



County of San Mateo

Inter-Departmental Correspondence

Department: HEALTH

File #: 16-464

Board Meeting Date: 8/8/2017

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Louise Rogers, Chief, Health System

Heather Forshey, Director, Environmental Health Services

Subject: Appointment of a Hearing Officer for the Solid Waste Program

RECOMMENDATION:

Adopt a resolution authorizing the California State Office of Administrative Hearings, or its designee, to act as hearing officers and adopt hearing officer appointment procedures and qualifications for the Solid Waste Management Program.

BACKGROUND:

The Solid Waste Enforcement Program in Environmental Health Services (EHS) has been delegated authority by the California Department of Resources, Recovery and Recycling (CalRecycle) to act as the Local Enforcement Agency (LEA) for solid waste regulations throughout the County of San Mateo.

The LEA regulates and inspects all permitted solid waste facilities, including closed landfills in its jurisdiction. The routine inspections conducted by the LEA ensure that the solid waste facilities are in compliance with the state minimum standards for each type of facility (e.g. transfer station, composting facility, or landfill). In addition, the LEA ensures that each facility conforms to the terms and conditions of its approved solid waste facility permit.

The LEA enforces the California Code of Regulations Title 14, Natural Resources Division and Title 27, Environmental Protection Division 2 to return a facility to compliance when violations are noted on inspection reports.

The resulting enforcement actions, including any decision made by the LEA, may be subject to an appeals process outlined in the California Public Resource Code Section 44307. Under the delegation, failure to institute the appeals process in a timely fashion may result in CalRecycle decertifying the LEA.

In the unlikely event that this should occur, CalRecycle would assume the role of the LEA in the

County's jurisdiction.

DISCUSSION:

According to the Public Resources Code, the LEA must have an Independent Hearing Panel (IHP) or duly appointed Hearing Officer in place to hear appeals that may be filed as a result of solid waste permitting and enforcement actions taken by the LEA. The existing LEA Enforcement Program Plan, pursuant to Public Resources Code Section 44308, established the LEA IHP made up of three members selected for their legal and technical abilities in areas related to solid waste management, and at least one member to represent the public at large. IHP membership is subject to term limitation of four years for no more than two consecutive terms of service. The current membership recently completed their term of service.

Changes to State laws have set new, tighter time limits for hearings and decisions to be rendered following the filing of appeals seeking relief from LEA enforcement actions. Most notably, an operator subject to an enforcement action who files an appeal must be provided with the date, time and location of the hearing within 15 days. The appeal hearing must occur within 30 days, and the final decision must be rendered within 35 days from the date that the appeal was filed.

As noted above, the LEA may opt to appoint a Hearing Officer, such as those available through the California State Office of Administrative Hearings, instead of an IHP. EHS would like to exercise this option, as a Hearing Officer is a less costly and more efficient hearing process, eliminates the need for an IHP to hear appeals of this type, and is not subject to strict term limitations.

The California State Office of Administrative Hearings requires EHS to enter into an agreement for services on an "as-needed" basis. A retainer fee is not charged. If approval is received from your Board for the appointment of a hearing officer, EHS will prepare and submit a service agreement to procure hearing officer services.

The resolution has been reviewed and approved by County Counsel.

The adoption of the Resolution contributes to the Shared Vision 2025 outcome of a Healthy Community by designating the California State Office of Administrative Hearings to hear appeals of permit or enforcement actions taken by the LEA and ensure that the solid waste facilities are in compliance with the state minimum standards. It is anticipated that 94% of all permitted facilities will receive an annual inspection in FY2017-18.

PERFORMANCE MEASURE:

Measure	FY 2016-17 Actual	FY 2017-18 Projected
Percent of permitted facilities receiving an annual inspection	96%*	94%

*FY2016-17 target of 94% was exceeded.

FISCAL IMPACT:

There is no Net County Cost resulting from this action.

All operations for the EHS Solid Waste Enforcement Program are budgeted and accounted for in each fiscal year. EHS may recover costs for the Hearing Officer (Administrative Law Judge and Court Reporter) from the regulated facility. If cost recovery is not approved by the Administrative Law Judge, costs will be drawn from the Solid Waste Enforcement Program's Enforcement Grant.