CONTRA COSTA COUNTY LOCAL ENFORCEMENT AGENCY
INDEPENDENT HEARING PANEL

Evan Edgar and Monica White,  ) Case No. CCCIHP-2015-01
   Petitioners,  ) RESPONSE TO STATEMENT OF ISSUES
VS.  ) (NOTICE OF DEFENSE)
CONTRA COSTA COUNTY LOCAL  ) (Pub. Resources Code, § 44310(a)(4))
ENFORCEMENT AGENCY,  )
   Respondent.

Keller Canyon Landfill Co.,  )
   Real Party in Interest.

Respondent Contra Costa County Local Enforcement Agency hereby presents its Response to
Statement of Issues (Notice of Defense) to the Contra Costa County Local Enforcement Agency
Independent Hearing Panel ("IHP") in the above-referenced matter. A Declaration of William Eric
Fung in Support of Response to Statement of Issues is filed concurrently herewith and incorporated
herein.

STATEMENT OF FACTS

Contra Costa Environmental Health ("CCEH"), a division of the Contra Costa County
Health Services Department, is the certified local enforcement agency for Contra Costa County
and all of its designating cities ("County LEA"), pursuant to Division 30, Part 4, Chapter 2, Article 1 of the Public Resources Code. CCEH was designated the County LEA by the Contra Costa County Board of Supervisors on February 24, 1992, and certified by the California Integrated Waste Management Board ("CIWMB") on July 16, 1992.

As the County LEA, CCEH provides regulatory oversight at Keller Canyon Landfill ("Facility"), a disposal facility located at 901 Bailey Road in an unincorporated area of Contra Costa County near Pittsburg. Keller Canyon Landfill Company ("Operator") is the operator of the Facility and owner of the land where the Facility is located. The Facility operates under a solid waste facilities permit, No. 07-AA-0032.

On February 1, 1999, the Facility’s operator at that time, Browning-Ferris Industries of California, Inc. ("BFI"), requested permission from the County LEA to use, as alternative daily cover (ADC), curbside collected residential green waste material that would not be ground, chipped, shredded or mechanically screened by the operator. The law at that time provided that processed green material meeting the definition of green material in former Section 17852, subdivision (u), with the exception of manure, could be used as ADC material. (Former 27 Cal. Code Regs., § 20690, subd. (b)(3)(A).) (Declaration of William Eric Fung in Support of Response to Statement of Issues ("Fung Decl."), ¶ 8 & Exhibit A.) Processed green material had to be ground, chipped, shredded, screened or otherwise process in a manner to provide a compacted material free of open voids when applied to meet the performance requirements as ADC. (Id.) If approved ADC material was used in accordance with the proscriptive standards in Section 20690 of Title 27, site-specific demonstrations were not required. (Id.)

On February 24, 1999, the County LEA advised BFI in a letter that due to seasonal high winds at the landfill, its proximity to residential areas, the request to use green waste that would not be mechanically processed, and restrictive language in the Facility’s land use permit, a demonstration project would be required to initiate the use of unprocessed green waste as ADC. Conditions of approval of the project included a requirement that the material used as ADC not exceed 3 inches in diameter and 4 feet in length. (Fung Decl., ¶ 9 & Exhibit B.) Copies of this letter were sent to the CIWMB. On April 23, 1999, the County LEA approved BFI’s proposal to
initiate a 12-month demonstration project to use green material as ADC. (Fung Decl., ¶ 10 & Exhibit C.)

After the conclusion of the project, on June 28, 2000, the County LEA sent a letter to BFI with a report advising that the County LEA had determined that green waste that met the above grain size specification could be used as ADC and that the material complied with Section 20690 of Title 27 of the California Code of Regulations as it read at that time. The report also advised that landfill staff was to remove any municipal solid waste found in the unprocessed green material prior to using it as ADC. The letter directed BFI to incorporate the use of the material into the Facility’s permit and Report of Disposal Site Information (RDSI). (Fung Decl., ¶ 11 & Exhibit D.)

In response, on July 11, 2002, the Operator submitted an application to amend the Facility’s RDSI. The County LEA approved that application on July 17, 2002. The amended RDSI included the following statement relevant to the use of green material as ADC:

Green/wood waste materials typically consist of varying proportions of wood and yard waste from urban and other sources. Prior to use as ADC the majority of the green material will be ground, shredded, screened or otherwise processed . . . Green/wood waste material collected from residential green waste curbside recycling program is also utilized . . . will be restricted to a minimum thickness of 6 inches and an average compacted thickness of less than or equal to 12 inches.”

(Fung Decl., ¶ 12 & Exhibit E.)

On August 8, 2002, CIWMB staff conducted a state inspection of the Facility along with County LEA staff. A report of the inspection acknowledges that both dirt and greenwaste were being used as ADC. The report also states that no violations or areas of concern were noted on that date. (Fung Decl., ¶ 13 & Exhibit F.)

On December 23, 2008, the Operator applied for a modified permit to operate the Facility. The County LEA approved the Modified Permit and submitted it to CIWMB, which concurred with the Modified Permit on November 12, 2009. The Modified Permit was issued on December 14, 2009 ("Modified Permit"). The Modified Permit incorporated the 2002 RDSI Amendment //

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language regarding the use of curbside collected residential green material as ADC.¹ (Fung Decl., ¶ 14 & Exhibit G.)

On July 31, 2014, the County LEA received an application from the Operator for a five-year review of the Modified Permit. The County LEA completed a report on the permit review on October 16, 2014. That report concluded that there were minor changes at the Facility that required another amendment to the RDSI, including (1) the use of a second trailer tipper and (2) a trailer had been added next to the operations building for use as office space. The report also advised that the RDSI amendment needed to “better describe and clarify the approved use of green waste for use as ADC in accordance with regulations and the approved demonstration project.” (Fung Decl., ¶ 15 & Exhibit H.) This advisory was included as the result of a consultation between the County LEA and CalRecycle², during which it was concluded that it would be worthwhile to amend the RDSI to describe the Facility’s current practice as it related to the use of green material as ADC. As the Operator had advised the County LEA of its desire to begin using construction and demolition waste as ADC, the RDSI amendment was also required to allow that proposed change in procedure.

On December 29, 2014, the Operator submitted an application for amendment to the RDSI. A revised application was submitted on January 9, 2015. It included replacement pages to the RDSI that, among other things, contained the following language regarding the use of green material as ADC:

Keller Canyon Landfill (KCL) also uses green material as ADC as specified in 27 CCR, Section 20690(b)(3). As required in a RDSI, this information also meets the requirements of 27 CCR, Section 21660(b)(6)-Cover and Beneficial Reuse. A successful demonstration project was completed for the approval of green material from May 1999 through May 2000. The project was designed to demonstrate that unprocessed green material from curbside and other sources was suitable for use as ADC at KCL.

¹ The Modified Permit specifically identified a May 2008 RDSI Amendment as restricting the operation of the Facility. The May 2008 RDSI Amendment, which identified additional changes to the operation of the Facility not relevant to this matter, included the language added in the July 2002 RDSI Amendment.

² On September 23, 2013, the California Department of Resources Recycling and Recovery, also known as CalRecycle, became the successor to CIWMB. (Pub. Resources Code, § 40400.)
The project was monitored for performance and compliance by the LEA during this period and determined to meet the ADC performance standards of controlling vectors, fires, odor, blowing litter and scavenging without presenting a threat to human health or the environment.

Green material is defined under 27 CCR, Section 20690(b)(3)(A as any plant material that is either separated at the point of generation, or separated at a centralized facility that employs methods to minimize contamination. Green material includes, but is not limited to, yard trimmings, untreated wood wastes, paper products, and natural fiber products. Green material does not include treated wood waste (TWW), mixed demolition or mixed construction debris, manure and plant waste from the food processing industry, alone or blended with soil. However, an alternative grain size was approved by the LEA to not exceed a grain size of 3 inches in diameter and 4 feet in length.

Green material typically arrives at KCL from curbside sources either via route trucks driving directly from residential homes or from transfer trailers hauling curbside or other green material from transfer stations. Commercial landscapers and other sources may also direct haul green material to the site. The material is generally made up of grass clippings, as well as leaves, brush clippings, and other small size green material. While in general the green material does comply with a grain size specification by volume of less than 6 inches, some may contain larger pieces. However the project demonstrated that, in accordance with 27 CCR, Section 20690(b)(3)(B), the green material used for ADC meets all of the performance criteria stated above by covering the waste in a manner in which there are no open voids within the cover material or in contact with the underlying waste.

Regardless of the material source (curbside, transfer or landscaper), the process is the same; once the material arrives at KCL, the trucks are directed to an area adjacent to the working face where the material is unloaded. In accordance with Section 20690(a)(11), KCK staff spread and sort the material to remove contaminants and oversized materials (greater than approved specification). Oversize or contaminated material removed from the greenwaste will be disposed of and tracked and recorded accordingly to ensure accurate accounting and fee payments. After the material has been determined to meet the ADC performance requirements, it will be spread over the compacted working face towards the end of the operational day. Green material used as ADC is compacted into place at least 6 inches thick, but on average not more than 12 inches thick.

Depending on moisture content and size of the working face, the amount (in tons) of green material utilized as ADC can vary day-to-day. Normally between 200-400 tons of green material is required to cover the working face daily. It should be noted that the maximum amount of incoming processed green material which can be received daily is 500 tons per day as allowed in the Solid Waste Facility Permit. The operator shall maintain a record of the type and quantity
of waste derived ADC used at the facility. If the site uses multiple types of ADC, the usage will be recorded.

Green material received at KCL for ADC will not be stockpiled for more than 4 days before use, and once placed will be covered within 7 days. All residue generated by the use, manual processing, and storage of green material for ADC shall be disposed of as waste by the end of each operating day.

(Fung Decl., ¶ 16 & Exhibit I.)

On January 14, 2015, the County LEA made the following findings as required by Section 21665, subdivisions (c)(1)-(3), of Title 27 of the California Code or Regulations:

- That the proposed amendments were categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(2) and 15301 of the CEQA Guidelines.

- That the proposed amendments to the RDSI were acceptable and consistent with the state minimum standards for solid waste handling and disposal as set forth in Chapter 3 of Division 7 of Title 14 of the California Code of Regulations and Subdivision 1 of Division 2 of Title 27 of the California Code of Regulations; and

- That the proposed amendments did not conflict with the terms and conditions of the Modified Permit. (*Id.*)

Based on the above findings, the County LEA was authorized under Section 21665, subdivision (c), to approve an amendment to the RDSI in lieu of requiring a revision or modification of the Facility’s permit. The County LEA approved the RDSI amendment application on January 14, 2015, and that day posted a Notice of Approval in accordance with Section 21660.1 of Title 27 of the California Code of Regulations.


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3 Although not expressly stated in the letter, the County LEA also determined the application was complete and correct on January 14, 2015.
DISCUSSION

A. THE USE OF GREEN MATERIAL AS ADC AT THE FACILITY COMPLIES WITH CURRENT REGULATIONS

Current minimum standards for sanitary landfills are set forth in Subchapter 4 of Division 2 of Title 27 of the California Code of Regulations. Included are a number of standards pertaining to material that may be used to cover disposed solid waste. As a general rule, landfill operators are required at the end of each day to cover disposed solid waste with a minimum of 6 inches of compacted earthen materials. (Cal. Code Regs., tit. 27, § 20680, subdivision (a).)\(^4\) However, an enforcement agency may approve the use of alternative materials for daily cover, with concurrence by CalRecycle, if the owner or operator demonstrates that it controls vectors, fires, odors, blowing letter and scavenging without presenting a threat to human health and the environment. (Cal. Code Regs., tit. 27, § 20690, subd. (a)(1).

ADC that is derived from waste generally must be processed prior to spreading and compacting it on the working face of a landfill. (Cal. Code Regs., tit. 27, § 20690, subd. (a)(2).) However, unprocessed waste material may be used as ADC if it meets the grain size standards set forth in the regulations or approved by the enforcement agency and the agency determines that the material is adequate to perform the functions of daily cover. (Cal. Code Regs., tit. 27, § 20690, subd. (b)(3)(B).)

All types of ADC must be approved by the enforcement agency in writing prior to its use at solid waste landfills, but proposed uses as ADC of materials that do not fit into one of nine categories are subject to site specific demonstration projects approved by the enforcement agency with concurrence by CalRecycle to establish their suitability as daily cover. (Cal. Code Regs., tit. 27, § 20690, subd. (b).) One of the categories is processed green material, defined as follows:

For the purposes of this section, processed green material means any plant material that is either separated at the point of generation, or separated at a centralized facility that employs methods to minimize contamination. Green material includes, but is not limited to, yard trimmings, untreated wood wastes, paper products, and natural fiber products. Green material does not include treated

\(^4\) Copies of selected provisions from Title 27 and Title 14 of the California Code of Regulations are attached as Exhibit 1 for convenience.
wood waste, mixed demolition or mixed construction debris, manure and plant waste from the food processing industry, alone or blended with soil. Processed green material may include varying proportions of wood waste from urban and other sources and shall be ground, shredded, screened, source separated for grain size, or otherwise processed.

(Cal. Code Regs., tit. 27, § 20690, subd. (b)(3)(A).)

Processed green material used as ADC must comply with a grain size specification by volume of 95% less than 6 inches before it is spread and compacted on the working face of a solid waste landfill. (Cal. Code Regs., tit. 27, § 20690, subd. (b)(3)(B).) But green material to be used as ADC need not be processed if it already meets the grain size specifications, which are either the specifications set forth in the regulations or alternative grain size specifications approved by the enforcement agency. (Id.) Alternative processing and grain size specification requirements may be approved by the enforcement agency if it determines that the alternative meets performance requirements and CalRecycle concurs. (Id.)

1. **A demonstration project was conducted with the approval of the County LEA.**

There is no dispute that the Facility conducted a demonstration project in 1999-2000, or that the County LEA approved that demonstration project. Nothing in the above regulations invalidates a demonstration project conducted prior to the effective date of the current regulations.

2. **The County LEA approved an alternative grain size, with CIWMB’s concurrence.**

Today, the regulations allow processed green material to be used as ADC without a demonstration project, as long as it meets performance standards, including a grain size specification by volume of 95% less than 6 inches. But the regulations also allow green material that is not “processed green material,” and does not meet that grain size specification, to be used if it meets an alternative grain size specification, the County LEA approves and CalRecycle concurs, and the suitability of this material is proven in a demonstration project. This is what occurred here. The County LEA approved an alternative grain size of a maximum of 3 inches in diameter and no more than 4 feet in length, and, as set forth below, the CIWMB concurred in that standard.
Green material meeting that grain size was then demonstrated to be suitable for use as ADC. This process was fully consistent with today’s requirements.

3. The CIWMB concurred in the demonstration project.

The regulations do not specify how or when CalRecycle is to give its concurrence – nothing requires a written concurrence – or precisely what CalRecycle is supposed to concur with. What is clear, however, is that CalRecycle’s predecessor, CIWMB, did concur, both with the demonstration project and with the use of green material as ADC. The County LEA outlined the parameters of the demonstration project, including grain size specifications, in a February 24, 1999, letter that was sent to the CIWMB. There is no record that the CIWMB ever objected to this demonstration project; thus, by its acquiescence in it, it impliedly concurred with it.

4. The County LEA approved the use of the green waste as ADC and the CIWMB concurred.

The record clearly shows that after the demonstration project, in June 2000, the County LEA approved the use of green material meeting its specifications as ADC at the Facility. The record is also clear that the CIWMB concurred in the use of that material, by noting its use in the report of its inspection of the Facility in August 2002, and finding no violations on the date of inspection.

5. There is no requirement that green material used as ADC not contain food waste.

Petitioners allege that the green waste used as ADC at the Facility has been contaminated with food waste and that this is a violation that the County LEA should have enforced. But there are three fundamental problems with this contention.

First, to date the Petitioners have offered no credible evidence of such contamination, but merely speculation and conjecture. Outreach materials by some waste haulers advising residential customers they could mix their food waste with their green waste does not prove that “contaminated” green material was taken to the Facility and used as ADC. Similarly, a tonnage report suggesting that green waste mixed with food waste collected in Lafayette may have been taken to the Facility for use as ADC has not been corroborated. Second, even if contaminated
green waste had been taken to the Facility and used as ADC, the Petitioners have offered no facts
to show that the County LEA ever observed any such instances. If the County LEA does not
observe a violation, it is not in a position to take enforcement action.

But more importantly, even if the Petitioners could offer evidence that food waste was
mixed with green waste and applied as ADC at the Facility, the Petitioners cannot demonstrate that
any violation has occurred. The applicable definition of “green waste” in Section 21690,
subdivision (b)(3)(A) of Title 27, quoted above, does not necessarily exclude food waste. Any
food waste that constitutes “plant material” — which would include fruit and vegetable matter
routinely discarded in residential waste — would qualify as green material under this definition.

Not satisfied with the applicable definition, Petitioners turn to Title 14 of the California
Code of Regulations for a definition of green material more to their liking. That definition,
contained in Section 17852, subdivision (21), of Title 14, expressly excludes “food material” and
also states that green material cannot contain greater than 1 percent of physical contaminants by
weight. But that definition does not apply to solid waste landfills or to ADC. Rather, Section
17852 makes clear that the definitions are [f]or the purpose of this Chapter,” a reference to Chapter
3.1 of Division 7 of Title 14 of the California Code of Regulations, which pertains to compostable
materials handling operations and facilities. The Section 17852 definitions therefore are not
relevant to this matter.

6. The green material used as ADC at the Facility is processed.

Finally, Petitioners assert that the Facility “has never complied with [the] practice of
processing the green waste prior to its use as ADC as set forth in its 2002 RDSI Amendment.”
This assertion has no factual basis. While the 2002 RDSI amendment requires green material to be
processed, there is no requirement that processing be conducted by the Operator. It can be
processed off site, such as by a homeowner before placing the material in green waste bins or by a
landscaper with access to a chipper.

Moreover, per Section 20690, subdivision (b)(3)(A) of Title 27, processing can entail a
number of different measures, including spreading the material and removing large pieces prior to
use of the material as ADC. Both the County LEA and CalRecycle observed Facility staff doing
this during an inspection on October 23, 2014, as set forth in CalRecycle’s report of its November
19, 2014, inspection, a copy of which was attached as Exhibit A to Petitioners’ Statement of
Issues. Specifically:

During the inspection October 23, 2014 landfill personnel were
removing, from the curbside collected residential green waste
material, branches that were up to four (4) feet long and 3 inches in
diameter. Staff were informed that a dozer spreads the ADC
material pile so that the employees could see and remove
contaminants such as plastic containers and bags, and cardboard
which may be in and at the bottom of the pile. CalRecycle staff
observed that some of the plastic containers and bags were hard to
remove completely on the first try, and that the spreading of the piles
would allow for ease of complete removal of the contaminants.

B. THE INDEPENDENT HEARING PANEL DOES NOT HAVE JURISDICTION TO
HOLD A HEARING ON THE COUNTY LEA’S 1999 APPROVAL OF THE
DEMONSTRATION PROJECT

Petitioners assert that the County LEA’s approval of the 1999 demonstration project did
not comply with current regulatory requirements. While Petitioners may take issue with the
County LEA’s recent action to approve the RDSI amendment incorporating new language about
the longstanding use of green material as ADC at the Facility, the approval of the 1999
demonstration project is not a matter over which the IHP has current jurisdiction.

A person alleging that an enforcement agency failed to act according to law has 30 days
from the date the person discovered, or reasonably should have discovered, the facts on which the
allegation is based, to request a hearing. (Pub. Resources Code, § 44307.) Nearly 16 years has
passed since the County LEA approved the demonstration project, and the Facility’s use of green
material as ADC has been well documented since then, including in the 2002 RDSI amendment
and another RDSI amendment in 2008, and in the Facility’s Modified Permit issued in 2009.
Public notice was given of the County LEA’s approval of each of these RDSI amendments and the
Modified Permit, and all three relate back to the demonstration project. Thus, at the very least
Petitioners should have known of the demonstration project years ago.

If the Petitioners did not learn of the demonstration project years ago, they most certainly
learned of it in 2014. Petitioner Monica White and counsel for the Petitioners were both
personally advised of the demonstration project at a meeting held at the Contra Costa County
Department of Conservation and Development on September 16, 2014. Additionally, County LEA staff discussed the demonstration project at a meeting of the Board of Supervisors on December 16, 2014, at which Petitioners and their counsel were present and spoke.

It is, accordingly, long past time when the Petitioners could have asked for a hearing on the County LEA’s 1999 demonstration project, and the IHP should decline the Petitioners’ invitation to inquire into that approval.

C. THE COUNTY LEA COMPLIED WITH APPLICABLE REGULATIONS IN PROCESSING AND APPROVING THE 2015 RDSI AMENDMENT APPLICATION

A RDSI is a document that generally describes the design and operation of a solid waste facility. (See Cal. Code Regs., tit. 27, § 21600, subd. (b).) The operator of a disposal site must file a RDSI in order to obtain a solid waste facility permit. (Cal. Code. Regs., tit. 27, § 21600, subd. (a).) In order to maintain that permit, the operator must also file amendments to the RDSI when changes to the facility are made or proposed or as specified by the enforcement agency. (Id.) Among other things, information regarding the use of ADC must be included in a RDSI. (Cal. Code Regs., tit. 27, § 21600, subd. (b)(6)(B).)

RDSI amendments are filed with the enforcement agency as part of an application package. (Cal. Code Regs., tit. 27, §§ 21665, subd. (a), 21600 & 21570, subd. (f).) A RDSI amendment application package is to contain only the items listed in Section 21570, subdivision (f), that have changed, or are proposed for change, or as specified by the enforcement agency. (Cal. Code Regs., tit. 27, § 21665, subd. (a).) Upon receipt of the package, the enforcement agency reviews it and determines whether the change qualifies as an amendment to the RDSI or instead requires a change in the facility’s permit. (Cal. Code Regs., tit. 27, § 21665, subd. (b).)⁵

The enforcement agency may approve and file a proposed change as an amendment without revising or modifying the permit if the following criteria are met:

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⁵ Section 21665, subdivision (b) of Title 27 literally requires a determination of a change qualifies as an amendment “to the RFI,” or Report of Facility Information. In the case of disposal sites, a RFI is a RDSI. (Cal. Code Regs., tit. 27, § 21570, subd. (f)(2).)
(1) The enforcement agency finds that the proposed change is exempt from the requirements of CEQA pursuant to Sections 15060 and 15061 of the CEQA Guidelines.

(2) The enforcement agency has deemed the proposed change acceptable and consistent with state minimum standards pursuant to Chapter 3 of Subdivision 1 of Title 27 of the California Code or Regulations or applicable minimum standards in Title 14 of the California Code of Regulations.

(3) The enforcement agency finds the changes do not conflict with the terms and conditions in the current solid waste facilities permit.

The enforcement agency is required to determine if the above three criteria are met, and either accept or reject the amendment, within 30 days of receipt of a RDSI amendment package. (Cal. Code Regs., tit. 27, § 21666, subd. (a).)

1. The RDSI amendment application package was complete and correct.

The Facility’s January 9, 2015, application package consisted of a completed and signed solid waste facility permit application and revised pages of the Facility’s RDSI. Per Section 21665, subdivision (a), and Section 21570, subdivisions (f)(1)-(2) of Title 27, these were the only items that needed to be submitted. The County LEA therefore properly found that the application was complete and correct.

2. The proposed changes qualified as an amendment to the RDSI.

As outlined above, an enforcement agency may approve a proposed change as an amendment to a facility’s RDSI if the agency makes three findings. Petitioners does not dispute that the County LEA made these findings; however, the Petitioner does contend that the County LEA erred in making two of them.

a. The IHP may not hear challenges to actions taken under CEQA.

With regard to the first finding, the Petitioner asserts that the categorical exemption under Section 15301 of Title 14 of the California Code of Regulations “may not apply because [KCL’s alleged practice of removing contaminants after spreading the green material as ADC] could have a significant effect on the environment if it does not comply with the requisite ADC performance standards.” Even if Petitioner could make a factual showing to prove this, the assertion is not
relevant. Actions taken by a County LEA under CEQA\(^6\) or the CEQA Guidelines\(^7\) are not listed among the types of matters that may be heard by a hearing panel under Public Resources Code section 44307, which is the sole statutory basis relied upon by Petitioners for their hearing request.\(^8\) The IHP thus does not have jurisdiction to inquire into the County LEA's categorical exemption determination under Section 15061 of Title 14 of the California Code of Regulations.

b. There is no factual basis for Petitioner's allegation that the County failed to act as required by law and regulation when it found that the proposed changes in the 2015 RDSI amendment were acceptable and consistent with state minimum standards.

Petitioners assert that the County LEA erred in finding that the proposed changes in the 2015 RDSI amendment were acceptable and consistent with state minimum standards because "some of the proposed changes regarding KCL’s ADC practices do not meet state minimum standards, including the standards dealing with removing contaminants before spreading the ADC. . . ."

The County LEA did not err in making this finding; in fact, Petitioners are the ones who have erred. The 2015 RDSI amendment was required due to a couple of minor changes in the Facility's operation and the Facility's proposal to use construction and demolition waste as ADC. The amendment was not required to document any changes in the Facility's practices pertaining to the use of green material as ADC, because there were no facts to suggest that any changes had been made to those practices, and the Operator had not proposed any changes. The only reason language about green material was included in the 2015 RDSI was to clarify the existing practices. Thus, the only changes that were properly the subject of this second finding were the minor changes and the proposed use of construction and demolition waste as ADC.

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\(^6\) Pub. Resources Code, §§ 21000-21189.3.


\(^8\) Section 44307 provides in relevant part that a hearing must be held upon a petition from any person requesting a review of "an alleged failure of the agency to act as required by this part, Part 5 (commencing with Section 45000) or Part 6 (commencing with Section 45030) or a regulation adopted by the department pursuant to this part, Part 5 (commencing with Section 45000) or Part 6 (commencing with Section 45030)."
Additionally, even if the clarifying language in the 2015 RDSI that describes how green material was to be used as ADC could be construed as a “change,” the description is absolutely consistent with both current regulations and the demonstration project.

The County LEA’s second finding was therefore proper.

3. The County LEA’s approval of the RDSI amendment was timely.

The County LEA received the Facility’s initial RDSI application package on December 29, 2014, and thus had until January 28, 2015, to either accept or reject it. In the course of the County LEA’s review of the application, the Operator opted to submit a revised application on January 9, 2015. Whether counting from the date of the original application or the revised application, the County LEA’s approval on January 14, 2015, was unquestionably timely.

D. THERE IS NO MERIT TO THE CONTENTION THAT THE COUNTY LEA FAILED TO ACT ACCORDING TO APPLICABLE LAWS OR REGULATIONS WITH REGARD TO THE FACILITY

Within its jurisdiction, a certified LEA enforces state and local minimum standards for solid waste collection, handling, storage and disposal for the protection of the air, water and land from pollution and nuisance, and for the protection of the public health and safety and the environment. (Cal. Code Regs., tit. 14, § 18070, subd. (b).) State minimum standards are set forth in the Integrated Waste Management Act of 1989 (Pub. Resources Code, § 40000 et seq.) and implementing regulations contained in Title 14 and Title 27 of the California Code of Regulations.

The duties of an LEA are set forth in Public Resources Code section 43209. Among other things, LEAs are required to enforce applicable provisions of Part 4 of Division 30 of the Public Resources Code (commencing with Section 43000) and regulations adopted thereunder, and the terms and conditions of permits issued under Chapter 3 of Part 4 of Division 30 of the Public Resources Code, commencing with Section 44001. (Pub. Resources Code, § 43209.)

Duties of an LEA are further described in Title 14 of the California Code of Regulations. Specific duties are set forth as to permitting and closure or postclosure, inspections and enforcement. (See Cal. Code Regs., tit. 14, § 18082-18084.) With regard to enforcement, an LEA has a variety of enforcement options, including notices and orders to take corrective action or come into compliance with applicable laws and the assessment of penalties. (Pub. Resources
However, an LEA is not required to take formal enforcement action to correct every violation. If a facility operator commits a violation, and is making timely progress toward compliance, the LEA is considered to be taking appropriate enforcement action. (Cal. Code Regs., tit. 14, § 18084, subd. (d)(1).)

Petitioners’ Statement of Issues contains no credible evidence that the County LEA did not fulfill its statutory and regulatory duties with regard to the Facility. Specifically, there are no facts to support the notion that that the County LEA allowed the Facility to conduct unlawful operations with regard to the use of green material as ADC.

The County LEA is required to and does conduct monthly unannounced inspections at the Facility. In the last 15 years, the County LEA has conducted approximately 180 such inspections, has never observed Facility staff using any substandard green material as ADC, and has never received a formal complaint regarding the use of green material as ADC at the Facility. Accordingly, there has been no cause for the County LEA to bring an enforcement action against the Facility with regard to the use of ADC.

Additionally, CalRecycle conducts audits of the County LEA every three years. Not once has CalRecycle ever found deficiencies related to the County LEA’s oversight of the Facility.

E. THE RELIEF SOUGHT BY PETITIONERS IS BEYOND THE JURISDICTION OF THE INDEPENDENT HEARING PANEL

Finally, the Petitioners have asked the IHP to require that KCL revise its RDSI amendment. Even if there were factual and legal grounds to overturn the County LEA’s decision to approve the RDSI amendment, the Petitioners’ request is beyond the jurisdiction of the IHP. An IHP is not an enforcement agency and thus does not have authority under the law or regulations to either approve or reject an RDSI amendment and substitute its decision for that of an enforcement agency.

\[9\] The County LEA did investigate after hearing complaints in public meetings, including claims by the Petitioners and their counsel, that the Facility’s use of green material as ADC was not in compliance with the regulations; however, the County LEA found no evidence to substantiate the claims.
The IHP may, after hearing a matter, either affirm or overturn a decision of the County LEA. In this case, the County LEA urges affirmance.

RESPONSES TO SPECIFIC ALLEGATIONS

Respondent’s responses to the specific allegations contained in Petitioners’ Statement of Issues are set forth below:

Allegation: That the LEA failed to act as required by law in approving the RDSI Amendment by relying on outdated requirements and/or protocol instead of relying on current requirements for ADC use and demonstration projects.

Response: The allegation is without merit. The County LEA reviewed the RDSI amendment and approved it based on current regulations governing the review and approval of RDSI amendments. The revised language in the RDSI amendment related to green material used as ADC clarified, but did not change, the longstanding practice at the Facility. The revised language in the RDSI amendment that allows the use of construction and demolition waste as a new type of ADC material described a practice that did not require a demonstration project. Nothing in the current regulations requires new demonstration projects to be conducted as to materials previously approved for use as ADC under prior regulations.

Allegation: That despite the 2002 RDSI amendment’s description of the use of processed green waste as ADC, KCL never actually complied with such processing requirements prior to its use of green waste as ADC.

Response: The allegation is ambiguous in use of the term “processed.” Regardless, the allegation is without merit. County LEA staff has inspected the Facility approximately 180 times since the 2000 approval of the use of green material as ADC and has not observed any instances of the Facility using green material that did not meet the required grain size specification for ADC as described in the demonstration project approval or as otherwise described in the 2002 RDSI.

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**Allegation:** That the RDSI Amendment inaccurately mischaracterizes the approved demonstration project as specifically involving the use of unprocessed green material as ADC without having to be processed at all.

**Response:** The term "inaccurately mischaracterizes" is uncertain; aside from that, the allegation is without merit. The RDSI Amendment clearly states that the material would be spread and sorted to remove contaminants and that the material would be used as ADC only after it was determined to meet ADC performance requirements. It is thus implied that to the extent that any of the green material did not meet those requirements, it either could not be used as ADC or would need to be processed first. The demonstration project was intended to evaluate what the County LEA at that time considered to be unprocessed green material for use as ADC.

**Allegation:** That the RDSI Amendment appears to indicate that the LEA approved the use of unprocessed green material as ADC without explaining that certain standards, requirements, and protocols still needed to be complied with, such as meeting certain size requirements and removing contaminants before using the green material as ADC.

**Response:** The allegation is without merit. The RDSI Amendment clearly refers to the grain size approved by the County LEA, and states that contaminants would be removed from the green material and that the material would meet performance standards before it is used as ADC. The demonstration project was concerned with materials collected from curbside recycling programs and this material can have a grain size not to exceed 3 inches in diameter or 4 feet in length. The demonstration project was intended to allow the use of a larger grain size and unprocessed green material as ADC if it was shown that the material met the required performance standard (i.e., control vectors, odors, fires, blowing litter, and scavenging), and these performance standards were indeed met. The term "unprocessed" as applied to the curbside materials was related to the interpretation at that time, but these materials are, in fact, subject to several processing steps. The curbside collected material is typically processed at the point of generation prior to placement in recycling containers; additionally, when the curbside material is received at the Facility, and prior to its use as ADC, it is typically spread out and a manual processing step is
performed whereby contaminants or pieces exceeding the authorized alternative grain size are removed.

**Allegation:** That the LEA’s current reliance on the 1999 demonstration project, which inherently incorporates outdated regulations regarding ADC, as a factor in approving the RDSI amendment is improper and indicates that the LEA failed to act as required by current law and regulation.

**Response:** The allegation is without merit. Nothing in the current laws and regulations invalidates a demonstration project performed under prior regulations. Moreover, the new language in the RDSI regarding the use of green material as ADC simply clarifies a process that has been used since 2000. Neither the laws or regulations required an RDSI amendment to insert this clarifying language.

**Allegation:** That the LEA’s approval of the 1999 demonstration project [] did not comply with current requirements for review, approval, and concurrence of demonstration projects.

**Response:** This challenge is untimely; for this reason, the IHP has no jurisdiction to consider it. In further response, when the County LEA approved the 1999 demonstration project, current regulatory requirements were not yet in force; therefore, it is beyond dispute that the LEA could not have complied with them at that time. However, nothing in the current requirements invalidates a demonstration project conducted under prior regulations, or an enforcement agency’s approval of alternative grain sizes or other standards for ADC based on such a project. Moreover, the current regulations would permit the approval of the same ADC practices used at the Facility if an enforcement agency found these practices met the aforementioned performance standards. An enforcement agency is allowed under current regulations to authorize the use of unprocessed green material or larger grain sizes as ADC if it meets the performance standards.

**Allegation:** That in approving the [2015] RDSI Amendment regarding KCL’s use of green material for ADC, the LEA failed to comply with current law, regulation, and requirements for
green waste use as ADC and failed to comply with its own performance standards, duties, and responsibilities as an enforcement agency.

**Response:** This allegation is without merit. Both the past and current regulations afford an enforcement agency sufficient discretion to approve alternative processing, which may include no processing, or alternative grain size specifications if the agency determines that these alternatives meet the key performance standard, which is to control vectors, odors, blowing litter, fires, and scavenging. The Operator has consistently demonstrated that its use of ADC at the Facility meets this performance standard.

**Allegation:** That the LEA failed to act as required by law and regulation as it failed to comply with performance standards and its duties and responsibilities as an enforcement agency, including, for example, those dealing with establishing that facilities are complying with the state minimum standards.

**Response:** The allegation is vague, ambiguous and unintelligible. To the extent that the allegation implies that the LEA has a duty to ensure that facilities are at all times in compliance with all applicable state laws and regulations pertaining to solid waste handling and disposal, the allegation is without merit. To the extent that the allegation implies that the County LEA was aware of and disregarded any violations of these standards at the Facility, the allegation is similarly without merit.

**Allegation:** That the LEA failed to act as required by law or regulation by failing to comply with current ADC regulations as follows. The RDSI Amendment language approved by the LEA does not explicitly set forth that green waste mixed with food waste cannot be used as ADC.

**Response:** It is correct that the RDSI amendment language does not explicitly set forth that green waste mixed with food waste cannot be used as ADC. However, to the extent the allegation implies that the LEA failed to act as required by law or regulation by approving the RDSI without the above statement, the allegation is without merit. Nothing in the applicable laws and regulations
expressly prohibits the use of green material that is mixed with food waste as ADC. Specifically, “processed green material” is defined by Section 20690, subdivision (b)(3)A of Title 27 as “any plant material that is either separated at the point of generation, or separated at a centralized facility that employs methods to minimize contamination.” Food waste that is plant material and meets the above standard, such as fruit and vegetable matter, would qualify as processed green material. The term “minimize” is not quantitatively defined in the regulations and is left a subjective term, but regardless of this fact, the County LEA has observed during its inspections that the Operator has consistently minimized contamination in the green material used as ADC.

Petitioners’ citation to Section 17852, subdivision (a)(21), for an alternative definition of “green material” is erroneous. The cited section is contained in Chapter 3.1 of Division 7 of Title 14 of the California Code of Regulations. Chapter 3.1 pertains to compostable materials handling facilities and operations, not ADC. Section 17852, subdivision (a), sets forth definitions “[f]or the purposes of this Chapter.” The definitions do not apply to the ADC requirements in Title 27 as to green material. For the same reason, the 1% contaminant standard contained in the cited section is also not relevant in this matter.

**Allegation:** That during the discussion of the County’s KCL’s land use permit at the December 16, 2014, Contra Costa County Board of Supervisors meeting, LEA staff asserted that food waste can be included as part of the 1% physical contamination allowed in green waste. This is not correct.

**Response:** The record of the meeting speaks for itself. To the extent that County LEA staff made the statement, it was correct to the extent that food waste can be a component of green material.

**Allegation:** That the LEA failed to act as required by law or regulation by failing to comply with current ADC regulations as follows. Instances of this prohibited practice of commingling food waste with green waste to be used as ADC at KCL have been documented.
Response: This allegation is without merit. Petitioners have cited no credible evidence of any instances of food waste being contained in any green material taken to the Facility for use as ADC. There have been no observations of this in approximately 180 unannounced monthly inspections by the County LEA and 12 inspections by CalRecycle.

Allegation: That the LEA failed to act as required by law and regulation because it failed to effectively monitor facilities in its jurisdiction and/or failed to properly perform its permitting, closure and postclosure, inspection, and enforcement functions when it allowed KCL to use commingled food waste/green waste as ADC and erroneously asserted that 1% food waste was allowed, such that KCL did not comply with the state minimum standards regarding green waste and ADC use.

Response: This allegation is vague, overbroad, untimely and without merit. The County LEA approved the use of green material with a specified grain size as ADC in 2000, and that approval is not subject to a hearing now. Moreover, the County LEA has never “allowed” any inappropriate material to be used as ADC at the Facility. With regard to the allegation that the County LEA “erroneously asserted that 1% food waste was allowed,” see above. Since 2000, approximately 180 unannounced monthly inspections by the County LEA and approximately 12 unannounced inspections by CalRecycle have been conducted and neither agency has found ADC contaminated or commingled with food waste. Additionally, CalRecycle conducts a thorough evaluation of the County LEA at least once every three years. The County LEA has not been found deficient in its regulatory oversight of the Facility, including the Operator’s use of green material as ADC.

Allegation: That the LEA failed to act as required by law by failing to require an RDSI Amendment that includes this specific prohibition of food waste as ADC.

Response: There is no merit to this allegation. There is no requirement in the laws or regulations that require this prohibition to be stated in a RDSI. Additionally, to the extent that food waste qualifies as processed green material, such a prohibition would be erroneous.
Allegation: That the RDSI Amendment language approved by the LEA fails to expressly prohibit KCL’s practice of spreading of the green waste material prior to removing oversize or contaminated materials despite such practice being inconsistent with ADC protocols approved by the LEA and ADC regulations.

Response: The allegation is correct to the extent that the RDSI amendment does not expressly state that the Facility cannot violate the ADC protocols approved by the County LEA and ADC regulations. However, the laws and regulations do not require an RDSI amendment to contain such language. The RDSI amendment clearly requires the spreading of green material and removal of contaminants prior to its use as ADC, which is the longstanding practice at the Facility. The allegation’s implication that the Operator had a practice inconsistent with ADC protocols approved by the County LEA and ADC regulations has no merit.

Allegation: That KCL is violating ADC regulations by removing contaminants from the ADC material after applying it to the active face.

Response: The allegation is without merit. The County LEA has not observed any instances of contaminants being removed from ADC materials after application to the active face. Additionally, the County LEA has seen no reliable documentation of any such violation allegedly being viewed by CalRecycle. The Operator has a separate practice of removing litter from the Facility premises, including the covered working face, as part of its required housekeeping and litter prevention protocols. This is separate from the process that is used to prepare green material for use as ADC. The ADC must be in acceptable condition prior its use as ADC, but once applied as cover material, the Facility is allowed to remove any litter that may subsequently migrate onto this area. This separate process may have been what CalRecycle staff allegedly observed during its November 19, 2014, inspection of the Facility outside the presence of County LEA staff.

Allegation: That the LEA is failing to act as required by law because it has not required KCL to accurately describe the process and methods being used by KCL to minimize contamination of ADC with waste prior to it being placed on the working face.
Response: There is no merit to this allegation. The RDSI amendment clearly states that material would be spread and sorted by Facility staff to remove contaminants and oversized materials, and that contaminants and oversized materials would be disposed of, and that after the material is determined to meet the requirements, it would be spread over the compacted working face. County LEA staff has observed this process taking place during its inspections of the Facility.

Allegation: That the LEA would be failing to act as required if KCL still continues to remove contaminants after spreading the material as ADC and the LEA fails to enforce KCL’s violation of the ADC regulations.

Response: There is no merit to this allegation. The Petitioners are not entitled to a hearing on hypothetical future actions or inaction by the County LEA.

Allegation: That the LEA also fails to act as required by failing to comply with its duties and obligations as an enforcement agency, including those set forth in 14 CCR § 18081 and PRC Section 43209.

Response: The allegation is vague and ambiguous and without merit. The County LEA complies with its duties and obligations as an enforcement agency. CalRecycle conducts a thorough evaluation of the County LEA at least once every three years. The County LEA has not been found deficient in its regulatory oversight of the Facility, including the Operator’s use of green material as ADC.

Allegation: That the LEA failed to monitor KCL’s use and acceptance of materials exceeding the alternative grain size approved of by the EA as discussed in its RDSI Amendment.

Response: There is no merit to this allegation. The County LEA inspects the Facility on a monthly basis and has observed no instances of the Facility using green materials that exceed the alternative grain size as ADC. Whether the Facility may have accepted such material is not relevant to the extent it was not used as ADC. The Facility is a landfill and is thus authorized to
accept and dispose of waste materials, including green material with grain sizes larger than authorized for use as ADC. Only material actually used as ADC is required to meet the ADC standards.

**Allegation:** That a Republic advertisement aimed at Benicia customers [regarding the acceptance for recycling of twigs and branches 6 inches or less in diameter and 3 feet or less in length] brings into question whether KCL is meeting the performance requirements and standards for ADC use if accepted material exceeds the alternative grain size specification that was approved by the LEA and/or KCL is not using the green material as ADC as set forth in the regulations.

**Response:** To the extent that the allegation implies that the Facility is using material that does not comply with the alternative grain size as ADC, the allegation is without merit. There is no requirement in the laws or regulations that all green material accepted by a solid waste landfill be used as ADC. The operator may, in fact, dispose of green material as regular waste, and any material that was intended for use as ADC that is found not acceptable as ADC is disposed of as regular waste. Regardless of a landfill operator’s public outreach materials, the LEA can only monitor and enforce what occurs at the actual facility.

**Allegation:** That the LEA failed to require KCL to provide accurate information in its RDSI Amendment about its actual use and acceptance of alternative grain size.

**Response:** There is no merit to this allegation. The regulations require accurate information regarding a Facility’s operations to be contained in an RDSI, and the LEA complied with its obligations with regard to review and approval of the RSDI amendment.

**Allegation:** Considering the history of oversight and ongoing issues regarding KCL’s use of green waste as ADC, the LEA failed to act as required by law and regulation by not complying with performance standards and fulfilling its duties and responsibilities as an enforcement agency.

**Response:** The allegation is vague, overbroad and without merit. CalRecycle conducts a thorough evaluation of the County LEA at least once every three years. The County LEA has not
been found deficient in its regulatory oversight of the Facility, including the Operator’s use of
green material as ADC.

**Allegation:** The LEA is subject to performance reviews by CalRecycle to determine if it is
meeting its performance standards, duties, and responsibilities.

**Response:** The County LEA does not dispute this allegation. CalRecycle conducts audits
of the County LEA every three years and has never found the County LEA to be deficient in its
regulatory oversight of the Facility, including the Operator’s use of green material as ADC.

**Allegation:** The LEA failed to exercise due diligence in the inspection of KCL (e.g., by
effectively monitoring KCL’s use of green waste as ADC over the years to ensure compliance with
state minimum standards and ADC regulations in general.

**Response:** The allegation is without merit. The County LEA inspects the Facility monthly
and has conducted some 180 unannounced inspections there in the last 15 years. The laws and
regulations do not require the LEA to “ensure” that every solid waste facility in its jurisdiction is in
compliance with all state minimum standards at all times.

**Allegation:** That the LEA approved an RDSI Amendment that is inconsistent with law and
regulations.

**Response:** The allegation is without merit. The RDSI amendment was approved in
accordance with the applicable requirements as outlined above.

**Allegation:** That the LEA failed to comply with and took actions inconsistent with the
Waste Management Act and its implementing regulations.

**Response:** The allegation is vague, overbroad and without merit. CalRecycle conducts a
thorough evaluation of the County LEA at least once every three years. The County LEA has not
been found deficient in its regulatory oversight of the Facility, including the Operator’s use of
green material as ADC.
Allegation: That because KCL’s use of green as ADC has not been properly and effectively monitored for at least the past 13 years, KCL has engaged in ADC practices that have been in violation of current ADC regulations.

Response: The allegation is without merit. The County LEA has found the Facility consistently in compliance with the ADC regulations, including the aforementioned performance standards, based on its findings from approximately 180 unannounced monthly inspections.

Allegation: That it appears as if the LEA had not properly and effectively monitored KCL’s use of green waste as ADC since at least back in 2002.

Response: The allegation is without merit. The County LEA has found the Facility consistently in compliance with the ADC regulations, including the aforementioned performance standards, based on its findings from approximately 180 unannounced monthly inspections.

Allegation: Since that time thirteen years ago, ADC and RDSI regulations have changed as discussed above but it appears that the LEA had not appropriately applied and enforced these regulations (including state minimum standards) with respect to KCL and its use of green waste as ADC.

Response: Certain regulations as to ADC and RDSI requirements have changed since 2002. Except to this extent, the allegation is without merit. The regulations in effect in 1999-2000 and currently allow the County LEA the discretion to approve alternatives to processing or no processing, or alternative grain sizes.

Allegation: That KCL engaged in certain practices regarding its use of green waste as ADC that were inconsistent with or in violation of certain ADC and RDSI regulations and standards as detailed above. Moreover, such practices continued and remained unchecked by the LEA for years; or, at the very least, the LEA had not adequately and properly applied the requisite ADC standards and regulations to ensure compliance with state minimum standards at KCL.
Response: The allegation is without merit. The County LEA has found the Facility consistently in compliance with the ADC regulations, including the aforementioned performance standards, based on its findings from approximately 180 unannounced monthly inspections.

Allegation: That the LEA should have required KCL to include important and necessary provisions in its RDSI Amendment to clearly establish the standards that KCL must abide by in using green waste as ADC. It is also of utmost importance that the RDSI Amendment set forth expected methods for LEA enforcement of such ADC standards, requirements, and regulations at KCL.

Response: The RDSI amendment should, and does, contain important and necessary provisions to clearly establish standards for use of green material as ADC at the Facility. Except to this extent, the allegation is without merit. The laws and regulations do not require discussion of an enforcement agency’s enforcement options in a RDSI. Enforcement options are described in laws and regulations.

Allegation: That a discrepancy between the date of receipt of the Operator’s application cited in the LEA’s January 14, 2015, letter to CalRecycle and the date of the actual application is problematic because the LEA may have received the proposed RDSI amendments on December 29, 2014 without the requisite certification from the operator/owner that the information contained therein was true and accurate.

Response: The allegation is without merit. There is no “discrepancy.” The original application was filed on December 29, 2014, but the final application that the LEA approved was filed on January 9, 2015, and it was found to be complete and correct. It is not uncommon for an operator to submit an application package and for the County LEA to review the package and find missing items or items needing additional detail or alteration. These items are then submitted in a new/final application. An enforcement agency has 30 days to approve or deny an application for a RDSI amendment. The County LEA based this deadline on the December 29, 2014, submission date.
Allegation: The discrepancy is problematic in that the LEA received an application that was not otherwise in compliance with the requirements above in 27 CCR § 21620(a)(2) (for example, by receiving the proposed amendments without the required application form).

Response: There is no merit to this allegation. An enforcement agency has 30 days to approve or deny an application for an RDSI amendment. The Operator submitted all required items, including an application form, prior to the County LEA’s approval of the RDSI amendment. Petitioners have provided no facts in support of their allegation that the application or amendments were not in compliance with the applicable laws or regulations.

Allegation: The discrepancy is problematic in that the LEA allowed the applicant to submit the RDSI amendment application less than 180 days prior to making the proposed changes without properly or adequately reviewing the proposed RDSI amendment given the short timeframe (which appears to be either two weeks or 5 days) for the LEA to determine if the proposed changes meet the criteria in 27 CCR § 21665(c).

Response: There is no merit to this allegation. The County LEA had sufficient time to, and did, properly and adequately review the RDSI amendment. The regulations require that an application for an RDSI amendment be approved or denied by an enforcement agency within 30 days. The regulations do not mandate a minimum amount of time that an enforcement agency should wait prior to approval or denial. Prior to the formal submittal of an application, the County LEA typically works with the operator and CalRecycle to make sure an acceptable application packet is submitted. This was done in this case. The County LEA was already familiar with the use of green material as ADC at the site, and the addition of construction and demolition (C&D) waste as a new ADC material was consistent with the standards contained in the regulations, and therefore did not require a demonstration project. The other changes to the Facility’s RDSI were straightforward to evaluate.
Allegation: That even if the LEA received an early draft of the RDSI Amendment earlier in order to review and/or work with the operator, the final, certified application for the RDSI Amendment still contained errors and/or issues as discussed herein indicating that the LEA still did not act as required by law and regulation when reviewing the final version of KCL’s RDSI Amendment.

Response: This allegation is vague, ambiguous and without merit. Petitioners have not identified any errors in the RDSI amendment and have provided no facts in support of their allegation that the LEA did not act as required by law or regulation in its review of the document.

Allegation: That the LEA failed to act as required by law when finding that the proposed changes are exempt from the requirements of CEQA.

Response: The allegation is without merit. Actions taken under CEQA are not within the jurisdiction of the IHP under Public Resources Code section 44307.

Allegation: That the LEA failed to act as required by law and regulation when finding that the proposed changes are acceptable and consistent with, but not limited to, State minimum standards.

Response: The allegation is without merit. Petitioners have provided no facts in support of their allegation that County LEA did not act as required by law or regulation in making this finding.

To the extent that Petitioners' Statement of Issues is found to contain any allegations in addition to those set forth above, the County LEA denies any and all such allegations.

SUMMARY

The County LEA properly reviewed and approved the amendment to the Facility’s RDSI in accordance with all applicable legal requirements, and Petitioners’ contention to the contrary has no basis in fact or law. The use of green material as ADC at the Facility is lawful and consistent
with the state minimum standards, and the County LEA's approval of the 1999-2000 demonstration project regarding the use of green material with an alternative grain size as ADC, and subsequent approval of the use of that material as ADC at the Facility, is not now subject to challenge. Finally, there is no merit to the contention that the County LEA did anything other than follow the laws and regulations in regulatory oversight of the Facility. In its regular audits of the County LEA, CalRecycle has never found any deficiencies related to the County LEA's performance in this regard.

Based on the foregoing, the County LEA respectfully requests that the IHP affirm the LEA's January 14, 2015, approval of the Facility's RDSI amendment.

Dated: February 25, 2015

Respectfully Submitted,

SHARON L. ANDERSON
County Counsel

By: Linda Wilcox
Deputy County Counsel

Attorneys for Contra Costa County Local Enforcement Agency

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**EXHIBIT 1**
§ 20620. CIWMB—Site Attendant. [T14:§17674]

Any disposal site open to the public shall have an attendant present during public operating hours or the site shall be inspected by the operator on a regularly scheduled basis, as determined by the enforcement agency.


§ 20680. CIWMB—Daily Cover. [T14:§17682, 17258.21]

(a) Except as provided in §(b), (c) and §20690, the owners or operators of all municipal solid waste landfill units shall cover disposed solid waste with a minimum of six inches of compacted earthen material at the end of each operating day, or at more frequent intervals if necessary, to control vectors, fires, odors, blowing litter, and scavenging. For the purposes of this section, the operating day shall be defined as the hours of operation specified in the solid waste facility permit, and may extend for more than 24 hours if operations are continuous.

(b) The EA, with concurrence by the CIWMB, may grant a temporary waiver from the requirements of (a) if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting such requirements impractical.

(c) Earthen material or alternative cover materials of alternative thickness shall be placed over all surfaces of disposed solid waste for other than municipal solid waste landfill units, as required by the EA to control vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment.

(d) For the purposes of this section, earthen material shall include contaminated soil as defined in Title 14, California Code of Regulations, §17361(b), and soil with contaminants other than petroleum hydrocarbons which has been approved for use as landfill daily cover by the RWQCB, and any other governmental agencies from which approval is required, such as the Department of Toxic Substances Control and Air Pollution Control District or Air Quality Management District.

(e) For waste classification, composition, and liquid percolation requirements of daily cover, refer to the SWRCB requirements set forth in §20705 of this article.

(f) For those MSWLFs that accept for disposal 20 tons or less of municipal solid waste per day based on an annual average, the EA, with concurrence by the Board, may establish alternative frequencies for daily cover after consideration of the unique characteristics of small communities, climatic and hydrogeologic conditions, and protection of human health and the environment. Any proposal to allow an alternative frequency shall be available for public review for a period of 30 days to allow affected parties the opportunity to comment. Documentation of the considerations, public comment and Board concurrence for any alternative frequency shall be placed in the operating record. The Executive Director or the EA may condition, limit, suspend, or terminate an operator’s use of an alternative monitoring frequency if it is determined that the alternative frequency would cause harm to public health and safety, or the environment.


Article 2. Alternative Daily Cover Material and Beneficial Reuse

§ 20670. CIWMB—Availability of Cover Material. [T14:§17681]

A sufficient quantity of cover material of a suitable quality to meet the requirements of this Subchapter shall be available. If on-site sources of cover material are insufficient, substantiation must be shown to the EA that an adequate supply of cover material will be provided.


§ 20685. CIWMB—Performance Standards. [T14:§17683]


1. New section filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

2. Reenumbering of former section 20685 to new section 20695 filed 11–5–97; operative 11–5–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 43).
§ 20686. Beneficial Reuse.

Beneficial reuse of solid wastes at a solid waste landfill shall include, but not be limited to, the following: alternative daily cover, alternative intermediate cover, final cover foundation layer, liner operations layer, leachate and landfill gas collection system, construction fill, road base, wet weather operations pads and access roads, and soil amendments for erosion control and landscaping. Alternative daily cover reuse shall comply with the requirements of §20690. Alternative intermediate cover reuse shall comply with the requirements of §20700. Other beneficial reuse shall comply with the following requirements:

(a) Beneficial reuse shall be restricted to those solid wastes appropriate for the specific use and in accordance with engineering, industry guidelines, or other standard practices specified in the Report of Disposal Site Information as required by §21600(b)(6).

(b) Beneficial reuse shall be restricted to quantities of solid wastes no more than necessary to meet the minimum requirements of (a). Should the CIWMB determine that an owner or operator violated this standard, the owner or operator shall revise the applicable reports to reflect the overuse as disposal, and pay the required Board of Equalization (BOE) disposal tipping fees for the amount of overuse.

(c) Storage and handling of solid wastes and derived materials for beneficial reuse shall be conducted in a manner to protect public health and safety and the environment, and control vectors, fires, odors, and nuisances.

(d) The owner or operator shall maintain a record of beneficial reuse in accordance with Title 14, California Code of Regulations, §18800 et seq. The records shall be available for inspection by authorized representatives of the EA, the local health agency, and the CIWMB during normal business hours and retained in the operating record near the site or in an alternative location approved by the EA.


HISTORY
1. New section filed 5-24-2004; operative 7-23-2004 (Register 2004, No. 22).

§ 20690. CIWMB—Alternative Daily Cover. [T14: §17682, §17258.21(b)]

(a) General Requirements

(1) Alternative materials of alternative thickness for daily cover (other than at least six inches of earthen material) for municipal solid waste landfill units may be approved by the EA with concurrence by the CIWMB, if the owner or operator demonstrates that the alternative material and thickness control vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment.

(2) Alternative daily cover alone, in conjunction with compacted earthen cover, shall be placed over the entire working face at the end of each operating day or at more frequent intervals to control vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. For the purposes of this section, the operating day shall be defined as the hours of operation specified in the solid waste facility permit, and may extend for more than 24 hours if operations are continuous. Waste-derived alternative daily cover shall be processed prior to spreading and compacting on the working face and applied and compacted to ensure that all exposed waste is completely covered by ADC and that there are no open voids within the cover material or in contact with the underlying waste. Waste materials used as ADC that already meet the grain-size specifications of these regulations, or an alternative grain size approved by the EA and CIWMB, pursuant to this section, need not be processed if the EA determines that the material received at the landfill is adequate to perform the functions of daily cover and meets the appropriate specifications.

(3) Should the application of alternative daily cover become impracticable or contribute to conditions hazardous to public health and safety and the environment, the owner or operator shall terminate such use and revert to the use of compacted earthen cover material in accordance with §20680. For the purposes of this section, impracticable conditions are those which make placement of alternative daily cover difficult due to adverse climatic or other conditions such that the performance requirements of §(a)(2) cannot be met.

(4) The owner or operator shall place compacted earthen material over the entire working face at the end of any operating day preceding a period of time greater than 24 hours when the facility is closed, unless procedures as required by the EA are in place to ensure that the requirements of §(a)(2) and (a)(3) are met. A stockpile of earthen cover material and required equipment shall be available to ensure a corrective response to violation of §(a)(2) and (a)(3). Whenever an EA determines that an application of ADC is not meeting the requirements of this standard, the EA may direct the operator to immediately cover the ADC with soil. The continuing use of ADC that has been determined by the EA as not meeting the requirements of this section may become the basis for the EA to take enforcement action to seek compliance with the requirements of this section.

(5) The owner or operator shall maintain a record of waste derived alternative daily cover in accordance with Title 14, California Code of Regulations, §18800 et seq. The records shall be available for inspection by authorized representatives of the EA, the local health agency, and the CIWMB during normal business hours and retained in the operating record near the site or in an alternative location approved by the EA.

(6) For waste classification, composition, and liquid percolation requirements of alternative daily cover, refer to the SWRCB requirements set forth in §20705.

(7) Waste derived materials used as alternative daily cover shall be restricted to quantities no more than necessary to meet the performance requirements of §(a)(2), or as specified in subdivision (b) of this section. Should the CIWMB determine after consulting with the EA that an owner or operator violated this standard, the owner or operator shall revise the applicable reports to reflect the overuse as disposal, and pay the required Board of Equalization (BOE) disposal tipping fees for the amount of overuse. EAs shall not be responsible for making such determinations.

(8) Compost, co-compost, and chemically fixed sewage sludge and water treatment sludge only, that meet the performance standards for cover material, shall be limited to up to 25% of landfill cover materials or landfill cover extenders as required under Public Resources Code (PRC) 42245. For the purposes of this section, “chemically fixed sewage sludge” means solid and semisolid residue generated during the treatment of domestic sewage. The 25% limit shall apply on a quarterly basis to the total daily and intermediate cover or cover extender use. For the purposes of this section, landfill cover extenders shall mean compost, co-compost, or chemically fixed sewage sludge blended or mixed with soil.

(9) Storage and handling of waste derived materials at the landfill for use as alternative daily cover shall be conducted in a manner to protect public health and safety and the environment, and control vectors, fires, odors, blowing litter, scavenging, and nuisances.

(10) The EA shall apply this section to disposal facilities other than municipal solid waste landfill units as necessary to control vectors, fires, odors, blowing litter, scavenging, and nuisances without presenting a threat to human health and the environment. This requirement shall also apply to municipal solid waste landfills which qualify for a delay in the general compliance date or additional flexibility as specified in 40 CFR Part 258.

(11) The owner or operator shall implement a program described in the Report of Disposal Site Information as required by §21600(b)(6) to minimize contamination of alternative daily cover with wastes not included within the individual alternative daily cover material types specified in subdivision (b) of this section and wastes that would conflict with the performance requirements of §(a)(2).

(b) Specific Requirements

All types of ADC must be approved by the EA in writing prior to use at solid waste landfills as consistent with Title 27, California Code of Regulations, §21570 through §21686. Proposed uses of alternative daily cover materials not specified below shall be subject to site specific dem-
onstration projects approved by the EA with concurrence by the CIWMB to establish suitability as daily cover. Unless otherwise specified in this section, alternative daily cover use by blending listed materials other than using side-by-side on the working face, or layering on top of one another listed materials, shall require site-specific demonstration projects approved by the EA with concurrence by the CIWMB as required by subsection (a)(1). Site specific demonstration projects are not required for the following materials used as specified and in accordance with subdivision (a) of this section.

(1) Geosynthetic Fabric or Panel Products (Blankets)
(A) Geosynthetic blanket products shall be removed from the waste and the waste shall be covered with new waste or approved cover materials within 24 hours of product placement, unless the product is intended to be nonreusable, or has been approved by the EA for continuous use beyond 24 hours.

(2) Foam Products
(A) Foam products shall not be applied when there is precipitation or when there is a local forecast of greater than 40% chance of precipitation within 8 hours of application time in the vicinity of the landfill.
(B) Foam products shall be covered with waste or other approved cover materials within 72 hours of application, unless a shorter time period is required by the EA to meet the requirements of §(a)(2) and (a)(3) of this section.

(3) Processed Green Material
(A) For the purposes of this section, processed green material means any plant material that is either separated at the point of generation, or separated at a centralized facility that employs methods to minimize contamination. Green material includes, but is not limited to, yard trimmings, untreated wood wastes, paper products, and natural fiber products. Green material does not include treated wood waste, mixed demolition or mixed construction debris, manure and plant waste from the food processing industry, alone or blended with soil. Processed green material may include varying proportions of wood waste from urban and other sources and shall be ground, shredded, screened, source separated for grain size, or otherwise processed.
(B) Green material used for alternative daily cover shall be processed prior to being applied to the working face unless the green material to be used as alternative daily cover already meets the grain size specifications. Prior to spreading and compacting on the working face, processed green material shall comply with a grain size specification by volume of 95% less than 6 inches. Alternative processing and grain size specification requirements may be approved by the EA if the EA determines that the alternative meets the performance requirements of §(a)(2) and (a)(3) of this section and the CIWMB concurs.

(C) Processed green material shall be restricted to a minimum compacted thickness of 6 inches and average compacted thickness of less than or equal to 12 inches.
(D) Processed green material placed as cover shall not be exposed for greater than 21 days.

(4) Sludge and Sludge- Derived Materials
(A) Public contact with sludge or sludge-derived materials, either alone or blended with soil, ash, processed green material, or stabilization agents such as lime, lime dust, or cement kiln dust, shall be prohibited. This prohibition shall apply to staking, processing, tipping, and cover placement areas.
(B) Sludge or sludge-derived materials, either alone or blended with soil, processed green material, ash, or stabilization agents such as lime, lime kiln dust, or cement kiln dust, shall form a compacted material which can be placed without forming open voids or causing material to be tracked off the working face area.
(C) Sludge or sludge-derived materials shall be restricted to a minimum compacted thickness of 6 inches and average compacted thickness of less than or equal to 12 inches.

(5) Ash and Cement Kiln Dust Materials
(A) Ash and Cement Kiln Dust, either alone or blended with earth material or stabilization agents, shall form a compacted material which can be placed without forming open voids or causing material to be tracked off the working face area. For the purposes of this section ash means the nonhazardous residue from the combustion of material or the hazardous residue which may be managed as a nonhazardous waste in accordance with Title 22 California Code of Regulations §§ 66260.200(f) or 66260.210.
(B) Ash and Cement Kiln Dust, either alone or blended with earth material or stabilization agents shall be used as alternative daily cover in a manner to minimize the creation of dust.
(C) Ash and Cement Kiln Dust, either alone or blended with earth material or stabilization agents, shall be restricted to a minimum compacted thickness of 6 inches and average compacted thickness of less than 12 inches.

(6) Treated Auto Shredder Waste
(A) Auto shredder waste shall be treated pursuant to Title 22, California Code of Regulations, § 66268.106(a)(1).
(B) Treated auto shredder waste used for alternative daily cover shall be restricted to a minimum compacted thickness of 6 inches and average compacted thickness of less than 24 inches.

(7) Contaminated Sediment, Dredge Spoils, Foundry Sands, Energy Resource Exploration and Production Wastes
(A) Contaminated sediment, dewatered dredge spoils, foundry sands, or processed energy resource exploration and production wastes shall be restricted to a minimum compacted thickness of 6 inches and average compacted thickness of less than 12 inches. Such materials shall form a compacted material which can be placed without forming open voids or causing material to be tracked off the working face area.

(8) Compost Materials
(A) Except as provided in §(b)(8)(B), of this section, compost shall meet the environmental health standards of Title 14, California Code of Regulations, Division 7, Chapter 3.1, Article 7.
(B) Public contact shall be precluded from cover staging, processing, tipping, and placement areas for compost which does not meet the environmental health standards of Title 14, California Code of Regulations, Division 7, Chapter 3.1, Article 7.

(C) Compost materials shall be restricted to a minimum compacted thickness of 6 inches and average compacted thickness of less than or equal to 12 inches. Compost materials shall comply with a grain size specification by volume of 95% less than 6 inches.

(9) Processed Construction and Demolition Wastes and Materials
(A) Processed construction and demolition wastes and materials shall be ground, pulverized, shredded, screened, source separated, or otherwise processed, alone or mixed with soil in a manner to provide a compacted material free of open voids when applied to meet the performance requirements as alternative daily cover.
(B) Processed construction and demolition wastes and materials used as alternative daily cover shall be restricted to the following materials: rock, concrete, brick, sand, soil, ceramics, cored asphalt, lumber and wood, wood products, roofing material, plastic pipe, plant material when commingled from construction work, and fines derived from processing the above materials.

(C) Construction and demolition wastes shall be processed prior to being applied to the working face. Prior to spreading and compacting on the working face, these materials shall comply with a grain size specification by volume of 95% less than 12 inches and 50% less than 6 inches as determined by the EA. The CIWMB shall provide technical assistance in making this determination if requested by the EA. Alternative processing and grain size specification requirements may be approved by the EA if the EA determines that the alternative meets the performance requirements of §(a)(2) and (a)(3) of this section and the CIWMB concurs.
(D) Construction and demolition wastes shall be restricted to a minimum compacted thickness of 6 inches and average compacted thickness of less than 18 inches.

(10) Shredded Tires

(A) Shredded tires used as daily cover alone or mixed with soil shall be shredded such that 50% by volume is smaller than 6 inches in length and no individual pieces are greater than 12 inches in length.

(B) Shredded tires used as alternative daily cover without admixed soil shall not be applied when there is precipitation or when there is a local forecast of greater than 40% chance of precipitation within 8 hours of application time in the vicinity of the landfill.

(11) Spray applied Cementitious products

(A) Such products shall not be applied when there is a local forecast of greater than 40% chance of precipitation within 8 hours of application time in the vicinity of the landfill.

NOTE: Authority Cited: Sections 40502, 41781.3, 43020, 43021, 43030 and 43103, Public Resources Code; Reference: Sections 40508, 42245, 43020 and 43021, Public Resources Code; and Title 40 Codes of Federal Regulations Section 258.21.

§ 20695. CIWMB—Cover Performance Standards.  [T14§17683]

The EA may require the following cover performance standards if necessary to control vectors, fires, odors, and blowing litter and to evaluate the suitability of alternative daily or intermediate cover:

(a) Vectors

(1) Threshold Values—The following shall constitute threshold values for vector populations:

(A) Flies—A fly grill survey value of six (6) or more domestic flies, or observations of domestic flies in the “crawler” stage (newly emerged adults prior to wings becoming functional) at a density of three (3) or more per square yard of surface area at any location on the disposal area. Domestic flies are considered to be those species in the Families: Muscidae (including Anthomyiidae), Calliphoridae, Sarcophagidae, and Drosophilidae.

(B) Domestic Rats—The trapping of one or more domestic rats anywhere on the disposal site. Domestic rats are considered to be any species in the genus Rattus.

(C) Field Rodents—Observation of five (5) or more field rodents feeding on the active face of the disposal site. Field rodents are considered to be any species in the Family Sciuridae.

(D) Mosquitoes—The observation of any immature mosquito stages from water holding waste materials on the disposal site.

(E) Wasps, cockroaches, etc.—The observation of excessive populations utilizing accepted norms.

(2) Inspection Practices

(A) Schedule—Fly grill surveys shall be conducted on each disposal site a minimum of once per week. Sampling to determine the species composition of the fly population shall be conducted a minimum of once per month. Rat trapping surveys shall be conducted at least once each month. Observations for mosquitoes, wasps, cockroaches, “crawler” flies or other types of vectors shall be made during each inspection of the disposal site. The EA may approve alternative inspection schedules or cease inspections if previous inspections or other observations indicate no further threat to public health and safety.

(B) Procedure—Ten (10) fly grill counts shall be made over appropriate attractants on the active face of the disposal site during each inspection utilizing accepted practices to count and record the flies. The five (5) highest counts shall be averaged to obtain the value for that inspection. In sampling to provide qualitative data for the fly species composition on a disposal site, any of the following or other acceptable method for sampling adult flies shall be observed:

—bait traps, exposed for at least a continuous 24-hour period at separate locations,
—sticky traps, exposed for a continuous 24-hour period at separate locations,
—utilization of a standard insect net on the active working face, or
—other approved method to provide a representative sample.

For uniformity of information, one of the approved methods shall be selected for use on a continuing basis at each disposal site.

A minimum of two (2) domestic rat trap lines each containing twenty (20) traps shall be operated for one night on each disposal site at the prescribed frequency. Traps appropriately baited, shall be set at 20-foot intervals in each trap line. One trap line shall be located on or as close to the active face as practical. The other trap line shall be located on the periphery of the site in suitable rodent habitat. On very large sites additional trap lines will be required to provide ample observation area. Visual observations of field rodents or their signs shall be made and recorded during each inspection.

(C) Equipment—All fly surveys conducted on the active face of the disposal site shall be made with a Scudder fly grill. This device is a square grill consisting of 24 slats, each 3” * 3/4” * 1/4” placed 3/4” apart on a z-shaped framework. Species composition of fly populations at the site shall be made with the use of fly traps, sticky traps, an insect net, or other approved method to provide a representative sample. Snap traps or live traps, or a combination thereof, of suitable size and design shall be used to capture mature domestic rodents.

(D) Records—The following information shall be recorded at a minimum during each inspection: Name of site; location; date of inspection; name of person(s) making the inspection; the time the inspection began; the time the inspection ended; temperature; wind conditions; moisture conditions; sky conditions; shade; attractants, when applicable; results of the 10 Scudder grill counts; number and species of all flies captured; number of domestic rats trapped since the previous inspection; number of field rodents observed (or signs of their presence), and the presence of any mosquitoes, wasps, cockroaches, or other types of vectors.

These records shall be kept up to date and shall be submitted to the EA upon request.

(b) Fire

Burning material, or any solid waste at a temperature likely to cause fire, shall not be deposited in the fill. Said material shall initially be deposited in a separate location a sufficient distance from the fill area to prevent fires from spreading to the normal fill area. It shall then be spread in a single layer not exceeding one (1) foot in thickness and immediately covered with a sufficient amount of earth or sprayed with sufficient fire retardant to extinguish all combustion. Final disposition of the material shall not take place until the operator is certain that no further combustion will take place under any conditions.

Fires which originate within the fill shall be handled by removing all the burning material from the fill and extinguishing it as described above, or by in-situ practices approved by the EA, in consultation with the local fire authority. Excavation of burning materials shall be undertaken in a planned and controlled manner, with sufficient fire fighting equipment present to control any “flare-ups” which may occur as outside air reaches the burning materials. The EA shall be immediately notified of any fire.

(c) Litter

Accumulation or offsite migration of litter in quantities that create a nuisance, injury to the public and personnel, or cause other problems, shall be prevented.

(d) Alternative Methods

Alternative cover performance standards in lieu of (a) through (c) of this section may be applied by the EA with concurrence by the CIWMB.

§ 21565. CIWMB—Exemptions from Requirement of a Permit or Other Regulatory Tier Requirements. (T14 §18215)

(a) After a public hearing the EA may grant an exemption from the requirement that the operator of a facility or operation obtain a permit or comply with other Regulatory Tier Requirements established in Title 14, California Code of Regulations, section 18100 et seq. Such an exemption may be granted if the facility falls within one of the classifications in subsection (b) and all of the following findings are made:

1. The exemption is not against the public interest.
2. The quality of solid wastes is insignificant.
3. The nature of the solid wastes poses no significant threat to health, safety, or the environment.

(b) Classifications of solid waste facilities that may be exempted are:

1. Facilities or portions thereof doing research funded primarily by government grants;
2. Drilling mud disposal sumps for short-term use (less than one year) if significant quantities of hazardous or toxic materials are not present in the mud, fluids and cuttings from drilling and associated operations (Note: currently on site sumps are exempted under T23 §2511(g) & in §20090(j) of this subdivision);
3. Unclassified waste management units as defined by the State Water Resources Control Board (SWRBC), except as otherwise provided in CCR, Title 14, Division 7, Chapter 3.0, Article 5.95;
4. Farm or ranch disposal sites for one- or two-family use;
5. Resource Recovery facilities intended only for demonstration purposes and not for profit;
6. Disposal sites to be used exclusively for one of the following: for spreading of either cannon wastes or oily wastes, mine tailings, ashes and residues, agricultural wastes, street sweepings, dirt from excavations, slag if disposed of on site, or waste water treatment sludge if disposed of on site or to specified agricultural lands; and
7. Evaporation ponds for disposing of salts from oil and geothermal drilling operations.

(c) The EA may inspect any exempted facility in accordance with CCR, Title 14, Division 7, Chapter 5, Article 2.2, section 18083. Where the EA has reason to believe that circumstances have changed and the findings made pursuant to subsection (a) can no longer be supported, the EA may, after holding a public hearing, rescind the exemption.

d) All exemptions and rescissions of exemptions shall be forwarded to the CIWMB within seven days after the decision is issued.

[Comment: In exempting facilities, the EA should recognize that only facilities which are solid waste facilities or operations, as defined in Public Resources Code section 40194, must obtain either a permit or an exemption. The following are examples of facilities that need not apply for an exemption or a permit:
1. A facility solely engaged in purchase or sale of salvaged separated materials.
2. Scrap metal, glass, cardboard and fiber brokers and manufacturing firms, which utilize salvaged materials.
3. Recycling centers that only handle salvaged separated materials for reuse.
4. Salvaged separated material collection, storage, or processing activities.]
(B) Information on the status of the application’s compliance with the CEQA regarding the facility, including the proposed project description. Once there has been compliance with the CEQA regarding the facility, evidence of compliance shall be submitted to the EA; and

(4) Any CEQA Mitigation Monitoring Implementation Schedule; and

(5) Conformance finding information, including one of the following:

(A) Until a countywide or regional agency integrated waste management plan has been approved by CalRecycle, the application shall include statements that: the facility is identified and described in or conforms with the County Solid Waste Management Plan, or otherwise complies with Public Resources Code §50000; and that the facility is consistent with the city or county General Plan and compatible with surrounding land use, in accordance with Public Resources Code §50000.5; or

(B) After a countywide or regional agency integrated waste management plan has been approved by CalRecycle, the application shall include a statement that: the facility is identified in either the countywide siting element, the non-disposal facility element, or in the Source Reduction and Recycling Element for the jurisdiction in which it is located; or, that the facility is not required to be identified in any of these elements pursuant to Public Resources Code §50001; and

(6) For disposal sites, completeness determination of Preliminary or Final Closure/Postclosure Maintenance Plan as specified in §§21780, 21865, and 21890 (Subchapter 4 of this Chapter); and

[Note: The operator has the option of submitting the preliminary closure plan with the JTD, in which case the EA, RWQCB, and CalRecycle would review it at the same time. If deemed complete by the reviewing agencies, the solid waste facilities permit application package could then be accepted for filing if all other information in the JTD is accepted by the EA. Or the operator can submit a stand-alone preliminary closure plan to be deemed complete by reviewing agencies before the application package is submitted to the EA. For CalRecycle purposes, all final closure/postclosure plans are stand-alone documents but can be processed jointly with a proposed solid waste facilities permit revision as long as the final plan is determined complete prior to approval of the proposed solid waste facilities permit. The JTD index prepared for the EA should show where each closure requirement is addressed in the closure/post-closure plan.]

(7) For disposal sites, a copy of the most recently submitted detailed written estimate or latest approved estimate, whichever identifies the greatest cost, to cover the cost of known or reasonably foreseeable corrective action activities, pursuant to §22101;

(8) For disposal sites, current documentation of acceptable funding levels for required closure, postclosure maintenance, and corrective action Financial Assurance Mechanism (in accordance with Chapter 6, Division 2); and

(9) For disposal sites, current documentation of compliance with operating liability requirements in accordance with Chapter 6;

(10) For disposal sites permitted for more than 20 tons–per-day, a ground or aerial survey to be completed at least once every five years or more frequently as determined by the EA. For disposal sites permitted for 20 tons–per-day or less, a ground or aerial survey must be completed at least once every ten years. Survey results must be submitted as a CAD file or vector graphics data file including at least two strata, i.e., 1) a stratum showing the base and finished ground surfaces, and 2) a stratum showing the existing and finished ground surfaces. For disposal sites where a change in permitted volume is proposed, a third stratum showing the base and proposed finished ground surfaces must be included. For each stratum the following information shall be included: site name, stratum name, surface1 name, surface2 name, volume calculation method (grid, composite, section), expansion (cut) factor, compaction (fill) factor, cut volume, fill volume and net volume. All volumes shall be reported in cubic yards. If the base ground surface is uncertain, the operator is allowed to provide the best available information as a substitute for the actual as-built contours. If selecting this substitute method, the operator must provide an explanation of the basis for using the substitute base ground surface. For the purposes of this section the following definitions apply:

(A) “base ground surface” — the best available excavation plan surface that existed prior to the placement of any waste;

(B) “CADD” — computer-aided design and drafting;

(C) “compaction (fill) factor” — the factor used to correct for expected compaction of fill material; this factor should normally be unity (one); if the factor is not unity (one), an explanation must be provided for the basis of the volumetric correction;

(D) “cut volume” — for any stratum, the volume removed by a cut of a lower surface to achieve the upper surface;

(E) “existing ground surface” — the topography that exists at the time of the subject survey;

(F) “expansion (cut) factor” — the factor used to correct for expected expansion of a cut surface; this factor should normally be unity (one); if the factor is not unity (one), an explanation must be provided for the basis of the volumetric correction;

(G) “fill volume” — for any stratum, the volume between the upper and lower surfaces;

(H) “finished ground surface” — the final fill plan surface as shown in the approved closure plan for the disposal site;

(I) “net volume” — the fill volume less the cut volume;

(J) “site name” — the name of the disposal site for which the survey information is being submitted;

(K) “stratum (plural: strata)” — a particular volume of a solid waste landfill bound by specified upper and lower surfaces;

(L) “stratum name” — a descriptive name for the stratum for which volumetric information is being submitted, e.g., total volume including proposed expansion;

(M) “surface names” — names for the pair of surfaces that define a named stratum, e.g., base ground surface and proposed finished ground surface;

(N) “survey” — a comprehensive examination of the disposal site under the direction of registered civil engineer or licensed land surveyor for purposes of determining the topography of the base, existing and finished ground surfaces, and the volumes bound by those surfaces;

(O) “vector graphics” — computer generated images comprised of lines and shapes of given origin, direction, thickness, color and other attributes;

(P) “volume calculation method” — grid, composite, section or other method approved by the enforcement agency;

(11) For disposal sites, one of the following:

(A)(i) In-place waste density (pounds of waste per cubic yard of waste). The in-place waste density is the estimated or measured density of in-place waste material achieved by mechanical or other means in the development of the current lift of the current operating waste cell, and

(ii) Waste-to-cover ratio, estimated, (volume:volume). The waste-to-cover ratio estimate is a unit-less expression of the proportion of the volumes of waste and cover that comprise a volume of compacted fill material, e.g., 4:1. The cover portion of the waste-to-cover ratio estimate should include only soil or approved daily or intermediate alternative cover that is not considered a waste material, i.e., payment of fees to CalRecycle is not required. The waste portion of the waste-to-cover ratio estimate should include only waste material for which payment of fees to CalRecycle is reported, or

(B) Airspace utilization factor (tons of waste per cubic yard of landfill airspace). The airspace utilization factor (AUF) is the effective density of waste material in the landfill. The AUF is recorded as the total weight of waste material passing over the landfill scales that is placed in a known volume of landfill airspace in a given period of time. The waste portion of the AUF should include only waste material for which payment of fees to CalRecycle is reported.

(12) List of all public hearings and other meetings open to the public that have been held or copies of notices distributed that are applicable to the proposed solid waste facilities permit action.

§ 21580. CIWMB—Submital of an Incomplete Application Package (T14 §18203)

The applicant may request, in writing, that the EA accept an incomplete application package. As a condition of acceptance, the applicant shall waive the statutory time limit contained in Public Resources Code §44008. The application package shall conform to §21570 within 180 days from the date the EA agrees to accept the package as incomplete or the application package shall be rejected. Upon submittal of an incomplete package, the applicant shall list the deficiencies in the package, reasons for the incomplete submittal, and a proposed schedule as to when the deficiencies will be submitted. For an application for a new or revised solid waste facilities permit, within 90 days after receiving the application complete and correct, the EA shall notice and conduct an informational meeting as required by §§21660.2 and 21660.3.


§ 21585. SWRCB—Joint Technical Document (JTD), (new)

Regulations in this section were promulgated by the State Water Resources Control Board (SWRCB), are administered by the appropriate Regional Water Quality Control Board (RWQCB) through the issuance of waste discharge requirements (WDRs) or other enforceable orders, and are applicable both to the RWQCB and to the owner or operator of a waste management unit (Unit) for the treatment, storage, or disposal of solid waste, in cases where the Unit is jointly regulated by the RWQCB and by one or more other state agencies.

(a) JTD Addresses All Post–CUP Permitting Agency Requirements—After July 18, 1997, for any Unit jointly regulated by the RWQCB and another state agency (or agencies), the report of waste discharge (ROWD) submitted to the RWQCB in support of the development or revision of WDRs for that Unit shall be in the form of a joint technical document (JTD) which includes all applicable information required under Article 4 of Subchapter 3 of this chapter (§21710et seq.), in addition to all information necessary to support the development (or modification, as appropriate) and issuance of any state or local agency permits, other than the conditional use permit, that are required to operate the Unit (including but not limited to the lateral expansion of any Unit).

(1) JTD Submittal Date—For new Units for which the ROWD is initially submitted (as part of the application for WDRs) after July 18, 1997, the discharger shall submit the ROWD in the form of a JTD when applying for WDRs for the Unit. For all other new Units and for existing Units, the discharger need not reorganize and resubmit, as a JTD, those portions of the ROWD submitted prior to July 15, 1997. For new and existing Units, after July 18, 1997, except for scheduled monitoring reports, each submittal regarding the Unit, whether initiated by the discharger or requested by RWQCB, shall be made in the form of a separate addendum to the JTD, pursuant to §1(a)(4).

(2) JTD Scope—The discharger is responsible for identifying all state and local agencies for which the JTD will serve as a joint permitting information document, pursuant to §1(a). Nevertheless, for a landfill, the list of agencies addressed in the JTD shall include at least the RWQCB, the CIWMB, the EA, and the AQMD or APCD.

(3) Integration—The discharger is free to organize the JTD in any manner that maximizes the readability and compactness of the document. Nevertheless, to the extent feasible, with respect to any portion of the JTD that discusses a subject of regulatory concern to more than one agency, the discharger shall integrate the discussion to satisfy the concerns of all agencies concerned with that subject. Likewise, to the extent feasible, for facilities having more than one Unit, the JTD shall address topics which are germane to all Units at the facility (e.g., the hydrogeology of the facility and surrounding area) in a manner which integrates and incorporates all concerns applicable to each individual Unit and to the facility in general.

(4) JTD Addenda—After July 18, 1997, each submittal made to any permitting agency encompassed by the JTD shall be in the form of a numerically-sequential addendum to the JTD (i.e., Addendum 76 would be followed by Addendum 77). For any given topic being addressed by a given addendum, the discharger shall send a copy of that addendum simultaneously to each permitting agency listing that topic in their agency-specific JTD Index, and shall include an updated JTD page listing for each Water Board JTD index line–item [under §1(b)] that is addressed by that addendum.

(b) Water Board (JTD) Index—As of July 18, 1997, each RWQCB shall make available to the discharger (both in hard copy and on magnetic media) a JTD index (Water Board Index) listing, by unique line–item number, each topic which the JTD must address to provide the RWQCB information needed to write and adopt or revise WDRs. For each line item (i.e., for each separately listed topic) in the Water Board Index, the discharger shall list all JTD pages (by page number or ranges thereof) addressing that topic. In cases where the preliminary or final closure and post–closure maintenance plan is submitted as a separate part of the JTD, as allowed by §21769(a), the component parts of the plan shall nevertheless be listed as part of the JTD index.

(c) Coordination—Upon the submittal of a new JTD or addendum, the RWQCB shall concentrate the initial review upon those line–items in the Water Board Index which are coded as being of joint interest with other agencies. Regarding all such joint–interest line–items in the Water Board Index, the RWQCB shall coordinate with staff from the other interested agencies, as appropriate, to ensure that WDRs (or proposed changes thereto) do not duplicate or conflict with the requirements of the other agencies.


Any operator of a disposal site which is required to submit a RDSI, closure/postclosure maintenance plan, and/or a ROWD or any other report that addresses similar regulatory concerns, may address those requirements under one JTD. The JTD will be used in place of the RDSI only if it meets all the requirements set forth in §21600 and lists where each requirement has been satisfied in the document in the form of a JTD index, pursuant to §1(c).

(a) After July 18, 1997, any operator of an existing facility who submits an application package to the EA, pursuant to §21570, which proposes to change the facility’s operations, or to change the SWPF shall do one of the following:

(1) Submit the updated information as an amendment to the existing JTD along with, a JTD index as described in §1(c), referencing the new or updated information; or

(2) Submit a complete JTD as described in §21600 along with a JTD index as described in subsection c.
(b) After July 18, 1997 any operator of a new facility that submits an application package to the EA pursuant to §21570, shall submit a complete JTD pursuant to §21600, and an index of the topics addressed in the JTD to be used by the EA as described in §(c).

(c) As of July 18, 1997, the operator shall include with the JTD a copy of an index specifically for use by the EA. The page number or the first line number within the JTD which addresses the topic shall be noted next to that topic in the index. The EA shall make available to the operator either in hard copy and/or magnetic media a JTD index listing, (Index found in Appendix 2) showing each topic which the JTD must address to provide the EA with relevant facility information for writing or revising the facility permit.

(d) These requirements do not apply to those facilities which have filed a ROWD or RDSI and application for SWFP prior to July 18, 1997. In the event the EA determines the application package for an RDSI first submitted prior to the effective date of these regulations to be incomplete, additional information requested shall be submitted as part of the RDSI and/or application for SWFP, as appropriate.


HISTORY
1. New section filed 6–18–97; operative 7–18–97 (Register 97, No. 25).


The JTD shall describe how the facility will comply with Section 20070 of Chapter 1 of this Division, if applicable, and include the specific variance(s) in criteria requested; project research goals; environmental monitoring, contingency and mitigation measures to be implemented for the project; and performance measures to determine to what extent the site is progressing in attaining project goals and protection of public health and safety and the environment. The description shall also include a summary and protocols for: 1. project controls to compare project performance with an equivalent or similar operation or activity not authorized by section 20070; 2. if applicable, processing of materials prior to placement in the MSWLF Unit at the facility; 3. potential accumulation of constituents of concern as defined in section 20164 of Chapter 1 of this Division; 4. if applicable, energy recovery; and 5. if applicable, impacts to postclosure maintenance. The description shall be incorporated in each applicable section of the JTD, in addition to a separate section describing the overall project.


HISTORY

§ 21600. CIWMB—Report of Disposal Site Information (RDSI). (T14;§17607, 17616, 17626, 17628, 17629, 18222)

(a) In order to obtain a solid waste facility permit, each operator of a disposal site must file with the EA a RDSI as required in §21600 and §21590. The information contained in the RDSI shall be used to determine whether a permit should be issued and to provide information to be included within the permit if applicable. In order to maintain the permit, the operator must file amendments to the RDSI as required in §21655. Such amendments or lack thereof may become the basis for changes in the permit or for revocation of the permit. The submittal shall contain only those items listed in §21570(f) that have changed or otherwise specified by the enforcement agency.

(b) A RDSI shall contain the following:

(1) General

(A) Facility Overview — Provide a statement including the name of the site, the name of the person who will operate the site, the name of the person who owns the land, and a description of the operation cycle.

(B) Site Plan — Provide facility plan(s), including the pre-disposal topography of the site, the facility boundary of the site (clearly illustrating parcels owned by the operator and/or any parcels leased), the total permitted acreage of the site, the acreage of the disposal area, fill sequencing and excavation plans, the extent of any buffer zones between the disposal area and the permitted property boundaries provided by the facility layout, and the vertical limits of the site. The map required for a ROWD/JTD may be used for the RDSI providing all requirements of this subsection are met.

(C) Hours — State the hours and days of operation for the site, including but not limited to maintenance, site operation, receipt of waste, and public and commercial access.

(2) Waste Classification and Management

(A) Waste Types/Volumes — Describe the types of wastes accepted or proposed for acceptance. Estimated waste volumes should be presented, including current daily average and peak daily waste flows as well as a five year projected waste flow. Specific mention shall be made concerning the receipt of liquid, designated, special wastes or hazardous waste, if taken.

(3) Waste Management Unit Classification and Siting

(A) Airport Safety — Provide documentation that the Federal Aviation Administration and appropriate airport officials were notified if a new MSWLF unit or lateral expansion will be sited within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft. Include results of the demonstration requirement, if required by §20270.

(B) Volumetric Capacity — Provide calculations for volumetric capacity of the site expressed in cubic yards, net permitted capacity available for waste disposal, including the amount of capacity consumed by soils used for liner construction, daily and intermediate cover, and final cover, if included in the total capacity given. Attach topographic maps, including the delineation of the site property boundary and the disposal area used for the volumetric calculations and the date of survey. This information shall be certified by a registered civil engineer or registered geologist.

(C) Site Life Estimate — Provide an estimate of the site life based on the capacity of the site and the waste flow projections, and assumptions regarding the compaction density used in life expectancy calculations. Include any other factors which may effect site life (e.g., local restrictions).

(D) Site Location — Describe the site location, referencing a location map highlighting the legal boundaries, points of access, and major access routes for waste deliveries to the site.

(E) Land Use — Describe and provide a plot plan showing land uses and land use zoning for all properties within 1000 feet of the facility boundary shown on a site plan. The site plan must show structures located on these adjacent properties or distances to the nearest structures. The plot plan shall include specific limits of the existing and planned disposal areas, in relationship to the surrounding land use.

(F) Auxiliary Facilities — Describe and provide a plot plan showing all auxiliary facilities at the site, including, but not limited to, administration buildings, entrance facilities, scales, maintenance structures, and hazardous materials storage areas.

(4) Design and Construction Standards for all Sites

(A) General Design Parameters — Describe how the site design accommodates or provides for the service area, climatological factors, physical setting, soils, drainage, and other pertinent information. The design shall be developed by a registered civil engineer or registered geologist. If the site is to be used by the general public, show how the design accommodates such use.

(B) Design Responsibility — Design of a new disposal site shall be under the direction of a registered civil engineer. The designer shall utilize expert advice as appropriate from persons competent in soils, hydrology, geology, landscape design, chemistry and other disciplines.

(C) Construction Sequencing Plans — Describe sequencing plans showing the anticipated phases of site development. A map showing the
topographical contours prior to filling and the existing topographical contours of the permitted boundary.

(D) Grading Plan — Include a grading plan showing the proposed final elevations of the completed disposal site, and excavation depth, including existing and proposed borrow area.

(E) Gas Management Plan — The gas management plan shall include a description of the facility’s gas control and monitoring systems. The site plan shall show locations of monitoring wells. The plan shall describe how the facility will comply with §20919 and §20919.5. Describe any possible use of landfill decomposition gases. Reference any additional information provided in the closure plans pursuant to Article 6.

(5) Operating Criteria

(A) Records — Describe the procedures for maintaining accurate records as required in §§20510 and 20515.

(B) Security — Describe how the operator will discourage unauthorized access by persons or vehicles.

(C) Sanitary Facilities — Describe the sanitary facilities available to site personnel and the public.

(D) Communications Systems — Describe the communications systems utilized and emergency communications procedures followed at the site.

(E) Lighting — Describe the locations, numbers, and types of all permanent and portable lighting to assure safety of employees during nighttime operations, if applicable.

(F) Safety Equipment — List personal safety equipment used by operating and maintenance personnel.

(G) Personnel Requirements — State the minimum numbers and qualifications of personnel required for site operations, maintenance, environmental controls, records, emergency, and health and safety.

(H) Personnel Training — Describe the training required by the various personnel identified above and how that training is to be provided in order to comply with §20610.

(I) Supervisory Structure — Describe supervisory structure, including the management organization which will operate the site and the name of supervisor(s).

(J) Spreading and Compaction — Describe the equipment and methods used to spread and compact wastes.

(6) Cover and Beneficial Use

(A) Cover Materials — Provide a plot plan identifying cover material quantities required from on-site sources, excavation sequence of the site and stockpile locations if stockpiled for a significant amount of time. Identify or describe off-site sources or types of cover materials needed for a five year duration if not included on plot plan.

(B) Alternative Daily Cover and Beneficial Reuse — Describe alternative daily cover and beneficial reuse waste types, processing methods, alternative processing or grain size specifications if applicable, operations methods, and applicable engineering, or other standard practices that will be used to ensure compliance with §§20695 and 20690. Estimate the range in tons of these materials that are anticipated to be used, based on waste types, applicable cover to waste volume ratios, applicable density conversion factors, engineering specifications, methods to minimize contamination, or other pertinent information. Materials accepted at the landfill to be used as alternative daily cover or for beneficial reuse shall be weighed upon receipt at landfills which have scales but need not be weighed again prior to placement at the landfill. Appropriate conversion factors for specific materials based on industry standards are acceptable for tracking materials received at landfills which do not have scales.

(C) Cover Frequency — State the cover frequency proposed or the alternative daily cover proposed for use in lieu of soil as daily cover. Provide information regarding compliance with §§20680 and 20695 if applicable.

(D) Intermediate Cover — Describe the operator’s methods for placing intermediate cover on all areas of the landfill which have not received waste for an 180 day or more time frame.

(7) Handling

(A) Public Health Design Parameters — Disposal sites shall be designed in such a manner as to minimize the propagation or harborage of flies, rodents or other vectors, and the creation of nuisances by reason of solid wastes being deposited at the site. Other factors which shall be taken into consideration are air and water quality, noise control, odor control, public safety and other pertinent matters related to the protection of public health.

(B) Salvaging Activities — If salvaging activities are proposed, describe types of materials handled, and procedures to ensure that salvaging and other waste activities are conducted in a planned and controlled manner so they do not interfere with other aspects of site operation. Provide an EA approved list of items which the facility is permitted to salvage. Describe the storage area for salvaged materials generated on-site or imported. Describe the procedures to ensure that salvage is removed at a frequency which will prevent health or fire problems.

(C) Volume Reduction Activities — If volume reduction activities such as baling and shredding are proposed, describe procedures to ensure proposed operations are conducted in a controlled manner so that they do not interfere with proper construction and maintenance of the site, and do not create health, safety or environmental problems.

(D) Equipment — Describe the minimum equipment requirements necessary to assure ongoing compliance with the state minimum standards. List on-site equipment designated as standby, or provide an up-to-date list of firms or agencies which can supply replacement units within a period of time short enough to ensure compliance with all regulatory requirements. Describe preventative maintenance activities for the equipment listed above.

(E) Waste Handling — Describe dimensions of unloading area and unloading practices. Include procedures for handling, unloading and disposal of liquid waste, special waste, or hazardous waste, if accepted.

(8) Controls

(A) Nuisance — Describe procedures to prevent or control public nuisances.

(B) Fire — Describe procedures for handling burning waste and preventing landfill fires.

(C) Leachate — Describe methods for controlling surface leachate to prevent contact with the public.

(D) Dust Control — Describe procedures which will be taken to control and minimize the creation of dust and prevent safety hazards due to obscured visibility.

(E) Vectors — Describe measures to be taken to control or prevent the propagation, harborage or attraction of flies, rodents, or other vectors and to minimize bird problems.

(F) Drainage and Erosion — Provide a conceptual design and description of the drainage system as it pertains to roads, structures and gas monitoring systems, preventing safety hazards and preventing the exposure of waste.

(G) Litter — Describe the collection frequency for controlling litter and windblown materials in order to prevent the accumulation of quantities which cause a public nuisance or other problems. Include the litter control method used, i.e. litter fences, litter crews, etc.

(H) Noise — Describe the methods for ensuring that noise from site operations are controlled to prevent nuisance to persons using the site and nearby residents.

(I) Traffic — Describe the traffic control plan, showing that the traffic flow into, on, and out of the site is controlled to minimize interference and safety problems for traffic on-site and adjacent public streets or roads.

(J) Hazardous Waste — Describe in detail the hazardous waste screening program.

(9) Compilation of approvals — Provide a list of all approvals having jurisdiction over the disposal site.


HISTORY
1. New section filed 6–18–97; operative 7–18–97 (Register 97, No. 25).
2. Amendment of subsections (b)(5)(A), (b)(6) and (b)(5)(A), new subsection (b)(6)(B) and subsection relettering filed 5-24-2004; operative 7-23-2004 (Register 2004, No. 22).

3. Change without regulatory effect amending subsections (b)(6)(B)–(C) filed 8-23-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 21610. CIWMB—Amendments to Application Package. (T14:§18202(a))

At any time after the application package has been submitted and before issuance or denial of the permit or alteration thereof, the applicant shall promptly notify the EA of any changes in any of the information required in the application package. Such notice shall be given by filing two copies of the amendments to the application within seven days of the applicant’s first knowledge of the changes. For processing additions, revisions or amendments to the proposed permit and accompanying documents, refer to section 21685(d).


HISTORY
1. New section filed 6-18-97; operative 7-18-97 (Register 97, No. 25).
2. Change without regulatory effect amending section filed 3-8-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

§ 21615. CIWMB—Completeness Appeal. [T14:§18203(f)]

If an application is determined not to be complete, the applicant may appeal the decision to the EA within fifteen (15) days of the date of notification. Such an appeal must be in writing and specify the grounds for the appeal. A final written determination on the appeal shall be made by the hearing panel or hearing officer designated pursuant to Public Resources Code §§44308 or 44309, whichever is applicable, no later than 60 days after the EA’s receipt of the applicant’s appeal.


HISTORY
1. New section filed 6-18-97; operative 7-18-97 (Register 97, No. 25).
2. Change without regulatory effect amending section filed 10-17-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 21620. CIWMB—Change in Design or Operation (New).

(a) This section applies to any operator proposing to make a change in the design (as defined in subsection 21663(a)(1)) or operation (as defined in subsection 21663(a)(2)) of the facility, where such change is subject to the authority of the EA acting pursuant to the Integrated Waste Management Act or regulations promulgated under such Act and one of the following categories apply: (1) Minor Change — the change qualifies as a minor change pursuant to §21620(a)(1), in which case the operator shall comply with §21620(a)(1)(F); (2) RFI Amendment — the EA has determined that an amendment to the RFI is required for the change, in which case the operator shall comply with §21620(a)(2); (3) Modified Permit — the EA has determined that the solid waste facilities permit requires modification pursuant to §21665(d), in which case the operator shall comply with §21620(a)(3); or (4) Revised Permit — the EA has determined that the solid waste facilities permit requires revision pursuant to §21665(e) or §21620(a)(4), in which case the operator shall comply with §21620(a)(4).

This section does not apply to changes to the facility, where such a change is not subject to the authority of the EA acting pursuant to the Integrated Waste Management Act or regulations promulgated under such Act.

(1) Minor Changes

An operator may implement a minor change without EA review and approval if all of the criteria set forth in subdivisions (A) through (D) are met and the operator notifies the EA of the minor change as required under subdivision (F):

(A) the change is subject to the authority of the EA acting pursuant to the Integrated Waste Management Act or regulations promulgated under such Act; and

(B) the change is consistent with State minimum standards pursuant to Chapter 3 of this subdivision or applicable minimum standards in Title 14 (commencing with §17200), and including financial assurances and operating liability criteria pursuant to Chapter 6 of this subdivision if applicable; and

(C) the change is consistent with the terms and conditions in the current solid waste facilities permit; and

(D) the change does not conflict with the design and operation of the facility as provided in the current RFI pursuant to §21600, 14 CCR §§17345.5, 17863, 17863.4, 18221.6, 18223.5, or 18227.

(E) Provided that they satisfy the criteria set forth in subdivisions (a)(1)(A–D), minor changes include, but are not limited to, the following:

(i) Correction of typographical errors in any documents/confirmation submitted by the owner or operator.

(ii) Changes in the training plan that do not affect the type or decrease the amount of training given to employees.

(iii) Changes in any name and phone number, mailing address, or other contact information that does not include a change of the owner or operator.

(iv) Changes in emergency equipment (e.g., used for spill or release response) with the same functionally equivalent equipment at the same or higher level of quality.

(v) Replacing equipment that consists of functionally equivalent components and specifications as the equipment being replaced, which does not cause any change to location or design from the formerly used equipment.

(vi) Changes in procedures for cleaning or decontamination of facility equipment or structures.

(vii) Changes in tanks used for storage of materials utilized as part of the operation of the facility such as fuel, motor oil, and water without a change in location.

(viii) Changes in the rental company or location of where the back-up equipment may be sought.

(ix) Replacement of an existing environmental or operational monitoring point that has been damaged or rendered inoperable, without change to location or design of the monitoring point.

(x) Updated changes to other regulatory agency documents that are included by reference in a RFI only.

(xi) Changes in containers used for temporary storage of materials separated for recycling.

(xii) Changes in narrative information (e.g., background information) outside the permitted boundary.

(xiii) Change to facility signage wording.

(xiv) Changes to improve personnel protective equipment and other safety procedures.

(xv) Changes to traffic patterns on site that do not affect off-site traffic and/or adjacent properties.

(xvi) Changes to adjacent land use map.

(xvii) Change in location of facility records.

(xviii) Changes in name, address, or phone number of contact in post-closure plan.

(xix) Changes to equipment maintenance operations associated with the operation of the facility.

(xx) Acquisition of property adjacent to the facility if not used for solid waste activities.

(xxii) Updated changes to documents that are included by reference in a permit or RFI.

(xxiii) Regulation re-numbering as referenced in RFI.

(F) the operator shall notify the EA at the time of the change or within 30 days after the change has been made, and the following provisions shall apply:

(i) the notice shall be in writing and delivered to the EA by regular mail, e-mail, or fax;

(ii) the operator shall identify the minor change in the notice and indicate the effective date of the change;

(iii) the notice is for informational purposes only and is not subject to EA compliance measures; however, if the EA determines at a later date that the change does not meet the criteria for minor change, the EA shall
(a) Upon compliance with the CEQA and this article, and upon the concurrence of the CIWMB for new and revised solid waste facilities permits, and the Executive Director of the CIWMB for modified solid waste facilities permits, the EA shall issue the solid waste facilities permit as provided in Public Resources Code §44014. The solid waste facilities permit shall specify the person authorized to operate the facility and the boundaries of the facility. The solid waste facilities permit shall contain such conditions as are necessary to specify a design and operation for which the applicant has demonstrated in the proceedings before the EA the ability to control the adverse environmental effects of the facility.

(1) As used herein, “design” means the layout of the facility (including numbers and types of fixed structures), total volumetric capacity of a disposal site [or total throughput rate of a transfer/processing station, transformation facility, or composting facility] vehicular traffic flow, and patterns surrounding and within the facility, proposed contouring, and other factors that may be considered a part of the facility’s physical configuration.

(2) As used herein, “operation” means the procedures, personnel, and equipment utilized to receive, handle and dispose of solid wastes and to control the effects of the facility on the environment.


1. New section filed 3-14-2007, operative 4-13-2007 (Register 2007, No. 11).

§ 21665. CIWMB—Issuance of Solid Waste Facilities Permit. (T14:§18208)

(a) Upon compliance with the CEQA and this article, and upon the concurrence of the CIWMB for new and revised solid waste facilities permits, the EA shall issue the solid waste facilities permit as provided in Public Resources Code §44014. The solid waste facilities permit shall specify the person authorized to operate the facility and the boundaries of the facility. The solid waste facilities permit shall contain such conditions as are necessary to specify a design and operation for which the applicant has demonstrated in the proceedings before the EA the ability to control the adverse environmental effects of the facility.

(1) As used herein, “design” means the layout of the facility (including numbers and types of fixed structures), total volumetric capacity of a disposal site [or total throughput rate of a transfer/processing station, transformation facility, or composting facility] vehicular traffic flow, and patterns surrounding and within the facility, proposed contouring, and other factors that may be considered a part of the facility’s physical configuration.

(2) As used herein, “operation” means the procedures, personnel, and equipment utilized to receive, handle and dispose of solid wastes and to control the effects of the facility on the environment.


1. New section filed 6-18-97; operative 7-18-97 (Register 97, No. 25).
2. Amendment of section heading and subsection (a) filed 3-14-2007; operative 4-13-2007 (Register 2007, No. 11).

§ 21665. CIWMB—Processing Proposed Changes at Solid Waste Facility. (New)

(a) The applicant shall submit an application package pursuant to §§21570 and 21630, or 14 CCR §§18221.6, 18223.5, 18227, or 17633.4 to the EA. The substantial shall contain only those items listed in §21570(f) that have changed, are proposed for change or as otherwise specified by the EA.

(b) The EA shall review the applicant’s proposed change to determine if such a change qualifies as an amendment(s) to the RFI or is the basis for changes in the solid waste facilities permit in which case the EA shall determine if the proposed change will require a solid waste facilities permit modification or a solid waste facilities permit revision pursuant to the provisions provided in §21665(c), (d), and (e) as follows:

(1) RFI Amendment(s)...
(2) Modified Solid Waste Facilities Permit...
(3) Revised Solid Waste Facilities Permit...
(c) RFI Amendment(s) — The EA may approve and file the proposed change as an amendment(s) to the RFI without revising or modifying the solid waste facilities permit if all of the following criteria are met:

(1) the EA finds that the proposed change is consistent with all applicable certified and/or adopted CEQA documents in that no subsequent EIR or Negative Declaration or supplemental EIR is warranted pursuant to Title 14, Chapter 3, Article 11, §§15162 or 15163, or if the EA finds that the change being requested is exempt from the requirements of CEQA pursuant to Title 14, Chapter 3, Article 5, §§15060 or 15061;
(2) the EA has deemed the proposed change acceptable and consistent with, but not limited to, State minimum standards pursuant to Chapter 3 of this subdivision or applicable minimum standards in Title 14 (commencing with §17200), and including financial assurances and operating liability criteria pursuant to Chapter 6 of this subdivision if applicable; and
(3) the EA finds the changes do not conflict with the terms and conditions in the current solid waste facilities permit.

(d) Modified Solid Waste Facilities Permit — The EA may determine that the proposed change qualifies as a modified solid waste facilities permit if the proposed change does not meet all of the criteria specified under §21665(c) and meets either of the following criteria:

(1) the EA determines that the proposed change is a nonmaterial change as specified in §21563(d)(5), or
(2) the EA determines that the proposed change is such that the solid waste facilities permit does not need to include further restrictions, prohibitions, mitigations, terms, conditions or other measures to adequately protect public health, public safety, ensure compliance with State minimum standards, or to protect the environment.

(e) Revised Solid Waste Facilities Permit — The EA shall determine that the proposed change is a significant change as defined in §21563(d)(6) and requires a revised solid waste facilities permit if the proposed change does not meet the criteria for an RFI Amendment as specified under §21665(c) or a modified solid waste facilities permit as specified under §21665(d).

NOTE: To help the affected public more readily understand the process used by the EA to determine whether a proposed change qualifies as an RFI amendment, modified solid waste facilities permit, or revised solid waste facilities permit, a decision tree is provided below; this diagram does not supplant any of these regulations:
§ 21666. CIWMB — Processing Report of Facility Information (RFI) Amendment(s).

(a) The EA shall determine if the RFI amendment(s) meet the requirements of §21655(c) within 30 days of receipt and either accept or reject some or all of the amendment(s).

(b) Within 5 days of acceptance for filing of the RFI amendment application package, the EA shall notify the operator, the CIWMB and the RWQCB, if applicable, of its determination. The EA shall include in their notification to the CIWMB, a copy of the accepted RFI amendment(s), and a copy of the application form specified in §21570 along with the EA determination specified in §(a).

[Note: Submittal of an Application Form in §21666 is for tracking purposes.]

(c) In cases where some or all of the amendment(s) do not follow the criteria set in §21655(c), the EA may either require the operator to submit an application for a modified or revised solid waste facilities permit pursuant to §21570, or deny the proposed amendment(s), in which case the applicant shall have thirty (30) days within which to appeal the decision to the hearing panel.


HISTORY

§ 21670. CIWMB—Change of Owner Operator, and/or Address. (T14-§18216 and 18217)

(a) The EA shall review the submitted notification prescribed in §21630 and any available records to determine if the current and anticipated operators/owners have provided the required information and that the facility is and will be able to operate within the terms and conditions of their permit and RFI. If the anticipated operator/owner has satisfied all of the requirements and the EA has obtained a written confirmation from the CIWMB that the anticipated owner/operator has complied with PRC §§340 and §43600, the EA shall notify the operator and CIWMB within 30 days of notice of the notification. Then, the EA has 15 days (from informing the operator and CIWMB that the notification was adequate) to send the operator and CIWMB a copy of the changed permit, to reflect the changes in the name of the owner, operator and/or facility name. This section does not authorize the EA to change any other aspect of the SWFP, including the issuance date or permit review date.

(b) If the EA determines that the operator/owner has not provided adequate documentation or if the EA has reason to believe that the anticipated operator or owner will be operating outside the terms and conditions of the governing SWFP, the EA shall inform the operator and the CIWMB, in writing, within 30 days of notice of the notification. The EA shall provide the basis for the notification being determined inadequate.

(c) Any information provided pursuant to §(a) shall not be a matter of public record and shall be considered confidential until such time as the owner’s encumbering, selling, transferring, or conveying of the property, occurs.

(d) This action will not take the place of a permit review or revision pursuant to §§21620 or 21640.

(e) Every operator of a solid waste facility, and every owner of property on which a facility is located shall notify the EA and the CIWMB of each change of address. The EA shall keep this information on file.


HISTORY
1. New section filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 21675. CIWMB—Review of Solid Waste Facilities Permits. (T14-§18213)

(a) Except as provided in §21680, all full solid waste facilities permits shall be reviewed and if necessary modified or revised, from the date of last issuance at least once every five years. The EA shall give the operator notice of the five year review no less than 180 days before it is due.

(H) Ponds, lagoons, ditches and pipelines used for the transfer, holding, treatment and stabilization of manure or vegetable or fruit crop wastes shall be managed so as to prevent the creation or harborage of excessive vectors or other conditions that adversely affect the public health or well-being. Accumulations of floating solids, scum and thick aquatic vegetation, and the growth of weeds and emergent aquatic vegetation at the water's edge shall be continuously maintained at a minimal level to assist in the prevention of such adverse conditions.

Disposal or utilization of the contents of such facilities shall not create excessive vectors or other adverse public health or well-being conditions.

Article 9. Litter Receptacle Standards

§ 17830. Purpose.


HISTORY
1. New article 9 (sections 17830-17840) filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33).
2. Change without regulatory effect amending section filed 5-17-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer of article 9 and section filed 9-10-96; operative 10-10-96 (Register 96, No. 37).

§ 17831. Limitations.

HISTORY
1. Repealer filed 9-10-96; operative 10-10-96 (Register 96, No. 37).

§ 17832. Responsibility.

HISTORY
1. Repealer filed 9-10-96; operative 10-10-96 (Register 96, No. 37).

§ 17833. Placement of Receptacles.

HISTORY
1. Repealer filed 9-10-96; operative 10-10-96 (Register 96, No. 37).

§ 17834. Receptacle Design.

HISTORY
1. Repealer filed 9-10-96; operative 10-10-96 (Register 96, No. 37).

§ 17835. Receptacle Maintenance.

HISTORY
1. Repealer filed 9-10-96; operative 10-10-96 (Register 96, No. 37).

§ 17836. Special Design and Maintenance Limitations.

HISTORY
1. Repealer filed 9-10-96; operative 10-10-96 (Register 96, No. 37).

§ 17837. Receptacle Marking.

HISTORY
1. Repealer filed 9-10-96; operative 10-10-96 (Register 96, No. 37).


HISTORY
1. Repealer filed 9-10-96; operative 10-10-96 (Register 96, No. 37).

§ 17839. Penalties.

HISTORY
1. Repealer filed 9-10-96; operative 10-10-96 (Register 96, No. 37).

§ 17840. Compliance.

HISTORY
1. Repealer filed 9-10-96; operative 10-10-96 (Register 96, No. 37).

Chapter 3.1. Compostable Materials Handling Operations and Facilities Regulatory Requirements

Article 1. General

§ 17850. Authority and Scope.

(a) This Chapter is adopted pursuant to and for the purpose of implementing the California Integrated Waste Management Act of 1989 (Act) commencing with Section 40000 of the Public Resources Code, as amended. These regulations should be read together with the Act.

(b) This Chapter implements those provisions of the Act relating to composting. Nothing in this Chapter is intended to limit the power of any federal, state, or local agency to enforce any provision of law that it is authorized or required to enforce or administer.

(c) Biological decomposition of organic material can be both a naturally occurring or artificially controlled process. This Chapter establishes standards and regulatory requirements for intentional and inadvertent composting resulting from the handling of compostable materials, including but not limited to feedstock, compost, or chipped and ground materials as defined in section 17852.

(d) Nothing in these standards shall be construed as relieving any owner, operator, or designee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, or reports, or other requirements of other regulatory or EA, including but not limited to, local health entities, regional water quality control boards, air quality management districts or air pollution control districts, local land use authorities, and fire authorities.

(e) Nothing in these standards precludes the EA or the board from inspecting an activity, operation or facility to determine if it is subject to these standards.


HISTORY
1. Amendment of chapter 3.1 and article 1 headings and new section filed 6-30-95; operative 7-30-95 (Register 95, No. 26).
2. Amendment of subsection (c) filed 4-7-97 as an emergency; operative 4-7-97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-5-97 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (c) refiled 4-7-99 as an emergency; operative 4-7-99 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12-1-97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4-7-97 order, including further amendment of subsection (c), transmitted to OAL 11-25-97 and filed 1-9-98 (Register 98, No. 2).
5. Amendment of chapter heading, amendment of subsections (c) and (d) and new subsection (e) filed 4-4-2003; operative 4-4-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
6. Change without regulatory effect amending subsection (a) filed 8-23-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 17851. Scope.


HISTORY
1. New chapter 3.1, article 1 and section filed 7-15-93; operative 7-15-93 (Register 93, No. 29).
2. Repealer filed 6-30-95; operative 7-30-95 (Register 95, No. 26).

§ 17852. Definitions.

(a) For the purposes of this Chapter:
(1) “Active Compost” means compost feedstock that is in the process of being rapidly decomposed and is unstable. Active compost is generat-
ing temperatures of at least 50 degrees Celsius (122 degrees Fahrenheit) during decomposition; or is releasing carbon dioxide at a rate of at least 15 milligrams per gram of compost per day, or the equivalent of oxygen uptake.

(2) “Additives” means material mixed with feedstock or active compost in order to adjust the moisture level, carbon to nitrogen ratio, or porosity to create a favorable condition. Additives include, but are not limited to, fertilizers and urea. Additives do not include septage, biosolids, or compost feedstock.

(3) “Aerated Static Pile” means a composting process that uses an air distribution system to either blow or draw air through the pile. Little or no pile agitation or turning is performed.

(4) “Aerobic Decomposition” means the biological decomposition of organic substances in the presence of oxygen.

(5) “Agricultural Material” means material of plant or animal origin, which result from the production and processing of farm, ranch, agricultural, horticultural, aquaculturaf, silvicultural, floricultural, vermiculural, or viticultural products, including manures, orchard and vineyard prunings, and crop residues.

(6) “Agricultural Material Composting Operation” means an operation that produces compost from green or agricultural material additives, and/or amendments.

(7) “Amendments” means materials added to stabilized or cured compost to provide attributes for certain compost products, such as product bulk, product nutrient value, product pH, and soils blend. Amendments do not include septage, biosolids, or compost feedstock.

(8) “Anaerobic Decomposition” means the biological decomposition of organic substances in the absence of oxygen.

(9) “Biosolids” means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Biosolids includes, but is not limited to, treated domestic septage and scum or solids removed in primary, secondary, or advanced wastewater treatment processes. Biosolids does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during the preliminary treatment of domestic sewage in a treatment works.

(10) “Chipping and Grinding Operations and Facilities” means an operation or facility, that does not produce compost, that mechanically reduces the size or otherwise engages in the handling, of compostable material and:

(A) The site does the following:

1. The site handles only material, excluding manure, allowed at a green material composting operation or facility as set forth in section 17852(a)(22); and,

2. Each load of green material is removed from the site within 48 hours of receipt. The EA may allow a site to keep green material on-site for up to 7 days if the EA determines that the additional time does not increase the potential for violations of this Chapter.

(B) If the site fails to meet the definition of green material because it exceeds the contamination limits in section 17852(a)(21), the site shall be regulated as set forth in the Transfer/Processing Regulatory requirements (commencing at section 17400).

(C) If the site fails to meet the definition of this section because the green material remains on-site for a longer period of time than is allowed, then the site shall be regulated as a compostable material handling operation or facility, as set forth in this Chapter.

(11) “Compostable Material” means any organic material that when accumulated will become active compost as defined in section 17852(a)(1).

(12) “Compostable Materials Handling Operation” or “Facility” means an operation or facility that processes, transfers, or stores compostable material. Handling of compostable materials results in controlled biological decomposition. Handling includes composting, screening, chipping and grinding, and storage activities related to the production of compost, compost feedstocks, and chipped and ground materials. “Compostable Materials Handling Operation or Facility” does not include activities excluded from regulation in section 17855. “Compostable Materials Handling Operation or Facility” also includes:

(A) agricultural material composting operations;

(B) green material composting operations and facilities;

(C) research composting operations; and,

(D) chipping and grinding operations and facilities.

(13) “Curing” means the final stage of the composting process that occurs after compost has undergone pathogen reduction, as described in section 17868.3, and after most of the readily metabolized material has been decomposed and stabilized.

(14) “Domestic Sewage” means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

(15) “Disposal” means:

(A) stockpiling of compostable material onto land for a combined period of time greater than six months, or agricultural and green material for twelve months on prime agricultural land as defined in Government Code section 51201, unless the RWQCB in consultation with the EA makes a written finding that the material may remain within the operations area for a period of time greater than specified.

(B) disposal does not include the use of compostable material for alternative daily cover material at a solid waste landfill. Notwithstanding this section, use of compostable organic material as an alternative daily cover material shall still require approval for use pursuant to Title 27, California Code of Regulations, section 20680 and may require additional approvals from other governmental agencies, including, but not limited to RWQCB and Air Districts.

(C) disposal does not include land application of compostable organic material. “Land Application” means the application of compostable material, excluding food material or mixed solid waste for the following applications: to forest, agricultural, and range land at agronomic rates; in accordance with California Department of Food and Agriculture (CDFA) requirements for beneficial use as authorized by Food and Agricultural Code section 14501 et seq.; or for beneficial uses that may be otherwise exempt or excluded from regulation by CDFA.

(D) Should the EA have information that a compostable material handler is engaging in other activities that meet the definition of disposal, the burden of proof shall be on the land owner or operator to demonstrate otherwise.

(E) If the activities at a site meet the definition of disposal, the site shall be regulated as set forth in the Consolidated Regulations for Treatment, Storage, Processing or Disposal of Solid Waste (commencing at Title 27, California Code of Regulations, section 20005).

(16) “Dry Weight Basis” means weight calculated on the basis of having been dried until reaching a constant mass, that results in essentially 100 percent solids content.

(17) “Enclosed Composting Process” means a composting process where the area that is used for the processing, composting, stabilizing, and curing of organic materials, is covered on all exposed sides and rests on a stable surface with environmental controls for moisture and airborne emissions present.

(18) “EA” means enforcement agency.

(19) “Feedstock” means any compostable organic material used in the production of compost or chipped and ground material including, but not limited to, agricultural material, green material, food material, biosolids, and mixed solid waste. Feedstocks shall not be considered as either additives or amendments.

(20) “Food Material” means any material that was acquired for animal or human consumption, is separated from the municipal solid waste stream, and that does not meet the definition of “agricultural material.” Food material may include material from food facilities as defined in Health and Safety Code section 113785, grocery stores, institutional cafeterias (such as, prisons, schools and hospitals) or residential food scrap collection.

(21) “Green Material” means any plant material that is separated at the point of generation contains no greater than 1.0 percent of physical con-
taminants by weight, and meets the requirements of section 17868.5. Green material includes, but is not limited to, yard trimmings, untreated wood wastes, natural fiber products, and construction and demolition wood waste. Green material does not include food material, biosolids, mixed solid waste, material processed from commingled collection, wood containing lead-based paint or wood preservative, mixed construction or mixed demolition debris.

(22) “Green Material Composting Operation” or “Facility” is an operation or facility that composts green material, additives, and/or amendments. A green material composting operation or facility may also handle manure and paper products. An operation or facility that handles a feedstock that is not green material, manure, or paper products, shall not be considered a green material composting operation or facility. “Green Material Composting Operation” or “Facility” does not include activities excluded from regulation in section 17855.

(23) “Handling” means the processing, transfer, and storage of compostable materials. Handling of compostable materials results in controlled biological decomposition. Handling includes composting, screening, chipping and grinding, and storage activities related to the production of compost, compost feedstocks, and chipped and ground materials.

(24) “Insulating Material” means material used for the purpose of minimizing the loss of heat from a compost pile undergoing the “Process to Further Reduce Pathogens” (PFRP), as described in section 17868.3. Insulating material includes, but is not limited to, soil and stabilized compost.

(25) “Manure” is an agricultural material and means accumulated herbivore or avian excrement. This definition shall include feces and urine, and any bedding material, spilled feed, or soil that is mixed with feces or urine.

(26) “Mixed Solid Waste” means any material that is part of the municipal solid waste stream, and is mixed with or contains non-organic, processed industrial materials, or plastics. A feedstock that is not source separated or contains 1.0% or more of physical contaminants by weight is mixed solid waste. Compostable material that contains mixed demolition or mixed construction debris shall be considered mixed solid waste.

(27) “Mushroom Farm” means an activity that produces mushrooms. The handling of compostable material at a mushroom farm prior to and after use as a growth medium is subject to regulation pursuant to this chapter and is not considered mushroom farming.

(28) “Operations Area” means the following areas within the boundary of a compostable material handling operation or facility: (A) equipment cleaning, maintenance, and storage areas; (B) feedstock, active, curing and stabilized compost processing or stockpiling areas; and (C) process water and stormwater drainage control systems.

(29) “Operator” means the owner, or other person who through a lease, franchise agreement or other arrangement with the owner, becomes legally responsible for the following: (A) complying with regulatory requirements set forth in this Chapter; (B) complying with all applicable federal, state and local requirements; (C) the design, construction, and physical operation of the site; and (D) site restoration.

(30) “Owner” means the person or persons who own, in whole or in part, a compostable material handling operation or facility, or the land on which these operations or facilities are located.

(31) “Pathogenic Organism” means disease-causing organisms.

(32) “Physical Contamination” or “Contaminants” means human-made inert products contained within feedstocks, including, but not limited to, glass, metal, and plastic.

(33) “Process Water” means liquid that is generated during or used in the production of compost or chipped and ground materials.

(34) “Research Composting Operation” means a composting operation, that is operated for the purpose of gathering research information on composting.

(35) “Separated At The Point of Generation” includes material separated from the solid waste stream by the generator of that material. It may also include material from a centralized facility as long as that material was kept separate from the waste stream prior to receipt by that facility and the material was not commingled with other materials during handling.

(36) “Stabilized Compost” means any organic material that has undergone the Process to Further Reduce Pathogens (PFRP), as described in section 17868.3, and has reached a stage of reduced biological activity as indicated by reduced temperature and rate of respiration below that of active compost.

(37) “Static Pile” means a composting process that is similar to the aerated static pile except that the air source may or may not be controlled.

(38) “Vector” includes any insect or other arthropod, rodent, or other animal capable of transmitting the causative agents of human disease.

(39) “Vermicomposting” means an activity that produces worm castings through worm activity. The EA may determine whether an activity is or is not vermirecomposting. The handling of compostable material prior to and after use as a growth medium is subject to regulation pursuant to this chapter and is not considered vermicomposting.

(40) “Windrow Composting Process” means the process in which compostable material is placed in elongated piles. The piles or “windrows” are aerated and/or mechanically turned on a periodic basis.

(41) “Within-vessel Composting Process” means a process in which compostable material is enclosed in a drum, silo, bin, tunnel, reactor, or other container for the purpose of producing compost, maintained under uniform conditions of temperature and moisture where air-borne emissions are controlled.

(42) “Wood Waste” means solid waste consisting of wood pieces or particles which are generated from the manufacturing or production of wood products, harvesting, processing or storage of raw wood materials, or construction and demolition activities.

(43) “Yard Trimings” means any wastes generated from the maintenance or alteration of public, commercial or residential landscapes including, but not limited to, yard clippings, leaves, tree trimmings, prunings, brush, and weeds.


§ 17853. Definitions.


§ 17853.0. Approval of Alternatives.

(a) Approvals, determinations and other requirements that the EA is authorized to make in this Chapter shall be provided in writing by the EA to the operator. The operator shall place a copy of these approvals, in
4. Change without regulatory effect amending section heading and subsections (a)–(b) and (c) filed 10-17-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

Article 2.1. LEA Certification Requirements

§ 18070. Scope.
(a) This article sets forth the LEA certification types, the requirements for certification and certification maintenance including, but not limited to: technical expertise, adequacy of staff resources, adequacy of budget resources, training, and the LEA’s Enforcement Program Plan (EPP), which the designated local agency shall develop, submit for board approval, and adopt pursuant to Public Resources Code Section 43209(e) and Section 18077 of this Chapter, and the periodic review of the LEA certification(s) pursuant to Article 2.2 of this Chapter.
(b) After certification(s) is issued and upon board approval, the designated local agency shall become the sole LEA in its jurisdiction, and shall maintain and comply with its board approved EPP to exercise its statutory power and authority pursuant to Division 30 of the Public Resources Code, 14 CCR Division 7, and 27 CCR Division 2, Subdivision 1 (§2005 et seq.). The LEA shall enforce the state and local minimum standards for solid waste collection, handling, storage, and disposal for the protection of the air, water, and land from pollution and nuisance, and for the protection of the public health and safety, and the environment. This Article also addresses board directories of hearing panels or hearing officers and enforcement agencies.


HISTORY
1. Repealer and adoption of new section, article heading and Note filed 12-17-91; operative 12-17-91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment filed 10-26-94; operative 10-26-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Change without regulatory effect amending subsection (b) filed 3-8-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
4. Change without regulatory effect amending subsection (a) filed 10-17-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18071. Types of Certification.
(a) The Board may approve a designated local agency and issue certification(s) to the local agency in one or more of the following types of certifications:
(1) Type "A": permitting, inspection, and enforcement of regulations at solid waste disposal sites;
(2) Type "B": permitting, inspection, and enforcement of regulations at solid waste transformation facilities;
(3) Type "C": permitting, inspection, and enforcement of regulations at transfer and processing sites, materials recovery facilities, and composting facilities; and
(4) Type "D": inspection and enforcement of litter, odor, and nuisance regulations at solid waste landfills.
(b) In jurisdictions where LEAs lack a certification to permit a new type of facility, the permit application, for that type of facility, shall be filed by the applicant with the board. The LEA shall, within 120 days of the permit application, obtain certification for this facility type, or the board shall review the performance of the LEA pursuant to Section 18051 and Article 2.2 of this Chapter and compliance with Public Resources Code Section 43201.
(c) An LEA lacking a specific certification type pursuant to 18071(a) may submit a new complete EPP for board review and request issuance of an additional certification to perform permitting, inspection, and enforcement duties in another jurisdiction, or inspection and enforcement duties in its jurisdiction, both pursuant to Article 2.1 of this Chapter, and subsequent to board approval.
(d) When in the LEA’s jurisdiction only one permitted solid waste disposal facility exists and its permit is surrendered, the LEA shall retain its type “A” certification, unless the LEA certification is withdrawn by the board.
(1) For LEAs to be issued type “D” certification they shall be required to have type “A” certification.
(e) A designated local agency shall demonstrate that it meets the certification requirements for each certification type requested. The LEA shall maintain compliance with the requirements of this Chapter.
(f) Sections 18071 through 18075 of this Article set forth the LEA certification requirements pursuant to Public Resources Code Section 43200.


HISTORY
1. New section filed 12-17-91; operative 12-17-91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsections (a), (b) and (c) filed 10-26-94; operative 10-26-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).

§ 18072. Technical Expertise.
(a) Performance of permitting, inspection, and enforcement duties and responsibilities of comprehensive solid waste enforcement issues shall reside solely within an LEA. The LEA shall have one or more full time staff members dedicated solely for solid waste issues. For all certification types the dedicated staff shall be composed of at least one registered environmental health specialist (REHS), pursuant to Sections 106600 through 106735 of the Health and Safety Code. Additional staff for permitting, inspection, and enforcement duties may be a REHS(s), or person(s) meeting the requirements of Sections 106635 of the Health and Safety Code, as certified by the LEA program director or manager.
(1) The REHS shall have experience and training in solid waste enforcement. This experience and training shall be current and subsequent to the enactment of the California Integrated Waste Management Act of 1989 commencing with Section 40000 of the PRC.
(2) The REHS experience and training shall include the following:
(A) permitting and closure/postclosure duties as described in 14 CCR 18082;
(B) inspection duties as described in 14 CCR 18083; and
(C) enforcement duties as described in 14 CCR 18084.
(3) (A) For type “A” certification, pursuant to 14 CCR 18071(a)(1), LEA review of documents or reports generated pursuant to engineering requirements of Public Resources Code Division 30 and 27 CCR Division 2, Subdivision 1 (§2005 et seq.), beyond the technical abilities of the LEA’s staff, shall be performed by public and private entities as specified in the LEA’s EPP, whose staff meet the following definitions contained in 27 CCR 20154; “Certified Engineering Geologists,” “Registered Civil Engineer,” and “Soil Engineer.”
(B) The LEA review in subsection (a)(3)(A) may be contracted for by the LEA or the LEA may use appropriate CIWMB staff to perform those duties.
(4) For type “B” and “C” certifications, pursuant to 14 CCR 18071(a)(2) and (3), LEA review of documents or reports generated pursuant to engineering requirements of Public Resources Code Division 30 and 14 CCR Division 7, may be performed by public and private entities, as specified in the LEA’s EPP, under contract to the LEA, which meet the following definitions contained in 27 CCR 20164; “Certified Engineering Geologists,” “Registered Civil Engineer,” and “Soil Engineer.”
(b) Counties or cities may have contracts or joint powers agreements pursuant to Government Code, section 6500 et. seq., or as authorized by law, with another county, city, or a joint powers jurisdiction LEA to provide permitting, inspection, and enforcement duties and responsibilities in the designated jurisdiction of the local governing body(s), with approval of the board. The above contracts or joint powers agreements shall preclude conflict of interest between the cities or counties, their designated LEA, or the LEA’s consultants and facility operators in the jurisdiction. The following consulted professionals defined in 27 CCR 20164 shall not be facility operators or consultants for solid waste facilities or disposal sites within the LEA’s jurisdiction unless approved by the board: “Certified Engineering Geologists,” “Professional Land Survey-
§ 18080. Scope.
This Article, pursuant to Public Resources Code Section 43214, sets forth the LEA’s duties and responsibilities, performance standards, certification maintenance requirements, and board evaluation of LEAs.

HISTORY
1. New section filed 12-17-91; operative 12-17-91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Repealer of subsection (a) designated filed 4-12-2001; operative 5-12-2001 (Register 2001, No. 15).

§ 18081. LEA Performance Standards and Evaluation Criteria.
(a) In performing its permitting, closure and postclosure, inspection, and enforcement functions, the LEA shall meet its duty requirements and comply with the standards pursuant to Public Resources Code Division 30, Parts 4, 5, and 6, 14CCR Division 7, 27 CCR, Division 2, Subdivision 1 ($20005 et seq.), and its EPP. Deviation from these standards may result in a performance review by the board pursuant to Public Resources Code Sections 43214, 43215 and 43219, including establishment of LEA compliance schedules or withdrawal of designation and certification(s) approvals. The board’s evaluation and decisions will consider the severity of the deviation(s) as related to the potential negative impacts on public health, safety or the environment.
(b) The LEA shall be assessed for compliance with the certification requirements pursuant to Article 2.1 and 2.2 of this Chapter, Public Resources Code Section 43209, and its board-approved EPP.
(c) All facilities and disposal sites within the LEA’s jurisdiction shall:
(1) be in compliance with the state minimum standards and either the terms and conditions of the solid waste facility permits, the board-approved final closure and postclosure maintenance plans, have completed postclosure maintenance and monitoring pursuant to 27 CCR Sections 21180 and 21900, or have ceased operation prior to January 1, 1988; and
(2) be permitted, exempted, governed by board-approved final closure and postclosure maintenance plans, or have completed postclosure maintenance and monitoring pursuant to 27 CCR Sections 21180 and 21900; or
(3) be under appropriate enforcement action(s) pursuant to 14 CCR Section 18084 to remedy any violations.
(d) All operations within the LEA’s jurisdiction shall:
(1) be in compliance with the state minimum standards, as applicable; and
(2) meet notification requirements as applicable; or
(3) be under appropriate enforcement action(s) pursuant to 14 CCR Section 18084 to remedy any violations.
(e) All LEA’s shall retain their certification(s) and designation approvals by maintaining compliance with their board-approved EPP and this Chapter.
(1) The LEA shall provide for, obtain, and maintain the necessary technical, safety and regulatory equipment, clothing and vehicles for field inspectors. The LEA shall identify in its board-approved EPP what constitutes “necessary” for staff safety and field monitoring, measurement, inspection, and enforcement requirements for all its solid waste enforcement duties and responsibilities and its certification(s).
(2) When in the jurisdiction of the EA there exists a publicly owned or operated solid waste facility or disposal site, the local governing body shall maintain an independent hearing panel or hearing officer for permit, enforcement and appeal purposes, as per Section 18060 of this Chapter and Sections 44308 through 44310 of the Public Resources Code.

§ 18082. LEA Duties and Responsibilities for Permitting and Closure or Postclosure.
(a) The LEA/EA shall implement the solid waste facility permitting regulations pursuant to Public Resources Code Division 30, Parts 4 and 5, 14 CCR Division 7, Chapter 5, 27 CCR, Division 2, Subdivision 1 ($20005 et seq.), and its EPP, where applicable, as follows:
(1) applications:
(A) verify the submission of required documents, site and personnel information, and fees;
(B) evaluate the application documents for accuracy and conformity to the EPP and the appropriate state standards cited in subsection (a) of this Section;
(C) review for short and long term environmental impacts, damage, and proposed mitigation measures;
(D) determine whether or not to accept the application and proceed with a proposed permit for board approval;
(E) initiate appropriate public notice and comment period; and
(F) submit copies of the above documents, notices, comments, and responses to the board.
(2) proposed permits:
(A) prepare permits with specific conditions for design, operation, and adverse environmental effect, monitoring and mitigation;
(B) submit proposed permits to the board and the applicant;
(C) allow a waiting period for review, concurrence, or objection by the board, and modification by the LEA/EA as required;
(D) issue or deny the issuance of the solid waste facilities permit, upon satisfactory conclusion of the above process; and
(E) the LEA/EA shall act upon applications and plans to generate a proposed solid waste facilities permit within the required regulatory and/or statutory time frames.
(3) closure and postclosure:
(A) pursuant to Public Resources Code Division 30 Parts 4 and 5 and 27 CCR, Division 2, Subdivision 1 ($20005 et seq.), and the EPP, the LEA/EA shall require any person owning or operating a solid waste landfill to submit for LEA/EA and board approval the following:
1. plans for the landfill closure and postclosure maintenance;
2. estimates of closure and postclosure maintenance costs; and
3. evidence of financial mechanisms to insure adequate availability of funds.
§ 18083. LEA Duties and Responsibilities for Inspections.

(a) Pursuant to Public Resources Code Division 30, Parts 4 and 5, and 14 CCR Division 7, Chapters 3 and 5, 27 CCR, Division 2, Subdivision 1 ($20005 et seq.), and its EPP, the LEA/EA shall inspect and investigate solid waste collection, handling, and storage, solid waste facilities, operations and disposal sites and equipment to verify compliance with the state minimum standards, solid waste facilities permits, and related state solid waste laws and regulations within their purview for the protection of the environment and the public health and safety. The LEA/EA shall perform these inspections and related duties as required below, and forward inspection reports to the operator and/or owner, and the board within 30 days of the inspection:

(1) weekly, for sites operating on performance standards pursuant to 27 CCR Section 20695;

(2) monthly, for all active and inactive facilities, and for illegal sites and facilities, pending abatement by enforcement action(s);

(3) at the frequency required by the state minimum standards for each type of operation regulated under the EA Notification tier.

(4) quarterly, for closed sites, abandoned sites, and sites exempted pursuant to 27 CCR Section 21565. For closed sites, inspections shall be made during any potential threat exists to public health and safety or the environment. This determination shall be subject to board approval. For the purposes of this subsection, the enumeration, and the workload analysis, a closed site means a site that has ceased accepting waste and, should be closed, is undergoing closure, or has met applicable closure requirements;

(A) the board may approve an alternate inspection frequency for these sites where such an action will not result in adverse impact on public health and safety and the environment.

(5) if an LEA has been designated as the EA for waste tire facilities or entered into an agreement with the board through a grant program to inspect waste tire facilities, major waste tire facilities shall be inspected annually and minor waste tire facilities shall be inspected at least once every two and a half years pursuant to 14 CCR Section 18443;

(6) upon receipt of a complaint or emergency notification which cannot be resolved off-site;

(7) as necessary, pursuant to the EPP, upon receipt of a solid waste facilities permit application, revision, review, RFI amendment, or closure/postclosure plan; and

(8) pursuant to the EPP, for solid waste handling and collection equipment.

(b) As specified in their EPP pursuant to Section 18077, the LEA/EA shall conduct any of the above inspections, whenever possible, without prior notice to the owner or operator, on randomly selected days, during normal business hours or the site’s operating hours.


§ 18084. LEA Duties and Responsibilities for Enforcement.

(a) If during an investigation, inquiry, or at any other time, the LEA/EA finds a solid waste facility, operation, or disposal site, is in violation of state minimum standards, the terms and conditions of a permit, or any related state solid waste laws or regulations within their purview, the LEA/EA shall enforce the applicable provisions as required by PRC Division 30, 14 CCR Division 7, Chapter 5, Article 4, 27 CCR, Division 2, Subdivision 1 ($20005 et seq.), and its EPP. The LEA/EA enforcement actions shall address the following categories of violations:

(1) operational violations, pursuant to 14 CCR Division 7, Chapter 3 and 5, 27 CCR, Division 2, Subdivision 1 ($20005 et seq.), and Division 30 of the Public Resources Code;

(2) emergency violations, pursuant to subsection (1) above which present an imminent threat to public health and safety, or the environment an require immediate action pursuant to Part 5, Division 30 or the Public Resources Code;

(3) permit violations, pursuant to Public Resources Code Division 30 Part 4, Chapter 3 and 14 CCR Division 7, Chapter 5, and 27 CCR, Division 2, Subdivision 1 ($20005 et seq.);

(4) closure and postclosure violations, pursuant to Public Resources Code Division 30 Part 4, Article 4, 27 CCR, Division 2, Subdivision 1 ($20005 et seq.);

(b) LEA/EA enforcement action options include, but are not limited to 14 CCR Division 7 Chapter 5, Article 4, 27 CCR, Division 2, Subdivision 1 ($20005 et seq.), and Public Resources Code Division 30 Parts 4 and 5.

(c) If in the course of an enforcement action, the LEA/EA deems legal counsel to be necessary to achieve enforcement, compliance, relief, or the assessment of monetary penalties through the courts, the LEA/EA shall utilize legal counsel which will be prepared to initiate legal proceedings within 30 days of notification.

(d) If the LEA fails to take appropriate enforcement action to cause an operator to correct violations, or to abate an imminent threat to public health and safety or the environment, the board may take appropriate enforcement action pursuant to PRC sections 45012, 43216.5, and CCR Title 14 section 18350, and also investigate the LEA and EA’s designation and/or certification pursuant to PRC section 43214. The board shall apply the following two general criteria to determine if the LEA is taking appropriate enforcement action:

(1) Criterion 1: If the operator is making timely progress toward compliance, then the LEA is taking appropriate action and criterion 2 need not be applied. If the operator is not making timely progress, then criterion 2 shall be applied. In determining whether or not the operator is making timely progress, the board shall consider the following:

(A) The operator’s success or lack thereof in accomplishing specific tasks within the timeframes specified in a compliance schedule, or a notice and order.

(B) Information presented by the LEA supporting reasonable deadline extensions in cases where the operator has made a good faith effort to comply, but a delay in compliance has been caused by extenuating circumstances outside the operator’s and LEA’s control. Examples of extenuating circumstances outside the operator’s and LEA’s control include acts of God such as inclement weather, earthquakes, etc. Information regarding reasonable deadline extensions due to delays in obtaining discretionary permits or other government agency approvals where the operator’s actions or failure to act was not the cause of the delay may also be taken into consideration.

(C) Information presented by the LEA supporting reasonable deadline extensions in cases where the operator has made a good faith effort to correct a landfill gas migration violation, but the assessment of the extent of migration has revealed a problem of a much larger magnitude than originally anticipated, necessitating a larger control system that will take a correspondingly longer length of time to design and install.

(2) Criterion 2: If the LEA is increasing its enforcement response by taking additional action pursuant to its EPP and, if applicable, a previous...
§ 18085. Grounds for Board Actions over LEAs.

An LEA’s failure to fulfill one or more of the following responsibilities and/or obligations under Public Resources Code Division 30, Part 4, Chapter 2 (the “Solid Waste Facilities Chapter of the Waste Management Act”) and/or these implementing regulations shall constitute sufficient ground(s) for any of the board actions set forth in 14 CCR 18086, including but not limited to:

(a) Failure of the LEA to comply with one or more of the Performance Standards referenced in Public Resources Code Section 43214 and/or its implementing regulation, 14 CCR 18081, including but not limited to:

(1) Failure of the LEA to maintain compliance with the certification requirements referenced in 14 CCR 18072-75, including but not limited to:

(a) Use of a certified leachate treatment system in accordance with California Code of Regulations, Title 12, Division 3, Subdivision H, Chapter 2, Section 12098;

(b) Use of a certified secondary treatment system in accordance with California Code of Regulations, Title 12, Division 3, Subdivision H, Chapter 2, Section 12098.

(b) Failure of the LEA to enforce facility compliance with one or more of the state minimum standards at solid waste facilities within the jurisdiction of the LEA, as referenced in Public Resources Code Section 43214(c);

(c) Failure of the LEA to maintain compliance with and/or implement one or more of the components of the LEA’s Enforcement Program Plan, as referenced in 14 CCR 18077; and

(d) Failure of the LEA to perform all applicable duties related to the California Environmental Quality Control Act.

§ 18086. Types of Board Actions over LEAs.

If the Board finds that an LEA is not fulfilling one or more of its responsibilities and/or obligations under Public Resources Code Division 30, Part 4, Chapter 2 (the “Solid Waste Facilities Chapter of the Waste Management Act”) and/or these implementing regulations, then the board, in accordance with Public Resources Code Section 43215 and 43216.5, may take one or more of the following actions:

(a) Assume responsibility for specified LEA duties by partially or fully decertifying an LEA, either permanently or through a temporary suspension. Such an assumption of responsibility shall only extend to the LEA duties so specified by the board. The board may charge for operations pursuant to PRC 43212(a) while performing enforcement agency duties.

(b) Conduct more frequent inspections and evaluations within an LEA’s jurisdiction.

(c) Establish a schedule and probationary period for improved performance by an LEA, and/or call for the submission of an evaluation workplan.

(d) Withdrawal of the Board’s approval of the local governing body’s designation of the LEA.

(e) Implement any other measures which may be determined by the Board to be necessary to improve LEA compliance.

§ 18087. Process for Board Actions over LEAs.

(a) Notice: Notice of the hearing shall be sent by first-class mail and deposited in the mail at least thirty (30) days prior to the hearing. The notice shall be sent to the LEA’s most current address as specified in the completed Form CWMB 1000 “Notice of Designation of Local Agency” currently on file with the Board. If written notice has been provided to the Board that the LEA is represented by an attorney in the proceeding, the notice of the hearing shall additionally be mailed to such attorney.

(b) Public Hearing: The hearing shall be open to the public. The Chair or other presiding officer may provide an opportunity during the hearing for nonidentifiable public comment relevant to the matter being heard by the Board. The Chair or other presiding officer may impose reasonable limitations on the number of public speakers commenting, and on the nature and length of the comment period.

(c) Admission of Evidence: A party shall be afforded the opportunity to present evidence and testimony on all relevant issues. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

(d) Final Action by the Board: The Board’s decision will consider the severity of the deviation(s) as related to the potential negative impacts on public health, safety or the environment. The Board will announce its decision at the conclusion of the hearing. A written decision will be prepared thereafter, which shall include a statement of the factual and legal basis of the decision. A copy of the written decision shall be sent to the LEA in the same manner as set forth in subsection (a), above, within ten (10) days of the conclusion of the hearing.

§ 18088. Board Acting as Enforcement Agency.

The Board, when acting as the enforcement agency, may enter into agreements or contracts as its discretion with any certified local enforcement agency for the purpose of delegating its enforcement agency duties...