

From: Mike Mohajer [<mailto:MikeMohajer@yahoo.com>]

Sent: Thursday, January 23, 2014 4:55 AM

To: 'Levenson, Howard@CalRecycle'

Cc: 'Mortensen, Caroll@CalRecycle'; 'Smithline, Scott@CalRecycle'; 'Morgan, Cara@CalRecycle'; 'Wallin, Jennifer@CalRecycle'; Bahman Hajialiakbar

Subject: RE: FW: AB 1126 - L.A. County IWM Task Force Letter re: Implementing Regulations

Hi Howard,

On behalf of the LA County IWM Task Force I want to express my appreciation for your response to the attached Task Force letter. For the record, the subject matter was very briefly discussed at the Task Force January 16, 2014 meeting which resulted in my email of 1/17/14, 3:55 AM, to Director Mortensen requesting a written response (For an unknown reason, my email date has disappeared).

On behalf of the Task Force, I have reviewed your response and the guidance link which was prepared in 1993 and was last updated on May 5, 2004, well before the enactment of the AB 1126 (2013). Among other things, I would like to offer the following with respect to the Task Force request for the implementing regulations:

Question/Concern 1

Could CalRecycle share their analysis which resulted in no need to promulgate any implementing regulations?

Question/Concern 2

The guidance link specifies that a Countywide Siting Element (CSE) must comply with requirements of the California Code of Regulations, Title 14 Sections 18755 through 18756.7. For the purpose of reference, Sections 18756 and 18756.7 read as follow:

“Section 18756. Criteria for Establishing New or for Expanding Existing Solid Waste Disposal Facilities.

(a) To establish a new solid waste disposal facility or to expand an existing solid waste disposal facility, the county and regional agency shall describe the criteria to be used in the siting process for each facility. The criteria shall include, but not be limited to, a description of the major categories of Environmental Considerations, Environmental Impacts, Socioeconomic Considerations, Legal Considerations, and additional criteria as developed by the county, cities, regional agency and member agencies. The following are examples of criteria that may be considered within those major categories:

- (1) **Environmental Considerations** (for example: geology and soils including faulting and seismicity, ground settlement, surface hydrology and ground water, quantity and quality of ground water, surface water, surface water contamination, drainage patterns, etc.);
- (2) **Environmental Impacts** (for example: air quality including climatic and meteorological conditions and emissions, visibility, cultural resources including regional setting, inventory and significance, paleontological resources including inventory and significance, vegetation, and wildlife, etc.);
- (3) **Socioeconomic considerations** (for example: transportation including local and regional transportation systems, highways and major roadway corridors, rail transportation and corridors, land use including regional and local land uses such as military use, mineral extraction, agriculture, recreation/tourism, compatibility with existing and future land uses, consistency with county general plan(s) and future post-closure uses, economic factors including estimates of development costs and operational costs, etc.);
- (4) **Legal considerations** (for example: federal, state, and local minimum standards and permits, liabilities, and monitoring, etc.);
- (5) Additional criteria as may be included by the county, cities, regional agency and member agencies approving the Siting Element.

(b) The Siting Element shall describe the process instituted countywide or regionwide to confirm that the criteria set forth in (a)(1-5) of this section are included as part of the solid waste disposal facility siting process.

(c) The countywide Siting Element shall be approved by the county and the cities as described in Public Resources Code section 41721. The regionwide Siting Element shall be approved by the regional agency as described in section 18783(c) of this chapter. The Siting Element shall include: a resolution from each jurisdiction and member agency approving or disapproving of the Siting Element or any proposed amendment to the element; and a record of any jurisdiction or member agency failing to act upon the Siting Element.

(d) No solid waste disposal facility in the Siting Element shall be established that does not satisfy the minimum criteria that are adopted in the Siting Element pursuant to section 18756(a) of this article.

(e) A solid waste disposal facility not described within the Siting Element shall not be established unless an amendment to the Siting Element has been approved identifying and describing the facility, and the date of its inclusion in the element pursuant to PRC section 41721.5.”

“Section 18756.7. Siting Element Implementation.

(a) The Siting Element shall include, but not be limited to, the following:

(1) identification of local government agencies, Local Task Forces, regional agencies, organizations, and any others, responsible for implementing the countywide or regionwide solid waste disposal facility siting program;

(2) implementation schedules addressing each task identified in Section 18755.1(d) for a minimum of 15 years beginning with the year in which the element is prepared; and,

(3) identification of revenue sources sufficient to support the administration and maintenance of the countywide or regionwide solid waste disposal facility siting program.”

Please note:

1. That Subsection 18756(c) needs to be revised in re to an Engineering Municipal Solid Waste (EMSW) conversion facility consistent with the requirements of AB 1126.
2. Is a CSE that provides for its 15-year disposal capacity only through utilization of EMSW conversion facilities needs the approval of both the cities and the county if no EMSW conversion facility is proposed to be located in the unincorporated area of the county? This needs to be addressed by regulations
3. Does a jurisdiction that amends an existing CSE to include an EMSW conversion facility within its boundaries need to comply with criteria stipulated in the Subsection 18756 (a), Paragraph 1 – 5? This needs to be addressed by regulations.
4. That Subsections 18756 (b) & (d) and Paragraph (1) of Subsection 18756.7 (a) need to be revised to address provisions of AB 1126.
5. That there is an urgent need for CalRecycle to ensure compliance with the existing regulations and future revisions there to by each solid waste facility applicant prior to issuance and/or concurrence with a Solid Waste Facility Permit.

Question/Concern 3

In re to EMSW conversion facilities, the provisions of the CC&R, Title 14, Sections 18755 - 18756.7 need to be amended to provide for requirements of the Public Resources Code, Subdivision 50001(c) which states “The person or agency proposing to establish a solid waste facility shall prepare and submit a site identification and description of the proposed facility to the task force established pursuant to Section 40950. Within 90 days after the site identification and description is submitted to the task force, the task force shall meet and comment on the proposed solid waste facility in writing. These comments shall include, but are not limited to, the relationship between the proposed solid waste facility and the implementation schedule requirements of Section 41780 and the regional impact of the facility. The task force shall transmit these comments to the person or public agency proposing establishment of the solid

waste facility, to the county, and to all cities within the county. The comments shall become part of the official record of the proposed solid waste facility.”

Question/Concern 4

As copied below, the Public Resources Code, Sections 41721 and 41721.5 define the approval process for the CSE and amendments thereto, respectively.

PRC 41721.

(a) The countywide siting element shall be approved by the county and by a majority of the cities within the county that contain a majority of the population of the incorporated area of the county except in those counties that have only two cities, in which case the element is subject to approval of the city that contains the majority of the population of the incorporated area of the county. Each city shall act upon the countywide siting element within 90 days after receipt of the siting element. If a city fails to act upon the siting element within 90 days after receiving the siting element, the city shall be deemed to have approved the siting element as submitted.

(b) Notwithstanding subdivision (a), a siting element providing for an EMSW conversion facility is only required to be approved by the city in which it is located, or if the EMSW is not located in a city, by the county.

(Amended by Stats. 2013, Ch. 411, Sec. 9. Effective January 1, 2014.)

PRC 41721.5.

(a) Any amendments to the countywide siting element shall be approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county except in those counties which have only two cities, in which case the amendment is subject to approval of the city which contains the majority of the population of the incorporated area of the county.

(b) Any person or public agency proposing the development of a solid waste disposal or transformation facility may initiate an amendment to the countywide siting element by submitting a site identification and description to the county board of supervisors.

(c) The county shall submit the site identification and description to the cities within the county within 20 days after the site identification and description is submitted to the county board of supervisors. Each city shall act upon the proposed amendment within 90 days after receipt of the proposed amendment. If a city fails to act upon the proposed amendment within 90 days after receiving the amendment, the city shall be deemed to have approved the proposed amendment as submitted.

(d) If the county or a city disapproves the proposed amendment, the county or city shall mail notice of its decision by first-class mail to the person or public agency proposing the amendment within 10 days of the disapproval, stating its reasons for the disapproval.

(e) No county or city shall disapprove a proposed amendment unless it determines, based on substantial evidence in the record, that the amendment would cause one or more significant adverse impacts within its boundaries from the proposed project.

(f) Within 45 days after the date of disapproval by the county or a city of a proposed amendment, or a decision by the board not to concur in the issuance, modification, or revision of a solid waste facilities permit pursuant to Section 44009, any person may file with the superior court a writ of mandate for review of the disapproval or the decision. The evidence before the court shall consist of the record before the county or city which disapproved the proposed amendment or the record before the board in its determination not to concur in issuance, modification, or revision of the solid waste facilities permit. Section 1094.5 of the Code of Civil Procedure shall govern the proceedings conducted pursuant to this subdivision.

(Added by Stats. 1992, Ch. 1291, Sec. 3. Effective January 1, 1993.)

Based on the requirements of PRC Subdivision 41721.5, in order to amend an existing CSE to include an EMSW conversion facility the “double approval” by a majority of cities in the county is required. As such, clarification is needed either through AB1126 implementing regulations or legislation in re to an “amendment” approval process.

In conclusion, thank you again for always being responsive to the Task Force inquiries. My apology for the long email and looking forward to your response. Thanks, Mike

Mike Mohajer
MikeMohajer@yahoo.com

CC: Ea Member/Alternate of the LA County IWM Task Force

From: Levenson, Howard@CalRecycle [<mailto:Howard.Levenson@CalRecycle.ca.gov>]
Sent: Wednesday, January 22, 2014 1:56 PM
To: Mike Mohajer (mikemohajer@yahoo.com)
Cc: Mortensen, Caroll@CalRecycle; Smithline, Scott@CalRecycle; Morgan, Cara@CalRecycle; Wallin, Jennifer@CalRecycle
Subject: [Bulk] FW: AB 1126 - L.A. County IWM Task Force Letter re: Implementing Regulations

Hi Mike,

On behalf of Director Mortensen, I'd like to respond to the L.A. County IWM Task Force's December 12, 2013, letter requesting that CalRecycle expedite regulations on AB 1126 with respect to siting elements. Very briefly, CalRecycle does not need to promulgate regulations re: this provision. Instead, we have already posted the following guidance on our web site:

<http://www.calrecycle.ca.gov/LGCentral/Library/Policy/CIWMPEnforce/Part1/CIWMPAdg.htm#Identify>

In addition, Jennifer Wallin provided this guidance to County staff late last year and more recently spoke with Bahman Hajialiakbar at the County about it. As always, Jennifer and her Long Beach staff are available to provide more assistance on this issue if needed.

Sincerely, Howard

Howard Levenson, Ph.D.
Deputy Director
Materials Management & Local Assistance Division
CalRecycle
(916) 341-6311
howard.levenson@calrecycle.ca.gov

----- Original Message -----

Subject: AB 1126 - Implementing Regulations
From: Mike Mohajer <MikeMohajer@yahoo.com>
To: "Mortensen, Caroll@CalRecycle" <Caroll.Mortensen@calrecycle.ca.gov>
CC: "DaRosa, Ken@CalRecycle" <Ken.DaRosa@calrecycle.ca.gov>, "De Bie, Mark@CalRecycle" <Mark.DeBie@CalRecycle.ca.gov>, "Smithline, Scott@CalRecycle" <Scott.Smithline@calrecycle.ca.gov>

Caroll,

Happy New Year and hope all is well.

On behalf of the LA County IWM Task Force, I would greatly appreciate a written response to the attached Task Force letter in re to implementing regs for AB 1126 (2013). Thanks, Mike

Mike Mohajer
MikeMohajer@yahoo.com