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Sent: Monday, April 14, 2014 5:01 PM
To: 'elliot.block@calrecycle.ca.gov'
Cc: 'Mike Mohajer'; Hajialiakbar, Bahman; Ruiz, Carlos; Thompson, Emiko; Holland, Patrick; Cartwright, Robert; Moore, Michael
Subject: FW: FW: AB 1126 - L.A. County IWM Task Force Letter re: Implementing Regulations

Dear Elliot,

After discussing these issues with staff at the Los Angeles County Department of Public Works ("DPW") and with Mike Mohajer of the Los Angeles County Solid Waste Management Task Force ("Task Force"), I wanted to make a few points regarding the adequacy of CalRecycle's regulations and Guidance in light of AB 1126.

Much of the confusion regarding AB 1126 stems from the fact that the statute revised Public Resources Code ("PRC") Section 41721 to exempt siting elements providing for an engineered municipal solid waste ("EMSW") conversion facility from the majority/majority approval requirement, but it did not revise PRC Section 41721.5, pertaining to approval for siting element amendments. As I understand your email, you are suggesting that despite a drafting error or oversight, the legislature clearly intended to eliminate the requirement that an amendment to a siting element adding a new EMSW facility needs majority/majority approval, and that CalRecycle therefore does not need to issue any regulations in order to implement this interpretation of the statute. Your interpretation, however, is inconsistent with the Guidance that CalRecycle issued on November 21, 2013 regarding AB 1126, which advises local agencies to *revise* their countywide siting elements ("CSEs") to add new EMSW facilities. We find this Guidance to be confusing and contradictory.

As I am sure you know, a revision to a CSE is an entirely different process from an amendment. A CSE revision must follow the procedures applying to a new siting element as set forth in 14 CCR sections 18784-18786, and must include all of the specified content that is required for an original CSE. (See PRC section 41701.) Revisions are typically prepared by counties and regional agencies, and we are not aware of any authority for a city to prepare a CSE revision. An amendment, on the other hand, can be prepared by a city or other person that is establishing a new solid waste facility (PRC section 41721.5; 50001), and the process for amending a CSE is simpler than the process for revising a CSE.

The Guidance states that "a jurisdiction should *revise* the [CSE] when siting a new [EMSW conversion facility], and then goes on to describe a process that is nothing like the process set forth in CalRecycle's regulations for revising a CSE. If it were CalRecycle's intention to change the existing procedure for CSE revisions for EMSW conversion facilities, it seems clear that such a change would require CalRecycle to go through the rulemaking process. But if CalRecycle's position is that AB 1126 authorizes an agency to amend a CSE to add an EMSW conversion facility without complying with the majority/majority approval requirement, then

even if CalRecycle does not believe that rulemaking is necessary, it should at least revise its Guidance to be clear about the process that should be used.

The Guidance also improperly curtails the role of the Task Force in a way that we believe contradicts existing statute and regulation. As you indicate in your email, nothing in AB 1126 removes the Task Force from the amendment process. PRC section 50001(c) requires the agency proposing to establish a solid waste facility to submit a site identification and description of the proposed facility to the Task Force, and within 90 days the Task Force is required to meet and comment on the proposed facility in writing, including but not limited to the *regional impact of the facility*. But according to CalRecycle's Guidance, when an EMSW facility is involved, the jurisdiction proposing the project need only approve the siting element amendment, send a copy of the approval resolution and a description to CalRecycle, the county and the Task Force, and CalRecycle automatically "appends" the amendment to the current CSE. In our view, if CalRecycle is interpreting AB 1126 to curtail the role of the task force in this way, such a curtailment can only be accomplished via a change in the existing statutes. CalRecycle did not even engage in a rulemaking process.

We believe that it is particularly important for the Task Force to be able to review and comment on the impact of EMSW conversion facilities on neighboring jurisdictions whose residents might be negatively impacted by the existence of an EMSW facility but whose cities have no approval role. By removing the 90-day review and comment period, the Guidance significantly reduces this role without any statutory authority or even opportunity for public comment.

In addition, as noted above, although there may be no new siting elements, counties and regional agencies are nevertheless required to prepare siting element revisions from time to time. DPW and the Task Force believe that CalRecycle should amend its regulations to provide clarification as to how the approval process required by 14 CCR sections 18784-18786 and PRC section 41721 would work for the revision of a CSE that provides for an EMSW conversion facility. The literal language of PRC section 41721 indicates that the entire siting element would be exempt from the majority/majority approval process. While it seems unlikely that this is what the legislature intended, clarification as to whether portions of the siting element would be exempt from the majority/majority approval requirement, and how this would work, would be helpful.

Thank you for working with us on these issues. We look forward to hearing your response.

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