



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C-11

For the meeting of: December 11, 2007

Date: November 8, 2007
To: Board of Supervisors
From: Phillip R. Crandall, Director
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 Susan Penn as an At-Large Public Representative with a term to expire December 11, 2011.
- 2. Appoint Peter Oringer as an At-Large Public Representative with a term to expire December 11, 2011.
- 3. Appoint Roy Comer as the Technical Expert Representative with a term to expire December 11, 2011.

SOURCE OF FUNDING: Public Health Fund

DISCUSSION:

The Board of Supervisors and the California Integrated Waste Management Board have designated the Department of Health and Human Services Division of Environmental Health as the solid waste Local Enforcement Agency (LEA). The LEA permits and inspects solid waste handling facilities in Humboldt County. One component of designation as the LEA is to maintain

Prepared by: Cynthia Chason 268-2229 P.C.

CAO Approval [Signature]

REVIEW: Auditor _____ County Counsel [Signature] Personnel _____ Risk Manager _____ Other _____

TYPE OF ITEM:
____ Consent
____ Departmental
____ Public Hearing
____ Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor WOOLLEY
Seconded by Supervisor [Signature] GEIST
And unanimously carried by those members present,
The Board hereby adopts the recommended action
contained in this report.

PREVIOUS ACTION/REFERRAL:

Board Order No. _____
Meeting of: _____

Dated: December 11, 2007
Kathy Hayes, Clerk of the Board
By: [Signature]

an independent hearing panel (IHP). The first IHP was established in 1992 by Humboldt County Resolution No. 92-128. The IHP acts as the local appeals body for solid waste permitting and enforcement issues. A hearing is initiated by the filing of a written request and must be held no later than 30 days after the LEA receives the request. A hearing before the appointed hearing panel members may be requested to appeal either an LEA action or the LEA's failure to act as required by law or regulation. The three IHP members serve four-year terms with a maximum appointment of two consecutive terms.

FINANCIAL IMPACT:

Serving on this panel is voluntary. Members of the panel may receive per diem and necessary expenses while conducting a hearing. These costs will come from the \$1,051 Hearing Panel Fee which is paid by the party requesting the hearing. This fee was established by Humboldt County Ordinance No. 2368.

OTHER AGENCY INVOLVEMENT:

California Integrated Waste Management Board

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 At-Large Public Representative recommendations. 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:

1 - Sections of the California Code of Regulations and Public Resources Code that pertain to IHP member appointment and 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.