second most important thing that you
18 need to do today and I need to present to you are the written
19 comments that have been received to this date by members of
20 the public. I have summarized these beginning on page 29 of
21 the Board's packets and on the entire item of the
22 supplemental item.

23 We had received six written comments before the item
24 went to press, three further. We have received nine total
25 written comments on the regulation with suggestions and

1 recommendations and one major telephonic communication. I
2 would like for the record to summarize those comments. Some
3 of the people who made written comments are also here in the
17
4 audience today and will wish at the time the actual public
5 hearing is open to amplify and continue their comments.
6 The first comment I received, beginning on page 29
7 of the Board packet, was from John Scholtes, who is a staff
8 member of the Local Enforcement Agency of San Luis Obispo.
9 Mr. Scholtes' general concern was that he suggested changing
10 the regulation to differentiate between collection services
11 and self-hauling.
12 I felt in my recommendation that this was
13 unnecessary; because this regulation has never addressed
14 self-hauling, still doesn't address self-hauling by its terms
15 and I recommended that you find that no change is necessary
16 due to this comment. Because we can make a statement, a
17 finding of fact, that it doesn't impact self-haulers and
18 there is nothing in the law that this regulation by amendment
19 would -- where you could reach that conclusion.
20 Many of these comments, including Mr. Scholtes', are
21 based on people's perceptions about how the regulation might
22 be interpreted upon enforcement on the local level, but many
23 of them don't need further language. Sometimes further
24 language confuses rather than clarifies. You cannot cover
25 every single situation in the regulation.

1 The second comment --

2 CHAIRMAN ROODZANT: Excuse me, counsel, as a matter
3 of procedure. Are we to act on each one of these findings
4 individually or as a whole?

5 MR. CONHEIM: I would like you to make at least
6 reference -- if you will accept my recommendations, then you
7 could refer to my findings and act on the whole. If you
8 choose to make other findings, then we would single out
9 certain comments and certain recommendations for your further
10 discussion and finding.

11 CHAIRMAN ROODZANT: Thank you.

12 MR. CONHEIM: It probably would be better if I just
13 whipped through these and we got to the public hearing and
14 then we came back and discussed the fiscal findings after all
15 of the public comments were out. The fiscal findings are
16 technical. I do want to make a point about them, but we can
17 reserve that for a more organized time.

18 CHAIRMAN ROODZANT: Carry on. Excuse me.

19 MR. CONHEIM: The second comment was from James D.
20 Wheaton, the City Manager of the City of Corona. Mr. Wheaton
21 asked for a modification to assure that confusion over who is
22 entitled to provide solid waste collection services does not
23 occur when cities annex previously unincorporated areas.

24 The statute, Health and Safety Code 4272, provides
25 for the short-term continuation of previously authorized

1 service providers when a city incorporates or annexes areas.
2 That's totally enveloped and taken care of by the statute.
3 This regulation is complementary to and not
4 conflicting with that requirement and I think that this
5 regulation never intended to comment or implement Health and
6 Safety Code 4272. Number one, that section is
7 self-implementing. Number two, we don't have the authority
8 to regulate in that area.
9 So I recommended that no change is necessary or
10 allowable due to this comment, but that the issue was -- I've
11 raised these issues because I believe that they need to be
12 included in the record, you need to at least be aware that
13 these issues are being raised in terms of interpreting our
14 regulation and I recommend, of course, that you make a
15 finding that if you make a statement of the intent of the
16 regulation, that no change is necessary.
17 The third comment I have entitled John Fanning,
18 Chairman, Solid Waste Enforcement Agency, County of
19 Riverside. It came to me as an annotated copy of the text of
20 the regulation transmitted, I believe, by Board Member
21 Arakalian through Herb.
22 It asked for three specific changes to the
23 regulation. The first change requested to insert the words
24 "transportation and disposal" after the word "collection" on
25 line three. The second change requested was to change the

1 word "duties" to "services" on line four. This document is
2 included as an attachment. Let me see if I can find it
3 quickly so that you can follow along. It's one of the pages
4 of --
5 BOARD MEMBER ARAKALIAN: Page 37, I believe.
6 MR. CONHEIM: It should be back here on page 72 of
7 the Board packet, the annotated version of the regulation
8 that was submitted by Mr. Fanning.
9 Going on, the third request was to insert on line
10 nine a reference to certain sections of the Administrative
11 Code concerning collection equipment, clarifying the term
12 used in the regulation "these standards", which also appears
13 on line nine.
14 I've made recommendations to you on these changes.
15 I've said that the first requested change -- that is, to
16 include the words "transportation and disposal" -- exceeds
17 the scope of this regulation and that if you felt that that
18 was necessary for the reasons stated, it would require a new
19 45-day notice and this proceeding would terminate at the end
20 of the public hearing and we would go back out to a full new
21 45-day notice to consider changes that were not closely
22 related to the proposed notice text.
23 The second change is sufficiently related to the
24 proposed text that it could be adopted without 45-day notice,
25 but only after a 15-day waiting period. You could not act

1 today if you chose to change the word "duties" to "services"
2 on line four. This change would add clarity and could be
3 adopted. I'm not saying -- I really should change my written
4 recommendation from should to could be adopted if the Board
5 felt that this clarity was necessary and if the Board were
6 willing to wait an additional 15 days and reconvene later
7 this month or at the regularly scheduled Board meeting in
8 January to consider this matter.
9 The third requested change I felt was not absolutely
10 relevant and I recommended that, based on my writing, that it
11 didn't add clarity or strength to the regulation, but should
12 be considered in the general regulations rewriting project
13 being undertaken by the Board staff. I felt it would be --
14 that there was some confusion as to what the commentor
15 intended to clarify and that it probably wasn't referencing
16 those regulations.
17 The fourth comment was from Bob Tremewan, the LEA in
18 Tuolumne County. Mr. Tremewan raises a generic issue that is
19 important to the Board in considering this issue. There have
20 been some people who have called and asked, including Mr.
21 Tremewan, whether this regulation required changes to local
22 government's regulatory program, franchising and permitting
23 program for the provision of solid waste services; whether by
24 its terms this regulation required, for instance, a county
25 that had no franchising or permitting or licensing program,

1 but supported -- free competition without any restraints
2 would be required as a result of this regulation to
3 implement, for instance, a franchising program.
4 It is my interpretation and my advice that this
5 regulation by its terms doesn't do that, that the statute in
6 the Health and Safety Code that provides for free and open
7 competition and also in the Government Code 66755 and the
8 following sections, that these statutes take precedence and
9 they create an illegal environment in which the local
10 government may choose to have any kind of regulatory program
11 it wants.
12 The only part of this regulation that is mandatory
13 in a sense on local government is the part that has always
14 been mandatory on local government. Where the regulation
15 refers to a collection service provider's requirement to meet
16 state standards, the LEA must treat all collection service
17 providers the same and if one meets them, then the other must
18 meet them. But it doesn't comment on the franchising or
19 permitting.
20 The fifth comment I received was from Robert Lewon,
21 Executive Vice President of LMC Corporation. I believe they
22 are a scrap metal recycler. I hope I'm not being too narrow.
23 They may collect other recyclables, but I think they're a
24 scrap metal recycler.
25 His question was also a generic question: Does this

1 regulation now require a franchising, permitting or
2 regulatory program for non-refuse haulers, people who haul
3 source separated recyclables? They do put out bins, they do
4 collect separated recyclable materials not intended for
5 disposal.
6 It was my recommendation that I do not believe that
7 this regulation has ever applied to collectors of separated
8 recyclables and that I would suggest that the Board make that
9 finding.
10 Mr. Varner.
11 BOARD MEMBER VARNER: Mr. Conheim, that's
12 interesting here. What about recyclables that are not
13 separated?
14 MR. CONHEIM: Recyclables that are not separated,
15 Mr. Varner, Mr. Chairman, are regulated under this regulation
16 because there's a putrescible waste problem. But I think we
17 have to look empirically at what is done out there.
18 BOARD MEMBER VARNER: All right. I just wanted that
19 clarified.
20 MR. CONHEIM: Absolutely. If it's not separated or
21 if there is a statement by the recycler that he is
22 separating, but there's significant quantities of lunch
23 waste, refuse, whatever goes in there that would cause a
24 health and safety problem, then these people are treatable by
25 local government in terms of where state minimum standards

1 are concerned as refuse haulers.

2 VICE CHAIRMAN MOSCONE: Mr. Chairman.

3 CHAIRMAN ROODZANT: Mr. Moscone.

4 VICE CHAIRMAN MOSCONE: To enlarge on this. I
5 believe that there are presently some cases in court now
6 where under the guise of recycling people have gotten into
7 this business of hauling roll-offs or whatever that have some
19
8 recyclables, but they've been collected by the garbage
9 collector, franchise or whatever with the excuse that they're
10 recycling. The recyclables are maybe one percent of what may
11 be in that container. As I say, some of these cases, I
12 believe, are now in court.

13 MR. CONHEIM: Mr. Moscone, I would refer, based on
14 what you said, to the Vincy Enterprises versus Oakland
15 Scavenger case, which is currently being litigated in which
16 there are several issues. One is involving the definition of
17 haulers, how much waste creates a refuse hauler. The other
18 one has to do with the local ordinance as to whether even a
19 recycler who picks up only source-separated recyclables is
20 allowed to if he's not the franchised hauler.

21 That is being litigated. It's being litigated with
22 respect to the Alameda County ordinance and this regulation
23 is of some interest in that area. However, I still think
24 that since this regulation is designed only to support
25 existing local regulatory programs and the implementation of

1 state standards regarding refuse, that it's not inconsistent
2 with any holding that might come out of the Vincy
3 Enterprises-East Bay Recycling case.
4 The final written comment is from Donald H.
5 Otterman, City Manager of the City of La Canada Flintridge.
6 He actually only asked two questions, but I thought they
7 raised some issues which the Board may wish to consider in
8 making findings of fact about the necessity and purpose and
9 intent of this regulation.
10 He does ask: Will the proposed regulations change
11 the requirements regarding franchising of trash haulers?
12 We've already raised that issue. And he asked whether cities
13 that do not have franchises imposed would be required to have
14 franchise mechanism.
15 This does not change the requirements of Government
16 Code Section 66755 and certain sections of the Health and
17 Safety Code that allow for local franchising or not and it
18 would allow -- this regulation also has no impact on
19 regulating trash haulers without franchising them.
20 The final comment received before the Board item
21 went to press was from George Lynch from Sacramento County
22 Public Works. Mr. Lynch's comment also was concerned with
23 the general issue of whether this regulation by its proposed
24 terms would require a new regulatory program of a county
25 other than the one that already existed.

He also raised what I call an SB 90 issue. That is, the issue of whether a new state requirement is being imposed on local governments by this regulation which would entail cost to local government, which traditionally are, if certain findings are made, reimbursable by the state to local government.

I just don't feel that Mr. Lynch's -- I think Mr. Lynch's comments are appropriate and important, but I do not feel that this regulation creates a new regulatory program or requires a new regulatory program and I also don't think that this regulation creates a new local mandate. Let me repeat. I feel in regard to Mr. Lynch's comments that this regulation merely enhances, amplifies, clarifies the existing language of the regulation.

I would like to return to make some comments and directions and advice, but perhaps at this point we can turn to comments from the audience. People do want to make some comments on this and I need to field those comments and give you my recommendations after your discussion of them.

BOARD MEMBER BREMBERG: Mr. Chairman.

CHAIRMAN ROODZANT: Mrs. Bremberg.

BOARD MEMBER BREMBERG: Is it not required that you also enter into the record the supplemental comments?

MR. CONHEIM: I'm sorry, Mrs. Bremberg. I'm moving ahead of myself. Thank you.

1 I have several more comments submitted after the
2 printing of the agenda item, substantial comments. One is
3 from John Nolan of the Sheppard, Mullin law firm in San
4 Francisco representing U.S. Eagle, Incorporated. Mr. Nolan
5 and a principal of U.S. Eagle are here and will amplify these
6 comments.
7 But their basic issue is that U.S. Eagle provides
8 refuse collection services on certain federal military
9 installations and has not up to this point been generally
10 subject to the local franchising requirements of local areas
11 in California. This regulation to them is focused and
12 poignant, because there is currently a case pending in the
13 district court called the Parola case which involves, I
14 think, the City of Monterey's attempt to impose its franchise
15 requirement on the military installations within its
16 jurisdictional boundaries. That case is on appeal and I'm
17 certain that Mr. Nolan will give you more information on
18 that. They're far more aware of it.
19 My recommendation on Mr. Nolan's comment was that he
20 has suggested that we put mandatory language in the proposed
21 regulation excepting federal military installations. I'm
22 concerned about doing that. I don't think it's necessary. I
23 think that that issue is one that relates only to franchising
24 or permitting, one which we don't have the jurisdiction to
25 regulate anyway, and at this point even if we did, we've got

1 litigation that is going to be a test case on this.
2 But I think the main thing -- and we don't have the
3 further question. The main thing is that we don't have the
4 jurisdiction in this area and it would be real inappropriate,
5 I think, for us to include language limiting the ability of
6 local government to franchise or not, to permit or not, to
7 license or not. It would conflict with existing statutory
8 law, Government Code Sections 66755, 56 and 57.
9 VICE CHAIRMAN MOSCONE: The government's going to do
10 what it damn well pleases.
11 MR. CONHEIM: Thank you, Mr. Moscone.
12 VICE CHAIRMAN MOSCONE: They disregard what they put
13 into their contract requirements. Having had the experience,
14 I think I can speak with some authority.
15 MR. CONHEIM: Mr. Tom Walters, Vice President of
16 Waste Management of California, who has been here today, but
17 I'm not sure he's still in the audience, wrote a letter
18 recently in support of the proposed amendment and raised
19 further issues which I would characterize -- and I'm sure
20 he'll correct me if I'm wrong -- that basically would
21 establish some kind of a regulatory schema, a certification
22 schema -- maybe not quite that much -- that "only recognized
23 professionals should manage California's waste". That's a
24 quote from his letter. He suggested creating a regulatory
25 schema with specific standards and performance criteria for

1 solid waste collectors.

2 I feel that that's beyond the scope of this

3 regulation, that it is clearly the proper scope of another

4 regulatory proceeding, that it is an issue that has come

5 before this Board several times in the past and might be

6 included in the general regulations rewriting project. But I

7 feel that it goes beyond the scope of this proceeding.

8 If you wanted to do something along this regard as a

9 result of Mr. Walters' comments, we would have to engage in

10 another 45-day notice to cover those matters. I recommend

11 that Board direct the staff to study this proposal and to

12 incorporate recommendations in the regulations review

13 currently being undertaken.

14 Finally, public comments which I'm sure will be

15 amplified have been received from The Lakes Country Club

16 Association, Palm Desert, and from Fred Taugher, a

17 governmental representative representing The Lakes, in which

18 they are concerned and reached the conclusion that this

19 regulation requires that the gardening subcontractor not be

20 allowed to provide these services and they disagree with that

21 effect of the regulation.

22 I do not believe that that is per se by the language

23 of the regulation the effect of this regulation. I believe

24 that this regulation does not by its terms require that a

25 franchised or permitted or licensed hauler be the one to do

1 it, that this regulation by its terms requires that people
2 who do provide act in a professional manner according to
3 state standards. Then if local government chooses to impose
4 licensing requirements on some refuse collectors, this
5 clarification reminds local government of the existing
6 regulatory requirement that everybody ought to be subject to
7 that.
8 Those are the public comments that I have received.
9 You have copies of them all. I have summarized them. Some
10 of them need to be amplified and findings need to be made
11 later. If you want to go into the fiscal effect now, we
12 could. But I don't want to break the context. There are
13 public commentors out there following right on the heels of
14 my long-winded presentation and I would recommend that we go
15 to the public hearing and comment portion.
16 CHAIRMAN ROODZANT: Thank you, counsel.
17 First member of the public that's requested to speak
18 today on this issue is John F. Nolan.
19 BOARD MEMBER CALLOWAY: Mr. Chairman.
20 CHAIRMAN ROODZANT: Mr. Calloway.
21 BOARD MEMBER CALLOWAY: Before you go to that, could
22 I just ask for procedure sake. Now, I'm sure there's a lot
23 of people, judging what counsel has just said, out there that
24 want to speak. This could be very lengthy. I think it would
25 help certainly me and probably other members of the Board if

1 we could do this in order without having to break for lunch
2 or something.
3 My question is: Should we break for lunch now and
4 come back and start the public portion of this and then we'll
5 have it in order? I think it will be easier to follow.
6 CHAIRMAN ROODZANT: Remind my colleague that the
7 Board earlier this morning in approving the request to
8 postpone or delay the matter until 11:30 agreed to hear
9 the --
10 BOARD MEMBER CALLOWAY: I'm not talking about that,
11 your Honor. I'm not talking about that at all. I'm just
12 simply saying that it is now ten minutes after 12:00. You
13 start this, you could be on this for three or four hours or
14 you go on a break in that three or four-hour time for lunch
15 or aren't you? That's all I'm asking
16 CHAIRMAN ROODZANT: What's the pleasure of the
17 Board?
18 BOARD MEMBER BEAUTROW: No.
19 CHAIRMAN ROODZANT: No what?
20 BOARD MEMBER BEAUTROW: Don't break. Just continue
21 this.
22 I think earlier on Ginger Bremberg asked, since
23 she's on this committee and said she had to leave here at
24 1:00 and she certainly would like to participate in it. If
25 this drags on after 1:00, I believe that the idea would be to

1 continue the matter.

2 BOARD MEMBER CALLOWAY: I think that was agreed on

3 anyway before that we would continue the matter. I'm not

4 talking about that.

5 BOARD MEMBER BEAUTROW: Let's beat the lunch thing

6 here.

7 BOARD MEMBER BREMBERG: Let's go.

8 CHAIRMAN ROODZANT: Mr. Conheim, in your

9 professional opinion, is there any way this thing could be

10 concluded by 1:00?

11 MR. CONHEIM: I do not believe so, no.

12 BOARD MEMBER BREMBERG: We could start it at 8:00

13 tomorrow morning, 30. I'll be back tomorrow morning.

14 CHAIRMAN ROODZANT: We've got a lot of people who

15 have traveled a great distance to have their voices heard and

16 I would suggest that in the interest of our colleagues here

17 who have expressed an interest in hearing the matter, that we

18 proceed with their testimony.

19 I'll call to the stand Mr. Nolan.

20 MR. NOLAN: Yes, Mr. Chairman. I'm going to keep

21 this very brief. Thank you, Bob, for the summary.

22 Mr. Chairman and members of the Board, my name is

23 John Nolan and I'm a lawyer with Sheppard, Mullin, Richter &

24 Hampton in San Francisco. I'm here on behalf of U.S. Eagle,

25 my client today.

1 You have the comments in front of you and Bob has
2 correctly and appropriately summarized those comments and
3 certainly it was not our intent in hearing his comments to
4 suggest that this Board would do something beyond its
5 jurisdiction.
6 With that said, I suppose there's two points I'd
7 like to make. I've heard Bob say that the purpose of this
8 amendment is to treat all waste collectors the same and we
9 think that's certainly appropriate under the state and
10 federal constitution. We also understand that the purpose is
11 to make sure that these services are performed by waste
12 management professionals, which my client counts itself among
13 those, and certainly that's an appropriate thing to do.
14 I'm wondering now why this regulation and this
15 amendment is necessary at all. Because Bob says it was only
16 for purposes of clarification. Yet the language of the
17 amendment that concerns us the most is the underscored
18 language that says: "Unless the service provider is duly
19 authorized to perform such duties by the local governing or
20 regulating authorities."
21 That is the change in the regulation from the old
22 law. It now, it seems to us, places an affirmative duty on
23 the local agency to affirmatively authorize providers of
24 services within its jurisdiction and that that is a change
25 from the old law. There was no requirement that there be

1 authorization from the local agency.

2 My client, which doesn't deal with the local

3 agencies, but deals with the federal government, is now put

4 in the position that it must go to the local agencies and ask

5 for written or perhaps oral authorization to continue to

6 provide services for the federal government. I think that is

7 more than just a clarification.

8 My second comment is because it seems to be more

9 than a clarification, it seems to be sending a signal to the

10 local authorities that by authorizing particular providers

11 that franchising -- by using the franchise system, that may

12 be the best way to implement this change.

13 I've heard Bob say and I think it's true that there

14 was no intent in this change in the regulation to encourage

15 or discourage franchising at the local level. But I do think

16 that that language of duly authorized seems to send a signal

17 that perhaps this Board does not want to send to the local

18 authorities and our suggestion would be that if our earlier

19 suggested amendment is rejected, that perhaps there be some

20 clarifying language if this regulation is to be amended to

21 say to the local agencies that we're not approving or

22 disapproving of franchising through this authorization

23 process; to make sure and make emphatic that all we're simply

24 trying to ensure is that whoever provides services within

25 that local authority does so in a professional and competent

1 manner.

2 My only final comment is that Bob referred to the
3 Parola case, which is now up before the 9th Circuit Court of
4 Appeal. It has been briefed, oral argument was heard in
5 early October. We appeared as an amicus, or friend of the
6 court, arguing that the Parola decision in the District Court
7 which said that under RCRA a local authority can impose its
8 franchisee on the federal government conflicts with the
9 competitive procurement practices of the federal government
10 and was certainly never the intent of RCRA.

11 As I say, that issue has been briefed and heard in
12 the 9th Circuit Court of Appeals and we're waiting a decision
13 on that issue, which I bring to your attention because it
14 impacts in some way perhaps later interpretations of this
15 regulation as somehow blessing franchising as opposed to free
16 and open competition in providing refuse collection services.

17 I have no further comments, but if anyone has any
18 questions about either of those written comments or my
19 comments today or Bob, I'd be happy to answer them.

20 VICE CHAIRMAN MOSCONE: Mr. Chairman.

21 CHAIRMAN ROODZANT: Mr. Moscone.

22 VICE CHAIRMAN MOSCONE: I'm talking from my
23 experience in the San Francisco Bay Area. I think you have
24 no worry if the government continues to do business the way
25 it used to do it when I was there. I submitted bids for

2

1 installations in the Bay Area and through a lot of finagling
2 and all this and that, we came to the point where they're
3 small business set-asides.
4 But in these contracts that the government put out
5 to the bidder, the contractor shall have all necessary city,
6 state, federal licenses and permits and everything else.
7 They could save that paper, they could save that typing.
8 Because they don't pay a damn bit of attention to it.
9 Because in cases where I have submitted contracts, people who
10 have bid had no permits to operate in this area. But when it
11 was changed to small business set-asides, the government
12 overlooked -- they didn't pay any attention to whether they
13 were licensed or otherwise as far as I can see.
14 So I think that U.S. Eagle is well-protected by the
15 way the government operates.
16 MR. NOLAN: Mr. Moscone, you've obviously had a lot
17 more experience in this trade than I have.
18 VICE CHAIRMAN MOSCONE: Unfortunately, yes.
19 MR. NOLAN: I have had none, actually. But to the
20 extent that a permit is a permit to be an exclusive
21 franchisee, I would agree with you that the federal
22 government's position and which we advocated in the 9th
23 Circuit Court of Appeal is that that would be contrary to the
24 government's competitive procurement practices.
25 On the other hand, to the extent permit means a

1 permit to dispose of waste at a particular site or to comply
2 with a permit for type of equipment, U.S. Eagle's experience
3 has been that the government does enforce or does ensure that
4 its contractors comply with those permits and we're not
5 quarreling with that. Our point is that we think that is
6 appropriate and it's consistent with the purpose of this
7 regulation to ensure that there are professional people
8 providing these services, whether it's for the federal
9 government or otherwise.
10 But to the extent that a local municipality can
11 impose its will in terms of who will provide as opposed to
12 how they will provide, then we do draw the line and our
13 concern again is that this amendment to the regulation maybe
14 sends a signal that you don't want to send suggesting that
15 the local municipality should adopt a franchising program or
16 that a franchising program is a better way to handle this
17 duly authorizing requirement of this amendment.
18 CHAIRMAN ROODZANT: Thank you, Mr. Nolan.
19 Mr. Calloway.
20 BOARD MEMBER CALLOWAY: Mr. Nolan, I just wanted to
21 ask you and have spent 20 years in local government in a city
22 and in a district where we have a lot of federal
23 installations and we have a lot of impact from those federal
24 installations on the local population and the local cities
25 and so forth.

1 Is this an imposition to ask that your client just
2 get the necessary permits like everybody else does like if
3 I'm competing or Mr. Moscone's company is competing?
4 Mr. Moscone's company has to, Mr. Varner's company has to get
5 permits. What's wrong with having your client get permits
6 from the local government and so forth? I don't understand.
7 MR. NOLAN: Nothing, Mr. Calloway. I thought that
8 was my point is that we have in the past and will continue in
9 the future to comply with all the local government permitting
10 and licensing requirements. The point --
11 BOARD MEMBER CALLOWAY: Excuse me. Isn't that
12 exactly what we're saying here; that you do have to comply,
13 you do have to get a permit from local government?
14 MR. NOLAN: Absolutely. The regulation as
15 originally drafted had that language in there. Our concern,
16 if you will, is not with that permitting or licensing
17 requirement that has always been part of the regulation and
18 which my client has always complied with. Our concern is in
19 the past the regulation was stated in that all persons shall
20 comply. Now it's stated in terms of no person shall provide
21 unless they are authorized by the local municipality.
22 Our concern with that now unless they're authorized
23 by the local municipality, it may impose more than just
24 permitting and licensing requirements, but be an attempt by
25 the local municipalities or may be used by the local

1 municipalities to adopt franchising as a mode of business in
2 that county and that would hurt and perhaps devastate my
3 client's business and I don't think that this Board wants to
4 do that. Because they want to ensure that companies like
5 U.S. Eagle that are professional waste management providers
6 stay in business and it's the people that don't follow the
7 law and that don't act in a reasonable and professional
8 manner, those are the people that this regulation is intended
9 to screen out.
10 But I'm suggesting to you that it does too much by
11 going beyond simply requiring that the service provider get a
12 permit and a license. Now it's saying that in addition that
13 provider has to go to the municipality and get authorization
14 to continue to operate. I'm saying that authorization is
15 unnecessary and may, as I have suggested, be an effort to
16 adopt franchising and limit the number of competitors like my
17 client from providing these services.
18 BOARD MEMBER CALLOWAY: Mr. Nolan, I might have
19 misinterpreted that, but I thought when I read this that we
3 20 were talking about the authorization would be a permit. In
21 other words, if the city council, board of supervisors gave
22 an operator a permit, that would be authorization to operate.
23 I don't understand it.
24 MR. NOLAN: Mr. Calloway, maybe it just requires a
25 clarification then on the scope of what this authorization

1 is. Because now it says unless they're authorized and unless
2 they comply with all local government licenses. If the
3 authorization is simply repeating the second phrase, comply
4 with all local government licenses and permits, then it's not
5 necessary. On the other hand, if it's suggesting something
6 more than simply complying, what is that something more that
7 this regulation is trying to suggest?
8 BOARD MEMBER ARAKALIAN: Mr. Chairman.
9 CHAIRMAN ROODZANT: Mr. Arakalian.
10 BOARD MEMBER CALLOWAY: Excuse me just a second.
11 Could we have our counsel to explain maybe his interpretation
12 of that portion of the reg?
13 BOARD MEMBER ARAKALIAN: I can handle that.
14 BOARD MEMBER CALLOWAY: If you don't mind, Mr.
15 Arakalian. I mean, he's licensed to do this. If you don't
16 mind.
17 MR. CONHEIM: I'm licensed, but am I franchised or
18 permitted or authorized?
19 I stated before that it was my interpretation -- and
20 I do think that perhaps Mrs. Bremberg and Mr. Moscone and
21 Mr. Astor may have a comment on this. But it was my
22 interpretation that the additional language amplified,
23 clarified the second clause by putting on notice providers
24 that to the extent that local government had licensing,
25 permitting, written approval requirements, that people who

1 hadn't gotten them before had to get them.

2 It was not -- I was not led to believe that this was

3 by its terms requiring any impact on the franchising and I

4 reached that conclusion based on the information that I heard

5 and also by reading the existing law, which wouldn't allow us

6 to do that in any event. Because the McVittie bill,

7 Government Code Section 66755, et seq., clearly gives local

8 government the right to provide or not provide in any manner

9 that they wish.

10 So my interpretation, Mr. Calloway, was that I've

11 tried to say it and it's hard to say it any differently and I

12 don't know how to make it any clearer is that this amplified

13 and clarified the second subset. That is, comply with all

14 local government licenses, permits or written approvals. It

15 strengthened the existing requirement under the regulation.

16 Because the Board does not have the right to require

17 local government to have a franchising program or because the

18 Board does not have the authority to favor or disfavor a

19 particular schema of franchising, exclusive, non-exclusive,

20 permitting, licensing in the business sense, not the

21 environmental sense, I didn't see how this regulation ever

22 could have been intended to reach into that domain.

23 BOARD MEMBER CALLOWAY: Thank you.

24 CHAIRMAN ROODZANT: Mr. Arakalian.

25 BOARD MEMBER ARAKALIAN: Frankly, although you're a

1 knowledgeable attorney and know a lot more than I do on legal
2 points, but I really think your concern is not really founded
3 by what we say here. Because we are not talking about who
4 should or should not be licensed, nor permitted. A statement
5 you made, if I heard it properly -- I'm not sure you said
6 it -- concerning this point that all local government
7 licenses, permits and written approval. It isn't "and
8 written", it's "or written". So if you already have the
9 licenses and permits, you wouldn't need any written approval
10 and you wouldn't fall in that category.
11 As far as intent goes, our intent not only has not
12 been to specify who can or cannot be permitted, I don't even
13 think that's in our realm. We're only talking about those
14 persons who are permitted should be the ones who are the
15 collectors. If your company in fact is as you say a
16 permitted or licensed or whatever you want to term it as
17 carrier, then certainly this doesn't affect you. This only
18 says if you weren't, you can't. But if you are, you can.
19 We are not saying who can be permitted, but the fact
20 that you do have to be. So I don't think it even touches
21 you.
22 MR. NOLAN: I understand your latter point. That
23 is, that the regulation does not and probably could not
24 identify those who can be licensed or permitted. But I
25 thought Mr. Calloway's point -- and I wanted to clarify

1 something or follow up on something Bob said -- that if this
2 underscored language on lines three to five of the
3 amendment --
4 MR. CONHEIM: See page 37 of the Board packet for
5 the text of the regulation.
6 BOARD MEMBER ARAKALIAN: If I may for a moment while
7 you're thinking in the pause. I think that if this in any
8 way affected your operation, whatever it affected, it
9 probably would have been affected had this change not taken
10 place or were not contemplating taking place. If you were
11 right now, you would have been right then. If you were wrong
12 after this, you would be wrong before it. I mean, you would
13 either be right or wrong before or after this regulation with
14 no bearing whatsoever whether you are right or wrong. If
15 you're wrong after, you've already been wrong.
16 MR. NOLAN: I understand what you're saying. The
17 pause was to get to that page. And the thought is this:
18 That if under the old regulation without this amendment my
19 client had the appropriate licenses and permits, I agree with
20 you that we don't need the written approval. Indeed, the
21 written approval doesn't say anything in terms of the types
22 of persons that can perform these services. What it says in
23 the next line down is that it shall be contingent upon the
24 operator's demonstrated capabiity to comply with standards
25 and use safe equipment. In other words, the whole purpose

1 was let's make sure we get professionals doing this job.
2 My point and Bob said -- I heard him say that the
3 underscored language, lines three through five, is not
4 intended to create a new requirement, it's simply to clarify
5 the language that was already there. If that is so, then the
6 use of the word "and" is a little confusing. I don't mean to
7 be real particular about this, but perhaps what --
8 BOARD MEMBER ARAKALIAN: Where is the word "and"?
9 MR. NOLAN: "... unless he or she is duly authorized
10 to perform such duties ..." et cetera "... and unless he or
11 she complies ..." In other words, the "and" suggests that
12 there are two things now you must do. You must comply and
13 you must be duly authorized.
14 If the duly authorization only goes to the question
15 of whether you comply, then it's unnecessary. But if it's
16 intending to put something new into this regulation, that's
17 the concern we have. Because that's the signal, I think,
18 that may be sent on to franchisees.
19 If I may, I didn't come here today prepared to
20 rewrite this regulation; but perhaps if the underscored
21 language was simply intended as a clarification, maybe it
22 would be better stated to say "no person shall provide the
23 collection services unless they comply with all local
24 government licenses, permits or written approval requirements
25 applicable to that city" et cetera "or is duly authorized to

1 perform such duties by the local governing or regulating
2 authorities." The suggestion being that the local authority
3 in which the power is ultimately vested may decide this
4 particular person doesn't need a license or permit. Because
5 of the scope of their work they're doing, we're going to
6 authorize them to do it even without that license or permit.
7 Again, if the intent was simply to clarify the
8 regulation as it previously existed, I think this says too
9 much. If it's intended to say something more than what the
10 regulation had initially, I guess our concern is what is it
11 that we're trying to tell the local authorities beyond make
12 sure that the providers are licensed, permitted or have your
13 written approval. Is there some additional thing that the
14 Board is telling the local authorities we want you to do
15 before you allow someone to provide services?
16 BOARD MEMBER BREMBERG: Mr. Chairman.
17 CHAIRMAN ROODZANT: Mrs. Bremberg.
18 BOARD MEMBER BREMBERG: Mr. Nolan, did you get the
19 entire packet of information or just the regulation?
20 MR. NOLAN: I got the entire -- the agenda item.
21 BOARD MEMBER BREMBERG: Would you look at page 62
22 and my original report from May 13, 1987?
23 MR. NOLAN: Mrs. Bremberg, mine's not numbered.
24 BOARD MEMBER BREMBERG: I beg your pardon. The ad
25 hoc committee report that Mr. Moscone, Mr. Astor and I

1 arrived at.

2 If you would read question two: "Should statewide

3 standards ..." et cetera, et cetera. The answer:

4 "While each LEA, City Council,

5 or Board of Supervisors has primary

6 enforcement and regulating

7 authority, each must conform to

8 minimum state standards. We felt

9 that an insertion of a clarifying

10 phrase on Line 2 of Section 17332,

11 Regulation of Operators, following

12 the word services to read: Be duly

13 authorized to perform such duties

14 by local governing/regulating

15 authority. This would allow the

16 local jurisdiction to license

17 operators, regulate financial

18 responsibility, require safe

19 equipment, and to regulate

20 frequency of collections."

21 I think with the usual careless rapture of members

22 of the bar, it has grown like topsy and ornaments have been

23 hung upon it when it was relatively simple, clear and concise

24 in my opinion, a non-lawyer.

25 But I do understand when you're proposing

1 regulations and they're going through a series of other
2 hierarchies, that you must make it sound as though it's
3 terribly important and that the world will stop if this is
4 not worded in such a manner.
5 Would you feel as I do that the simpler the proposed
6 language is, the better it would be and that the whole thing
7 has rather gotten out of control?
8 MR. NOLAN: Let me make sure I understand. The
9 language that is in this ad hoc report would be in lieu of
10 all the phrases?
11 BOARD MEMBER BREMBERG: Do you feel that it covers
12 everything that concerns you?
13 MR. NOLAN: To the extent it's now deleting
14 compliance with the local permits and licensing, I'd be
15 concerned about that. I also think that it would change what
16 I heard Bob say, that this was simply intended as a
17 clarification, not a change in the existing regulation.
18 BOARD MEMBER BREMBERG: You've answered my question.
19 MR. NOLAN: If I may make one more point. It was
20 not my intent certainly to impose legalese for its own sake.
21 But to the extent the regulation adds a new phrase that's
22 intended simply as a clarification, my suggestion is there's
23 a better way to make that clear than the regulation as it now
24 exists in its use of the conjunctive you will be duly
25 authorized and you will be licensed.

1 BOARD MEMBER BREMBERG: Thank you.

2 BOARD MEMBER VARNER: Mr. Chairman, I have just one
3 question.

4 Mr. Nolan, you've raised the issue about
5 franchising. What's your position on counties that have a
6 franchise system in place already and that's their method of
7 duly authorizing?

8 MR. NOLAN: Well, Mr. Varner, in Monterey, which was
9 the city that was at issue in the Parola case, Monterey has
10 an exclusive franchisee by ordinance adopted under the state
11 plan. There was no challenge to the city's right to adopt
12 such an ordinance. The only issue was what is the scope of
13 that ordinance.

14 My suggestion for U.S. Eagle is that that ordinance
15 could not govern U.S. Eagle and other federal contractors.
16 That's the issue that the Parola case went up to the 9th
17 Circuit on.

18 Now, to the extent there are companies unlike U.S.
19 Eagle that simply provide services within the city, certainly
20 Monterey and every other city under the state plan has the
21 right to adopt a franchise system and many cities have that
22 in place and we're not here to quarrel with their right to do
23 that.

24 I didn't understand the Board to be suggesting
25 through this regulation that that's a good thing and that

there should be more franchises or that it's a bad thing, but simply that they have no opinion on that and certainly that the duly authorization, if that language is going to ultimately be adopted, perhaps some clarification telling the cities we're not recommending to you that you should continue franchising, adopt it or drop it in the case of if you already have it.

The only question is can that ordinance govern a federal government under its sovereign immunity powers and we suggest no and we're waiting for the court's resolution of that issue.

BOARD MEMBER VARNER: What's your position on a non-exclusive franchise?

MR. NOLAN: I think it's probably the same position as the exclusive franchise to the extent that a franchising system -- if you're asking me as a lawyer or just a member of the public, I'm a firm believer in free enterprise. To the extent the franchising system uses administrative convenience as an excuse to keep people out of the competitive marketplace, I'm against it whether it's an exclusive system or a partial system. But I don't quarrel with the fact that under California law that it's permissible. But if I had a personal preference, I would say no.

CHAIRMAN ROODZANT: Is there any further discussion with Mr. Nolan?

1 Appreciate your testimony.

2 MR. NOLAN: Thank you, sir.

3 CHAIRMAN ROODZANT: The next request to address the

4 Board on this issue is Z. Harry Astor, CRRC and Waste

5 Management of North America.

6 MR. ASTOR: I would like to ask a question, Mr.

7 Chairman. There are several people that are testifying.

8 This gentleman took 45 minutes pursuant to questions.

9 Shouldn't there be some limits so we can get on with this

10 thing? Several of us have come a long way and if each

11 speaker is going to take 45 minutes, then let's find out

12 where we stand so that I'll know. I mean, is there some

13 unlimited time? What are we talking about?

14 CHAIRMAN ROODZANT: What's the pleasure of the

15 Board.

16 BOARD MEMBER VARNER: I say limit the time.

17 MR. ASTOR: I'll just take a couple of minutes while

18 you're considering that.

19 BOARD MEMBER CALLOWAY: Mr. Chairman, while

20 Mr. Astor is coming up here.

21 I think, Mr. Astor, you would agree that it's pretty

22 difficult to limit anyone to their time. I certainly would

23 not want to cut you short and I wouldn't want to cut anybody

24 from the public short. I know sometimes it takes a long time

25 to get through these things. That's why I suggested if we

1 break for the lunch and so we'd go straight on through after
2 we then got started. But that, of course, we couldn't do.
3 But I hear what you're saying. I don't think that
4 the Board wants to sit up here any longer than the audience
5 do. I realize the problem.
6 MR. ASTOR: I'm just trying to be helpful. If there
7 was some parameters of about how much time, then we could do
8 that. But I won't waste any more of the Board's time.
9 I'm Harry Astor. I'm here on behalf of California
10 Refuse Removal Council, speaking on behalf of both districts.
11 I also am here on behalf of Waste Management of North
12 America.
13 In essence, I've read through the file of the staff
14 and particularly the comments of your general counsel, Mr.
15 Bob Conheim, and the organizations that I represent are in
16 full support of what is proposed. I would like to reserve
17 any time that I would have to listen to other comments by
18 other people. Then I'll be glad to respond to any questions
19 that have been raised either by the speakers or by members of
20 the Board.
21 I just wanted to move it along. I was interested in
22 being able to go through this while Mrs. Bremberg was here.
23 I don't mean to get on to the Board's agenda, but there ought
24 to be some limitive time. Otherwise you could be here
25 forever. Thank you.

BOARD MEMBER BREMBERG: Mr. Chairman.

CHAIRMAN ROODZANT: Thank you, Mr. Astor.

Mrs. Bremberg.

BOARD MEMBER BREMBERG: It's courtesy of Senator Presley that I have to leave, because of the passage of Senate Bill 151 on the South Coast Air Quality Management District and selection of representative thereonto. And just a real nasty aside, getting no help in defeating that bill from the waste industry. I would suggest that if anybody's inconvenienced because we've been subjected to it, they can enjoy with me.

CHAIRMAN ROODZANT: Next request to address the Board is Jack A. Dahlstrum, representing several associations.

Mr. Dahlstrum.

MR. DAHLSTRUM: Thank you, Mr. Chairman. May I sit down? My bifocals don't work well between the two distances.

CHAIRMAN ROODZANT: Please.

BOARD MEMBER ARAKALIAN: I'm sorry, I didn't hear the name, nor the --

MR. DAHLSTRUM: Dahlstrum. Jack A. Dahlstrum. I'm an attorney. I have offices in Palm Desert, California. Were you able to hear me all right?

BOARD MEMBER ARAKALIAN: Yes.

I don't hear well. He mumbles, you know. Yeah, I

1 heard you well.

2 MR. DAHLSTRUM: I'd like to reserve all my time to

3 rebut Mr. Astor, but I'll go ahead anyway. Maybe I can have

4 a word or two after he gets through.

5 Our offices are located at 74-090 El Paseo, Palm

6 Desert, California. I'm a partner in the law firm of Roemer

7 & Dahlstrum. I've been practicing law in California since

8 1958. I'm here representing homeowners associations in the

9 Palm Desert, California vicinity for nine projects which

10 represent a totality of 4,188 condominium units.

11 I understand from Mr. Conheim's presentation that

12 this problem more or less evolved out of one of the projects

13 that I'm here representing. At the time that the problem, if

14 it be a problem, evolved there was only one project and

15 everyone was happy and the city was happy and we found a

16 solution. We'll get to that a little later.

17 We come today, however, now not only with nine

18 condominium projects, but with another non-condominium

19 project which consists of another seven associations and

20 another 502 units, all of whom have since last week when I

21 first learned of this hearing for the first time decided that

22 we better start getting together and we better come forth and

23 let our feelings be known.

24 We had been dealing with this on the local level we

25 think in a very responsible manner. Riverside County Waste

1 Management had been involved, the City of Palm Desert had
2 been involved, the city attorney of that city had been
3 involved, the local management company of the association
4 that was concerned had been involved and we had been involved
5 as their counsel. But the thing has gotten far beyond that
6 apparently and has necessitated changes in regulations at the
7 state level.
8 So I don't know how it got quite that far. However,
9 we were first informed by the first letter in June of 1986
10 that someone had informed the local Waste Management Board
11 that gardeners were collecting refuse.
12 Let me tell you something about my background and
13 why perhaps I have chosen to be here. Aside from just being
14 a lawyer for all those years, I moved to the desert on a
15 permanent basis in 1975 and shortly thereafter became the
16 president of one of these homeowners associations. So I have
17 some personal firsthand knowledge as an association member
18 and homeowner, president, not affiliated with any developer
19 in the first instance of what goes on in these associations,
20 how they function and what our problems are in that
21 community, which is a unique community.
22 Many of you may be familiar with it. At the risk of
23 boring those of you who are, I must tell you a little bit
24 about that area.
25 We are a resort community. We are part of the

1 Coachella Valley where we have the small cities -- Palm
2 Desert, Rancho Mirage, Cathedral City, Indian Wells, Palm
3 Desert, Indio and others. By and large probably well over
4 half of that community of cities consists of country club
5 developments, walled and gated communities, private
6 condominium projects surrounding golf courses, all private
7 streets, no public streets, gated and in large measure many
8 of them patrolled.
9 It is a unique community. It is frequented probably
10 to the extent of 75 percent by second homeowners. They live
11 in the Los Angeles and Orange County areas and they come
12 there infrequently, non-scheduled and it all becomes very
13 relevant to the problem here from a fiscal point of view.
14 They come there infrequently, non-scheduled and stay a couple
15 days, three days, some a month, some a week and they never
16 know when they're coming or when they're not coming. So the
17 house in the project, walled and gated, remains locked up and
18 unoccupied a substantial period of the time.
19 Not only do they come infrequently, but they come
20 seasonally. So there are seasons when they don't come at all
21 and a home will remain unoccupied and locked for as much as
22 three and four months and perhaps longer.
23 Now, the system which prevailed and the franchise
24 system which prevailed at the time of the development of
25 these projects in that area by the City was a once-a-week

1 per-door charge for collection of refuse. So, most of the
2 projects have no more than approximately 25 percent permanent
3 occupants. The remaining 75 percent are owners of the type I
4 have described to you.
5 So under the franchise system which then prevailed
6 and had been in place before the development of these
7 projects and basically to serve a residential community as
8 such a franchise service serves other residential communities
9 and appropriately so, we found that we were paying a grossly
10 disproportionate amount of money for the service rendered.
11 Because we weren't there to get the service, we didn't need
7
12 the service, we didn't want the service; but we were having
13 to pay for once-a-week collection whether we were there or
14 not and whether we had been there for three or four months or
15 not. So there was a rather inequitable monetary
16 consideration we thought.
17 Now, in order to alleviate that problem and a more
18 significant problem which I think you will be more concerned
19 with perhaps, the problem that the infrequent visitor
20 homeowner who comes down and spends two or three days, we can
21 be sure that he will do this when he leaves: He will take
22 his trash, he will put it in a plastic bag and he will put it
23 on the curb whether he leaves on Tuesday, Wednesday,
24 Thursday, Friday, Saturday or Sunday or whenever he leaves.
25 So that if you have a once-a-week collection by the

1 franchise operator, which is the scheme and was the scheme,
2 then that refuse either has to be kept in the garage until
3 sometime you're going to be there and you know they're going
4 to pick it up, which is a very unhealthy situation, or it
5 remains on the curb until the day appointed comes to pick it
6 up.
7 You may think this is a bit of levity that's not
8 appropriate, but I'm going to tell you that we're convinced
9 that the loose dogs in the desert know not only the trash
10 day, but the hour. Because they will come after the bags and
11 they'll get there before they get there for the bags. It's a
12 fact. So when you don't have them picking it up at all and
13 the owner has laid it out and it's there two or three days,
14 then you've got the problem of loose trash all over the
15 project.
16 To solve those problems, someone got the idea, a
17 manager, he said, let's collect the trash with the gardeners
18 who are here anyway on a daily basis, keep the place clean,
19 put it into bins and have the disposal company take the bins
20 away on a regular basis. Somebody said, that sounds like a
21 reasonably good idea. We started that and I think that's
22 where this problem evolved and that's when the first letter
23 came in June.
24 Now, I'm sure that not every one of these homeowners
25 that I'm here representing by association agrees with this,

1 because I'm sure there's at least one who doesn't. But,
2 basically, this has been adopted as a satisfactory method in
3 meetings with the city, with your Riverside County people,
4 with the local Palm Desert Disposal people, a subsidiary of
5 Waste Management. However, we have been told -- and I'll get
6 into a little of the formality of the meetings -- that maybe
7 we'd never be able to make it work; although everybody agreed
8 this is what we should do. A memorandum of agreement went
9 out. Twice I wrote it, twice it was adopted. But always
10 something new kept coming up.
11 The last time we had such a meeting -- we've had
12 two. Round table meeting, all interested parties
13 participating, everyone agreeing this is a reasonable
14 solution. What happened was the gardeners were not doing a
15 good job. Quite rightly so, we received notice from Waste
16 Management in Riverside that they're violating your
17 agreement.
18 We brought the gardeners in and we said, either
19 you're going to meet this agreement or we're going to have to
20 go back and the association is going to have to get on them
21 to make sure that they meet this agreement, that they do
22 their job adequately, that the trash is separated, kept in
23 bins, the bins are kept closed, that they're not throwing it
24 into trucks and taking it to the dump with their other
25 refuse. And everybody said, we will be sure that happens.

We went back out. A few months we operated. Next word we got was there's a terrible situation, your bins are overflowing. I called the same meeting again, got all of the interested parties back to the table. I said, let's see these pictures. Someone had pictures. Of course, they had pictures of the gardeners taking it to the dump. I don't know who's taking all the pictures. But there were pictures being furnished.

We had a bin that was all overflowing, falling on the ground. I said, when was this picture taken? Somebody said, well, you're right, it was taken on a three-day holiday weekend of the 4th of July. I said, well -- they said, you're going to have to stop the system because it's not working. I said, wait a minute. Why do we stop a system that everybody agrees is fiscally sound, meets the health and sanitation standards because of poor planning? Why don't you get together, refuse people, Palm Desert Disposal, why don't you get together with the management company and let's set a variable schedule and have provision for emergency ordering of more bins.

They met, they set a schedule. I memorandized that with a letter and we've been going for months now again with no problem until last week when I was told they're going to change the regulations.

BOARD MEMBER ARAKALIAN: Until last week what?

1 MR. DAHLSTRUM: Last week I was just told that this
2 regulation change was coming.
3 If it is the intent of the regulation -- and I've
4 heard Mr. Nolan's questioning about what the conjunctive
5 nature of the new phrase is, what he thinks it may mean. I
6 don't know what it means either. I think it may have some
7 questions. I think better it would be disjunctive as
8 suggested by Mr. Nolan.
9 If the Palm Desert City fathers are of the opinion
10 that the sanitation and health and sanitation standards are
11 being met by removing it in the manner on private property to
8
12 a bin as we have accomplished in the past and that's
13 agreeable with everyone, I see no reason why they should not
14 be able to approve that method at the local level.
15 We have peculiar problems. Mr. Conheim in his
16 presentation said at the outset not every regulation can
17 solve every problem, not every problem can be solved by
18 regulation. We have peculiar problems down there and I think
19 if the interpretation of this regulation is such that it's
20 going to preclude an arrangement at the local level that
21 meets or exceeds the health and sanitation standards that you
22 would require and not give us an exception under our peculiar
23 circumstances, then I think it's inappropriate.
24 I would hope that you would have the opportunity to
25 review the resolution drawn by The Lakes. Let me just read

1 the last portion of that to you. It does detail in some
2 measure -- and I think you'll have it perhaps later. I was
3 unable because of time to do anything other than facts that
4 Mr. Conheim --
5 MR. CONHEIM: Mr. Dahlstrum, I did distribute it in
6 a supplemental agenda item. It is one of the last items that
7 has been sent to you.
8 MR. DAHLSTRUM: It is undated. It is a two-page
9 document on The Lakes Country Club Association letterhead.
10 It reads: "Resolution of The Lakes Country Club
11 Association." I commend it to you to read. I'm not going to
12 sit here and read it to you. You're perfectly capable to
13 read it.
14 But I do think that I must say on behalf of all of
15 the people that I'm here representing -- and that's several
16 thousand people -- and the associations that represent them,
17 the city in no manner has objected to what's been done and
18 has condoned it and approved it. It is a local problem
19 peculiar to our area. It's unfortunate that it's gone beyond
20 the two or three projects where everyone was happy and that
21 we now have to come here with public law people and get this
22 involved and come talking for thousands of people. It's a
23 small problem that could have been contained and should have
24 been kept local.
25 If the intent of the present amendment or the

1 interpretation is to preclude a collection system on private
2 property which meets or exceeds minimum health and safety
3 concerns and which is approved at the local municipal level
4 and monitored by your local board, we think it's
5 administratively irresponsible, fiscally irresponsible and
6 possibly legally unsupportable.
7 I have figures, but not the details; because I
8 haven't had time. But I have figures that I can offer to you
9 that show that on the fiscal aspect, the difference between
10 what The Lakes association, for instance, is paying now --
11 and they do pay the gardeners. They do pay the gardeners. I
12 don't want anyone to think that we're getting it for free.
13 We pay the gardeners five dollars a month for six-day-a-week
14 pickup. Then we pay in addition the waste disposal service
15 to take the bins away three and four times a week. They
16 increase the bins periodically when it's necessary. The
17 result in the last analysis is that there is about a
18 $50,000-a-year differential between what we can pay under the
19 system that was adopted there and what would be required
20 under the mandatory per-door charge which would leave the
21 health and sanitation far below the level of where it's at.
22 BOARD MEMBER ARAKALIAN: Which is more expensive?
23 MR. DAHLSTRUM: The franchised once-a-week
24 collection is $50,000 a year more expensive and from our
25 point of view far less satisfactory in a health and

1 sanitation point of view. We can supply those figures if we
2 are given some leave to do so. Or if this matter should not
3 be decided today, we'll be glad to give you documentation not
4 only on that project, but on the four that have now begun to
5 use this system with the approval of the cities by virtue of
6 the fact that it's growing like topsy twirl.
7 If it continues to be a contest, I suspect that all
8 projects in the desert will try to get together and do
9 something to appeal to you or beyond and get some relief.
10 Because it is fiscally irresponsible and it is not the best
11 from a health and sanitation point of view.
12 I think I'd be redundant if I said more. I will be
13 happy to try to answer your questions.
14 CHAIRMAN ROODZANT: Are there any questions of
15 Mr. Dahlstrum?
16 BOARD MEMBER ARAKALIAN: Uh-huh.
17 CHAIRMAN ROODZANT: Mr. Arakalian.
18 BOARD MEMBER BREMBERG: I don't know if they're
19 questions, but comments.
20 On a few points you're making, I'd like to say that
21 the problem that you're talking about between the way it's
22 more sanitary and not sanitary has merit, but some of it is a
23 bit euphoric.
24 I am opposed, frankly, to the method that's being
25 used presently for various reasons. One, by the collector

1 itself I'm not as strong on. I do not like the way it's
2 collected, but not as strongly about that as I do the fact
3 that normally when rubbish is collected, it gets collected
4 from a home and gets taken to a dump site and that's the end
5 of it.
6 In this case it's going from the home to a point
7 which we can call -- I would call, because using the
8 terminology of our Board, a transfer station. It is being
9 transferred from one point to another and being reheld.
10 You talked about the fact that when people put their
11 trash out, dogs come and tear them up and people leave them.
12 This is true to an extent, but a little bit tainted.
13 Firstly, I don't think that poses too big a problem for a lot
14 of reasons. One of them is that most people that go down
15 there, as you say, for two and three days, probably the
16 highest percentages are going there on weekends; although
17 they have the perogative, if it's their time, they can go
18 midweek or any day they like. Normally the biggest
19 percentage certainly go on weekends.
20 If the trash collection is on a Monday or Tuesday,
21 in which most cases they are and Thursday and Friday, I think
22 that your complexes that you're speaking of and most of the
23 complexes I know of in the desert are not picked up by the
24 collector once a week, but twice a week and possibly reasons
25 for that might be, one, yes, there are transient people that

1 are coming and going, or temporary people if you'd rather;
2 and, also, because of the heat conditions of the desert, they
3 have more frequent pickup.
4 As far as dogs tearing into it, I've got to get back
5 to that. I go off on a tangent. I know a lot of people that
6 put things out don't have any problem with dogs because there
7 are things that can be done by the homeowner such as a little
8 few drops sprinkled of ammonia on your trash bag will keep
9 dogs away, believe me. That trash bag will stay intact until
10 the rubbish collector comes and takes it. It works. I've
11 seen it work in the desert.
12 I have seen -- frankly, I spend a lot of time there,
13 so I'm familiar with the problem. In fact, you said you
14 wondered who was making all the stir. I'm the guy
15 MR. DAHLSTRUM: I'm aware of that, Mr. Arakalian.
16 BOARD MEMBER ARAKALIAN: I wasn't doing it to be
17 mean to anyone. In fact, I'm being mean to myself. Because
18 I'm one of the persons who, if I felt it was good the other
19 way, would be the recipient of that better method; but I
20 don't think it is.
21 You talked about if they do it the way you're
22 talking, why are we concerned if they meet the sanitation
23 standards. I frankly don't believe you really meet the
24 sanitation standards that way. Firstly, the collector isn't
25 doing it maliciously or anything, but he does it haphazardly

1 somewhat. As you said, in the beginning they weren't very
2 good.
3 MR. DAHLSTRUM: Yes.
4 BOARD MEMBER ARAKALIAN: Possibly improved. But it
5 isn't really good. I go out there on regular intervals, darn
6 near every week and I look around during the weekdays and I
7 look around during the weekends and I see far more spilled,
8 shabby, unkempt rubbish when it's being put into the bins,
9 after it's in the bins supposedly. Some of it is and some of
10 it isn't. Far more unsanitary condition there than I see
11 individual bags in front of homes that are askew and
12 shattered and tattered, et cetera, et cetera.
13 Concerning the part where you mentioned that you
14 were getting service from all these places and only about 25
15 percent of them or 75 percent -- I don't remember the
16 numbers, but whichever they were -- are being used. The rest
17 of them aren't permanently there. That isn't our concern.
18 Our concern is when it's being done, is it done properly.
19 Now, if you people feel that the rubbish company
20 isn't picking up all the houses and they're charging for all
21 the homes they're not picking up, that's another subject.
22 Renegotiate with your rubbish hauler, from your trash hauler.
23 Go to them and say, look, we have 800 homes or 300 homes or
24 200 homes, half of them or whatever -- picking the number --
25 aren't there, give us a better break on our price.

1 That is between you and the hauler. How you pay,
2 what you pay and the economics of it frankly should not be in
3 our concern not because we're not concerned, but I don't
4 think it's an onus on the government or a government agency
5 to negotiate financial transactions and finances for private
6 people. It isn't our obligation nor our duty to see to it
7 that it's done in the most economical way.
8 Ours is to see that it's done in the most efficient
9 way, the most sanitary way. I'll tell you, rubbish companies
10 in their rubbish yard aren't permitted to keep their rubbish
11 in their trucks and left overnight and held and taken to a
12 landfill the next day. What you pick up you take directly to
13 a landfill.
14 In this case it isn't going to a landfill. It all
15 looks swell. You pick it up and you put it in the can and
16 you save it and take it there. It's in the can every bit as
17 long, if not longer, still on the premises of that country
18 club or that condominium complex just as long whether it be
19 out in front or in the can. In fact, far longer. Because
20 that stuff that's picked up when it's out there on the day
21 the hauler hauls it is no longer on the premises. In the
22 manner that it's being done now, even after it's picked up
23 it's still on the premises.
24 Those cans are not always going to be closed. If
25 you think they are, you looked at the wrong times. It isn't

1 just the holidays they're overspilling. The problem isn't
2 then. The problem is continuing. It is not a good
3 condition.
4 You mentioned the 4,000 people like it that way.
5 Let me tell you something: Those 4,000 people who are saying
6 they like it that way today would be the first to rise and
7 raise heck and sue and everything else, whether it be the
8 government or their own condominium complex or the city or
9 the county or anyone else they find they can berate. Because
10 they think that's what they want at that time and they aren't
11 being far-sighted enough to realize that this can bring upon
12 them other problems. I assure you, they will not say, yeah,
13 we wanted it that way, but now that my little child went over
14 there in that trash bin and it caused a problem, we're going
15 to let you off the hook because we wanted it that way. No,
16 they won't.
17 If they don't know what's good for them, sometimes
18 that's why governments have to come along and need to give
19 guidance to them. If you can't do it right yourself, maybe
20 someone should guide you and I think that's what I feel our
21 Board is trying to do.
22 Let's do it the proper way and not give an exception
23 just because people who are not knowledgeable about the
24 problem don't want it to be done that way. I don't think
25 that the average person has given it enough thought to be

10

able to want it that way. Although you say you've held meetings and had these people go that way, I don't know if they made the wise vote. If they didn't, I don't think that's what should sway our decision.

No law should be made just because the people don't want it or do want it. The law should be made or the regulation should be made for the good of everyone, for the good of most. If we have methods that are good ways and good methods of hauling trash, we're trying to use them, we don't want to go to a lesser way. If we make a change, we want to go to a better way.

MR. DAHLSTRUM: May I respond briefly to the comments?

BOARD MEMBER BREMBERG: Mr. Chairman.

CHAIRMAN ROODZANT: Mrs. Bremberg.

BOARD MEMBER BREMBERG: I really do have to leave to catch my plane. May I ask that this either be continued and that a final vote not be taken today, that I be given the privilege of a verbatim account and the right to rebut when it is continued and before a final vote is taken?

I feel totally dedicated to this particular issue, because I was the one assigned to start the whole procedure in response to Mr. Arakalian's questions and I would ask the courtesy of the Board to extend that to me. If not, I will accept your decision.

1 CHAIRMAN ROODZANT: Any objection?
2 Hearing none, so ordered.
3 BOARD MEMBER BREMBERG: Thank you very much.
4 BOARD MEMBER BEAUTROW: Mr. Astor is asking --
5 CHAIRMAN ROODZANT: Did you want to respond to
6 Mr. Arakalian's comments?
7 MR. DAHLSTRUM: I would like to if possible briefly.
8 Just two points. No use being redundant.
9 I lived also on a project for well over a year as a
10 temporary resident and as a permanent resident. I am very
11 familiar with what goes on in the projects, Mr. Arakalian.
12 BOARD MEMBER ARAKALIAN: I'm not saying you aren't,
13 but I also am.
14 MR. DAHLSTRUM: Then as an executive of Sunrise
15 Company for three years, the builder of over 4,000 units in
16 the desert, I am very familiar with what goes on in the
17 projects from that point, also. So I really think that's
18 maybe partly why I was chosen. I do have perhaps a really
19 good overview and perspective of what goes on there.
20 On your points. One. One of the findings this
21 Board has to make is that there's no fiscal effect. If you
22 are saying -- and I think you are saying -- contrary to what
23 Mr. Conheim has been saying that this regulation is going to
24 preclude what we have been doing in the past with the
25 approval of the local enforcement authority, the City of Palm

1 Desert, and with the tacit approval except for the fact that
2 they kept getting apparently directives from up above
3 perhaps, the local waste management board also sat in and
4 felt that the compromise was a reasonable one and that the
5 condition was a reasonable one and went away leaving us with
6 that understanding until and unless something kept causing
7 new reviews of the matter.
8 Now, the fiscal aspect I think needs examination.
9 There is going to be a substantial fiscal effect on many
10 projects, the four who have been using this system, if this
11 regulation is designed to preclude doing what we were doing.
12 If it's not, then there won't be any fiscal effect. But I
13 think you must consider that fiscal effect.
14 The last point to answer --
15 BOARD MEMBER ARAKALIAN: Frankly, I'm not wise
16 enough to know what you mean by the fiscal effect.
17 MR. DAHLSTRUM: Finding D. says there will be no
18 fiscal effect on private persons. If these people have to
19 start paying a once-a-week, once-a-month per-door charge --
20 excuse me, once-a-week per-door charge from the franchised
21 operator, irrespective of the fact they're not there as
22 contrasted with what they're paying now -- see, it's all
23 budgeted into the homeowners budget.
24 BOARD MEMBER ARAKALIAN: Yes.
25 MR. DAHLSTRUM: Presently, the total budget costs

1 them about $70,000 a year for the association. Under the
2 per-door charge of 13.85 a month, which is the going rate for
3 Palm Desert Disposal per door, they're going to go up
4 $50,000. That's a fiscal effect as I understand fiscal
5 effects.
6 BOARD MEMBER ARAKALIAN: Fine. To the homeowners
7 themselves you mean.
8 MR. DAHLSTRUM: Yes. Sure. It just carries into
9 their monthly assessment that goes to make up their budget
10 for the year.
11 BOARD MEMBER ARAKALIAN: Well, would you then say,
12 for example -- I'll use an analogy, if I may. If you found
13 in a regulation, a local regulation, that a construction site
14 might take certain necessary precautions to make it a safer
15 job and/or heavier beams were necessary to build a house more
16 securely and they cause a fiscal effect on the homeowner or
17 the builder, we should say that even though we feel it's the
18 safest way, let's waive it because it's cheaper to go the
19 other way? Is that what you're saying?
20 MR. DAHLSTRUM: Of course not. But that's not the
21 point.
22 BOARD MEMBER ARAKALIAN: Well, then the fiscal
23 effect shouldn't affect this. Because I'm not concerned --
24 MR. DAHLSTRUM: The point is that you are --
25 BOARD MEMBER ARAKALIAN: If you'll wait a moment.

1 I'm not concerned about that effect as I am the safety and
2 sanitary and wisest and best way that we feel rubbish can be
3 handled. If we feel this way is better but costs more, we're
4 going to have to go with this way no differently than any
5 other safety feature in buildings, highways or any other
6 thing, you know, pre-empts, if you may. I don't know if
7 that's the proper way of saying it. But would pre-empt the
8 cost factor. You know, which is the more important.
9 MR. DAHLSTRUM: I have no quarrel with basically
10 what you said, except that your counsel has told you and he's
11 going to expand on it, I think, a little bit later that you
12 must make a finding there is no fiscal effect on the change
13 in this regulation.
14 What I'm saying is that if the interpretation of
15 this regulation is such that it precludes what we have been
16 able to accomplish by local compromise, there will be a
17 fiscal effect on every individual who has to pay the new
18 increased charge by virtue of the interpretation of the
19 regulation. Are you with me?
20 MR. ASTOR: Excuse me.
21 BOARD MEMBER ARAKALIAN: Mr. Dahlstrum, I'll let him
22 address that.
23 CHAIRMAN ROODZANT: Let's hear from Mr. Conheim.
11
24 MR. CONHEIM: The law requires that we determine
25 what the fiscal effect is. You can adopt a regulation if it

1 has a fiscal effect. You simply need to determine what the
2 fiscal effect is.
3 I have stated in the notice that there was no fiscal
4 effect. Because, number one, based on the information I
5 have, I have not been able to reach the conclusion that this
6 regulation requires the use of Palm Desert Disposal door to
7 door.
8 Number two, another argument about fiscal effect
9 that I've heard was that it will increase the cost to the
10 association, because there will have to be some retrofit or
11 use of different equipment by the gardeners and I have been
12 unable to determine that that has a fiscal effect. Because
13 if the gardeners are now operating not in accordance with
14 state minimum standards, then you cannot compare or analyze
15 the fiscal effect of someone operating illegally to what
16 they'd have to do if they were operating legally.
17 So that analyzing the fiscal effect in both those
18 ways I have been unable to determine that. You may
19 determine, contrary to my analysis, that there is a fiscal
20 effect. If you do, you can adopt the regulation. The
21 problem we get into with OAL is where I make a statement that
22 there's no fiscal effect, you make no finding on the fact or
23 the evidence in the record dictates something different.
24 Then the record is in error when it goes up.
25 I've just given you my recommendations that there's

1 no fiscal effect and I've stated my reasons and I can amplify
2 them later.
3 BOARD MEMBER ARAKALIAN: You said that better than I
4 could.
5 MR. CONHEIM: Thank you, Mr. Arakalian. I'm deeply
6 honored.
7 You must determine fiscal in those number of
8 categories that are listed on the notice and we'll go through
9 that later. But the requirement is that not that no fiscal
10 effect be found. You may still adopt a regulation even if
11 there is a fiscal effect.
12 BOARD MEMBER VARNER: Mr. Chairman, before Harry
13 talks, I just would like to make one short point.
14 The whole thing is getting way away from the
15 subject. Number one, the rubbish industry is one of the most
16 highly regulated industries there is. Due to those
17 regulations, that's what brings about a rate structure.
18 Now, in effect you're creating a whole new category
19 of rubbish people that have no regulation on them or not the
20 same regulation that the rubbish industry has. So in that
21 respect you're getting a very, very low rate; that you would
22 get the same low rate with the rubbish companies you have
23 that wouldn't have to abide by all these regulations.
24 So the point of the thing is that this is a
25 regulated industry and you have a group of people here that

1 are not under any regulations whatsoever from the industry as
2 far as standards are concerned.
3 MR. DAHLSTRUM: I don't believe that anyone has told
4 me anywhere where they've violated any regulation.
5 BOARD MEMBER VARNER: All right. What kind of
6 compensation insurance is paid to those people? You see, you
7 have a whole bunch of regulations.
8 MR. DAHLSTRUM: Of course there's Workman's Comp.
9 BOARD MEMBER VARNER: But not on the same rate that
10 the rubbish industry is paid.
11 MR. DAHLSTRUM: I have no idea what --
12 BOARD MEMBER VARNER: You see, there's a whole bunch
13 of these things that enter into this thing and those things
14 are not for the benefit of the rubbish industry, but they're
15 for the benefit of the public. Every one of these
16 regulations are made to benefit the public.
17 MR. DAHLSTRUM: The public is what I'm here talking
18 about, sir. I'm talking about the health and safety, the
19 second point. It seems to me you've got two alternatives.
20 It sits in the street in a bag subject to whatever varmints
21 come, dogs or otherwise, for whatever number of days it takes
22 before the weekly pickup is made or it sits in a bin with a
23 cover on it. Now, of the two, I can't believe there's any
24 quarrel about which is the more sanitary. Can anyone quarrel
25 with that?

1 BOARD MEMBER ARAKALIAN: Yes, I can.
2 BOARD MEMBER VARNER: If the thing is --
3 BOARD MEMBER ARAKALIAN: I can quarrel with it
4 because, one --
5 CHAIRMAN ROODZANT: Mr. Varner.
6 BOARD MEMBER ARAKALIAN: I'm sorry, go ahead.
7 BOARD MEMBER VARNER: The point of the matter is you
8 talk about a fiscal impact. In other words, with these
9 people -- in other words, put them under the same regulations
10 and standards that is ordinary for the entire rubbish
11 industry and your cost that they're going to charge you is
12 going to be quite a bit more. That's the whole point of it.
13 MR. DAHLSTRUM: My understanding is that this is not
14 creating any new regulation on them.
15 BOARD MEMBER VARNER: It doesn't have to have any
16 new regulation. That's the whole point of this thing. The
17 regulation is already in effect. If it is put into effect,
18 that's all you need.
19 MR. DAHLSTRUM: No one has ever claimed it's been
20 violated.
21 BOARD MEMBER VARNER: I would say it's been
22 violated.
23 CHAIRMAN ROODZANT: Mr. Astor.
24 MR. DAHLSTRUM: We've never had anybody try to
25 enforce any violations in a whole year. So why are we

1 changing the regulation to touch this problem if this isn't
2 intended to change it?
3 BOARD MEMBER BEAUTROW: Could we have a new voice in
4 this matter?
5 MR. DAHLSTRUM: I'm sorry.
6 MR. ASTOR: Mr. Chairman, I would like to go further
7 with my remarks and I appreciate the courtesy of saying a few
8 things.
9 MR. DAHLSTRUM: Am I excused then or do you want me
10 to remain here?
11 MR. ASTOR: I would suggest that Mr. Dahlstrum can
12 remain. I wanted to be heard now, because Mr. Dahlstrum
13 wanted to hear what I had to say. In all fairness, I wanted
14 to just follow his comments. So I appreciate the ability to
15 make some statements.
16 I think the discussion here has been tangential.
17 Let me get to what I as a member of the committee -- Mr. John
18 Moscone is still here -- had in mind. I think it answers
19 some of the questions that were raised.
20 Number one, while the proposal to amend the
21 regulation is a clarification, it really does add another
22 element. In other words, a person has to be authorized and
23 has to also meet those standards. That's number one.
24 MR. DAHLSTRUM: So it is conjunctive as Mr. Nolan
25 was fearing it might be.

12

1 MR. ASTOR: That is correct.

2 MR. DAHLSTRUM: Okay.

3 MR. ASTOR: I'll get to Mr. Nolan in just a moment.

4 All that the State Board is doing, I believe, in
5 entertaining this proposal is to recognize that the primary
6 purpose of waste management regulations is under the police
7 powers to regulate for the public health, safety and welfare.
8 As part of that, the various minimum standards that are
9 alluded to are adopted. What we're saying is that those who
10 are authorized by the local agencies are the ones who ought
11 to collect.

12 We also believe in the local agencies having the
13 right at the local level to determine these things. Your
14 association, you individually, the people you represent can
15 petition your local government and if they in their infinite
16 wisdom desire to make certain exceptions in the ordinance,
17 they can do so.

18 We're not trying to mandate the industry's point of
19 view that the State of California tells each locality how to
20 run their shop except in connection with these various
21 minimum standards, all of which are designed for the purpose
22 of public safety, health and welfare.

23 So if the City of Palm Desert, for example, wants to
24 say in its ordinance, its dealings with its contractor that
25 while you should exempt a certain kind of collection the way

1 that you've described it, Mr. Dahlstrum, then they can do so
2 provided they meet the basic standards.
3 It's got to be collected by one who's authorized.
4 If the city authorizes the landscape gardeners to collect so
5 long as they're in conformance with all other regulations,
6 that's the right of the city to do. There may be differences
7 of opinion between the collector who's franchised and the
8 homeowners as to who is best qualified, et cetera. But
9 that's the purpose of adopting state policies which set out
10 these basic standards that let the local people decide what
11 they want to do.
12 There's a lot of discussion here on a case-by-case
13 method as to whether the method espoused by Mr. Dahlstrum on
14 behalf of his constituents is more economical, it's more
15 something else or it's better or whatever. That isn't to be
16 decided by the California Waste Management Board, it seems to
17 me. That's to be decided either by the County of Riverside,
18 City of Palm Desert, Indian Wells or whatever.
19 I, too, have been a resident of Coachella Valley
20 since 1951, Mr. Dahlstrum --
21 MR. DAHLSTRUM: That's far longer than me.
22 MR. ASTOR: -- off and on and I'm also familiar with
23 the desert and all the rest of it and I've been also serving
24 this industry since 1949. I think I understand some of the
25 problems.

1 Basically, it comes down to this: If this amendment
2 to the regulation is adopted, all it's really saying is that
3 whoever the city, the county, the sanitation district
4 determines is authorized to collect rubbish provided they
5 comply with the other minimum standards, they can do so.
6 You wouldn't suggest that people who like to draw up
7 contracts who are not licensed to practice law ought to have
8 that right. You don't want the barber turning into a rubbish
9 collector. There's a lot of other examples.
10 So what I am saying is that just like the
11 comments -- and I'll get back to what Mr. Nolan said. I
12 didn't realize he was going to leave. The issue that's
13 presented here has nothing to do with who collects, it's just
14 whoever's authorized to collect by the local agency and the
15 federal issue is a separate item.
16 So what I'm saying is that the people in Palm
17 Desert, if they feel that there is a better system of
18 collection, let them convince the city fathers. Obviously,
19 we who represent the private sector feel that those who are
20 professionally qualified are the ones who ought to do it.
21 But the local agency can make exemptions. You're familiar
22 with householder exemptions, gardener exemptions. Companies
23 even haul their own refuse. We just don't want unqualified
24 people messing with the health and safety conditions of the
25 public. That's the real basis for the private sector of the

1 waste management industry supporting this proposed
2 regulation.
3 I think that really says it all and I appreciate
4 coming again out of turn. But I had wanted to reserve some
5 time so that while Mr. Dahlstrum was here maybe we could
6 clarify something.
7 CHAIRMAN ROODZANT: Mr. Brown.
8 BOARD MEMBER BROWN: At the risk of getting into
9 semantics -- and, boy, we're getting close -- what is the
10 difference in your view between the original text which talks
11 about written approval and the new text which talks about
12 authorized? What's the difference?
13 MR. ASTOR: I think authorized is a more complete
14 term.
15 MR. BROWN: Both are issued by the local government
16 or the local jurisdiction, is that not correct?
17 MR. ASTOR: Yes. Commissioner Brown, I concur with
18 you that we don't want to get involved in the semantics per
19 say. But I had some discussion with Mr. Conheim, your
20 general counsel, and the idea was to get some general
21 language and the word "authorized" seemed to encompass a
22 variety of things -- permits, licenses, written approval or
23 whatever else.
24 MR. DAHLSTRUM: Oral approval?
25 MR. ASTOR: You're asking if a city gives oral

1 approval?

2 MR. DAHLSTRUM: As they have done for a year.

3 MR. ASTOR: I don't understand.

4 MR. DAHLSTRUM: That's my question. That's the

5 narrow question whether this is going to alter that. They

6 have previously given oral approval. Now, is this going to

7 alter their ability to do that?

8 MR. ASTOR: Well, any oral approval that a city

9 gives I would think should be consistent with and

10 commensurate with the authority in their ordinance as well as

13

11 their contract if there is an existing franchise, et cetera.

12 So to respond to the question, it seems to me that

13 oral approval is okay provided it also complies with the rest

14 of the city's requirements. I don't think we have the

15 problem Mr. Dahlstrum has identified.

16 CHAIRMAN ROODZANT: Excuse me, Mr. Astor. The

17 Chair's bottom is getting impatient and there's a few other

18 people's patience up here that are worn thin and our good

19 reporter's fingers are getting out of touch with reality, I

20 understand.

21 Let's continue this matter after lunch if that's

22 agreeable to all parties or we're going to have to continue

23 it on until next meeting, January the 13th. What's the

24 pleasure of the Board and those interested parties?

25 BOARD MEMBER BROWN: After lunch.

1 MR. DAHLSTRUM: Does that mean that Mrs. Bremberg's
2 problem is going to be resolved after lunch or tomorrow or is
3 she going --
4 CHAIRMAN ROODZANT: Mrs. Bremberg requested that
5 this matter be continued until next month before a vote was
6 taken and that she be given the opportunity to review the
7 record and redirect questions to anybody and we will honor
8 that. But we can continue to discuss this matter after
9 lunch.
10 MR. DAHLSTRUM: I see. I thank you. I didn't
11 understand that.
12 BOARD MEMBER BROWN: Excuse me. Now, I understood
13 her to say that if she were able to see the record upon her
14 return in the morning, then we could work on this decision --
15 no?
16 MR. CONHEIM: It's not possible to prepare the
17 record. I've ordered the record of this particular
18 proceeding to be completed in two weeks rather than the
19 normal month. So we'll at least have it by that time, but
20 not -- I want to make sure she's still upright. She almost
21 fell off the chair when you suggested that.
22 CHAIRMAN ROODZANT: We'll break for lunch and recess
23 until 2:15.
24 (Thereupon the luncheon recess was taken.)
25 AFTERNOON SESSION

--oOo--

CHAIRMAN ROODZANT: Call the meeting of the Board back to order.

Continue Item No. 5, the Public Hearing on Proposed Changes in Board Regulations Concerning Collection Service Providers: Title 14, California Administrative Code, Section 17332.

We have a request from Mr. John Fanning, the Riverside County LEA Chairman to address the issue.

Mr. Fanning.

BOARD MEMBER ARAKALIAN: Mr. Chairman.

CHAIRMAN ROODZANT: Mr. Arakalian.

BOARD MEMBER ARAKALIAN: Would it be out of order if we held what he has to say at the moment? Because if anybody is coming late from lunch -- I think he's an important person with all due respect, a real important person, and I think that maybe we should let more people hear it if they come in. Regular people like me they don't mind if they don't hear. But a guy like that, they should hear. What do you think?

CHAIRMAN ROODZANT: I have no problem with that if Mr. Fanning doesn't and there's no other opposition to it.

(Thereupon the meeting returned to the regular agenda.)

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1 CHAIRMAN ROODZANT: I've been informed we're ready
2 to go back to Item No. 5, Public Hearing on Proposed Changes
3 in Board Regulations Concerning Collection Service Providers:
4 Title 14, California Administrative Code, Section 17332.
5 MR. CONHEIM: Mr. Chairman, just for the record, you
6 reminded me a little earlier that I may not have acknowledged
7 the receipt of a letter from Fred Taugher, although I did
8 mention his name. He is a governmental representative,
9 Principle and Public Policy Advocates, a December 3rd letter
10 on behalf of The Lakes Country Club, which was included in
11 the supplemental item late, but not commented on.
12 CHAIRMAN ROODZANT: We have a request here from Mr.
13 John Fanning, the Riverside County LEA Chairman.
14 Mr. Fanning.
15 MR. FANNING: Thank you, Mr. Chairman and members of
16 the Board. My name is John Fanning. I'm the Director of
17 Environmental Health for Riverside County and also the
18 Chairman of the Local Solid Waste Management Enforcement
19 Agency.
20 My comments will be brief, Mr. Chairman. As the
21 chairman for the local LEA --
22 CHAIRMAN ROODZANT: Excuse me, Mr. Fanning, has that
23 microphone been turned on?
24 MR. CONHEIM: It's always on.
25 MR. FANNING: I did provide comments to your staff

1 regarding this agenda item and I appreciate the action that
2 counsel took on them and I concur with those and his
3 recommendations that are contained in the package.
4 Further, I would like to communicate to the Board
5 that I feel that the ambiguity was there in the language and
6 that this clarification will help me as the local LEA
7 enforcer.
8 To give you a little bit of perspective about this
9 situation, there are approximately 40 of those types of gated
10 communities down in the Coachella Valley -- Palm Desert,
11 Rancho Mirage, La Quinta area -- and they comprise about 80
12 percent of the hauler's pickup routes for these communities
13 in the valley. In other words, 80 percent of this hauler has
14 those 40 communities.
15 There are only three communities where I had this
16 situation occurring where the gardeners were putting the
17 materials from the residential communities in their either
18 wagons, trucks and so forth and/or hauling them to the dump
19 themselves or putting them in the containers. That's where
20 this problem really started from.
21 Out of those 80 percent, you're talking roughly
22 11,000; 254 housing units. Within the three communities that
23 do not have a licensed hauler picking up their material, it
24 only comprises about 2,000 units down there in the Coachella
25 Valley. That represents about six percent of the communities

1 or those areas that aren't being picked up in a manner by a
2 licensed hauler.
3 We do have better compliance now than we had a year
4 and a half ago.
5 BOARD MEMBER ARAKALIAN: You have what?
6 MR. FANNING: We have better compliance now. Yes,
7 they are probably picking it up in bags and hauling it off to
8 the bins and so forth. But I think I'm concerned with the
9 broader issue there that you have an unlicensed hauler or
10 someone that just happens to be gardeners in this situation
11 putting those materials in their trucks and/or whatever and
12 hauling it to an area and they aren't trained people in solid
13 waste management handling.
14 That concerns me in a county as large as Riverside
15 County and a county that's growing as fast as Riverside
16 County.
17 In closing, I reviewed your task force report and I
18 concur with their findings and I feel that the Board would be
19 appropriate to move with the language changes mentioned in
20 the title.
21 CHAIRMAN ROODZANT: Thank you, Mr. Fanning.
22 Are there any questions or comments directed to
23 Mr. Fanning?
24 Mr. Conheim.
25 MR. CONHEIM: Mr. Chairman, if I might. I'd like to

1 ask Mr. Fanning a couple of questions. As staff to staff,
2 we've had conversations apart from this hearing on this
3 matter and I'm concerned about the factual context that we're
4 looking at today.
17
5 I'm wondering, John -- I'm concerned -- and I
6 haven't been on site, on these sites. I'm concerned that
7 there could be a problem with non-professional refuse
8 collectors screening, for instance, for hazardous waste,
9 hazardous chemicals. Is that a possibility or problem?
10 MR. FANNING: That's a possibility. To the extent
11 it would be a problem, I don't know. If you look at the
12 rough numbers that talk about hazardous waste in the
13 commercial residential waste stream, it is about one percent.
14 But, there again, you have a gardener or another individual
15 other than a solid waste management person picking up this
16 material. Should they come in contact with those materials,
17 large amounts of used oil or any other material, they don't
18 just pick up one little bag and put it in their garden wagon
19 and go down the street. They may pick up six or seven or
20 eight or ten stops and you have a considerable amount of
21 volume of this material going in the back in a plastic bag
22 that could rupture and you're putting palm fronds and other
23 materials on there.
24 It's just not the way to do it in my opinion.
25 MR. CONHEIM: We have a regulation that you

1 referenced in your comments, Title 14, Section 17341,
2 entitled "Equipment Construction" which requires that
3 collection equipment be durable, easily cleanable, designed
4 for safe handling, constructed to prevent loss of wastes and
5 there are several other requirements in that.
6 Just observing from the written material and the
7 pictures I've seen, I'm concerned also about the use of stake
8 bed trucks or gardening grass clipping carts.
9 Can you comment on that issue in compliance with
10 that regulation?
11 MR. FANNING: Well, that's what I was alluding to.
12 I could clarify that. If you have a Cushman scooter that the
13 gardeners use or some small flatbed vehicle that they use or
14 in the beginning it was a stake bed truck that was being used
15 at one of the projects where this material was thrown in with
16 their groundskeeping/grass clipping materials. It was just
17 piled in there. That piece of equipment and those pieces of
18 equipment that your landscape gardeners generally use do not
19 in any way begin to comply with the standards contained in
20 Title 14 for solid waste collection, transportation.
21 MR. CONHEIM: If I can ask one or two more
22 questions. Mr. Dahlstrum said two things. He said, number
23 one, there have been no complaints. Number two, he said that
24 this arrangement has been the result of an agreement between
25 his association and governmental entities. He's argued from

1 that point that there's no need for this regulation.
2 I am concerned about setting a proper factual
3 context for the need for this regulation. I'd like to know a
4 little bit more about that, whether the LEA has given
5 permanent permission to do this without further controls.
6 MR. FANNING: Our agreement, if I could clarify that
7 issue -- and I was not involved with those meetings
8 personally, my staff was -- was for us to resolve this matter
9 at the local level, which we always try to do with the 20
10 cities that we have to deal with as lead enforcing agency in
11 Riverside County. We attempted to work on the situation.
12 Now, again, the City of Palm Desert is an
13 incorporated city. There are two other facilities that are
14 in the unincorporated area and the rules for Palm Desert do
15 not apply. We have a county ordinance that regulates solid
16 waste collection and transportation. In those operations
17 they totally do not comply with our requirements under our
18 ordinance relating to it, which basically says you have to
19 comply with Title 14 standards.
20 So the only one facility that we have then is The
21 Lakes that's in the City of Palm Desert. That's when I meant
22 the matter of it being picked up properly now is better than
23 it was before. Yes, it was and it's being stored in bins.
24 But, again, you have a group of people that are not either
25 licensed or in the business of solid waste management and

1 collection.

2 The other issue of the bins overflowing and so

3 forth, it's my understand that that community down in the

4 Coachella Valley, that this time of the year is when the

5 population just booms down there. So the haulers as a rule

6 throughout that valley do make arrangements for extra pickup

7 during the week and there are extra charges and so forth that

8 are put on there as these other 40-plus gated communities

9 throughout the Coachella Valley do to comply with this solid

10 waste handling. Because it just really goes up now at this

11 time of the year. We have people coming from all over the

12 country and the world down there to that valley. I would

13 probably say, without seeing fresh statistics on it, that

14 your volumes probably triple down there in that area.

15 CHAIRMAN ROODZANT: Thank you, Mr. Conheim.

16 BOARD MEMBER GALLAGHER: Mr. Chairman.

17 CHAIRMAN ROODZANT: Mr. Gallagher.

18 BOARD MEMBER GALLAGHER: A couple questions. First

19 of all, you made a comment just now that there is a tendency

20 to have the gardener pick up the plastic bags, throw them in

21 the truck bed with the clippings and palm fronds and things

22 like that and take them to the dumpsters and get rid of the

23 plastic bags.

24 Are you absolutely sure that they're always

25 separating the two? What happens to the grass clippings and

the palm fronds? Do they go directly to the landfill with those?

MR. FANNING: No. It's my understanding all that material would go in those bins, the transfer bins that the gardener picks up. Then there is that issue of extra handling. And, no, they do not segregate it to my knowledge. They don't put the bags on this side of their wagon and the other materials on the other side of the wagon. So it's commingled.

BOARD MEMBER GALLAGHER: One other question that's always concerned me: What is the reason, if there is one, that a city like Bermuda Dunes, which is just down the street a little ways from The Lakes, can operate with a regular collection system? They have the same problem that The Lakes have. They have people that come in there during the wintertime and are gone for months at a time or in there for a week and gone for a week. They don't seem to have this problem and yet I don't see a lot of trash laying around when I'm down there and I'm down there quite regularly. Why would they be different from The Lakes?

MR. FANNING: Do I take it, Mr. Gallagher, that you mean that they at the Bermuda Dunes project have the gardeners pick up their material?

BOARD MEMBER GALLAGHER: No, they don't have gardeners.

1 MR. FANNING: That's correct. That's what I needed
2 to be sure. Bermuda Dunes is in the unincorporated area of
3 the county and they are required, as are the other areas of
4 the county, to either take it away yourself as a private
5 resident or you have commercial pickup. They are just down
6 the street down Country Club Drive there, but they are not in
7 the city. So, they are in the county. That's under our
8 jurisdiction. We don't have that problem down there.
9 BOARD MEMBER GALLAGHER: It surprised me that they
10 can do it without great excessive cost and still manage to do
11 it properly and within the regulations. What's the
12 difference between them and The Lakes?
13 MR. FANNING: Let me see if I can put that in
14 perspective and possibly Mr. Dahlstrum can amplify it.
15 It's my understand that when you did have the
16 gardeners picking these materials up in their wagons and
17 carts and trucks or however they did it over the last year,
18 year and a half, two years and you did not have them putting
19 their materials in the 5, 10 or 15 four-yard bins that
20 they're using now, you didn't have that cost.
21 I would submit that if the gardeners were handling
22 it, which they were, and they were hauling it to the dump and
23 not a licensed hauler, you did not have a high trash
24 collection cost. Now that you have those volumes being
25 required to be removed off of that site, you're going to be

1 seeing it on the end in terms of your cost; because you're
2 paying for it in the bins.
3 So that may explain why now all of a sudden they're
4 going to be feeling the pinch, if you will, of that
5 $50,000-plus increase in their bill. But I would say that
6 the volumes, if you look at the numbers of units, 11,000 or
7 so units, and figure out the garbage and trash that would
8 have been generated at those facilities over the last year or
9 so or two years and calculate what that would cost using
10 standard commercial pickup rates, it would be probably about
11 the same as what you've got now.
12 BOARD MEMBER GALLAGHER: There's two other things
13 that disturb me about it is, one, The Lakes does a good
14 enough job of keeping the human beings out of there. I'm
15 surprised that they can't keep the dogs out.
16 I'm also concerned about the fact that in Bermuda
17 Dunes they have some sort of a receptacle or something that
18 the plastic bags are placed in and covered until the trash
19 disposal people can come around and pick it up.
20 Why in the hell couldn't The Lakes Country Club
21 implement a program like that?
22 MR. FANNING: Good question, sir. I think we
23 generally leave those options up to either the community
24 or -- again, The Lakes is in the City of Palm Desert. They
25 have an ordinance. It's my opinion quite some time ago

1 before we came to this Board and your counsel for an
2 interpretation on this that they should be enforcing it,
3 which says that the trash should be picked up by a hauler and
4 it should be picked up in a vehicle and the equipment that is
5 necessary to handle trash and garbage.
6 BOARD MEMBER GALLAGHER: Thank you.
7 CHAIRMAN ROODZANT: Mr. Varner.
8 BOARD MEMBER VARNER: Mr. Fanning, there are just a
9 couple questions. You kind of answered some of them. In
10 other words, you're a county enforcement officer right?
11 MR. FANNING: Yes, sir.
12 BOARD MEMBER VARNER: Do you have any authority in
13 the city?
14 MR. FANNING: Yes, through the cities. We are the
15 LEA for the 20 cities in Riverside County.
16 BOARD MEMBER VARNER: But you have to enforce the
17 rules according to the city ordinances and not to your county
18 ordinances?
19 MR. FANNING: That's correct. According to their
20 city ordinaces if they have other standards other than what's
21 in Title 14. Title 14 are for the county in total. They may
22 have some other standards in terms of their licensing,
23 franchising of contracts and so forth. But the standards for
24 the collection equipment and so forth, the disposition of the
25 materials and those things that are covered under Title 14

1 applies throughout our county.

2 BOARD MEMBER VARNER: Let me ask you a couple

3 questions about your county ordinance. What kind of an

4 ordinance do you have to license or permit a hauler? What

5 kind of system do you operate under?

6 MR. FANNING: We operate under an annual permit. We

7 currently have 18 licensed haulers under permit for various

8 areas throughout our county. We have seven collection areas

9 going from Norco on down to Blythe.

10 BOARD MEMBER VARNER: So you operate under a permit.

11 Okay. What kind of standards -- you've already said that you

12 have standards for equipment and so forth that certainly is

13 not being adhered to in this situation. What do you have for

14 standards such as liability and insurance? Do you have any

15 type of requirement of what should be carried?

16 MR. FANNING: Yes, sir, we do. I don't recall those

17 specific numbers right now, but we have pretty much the model

18 ordinance that is around throughout the other counties in

19 Southern California where you have to have a million dollars

20 insurance, comprehensive, et cetera, et cetera and so forth.

21 He has to post a bond with us, provide documentation from

22 your insurance, occupational health and safety training and

23 so forth and so on.

24 BOARD MEMBER VARNER: Okay. You're answering my

25 question. Because all of these are important. In other

19

words, your safety standards have to be met, your liability insurance. I'm aware that usually one million is the least amount that anyone will allow you to get by with now. The same way on compensation insurance. They have to adhere to the comp rate that the state sets for rubbish handlers, is that correct?

MR. FANNING: That's correct.

BOARD MEMBER VARNER: You require all of those things, plus you might have some other requirements. And all of these things have a cost factor to them, would you agree?

MR. FANNING: Yes, sir.

BOARD MEMBER VARNER: Thank you.

CHAIRMAN ROODZANT: Mr. Arakalian.

BOARD MEMBER ARAKALIAN: Mr. Fanning, you mentioned that of these complexes, The Lakes and Palm Desert, one is in the city, incorporated city, and one is in the county only. Which is which?

MR. FANNING: Two are in the unincorporated area. Palm Valley and The Resort are in the unincorporated area and The Lakes is in the City of Palm Desert.

BOARD MEMBER ARAKALIAN: My other question is: You say that -- does Title 14 pertain to both of these, for example? Would the regs of Title 14 affect both of them, whether they be in the county or unincorporated city?

MR. FANNING: I'm not that familiar with the City of

1 Palm Desert's ordinance, but I believe that they adopted what
2 we had in our ordinance.
3 BOARD MEMBER ARAKALIAN: The reason I'm asking is
4 how is it that you find that the one in the county does not
5 comply, yet the one in the city does comply? Where is the
6 differentiation? How does it comply in the city whereas it
7 doesn't in the county? What are the differences?
8 MR. FANNING: Well, it's a very, very fine
9 difference there. Again, the city council is the lead
10 authority for implementing their ordinances, particularly in
11 relation to trash collection and garbage. This is where we
12 got into this question. We had a difference of opinion, if
13 you will, with the three projects named and also with the
14 city in terms of these projects not complying with the proper
15 collection standards for their trash and garbage -- i.e. the
16 vehicles under a licensed hauler.
17 BOARD MEMBER ARAKALIAN: In other words, the city
18 doesn't have that criteria, is that it?
19 MR. FANNING: My understanding is they do have that
20 criteria.
21 BOARD MEMBER ARAKALIAN: If they have the same
22 criteria as the county, then wouldn't you be in violation
23 whether you were in the city or the county? I really am
24 confused on that.
25 MR. FANNING: That's correct. Again, that's --

1 BOARD MEMBER ARAKALIAN: There is a minimum
2 standard. If the minimum were the same in both and it didn't
3 comply in one, then why should it be other unless you have
4 things that go beyond the minimum. Maybe you go minimum
5 plus, where the other one only goes minimum. Or is your
6 minimum the same as their minimum? I don't know.
7 MR. FANNING: I'd have to look at their ordinance,
8 Mr. Arakalian, to be specific on that. But, again, we got
9 into this when they had -- really the transfer station was
10 really the issue of how this material is being collected and
11 contained on site out there, albeit improperly. But it was
12 the transfer station issue that brought this thing about and
13 then we got into the issue of the gardeners and the other
14 landscapers picking up their garbage and trash and then
15 hauling it either to the landfill -- I understand now that
16 has stopped -- and then them taking it to an area for
17 consolidation.
18 BOARD MEMBER ARAKALIAN: My other question then is
19 you said the ones in the county -- plural, I guess -- were
20 not complying. If they are not complying, how are they doing
21 it then without complying? How are you allowing it to go on
22 without complying?
23 MR. FANNING: Since we had this issue before the
24 Board, we have been asking your counsel to clarify this issue
25 in complying. They're sort of in an abeyance or in a pending

1 mode.

2 BOARD MEMBER ARAKALIAN: Then you feel that if we

3 made this amendment, it would make it more exacting where it

4 would be easier for you to determine whether they are or

5 aren't complying, is that it?

6 MR. FANNING: Yes, sir, that's what I meant when I

7 said I believe I need this type of clarification in the

8 language in the Administrative Code as a Local Enforcement

9 Agency.

10 CHAIRMAN ROODZANT: Mr. Beautrow.

11 BOARD MEMBER BEAUTROW: I wonder if we could just

12 take a minute and see just two slides which will -- you know,

13 pictures are better than words sometimes. Now, these are

14 admittedly poor pictures taken by Sam. But there's two of

15 them that show --

16 --oOo--

17 Looks like a garbage train. I guess they've gone to

18 the small bins now rather than this great big bin. But, I

19 mean, we're talking about a problem that has some magnitude

20 here.

21 There's one more.

22 --oOo--

23 BOARD MEMBER GALLAGHER: Where's that, Sam?

24 BOARD MEMBER ARAKALIAN: I'm starting to forget. I

25 took them a while back. I think that one -- I'm pretty sure

1 that's Palm Valley. Palm Valley, isn't it? Is that the name
2 of it, Palm Valley? Am I getting the name right?
3 MR. DAHLSTRUM: There is a Palm Valley Country Club.
4 CHAIRMAN ROODZANT: I don't know, but you're a lousy
5 photographer.
6 BOARD MEMBER BEAUTROW: That's like everything else
7 he does.
8 BOARD MEMBER ARAKALIAN: You ought to see me work on
9 nudes.
10 BOARD MEMBER GALLAGHER: I don't know, the bread's
11 pretty good.
12 BOARD MEMBER ARAKALIAN: And, frankly, I have
13 pictures a lot more than those at my office from different
14 times. These were the best of the bunch, darn it. I took
15 the wrong ones. Those look the best. They weren't too bad
16 and yet they're bad. I don't think that's really --
17 John, you took a look at that and you're a big head
18 of an LEA. Would you consider that a nice, sanitary,
19 clean-cut operation?
20 MR. FANNING: That's not the best way to do it.
21 However, you could have a big weekend or something like that
22 where you would get an isolated incident like that. However,
23 I would say when you're talking again of a community that's
24 got 500, 200, 300 homes and these people are down there
25 fulltime -- now, it's not just one or two bags that may be

1 out there a couple of times a week. You're talking about a
2 considerable amount of trash or garbage. Yes, you could have
3 that probably at this time of the year if the bins aren't
4 dumped properly by the hauler.
5 BOARD MEMBER ARAKALIAN: Frankly, I've been watching
6 it from the summer months even when the traffic there is the
7 least. The number of bins increases with the number of
8 people, but the situation doesn't change. In other words,
9 instead of seeing three crappy bins, you see ten crappy bins
10 and when there's less people, you only see two crappy bins.
11 But it's always crappy bins. The number varies, but the
12 situation doesn't.
13 I contend that it never will get better as long as
14 the person just goes up and tosses it in. I don't know that
15 it wouldn't be euphoric to believe that somebody is going to
16 go up there and gingerly place it in, close the lid, make
17 sure it's neat and clean and all that. That's not how it's
18 going to get down. That's the way it's going to get done.
19 That's the real and the other is the wishful thinking.
20 CHAIRMAN ROODZANT: Mr. Gallagher.
21 BOARD MEMBER GALLAGHER: I just want to go back to
22 the question that Mr. Varner asked and ask very forthrightly:
23 Do the gardeners and the people that are doing this job now
24 in The Lakes and wherever else it's being done, do they meet
25 all of these insurance requirements and everything, licenses,

1 that the refuse removal people are required to have?
2 MR. FANNING: Let me separate that. I don't want to
3 address the insurance requirements, because I understand
4 these contractors, the gardener/landscape people, may be
5 large enough to have Workman's Comp for a gardener. But, no,
6 they don't carry the insurance requirements and public
7 liability that a trash hauler or trash collector is supposed
8 to have.
9 BOARD MEMBER GALLAGHER: Is there anybody from that
10 industry here to defend the fact they want to continue it?
11 I'd like to see them on the stand. Is there somebody here
12 that we could question about it? Are they being required to
13 do this under duress in any way that they lose their right to
14 do the gardening if they don't pick up the garbage?
15 MR. FANNING: I could just offer a brief comment on
16 that, although --
17 MR. DAHLSTRUM: When the time comes, I'd like to
18 speak to it, Mr. Gallagher, for a moment.
19 MR. FANNING: At this point in time I don't have the
20 date and the time, but my field staff informed me when they
21 had spoke to those people on this that it wasn't their
22 decision. I understand that that is contracted out, the
23 landscaping contracts are contracted out through the
24 homeowners association.
25 That was why, again, in not dissecting the language,

1 but being more specific in my second comment was to change
2 the word "duty" to "service". Because it may be a duty of
3 somebody that's working there. My feeling was that if you
4 have a trash collection service, you have a service provider
5 providing trash collection and that to be consistent in the
6 language that was going to be changed, it ought to be
7 services.
8 BOARD MEMBER GALLAGHER: Thank you.
9 CHAIRMAN ROODZANT: Mr. Varner.
10 BOARD MEMBER VARNER: I have just one other
11 question, Mr. Fanning, and John asked almost what I had in
12 mind. My question is after having listened to all this, do
13 these people live up to any of the standards or rules or
14 regulations for trash collection?
15 MR. FANNING: Not to my knowledge.
16 BOARD MEMBER VARNER: So they're totally violating
17 the rules and the laws completely. So that's the case.
18 MR. FANNING: In all fairness, I would say the only
19 area that they may even come close to is that they are at
20 least removing it off the streets in a daily or timely
21 manner. That would be the only one.
22 BOARD MEMBER VARNER: They're doing a job, but
23 they're not adhering to any of the rules, regulations or
24 laws. They're violating their own local ordinances as well
25 as a number of state ordinances and rules and laws.

1 MR. FANNING: Yes, sir.
2 CHAIRMAN ROODZANT: Mr. Calloway.
3 BOARD MEMBER CALLOWAY: Mr. Varner asked my
4 question. Thank you.
5 CHAIRMAN ROODZANT: Thank you, Mr. Fanning.
6 We concluded this item this morning or stopped at
7 the middle of a colloquy between Mr. Astor and Mr. Dahlstrum.
8 Would you gentlemen like to continue that discussion?
9 MR. DAHLSTRUM: I think our colloquy is probably
10 through, don't you, Mr. Astor?
11 MR. ASTOR: I don't have anything further.
12 MR. DAHLSTRUM: I wanted to answer a couple of
13 questions that came up that I might be able to speak to.
14 CHAIRMAN ROODZANT: Please.
15 MR. DAHLSTRUM: But I don't think it has to do with
16 Mr. Astor's colloquy. Just a couple of things.
17 The commencement of this practice by an association
18 management company at The Lakes, which is where it all began,
19 was of necessity as they viewed it and not to go in the trash
20 business. The gardeners don't want to be in the trash
21 business, the association does not want to be in the trash
22 business. Please understand that. We're not here trying to
23 take somebody else's business. The gardeners don't want to
24 be in the business.
25 While Mr. Arakalian's point has some merit about

1 having to hold it overnight and that may be bad, it is better
2 and was viewed as better to get it off the streets. That's
3 why this began. It began at a time when they were still
4 moving in people. People bring cartons and junk and it piles
5 up in front and it might be there for four and five days.
6 So they began a practice of saying, pick that stuff
7 up and let's keep this place cleaned up. Because the
8 homeowners would get on the phone to the management company
9 and say, why is the trash all laying in the street? So they
10 said, what can we do? The gardeners are running around here
11 anyway, let's get it off the streets. That's how it began.
12 It proved, we thought, to be a satisfactory way to
13 keep the projects cleaner and neater.
14 BOARD MEMBER ARAKALIAN: Did you consider that clean
15 what we saw up there?
16 MR. DAHLSTRUM: I don't know where that was or when
17 it was, Mr. Arakalian. I don't recognize it as anything.
18 But I don't consider that a satisfactory situation. Of
19 course not. But if that's the 4th of July weekend, as I was
20 told the last time we looked at pictures like that --
21 BOARD MEMBER ARAKALIAN: That wasn't 4th of July.
22 MR. DAHLSTRUM: -- then it was poor planning.
23 Might I say that there has been a mandate to Palm
24 Desert collection that any time that you see the bins
25 overflowing, call us immediately and let us know. We don't

1 get the calls. Any time you see a problem there, any time
2 there's a shortage of bins, call the management company and
3 let them know. They've been working very well lately. No
4 problems.
5 But I just want to make the point that this is not
6 something that they set about to do to somehow violate
7 regulations, have a confrontation with trash collectors or
8 anything like that. They found it to be a more satisfactory
9 way to police the project and economically sound as
10 against -- I gave you a fiscal effect this morning based upon
11 just going back to one-day collection from the contractor.
12 That would be only 50,000 a year. If they were to provide
13 the service that is being provided now, their fees would run
14 $686,000 a year.
15 The alternatives are that something in the middle
16 needs to be done. Now, there may be a compromise that can be
17 effective in a practical way with the collector. Maybe
18 that's what needs to be done. Maybe we need to consider
19 different collection practices by the contractors and talk
20 about some of those things. So maybe this is all good for
21 that reason.
22 VICE CHAIRMAN MOSCONE: Has this never been done?
23 MR. DAHLSTRUM: Yes, as a matter of fact it has.
24 There's two other projects that nobody here has talked about.
25 They arrived at a different solution. To answer your

1 question, yes. I don't think it really does anybody any
2 credit or helps the problem. There has been a solution
3 effected on two other projects of a different type and
4 everybody seems to be happy with it.
5 BOARD MEMBER BROWN: Mr. Chairman.
6 CHAIRMAN ROODZANT: Mr. Brown.
7 BOARD MEMBER BROWN: Yes, sir --
8 BOARD MEMBER ARAKALIAN: But all these solutions --
9 CHAIRMAN ROODZANT: Mr. Arakalian, Mr. Brown's got
10 the floor.
11 BOARD MEMBER ARAKALIAN: Excuse me.
12 BOARD MEMBER BROWN: With the addition of the
13 additional phrase "authorized" -- that seems to be what we're
14 talking about here. The new language talks about an
15 authorization and the old language did not. How does that
16 affect what's happening in your situation now? Why does just
17 the insertion of that language change anything? What do you
18 see it doing in your opinion?
19 MR. DAHLSTRUM: It's vague and ambiguous to me and I
20 don't know to give you my best answer. I heard Mr. Nolan's
21 analysis and it has merit. If it is to be viewed in the
22 conjunctive as adding something more, then it does change
23 things.
24 BOARD MEMBER BROWN: How?
25 MR. DAHLSTRUM: Well, what does authorization mean?

1 It means something more than getting whatever permits, if
2 any.
3 You notice the second part, the permits, license and
4 so forth as required. Now, if the city doesn't require them
5 of these people, maybe it doesn't affect anything.
6 But it depends how you interpret it to mean. If
7 it's conjunctive, if it's adding something -- and I don't
8 know what that something is and neither does he and that's
9 what he's worried about and I subscribe to that possible
10 interpretation.
11 On the other hand, counsel -- and I'm sure in good
12 faith -- says we don't really mean to add anything. So we're
13 getting -- and when I asked the last witness with whom I was
14 having the colloquy, he says, yes, it does add something.
15 BOARD MEMBER BROWN: But in either case you're not
16 sure what it does to the system you have in place now.
17 MR. DAHLSTRUM: No, I'm not.
18 BOARD MEMBER BROWN: Whether it's conjunctive or
19 otherwise.
20 MR. DAHLSTRUM: No, I'm not. That's why I say if it
21 is going to be interpreted in a fashion -- that was the sense
22 of the ultimate resolution of The Lakes, which I think is
23 very well-worded since I wrote it. If it does in fact cause
24 an interpretation that's going to preclude doing what we've
25 been doing, then we don't like it. If it doesn't change

1 anything and we could do it before under local control, then,
2 you're right, it doesn't affect anything.
3 But that's not the kind of legislation, if you will,
4 or regulation to put out. We may all be gone next month and
5 the next guy may think it means something else and it may
6 cause a problem that we all thought wasn't a problem.
7 Mr. Gallagher, I suspect, in answer to your
8 question, which I think were good questions about Bermuda
9 Dunes, Bermuda Dunes probably has a much higher degree of
10 permanent population. Therefore, the problem to the extent
11 that there are come-and-go residents, second-home residents,
12 I don't think they're as large a population. They are a part
13 to be sure.
14 How that's happening and how it's being controlled,
15 I don't have the slightest idea. They may have more dogs out
16 there than we do at The Lakes, a hell of a lot more.
17 BOARD MEMBER GALLAGHER: They don't have any fences
18 or guards and a few things like that.
19 MR. DAHLSTRUM: That's right. They have no fences.
20 You're absolutely right. That's where the packs of dogs
21 basically are, because I live about ten minutes from there.
22 CHAIRMAN ROODZANT: Mr. Arakalian.
23 BOARD MEMBER ARAKALIAN: That's all right. I forgot
24 what I was saying.
25 BOARD MEMBER GALLAGHER: I'm not trying to be

1 argumentative about this, but you've made a substantial point
2 about the fact that how this grew, that it was a question of
3 irate homeowners wanting the trash off the streets.
4 I can appreciate that there could probably be some
5 interest that way, particularly in the early days of The
6 Lakes. But I submit to you that, as Bermuda Dunes has done,
7 there are lots of ways to get it off the street and still
8 abide by a regular weekly collection system without any
9 dangers at all.
10 I'll have to tell you very candidly when you start
11 crying poor mouth to me about The Lakes Country Club area,
12 you aren't getting very much sympathy from me. I'll tell you
13 that right up front.
14 MR. DAHLSTRUM: I don't think that should be the
15 criteria. Fiscal responsibility is fiscal responsibility.
16 Whether I can afford it or not, the money shouldn't be
17 wasted.
18 BOARD MEMBER GALLAGHER: On the other hand, other
19 people are paying for that service that is decreed by
20 ordinance, both city and county, and I can't for the life of
21 me see why, if the rest of the Coachella Valley can live by
22 that rule and can do it within the framework of reasonable
23 economics, why The Lakes Country Club should be exempted.
24 MR. DAHLSTRUM: Well, there is also a correlation,
25 Mr. Gallagher -- I'll suggest to you there's a correlation

1 between the level of economic placement and the requirements
2 in the degree of service requested. What some people may be
3 willing to accept, others perhaps -- and I don't justify it.
4 I'm talking the real world. What we're talking here is the
5 real world, not some esoteric thing out somewhere.
6 BOARD MEMBER GALLAGHER: That's exactly right.
7 MR. DAHLSTRUM: People are very demanding. When
8 they reach a certain level, some people are very demanding
9 and other people might say, well, you know, it will be gone
10 tomorrow, and other people might say, we want it out now.
11 The other answer to your question -- another answer
12 to your question is that there are about three different
13 levels of occupants of a premises even as The Lakes --
14 permanent residents, who have certain needs requirements and
15 demands; weekenders, who are in an altogether different
16 category; and guests and renters who are in a third
17 altogether different category. Their demands, their needs
18 and what they expect are violently different. The permanent
19 resident will take care of things much better than the
20 weekender, who doesn't care and will put the trash and leave.
21 It's a fact. The renter doesn't hardly care at all, nor the
22 guest.
23 BOARD MEMBER GALLAGHER: I spend a good deal of time
24 in the desert and I'd have to take the position that these
25 people who rise to a certain level and demand this kind of

service ought to pay for it. If they want to have daily collection, pay for it. If they don't, let them put it in their Rolls Royce and take it to the dump themselves.

MR. DAHLSTRUM: I'm sorry that I can't subscribe to that view and I certainly don't own a Rolls Royce, but I think it's inappropriate. That's all I can say, sir.

BOARD MEMBER GALLAGHER: I'm sorry. I find it difficult to think that there should be an exemption for The Lakes Country Club, one of the wealthiest sections of the entire Coachella Valley, where the rest of the people abide by the rules and regulations that have been promulgated correctly through legislative bodies and administrative groups. Yet The Lakes can't seem to find it within themselves to live by those same rules because it doesn't provide them the service they want. Yet to get the service that they want, they've got to dig down in their jeans and come up with more of the cold hard cash.

I just find it difficult -- and I'm not trying to be argumentative or mean. I find it difficult to be sympathetic to that kind of position.

Thank you very much though for letting me have your point of view.

BOARD MEMBER VARNER: Mr. Chairman.

I really didn't want to get into the thing of rates, because that's a whole different issue. But being as it's

1 been brought up -- and, actually, you threw the large figures
2 of 600 and some thousand dollars. As I remember, we're
3 talking about, what, 11,000 units?
4 MR. DAHLSTRUM: No. In respect to what?
5 BOARD MEMBER VARNER: What was your 600 --
6 MR. DAHLSTRUM: That would be an 815-unit project.
7 Actually, The Lakes is 902, but my associate here
8 projected --
9 BOARD MEMBER VARNER: Let me ask you this: What is
10 the charge for weekly service that the rubbish companies
11 would provide? Naturally, you wouldn't need the containers
12 to store it in. They would come by and pick it up in a truck
13 and take it off. What is that monthly service charge?
14 MR. DAHLSTRUM: There is no service like that that's
15 ever been asked for nor provided.
16 BOARD MEMBER ARAKALIAN: Anywhere in the valley?
17 MR. DAHLSTRUM: No, not by gardeners.
18 BOARD MEMBER VARNER: I said the rubbish company.
19 MR. DAHLSTRUM: Oh, 13 -- daily?
20 BOARD MEMBER VARNER: No, no. Once-a-week service.
21 MR. DAHLSTRUM: $13.85 a door a month and they're
22 collecting now from either 25 to 50 percent only of the
23 units, but the rate is 13.85 a door. Not collected, per
24 door.
25 BOARD MEMBER VARNER: Whether they collect it or

1 not.

2 MR. DAHLSTRUM: Whether they collect or not.

3 BOARD MEMBER VARNER: Well, it seems to me that what

4 needs to be done is to negotiate with the rubbish company for

5 a fee.

6 MR. DAHLSTRUM: Possibly.

7 BOARD MEMBER VARNER: I see that as the only

8 alternative.

9 MR. DAHLSTRUM: That's been done on two projects

10 because of the concern, I believe, that the system that The

11 Lakes had initiated and had been adopted by two more and is

12 being looked at by others. They sat down and said, what can

13 we do to alleviate that spreading any? As I understand it --

14 I'm not privy to it, I'm not party to it. I can only give

15 you my understanding. It may not be totally accurate. But I

16 think what they do is they do a periodic survey of occupancy.

17 They set a rate based upon their findings at that time and in

18 some period of time do a second survey and reset the rate

19 based upon that degree of occupancy, which has some

20 rationality to it and is an equitable arrangement.

21 I must say to you that I believe that meeting some

22 of the people other than at the local level, that some

23 discourse might begin that will alleviate some of the

24 problems. We'll provide the service, perhaps get a more

25 equitable situation and work itself out. They don't want to

1 be in the trash business.

2 BOARD MEMBER VARNER: Just fine. In other words,

3 there you have the opportunity to at least mediate. But

4 there's just one other point that I will make here that if

5 you have your landscape gardeners given a permit and they

6 operate under the same rules that Mr. Fanning said was the

7 local ordinance to do all these things, your local landscape

8 gardeners might not do it any cheaper than $13.00 a month

9 either.

10 MR. DAHLSTRUM: That may be, Mr. Varner. The only

11 thing I would add now as an after bit of information is that

12 I also at one point owned a landscape maintenance company and

13 I also owned a management company. So I have a view of this

14 from all sides.

15 BOARD MEMBER VARNER: But you never owned a rubbish

16 company.

17 MR. DAHLSTRUM: No, and I don't want to.

18 BOARD MEMBER VARNER: Great. I'm glad to hear that.

19 (Laughter.)

20 MR. DAHLSTRUM: The one thing I want to say is I

21 can't answer with authority the questions you placed to

22 Mr. Fanning, but I have some serious concern. Because I do

23 believe that we had to post bonds and we had to post

24 liability policies. Now, whether they equated the same

25 amount to what you have to --

1 BOARD MEMBER VARNER: That's the point.
2 MR. DAHLSTRUM: -- I can't speak to. But I know
3 they had to do it.
4 BOARD MEMBER VARNER: Your business there was not a
5 highly-regulated business such as this is. When you have a
6 highly-regulated business, there's a cost to it.
7 MR. DAHLSTRUM: That is true.
8 BOARD MEMBER VARNER: That regulation is not for the
9 rubbish man's benefit, it's for the protection of the public.
10 That's what they're all passed for. Now, you might dispute
11 that.
12 MR. DAHLSTRUM: I have no quarrel with the purpose
13 of the regulations. I understand the purpose of the
14 regulations. But please don't lose sight of the fact that we
15 think that we are providing, given the alternative that
16 existed at the time we did it of once-a-week pickup, periodic
17 occupancy of varying periods so that trash was not disposed
18 of and was left in the street, we felt the alternative was a
19 better alternative from a health and safety point of view and
20 the city agreed with us.
21 BOARD MEMBER VARNER: That might be true from your
22 viewpoint. But you did not take into consideration all the
23 ramifications of it though.
24 MR. DAHLSTRUM: Well, at that point there weren't a
25 lot. It had gone its merry way.

1 BOARD MEMBER VARNER: Okay. I have no further
2 questions.
3 CHAIRMAN ROODZANT: Mr. Dahlstrum, have you
4 concluded your presentation?
5 MR. DAHLSTRUM: I certainly have. I appreciate the
6 opportunity to be here. Thank you very much for allowing me
7 to speak to you.
8 CHAIRMAN ROODZANT: Thank you.
9 Is there any further public input on Item No. 5?
10 Mr. Astor.
11 MR. ASTOR: Just one other comment, Mr. Chairman.
12 BOARD MEMBER BEAUTROW: Is this a soliloquy or
13 whatever they call it?
14 CHAIRMAN ROODZANT: Colloquy is the word.
15 BOARD MEMBER BEAUTROW: Coliloquy? Soliloquy?
16 MR. ASTOR: Is that an Armenian word?
17 I just wanted to confirm something so there wouldn't
18 be any question as far as the CRRC and Waste Management of
19 North America is concerned. The language changes that were
20 suggested by Mr. Fanning -- I think there were three of
21 them -- the one that we concur with, which I think your
22 counsel has concurred with, is to have the word "services"
23 instead of "duties". We support that. I wanted to point
24 that out.
25 Lastly, I really think this is a very simple matter.

1 I think the language is very clear and all it really says in
2 essence is that whoever the city and county authorizes to
3 collect refuse can do so and he also has to comply with these
4 conditions.
5 These other economic considerations and so forth, I
6 think they can be addressed. I had some conversation, which
7 I think Mr. Dahlstrum said the same thing publically that it
8 would seem to me that economic considerations can be resolved
9 between the collector and the people involved. Landscape
10 gardeners don't want to be in the rubbish business. The
11 management company doesn't want to be in the rubbish
12 business. So we just are saying let the refuse collectors do
13 the business that they're qualified to do.
14 Lastly, there is a change that those of us in the
15 industry want to support. We're not suggesting this as some
16 innocuous language that doesn't have any meaning. We are
17 suggesting from the industry's point of view it does have
18 meaning. We want only authorized people to perform the
19 services that are required for this industry. As Mr. Varner
20 has put it, it's so highly regulated, but so vitally affects
21 the public's safety, health and welfare.
22 Lastly -- and this is really not directly in point.
23 I suppose if you thought you weren't going to have a fire
24 very often in your house or you weren't going to use the
25 telephone, well, just charge me for the time that I'm at

1 home. In other words, we have many services that are in the
2 general public utility domain that everyone kind of shares
3 in. You know, you can't get exact costs allocated.
4 But while I make that comment, I feel -- because I
5 know the people that are directly involved in the Coachella
6 Valley in the refuse collection business and the company that
7 I represent and the other subsidiary is Palm Desert Disposal.
8 There's no question in my mind that if it's an economic
9 matter, so long as it's fair to all the citizens and it's not
10 just for The Lakes project, I think it can be resolved.
11 Thank you for your time and patience. I again want
12 to say that this morning I was only interested if we could
13 have an orderly presentation, because Mrs. Bremberg was going
14 to leave. I hope I didn't upset anyone by my comments. So I
15 apologize.
16 CHAIRMAN ROODZANT: Thank you, Mr. Astor.
17 BOARD MEMBER BEAUTROW: Mr. Chairman.
18 CHAIRMAN ROODZANT: Is there any other further
19 public input?
20 Hearing none, Mr. Conheim.
21 MR. CONHEIM: I have one suggestion. If the Board
22 is agreeable -- since you're going to continue the matter
23 until January, if you're agreeable to consider in January a
24 proposed regulation that changes the word "duties" to
25 "services", would you consider moving that change now?

1 Because the law requires that a non-substantive change be
2 made available to the public for 15 days before acting. So
3 that if you make that change now in the context of
4 continuance, then at the time you may act in January, we
5 won't have to further delay acting. Have I made myself
6 clear?
7 CHAIRMAN ROODZANT: Do you think that would comply
8 with Mrs. Bremberg's stated wish?
9 MR. CONHEIM: I think that in January if
10 Mrs. Bremberg had objection to the use of the word "services"
11 in place of "duties" on line four, then you could change it
12 back and wait 15 more days. But I think the odds are that
13 she would not object to this and you would save yourself one
14 more month. If you changed the "duties" to "services" and
15 waited until January to do it, you couldn't act until
16 February.
17 CHAIRMAN ROODZANT: Is there any objection?
18 BOARD MEMBER BEAUTROW: I'll move that.
19 CHAIRMAN ROODZANT: Hearing none, so ordered.
20 BOARD MEMBER BEAUTROW: Thank you.
21 CHAIRMAN ROODZANT: The Chair, hearing no more
22 requests for input on this matter today, will --
23 MR. DAHLSTRUM: Mr. Chairman, would it be
24 appropriate -- I didn't have this packet until today.
25 Mr. Conheim was gracious enough when we first heard of this

1 last week to send me four pages of the proposed reg, but I
2 didn't see the packet. I just got it today.
3 CHAIRMAN ROODZANT: Mr. Dahlstrum, we'll be happy to
4 provide you with the entire packet.
5 MR. DAHLSTRUM: I have it. Might I have leave to
6 send in anything I think I want to say with respect to packet
7 materials that would not be repetitive of something --
8 CHAIRMAN ROODZANT: Yes, the hearing will be still
9 open next meeting.
10 MR. DAHLSTRUM: Thank you.
11 CHAIRMAN ROODZANT: With that, the Chair declares
12 that the matter will be continued to 10:00, January the 13th,
13 1988.
14 (Thereupon the meeting returned to the regular
15 agenda.)
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1 BOARD MEMBER ARAKALIAN: I just wanted to clarify
2 one point. Is the gentleman gone from The Lakes?
3 I'll let the Board -- and I wanted to let him know
4 one of his numbers was wrong. I just called Palm Desert
5 Disposal and said, what do you charge for pickup for
6 condominiums such as The Lakes or any other? It's 4.80 a
7 month, not 13 something a month for once a week; and 7
8 something -- he wasn't sure of the number exactly. He didn't
9 have it on the top of his head -- for twice a week. Then the
10 gentleman tells us 13 something for once a week.
11 So that may not be a big point. But it's like he
12 missed by three or four hundred percent. But that isn't bad.
13 I wish he were here. I'd like to ask him where he
14 got his $13.00 number.
15 Hey, Rowden? John, will you see if that attorney
16 from the thing is still there and ask him to come in for one
17 moment, please?
18 Excuse me for disturbing you really. This doesn't
19 change the overall scope of what we were speaking about. But
20 since you're spitting numbers out, I wanted to correct you on
21 one of them. The number you gave was 13 how much a month?
22 MR. DAHLSTRUM: $13.85 is what I was told.
23 BOARD MEMBER ARAKALIAN: Well, check it again.
24 Because I just called Palm Desert Disposal and said, what is
25 your charge for condominium pickup per week in Palm Desert?

He said 4.80. I said, would that be 4.80 --

MR. DAHLSTRUM: Per week?

BOARD MEMBER ARAKALIAN: -- for The Lakes? Huh?

MR. DAHLSTRUM: Per week.

BOARD MEMBER ARAKALIAN: No, no, per month.

MR. DAHLSTRUM: No, that can't be right, sir. I'm sorry. I have three different numbers from three different projects and 13.85 was the one down the street.

BOARD MEMBER ARAKALIAN: Which one sounds right for rubbish collection?

MR. DAHLSTRUM: If they'll do it for 4.85, they got a contract.

VICE CHAIRMAN MOSCONE: Maybe it's 13 something per container.

MR. DAHLSTRUM: You get me the contract and I'm sure The Lakes will sign it.

BOARD MEMBER ARAKALIAN: That's okay. I just was wondering for curiosity. Because if I'm paying that, too, maybe I'm getting ripped off.

MR. DAHLSTRUM: You get me that number and we'll pay it.

VICE CHAIRMAN MOSCONE: We are in a recess for five minutes.

(Thereupon a brief recess was taken.)

--oOo--

CERTIFICATE OF SHORTHAND REPORTER

I, EILEEN JENNINGS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing meeting was reported in shorthand by me, Eileen Jennings, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of December, 1987.

Eileen Jennings

EILEEN JENNINGS
Certified Shorthand Reporter
License No. 5122

CALIFORNIA WASTE MANAGEMENT BOARD

Resolution # 88-3

January 13-14, 1988

Adoption of Amendment to Regulations of the California Waste Management Board Title 14, California Administrative Code Section 17332

WHEREAS, the California Waste Management Board (Board) proposed a regulation change to Title 14, California Administrative Code (Cal. Admin. Code), Section 17332, in its Notice, Informative Digest, Text and Initial Statement of Reasons (Notice, et al.), dated September 30, 1987;

WHEREAS, the Notice was published in the Administrative Register on October 9, 1987, and was distributed to the Board's mailing list on October 17, 1987, greater than 45 days before Board action on the regulation change;

WHEREAS, the Board conducted a public hearing on the regulation change on December 3, 1987, in which it received and considered written and oral comments;

WHEREAS, the Board considered the proposed regulation change in light of the statutory criteria for the review and approval of state regulations, Necessity, Authority, Clarity, Consistency, Reference, and Nonduplication;

WHEREAS, the Board considered the fiscal effect of the regulation on local and state government, federal funding of state programs, small business, businesses and persons directly affected, housing, local agencies and school districts;

NOW, THEREFORE BE IT RESOLVED, that the proposed regulation change meets the statutory standards of Necessity, Authority, Clarity, Consistency, Reference, and Nonduplication;

BE IT FURTHER RESOLVED, that the proposed regulation change will not have a significant fiscal impact on local and state government, federal funding of state programs, small business, businesses and persons directly affected, housing, local agencies and school districts;

BE IT FURTHER RESOLVED, that the Board adopts the text of the regulation change to Title 14, Cal. Admin. Code, Section 17332, as originally proposed in the Notice of this proceeding, and further directs staff to prepare the Final Statement of Reasons and other required documents, and to compile the official file of the regulatory proceeding, and to file the regulation change with the Office of Administrative Law forthwith.

CERTIFICATION

The undersigned Chief Executive Officer of the California Waste Management Board does hereby certify that the foregoing is a full, true and correct copy a resolution duly and regularly adopted at a meeting of the California Waste Management Board held on January 13-14, 1988.

Dated:

George T. Eowan
Chief Executive Officer

CALIFORNIA WASTE MANAGEMENT BOARD

AGENDA ITEM # 2

JANUARY 13-14, 1988

ITEM:

Consideration of Approval of the Contra Costa County Solid Waste Management Plan Revision.

KEY ISSUES:

- Revision is delinquent, submitted 141 days late.
- Estimated that County will run out of permitted disposal capacity in 1991.
- Revision fails to identify future disposal sites.
- County Board of Supervisors scheduled to consider the General Plan Amendment and land use permits for Kirker Pass and East Contra Costa landfills on January 12, 1988.

BACKGROUND:

The first revision of the Contra Costa County Solid Waste Management Plan (CoSWMP) was approved by the California Waste Management Board (CWMB) on December 16, 1982. The revised CoSWMP was amended in 1985 to include a landfill siting schedule for the replacement of the Acme Landfill.

On November 19, 1985, the County submitted a Plan Review Report indicating the need for a Plan Revision. In this initial submittal, the County proposed to revise the Plan without including adequate disposal capacity for the short term planning period. This was a result of a policy set by the County Board of Supervisors -- no proposed private landfill site could be designated in the CoSWMP until all local land use approvals had been received. These approvals, for the three proposed new landfill sites, could not have been completed within the 270 days from the November, 1985. Staff advised the County that a Plan Revision which did not provide for short term disposal capacity could not be fully approved by the Board. To do so would violate Board regulations (California Administrative Code, Title 14, Sections 17134 (b) and 17139 and Government Code, Title 7.3, Section 66784) regarding solid waste management planning.

On August 11, 1986, the County submitted a revised Plan Review Report indicating that they would include new landfill sites, to

by June of 1987. On the basis of new sites and future capacity being included in the Plan Revision, the Board accepted the Plan Review Report on September 22-23, 1986. At that time, the Board directed the County to revise the Plan, within the 270 day review period ending on June 22, 1987, in the following areas:

1) Identification of Solid Wastes (CAC, Section 17131)
2) Storage and Collection of Solid Waste (CAC, Sections 17132 and 17133)
3) Disposal and Processing of Wastes (CAC, Section 17134)
4) Resource Recovery (CAC, Section 17135)
5) Plan Administration (CAC, Section 17136)
6) Economic Feasibility (CAC, Section 17137 and Government Code 66780.1)
7) Enforcement Program (CAC, Section 17138 and Government Code, Title 7.3, Section 66780.5)
8) Implementation Schedule (CAC, Section 17139 and Government Code Section 66714.9)

Subsequently, completion of the Plan Revision was delayed yet again when on January 30, 1987, the County Board of Supervisors put all landfill siting decisions on hold for six months. This decision was made to allow time for their "Blue Ribbon Task Force" to complete their review of all proposed County landfill sites. In April, 1987 the County came before the Board to present an informational item on the status of replacement sites. The County informed the Board that they would not be able to complete the Plan Revision within the 270 day period if they had to include a review of replacement sites and an implementation schedule for these facilities in the Plan Revision. The County addressed the issue by including a discussion of future disposal sites as possible amendments to the Plan Revision.

The final CoSWMP Revision was not approved by the Board of Supervisors until June 23, 1987. The final CoSWMP Revision was then sent to the eighteen incorporated cities in Contra Costa County. Eleven cities approved the Plan Revision by resolution, 6 disapproved the Plan. The city of Brentwood did not take action within the 90 day review period. By not taking action, the city, according to CAC, Title 14, Section 17147, was deemed to have approved the Plan as submitted, thus bringing the total number of cities approving the Plan to 12. Approval by twelve cities represents 64.8 percent of the incorporated population, and 66.7 percent of incorporated cities.

Copies of the CoSWMP Revision have been provided to all members of the Board. The CoSWMP Revision was also circulated for review and comment to the State Department of Health Services, State Water Resources Control Board, Regional Water Quality Control Boards for the San Francisco Bay and Central Valley Regions, the State Air Resources Board, and the Bay Area Air Quality Maintenance District. To date, no comments have been received.

DISCUSSION:

County Characteristics and Solid Waste System:

Contra Costa County is located within the San Francisco Bay Area. San Pablo and San Francisco Bay lay to the west, Suisun Bay and the San Joaquin River lay to the north, San Joaquin County borders to the east, and Alameda County borders on the south of Contra Costa County. The County encompasses 710 square miles of land area, and as of 1987 had a population of 734,500. Terrain in the County varies from Bay frontage, near Richmond, in the west, to the steep hillsides of the Diablo Range, near Concord and Walnut Creek, in the central County. Delta terrain, associated with the San Joaquin River, is characteristic of the eastern part of the County near Antioch.

The weather in Contra Costa County is characterized by two distinct climates. The western portions, near San Francisco Bay, have a marine climate with little variation in conditions. The inland areas experience greater fluctuations in climate and are influenced by conditions in the Sacramento/San Joaquin Valley. Overall, the climate in Contra Costa County is Mediterranean (hot, dry summers and mild, wet winters).

In 1986, approximately one million tons of nonhazardous solid waste was generated (this figure is based on estimates of solid waste disposal at county landfills). This is equivalent to 1.4 tons per person annually. Waste quantities are projected to increase at a 1% per annum rate.

The total amount of waste diverted from landfills by recycling is unknown. However, known recycling programs divert 60,000 tons per year of solid waste from landfills. These programs include a combination of ten private and county recycling operations. These programs include dropoff, buyback and curbside recycling operations. Also, there is one privately owned construction/demolition operation. This company recycles asphalt and concrete.

All solid waste collection companies in Contra Costa County are privately owned. Most solid waste collection is regulated by franchise agreements between the collectors and cities or special districts.

Currently, the county has three landfills in operation; Acme, West Contra Costa and Contra Costa Waste. The estimated remaining lifetime of these facilities are as follows: Acme has permitted capacity through June of 1989, West Contra Costa has permitted capacity through 1993, and Contra Costa Waste has permitted capacity through 1992. Two new Landfill sites, Kirker Pass and East Contra Costa, are scheduled to go before the County Board of Supervisors for their land use permits and General Plan Amendment on January 12, 1988.

Currently, there are no transfer stations in operation in the County. However, it is anticipated that transfer stations will be established at the Acme, the West Contra Costa and at the Contra Costa Waste landfills.

REVISION FEATURES:

This section summarizes the significant information, by chapter, contained in the CoSWMP Revision.

Administration and Finance (Chapter 3)

This section discusses the existing oversight roles of various Federal, State and local government agencies involved in management and regulation of non-hazardous solid waste.

Existing funding methods for solid waste programs are described. The Revision states that solid waste management and enforcement programs will continue to be funded from fees assessed to landfill operators. Operators of new facilities must demonstrate that the volume of waste disposal at the new site will generate enough revenue to finance the operation of that project.

Storage, Collection, and Transportation (Chapter 4)

The County states that a major portion of the Department of Health Services solid waste enforcement budget is allocated to investigating and abating storage problems.

The system of private waste collectors working under a franchise agreement with franchising jurisdictions (cities or special districts) will continue.

Also, in this chapter, solid waste transportation costs are evaluated. Total cost figures for collection, transport, and disposal are estimated.

Transfer Stations (Chapter 5)

Currently, there are no transfer stations operating in the county. However, the Plan Revision contains recommendations for the location and timing of transfer stations for the West County, South/Central County, and the East County. An analysis of the transportation cost of hauling solid waste is also provided.

Landfill Disposal (Chapter 6)

This section discusses existing facilities, future facilities, and solid waste import/export. A discussion on landfill classifications and operating costs is included. Tipping fees at the County's existing landfills are as follows: Acme and Contra Costa Waste - $ 10.00 per ton, West Contra Costa - $ 18.00 per ton. A description of the county's three existing landfills is provided. Board staff estimates that the County has a total remaining landfill capacity of 2,509,000 tons. At the current

waste generation rate, the County will run out of disposal capacity sometime in 1991. An evaluation of the need for and location of new landfill sites is given. And finally, an analysis of solid waste import/export is provided. Contra Costa County is not exporting any solid waste at the present time, but is negotiating with Alameda County for future disposal at the Altamont Landfill. The County is importing approximately 164,000 tons per year of solid waste from Solano, Marin, and Alameda counties.

Resource Recovery (Chapter 7)

This section is divided into five parts: benefits of resource recovery, recycling, waste-to-energy, methane recovery, and composting. Emphasis is put on the recycling and waste-to-energy sections.

In the recycling analysis, known recycling programs are discussed. Markets for recyclables are evaluated. Potential participation rates and recycling quantities are estimated. Different types of recycling programs are assessed, and an analysis of avoided costs is given. An analysis of how AB 2020 will be implemented is also provided.

A discussion on the desirability of waste-to-energy is undertaken. This is followed by a description of past and current proposals of waste-to-energy projects in the County. The West County Agency, a Joint Powers Authority between the West Contra Costa Sanitary District and the City of Richmond, is currently planning a waste-to-energy project to burn 500 tons per day of solid waste and sewage sludge.

A brief description of methane gas recovery, this gas is used to incinerate sludge at the Central Contra Costa Sanitary District Waste Water Treatment Facility, at Acme Landfill is given.

Finally, a description of vegetative waste composting, and its possible application in Contra Costa County, is provided.

Special Wastes (Chapter 8)

The collection, processing, and disposal procedures for eleven categories of special wastes is provided. The procedures for handling each waste is discussed individually.

The CoSWMP indicates that the County's Hazardous Materials Commission will be addressing household hazardous waste as part of the overall County Hazardous Waste Management Plan. The County Solid Waste Commision will follow developments on this issue and assess the need for and design of a household hazardous waste program.

Current Waste Streams and Future Projections (Chapter 9)

This chapter is divided into three parts; waste composition, current waste quantities, and landfill capacity.

The waste stream in Contra Costa county is broken down into four broad categories: residential, commercial, industrial, and construction/demolition. The amount, in tons per day, and the percent of each category of waste in Contra Costa County's waste stream is provided. The break down is as follows:

* residential- 40.3 % or 301,855 tons per year (tpy);

* commercial- 26.9 % or 201,115 tpy;

* construction wastes- 17.2 % or 128,895 tpy;

* industrial wastes- 15.6 % or 116,800 tpy.

Additionally, the different types of waste comprising the residential and commercial waste stream are described.

Also, current and future waste stream quantities are estimated. The quantity of waste generated is estimated in two ways. First, landfill operators provide estimates of waste being disposed of at their landfills by weighing disposal vehicles. Second, per capita waste generation figures multiplied by the county's population yields a total waste generation figure.

Finally, the process for determining the remaining capacity of a landfill given.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The County of Contra Costa prepared a Negative Declaration for the Plan Revision. In that document, the County stated, based on its review of the potential impacts, that no significant environmental impacts would result from the approval of the CoSWMP Revision. Further, that a Negative Declaration was appropriate for the project since:

1. This is a planning document and not a set of proposals,
2. The impacts of unsited and unplanned facilities are too speculative to evaluate, and,
3. Separate environmental documents will be prepared for plan projects.

The Negative Declaration was certified by the Board of Supervisors on June 23, 1987. A Notice of Determination was filed with the State Clearinghouse on June 25, 1987. Staff has reviewed the Negative Declaration and has found it adequate for the Board's use in evaluating this project.

STAFF ANALYSIS:

The final CoSWMP Revision has been reviewed by Board staff to determine: (1) if the CoSWMP Revision has been modified in the areas determined, by the Board and the County, to be in need of

updating at the time the Plan Review Report was accepted, and (2), if the CoSWMP Revision complies with State Policy and the Board Guidelines for Preparing, Revising, and Amending County Solid Waste Management Plans.

The County has addressed many of the revision items identified by the Board and the County in the Plan Review Report. However, a serious deficiency remains. The County has not included replacement disposal sites in the Plan Revision as required by the Board when it accepted the Plan Review Report. The Plan Revision does discuss future disposal sites, but indicates that planned replacement sites must be incorporated through the Plan Amendment process.

There is a critical need for short-term disposal capacity in the County. The need to deal with this critical problem in the Plan Revision was clearly stated by staff in the Plan Review Report. If no new facilities are sited, the County will be out of disposal capacity in 1991. This leaves the County with only four more years of permitted disposal capacity.

The Plan Revision does not comply with California Administrative Code, Title 14, Section 17139 (b). The disposal element of the submitted Plan Revision is inadequate because it does not identify an implementation schedule for future disposal sites. Identifying future facilities at a later date through plan amendments will not meet the requirements of the planning regulations. The CoSWMP is intended to include a comprehensive futrue facilities planning process and an implementation schedule for this process. The current Plan Revision submitted by Contra Costa County undermines the planning process. To approve the Plan in its present form would set a bad precedent. Counties could lose sight of the fact that the planning process is intedned to provide foresight and alternatives in regard to solid waste disposal problems. If Contra Costa's Plan is approved in its current form, other counties could also submit plans which provide for future facilities through the amendment process and, as a result, not adequately plan for future disposal needs. The problems that Contra Costa is experiencing with possible disposal shortages could become more common throughout the State.

Based on the above analysis, staff concludes that because of the lack of a specific implementation schedule for siting future facilities, the disposal element of the CoSWMP (chapter six) does not comply with the Board's guidelines or State Policy regarding solid waste management planning.

OPTIONS FOR BOARD ACTION:

1. Disapprove the CoSWMP Revision. This option would be appropriate if the County had not revised the areas in the Plan which had been identified by County and staff, in the Plan Review Report, as requiring update. The Board directed the County to carry out these revisions to the Plan in

Plan which had been identified by County and staff, in the Plan Review Report, as requiring update. The Board directed the County to carry out these revisions to the Plan in Resolution #86-62. This was the resolution in which the Board accepted the Contra Costa Plan Review Report.

2. Approve the CoSWMP Revision. This would be appropriate if the County fully complied with State Planning Guidelines for Amending, Revising and Preparing County Solid Waste Management Plans, and if the County had revised the CoSWMP in all the areas identified in Resolution #86-62.

3. Partially Approve the CoSWMP Revision. This would be appropriate if the County had substantially complied with the Board Planning Guidelines for Preparing, Amending and Revising County Solid Waste Management Plans but had not fully revised the CoSWMP in all the areas identified in Resolution #86-62.

   Under this option, in accordance with California Administrative Code, Title 14, Section 17154, the County would be given 120 days to include future diposal sites in chapter six (Landfill Disposal) of the Plan Revision, and also, to make necessary changes in the implementation schedule for the siting of these future facilities. The Board may grant the County more than 120 days, for good cause, for making the required modifications and for securing city approval of the modified plan.

RECOMMENDATION:

Staff recommends that the Board select Option 3, partially approving the Contra Costa County Solid Waste Management Plan Revision. The County should be directed to modify chapter six of the CoSWMP Revision to include future disposal sites that would, at a minimum, provide the County with eight years of disposal capacity. These disposal sites must be a part of the Plan Revision, not future amendments to it. The County should also be directed to include any necessary changes in the implementation schedule as a result of these modifications to chapter six. Staff recomends that the County be given 120 days to make the necessary modifications, and for recirculating the modified Plan to the cities for their approval (as prescribed by California Administrative Code, Title 14, Section 17147).

ATTACHMENT:

1. Resolution of the Contra Costa County Board of Supervisors, approving CoSWMP Revision.

2. Tabulation of City Approval for the CoSWMP Revision.

3. Notice of Determination for the CoSWMP Revision.

4. Proposed Board Resolution # 88-55 partially approving the Contra Costa CoSWMP Revision.

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA

Adopted this Order on June 23, 1987, by the following vote:

AYES: Supervisors Fahden, Schroder, Torlakson, McPeak

NOES: None

ABSENT: Supervisor Powers

ABSTAIN: None

==========

SUBJECT: Resolution to Approve Revision to the County Solid Waste Management Plan (14 C.A.C. Section 17150)

RESOLUTION NO. 87/394

The Contra Costa County Board of Supervisors RESOLVES THAT:

1. This Board, on June 2, 1987, adopted Resolution No. 87/333 - Resolution of Intention to Approve Revised County Solid Waste Management Plan; Notice of Public Hearing.

2. After due notice, a public hearing was held at 10:30 a.m., on June 23, 1987 at which time the Board heard comments from the public and County staff on this revision to the Solid Waste Management Plan.

3. The Community Development Director and the Solid Waste Commission have recommended approval of the revised County Solid Waste Management Plan.

4. After receiving public testimony, the Board directs that the Plan be modified prior to submission to the cities to include the following items:

   - The Solid Waste Commission is to conduct a study on the feasibility of vegetative waste composting at new and existing landfills within six months of approval of this Plan.

   - References to future potential landfill sites shall note that their inclusion in the Plan are for informational purposes only. Any new site will require an amendment to the Plan.

   - References to encouragement of cities to increase solid waste collection rates for curbside or equivalent recycling shall not apply to communities that currently have these types of programs.

L16:r-38dres.ord
Orig. Dept: Community Development
cc: Solid Waste Commission (via CDD)
County Administrator
County Counsel
California Waste Management Board (via CDD)

- Public agencies should assess the feasibility of purchasing materials with less packaging, purchasing from companies supportive of waste reduction policies, using more reusable materials, and discouraging use of non biodegradable materials.

- Request cities and the County to review their regulations concerning allowing construction/demolition waste to be used as fill in sites other than sites approved as sanitary landfills. Permitting procedures should be modified so that these sites are registered with the County Health Department and waste types and quantities should be reported. Within one year, the Solid Waste Commission shall report to the Board on this issue.

- Local host community mitigation should be agreed upon before solid waste facilities are decided upon by the Board of Supervisors.

5. This Board hereby FINDS that the revised Solid Waste Management Plan will not have a significant effect on the environment, and that this Board has reviewed and considered the negative declaration together with any comments received during the public review process (all on file with this Board) and approves (certifies) its adequacy for California Environmental Quality Act purposes.

6. The revised County Solid Waste Management Plan is hereby APPROVED.

7. The Community Development Director is directed to file with the County Clerk a Notice of Determination concerning this revised Solid Waste Management Plan.

8. The Community Development Director is further directed to send the Solid Waste Management Plan to the cities of Contra Costa County and the California Waste Management Board for approval and the Solid Waste Commission is authorized to oversee the approval process of the Solid Waste Management Plan Revision.

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I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: June 23, 1987

PHIL BATCHELOR, Clerk of the Board of Supervisors and County Administrator

By Jolene Edwards, Deputy

RESOLUTION NO. 87/394

CITY APPROVAL TIME TABLE
FOR THE COUNTY SWMP
DATE: 10-9-87

CITIES	POPULATION#	RECEIPT DATE	90 DAYS	POSITION	
Antioch	51,789	6-29-87	9-26-87	no	o
Brentwood	6,101	6-29-87	9-26-87	*	
Clayton	4,827	6-29-87	9-26-87	approved	x
Concord	108,009	6-29-87	9-26-87	approved	x
Danville	28,158	6-29-87	9-26-87	approved	x
El Cerrito	23,396	6-29-87	9-26-87	no	
Hercules	11,620	6-29-87	9-26-87	no	o
Lafayette	22,479	6-29-87	9-26-87	approved	x
Martinez	28,783	6-30-87	9-27-87	no	o
Moraga	15,515	7-15-87	10-12-87	approved	x
Orinda	17,225	7-11-87	10-8-87	approved	x
Pinole	15,024	6-29-87	9-26-87	no	
Pittsburg	41,623	6-29-87	9-26-87	approved	x
Pleasant Hill	29,963	6-29-87	9-26-87	approved	x
Richmond	78,701	6-29-87	9-26-87	no	o
San Pablo	21,338	6-29-87	9-26-87	approved	
San Ramon	27,439	6-29-87	9-26-87	approved	x
Walnut Creek	62,087	6-29-87	9-26-87	approved	x
TOTAL:	594,077				

11 approved (378,663)
6 disapproved (209,313)
1 still pending (6,101)

PERCENT OF CITIES: 61.1%
PERCENT OF INCORPORATED POPULATION: 63.7%

* The City of Brentwood has not acted on the CoSWMP as of 10-9-87. Since the 90 day approval period ended on 9-26-87, the CoSWMP can be considered approved by the City of Brentwood.

\# as of 1-1-87, Population Research Unit, California Department of Finance

ebw/L19:swmpciap.90d

FILED

JUN 25 1987

L.R. OLSSON, County Clerk
CONTRA COSTA COUNTY

CALIFORNIA ENVIRONMENTAL QUALITY ACT
NOTICE OF DETERMINATION

CONTRA COSTA COUNTY COMMUNITY DEVELOPMENT DEPARTMENT
651 PINE STREET P.O. BOX 951 MARTINEZ, CALIFORNIA 94553-0095

Telephone: (415) 372- 2091 Contact Person Gus Almquist

Project Description and Location:

NOTICE OF PREPARATION OF A NEGATIVE DECLARATION FOR THE COUNTY SOLID WASTE MANAGEMENT PLAN, COUNTY FILE #CP 87-45:

The Solid Waste Management Plan revision is a state mandated program intended to cover all aspects of Solid Waste Management from collection to disposal. The plan details Contra Costa County goals, objectives and policies concerning solid waste. A Negative Declaration of environmental significance was prepared based on an initial study. All new facilities developed as a result of this Plan will be required to have an individual environmental assessment pursuant with the California Environmental Quality Act (CEQA).

☐ The Project was (Denied) (Withdrawn).

☒ The Project was Approved on June 23, 1987.

Pursuant to the provisions of the California Environmental Quality Act:

☐ An Environmental Impact Report was prepared and certified.

☐ The Project was encompassed by an Environmental Impact Report previously prepared for _____.

☒ A Negative Declaration was issued indicating that preparation of an Environmental Impact Report was not required.

☐ Copies of the record of project approval and the Negative Declaration or the final EIR may be examined at the office of the Contra Costa County Community Development Department, County Administration Building, North Wing, Fourth Floor, corner of Pine and Escobar Streets, Martinez, California.

☐ The Project will not have a significant environmental effect.

☐ The Project will have a significant environmental effect. Mitigation measures for identified significant impacts were made a condition of approval, and are included in the attached documents.

☐ A statement of overriding considerations was adopted.

☐ Findings were adopted pursuant to Section 15091 of the State CEQA Guidelines.

Date June 25, 1987

By Gus Almquist
Community Development Department Representative

AP 20 5/85

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CALIFORNIA WASTE MANAGEMENT BOARD

Resolution # 88-55

JANUARY 13-14, 1988

Resolution of Partial Approval of the Contra Costa County Solid Waste Management Plan Revision.

WHEREAS, the Nejedly-Z'Berg-Dills Solid Waste Management and Resource Recovery Act of 1972 (hereafter referred to as the Act), requires each County, in cooperation with affected local jurisdictions, to prepare a comprehensive, coordinated Solid Waste Management Plan consistent with State Policy and Planning Guidelines; and

WHEREAS, the County of Contra Costa prepared a revised Solid Waste Management Plan which was approved by the California Waste Management Board on November 18, 1982; and

WHEREAS, the Act requires that approved Solid Waste Management Plans be reviewed and revised, if appropriate, at least every three years; and.

WHEREAS, the County of Contra Costa reviewed its Plan and the California Waste Management Board accepted the County's Plan Review Report, identifying a need for a Plan Revision at its March, 1986, meeting; and

WHEREAS, the County of Contra Costa has prepared a revised Solid Waste Management Plan and in February, 1987, submitted said Plan Revision to the California Waste Management Board; and

WHEREAS, the proposed Plan Revision has been approved by a majority of the incorporated cities with a majority of the population and the County Board of Supervisors; and

WHEREAS, the proposed Plan Revision was circulated to other state agencies with involvement in solid waste management; and

WHEREAS, the Board finds that the Negative Declaration for the Plan Revision was prepared by Contra Costa County in compliance with the California Environmental Quality Act (CEQA); and

WHEREAS, the Board finds that the County of Contra Costa in the Negative Declaration found the project would not have a significant effect on the environment; and

WHEREAS, the Contra Costa County Board of Supervisors certified the Negative Declaration for the Plan Revision on June 23, 1987; and

WHEREAS, the Board finds that the environmental document is adequate for use in its approval of the proposed Plan Revision; and

WHEREAS, the Board and Board staff have reviewed the Plan Revision and, found the Plan Revision fails to provide adequate information on future disposal capacity as required by California Administrative Code, Title 14, Section 17134 and 17139, and

WHEREAS, the Board and Board staff have found the remaining portion of the Plan Revision complies with the State Policy and the Board's Planning Guidelines and Procedures for Preparing, Revising and Amending County Solid Waste Management Plan.

NOW, THEREFORE, BE IT RESOLVED that the California Waste Management Board partially approves the Contra Costa County Solid Waste Management Plan Revision.

BE, IT FURTHER RESOLVED, that the County of Contra Costa, within 120 days, resubmit a Plan Revision which identifies planned replacement disposal sites and a specific timetable for their implementation, as required by California Administrative Code, Title 14, Section 17154.

CERTIFICATION

The undersigned Chief Executive Officer of the California Waste Management Board does hereby certify that the foregoing is a full, true and correct copy of a Resolution duly and regularly adopted at a meeting of the California Waste Management Board held on January 13-14, 1988.

Dated:

George T. Eowan
Chief Executive Officer

CALIFORNIA WASTE MANAGEMENT BOARD

AGENDA ITEM # 3

JANUARY 13-14, 1988

ITEM:

Consideration of Plumas County Solid Waste Management Plan Review Report.

KEY ISSUES:

- Database and disposal capacity adequate
- County does not wish to revise Plan
- Board staff agrees there is no need to revise

BACKGROUND:

The Plumas County Solid Waste Management Plan was originally approved by the California Waste Management Board on January 12, 1979, with a Plan Revision being made by the County in October 1984. On September 30, 1987, the County submitted a Plan Review Report (see Attachment #2) indicating that further revision of the Plan was not necessary at this time.

STAFF ANALYSIS:

The attached Staff Review and Comment (Attachment #1) analyzes the adequacy of the Plumas County Solid Waste Management Plan Review Report and provides an objective description of the current solid waste management program in Plumas County. Staff analysis entailed review of the Plan and Plan Review Report, meeting with County officials and visiting solid waste facilities in the County.

Staff believes the Plan components listed below remain substantially unchanged since the last Plan Revision and do not warrant revising the Plan at this time.

1. Database - remains current
2. Consistency with State Policy - remains consistent

3. Economic changes - Plan remains relatively unchanged
4. Implementation schedule - has essentially been met
5. Administrative responsibilities - remain unchanged
6. Changes in funding - have remained relatively constant
7. Future Facilities - present disposal facilities adequate through the mid-term planning period
8. Elements of Plan not implemented - all significantly planned actions have been implemented

OPTIONS FOR BOARD ACTION:

1. Do not accept the Plan Review Report

   This would be appropriate if the County had not complied with Board requirements for preparation of the Plan Review Report.

2. Take no action

   This would be appropriate if there is new information available during the Board meeting which requires further analysis by either County or Board staff prior to Board action. Staff believes the current analysis is complete based on the available information.

3. Accept the Plan Review Report and concur with the County's decision not to revise the Plan

   This option would be appropriate if the County has complied with the Board's requirements for preparation of a County Plan Review Report. The County has substantially met all requirements for preparation of the Plan Review Report.

RECOMMENDATION:

Staff recommends that the Board adopt Resolution #88-1 accepting the Plumas County Plan Review Report and concur with the County's decision not to revise the County Solid Waste Management Plan.

ATTACHMENTS:

1. Staff Review and Comment
2. Plumas County Solid Waste Management Plan Review Report
3. Map of County Solid Waste Facilities
4. Proposed Board Resolution #88-1 accepting the Plumas County Solid Waste Management Plan Review Report

Staff Review and Comment

Plumas County Solid Waste Management Plan Review Report

I. County Solid Waste Management System

A. Current System

1. Background

Plumas County is located approximately 150 miles northeast of Sacramento and has a population of about 19,000. There is one incorporated city (Portola) in the County. The community of Quincy serves as the County seat. The economy of the County is based primarily on timber, tourism and government.

2. Waste Management Responsibilities

The Plumas County Board of Supervisors is ultimately responsible for establishing solid waste management policy and adopting waste ordinances for the unincorporated areas.

The Plumas County Department of Public Works is responsible for the administration and maintenance of the County Solid Waste Management Plan and also oversees the operation of transfer and disposal facilities. Operation of these facilities has been assigned to private contractors.

The city of Portola establishes solid waste management policy and adopts ordinances for the city. The city also owns and operates a landfill within the city limits. The Quincy and Chester Sanitary Districts regulate collection of wastes within their respective boundaries and establish fees relating to this service.

The County Health Department's Environmental Health Division has been designated as the sole Local Enforcement Agency for the County and the one incorporated city.

3. System Financing

The County's disposal and transfer system is funded mostly through user fees, with the remainder coming from general fund monies. The County Health Enforcement Program is funded by general fund and

septage pumping fees. Collection services and the city of Portola's disposal program are funded by user fees.

4. Waste Generation

Approximately 11,000 tons of residential and commercial wastes are generated annually within the County.

The primary industrial wastes in the County are those associated with the lumber industry. Bark, sawdust and shavings are used to fuel lumber mill boilers that generate approximately 5,000 tons of ash per year. Material contaminated with dirt or rock is disposed of at individual mill disposal sites.

Agricultural wastes, generally associated with cattle ranching operations, are returned to the land where generated.

The Quincy Sanitary District receives approximately 85,000 gallons of septage and sludge which is treated, dried and disposed of as a soil amendment at a 40 acre site adjacent to their plant. An additional 200 acres of land is available for future expansion. The District estimates the site life of the disposal area to be indefinite.

Surveillance over sludge disposal is vested in the County Health Department and the Regional Water Quality Control Board.

Little asbestos waste is generated in the County and is disposed of at the County landfill.

5. Collection and Storage

Currently two franchised haulers collect wastes within the city and unincorporated areas. Rates for these services are set by the Portola City Council, the two Sanitation Districts and the County Board of Supervisors. The city of Portola and the communities of Quincy and Chester all have mandatory collection ordinances.

The city of Portola and the two Sanitation Districts and the County have adopted ordinances that are generally adequate to assure compliance with the State Minimum Standards.

6. Transfer

Plumas County currently has a system of ten transfer stations to serve a scattered rural population. All stations are attended when open to the public and charge a fee for tipping. The stations are serviced by contractors with disposal to one of the County's two landfills.

7. Disposal

Three landfills serve Plumas County. Each facility is discussed below.

Gopher Hill, a Class III landfill serving the Quincy area, receives approximately 22 tons per day as calculated on a 7 day per week basis. The privately operated facility contains 35 acres and has a remaining capacity of 20-25 years.

The Chester Landfill, a Class III site, currently receives approximately ten tons of waste daily from the community of Chester. This facility is operated for the County by a private contractor. The County leases the landfill property from a private corporation. The remaining site life is 10 to 15 years.

The city of Portola owns and operates a Class III site on 20 acres east of Portola. The site receives less than 4 tons per 6-day week and has a remaining site life of 10 years. The city has purchased 8.5 acres adjacent to the site for future expansion. This expansion would add an additional 10 years capacity to the facility and is mentioned in the current CoSWMP.

8. Litter Management

Responsibility for litter management in Plumas County is divided among several agencies. Cal Trans maintains clean up activities along highways while County road crews perform similar services along County right-of-ways. The County Social Services Department provides workers to perform litter pickup at the County landfill under the County's Workfare program. The city of Portola is responsible for litter within city boundaries.

9. Resource Recovery

The major resource recovery efforts in the County are associated with wood wastes. Lumber mills in the

County utilize bark, sawdust and shavings for boiler fuel.

Most of the used oil in the County is disposed of at the Portola Railroad Museum where it is used to fuel the locomotives in the museum's collection. A local beverage distributor buys aluminum cans four days per week at Quincy or Portola, while a Nevada County recycler picks up used batteries on a regular basis. A metals company from Redding also recycles white metal goods at the Portola, Quincy and Chester landfills.

B. Enforcement Program

The Plumas County Health Department is the local agency designated to enforce the State Minimum Standards and local solid waste ordinances. The Health Department prepared a Solid Waste Enforcement Program Plan which was included in the 1984 CoSWMP Revision. The Department periodically inspects solid waste facilties. These facilities are in substantial compliance with State Minimum Standards. The Department also inspects collection vehicles and responds to citizen complaints.

C. Current Issues

1. Implementation of measures necessary to comply with Subchapter 15 and Calderon Act.

2. Approval of the site operating plan by U.S. Forest Service for the Gopher Hill Landfill.

3. Completion of five year reviews of Solid Waste Facilities Permits for Chester and Gopher Hill landfills.

D. System Improvements

Since the approval of the last Plumas County Solid Waste Management Plan Revision in 1984, there have been additional steps taken to improve the County's solid waste system:

1. Increased water quality monitoring at both the County and city of Portola landfills.

2. All solid waste transfer stations are now attended during operating hours.

3. Improved operations at the Portola City Landfill.

II. Report Summary

The Plumas County Solid Waste Management Plan Review Report has been submitted in accordance with the Planning Guidelines and Procedures for Preparing, Revising and Amending County Solid Waste Management Plans. In the report, the County states the Plan remains consistent with State policies on solid waste disposal and management and does not wish to revise the Plan at this time.

III. Staff Analysis

Staff has reviewed the Plan Review Report submitted by Plumas County, reviewed the current CoSWMP, visited the County to meet with local officials, and has viewed solid waste disposal sites.

The database submitted by the County, funding sources and administrative responsibilities, except for waste quantities, have remained substantially unchanged. The implementation schedule has essentially been met, and disposal capacity and the enforcement program are adequate. Staff therefore concurs with the County that a Plan Revision is not necessary at this time.

Attachment #2

DEPARTMENT OF PUBLIC WORKS

RT. 1 BOX 279, QUINCY, CA 95971 TELEPHONE 283-2900

LAWRENCE J. BROCK
DIRECTOR

WALT MARTES
DEPUTY DIRECTOR OF PUBLIC WORKS

EARL LEHNEN
DEPUTY DIRECTOR OF PUBLIC WORKS

September 28, 1987

State of California
California Waste Management Board
1020 Ninth Street, Suite 300
Sacramento, CA 95814

Attention: Cy Armstrong

Subject: Plan Review Report-Plumas County

Please find enclosed the County of Plumas Solid Waste Management Plan Review Report. The Plumas County Public Works Department has reviewed and prepared this report.

The Department informed the City of Portola that the review was underway, and invited their comments. No comments were received. Also informed were the Plumas County Planning Department and Plumas County Environmental Health Department. Planning Department had no comment regarding the review and the Environmental Health Department made some brief comments on the review during a phone conversation.

Thank you for your assistance and cooperation in this matter. If there are any questions or comments, please contact me at (916) 283-2900.

Sincerely,

L. J. Brock
Director of Public Works

By _____
J. B. Blinn, P.E.
Associate Engineer

enclosures

State of California
California Waste Management Board
1020 Ninth Street, Suite 300
Sacramento, Ca 95814

Attn: Cy Armstrong

Subject: Plan Review Report- Plumas County Solid Waste Management Plan

Introduction

The County of Plumas has prepared the 1987 Plan Review Report in accordance with Section 17141 of the California Administrative Code. The review addresses the eight items outlined as the basis for revising or not revising the plan. The Plumas County Solid Waste Management Plan was originally prepared and adopted in 1978. Some changes were made in 1979 with adoption of Amendment #1 to the Plumas County Solid Waste Management Plan.

The plan was then reviewed in 1982 and revised in 1983 to bring the plan into full compliance with State Policy and Planning Guidelines. The revised plan was approved by the California Waste Management Board in February, 1983.

The Plumas County Department of Public Works notified the City of Portola, the only incorporated city in the county, that the review was in progress, and solicited their comments regarding the adequacy of the current plan.

Adequacy of the Data Base

The projected population figure of 20060 provided by the California Department of Finance for 1987 compares favorably with the estimated population figure of 19235 provided by the Plumas County Planning Department for 1987. The estimated and projected population figures are slightly higher than population figures used in the plan which were based on "Provisional Projections of California Counties to 2000", Department of Finance.

The solid waste generated by the general of the county has been much less than projected, approximately 11000 tons per year versus a projection of approximately 39000 tons per year. However, lumber mill waste in the form of ash from the co-generation plants have contributed approximately 5000 tons annually to the waste stream.

The septage generated within the county appears to not to be a problem since it is not expected to become a part of the waste stream. The Quincy Sanitary District's Waste Water Treatment Facility receives approximately 85,000 gallons annually which is treated, dried and land disposed on land owned or leased by the Quincy Sanitary District.

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Engineering studies indicate Gopher Hill Landfill will continue to have a life of 20 to 25 years depending on approval of the U.S. Forest Service approval of the site's operating plan. Chester Landfill life is uncertain since the land owner, Roseburg Resources Inc., is eager for the County to cease landfill operations on the property. Roseburg Resources, however, will continue to lease the property to the County until a viable alternative can be developed. The existing property is estimated to have an estimated life of 10 to 15 years.

With the exception of one transfer site, the transfer stations and landfills discussed in the CoSWP remain in operation. One site closed is the Belden Transfer Station which was closed because of economic conditions.

Consistency With State Policy

The CoSWP remains consistent with State policies on solid waste disposal and management. Work currently in progress to meet State regulations include:

- Engineering report for the five year review for Gopher Hill Landfill and Chester Landfill (17751 Title 14 CAC).
- Solid Waste Assessment Test report for Gopher Hill Landfill.
- Development of monitoring programs for Gopher Hill Landfill and Chester Landfill (Subchapter 15 Title 23 CAC).

Economic Changes

The Plumas County Solid Waste Program began operating on a user-supported basis on January 1, 1986. The change to a user-supported program coincided with new franchise operator contracts and the planned future end to federal revenue sharing monies. The County no longer provides a subsidy to the franchise operators. With the exception of solid waste program administration and landfill annual maintenance, the County solid waste program is supported entirely by user fees. Increased gate fees, increased door-to-door fees, increased commercial fees and reduced landfill site and transfer station operating hours have resulted in an economically viable system to date.

Future State mandated solid waste management programs could alter the operation of the County's solid waste management program.

Implementation Schedule

The schedule for implementation of the objectives of the Plumas County Solid Waste Plan remain adhered to with the short-term

objectives having essentially been met and most of the medium-term objective having been essentially accomplished.

Allowing for changes required by state-mandated solid waste programs, by new franchisee contracts and by the loss of federal revenue sharing monies, the CoSWMP continues to reflect and meet the needs and desires of the County for solid waste management.

An issue which will need be addressed by the next triennial plan review is the hazardous material management in Plumas County. The County Enviromental Health Department is just beginning the process of implementing Assembly Bill 2948.

Current and Future Administrative Responsibilities

Administration remains the same with the Plumas County Board of Supervisors continuing to be the policy-making body along with being responsible for providing program monies. The Board is also responsible for the adoption of ordinances and standards.

The Plumas County Enviromental Health Department and Plumas County Public Works Department, under the direction of the Board, are responsible for the administration of the Solid Waste Management Program. The Enviromental Health Department continues to be the local enforcement agenncy.

The Plumas County Public Works Department remains the agency responsible for technical and support management of the solid waste program and of transfer and landfill operations. The daily operations of the sites and stations remain delegated to the county franchisees.

The Quincy Sanitary District, Chester Sanitary District and the City of Portola continue to control the collection of waste within their respective boundaries.

In the recent past, the Solid Waste Advisory Committee was reinstituted to provide the Board with recommendations on franchise contracts and other aspects of the solid waste program. The committee met and has continued to meet on an as needed basis. The committee consists of the County Auditor, County Counsel, Director of Enviromental Health and Sanitation, Director of Public Works and two County Supervisors.

Changes in Funding Sources

The economic section of this review outlines the funding provided for the program. With the loss of federal revenue sharing program, the majority of the program has become user-supported. The remaining portion of the program including, technical adminstration, program enforcement and supplementary maintenance operations, are now being funded utilizing general fund monies.

Future Facilities

The closure of the Chester Landfill is being considered. The land owner, Roseburg Resources, Inc., has expressed a strong desire for the County to discontinue operation of a landfill on their property as soon as possible. Discussions have continued to take place with Lassen County for the joint operation of a landfill in the Westwood area, but nothing definitive has evolved from the discussions. In the meantime, the existing site continues in operation and has a life expectancy of approximately 10 years.

Based on projections the remaining landfills in the county have sufficient capacity to continue operation into the 1990's and beyond. No future facilities are planned within the county for the next three years.

Elements of Plan Not Implemented

As mentioned in an earlier section, the majority of the activties scheduled for implementation under the short term and medium term objectivities have been achieved.

The limited waste quantities and long haul distances continue to limit the feasibility of most resource recycling alternatives. The new state legislation should give a boost to some recycling in the area.

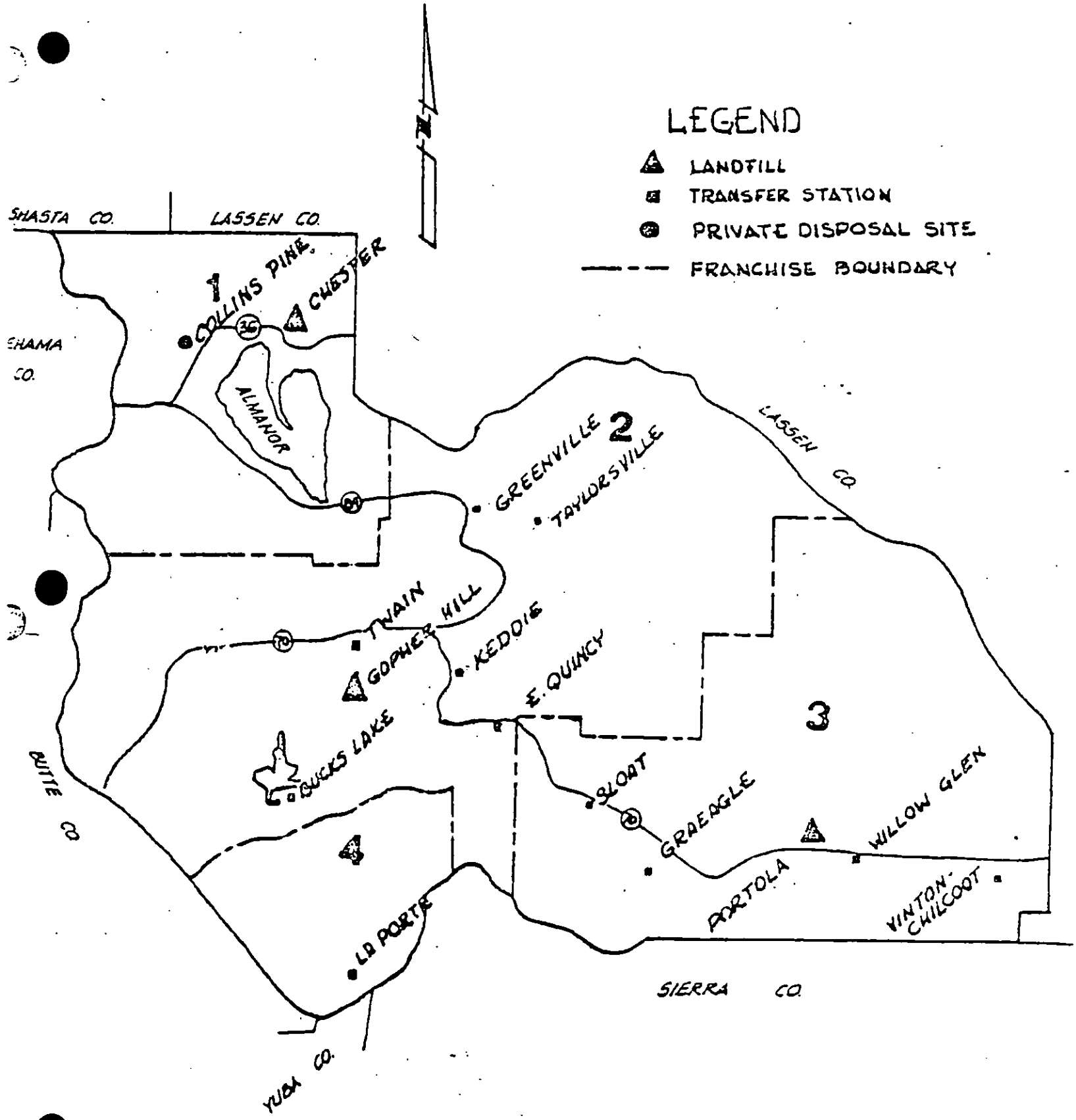
If any further information is required, please call the undersigned at (916) 283-2900.

Sincerely,

L.J. Brock
Director of Public Works

By _____
J. B. Blinn, P.E.
Associate Engineer

215



SANITARY LANDFILLS AND TRANSFER STATIONS WITHIN PLUMAS COUNTY

Attachment #4

CALIFORNIA WASTE MANAGEMENT BOARD

RESOLUTION # 88-1

JANUARY 13-14, 1988

Resolution of Acceptance of the Plumas County Solid Waste Management Plan Review Report

WHEREAS, the California Waste Management Board (Board) approved the revised Plumas County Solid Waste Management Plan on October 18, 1984; and

WHEREAS, the county of Plumas has reviewed its County Solid Waste Management Plan and submitted a report to the Board pursuant to Government Code section 66780.5(b); and

WHEREAS, the county of Plumas has determined that the County Solid Waste Management Plan is not in need of revision; and

WHEREAS, Board staff has determined that revision to the County Solid Waste Management Plan is not needed at this time; and

WHEREAS, the Board has determined that a copy of the Staff Review and Comment be forwarded to the Plumas County Board of Supervisors for their information;

NOW, THEREFORE, BE IT RESOLVED that the California Waste Management Board accepts the Plumas County Solid Waste Management Plan Review Report as submitted.

CERTIFICATION

The undersigned Chief Executive Officer of the California Waste Management Board does hereby certify that the foregoing is a full, true and correct copy of a Resolution duly and regularly adopted at a meeting of the California Waste Management Board held on January 13-14, 1988.

Dated:

George T. Eowan
Chief Executive Officer

CALIFORNIA WASTE MANAGEMENT BOARD

AGENDA ITEM # 4

JANUARY 13 - 14, 1988

ITEM:

Status of County Solid Waste Management Plans (CoSWMPs).

KEY ISSUES:

- 55 CoSWMPs are complete and current.
- 2 CoSWMPs are delinquent as compared to 31 in June 1985 (a baseline date established for comparison).
- Contra Costa CoSWMP Revision will be considered this Board meeting.
- Alameda CoSWMP Revision has been locally approved, the CoSWMP Revision should be received by December 17, 1987.

BACKGROUND:

Each month at the request of the Board, staff has provided the Board with a report on the status of County Solid Waste Management Plans. At the request of the Board at its December meeting, staff is preparing letters to legislators notifying them of the significance attributed by the Board to CoSWMPs and how delinquencies have been reduced. This item contains the most current information on the status of CoSWMPs.

DISCUSSION:

This status report is divided into three sections, according to the degree of Plan completion:

> Section I is a listing of fifty-five (55) counties with complete and current Plans. The due date of either the Plan Revision or the next Plan Review Report is also included.
>
> Section II includes one (1) county that has recently submitted its Plan Revision to the Board.
>
> Section III includes one (1) county that has brought a Plan Revision to the Board for approval, but the Board has disapproved the Revision.

I. The following counties are current. Staff has notified all counties with Plan Review Reports due through April 1988 and plans periodic follow up contacts to ensure the timely submittal of Plan Review Reports. Staff is in frequent contact with counties preparing their second CoSWMP Revision. Latest contacts indicate that all counties will meet the 270-day requirement for submittal of CoSWMP Revisions. The due date of either the next CoSWMP Revision or Plan Review Report follows.

1.	Napa*	Revision Due Feb. 1988
2.	San Francisco*	Revision Due Mar. 1988
3.	Kern*	Revision Due Mar. 1988
4.	Solano*	Revision Due Apr. 1988
5.	Sacramento*	Revision Due May 1988
6.	Humboldt*	Revision Due May 1988
7.	Plumas***	Oct. 1987
8.	Sutter-Yuba**	Nov. 1987
9.	Siskiyou**	Dec. 1987
10.	Del Norte	Dec. 1987
11.	San Mateo**	Dec. 1987
12.	Glenn	Jan. 1988
13.	Orange	Feb. 1988
14.	Madera	Feb. 1988
15.	Alpine	Mar. 1988
16.	Imperial	Apr. 1988
17.	Amador	May 1988
18.	Riverside	May 1988
19.	Santa Cruz	June 1988
20.	Nevada	June 1988
21.	Shasta	June 1988
22.	El Dorado	June 1988
23.	Ventura	July 1988
24.	Lake	Aug. 1988
25.	Santa Clara	Aug. 1988
26.	Inyo	Aug. 1988
27.	Mono	Aug. 1988
28.	San Benito	Aug. 1988
29.	Fresno	Sept.1988
30.	Tuolumne	Oct. 1988
31.	Yolo	Nov. 1988
32.	Trinity	Nov. 1988
33.	Tehama	Dec. 1988
34.	Butte	Dec. 1988
35.	Placer	Jan. 1989
36.	Monterey	Feb. 1989
37.	Los Angeles	Mar. 1989
38.	Sonoma	Apr. 1989
39.	San Bernardino	May 1989
40.	Stanislaus	June 1989
41.	Lassen	July 1989
42.	Merced	July 1989
43.	Santa Barbara	Sept.1989
44.	San Joaquin	Oct. 1989
45.	Calaveras	Dec. 1989
46.	San Luis Obispo	Dec. 1989
47.	Tulare	Dec. 1989
48.	Colusa	Dec. 1989
49.	Sierra	Jan. 1990
50.	Modoc	Mar. 1990
51.	Mendocino	May 1990
52.	Mariposa	May 1990
53.	San Diego	Aug. 1990
54.	Marin	Nov. 1990
55.	Kings	Dec. 1990

* Currently preparing the second Revision.
** Plan Review Report has been submitted to the Board.
***Consideration of Plan Review Report scheduled for this Board meeting.

II. Submitted CoSWMP Revision

The Contra Costa CoSWMP Revision has been submitted to the Board and will be considered at this Board meeting.

III. Disapproved Revision

County	Original Date Revision Due	Date Revision Submitted	Due Date of Resubmittal
Alameda	December 1986	December 1986	July 1987

Alameda County has previously submitted a CoSWMP Revision to the Board. The CoSWMP has been disapproved by this Board. Below is specific information on Alameda County's CoSWMP Revision status:

Alameda County

03/26/87 - Board disapproved CoSWMP Revision because it was incomplete and inadequate in a number of areas. Board also requested a timetable for expediting the CoSWMP Revision.

04/20/87 - Certified letter from Board sent to County Board of Supervisors and County Planning Director requesting timetable within 30 calendar days for expediting CoSWMP Revision.

04/24/87 - County sent draft CoSWMP Revision to incorporated cities, the Board, and other interested agencies for review.

07/24/87 - Expiration of the 120-day time period for resubmittal of the deficient CoSWMP Revision (time limit set by California Administrative Code section 17154).

07/29/87 - Solid Waste Authority certified environmental document and submitted CoSWMP Revision to cities and the County for approval.

11/04/87 - County Planning staff confirms by telephone CoSWMP Revision submittal date of 12/01/87.

12/01/87 - Date anticipated for submittal of CoSWMP Revision to Board.

12/01/87 - CoSWMP Revision locally approved.

12/17/87 - Date County Planning staff anticipates submitting 20 copies of CoSWMP Revision to Board

RECOMMENDATION:

For information only.

CALIFORNIA WASTE MANAGEMENT BOARD

AGENDA ITEM # 5

JANUARY 13-14, 1988

ITEM:

Determination of Conformance with the Los Angeles County Solid Waste Management Plan for Southeast Resource Recovery (SERRF) Project.

KEY ISSUES:

- City of Long Beach has requested an increase in average daily tonnage received
- Revised project is to increase average daily tonnage from 900 to 1173 tons
- Los Angeles County Solid Waste Management Committee has found tonnage increase in conformance with CoSWMP
- City of Long Beach has prepared environmental document for increase
- No revision of the Solid Waste Facilities Permit is required since existing permit covers all stages of the project

BACKGROUND:

The SERRF Project is to be implemented in the following three stages:

Stage I - construction of a facility which will process up to 900 tons per calender day of waste. Processed waste will fuel two steam generators.

Stage II - the addition of a third steam generator which will increase waste processing to 1173 tons per calendar day

Stage III - installation of refuse processing equipment which will sort out recyclable material. This stage will only be initiated once technical and economic feasibility is shown

Facility Facts:

Name: Southeast Resource Recovery Facility Project

Project: Waste-to-Energy Facility

Location: Terminal Island Area, city of Long Beach

Service Area: City of Long Beach and adjacent cities

Operator: City of Long Beach

Owner: Southeast Resource Recovery Joint Powers Authority

Size: 17.1 acres

Permitted Capacity:

Stage I: 900 tons per day

Stage II: 1173 tons per day

Electricity Generated:

Stage I: 19.7 megawatts

Stage II: 29.6 megawatts

At its April 4, 1985 meeting, the Board was to consider a Determination of Conformance for the first stage of the SERRF Project, a 900 ton per day (219,000 tons per year) facility. During that phase, waste would supply fuel for two boilers which would generate 19.7 megawatts of power. At that meeting, the Board denied the Determination of Conformance for the SERRF Project, because the County did not have a valid CoSWMP. At that time, the CoSWMP was delinquent. The Board had adopted a policy in February 1985, that once a CoSWMP became delinquent, the original CoSWMP was no longer valid. Without a valid Plan, no facility could be found in conformance.

Also at the April 4, 1985 meeting, the Board conditionally concurred in a Solid Waste Facilities Permit for the project. That permit covered all three stages of the project. However, the permit limited the facility's operation to 900 tons until a revised Finding of Conformance was received from the Los Angeles Solid Waste Management Committee for the increase in daily tonnage received. This Solid Waste Facility Permit issuance was conditioned upon the Board determining the project in conformance with the Los Angeles CoSWMP, once that document was approved by the Board.

On May 30, 1985, the Legislature enacted Senate Bill 1463 which deemed this project to be in conformance with the County Solid

Waste Management Plan and allowed the project to be established and Solid Waste Facilities Permit to be granted without any further action required by the Board.

DISCUSSION:

Revised Project Description

The Determination of Conformance with the Los Angeles CoSWMP is for an increase in average daily tonnage to 1173 tons per day (428,000 tons per year). This revised project will allow for the immediate establishment of Stage II of the project; the construction of additional boiler and, at a future date, the establishment of Stage III, the installation of waste processing equipment for recovery of recyclable materials.

During Stage II, the project will receive a maximum of 428,000 tons per year. Approximately 328,500 tons per year or 77% of waste received will be incinerated, leaving a remainder of approximately 94,800 tons per year in ash and unprocessable wastes that would be hauled to the Puente Hills Landfill for disposal. The expanded project will also increase the electrical generation to approximately 30 megawatts.

Wastes for the project will include residential and commercial wastes principally from the city of Long Beach. If the city is unable to secure contracts for all the commercial waste in the city of Long Beach, it is anticipated that waste sources in the nearby communities could be secured. It is anticipated that the facility will be operational in Fall of 1988.

California Environmental Quality Act

Since the Determination of Conformance is a discretionary act under CEQA, the Board must review the environmental document prepared for the expanded project and must determine its adequacy for the Board's use.

For the original project (the 900 ton per day facility), an Environmental Impact Report was prepared and certified in compliance with CEQA by the Board of Directors of the County Sanitation District #2. In that document, the various significant impacts and mitigation measures of the project were identified. The mitigation measures identified in that document were later included as conditions of approval for various permits obtained for this project including the Solid Waste Facilities Permit.

For the revised project, the city of Long Beach prepared and certified a Negative Declaration on October 18, 1984. In that document, the city determined that the revised project would not create any new significant impacts that were not already addressed in the original EIR. The mitigation measures identified in the EIR would still be appropriate for the revised

project. The city filed a Notice of Determination for this project on October 18, 1984 (Attachment #3). Board staff has reviewed the Negative Declaration and found that it does comply with the requirements of CEQA. Staff has also determined that the environmental document is appropriate for this Board's use.

Requirements for a Determination of Conformance

Government Code section 66784 requires that the Board make a Finding of Conformance prior to the establishment of any new or expanded facility. In accordance with procedures for obtaining a Finding of Conformance with the Los Angeles County Solid Waste Management Plan (CoSWMP), the city of Long Beach filed a Notice of Intent (Attachment #4) with the Los Angeles County Solid Waste Management Committee to increase tonnage received at the site. Also according to those procedures, the County Solid Waste Management Committee found the facility in conformance with the CoSWMP.

Staff finds that all previous local actions have been completed, it is now appropriate for the Board to consider the requested Determination of Conformance for this project. The Board's Determination of Conformance is based on consideration of the following four criteria:

1. Consistency with State Policy

   The SERRF Project is consistent with the following objectives of the Board's State Policy:

   o Diverting maximum amounts of waste from landfills

   o Providing an efficient, safe and environmentally sound method of waste disposal

2. Consistency with Policies and Objectives of the County Solid Waste Management Plan

   The SERRF Project is consistent with the overall CoSWMP goal of developing a multifaceted solid waste management system which minimizes solid waste production and waste quantities to be disposed. It is also consistent with the specific CoSWMP objective of encouraging development of low and high technology resource recovery projects.

3. Consistency with Short, Medium and Long Term Facilities Element of the County Solid Waste Management Plan.

   This facility is specifically identified in the County Solid Waste Management Plan.

4. Local Issues and Planning

All local permits have been obtained for the project. Staff is unaware of any opposition to the project.

In conclusion, Board staff finds that the project is consistent with all four criteria.

Status of Solid Waste Facilities Permit

As was discussed in the Background section of this item, the original Solid Waste Facilities Permit that was issued for this project covered all three development stages. However, a limiting condition of that permit required that before the proponent could initiate Stage II, he must obtain a revised Finding of Conformance for the increase in tonnage received. Board approval of this Determination of Conformance will fulfill that condition and will allow the proponent, with the existing Solid Waste Facilities Permit, to initiate Stage II.

BOARD OPTIONS:

1. Find facility in conformance with the County Solid Waste Management Plan.

   This action would be appropriate if the proponent had complied with Board procedures for obtaining a Determination of Conformance.

2. Take no action.

   This action would be appropriate if information on which to consider conformance was incomplete.

3. Deny conformance with the County Solid Waste Management Plan.

   This action would be appropriate if the proponent had not fully complied with Board procedures for obtaining a Determination of Conformance.

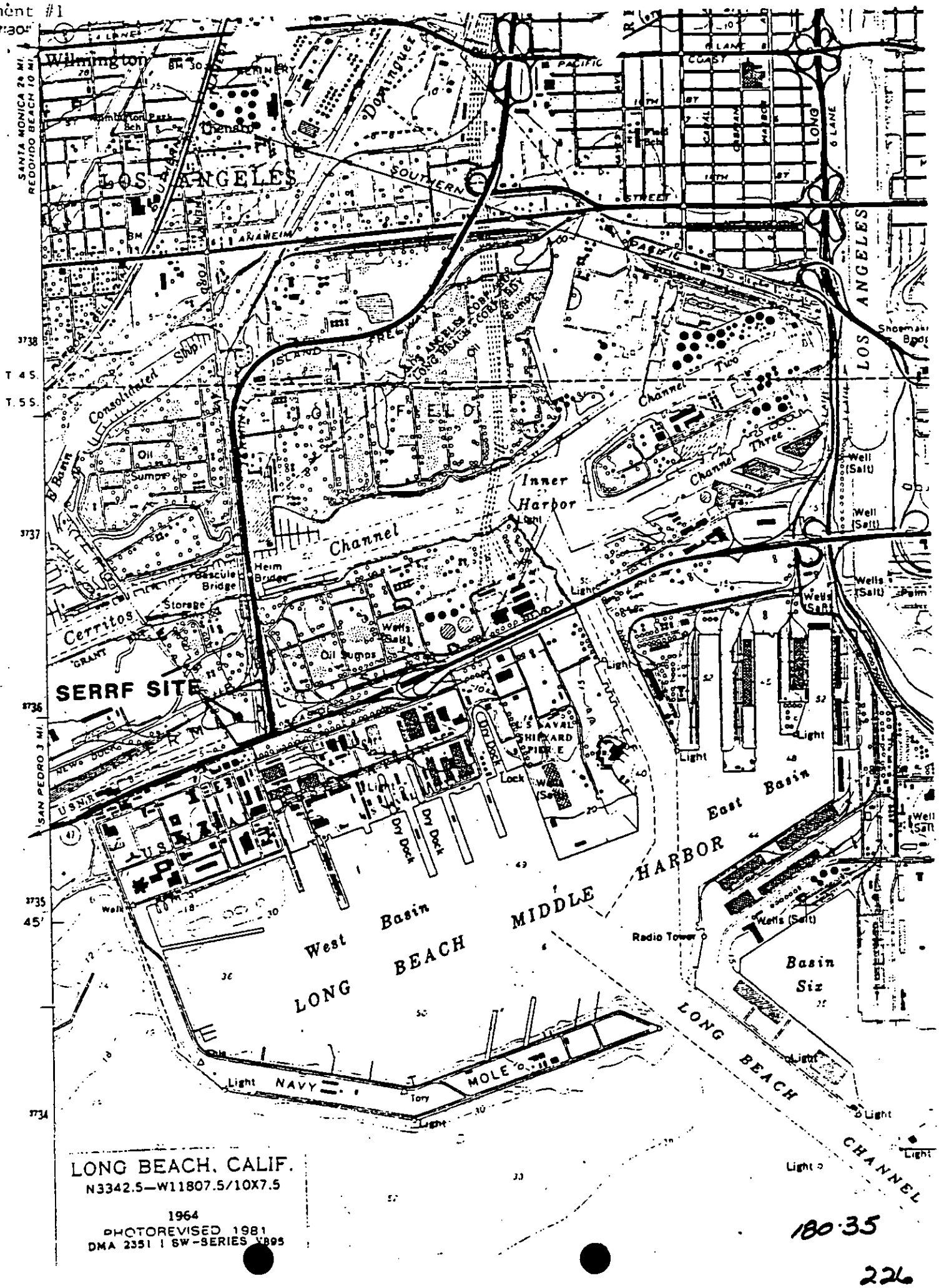
RECOMMENDATION:

That the Board select Option #1 and find the project in conformance with the Los Angeles County Solid Waste Management Plan.

ATTACHMENTS:

1. Map of Project Location
2. Map of City of Long Beach and Adjacent Area
3. Notice of Determination
4. Notice of Intent
5. Local Finding of Conformance
6. Draft Solid Waste Facility Determination of Conformance

Attachment #1



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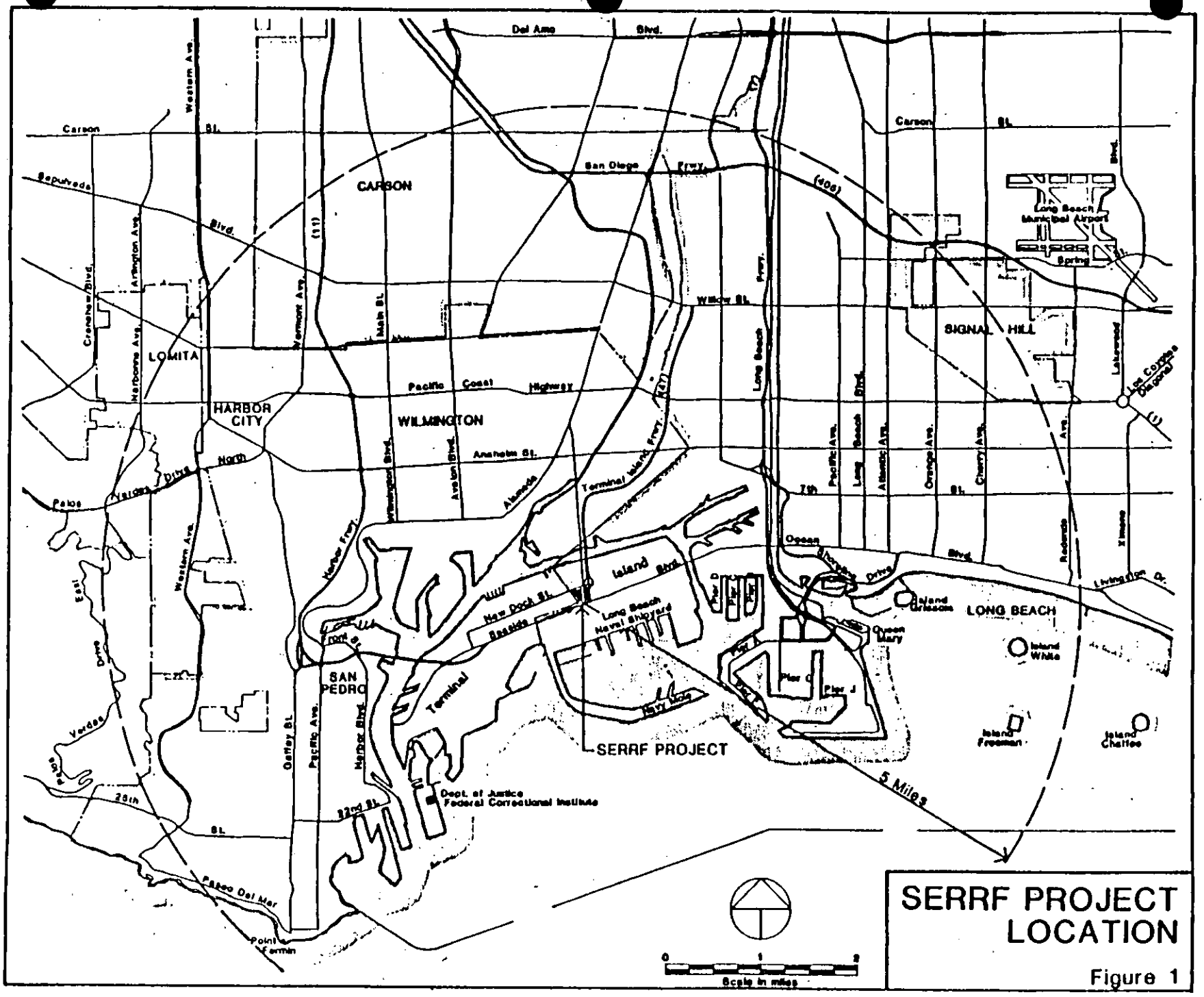

SERRF PROJECT LOCATION

Figure 1

Attachment #3

CITY OF LONG BEACH

THE CITY PLANNING COMMISSION

CR _____
KIR _____
ERR _____

333 WEST OCEAN BLVD. • LONG BEACH, CALIFORNIA 90802

(213) 590-6054

RECEIVED OCT 22 1984

TO: Los Angeles County Clerk

FROM: Community and Environmental Planning Division

SUBJECT: Filing of Notice of Determination in Compliance with Section 21108 or 21152 of the Public Resources Code

NOTICE OF DETERMINATION

Public Resources Code Section 21108 or 21152 requires local agencies to submit this information to the County Clerk. The filing of the Notice starts a 30 day statute of limitations on court challenges to the approval of the project under Public Resources Code Section 21167

DATE OF FILING: October 18, 1984

PROJECT DESCRIPTION: 900 ton per day resource recovery facility

PROJECT LOCATION: Northwest corner of Seaside Blvd. & the Terminal Island Freeway

APPLICANT: City of Long Beach/L.A. Co. Sanitation TELEPHONE NO. (213) 590-6641

STATE CLEARINGHOUSE NO. (if submitted)

In accordance with the California Environmental Quality Act of 1970, as currently amended and Municipal Resolution, the City Planning Commission, lead agency for the City of Long Beach has made the following determination regarding the above described project:

_____ Project is Categorically Exempt

X Project will NOT HAVE significant adverse environmental impacts.

_____ Project will HAVE significant adverse impacts on the environment.

FOR THIS PROJECT:

_____ A Categorical Exemption was issued on _____.

X A Negative Declaration has been certified by the City Planning Commission, pursuant to C.E.Q.A. on October 18, 1984.

_____ A Final Environmental Impact Report was certified by the City Planning Commission, pursuant to C.E.Q.A. on _____.

(Copies of Negative Declarations, Environmental Impact Reports and/or Environmental Review Record are available at the Bureau of Planning for public review)

LONG BEACH CITY PLANNING COMMISSION ACTION:

X Project Approved.

_____ Mitigation Measures were made a condition of project approval.

_____ Statement of Overriding Considerations provided (see attached).

By: Jean Moner (Signature) Secretary (Title)

Contact Person: G. H. Felgemaker, Manager, Community and Environmental Planning

Note: Authority: Section 21083, Public Resources Code; Reference: Sections 21108, 21152 and 21167, Public Resources Code

8/83

Attachment #4

CITY OF LONG BEACH

DEPARTMENT OF PUBLIC WORKS

333 W. OCEAN BLVD. • LONG BEACH, CA 90802 • (213) 590-6383

June 11, 1987

Mr. Thomas A. Tidemanson
Chairman
County of Los Angeles
Solid Waste Management Committee
1540 Alcazar Street
Los Angeles, CA 90033

SUBJECT: SERRF PROJECT - INCREASED FACILITY THROUGHPUT

Dear Mr. Tidemanson:

This is to request that the Los Angeles County Solid Waste Management Committee approve the increase in facility throughput from 328,500 tons per year to 428,000 tons per year as provided by Condition (F) (2) of the Solid Waste Facility Permit for SERRF.

Construction of the three boiler plant has been initated to provide processing capacity allocated as follows:

SOURCE	TONS PER YEAR
1986 City Refuse Collections	219,000
1986 City Operations	21,900
City of Signal Hill	14,600
City of Lakewood	41,975
Private Refuse Collections	80,300
Growth Allowance Reserve	50,225
Total	428,000

Construction of SERRF is intended to provide processing of residential and commercial refuse generated in Long Beach, whether collected by City forces or private refuse collectors. Negotiations have been initiated with private refuse collectors to develop contract terms for their use of SERRF for refuse disposal. In the event, however, that negotiations are not fruitful and other means to provide for delivery of refuse are not selected, it is expected that any remaining capacity could be made available to other nearby communities.

SUBJECT: SERRF PROJECT - INCREASED FACILITY THROUGHPUT

Attached to this letter is the latest report describing the status of construction of the Project.

Favorable action by the Committee to our request will assist in alleviating demand for increasingly scarce landfill space in Los Angeles County and is consistent with the stated goals and policies of the County Solid Waste Management Plan.

Please let me know if you or any Committee members request additional information.

Sincerely yours,

Bill Davis

Bill Davis
Solid Waste Program Manager

BD/bh
3B:1

cc: Raymond T. Holland, Director - Public Works
Rugmini S. Shah, M.D. City Health Officer
Bill Keiser, Deputy City Attorney
Greg Rigo, Rigo & Rigo Associates, Inc.
Nick DeMarco, Metcalf & Eddy, Inc.

Attachment #5

LOS ANGELES COUNTY
SOLID WASTE MANAGEMENT COMMITTEE
1540 ALCAZAR STREET LOS ANGELES, CALIFORNIA 90033
P.O. BOX 4089 LOS ANGELES, CALIFORNIA 90051

THOMAS A. TIDEMANSON
CHAIRMAN

November 16, 1987

WM-2

Mr. George Eowan, Executive Officer
California Waste Management Board
1020 Ninth Avenue, Suite 300
Sacramento, CA 95814

Dear Mr. Eowan:

REVISED FINDING OF CONFORMANCE FOR THE
SOUTHEAST RESOURCE RECOVERY FACILITY (SERRF) PROJECT
LOS ANGELES COUNTY SOLID WASTE MANAGEMENT PLAN

By letter dated June 11, 1987 (copy enclosed), the Los Angeles County Solid Waste Management Committee received a written request from Mr. Bill Davis, Solid Waste Program Manager, City of Long Beach, to grant a revised Finding of Conformance to the subject waste-to-energy facility for an increase in throughput from 328,500 tons per year (900 tons per day, tpd) to 428,000 tons per year (1,173 tpd) to the subject waste-to-energy facility. The Committee reviewed the proposal for conformance with the Los Angeles County Solid Waste Management Plan.

In accordance with Section 17937 of the California Administrative Code, the Los Angeles County Solid Waste Management Committee hereby submits its Finding of Conformance with the Los Angeles County Solid Waste Management Plan of the SERRF expansion project. This Finding was conditionally approved at the meeting held on August 20, 1987, by a 7 to 0 vote of the Committee, with two abstentions, subject to the proponent submitting a plan to reduce litter caused by uncovered vehicles coming into the facility. This condition was fulfilled by the proponent and approved by the Committee on October 15, 1987.

On March 12, 1986, your Board approved the Los Angeles County Solid Waste Management Plan, Triennial Review, Volume I - Nonhazardous Element, dated March 1984, and Revision A dated August 1985. The SERRF Project Revised Finding of Conformance was reviewed in accordance with the requirements of said document.

A copy of this revised Finding is also being sent to the County Sanitation Districts of Los Angeles County, the project's proponent, and the City of Long Beach Health Department.

Should you have any questions regarding this matter, please contact Mr. Mike Mohajer of my staff at (213) 226-4281.

Very truly yours,

for T. A. TIDEMANSON
Director of Public Works/Chairman
Los Angeles County Solid Waste Management Committee

MMM:maly/EOWAN

Enc.

cc: City of Long Beach Health Department
County Sanitation Districts of Los Angeles County
Southeast Resource Recovery Facility

LOS ANGELES COUNTY SOLID WASTE MANAGEMENT COMMITTEE
REVISED FINDING OF CONFORMANCE
WITH THE LOS ANGELES COUNTY SOLID WASTE MANAGEMENT PLAN
SOUTHEAST RESOURCE RECOVERY FACILITY (SERRF) PROJECT
CITY OF LONG BEACH, CALIFORNIA
OCTOBER 15, 1987

The Los Angeles County Solid Waste Management Committee (Committee) has reviewed a request from Mr. Bill Davis representing the SERRF Project to find the increase in daily tonnage for the above waste-to-energy facility from 328,500 tons per year (900 tons per day, tpd) to 428,000 tons per year (1,173 tpd) in conformance with the Los Angeles County Solid Waste Management Plan (CoSWMP).

The subject facility is located on approximately 10 acres of land located in the Terminal Island area of the City of Long Beach. The site is located on the north side of Ocean Boulevard, across from the Navy Shipyard, and west of the Southern California Edison Plant.

The SERRF is owned by a Joint Power Authority (Authority), consisting of the City of Long Beach and County Sanitation Districts of Los Angeles County (CSD) and leased by the City of Long Beach. The City acts as the agent for the Authority. The facility will be operated by Dravo Corporation during the first five years of operation and by the CSD thereafter.

Type of Waste

The waste materials to be handled at the subject facility are limited to solid waste as defined by the Title 23 of the California Administrative Code, Chapter 3, Subchapter 15. Liquid waste and hazardous waste are not allowed.

Project Implementation Schedule

A Finding of Conformance with a daily capacity of 900 tpd was first issued to the SERRF Project by the Committee on August 20, 1981. However, due to construction delays, the Finding was extended by the Committee on August 18, 1983, April 19, 1984, and June 20, 1985 (a copy of the last Finding is provided in the Attachment A).

The construction of the facility began in 1986 and it is estimated to be operational by fall 1988. Upon approval of all regulatory agencies, the facility will be operated on a 1,173 tpd throughput which would generate approximately 36 megawatts per day.

Identification of Waste Transport Corridors and Destination

Vehicle access to the facility is provided via Henry Ford Avenue and New Duct Street with access to and from the Terminal Island Freeway. The Puente Hills Landfill in Whittier, Los Angeles County, is currently designated for generated ash residues.

Compliance with Regulatory Requirements
for Increase Capacity to 428,000 tons per year

1. Environmental Document

The EIR for the subject facility (900 tpd) was prepared by the CSD, State Clearing House No. 80010319. The EIR was approved by the CSD's Board of Directors on November 4, 1981.

In 1984, the City of Long Beach, as the lead agency, prepared an Initial Study (IS-5-84) to address the environmental impacts of the facility which may result due to the increase in capacity to 428,000 tons per year. On October 18, 1984, the City of Long Beach Planning Commission made a determination that all environmental concerns for the proposed capacity have been adequately addressed in the original EIR. This determination was reconfirmed by the City of Long Beach in a letter dated July 7, 1987, to the Committee (Attachment B).

2. General Planning Consistency and Land Use Permit

The project site is zoned MP (port-related industrial district). SERRF is a principal permitted land use in the MP zoning district. On November 10, 1983, by resolution, the Long Beach Planning Department determined that SERRF is:

a. A port-related use under the Long Beach zoning regulations and is compatible with land uses authorized adjacent to and near the site.

b. Fully conforms with the adopted General Plan of the City of Long Beach per Section 65402 of the California Government Code.

c. Consistent with the General Plan of the City of Long Beach per Section 66786.1 of the California Government Code. Lands adjacent to the SERRF site within the City of Los Angeles are zoned heavy industrial.

3. Solid Waste Facility Permit

The proposed facility is currently covered under Solid Waste Facility Permit No. 19-AK-083 issued March 1, 1985, by the City of Long Beach Health Department.

Resource Recovery

The facility will provide for recovery of ferrous metals, aluminum, and glass, and the production of steam and electricity.

Accordingly, the Committee has reviewed the proposed increase in daily tonnage from 900 tpd to 1,173 tpd for the said facility utilizing the guidelines specified in Chapter 7 of the Los Angeles County Solid Waste Management Plan, Triennial Review, dated March 1984 and Revision A dated August 1985 (CoSWMP). The Committee finds:

1. This revised Finding of Conformance replaces all Findings previously granted by the Committee.

2. Average daily throughput shall be limited to 1,173 tpd, 24 hours per day, 365 days per year.

3. Applicant must comply with all requirements of Federal, State, County, City and other local regulatory agencies.

4. An average waste handling of 1,173 tpd is permitted for a period of time necessary to retire the facility bonds, not to exceed 30 years. During this time period, should the proponents require more than 30 years, they may bring the request back to the Committee for reconsideration.

5. Upon commencement of operation, the Permittee is required to submit self-monitoring reports to the Committee on a quarterly basis. Self-monitoring reports will incorporate:

   --Weights and types of emissions per day and week
   --Weights of waste per day and week
   --Number of vehicles using the facility per day and week
   --Quantity of fly/bottom ash taken to landfill
   --Amount of energy produced per day and week

6. The waste materials to be handled at subject facility are limited to solid waste as defined by Title 23 of the California Administrative Code, Chapter 3, Subchapter 15, adopted October 18, 1984. Liquid waste and hazardous waste are not allowed.

7. In the event of any change in name of operator or in control of ownership of land owned or controlled by the City of Long Beach/CSD, the owner/operator shall:

   a. Notify the Committee, in writing, of such change within 10 calendar days; and

   b. Notify the succeeding owner or operator by letter, a copy of which shall be filed with the Committee, of the existence of the Finding of Conformance.

8. Applicant is to implement a litter control program as described in Attachment "C". In addition, the proponent is to place a sign at the facility entrance informing vehicles that all loads must be tarped.

9. The applicant must comply with requirements of the South Coast Air Quality Management District in reference to Health Risk Assessment.

10. The applicant on a quarterly basis is to submit a progress report during the construction phase to the Committee.

This Finding of Conformance is not intended to be nor does it confer on this facility a guarantee that the amount of tonnage contained in the Finding will be available.

The Chairman is directed to inform the California Waste Management Board, the County Sanitation Districts of Los Angeles County, the City of Long Beach Health Department, and the SERRF Project, of the Finding and recommendation of this Committee.

This revised Finding was conditionally approved by seven members of the Committee, a unanimous vote of those members present with two abstentions (representatives of the CSD and the City of Long Beach), on August 20, 1987, subject to the proponent submitting a plan to reduce litter caused by uncovered vehicles coming into the facility. This condition was fulfilled by the proponent and approved by the Committee on October 15, 1987.

for

T. A. TIDEMANSON, Chairman
Los Angeles County Solid Waste Management Committee

MMM:maly/SERRF

Attach.

Attachment A

LOS ANGELES COUNTY SOLID WASTE MANAGEMENT COMMITTEE

FINDING OF CONFORMANCE/NONCONFORMANCE
WITH THE LOS ANGELES COUNTY SOLID WASTE MANAGEMENT PLAN
(CoSWMP)

CITY OF LONG BEACH/LOS ANGELES COUNTY SANITATION DISTRICTS
Southeast Resource Recovery Facility (SERRF)
Revised June 20, 1985

The Los Angeles County Solid Waste Management Committee (the Committee) has reviewed a proposal from the Los Angeles County Sanitation Districts and the City of Long Beach to find the Southeast Resource Recovery Facility (SERRF) in conformance with the CoSWMP.

The proposed facility will be located on approximately 10 acres of land located in the Terminal Island area of the City of Long Beach. The proposed site is located on the north side of Ocean Boulevard, across from the Navy Shipyard, and west of the Southern California Edison Plant.

Since the Committee's action of August 20, 1981, the proponent had experienced difficulties in proceeding with the project due to unexpected increases in construction costs and revised regulations on air quality. As a result, the proponent has requested the Committee to extend the Finding as follows:

1. On August 20, 1981, the Committee granted a Finding of Conformance with a stipulation of award of construction contract by August 31, 1982, and start of construction by August 31, 1983.

2. On August 18, 1983, the Committee considered and granted a request for an extension covering the period from August 31, 1983 to December 31, 1984.

3. On April 19, 1984, the Committee considered and granted a request for an extension covering the period from December 31, 1984 to December 31, 1985.

4. On June 20, 1985, the Committee considered and granted a request for an extension with a stipulation of award of construction contract by June 30, 1986, and start of construction by December 31, 1986.

Environmental Document

The County Sanitation Districts of Los Angeles County prepared an Environmental Impact Assessment dated December 20, 1979. The initial study concluded that the project may have a significant effect on the environment; therefore, an Environmental Impact

Report (EIR) was required. As a result, a Notice of Preparation of a Draft EIR was prepared and distributed in accordance with State EIR guidelines by the County Sanitation Districts on December 21, 1979.

Brown and Caldwell, Consulting Engineers, prepared a Draft EIR dated May 1981 which was reviewed by members of CoSWMP Committee and staff in August 1981. The County Sanitation Districts prepared the final report which was certified by the District's Board of Directors on November 4, 1981.

Resource Recovery

The proposed project will provide for the recovery of ferrous metals, aluminum, and glass, and the production of steam and electricity.

Correspondence

The Los Angeles County Sanitation Districts, in a letter dated June 12, 1981 by Mr. Walter Garrison, General Manager, requested a Finding of Conformance with the Los Angeles County Solid Waste Management Plan. Accordingly, the Committee has reviewed the subject project utilizing the "Summary of the Process for Incorporating Future Facilities into the Los Angeles Solid Waste Management Plan".

By letter dated August 9, 1983, the Los Angeles County Solid Waste Management Committee received a written request from Mr. Bill Davis, Solid Waste Program Manager, City of Long Beach, and Mr. Charles Carry, Assistant General Manager of the Los Angeles County Sanitation Districts, to amend the existing Finding of Conformance for the SERRF Project, to extend the scheduled date for start of construction from August 31, 1983, to November 1, 1984.

By letter dated April 9, 1984, the Los Angeles County Solid Waste Management Committee received a written request from Mr. Bill Davis, Solid Waste Program Manager, City of Long Beach, to amend the existing Finding of Conformance for the SERRF Project to extend the scheduled date for start of construction from December 31, 1984 to December 31, 1985.

By letter dated June 6, 1985, the Los Angeles County Solid Waste Management Committee received a written request from Mr. Davis to amend the existing Finding of Conformance for the SERRF Project to extend the scheduled date for award of construction contract to June 30, 1985, and to extend the scheduled date for start of construction to December 31, 1986.

The Los Angeles County Solid Waste Management Committee finds:

1. This facility will provide disposal service which will help to mitigate impact on the wasteshed area resulting from the closure of the Palos Verdes Landfill.

2. This proposal is not in conflict with the goals and objectives of CoSWMP and is intended to provide efficient, effective, and economical long-term disposal of Class II waste in the immediate area.

3. This proposal will provide for material and energy recovery.

4. An average waste handling capacity of 900 tons per calendar day is permitted for a period of time necessary to retire the facility bonds, not to exceed 30 years. During this time period, should the proponents require more than 30 years, they may bring the request back to the Committee for reconsideration. This time frame, to be determined at the time the bonds are sold, should be made a part of this Finding.

After the first 10 years of facility operation, the proponent must be operating at the permitted waste handling capacity or must demonstrate reasonable progress in attaining this capacity. After this period of time, the Committee reserves the right to deduct and re-permit to any other facility the unused portion of waste handling capacity.

This Finding of Conformance is not intended to be, nor does it confer on this facility, a guarantee that the amount of tonnage contained in the Finding will be available.

The above Findings will remain valid provided the proponent awards a contract for the construction by June 30, 1986, and begins construction by December 31, 1986. Additionally, the proponent shall provide the Committee with an implementation schedule showing objectives and approximate time-lines which will enable the Committee to monitor the progress of the proposed facility. Progress reports will be submitted to the Committee by January 1, 1987 and again by April 1, 1987. Operation of the facility should begin in late 1988.

With this Finding of Conformance, and upon commencement of operation, the Permittee is required to submit self-monitoring reports to the Committee on a quarterly basis. Self-monitoring reports will incorporate:

--Weights and types of emissions per day and week.
--Weights of waste per day and week
--Number of vehicles using the facility per day and week.
--Quantity of fly/bottom ash taken to landfill.
--Amount of energy produced per day and week.

The Chairman is directed to inform the Los Angeles County Sanitation Districts, the City of Long Beach, and the California Waste Management Board of the finding and recommendations of this Committee.

This Finding was approved by 14 members of Los Angeles County Solid Waste Management Committee, a majority vote of those present on June 20, 1985.

T. A. Tidemanson, Chairman
Los Angeles County Solid Waste
Management Committee

MMM:npk 41

Attachment B

CITY OF LONG BEACH
DEPARTMENT OF PLANNING & BUILDING
333 WEST OCEAN BLVD. • LONG BEACH, CALIFORNIA 90802
(213) 590-6651

July 7, 1987

T. A. Tidemanson
Director of Public Works/Chairman
Los Angeles County
Solid Waste Management Committee
1540 Cazar Street
Los Angeles, CA 90033

Dear Mr. Tidemanson:

Revised Finding of Conformance for SERRF Project
Los Angeles County Solid Waste Management Plan

This office is in receipt of your letter of June 30, 1987 requesting clarification relative to the environmental documents.

I refer you to the Initial Study (IS-5-84) which was certified by the City Planning Commission, on October 18, 1984. This Initial Study was prepared to address the modifications to the project which had occurred subsequent to the Final Environmental Impact Report.

The project description contained in the Initial Study (page 7, paragraph 3) specifically references the increase of throughput to 428,000 tons per year. This environmental analysis considered this increase as well as the Stage III processing.

The City Planning Commission which is the Lead Agency of the City of Long Beach, for purposes of environmental review found that the Initial Study and the Environmental Impact Report adequately addressed the environmental impacts for the maximum throughput of 428,000 tons per year.

I have reviewed the complete environmental record for this project and have concluded that the documents continue to remain current and valid. There is no new information of significance nor have circumstances substantially changed which would necessitate a supplemental environmental analysis.

Should you have any additional questions, please contact me at (213) 590-6894.

Respectfully submitted,

Gerhardt H. Felgemaker
Environmental Officer

GHF:jm

Attachment C

CITY OF LONG BEACH
DEPARTMENT OF PUBLIC WORKS
333 W. OCEAN BLVD. • LONG BEACH, CA 90802 • (213) 590-6383

September 17, 1987

Thomas A. Tidemanson
Director of Public Works/Chairman
County of Los Angeles
Solid Waste Management Committee
1540 Alcazar Street
Los Angeles, CA 90033

SUBJECT: PRELIMINARY SERRF SITE LITTER CONTROL PROGRAM

Dear Mr. Tidemanson:

We are submitting a copy of the Litter Control program for the SERRF site for your review and approval. This program will be implemented when the facility becomes operational in 1988.

The submittal of this program is a requirement of the Los Angeles County Solid Waste Management Committee for grant of a Revised Conformance of the SERRF Facility for an increase in thruput. If you should require additional information, please call 590-6010.

Sincerely yours,

Bill Davis

Bill Davis
Solid Waste Program Manager

CT/BD/bh
17.1

cc: Mike Mohajer, LA County Solid Waste Committee
Greg Rigo, Rigo & Rigo Associates, Inc.
Nick DeMarco, Metcalf & Eddy, Inc.

LITTER CONTROL PROGRAM

SERRF SITE

Background - The Litter Control Program for the SERRF site will be implemented by Dravo Corporation. The City of Long Beach has a five year contract with Dravo, to operate the SERRF (Waste-to-Energy) Facility located on Terminal Island in the City of Long Beach. The City of Long Beach has overall responsibility to insure the plant is operated in accordance with this Litter Control Program as well as all regulatory permits and laws.

The following activities will be performed at the SERRF Facility during days when refuse is delivered.

1. Refuse will be received from 6:00 A.M. to 6:00 P.M. Monday through Saturday, exclusive of holidays.

2. Refuse carrying vehicles will be weighed upon arrival and departure from the site only if the vehicles are properly covered to insure litter does not blow loose. (Anticipated that 90% of vehicles are packer type.)

3. The refuse carrier will not be weighed and refuse will not be accepted unless it is delivered in a covered vehicle.

4. Covers on refuse vehicles will be removed during queing for entrance to the tipping hall.

5. Ash residue vehicles leaving the site will be covered prior to weighing when leaving the site.

6. The loaded ash residue vehicles will not be weighed unless covered.

7. Daily cleaning rounds of the site will be made by Dravo's laborers under supervision of the Operations Supervisors, to insure site grounds are free of litter and debris.

8. Daily cleaning rounds of access roads, parking facilities and other paved areas on the SERRF site will be performed by Dravo laborers using a mechanical sweeper.

CALIFORNIA WASTE MANAGEMENT BOARD

SOLID WASTE FACILITY DETERMINATION OF CONFORMANCE #88-1

JANUARY 13-14, 1988

WHEREAS, the Board finds that the City of Long Beach has filed a Notice of Intent with the Los Angeles County Solid Waste Management Committee to increase the average daily tonnage received at the Southeast Resource Recovery (SERRF) Facility to 1173 tons; and

WHEREAS, the Board finds that the Los Angeles County Solid Waste Management Committee has made a local finding of conformance with the Los Angeles County Solid Waste Management Plan for the increase in daily tonnage received to 1173 tons; and

WHEREAS, the Board finds that the City of Long Beach has prepared and certified an Negative Declaration for the project which complies with the California Environmental Quality Act and the Board concurs with the City's determination; and

WHEREAS, the Board find that it has considered the issue of conformance for the increase in average daily tonnage received from the standpoint of local issues and planning, consistency with the Board's State Policy, consistency with the short, medium and long-term facilities element, and goals and objectives of the Los Angeles County Waste Management Plan.

NOW, THEREFORE, BE IT RESOLVED, that the California Waste Management Board finds the increase in average daily tonnage received to 1173 tons to be in conformance with the Los Angeles County Solid Waste Management Plan.

CERTIFICATION

The undersigned Chief Executive Officer of the California Waste Management Board does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the California Waste Management Board held January 13-14, 1988.

Dated:

George T. Eowan
Chief Executive Officer

CALIFORNIA WASTE MANAGEMENT BOARD

AGENDA ITEM # 6

JANUARY 13-14, 1988

ITEM:

Consideration of Revision of the Solid Waste Facilities Permit for Closure of the Ozena Modified Sanitary Landfill, Ventura County.

KEY ISSUES:

- The Conditional Land Use Permit for the facility has expired
- The facility last accepted waste in July 1986
- The LEA has determined that the Permit must be modified for closure
- A Negative Declaration has been prepared
- Waste Discharge Requirements have been issued

FACILITY FACTS:

Name:	Ozena Modified Sanitary Landfill, Facility #56-AA-006
Project:	Revised Permit to reflect closure
Location:	Ventura County
Owner/Operator:	Ventura Regional Sanitation District
Present Volume:	Estimated at 3,100 tons
Total Acreage:	10.2 acres

BACKGROUND:

The Ozena Modified Sanitary Landfill is located in Ventura County on 10.2 acres that are bordered by Lockwood Valley Road and the Cuyama River. The facility is owned and operated by the Ventura Regional Sanitation District (VRSD). The site has been used for nonhazardous waste disposal since 1974. Refuse was last disposed of at the site in July 1986 following the expiration of the local land use permit.

Disposal was limited to the central two acres of the site. The cut and cover trench method of operation was used. Approximately 15-20 tons of refuse were disposed monthly. The site is estimated to contain 3,120 tons of refuse.

The LEA has required the operator to file an application for revision of the Permit for closure of the facility. A Negative Declaration has been completed and a final closure plan has been prepared. Waste Discharge Requirements have been issued.

Following closure the site will left as open space. The VRSD plans on maintaining five 3-cubic yard trash bins near the landfill entrance for use by local residents. Waste will be transferred weekly to a nearby landfill.

Concerns:

The site design, implementation, and operation plan have never been evaluated as is specified in Title 14, Section 17751 (Periodic Site Review). Inspection records generally indicate that the site has been operated in accordance with the Permit.

Closure of the facility is not affected by AB 2448 (Easton) because refuse disposal was discontinued before January 1, 1988.

BOARD ACTION:

The Board may concur in or object to the issuance of a revised permit pursuant to Government Code Section 66796.32(e). The Board has 40 days from the receipt of the proposed document to act (by January 20, 1988).

California Environmental Quality Act (CEQA)

The Ventura Regional Sanitation District, as the lead agency under CEQA, certified a Negative Declaration for the project at a public hearing. In that document, it was concluded that the

project would not have any significant effect on the environment. Board staff has reviewed the draft and final versions of the Negative Declaration and found that it fully complies with CEQA. Staff has determined that the document is appropriate for Board use.

Requirements for Concurrence in the Issuance of the Solid Waste Facilities Permit:

1. The operator has submitted an application and Final Closure Plan to the Local Enforcement Agency (Ventura County Environmental Health Department).

2. The proposed Permit is consistent with the Ventura CoSWMP.

3. The proposed Permit is consistent with the State Minimum Standards.

The proposed Permit and Final Closure Plan have been reviewed by Board staff, who find their form and content acceptable.

BOARD OPTIONS:

OPTION #1

Take No Action: By taking no action the Board would relinquish its authority and no useful purpose would be served. If the Board does not act on a Permit within 40 days of receipt, the Permit is deemed to have been concurred in.

OPTION #2

Object to Revision of the Permit: This action is appropriate if any of the requirements for concurrence have not been met.

OPTION #3

Concur in the Revision of the Facilities Permit: This action is appropriate if the applicant and the LEA have met all the Board requirements for permit revision.

RECOMMENDATIONS:

Staff recommends option #3, that the Board adopt a Solid Waste Facilities Permit Decision #88-6, concurring in the revision of Solid Waste Facilities Permit #56-AA-006.

Attachments:

1. Proposed revised Facilities Permit #56-AA-006
2. Solid Waste Facilities Permit Decision #88-6

CALIFORNIA WASTE MANAGEMENT BOARD

Solid Waste Facilities Permit Decision #88-6

January 13-14, 1988

WHEREAS, the Ventura Regional Sanitation District has applied for revision of the Facilities Permit for closure of the Ozena Modified Sanitary Landfill and has prepared a Final Closure PLan; and

WHEREAS, the Local Enforcement Agency has submitted an appropriate proposed Solid Waste Facilities Permit for the closure of the Ozena Modified Sanitary Landfill to this Board for concurrence in, or objection to its issuance; and

WHEREAS, the Board finds that the Ventura Regional Sanitation District certified a Negative Declaration which fully complies with California Environmental Quality Act and the Board concurs in that determination; and

WHEREAS, The Board finds the proposed permit is consistent with the Ventura County Solid Waste Management Plan, the State Minimum Standards for Solid Waste Disposal, and the Final Closure Plan.

NOW, THEREFORE, BE IT RESOLVED that the California Waste Management Board concurs in the revision of Solid Waste Facilities Permit #56-AA-006.

CERTIFICATION

The undersigned Chief Executive Officer of the California Waste Management Board does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the California Waste Management Board held on January 13-14, 1988.

Dated:

George T. Eowan
Chief Executive Officer

OPERATING PERMIT FOR FACILITIES RECEIVING SOLID WASTE	TYPE OF FACILITY	FACILITY/PERMIT NUMBER
	Sanitary Landfill	56-AA-006

NAME AND STREET ADDRESS OF FACILITY	NAME AND MAILING ADDRESS OF OPERATOR
Ozena Modified Sanitary landfill Ozena - Lockwood Valley Road Ventura County, CA.	Ventura Regional Sanitation District 1001 Partridge Drive, Suite 150 Ventura, CA 93003

PERMITTING ENFORCEMENT AGENCY	CITY/COUNTY
Environmental Health Department Local Enforcement Agency	Ventura County

PERMIT

This permit is granted solely to the operator named above, and is not transferrable.

Upon a change of operator, this permit is subject to revocation.

Upon a significant change in design or operation from that described by the Plan of Operation or the Report of Station or Disposal Site Information, this permit is subject to revocation, suspension, or modification.

This permit does not authorize the operation of any facility contrary to the State Minimum Standards for Solid Waste Handling and Disposal.

This permit cannot be considered as permission to violate existing laws, ordinances, regulations, or statutes of other government agencies.

The attached permit findings, conditions, prohibitions, and requirements are by this reference incorporated herein and made a part of this permit.

APPROVED:	AGENCY ADDRESS
APPROVING OFFICER Donald W. Koepp, Director NAME/TITLE	Environmental Health Department Ventura County - Resource Management Agency 800 S. Victoria Ave. Ventura, CA 93009
SEAL	AGENCY USE/COMMENTS
	PERMIT RECEIVED BY CWMB: DEC 11 1987 / CWMB CONCURRANCE DATE
	PERMIT REVIEW DUE / PERMIT ISSUED DATE

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SWFP #56-AA-006
OZENA LANDFILL

FINDINGS

1. This facility is a closed Class III (CAC, Title 23, Subchapter 15 designation) non-hazardous, solid waste disposal facility consisting of approximately 10.0 acres, which is referred to as the site or facility hereinafter. The facility is identified in the April 1985 Ventura County Solid Waste Management Plan (CoSWMP). Waste Discharge Requirements (WDR's) were issued on December 4, 1987, by the California Regional Water Quality Control Board, Central Coast Region. The site operator is also the site owner. This permit allows the closure of the site.

2. Closure design and operation of the facility are as specified by the Closure Plan - Ozena Modified Sanitary Landfill submitted to the Ventura County Environmental Health Department, as Local Enforcement Agency (LEA), and dated September 1987.

3. Land located to the north, east, and west of the facility is unused open space. The southern border of the facility property is the Cuyama River.

4. This facility's closure is exempt from Section 66784.2 of the Government Code requiring compliance with the State Minimum Standards in establishing solid waste disposal sites because this permit does not expand or establish a site.

5. This site is exempt from Section 66784 of the Government Code requiring conformance to Ventura County Solid Waste Management Plan because this permit does not expand or establish a site.

6. This site is exempt from Section 66796.41 of the Government Code requiring consistency with the city's or county's general plan because this permit does not expand or establish a site.

7. This site is exempt from issuance of a Land Use Permit (CUP) as required in Section 66796.32(b) of the Government Code because this permit does not expand or establish a site.

8. Closure of the facility is in compliance with the California Environmental Quality Act (CEQA). A Negative Declaration was certified by the Ventura Regional Sanitation District Board of Directors at a public hearing conducted in June 18, 1987.

9. The following documents condition closure of this facility and, by reference, are adopted and made a part of this permit:

   a. Closure Plan - Ozena Modified Sanitary Landfill, dated September 1987, prepared by the Ventura Regional Sanitation District.

   b. California Regional Water Quality Control Board, Central Coast Region Order #87-154 or future revisions thereof.

CONDITIONS

1. Requirements

   a. This facility shall comply with the State Minimum Standards for solid waste handling and disposal as provided in California Administrative Code Title 14, Chapter 3.

   b. This facility shall comply with all federal, state and local requirements and enactments.

   c. Additional information concerning design, operation and closure of this facility not provided in the Closure Plan shall be provided upon request of the LEA.

2. Prohibitions

   a. This is a closed facility. The acceptance of any waste is prohibited.

3. Specifications

   a. No significant changes in the design, operation or closure as described in the Findings section are allowed. Significant changes in the design, operation or closure as determined by the LEA, may require revision of this permit by the owner/operator.

   b. Design, operation, and closure shall comply with prevailing Central Coast Regional Water Quality Control Board Waste Discharge Requirements.

   c. The owner/operator shall maintain a current log of special occurrences such as earthquakes, fires, accidents, unusual sudden settlement, injury, property damage, and natural disasters and shall furnish to the LEA upon request.

   d. The owner/operator shall be responsible for mitigation of adverse effects to the environment from leachate and any hazard or nuisance caused by landfill gas migration which may occur during the life of the permit.

e. The owner/operator shall comply with all leachate and groundwater monitoring reporting, and mitigation requirements specified by Central Coast Regional Water Quality Control Board. The owner shall provide the LEA with any pertinent correspondence and documentation in regard to groundwater quality. If leachate mitigation is necessary for groundwater protection, a remedial plan shall be submitted to the LEA.

f. The owner/operator shall provide a final cover system for the site as described in Section 3 of the Closure Plan. In the event that the specified permeability of final cover is not attainable and a waiver is sought from the Central Coast Regional Water Quality Control Board, the owner shall provide the LEA with any pertinent correspondence and documentation.

g. If determined to be necessary by the LEA, the owner/operator shall provide a Site Drainage Plan that describes: maintenance of the final cover system; flood and erosion control structures; drainage control structures; repair of areas of settlement; and vegetation.

h. Monitoring and reporting of landfill gas shall be as described in Section 5 of the Closure Plan. Should the LEA determine that a hazard or nuisance may be created by off-site migration of landfill gas, additional monitoring or controls may be required.

i. The owner/operator shall file a detailed description of the site including a map with the County Recorder and with the local agency that maintains the County Solid Waste Management Plan.

j. The owner/operator shall not conduct any excavation of the landfill without the express written approval of the LEA.

k. The owner/operator shall keep the LEA informed of all activities associated with this landfill.

l. The owner/operator shall file an annual report with the LEA. This report shall be submitted annually commencing on July 1, 1989. The report shall contain:

1. Summary of landfill gas monitoring data.
2. Summary of groundwater monitoring data.
3. Report of monitoring equipment maintenance.
4. Report of owner/operator site inspections.
5. List of special occurrences and actions taken by permittee.
6. Assessment of final cover system and drainage/erosion control structures.
7. List of citizen complaints received.

4. Provisions

a. This permit is subject to review by the local enforcement agency, and may be suspended, revoked, or modified for sufficient cause.

5. Self-Monitoring Program

The following items shall be monitored and records shall be kept by owner/operator of this facility or his agent.

a. Landfill gas generation/migration and emission.

b. Groundwater quality.

c. Repair or replacement of gas or water monitoring wells, pumps, caps, etc.

d. Citizen complaints.

e. A log of special occurrences to include fires, earthquakes, unusual sudden settlement, injury and property damage accidents, flooding, etc.

f. Records of owner/operator inspection of the facility.

h. Condition of the cover.

CALIFORNIA WASTE MANAGEMENT BOARD

Agenda Item # 7

January 13-14, 1988

Item:

Consideration of Removal of the City of Alameda Landfill (closed), Alameda County, from the USEPA RCRA Open Dump List.

Key Issues:

- Added to Open Dump List September, 1980, for violations of disease (cover), and safety/access.
- Reinspection on November 19, 1987, confirms site compliance.
- Staff recommends removal of the site from the Open Dump List.

Site Information:

Name:	City of Alameda Disposal Site
SWIS #:	01-AA-0012
Facility Type:	Class II-2 Landfill (old classification)
Operational Status:	Closed in 1981
Location:	North side of Doolittle Drive Alameda, CA
Setting:	To the north and east is San Leandro Bay, to the south is the City Golf Course and the Oakland International Airport, to the west is open space.
In Place Tonnage:	Approximately 2 million tons
Commencement Date:	1952
Permitted Acreage:	35 acres
Facility Owner:	City of Alameda
Facility Operator:	Alameda City Disposal
Local Enforcement Agency:	Alameda County Environmental Health, Office of Solid Waste Management

Background:

The City of Alameda Landfill was operated by Alameda City Disposal under direction of the City Public Works Department. Municipal solid wastes generated within the City and surrounding areas were disposed of at the site between the years of 1952 and 1981. These wastes are now hauled to Davis Street Transfer Station for disposal at Altamont Landfill.

Monitoring/Compliance Actions:

During the period when the Board was conducting the inventory of landfills pursuant to RCRA Subtitle D criteria, staff conducted two inspections at the City of Alameda Landfill. These inspections were conducted on December 27, 1979, and August 21, 1980. The facility was found in violation with the following RCRA criteria:

Disease (cover)
Safety/Access (fencing)

Consequently, the Board added the site to the U.S. Environmental Protection Agency (USEPA) RCRA Open Dump List on September 29, 1980. Shortly after the site was added to the List it closed in early 1981.

The Local Enforcement Agency (LEA) has been inspecting the site and pursuing proper closure with the City of Alameda. However, the City experienced a general fund deficit for several years. Over the last few years, a closure plan was filed with the LEA, Board staff, and the Regional Water Quality Control Board. The City encumbered $1.1 million to perform required work to properly close the site. After completion of the work, the LEA informed Board staff that the site was in compliance with RCRA criteria and was ready to be reinspected by Board staff.

On November 19, 1987, Board staff reinspected the site in the company of the LEA and City of Alameda staff. During this inspection, the site was found in compliance, as it was apparent that the following corrections have been made:

- A new six-foot cyclone fence has been installed with a gate that is kept locked.
- Four feet of final cover has been applied and hydroseeded.
- Surface drainage culverts have been installed.

- Leachate control facilities have been constructed.
- Additional groundwater monitoring wells have been constructed and are being monitored, as required, quarterly.
- The city is currently in discussions with the Bay Area Air Quality Management District regarding landfill gas control/recovery requirements of the district.

Conclusions:

Monitoring activities at the City of Alameda Landfill show that the operator has corrected all outstanding violations.

Board Options:

OPTION #1

The Board directs the Chief Executive Officer to request that USEPA remove the City of Alameda Landfill from the RCRA Open Dump List, as it is in compliance with RCRA Subtitle D criteria.

OPTION #2

The Board takes no action.

Recommendation:

Based on the conclusions made in this report, and the verification by Board staff that the site is in compliance, staff recommends that the Board adopt Resolution 88-7 removing the City of Alameda Landfill from the USEPA RCRA Open Dump List.

CALIFORNIA WASTE MANAGEMENT BOARD

RESOLUTION 88-7

Removal of City of Alameda Landfill (closed), Alameda County From the USEPA RCRA Open Dump List

WHEREAS, on December 27, 1979, and August 21, 1980, the City of Alameda Landfill was inspected by California Waste Management Board staff, and it did not comply with the RCRA disease and safety/access criteria; and

WHEREAS, on September 29, 1980, the Board adopted Resolution 80-108 placing the City of Alameda Landfill on the USEPA RCRA Open Dump List; and

WHEREAS, in October, 1987, the Local Enforcement Agency (LEA) notified Board staff that fencing and final cover had been installed at the site, and the site complies with the RCRA criteria; and

WHEREAS, on November 19, 1987, Board staff reinspected the site and verified its compliance with the RCRA criteria;

NOW, THEREFORE, BE IT RESOLVED, that the Board's Chief Executive Officer is directed to request removal of the City of Alameda Landfill from the USEPA RCRA Open Dump List.

CERTIFICATION

The undersigned Chief Executive Officer of the California Waste Management Board does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the California Waste Management Board held on January 13-14, 1988.

Dated:

George T. Eowan
Chief Executive Officer

CALIFORNIA WASTE MANAGEMENT BOARD

Agenda Item # 8

January 13-14, 1988

Item:

Report to the Board from the Enforcement Advisory Council.

Discussion:

Two Enforcement Advisory Council meetings have been held since the Council Chairman's last report. During the meeting held on September 30 and October 1, 1987, in the California Waste Management Board's hearing room, the following resolutions were passed:

- Approve the minutes of the June EAC meeting.
- Adopt the Mission/Purpose statement prepared by Council members. The statement is presented below:

  > To achieve a coordinated, consistent statewide enforcement program by ongoing communication among all local enforcement agencies and the California Waste Management Board (CWMB).
  >
  > To assure that the local enforcement interests and viewpoints regarding legislation, policies, programs and training needs are considered at the state level.

- To continue to support the concept of the Guidelines for the Enforcement of the State Minimum Standards.

Also discussed at the meeting were the following items:

- There appears to be better communication between the local enforcement agencies and Board staff on Presley inspections. The EAC was impressed by Bernie Vlach's ideas on relations between the LEAs and Board staff regarding these inspections.
- The EAC continues to support training of the LEAs. The EAC would encourage a workshop to be set up between the Air Resources Board, the State Water Resources Control Board and the Waste Management Board to discuss the status of the Calderon SWAT program.

- The EAC understands that there is proposed cleanup language to AB 2448. The council feels that the $500.00 fee in existing law for permitting is not sufficient for most applications. The council recommends that language be proposed similar to existing law in the Health and Safety Code, which allows for full cost recovery for any service rendered for the permit process.

- The CWMB has several contracts for studies in areas such as Household Hazardous Waste and gas migration. It would be beneficial if LEAs were notified prior to a contractor visiting a solid waste facility in its jurisdiction. Perhaps, this notification could be written into the contracts.

The other meeting was held on December 16-17, 1987. At the time of this writing, December 16-17 has not yet passed, so staff is unable to brief the Board in writing regarding that meeting. An oral presentation will be provided at the January Board meeting.

Recommendation:

This item is for information only.

CALIFORNIA WASTE MANAGEMENT BOARD

Agenda Item # 9

January 13-14, 1988

Item:

Consideration of the Board's Enforcement Guidelines

Key Issues:

- The authority and regulations for enforcement of the State Minimum Standards are not summarized in any one location and require clarification.
- Enforcement agencies should be provided guidance on enforcement.
- Guidance on enforcement should be consistent statewide.

Background:

Enforcement of State Minimum Standards for solid waste has received increased attention by enforcement agencies as a means to achieving greater compliance at facilities and sites which are regulated by these laws. Many of these agencies employ enforcement remedies authorized by local ordinance in addition to the remedies authorized under the Government Code and the California Administrative Code.

Staff has reviewed the applicable standards for solid waste facilities and has drafted a guidance document which identifies specific enforcement responses for various levels of violation documented at a facility. This document adheres to the authority granted to the California Waste Management Board under the Government Code and the California Administrative Code. At the same time, this document outlines what an inspection should consist of and what type of evidence is necessary to document a violation before an enforcement response can be prepared.

This document will serve as a guide for local enforcement agencies and Board staff on the appropriate enforcement response for specific conditions observed at a solid waste facility. This document will be utilized by Board staff to train local enforcement agencies in determining the type of enforcement response to pursue based upon the severity of the violation and in the preparation of that response.

Consideration of the Enforcement Guidelines was scheduled for the Board's December, 1987, meeting. At that meeting, the Board postponed approval of the guidelines until the January 13-14, 1988 meeting to allow additional review time. However, a few changes were recommended; these are shown in strikeout and underline form.

Related Issues:

Board staff discussed the concept of uniform guidelines for the enforcement of the State Minimum Standards on solid waste with the members of the Enforcement Advisory Council at their March meeting. Members of the council were very receptive to the development of this project and made this recommendation to the Board at its meeting of March 26 and 27, 1987, in Sacramento. At the April, 1987, meeting of the California Waste Management Board, this concept was discussed with the Board as an information item. The board approved of the concept and directed staff to develop the document with representatives of local enforcement agencies and to return before the Board for approval consideration. Board staff distributed a first draft of this document to all local enforcement agencies in May, 1987, for written comment and a discussion at the June meeting of the Enforcement Advisory Council. The comments were favorable, but requested revision in several areas. These areas included:

- Revision of inspection forms to allow for reporting of various types of enforcement responses.
- Timelines for submission of inspection forms.
- Clarification of inspection frequencies.
- Specific violation groupings.

Board staff worked with members to revise these areas. A revised document, based upon written comments received and the discussion at the June Enforcement Advisory Council meeting, was distributed to all LEAs in August, 1987. This revision was again discussed at the Enforcement Advisory Council meeting in September, 1987, and specific changes were made.

The Enforcement Advisory Council supports the document as currently revised. The document will be used as a guide for enforcement by local enforcement agencies and Board staff where appropriate.

Recommendation:

Staff recommends that the Board adopt Resolution 88-02 to approve the Guidelines for Enforcement of the State Minimum Standards for Solid Waste Handling and Disposal, as presented in this agenda item, for use by local enforcement agencies and Board staff where appropriate.

Attachments:

1. Resolution 88-02
2. Guidelines for Enforcement of State Minimum Standards for Solid Waste Handling and Disposal

CALIFORNIA WASTE MANAGEMENT BOARD

Resolution 88-02

January 13-14, 1988

WHEREAS, on April 22, 1987, the California Waste Management Board approved of the concept for a document containing guidelines for enforcement of State Minimum Standards; and

WHEREAS, on July 16, 1987, the Chairman of the Enforcement Advisory Council expressed support for such guidelines at the meeting of the California Waste Management Board; and

WHEREAS, staff has worked with local enforcement agency representatives and members of the Enforcement Advisory Council to improve the content of the document; and

WHEREAS, in its report to the California Waste Management Board at the November 5 and 6, 1987, board meeting, the Enforcement Advisory Council continues to support the document entitled, "Guidelines For The Enforcement Of The State Minimum Standards For Solid Waste Handling And Disposal";

NOW, THEREFORE, BE IT RESOLVED that the document entitled, "Guidelines For The Enforcement Of The State Minimum Standards For Solid Waste Handling And Disposal" be approved for distribution to all local enforcement agencies for their use.

CERTIFICATION

The undersigned Chief Executive Officer of the California Waste Management Board does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the California Waste Management Board held on January 13-14, 1988.

Dated:

George T. Eowan
Chief Executive Officer

GUIDELINES FOR ENFORCEMENT OF THE STATE MINIMUM STANDARDS FOR SOLID WASTE HANDLING AND DISPOSAL

DRAFT
November, 1987

Prepared by:

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Enforcement Division
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GUIDELINES FOR ENFORCEMENT OF THE STATE MINIMUM STANDARDS FOR SOLID WASTE HANDLING AND DISPOSAL

I. PURPOSE

The purpose of this document is to provide Local Enforcement Agencies (LEA) guidance in interpreting and applying the regulations governing the operation evaluation and enforcement of solid waste facilities under the authority of the Government Code, (hereinafter Govt. Code), Section 66701 et. seq., and the Title 14 of the California Administrative Code (hereinafter 14 CAC), Section 17020 et. seq. These regulations are currently enforced through the LEA's which are designated by local government and approved by the California Waste Management Board (Board). This document is intended to enhance a consistent approach towards enforcement statewide. Additionally, this document will guide the Board staff when it must act as the LEA.

II. GENERAL

The various regulations governing solid waste facilities have been grouped into three classifications which differentiate between administrative requirements, operational standards, and those standards which may also impact the landfill after it ceases to accept waste. Within each classification, violations are broken down into three levels which reflect the magnitude of the threat to the public health and the environment or the magnitude of disruption of the waste management operations caused by the violation.

Guidelines for appropriate enforcement response to various violations have been developed to assure consistent enforcement practices throughout the State. An LEA may determine that deviation from the guidelines is appropriate in a specific instance or that application of a particular guideline is not allowed under local regulation. In such an instance, the LEA should make a reasonable effort to apply the intent of the guidelines.

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ENFORCEMENT PROGRAM

III. ENFORCEMENT RESPONSIBILITIES

A. Local and State

The primary enforcement authority rests with the LEA. The LEA is responsible for pursuing the appropriate response for violation of any state minimum standard, permit condition, or where applicable, violation of a local ordinance which regulates solid waste facilities in addition to the state regulations.

The LEA and the Board have available several options for enforcement response of the state and local requirements. These options are presented here in escalating order of severity:

Warning Notice (WN)[1] : At the time of an inspection the LEA may issue a warning notice on the inspection form which identifies the violation(s) and which describes those actions which must be taken to correct the conditions which resulted in the violation(s). This notice must include a deadline for completion of these actions. It is recommended that this form be signed by the facility owner or operator as evidence of receipt. A copy of the inspection form must be left with the owner or operator.

Notice of Violation (NOV)[2] : A Notice of Violation is a written notice which contains a summary of violations documented during an inspection. This notice requires a written response from the owner or operator to be submitted within an established time frame. The owner or operator's response should summarize the efforts which have been taken to mitigate the reported violations.

Request For Listing as a Non-Complying Facility (NCFL): If a facility has chronically operated in violation of the State Minimum Standards, the LEA may request that the Board add the facility to the State List of Non-Complying Facilities. All remedies available to the LEA (except permit revocation) should have been attempted by the LEA,

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[1] A Warning Notice and Notice of Violation are enforcement responses, requiring no legal assistance, which are utilized when the violation(s) does not warrant a formal legal response authorized under both the Government Code and the California Administrative Code.

[2] See #1 above.

without success, prior to seeking this action. (Govt. Code 66796.38).

Notice and Order (N&O): The LEA may issue a Notice and Order to require a facility owner or operator to cease and desist from any illegal activity and/or to cleanup and abate any conditions resulting from that activity. (Govt. Code 66796.50 and 14 CAC 18304).

Civil Penalties (CP): The LEA or the Board may petition the court to assess monetary penalties for various violations. The LEA or the Board should have, at a minimum, exhausted the appropriate remedies listed above, for correction of the violation prior to initiation of this response. (Govt. Code 66796.51 and 14 CAC 18305, 18308).

Injunctive Relief (INJ): Relief sought by the LEA or Board which requests the court to order a facility to provide relief from certain activities resulting in a violation of law. At a minimum, the appropriate administrative remedies listed above should have been attempted, without success, prior to seeking this type of relief. (Govt. Code 66796.691, 66796.692 and 14 CAC 18305).

Permit Suspension or Revocation (PR): The LEA may take action to suspend or rescind the operating permit for a facility after a hearing. This may be necessary where repeated violations have demonstrated the facility's failure to operate in accordance with the established permit conditions or regulations and where all other enforcement remedies have failed. (Govt. Code 66796.56 and 14 CAC 18307).

The LEA also has available any other sanctions, civil or criminal, which are authorized under local ordinances.

As a final option, the county may refer the case to the Board for appropriate enforcement action when both the LEA and the Enforcement Division agree that state action is necessary to achieve a desired end-result. As an example, referral is appropriate when the facility owner or operator manages additional solid waste disposal sites located in several counties which have documented violations that would require a consolidated enforcement approach and both the LEA and the Enforcement Division agree on the referral.

B. State

The Board is responsible for the establishment of regulations and performance standards which govern the operation of solid waste facilities. The Board approves the designation of the LEA and monitors the LEA to ensure appropriate implementation of the state requirements. The Board may require the LEA, as necessary, to investigate and report on any questions or matters involved in solid waste handling or disposal (Govt. Code, Section 66790(i)).

A particular site may be referred to the Board by the LEA for enforcement under the provisions of Section III.A. of this guidance document. The Board is then responsible for generating the enforcement response in accordance with this document. When seeking injunctive or monetary relief, however, the Board will refer the case to the State Attorney General's office. The Board may take enforcement action when it finds that the LEA has failed to take such action (14 CAC 18308).

Upon the request of the enforcement agency, or upon its own initiative, the Board may, after notification of the enforcement agency, enforce the provisions of Title 7.3 of the Government Code. In taking any action, the Board is vested, in addition to its other powers, with all the powers of the enforcement agency under Title 7.3 of the Government Code. (Govt. Code 66796.67(a))

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IV. TIME FRAMES FOR ACTION

A. Local

Guideline IV-1

Records of inspection (SWIS forms) should be completed and transmitted to the owner or operator of the facility and the Enforcement Division ~~as soon as possible~~ no later than 30 days after the date of the inspection. The filing of an enforcement action, as listed in Section III.A. above, by the LEA for violations noted in the inspection report should in most cases commence within 15 days of transmittal of the inspection report. Actions which are prepared solely by the LEA without legal representation should be issued within the 15 day time frame. Actions by the LEA which require the assistance of the legal representation should be drafted and ready for referral to the appropriate counsel within the 15 day time frame.

In the event that a violation is noted during the course of an inspection which presents an imminent or substantial threat to the surrounding public or the environment, enforcement response to abate the alleged unsafe condition should commence no later than 5 working days from discovery of the condition. While the appropriate administrative remedy may require a more lengthy time frame, initial response to restrain the alleged violation should commence within 5 working days, if not sooner.

Guideline IV-2

The LEA should establish appropriate time frames with its legal representative for the review of referrals and the filing of any enforcement action by that representative. Details of this arrangement should be described in the Enforcement Program (Govt. Code 66796.10(f)). The LEA should work with its legal representative to identify all items to be included in the case file prior to referral.

B. State

Guideline IV-3

Inspection reports should be completed and transmitted to the owner or operator of the facility and the LEA ~~as soon as possible~~ no later than 30 days after the date of the inspection.

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Guideline IV-4

Case files reviewed by the Board which do not require the assistance of the State Attorney General's office should be reviewed and an enforcement response should be prepared and issued within 15 days of receipt of the case file. Case files reviewed by the Board for enforcement which require the assistance of the Attorney General's staff should be reviewed by the Board's Enforcement Division staff and General Counsel. A draft enforcement response should be prepared within 15 days. The Board's General Counsel will forward the response to the Attorney General within 15 days of receipt of the draft response.

Guideline IV-5

The Enforcement Division, through the Board's General Counsel, should establish with the Attorney General's office time frames for the review and filing of actions by the Attorney General's staff.

V. COORDINATION WITH STATE AND LOCAL AGENCIES

A. Local

The LEA should become familiar with the regulations of other state and local agencies within its jurisdiction which have the authority to regulate the design, operation or closure of a solid waste facility. The LEA shall coordinate action relating to waste management with the appropriate local, state, and federal agencies based upon jurisdiction and shall request enforcement response by the appropriate agency when indicated (Govt. Code, Section 66796.10(b) & (c). The LEA shall consult with the local health agency concerning enforcement actions which involve health standards (Govt. Code, Section 66796.10(h)).

Guideline V-1

If an enforcement response is anticipated by both the LEA and an additional regulatory agency (local, state, or federal), the action by the LEA should be coordinated and not duplicative of any other action which may be filed in that county. To determine whether an action is duplicative, the LEA should review the proposed enforcement response of the local agency and identify the required corrective action. If the level of corrective action will remedy the violations of state minimum standards, permit conditions, or local ordinances observed by the LEA at the site, then the LEA should consider joining in on the proposed action rather than duplicating efforts. If the LEA determines that the action proposed by another agency does not remedy all of the violations at the site, then the LEA should note this in the case file and pursue an appropriate course of action.

Guideline V-2

When a case file is to be referred to the Enforcement Division for enforcement response based upon the criteria in Section III.A., above, the file should include a summary of county agencies currently involved in any enforcement aspects at the site.

B. State

Guideline V-3

When a case file is received by the Enforcement Division for enforcement based upon the criteria in Section III.A., the Enforcement Division should review the file for information concerning enforcement response taken by other local agencies. If other agencies are identified with a current enforcement interest in the site, the Enforcement Division should, through the efforts of the LEA, ensure that any State action taken in regard to that site will not unnecessarily duplicate the local efforts. If the Enforcement Division determines that the local action will not adequately address the problems at the site, the Enforcement Division should note this in the case file and pursue an appropriate enforcement response which will sufficiently address the identified deficiencies.

Guideline V-4

The Enforcement Division should become familiar with the policies and programs other state agencies which have authority to regulate the design, operation or closure of a solid waste facility. The Enforcement Division should consult with these agencies prior to taking action at a particular site to ensure that no unnecessary duplication of effort takes place. If the Enforcement Division determines that the level of action of another state agency is not sufficient to adequately address the deficiencies at the site, the Enforcement Division should note this in the case file and continue to pursue a proposed action which will sufficiently address these deficiencies. Examples of agencies which may regulate certain aspects of a solid waste facility are: State Department of Health Services, State Water Resources Control Board, Regional Water Quality Control Boards, and the Local Air Pollution Control Districts.

VI. INSPECTION FREQUENCY

A. Local Requirements

The local enforcement agency is required under Govt. Code, Section 66796.10(e) to develop, implement and maintain an inspection program. 14 CAC, Section 18303, requires that the LEA conduct investigations of all facilities where it has reason to believe that a violation exists and to periodically inspect permitted facilities to ensure compliance with all applicable laws and regulations.

There are no specified inspection frequencies mandated in the law; however, facilities utilizing performance standards in lieu of State minimum standards shall be inspected at least weekly by the LEA (14 CAC, Section 18313).

Guideline VI-1

The LEA inspection program should thoroughly evaluate 100% of the permitted solid waste facilities a minimum of four times per year. These inspections should occur between the months of July-September, October-December, January-March, and April-June.

Based upon geographical location, population density, and compliance history, the inspection frequency may be modified, but in no instance should it be reduced from a minimum of quarterly inspections. These inspections should represent the core of the inspection program. Inspections required either for performance standard verification or follow-up to determine if corrective action has been completed should be in addition to the inspection frequency specified in this guideline.

Guideline VI-2

Follow-up inspections to determine if a facility has corrected past violations should occur as soon as possible after the established deadline for correction has elapsed.

B. State Requirements

Govt. Code, Section 66796.38 requires the Board to inspect 50% of the permitted solid waste facilities which receive greater than 100 tons of solid waste per day and at least 25% of the other permitted solid waste facilities every 2 years. The Board is required to maintain an inventory of solid waste facilities which violate state minimum standards.

VII. INSPECTION DOCUMENTATION

State and Local

Guideline VII-1

Inspections performed pursuant to Guideline VI-1, under the authority of Govt. Code, Sections 66796.10, 66796.35, and 66796.38 should include, at a minimum, a review of all standards published under 14 CAC, Division 7, Chapters 3 and 4. The inspection should also include a review of the facility's permit conditions. Non-compliances with any applicable permit conditions should be noted in the inspection report. Where the State conducts inspections under Section VI.B. above , the inspection report should indicate that a pre-inspection review of the permit was completed prior to the site visit. Where the LEA conducts inspection/investigations, the review should include any local regulatory requirements that the local authorities have established in addition to those of the State.

The inspection report shall be on the form approved by the Board (14 CAC, Section 18303(b)). Inspections conducted by the LEA should be completed and forwarded to the Enforcement Division as specified under Guideline IV-1.

Guideline VII-2

All violations which may be made a part of an enforcement action should be documented. Where possible, photographs of the deficiencies should be included in the inspection report (i.e. no signs, salvaged material stored near landfill, animals feeding on refuse, burning of refuse, liquid in contact with solid waste). Where appropriate, obtain actual quantity estimates from the facility operator (i.e. adequate supply of cover material, working face slope ratio). If the estimates do not appear to be accurate, this should be noted in the inspection report. If estimates are made by the inspector, the method used to estimate the quantity involved should be included in the inspection report. A record review should include copies, where possible, of records where deficiencies are noted.

If observation is to be the only evidence of the violation, the inspector should describe the activity causing the condition of violation, including maps or diagrams, where appropriate. This description should include how the violation was discovered, what the inspector observed and why the observation should be considered a violation.

Where a judgement regarding adequacy of efforts to monitor, prevent, or control the effects of an operation is made, a complete discussion of the facts concluding inadequacy of those features should be included.

Guideline VII-3

Where there are statutes or regulations of another agency in effect, an alleged violation of those regulations observed by the LEA or the State should be referred to that agency. A partial listing include those regulations established by the State Water Resources Control Board, the Department of Health Services, the Department of Forestry, the California Occupational, Safety and Health Administration, the Local Air Pollution Control Districts, and the State Fire Marshal's office. In addition, sites may also be governed by the US Army Corp of Engineers, the Coastal Commission, and the EPA.

Guideline VII-4

The inspection report should contain documentation of all deficiencies noted during the inspection. Escalation of enforcement action based upon a second offense violation should only take place when the initial violation was documented.

VIII. REPORTING REQUIREMENTS

Govt. Code, Section 66796.10(g) requires the LEA to keep and maintain records of its inspections, enforcement, training, regulatory programs, and any other official actions. At the request of the Board, the LEA shall file with the Board, information that the Board deems necessary (Govt. Code, Section 66796.10(d)).

Govt. Code, Section 66796.21(b) requires the Board to periodically review the LEA and its implementation of the enforcement program.

Guideline VIII-1

The LEA should submit copies of its inspection forms to the Enforcement Division ~~as soon as possible~~ no later than 30 days after the date of the inspections. Inspection reports should be submitted on the form approved by the Board.

The LEA should also submit a summary of enforcement actions, to the Enforcement Division, on a quarterly basis, on the form provided in Appendix II of this document. This enforcement summary should be submitted by July 15, October 15, January 15, and April 15, covering the previous quarter's activities. Warnings, and Notices of Violation need not be included in this report. Cease and Desist and cleanup orders, and civil and criminal actions should be included in this summary. The date that the action was taken or filed should determine which quarterly summary it is to be included in. For all court actions, the date that the case is settled should be included as well.

The enforcement summary data will be tabulated by the Enforcement Division and used by the Enforcement Division in its review of the LEA (refer to Section XI of this policy).

Guideline VIII-2

The LEA should keep records of all permit reviews conducted pursuant to Govt. Code, Section 66796.10(g). The records should include a summary of what was reviewed (i.e. enforcement history, county plan, amendments to the regulations), findings of the review, and what permit action was taken, where applicable. This information need not be included in the quarterly enforcement summary.

IX. MINIMUM EXPECTED ENFORCEMENT RESPONSE

A. Local Authority

Govt. Code, Section 66796.50 through Section 66796.52 provides the LEA with the authority to pursue legal measures to mitigate any violation of minimum standards or permit conditions. This authority includes the ability to require a facility to cease and desist any unlawful operations, to cleanup any solid waste not disposed of in accordance with all applicable regulations, and to pursue civil action to recover fines associated with a particular violation. (civil penalties cannot exceed a maximum of $1000 per day per violation, Govt. Code, Section 66796.51.).

In addition, the LEA has available the ability to modify, suspend or revoke a permit, if a facility has violated any of the conditions of the permit or has provided misleading information which led to the development of the permit conditions and the granting of a permit to operate (Govt. Code, Section 66796.56 and 14 CAC, Section 18307).

This document establishes the Enforcement Division's expectations of what the minimum level of enforcement response for each type of violation should be. All guidelines under this section apply to both the LEA's and Board staff.

Guideline IX-1

An LEA may request the Board to place a facility on the State List of Non-Complying Facilities as an enforcement response, (see Section III, above). Such action may be in addition to any administrative, injunctive or monetary relief measures.

B. State Authority

The Government Code provides the authority for the Board to seek injunctive relief against a facility when the LEA has failed to do so (Govt. Code, Sections 66796.51(b), 66796.67 and 66796.692 and 14 CAC, Section 18308). This relief may include civil action to recover penalty costs. The maximum civil penalty allowed is $1000 per day per violation. When a violation constitutes an emergency and requires immediate action, the Board may take such administrative action if the LEA fails to issue such action (Govt. Code, Section 66796.52 and 14 CAC, Section 18308). Under these conditions, the Board may issue a cease and desist order or a cleanup order to abate a situation when the LEA fails to do so.

Guideline IX-2

It is the policy of the Board to refrain from exercising its independent jurisdiction to take enforcement actions unless necessary due to local agency inaction. (14 CAC 18303(e)(comment)).

Guideline IX-3

Records of violations of the State Minimum Standards documented under Section VI.B., above, are maintained and reviewed during the course of the inspection program conducted by the Board's Enforcement Division staff. If a facility reaches its third Board inspection with continuing violations or additional violations of the State minimum standards, the facility may receive a notice stating that if the violation(s) is not corrected within 90 days of receipt of the notice that the facility may be placed on the State List of Non-Complying Facilities (Inventory).

Guideline IX-4

Standards regulating the operation of solid waste facilities have been grouped into three classifications to reflect the various segments of a facility's operations:

Group I - these are standards which are either purely administrative or which deal with potential health, safety, or environmental impacts indirectly associated with facility operations. Examples include:

Records	Communication	Safety
Personnel	Sanitation	Security
Signs	Traffic	

Group II - these standards which deal with short-term potential health, safety, and environmental effects which are the direct consequence of waste management operations at the facility but which are no longer of concern when the facility has completed closure in accordance with all applicable regulations. ~~receiving wastes.~~ Examples include:

Unloading	Vector Control	Salvaging/Processing
Spreading/Compacting	Litter	Equipment
Slopes/Cuts	Dust	Operating Maintenance
Daily/Intermediate Cover	Noise	Nuisance
Lighting	Roads	Fire
Odor	Training	

Group III - these standards deal with long-term potential health, safety, and environmental effects which are a direct result of the facility operations or are applicable during or after closure of the facility. Examples include:

Closure	Drainage/Erosion	Final Slope
Leachate	Special Wastes	Final Site Face
Completed Site Maintenance		Gas
Grading		

For each of the above classifications, the extent of a given violation may be serious, major, or minor in nature:

Serious violations include those where there has been a documented violation which has resulted in an impact to the public health or the environment. Serious violations in any group include those which have had a documented effect on the day-to-day operations of the facility.

A **major violation** has the potential to effect the public health or the environment, but correction of this violation will prevent the potential impact. Major administrative violations have the potential to adversely affect the day-to-day operations of the facility.

A **minor violation** is one which will not directly impact the day-to-day operations of the facility or which will not directly increase the probability that the potential health, safety, or environmental effect will occur.

Table I, on page 20, provides guidance for determining the extent of a violation. This table is indexed by the group classification described above. Use Table I to determine the extent of each violation (minor, major, or serious).

Table II on page 27, should then be utilized to determine the minimum recommended level of action to be taken for the first, second and third offense. The matrix in Table III on page 28, will provide an appropriate penalty value when the decision to pursue a civil penalty has been made.

Guideline IX-5

Because of the frequency at which facilities are inspected by the LEA, it is possible that problems, subject to repeated cycles of violation/correction, may not be recognized as chronic. A violation may be considered a third offense if it has been documented as a chronic occurrence (a minimum of three times, but this does not require that the violations occur during three consecutive inspections).

Guideline IX-6

The enforcement response for violation of a permit condition should be determined based upon the group's analogous classification (whether it corresponds to a Group I, II, or III classification) and the extent of the violation (minor, major, or serious). Case files should contain a short summary on the development of an enforcement response beyond that of a Notice of Violation.

Guideline IX-7

When a decision to deviate from these guidelines is made, the case file should include a written justification describing why the document is not applicable in a particular circumstance.

Table I

GROUP I VIOLATIONS[3]

Minor	CAC Section
Records available but not complete.	17636, 17637, 17638
Signs not reasonably clear or at public access points.	17656, 17657
Sanitary facilities provided for but not in the immediate vicinity of the site.	17666
Security provided but not maintained.	17658
Communication provided but not readily available.	17668
Safety equipment available but not readily accessible.	17670
Major	
Records do not exist.	17636, 17637, 17638
Warning signs (i.e. unattended site) not present or inaccurate.	17668
Sanitary facilities not provided.	17666
Access roads not maintained.	17659
Communication facilities not available.	17668
Safety equipment not available.	17670
Security available but does not prevent vehicular access.	17658

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Serious

Records do not exist and daily operations affected.	17636, 17637, 17638
Records altered.	**17636, 17637, 17638**
Site attendant not present at the site and the site is not inspected regularly during operating hours.	17649
Site not supervised, causing violation of standards and operations.	**17648**
No security where required.	17658

Table I

GROUP II VIOLATIONS

Minor	CAC Section
Unloading not confined; no hazard to operations.	17676
Slope ratio on working face or fill does not meet horizontal to vertical ratios as approved by the LEA.	17678
No proof of adequate supply of cover material.	17681
Cover applied, but waste protruding.	17682
Salvage and/or volume reduction not confined to limit interference with other operations; no hazard observed.	17687, 17688
Unauthorized salvaging.	17687
Vector control program available but does not minimize population: no hazard observed.	17707
Control program (including fences and collection) for litter available but does not prevent the accumulation of material in non-controlled areas.	17711
Operations designed to control noise but periodically exceeds limits.	17712
No proof of availability of stand-by equipment.	17727

Major	
No evidence of training of personnel	17647
Unloading not confined; hazard to operations.	17676
Slope ratio on working face or fill does not meet horizontal to vertical ratios as approved by LEA; hazard to operations.	17678
Material at depth of greater than 2 ft prior to compaction.	17677

(Group II, cont'd.)

Stockpile of cover material interferes with operation and maintenance practices.	17680
Intermediate cover not of required thickness or placed within required time frame.	17684
No proof of cover supply, not sufficient material to cover active face daily.	17681
No notification of fire which cannot be extinguished within 24 hours when site utilizing performance standards	17683(c)
Salvage and/or volume reduction not confined to limit interference with operations; hazard to operations and/or health hazard.	17687, 17688
Scavenging of material allowed.	17686
Operator does not take adequate steps to control fire.	17703
Vector control not adequate; hazard to operations observed.	17707
No litter program; working hazard to site personnel and users.	17711
Verified odor and/or noise complaints registered with the local control agency for the date of the inspection.	17712, 17713
Deficiencies at site not repaired in a timely manner; hazard to operations.	17732
Equipment not maintained to perform the required work.	17726

Serious

Unloading not confined; hazard to site personnel and users.	17676
Slope ratio on working face or fill does not meet the horizontal to vertical ratio as approved by LEA; hazard to operations and users.	17678
No proof of adequate supply of cover material for day of inspection, active face not covered at the end of the day.	17681, 17682
Lack of cover resulting in violations of additional standards for solid waste handling and disposal.	17682, 17684
Waste in contact with surface or ground water, not approved by RWQCB.	17709
Active face exceeds allowable area for wet or dry season when site utilizing performance standards at end of operating day.	17683
Salvaging of non-salvageable items.	17692
Vector control not adequate; off-site migration observed.	17707
Litter allowed to migrate off-site when used to meet performance standards.	17683
Litter not collected, migrating off-site.	17711
Equipment does not meet needs of operation.	17726
Deficiencies at site not repaired; off-site hazard.	17732
Deposition of burning wastes	17741

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Table I

GROUP III VIOLATIONS

Minor	CAC Section
Gas monitoring frequency, where required, interrupted for less than 2 reporting periods.	17705
Site description (including closed sites and new sites) not recorded.	17735
Erosion repaired but drainage system not designed to prevent further occurrence.	17708
Major	
Leachate control system does not contain and appropriately dispose of material; no off-site migration.	17704
Required gas monitoring system not implemented as specified.	17705
Grading of fill surfaces does not promote lateral runoff and prevent ponding at site.	17710
Erosion not repaired; no exposed waste.	17708
Dead animals disposed of at unapproved site.	17744
Serious	
Final face slope ratio is greater than the horizontal to vertical ratio of 1.75:1.	17679
Final site face or slope does not contain additional design features required by the LEA.	17679, 17685
Refuse fed to animals for human consumption.	17702
Fire control not initiated or in accordance with local requirements.	17703

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(Group III cont'd.)

Gas monitoring system not implemented after notification by Board or LEA. Gas control system not implemented after after results show movement away from site.	17705
Receipt of burning wastes.	**17741**
Hazardous wastes at site not approved for storage, transfer or disposal.	17742
Liquid wastes at a site not approved for acceptance.	**17743**
Leachate collection system not containing and disposing of material; off-site migration.	17704
No leachate collection system, accumulation of liquids; off-site migration observed and/or documented.	**17704**
Erosion not controlled; exposed waste observed.	17708

Table II

MINIMUM EXPECTED OF ENFORCEMENT RESPONSE[3]

GROUP I

Extent	First Offense	Second Offense	Third Offense
Minor	WN	WN	NOV
Major	WN	NOV	NOV
Serious	WN	NOV	PM

GROUP II

Extent	First Offense	Second Offense	Third Offense
Minor	WN	NOV	N&O/PM
Major	WN	NOV	N&O
Serious	NOV	N&O	INJ

GROUP III

Extent	First Offense	Second Offense	Third Offense
Minor	WN	NOV	N&O
Major	NOV	N&O	INJ
Serious	N&O	INJ	PR

[3] WN- Warning Notice
N&O-Notice and Order
CP- Civil Penalties
NCFL-Non-Compliance Facility List
NOV-Notice of Violation
PM- Permit Modification
INJ-Injunctive Relief
PR- Permit Suspension or Revocation

Table III

ENFORCEMENT PENALTY MATRIX

	minor	major	serious
group I	$150	$300	$500
group II	$250	$500	$750
group III	$500	$750	$1000

The monetary values presented above are based upon the maximum penalty value established in the Government Code, Section 66796.51(a). The maximum penalty per violation, per day is $1000.

X. REVIEW OF FACILITIES BY THE LEA

The LEA shall review, and, if necessary, revise every solid waste facilities permit at least every five years (Govt. Code, Section 66796.33(d)).

Guideline X-1

The permit review conducted by the LEA should utilize the enforcement history summary at each site. The LEA should determine whether the facility has repeatedly violated any minimum standard or permit condition which may require a modification or revision to the facility's permit. Violations which have been the subject of previous enforcement action and which have not been corrected should be addressed during the permit review.

When reviewing the permit of a site which has been placed on the Inventory specified in Section VI.B. of this document, the LEA should request and utilize any information generated by the Enforcement Division which the LEA deems applicable.

XI. REVIEW OF ENFORCEMENT AGENCY

Govt. Code, Section 66796.21(b) requires the Board to periodically review the enforcement agency and its implementation of the enforcement program. If the Board determines that the LEA is not performing its duties as specified, the LEA shall be notified in writing of the documented deficiencies and proposed withdrawal of approval by the Board. If the LEA does not take the corrective action specified in the notice within 30 days (or more if so allowed by the Board), then the Board shall dedesignate the local enforcement agency. If no new proposal for designation of an alternate local agency to act as the local enforcement agency is made, then the Board shall assume the duties of the local enforcement agency.

If the Board becomes the enforcement agency, it may charge reasonable fees to the local governing body to recover operation costs (Govt. Code, Section 66796.15).

Guideline XI-1

The Board may withdraw its approval of the designation of the LEA when the LEA is not consistently performing its responsibilities under the enforcement program or Sections 66796.10 and 66796.39 of the Government Code. The requirements of these sections include that the LEA enforce the regulations pertaining to the minimum standards for solid waste handling and disposal; file with the Board, upon its request, information that the Board deems necessary; develop, implement, and maintain inspection, enforcement, and training programs; adopt an enforcement program; keep and maintain records of inspection, enforcement, training, and other regulatory programs; and develop compliance schedules for facilities that have been included in the inventory developed under Section 66796.38 of the Government Code.

If the Board concludes to withdraw its approval of designation from the LEA, the Board shall provide no less than 30 days notice of dedesignation. This notice shall also contain a description of the actions that the LEA must perform in order to retain its designation. If the LEA can provide proof that the required corrective action has been taken, the Board shall withdraw its proposal for dedesignation. Prior to the withdrawal of the proposed dedesignation, the Board may establish any such record keeping or reporting provisions which will ensure the continued adherence by the LEA to these guidelines.

DRAFT: 11/12/87

Guideline XI-2

Inspections conducted by the Enforcement Division under the authority of Govt. Code, Section 66796.38(b) may be used as an evaluation mechanism. If a given facility is inspected over three consecutive occasions with continuous violations noted, the Enforcement Division may review the LEA's performance (past inspection history, violation history of facility(s), enforcement response) and where sufficient deficiencies are noted, make a preliminary determination regarding the LEA's implementation of the enforcement program.

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DRAFT: 11/12/87

Appendix I

VIOLATION GROUPINGS

Group	Cite	Description
I	17636	weight/volume records
I	17637	subsurface records
I	17638 H	special occurrences log
I	17639	inspection of records
I	17646	availability of qualified personnel
I	17648	adequate supervision
I	17649 H	site attendant
I	17656	identification signs
I	17657	entry signs
I	17658	site security
I	17659	access roads
I	17666 H	sanitary facilities at site
I	17667 H	safe drinking water at site
I	17668	communication facilities
I	17670 H	personnel health and safety
I	17714	traffic control

DRAFT: 11/12/87

Appendix I

VIOLATION GROUPINGS

Group	Cite	Description
II	17647 H	training
II	17660	internal roads
II	17669	lighting
II	17676	confined unloading
II	17677 H	spreading and compacting
II	17678	slopes and cuts (active site)
II	17680	stockpiling
II	17681	availability of cover material
II	17682 H	cover (active site)
II	17683(a)	performance standards: vectors
II	17683(b)	performance standards: odor
II	17683(c)	performance standards: fire
II	17683(d)	performance standards: litter
II	17683(e)	performance standards: moisture infiltration
II	17684	intermediate cover
II	17686 H	scavenging prohibited
II	17687	salvaging permitted
II	17688	volume reduction and energy recovery
II	17689	processing area
II	17690	confined area for salvage storage
II	17691 H	storage of salvage
II	17692 H	non-salvageable items
II	17701	nuisance control

Appendix I

VIOLATION GROUPINGS

Group	Cite	Description
II	17702 H	animal feeding
II	17703	fire control
II	17706	dust control
II	17707 H	vectors and bird control
II	17709	contact with water
II	17710	grading of fill surfaces
II	17711	litter control
II	17712 H	noise control
II	17713 H	odor control
II	17715 H	ponded liquid
II	17726	site equipment
II	17727	standby equipment
II	17731	maintenance procedures
II	17732	operating site maintenance
II	17741	burning wastes
II	17744 H	dead animals

DRAFT: 11/12/87

Appendix I

VIOLATION GROUPINGS

Group	Cite	Description
III	17679	final site face
III	17685	final cover
III	17704	leachate control
III	17705	gas control
III	17708	drainage and erosion control
III	17734	completed site maintenance
III	17735	recording
III	17742 H	hazardous wastes
III	17743 H	liquid wastes

DRAFT: 11/12/87

Appendix II

LEA_____ Quarter_____

ENFORCEMENT RESPONSE
SUMMARY REPORT

FACILITY SWISS #	DATE OF INSPECTION	ENFORCEMENT RESPONSE	DATE OF ACTION
This should be the number assigned by the Board.	This is the date of the inspection during which the violations were documented.	The type of action, such as INJ, and CP.	The date that the enforcement response was issued.

CALIFORNIA WASTE MANAGEMENT BOARD

Agenda Item # 10

January 13-14, 1988

Item:

Status of Solid Waste disposal in Ventura County

Discussion:

The Ventura Regional Sanitation District operates two permitted, active landfills (Toland L.F. 125 TPD and Coastal L.F. 2000 TPD) and is attempting to reactivate the Bailard Landfill, which was recently removed from the Federal RCRA Open Dump Inventory. Additionally, a new site, the Weldon Canyon Landfill, is currently in the environmental review phase for permitting. Processing of this facility could take up to five years.

The California Regional Water Quality Control Board, Los Angeles Region, has heard a request by the district for a revision of the Bailard waste discharge requirements in order to reactivate the facility. However, the RWQCB is considering rescinding the current WDR on the basis that significant amounts of leachate is leaking from the site into the underlying groundwater. There has been much debate over the interpretation of the water monitoring data.

The district has determined that if the Board takes this action it will create serious economic and technical hardships to waste disposal operations within the county and threaten the environment and the public health and safety.

It was planned that the Bailard Landfill would be reactivated for five years and serve as the primary interim disposal site for the county's solid waste until the opening of the Weldon Canyon Landfill. Without Bailard, the county would be left without a viable disposal facility.

Toland Landfill is a small volume facility and is not set up or fully permitted to handle such a large increase in volume. Coastal Landfill, which is adjacent to Bailard, currently accepts 2000 tons per day, however, the site will reach its permitted capacity in early 1988. The Ventura Regional Sanitation District is attempting to get a six month operations extension.

Ventura Regional Sanitation District representatives will be present to give the Board a complete update on the status of waste disposal in Ventura County.

Recommendation:

Information only

CALIFORNIA WASTE MANAGEMENT BOARD

AGENDA ITEM # 11

JANUARY 13-14, 1988

ITEM:

Overview of the financing and current court actions related to the Lassen College Cogeneration Facility

KEY ISSUES:

- The College has filed for under Chapter 9 of Federal Bankruptcy Law which could lead to the default on Certificates of Participation worth $7 million.
- Inquiries from Certificate holders to members of the legislature have led to questions about the State's participation in the project.
- Meaningful State involvement on the part of the Board and other agencies occurred after the Certificates were sold and the project financed.

BACKGROUND:

The Board received a number of inquiries concerning the status of the filing of bankruptcy by the Lassen Community College District because of the failure of the Cogeneration Facility to operate and generate revenue. The prospect of a complete loss of the investment of $7 million by what seems to be a large number of certificate holders is of concern. A recent letter (Attachment A) sent by Donna Jevens, the Administrative Assistant to Assemblyman Thomas McClintock of the Thirty-sixth Assembly District inquiring about the College contained an editorial (Attachment B). The editorial, which was heard October 4 on Radio KSMA in Santa Maria, stated, "The Lassen Community College

Board of Trustees and the College's administration were encouraged by the Sate of California to construct a cogenerating plant at the Lassen Community College in Susanville, located in northern California." Because the Board has supported the College both through financial and technical assistance this particular statement along with the rest of the editorial as well as the number of inquiries prompted a review of the sequence of events that led to the current situation.

The following is a list of events leading to and including the State's involvement in the project.

Summer 1981	The project was identified as a disposal facility by Lassen county allowing waste to be taken to the planned project. During the planning phase Board staff was asked to provide technical assistance, however there is no evidence of any endorsement of the project at that time. In fact it is the recollection of the staff that there was concern over the possible lack of a sufficient waste stream. Also during this time, the project received assistance and endorsement from the Industry Education Council of California and a number of member companies, including the Natomas Company, Chevron Resources Company and the Atlantic Richfield Company. Coming at the start of federal policies to promote alternative energy sources, support for the project stemmed from the anticipated need for trained operators for alternative power generating facilities. The Cogeneration facility was to be a centerpiece for a program that was to include training for operators of hydro, wind, and solar facilities as well as biomass, waste and cogeneration.
Fall 1982	The project was financed in October of 1982; the Certificates were sold by noon of the first day they were available. The lease-purchase arrangement by which the project was financed was a unique means of taking advantage of tax-exempt financing and private ownership allowed under Federal tax law in place at that time.
Winter 1982-83	The project received a conditional permit to operate in December and requested assistance for the educational program and potential research efforts. The Board made a $570,000 grant to the college in January 1983. The grant was divided into two parts, one for $200,000 for education and training program and another for $370,000 went for equipment already financed. The College established a trust fund jointly administered by the College and the CWMB using $370,000 of the funds inteded to pay for equipment.

Spring 1983	Final design drawings and specifications were sent to the Board as required by the conditional permit and construction of the facility commenced.
Spring 1984	The scheduled completion date of the project was missed. Completion delayed until Fall 1984.
Summer 1984	Under the F.Y.84-85 budget act the California Energy Commission granted a little over $1.4 million to the College to conduct a five year demonstration and testing program which included the building of an onsite analytical laboratory.
Winter 1984-85	The construction of the facility was completed. Technical problems with the plant began to be apparent. Also the College had failed to negotiate a suitable energy contract and it became obvious that the waste and fuel supply in the immediate area was insufficient. The first rent payments were covered by the reserve fund putting the project into technical default. In February facility was shut down.
Spring 1985	The second rent payment came due, the project was still shut down, no revenue had been generated. The College was negotiating with the contractor, the design engineer and the equipment vendors and their respective insurance companies for damages. The College did not make the rent payment or any subsequent payments.
Spring 1986	The College filed a petition for "Chapter 9" protection in the federal Bankruptcy Court. The Board proposed that $14 million from the Petroleum Violation Escrow Account Funds to use the facility as a State Research Center for determining the potential environmental effects of waste-to-energy technology. The proposal included paying the debt service for the project during the time of its use. By this time the Energy Commission had suspended the use of funds from their grant to the project. CWMB funds continued to support the ongoing education program which was not dependent of the operation of the facility. Funds deposited in a trust fund set up under the terms of the CWMB contract with the College were partially used to test ash, to test treated ash and to determine if the technical problems of the facility could fixed. The proposal to use the facility was replaced by the $1 million City of Commerce Demonstration Project.

The court proceeding is going very slowly. A number of petitions have been filed and acted upon. It is not likely that the issue will be resolved any time soon. There have been some inquiries about the potential use of the facility or the availability of equipment from the facility. However no serious proposals have yet appeared. The trust fund still contains $230,000 no plans exist to spend those monies at this time.

In conclusion, the staff could find no evidence of the any state agency encouraging the development or financing of the project. State participation and support followed the sales of the certificates and the financing of the project. In addition the Official Statement providing information about the Certificates of Participation includes on the first page in bold print the following disclaimer: The obligation of the District to pay lease payments does not constitute an obligation of the District for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. Neither the Certificates nor the obligation of the District to make lease payments under the Lease-Purchase Agreement constitutes an indebtedness of the District, the State of California or any of its political subdivisions within the meaning of the Constitution of the State of California or otherwise. (Attachment C)

RECOMMENDATION:

For information only.

ATTACHMENTS:

1. Letter from Donna Jevens
2. Editorial from KSMA Radio
3. Official Statement

Attachment A

PLEASE REPLY TO:
CAPITOL OFFICE
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001
(916) 445-7402
DISTRICT OFFICE
350 N. Lantana Street
Suite 222
Camarillo, CA 93010
(805) 987-9797
ATSS 8-723-4530
Thousand Oaks: (805) 499-7076
Ventura: (805) 654-4530

RECEIVED
5 1987

Assembly
California Legislature

COMMITTEES:
Judiciary
Revenue & Taxation
Water, Parks & Wildlife
Ways & Means
SUBCOMMITTEES:
Judiciary Subcommittee on the Administration of Justice
Ways & Means Subcommittee No. 2 on Education
JOINT COMMITTEE:
Review of the Master Plan for Higher Education

THOMAS McCLINTOCK
ASSEMBLYMAN, THIRTY-SIXTH DISTRICT
VICE CHAIRMAN JUDICIARY COMMITTEE
ASSEMBLY REPUBLICAN WHIP

November 3, 1987

Mr. Sherman Roodzant, Chairman
California Waste Management Board
1020 9th Street, Suite 300
Sacramento, California 95814

Dear Mr. Roodzant:

Assemblyman Tom McClintock has reviewed the enclosed correspondence from Mr. Joseph P. Brown and asked me to write to you for an in depth explanation of the events that led to the filing of bankruptcy by Lassen Community College.

I am especially interested in your appraisal of the State's role in encouraging the Lassen Community College Board of Trustees and the College's administration to construct a cogenerating plant at the Lassen Community College in Susanville.

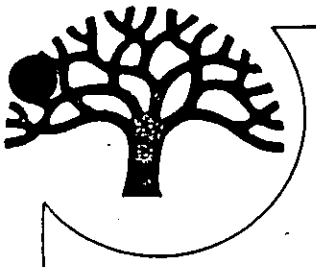
It appears there are many numbers of people that are being negatively affected by this situation and I am looking forward to your earliest response in order to determine what, if any, role the Assemblyman can play in finding a solution to this serious problem.

Sincerely,

Donna L. Jevens

DONNA L. JEVENS
Administrative Assistant

Enclosure



BROWN/REALTORS

OCT 30 1987

October 21, 1987

Assemblyman Thomas McClintock
P.O. Box 6336
Thousand Oaks, CA 91362

Dear Tom:

I invested $25,000 in Lassen Community College bonds. At the present time this is a total loss to me because the school district filed bankruptcy. It is my understanding that most of the money raised by these bonds is impounded but there is some risk that the bankruptcy court may release it; however, not to the bond holders.

I am enclosing material from Donn Wright who states the position of people less fortunate than I. I would appreciate it if you could agitate the proper people to find a satisfactory solution to this debacle.

Best regards,

Joseph P. Brown
President

JPB:mam
enclosure

100 E. Thousand Oaks Blvd., Suite 119 • Thousand Oaks, California 91360-5771 • (805) 495-2175 • (818) 889-0804

Attachment B
INVESTMENT POINTERS
Radio KSMA
Santa Maria, California
October 4, 1987
(in part)

ARE THE LASSEN COMMUNITY COLLEGE BONDS CALIFORNIA'S "WHOOPS"?

On Tuesday, September 29, 1987, a group of older conservative citizens met at Mid-State Bank's So. Broadway branch in Santa Maria.

The group were disturbed, but did not act disturbed. They were there to protest, but only in a dignified way. They were upset, for no matter where they turned, they received no understanding or cooperation.

The meeting was called by Donn Wright and other holders of the Lassen Community College District bonds. They cannot understand how such a series of events in the State of California could take place, depriving many of these elderly a major source of their present income.

What happened is almost unbelievable in this age of government regulations and restrictions.

The Lassen Community College Board of Trustees and the College's administration were encouraged by the State of California to construct a co-generating plant at the Lassen Community College in Susanville, located in northern California. The purpose of the plant was to provide facilities to instruct students in the timely and currently important subject of waste management. Over $7,000,000 was raised for this purpose with the knowledge and approval of the State of California by the issuance of bonds underwritten by America's largest brokerage firm, Merrill, Lynch, Pierce, Fenner and Smith, and trusteed by First Interstate Bank, one of the leading financial institutions of the southwest.

Approved by the State, underwritten by Merrill Lynch with First Interstate Bank as trustee, and being awarded a triple-B rating, which means it is a bank-eligible bond, many Californians bought these bonds anticipating

steady and assured income. Many of California's leading brokerage firms, many of them specialists in tax-free municipal bonds, distributed the Lassen Community College bonds throughout the state in good faith. In general, the purchasers of the Lassen bonds were not speculators, not eagerly searching for a fast buck, but ordinary good citizens who wanted a fair return on their investment over the long term.

Last Tuesday evening disappointed bond-holders met in a dignified, intelligent manner to explore with Mr. Wright what avenues to take to recover their funds. They want to find out why a community college, regulated and controlled by the State, and funded by California citizens, could be permitted to present this waste-management plant and a college-level course on this subject, without adequate insurance and proper safeguards.

The co-generating plant with a structural flaw and an architectural error stands by unused, and no one--not the governor, nor the legislators, nor the school's administrators--want to assume any responsibility for the errors of Lassen Community College or to take responsibility for their correction.

The Committee is searching for the right answer. The politicians, the underwriters, the trustee bank, the school officials have not shown any leadership in solving this expensive error.This is a black mark on the State of California's investment environment, on its creditability, on its future ability to raise funds inexpensively, and on our educational system's attempt to finance future projects.

The State of Washington had its WHOOP bonds; now the State of California has its Lassen Community College bonds--and thank God we have a group who wants to do something about it.

FOR FURTHER INFORMATION:
Donn Wright
Tel. (805) 922-4402

NEXT MEETING: Saturday, October 10, 1987, 9:30 a.m., at Howard Johnson Restaurant, 9400 Reseda Blvd., Northridge, CA

OFFICIAL STATEMENT

NEW ISSUE

RATING:
Standard & Poor's: BBB-(Prov.)
(See "Rating" herein)

In the opinion of Rutan & Tucker, Costa Mesa, California, Special Counsel, under existing laws, regulations, rulings and judicial decisions, the interest portion of payments made by the District under the Lease-Purchase Agreement received by the Certificate holders is exempt from present federal income taxation and from present California personal income taxes.

$7,150,000

CERTIFICATES OF PARTICIPATION
(COGENERATION AND TRAINING FACILITY PROJECT)

Evidencing a Proportionate Interest of the Holder Thereof in Lease-Purchase Payments to be Made by the

LASSEN COMMUNITY COLLEGE DISTRICT

(Lassen County, California)

As the Rental For Certain Property Pursuant to a Lease-Purchase Agreement with
BANKERS LEASING AND FINANCIAL CORPORATION

Dated: November 1, 1982 **Due: November 1, as shown below**

The Certificates are being issued to finance the acquisition and construction of a municipal waste-fired cogeneration plant to provide the space heating and electrical needs of the District, located in Susanville, County of Lassen, California.

Interest due with respect to the above identified Certificates is payable semiannually on May 1 and November 1 of each year, commencing May 1, 1983, at the principal corporate trust office of First Interstate Bank of California, San Francisco, California, the Trustee, or (in the case of coupon Certificates) at the principal corporate trust office of the Trustee in San Francisco or Los Angeles, California or Bankers Trust Company, New York, New York, Paying Agent. The Certificates are issuable as coupon certificates in the denomination of $5,000 and as fully registered certificates without coupons in the denomination of $5,000 or any integral multiple thereof. *The Certificates are subject to redemption prior to maturity as described herein.*

The District has covenanted under the Lease-Purchase Agreement to pay lease payments from any source of legally available funds sufficient to pay, when due, the annual principal and interest due with respect to the Certificates. The District has covenanted under the Lease-Purchase Agreement to take such action as may be necessary to include such lease payments in its annual budget, and to make the necessary annual appropriations therefor. **The obligation of the District to pay lease payments does not constitute an obligation of the District for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. Neither the Certificates nor the obligation of the District to make lease payments under the Lease-Purchase Agreement constitutes an indebtedness of the District, the State of California or any of its political subdivisions within the meaning of the Constitution of the State of California or otherwise.**

MATURITY SCHEDULE

Maturity (November 1)	Principal Amount	Interest Rate	Maturity (November 1)	Principal Amount	Interest Rate
1985	$140,000	7.50%	1995	$320,000	9.90%
1986	150,000	7.75	1996	350,000	10.00
1987	160,000	8.00	1997	385,000	10.00
1988	175,000	8.25	1998	420,000	10.25
1989	190,000	8.50	1999	465,000	10.25
1990	205,000	8.75	2000	515,000	10.50
1991	220,000	9.00	2001	565,000	10.50
1992	240,000	9.25	2002	625,000	10.75
1993	265,000	9.50	2003	695,000	10.75
1994	290,000	9.75	2004	775,000	10.75

(Price: 100%, plus accrued interest from November 1, 1982)

The Certificates are offered when, as and if issued and received by the Underwriter, subject to the approval as to their legality by Rutan & Tucker, Costa Mesa, California, Special Counsel, and certain other conditions. Certain legal matters will be passed upon for the Underwriter by Mudge Rose Guthrie & Alexander, New York, New York and for the District by Whitmore & Kay, Palo Alto, California. It is anticipated that the Certificates in definitive form will be available for delivery in Los Angeles, California, on or about November 4, 1982.

Merrill Lynch White Weld Capital Markets Group
Merrill Lynch, Pierce, Fenner & Smith Incorporated

Dated: October 13, 1982

CALIFORNIA WASTE MANAGEMENT BOARD

AGENDA ITEM # 12

JANUARY 13 - 14, 1988

ITEM:

Presentation of Staff Review of Los Angeles County Residential Source Separation Feasibility Report from the Los Angeles County Sanitation Districts.

KEY ISSUES:

- Information meant to provide a framework for individual cities in L.A. County to develop source separation programs.
- Recommendations based partially on survey of 600 Los Angeles County residents.
- Emphasis that each program be designed, developed, and targeted for a specific set of circumstances as dictated by community needs.
- Recommends that cities implement **mandatory** source separation (ordinance enacted) through "multi-service" recycling programs. Citizens would choose from curbside collection, buy-back recycling centers, and drop-off/donation recycling centers.

BACKGROUND:

Faced with a critical shortage of waste disposal capacity, Los Angeles County is reevaluating its waste disposal options. Due to public resistance, refuse-to-energy facilities will not be a very significant disposal option in the near future. Because L.A. County represents such a large segment of the California population, the recommendations of the L.A. County Sanitation Districts' report could have a far-reaching impact on waste management practices in Southern California. At the December Board meeting, the Board requested staff to review the L.A. County report to summarize the findings and recommendations.

STAFF REVIEW: (see next page)

Introduction

The Los Angeles County Residential Source Separation Feasibility Study was conducted by the Los Angeles County Sanitation Districts to show how source separation could be integrated into solid waste management for Los Angeles County. The study report was released in September 1987. At the request of the Board, staff has reviewed the report to identify the major findings and recommendations.

Contents of Report

The report investigates the following areas with respect to source separation in Los Angeles County:

1. Public opinion regarding recycling and source separation (determined through a survey conducted in 1981).
2. Factors affecting waste composition (generally and specific to a three-city region in L.A. County).
3. Secondary material markets.
4. Factors affecting public participation in source separation programs.
5. Obstacles to implementing curbside programs.
6. Source separation strategies and program options.
7. Economics of recycling and curbside collection.

The remainder of this review provides a chapter-by-chapter summary of the report.

Chapter I: Introduction

A. Background of Curbside Recycling
   1. Actions required by participating residents in curbside recycling program.
      a. Keep selected items from entering the wastestream.
      b. Provide short-term storage for the recyclables.
      c. Place the recyclables at the curb for collection.

B. Difficulties with implementing curbside recycling programs.
   1. Source separation requires basic change in habits.
   2. Requires modified or separate collection vehicles.
   3. Unstable secondary material markets.

C. Inventory of existing curbside recycling programs in L.A. County and remainder of California.

Chapter II: Summary of Source Separation Public Opinion Survey

A. 600 survey respondents were classified into four groups:
   1. Early Adopters (18%) - almost certain to participate.
   2. Early Majority (34%) - very likely to participate.
   3. Late Majority ((34%) - likely to participate only with outside influence.
   4. Non-Participants (23%) - not likely to participate voluntarily.

B. Key findings:
   1. People expect a recycling program to be **convenient.**
   2. People expect a recycling program to be cost-effective.

C. Key features of strategy to maximize participation:
   1. Design program & policies to have "staying power"; convenience may have to yield to economic realities.
   2. Focus communications on appropriate target group. For example, for Early Adopters, focus on environmental & community concerns; for Late Majority, focus on personal benefits such as potential garbage collection savings.
   3. Give individuals an incentive to try the program. Report recommends providing free household recycling containers to accomplish this purpose.
   4. Positively reinforce decision to participate in program. Report suggests feedback questionnaires or toll-free hot-line.

Chapter III: Materials Recovery Potential

A. The report states that estimating potential recoverable quantities of recyclables is important for:
   1. Projecting program economics.
   2. Projecting collection & processing requirements.
   3. Determining marketing strategies.
   4. Identifying other program benefits (e.g., collection & disposal cost savings, landfill diversion, energy savings, resource conservation, pollution reduction).

B. Key findings for projecting program economics (based on waste composition study for Glendale/Burbank/Pasadena):
   1. Waste Composition
      a. While readily recyclable materials (newspaper, glass, tin cans, aluminum cans) represent **20%** of **residential** wastestream, they only represent **8%** of **total** wastestream (58% of which is non-residential). See Figure 1, following page.

Wastestream Characterization

(From Burbank, Glendale, and Pasadena Study)

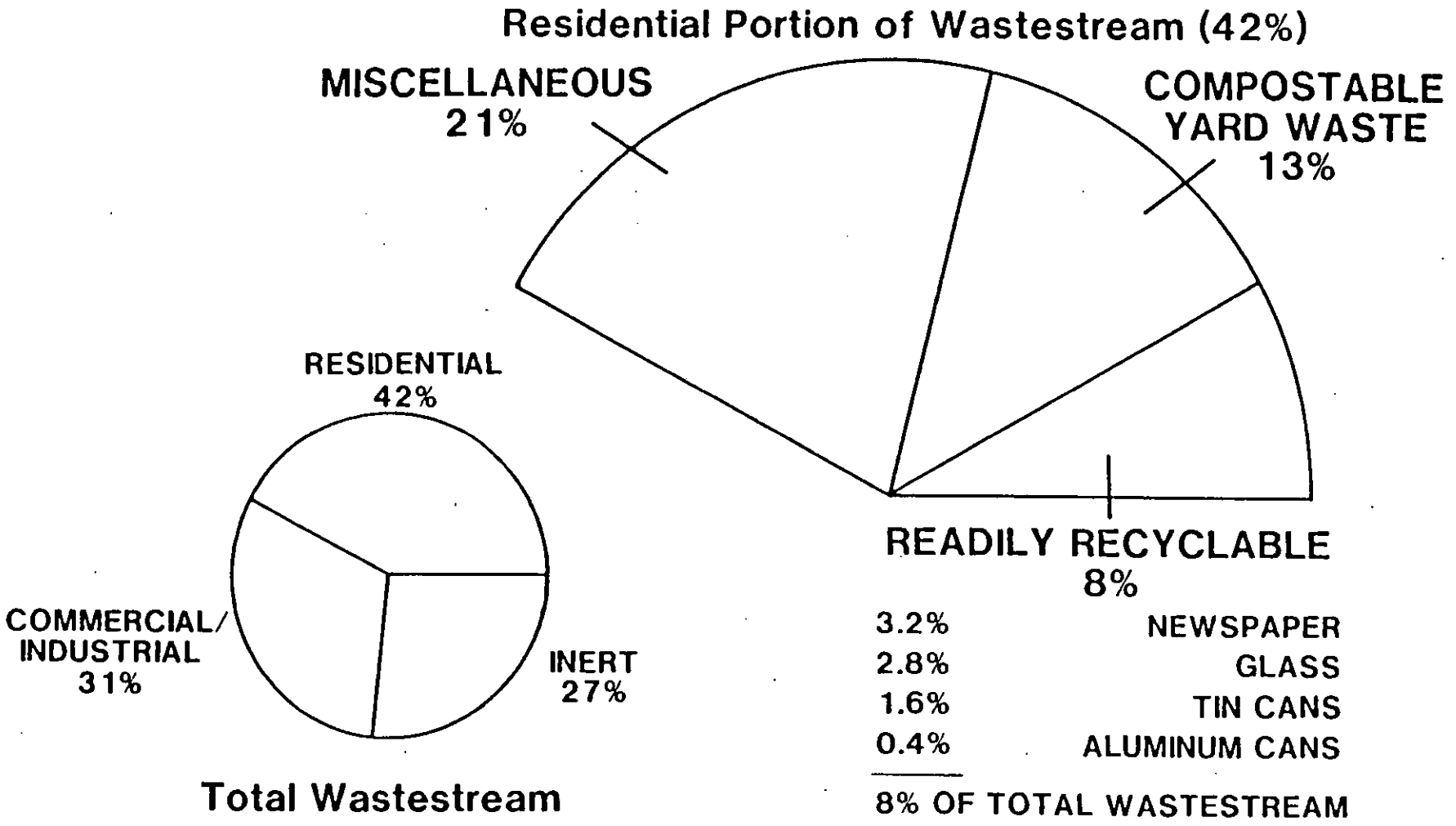


FIGURE 1

2. Participation Rates
   a. Participation in source separation programs is very site-specific.
   b. Participation rates are determined differently by different programs and are often unreliable.

3. Recovery Potential - the report uses the following terms and formulas to determine recovery potential:
   a. Separation Efficiency (%) = recyclables available (tons per year) - recyclables recovered (tons per year).
   b. Recovery Rate (%) = average separation efficiency (averaged for all materials) X projected participation rate (%).
   c. Recovery Potential (tons) = recovery rate (%) X recyclables available (tons). See Table 1, following page, for example.
   d. Comparison of overall recovery rates from resdidential wastestream for voluntary vs. mandatory curbside programs (assuming recyclable waste = 20% of residential wastestream).
      i. Voluntary Program (40% participation projected) = 2.5% recovery rate .
      ii. Mandatory Program (90% participation projected) = 8.8% recovery rate.

4. Competition for Recyclables - three basic factors that could limit materials recovery through source separation program:
   a. Existing recycling opportunities (non-curbside).
   b. Scavenging.
   c. Impacts of beverage container deposit legislation (California AB 2020). A wastestream composition study estimates that AB 2020 could reduce glass available to curbside programs by 20%, bi-metal cans by 10%, and aluminum cans by nearly 100%.

Chapter IV: Marketing of Recyclables

A. Primary goal of marketing program: sell collected recyclables at highest price available to offset program costs.

B. Markets generally fall under one of two classifications:
   1. Primary Users - use recycled material directly as feedstock to manufacture new products.
   2. Market Brokers - "pool" relatively small quantities of recyclables for resale in larger amounts to primary users.

TABLE 1

ESTIMATED RECOVERY POTENTIAL FOR A VOLUNTARY CURBSIDE COLLECTION PROGRAM FROM RESIDENTIAL WASTESTREAM OF 72,000 TONS PER YEAR (TPY) (40% PARTICIPATION)

RECYCLABLE	AVERAGE % IN WASTESTREAM	AMOUNT AVAILABLE	AVERAGE % SEPARATION EFFICIENCY*	% RECOVERY RATE **	AMOUNT RECOVERED (APPROXIMATE)
NEWSPAPER	8	5,760	52	21	1,200
GLASS	6	4,320	28	11	480
TIN CANS	5	3,600	7	3	100
ALUMINUM	1	720	8	3	20
TOTAL	20%	14,400 TPY	31%	12.5%	1,800 TPY

* Separation Efficiency is an Estimate Based on the Results of Existing Programs and Public Opinion Surveys and Assumes Other Typical Opportunities to Recycle for Cash Exist.

** Recovery Rate = Estimated Participation Rate x Estimated Separation Efficiency

C. New or smaller source separation programs can benefit by marketing through a broker for a number of reasons, although there are also disadvantages to this marketing approach.

D. Marketing contracts can protect both the buyer and seller of secondary materials from common market fluctuations.

Chapter V: Participation Factors

A. There are two primary expectations by participants in curbside programs (determined from public opinion survey):
   1. Convenience (reduce effort required to recycle)
   2. Cost-Effectiveness (revenues exceed costs).

B. Residents need to be educated that program cost-effectiveness does not necessarily mean the program will produce a net revenue (there are indirect benefits that also determine cost-effectiveness).

C. Factors Likely to **Promote** Participation:
   1. Minimium effort required to separate & store recyclables.
   2. Residents provided with a free, standardized container for recyclables.
   3. Recyclables collected weekly, same day as garbage collection.
   4. Option provided of using buy-back recycling center sponsored by program.
   5. Education program focussed on conserving landfill capacities, reducing litter, and keeping disposal costs low.

D. Factors Likely to **Impede** Participation:
   1. Increased garbage collection fees.
   2. Requirement that glass be clean, metal-free, and separated by color.
   3. Requirement that newspapers be bundled & tied.
   4. Missed and/or erroneous collections.
   5. Scavengers.

E. Incentives to Participate:
   1. Environmental / Conservation.
   2. Community Pride.
   3. Legal Requirements (mandatory recycling).
   4. Financial (direct & indirect).

Chapter VI: Potential Impediments to Program Success

A. Three basic impediments to program success:
   1. Negative public attitudes towards program - if program costs must be passed on to participants, program may be viewed as unsuccessful, deterring participation.
   2. Competition for materials:
      a. buy-back recycling centers
      b. scavengers
      c. California AB 2020 -
         i. will greatly increase number of recycling opportunities available
         ii. will decrease likelihood of beverage containers being set out for collection (due to increased value)
         iii. will increase scavenging - reduces revenue, discourages others from participating.
   3. Economics (discussed in Chapter VIII).

Chapter VII: Recycling Program Options and Strategies

A. Three basic types of programs a city can implement:
   1. Drop-off or Donation Recycling Center - generates low volumes due to lack of monetary compensation; materials often prepared poorly; can become "eyesores" without adequate maintenance.
   2. Buy-Back Recycling Center - residents receive monetary compensation, but must still deliver materials to facility; poor recovery for lower-value materials.
   3. Curbside Collection Program - provides greatest convenience, but requires separation, storage, and preparation of materials by participants.

B. Basic considerations to insure curbside program viability:
   1. Target materials to be recycled - only four materials have established markets at present time: aluminum cans, newspaper, glass bottles & jars, and tin cans. AB 2020 will help create a market for PET bottles.
   2. Determine level of processing and storage to be performed by participants. Provision of storage containers can be made either by:
      a. Participants - results in non-standardized containers.
      b. Program Operator - allows for use of standardized containers, with following benefits:
         i. identifies recyclables from garbage
         ii. "advertises" program, creates peer pressure to participate
         iii. provides easier storage between collections

iv. discourages scavenging.

3. Determine frequency of collection - weekly collection is often preferred by participants, but bi-weekly is generally more cost-effective.
4. Determine method of collection (vehicles & equipment).

C. Multi-Service (Integrated) Recycling Program - offers the public the option of using a drop-off center, buy-back center, or curbside collection. Multi-Service Programs have two major benefits:
   1. Afford greater potential for materials recovery, landfill diversion, and favorable program economics than any single recycling option.
   2. Allow cooperative use of equipment, manpower, public education, financing, and management, effectively reducing the cost of each function.

Chapter VIII: Financial Analysis of a Multi-Service Program

Note: The financial analysis in Chapter VIII was based on the same baseline figures and projections as those in Table 1 of this review. The analysis illustrates the costs, revenues, and benefits for all three types of recycling programs identified in Chapter VII.

A. Financial analysis of **voluntary** multi-service recycling program (given the 40% estimated participation rate, 12.5% **recyclable** recovery rate estimated for a curbside program in Table 1, and actual participation in buy-back and donation recycling centers in other California cities).

   1. The **overall** recovery rate from the **residential** wastestream for a multi-service program would be **8.6%** (versus 2.5% for curbside only), and the overall recovery rate from the **total** wastestream would be **3.4%** (versus 1% for curbside only). (See Table 2.)

   2. Table 3 presents a projected range of annual multi-service program revenues based on three different scrap value "scenarios."

   3. Table 4 compares the costs and revenues of the multi-service program under the three scrap value scenarios. As can be seen from this table, revenues from collected materials do not cover the costs of the program under any of the scrap value scenarios.

   4. The report estimates avoided costs achieved by the multi-service recycling program at $260,000, broken down as follows:

i. Disposal cost savings: $60,000/yr., assuming a low-range landfill tipping fee of $10/ton.

ii. Collection & hauling cost savings: $200,000/yr., based on the L.A. County-wide average of $60.00/ton for collection, transport, and disposal. Existing collection routes would have to be revised to achieve these savings.

5. When the avoided costs outlined above are included with program revenues, the revenues from both the "typical" and "high" scrap value scenarios exceed the costs of the multi-service program. (See Figure 2.)

B. Financial analysis of **mandatory** multi-service recycling program, given a **90%** estimated participation rate).

1. Total costs increase to approximately $1,150,000, and total revenues to $1,319,000.

2. Revenues exceed program costs even before avoided costs are considered. Table 5 illustrates the differences in tonnages and revenues between a voluntary and mandatory multi-service recycling program.

TABLE 2

PROJECTED TONS PER YEAR (TPY) RECOVERED FOR A WELL RUN MULTI-SERVICE PROGRAM WITH CURBSIDE COLLECTION, BUY-BACK REDEMPTION CENTER AND DONATION CENTER

MATERIAL	AVERAGE % IN WASTESTREAM	TONS PER YEAR AVAILABLE	RECOVERED BY CURBSIDE PROGRAM	RECOVERED AT BUY-BACK CENTER	RECOVERED AT DONATION CENTER	TOTAL RECOVERED	% OF RECYCLABLES RECOVERED
NEWSPAPER	8	5,760	1,200	3,000	100	4,300	75%
GLASS	6	4,320	480	1,000	20	1,500	35%
TIN CANS	5	3,600	100	20	10	130	4%
ALUMINUM	1	720	20	200	0	220	31%
TOTAL	20%	14,400 TPY	1,800 TPY	4,220 TPY	130 TPY	6,150 TPY	43%

NOTES:

1) Some of this tonnage may be attracted from other, existing recycling opportunities.

2) The amount of recyclables within each program component and the relative distribution of recyclable material between program components is an estimate based on experience with existing program and is dependent upon such influences as wastestream composition, convenience, other cash recycling opportunities, the value of materials and scavenging. This is especially true for aluminum.

3) The recovery rate from the residential wastestream for this example would be (43%) x (20%) = 8.6%. If the residential wastestream comprised 40 percent of the total wastestream then the overall recovery rate would be (8.6%) x (40%) = 3.4%.

TABLE 3

PROJECTED RANGE IN TOTAL ANNUAL PROGRAM REVENUES BY MATERIAL

MATERIAL	ANNUAL TONNAGE	LOW SCRAP VALUE	ANNUAL REVENUE	TYPICAL SCRAP VALUE	ANNUAL REVENUE	HIGH SCRAP VALUE	ANNUAL REVENUE
NEWSPAPER	4,300	$ 20/ton	$ 86,000	$ 45/ton	$193,500	$ 60/ton	$258,000
GLASS	1,500	$ 60/ton	$120,000	$ 70/ton	$135,000	$ 80/ton	$150,000
TIN CANS	130	$ 0	$ 2,600	$ 5/ton	$ 3,250	$ 10/ton	$ 3,900
ALUMINUM	220	$400/ton	$198,000	$700/ton	$264,000	$ 900/ton	$308,000
TOTAL	6,150 TPY		$407,000		$596,000		$720,000

NOTE: Annual revenues include estimated redemption values of $500/ton for aluminum and $20/ton for both glass and tin cans. Actual value will vary according to mix received. Revenue does not include value of potential processing fee from AB 2020.

Total annual revenues have also been "rounded" to nearest $1,000.00.

TABLE 4

PROJECTED RANGE IN NET COSTS/REVENUES FOR MULTI-SERVICE PROGRAM WITH VOLUNTARY PARTICIPATION

SCRAP VALUE	ANNUAL REVENUE(1)	ANNUAL COSTS(2)	NET ANNUAL COST/REVENUE	NET ANNUAL COST/REVENUE PER HOUSEHOLD(3)
LOW	$407,000	$746,000	(-)$339,000	(-)$9.70
TYPICAL	$596,000	$746,000	(-)$150,000	(-)$4.30
HIGH	$720,000	$746,000	(-)$ 26,000	(-)$0.75

NOTES:

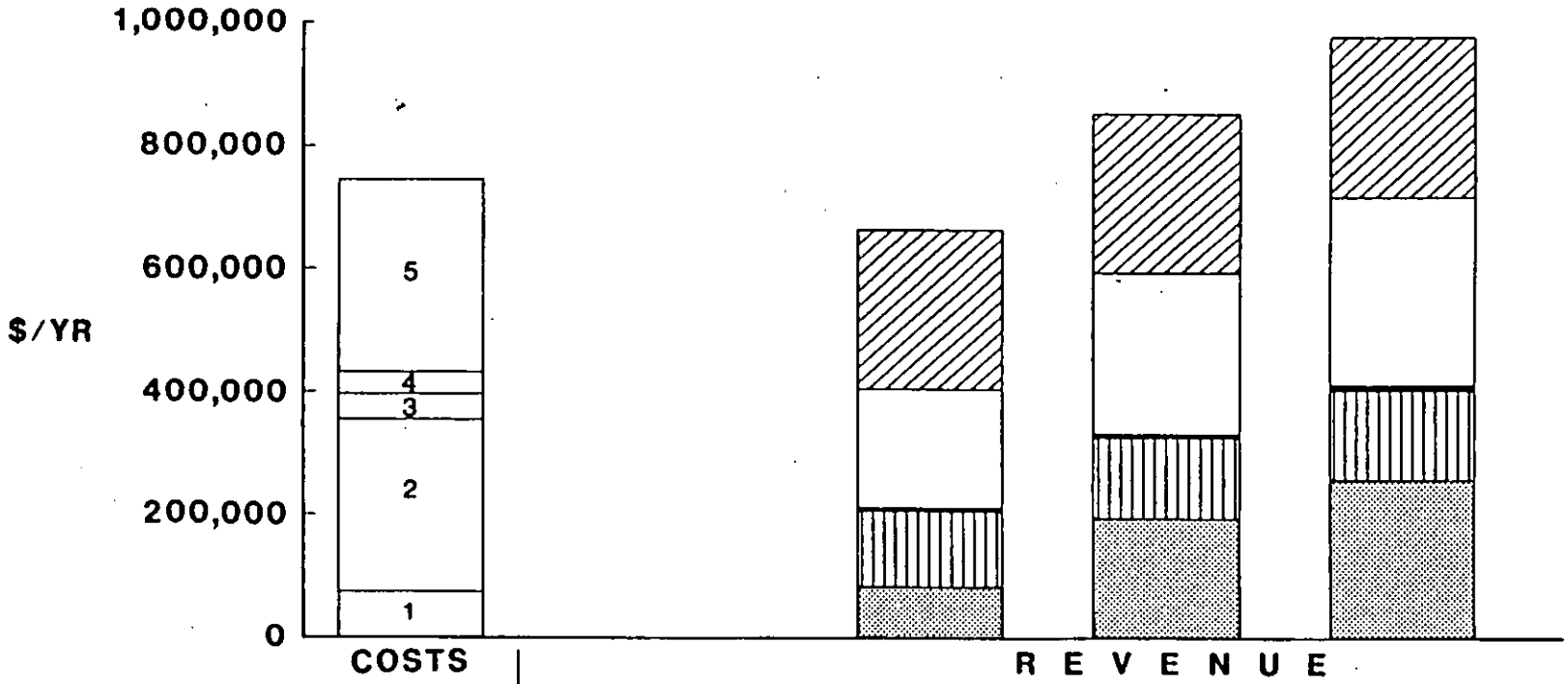
(1) Annual revenue includes scrap value and an estimate of redemption value. It does not include consideration of a processing fee.

(2) Example assumes that the same quantity and type of material will be recovered for all ranges of scrap value and that costs will remain constant. Costs of in-home storage containers not included. Costs also rounded to nearest $1,000.00.

(3) Assumes 35,000 households. Net cost per household rounded to nearest 5¢.

Revenue/Cost Comparison

(Including Avoided Costs)



			Low	Typical	High
			(Scrap Value)		
1 Capitalization	$ 78,000	Newspaper	$ 86,000	$193,500	$258,000
2 Labor	276,000	Glass	120,000	135,000	150,000
3 O&M	41,000	Tin Cans	2,600	3,250	3,900
4 Public Information	36,000	Aluminum	198,000	264,000	308,000
5 Cost of Buyback Recyclables	315,400	Avoided Costs	260,000	260,000	260,000
TOTAL	$746,000*	TOTALS	$667,000	$856,000	$980,000

*Not including cost of in home containers.

FIGURE 2

TABLE 5

COMPARISON OF POTENTIAL RECOVERABLE TONNAGES IN A VOLUNTARY AND IN A MANDATORY MULTI-SERVICE PROGRAM

		VOLUNTARY		MANDATORY	
MATERIAL	TONS PER YEAR AVAILABLE	TOTAL TONS PER YEAR RECOVERED	ESTIMATED "TYPICAL" VALUE	TOTAL TONS PER YEAR RECOVERED	ESTIMATED "TYPICAL" VALUE(2)
NEWSPAPER	5,760	4,300	$193,500	4,700	$211,500
GLASS	4,320	1,500	$135,000	3,500	$315,000
TIN CANS	3,600	130	$ 3,250	2,900	$ 72,500
ALUMINUM	720	220	$264,000	600	$720,000
TOTAL	14,400 TPY	6,150 TPY	$596,000 (1)	11,700 TPY	$1,319,000/yr (3)

1) Rounded to nearest $1,000.00.

2) The percentage of each material that will go to the various program components will vary according to the convenience offered by the curbside program, the prices paid at the buy-back redemption center, and by other opportunities to recycle.

3) This should not be compared directly to the $746,400/year cost to operate derived in Table 6 because it does not include the increased cost of operating the program at the higher quantities.

Chapter IX: Findings and Recommendations

1. It is important that each program be designed, developed, and targeted for a specific set of circumstances as dictated by community needs.

2. Implement **mandatory** source separation (ordinance enacted) through a multi-service recycling program, providing the following recycling options:
   a. curbside recycling
   b. buy-back center(s)
   c. drop-off center(s).

3. Collection frequency for curbside collection should be every other week, same day as garbage collection.

4. Curbside participants should be required to segregate three groups of materials:
   a. mixed cans (aluminum & tin)
   b. glass
   c. bundled newspaper.

   PET containers could be placed in either or both containers since they are easily separated after collection.

5. Fiber bags (burlap or onion-type) or plastic containers, labeled and distinctly colored, should be provided free to participants.

6. The entity responsible for curbside collection should be familiar with routing, and have adequate personnel for both operations and equipment maintenance.

7. A public information/education program should focus on the following issues:
   a. Curbside - convenience, community pride, and the benefits of materials conservation.
   b. Buy-back - direct financial rewards to individuals, and potential for groups to accrue funds through donations of recyclable materials.

8. An anti-scavenging ordinance should be passed and enforced.

RECOMMENDATION:

Information Item.

CALIFORNIA WASTE MANAGEMENT BOARD

AGENDA ITEM # 14

JANUARY 13-14, 1988

Item:

Consideration of Comments on Board Staff's Draft Version of Curbside Recycling in California, A Special Report

Key Issues:

- Board provided initial comments on draft at November Board meeting.
- Draft revised to incorporate changes indicated at Board meeting.
- Revised (December 4) version sent to industry representatives for review and comment by January Board meeting.
- Staff will summarize comments received prior to Board meeting.

Report Status:

At the November, 1987, meeting the Board directed that the staff's draft curbside recycling report be sent to industry representatives for review and comment. The report has since been sent out to a select group of industry reviewers. The version sent for review included changes made as suggested by the Board at the November meeting. Comments were to be received prior to the January Board meeting or provided at the meeting if desired. Staff will summarize the comments received prior to the Board meeting.

Recommendation:

Additional revisions to be made to draft in accordance with the comments received and final draft to be brought back to the Board for consideration of acceptance at the February, 1988, Board meeting.

CALIFORNIA WASTE MANAGEMENT BOARD

AGENDA ITEM # 15

JANUARY 13-14, 1988

ITEM:

Consideration of Comments and Discussion of the Recycling Programs and Market Development Act of 1988

KEY ISSUES:

- Legislative proposal has been widely circulated for comment.
- Comments due prior to Board meeting.
- Staff will summarize comments.

BACKGROUND:

Among the statutory responsibilities of the California Waste Management Board (CWMB), is the development of various means for the safe and environmentally sound management of solid waste. Recycling, or segregation of materials from the waste stream for the purpose of using the material in an altered form, is one of the primary means by which solid waste can be managed. Aside from the obvious environmental benefit of resource conservation, recycling of materials from the solid waste stream serves to extend the useful life of the State's landfill capacity. The visibility of the Board's recycling program has declined in recent years to the point that staff are only able to provide limited technical assistance to those who inquire about recycling alternatives in California. Normal staff attrition without replacement, due to budget reductions, has further reduced the ability of the Board to effectively project an image of leadership in the area of recycling. The enactment of Assembly Bill 2020 in 1986, giving lead responsibility for implementation of the California Beverage Container Recycling and Litter Reduction Act to the Department of Conservation, further

DISCUSSION:

It has not been the policy of the Board to recommend one means of management of solid waste as the best means. Rather, the Board has recognized that a variety of methods are available to effectively handle solid waste and that local conditions often dictate the best means for a given location. Recent developments have prompted local officials to re-evaluate those conditions and give recycling a closer look. The developments that dictate a need for reassessment of recycling include:

1. Diminishing landfill capacity

   As the amount of waste increases due to population growth and increased per capita waste generation, local officials experience the need to acquire new landfill capacity. Acquisition of the landfill capacity is difficult, time-consuming and expensive.

2. Local opposition to landfills and waste-to-energy siting

   Generally, citizens do not discriminate between solid waste management options that they don't like...they don't like all of them equally. New landfills and proposed waste-to-energy projects rally local citizens into a fervor that local politicians find hard to ignore. As a result, even well designed, environmentally sound, technically practical solid waste projects may not be sited.

3. Recycling's positive public image

   Local officials, and to some extent private refuse collectors, have begun to investigate implementation of recycling programs on a large scale, such as curbside collection. Depending on the scope of the programs, curbside could have a significant impact on the volume of waste being diverted from landfills. Recycling proposals meet with a much more positive response from the public than some other alternatives being pursued.

Although the passage of AB 2020 may place a significant program under the jurisdiction of another agency, the bottle redemption program addresses less than five (5) percent of the solid waste stream in California. Management of the solid waste stream is clearly the province of the Board.

The Chairman authorized the wide distribution of the attached legislative proposal to the public and private solid waste industry, legislative staff persons, environmental organizations and the general public. The purpose of the consideration of this

item is to relate the comments received from the interested public.

LEGISLATIVE PROPOSAL SUMMARY:

The Recycling Programs and Market Development Act of 1988 has the following major components:

I Public Information Program

The Board would undertake an aggressive public information and education program, including the following elements:

- A recycling logo identifying packaging and products made of recycled materials.
- A quarterly recycling journal.
- Paid and public service announcements.
- Printed media materials.

II Market Studies and Development

The Board would undertake studies to enhance recycled materials markets, including the following topics:

- Futures commodity markets for recycled materials.
- Foreign markets task force.
- Alternative procurement practices.
- Scrap tire recycling and processing.
- Plastics as a component of the waste stream.
- Used oil recycling.

III Local Service Fee Surcharge

The legislative proposal institutes a 10% local surcharge on the cost attributable to solid waste collection and disposal costs. Eighty (80) percent of this surcharge would be collected locally and remain in the locality for expenditure on recycling programs. Twenty (20) percent would be forwarded to the CWMB for public information and market studies.

RECOMMENDATION:

The Board consider comments offered and direct staff to take appropriate action regarding the proposed legislation.

December 1, 1987

THE RECYCLING PROGRAMS AND MARKET DEVELOPMENT ACT OF 1988

SECTION 1 PUBLIC INFORMATION AND EDUCATION

Public Information Program

(a) The Board shall undertake a public information and education program to educate the citizens of California about the benefits of purchasing products and packaging that are manufactured from recycled materials. This public information and education program shall include:

1. Adoption of a recycling logo to be prominently displayed on all products and packaging that meets eligibility criteria to be established by the Board. This logo may be used with the approval of the Board and at the discretion of the manufacturer or retailer of the product. The Board shall seek the voluntary cooperation of member companies of the California Manufacturers Association, the American Paper Institute, and the California Chamber of Commerce, and other appropriate associations, in developing the most effective means to implement this section. Beverage containers, as defined in Section 14505 of the Public Resources Code, shall not be included under the provisions of the recycled product logo program.

2. Development of incentives to increase the public's awareness of the recycling logo. These incentives include, but are not limited to:

a. Cash bonuses or prizes for identification, collection, or other actions to bring the recycling logo into public visibility.

b. Manufacturer awards for support of the product and packaging logo program designed to give public acknowledgement to those manufacturers who support the program.

c. Incentives to bolster citizen participation in recycling programs including cash, prizes and recognition.

3. The Board shall publish a Quarterly Recycling Journal. This Journal shall provide the citizens of California, other states and nations with a thorough analysis of all aspects of recycling activities in California.

Public Information Program - Media Products

(b) In addition to any local public information efforts, the Board shall develop, implement, sustain, and modify as necessary, an aggressive public relations and education program designed to support the efforts of local recycling programs. Public relations and education programs provided under this section may be provided by contract and shall include:

1. Production of paid and public service announcements for distribution through various media in the State, designed to specifically support local recycling programs.

2. Production of printed materials including posters, brochures, utility bill inserts, billboards, litter bags, public transit posters, and any other appropriate printed materials to support the wide dissemination of information about local recycling programs. To the extent practical, recycled materials shall be utilized in the production of printed materials.

SECTION 2. CALIFORNIA RECYCLING FUND - MARKET STUDIES

Market Studies - Purposes

(a) The Board shall conduct market studies specified in this Section to enhance markets for recyclable materials on a national and international basis. Each study shall focus on a recyclable materials to be specified by the Board.

Market Development Studies - Topics

(b) The Board shall undertake or cause to be undertaken, a series of technical studies to recommend specific actions to contribute to stabilized price structures for recycled materials and investigate methods to expand the markets for recyclable materials in domestic and international markets. Special attention shall be given to identification and modification of existing trade restrictions that limit the international export of recyclable materials from the solid waste stream. Other actions shall include, but are not limited to:

1. Studies to investigate financial mechanisms to institute a futures commodity market to provide a means to

negotiate future prices to be paid for all recyclable materials segregated from the solid waste stream.

2. Investigation of the availability of funds for capitalization of private manufacturing facilities designed and constructed in California to utilize recycled materials in the processing of new materials or production of new products. These funding sources shall include Industrial Development Bonds, tax exempt financing through the California Pollution Control Financing Authority, California Innovative Development Loans, and other funding sources.

3. The development of a Special Task Force, in cooperation with the Department of Commerce, with the responsibility to develop an aggressive outreach program to attract foreign markets to purchase recyclable commodities from sources within the State of California and to establish facilities within the State that utilize as their primary manufacturing raw materials, recyclable resources segregated from the solid waste stream within the State.

4. Investigation of alternative procurement practices that would result in increased procurement of recycled materials by the State of California, local governments, private businesses, and individuals. Such alternative procurement practices shall not result in the procurement of materials,

supplies or products that are not of equal quality of their virgin counterparts.

Market Studies - Distribution

(c) The Board shall, within eighteen months of the effective date of this Act, transmit copies of the studies prepared pursuant to subsection (__) of this section to the governing bodies of each city and county in the State requesting such studies. These studies shall be made available to the general public at a cost not to exceed the cost of reproduction and distribution.

SECTION 3. TECHNICAL STUDIES AND WORKSHOPS - TOPICS

The Board shall undertake or cause to be undertaken, a series of technical studies and professional workshops addressing issues relating to recycling and solid waste management that have not been adequately addressed in current solid waste management technology and practices. The Board shall, from time to time, identify the topics of technical studies to be undertaken, but they shall include at a minimum, the following:

a. Convenient and economical means for the disposition or recycling of scrap automobile tires which plague landfill facility operators. Such studies shall investigate acceptable alternatives for the reprocessing of scrap tires into reuseable raw materials, incineration feedstock, asphalt paving materials, or other acceptable alternatives. Such studies shall investigate

the feasibility of instituting an excise tax on tires in an amount sufficient to equal the special disposal costs that are attributable to tire disposal, processing or recycling.

b. Thorough analysis of the special problems associated with the increasing percentage of the solid waste stream that is comprised of packaging and products that are manufactured from plastic. Specific attention should be focussed on the impacts that this increasing volume of plastic has on the land, air and water of the State.

c. Economical and practical methods to increase the volume of compost and co-compost materials purchased by the State, cities and counties, businesses, and the general public. Such a study shall investigate the means by which increased processing of compostable materials may be segregated from the solid waste stream in quantities that meet, but do not exceed, demand created by new uses of compost.

d. Evaluation of State procurement specifications for purchase of supplies, materials, and products to determine if such procurement specifications are discriminatory to recycled products that can accomplish the function, purpose, or service provided by the product.

e. Investigation of appropriate means to increase the volume of used motor oil recycled in the State.

f. Studies that investigate alternative disposal or processing methods for wastes that require special handling such

as household hazardous wastes, low level nuclear wastes, storage batteries, sludges, oily wastes, and any other special waste.

g. Studies to identify the true cost of solid waste disposal in California on a regional basis. The study will identify locations where actual costs of disposal are subsidized by other local fund sources and factor in external costs, such as environmental control systems, that must be installed after closure and must be paid for as a separate cost. The outcome of such studies will allow the accurate comparison of various solid waste management options on a parity basis.

SECTION 4. RECOMMENDATIONS TO THE LEGISLATURE

Based on the findings of the studies and workshops specified in Section __, the Board shall periodically recommend such actions as are deemed necessary to address changes to the solid waste management collection, transfer, processing, and disposal system in California. These actions may take the form of legislative proposals for consideration by the California Legislature subsequent to the completion of studies conducted pursuant to this Act.

SECTION 5. LOCAL SERVICE FEE SURCHARGE

Local Service Fee Assessments

(a) Local jurisdictions shall institute a local service fee surcharge of ten (10) percent of the cost attributable for solid waste collection services to support local recycling activities

and to make deposits into the California Recycling Fund, established by this Act. These fees shall be assessed on existing residential and commercial refuse collection bills in a manner that is compatible with local solid waste billing procedures. In those jurisdictions where solid waste collection services are supported by other than a periodic billing procedure, those jurisdictions shall provide for the collection of the collection assessments in a manner to be prescribed by the Board of Equalization.

Local Expenditure Of Solid Waste Collection Assessments

(b) Local jurisdictions are authorized to utilize eighty (80) percent of locally collected solid waste collection assessments for support of local recycling activities. Expenditures of locally collected fees shall be made in such a manner as to provide adequate accountability for such expenditures.

Allocation of Local Fees To The California Recycling Fund

(c) Each local jurisdiction shall forward twenty (20) percent of locally collected assessments for deposit in the California Recycling Fund, in a manner to be established by the Board of Equalization.

SECTION 6. CALIFORNIA RECYCLING FUND - ESTABLISHMENT

California Recycling Fund - Structure

(a) The California Recycling Fund (Fund) is hereby established as a revolving fund within the General Fund. The revenues to be deposited into the fund shall be collected by the Board of Equalization. Moneys in the fund shall be allocated and used for purposes specified in this Act. The California Recycling Fund is established as a special account within the General Fund. The Fund shall be the depository of all moneys generated pursuant to locally assessed fees established by this Act or any subsequent Act for the purposes of assisting in the implementation of this Act, and for the studies of recyclable materials as provided in Section__ of this Act.

SECTION 7. CALIFORNIA RECYCLING FUND DISBURSEMENTS

Public Information and Education Programs

(a) Not more than fifty (50) percent of the Fund shall be expended for the support of state and local public information programs. Eligibility for receipt of public information and education funds shall be established by the Board.

Market Development Studies

(b) Not more than forty (40) percent of the Fund shall be expended for the conduct of market studies and technical workshops specified in Sections __ and __.

Administrative Support

(c) Not more than ten (10) percent of the Fund shall be expended for administrative support of the Act by the California Waste Management Board.

SECTION 8. RECYCLED PRODUCTS AND MARKET DEVELOPMENT ACT OF 1988 - TRIENNIAL REPORT

The Board shall prepare a report to the Legislature concerning the implementation of this Act, including a recommendation as to whether the continuation or adjustment of the fee is necessary to ensure the achievement of the goals and objectives of the Act and the success of city and county recycling programs. This report shall be transmitted to the Legislature not later than March 31, 1993, and shall be reviewed, and revised if necessary, at least once every three years thereafter.

SECTION 9. OTHER POWERS AND DUTIES - SPECIFIED

In addition to the other powers granted to the Board in this section, the Board is hereby authorized and empowered:

Delegation of Authority

(a) To delegate to any office or employee of the Board such powers and duties as it deems necessary to carry out the provisions of this Act. The person or persons to whom such power has been delegated shall possess and may exercise all of said powers and perform all of the duties delegated by the Board;

Development of Forms

(b) To prescribe and distribute all necessary forms for the implementation of this section.

Authority to Contract

(c) To contract with any other State agency or person to accomplish the intent of this Act.

SECTION 10. RECYCLED PROGRAMS AND MARKET DEVELOPMENT ACT OF 1988 - REGULATIONS

The Board shall adopt such regulations as are necessary to carry out the provisions of this Act.

SECTION 11. RECYCLED PROGRAMS AND MARKET DEVELOPMENT ACT OF 1988 - TERMINATION

This Act shall take effect January 1, 1989 and shall expire on December 31, 1998, unless terminated or extended by subsequent legislation.

CALIFORNIA WASTE MANAGEMENT BOARD

AGENDA ITEM # 16

JANUARY 13-14, 1988

ITEM:

Update on Study of Waste Disposal Regions in Los Angeles County required by AB 223 (Tanner).

KEY ISSUES:

- AB 223 requires a joint study by the Board and County Sanitation Districts of waste disposal regions in Los Angeles County
- Report on study findings and recommendations due to Legislature by July 1, 1988
- Meeting scheduled by Board staff with County Sanitation Districts prior to Board meeting

BACKGROUND:

In response to a concern expressed by some citizens in certain regions of Los Angeles County that they have had to endure severe societal and environmental effects caused by the uneven distribution of disposal facilities, the Legislature enacted AB 223. That bill was enacted with the purpose of "ensuring a more equitable distribution of disposal facilities in Los Angeles County."

To resolve the problem of uneven distribution of disposal facilities, this bill requires that at the time of the next and subsequent revisions of the Los Angeles County Solid Waste Management Plan (CoSWMP), a program be developed for ensuring a more equitable distribution of disposal sites.

The basis for that program would come from a joint study conducted by the Board and the County Sanitation Districts on waste disposal regions in Los Angeles County. For the purpose of this study, the County Sanitation Districts are to establish boundaries for the six waste disposal regions of the County that have been identified in the legislation.

The study is required to include the following information:

1. Quantification of waste generated and landfilled by each of six specified waste disposal regions

    1) The San Gabriel Valley
    2) The San Fernando Valley
    3) North Los Angeles County
    4) Central and West Los Angeles County
    5) Southeastern Los Angeles County
    6) Bay Cities/Los Angeles Harbor Area

2. Identification of inequitable waste disposal regions (those either disposing in excess of 125% or less than 75% of waste generated)

3. Identification of measures to ensure more equitable distribution of disposal facilities

4. A discussion of feasibility of diversifying solid waste management methods to minimize air as well as other negative environmental impacts in waste disposal regions where waste disposed significantly exceed waste generated

From the study's findings and recommendations, the Board and County Sanitation Districts are required to prepare a report to the Legislature by July 1, 1988. This item has been prepared to give the Board an update on the implementation of AB 223 and more specifically the steps that will be necessary to complete the required study and report by July.

DISCUSSION:

For the study to be presented to the Legislature by July 1, 1988, the document will have to be approved by the Board at its June meeting. A draft copy should therefore be available for earlier review and comment as early as the Board's April meeting. In order to expedite implementation, Board staff has made initial contact with the Sanitation Districts of Los Angeles County, the joint preparer of the study and report. The Sanitation Districts have been informed of these logistical requirements and at the time of preparation of the Agenda item are in the process of developing a workplan for this study. During the first week of January, Board staff will meet with the County Sanitation Districts to discuss the workplan. At this Board meeting, staff will update the Board on the proposed study.

RECOMMENDATION:

For discussion only.

CALIFORNIA WASTE MANAGEMENT BOARD

AGENDA ITEM # 17

JANUARY 13-14, 1988

ITEM:

Presentation on Staff Attendance at the 34th Annual Meeting of Keep America Beautiful.

KEY ISSUES:

- KAB Annual Meeting was held December 8-12, 1987 in Washington, D. C. Attended by one of the Board's Litter Control Program Coordinators.
- More than 500 people representing KAB communities, government agencies, civic organizations, business, and industry attended.
- Purpose was to celebrate accomplishments, reward excellence and share knowledge in litter prevention, community improvement, and multi-material recycling programs.
- Staff given opportunity for training and an opportunity to establish contacts with representatives of municipal, state, and federal governmental agencies, civic organizations, and the private sector.

BACKGROUND:

The 34th Annual Meeting of Keep America Beautiful, Inc., (KAB) was held December 8-12, 1987 in Washington, D. C. KAB is a nonprofit public service organization dedicated to promoting proper waste handling, and is recognized throughout the nation for its success in seeking positive approaches and innovative methods for the implementation of waste control programs at the community level.

The Board's California Litter Education and Action Network (CLEAN), a litter abatement program developed to assist communities throughout California in the implementation of litter control, was designed with the cooperation of KAB. The Board's Litter Control Program Coordinators work closely with KAB's Western Regional Field Director and benefit from KAB's training seminars and expertise.

The annual meeting provided an opportunity for training and for learning about waste management accomplishments across the nation. It also provided an opportunity to establish contacts with representatives of municipal, state, and federal governmental agencies, national civic organizations, and the private sector. Through KAB and this network, the Board's Coordinators keep up-to-date on proven and tested methods which are incorporated into the CLEAN program.

In 1987, KAB launched a nationwide advertising campaign with the coordinated themes, **Who Keeps America Beautiful?** and **How to Become One of the Beautiful People.** The video, called **Keeping America Beautiful,** conveyed the message that KAB offers a cost-effective approach to improving waste handling practices that is enabling more Americans to make conscious and informed decisions about the quality of their lives. The campaign had received $7.5 million in free air time and ad space six months after its introduction.

The KAB System recorded outstanding growth in 1987 with 38 communities achieving full certification and 58 receiving pre-certification status. This brings the total number of pre-certified and certified KAB System communities to 470. The network of statewide KAB System programs grew to 13. In addition, adaptations of the KAB System are now underway in the Bahamas, Canada, Great Britain, Japan, New Zealand, and South Africa.

In order to establish stronger credibility within community programs, KAB introduced the Cost/Benefit Analysis as a membership requirement. It provides a sound method for development of program budgets, analysis of benefits received, justification of program costs, and accountability for funding sources.

KAB's Pre-certification Manual and Certification Manual were revised in 1987. These manuals include technical information on the organization, funding, management and accountability of a local program. They also provide guidelines for carrying out projects and setting goals and objectives. Both manuals are produced with a grant from KAB Member company Browning-Ferris Industries, Inc.

KAB's commitment to recycling will expand in 1988 with the development of a recycling logo which will begin appearing on KAB publications and materials. With a grant from KAB corporate member Waste Management, Inc., and the efforts of KAB's Recycling Committee, they also revised their Multi-Material Recycling Manual in 1987.

Private sector support of the KAB system increased and broadened in 1987. The Second Vision for America Award Dinner was held at the Waldorf Astoria in New York. The award dinner, which raises funds for the achievement of developmental goals, honored one corporate individual who had made an outstanding contribution to waste management. Partnerships between corporate America and grass-roots volunteers were greatly expanded in April and May as KAB teamed up with GLAD Wrap & Bags for the second annual GLAD Bag-A-Thons. More than 50,000 volunteers removed several hundred tons of litter in 11 KAB communities. GLAD donated over a quarter million trash bags and thousands of souvenir hats, banners, posters and brochures. KAB and GLAD have planned 50 Bag-a-Thons in KAB system communities in 1988.

KAB has a National Advisory Council (NAC) comprised of 72 civic and professional organizations and 13 federal agencies that provide direction to KAB staff. This Council also administers KAB's Public Lands Stewardship Program which experienced tremendous growth in 1987. Take Pride in America, the Reagan Administration initiative, was the catalyst for the expansion of this program. Take Pride in America is a partnership involving federal agenices, state governments and several private and public organizations. Through a large-scale public awareness campaign, national awards program and other hands-on efforts, Take Pride in America promotes the use of our nation's natural and cultural resources. Also adding to the success of KAB's Public Lands Program was the passage of the Federal Lands Clean-up Act. This bill requires all federal land managers to work cooperatively with citizen volunteers and state and local agencies to conduct stewardship activities on the lands within their jurisdiction. In addition, Secretary of the Interior Donald P. Hodel was among the many members of KAB's National Advisory Council to officially endorse support of Public Lands Day. As a result, public lands programs conducted by the KAB System and their NAC affiliates increased from 150 to 500 in 1987. These events, which are organized to encourage individuals to take pride in public lands which belong to all citizens, are often conducted on Public Lands Day, the first Saturday after Labor Day. Participants are encouragd to continue year-round efforts.

In April 1988, KAB will expand its KAB Week program to a month-long observance. The month will focus on nationwide litter prevention activities including community-wide cleanups, recycling programs, educational and public awareness campaigns, appreciation breakfasts for sanitation workers, and award luncheons. The month will culminate with National Litterbag Day on the last Friday in April.

STAFF ANALYSIS:

The agenda included workshops and presentations on skills and leadership development, offshore dumping and beach littering, Public Lands Day, landfills, resource recovery, curbside collection, household separation and multi-material recycling. It also included presentations on community public education programs and special presentations on community litter abatement programs. The KAB National Awards Luncheon honored 50 individuals, civic groups, government agencies, schools and corporations for their leadership in keeping our country beautiful.

One highlight of the conference was a presentation by Texas Land Commissioner Garry Mauro. His negotiations with foreign governments about offshore dumping are helping to find solutions that will have far reaching impact here and abroad. The State of Texas has a tremendous problem with litter on their beaches, 90 percent of which is from offshore dumping. It is not unusual to find a plastic detergent bottle from Singapore among the countless tons of debris that are washed ashore onto Texas beaches each year. His office has been instrumental in regulating waste disposal systems on all oil rigs, and they are working with marina associations on a solid waste education program which includes used motor oil. They have had great success with their Adopt-A-Beach program which involves thousands of volunteers who participate in beach cleanups. Particularly interesting was Mr. Mauro's discussion of MARPOL. MARPOL, which stands for the International Convention for the Prevention of Pollution from Ships, is an International Treaty which contains five annexes that prohibit various types of pollution. For example, as we are aware, oil and chemical waste dumping is prohibited. These are two of the annexes of MARPOL. The fifth annex of MARPOL prohibits offshore dumping of plastics. The implementation legislation, H. R. 940, has just passed the House and is now in the Senate. In order to become international law, 50 percent of the world's shipping tonnage must ratify this annex. If the bill passes the U. S. Senate, this will be accomplished.

Another highlight of the conference was a presentation entitled, Sanitary Landfills are Forever, by Donald A. Wallgren, Waste Management, Inc. Mr. Wallgren, who has provided a copy of this presentation to the Board, stated that every man, woman, and child in the U. S. generates nearly one ton of collected residential and commercial wastes per year which equals about 220 million tons. About 95 percent, or 209 million tons, is landfilled; the remaining 11 million tons are incinerated. Although recycling programs may slightly reduce the amount of waste landfilled, it is clear that landfills are very important

in solid waste management today. Although there seems to be much public and political support for incinerating waste, about 20 percent, or 45 million tons per year, cannot be incinerated. That leaves 175 million tons per year that are incinerable. If all of that went to waste-to-energy plants, 45 million tons would end up as incinerator residue such as ash and fly ash. Therefore, even if all waste were incinerated, 90 million tons per year of solid waste would still have to be landfilled. Mr. Wallgren went on to discuss economics and recycling, landfill shortages, landfill design, liquid wastes, and end uses and energy recovery.

Other highlights of the conference included:

- An explanation of the California Beverage Container Recycling Act, AB 2020, by Theresa Creech of KAB.

- A presentation by the Mayor of Columbus, Ohio, in which he stated that his city has had outstanding success in litter abatement programs through the use of volunteers. He stressed that public/private partneships are in, and that his city is actively involved in working on waste management education for school children and encouraging a spirit of cooperation between local government and volunteer teams.

- A video entitled, **The Trash Man Cometh**, and a presentation of the Cash for Trash program which encourages curbside source separation by the Superintendent of Sanitation for the City of Rockford, Illinois. Each week, the Trash Man sorts through the curbside collection receptacles of one household selected at random. If the garbage does not contain cans, bottles, or newpapers, the household is awarded $1,000.

- Introduction by KAB of the Labels for America program which they will begin in January 1988. Twelve national brands will participate in the beginning, and they anticipate others to join later on. If volunteers within a community buy one of the products and give the label to their local KAB community coordinator, KAB will reimburse the progrm with $0.4 for each label. KAB expects this program to generate $750,000 in 1988, with $400,000 being returned to the community for litter abatement. The program has the potential to generate $4.5 million for litter prevention by 1991.

- A presentation by an official of the City of New York. The city generates 56 million tons of garbage per day. There are 7.5 million residents of the city, and another 7 million

people come to the city each day to work and visit. They have recently launched an anti-litter advertising campaign using TV and radio public service announcements and have asked the fast food industry to pay for the campaign in lieu of a tax.

- A presentation by the University of Alabama on Project Rose, Recycled Oil Saves Energy. This project offers curbside collection of used oil in the State of Alabama. The program furnishes plastic containers and also provides collection centers.

The 34th Annual Meeting of Keep America Beautiful, Inc., was outstanding. It provided an excellent opportunity to learn about waste management accomplishments across the nation and to share knowledge with a diverse group of people concerned with preserving and enhancing the natural beauty of our nation and dedicated to building a national cleanliness ethic.

RECOMMENDATION:

Information item.

CALIFORNIA WASTE MANAGEMENT BOARD

AGENDA ITEM # 18

JANUARY 13-14, 1988

ITEM:

Update on California Litter Education and Action Network (CLEAN) Community Achievement Awards Conference.

KEY ISSUES:

- First CLEAN Community Achievement Awards Conference was held on November 17, 1986 in Long Beach.
- Awards presented to ten communities for outstanding achievement in litter abatement.
- Second conference prepared for 1988. It was originally scheduled for May 1988.
- CLEAN members have indicated that they would prefer the conference to be scheduled in the fall so that they can devote more time to spring and summer clean-up events and have adequate time to prepare for the conference.

BACKGROUND:

The first CLEAN Community Achievement Awards Conference was held on November 17, 1986 in Long Beach. The objective of the conference was to provide a forum for discussion of positive approaches and innovative methods for litter control program management and to present awards of recognition to outstanding CLEAN community programs. The conference was attended by approximately ninety community leaders, government officials, industry representatives, and concerned citizens. Awards were presented to ten communities for outstanding achievement in litter abatement. Conference participants were enthusiastic and indicated that they would like to see the conference continue in the future.

As the September Board meeting, the Board approved $20,000 in contract funding for the second conference. It was originally scheduled for May 1988. Because spring and summer are the most popular times for community clean-up projects, however, many

CLEAN members have expressed a desire that the conference be held later in the year. This would allow them to devote more time to these clean-up events, and it would also give them adequate time to prepare for the conference. Many have indicated that they would welcome the opportunity to have their spring and summer clean-up events be considered for awards.

If the conference is rescheduled for later in the year, it would also give staff the additional time needed to set the award criteria and effectively evaluate applications submitted for consideration of awards. In addition to these benefits, staff would also have more time to solicit CLEAN membership since membership is one of the award criteria.

STAFF ANALYSIS:

Staff has considered the suggestions of CLEAN members to have the conference scheduled later in the year and agrees that it would be more appropriate to do this. The staff would use the additional time to actively solicit CLEAN membership, work with communities on spring and summer clean-up events, and encourage participation in the awards conference. If the event is held later next year then the $20,000 allocated from this year's contract money could be reallocated. Funding would then come from the Budget for FY 1988-89.

RECOMMENDATION:

Staff recommends that the CLEAN Community Achievement Awards Conference be scheduled for either November 7 or 20, 1988.

CALIFORNIA WASTE MANAGEMENT BOARD
Agenda Item 19
January 13-14, 1988

Item:

Progress Report on the California Cleanin' Campaign

Significant Issues:

- Governor's proclamation
- California Cleanin' kickoff on December 12, 1987
- Current and future campaign activities

Background:

On Friday, December 11, Governor George Deukmejian issued a proclamation declaring December 16, 1987 "California Cleanin'" day, urging all Californians to do their part in preserving the state's environment and natural beauty. A copy of the Governor's proclamation is attached to this agenda item.

On Wednesday, December 16, California Waste Management Board Chairman Sherman E. Roodzant was joined by representatives of CalTrans, California Highway Patrol, and the State Departments of Commerce, Conservation, Food and Agriculture and Parks and Recreation at a State Capitol celebration kicking off the California Cleanin' campaign. A copy of the press packet distributed at the press conference and to statewide media outlets has been enclosed with the Board members' agenda packets.

Ray McNally and Associates (RMA) has prepared a status update on all elements of the California Cleanin' campaign. The update is attached to this agenda item and includes RMA's recommendations for the progressive development of campaign activities and the production of future campaign materials. At the January meeting, the Board members will be briefed on media coverage resulting from the inaugural press conference and on the progress of the campaign.

Recommendation:

It is recommended that the Board support the continuation of California Cleanin' campaign activities and authorize the development of successive campaign materials.

Attachments:

1. Governor's Proclamation
2. RMA California Cleanin' Status Report

Ray McNally & Associates, Inc.

December 22, 1987

TO: Sherman E. Roodzant, Chairman, and Board members of California Waste Management Board

FR: Ray McNally

RE: California Cleanin' Kick Off

MATERIAL DEVELOPMENT

Fact Sheets

Six pages focusing on litter were developed:

- The California Litter Problem
- Portrait of a Litterbug
- Litter on California Highways
- Litter Lifespan
- California Cleanin'
- The California Waste Management Board

Media/Information Kits

In addition to fact sheets, each kit includes a litter bag, a California Cleanin' button, a kick-off news release, public service announcement scripts, a Governor's proclamation and a copy of Assembly Bill 480 (which increased litter fines).

California Cleanin' T-shirts

Shirts were produced for and delivered to CWMB board members and television public service directors.

Public Service Camera-ready Ads

Several sizes of public service ads and camera-ready logos were prepared for corporate sponsors and statewide newspapers.

Corporate Sponsorship Inserts

Two sheets describing how corporations can participate and listing activities and costs accompany our solicitation cover letter.

Volunteer Program

A separate insert explaining the program and calling on volunteers to join the California Cleanin' team will be sent to statewide volunteer groups along with our information kits.

Public Service Announcements

A 30-second television public service announcement called "Litter Wars" shows scenes of littering to the music of "The 1812 Overture". This spot was designed to appeal to the general public.

916/447-8186 820 18th Street Sacramento, CA 95816 FAX 916/447-6326

20 News conference announcement calls were also made to Los Angeles and San Francisco television stations.

NEWS CONFERENCE FOLLOW-UP

Kits which included the Chairman's statement and a press release describing the event were hand-delivered to the Capitol Press Corp.

Following the news conference, Ray McNally & Associates called affiliates of public radio, NBC and CBS encouraging them to request the feed.

A radio actuality was prepared from the taped news conference and was distributed to radio stations throughout the state. Forty-seven stations accepted the feed.

CORPORATE SPONSOR PROGRAM

To create visual interest in the news conference and increase our television exposure, we approached theme parks requesting that their characters participate. The opportunity was welcomed by Great America, which sent representatives Yogi Bear and Scooby-Doo to join the California Cleanin' team.

Our initial mailing of 88 corporate sponsor kits was followed by phone calls requesting support. Twenty additional kits have been distributed to other representatives of the same firms.

Chevron USA produced the first 5,000 litterbags for our campaign kick-off. The California Manufacturers Association requested that we prepare an article describing how corporations can participate. The Ford Motor Company and Waste Management Inc. have also expressed interest in producing litterbags.

With the kick-off behind us and the attention it generated just beginning to build, we will continue to aggressively recruit corporate members for the California Cleanin' team.

CONTINUING ACTIVITIES

The first week in January will mark the beginning of an aggressive effort to schedule radio and television talkshows and editorial board tours.

We plan to re-edit the television public service announcement to develop 10-second and 20-second formats.

A 30-second radio spot featuring Rex Allen and targeted to reach men over 30 -- the biggest source of accidental litter -- was distributed to country music stations.

A 60-second spot, "Teenage Girls," featuring the unrehearsed comments of teenage girls about boys who litter, was distributed to teen stations.

DISTRIBUTION

50 Television Public Service Directors
Tom Biaz delivered the kits along with T-shirts to Los Angeles and San Diego television stations, Ray McNally & Associates delivered materials to Sacramento television stations and the remaining kits were mailed. Stations were encouraged to air the public service announcement.

50 Television Assignment Editors
Kits were mailed to announce the campaign kick-off, explain that tapes had been sent to the Public Service Directors and encourage stations to prepare a news feature about the campaign.

40 Radio Public Service Directors
(agriculture and country-western stations)
Kits were mailed encouraging stations to provide air time for the "Rex Allen" public service announcement.

38 Radio Public Service Directors
(teen/rock and roll stations)
Kits were mailed with a request that stations air the "Teenage Girls" public service announcement and sponsor a contest or activity with an anti-litter theme.

432 Newspaper Environmental Editors
Kits were mailed urging newspapers to use the public service ads and prepare articles focusing on the litter problem and California Cleanin'.

NEWS CONFERENCE PREPARATION

80 Advisories were distributed to the Capitol Press Corp on Monday, December 14.
(follow-up calls were made the following day)

25 Advisories were delivered on Monday to Sacramento television and radio stations encouraging them to attend the news conference.
(reminder calls were made the following day)

Buttons, inserts and folders will be produced as necessary.

PHASE II: RECYCLING

With the Board's concurrence, Ray McNally & Associates will begin developing materials for Phase II of California Cleanin'. Phase II focuses on recycling and will include fact sheets about recycling and the development of a public awareness program informing the public of how many of their common household products can easily be recycled.

Television and radio public service announcement scripts will also be developed.

Additionally, fact sheets will be produced focusing on landfill siting and alternative methods of waste disposal.

Armed with facts, we can pursue our goal of using the California Cleanin' campaign to educate the public about the critical waste management issues facing all Californians.

CALIFORNIA WASTE MANAGEMENT BOARD

Agenda Item # 20

January 13-14, 1988

Item: Update on Department of Health Services' Application to Obtain Authorization to Implement the Federal Resource Conservation and Recovery Act Hazardous Waste Program in California

Key Issues:

- State Hazardous Waste program must be as stringent as and consistent with Federal Hazardous Waste Program
- Required changes in state law will affect waste-to-energy ash, household hazardous waste and the definition of solid waste.

Background:

The Department of Health Services (DHS) is pursuing Authorization from the Federal Environmental Protection Agency (EPA) to implement the Resource Conservation and Recovery Act (RCRA) Hazardous Waste Program in California. RCRA allows states to assume the responsibility for implementing RCRA's Hazardous Waste Program by demonstrating that its hazardous waste management program is equivalent to, no less stringent than and consistent with the federal program. In developing the application to EPA with supporting documentation, DHS has undertaken a regulatory and statutory analysis to determine where state's laws and regulations are equivalent to, or more or less stringent than, or inconsistent with RCRA and EPA regulations.

DHS has completed analytical outlines or briefing papers for the program and regulatory areas of **alternative technology** (including radioactive mixed waste, definitions of waste and solid waste, hazardous waste recycling and small quantity generators), **technical services** (including groundwater monitoring and the role of the State Water Board), **permit issues** (including compliance with the State Permit Streamlining Act, denial and appeal procedures and compliance with permit conditions and regulations), and **financial responsibility issues** (including coverage variance provisions). Having done this, DHS convened the RCRA Authorization Advisory Committee. Its membership consists of representatives from Industrial Associations, Public Interest Associations and Governmental Associations. A list of the invited members is attached to this item.

The Advisory Committee met December 11, 1987. Board counsel represented the Board at the meeting. Several issues arose during the course of the meeting, in which staff feels that the Board would be interested. Generally, the process which DHS is undertaking may resemble the process the Board will have to undertake when RCRA Subtitle D (solid waste) standards are imposed upon the states.

Specifically, DHS has presented several analytical outlines/briefing papers affecting topics significant to the Board's responsibilities. Among those signficant specific issues are the following:

- Ash and Emission Control Residue from Waste-to-Energy
- Definition of Waste
- Household Hazardous Waste Exemption

Discussion:

Ash and Emission Control Residue from Waste-to-Energy

The briefing papers state that there are several inconsistencies between state and federal law on the treatment and handling of waste-to-energy ash. First, state law requires that DHS classify waste-to-energy ash as nonhazardous, if significant quantities of hazardous waste or industrial sludge are not present. Federal law defines waste-to-energy ash as hazardous. Second, state law requires that the DHS has the responsibility of demonstrating that ash has become hazardous in order to reclassify it as hazardous. Federal regulation places that responsibility on the generator. Third, state law permits the disposal of ash in a nonhazardous waste facility, but federal regulation does not.

DHS proposes to change state law to be consistent with federal regulation. These would have the impact of causing far more waste-to-energy ash to be classified hazardous. DHS has not considered, in its briefing papers this impact on waste-to-energy.

The DHS ash briefing papers are attached to this item and bear designations in the upper left corner of "CJM-1," "CJM-2," "CJM-3" and "CJM-4," as well as sequential page numbers, also in the uppper left hand corner of 9-15.

Definition of Waste

DHS states the problem as follows:

"Such a great difference exists between EPA's definition of which materials are regulated (waste and recyclable material) that a comparison to establish equivalency is not possible."

The basic difference between the federal and state treatment of the definition of waste, solid waste and hazardous waste is the following:

- Federal: Hazardous Waste, along with Recycling, are smaller subsets of Solid Waste.

- State: The Health and Safety Code provides that Hazardous Waste and Recyclable Material are a subset of Waste. Solid Waste as defined parallel statutes in both the Government Code and Health and Safety Code specifically excludes Hazardous Waste.

DHS states that "EPA will not authorize our program as long as such a great difference exists in the way the regulated universe is defined; thus we (?) have agreed that we will redefine hazardous waste in the rewritten [state] regulations to parallel the definition in CFR 40 Sec 261.2 and 261.3." DHS proposes to ask EPA to substitute the term, "waste," for "solid waste," in the appropriate federal regulations. Furthermore, DHS proposes to redefine its definition of "waste," to read more like the federal definition of "solid waste," appearing in 40 CFR 261.2

DHS is aware of the impact of this problem on "other agencies," but has not referenced the specific problems to be caused the Board, nor has it consulted the Board in proposing this solution for its authorization exercise.

The Definition of Waste briefing paper from DHS is attached to this item and bears sequential page numbering in the upper left-hand corner of 22-27.

Household Hazardous Waste Exemption

Federal regulation does exempt solid wastes produced by households (and certain businesses) as not hazardous. State law does not. DHS proposes to keep the more stringent standard. This may have an impact on the household hazardous waste activities being undertaken by the Board. The DHS briefing paper is attached to this item; it bears sequential page numbers in the upper left-hand corner of 60-61.

All of the other briefing papers are also provided as attachments to this item, along with a document entitled, "RCRA AUTHORIZATION UPDATE."

Action:

This item is an informational item only. DHS has invited the Board to participate in the Advisory Committee. The Board's first input was Counsel's review of the briefed topics during the meeting, and his statement of a desire to reserve the right to comment on several topics, including the three detailed above, pending consultation with Board Members and management.

Furthermore, the Board's continued presence at the meeting of the Advisory Committee will be instructive. This process could be a bellwether for when EPA adopts Subtitle D criteria and the Board is required to undergo an equivalency exercise.

Your comment and direction is invited.

Attachments

RCRA AUTHORIZATION

UPDATE

Department of Health Services

Kenneth W. Kizer, M.D., M.P.H.,

Director

Toxic Substances Control Division

Alex R. Cunningham

Chief Deputy Director

Contact: Kathie Schievelbein (916) 322-8677

INTRODUCTION

The Department of Health Services (DHS) is pursuing Authorization from the federal Environmental Protection Agency (EPA) to implement the Resource Conservation and Recovery Act (RCRA) in California. The progress of the various stages leading to authorization will affect a range of individuals and agencies. To ensure that all concerned parties have an informational link to each stage throughout this process, the Department of Health Services/Toxic Substances Control Division (TSCD) has developed this "RCRA AUTHORIZATION UPDATE". The "UPDATE" will be used to communicate to TSCD staff, EPA, environmental groups, and the regulated community on a quarterly basis, with a comprehensive assessment of the state's progress and a continuous report of upcoming authorization activities.

WHAT IS "RCRA AUTHORIZATION"?

RCRA allows states to assume the responsibility for implementing and enforcing the Act's Hazardous Waste Program by demonstrating that its hazardous waste management program is equivalent to, no less stringent than, and consistent with the federal program. Additionally, the state must prove that it can adequately enforce the provisions of the program. The primary rationale for this delegation of authority to the states is their proximity to and familiarity with the needs of the regulated community.

States seeking Authorization must submit an application to the federal government which includes the following elements:

- A letter from the Governor requesting program approval;
- Copies of all applicable state statutes and regulations, including those governing state administrative procedures;
- Documentation of the public notice period and any other public participation activities;
- A program description;
- Attorney General's statement;
- Memorandum of Agreement between DHS and EPA (although an authorized state has primary responsibility for administering the federal hazardous waste program, EPA retains some responsibilities and oversight with regard to the state's execution of the program; that relationship would be outlined here).

HOW WILL DHS ACHIEVE AUTHORIZATION?

The Governor's Office, State Legislature and the Department have all agreed that California should pursue RCRA authorization. To reach this goal, DHS conducted an evaluation of authorization needs and a planned, detailed approach. The major elements of this approach are:

- The California regulations pertaining to hazardous waste management (CAC Title 22 Chapter 30) will be modified to conform to the federal regulations format.
- Changes to California statutes, required for Authorization, will be sought by DHS.
- A capability assessment will be completed by EPA.
- Public workshops and a public hearing will be held to solicit broad input throughout the regulation review and application process.

DHS/TSCD has compiled a "RCRA Authorization Team" to accomplish these tasks. This team includes individuals from the TSCD, other divisions of DHS, the State Water Resources Control Board (SWRCB), the Attorney General's Office and the EPA.

The approach has been divided into the following six phases with authorization projected for mid-1989.

PHASE	COMPLETION DATE
Regulatory/statutory development	2/88
Public workshop and hearing	7/88
Adoption of regulations/statutes	12/88
Development and submittal of revised application to EPA	1/89
EPA application approval	7/89

WHAT IS CURRENTLY BEING DONE?

TSCD has formed the work groups for the authorization effort. These work groups are now evaluating federal and state statutes and regulations to identify the areas where policy issues must be resolved.

The team leaders and their areas of responsibility are:

- Don Plain — Permitting
- Mike Horner — Alternative Technology
- Elgar Stevens — Technical Services
- Karen Parken — State Water Resources Control Board

The first product from each of the work groups will be the identification of all statutory and regulatory policy issues. These issues will be reviewed by management and priorities and direction will be determined. Decisions on these issues will be the basis for needed statutory and regulatory changes. TSCD has held three policy meetings to date. Participants included TSCD Executive staff, regional section chiefs, Office of Legal Services, the Attorney General's Office, the Environmental Protection Agency and SWRCB. If needed, an additional policy review meeting will be scheduled to resolve any issues which are identified as the Division develops its regulatory and statutory program.

WHAT IS PLANNED FOR THE FUTURE?

The regulation review/rewrite process has begun. During this period, an advisory group representing California's regulated community, the general public, environmental groups, and governmental agencies will be established and meetings will be conducted to brief the group on the progress of the authorization process. The first meeting of the advisory group is scheduled for December 11, 1987 in Sacramento.

The next issue of this update is scheduled for February 1987.

Fourth Quarter 1987

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POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	Mike Horner
Sec # 261.3(c)(2)(i)	66740(a)(1)	25143.5	Team Leader
261.4(b)(1)	66740(a)(3)		
			Carol Masson
			Reviewer
			September 3, 1987
			Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

SUBJECT: ASH/EMISSION CONTROL RESIDUE FROM COMBUSTION OF SOLID WASTE - HAZARDOUS WASTE

HSC Section 25143.5 concerns the classification of fly ash, bottom ash, and flue gas emission control residues from the combustion of solid waste or biomass material and the conditions by which the department may repeal or modify a nonhazardous determination of such a waste.

HSC Section 25143.5(a) states that "...the department shall classify as nonhazardous waste any fly ash, bottom ash, and flue gas emission control residues, generated from the combustion of solid waste or biomass material, if these wastes do not contain significant quantities of industrial sludge or hazardous waste..." Aside from not quantifying "significant", this clause could be in conflict with 40 CFR 261.3(c)(2)(i) which states "...any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate... is a hazardous waste." In other words, if a facility burns hazardous waste, the ash and/or emission control dust would be hazardous waste by federal definition. Section 25143.5 does not provide for this possibility, even though it does state the department would determine the hazardous nature of the ash/residue pursuant to adopted criteria (the criteria do not refer to 40 CFR 261.3 (c)(2)(i)). 22 CAC 66740(a)(1) and (3) include these two wastes (ash/residue) as classifiable as special wastes.

The intent of this phrase of HSC 25143.5 (a) is confusing because the HSC definition of solid waste (Section 25148.5) specifically does <u>not</u> include hazardous waste. The phrase may have been inserted because of the possibility of hazardous waste included in biomass material. The 40 CFR 261.4 (b) (1) description of what a resource recovery facility managing municipal solid waste will receive includes "... (s)olid waste from commercial or industrial sources that does not contain hazardous waste..."

Problem: The possibility exists that HSC 25143.5 (a) could allow a nonhazardous determination for ash/residue that would be hazardous by federal definition.

Option:

Change the phrase in HSC 25143.5 (a) to read "...if these wastes do not contain hazardous waste ..." This change would remove the conflict with 40 CFR 261.3 (c)(2)(i) and would be complimentary to 40CFR 261.4 (b)(1).

Impact:

The law would need an amendment.

CJM-2

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	Mike Horner
Sec # 262.11	66305(b)	25143.5	Team Leader
			Carol Masson
			Reviewer
			September 3, 1987
			Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

SUBJECT: ASH/EMISSION CONTROL RESIDUE FROM COMBUSTION OF SOLID WASTE - DETERMINATION

HSC Section 25143.5 concerns the classification of fly ash, bottom ash, and flue gas emission control residues from the combustion of solid waste or biomass material and the conditions by which the department may repeal or modify a nonhazardous determination of such a waste.

HSC 25143.5 (a) and (d) both state that once the Department has made a nonhazardous determination, the Department shall not repeal or modify the determination unless it determines there has been a significant change in the ash/residue or in the solid waste conversion process. 40 CFR 262.11 and 22 CAC 66305 (b) both state that it is the generator's responsibility to determine if his waste is hazardous or not.

Problem:

HSC Section 25143.5 appears to place the responsibility of hazardous waste determination upon the Department. This section is in conflict with 40 CFR 261.11 and 22 CAC 66305(b), both of which place the responsibility upon the generator.

Option:

Amend HSC 25143.5 (a) and (d) to state that "the Department shall not repeal or modify the nonhazardous determination provided the operator of the solid waste facility assures the nature of the waste remains the same..."

Impact:

The law would need an amendment. The amendment would remove the conflict with the federal and state regulations.

CMJ-3

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC
Sec # 260 25143.5

Mike Horner
Team Leader

Carol Masson
Reviewer

September 3, 1987
Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

SUBJECT: ASH/EMISSION CONTROL RESIDUE FROM COMBUSTION OF SOLID WASTE - ADEQUATE REGULATION BY OTHER AGENCIES

HSC Section 25143.5 concerns the classification of fly ash, bottom ash, and flue gas emission control residues from the combustion of solid waste or biomass material and the conditions by which the department may repeal or modify a nonhazardous determination of such a waste.

One of the conditions in HSC Section 25143.5 (d)(3) states that a nonhazardous determination for ash/residue by the Department shall not be modified by the Department unless "...(t)he hazard caused by the change specified in paragraph (1) or the hazardous waste produced by the facility is not adequately regulated by any other state or local agency with jurisdiction over the facility which generates the ash or residue." Except for excluding wastes which go to publicly-owned treatment works, 40 CFR does not have a similar provision.

Problem:

The possibility exists that HSC 25143.5 could allow the disposal of a hazardous waste to an unpermitted facility.

Note 1:

See CJM-4 for additional comments on HSC 25143.5(d).

Note 2:

Changes in exclusion and/or variance sections of 40 CFR and/or HSC could affect this section of the law as well.

Option:

Delete HSC Section 25143.5 (d)(3).

Impact:

Deletion would remove the possible conflict with federal regulations. Deletion would not affect modification or repeal of a department determination and if new data indicate the waste is hazardous, the department may still waiver disposal requirements under HSC Section 25143.

CJM-4

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	Mike Horner
Sec # _____	_____	25143.5	Team Leader
			Carol Masson
			Reviewer
			September 3, 1987
			Date

- o State the difference
- o How is it different
- o Explain the impact
- o Suggestions

SUBJECT: ASH/EMISSION CONTROL RESIDUE FROM COMBUSTION OF SOLID WASTE - TYPOGRAPHICAL/GRAMMATICAL ERRORS

HSC Section 25143.5 concerns the classification of fly ash, bottom ash, and flue gas emission control residues from the combustion of solid waste or biomass material and the conditions by which the Department may repeal or modify a nonhazardous determination of such a waste.

Besides the potential conflicts with 40 CFR, review of HSC 25143.5 discovered two other problems. The first problem is typographical/grammatical: the "s" on the verb "reveals" should be removed from Section 25143.5 (d)(1).

The second problem concerns HSC 25143.5 (d). The conditions upon which the Department may modify or repeal a nonhazardous determination do not include new data when there has been no significant change in the solid waste entering the combustion process, etc., but which meets hazardous waste criteria. Allowance for the possibility of a revision to any of the criteria that may in turn affect a nonhazardous determination is not made either. In other words, if the Department made a nonhazardous determination prior to January 1, 1985 with a limited amount of data (e.g., total metals only) and additional data (e.g., soluble metals) later indicate the ash/residue to actually be hazardous, the Department could not modify or repeal the nonhazardous determination. Likewise, if a revision is made in the future to any of the criteria used to identify hazardous waste (e.g., the adoption of the Toxicity Characteristic Leaching Procedure) and that revision identifies the ash/residue as hazardous, the Department could not modify or repeal the nonhazardous determination.

The Department may be able to avoid the issue by arguing that the waste entering the combustion process varies (e.g. wrapping paper/boxes in the winter, yard clippings in the spring/summer) to the extent that HSC Section 25143.5 (d) (1) may be invoked.

Option 1:

Repeal Section 25143.5.

Impact 1:

Repeal of this law would require work with the legislature, but would also require some finesse with the California Waste Management Board.

Option 2:

Add a condition to Section 25143.5 (d) that would include new data and criteria revision.

Impact 2:

The law would need an amendment. Once amended, this section would not differ from the Department's standard waste classification procedure.

WASTE DEFINITION ISSUES

CONCEPT PAPER

ISSUE: Definition of waste

PROBLEM: Such a great difference exists between EPA's definition of which materials are regulated (solid waste) and the DHS's definition of which materials are regulated (waste and recyclable material) that a comparison to establish equivalency is not possible.

EPA establishes which materials they will regulate as candidate hazardous wastes in 40 CFR Section 261.2 (they are hazardous wastes only if they are listed or meet characteristics set forth in elsewhere in 40 CFR). Section 261.2 does three different things:

1st: It establishes that materials discarded by being abandoned, recycled, or inherently wastelike are solid wastes and thus can be hazardous wastes.

2nd: It exempts materials recycled in certain ways from classification as solid waste.

3rd: It recaptures some of these materials recycled in certain manners such as burning for energy recovery and speculative accumulation.

PROPOSAL:

1) Redefine "waste" in the HSC to read like the first part of 40 CFR Section 261.2. State that materials exempted from regulation under Section 25143.2 HSC are not "wastes".

2) "Clean-up" Section 25143.2 HSC to read like the second and third sections of 40 CFR Section 261.2. Materials recycled in such a manner as not to be classified as "solid waste" under the federal system would be released from classification as a "waste" under the new State system.

HSC CHANGES REQUIRED FOR IMPLEMENTATION:

1) New definition of "waste" (see issue paper)

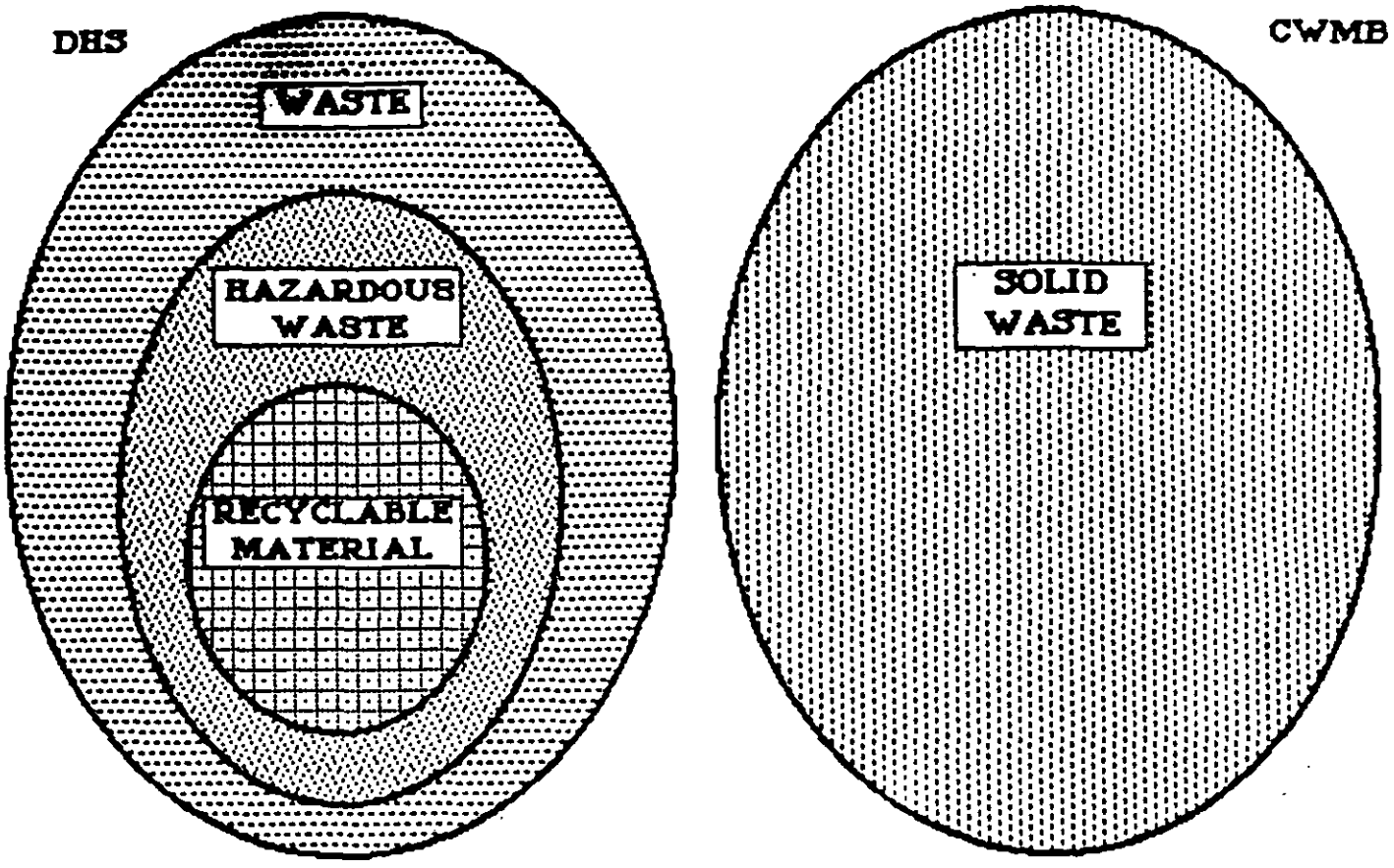
2) The following terms would need definition or redefinition in statute:

Discarded
Abandoned
Recycled
Inherently wastelike
Accumulated speculatively
Recyclable material

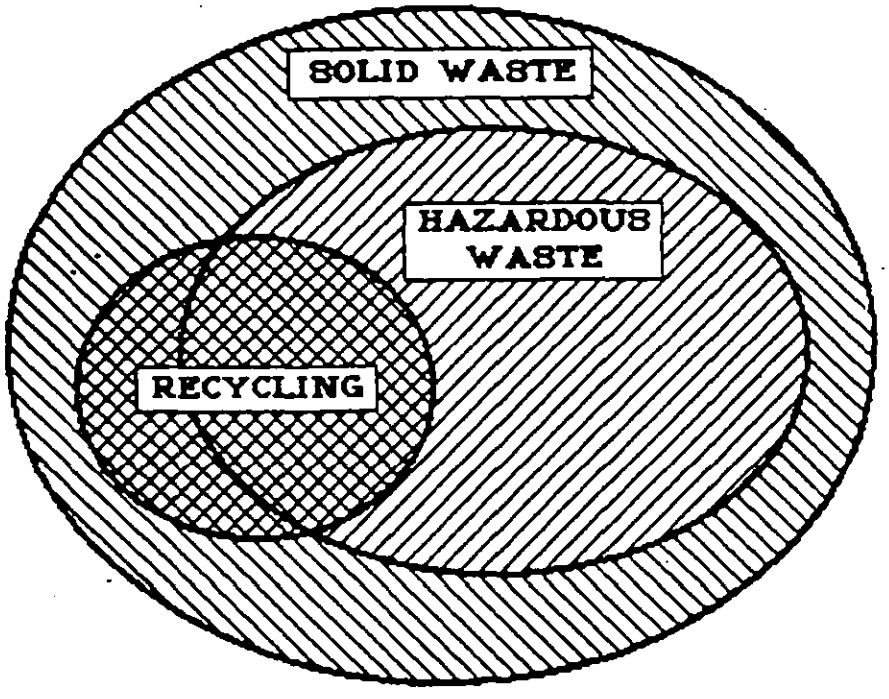
3) Section 25143.2 would need to be "cleaned-up" to mirror the Federal exemptions and exceptions to the exemptions in 40 CFR Section 261.2. (see issue papers)

RESOURCE IMPACT: Little or no impact on DHS resources other than initial regulation writing and training of DHS and other personnel in the new waste classification system.

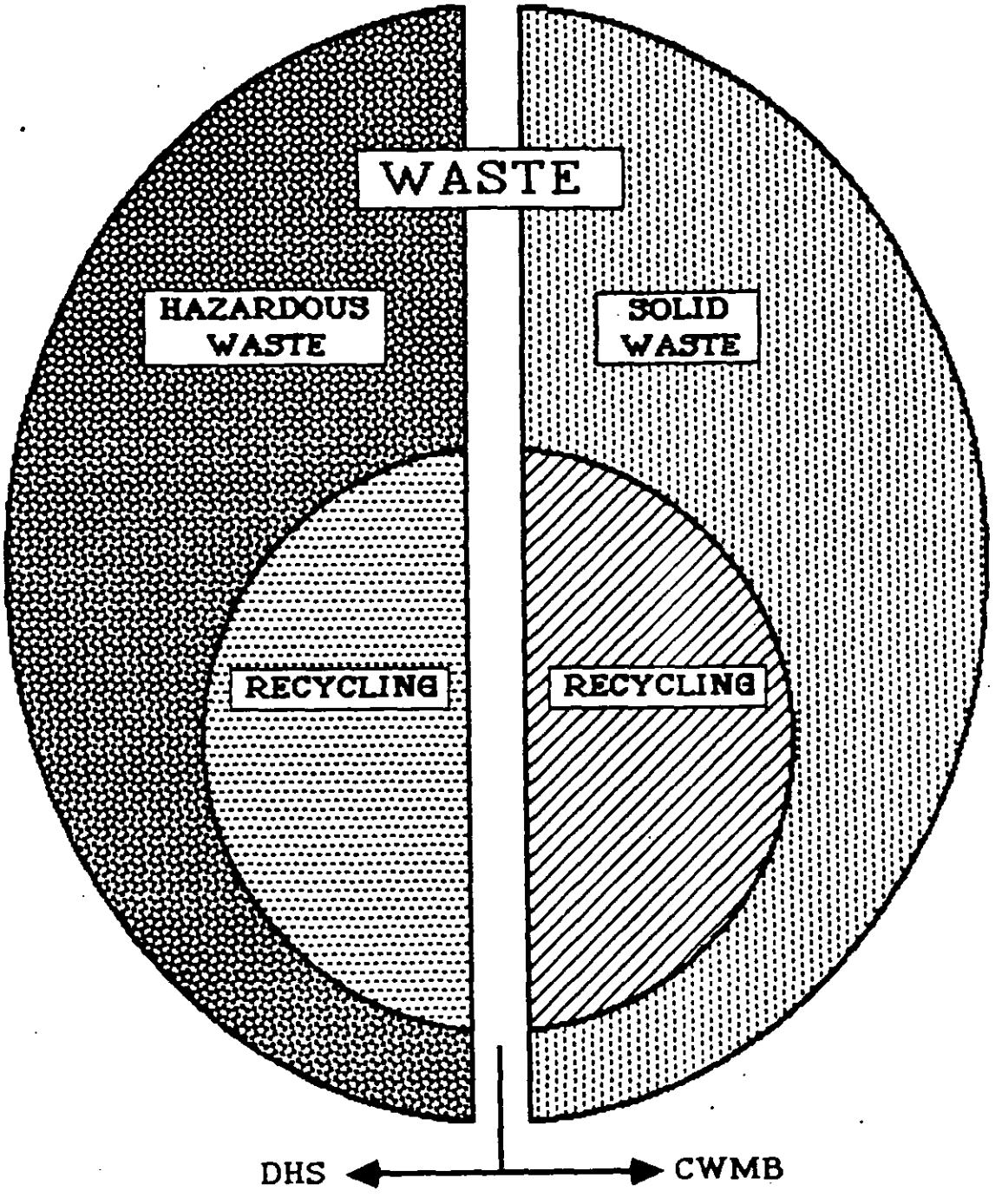
CURRENT WASTE UNIVERSE IN CALIFORNIA



CURRENT EPA WASTE UNIVERSE



PROPOSED CALIFORNIA WASTE UNIVERSE



POLICY/STATUTE EXPLANATION FORM

CFR 40 Sec #	(change)	Title 22	HSC 25117,25124, 25148.5	Mike Horner Team leader
				Reviewer

o State the difference
o Explain the impact
o How is it different
o Suggestions

Subject: DEFINITION OF "SOLID WASTE"

1) EPA defines "solid waste" first in 42USCA sec. 6903 def. #27; "Solid waste" is defined again in 40 CFR Sec. 261.2 "...for the purposes of Subtitle C.." (see 261.1 (b)(1)) as solid waste which is hazardous. Section 261.2, Definition of Solid Waste, is more than definitional as it establishes whether a waste is regulated as a hazardous waste or exempt from regulation; designation as a "solid waste" is used in other parts of 40 CFR to determine applicability of regulation by defining a "hazardous waste" as a subset of "solid waste" in Sec. 261.3. The federal definition of "solid waste" is part of an overall system to manage all wastes; DHS regulates only the hazardous subset of waste and cannot implement the entire solid waste management system of RCRA.

2) DHS defines "waste" in Sec. 25124 HSC; "hazardous waste" is defined as a subset of "waste" in Sec. 25117 HSC; "solid waste" is defined in Sec. 25148.5 HSC as a subset of "waste" which is exclusive of hazardous waste. "Recyclable material" is defined in Sec. 25120.5 HSC; "recycle" is defined in Sec. 25121 HSC; and "retrograde material" is defined in Sec. 25121.5 HSC. Exemptions from regulation parallel to those in Sec. 261.2 40 CFR are contained in Sec. 25143.2 (b) HSC, and other operative sections. All these definitions and the operative sections contain authority needed for equivalence to 40 CFR Sec. 261.2.

3) Problem: EPA will not authorize our program as long as such a great difference exists in the way the regulated universe is defined; thus we have agreed that we will redefine hazardous waste in the rewritten regulations to parallel the definition in CFR 40 Sec. 261.2 and 261.3. If we are to define hazardous waste as a subset of "solid waste", we need to redefine "solid waste" in our own statute; consequently, we will have conflicts with other agencies' definitions of "solid waste". Additionally, problems will occur with other agencies reference to our definition of "hazardous waste" if we define it as a subset of "solid waste" in conflict with their existing definitions of "solid waste" (which exclude hazardous waste).

4) Suggested resolution: Substitute the term "waste" 1:1 into the new set of regulations wherever the the term "solid waste"appears in 40 CFR. The current definition of "waste" contained in Sec. 25124 HSC would then require modification to read more like the federal definition of "solid waste" in 40 CFR Sect. 261.2. In addition, the definition of "recyclable material" contained in Sec. 25120.5 HSC would be changed to read like the Federal definition: "A recyclable material is a hazardous waste that is recycled". Recycle would need to be redefined in order gain equivalence to 40 CFR Section 261.2. Suggested wording follows:

A waste is any discarded material not excluded by regulation or variance.

a) A discarded material is any material which:
   1) Is abandoned, or:
   2) Is recycled, or:
   3) Is inherently wastelike, or:
   4) Which poses a threat to public health or the environment and which meets either, or both of the following conditions:
   (A) Is mislabeled or is not adequately labeled, unless the material is correctly labeled or adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately labeled.
   (B) Is packaged in deteriorated or damaged containers, unless the material is contained in sound or undamaged containers within 96 hours after the containers are discovered to be deteriorated or damaged; or
   5) Is any retrograde material that has not been used, distributed or reclaimed through treatment by the original manufacturer or owner by the later of the following dates:
   (A) One year after the date when the material became a retrograde material.
   (B) One year after the material is returned to the original manufacturer.

b) A material is not a waste if it is exempted from regulation under Section 25143.2 HSC.

A material is recycled if it is used, reused, or reclaimed.

A material is abandoned if it is disposed or burned or incinerated or accumulated speculatively before being disposed of, burned, or incinerated.

Comment: Rather than define "recycle" or "recycled", we may need to define "recyclable material" or "hazardous recyclable material" because of the definitions of "recycle" in other agencies regulations. The exact format and language of these definitions will require careful legal analysis.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 HSC
Sec # 261.4(b)(1) 66470(e)

Mike Horner
Team leader

Mike Horner
Reviewer

o State the difference
o Explain the impact
o How is it different
o Suggestions

Subject: HOUSEHOLD HAZARDOUS WASTE EXEMPTION

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1) 40 CFR Sec. 261.4(b) list "solid wastes" which are not "hazardous waste." Sec. 261.4(b)(1) states that solid waste produced by households (and certain businesses) is not hazardous waste. In addition, this section states that a resource recovery facility managing municipal solid waste is not a hazardous waste facility if it accepts only household waste, non-hazardous industrial waste, and has a program to assure that no hazardous wastes are being burned at the facility.

2) Title 22 Sec. 66470(e) exempts householders from the generator requirements but doesn't exempt their waste from classification as hazardous.

Sec. 25143.5 HSC sets certain modified classification requirements for wastes derived from the burning of municipal solid waste.

3) Problem: State law is unclear about exactly what the household hazardous waste exemption means. In addition, our modified requirements for classification of waste from municipal solid waste incineration do not line up well with the federal exemption for resource recovery facilities burning household and municipal solid waste.

The federal exemption categorically exempts a resource recovery facility burning municipal solid waste from classification as a hazardous waste facility while not addressing the wastes produced at the facility.

Suggestions:

Option 1: Do not include Section 261.4(b)(1) in our version. Many materials in household waste are indeed hazardous.

Impact: If we did not adopt this exemption and added the Title 22 householder exemption from generator requirements to the new

regulations, they would be equivalent to our current regulations and would be more stringent than 40 CFR.

Option 2: Adopt this exemption as is.

Impact: Adoption of this exemption would legitimize the status quo. However, we may need to eventually regulate certain household hazardous wastes; and, if adopted, we would need to change this regulation if we decided to control household hazardous waste in the future. Adoption of this exemption would allow not only the householder to dispose of hazardous waste in municipal landfills, but would also allow a municipality or refuse collection agency to dispose of truckloads of hazardous waste collected in community hazardous waste collection programs in municipal landfills (because the waste is declared "not hazardous waste").

SUMMARY OF ALTERNATIVE TECHNOLOGY ISSUES

ISSUE	DECISION
Regulation of Radioactive Mixed Waste.	As part of Authorization, Mixed Waste regulatory Responsibility will go to Environmental Management Branch. TSCD will provide technical support.
Identification of a Hazardous Waste.	Will use a system which combines the current California system with the EPA system. . EPA list of waste . California characteristics . California Wet Test . California Toxicity Test
Ash from waste to energy plants.	Agreed to proposed statutory changes to remove waste classification conflicts i.e., reclassification of waste.
Variance Authority.	. Will not seek delisting authority as part of authorization. . Will not adopt EPA recycling variances. . Will use California Administrative process to provide variances for California only waste. . Will have a definition for California only waste.
Definition of Waste or Solid Waste.	Redefine "waste" to parallel EPA's definition of "solid waste". Obtain letter from EPA stating the proposed change in the State's definition of waste is a requirement for Authorization.
Definition of recycle.	Obtain letter from EPA stating that a new definition of recycled material is needed.

ISSUE	DECISION
Recyclable Material.	Change definition if required by EPA; if not required, current definition will be retained.
Retrograde Material definition.	Make changes in statute if required by EPA.
Household Hazardous Waste Federal Exemption.	Will not be adopted.
Small Quantity Generators Federal Exemption.	Will not be adopted .
Agricultural Waste Federal Exemption.	Will not be adopted.
Sewage and Sewage/Hazardous Waste Federal Exclusion.	Will adopt federal language, but change part (ii) to read: (ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works (POTW) for treatment, as long as these other wastes are discharged to the sewer with the written consent of the POTW...etc.
Point - Source Discharge Federal Exemption.	Will adopt federal language.
Industrial Waste Water Federal Exemption.	Will adopt federal language.
Irrigation return flow exclusion	Reverse earlier decision and not adopt Federal exemption.
Exemption from treatment requirement	Add language negating this exemption for RCRA restricted wastes.
Lab pack exemptions	Remove lab pack exemption from statute.
Definition of treatment	Add language to state that the department must adopt EPA standards which are more retrictive.
Variance from land disposal restriction or treatment standard	Add language to limit our variance authority to California standard only wastes while retaining our authority to not adopt EPA extensions and exemptions.

ISSUE	DECISION
Limited capacity extension	Add language that retains our authority to give extensions but requires us to defer to a decision of the EPA administrator not to delay a restriction for RCRA wastes.
Storage Limitation	Adopt one year maximum permitted storage of restricted wastes.
Exemption from land disposal restriction: Incinerator shutdown	Add language to restrict this exemption to Ca-only wastes or RCRA wastes only with the concurrence of the EPA administrator.
Use of best demonstrated available technology (BDAT)	Add language requiring us to adopt EPA treatment standards or more stringent treatment standards.
Department's adoption of EPA treatment standards	Add language stating that EPA's standards treatment standards are those of the Department until the Department adopts equivalent or more stringent treatment standards.
Treatment standard revision	Add language requiring the Department to adopt EPA's revised treatment standards without justification or to adopt more stringent treatment standard revisions with justification.
Definition of "hazardous waste constituent" for the land disposal restriction	Add language to 25179.3(d) adding "an element, chemical compound, or mixture of compound listed by the Department as a "hazardous constituent or constituent"."

ISSUE	DECISION
Definition of "HOC" (halogenated organic compound)	Add language defining "halogenated organic compound" and creating a list of HOC's to the new regulations referencing the requirement (to be added to the HSC) that we adopt EPA's land disposal restrictions and treatment standards.
Used oil recycling	Amend the statute to state that exempt oil must have no more than 3000 ppm total halogens.
Exemption for contaminated petroleum products	Add language empowering us to write RCRA equivalent regulations.
Recycling - Permit requirement	Not an authorization issue.
Alternate test methods	Do not adopt alternate test method adoption procedure for RCRA wastes.

SUMMARY OF ALTERNATIVE TECHNOLOGY ISSUES - MINOR:

ISSUE	DECISION
Irrigation Return Flow Federal Exemption.	Will adopt federal language.
In-Site Mining Federal Exemption.	Will adopt federal language.
Arsenical-treated Wood Federal Exemption.	Will not be adopted.
Federal Exemption for In-Process Wastes, Accumulation Start-Time.	Will adopt federal language.
Federal Exemption for Drilling/ Production Waste.	Will not be adopted.
Federal Exemption for Pulping Liquor.	Will not be adopted.
Federal Exemption for Mining Overburden.	Will adopt federal language.
Federal Exemption for Trivalent Chronium Waste.	Will not be adopted.
Federal Exemption for Mine Waste and Kiln Dust.	Will not be adopted.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	HSC	Mike Horner
Sec # Fed.Reg. 51/128	66300 (b)		Team leader
			Mike Horner
			Reviewer

o State the difference
o Explain the impact
o How is it different
o Suggestions

Subject: REGULATION OF RADIOACTIVE MIXED WASTE

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1) Section 66300 (b) states that radioactive wastes are not subject to regulation as hazardous waste.

2) EPA now requires that states regulate the chemical hazard portion of "mixed waste" (mixed radioactive/hazardous waste) under their hazardous waste regulations (Fed. Reg.51/128, July 3, 1986). The hazardous waste rules are required to address all but the radioneuclide constituent of the waste; a joint regulatory effort would be necessary with TSCD regulating the chemical hazards of the mixed waste and the Environmental Management Branch of DHS (authorized by DOE to operate their low level radioactive waste program in California) regulating the radioactive portion. In order to obtain authorization, the Department must provide a program description for regulating the RCRA portion of mixed waste. This description should address how standards for generators, transporters, and facilities will be developed and enforced. States applying for HSWA authorization must demonstrate that they have a program to address corrective actions involving mixed waste. In addition, the Department must show that it has appropriate resources available for implementation of the mixed waste program and present an Attorney General's statement affirming that we have sufficient authority to regulate mixed waste. Currently, the need for having regulations in place for control of mixed waste has not been clarified by EPA authorization staff.

EPA currently has no generator, transporter, or facility standards for mixed waste. A joint NRC/EPA project has proposed designs for mixed waste facilities; these facilities must deal with the conflicting requirements for radioactive and hazardous waste. The standards for hazardous waste management are not directly applicable to mixed radioactive/hazardous wastes.

3) Problem: There is currently no authority for DHS to regulate mixed waste; in fact, Title 22 Sec. 66300(b) states that radioactive waste is <u>not</u> regulated as hazardous waste. In addition, no lead authority has been designated and no single entity in state government has the capability to address this

issue.

4) Suggested resolution:

Option 1: Reach an agreement with the Environmental Management Branch of DHS (an MOA) naming them as the lead agency for regulation of mixed waste; add language to our statute allowing the identification of mixed waste as hazardous waste and specifying that it will be regulated under Environmental Management regulations.

Impact: TSCD would need to participate in a joint task force to develop suitable standards for dealing with the chemically hazardous portion of mixed waste. We would need no new expertise for control of the radiation hazards.

Option 2: Reach an agreement with the Environmental Management Branch of DHS naming TSCD as the lead agency for regulation of mixed waste; add language to our statute allowing identification of mixed waste as hazardous waste and allowing the development of regulations to control mixed waste hazards, both radiation and chemical.

Impact: Environmental Management Branch would need to participate in a joint task force to develop suitable standards for dealing with the radiation hazard portion of mixed waste.

Resource Impact: Creation of generator, transporter, and facility standards, enforcing these standards, and administering this program will require addition of new personnel. The largest workload increase will, of course, be in the lead agency.

Comment: The task created by the mixed waste requirement entails promulgation of generator, transporter, and facility standards, creation of new worker safety procedures and training programs, and regulation of firms not currently included in the hazardous waste management system. This task requires personnel skilled in health physics and personnel skilled in hazardous waste management. The standards for corrective actions, containers, sampling, storage, disposal and other aspects of mixed waste management are significantly different than those for other hazardous wastes. Neither TSCD nor the Environmental Management Branch have all the resources needed for this task, but the combination of both groups probably does. A joint task force will undoubtedly be formed to address mixed waste; the real issue currently needing resolution is the identity of the lead authority. Mixed waste represents only about 4% of all low level radioactive waste; it is obviously a large effort for no more than 200 tons/year of hazardous waste.

WASTE CLASSIFICATION ISSUES

CONCEPT PAPER

ISSUE: Identification of a hazardous waste

PROBLEM: DHS and EPA use different approaches to the identification of a hazardous waste. EPA first sees whether a "solid waste" appears on a list of hazardous wastes from specific and non-specific sources or a list of commercial chemical products. Inclusion on a list makes a "solid waste" a prima-facie hazardous waste. If a waste is not a "listed" hazardous waste, it still can be a hazardous waste if it exhibits any of the four "characteristics" of a hazardous waste: corrosivity, reactivity, ignitability, or EP toxicity.

DHS identifies a "waste" as a hazardous waste if it exhibits any of the" criteria" of a hazardous waste: corrosivity, reactivity, ignitability, or toxicity.

The criteria of corrosivity, ignitability, reactivity are virtually identical in State and Federal regulations; the characteristic of EP toxicity incorporates only a fraction of the testing incorporated in the DHS Toxicity criterion. In addition, the EPA characteristic of EP toxicity references a different extraction procedure than the Waste Extraction Test used by DHS.

PROPOSAL: Mingle the two identification systems so that we are equivalent to 40 CFR while maintaining our expanded toxicity criteria. In the proposed system, we would identify two major categories of hazardous waste: listed hazardous wastes, and characteristic hazardous wastes. The lists and the criteria for listing would be brought over from 40 CFR Part 261; the characteristics would be retained from Title 22. We also propose that the WET be substituted for the EPA's Extraction Procedure (EP) test; this test will probably be accepted as a substitute for the EP test by EPA.

NO HSC CHANGES REQUIRED

RESOURCE IMPACT: Little or no impact. This classification system is in effect currently; we currently identify which wastes and facilities are "RCRA" and which are "California-only".

IDENTIFICATION of a HAZARDOUS WASTE

TSCD

CHARACTERISTIC ONLY

- CORROSIVITY
- REACTIVITY
- IGNITABILITY
- TOXICITY
  - TOTAL CONCENTRATION (TTLC)
  - SOLUBLE CONCENTRATION (STLC - W.E.T.)
  - ORAL TOXICITY
  - DERMAL TOXICITY
  - INHALATION TOXICITY
  - CARCINOGENICITY
  - AQUATIC TOXICITY
  - BEST PROFESSIONAL JUDGEMENT

EPA

- LISTS
- CHARACTERISTICS
  - CORROSIVITY
  - REACTIVITY
  - IGNITABILITY
  - E.P. TOXICITY

PROPOSED TSCD

- LISTS
- CHARACTERISTICS
  - CORROSIVITY
  - REACTIVITY
  - IGNITABILITY
  - TOXICITY
    - TOTAL CONCENTRATION (TTLC)
    - SOLUBLE CONCENTRATION (STLC - W.E.T.)
    - ORAL TOXICITY
    - DERMAL TOXICITY
    - INHALATION TOXICITY
    - CARCINOGENICITY
    - AQUATIC TOXICITY
    - BEST PROFESSIONAL JUDGEMENT

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 HSC
Sec # 261.24, 66700 CAC
App.II to Part 261

Mike Horner
Team leader

Mike Horner
Reviewer

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: TESTING FOR EXTRACTABLES; WET VS EP

---

1) 40 CFR Sect. 261.24 calls for testing of hazardous wastes using the Extraction Procedure (EP) given in Appendix II to Part 261.

2) Title 22, Sect. 66699 sets forth concentrations of certain heavy metals and certain organic compounds in the extract from a Waste Extraction Test (WET) described in Sect. 66700 CAC which render a waste hazardous.

3) Problem: The federal EP test and the State WET contain differences in leaching solution and procedure which cause the WET to extract higher concentrations of metals than the EP test. Therefore, even with identical threshold concentrations for designation as a hazardous waste, the WET will identify a significantly greater percentage of wastes as hazardous than the EP test.

4) Suggested resolution: Replace the EP test in our version of the regulations with the WET as set forth currently in Sect. 66700 CAC.

Impact: Our identification of wastes as hazardous by the concentration of soluble hazardous constituents in the waste extract will be different than the EPA's identification of wastes due to soluble content (characteristic of EP toxicity). HML is currently assembling a package of results showing that the WET consistently extracts higher concentrations of soluble hazardous constituents from a wide variety of wastes than does the EP test. This package of information will be sent to both EPA Region IX and EPA headquarters staff for expedited approval, but may be judged inequivalent.

STATUTE REVIEW FOR RCRA AUTHORIZATION

Statute:

H & SC Section 25143.5

Synopsis of Statute:

HSC Section 25143.5 concerns the classification of fly ash, bottom ash, and flue gas emission control residues from the combustion of solid waste or biomass material and the conditions by which the Department may repeal or modify a nonhazardous determination of such a waste.

Potential Conflicts with 40 CFR:

HSC Section 25143.5 conflicts or has the potential to conflict with 40 CFR in three areas. These conflicts are discussed in CJM 1-3.

Other Problems:

HSC Section 25143.5 has some other problems outside of 40 CFR conflict. There is a typographical error, plus a limitation on when to modify a nonhazardous determination that seems inappropriate.

Evaluator:

Carol Masson

VARIANCE AUTHORITY

CONCEPT PAPER

ISSUE: Restructuring DHS's variance authority

PROBLEM: Current DHS variance authority can potentially conflict with 40 CFR. (see issue paper)

PROPOSAL:

1) Adopt 40 CFR variance authority and procedures for all listed and characteristic wastes.

- Delisting
- Equivalent testing methods
- Recycling variances
- Issued by a rulemaking process with public meetings

2) Retain current DHS administratively issued variances for special wastes and 40 CFR exempted wastes and/or activities.

- Variance for wastes which pose an insignificant hazard
- Variance for wastes or management activities adequately regulated by another governmental agency
- Issued administratively with no public participation

3) Give generators the option of applying for a DHS administrative variance for characteristic wastes if they can demonstrate that their waste would not be a hazardous waste under Federal rules.

4) Compile a separate section in the regulations listing all those exemptions and exclusions from regulation found in 40 CFR and not adopted by DHS. Make these wastes and/or activities eligible for the DHS administrative variance.

HSC CHANGES ARE REQUIRED

RESOURCE IMPACT: Significant increases in personnel would be required to carry out the public notice, hearing, and comment process. Generators would be allowed to self-determine the status of their wastes as RCRA or non-RCRA wastes; this is consistent with the current self-determining provisions.

VARIANCE AUTHORITY

HAZARDOUS WASTE UNIVERSE

RCRA VARIANCE PROCEDURE

1. LISTED WASTES
2. CHARACTERISTIC WASTES

DHS ADMINISTRATIVE VARIANCE

3. WASTES EXCLUDED BY RCRA BUT REGULATED BY DHS
4. SPECIAL WASTES

⇨ A DHS ADMINISTRATIVE VARIANCE MAY BE ALLOWED FOR A CHARACTERISTIC WASTE IF THE GENERATOR CAN SHOW THAT THE WASTE IS HAZARDOUS BY CALIFORNIA LAW NOT BY FEDERAL LAW.

DHS ADMINISTRATIVE VARIANCE

- INSIGNIFICANT AS HAZARD
- REGULATED BY OTHER AGENCY
- ⇨ MANAGEMENT TECHNIQUE ⇦

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	HSC	Mike Horner
Sec # 260	66300	25143	Team leader
			Reviewer

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: VARIANCE AUTHORITY

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1) Section 25143 HSC gives the department authority to grant variances from any or all of the hazardous waste control laws for hazardous wastes, but only on two narrow grounds: wastes which the department feels are insignificant as potential hazards to human health, domestic livestock, and wildlife and those which are adequately regulated by another governmental agency. Section 66310 CAC further elaborates these grounds and establishes procedures for variance applications. In California law, the variance is administratively granted without public notice and/or public hearings.

2) 40 CFR Sec. 260.21, 22, 30, 31, 32, and 40 contain the federal variance authorities. Of these variance authorities, only 260.21 and 22 seem to be consistent with Sec. 25143 HSC; 40 CFR Sec. 260.21 contains the procedure for adding an equivalent method for testing wastes to Parts 261, 264, and 265; 40 CFR Sec. 260.22 contains the procedure for delisting wastes. We currently have a procedure for approval of equivalent testing methods in Sec. 66310 (e) CAC; authority for delisting exists in Sec. 25143 HSC because wastes can be delisted only if they do not meet the characteristic for which they were listed.

Sec. 260.30, 31, 32, and 40 establish variance authorities for various recycling issues such as allowing speculative accumulation, reclamation before reuse, and classification of equipment that doesn't meet the definition of a boiler as a boiler.

3) Problem: DHS has authority under 25143 HSC to give variances for wastes or handling methods adequately regulated by another governmental agency. There are no safeguards in the statute to ensure that RCRA wastes are not excluded from regulation; thus Section 25143 HSC is less stringent than 40 CFR because it allows variances that have no counterpart in 40 CFR.

Secondly, Sec. 25143 has no provision for granting the variances available from the EPA in 40 CFR Sec. 260.30, 31, 32,

33, and 40. These recycling variances do not ask that a waste meet either of the conditions in Sec. 25143 HSC.

Thirdly, Sec. 25143 establishes no procedural requirements for granting variances. The federal variance authority requires that variances be granted only after public notice and public hearings.

Suggested resolution: Change 25143 HSC to state that the department can grant variances pursuant to 25143 only to materials that are not hazardous wastes under 40 CFR and add appropriate language to 25143 HSC to grant the recycling variances available from EPA. This language should institute the EPA variance procedure for wastes regulated as hazardous wastes under RCRA and preserve our administratively issued variances for other wastes. In regulation, state that a generator can demonstrate that his hazardous wastes are not RCRA hazardous wastes and become eligible for a variance on the two current grounds. Also in regulation, compile a list of EPA exemptions from regulation and make them eligible for variances under the two current grounds. These exemptions are things which EPA currently doesn't regulate such as mining overburden returned to the mine site and elementary neutralization units. For instance, an elementary neutralization unit regulated by a local sewerage agency could be given a variance from permit requirements on the grounds that it is adequately regulated by another governmental agency.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Sec # 261.1(c)(7) [261.1(c)(4)] [261.1(c)(5)]	Title 22	H&SC 25121	Mike Horner Team Leader Eric Workman Reviewer

September 15, 1987
Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: DEFINITION OF "RECYCLE"

Difference: 40 CFR 261.1(c)(7) defines "recycled" as used, reused or reclaimed. 40 CFR 261.1(c)(4) and (c)(5) define "reclaimed" and "used or reused", respectively. Section 25121, HSC defines "recycle" (in part) as "to use, reuse or reclaim" but does not define those terms. The HSC further defines "recycle" to include the use, reuse or reclamation of a substance from a hazardous waste. 40 CFR apparently does not address this issue.

Impact: If 40 CFR 261.1(c)(7)'s definition were added to 22 CAC, then Section 25121, HSC's definition could be considered less stringent, for the following reasons.

First, the HSC's lack of definitions of the terms "use, reuse or reclaim" could result in claims that (for example) "use" or "reuse" includes the sale or distribution (members of the regulated community have interpreted "use or reuse" to include sale or distribution) of a recyclable material to a recycler for processing instead of being limited either to employment as an ingredient in

an industrial process to make a product or to employment in a particular function or application as an effective substitute for a commercial product as required in the definition of "used or reused" under 40 CFR 261.1(c)(5).

Second, the HSC's expansion of the definition of "recycle" to include the use, reuse or reclamation of a substance from a hazardous waste could result in claims that some hazardous waste treatment processes qualify as the recycling of nonhazardous components of hazardous wastes. For example, a person could: reclaim a nonhazardous component (e.g., water) from a hazardous waste (e.g., a metal plating sludge); use the nonhazardous component (e.g., water the lawns); dispose of the hazardous component (the dewatered sludge); and qualify as a recycler, instead of just a treater, of hazardous waste under HSC. It is unclear whether such a person would qualify as a recycler under 40 CFR. (EPA's "RCRA/Superfund Hotline" was unable to resolve this issue earlier this month and has not as yet called back with a resolution.)

[Note: The foregoing problems would become issues only if the safeguards of Sections 25101(d) and 25159 et seq., HSC do not prevent the DHS from operating a program less stringent than EPA's corresponding program, as determined by EPA.]

Suggestions: Amend the definition of "recycle" in Section 25121, HSC to conform with 40 CFR 261.1(c)(7) and add the related

definitions in 40 CFR 261.1(c)(4) and (5) for equivalency, not clarity (40 CFR raises its own questions). Pending a response from EPA, a policy decision is needed to determine whether recycling of nonhazardous constituents from "California only" hazardous wastes should continue to constitute recycling, and if so, to what extent. In any case, the definition of "recycle" should clearly state whether recycling of nonhazardous constituents does or does not constitute recycling for purposes of DHS regulation. In a more general sense, a policy decision is needed also to determine whether the DHS should establish a "two-tier" approach to the regulation of recyclable materials in those areas where HSC's requirements are less stringent than 40 CFR's requirements: one tier for "EPA-only" recyclable materials and the other tier for "California-only" recyclable materials.

[a:policy6.doc]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22
Sec # 261.6(a)(1) (Part)
[261.2(c)(1)]
[261.3]

H&SC Sec #
25120.5

Mike Horner
Team Leader

Eric Workman
Reviewer

September 15, 1987
Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: DEFINITION OF "RECYCLABLE MATERIAL"

Difference: 40 CFR 261.6(a)(1) (part) states that hazardous wastes which are recycled will be known as "recyclable materials". Section 25120.5, HSC makes a similar statement but additionally limits the scope of "recyclable material" to specified categories: spent material, residue, retrograde material, etc. (Obviously, the universes of wastes regulated under 40 CFR and HSC as hazardous wastes also differ; the latter is presumably more stringent.)

Impact: If 40 CFR 261.6(a)(1)'s definition of "recyclable material" were added to 22 CAC, then 22 CAC's universe of recyclable materials would possibly be larger than Section 25120.5, HSC's universe due to the additional limitations (under HSC's universe) that recyclable materials must be spent materials, etc. The actual magnitude of the difference between universes is unclear, because some of the categories specified in the HSC definition appear elsewhere in 40 CFR (e.g., "spent materials" are addressed in the definition of "solid waste" under 40 CFR

261.2(c)(1) and are thus part of the definition of "hazardous waste" under 40 CFR 261.3).

In addition to the possible conflict between regulated universes, if the DHS' universe of recyclable materials were enlarged, then more hazardous wastes would qualify for the special (and less stringent) regulation provided for recyclable materials under both 40 CFR and (to a much lesser degree) under current HSC and 22 CAC. If HSC and 22 CAC were liberalized in conformance with 40 CFR requirements for recyclable materials (e.g., 40 CFR generally requires no permits for recycling operations, although there are exceptions) then more hazardous wastes would qualify for those more liberal requirements.

Suggestion: Amend the HSC to adopt the 40 CFR definition for equivalency not clarity (40 CFR raises its own questions). Although such action could have the liberalizing impact discussed above, the magnitude of the impact is difficult to evaluate. However, on occasion the DHS has had some difficulty classifying as recyclable materials under Section 25120.5, HSC, recyclable hazardous wastes that do not fit into the categories of "spent material", "residue", contaminated material, etc. For example, a container two-thirds full of an EPA-exempt, unused chemical for which its owner no longer has a use (a "waste" under Section 25124, HSC) does not clearly qualify as one of the categories of "recyclable material" even if it can only be used if it is shipped offsite to a recycler for processing. The simpler definition of

"recyclable material" in 40 CFR 261.6(a)(1) would include such a chemical.

This change in the definition of "recyclable material" would also require some wording changes in Section 25175 HSC wherein the Department is empowered to send letters to persons disposing of "recyclable materials" asking for justification for not recycling them.

[a:policy3]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Sec # 261.2(c)(3) & (4) (Part) [261.1(c)(4) & (8)] [261.33]	Title 22	H&SC 25121.5 [25120.5(e)]	Mike Horner Team Leader Eric B. Workman Reviewer September 18, 1987 Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: DEFINITION OF RETROGRADE MATERIAL

Difference: Section 25121.5, HSC defines "retrograde material" as a hazardous material which is not to be used as originally intended and which: has undergone chemical or other change due to storage conditions or time; has exceeded its shelf life; is banned by law; or cannot be used due to potential hazards, as specified. Section 25120.5(e), HSC defines as "recyclable material" any "retrograde material" that essentially has not been "used, distributed, or reclaimed through treatment by the original manufacturer or owner" within one year after it became retrograde or one year after it was returned to the original manufacturer, whichever is later.

40 CFR apparently has no comparable provisions for all materials that could qualify as "retrograde materials" under the HSC. However, 40 CFR 261.2(c)(3) and (4) (part) exclude from the definition of "solid waste", commercial chemical products which are all of the following: listed in 40 CFR 261.33; to be discarded by being recycled; and "speculatively accumulated" or "reclaimed" as defined in 40 CFR 261.1(c)(4) and (8), respectively.

Impact: If 40 CFR 261.2(c)(3) and (4) (part) were added to 22 CAC, then 40 CFR would probably be more stringent to the extent that the list of commercial chemical products in 40 CFR 261.33 is more limited than the universe of hazardous materials which would qualify as "retrograde materials" under Section 25121.5, HSC. Based on the assumption that a list (as in 40 CFR) is more restrictive than criteria (as in HSC) the following would apply. The listed materials might or might not be regulated as stringently under 40 CFR as under HSC, because they are not solid wastes if they are "reclaimed" (i.e., processed to recover usable products or regenerated) or "accumulated speculatively" (i.e., accumulated before being used, reused or reclaimed, if less than 75 percent of the listed material is recycled in a calendar year, as specified). Therefore, the listed materials could apparently be stored indefinitely, and when the appropriate times came, any amounts of them could be reclaimed, all apparently without regulation under 40 CFR. In contrast, the HSC sets the one-year time limits described above which are apparently more restrictive than 40 CFR, but HSC uses, but does not define, the term "reclaimed" (although HSC also adds "used" and "distributed" as alternatives to "reclaimed"), which might be less stringent (unless the 40 CFR definition of "reclaimed" definitely applies in the absence of a HSC definition).

Suggestion: It is difficult to determine clearly the extent to which the addition of 40 CFR to 22 CAC would conflict with HSC, but the potential for criteria (as in HSC) to extend the universe of "retrograde materials" beyond the scope of the list in 40 CFR

(assuming that the safeguards in Sections 25101(d) and 25159 et seq., HSC are nullified) should be sufficient to warrant repeal of the "retrograde material" definition and provisions in HSC. If DHS decides to adopt EPA's definition of "solid waste" intact, then the 40 CFR provisions addressing commercial chemical products would probably provide the 40 CFR equivalent of the HSC's "retrograde material" provisions. (Issues regarding the adoption in 22 CAC of 40 CFR's list of commercial chemical products are addressed in other issue memoranda.) A policy decision is needed to determine whether the "retrograde material" provisions of the HSC should be repealed.

[a:policy35.doc]

COVER SHEET: Issues deriving from Section 25143.2 HSC, recycling statute

PROBLEM: When the State becomes authorized, the Federal regulations "disappear" in California and along with them goes Section 25143.2(c)(6) which states that wastes regulated under 40 CFR are not eligible for exemption under Section 25143.2 HSC. In order to be equivalent to 40 CFR, we will rely on Section 25143.2(b) and (c) HSC to create the framework for the exemptions and exceptions to those exemptions set forth in the recycling provisions of 40 CFR Section 261.2, "Definition of a Solid Waste". Many existing provisions of 25143.2 HSC are either inequivalent or are of questionable equivalence to Section 261.2:

HSC CITE:	PROBLEM:
25143.2(b)(1)	Exempts on-site recycling potentially regulated by EPA
25143.2(b)(2)	"Handling" as cited in the HSC includes treatment which is broader than 40 CFR "reclamation"
25143.2(b)(4)	Has no known 40 CFR counterpart
25143.2(b)(5)	HSC excludes from exemption materials treated before use or reuse, 40 CFR excludes materials reclaimed
25143.2(b)(9)	Conflicts with 40 CFR by exempting, for example, waste derived fuels burned for energy recovery.
25143.2(c)(6)	No longer applicable when the Department's program is authorized
25143.2(d)	Makes reference to the Departments inequivalent variance authority
25143.2(e)	Language differs sufficiently from Federal language to be potentially inequivalent

If the Department decides to maintain a two-tiered system with one set of regulations for RCRA wastes and one for California-only wastes, these provisions could be retained for California-only wastes with 40 CFR provisions added to match the recycling exemptions from classification as "solid waste" and exceptions to these exemption found in 40 CFR. Safeguards would need to be put in place to limit the current provisions to California-only wastes.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 HSC
Sec # 261.5

Mike Horner
Team leader

Mike Horner
Reviewer

o State the difference
o Explain the impact
o How is it different
o Suggestions

Subject: CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS

---

1) 40 CFR Section 261.5 sets forth standards for hazardous waste management by "conditionally exempt small quantity generators" (CESQG). A CESQG is a generator who generates 100 Kg or less of hazardous waste or 1 Kg or less of acutely hazardous waste per month. The CESQG is not required to manifest wastes and is allowed to send them to a permitted or ISD facility, a municipal solid waste disposal facility, an unpermitted recycler, or to treat, store, or dispose of these wastes on-site. If a CESQG accumulates more than 100 Kg of acutely hazardous waste or more than 1000 Kg of hazardous waste, these wastes are fully regulated.

2) The only vaguely similar provision in State law is the provision that generators of less than 100 Kg per month may store up to 100 Kg of hazardous waste before the 90 day unpermitted storage period begins. The statute also contains a definition of "small quantity producer" (25122.6 HSC.) which doesn't seem to be used elsewhere in current statute.

3) Suggested resolutions:

Option 1: Adopt Section 261.5 into our regulations.

Impact: Many small businesses would be released from the requirement that they manifest their wastes, use registered waste haulers, and send their wastes to permitted facilities. Municipal waste authorities would then have problems with hazardous waste being sent to sanitary landfills and solid waste incinerators; environmental problems would also be caused by on-site disposal and improper treatment of CESQG wastes.

Option 2: Do not include this provision in our version of the regulations.

Impact: Little or none; no comparable exemption currently exists in State law.

Option 3: Adopt the Federal definition of CESQG with modifications. Adopt the lengthened storage requirements of this section and give permits by rule in the facility standards to CESQG's performing certain simple treatment activities. Examples of these simple treatment processes are volume reduction by evaporation, silver recovery before discharge to the sewer, elementary neutralization processes and other well characterized processes which can be given a set of operating instructions and a permit by rule in regulation.

Impact: CESQG's would be able to store enough waste to dispose of it economically or to interest a commercial recycler. CESQG's treating on-site would no longer be shipping untreated hazardous waste but only treated residuals. DHS would also see a reduction in workload coming from the permits by rule for simple treatment activities.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 HSC
Sec # 261.4(b)(2)

Mike Horner
Team leader

Mike Horner
Reviewer

o State the difference
o Explain the impact
o How is it different
o Suggestions

Subject: AGRICULTURAL WASTE EXCLUSION

---

1) 40 CFR Sec. 261.4(b) lists solid wastes which are not hazardous wastes. Sec. 261.4(b)(2) reads:

> (2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:
> (i) The growing and harvesting of agricultural crops.
> (ii) The raising of animals including animal manures.

2) State law contains no similar exclusion.

3) Analysis: Agricultural wastes contaminated with a hazardous waste may be regulated by the "mixture rule" notwithstanding these exemptions. However, this exemption may lead people to believe that they are not regulated by EPA when they may actually be subject to regulation. Currently, the California Food and Agriculture Code requires that crops contaminated with illegal pesticide residues be destroyed without specifying a method. The Department of Food and Agriculture uniformly recommends discing these contaminated crops into the fields; in fact, contaminated produce rejected in the market is usually returned to the grower for discing into the field. The Food and Agriculture Code does not seem to deal with agricultural materials contaminated with other hazardous wastes. A good case in point is that of the millions of chickens in the Midwest contaminated with PCB's that leaked from a transformer into chicken feed.

4) Suggested resolution:
Option 1: Do not include this federal exemption in our version.

Impact: Little or no impact because these materials are currently subject to regulation under the hazardous waste control law.

Option 2: Exempt only agricultural materials contaminated with illegal pesticide residues.

Impact: Little or no impact. This option would also recognize the status quo.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC
Sec # 261.4(a)(i)(i+ii)

Mike Horner
Team Leader

Mike Horner
Reviewer

August 19, 1987
Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: SEWAGE AND SEWAGE/HAZARDOUS WASTE EXCLUSION

---

40 CFR, Section 261.4(a) lists materials which are not "solid Wastes." Section (a)(1)(i + ii) exempts sewage:

> (1)(i) Domestic sewage: and
> (ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

Because these materials are not "solid waste," they cannot be "hazardous wastes."

California has no exclusions for sewage or mixed sewage with "other wastes" (if they are hazardous) going to a POTW; however, the POTW has a permit-by-rule and can accept hazardous wastes. Some confusion exists as to where the POTW begins (at the property line of the waste generator or at the headworks of the POTW?) and as to the need for manifesting of sewered wastes.

Suggestions:

Option 1: Adopt the Federal language "as is."
Pro: POTW's are regulated by NPDES permits - they must regulate upstream discharges to meet their own discharge limits. In addition, waste generated by a POTW is fully regulated if it meets the criteria of a hazardous waste. This exemption allows easy and environmentally safe treatment at low-cost for certain biodegradable hazardous wastes such as low concentration organic solvents, de-silvered photographic solutions, and spent automotive antifreeze.
Con: The Department would lose control over disposal of sewerable wastes (much of which is currently sewered without TSCD approval). Waste may also be sewered without the knowledge of the treatment works.

Option 2: **Adopt** the federal language but change part (ii) to read:

> (ii) **Any** mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works (POTW) for treatment, as long as these other wastes are discharged to the sewer with the written consent of the POTW ... etc.

Pro: This approach has the advantages of Option 1 along with the added assurance that the POTW has agreed to accept these wastes and feels it can accept them and stay within its NPDES permit requirements.

Option 3: Do not include part 261.4(a)(1) in our version.
Pro: We would regulate the same universe as we presently do.
Con: Current confusion about wastes going to a POTW would continue. In addition, an environmentally sound cheap alternative to landfill for certain wastes would become much more expensive and difficult to pursue.

[a:Policy 13]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 HSC Mike Horner
Sec # 261.3 (a)(iv) Team leader

Reviewer

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: POINT-SOURCE DISCHARGE EXCLUSION

Section 261.3 (a) (iv) states that wastewater-hazardous waste mixtures coming from a facility discharging wastewater subject to regulation under the Clean Water Act are not hazardous waste under certain conditions. These conditions include calculations of the maximum time-averaged concentration of solvents, wastewater from the clean-up of "de minimus" losses of chemical products, and waste water contaminated with laboratory chemicals listed as "toxic" wastes.

State law provides no such exemption directly; however, authority for such an exemption exists in the variance authority given in Section 25143 HSC (adequately regulated by another agency.)

Suggestions:

Option 1: Do not include this CFR provision in our version of the regulations. This provision could be seen as condoning poor practices such as disposal of small quantities of solvent by pouring it down the drain and as condoning poor housekeeping practices.

Option 2 (Recommended): Retain this section in our version of the regulations. These discharges are not currently uniformly regulated by DHS and these activities are adequately regulated by the Water Quality Control Board. In addition, since we are adopting EPA's "listed hazardous waste" concept, we need a mechanism for ensuring that very low concentrations of solvent (F series wastes), for instance from washing of solvent contaminated hands, are not treated as hazardous waste. Under the listed waste concept, this water with very low concentrations of solvent would remain hazardous forever without this exemption.

Option 3: Give a permit-by-rule to facilities with permits under the Clean Water Act. The language of this permit-by-rule should mirror the language of 40 CFR Sec. 261.3(a)(iv).

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	HSC	Mike Horner
Sec # 261.4 (a) (2)		25144	Team leader
			Reviewer

o State the difference
o Explain the impact
o How is it different
o Suggestions

Subject: INDUSTRIAL WASTEWATER EXEMPTIONS

---

40 CFR Sect. 261.4 (a) (2) exempts from regulation industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act.

Sect. 25144 HSC exempts from regulation effluent from the property of an oil producer biologically treating oil wastes who has a permit under Section 402 of the Clean Water Act.

Suggestions:

Option 1: Modify this CFR provision in our version of 40 CFR to reflect only the exemption in the HSC.

Impact: Little or no impact. This option would recognize the status quo.

Option 2 (recommended): Adopt this CFR provision as-is in our version of the regulations. We need a way to deregulate very low concentrations of listed wastes from, for instance, washing of hands contaminated with solvent (F- series waste). Without this exemption, the washwater from a listed waste would be hazardous waste forever.

Impact: This option would decrease the workload of the Department by de-regulating activities commonly given variances. Theoretically, there would be no negative environmental impact because these activities would be adequately regulated by another governmental agency.

MINOR ISSUES

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC
Sec # 261.4(a)(3)

Mike Horner
Team Leader

Mike Horner
Reviewer

August 28, 1987
Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: IRRIGATION RETURN FLOW EXCLUSION

---

40 CFR Section 251.4(a)(3) excludes irrigation return flows from classification as a solid waste; thus, from classification as a hazardous waste.

No corresponding exemption exists in state law.

Suggestions: Do not include this CFR provision in our version.

Impact: Little or no impact. These wastes are currently subject to regulation under California hazardous waste control law.

[a:Policy 14]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Sec # 268.30	Title 22	H&SC 25179.6(a)	Mike Horner Team Leader
			Luis Matienzo Reviewer
			September 3, 1987 Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: EXEMPTION FROM TREATMENT REQUIREMENT

H&SC Section 25179.6(a) exempts "a solid hazardous waste generated in the clean up or decontamination of any site contaminated by hazardous waste".

40 CFR 268.30, "Waste specific prohibition", does not exempt restricted hazardous wastes generated from CERCLA response action or RCRA corrective actions, although the federal rule extends the effective date of compliance due to lack of national treatment capacity.

Since wastes generated from clean up or decontamination fall under CERCLA or RCRA action, this provision in the H&SC contradicts the 40 CFR regulations.

It is suggested that this exemption be removed from the H&SC Section 25179.6(a).

[A:POLICY25.DOC]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	Mike Horner
Sec # Part 268	66910	25179.9	Team Leader
264.316			
265.316			Luis Matienzo
			Reviewer
			September 3, 1987
			Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: LAB PACK EXEMPTIONS

H&SC Section 25179.9 exempts lab packs from treatment requirements specified under H&SC Sections 25179.6 and 25179.5 if the lab packs containing restricted wastes are disposed according to Title 22 Section 66910.

40 CFR Part 268 does not exempt lab packs from treatment requirements if lab packs contains prohibited wastes.

The H&SC provision directly contradicts the 40 CFR regulation concerning the disposal of lab packs containing prohibited wastes.

It is suggested that H&SC Section 25179.9 be changed to allow disposal of lab packs only if prohibited wastes contained in the lab packs meet the requirements specified in 40 CFR 264.316 or 40 CFR 265.316 and the wastes are either removed before disposal or treated to meet the EPA treatment standards.

[A:POLICY29.DOC]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	Mike Horner
Sec # 268.2		25179.3(j)	Team Leader
268.4			
264.316			Luis Matienzo
265.314			Reviewer
			September 3, 1987
			Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: DEFINITION OF "TREATMENT"

H&SC Section 25179.3(j) adds the following provision in the definition of "treatment":

> "Treatment does not include any of the following, to the extent that one or more of the following are the only methods which are used:
>
> (1) Solidification of hazardous waste by the addition of absorbent material which produces a change only in the physical character of the waste without a corresponding change in the chemical character of the waste.
>
> (2) Treatment occurring directly in or on the land, such as land treatment, except that treatment may include in situ treatment necessary for site mitigation."

The above provision conflicts with the 40 CFR Part 268 in the following manner:

(a) Solidification is not allowed if treatment technology or technologies are specified unless, of course, solidification is specified as treatment standard. In addition, where absorbents are added to liquids, disposal of these wastes must meet 40 CFR 264.314 or 40 CFR 265.314.

(b) Land treatment of prohibited wastes is not allowed in 40 CFR 268.2.

It is therefore suggested that the above provision of H&SC Section 25179.3(j) be removed.

[A:POLICY30.DOC]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Sec # 268.5 268.6	Title 22	HSC 25179.8	Mike Horner Team leader Mike Horner Reviewer 10/16/87

o State the difference
o Explain the impact
o How is it different
o Suggestions

VARIANCE FROM LAND DISPOSAL RESTRICTION OR TREATMENT STANDARD

Section 25179.8 HSC sets forth variance procedures and conditions which allow a specific waste to be land disposed beyond the effective date of a land disposal restriction or exempted from treatment standards under specific circumstances.

40 CFR Section 268.5 and 268.6 set forth conditions and procedures for case-by-case extension of an effective date for a land disposal restriction and for petitions to allow land disposal of a prohibited waste.

PROBLEM: The federal procedures for variance from the land disposal restrictions state that these variances and extensions can only be given by the EPA administrator and thus cannot be given by regional administrators or by authorized states. Section 25179.7 (d) and (e) do not conflict with the Federal land disposal restrictions because agricultural drain water is exempted from classification as solid waste in 40 CFR Section 261.4(a)(3) and thus cannot be a hazardous waste.

SUGGESTED RESOLUTION:

OPTION 1: Remove Section 25179.8(a) thru (c) from our statute.

IMPACT: We would lose flexibility towards land disposal of California-only waste.

OPTION 2: (Recommended) Add language to the statute to ensure that our variances would be given only to California-only waste.

IMPACT: None - this option preserves the status-quo. We cannot currently give variance from the Federal land disposal restrictions which override any State statute or variance.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 HSC
Sec # RCRA 3004(h) 25179.7

Mike Horner
Team leader

Mike Horner
Reviewer

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

LIMITED CAPACITY EXTENSION

RCRA Section 3004 (h) allows the EPA administrator to delay specific land disposal restrictions for up to two years if sufficient "..alternative treatment, recovery or disposal capacity which protects human health and the environment..." is not available.

HSC Section 25179.7 allows the DHS to extend the implementation date of a land disposal restriction if sufficient recycling and treatment capacity is not available at the site of generation or is not commercially available in the State.

PROBLEM: The provision that the DHS can delay implementation of a land disposal restriction for up to two years conflicts with the provision in RCRA which reserves that function for the EPA administrator.

SUGGESTED RESOLUTION:

Option 1: Add language to the statute ensuring that DHS will grant extensions only to non-RCRA waste.

Impact: This option preserves our regulatory flexibility towards California-only wastes.

Option 2: Amend the HSC to eliminate this provision.

Impact: We would be equivalent to EPA in our approach to extending land disposal restrictions but would lose our flexibility towards restricting California-only waste.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 HSC
Sec # 268.50

Mike Horner
Team leader

Mike Horner
Reviewer

o State the difference
o Explain the impact
o How is it different
o Suggestions

STORAGE LIMITATION

---

40 CFR Section 268.50 prohibits storage of a restricted waste in lieu of treatment prior to disposal or recycling. Generators are allowed to accumulate waste until sufficient quantities have been accumulated for treatment or recycling; however, storage of a restricted waste may not exceed one year under any circumstances. Storage for more than 90 days, of course, requires a hazardous waste facility permit.

Neither the HSC nor Title 22 contains similar provisions.

PROBLEM: State law can be seen as allowing unlimited permitted storage of restricted wastes in lieu of treatment or recycling in direct conflict with 40 CFR Section 268.50.

SUGGESTED RESOLUTION:

Option 1: Amend the HSC adding a similar storage prohibition.

Impact: Unknown

Option 2: Add language to the HSC adding the storage prohibition for RCRA wastes only.

Impact: This option would preserve the status-quo.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	HSC	Mike Horner
Sec # Part 268		25155.7	Team leader
			Mike Horner
			Reviewer

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

EXEMPTION FROM LAND DISPOSAL RESTRICTION: INCINERATOR SHUTDOWN

HSC Sections 25155.5 thru 25155.7 require incineration or recycling for hazardous wastes having heating values above 3,000 BTU/lb. Section 25155.7 gives the department the authority to allow land disposal of these wastes if the incinerator or recycling unit normally processing these wastes is shutdown or unavailable.

40 CFR Section 268 prohibits land disposal of restricted wastes unless the EPA administrator has given a variance from the land disposal restriction.

PROBLEM: The DHS is given the authority in Section 25155.7 to allow land disposal of a waste that may be restricted by EPA or by the DHS.

SUGGESTED RESOLUTION: Amend HSC Section 25155.7 to state that DHS cannot allow land disposal under this section of wastes restricted from land disposal by EPA or by DHS.

LM 3

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Sec # Part 268 RCRA Sec. 3004(m)	Title 22	H&SC 25179.6(b)	Mike Horner Team Leader
			Luis Matienzo Reviewer
			September 3, 1987 Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: USE OF BEST DEMONSTRATED AVAILABLE TECHNOLOGY (BDAT)

H&SC Section 25179.6(b) requires the Department to follow closely the schedule established in the RCRA for adopting treatment standards for hazardous wastes, to adopt standards for California. The standards must require the treatment of hazardous waste so that their hazardous characteristics and potential for migration or bioaccumulation are minimized. Under this subsection, these characteristics are minimized if the treatment standards require treatment using the "best demonstrated available technology" (BDAT) or a treatment method that yields substantial equivalent results.

Neither the RCRA 3004(m) nor 40 CFR Part 268 (Land Disposal Restriction regulations) requires the use of BDAT in establishing treatment standards.

The impact of this difference is that the Department's action in establishing treatment standards or adopting the EPA's treatment standards will be limited by the definition of BDAT specified by the H&SC. Such definition will prevent the Department from establishing standards not based on technology. For example, the Department can not establish or adopt standards based on health risk assessments.

Because neither the RCRA nor the 40 CFR has this limitation, the EPA has more latitude in specifying what constitutes BDAT. In fact, in the preamble to the Land Disposal Restriction rule of November 7, 1986, the EPA defines BDAT in a manner far more stringent than the definition specified in the H&SC. In addition, because BDAT is not specified in RCRA nor in 40 CFR, EPA is uninhibited in their approach to establishing the standards. For example, the EPA can establish standards based on technology or health risk or both.

It is therefore suggested that Subsection (b)(3) H&SC Section 25179.6 be removed.

[A:POLICY26.DOC]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	Mike Horner
Sec # Part 268		25179.6(b)	Team Leader
Subpart B			
RCRA Sec. 3004(g)			Luis Matienzo
			Reviewer
			September 3, 1987
			Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

Subject: DEPARTMENT'S ADOPTION OF EPA TREATMENT STANDARDS

H&SC Section 25179.6(b) requires the Department to adopt EPA treatment standards within six months of the EPA schedule (as provided in RCRA Section 3004(g)). The H&SC specify May 8, 1990, as the latest date the Department must adopt the EPA standards.

In accordance with RCRA Section 3004(g), the EPA established the following schedules in which listed hazardous wastes will be prohibited and/or treatment standards will be set: August 8, 1988; June 8, 1989; and May 8, 1990. The schedules are codified in 40 CFR Part 268.

The conflict between the H&SC and 40 CFR concerns the May 8, 1990 scedule by the EPA to adopt treatment standards. EPA adopted the solvent, dioxin and "California list" standards on the last possible day allowed in RCRA. EPA will likely continue to adopt treatment standards on the latest possible dates allowed by their schedule.

The Department usually requires more than six months to adopt any regulation. In some cases, it has taken several years. Staff review of the EPA solvent, dioxin, and "California list" treatment standards has taken two months to get a working understanding. In addition, the staff needs additional time to assess whether the EPA standards meet the Department's criteria established pursuant to H&SC Sections 25141, 25179.6 and elsewhere in Division 20. Because of these delays it is not appropriate to specify in the H&SC Section 25179.6(b) the May 8, 1990 schedule the adoption of EPA treatment standards.

It is suggested that H&SC Section 25179.6(b((1) be changed to allow a minimum of 12 months after May 8, 1990 to adopt the EPA treatment standards.

[A:POLICY27.DOC]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC Mike Horner
Sec # RCRA Sec. 2002(b) 25179.6(d) Team Leader

Luis Matienzo
Reviewer

September 3, 1987
Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: TREATMENT STANDARD REVISION

H&SC Section 25179.6(d) requires that the treatment standards must be revised within seven years of adoption as state regulation. It also requires that the revised standards provide "substantial additional protection to the human health and the environment" and can be economically justified.

The federal RCRA and 40 CFR regulations specify neither schedules for revising the treatment standards nor conditions for revisions. RCRA Section 2002(b) provides authority to EPA Administrator to review and, where necessary, revise regulations at least every three years. In addition, if a new technology is shown to be more effective, the Agency may revise the treatment standards (EPA's "Questions and Answers on Land Disposal Restrictions for Solvents and Dioxins, May 1987"). Both the federal RCRA and 40 CFR regulations do not require economic considerations in setting or revising the treatment standards. Cost is implicitly accounted for since technologies that are not economically feasible are not likely to be found "on line" at commercial or on site facilities.

The impact of this statutory requirement to the adoption of 40 CFR regulation is that it limits the Department's authority to fully adopt the revised EPA treatment standards based on the following:

1. The phrase "substantial additional protection to human health and the environment" in the H&SC implies that the Department must make health risk evaluations on every treatment standard that EPA revised before the Department adopts them. This is regardless of whether or not the EPA based their standards on technology alone. Such tasks will demand considerable time, expertise and resources.

2. The H&SC requirements of providing economic justification is another factor that will restrict the adoption of EPA revised standards since, as stated earlier, the EPA is not bound by

federal laws and regulations to conduct economic study as a **condition** for revising standards.

It is suggested that the whole subsection (d) be removed from the H&SC. In its place, use similar language in RCRA Section 2002(b) or Section 3004(d)(B).

[A:POLICY28.DOC]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	Mike Horner
Sec # 268.2(a)		25179.3(d)	Team Leader
			Bal Lee
			Reviewer
			September 3, 1987
			Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: DEFINITION OF "HAZARDOUS WASTE CONSTITUENT" FOR THE LAND DISPOSAL RESTRICTION

H&SC 25179.3(d) defines "Hazardous waste constituent" as follows for the purpose of Art. 7.7 (SB 1500):

> (d) "Hazardous waste constituent means an element, chemical compound, or mixture of compounds which is a component of a hazardous waste or leachate and which has the physical or chemical properties that cause the waste to be identified as hazardous waste by the department."

40 CFR 268.2(a) defines "Hazardous constituent or constituents" as those constituents listed in App. VIII to 40 CFR 261, for the purpose of 40 CFR 268 (Land Disposal Restrictions); the scope is clearly defined whereas it is not the case for H&SC.

Suggested Resolution: Ask that 25179.3(d) be amended to read:

(d) "Hazardous waste constituent" means:

(1) an element, chemical compound . . . or:

(2) an element, chemical compound, or mixture of compounds listed by the Department as a "hazardous waste constituent".

[A:POLICY33.DOC]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	HSC	Mike Horner
Sec # 268.2		25122.7(a)(5)	Team leader
			Bal Lee
			Reviewer

o State the difference
o Explain the impact
o How is it different
o Suggestions

Subject: DEFINITION OF HOC (HALOGENATED ORGANIC COMPOUND)

---

40 CFR Sec. 268.2(a) defines "HOC's" (halogenated organic compounds) as those compounds having a carbon-halogen bond which are listed under Appendix III to 40 CFR Sec. 268.

No equivalent definition exists in California law.

Problem: HOC's are subject to land disposal restriction under 40 CFR Part 268; therefore, they must be listed and restricted by the Department.

Suggested resolution: Add the federal definition of "HOC" in 40 CFR Sec. 268.2(a) and the list of HOC's in Appendix III to 40 CFR Part 268 to 25122.7(a)(5) HSC (definition of "restricted waste"). Alternatively, the definition could be added with language to empower the DHS to create a list of HOC's. No analytical methods exist for non-listed HOC's.

Impact: Little or no impact as these materials were already subject to the federal land disposal restrictions.

CONCEPT PAPER: USED OIL RECYCLING

The California legislature recently passed SB-86, a comprehensive set of laws governing the management of used oil. SB-86 was added to the HSC as Article 13. Article 13 differs markedly from the 40 CFR sections dealing with used oil in the types of oils given special regulations and in the generator, transporter, and facility standards established. Several conflicts have been identified; other conflicts may be hidden in the differences between the state and federal rules for used oil.

HALOGEN CONTENT STANDARDS: Article 13 HSC limits chlorides to 3000 ppm in exempt used oil; 40 CFR limits exempt used oil to 4000 ppm total halogens. A DHS exempt used oil could conceivably have less than 3000 ppm chlorides and more than 4000 ppm total halogens.

CONTAMINATED PETROLEUM PRODUCTS: Article 13 HSC exempts petroleum products contaminated with nonhazardous material or with other petroleum products when returned to a refinery for use as a fuel or a feedstock. Some of these materials would be regulated as hazardous waste fuel under 40 CFR. A legal opinion is necessary to clarify what exempt oil is exempt from.

SUGGESTED RESOLUTION: Amend Article 13 HSC to exclude from exemption any used oils regulated by EPA as hazardous waste fuels.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	Mike Horner
Sec # 261.6(a)(2) (iii), (a)(3) (iii),(v), (vi),viii) 266.30-35 266.40-44		25250 et seq. except 25250.3	Team Leader
			Eric Workman
			October 22, 1987 Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: USED OIL RECYCLING

Difference: Section 25250 et seq., HSC differ significantly from the 40 CFR sections cited above in at least the following aspects: specifications of oils given special regulation; and generator, collector, transporter, facility requirements, etc. There are so many differences that section by section comparison (attempted on the "Statute Checklist Form" becomes endlessly confusing. Examples of some of the major differences are as follows:

- o Section 25250.1(e), HSC exempts from DHS regulation "used oil" which meets minimum standards for properties and constituents specified in Section 25250.1(c), HSC and which are not otherwise hazardous wastes based on the DHS' criteria for identification of such wastes. Although 40 CFR 266.40(d) exempts "used oil" which is a characteristically hazardous waste (not mixed with other hazardous waste) and is in that sense less restrictive than HSC, the 40 CFR standards for properties and constituents of such exempt oil are perhaps

somewhat more restrictive, limiting total halogens to 4000 ppm maximum whereas HSC limits only chlorides but at 3000 ppm maximum.

- Section 25250.5(a), HSC equates burning of used oil as fuel with disposal and prohibits all such burning, unless authorized under other provisions of law (for example, as authorized under the DHS' permitting requirements of Section 25200 et seq., HSC (for thermal treatment of hazardous wastes in devices other than incinerators)) Section 25250.16, HSC requires permits to receive used oil. 40 CFR 266.40-44 set forth only limited notification and recordkeeping requirements for burning used oil in boilers and industrial furnaces, operated without permits.

- Section 25250.23, HSC requires transporters of used oil to register with the DHS. 40 CFR has no comparable requirement.

Impact: If 40 CFR became part of 22 CAC, then considerable confusion would result, unless the provisions of Section 25250 et seq., HSC were amended to accommodate 40 CFR. Since the 40 CFR provisions are generally less stringent than HSC and differ in so many ways, the task would be a major undertaking, beyond the scope of any issue memorandum.

Suggestions: Except for the sweeping exemption for used oil recycled other than by burning for energy recovery set forth in 40 CFR 261.6(a)(3)(iii) (and possibly other 40 CFR exemptions whose relationship to Sections 25250 et seq., HSC and Section 25143.2(b)(9) HSC are questionable) adopt 40 CFR in 22 CAC with ample modifications and references to conform with the many HSC provisions that are more stringent.

[a:policy4.doc]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	Mike Horner
Sec # 261.6(a)(2)(ii), (iii)		25250.3	Team Leader
[261.6(a)(3)(iii),		[25250.1]	
(v), (vi), (viii)			Eric Workman
[261.33]			Reviewer
[266.30-35]			
[266.40-44]			October 22, 1987
			Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

Subject: EXEMPTION FOR CONTAMINATED PETROLEUM PRODUCTS

Difference: Section 25250.3, HSC exempts from the "article" (i.e., Article 13, Chapter 6.5, Division 20, HSC) petroleum products contaminated with nonhazardous impurities and returned for gravity separation of contaminants, as specified. Section 25250.3, HSC also exempts from the "article" petroleum products contaminated with other petroleum products and (presumably) used as a refinery feedstock or as a refinery fuel. 40 CFR 261.6(a)(2)(ii) and (iii) regulate (as specified in 40 CFR 266.40-44 respectively) contaminated petroleum products that are hazardous waste fuels or that are oils which are characteristic hazardous wastes and that are burned for energy recovery, as specified.

Impact: If 40 CFR 261.6(a)(ii) and (iii) were added to 22 CAC, then conflicts with HSC could arise. For example, depending on the interpretation of the terms "petroleum products", Section 25250.3, HSC could exempt from the "article" EPA-listed hazardous wastes (like xylene and toluene) and EPA-characteristic hazardous wastes (like hexane, due to ignitability). Depending on the

interpretation of "exempt from this article," one could determine either that HSC exempts the subject petroleum products from regulation as hazardous wastes or that HSC exempts those products from the special regulations for used oil in the "article" and imposes all other requirements of Chapter 6.5, Division 20, HSC on the products instead. If the contaminated petroleum products are exempt from regulation under HSC (not just under the "article") as hazardous wastes, then HSC would be less stringent than 40 CFR for EPA-listed and EPA-characteristic hazardous wastes burned for energy recovery.

Suggestions: Obtain an "official" ruling on the phrase "exempt from this article," and if the exemption applies to all the requirements of Chapter 6.5, Division 20, HSC, delete the exemptions in Section 25250.3 in favor of those set forth in 40 CFR 261.6(a)(3) (as cited above), except for the broad exemption for used oil recycled other than by burning for energy recovery (40 CFR 261.6(a)(3)(iii)). The 40 CFR exemptions are related to, but apparently more stringent than, the exemptions in Section 25143.2(b)(9), HSC, which was recommended for deletion in another issue memorandum. A policy decision is needed to determine whether the 40 CFR exemptions should be adopted.

(a:policy5.doc)

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	HSC	Mike Horner
Sec # 261.6(c)(1)	66181	25201	Team leader
	66802(a)(4)	25143.2(a)	
			Eric Workman
			Reviewer

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

RECYCLING - PERMIT REQUIREMENT

DIFFERENCE:

EPA in 40 CFR Sections 261.6(a)(1),(b) and (c)(1) states that only the generation, storage and transportation of recyclable materials prior to recycling is regulated; thus the recycling process itself does not require a hazardous waste facility permit; any storage prior to recycling does require a permit. Apparently, the only exception to this rule is that one using a hazardous waste in a manner constituting disposal is required to obtain a permit per Sections 261.6(a)(2)(i) and 266.20 et seq.

DHS requires permits for storage prior to recycling and for the recycling process itself, except for onsite recycling and use of recyclable materials as specified in Sections 25143.2(a), 25201, 25143.2(b)(1) HSC, and as limited in Sections 25143.2(c) and (e) HSC.

Thus, under the federal system a commercial recycler is required to obtain a storage facility permit and under the state system a commercial recycler is required to obtain a treatment and storage permit. Presumably only the more stringent permit is actually issued to the recycler in cooperation with EPA until final authorization is received by DHS.

IMPACT: The DHS' permit process and associated requirement have been an obstacle to recycling of hazardous wastes for years. Although the DHS has stringent permit requirements, usually the same as those for hazardous waste treatment facilities, few facilities can get permits in a timely manner and, if the permits are eventually obtained, the costs associated with permit maintenance are significant: e.g. liability insurance and permit fees. As a result, recycling facilities either continue to operate without permits and the DHS essentially ignores them, they operate under interim status for years, or they are never constructed in the first place.

It is not known absolutely how many offsite recycling facilities store hazardous wastes prior to recycling them and how many such facilities introduce the wastes directly into their production processes without prior storage. Indeed, many of those direct-use processes would likely be exempt from DHS regulation under Section 25143.2 HSC exemptions. However, if the DHS were to reduce the scope of its regulation of recycling facilities such that the recycling process itself were exempt from the permit requirement, the DHS could accomplish the following:

- Avoid some of the problems of trying to determine which processes in integrated primary/secondary production facilities are subject to regulation and which are exempt processes.
- Reduce the complexity of permit applications, permit reviews, and permit inspections, thereby saving costs for the regulated community, providing grounds for reducing the DHS' permit application and maintenance fees, and accelerating permit issuance.
- Provide an incentive, although a limited one, to recyclers of hazardous waste by putting their production processes under no more regulatory control than exists for persons who produce the same products from primary raw materials.
- Conform with current federal regulations governing recycling of hazardous wastes, thereby eliminating some confusion among the regulated community (particularly among multi-state companies with facilities in California).

SUGGESTIONS:

Option 1: Continue the present system.

Impact: None beyond those problems discussed above. This option would continue the status quo.

Option 2: Cease to permit the recycling process itself, except for those activities subject to regulation under Section 25143.2(c) HSC, such as use constituting disposal and other EPA regulated activities, burning for energy recovery etc.

Impact:

1) This option would encourage recycling of hazardous wastes by reducing the cost of obtaining a permit and by reducing the permit fees charged to recyclers to the extent that these are either required to be, or are chosen to be, related to DHS' program costs.

2) This option would reduce the DHS' permitting workload and speed the issuance of permits.

3) This option would reduce the amount of fees collected by the Board of Equalization.

4) This option would probably require amendment of Section 25143.2 HSC.

Option 3: Cease to permit the recycling process itself except for those activities subject to regulation under 40 CFR.

Impact: This option would have the same four impacts set forth for Option 2, but to a greater extent.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	HSC	Mike Horner
Sec # 260	66310(e)	Art. 8.5	Team leader
			Bart Simmons
			Reviewer

o State the difference
o Explain the impact
o How is it different
o Suggestions

ALTERNATE TEST METHODS

HSC Article 8.5 gives the Department the authority to adopt regulations governing the procedures for hazardous waste analysis.

40 CFR Section 261 requires certain specified test methods for hazardous waste identification. It also specifies a procedure for petitioning EPA for alternate testing procedures in Section 260.21.

PROBLEM: Article 8.5 allows the Department to accept alternative testing procedures without following the procedure in 40 CFR Section 260.21.

SUGGESTED RESOLUTION:

Option 1) Amend Article 8.5 HSC and rewrite the regulations for laboratory certification to state that only EPA approved test procedures may be used for the identification of hazardous waste.

Impact: This option would limit the flexibility of the DHS and of state hazardous waste generators to use alternate testing procedures for identification of hazardous waste. Generators would have to apply to EPA to gain approval of alternate testing procedures.

Option 2) Adopt EPA procedures for adding alternate testing procedures in our regulations. (recommended by HML)

Impact: EPA procedure requires more staff time than current DHS procedures.

Option 3) Adopt EPA procedures for adding alternate testing procedures for RCRA wastes only. Retain current authority in Section 66310 (e) for California only wastes.

Impact: Little or no impact; this option would continue the status quo.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC
Sec # 261.4(a)(3)

Mike Horner
Team Leader

Mike Horner
Reviewer

August 28, 1987
Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: IRRIGATION RETURN FLOW EXCLUSION

---

40 CFR Section 251.4(a)(3) excludes irrigation return flows from classification as a solid waste; thus, from classification as a hazardous waste.

No corresponding exemption exists in state law.

Suggestions: Do not include this CFR provision in our version.

Impact: Little or no impact. These wastes are currently subject to regulation under California hazardous waste control law.

[a:Policy 14]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC
Sec # 261.4(a)(5)

Mike Horner
Team Leader

Mike Horner
Reviewer

August 28, 1987
Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: IN-SITU MINING EXCLUSION

---

40 CFR Section 261.4(a) excludes materials from classification as solid waste, thus, from classification as hazardous waste. Section (5) reads:

> (5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

No similar exemption exists in state law.

Suggestions: Do not include this CFR exclusion in our version. In-situ mining includes a wide variety of techniques including benevolent processes such as hot-water extraction of salt and sulfur, along with potentially polluting processes such as cyanide leaching and acid solution-mining of metals. The latter leaves a residue of acid mobilized metals with groundwater pollution potential. These processes should remain subject to regulation.

Impact: Little or no impact. These materials are currently subject to regulation under California's hazardous waste control law. This provision is less stringent than current laws although it recognizes that we currently do not regulate in-situ mining wastes left in the ground.

[a:Policy 15]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	Mike Horner
Sec # 261.4(b)(9)		25143.2(b)(6)	Team Leader
			Mike Horner
			Reviewer
			August 28, 1987
			Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: ARSENICAL-TREATED WOOD EXEMPTION

---

40 CFR Section 261.4(b) excludes certain "solid wastes" from classification as "hazardous wastes." Section 261.4(b)(9) reads:

> (9) Solid waste which consists of discarded wood or wood products which fails the test for the characteristic of EP toxicity and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize arsenical-treated wood and wood products for these materials' intended end use.

State law contains no similar exemption for waste arsenical-treated wood.

Suggestion: Do not include Section 261.4(b)(9) in our version. Arsenical-treated wood can exceed TTLC requirements for arsenic, chromium, and copper. As this wood degrades in landfills, these metals are released and may be mobilized in the acidic landfill environment.

Impact: Little or no impact because these materials are currently subject to regulation under the hazardous waste control law.

[a:Policy22]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC
Sec # 261.4(c)

Mike Horner
Team Leader

Mike Horner
Reviewer

August 28, 1987
Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: IN-PROCESS WASTES, ACCUMULATION START-TIME

---

40 CFR Section 261.4(c) establishes when a hazardous waste generated in certain processes becomes a hazardous waste. Section 261.4(c) reads:

> (c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under Parts 262 through 265, 270 and 124 of this chapter or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

State law is ambiguous about when wastes such as tank sediments, pipeline transmixes, etc. become wastes.

Suggestions: Retain Section 261.4(c) in our version. This provision clarifies when a material becomes a hazardous waste. An example is a petroleum storage tank with a constant in-flow and out-flow. Tank bottom sediments begin to accumulate immediately but don't require removal for long periods of time. This Section would establish the time of removal from the tank as the starting point for the 90 day unpermitted storage period.

Impact: Impact on DHS workload is unclear. This resolution would clarify an unclear provision of California's hazardous waste control law.

[a:Policy23]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	HSC	Mike Horner
Sec # 261.4(b)(5)	66740	25143	Team leader
			Reviewer

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: DRILLING/PRODUCTION WASTE EXCLUSION

---

40 CFR Sect. 261.4(b)(5) excludes drilling muds, produced waters, and other oil, gas, and geothermal exploration and production wastes from classification as a hazardous waste.

Title 22 Sect. 66740 lists drilling mud from drilling of oil and gas wells as being classifiable as a special waste. Other production wastes are not specifically mentioned in Title 22.

Section 25143 HSC exempts "Any drilling for geothermal resources..." from regulation. This exemption seems to only apply to drilling wastes.

Problem: State law contains some of the exemptions given in the federal and specifically regulates others (at a decreased level). Some of the materials mentioned in the federal exemption are listed as being classifiable as special waste in State law. Only the geothermal drilling wastes are specifically exempted in State law.

Suggested resolution: Do not include this CFR provision in our regulations. The exemption for geothermal wastes appears in our statute and will not be affected by elimination of this exemption. The other wastes addressed in 261.4(b)(5) would remain regulated and would still be listed as special wastes in the California addenda to 40 CFR.

Impact: Little or no impact. Elimination of this exemption would preserve the status quo. In addition, EPA has proposed regulating many of these wastes as listed hazardous wastes.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC
Sec # 261.4(a)(6)

Mike Horner
Team Leader

Mike Horner
Reviewer

August 28, 1987
Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: PULPING LIQUOR EXCLUSION

---

40 CFR Section 261.4(a) excludes materials from classification as "solid waste," thus from classification as "hazardous waste." Section 261.4(a)(6) reads:

> (6) Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Section 261.4(c) of this chapter.

No similar exemption exists in state law unless the pulping liquor is eligible for exemption under 25143.2(b), HSC (recycling law).

Suggestions: Do not include Section 261.4(a)(6) in our version. State recycling statutes adequately regulate this type of recycling activity.

Impact: Little or none because this material is currently subject to regulation under the hazardous waste control law.

[a:Policy 16]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC
Sec # 261.4(b)(3)

Mike Horner
Team Leader

Mike Horner
Reviewer

August 28, 1987
Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: MINING OVERBURDEN

---

40 CFR Section 2671.4(b) lists "solid wastes" which are not "hazardous wastes." Section 261.4(b)(3) states that "mining overburden returned to the mine site" is not a hazardous waste.

State law recognizes no such exemption.

Suggestion: Do not include this CFR provision in our version. Disturbing overlying rock to remove minerals increases the mobility of potentially hazardous components of the overburden by increasing surface area and permeability of the rock. The increased leaching creates a potential hazard to ground and surface water.

Impact: Little or none. These wastes are currently subject to regulation under the hazardous waste control law.

[a:Policy19]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC
Sec # 261.4(b)(6)

Mike Horner
Team Leader

Mike Horner
Reviewer

August 28, 1987
Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: TRIVALENT CHROMIUM WASTE EXCLUSION

---

40 CFR Section 261.4(b)(6) excludes certain solid wastes containing trivalent chromium (Cr III) from classification as hazardous wastes.

Title 22 establishes STLC and TTLC levels for Cr III beyond which a waste becomes hazardous.

Suggestions: Do not include Section 261.4(b)(6) in our version. Cr III criteria were chosen using the same health oriented parameters as criteria for other metals; excluding Cr III wastes from regulation would be inconsistent with the level of environmental protection afforded by criteria for other metals and would decrease the California universe of hazardous waste.

Impact: Little or none. These wastes are currently subject to regulation.

[a:Policy20]

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	Mike Horner Team Leader
Sec # 261.4(b)(7,8)	66740 66742		
			Mike Horner Reviewer
			August 28, 1987 Date

- o State the difference
- o Explain the impact
- o How is it different
- o Suggestions

Subject: MINE WASTE AND KILN DUST EXCLUSION

---

40 CFR Section 261.4(b)(7) excludes "solid wastes" from the "extraction, beneficiation, and processing of ores and minerals (including coal) including phosphate rock and overburden from the mining of uranium ore from classification as 'hazardous wastes'." 40 CFR Section 261.4(b)(8) excludes a "solid waste, cement kiln dust, from classification as a 'hazardous waste'."

Title 22 lists the aforementioned wastes as being classifiable as "special wastes" if they meet the criteria of "special waste" as presented in Section 66742 CAC. These wastes can also be fully regulated hazardous wastes rather than special wastes if they fail the criteria for special wastes.

Suggestion: Do not include Sections 261.4(b)(7&8) in our regulations. All wastes meeting the criteria of a hazardous waste should be regulated as such.

Impact: Little or none provided "special waste" category is preserved.

[a:Policy21]

SUMMARY OF TECHNICAL SERVICES ISSUES

ISSUE	DECISION
Statutes that limit role of the Department (25159., 25145., 25205., 25247., 13227.).	Determined that these sections would prevent authorization and would require modification. Agreed to meet with SWRCB to discuss a mutually acceptable way to change these statutes. Basic provisions sould include: - DHS/TSCD authority to regulate TSD Facilities in the area of ground water monitoring will not be limited. - The SWRCB or RWQCB's authority to impose more restrictive conditions will not be prevented.
Monitoring Requirement at Land Treatment Facilities.	Amend Article 9.6., if required after legal review.
Unsaturated Zone Monitoring.	Clarify 67188(e)(2). to indicate that a waiver for monitoring at land treatment facilities can not be granted.
Class I Hazardous Waste Injection Wells.	Amend 25159.25 and seek primary at a later time. The Department shall impose more stringent requirements which the Department determines is necessary or appropriate to protest water quality, human health and/or environment.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC Water Code

Sec#

Elgar Stephens
Team Leader

Steve Reynolds
Reviewer

10-13-87
Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Statutes That Limit Role of Department

Discussion:

There are several interrelated statutes which prohibit the Department from taking action independent of the regional water boards at any hazardous waste facility. These are Health and Safety Code Sections 25159, 25145, 25205, and 25247 and Water Code Section 13227. These statutes state;

25159. To the extent authorized by Section 25145, the department shall adopt and revise when necessary regulations which will allow the state to receive and maintain authorization to administer a state hazardous waste program in lieu of the federal program pursuant to Section 3006 of Public Law 94-580, as amended (42 U.S.C. 6926).

(Added by Stats. 1982, Ch. 89.)

25145. This chapter shall not be construed to limit, abridge, or supersede the powers or duties granted to the State Water Resources Control Board and each regional water quality control

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC Water Code

Sec#

Elgar Stephens
Team Leader

Steve Reynolds
Reviewer

10-13-87
Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Statutes That Limit Role of Department Page (2)

---

board by Division 7 (commencing with Section 13000) and Division 7.5 (commencing with Section 14000) of the Water Code.

(Amended by Stats. 1982, Ch. 89.)

25205. (a) The department shall not issue, renew, or continue a permit to operate a hazardous waste facility unless the operator of the facility establishes and maintains the financial assurance prescribed pursuant to Section 25245 for the operator to obtain the prescribed financial assurances.

(b) The department shall not issue a permit for, or take any other approval action regarding, a hazardous waste facility in conflict with any determination relating to water quality made by the State Water Resources Control Board or any regional water quality control board. Any limitations and requirements imposed upon a facility by a regional water quality control board pursuant to Section 13227 of the Water Code shall also be a

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC Water Code

Sec#

Elgar Stephens
Team Leader

Steve Reynolds
Reviewer

10-13-87
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

SUBJECT: Statutes That Limit Role of Department Page (3)

---

condition of any permit issued for the facility by the department.

(Added by Stats. 1982, Ch. 90.)

25247. The department shall review each report submitted pursuant to Section 25246 and shall approve the report if it finds that the report complies with the standards and regulations adopted pursuant to Section 25245, complies with other applicable state and federal regulations, and has been approved pursuant to Section 13227 of the Water Code.

(Added by Stats. 1982, Ch. 90.)

13227. (a) Each regional board, with respect to its region, shall review the facility closure and maintenance report submitted to the State Department of Health Services pursuant to Section 25246 of the Health and Safety Code, to ensure that water quality is adequately protected during closure and the

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC Water Code

Sec#

Elgar Stephens
Team Leader

Steve Reynolds
Reviewer

10-13-87
Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

---

post-closure maintenance period.

(b) The regional board shall approve the facility closure and maintenance report if it finds that the report complies with applicable state and federal laws and regulations relating to water quality protection and monitoring.

Section 25159 clearly requires the Department to comply with 25145, which says that Chapter 6.5 shall not be construed to limit, abridge, or supersede the powers and duties granted to the state and regional water boards. When taken together with 25205(b), the Department can not legally impose any conditions at a facility that are contrary to what is conceived by any water board.

This has resulted in numerous inappropriate actions by various water boards that were not in compliance with RCRA. Waste Discharge Requirements (WDR's) incorporated into Interum Status

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC Water Code

Sec#

Elgar Stephens
Team Leader

Steve Reynolds
Reviewer

10-13-87
Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Statutes That Limit Role of Department

Documents (ISD's) have not met minimum RCRA requirements at the following facilities:

- Acme Landfill
- BKK Landfill
- Casmalia Resources
- CWM Kettleman Hills
- IT Vine Hill
- IT Baker
- EPC Eastside
- EPC Westside

The most serious threat to the Department's ability to impose RCRA regulations is probably 25205(b) which not only applies to WDR's, but to any requirements imposed by water board at anytime. This requirement clearly gives the Department no authority to

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC Water Code

Sec#

Elgar Stephens
Team Leader

Steve Reynolds
Reviewer

10-13-87
Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Statutes That Limit Role of Department

---

have the independent authority that EPA has repeatedly stated we must have.

The record is clear that WDR's and ground water monitoring requirements of the regional boards have not been RCRA equivalent.

Options:

- Propose statutory changes that empower the Department to obtain independent authority to implement RCRA in California.
- Not seek authorization.
- Propose that the Department seek authorization using the State and regional boards to implement the ground water portion of RCRA through Subchapter 15.

Recommendation: Propose statutory changes that empower the Department to obtain independent authority to implement RCRA in California.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC Water Code

Sec#

Elgar Stephens
Team Leader

Steve Reynolds
Reviewer

10-13-87
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

SUBJECT: Statutes That Limit Role of Department Page (7)

The need for independent authority is made necessary by the discretionary authority allowed the regional boards under the Porter Cologne Act. This independent authority need not extend beyond the RCRA universe, however, and the suggested amendments are intended to do only that.

25159. To the extent authorized by Section 25145, the department shall adopt and revise when necessary regulations which will allow the state to receive and maintain authorization to administer a state hazardous waste program in lieu of the federal program pursuant to Section 3006 of Public Law 94-580, as amended (42 U.S.C. 6926). (Added by Stats. 1982, Ch. 89.)

25145. This chapter shall not be construed to limit, abridge, or supersede the powers or duties granted to the State Water Resources Control Board and each regional water quality control board by Division 7 (commencing with Section 13000) and Division

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC Water Code

Sec#

Elgar Stephens
Team Leader

Steve Reynolds
Reviewer

10-13-87
Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Statutes That Limit Role of Department Page (8)

7.5 (commencing with Section 14000) of the Water Code with respect to those wastes not regulated by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.)
(Amended by Stats. 1982, Ch. 89.)

25205. (a) The department shall not issue, renew, or continue a permit to operate a hazardous waste facility unless the operator of the facility establishes and maintains the financial assurance prescribed pursuant to Section 25245 for the operator to obtain the prescribed financial assurances.

(b) The department shall not issue a permit for or take any other approval action regarding a hazardous waste facility in conflict with any determination relating to water quality made by the State Water Resources Control Board or any regional water quality control board. Any limitations and requirements imposed upon a facility by a regional water quality control board pursuant to Section 13227 of the Water Code shall also be a condition of any permit issued for the facility by the department. (Added by Stats. 1982, Ch. 90.)

13227. (a) Each regional board, with respect to its region, shall review the facility closure and maintenance report submitted to the State Department of Health Services pursuant to Section 25246 of the Health and Safety Code to ensure that water quality is adequately protected during closure and the

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC Water Code

Sec#

Elgar Stephens
Team Leader

Steve Reynolds
Reviewer

10-13-87
Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Statutes That Limit Role of Department Page (9)

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post-closure maintenance period

(b) The regional board shall approve the facility closure and maintenance report if it finds that the report complies with the standards and regulations adopted pursuant to Section 25245, complies with other applicable state and federal laws and regulations relating to water quality protection and monitoring.

25247. The Department shall review each report submitted pursuant to Section 25246 and shall approve the report if it finds that the report complies with the standards and regulations adopted pursuant to Section 25245, complies with other applicable state and federal regulations, *and has been approved pursuant to Section 13227 of the Water Code.*
(Added by Stats. 1982, Ch. 90.)

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 264.98		67188	Elgar Stephens Team Leader
264.278		67368	
265.278		67377	
267.10			Steve Reynolds Reviewer
267.43			
			10-16-87 Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Unsaturated Zone Monitoring

Discussion:

In Title 22 unsaturated zone monitoring is required both under general Environmental Monitoring Requirements, 67188(e) through (s), and under the specific requirements for land treatment facilities, 67368 and 67377. In 40CFR, 264.98 makes a vague reference to the unsaturated zone in that it requires "consideration of the mobility, stability, and persistence" of hazardous waste constituents in the unsaturated zone. Unsaturated zone monitoring is required in 40CFR for land treatment facilities under 264.278, 265.278, 267.10, and 267.43. Title 22 requirements for land treatment units are taken verbatum from 40CFR and thus are equivalent. Title 22 requirements under 67188 do not have a counterpart in 40CFR. 40CFR does <u>not</u> require unsaturated zone monitoring at facilities other than land treatment facilities. Thus, Title 22 is more stringent in that it requires unsaturated zone monitoring in addition to ground water monitoring.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 264.98		67188	Elgar Stephens
264.278		67368	Team Leader
265.278		67377	
267.10			Steve Reynolds
267.43			Reviewer
			10-16-87
			Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

SUBJECT: Unsaturated Zone Monitoring (Page 2)

However, a point of clarification is needed in Title 22. 67188(e)(2) contains a waiver clause for unsaturated zone monitoring. This clause does not indicate for which type of facilities the waiver is applicable. Thus it is not clear whether or not a waiver can be granted to a land treatment facility. If under 67188(e)(2) a waiver could (theoretically) be granted to a land treatment facility, then 67188(e)(2) would be in conflict (less stringent) than 67368, 67377, and 40CFR.

Options:

. Clarify 67188(e)(2)
. Consult EPA to see if significant
. Drop 67188 altogether

Recommend:

Clarify 67188(e)(2).

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec#		25159.25	Elgar Stephens Team Leader
			Steve Reynolds Reviewer
			10-13-87 Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Class I Hazardous Waste Injection Wells

Discussion:

The Toxic Injection Well Control Act of 1985 requires the department grant or deny permits and exemptions, conduct inspections, take enforcement actions, and oversee the closure of Class I hazardous waste injection wells.

Under the new HSWA amendments, hazardous waste injection wells are now regulated under RCRA in addition to the Clean Water Act (UIC). UIC is currently promulgating new RCRA equivalent regulations. Section 25159.25 of the Health and Safety Code states:

> 25159.25. Any action taken by the department pursuant to this article shall comply with and incorporate any waste discharge requirements issued by the state board or a regional board, and the action shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water

CFR 40 (Change) Title 22 H&SC

Sec# 25159.25

Elgar Stephens
Team Leader

Steve Reynolds
Reviewer

10-13-87
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

Code and with the state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, and any amendments made to these plans, policies, or requirements. The department may also include any more stringent requirements which the department determines is necessary or appropriate to protect water quality.

(Added by Stats. 1985, Ch. 1591).

This statute requires that any action taken by the department with respect to an injection well must "comply with and incorporate any waste discharge requirements issued by the State Board or a regional "board," and any amendments to State Board policies or plans. Present state law does not contain provisions to ensure that those requirements of the State or regional boards are or will be RCRA equivalent. This statute does allow the department to impose more stringent requirements, but only to protect water quality, not the broader human health and environment issues.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec#		25159.25	Elgar Stephens Team Leader
			Steve Reynolds Reviewer
			10-13-87 Date

. State the difference . How is it different
. Explain the impact . Suggestions

SUBJECT: Class I Hazardous Waste Injection Wells (Page 3)

There is also the issue of primacy (authorization) with respect to hazardous waste injection wells. Section 13160 of the Water Code designates the State Water Resources Control Board as the lead agency for the Federal Water Pollution Control Act, now the Clean Water Act, which regulates all underground injection. This is not consistent with the Toxic Injection Well Control Act which designates the department as the lead agency. The Water Code also sets forth a directive/policy for the State Water Board to seek authorization for the UIC Program (13160, 13263.5). Thus, 13160 and 13263.5 further confuse the issue of primacy (authorization) for those parts of underground injection regulated by RCRA.

Options:

- Maintain status quo.
- Seek primacy now by amending 13160 and 13263.5 of water code and amend 25159.25 to provide additional authority to protect human health.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec#		25159.25	Elgar Stephens Team Leader
			Steve Reynolds Reviewer
			10-13-87 Date

. State the difference . How is it different
. Explain the impact . Suggestions

SUBJECT: Class I Hazardous Waste Injection Wells (Page 4)

. Amend 25159.25 of the Health and Safety Code now and seek primacy at a later time.

. Amend 25159.25 of the Health and Safety Code and ignore primacy issue.

Recommend:

Amend 25159.25 as below and seek primacy at a later time.

25159.25. Any action taken by the department pursuant to this article shall comply with and incorporate any waste discharge requirements issued by the state board or a regional board, and the action shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code and with the state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, and any amendments made to these plans, policies, or requirements. The department may ~~also include any~~ impose

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec#		25159.25	Elgar Stephens Team Leader
			Steve Reynolds Reviewer
			10-13-87 Date

. State the difference . How is it different
. Explain the impact . Suggestions

SUBJECT: Class I Hazardous Waste Injection Wells (Page 5)

more stringent requirements which the department determines is necessary or appropriate to protect water quality, human health, and or environment.

(Added by Stats. 1985, Ch. 1591).

Impact:

Allows department to impose RCRA as minimum standard. Clarifies roles of department and regional water boards.

SUMMARY OF PERMIT ISSUES

ISSUE	DECISION
Definition of Hazardous Waste Storage Facility.	Use current Health & Safety Code (H&SC) definition.
Permit Streamlining Act.	Use current H&SC requirements (Talk to EPA and resurface if they are concerned).
Water Board Role.	This section will be repealed or amended to allow DHS to impose standards which are more stringent than Water Board requirements in order to implement RCRA.
Interim Status.	Adopt federal language.
Definition of "Facility".	Adopt federal language. Add H&SC section for "facility" which parallels RCRA definition. Determine impact of definition change on TTUs.
Definition of "Management".	Adopt federal language.
Definition of On-Site.	Adopt federal language. Determine impact of new definition on TTUs.
Definition of Small Quantity Generator.	Will remain the same as current California law.
Definition of Storage.	Adopt federal language.
Reporting of Releases from Surface Impoundments.	Modify to reflect federal reporting requirement.
Reference to CAM.	Change wording to refer to hazardous waste, delete reference to Title 22.
Permits for "Facilities".	Adopt federal language into Title 22.
Permit to construct TSDF.	Adopt federal language to require a permit to be obtained prior to construction of a TSDF.
Waste Minimization Requirements.	Refer to Alternative Technology for additional evaluation. Facility

ISSUE	DECISION
Facility Containment Systems for containers and tanks	Continue with current state standard which requires a larger system and is considered more stringent than Federal regulations.
Closure and Post Closure for Surface Impound and waste piles.	Continue with current state standard which is more stringent then Federal regulations.
Cover Design	Adopt RCRA performance oriented standards
Waste Pile Design	Continue with the current state standard which is more stringent than Federal regulations.
Land Treatment and Food Chain Crops.	Continue with the current state standard which is more stringent.
Landfill Liner Design	Continue with the current state standard which is more stringent then Federal regulations.
Landfill Gas Collection Systems	Continue with the current state standard which is more stringent then Federal regulations.
Closure of Landfills that have accepted Liquids	Continue with the current state standard.
Seismic and Precipitation Design Standards	Continue with current state precipatation standards and modify seismic standard to maximum probable.
RCRA Exemptions	Not to be handled as part of RCRA Authorization regulations. Include exemptions for totally enclosed treatment systems and element neutralization/waste-water treatment systems in a separate regulation package. Don't adopt federal transfer station exemption.

ISSUE	DECISION
Denial Procedures	Use RCRA process for initial decision, APA for appeal, then RCRA appeal process for decision coming out of APA hearing.
Infectious Waste	Maintain infectious waste regulation as they presently exist.
Notification of Closure	Adopt RCRA Standards but include flexibility to require up to 180 days notice.
Surface Impoundment	Don't adopt exemption.
Compliance with Permit Conditions Only	Adopt state standard unless EPA opposes.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)		Title 22	H&SC	
Sec#	262.34 261.5	66508	25123.3	Mohinder Sandhu Team Leader Don Plain Reviewer 9-21-87 Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

SUBJECT: Definition of hazardous waste storage facility

Federal regulations and state law have a completely different definition for a hazardous waste storage facility. Under federal regulations, facilities that generate less than 100 kg of hazardous waste or 1kg of acute hazardous waste per month are not subject to storage requirements, facilities that generate 100-1000kg/month can store 180 days, and facilities that generate up to 6000 kg/month and transport the waste over 200 miles can store up to 270 days. California statute specifies that 1) facilities generating less then 100 kg of hazardous waste or 1 kg of extremely hazardous waste per month can store the waste until they accumulate 100 kg at which time they have 90 days to remove it, 2) facilities generating greater then 100 kg per month can store the waste 90 days, and 3) all tanks of 5,000 gal/45,000 lbs capacity are required to have a permit. The impact of this difference is extensive confusion in the regulated community. Also, EPA is very likely to have problems just due to the fact that the definitions are so different.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)		Title 22	H&SC	
Sec#	262.34 261.5	66508	25123.3	Mohinder Sandhu Team Leader
				Don Plain Reviewer
				9-21-87 Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

(continued)

Recommend:

These options are currently possible now due to the fact that we don't know what EPA concerns exist regarding this definition:

1) Use H&S Code if EPA accepts the definition
2) Adopt RCRA definition of storage facility (note-this definition would include the small quantity generator exemption.)
3) Use a hybred definition - Part H&S Code and Part RCRA which retains regulatory authority over the small quantity generators of less than 100kg/mo.*

Impact:

Unknown at this time. Potentially significant impact if we adopt the federal small quantity generator exmeption. Adoption of the federal small quantity generator exemption will result in the deregulation of generators of less then 100kg/mo.

*Recommended option

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 124.3(c)	N/A	25199.2	Mohinder Sandhu
			Team Leader
			Don Plain
			Reviewer
			9-21-87
			Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Permit Streamlining Act

Section 25199.2 requires that the Department comply with Permit Streamlining Act requirements when issuing hazardous waste facility permits. This Act requires the Department to review a permit application within 30 days of receiving it. Applications that aren't reviewed within this period are deemed to be complete. This provision is much more stringent than federal regulations that specify the application should be reviewed within 30 or 60 days.

Recommend:

Repeal 25199.2 and put EPA standards into Title 22. Based on fact that Permit Streamlining Act requirement is impossible to comply with due to the size and complexity of permit applications.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 124.3(c)	N/A	25199.2	Mohinder Sandhu
			Team Leader
			Don Plain
			Reviewer
			9-21-87
			Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

(continued)

Impact:

Significant impact on TSCD if this provision is not changed due to the fact that it is (in most cases) impossible to comply with.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# N/A	N/A	25199.6	Mohinder Sandhu Team Leader
			Don Plain Reviewer
			9-21-87 Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Permit Streamlining Act

Section 25199.6 requires DHS to make a decision on a permit application within one year of the date on which the application is deemed complete. If a decision isn't made within this period, the applicant can file an action to "compel" the Department to make a decision. Compliance with the one year timeframe can be difficult (and in many cases impossible) for land disposal and incineration facilities due to the fact that applications are automatically deemed complete if they aren't reviewed within 30 days of receipt. This situation means that the permit decision must be issued within 395 days of receipt of the application if the initial review isn't done within 30 days. Since it is impossible to complete an initial review of a complete application within 30 days and it takes 24-30 months to complete the permit process for a LD and incineration facility, the Department will continually be in violation of this section.

POLICY/STATUTE EXPLANATION FORM

	CFR 40 (Change)	Title 22	H&SC	
Sec#	N/A	N/A	25199.6	Mohinder Sandhu
				Team Leader
				Don Plain
				Reviewer
				9-21-87
				Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

(continued)

Recommend:

Repeal 25199.6 (this will be difficult due to the fact that the requirement is more stringent then RCRA).

Impact:

Significant impact on TSCD if this provision is not changed due to the fact that it is (in many cases) impossible to comply with.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)		Title 22	H&SC	
Sec#	264 F&H 265 F&H	Artic 17 Artic 22 66371(d)(e)	25205	Mohinder Sandhu Team Leader
				Don Plain Reviewer
				9-21-87 Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

SUBJECT: Water Board Role

Section 25205(b) prohibits the Department from taking an action that is in conflict with Water Board actions. The Regional Water Boards are not required to implement a RCRA-equivalent program and actions taken by them are generally not RCRA-equivalent. Since the Department cannot take actions that conflict with Water Board actions, this section makes the Department's authority to impose RCRA standards very questionable. This section should be repealed or amended to show that DHS can impose standards that are more stringent then Water Board requirements in order to implement RCRA.

Recommend:

Amend 25205 as noted.

Impact:

Changes are primarily clarification.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 270 Subpart G	66389	25200.5	Mohinder Sandhu
			Team Leader
			Don Plain
			Reviewer
			9-21-87
			Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Interim Status

Federal law and regulations specify that facilities in existence on November 19, 1980 had the right to obtain interim status and any facility that becomes subject to RCRA due to new law or regulations also is granted this right. Section 3005(e) and (c) also specify that facilities loose interim status unless specific requirements are met. State regulations do not provide for granting interim status to facilities that become subject to hazardous waste requirements as a result of changes in the law or regulations. In addition, the H&S code is unclear as to which facilities can be granted interim status and it does not specify provisions for loosing interim status as found in RCRA 3005(c) and (e). State provisions for granting and terminating interim status must be modified to reflect RCRA provisions to make the programs equivalent.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 270 Subpart G	66389	25200.5	Mohinder Sandhu
			Team Leader
			Don Plain
			Reviewer
			9-21-87
			Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

(continued)

Recommend:

Modify H&S code 25200 to incorporate the deadlines in 3005 (c) and (e). Adopt portions 40 CFR 270 Subpart G, which parallel 3005 (c) and (e).

Impact:

Change would clarify that a facility which becomes subject to Title 22 due to the addition of new types of wastes, etc. to the regulations can qualify for interim status.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 260.10	66096	25117.1	Mohinder Sandhu Team Leader
			Don Plain Reviewer
			9-21-87 Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Definition of "Facility"

Hazardous waste facility is defined in Title 22 (66096) and in the H&SC (25117.1). The definitions are different and both are different from the federal definition of facility in 40 CFR 260.10. The wording difference is relatively minor but a change is needed to clarify that DHS can issue permits on a unit-by-unit basis. Federal definition includes the following, "A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

Recommend:

Revise 25117.1 to read verbatim with federal definition of "facility". Add H&S code section for facility that is the same as the RCRA definition.

Impact:

Essentially none due to the fact that we are currently using the federal definition.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 260.10	66130	25117.2	Mohinder Sandhu
			Team Leader
			Don Plain
			Reviewer
			9-21-87
			Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Definition of "Management"

Federal and state regulations define "management or hazardous waste management" identically H&S code defines hazardous waste management in a much less specific way that could lead to a difference in interpretation of federal and state requirements.

Recommend:

Revise 25117.2 to be consistent with federal definition.

Impact:

None due to the fact that we currently have the federal definition in the CAC. Change is for clarity only.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 260.10	66140	25117.12	Mohinder Sandhu
			Team Leader
			Don Plain
			Reviewer
			9-21-87
			Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

SUBJECT: Definition of On-Site

Federal regulations define "on-site" while state regulations define "On-Site Hazardous Waste Facility" and the statute defines "On-Site Facility". Federal and state definitions are identical with the exception of the addition of Hazardous Waste Facility to the State's definition. The H&S code provides a very general definition. Since the federal definition is more specific covering contiguous and non-contiguous property it could be interpreted differently than the Title 22 or H&S code definitions.

Recommend:

Revise H&S code to be consistent with federal definition of "on-site".

Impact:

None since CAC regulations are the same as federal regulations. (We need to do a word search to determine the impact of changing the definition on other H&S code sections.)

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 260.10	N/A	25122.6	Mohinder Sandhu
			Team Leader
			Don Plain
			Reviewer
			9-21-87
			Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Definition of small quantity generator

The H&S Code definition of small quantity generator uses the term "month" while the federal definition specifies "calendar month". Since the H&S code could be interpreted as referring to solar, lunar, or calendar month a conflict exists between the federal and state definitions.

Recommend:

Revise 25122.6 to be consistent with federal definition of small quantity generator. Modify the H&S code definition for small quantity generator so as to be the same as the federal definition. This will require the addition of the word "calendar" before month.

Impact:

None due to the fact that the term month is defined as calendar month in the Code of Civil Procedure. Change is only for clarity.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 260.10	N/A	25123	Mohinder Sandhu Team Leader
			Don Plain Reviewer
			9-21-87 Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Definition of storage

The H&S code defines storage as the holding of hazardous waste in a manner that doesn't constitute disposal. Disposal is defined as "to abandon, deposit, inter, or otherwise discard waste". Federal regulations define storage as holding waste prior to treatment storage, elsewhere or disposal. Under the state definition, both storage and treatment fell under the category of holding since neither constitutes disposal. Therefore, the state definition is broader (and less stringent) than the federal definition.

Recommend:

Amend H&S code Section 25123 to be consistent with federal definition.

Impact:

Probably none but we need to do a word search in the H&S code to identify statutes that may be impacted by the definition change.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 264.56 265.56	67145	25174.6(c)(2)	Mohinder Sandhu Team Leader Don Plain Reviewer 9-21-87 Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Reporting of releases from surface impoundments

Section 25174.6(c)(2) specifies that releases from surface impoundments must be reported to DHS within 24 hours after detection. In some cases, this section may be in conflict with federal regulations which require facilities to immediately report releases that move outside the facility and could threaten human health or the environment.

Recommend:

Modify 25174.6(c)(2) to reflect federal reporting requirement.

Impact:

None foreseen, however a key word search of the H&S Code will be done. (Note-this section is in conflict with section 25507.)

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# None	Artic 9 & 11	25174.11	Mohinder Sandhu
			Team Leader
			Don Plain
			Reviewer
			9-21-87
			Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

SUBJECT: Reference to CAM

Section 25174.11 refers to CAM regulations and CAC Article 66300. Thi reference is currently incorrect. It should be changed to correctly reference the new Title 22 articles that will cover existing Articles 9 & 11.

Impact:

None, clarification only.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 270.1(c)(4)	N/A	25200	Mohinder Sandhu
			Team Leader
			Don Plain
			Reviewer
			9-21-87
			Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Permits for "facilities"

H&S code section 25200 gives the Department the authority to issue permits to hazardous waste facilities. This section does not address the Department's authority to issue permits to individual units within a facility (e.g. - issuing a permit for each unit within the facility). We have been arguing that we have the authority to issue permits to individual units (as allowed under 40 CFR 270.1[c][4]) in order to meet the RCRA-mandated permit issuance dates for specific units by 88, 89 and 1992. This authority should be clearly specified in the H&S code or in Title 22.

Recommend:

Add 40 CFR 270.1(c)(4) to Title 22.

Impact:

None, currently following RCRA regulations. Clarification only.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)		Title 22	H&SC	
Sec#	3005(a)	N/A	25201	Mohinder Sandhu
				Team Leader
				Don Plain
				Reviewer
				9-21-87
				Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Permit to construct TSDF

Section 3005(a) specifies that a permit must be obtained to construct a hazardous waste treatment, storage, or disposal facility. Section 25201 H&S code is inconsistent with this provision in that it requires individuals to get a permit to "use and operate" a hazardous waste facility. Section 25201 should be amended to construct a hazardous waste facility.

Recommend:

Modify Section 25201 as noted. This will make it consistant with federal regulations which clearly require a permit to be obtained prior to construction of a TSDF.

Impact:

None, regulations currently specify that the permit is required to construct. Clarification only.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 3004(h)	N/A	25202.9	Mohinder Sandhu
			Team Leader
			Don Plain
			Reviewer
			9-21-87
			Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: Waste Minimization Requirements

Section 3004(h) of RCRA requires any permit issued for the treatment, storage, or disposal of hazardous waste at the facility where the waste was generated must include waste minimization requirements. H&S code section 25202.9 uses the same language except that it applies only to "onsite" facilities rather then to all facilities where the waste was generated. The latter category is broader due to the fact that many offsite facilities also generate hazardous waste (for example, off site facilities that treat hazardous waste often produce side streams of different hazardous waste). This difference means that 25202.9 is less stringent then RCRA.

Recommend:

Amend 25202.9 to read verbatim with 3004(h).

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 3004(h)	N/A	25202.9	Mohinder Sandhu

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# 264.175	67245	

. M. S. Sandhu .
Team Leader

. Don Plain .
Reviewer

. 10/26/87 .
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

Containment Systems-Container Storage Areas

The CAC requires that container storage facilities have a containment system with a capacity sufficient to hold runoff from 24 hour, 25 year storm plus 10% of the container volume or the volume of the largest container, whichever is greater. RCRA only requires the capacity to be set at the 10% of container volume or volume of the largest container level. In addition, the CAC requires all container storage areas to have containment facilities. RCRA exempts most container storage areas that do not hold free liquids. We need to decide if we want to continue with the more stringent state requirements.

Recommendation:

Use state standards. Extra capacity is needed because runoff can exceed the 10% of container volume level. Also, all facilities

should have containment systems due to the fact that there is a high probibility that runoff from these facilities will classify as hazardous waste.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# 264.175	67245	

. M. S. Sandhu.
Team Leader

. Don Plain .
Reviewer

. 10/26/87 .
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

Containment Systems-Container Storage Areas

(continued)

Impact:

Minimal, new facilities will have to build containment systems slighty larger than required under RCRA. (Current state standard will be maintained.)

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# 264.191	67251	

. M. S. Sandhu .
Team Leader

. Don Plain .
Reviewer

. 10/26/87 .
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

Containment/Monitoring Systems at Tank Facilities

Section 67251 requires all tank storage facilities to have a containment system or a monitoring system. RCRA does not require either of these systems. We need to decide if we want to continue with the more stringent requirement.

Recommendation:

Continue with the state requirements due to the fact that a definite possibility for spills/leaks exists at tank facilities. State requirement is clearly more stringent and should not pose an authorization problem.

Impact:

Facilities will continue to be subject to current state requirements.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# 264.228	67288	

. M. S. Sandhu .
Team Leader

. Don Plain .
Reviewer

. 10/26/87 .
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

Surface Impoundment Closure/Post Closure

A. Section 67288 (d) requires facilities that plan to clean close a surface impoundment to have a contingent plan for post closure and financial coverage for post closure. RCRA does not require facilities with ponds to have the contingent plan if the ponds have an adequate liner. We need to decide if we want to continue requiring the contingent post-closure plan for all ponds that are scheduled for clean closure.

B. Section 67288 also specifies extensive cover design and installation specifications and annual inspection/maintenance reporting requirements that are not included under RCRA. We need to decide if we want these specifications in the CAC.

Recommendation:

A. Retain state standard due to the high probability of leakage at ponds.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# 264.228	67288	

. M. S. Sandhu .
Team Leader

. Don Plain .
Reviewer

. 10/26/87 .
Date

. State the difference . How is it different
. Explain the impact . Suggestions

Surface Impoundment Closure/Post Closure

Recommendation: (cont'd)

B. Delete design and installation specs and include performance standards. This increases flexibility in dealing with facilities. Keep annual reporting requirement so that we have a record of the facility monitoring and maintenance activities.

Impact:

Facilities will continue to be required to submit annual post-closure reports, cover standards will remain essentially the same.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Title 22 H&SC

Sec# None 67342

. M. S. Sandhu .
Team Leader

. Don Plain .
Reviewer

. 10/26/87 .
Date

. State the difference . How is it different
. Explain the impact . Suggestions

Waste Pile Design and Monitoring

This section specifies that the Department may require waste piles to be double lined and to have a leak detection system if vadose monitoring is not practical. RCRA has no equivalent requirement and vadose monitoring in general is not required. We need to decide if we will require facilities to have vadose monitoring and whether or not waste piles may be subject to double liner requirements.

Recommendation:

Retain current CAC requirement for vadose monitoring and flexibility to impose double liner and leak detection requirements. Vadose monitoring is critical in many areas of California due to the substantial depth to ground water. This requirement is definetly more stringent than RCRA.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# None	67342	

M. S. Sandhu
Team Leader

Don Plain
Reviewer

10/26/87
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

Waste Pile Design and Monitoring

Impact: (cont'd)

All facilities with waste piles will continue to be required to have vadose monitoring or double liners with leak detection systems.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# 264.310	67409 (a)	

. M. S. Sandhu .
Team Leader

. Don Plain .
Reviewer

. 10/26/87 .
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

Landfill Cover Design

California regulations require that covers placed over land disposal facilities be designed to prevent downward entry of liquids for at least 100 years. RCRA specifies that the cover provide "long-term minimization" of migration of liquids through the landfill. We need to decide if we want to maintain the more specific standard.

Recommendation:

Adopt the EPA standard due to the fact that we have found that it is essentially impossible to accurately determine if a cover actually meets the 100 year standard. Also, from a practical standpoint, DHS and EPA are using essentially the same cover design specifications.

Impact:

None foreseen since DHS and EPA are generally using the same cover standards now.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# 264.258	67351	

M. S. Sandhu
Team Leader

Don Plain
Reviewer

10/26/87
Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

Contingent Post Closure at Waste Piles

Section 67351 requires permitted facilities with waste piles to have a contingent post-closure plan and to meet post-closure financial assurance requirements. RCRA only requires these facilities to have the contingent plan if the unit does not meet liner standards. We need to decide if we want to continue to require all waste piles to have the contingent plan.

Recommendation:

Retain CAC requirement due to the high potential for leakage at these facilities.

Impact:

All facilities with waste piles will continue to be required to have post-closure plans and to maintain financial coverage for post-closure.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) . Title 22 . H&SC

Sec# 264.276 67362

. M. S. Sandhu .
Team Leader

. Don Plain .
Reviewer

. 10/26/87 .
Date

. State the difference . How is it different
. Explain the impact . Suggestions

Growth of Crops at Land Treatment Facilities

Section 67362 specifically prohibits the grownth of food-chain crops at land treatment units. RCRA allows the crops to be grown provided the facility demonstrates that the crops do not pose a "substantial" risk to human health. We need to decide if we want to continue the prohibition currently in the CAC.

Recommendation:

Continue the current prohibition due to the fact that many hazardous wastes placed in land treatment units are taken up by crops. Also, EPAs term "substantial risk" has not been defined, therefore, Section 264.276 which allows crops to be grown if their is no substantial risk could be difficult to enforce.

Impact:

Little, if any. Most land treatment facilities in the state are operated by refineries. No crops are grown on the sites.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# 264.301	67401	

. M. S. Sandhu.
Team Leader

. Don PLain .
Reviewer

. 10/26/87 .
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

Landfill Liner Design

State regulations require liners for landfills (and surface impoundments) to be desingnated to prevent any migration of wastes from the unit during the active life of the facility and during the post-closure period. RCRA regulations only require that liners prevent migration during the active life of the facility. We need to decide if we want to continue to be more stringent in this area.

Recommendation:

Retain the state requirement to minimize the potential for migration of waste from the units. Any wastes that do leave the units would have to be cleaned up under Title 22 and RCRA. However, releases would not be detected under the RCRA program until ground-water contamination occurred due to the fact that vadose zone monitoring is not required.

Impact:

No real impact due to the fact that EPA liner design specifications meet the DHS standard.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# none	67409 (b)	

. M. S. Sandhu .
Team Leader

. Don Plain .
Reviewer

. 10/26/87 .
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

Gas Collection Systems at Landfills

State regulations require that landfills have a gas collection system at closure. This type of system is not required under RCRA. We need to decide if we want to keep this more stringent requirement.

Recommendation:

Retain current state requirement due to the high potential for gas generation at landfills.

Impact:

None since DHS currently requires the system.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# none	67409 (c)	

M. S. Sandhu.
Team Leader

Don Plain
Reviewer

10/26/87
Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

Closure of Landfills that Have Accepted Liquids

State regulations require landfills that have accepted liquids in the past to demonstrate (prior to closure) that incompatible wastes can't commingle when overburden is applied. RCRA has no comparable provision. We need to decide if we want to have this extra closure requirement.

Recommendation:

Retain state requirement due to the fact that a number of landfills (Kettleman and IT Panoche for example) have accepted liquids in the past.

Impact:

None since we currently have this requirement in our regulations.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# none	67108	

. M. S. Sandhu .
Team Leader

. Don Plain .
Reviewer

. 10/26/87 .
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

Seismic and Participation Design Standards

CAC Section 67108 specifies seismic and precipitation design standards for facilities. All facilities must be designed to withstand hydrostatic and hydrodynamic loads resulting from a 24-hour maximum probable storm and a maximum credible earthquake. Neither of these design standards exists in RCRA. We need to decide if we want to require compliance with these standards.

Recommendation:

Retain CAC requirement but reduce the maximum credible earthquake standard to the maximum probable level. This proposal is based on the fact that we have not been requiring compliance with the maximum credible standard due to the difficulty in estimating this earthquake level. The maximum probable level is much more easily defined and provides an adequate margin of system.

Impact:

Minimal due to the fact that the change is primarily for clarification purposes.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)		Title 22	H&SC	
Sec#	264.1 265.1	66300	N/A	M. S. Sandhu Team Leader
				Don Plain Reviewer
				9-10-87 Date

. State the difference . How is it different
. Explain the impact . Suggestions

(Exemptions)

Section 66300 identifies specific exemptions from permitting requirements. The following exemptions are allowed under RCRA but are not currently allowed under state regulations:

1) Totally enclosed treatment systems
2) Elementary neutralization and waste water treatment units
3) Transfer stations holding wastes for no longer than 10 days (H&S code currently allows 4 days).

We need to decide which of these provisions (if any) we want to adopt.

Recommendation:

Adopt exemptions 1 and 2 due to the fact that we are generally giving variances for these categories of facilities. Do not adopt #3 due to the fact that a 96 hour limit is specified in H&S Code Section 25123.3.

Impact:

Reduction in TSCD staff time required for issuing variances.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# **124.18**	66398	25186	M. S. Sandhu
			Team Leader
			Don Plain
			Reviewer
			9-10-87
			Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

(Denial Procedures)

Section 25186 requires the Department to follow Administrative Procedure Act (APA) requirements when denying permit applications. This procedure does not allow for public involvement in the denial process. RCRA, however, allows the public to be involved in both the denial decision process and the appeals process. We have worked out a procedure that follows the RCRA denial decision process but that only involves the Department and the applicant in the appeals process using APA procedures. We need to decide if we want to formalize this process in regulations or try to get 25186 changed to allow the Department to follow all RCRA administrative procedures.

Recommendation:

Adopt RCRA denial procedure for initial decision and retain the APA process for appeals. EPA may object to this as a less stringent requirement because APA does not involve the public.

Impact:

TSCD would continue to have a public review period for all denials.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# None	Article 13	N/A	M. S. Sandhu
			Team Leader
			Don Plain
			Reviewer
			9-10-87
			Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

(Infectious Waste)

Article 13 covers requirements pertaining to infectious wastes. We need to decide if we want to include these regulations in the RCRA-equivalent package.

Recommendation:

Include in the new regulations package due to the fact that the probability of transferring the authority to deal with the waste to another division is very low.

Impact:

TSCD will continue as lead in regulating infectious waste facilities.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# 264.112(d)	67212(d)	N/A

Team Leader

Don Plain

Reviewer

9-10-87

Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

(Notification of Closure)

State and federal regulations differ in their time requirements for notification of closure and submittal of closure plans. State regulations require: 1) all permitted facilities to notify the Department 180 days prior to starting closure, and 2) all interim status facilities to submit a closure plan at least 180 days before closure starts. Under RCRA, 1) permitted facilities closing land disposal units must notify EPA 60 days prior to closure and facilities closing T/S units must give 45 days notice, and 2) interim status facilities closing land disposal units must submit the closure plan 180 days prior to starting closure and facilities closing T/S units must submit the plan 45 days in advance. We need to decide which set of standards to use.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# 264.112(d)	67212(d)	N/A	M. S. Sandhu
			Team Leader
			Don Plain
			Reviewer
			9-10-87
			Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

(continued)

Recommendation:

Retain CAC requirements which are equal to or more stringent than RCRA. RCRA timelines for notice/submittal do not give the Department adequate time to review the plan and finalize it, especially when public noticing is involved.

Impact: none

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# 264.221	67281	

. M. S. Sandhu .
Team Leader

. Don Plain .
Reviewer

. 10/26/87 .
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

Surface Impoundment Exemption

RCRA exempts surface impoundments that receive foundry furnace, emission control, or metal casting sand wastes (which is only EP Toxic) from permit requirements. However the facilities must have 1 liner, be 1/4 mile from an underground source of drinking water, and have ground-water monitoring. We need to decide if we want to include this exemption.

Recommendation:

Don't adopt RCRA provision due to the fact that we won't be using the EPA toxicity criteron.

Impact:

Minimal, due to the fact that there are very few facilities (if any) in the state.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# 270.4 (a)	None	25202

. M. Sandhu .
Team Leader

. D. Plain .
Reviewer

. 10/27/87 .
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

Compliance with Permit Conditions Only

Section 270.4 (a) of federal regulations specifies that compliance with a RCRA permit constitutes compliance with RCRA for the purposes of enforcement. This provision is in conflict with Section 25202 of the H&S code which specifically requires facilities to be in compliance with their permit conditions and all regulations. We need to decide if we want to maintain the more stringent state requirement.

Recommendation:

Retain the more stringent state requirement. This provision allows DHS to enforce new regulatory requirements as they take effect rather than having to first modify the facility permit to include the new requirement. (Note: we have been putting a provision in permits that state that compliance with the permit constitutes compliance with the H&S Code and Title 22. There are numerous state permits which currently have this provision.)

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC
Sec# 270.4 (a)	None	25202

. M. Sandhu .
Team Leader

. D. Plain .
Reviewer

. 10/27/87 .
Date

. State the difference
. Explain the impact
. How is it different
. Suggestions

Compliance with Permit Conditions Only

Recommendation: (cont'd)

Impact:

DHS enforcement authority will be clarified. Additional work load will be imposed to clean up the existing permits with the RCRA type provision.

SUMMARY OF FINANCIAL RESPONSIBILITY ISSUES

ISSUE	DECISION
Financial Liability Coverage Variances	Adopt EPA liability coverage variance language verbatim.

SUMMARY OF OFFICE OF PROGRAM MONITORING ISSUES

ISSUE	DECISION
Title 22 Fees.	Repeal all of Title 22 fees.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change)	Title 22	H&SC	
Sec# N/A	Article 8-Fees Sections: 66670 66672 66676	Sections: 25174 25205.2 25205.5	Dink Mather Team Leader Dink Mather Reviewer 10/26/87 Date

- State the difference
- Explain the impact
- How is it different
- Suggestions

SUBJECT: FEES

Delete entire Article 8 - Fees, Section 66670, 66672, and 66676. There is no corresponding Federal regulations or statutes. The fees referred to in Title 22 were established in the 1970's and paid by the operator of the facilityat $1.00 per ton of land disposal hazardous waste. In FY 1982/83 the disposal fee was increased to $4.00 per ton. In FY 1985/86, SB807 (c.113, stats.85) implemented a generator - direct payment provision under which the disposal fees would be paid directly by generators rather than facility operators.

Health and Safety Code Sections 25174, 25205.2 and 25205.5 cover the current fee formulas.

Recommendation:

Repeal all of Title 22 fees.

POLICY/STATUTE EXPLANATION FORM

CFR 40 (Change) Sec §264.147 [redacted]	Title 22 No current Section	H&SC 25245	Rubia Bertram Team Leader Rubia Bertram Reviewer Date

Subject: FINANCIAL LIABILITY COVERAGE VARIANCES

Issue

RCRA regulations, 40 CFR 264.147 and 265.147, allow variances of federal liability coverage requirements to be granted, based upon the degree and duration of risk at the facility. Such variances take the form of adjusted levels of coverage below or above the standard federal liability coverage requirements.

Title 22 does not provide a comparable variance option for California. However, Title 22, CAC, Section 66310 does allow the Department to grant variances of Title 22 requirements (including liability coverage) if the wastes are determined to pose insignificant risks.

This discrepancy between Title 22 and 40 CFR makes California's program both more lenient and more stringent than RCRA. We are more stringent in that we do not have as much flexibility as EPA in granting variances to lower liability coverage amounts. On the other hand, we are more lenient than EPA in that we do not have as much flexibility to require coverage levels above the standard amounts. EPA has previously identified this latter discrepancy as an authorization issue.

NOTE: For companies owning multiple facilities, California requirements are more stringent than the federal. RCRA requires $1/$2 million per owner for treatment and storage facilities, and $4/$8 million per owner for landfills, surface impoundments and land treatment facilities. Title 22 requires the same coverage levels, but on a per facility rather than a per owner basis.

Option 1: Adopt EPA liability coverage variance language verbatim.

Impact This will eliminate EPA concerns regarding regulatory equivalency in this area for authorization purposes. Additionally, it will provide California greater flexibility in granting liability coverage variances (which can either increase or decrease required levels), and increase our ability to match required levels with facility-specific risk in some cases. This type of flexibility is critically needed in light of the current

insurance market. This change however, would likely result in an increased number of variance requests, and would require the Department to develop criteria and guidelines for evaluating these requests. This change may receive some opposition from interest groups and legislators who are opposed to any lowering of program requirements, no matter how necessary or reasonable the change may be.

Option 2: Retain current Title 22 requirements in this area.

Impact This may become a regulation equivalency issue for authorization, since EPA views our regulations as less stringent in this area. Our hands would be tied in the case of facilities who cannot obtain the full liability coverage requirements, and who can make a justifiable, risk-based agreement for lower levels of coverage. The problems associated with Option 1 would not be encountered if the Title 22 regulations were left unchanged.

Option 3 Revise Title 22 regulations to adopt the RCRA liability coverage variance provisions, with the stipulation that California would not issue a variance on a RCRA facility without a concurrent EPA variance.

Impact This "compromise" solution would adequately address EPA's concerns regarding regulatory equivalency; give the Division much of the added flexibility discussed with regard to Option 1, and may at least partially mitigate concerns from those who are opposed to "weakening" program requirements. Like Option 1, this option will likely increase the number of variance requests, and require the development of criteria and guidelines.

Recommendation: Option 3, for the reasons discussed above.