

## **ATTACHMENT H**

### **FOC-RELATED CORRESPONDENCE BETWEEN THE COUNTY AND THE CIWMB**

- DPW letter dated September 18, 2000
- DPW letter dated December 12, 2002
- CIWMB letter dated January 3, 2003
- DPW letter dated January 13, 2003
- CIWMB letter dated January 21, 2003
- County counsel letter dated March 17, 2003
- CIWMB letter dated April 3, 2003

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**COUNTY OF LOS ANGELES**  
**DEPARTMENT OF PUBLIC WORKS**

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (626) 458-5100

HARRY W. STONE, Director

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

September 18, 2000

IN REPLY PLEASE  
REFER TO FILE:

EP-2

Mr. Patrick Schiavo  
Deputy Director  
Diversion, Planning, and Local Assistance Division  
California Integrated Waste Management Board  
8800 Cal Center Drive  
Sacramento, CA 95826-3268

Dear Mr. Schiavo:

**CONFORMANCE FINDINGS -- AGENDA ITEM 20**  
**CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD MEETING**  
**SEPTEMBER 19-20, 2000**

We have reviewed the staff report corresponding to Agenda Item 20 (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) for the September 19-20, 2000, meeting of the California Integrated Waste Management Board (CIWMB). We appreciate the CIWMB's efforts to address this issue and are pleased to see that the staff report recognizes its importance to jurisdictions in Los Angeles County.

While the staff report was thorough in its discussion of the issue, we would like to offer the following which will further detail the background, issues, and need for the Finding of Conformance (FOC) process in Los Angeles County.

**A. Background**

Attachment 4, Page 4, last paragraph, of the staff report implies that Los Angeles County's inclusion of the FOC process into the CSE was arbitrary in nature ("While the Los Angeles Countywide Siting Element included a Conformance Finding Procedure any way . . ."). This is not the case as demonstrated by the following:

- a) As an element of the former Los Angeles County Solid Waste Management Plan, the FOC process has existed in Los Angeles County since the late 1970's, well before the "gap" legislation was enacted (AB 2296, as discussed in Attachment 3 of the staff report). The FOC process was approved by the former California Solid Waste Management Board in lieu of provisions of Sections 66780.1 and 66796.32

of the Government Code for incorporation of new and expansion of existing solid waste management facilities into the County Solid Waste Management Plan. A copy of the more recent approval by the former Waste Management Board is attached, Resolution No. 86-8 dated March 12-13, 1986 (see Enclosure A).

- b) The CIWMB reviewed the preliminary draft of the Los Angeles County CSE, which included the FOC process, and submitted comments in a letter dated January 9, 1998 (see Enclosure B). This letter did not express any concern with the proposed FOC process.
- c) In June 1998, we questioned the CIWMB staff regarding the Alameda County CSE and its FOC process which was approved by the CIWMB on January 29, 1998 (Resolution No. 98-21, Enclosure C). At that time it was indicated that the Los Angeles County FOC process, as well as the statutory provisions that were considered in approving the Alameda County FOC process, would be addressed at a later date.

B. Comments on the staff report.

1. Attachment 4, Page 2

The discussion should be expanded to include Section 18755.1 of Title 14 of the California Code of Regulations, which describes the local task force's (LTF) role in developing goals policies and procedures to provide guidance to the county in preparing the Countywide Siting Element (CSE). Section 18755.1 reads in part: "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. . ."

2. Attachment 4, Page 2, Second Paragraph

The last sentence of this paragraph states: "The Task Force does not, however, have any authority relating to the approval of the CSE."

We recommend that the Staff report be expanded to recognize that there are no statutory and regulatory provisions prohibiting cities and counties from delegating certain authority to their LTF. This is the case in Los Angeles County where the County and the vast majority of cities approved the Los Angeles County CSE, including its FOC process. The process, subject to those provisions listed in the CSE, authorizes the Los Angeles County Integrated Waste Management Task Force to issue FOCs for all new or expanded solid waste disposal facilities as an alternative to amending the CSE to incorporate such facilities.

The FOC process in Los Angeles County is critical to achieving the CSE's goal to protect public health, welfare, and safety of all citizens by addressing the disposal needs of all the cities in the County and the County unincorporated communities. This policy, when appropriate, is to expedite, streamline, and coordinate all permitting necessary for the development of new and/or expanded in-County disposal facility projects that are found to be environmentally and technically feasible. Without this FOC process, siting a new or expanded in-County disposal facility not identified in the CSE will be extremely lengthy and expensive. This would necessitate amending the CSE and would require the approval of a majority of the cities in the County containing a majority of the cities' population.

For example, on July 29, 1998, the Los Angeles County Regional Planning Commission granted a conditional use permit for increasing the maximum fill elevation for Pebbly Beach Landfill by 30 feet and the development of a materials recovery facility and a composting facility. Pebbly Beach is a small landfill (receiving an average of less than 10 tons per day of solid waste) which is the sole disposal facility serving the needs of residents and businesses in Catalina Island. Without the FOC process, this expansion may be jeopardized due to the enormous costs and time associated with formally amending the CSE.

3. Page 20-3, V. Analysis, Background, Second Paragraph

According to the referenced paragraph, "to be 'found in conformance' during the gap, PRC Section 50000 require[s] 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."

It should be noted that Section 50000 does not state that this is the sole criteria but rather it is one of five alternative criteria. As such, we recommend that the staff report be revised to reflect this fact.

4. Page 20-8, The Amendment Process for CSEs And NDFEs, First Paragraph

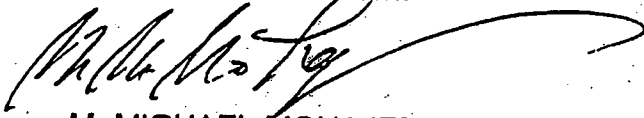
The first sentence states: "Statute requires a CSE amendment to be presented at a Local Task Force meeting for review and comment." This appears to be in conflict with Attachment 4, page 1, third paragraph, which reads: "PRC section 41760, which is the primary statute dealing with the adoption and amendment of the CSE, does not specifically mention the LTF." Section 18755.1 of Title 14 of the California Code of Regulations would further clarify the LTF's responsibilities.

Mr. Patrick Schiavo  
September 18, 2000  
Page 4

Thank you for the efforts in addressing the Finding of Conformance process. Should you have any questions regarding this matter, please contact the undersigned at (626) 458-3500.

Very truly yours,

HARRY W. STONE  
Director of Public Works



M. MICHAEL MOHAJER  
Assistant Deputy Director  
Environmental Programs Division

CR:ma  
agenda20b.wpd

Enc.

cc: Each Member of the California Integrated Waste Management Board  
Ms. Julie Nauman (Permitting and Enforcement Division, California Integrated Waste Management Board)  
Each Member of the Los Angeles County Integrated Waste Management Task Force



JAMES A. NOYES, Director

# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

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ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

December 12, 2002

IN REPLY PLEASE  
REFER TO FILE: EP-2

Mr. Elliot Block, Staff Counsel  
California Integrated Waste Management Board  
Cal-EPA Building  
1001 "I" Street  
Sacramento, CA 95812-4025

Dear Mr. Block:

### **FINDINGS OF CONFORMANCE AND THE ROLE OF THE LOS ANGELES COUNTY INTEGRATED WASTE MANAGEMENT TASK FORCE**

We are in receipt of your November 21, 2002, correspondence regarding conformance findings and the role of the Los Angeles County Integrated Waste Management Task Force. I would like to thank you for taking the time to review this longstanding matter which is of great importance to jurisdictions in the County of Los Angeles as well as the Task Force.

In summary, your letter indicated that our inquiry seeking clarification regarding the California Integrated Waste Management Board's position on this issue was made during the open discussion at the Waste Board's August 2000 meeting and that the Waste Board had responded to those issues the following month with an agenda item on the topic. You also indicated that the Finding of Conformance process contained in the Los Angeles County Countywide Siting Element is a local approval process and therefore would be "essentially" independent of the Waste Board's process. Consequently, failure by a disposal facility operator to comply with such a local process would not be grounds for a Local Enforcement Agency/the Waste Board denying a new or revised Solid Waste Facility Permit. We strongly disagree with your interpretation and believe that such a conclusion is contrary to State statute and those regulations promulgated by the Waste Board. Briefly, the following is offered.

#### **Public Works' Requests and Waste Board Response**

Your letter is correct in stating (after some research and reading of meeting transcripts) that I requested the Waste Board's clarification during the open discussion at the August 2000 Board meeting. However, I would note that Public Works also inquired in writing via a letter dated September 18, 2000 (copy enclosed). Other than the current,

November 21, 2002, letter, we have no record of any written response or follow-up from the Waste Board or its staff to our written/verbal inquiries and/or addressing the issues raised in our September 18 letter. Furthermore, in the September 2000 agenda item, Waste Board staff were asking the Board to provide clarifying direction and indicated that they would bring forward to the Board a more detailed recommendation related to the direction the Board was to provide. The Board action, as far as we know, did not address the County's Finding of Conformance issue.

#### Locally Adopted Requirements for Conformance with the Siting Element

Your analysis implies that the Countywide Siting Element's approval process followed by the County of Los Angeles and the 88 cities in the County is acceptable for use by the Waste Board in approving the Siting Element. However, the same process is deemed inappropriate when it comes to the Finding of Conformance procedures provided for in the same Siting Element for, among other things, ensuring compliance with the Siting Criteria contained in the Element. Based on this determination, how could the Waste Board use the Siting Element to verify consistency with the Los Angeles County Countywide Integrated Waste Management Plan when the Siting Element's approval process is deemed inappropriate or invalid? Your response on behalf of the Waste Board appears being selective in its determination of the validity of the Siting Element's approval process.

As explained at great length in our September 18, 2000, letter, the Task Force has been in existence since 1979 and the Finding of Conformance process has been used by the cities and the County over the years, as a fair and consistent mechanism to ensure consistency with the Countywide solid waste management plans. Also, it should be noted that (a) as a part of the Siting Element's development and approval process, all cities in the County of Los Angeles (and all other responsible agencies, including the Waste Board, and interested parties) were informed of the Siting Element's Finding of Conformance process early on during the environmental review process (as documented in Volume III, Appendix 1-G, of the Siting Element); (b) the Siting Element dedicates an entire chapter describing the process; and (c) the Siting Element and its Finding of Conformance process were approved by the overwhelming majority of the cities in the County containing over 97 percent of the incorporated population and by the County Board of Supervisors, pursuant to the procedures set forth in State law and Title 14 of the California Code of Regulations. The authorities for the Task Force to perform these responsibilities are provided in the Siting Element as well as Chapter 3.67 of the Los Angeles County Code.



The Task Force's Role and Its Consistency with Statutory and Regulatory Requirements

Your letter asserts that the role of the Task Force (in determining consistency with the Siting Element and its Siting Criteria) is not consistent with the Waste Board's understanding of statutory and regulatory requirements. However, the regulations adopted by the Waste Board, pursuant to the authority granted in statute, stipulate specific requirements for ensuring compliance with the Siting Element and its Siting Criteria. Specifically:

1. Section 18755.1 of the CCR, which describes the role of the Task Force in developing the Countywide Siting Element, stipulates:

"(a) The Local Task Force (LTF) shall develop goals, policies, and procedures to provide guidance to the county to prepare the Siting Element. Based upon this guidance, the Siting Element shall include a statement on the goals and policies established by the county...

(c) The goals shall be consistent with the mandates of Public Resources Code section 40051. The goals shall describe the method for the environmentally safe disposal of solid waste generated within the boundaries of the county and regional agency.

(d) The policies shall specify any programs, regulatory ordinances, actions, or strategies that may be established to meet the goals described in subdivision (c) of this section and to assist in the siting of solid waste disposal facilities..." (Emphasis added)

2. Section 18756 of the CCR, which establishes criteria that must be used in the process of siting new or expanding existing solid waste disposal facilities, stipulates:

"(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...

- (1) Environmental Considerations...
- (2) Environmental Impacts...
- (3) Socioeconomic considerations...
- (4) Legal considerations...

(5) **Additional criteria** as may be included by the county, cities... approving the Siting Element.

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

As previously discussed and as indicated in the Siting Element, cities in the County of Los Angeles and the County Board of Supervisors gave the authority to the Task Force to determine consistency with the Element and its Siting Criteria, and this was, and continues to be, deemed the fairest, most consistent, and appropriate mechanism to ensure conformance with the said criteria. We do not know of any legal basis which prevents, limits, or prohibits local jurisdictions in the County of Los Angeles from granting such an authority to the Task Force. Since your letter asserts to the contrary, then how does the Waste Board intend to ensure compliance with its existing regulations and specifically Section 18756, subparagraphs (b) and (d)? If the intent of the Waste Board is not to enforce these regulations, then we respectfully request a formal response as to why local governments were required to spend substantial resources to develop the siting criteria formulated in the Siting Element. Also, if this is the intent, then we would like to be advised as to when the regulations will be revised by the Waste Board in order to avoid further loss of local governments' limited resources.

We strongly believe that the Finding of Conformance process in our Siting Element is the most appropriate vehicle to accomplish the above and that it is consistent with State statutes and regulations adopted by the Waste Board. Also, the most appropriate time to ensure its implementation is concurrent with and as an element of the Local Enforcement Agency's and the Waste Board's consideration of an application prior to drafting the Solid Waste Facility Permit.

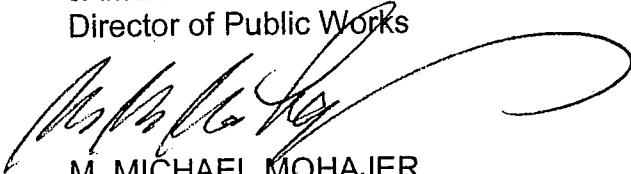
Again, I would like to stress the critical importance of the Finding of Conformance process in achieving the Siting Element's goal to protect public health, welfare, and safety of all citizens. I am looking forward to the Waste Board's written response at its earliest.

Mr. Elliot Block  
December 12, 2002  
Page 5

Should you have any questions regarding this matter, please contact the undersigned at (626) 458-3500.

Very truly yours,

JAMES A. NOYES  
Director of Public Works



M. MICHAEL MOHAJER  
Assistant Deputy Director  
Environmental Programs Division

CR:my  
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Enc.

cc: Each Member of the California Integrated waste Management Board  
Executive Director of the California Integrated Waste Management Board  
Chief Counsel of the California Integrated Waste Management Board  
Each Member of the Los Angeles County Integrated Waste Management Task  
Force  
City of Los Angeles Environmental Affairs Department (Wayne Tsuda)



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September 18, 2000

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Deputy Director  
Diversion, Planning, and Local Assistance Division  
California Integrated Waste Management Board  
8800 Cal Center Drive  
Sacramento, CA 95826-3268

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For example, on July 29, 1998, the Los Angeles County Regional Planning Commission granted a conditional use permit for increasing the maximum fill elevation for Pebbly Beach Landfill by 30 feet and the development of a materials recovery facility and a composting facility. Pebbly Beach is a small landfill (receiving an average of less than 10 tons per day of solid waste) which is the sole disposal facility serving the needs of residents and businesses in Catalina Island. Without the FOC process, this expansion may be jeopardized due to the enormous costs and time associated with formally amending the CSE.

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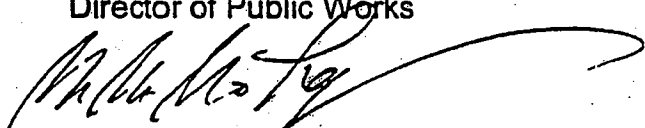
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Mr. Patrick Schiavo  
September 18, 2000  
Page 4

Thank you for the efforts in addressing the Finding of Conformance process. Should you have any questions regarding this matter, please contact the undersigned at (626) 458-3500.

Very truly yours,

HARRY W. STONE  
Director of Public Works



M. MICHAEL MOHAJER  
Assistant Deputy Director  
Environmental Programs Division

CR:ma  
agenda20b.wpd

Enc.

cc: Each Member of the California Integrated Waste Management Board  
Ms. Julie Nauman (Permitting and Enforcement Division, California Integrated Waste Management Board)  
Each Member of the Los Angeles County Integrated Waste Management Task Force







Winston H. Hickox  
Secretary for  
Environmental  
Protection

January 3, 2003

SENT BY FACSIMILE

M. Michael Mohajer  
Assistant Deputy Director  
Environmental Programs Division  
P.O. Box 1460  
Alhambra, CA 91802-1460

Re: Findings of Conformance and the Role of the L.A. Task Force

Dear Sir:

I am writing in response to your letter dated December 12, 2002, regarding my letter on the above-entitled topic. In your letter, you indicate that you disagree with my conclusion regarding the authority of the Los Angeles County Integrated Waste Management Task Force. Unfortunately, your letter reiterates the same points that my last letter already dealt with and does not provide any legal analysis that would counter the legal analysis that I have already provided.

While I can understand why you would like the Task Force to have additional authority and that there may even be good policy reasons for allowing it additional authority (something I am not venturing an opinion on), that does not change the fact that current statute does not provide it with the authority that you would like. I believe that my last letter explained this in exhaustive but straightforward detail.

Please feel free to have your County Counsel's Office contact me if they can point me to statutory authority that I have not considered in my analysis.

Sincerely,

Elliot Block  
Staff Counsel

cc: CIWMB Boardmembers  
Wayne Tsuda, City of Los Angeles, LEA

California Environmental Protection Agency

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# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

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JAMES A. NOYES, Director

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

January 13, 2003

IN REPLY PLEASE REFER TO FILE: EP-2

Mr. Elliot Block, Staff Counsel  
California Integrated Waste Management Board  
Cal-EPA Building  
1001 "I" Street  
Sacramento, CA 95812-4025

Dear Mr. Block:

### FINDINGS OF CONFORMANCE AND THE ROLE OF THE TASK FORCE

Thank you for your January 3, 2003, letter regarding conformance findings and the role of the Los Angeles County Integrated Waste Management Task Force. Your letter stated that the issues raised in our December 12, 2002, letter had been dealt in the correspondence and legal analysis that you previously provided. It concluded by stating that "current statute does not provide [the Task Force] with the authority that [we] would like."

As indicated in our letter, the Finding of Conformance is a local requirement imposed by cities in the County of Los Angeles and the County. By the above statement, are you implying that jurisdictions in Los Angeles County have no authority to impose the Finding of Conformance requirement? If so, on what basis was this conclusion arrived at? The Task Force, under the authority granted by jurisdictions in the County of Los Angeles, has and will continue to enforce the Finding of Conformance process/requirements (including Bradley West Landfill) and, as previously indicated, we are not aware of any statute that gives the California Integrated Waste Management Board the authority to negate or override such local requirements.

Also, a number of issues were raised on pages two through four of our December 12, 2002, letter regarding the existing requirements of the Waste Board in reference to the preparation and contents of countywide siting elements. Your letter is non-responsive to those issues and we need, and again are requesting, a response.

As we stated before, the Finding of Conformance requirement is the most appropriate vehicle to ensure that new disposal facilities and expansions of existing facilities are in compliance with the requirements of the Los Angeles County Countywide Siting Element (including its Siting Criteria) and other requirements of the Countywide Integrated Waste Management Plan. The Siting Criteria was incorporated pursuant to regulations adopted by



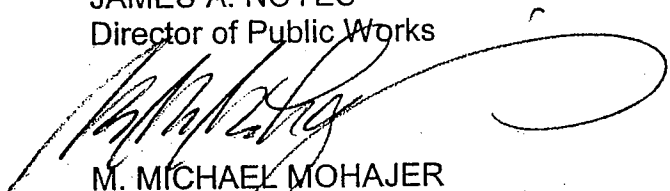
Mr. Elliot Block  
January 13, 2003  
Page 2

the Waste Board for the preparation and adoption of countywide siting elements. Your letters essentially indicate that the Waste Board does not intend to enforce its own regulations. Therefore, we also need to know when the Waste Board will be revising said regulations to prevent further expenses by this County and other counties throughout the State in pursuing compliance with the Waste Board's regulations.

We thank you for your efforts in addressing our comments and are looking forward to your prompt response. If you have any questions, please contact the undersigned at (626) 458-3500.

Very truly yours,

JAMES A. NOYES  
Director of Public Works



M. MICHAEL MOHAJER  
Assistant Deputy Director  
Environmental Programs Division

CR:my  
P:\sec\forc\lrf

Enc.

cc: Each Member of the California Integrated Waste Management Board  
Executive Director of the California Integrated Waste Management Board  
Chief Counsel of the California Integrated Waste Management Board  
Mr. Patrick Schiavo, Deputy Director, California Integrated Waste Management Board  
Each member of the Los Angeles County Integrated Waste Management Task Force  
City of Los Angeles Environmental Affairs Department (Wayne Tsuda)





Winston H. Hickox  
Secretary for  
Environmental  
Protection

January 21, 2003

M. Michael Mohajer  
Assistant Deputy Director  
Environmental Programs Division  
P.O. Box 1460  
Alhambra, CA 91802-1460

Re: Findings of Conformance and the Role of the L.A. Task Force

Dear Sir:

I am writing in response to your letter dated January 13, 2002, regarding my letters on the above-entitled topic. In your letter you raise three issues, all of which were already answered in my original letter.

First, you ask: "... are you implying that jurisdictions in Los Angeles County have no authority to impose the Finding of Conformance Requirement? ...we are not aware of any statute that gives the California Integrated Waste Management Board the authority to negate or override such local requirements."

My initial letter contains the following:

"Board Approval of the Los Angeles CSE and Other Sources of Task Force Authority"

When the Los Angeles CSE came before the Board and included the Los Angeles Task Force Finding of Conformance Process, the Board expressly indicated that it was not approving that process as part of its approval of the CSE. For the reasons noted above, the Board did not have the authority to authorize an additional local permit approval process.

Conversely, the Board did not disapprove that process either. This failure to disapprove was due to the fact that **the Board was not in a position to know about, or exert jurisdiction over, whether or not this local process had some other source of authority on the local level. Nothing prevents local jurisdictions from agreeing among themselves to create a body that they delegate approval authority to.** This can be done through a Joint Powers

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California Environmental Protection Agency

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Agreement (JPA), and depending upon the nature of the body, perhaps even a Memorandum of Understanding (MOU). If the CSE included a local process that had its own source of authority, there is no reason why it could not be included in the CSE for descriptive purposes.

However, any such local approval process would have to stand upon its own source of authority and would be essentially independent of the Board's process. Thus, if the process wasn't followed – the remedy would not be an objection by the board to a proposed permit, the remedy would be one that was authorized and enforceable through the JPA or MOU. The Board's statutes would not be the source of authority for that enforcement. The LEA would have no role in enforcing that local process through the State permitting process. As provided in PRC section 40053:

‘This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the power of a city, county, or district to impose and enforce reasonable land use conditions or restrictions on solid waste management facilities in order to prevent or mitigate potential nuisances, if the conditions or restrictions do not conflict with or impose lesser requirements than the policies, standards, and requirements of this division and all regulations adopted pursuant to this division.’” (Emphasis added)

Second, you indicate that I was not responsive to issues raised related to “...the existing requirements of the Waste Board in reference to the preparation and contents of countywide siting elements.” Once again, my initial letter contains the following:

“You have indicated that you believe that that the Los Angeles Task Force has a greater role in the conformance finding process because the Board has authorized a greater role through its regulations. Specifically, you have cited 14 CCR 18756 as evidence that the Board has authorized the jurisdictions within a particular county to provide its task force with a greater role, approval as opposed to review and comment, if they so chose:

“... (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. ...”

First, by its own terms, this provision does not apply to an already identified, existing site. Thus, it can not modify the analysis regarding the basic conformance finding process discussed above.

Second, with regard to CSE and NDFE amendments, statute does not authorize a task force approval requirement. This regulatory language was never intended to provide authority for an additional approval requirement, nor could it.



**The intent of this section was to require the jurisdictions to describe how they were going to provide notice of these requirements to affected parties and/or how each individual jurisdiction would incorporate these criteria into their own local governing bodies' approval process. Nothing in this section would allow a task force to be converted from an advisory body to one which would have to approve a proposed facility prior to its moving forward."**  
(emphasis added)

Finally, you state that: "... the Waste Board does not intend to enforce its own regulations. Therefore, we also need to know when the Waste Board will be revising said regulations to prevent further expenses by this County and other counties throughout the State in pursuing compliance with the Waste Board's regulations."

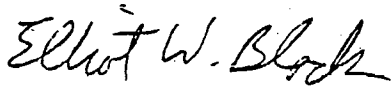
As evidenced by the quotes above, it is not true that the Board doesn't intend to enforce its regulations, they have already been enforced consistent with our intent in adopting them. Furthermore, as you are well aware, Los Angeles County's Siting Element was approved four years ago. At that time, the Board did not, nor do I in my letters, suggest that the County had to make any changes to its Siting Element to comply with the regulation in question. In fact, as was discussed in my original letter, we indicated that:

"[I]f the CSE included a local process that had its own source of authority, there is no reason why it could not be included in the CSE for descriptive purposes."

Since every County has already had their Siting Elements approved, and none of them have raised this issue, it is fair to say that no other counties will be making further expenses to comply with this regulation either.

This is the third letter in two months that I have written to you on the topic of Conformance Findings. Responding to your letters requires a considerable amount of time on my part. As a fellow public servant, I'm sure that you can appreciate my request that you please refrain from sending me further correspondence on this topic unless you have new information not already addressed by my earlier correspondence. Thank you for your cooperation.

Sincerely,



Elliot Block  
Staff Counsel

cc: CIWMB Boardmembers

Wayne Tsuda, City of Los Angeles, LEA  
James A. Noyes, Director of Public Works





COUNTY OF LOS ANGELES  
OFFICE OF THE COUNTY COUNSEL

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LLOYD W. PELLMAN  
County Counsel

March 17, 2003

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California Integrated Waste Management Board  
Cal-EPA Building  
1001 "I" Street  
Sacramento, California 95812-4025

**Re: Agenda Item 31- Consideration of a Revised Full Solid Waste  
Facilities Permit (Disposal Facility) For Bradley Landfill West  
and West Extension, Los Angeles County  
March 18-19 Board Meeting**

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Dear Members of the Board:

This letter is submitted on behalf of the County of Los Angeles Department of Public Works as staff to the Los Angeles County Integrated Waste Management Task Force ("Task Force Staff") regarding the finding of conformance contained at page 5 of the staff report for Agenda Item 31. Item 31 is identified as "Consideration of a Revised Full Solid Waste Facilities Permit (Disposal Facility) For Bradley Landfill West and West Extension, Los Angeles County."

The Staff Analysis section appears to conclude that the since the location of the Bradley Landfill West and West Extension ("Bradley") is identified in the Los Angeles County Countywide Siting Element ("CSE"), the proposed permit to allow additional capacity is automatically in conformance with the CSE. The additional capacity now contemplated by the permit before your Board would expand the capacity of the landfill beyond what is contemplated in the CSE. This additional capacity constitutes an expansion of the facility.

14 CCR § 18756.1(a) requires that every Siting Element contain a description of each proposed expansion of existing solid waste facilities. Section 7.5 of the CSE contains descriptions of landfills in Los Angeles County proposed for expansion. Bradley is not among the landfills described. Since the proposed expansion to allow additional capacity appears not to be contemplated by the

CSE, we question whether the criteria established in 14 CCR 18756 have ever been addressed relative to the proposed additional capacity.

A key function of any Siting Element is to ensure that the criteria established in 14 CCR 18756(a) is confirmed for the expansion of existing landfills. Pursuant to 14 CCR 18756(b), the CSE contains a process to confirm that the criteria set forth in 14 CCR 18756(a) have been considered. Since the impact from the additional capacity is not contemplated by the CSE and the criteria of 14 CCR § 18756.1(a) has not been addressed, it would not be appropriate for your Board to make a finding of conformance with the CSE at this time.

On behalf of Task Force Staff, we respectfully request that your Board consider objecting to the issuance of the proposed permit until such time as the additional capacity is evaluated pursuant to the CSE to confirm that the criteria set forth in 14 CCR 18756(a) have been considered.

Very truly yours,

LLOYD W. PELLMAN  
County Counsel

By 

PETER J. GUTIERREZ  
Senior Deputy County Counsel  
Public Works Division

PJG1:am

c: M. Michael Mohajer, Assistant Deputy Director  
Environmental Programs Division  
Department of Public Works



# California Integrated Waste Management Board



Linda Moulton-Patterson, Chair

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[www.ciwmb.ca.gov](http://www.ciwmb.ca.gov)

Gray Davis  
Governor

Winston H. Hickox  
Secretary for  
Environmental  
Protection

April 3, 2003

Peter J. Gutierrez  
Senior Deputy County Counsel  
Public Works Division  
648 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012-2713

## LETTER SENT BY FACSIMILE, HARD COPY WITH ATTACHMENTS TO FOLLOW

Re: Proposed Permit of Bradley Landfill and Finding of Conformance

Dear Mr. Gutierrez:

I am writing in response to your letter dated March 17, 2003, handed out at the California Integrated Waste Management Board's (Board) March 19, 2003 monthly meeting, regarding Agenda Item 31 on the proposed revised solid waste facility permit for Bradley Landfill. The Board asked me to respond to your letter, sent on behalf of the Los Angeles County Integrated Waste Management Task Force (Task Force), in which you urge the Board to object to this proposed permit based upon your interpretation of our regulation, 14 CCR 18756, that requires Siting Elements to describe proposed landfill expansions. While the requirements that you have noted from this regulation would apply to a county that is preparing or amending its Siting Element, they do not apply in the context of the Board's consideration of this proposed permit revision.

When determining whether or not to concur in a proposed permit, the Board's authority is specifically proscribed in statute. With regard to conformance findings, Public Resources Code (PRC) section 44009 provides that:

**"(c)... The board shall not object to the issuance, modification, or revision of any solid waste facilities permit unless the board finds that the permit is not consistent with ... Division 31 (commencing with Section 50000). .... (emphasis added)**

California Environmental Protection Agency

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Public Resources Code (PRC) section 50001(a) sets forth the "Division 31" requirement to be applied to landfill permits after approval of a Countywide Integrated Waste Management Plan (CIWMP):

**"... no person shall establish or expand a solid waste facility, ... unless ...**

**(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...."** (emphasis added)

Thus, a proposed landfill permit would be "consistent with Division 31" if its location were identified in the Countywide Siting Element. Since the location of the Bradley Landfill is identified in the Los Angeles Countywide Siting Element, the proposed permit is consistent with this requirement.

These statutory provisions do not require that the Siting Element be amended prior to concurrence in a revised permit. This fact is further highlighted by subsection (c) of PRC 50001 which goes on to provide the requirements for utilizing the task force for establishing a solid waste facility (new permit), but notably does not require this process for expanding an existing facility (revised permit):

**"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. ..."** (emphasis added)

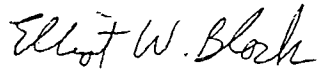
The regulation that you have cited is related to the planning process, not the permitting process. A landfill expansion would have to be described in a future amendment to the Siting Element, at least by the time of the five year review. As I have explained in previous correspondence with the Task Force, the Board never intended its regulations to add additional permitting requirements, and as I am sure that you are aware, in the face of the limiting language of PRC 44009, the Board could not have done so because a state agency can not adopt a regulation that exceeds its statutory authority. ("An administrative agency may not promulgate a regulation that alters or enlarges the terms of a legislative enactment." *Cleveland Chiropractic College v. State Board of Chiropractic Examiners* (1970) 11 Cal. App. 3d 25, 89; Gov. Code 11342.2)

The above brief analysis is excerpted from the earlier series of correspondence with Task Force staff mentioned above. I have only reiterated the portions of those letters that are directly related to your letter, but I have enclosed copies of those letters for your review as they deal with other

indirectly related issues that you may be asked about in the future. In addition, I have enclosed a copy of the Board's resolution regarding approval of the Los Angeles Countywide Siting Element which is referenced in that correspondence.

If you have any questions, please feel free to contact me at (916) 341-6080.

Sincerely,

A handwritten signature in cursive script that reads "Elliot W. Block".

Elliot Block  
Staff Counsel

Enclosures

cc: California Integrated Waste Management Boardmembers  
M. Michael Mohajer, Los Angeles County Task Force  
James A. Noyes, Chairman Los Angeles County Task Force  
Lloyd W. Pellman, Los Angeles County Counsel





# **CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD**

## **Resolution 98-190**

### **CONSIDERATION OF STAFF RECOMMENDATION ON THE ADEQUACY OF THE COUNTYWIDE SITING ELEMENT FOR LOS ANGELES COUNTY**

**WHEREAS, Public Resources Code (PRC) Sections 40900 et seq. describe the requirements to be met by cities and counties when developing and implementing integrated waste management plans; and**

**WHEREAS, PRC Section 41700 requires that each county shall prepare a Countywide Siting Element which provides a description of the areas to be used for development of adequate transformation or disposal capacity concurrent and consistent with the development and implementation of the county and city Source Reduction and Recycling Elements adopted; and**

**WHEREAS, California Code of Regulations Title 14, Section 18783 requires that the County comply with the California Environmental Quality Act and it has provided a Notice of Determination from the State Clearinghouse as required; and**

**WHEREAS, PRC Section 41701 requires that the Countywide Siting Element contain a statement of goals and policies for the environmentally safe transformation or disposal of solid waste which cannot be reduced, recycled, or composted; and**

**WHEREAS, the Countywide Siting Element must include an estimate of the total transformation or disposal capacity in cubic yards that will be needed for a 15-year period; and**

**WHEREAS, the Countywide Siting Element must be approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county; and**

**WHEREAS, resolutions from the majority of the cities representing a majority of the population were included with the submittal of the Countywide Siting Element; and**

**WHEREAS, based on review of the Countywide Siting Element, Board staff found that all of the foregoing requirements have been satisfied and the Countywide Siting Element substantially complies with PRC Section 41700, et seq. and recommends approval; and**

**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;**

**NOW, THEREFORE, BE IT RESOLVED** that the Board hereby approves the Countywide  
Siting Element for Los Angeles County.

### **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 June 24, 1998.

Dated:

Ralph E. Chandler  
Executive Director