



Contra
Costa
County

To: Board of Supervisors
From: William Walker, M.D., Health Services Director
Date: January 24, 2012

Subject: Appointment of Health Officer as the Local Enforcement Agency Hearing Officer

RECOMMENDATION(S):

1. ADOPT Contra Costa Local Enforcement Agency hearing officer appointment procedures and required qualifications, as set forth in Exhibit A attached hereto.
2. ADOPT Resolution appointing the Contra Costa County Health Officer as the Contra Costa Local Enforcement Agency hearing officer.

FISCAL IMPACT:

Not applicable.

BACKGROUND:

Contra Costa Environmental Health, a division of the Contra Costa County Health Services Department, has been designated and approved by the state to serve as the Local Enforcement Agency (LEA) for all of Contra Costa County except for the City of Pittsburg, which acts as its own LEA. The LEA is required to enforce state minimum standards applicable to solid waste facilities, including landfills and transfer stations.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **01/24/2012** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes: SEE ADDENDUM

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Gayle B. Uilkema, District II Supervisor
Mary N. Piepho, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: January 24, 2012

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Marilyn Underwood,
692-2521

cc: Marilyn Underwood, Tasha Scott

BACKGROUND: (CONT'D)

These standards are intended to protect public health and safety, and the environment. The duties of the LEA include issuance of permits, routine inspections complaint investigations and enforcement actions.

The LEA is required to hold hearings before taking certain actions, including the denial, temporary suspension and revocation of solid waste facility permits under specified conditions. (Pub. Resources Code, §§ 43200, 44305, 44306.) If requested to do so by the person subject to the action, the LEA is also required to hold a hearing (1) upon the issuance of a permit that imposes conditions that the applicant contends are inappropriate, (2) upon the petition from any person requesting the LEA to review an alleged failure of the agency to act as required by law or regulation, and (3) after taking specified enforcement actions, including issuing corrective action orders, issuing cease and desist orders and imposing civil penalties, pursuant to Public Resources Code section 45000 et seq.

In 1992, this Board, acting as the governing body of the LEA, appointed itself to serve as the hearing panel pursuant to a statute that was later repealed. Under current law, hearings regarding the above matters may be conducted by either a hearing officer appointed by the governing body of the LEA or by a hearing panel, which may be either (1) a panel of three members of the LEA governing body, appointed by the governing body, or (2) an independent three-member panel appointed by the chairperson of the governing body. (Pub. Resources Code, § 44308.)

When a publicly-owned or operated solid waste facility or disposal site is located within the jurisdiction of a LEA, the law requires either an independent hearing panel or hearing officer to be appointed. The jurisdiction of the Contra Costa LEA encompasses the territory of the entire County except for the area within the boundaries of the City of Pittsburg. Within the Contra Costa LEA's jurisdiction are several publicly-owned solid waste facilities, including the Brentwood Transfer Station, closed landfills owned by the cities of Martinez and Antioch, and a closed dump site owned by the California Water Resources Board at the Harvey O. Banks Delta Pumping Plant in Byron. A three-member Board hearing panel is thus not recommended.

An independent hearing panel with three members could present difficulties with respect to compliance with statutorily mandated deadlines associated with some hearings. One statute, for example, requires a hearing to be held as soon as three days after a solid waste facility permit is suspended in certain circumstances, if the suspension is appealed. (Pub. Resources Code, § 44305.) While adherence to this requirement might prove to be challenging even with a single hearing officer, it would be even more difficult to coordinate the schedules of multiple hearing panel members in such a short period of time, and in some situations could prove to be impossible.

In light of the above, staff recommends that the Board appoint a hearing officer to preside at LEA hearings. Appointment of a hearing officer is permitted if the governing body of

the LEA has first adopted procedures for making the appointment and qualifications that the hearing officer is required to meet. Recommended procedures for making the appointment and qualifications of the hearing officer are set forth in Exhibit A.

Staff is recommending that the County Health Officer be appointed as the LEA hearing officer because the Health Officer has public health training and is charged with protecting the health and welfare of county residents.

CONSEQUENCE OF NEGATIVE ACTION:

The action will allow the health officer to act as the hearing officer and rather than three members of the Board of Supervisors.

CHILDREN'S IMPACT STATEMENT:

Not applicable.

CLERK'S ADDENDUM

CONTINUED to a future date; REQUESTED staff to return with clarification of the potential of an 'either/or' provision as well as additional information and background regarding the Health Officer's defined role and qualifications.

ATTACHMENTS

Resolution No. 2012/31

Hearing Officer Ex A