



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C-4

For the meeting of: November 10, 2015

Date: October 26, 2015
To: Board of Supervisors
From: Phillip R. Crandall, Director *SBuchley*
Department of Health and Human Services - Public Health Branch
Subject: Appointments to the Solid Waste Local Enforcement Agency Independent Hearing Panel

RECOMMENDATION(S):

That the Board of Supervisors:

- 1. Appoint Margaret Gainer as an At-Large Public Representative with a term to expire December 11, 2019.
- 2. Appoint Linda Wise as a Technical Expert Representative with a term to expire December 11, 2019.
- 3. Appoint James Clark as a Technical Expert Representative with a term to expire December 11, 2019.

SOURCE OF FUNDING:

Public Health Fund

DISCUSSION:

The Board of Supervisors, the governing authorities of the cities within the County, and the Department of Resources Recycling and Recovery (CalRecycle) have designated the Department of Health and Human Services Division of Environmental Health (DEH) as the solid waste Local Enforcement Agency (LEA). The LEA permits and inspects solid waste handling sites throughout Humboldt County. One component of designation as the LEA is to maintain a local appeals body to hear solid waste permitting and enforcement issues (CCR 14 §18081(e)(2)). A hearing before the appointed hearing panel may be requested to appeal either an LEA action or the LEA's failure to act as required by law or regulation. When, in the jurisdiction

Prepared by DJ Wieman *DM* CAO Approval *Eashia Hayes*

REVIEW: Auditor _____ County Counsel *an* Personnel _____ Risk Manager *KRV* Other _____

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other _____

PREVIOUS ACTION/REFERRAL:

Board Order No. C-11, C-7

Meeting of: 12/11/2007, 3/6/2012

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor *Lovelace* Seconded by Supervisor *Sundberg*
Ayes *Sundberg, Lovelace, Fennell, Bohn*
Nays _____
Abstain _____
Absent *Bass*

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: Nov. 10, 2015
By: *Kathy Hayes*
Kathy Hayes, Clerk of the Board

of the enforcement agency, there exists a publicly owned or operated solid waste facility or disposal site (as exists in Humboldt County), there shall be an independent hearing panel (IHP) rather than one composed entirely of local governing body members (CCR 14 §18081(e)(2)).

The first IHP was established in 1992 by Humboldt County Resolution No. 92-128. (A copy of the Resolution is attached here for your Board's reference.) The IHP members serve four-year terms with a maximum appointment of two consecutive terms. The terms of the current members of the IHP are set to expire on December 11, 2015. The LEA maintains a list of potentially qualified candidates who may be willing to serve. Eight people were contacted; three agreed to be considered for the upcoming IHP term. The remaining candidates prefer to remain on the list for consideration at a future time. The LEA is now recommending the appointment of Margaret Gainer, Linda Wise, and James Clark to the IHP. Examples of the nominees' qualifications to serve on the IHP are as follows:

Ms. Gainer has worked for over twenty years as a consultant in the western United States on community development and integrated waste management projects with a focus on public education, waste prevention, and identifying and developing end-use markets for recyclable material. She has been a professional facilitator of group process since 1982. She has served on the Arcata Planning Commission, the City of Arcata's Economic Development Committee, and on the Humboldt County Headwaters Fund Board of Directors. She is currently on the Board of Directors of Zero Waste Humboldt.

Ms. Wise has experience in both the regulatory and industrial facets of solid waste management. She is a Registered Environmental Health Specialist who served as the manager of the Solid Waste LEA program in Yuba-Sutter Counties from 1999 to 2003. She has been employed in the waste management industry for over twelve years and is currently the General Manager of Recology Humboldt.

Mr. Clark graduated from HSU with a degree in Natural Resources in 1974 and has lived in Eureka since 1980. He has worked in all areas of environmental health in Calaveras, Tulare and Humboldt Counties during his career as a Registered Environmental Health Specialist. He served on the Solid Waste Task Force in Humboldt in the early 1990s when key decisions were made about the County's solid waste management future. He has served on the Mariculture Monitoring Committee, is a long-standing member and officer of the Redwood Region Audubon Society, a chapter of the National Audubon Society; he currently serves as its Vice President.

FINANCIAL IMPACT:

Serving on this panel is voluntary. Members of the panel may receive per diem and necessary expenses while conducting a hearing (PRC§44308(c)). These costs will come from the \$1,152 Hearing Panel Fee which is paid by the party requesting the hearing. This fee was established by Humboldt County Ordinance No. 2459.

The Solid Waste Local Enforcement Agency Independent Hearing Panel supports the Board's Strategic Framework by creating opportunities for improved safety and health.

OTHER AGENCY INVOLVEMENT:

Department of Resources Recycling and Recovery (CalRecycle).

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board of Supervisors may choose to appoint one of its members to the IHP in lieu of one of the proposed appointments (PRC§44308(b)(1)). To avoid a conflict of interest, the governing body representative should be a member who does not sit on the Board of the local solid waste joint powers authority.

ATTACHMENTS:

Attachment 1: Sections of the California Code of Regulations and Public Resources Code that pertain to Independent Hearing Panel member appointment, qualifications and hearing procedure.

Attachment 2: Humboldt County Resolution No. 92-128.

ATTACHMENT 1

Sections of the California Code of Regulations and Public Resources Code that pertain to Independent Hearing Panel member appointment, qualifications and hearing procedure

Attachment 1

Sections of the California Code of Regulations and Public Resources Code that pertain to IHP member appointment and qualifications and hearing procedure.

CCR 14 §18060. Appointment of Hearing Panel(s).

(a) Before the board can approve a designation, the designated local agency's local governing body shall appoint a hearing panel. The hearing panel shall be composed of either members of the local governing body or an independent hearing panel pursuant to Section 18081(e)(2). There shall be an independent hearing panel when in the jurisdiction of the enforcement agency there exists a publicly owned or operated solid waste facility or disposal site.

(b) Notice of the appointment of a hearing panel(s) shall be given the board and shall include the following:

(1) The name of each member and her or his position in the local governing body. If an independent hearing panel is appointed pursuant to Section 44308 of the Public Resources Code, an indication of which person is the technical expert in solid waste management, which person is the member of the local governing body, and which person is the representative of the public at large;

(2) the address to which filings and correspondence shall be mailed;

(3) indication whether each hearing panel was appointed pursuant to Section 44308 of the Public Resources Code; and

(4) The date, terms and conditions of the appointment.

(c) Notices of appointments to vacant positions on the hearing panel shall be given in the same manner.

(d) When the board serves as the enforcement agency, hearing panels shall be as set forth in Public Resource Code Section 44309.

§ 18081. LEA Performance Standards and Evaluation Criteria.

(e) All LEAs shall retain their certification(s) and designation approvals by maintaining compliance with their board-approved EPP and this Chapter.

(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 for permit, enforcement and appeal purposes, as per Section 18060 of this Chapter and Sections 44308 through 44310 of the Public Resources Code.

Public Resources Code

44308. (a) All hearings conducted pursuant to this chapter by the enforcement agency shall be conducted by a hearing officer appointed

pursuant to subdivision (d) or a hearing panel appointed pursuant to either of the following procedures:

(1) The governing body may appoint three of its members as the hearing panel.

(2) The chairperson of the governing body may appoint an independent hearing panel consisting of three members.

(b) (1) If an independent hearing panel is appointed pursuant to paragraph (2) of subdivision (a), not more than one member of the governing body shall serve on the hearing panel.

(2) Members of the independent hearing panel shall be selected for their legal, administrative, or technical abilities in areas relating to solid waste management.

(3) At least one member of the independent hearing panel shall be a technical expert with knowledge of solid waste management methods and technology.

(4) At least one member of the independent hearing panel shall be a representative of the public at large.

(5) A member of an independent hearing panel shall serve for a term of four years, and may not serve more than two consecutive terms.

(6) If a member of an independent hearing panel does not complete the member's term, the chairperson of the governing body shall appoint a replacement to serve out the remainder of the unexpired term.

(c) Members of the hearing panel may receive per diem and necessary expenses while conducting the hearing.

(d) The governing body of an enforcement agency may appoint a hearing officer only if the governing body has adopted procedures for making that appointment and has adopted qualifications that the hearing officer is required to meet.

44310. All hearings conducted pursuant to this chapter shall be based on the following procedures:

(a) (1) The hearing shall be initiated by the filing of a written request for a hearing with a statement of the issues.

(A) If the hearing request is made by the person subject to the action, the request shall be made within 15 days from the date that person is notified, in writing, of the enforcement agency's intent to act in the manner specified.

(B) If the hearing request is made by a person alleging that the enforcement agency failed to act as required by law or regulation pursuant to Section 44307, the person shall file a request for a hearing within 30 days from the date the person discovered or reasonably should have discovered, the facts on which the allegation is based.

(2) The enforcement agency shall, within 15 days from the date of receipt of a request for a hearing, provide written notice to the person filing the request notifying the person of the date, time, and place of the hearing.

(3) If that person fails to request a hearing or to timely file a statement of issues, the enforcement agency may take the proposed action without a hearing or may, at its discretion, proceed with a hearing before taking the proposed action.

(4) The enforcement agency shall file its written response to the statement of issues filed by the person requesting the hearing with the hearing panel or the hearing officer, and provide a copy to the person requesting the hearing, not less than 15 days prior to the date of the hearing.

(b) The hearing shall be held no later than 30 days after receiving the request for a hearing on the merits of the issues presented, in accordance with the procedures specified in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Within five days from the conclusion of the hearing, the hearing panel or hearing officer shall issue its decision. The decision shall become effective as provided in Section 45017.

ATTACHMENT 2

Humboldt County Resolution No. 92-128

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified copy of portion of proceedings, Meeting on November 17, 1992

RESOLUTION NO. 92-128

RESOLUTION ESTABLISHING AN
INTEGRATED WASTE MANAGEMENT
INDEPENDENT HEARING PANEL

WHEREAS, the provisions of the Integrated Waste Management Act of 1989 (Public Resources Code Section 40000 et seq.) require the County of Humboldt to establish an independent hearing panel; and

WHEREAS, the purpose of the independent hearing panel will be to conduct hearings in connection with enforcement and permitting actions taken by the Local Enforcement Agency; and

WHEREAS, the composition of the independent hearing panel is governed by the Integrated Waste Management Act.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors hereby establishes an Integrated Waste Management Independent Hearing Panel. Vacancies on the panel shall be filled by appointment of the Board of Supervisors. Members of the panel shall be selected for their legal, administrative, or technical abilities in areas relating to solid waste management. At least one member of the hearing panel shall be a technical expert with knowledge of solid waste management methods and technology. At least one member shall be a representative of the public at large. One member of the Board of Supervisors may serve on the hearing panel.

Panel members shall serve for a term of two years, and may serve more than one term, but not more than two consecutive terms. If a member does not complete his or her term, the Board of

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings, Meeting on November 17, 1992

Supervisors may appoint a replacement to serve out the remainder of the unexpired term.

The panel shall be required to conduct all hearings in accord with the provisions of the Integrated Waste Management Act of 1989.

Adopted on motion by Supervisor Pritchard, seconded by Supervisor Neely and the following vote:

AYES: Supervisors-- Dixon, Pritchard, Fulkerson, and Neely
NOES: Supervisors-- None
ABSENT: Supervisors-- Sparks
ABSTAIN: Supervisors-- None

STATE OF CALIFORNIA)
County of Humboldt) ss.

I CHRIS ARNOLD, Clerk of the Board of Supervisors, County of Humboldt, State of California, do hereby certify the foregoing to be a full, true and correct copy of the original made in the above-entitled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Board of Supervisors

CHRIS ARNOLD

Clerk of the Board of Supervisors of the County of Humboldt, State of California

By Lora Frediani
Deputy

Lora Frediani
November 20, 1992