

FORM APPROVED COUNTY COUNSEL
 BY: *[Signature]* 12/14/09
 DATE
 JIMNY H. RA

**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

611



FROM: Community Health Agency/Department of Environmental Health

SUBMITTAL DATE:
 October 7, 2009,

SUBJECT: Adoption of Resolution 2009-309 Establishing an Independent Hearing Officer to Consider Appeals and Hearings Related to Solid Waste Regulation and Enforcement

RECOMMENDED MOTION:

That the Board adopt Resolution 2009-309, and the attachments thereto, appointing the California State Office of Administrative Hearings, or its respective designees, to act as Hearing Officer to hear all actions brought before them pursuant to Section 44308(d) of the State Public Resources Code.

BACKGROUND: The Riverside County Department of Environmental Health (DEH) has been delegated authority by the California Integrated Waste Management Board to act as the Local Enforcement Agency (LEA) for solid waste regulation in Riverside County. The delegation of authority requires establishment of an Independent Hearing Panel or Independent Hearing Officer to consider appeals and hearings relating to solid waste regulation and enforcement. This Resolution proposes that an Administrative Law Judge (ALJ) act as the Solid Waste Independent Hearing Officer, rather than a three member hearing panel.

(continued)

[Signature: Steve Van Stockum]

SVS:jw

Steve Van Stockum, Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	09/10

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
 BY: *[Signature: Debra Cournoyer]*
 Debra Cournoyer

County Executive Office Signature

Dept's Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

3.20

Departmental Concurrence

October 7, 2009

In 1992, the Riverside County Board of Supervisors established an Independent Hearing Panel pursuant to Public Resources Code Section 44801 by adoption of Resolution 92-048. The three member Hearing Panel consisted of a representative of the Riverside County Board of Supervisors, a technical expert in solid waste management, and a representative of the public.

State Law changed in September 2004 when California Assembly Bill 2159 was signed by Governor Schwarzenegger, amending the Public Resources Code and allowing the ability to appoint an Independent Hearing Officer in lieu of the Independent Hearing Panel.

Previously the Department would coordinate appointments by the Board of Supervisors for a Hearing Panel. Due to its infrequent use, it was difficult to keep the Panel staffed. The use of a Hearing Officer would enable the Department to provide this service to the facility operators when needed and meet the requirements of State regulations.

This proposal will ensure more timely hearings in that scheduling of an ALJ is more readily accomplished than convening a three member panel. Utilizing the existing process of an Independent Hearing Panel, even with the ability to appoint a designee, is difficult to manage due to busy schedules and personal or professional conflicts. The proposed Resolution will reduce the time needed to hear and resolve grievances. This proposal is consistent with State Law and will enable the Department to better serve the public.

Approval of this Resolution will allow the LEA to respond to requests for appeal hearings in a timely and efficient manner as required by California State law.

FINANCIAL:

DEH would recover costs for the Hearing Officer (ALJ and Court Reporter) from the regulated facility. If cost recovery is not approved by the ALJ, costs can be budgeted within existing program regulatory fees. The recommended action will have no fiscal impact to the General Fund.

2 RESOLUTION NO. 2009-309

3
4 Establishing an Independent Hearing Officer to Consider Appeals and Hearings Related to Solid Waste
5 Regulation and Enforcement

6 WHEREAS, Riverside County Department of Environmental Health is certified as the Local
7 Enforcement Agency (LEA) to enforce state laws and regulations, including the permitting, inspection
8 and enforcement, of solid waste handling and disposal sites in the unincorporated County and Cities
9 within the County; and

10 WHEREAS, the LEA is required to provide a means to hear the grievances of owners/operators or
11 other aggrieved parties as follows:

- 12 1. Any person subject to an action by the LEA requesting an appeal of the action;
13 2. Any person who alleges that the LEA has failed to act as required by law or regulation; or
14 3. By the Board of Supervisors, who can direct that a hearing be held prior to the assessment of
15 administrative civil penalties against an owner/operator of a solid waste facility or operation; and

16 WHEREAS, previously, the Riverside County Board of Supervisors, by Resolution 92-048,
17 established an Independent Hearing Panel for Riverside County, but has determined a need for a more
18 streamlined process to hear grievances against the LEA; and

19 WHEREAS, the Public Resources Code (PRC), Section 44308(d) allows the local governing body to
20 appoint an Independent Hearing Officer in lieu of an Independent Hearing Panel only if the governing
21 body has adopted procedures for making that appointment and has adopted qualifications that the hearing
22 officer is required to meet; and

23 WHEREAS, the Riverside County Board of Supervisors, the governing body for the LEA, as
24 required by PRC 44308(d), shall concurrently adopt the *Local Enforcement Agency Procedure to*
25 *Appoint a Hearing Officer* (See Appendix A), and the *Local Enforcement Agency Hearing Officer*
Qualifications (See Appendix B), as attached hereto and incorporated herein;

1 NOW, THEREFORE BE IT RESOLVED, that the Riverside County Board of Supervisors hereby
2 appoints the California State Office of Administrative Hearings, or its respective designees that meet the
3 qualifications adopted by this Board, to act as the hearing officer and hear all actions brought before them
4 pursuant to the Public Resources Code.

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BY: JINNY H. RA 10/14/09
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APPENDIX A

LOCAL ENFORCEMENT AGENCY PROCEDURE TO APPOINT A HEARING OFFICER

The Riverside County Department of Environmental Health, Local Solid Waste Management Enforcement Agency (LEA), has established the following procedure in order to appoint a hearing officer to hear grievances of owner/operators or other aggrieved parties subject to an enforcement or permit action by the LEA, or alleging that the LEA has failed to act as required by law or regulation:

1. Establish account with California Office of Administrative Hearings (OAH).
2. Establish/ascertain qualifications of available Administrative Law Judges to serve as hearing officer for cases involving code compliance and environmental and/or public health threats.
3. Upon timely receipt of a request to appeal an enforcement or permit action by the LEA, the LEA shall request assignment of an appropriately qualified Administrative Law Judge from the OAH to hear the case.
4. Similarly, upon timely receipt of a request to appeal the LEA's failure to act as required by law, the LEA shall request assignment of an appropriately qualified Administrative Law Judge from the OAH to hear the case.
5. Similarly, upon request of the governing body, as in the case of the Board of Supervisors who can direct that a hearing be held prior to the assessment of administrative civil penalties against an owner/operator of a solid waste facility or operation, the LEA shall request assignment of an appropriately qualified Administrative Law Judge from OAH to hear the case.

APPENDIX B

LOCAL ENFORCEMENT AGENCY HEARING OFFICER QUALIFICATIONS

In order to appoint a hearing officer to hear grievances of owner/operators or other aggrieved parties subject to an enforcement or permit action by the Riverside County Department of Environmental Health, Local Solid Waste Management Enforcement Agency (LEA), or alleging that the LEA has failed to act as required by law or regulation, the LEA has established the following qualifications:

An appropriately qualified Hearing Officer is defined as holding the following qualifications:

1. Administrative Law Judge in good standing and employed by, or contracted with, the California State Office of Administrative Hearings;
2. Demonstrated familiarity with administrative procedures; and
3. Demonstrated familiarity with legal procedures.