

ATTACHMENT G

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD FINDING OF CONFORMANCE RULES/POLICIES

- Agenda Item 20, Board Meeting September 19-20, 2000
- Agenda Item 1 (Revised), Board Meeting August 20-21, 2002
- Resolution 2002-413 (Revised), August 20, 2002

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California Integrated Waste Management Board

Board Meeting

September 19-20, 2000

AGENDA ITEM 20

ITEM

Consideration Of Board Direction On The Appropriate Method For Making Conformance Findings For Permit Revisions As They Relate To Countywide Siting Elements And Non-Disposal Facility Elements

I. SUMMARY

Public Resources Code (PRC) Section 50001 requires the permit review process to include a "conformance finding" step prior to the California Integrated Waste Management Board (Board) concurring in a proposed solid waste facility permit (SWFP). Making a conformance finding requires comparing a proposed permit to a County's Countywide Siting Element (CSE), or a city or county's Nondisposal Facility Element (NDFE) to see if the permit conforms to the applicable planning document. Questions have been raised by local governments, waste management industry, and Board staff as to how the Board should interpret PRC Section 50001 when making a conformance finding; specifically, what is a permit in conformance with in a CSE or NDFE? For example, is identification of the location of a proposed new facility, or facility expansion, enough for the permit to be found "in conformance," or should the facility description in the permit match the facility description in the applicable CSE or NDFE?

This issue was raised at the January 27, 1999 Board meeting. As a result of the discussion, the Board directed staff to prepare an agenda item outlining the issues involved in considering a method for determining conformance, to get input from stakeholders, and to bring the item back to the Board for consideration. Board staff conducted two workshops in Sacramento on this matter - one on March 17, 1999 and another June 24, 1999. An additional issue was raised regarding the purpose of conformance findings at the April 18, 2000, Board meeting relating to when and how the public is noticed about proposed permit revisions.

The purpose of this agenda item is to present to the Board several key issues to be considered in establishing an appropriate method for handling conformance findings, including: "What is the point of a conformance finding?" Specifically, should there be a statewide role in the evaluation of a proposed permit in relation to local planning documents? These issues are discussed in the analysis section below.

II. PREVIOUS BOARD ACTION

At the January 27, 1999, Board meeting during consideration of a landfill permit revision, the Board directed staff to prepare an agenda item considering the issues involved with making conformance findings, and to hold a public workshop to get input from stakeholders regarding this matter. The Board also directed staff in the interim to bring the question of conformance forward for Board consideration on a case-by-case basis when a proposed permit is not consistent with the description in the applicable CSE.

At the April 18, 2000, Board Meeting, again during consideration of a landfill permit revision, the Board directed staff to bring forward the agenda item considering the issues involved with making conformance findings for their consideration at either the July or August, 2000, Board meeting. Board staff was further directed to include a section on conformance findings at the July 11, 2000, Board meeting. This latest meeting was a workshop for Board members that included presentations by Board staff about the permitting process.

III. OPTIONS FOR THE BOARD

- 1) Propose legislation to delete PRC Section 50001, which would delete the conformance finding requirement. If enacted, the Board's corresponding regulations requiring a conformance finding step would also need to be revised accordingly. An alternative version of this option would be to amend the Section by deleting the words "or expand," thereby limiting conformance findings to new facilities.
- 2) Base conformance on "location identification," as defined by the Board. Location identification could mean a facility address, a disposal footprint or some other facility boundary, or a "dot on a map." Such a clarification may require regulations.
- 3) Base conformance (of disposal facility permits) on the effect of the proposed permit on a County's 15-year remaining disposal capacity. The Board's permitting statutes, however, do not currently authorize an objection based on capacity. Staff therefore believes that this option would require a statutory change (and corresponding regulatory changes.)
- 4) Base conformance on description; i.e., the new or expanded facility as described in a proposed permit must be similarly described in a CSE, or NDFE (i.e., using essentially the same standards as in PRC 50000). If the descriptions aren't similar, then require the CSE to be amended and locally adopted prior to concurring with the permit, or the NDFE to be amended, locally adopted, and approved by the Board, prior to concurring with the permit. Examples of what could be considered a description include a facility's maximum daily tonnage, facility capacity, disposal footprint, and permitted waste types. This option might require clarifying legislation and a corresponding change in regulations. Variations of this option include requiring revision of CSEs and NDFEs at the time of the 5-year review, and re-authorizing the Board to determine if a facility would prevent or substantially impair a jurisdiction from meeting the diversion requirements.

IV. STAFF RECOMMENDATION

Staff recommends the Board provide clarifying direction regarding which of the above-mentioned four options staff should further pursue and the underlying public policy objectives that the Board seeks to address. Staff will then bring forward to the Board a more detailed recommendation related to the option-direction the Board provides. Depending on the option chosen, staff would continue to make conformance findings following the current process, unless, and until, directed otherwise.

V. ANALYSIS

Background

Public Resources Code Sections 50000 and 50001 require permits for new solid waste facilities, and expansions of existing solid waste facilities, to be reviewed for their "conformance" with a jurisdiction's solid waste planning documents as part of the permit review process. PRC Section 50000 covered those jurisdictions that were "in the gap" period, i.e., when they did not yet have a Board-approved Countywide Integrated Waste Management Plan, or CIWMP. PRC Section 50001 covers the "post gap" period, i.e., the time after a County has a Board-approved CIWMP. All Counties except one are in this category. In these cases, a conformance finding for a proposed permit for a new facility, or expansion of an existing facility, would require review of the applicable jurisdiction's CSE or NDFE.

To be "found in conformance" during the gap, PRC Section 50000 required any new, or expansion to an existing solid waste or transformation facility which would result in a significant increase in the amount of solid waste handled at the facility, to be identified and described in the applicable planning document. For disposal facilities, that document is the CSE. For nondisposal facilities, such as composting facilities and transfer stations, that document is a NDFE.

To be "found in conformance" post-gap, PRC Section 50001 requires the location of a new or expanded disposal facility to be identified in the County's locally adopted CSE, or Amended CSE; or a nondisposal facility to be identified in a Board-approved NDFE or Amended NDFE. However, if only the location identification of a facility was required (as opposed to a description), there would be no reason to require a conformance finding for expansions. By definition, all existing facilities (which might be expanded) would already be identified, so an additional finding for location information would be unnecessary.

At the January 27, 1999, Board meeting, ambiguities in PRC Section 50001 (a)(1) were discussed during consideration of two landfill permit revisions. Specifically, after the CIWMP is approved for a County, does the facility description (e.g., maximum daily tonnage received) for a new or revised permit have to be consistent with the tonnage description in the CSE, or is location identification alone sufficient for conformance?

A similar ambiguity exists in PRC Section 50001 (a)(2), that portion of the statute that applies to NDFEs. Specifically, does a facility's description (e.g., facility capacity), for a new or revised permit have to be consistent with the facility's description in a NDFE, or is identification alone sufficient for conformance? Examples of what is meant by identification could include the facility's name, location description, type of facility, or the facility's capacity.

The Board concluded that such a policy decision would require input from stakeholders, and a separate agenda item. The Board therefore directed staff to prepare an agenda item on these issues for their consideration at a subsequent Board meeting. The key issues for the Board to consider are discussed below.

Key Issues

1. What Is The Purpose Of A CSE?

A County's CSE is required under PRC Section 41700 to include a description of the areas to be used for the development of adequate transformation or disposal capacity concurrent and consistent with the applicable City and County Source Reduction and Recycling Elements (SRRE). PRC Section 41701 further requires a CSE to include an estimate of the total transformation or disposal capacity that will be needed for a 15-year period to safely handle solid waste that can't be reduced, recycled, or composted. The remaining disposal capacity of those transformation and disposal facilities existing at the time of the preparation of the CSE is also to be included, as well as identification of areas that may be used for establishing new, or expanding existing facilities, in the case where the total remaining capacity for the County is less than 15 years.

Given these statutory directions, it appears the purpose of a CSE is to demonstrate that a County has a minimum of 15 years of combined disposal capacity, whether in existing facilities or with planned expansions, so that it can safely handle those solid wastes that are not reduced, recycled, or composted.

2. What is the purpose of a NDFE?

Statute requires NDFEs to include a description of any new nondisposal solid waste facilities or expansion of existing facilities that will be needed to implement a jurisdiction's SRRE to meet the diversion requirements of PRC Section 41780, using information that was available at the time the NDFE was prepared (PRC Section 41732.). The NDFE may include the identification of specific locations or general areas for new solid waste facilities that will be needed to implement the jurisdiction's SRRE. Per PRC Section 41733, NDFEs shall also include all nondisposal solid waste facilities and nondisposal solid waste facility expansions, which will recover 5 percent or more of the total volume of material received by the facility. Transfer stations that recover less than 5 percent of the total volume of material received are to be included in the NDFE, but that portion of the NDFE is not subject to Board approval.

Given these statutory directions, it appears the purpose of a NDFE is to identify those nondisposal facilities a jurisdiction believed would assist them in achieving the 25 and 50 percent diversion requirements of PRC Section 41780, at the time the NDFE was prepared.

3. What is the purpose of a Conformance Finding?

Board staff currently make conformance findings by determining consistency between a proposed permit and the applicable CSE or NDFE. The major issues regarding conformance are: a) what does consistency mean; b) does the public have an opportunity elsewhere in the permitting process to provide comments on proposed permits; and c) is it appropriate at the statewide level to use the conformance finding process to evaluate a proposed permit based on its conformance (or not) with the corresponding local planning document?

During the two conformance findings workshops held in 1999, the following ideas for consistency between a proposed permit and the applicable planning document were discussed:

- the facility's location is consistent
- the facility's location, and the waste flow and facility capacity descriptions are consistent
- the facility's full description is consistent
- the proposed permit is consistent with the purpose of the CSE or NDFE, as applicable

Based on input received at both workshops, and again at the July 11, 2000, Board meeting, the overwhelming majority of stakeholders believe that PRC Section 50001 limits the Board's role in determining conformance to looking at the consistency of a facility's location identification in a proposed permit and applicable CSE, or the consistency of a facility's identification in a permit and corresponding NDFE.

4. What Is The Purpose Of A Solid Waste Facility Permit?

The primary goal/purpose of issuing or revising a SWFP is to ensure protection of the public health and safety, and prevention of environmental damage; the long-term protection of the environment shall be the guiding principle (PRC Section 44012). PRC Section 44009 directs the Board to concur or object to the issuance, modification, or revision of a SWFP within 60 days from date of receipt of a proposed permit.

Statute requires a SWFP to:

- authorize the operation of the solid waste facility in accordance with California law and regulations [PRC Section 44014(b)]
- minimize overlap with other regulatory agencies (PRC Div. 30, Part 4, Chapter 1.5)
- specify limitations, prohibitions, terms, and conditions that the enforcement agency determines to be appropriate for the design and operation of a solid waste facility

- maintain consistency with the CEQA analysis for the project (PRC Section 44004, Title 27, California Code of Regulations, Section 21650)

A permit usually first goes through a local permitting process prior to its being submitted to the Local Enforcement Agency (LEA), and eventually the Board, for consideration. In most situations, a new solid waste facility project will require local approval of a land use permit, which usually requires the local entity granting the approval to comply with the California Environmental Quality Act (CEQA). CEQA requires that any document developed for a project be publicly noticed, and that notice be provided to interested local and state agencies. Attachment 1 briefly describes the local approval and notice requirements.

Permitting and Inspection staff estimate that approximately 95-100 percent of projects that require revision to the SWFP for a landfill have gone through a public process, including a local public hearing, while about 80 – 85 percent of permits for transfer stations have had public hearings. This percentage is lower because some transfer station permit revisions are for changes that do not affect the local land use approval. It is estimated that 80 percent of composting facility projects have been subject to local hearings. Composting facilities tend to be associated with existing facilities (landfills or transfer stations), or are located in agricultural or industrial zones that may not require additional local approval prior to being submitted to the Board for consideration.

5. The Current Process For Making A Conformance Finding:

The applicant must include a statement as part of the solid waste facility permit application package that the facility is identified in the CSE or NDFE. The LEA must determine if the package is complete and correct. In making this determination, they must verify that the applicant's statement is included, and that the statement is correct.

Board staff also makes a conformance finding after the application package for a proposed permit has been submitted to the Board. Based on the Board's direction at the January 1999 Board meeting, staff of the Board's Office of Local Assistance (OLA) compares a solid waste facility's description in the pertinent planning document to the facility description in a proposed permit to determine conformance. For a CSE, that information includes:

- Location information
- Remaining disposal capacity
- Rates of waste disposal:
maximum permitted daily and yearly (tons/cubic yards)
average daily received (tons/cubic yards)
- Permitted types of wastes

For a NDFE, that information includes:

- Facility identification information
- Facility capacity (tons/cubic yards)
- Anticipated diversion rate or expected diversion rate from the total amount of waste received by the facility
- Participating jurisdictions

Findings

Input From Stakeholders:

Based on input received at the two conformance finding workshops held in 1999, the vast majority of stakeholders were in favor of limiting "conformance" to mean a facility's location must be identified in the corresponding planning document. Participants at both workshops included waste industry representatives as well as local government, both city and county. The majority of the participants believed the public was usually provided an opportunity to provide input on proposed facility/permit changes at the local level, to comply with CEQA.

Stakeholders also believed the CSEs and NDFEs were developed as planning tools, based on information available at the time of preparation, and were never intended to be used as tracking tools that would reflect all changes in facility permits on an on-going basis. They believed statute provided an opportunity to make revisions (as necessary) to local planning documents, in the 5-year review requirement of PRC Section 41770. Revising CSEs and NDFEs to reflect past permit revisions, however, would only be updating the documents after the facility changes had occurred. Current statute requires counties to submit to the Board the results of their 5-year review for Board consideration. However, statute does not specify under what conditions the Board should approve or disapprove a local jurisdiction's findings as to whether or not a planning document needed revising.

The majority of local government representatives also believed that requiring planning documents to be amended whenever a facility was expanded would be unnecessary and burdensome, and contrary to the intent of PRC Section 50001. Specifically, they believed there was no ambiguity in the wording of that Section, and that it clearly limits conformance findings after a County's CIWMP has been approved by the Board, to determining whether the location of the facility is identified in the respective planning document. If the planning document did not identify the location of the facility, then the document would need to be amended prior to the Board's concurring with the permit.

The Amendment Process For CSEs And NDFEs:

Statute requires a CSE amendment to be presented at a Local Task Force (LTF) meeting for review and comment. Once a County has finalized the amendment, it must be noticed for 30 days prior to a local hearing by the County. The County must also submit the amended CSE and accompanying CEQA documentation to all the Cities within the County for their review; the County and a majority of the incorporated Cities with a majority of the incorporated population must approve the document for it to be "locally adopted" (PRC Section 41721.5.) Cities have 90 days to take action to approve or disapprove; no action leads to approval by default [PRC Section 41721.5 (c).] Also, CEQA documentation must be provided, either stating why the previous CEQA documentation is still applicable, or a revised CEQA must be prepared.

The County must submit to the Board verification of the LTF meeting, hearing notices, and resolutions adopting the amended CSE, as well as a resolution from the affected City or the County stating the new or expanded facility is consistent with their general plan (PRC Section 41720.) Board staff will then prepare an agenda item for Board approval of the amended CSE. Local adoption by the County and majority/majority is all that is required, however, for the Board to hear a corresponding permit.

Statute also requires a NDFE amendment to be presented at a LTF meeting for review and comment (PRC Section 41734.) For Regional NDFEs that extend beyond a single County (i.e., Yuba/Sutter and City of Gridley in Butte County), the LTFs of each County must meet and review the amendment. Comments by the LTF shall include an assessment of the regional impacts of potential diversion facilities, and shall be submitted to the City, County, or Regional Agency, and the Board, within 90 days of date of receipt of the nondisposal facility amendment for review and comment. Once a jurisdiction has finalized the amendment, it must be noticed for 3 days prior to a local hearing by the host jurisdiction. The NDFE and any amendments are not subject to CEQA, nor is the NDFE subject to a majority/majority approval. The jurisdiction must submit to the Board verification of the LTF meeting, hearing notice, and resolution adopting the amended NDFE. The amended NDFE must be approved by the Board prior to, or concurrent with, any corresponding permit(s).

Since the January 1999 Board meeting, two amended CSEs have come before the Board: one that added new facilities and described a proposed expansion (Kern), the other described proposed expansions at three landfills (San Bernardino). In that same time period, twenty-one amended NDFEs have come before the Board. Seventeen were adding new facilities to the NDFE, and four NDFEs were amended only to revise facility descriptions. Without the seventeen amendments, the corresponding permits would have been found to be "not in conformance" with the NDFEs because those facilities were not "identified" in the NDFE.

In order to provide background information regarding the development of the conformance finding statutes, Attachment 2 traces the legislative history of the relevant portion of these statutes; Attachment 3 provides the full text of these statutes.

Role Of The Local Task Force:

At the Board's August 2000, meeting in Fountain Valley, the County of Los Angeles requested information on the role of the Local Task Force in the Countywide Siting Element. That information is addressed in Attachment 4 of this agenda item.

Options, and implications of each:

Option 1. Propose legislation to delete PRC Section 50001. A few stakeholders believe it is not even necessary to make a finding of conformance once a county is "out of the gap," i.e., has a Board-approved CIWMP. One could logically conclude that the statute should therefore be deleted, and some have actually indicated that this would be their preference. This option would de-couple a solid waste facility permit from a local jurisdiction's planning documents. In other words, there would be no statewide review of local planning for solid waste facility infrastructure with subsequently proposed solid waste facility permits.

Making such a legislative change, however, would take time, so until the change was made, Board staff would continue to process conformance findings in the manner they have been since January of 1999, unless directed otherwise. If such a deletion were enacted, the Board's corresponding regulations would also need to be revised accordingly.

Alternatively, PRC Section 50001 could be amended by deleting the words "or expand." This would clarify that only new facilities would need to be found to be in conformance with a jurisdiction's applicable planning document.

Option 2. Base conformance on "location identification," as defined by the Board. Location identification could mean a facility address, a disposal footprint or some other facility boundary, or a "dot on a map." Such a clarification might require regulations. For example, if "location" was defined as the disposal footprint, new regulations would need to be written and all CSEs would need to be revised, as current regulations do not require disposal footprint information to be included in a CSE. The nature of this option is ministerial in scope and may be suitable for delegation to staff.

Basing conformance on the location of a new or expanding facility being identified in the applicable planning document could simplify the current process. Most permits would then be found to be "in conformance," as the majority of permits that come forward for Board consideration deal with permit revisions, as opposed to new facility permits. Under this option, only new solid waste facilities not "identified" in a CSE or NDFE would require an amendment to the respective planning document before the permit could be found to be in conformance. The vast majority of stakeholders favor this option, including LEAs, industry, and local government.

Speakers on the Conformance Finding Panel of the Board's July 9, 2000, Permitting Workshop indicated that they believe the "conformance finding" per se, no longer exists. They believe that the change in statutory language to "location..." and "identified..." in PRC Section 50001 eliminated the "conformance finding" requirement. While a finding of compliance with this section is still required, it is no longer a "conformance finding," i.e., a consistent description is no longer required.

During the period of January 1999 to July 2000, OLA staff prepared at least 50 conformance findings related to CSEs. Of these, nearly half were found to be inconsistent with the permit, usually because of differences in maximum daily tonnage increases in the permit compared to the description in the CSE. With this option, all of the permits could have been found in conformance, depending on the definition of "location." During that same time period, OLA staff prepared at least 30 conformance findings related to NDFEs, eight of which found inconsistencies in the facility capacity information between the permit and NDFE.

Option 3. Base conformance (of disposal facility permits) on the effect of the proposed permit on a County's remaining disposal capacity. This option would require a permit applicant to include in the permit application package information on the impacts of the proposed change on the County's remaining 15-year disposal capacity. It is not clear how Counties are currently tracking capacity information, so it is not clear whether such a requirement, applied on a per-permit basis, would present an undue hardship on a County; although remaining capacity is required to be reported in a County's annual report. The Board does not currently track how permit revisions impact a County's remaining disposal capacity. If this option were chosen, most landfill permits would be found in conformance, as most result in increasing a County's disposal capacity.

The Board's current permit statute (PRC Section 44009) contains a limited list of items that would allow an objection. It does not contain any reference to a capacity analysis. Therefore, staff believes that a statutory change would be required to implement this option; corresponding regulatory changes would also be necessary.

Option 3 would also require the Board to determine the basis for a conformance finding for a nondisposal facility-related permit and the applicable NDFE, since the 15-year disposal capacity requirement for a CSE does not apply to NDFEs.

Option 4. Base conformance on facility description; i.e., the new or expanded facility as described in a proposed permit must be similarly described in a CSE or NDFE. If the descriptions aren't similar, then require the CSE to be amended and locally adopted prior to concurring with the permit, or the NDFE to be amended, locally adopted, and approved by the Board, prior to concurring with the permit. Examples of what could be considered a description include a facility's maximum daily tonnage, facility capacity, disposal footprint, and permitted waste types. One of the primary issues with this option is how the word expansion should be defined, and what kind of facility expansion would be of concern in relation to a conformance finding. A definition of "expansion" could include a percentage, or absolute increase in tonnage; an increase in maximum or average daily tonnage, or maximum or average yearly tonnage; or an increase in hours or days of operation. This option might require clarifying legislation, and corresponding regulations.

A variation on this option would be to require jurisdictions to revise their applicable planning documents at the time of the 5-year revision to reflect permitting changes to their disposal and nondisposal facilities. This option, however, might also require a change in statute and corresponding new regulations to specify what information in a facility's permit description would need to be included in the applicable planning document.

An additional variation of this option could be to require a proposed permit (new or revised) to be found to be in conformance with a County's diversion strategies and programs before concurring with the permit. For example, if the Board were to determine that the proposed new or expanded facility would "prevent or substantially impair" the jurisdiction from achieving the diversion requirements of PRC Section 41780, then the Board could deny the permit. Such an option would require legislation, as the Board currently does not have the authority to deny a permit based on these grounds.

Prior to 1996, in reviewing a proposed permit, the Board was authorized, among other things, to do the following:

"Until a Countywide integrated waste management plan [CIWMP] has been approved by the board pursuant to this division, if the board determines, based on substantial evidence in the record, that the issuance of the permit would prevent or substantially impair achievement of the diversion requirements prescribed in Section 41780, the board shall object to the permit..."

AB2009 deleted this authority. The supporters of this legislation indicated that it was no longer necessary, as noted below:

"The sponsors, the League of California Cities and the California State Association of Counties, have stated that since AB 2494 disconnected the source reduction and recycling elements (SRREs) from the CIWMPs, about 75 percent of the SRRE's have been submitted and approved by the Board. Taken together with Board guidelines that have been developed over the years, this has effectively ended the need for the Prevent and Impair Provision. In addition, the sponsors maintain that the existence of the Prevent and Impair Provision has been used in two instances by permit opponents and the environmental community to challenge the proposed permits on the ground that issuance "could" (not "would", as the law reads) prevent or substantially impair achievement of the AB 939 diversion goals. Although the Board ultimately approved the permits, the time, effort and resources spent by local government proponents in defeating the challenges could have been better allocated." (Assembly Natural Resources Committee Analysis)

VI. FUNDING INFORMATION – N/A

VII. ATTACHMENTS

1. Typical Local Approvals and Notice Requirements
2. Conformance Finding Statute History
3. Conformance Finding Statutes
4. Role of the Local Task Force in the Countywide Siting Element
5. Resolution 2000-330 (to be provided following Board direction)

VIII. CONTACTS

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ROLE OF THE LOCAL TASK FORCE IN THE COUNTYWIDE SITING ELEMENT

At the Board's August 2000 meeting in Fountain Valley, the County of Los Angeles requested information on the role of the Local Task Force in the Countywide Siting Element.

PRC section 40950 sets forth the make-up and basic purpose of the Local Task Force:

"(a) ... each county, ... , shall convene a task force to assist in coordinating the development of city [SRREs] ... the county [SRRE] ... and to assist in the preparation of the countywide siting element...

(b) The membership of the task force shall be determined by [majority/majority approval]. The task force may include representatives of the solid waste industry, environmental organizations, the general public, special districts, and affected governmental agencies.

(c) To ensure a coordinated and cost-effective regional recycling system, the task force shall do all of the following:

- (1) Identify solid waste management issues of countywide or regional concern.
 - (2) Determine the need for solid waste collection and transfer systems, processing facilities, and marketing strategies that can serve more than one local jurisdiction within the region.
 - (3) Facilitate the development of multijurisdictional arrangements for the marketing of recyclable materials.
 - (4) To the extent possible, facilitate resolution of conflicts and inconsistencies between or among city and county [SRREs].
- (d) The task force shall develop goals, policies, and procedures which are consistent with guidelines and regulations adopted by the board, to guide the development of the siting element of the countywide integrated waste management plan." (emphasis added)

PRC section 41760, which is the primary statute dealing with the adoption and amendment of the Countywide Siting Element, does not specifically mention the Local Task Force:

"The [CIWMP] and any amendments thereto, with the exception of any [SRRE], [HHWE], or [NDFE], prepared by a city or county, 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 areas of the county, except in those counties which have only two cities, in which case the plan is subject to the approval of the city which contains a majority of the population of the incorporated areas of the county. Each city shall act upon the plan and any proposed amendment within 90 days after receipt of the amendment. If a city fails to act upon the plan or the proposed amendment within 90 days after receiving the plan or the amendment, the city shall be deemed to have approved the plan or the amendment as submitted."

However, PRC 50001(c) does provide an express role for the Local Task Force in amendments CSE and NDFE:

"... (c) 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. ..." (emphasis added)

As set forth in these statutory provisions, the Local Task Force is intended to provide information, assistance, review, and comment to the County and Cities within the County during the preparation of the CSE and any subsequent amendments, with a particular emphasis on issues of coordination in the region. The Task Force does not, however, have any authority relating to the approval of the CSE.

Based upon these statutes, the Board's regulations set forth various details for the role of the Local Task Force:

18777. Role of the Local Task Force.

- (a) The role of the Local Task Force (LTF) shall be to assist and advise the agency(ies) responsible for preparation of the Siting Element and the Summary Plan. The LTF shall guide the preparation and review of these documents prior to their circulation to reviewing agencies and to the Board, to aid in ensuring that the county or regional agency adequately plans for meeting future solid waste handling and disposal needs.
- (b) Within 30 days of its establishment, the LTF shall determine and verify the remaining permitted combined disposal capacity of existing solid waste disposal facilities in the county or regional agency.
- (c) If the county and the cities within the county determine that the representation of the current LTF is not adequately addressing the needs of the county, cities, or public, a new LTF may be established. The new LTF membership shall be approved as described in Public Resources Code section 40950. Within 30 days of the establishment of the new LTF, a membership roster containing the names, phone numbers, and member representation shall be sent to the Board.

The specific procedures for obtaining and considering the comments of the Local Task Force are set forth in sections 18779, 18780, 18781, and 18785. In addition, the section 18788 sets forth the Local Task Force's participation in the 5-year review.

In addition to requiring a description of all existing and proposed disposal and transformation facilities, the Board's regulations require that the Countywide Siting Element include criteria that will be used in the siting process for each facility. The Element is also required to describe the process to be used to confirm that these criteria are used:

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 regulations provides examples of criteria for each category) ...*

(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 *(majority/majority approval)*. ...

(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. *(emphasis added)*

The Los Angeles Countywide Siting Element provides that its Task Force shall review each proposed new or expanded facility to determine if it meets these requirements. Nothing in section 18756 would prevent utilization of the Task Force in this role.

However, the Countywide Siting Element also purports to use this process as a substitute for majority/majority approval of amendments to the Element and this would not be consistent with statute. PRC section 41760, excerpted above, requires majority/majority approval of the cities, and the county, for amendments. During the "gap period," PRC section 50000(a) did provide for this exception:

"(a) Until a countywide integrated waste management plan has been approved by the California Integrated Waste Management Board pursuant to Division 30 (commencing with Section 40000), no person shall establish a new solid waste facility or transformation facility or expand an existing solid waste facility or transformation facility which will result in a significant increase in the amount of solid waste handled at the facility without a certification by the local enforcement agency that one of the following has occurred:

(1) The facility is identified and described in or found to conform with a county solid waste management plan which was in compliance with the law and regulations existing on December 31, 1989, adopted pursuant to former Title 7.3 (commencing with Section 66700) of the Government Code as it read on December 31, 1989. The conformance finding with that plan shall be in accordance with the procedure for a finding of conformance which was set forth in the plan prior to January 1, 1990.

(2) The facility is identified and described in the most recent county solid waste management plan which has been 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 plan has been approved by the county and by the city which contains a majority of the population of the incorporated area of the county.

(3) Pursuant to the procedures in subdivision (b), the facility has been 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 facility has been approved by the county and by the city which contains a majority of the population of the incorporated area of the county." (emphasis added)

While not naming Los Angeles County specifically, they were the only county to qualify under the provisions of this exception - Los Angeles County had a county solid waste management plan adopted prior to December 31, 1989, that set forth a procedure for a finding of conformance.

Public Resources Code Section 50001 does not contain a corresponding exception based upon a procedure set forth in the Countywide Integrated Waste Management Plan. While the Los Angeles Countywide Siting Element included a Conformance Finding Procedure anyway, the CIWMB's approval of the Element expressly provided that the approval of the Element did not approve or disapprove this additional material included in the Element, as noted below:

"WHEREAS, the Countywide Siting Element contains an additional description of procedures for obtaining findings of conformance for the establishment of new and expansion of existing solid waste disposal facilities that is not required by statute or regulation to be included in the Siting Element and the Board is neither approving or disapproving these procedures;"

Solid Waste Facility Permits that Include Multiple Solid Waste Facilities (revised)

SWIS Number	County	Landfill Name	Nondisposal Facility	In NDFE
05-AA-0023	Calaveras	Rock Creek Landfill	transfer station	No
08-AA-0018	Del Norte	Del Norte Landfill	<i>planned</i> MRF	Yes
			<i>planned</i> compost	No
15-AA-0150	Kern	Edwards AFB Main Landfill	compost	Yes
19-AA-0052	Los Angeles	Chiquita Canyon Sanitary Landfill	compost	In CSE
19-AA-0061	Los Angeles	Pebbly Beach Disposal Site	compost, MRF	Yes - <u>both</u>
40-AA-004	San Luis Obispo	Cold Canyon Landfill Solid Waste Disposal Site	compost	Yes
43-AN-0001	Santa Clara	Zanker Landfill	compost, MRF	Yes - <u>both</u>
34-AC-0002	Sacramento	Folsom MRF and Composting	MRF, TS, composting	Yes - <u>all</u>
39-AA-0024	San Joaquin	Tracy MRF & Transfer Station	large volume transfer, compost	Yes - <u>both</u>
45-AA-0059	Shasta	City of Redding and TS/MRF	MRF, transfer station, compost	Yes - <u>all</u>

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Resolution 2002-413 (Revised)

Consideration Of An Appropriate Method For Making Conformance Findings For Permits (New Or Revised) That Included Multiple Solid Waste Facilities As They Relate To Countywide Siting Elements And Nondisposal Facility Elements

WHEREAS, Public Resources Code (PRC) Section 50001 provides that after a Countywide Integrated Waste Management Plan (CIWMP) has been approved, no person shall establish or expand an existing disposal facility or transformation facility unless "the location of [it] is identified" in the Countywide Siting Element (CSE), and no person shall establish or expand specified nondisposal facilities unless they have been "identified" in the Nondisposal Facility Element (NDFE), and PRC section 44009 requires the California Integrated Waste Management Board (Board) to object to a proposed solid waste facility permit (SWFP) if this requirement has not been met; and

WHEREAS, based on overwhelming public comment received at Board hearings and public workshops conducted in 1999 and 2000 regarding the appropriate interpretation of PRC Section 50001, the Board agreed that there had been specific legislative intent to limit conformance findings to a requirement that a facility's location be identified in the CSE or NDFE, as evidenced by a plain English reading of the statute, and therefore determined at the September 19-20, 2000, Board meeting that conformance of a proposed permit would henceforth be limited to location identification in the applicable planning document; and

WHEREAS, under the Board's statutory and regulatory scheme, a nondisposal facility would require a solid waste facility permit and would thus be subject to the conformance finding requirements of PRC 50001, and a nondisposal operation would not require a solid waste facility permit and would thus not be subject to the conformance finding requirements of PRC 50001; and,

WHEREAS, since the September 2000 Board meeting, a question has arisen regarding whether that determination should be applied to nondisposal facilities included in a landfill permit that are not identified in the host jurisdiction's NDFE (or the host County's CSE); and

WHEREAS, a number of nondisposal operations (primarily chipping and grinding operations) are currently operating on-site at permitted disposal facilities without a separate permit because none was required for the nondisposal operation at the time it commenced operation, but the operations are otherwise required to be included within the Report of Facility Information (RFI) for the disposal facility; and,

WHEREAS, a number of landfill sites handle construction and demolition waste on-site without a separate permit because the Board had not established permit requirements for them at the time they commenced operation. While no permit is currently required, these operations are still required to be included within the Report of Facility Information (RFI) for the disposal facility; and,

WHEREAS, the Board is currently in the process of revising its regulations that cover composting and chipping and grinding operations and is considering classifying some of them as facilities which would require a permit for composting and chipping and grinding above a specified size threshold and/or handling specified feedstocks and could subject these existing activities to the conformance finding requirements; and,

(over)

WHEREAS, in addressing the issue of conformance findings for nondisposal facilities on-site at disposal facilities, it is not the intent of the Board to impose additional conformance requirements upon existing nondisposal operations that have been included with the disposal facility's permit and/or RFI that may require a permit solely due to a change in the Board's regulations.

NOW, THEREFORE, BE IT RESOLVED that in considering a proposed solid waste facility permit for a nondisposal facility, regardless of its location, which is located on-site at a disposal facility, regardless of whether it is included within the disposal facility's permit, or is permitted separately, the Board shall interpret PRC Section 50001 to require a finding that the nondisposal facility be identified in the applicable planning document for the purposes of making a conformance finding, except as provided below.

NOW, THEREFORE BE IT FURTHER RESOLVED the Board shall interpret PRC Section 50001 to not require a finding that the nondisposal facility be identified in the applicable planning document for the purposes of making a conformance finding when all of the following conditions are met:

- a proposed solid waste facility permit includes an existing nondisposal activity; and
- the non-disposal activity is located on-site at a disposal facility that is identified in the applicable Countywide Siting Element; and
- the non-disposal activity would require a permit if it were located elsewhere; and
- the non-disposal activity would require that permit only as a result of a revision to the Board's regulations, and not as a result of a change in the activity (e.g., increase in size, materials handled, etc.); and
- the existing nondisposal activity was described within the disposal facility's RFI by the date of this resolution.

CERTIFICATION

The undersigned Executive Director, or his designee, of the California Integrated 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 Integrated Waste Management Board held on August 20-21, 2002.

Dated:

Mark Leary,
Executive Director

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 a description of the major categories of
 - (1) Environmental Considerations
 - (2) Environmental Impacts
 - (3) Socioeconomic considerations
 - (4) Legal considerations (for example: . . local minimum standards and permits . .
 - (5)
- (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)
- (d)
- (e)

With regard to the Los Angeles County Countywide Siting Element, we describe the applicability of the Finding of Conformance process. Section 10.4 reads as follows

10.4 Applicability of Finding of Conformance.

New solid waste disposal facilities, expansions of existing solid waste disposal facilities, or existing solid waste disposal facilities that institute a "significant change" to their operation must obtain an FOC with the CSE granted by the Task Force . .

For the purpose of the CSE, "significant change" is defined as:

- a) any change in the solid waste disposal facility's land use permit/conditional use permit, and/or Waste Discharge Requirements Permit that requires compliance with the requirements of the California Environmental Quality Act, as amended;
- b) any revision in the facility's Solid Waste Facility Permit; or
- c) any increase in daily permitted capacity

• Third, I would like to express the following comments regarding the staff report for this agenda item

- Page 5: Item 3 goes into detail describing the purpose of a conformance finding. However, upon reading this item, the report fails to define the role of the Local Task Force. As I communicated to the Board on July 11 of this year, I am requesting that Board staff describe the role of the Local Task Force in the conformance process.
- Page 10: I urge the Board to adopt Option 4, provided it is revised to allow the FOC process.

**Summary of Verbal Comments by Mike Mohajer
to the CIWMB Regarding Agenda Item 20
(CIWMB meeting of August 22-23, 2000)**

Please Note: This summary is written in the first person narrative.

I would like to offer three comments regarding Agenda Item 20.

- First, statutory and regulatory sections of the law is very specific regarding the role of the Local Task Force. For example, Section 40950 of the Public Resources Code reads as follows:

40950 Local Task Forces.

- (a) each county shall convene a task force to assist in the preparation of the countywide siting element
- (b) The membership of the task force may include representatives of the solid waste industry, environmental organizations, the general public, special districts, and affected governmental agencies.
- (c)
- (d) The task force shall develop goals, policies, and procedures which are consistent with guidelines and regulations adopted by the board, to guide the development of the siting element of the countywide integrated waste management plan.

In addition, Section 18755.1 of Title 14 of the California Code of Regulations reads as follows:

18755.1 Goals and Policies.

- (a) The Local Task Force (LTF) shall develop goals, policies, and procedures to provide guidance to the county to prepare the Siting Element.
- (b)
- (c)
- (d) The policies shall specify any programs, regulatory ordinances, actions, or strategies that may be established to meet the goals and to assist in the siting of solid waste disposal facilities.

- Second, State regulations is very clear regarding the criteria for establishing new or for expanding existing solid waste disposal facilities. For example, Section 18756 of Title 14 of the California Code of Regulations reads as follows:

California Integrated Waste Management Board
Board Meeting
August 20 and 21, 2002
AGENDA ITEM 1 (Revised)

This item was continued from the July Committee meeting to further consider the issue of existing non-disposal activities that may require a permit in the future.

AGENDA ITEM

Consideration of an appropriate method for making conformance findings for permits (new or revised) that include multiple solid waste facilities as they relate to Countywide Siting Elements and Nondisposal Facility Elements

SUMMARY

- Board determined at the September 19 and 20, 2000, Board meeting that a solid waste facility permit would be in conformance if the facility's location were identified in the corresponding planning document.
- Question at hand is: Should a permit revision for a nondisposal facility that is not identified in either the host jurisdiction's NDFE or applicable county's CSE be found to be in conformance because the landfill where the nondisposal facility is sited is identified in the County's CSE?
- Board staff is recommending that the "location identification" criterion be applied to nondisposal facilities that are sited at a landfill and included in the landfill's solid waste facility permit, but are not identified in the host jurisdiction's NDFE.
- Staff is also recommending that the two jurisdictions that currently host landfills with multiple facilities included in their existing permit would also need to amend their NDFE prior to the Board concurring with any permit revision for those facilities, should the Board agree with staff's recommendation.
- Staff is recommending that nondisposal activities that are currently sited at a Board-permitted landfill that are not currently classified as needing a permit, but would require a permit as a result of either the Board's proposed composting or C&D regulations, would also not be subject to the conformance finding requirement.

PREVIOUS BOARD ACTION

- Board determined at the September 19 and 20, 2000, Board meeting that PRC Section 5001 would be interpreted to mean a permit would be found in conformance if the facility's location was identified in the corresponding planning document.

OPTIONS FOR THE BOARD

1. Accept staff's recommendation that all nondisposal facilities required to be permitted by the Board be identified in the host jurisdiction's NDFE, regardless of where the facility is located, and also expect staff's recommendation regarding existing nondisposal facilities.
2. Modify staff's recommendation.
3. Not accept staff's recommendation and provide staff with direction with how to proceed with resolving this issue.

STAFF RECOMMENDATIONS

- Staff recommends the Board adopt Option 1 (as stated above).

California Integrated Waste Management Board

Board Meeting

August 20-21, 2002

AGENDA ITEM 1 (Revised)

(Continued from July 23-24, 2002 Meeting, Agenda Item 56)

ITEM

Consideration Of An Appropriate Method For Making Conformance Findings For Permits (New Or Revised) That Include Multiple Solid Waste Facilities As They Relate To Countywide Siting Elements And Nondisposal Facility Elements

I. SUMMARY

Public Resources Code (PRC) Section 50001 requires the solid waste facility permit review process to include a "conformance finding" step prior to the California Integrated Waste Management Board (Board) concurring in a proposed solid waste facility permit (permit). Making a conformance finding requires comparing a proposed permit to the applicable planning document, i.e., either a County's Countywide Siting Element (CSE) for disposal facilities, or a city or county's Nondisposal Facility Element (NDFE) for nondisposal facilities, such as compost facilities.

The Board determined at the September 19-20, 2000, Board meeting, that a solid waste facility permit would be in conformance if the facility's location were identified in the corresponding planning document. Since that Board decision, a question has arisen regarding whether this policy should also apply to a nondisposal facility located at a landfill and included in the landfill's permit (instead of having a separate permit), but that is not separately identified in either the applicable CSE or NDFE. Specifically, should a permit revision for a nondisposal facility that is not identified in either the host jurisdiction's NDFE or applicable county's CSE be found to be in conformance because the landfill where the nondisposal facility is sited is identified in the County's CSE?

Board staff is recommending that the "location identification" criterion be applied to nondisposal facilities that are sited at a landfill and included in the landfill's solid waste facility permit, but are not identified in the host jurisdiction's NDFE. This recommendation is based on prior stake holder input that location identification of a disposal or nondisposal facility in the applicable planning document should be sufficient for a finding of conformance, and is consistent with the majority of previous permit revisions regarding nondisposal facilities sited at landfills. Staff is also recommending that the two ~~In addition, only a few jurisdictions that~~ currently host landfills with multiple facilities included in their existing permit that would also need to amend their NDFE prior to the Board concurring with any permit revision for those facilities, should the Board agree with staff's recommendation.

Further, staff is recommending that those nondisposal activities that are currently sited at a Board-permitted landfill that are not currently classified as needing a permit, but would require a permit as a result of either the Board's proposed composting or C & D regulations, would also not be subject to the conformance finding requirement.

II. PREVIOUS BOARD ACTION

In a similar item considered at the September 19-20, 2000, Board meeting, the Board determined that PRC Section 5001 would be interpreted to mean a permit would be found in conformance if the facility's location was identified in the corresponding planning document.

The current item was continued from the July Committee meeting to further consider the issue of existing non-disposal activities that may require a permit in the future.

III. OPTIONS FOR THE BOARD

1. Accept staff's recommendation that all nondisposal facilities required to be permitted by the Board be identified in the host jurisdiction's NDFE, regardless of where the facility is located, and also except staff's recommendation regarding existing nondisposal facilities.
2. Modify staff's recommendation.
3. Not accept staff's recommendation and provide staff with direction with how to proceed with resolving this issue.

IV. STAFF RECOMMENDATION

Staff recommends the Board adopt option 1.

V. ANALYSIS

Background

Permits for new solid waste facilities, and expansions of existing solid waste facilities, must be reviewed for their conformance with a jurisdiction's solid waste planning documents as part of the permit review process as required by PRC Section 50001. Making a conformance finding requires comparing a proposed permit to the applicable planning document, i.e., either a County's CSE for disposal facilities, or a city or county's NDFE for nondisposal facilities, for example, a compost facility.

PRC Section 50001 (a) states:

Except as provided by subdivision (b), after a countywide or regional agency integrated waste management plan has been approved by the California Integrated Waste Management Board pursuant to Division 30 (commencing with Section 40000), no person shall establish or expand a solid waste facility, as defined in Section 40194, in the county unless the solid waste facility meets one of the following criteria:

(1) The solid waste facility is a disposal facility or a transformation facility, the location of which is identified in the countywide siting element or amendment thereto, which has been approved pursuant to Section 41721; (i.e., locally adopted).

(2) The solid waste facility is a facility which is designed, to, and which as a condition of its permit, will recover for reuse or recycling at least 5 percent of the total volume of material received by the facility, and which is identified in the nondisposal facility element or

amendment thereto, which has been approved pursuant to Section 41800 or 41801.5 (i.e., approved by the Board).

The question of the most reasonable interpretation of PRC Section 50001 was discussed at the January 27, 1999, Board meeting; specifically, was location identification alone sufficient for conformance? As a result of the discussion, the Board directed staff to gather input from stakeholders and to present their findings at a subsequent Board meeting. As a result of staff findings, the Board determined at the September 19-20, 2000, Board meeting, that PRC Section 50001 would be interpreted to mean a permit would be found in conformance if the facility's location were identified in the corresponding planning document in accordance with a plain English reading of the statute. Specifically, this means the location of a new or expanded disposal facility must be identified in the County's locally adopted CSE, or locally adopted amended CSE, for the permit to be in conformance. Likewise, a nondisposal facility must be identified in a Board-approved NDFE or Board-approved amended NDFE for the proposed permit to be in conformance.

A permit applicant must include a statement as part of the solid waste facility permit application package that the facility is identified in the host jurisdiction's CSE or NDFE. The LEA must determine if the package is complete and correct. In making this determination, they must verify that the applicant's statement is included, and that the statement is correct.

The issue addressed in this item relates to the situation where a nondisposal facility (that requires Board concurrence in its permit) located at a landfill and included in the landfill's permit is not identified in the host jurisdiction's NDFE, although the landfill is identified in the host county's CSE. While the nondisposal facility might be included in the County's CSE, it is not required to be. If it is identified separately in the County's CSE, staff would find the permit to be in conformance, but would recommend the host jurisdiction's NDFE be amended at the time of the County's 5-year review report, as the jurisdiction's NDFE is the appropriate planning document for identifying nondisposal facilities used by a jurisdiction.

Typically, amended NDFEs are approved by the Board prior to the Board taking action on the corresponding permit. In a few cases where the need to amend the NDFE has been identified late in the permit process, action on the permit has been deferred by request of the applicant until such time that the Board could approve the amendment to the NDFE. This has been true in most cases, including those where the nondisposal facility is located at a landfill identified in the host county's CSE. Therefore, applying the requirement that a nondisposal facility be identified in the host jurisdiction's NDFE for a permit revision for that facility to be in conformance would be consistent with the majority of previous permit revisions regarding nondisposal facilities sited at landfills.

Key Issues

1. What is the purpose of a NDFE?

Statute requires NDFEs to include a description of any new nondisposal solid waste facilities or expansion of existing facilities that will be needed to implement a jurisdiction's Source Reduction and Recycling Element (SRRE) to meet the diversion requirements of PRC Section 41780, using information that was available at the time the NDFE was prepared (PRC Section 41732.). The NDFE may include the identification of specific locations or general areas for new

solid waste facilities that will be needed to implement the jurisdiction's SRRE. Per PRC Section 41733, NDFEs shall also include all nondisposal facilities and nondisposal facility expansions, which will recover 5 percent or more of the total volume of material received by the facility. Transfer stations that recover less than 5 percent of the total volume of material received are to be included in the NDFE, but that portion of the NDFE is not subject to Board approval.

Given these statutory directions, it appears the purpose of a NDFE is to identify those nondisposal facilities a jurisdiction believed would assist them in achieving the 25 and 50 percent diversion requirements of PRC Section 41780, at the time the NDFE was prepared. However, PRC Sections 41730 and 41731 refer to amended NDFEs, so the need to update a jurisdiction's NDFE was therefore also anticipated.

2. What is the purpose of a Solid Waste Facility Permit?

The primary goal/purpose of issuing or revising a SWFP is to ensure protection of the public health and safety, and prevention of environmental damage; the long-term protection of the environment shall be the guiding principle (PRC Section 44012). PRC Section 44009 directs the Board to concur or object to the issuance, modification, or revision of a SWFP within 60 days from date of receipt of a proposed permit. Attachment 1 has additional information on this topic.

3. What is the purpose of a conformance finding?

Based on input from stakeholders provided at the workshops and at the July 11, 2000, Board meeting, and a plain English reading of the statute, the Board determined the purpose of making a conformance finding is to simply verify that the solid waste facility in a proposed permit, whether new or revised, is identified in the host jurisdiction's applicable planning document. Being thus identified demonstrates that the public has had the opportunity to review and comment on the siting of the facility in that location.

4. What is the current process for making a conformance finding?

A permit applicant must include a statement as part of the solid waste facility permit application package that the facility is identified in the host jurisdiction's CSE or NDFE. The LEA must determine if the package is complete and correct. In making this determination, they must verify that the applicant's statement is included, and that the statement is correct. Board staff also makes a conformance finding after the application package for a proposed permit has been submitted to the Board. Based on the Board's direction at the September 2000 Board meeting, staff of the Board's Office of Local Assistance looks at the applicable planning document to determine if the location of the facility in the permit has been identified therein. If the facility's location is identified in the corresponding planning document, staff's recommendation is that the facility is in conformance.

Board staff is not clear if the Board's decision regarding location identification for a finding of conformance also applies to nondisposal facilities that require a Board permit that are located at landfills and included in the landfill's solid waste facility permit. Because the landfill is identified in the host county's CSE, there has been some confusion as to whether any new or revised permits regarding the nondisposal facility should be found to be in conformance as well. Currently, staff are recommending the host jurisdiction's NDFE be amended to include the nondisposal facility before finding the nondisposal facility to be in conformance with the NDFE.

5. What is the process for amending a NDFE?

Statute requires a NDFE amendment to be presented at a Local Task Force (LTF) meeting for review and comment (PRC Section 41734.) For Regional NDFEs that extend beyond a single County (i.e., Yuba/Sutter Counties), the LTFs of each County must meet and review the amendment. Comments by the LTF shall include an assessment of the regional impacts of potential diversion facilities, and shall be submitted to the City, County, or Regional Agency, and the Board, within 90 days of date of receipt of the nondisposal facility amendment for review and comment.

At the Board's August 2000, meeting in Fountain Valley, the County of Los Angeles requested information on the role of the Local Task Force in the CSE. That information is addressed in Attachment 2 of this agenda item.

Once a jurisdiction has finalized the NDFE amendment, it must be noticed for 3 days prior to a local hearing by the host jurisdiction where the amendment is being considered for adoption. The NDFE and any amendments are not subject to the California Environmental Quality Act (CEQA), nor is the NDFE subject to a majority/majority approval. The jurisdiction must submit to the Board verification of the LTF meeting and its comments, the 3-day hearing notice, and the local resolution showing adoption of the amended NDFE. The amended NDFE must be approved by the Board prior to, or concurrent with, any corresponding permit.

6. What was stakeholder input in 1999?

The majority of the participants at the two conformance finding workshops held in 1999 believed the public was usually provided an opportunity to provide input on proposed facility/permit changes at the local level, to comply with CEQA. Stakeholders also believed the CSEs and NDFEs were developed as planning tools, based on information available at the time of preparation, and were never intended to be used as tracking tools that would reflect all changes in facility permits on an on-going basis. They believed statute provided an opportunity to make revisions, as necessary, to local planning documents, in the 5-year review requirement of PRC Section 41770.

Revising CSEs and NDFEs to reflect past permit revisions, however, would only be updating the documents after the facility changes had occurred, and would therefore not provide the public an opportunity to comment on a new disposal or nondisposal facility. Current statute requires counties to submit to the Board the results of their 5-year review for Board consideration, but does not specify on what basis the Board could require that a planning document be revised; for example, statute does not specify that adding a new disposal or nondisposal facility would trigger the need for a revision to the appropriate planning document.

The majority of local government representatives that provided feedback also believed that there was no ambiguity in the wording of PRC Section 50001, and that it clearly limits conformance findings to determining whether the location of the facility is identified in the respective planning document. If the planning document did not identify the location of the facility, then the document would need to be amended prior to the Board's concurring with the permit.

Additional Information

Subsequent to the Diversion Planning and Local Assistance Committee's first consideration of this item in July, an issue was raised regarding whether or not existing activities on-site at landfills should be "grandfathered" such that they would not have to meet the conformance finding requirements under certain conditions. There are two possible scenarios in which this issue might arise.

A number of nondisposal operations (primarily chipping and grinding operations) are currently operating on-site at permitted disposal facilities without a separate permit because none was required for the nondisposal operation at the time it commenced operation. While no permit is required, these operations are still required to be included within the Report of Facility Information (RFI) for the disposal facility.

Finally, a number of landfill sites handle construction and demolition waste on-site without a separate permit because the Board had not established permit requirements for them at the time they commenced operation. While no permit is currently required, these operations are still required to be included within the Report of Facility Information (RFI) for the disposal facility.

(Note: At the time this item was revised, staff was still in the process of determining the potential number of sites which might fit within the above categories. More specific information will be provided at the August DPLA Committee meeting).

The Board is currently in the process of revising its regulations that cover composting and chipping and grinding operations and also construction and demolition transfer/processing and is considering classifying some of them as facilities which would require a permit for specified sizes and/or for handling specified feedstocks.

Under the Board's statutory and regulatory scheme, if these sites were to seek either a new or revised permit at a future time they would be subject to the conformance finding requirements of PRC Section 50001. A nondisposal operation that would not require a solid waste facility permit would not be subject to the conformance finding requirements of PRC 50001.

Staff's recommendation in addressing the issue of conformance findings for nondisposal facilities on-site at disposal facilities, would require these facilities to be separately identified in a NDFE. However, that original analysis did not address the issue of the application of the conformance requirements to existing nondisposal facilities and operations that have been included within a disposal facility's permit and/or RFI where the permit requirement (and hence the conformance requirement) came about due to a change in the Board's regulations (as opposed to a change in the activity).

Some stakeholders have argued that it would be unfair, time-consuming and burdensome to require these existing activities to go through the process of a NDFE amendment when the activity itself hasn't changed, just the Board's regulations.

To address this issue, staff recommends that the Board interpret PRC Section 50001 to not require a finding that the nondisposal facility be identified in the applicable planning document for the purposes of making a conformance finding when all of the following requirements are met:

- a proposed solid waste facility permit includes an existing nondisposal activity; and
- the non-disposal activity is located on-site at a disposal facility that is identified in the applicable Countywide Siting Element; and
- the non-disposal activity would require a permit if it were located elsewhere; and
- the non-disposal activity would require that permit only as a result of a revision to the Board's regulations, and not as a result of a change in the activity (e.g., increase in size, materials handled, etc.); and
- the existing nondisposal activity was described within the disposal facility's RFI by the date of the Board's decision on this issue (August 20, 2002).

As an alternative to staff's recommendation, the Board could determine that no further identification is necessary, for both new and existing nondisposal activities, when a nondisposal facility is placed on-site at a permitted disposal facility, because the permitted disposal facility is already identified in the Countywide Siting Element. In such a situation, the public has already been put on notice that a solid waste facility will be in that location and the addition of the nondisposal facility simply involves additional handling of solid waste. In such a situation, if the new activity will involve any potential impacts to the environment, the public will also receive notice through the CEQA process. Under the Board's plain reading of PRC 50001 as "location identification," currently a landfill could change its waste handling practices, hours and/or significantly increase the amount of waste that it handles, without needing to amend the Countywide Siting Element. It could thus be argued that adding a nondisposal facility to an already existing disposal facility site is not any more significant than one of these changes and should not be subject to additional requirements.

Findings

NDFE Amendments Since September 2000:

As of the June 18-19, 2002, Board meeting, twenty-two amended NDFEs have come before the Board since the September 19-20, 2000, Board meeting. Sixteen of those were amended to add new facilities to the NDFE, while six were amended to revise existing facility descriptions. Without the sixteen amendments for new facilities, the corresponding permits would have been found to be "not in conformance" with the NDFEs because those facilities were not previously identified in the NDFE.

Since September 2000, OLA staff has prepared 53 conformance findings related to CSEs and 51 related to NDFEs. Of the NDFE-related conformance findings, 7 were found to not be in conformance because the nondisposal facility was not identified in the host jurisdiction's NDFE at the time the conformance finding was made. In all but two cases, Board action on the permit was either deferred by request of the applicant until the Board could approve an amended NDFE, or the amended NDFE was approved by the Board at the same Board meeting as the corresponding permit item, bringing the permit into conformance.

Most permits that come to OLA staff for a conformance finding are now found to be in conformance, as the majority of permits that come forward for Board consideration deal with permit revisions, as opposed to new facility permits. Only new solid waste facilities not identified in a CSE or NDFE require an amendment to the respective planning document before the permit can be found to be in conformance.

Nondisposal facilities currently included in a landfill permit:

From information provided by Permits staff, there are currently 7 landfill facilities in the State for which the landfill permit includes one or more separate nondisposal facilities, and 3 additional permits that each contain several nondisposal facilities (Attachment 4). The 7 landfills are:

<u>Landfill Name</u>	<u>County</u>
<u>Rock Creek Landfill</u>	<u>Calaveras</u>
<u>Del Norte Landfill</u>	<u>Del Norte</u>
<u>Edwards AFB Main Landfill</u>	<u>Kern</u>
<u>Chiquita Canyon Sanitary Landfill</u>	<u>Los Angeles</u>
<u>Pebbly Beach Disposal Site</u>	<u>Los Angeles</u>
<u>Cold Canyon Landfill Solid Waste Disposal Site</u>	<u>San Luis Obispo</u>
<u>Zanker Landfill</u>	<u>Santa Clara</u>

Of the 7 landfill permits, 7 nondisposal facilities are identified in the host jurisdiction's NDFE, 1 is identified in the host county's CSE (the compost facility at Chiquita Canyon), and 2 are not identified in either planning document (the transfer station at Rock Creek and the planned compost facility at Del Norte). The 8 nondisposal facilities included listed in the three facility permits that include list multiple nondisposal facilities are all identified in the applicable host jurisdiction's NDFE.

If the Board accepts staff's recommendation, the 2 nondisposal facilities addressed above that are included in a landfill permit but not identified in the host jurisdiction's NDFE, and any new nondisposal facility sited at a landfill and included in the landfill's permit would need to be included in the host jurisdiction's NDFE before a revised permit for those facilities could be found to be in conformance. These would not be "grandfathered " by the proposal noted above because the permit requirement for these facilities existed at the time the facility was added to the site (as opposed to being required by a change to the Board's regulations). Therefore, because of the relatively small number of jurisdictions that could be impacted by this decision, previous stakeholders' input regarding location identification being sufficient information for a finding of conformance, and consistency with the majority of previous Board actions regarding permit revisions for nondisposal facilities, staff is recommending that the "location identification" criterion for a finding of conformance apply to all nondisposal facilities, including those sited at a landfill and included in a landfill permit, except in the specific scenarios noted above.

VI. FUNDING INFORMATION – N/A

August 20-21, 2002

VII. ATTACHMENTS

1. September 19-20, 2000, Board Meeting Agenda Item 20
2. Role of the Local Task Force in the Countywide Siting Element
3. List of permits that include multiple facilities
4. Resolution Number 2002- 413

VIII. CONTACTS

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CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Resolution 2002-413 (Revised)

Consideration Of An Appropriate Method For Making Conformance Findings For Permits (New Or Revised) That Included Multiple Solid Waste Facilities As They Relate To Countywide Siting Elements And Nondisposal Facility Elements

WHEREAS, Public Resources Code (PRC) Section 50001 provides that after a Countywide Integrated Waste Management Plan (CIWMP) has been approved, no person shall establish or expand an existing disposal facility or transformation facility unless "the location of [it] is identified" in the Countywide Siting Element (CSE), and no person shall establish or expand specified nondisposal facilities unless they have been "identified" in the Nondisposal Facility Element (NDFE), and PRC section 44009 requires the California Integrated Waste Management Board (Board) to object to a proposed solid waste facility permit (SWFP) if this requirement has not been met; and

WHEREAS, based on overwhelming public comment received at Board hearings and public workshops conducted in 1999 and 2000 regarding the appropriate interpretation of PRC Section 50001, the Board agreed that there had been specific legislative intent to limit conformance findings to a requirement that a facility's location be identified in the CSE or NDFE, as evidenced by a plain English reading of the statute, and therefore determined at the September 19-20, 2000, Board meeting that conformance of a proposed permit would henceforth be limited to location identification in the applicable planning document; and

WHEREAS, under the Board's statutory and regulatory scheme, a nondisposal facility would require a solid waste facility permit and would thus be subject to the conformance finding requirements of PRC 50001, and a nondisposal operation would not require a solid waste facility permit and would thus not be subject to the conformance finding requirements of PRC 50001; and,

WHEREAS, since the September 2000 Board meeting, a question has arisen regarding whether that determination should be applied to nondisposal facilities included in a landfill permit that are not identified in the host jurisdiction's NDFE (or the host County's CSE); and

WHEREAS, a number of nondisposal operations (primarily chipping and grinding operations) are currently operating on-site at permitted disposal facilities without a separate permit because none was required for the nondisposal operation at the time it commenced operation, but the operations are otherwise required to be included within the Report of Facility Information (RFI) for the disposal facility; and,

WHEREAS, a number of landfill sites handle construction and demolition waste on-site without a separate permit because the Board had not established permit requirements for them at the time they commenced operation. While no permit is currently required, these operations are still required to be included within the Report of Facility Information (RFI) for the disposal facility: and,

(over)

WHEREAS, the Board is currently in the process of revising its regulations that cover composting and chipping and grinding operations and is considering classifying some of them as facilities which would require a permit for composting and chipping and grinding above a specified size threshold and/or handling specified feedstocks and could subject these existing activities to the conformance finding requirements; and,

WHEREAS, in addressing the issue of conformance findings for nondisposal facilities on-site at disposal facilities, it is not the intent of the Board to impose additional conformance requirements upon existing nondisposal operations that have been included with the disposal facility's permit and/or RFI that may require a permit solely due to a change in the Board's regulations.

NOW, THEREFORE, BE IT RESOLVED that in considering a proposed solid waste facility permit for a nondisposal facility, which is located on-site at a disposal facility, regardless of whether it is included within the disposal facility's permit, or is permitted separately, the Board shall interpret PRC Section 50001 to require a finding that the nondisposal facility be identified in the applicable planning document for the purposes of making a conformance finding, except as provided below.

NOW, THEREFORE BE IT FURTHER RESOLVED the Board shall interpret PRC Section 50001 to not require a finding that the nondisposal facility be identified in the applicable planning document for the purposes of making a conformance finding when all of the following conditions are met:

- a proposed solid waste facility permit includes an existing nondisposal activity; and
- the non-disposal activity is located on-site at a disposal facility that is identified in the applicable Countywide Siting Element; and
- the non-disposal activity would require a permit if it were located elsewhere; and
- the non-disposal activity would require that permit only as a result of a revision to the Board's regulations, and not as a result of a change in the activity (e.g., increase in size, materials handled, etc.); and
- the existing nondisposal activity was described within the disposal facility's RFI by the date of this resolution.

CERTIFICATION

The undersigned Executive Director, or his designee, of the California Integrated 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 Integrated Waste Management Board held on August 20-21, 2002.

Dated: August 20, 2002

ORIGINAL SIGNED BY DESIGNEE

Mark Leary,
Executive Director