

California State Auditor

B U R E A U O F S T A T E A U D I T S

California Integrated Waste Management Board:

*Its New Regulations Establish Rules for Oversight
of Construction and Demolition Debris Sites, but
Good Communication and Enforcement Are Also
Needed to Help Prevent Threats to Public Health
and Safety*



December 2003
2003-113

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CALIFORNIA STATE AUDITOR

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December 10, 2003

2003-113

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning our review of the processes used by the California Integrated Waste Management Board (board) and local agencies, including local enforcement agencies (LEAs), to grant permits for and to monitor solid waste sites.

This report concludes that the board had not finalized regulations for construction and demolition debris sites when a large fire broke out at the Archie Crippen Excavation Site (Crippen Site), a site that accepted this type of material, in Fresno, putting public health and safety at risk. Representatives of several agencies visiting the Crippen Site before the fire failed to cite the operator or require remediation of conditions that ultimately made the fire difficult to suppress. Also, the board does not track sites that fall into the excluded regulatory tier because it is not required to do so. However, these sites may grow or begin to receive other types of waste, potentially posing a risk to public health and the environment without the board's or the LEAs' knowledge if the operator does not notify them of any change in activity. In addition, the board does not complete its reviews of each LEA every three years, as required by law, to ensure they are appropriately enforcing the California Integrated Waste Management Act of 1989.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

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SUMMARY

Audit Highlights . . .

Our review of the California Integrated Waste Management Board (board) and local agencies' oversight of solid waste facilities found:

- ☑ *The board had not finalized regulations for construction and demolition debris sites when a large fire broke out at the Archie Crippen Excavation Site (Crippen Site), which accepted construction and demolition waste in Fresno.*
 - ☑ *The board's interim directions did not provide the local enforcement agencies (LEAs) with clear guidance on how to handle construction and demolition debris sites.*
 - ☑ *Representatives of several agencies visiting the Crippen Site before the fire failed to cite and remediate conditions that ultimately made the fire difficult to suppress, raising concerns about public health.*
 - ☑ *The board does not track "excluded" solid waste sites because regulations do not require it to do so.*
 - ☑ *The board does not complete a review of each LEA every three years, as required by law.*
 - ☑ *Through legal challenges to enforcement actions, solid waste facility operators can delay correction of identified problems.*
-

RESULTS IN BRIEF

Through its oversight of the State's 240 solid waste landfill sites and facilities, the California Integrated Waste Management Board (board) helps protect the environment and public health and safety. The board certifies and works with local enforcement agencies (LEAs) to manage programs that oversee the reduction and proper handling of an estimated 66 million tons of solid waste each year in California. The board establishes regulations for handling many types of solid waste, and the LEAs enforce the regulations at the solid waste sites in their geographical areas.

However, when the board had not yet established regulations for one type of waste—construction and demolition debris—its interim directions for LEAs were not sufficiently clear, potentially putting public health and safety at risk. Thus, when a fire broke out in January 2003 at the Archie Crippen Excavation Site (Crippen Site), a site receiving construction and demolition waste in Fresno, firefighters faced large piles of waste material without adequate fire access lanes. The debris pile that caught fire covered five continuous acres and was over 40 feet high, creating smoke that threatened the health and safety of local residents. One month later, the combined efforts of local, state, and federal emergency response agencies finally contained the fire, which cost \$6 million to suppress and clean up.

State law requires anyone who proposes to operate a solid waste facility, which includes a facility that processes and handles construction and demolition waste, to apply for a solid waste facility permit. Before August 2003 the board had not finalized regulations for construction and demolition debris sites. Pending final regulations, the board advised LEAs to follow its LEA Advisory #12 (advisory), but some questions exist about the advice. The board points to the advisory's statement that the advisory does not "preclude LEAs from accepting applications for a solid waste facilities permit," whereas the Fresno LEA followed other language in the advisory that "strongly encouraged [LEAs] not to accept applications for a solid waste facilities permit for materials and handling methods which are under evaluation." As a result, the Fresno LEA did not require a solid waste facility permit for the Crippen Site. Instead, the site

operated under a conditional use permit from the city of Fresno and was subject to much less monitoring than required under a solid waste facility permit, which would have required the LEA to periodically inspect the site to ensure the operators' compliance with statutes, regulations, and the terms of their permits.

If the Crippen Site had obtained a solid waste facility permit, as regulations now require, periodic monitoring visits and enforcement actions would likely have prevented the accumulation of such a large debris pile and also required adequate emergency access. However, the city of Fresno Code Enforcement Division, the city of Fresno Fire Department, the Fresno LEA, and the board had visited the Crippen Site and observed the size of the debris pile. Because of questions about the board's interim directions for dealing with waste types that regulations did not yet cover, lack of communication between certain agencies that observed conditions at the Crippen Site, and the failure to cite those conditions, the problems at the Crippen Site were not remediated. The first phase of final regulations for construction and demolition debris sites and inert debris sites took effect August 2003.

The board's Solid Waste Information System database, which has detailed information on the LEAs' oversight of each facility with a solid waste facility permit and sites in the enforcement agency notification regulatory tier in the State, does not regularly record information about all waste sites in the excluded regulatory tier, which are not required to have solid waste facility permits. Further, not all LEAs track the existence of excluded sites. Operators of some sites are not required to notify their LEAs of their intent to operate nor are such operators required to submit an application for a solid waste facility permit. Such sites are covered in state law but are in the excluded tier of the regulations. If these sites grow or begin to receive other types of waste, they may require permits, but operators may decide not to inform the board or LEA. Potentially, such sites could pose a risk to public health and the environment without the board even knowing they exist.

The board not only establishes regulations but also certifies LEAs and monitors their operations to ensure that LEAs require solid waste facilities in their jurisdictions to comply with legal and regulatory requirements. The scope of the board's reviews is appropriate, addressing six compliance issues established in law, as well as ensuring that LEAs continue to comply with the terms of their certifications. However, the board does not complete a review of each LEA every three years, as required by law.

Even if regulations existed for all types of solid waste activities and the board and LEAs adequately monitored all facilities and initiated enforcement actions to correct identified problems, not every identified problem at solid waste facilities would be promptly corrected. Facility operators can successfully challenge LEAs' findings on an appeal, as well as in court, and may delay implementing corrective action or assessment of penalties.

RECOMMENDATIONS

To help protect public health and safety and the environment, the board should do the following:

- To ensure that sites are adequately monitored, the board should clarify the intent of the advisory for the currently known or newly identified nontraditional sites for which regulations are not yet in place.
- To meet the goals of the California Integrated Waste Management Act of 1989 (Waste Act) and improve regulation of solid waste, the board should complete and implement as promptly as possible its work on the second phase of regulations for construction and demolition debris sites, covering the disposal of the waste materials.
- When it determines that an LEA has inappropriately classified a site—for example, treating a composting site as a construction and demolition debris site—the board should work with the LEA to correct the classification.
- To ensure the enforcement community is aware of excluded operations that could potentially grow into a public health, safety, or environmental concern, the board should require, pursuant to the Public Resources Code, Section 43209(c), LEAs to compile and track information on operations in the excluded tier. To track this information, each LEA should work with its related cities and counties to develop a system to communicate information to the LEA about existing and proposed operations in the excluded tier with the potential to grow and cause problems for public health, safety, and the environment. For example, cities and counties might forward to LEAs information about requests for conditional use permits, revisions to current conditional use permits, or requests for new business licenses. We are not suggesting that the LEA track all operations in the excluded tier—for example, backyard composting or disposal bins located at

construction sites. In addition, the board should require LEAs to periodically monitor operations in the excluded tier to ensure they still meet the requirements for this tier. Finally, in its triennial assessments of each LEA, the board should review the LEA's compliance with these requirements regarding excluded sites.

- To comply with existing law, the board should complete evaluations of LEAs within the three-year cycle. If that is not feasible, the board should propose a change in law that would allow a prioritization system to ensure that it at least evaluates LEAs with a history of problems every three years.

The Legislature may wish to consider amending the current provisions of the Waste Act that allow a stay of an enforcement order upon the request for a hearing, and to streamline or otherwise modify the appeal process to make it more effective and timely and enhance the ability to enforce the Waste Act.

AGENCY COMMENTS

The board, the county and city of Fresno, and the county and city of Sacramento generally agree with our recommendations and have indicated that they are either considering or already taking steps to address our recommendations. In addition, these entities have provided additional perspective and context for the report. ■

INTRODUCTION

BACKGROUND

Each year Californians generate an estimated 66 million tons of solid waste, which must be properly handled to prevent health and environmental threats. In 1976 Congress enacted the Resource Conservation and Recovery Act of 1976 (RCRA), which expanded the federal government's role in regulating the disposal of solid wastes and required that all solid waste landfills comply with certain minimum criteria adopted by the U.S. Environmental Protection Agency (EPA). In that same year, when cities and counties became responsible for enforcing these standards, each local government, with the Waste Management Board's approval, designated a local enforcement agency (LEA) to enforce state minimum standards and solid waste facility permits.

CALIFORNIA'S RESPONSE TO THE EVOLVING CHALLENGES OF THE SOLID WASTE INDUSTRY

In 1989 the Legislature passed the California Integrated Waste Management Act of 1989 (Waste Act), designed in part to meet the State's obligations under the federal RCRA.

The Waste Act replaced the part-time, 10-member Waste Management Board with the full-time, six-member California Integrated Waste Management Board (board) responsible for managing California's solid waste materials by reducing, recycling, and reusing solid waste to the maximum extent feasible and in the most cost-efficient manner. The Waste Act called for a comprehensive regulatory scheme for handling and processing solid waste and managing solid waste facilities in the State, declaring that "the amount of solid waste generated in the state coupled with diminishing landfill space and potential adverse environmental impacts from landfilling constitutes an urgent

need for state and local agencies to enact and implement an aggressive new integrated waste management program."

Goals of the Waste Act

- Improve the regulation of existing solid waste landfills.
- Ensure that new solid waste landfills are environmentally sound.
- Improve procedures for issuing permits to solid waste management facilities.
- Specify local governments' responsibilities to develop and implement integrated waste management programs.

A central feature of the Waste Act requires any person proposing to operate a solid waste facility to apply for a solid waste facility permit, which imposes various requirements on such facilities to ensure that their operation protects public health and safety and prevents environmental damage. An LEA must approve the solid waste facility permit, subject to the board's concurrence, before the applicant can begin operations. Any solid waste facility permit approved must be consistent with the Waste Act, regulatory standards, and any specific local standards that may apply.

Solid wastes include the following:

- Garbage
- Trash
- Refuse
- Paper
- Rubbish
- Ashes
- Industrial wastes
- Construction and demolition wastes
- Abandoned vehicles
- Discarded home and industrial appliances
- Manure
- Vegetable or animal wastes
- Other discarded wastes

The Waste Act defines “solid waste” very broadly to include essentially all solid, semisolid, and liquid wastes, other than hazardous, radioactive, and medical wastes. Also, the Waste Act defines a “solid waste facility” to include various types of facilities, including a solid waste transfer or processing station, a composting facility, a transformation facility, and a disposal facility. (See Appendix C for a glossary.) A disposal facility, as its name suggests, is one where solid waste is disposed onto land, commonly known as a landfill. The other types of solid waste facilities subject to regulation under the Waste Act are not designed for solid waste disposal; rather, they recycle, compost, transform, or otherwise process the solid waste handled at those sites for reuse in some way. For example, a transfer or processing station is a site used to receive solid

wastes; temporarily store, separate, convert, or otherwise process the materials in the solid wastes; or transfer the solid wastes directly from smaller to larger vehicles for transport. Although these facilities are not designed for solid waste disposal, they do handle solid waste and are subject to regulation under the Waste Act.

A central component of solid waste management in California is the shared responsibility between the board and the 56 LEAs that issue permits to operators of waste sites, inspect those sites, and enforce standards for solid waste handling within their geographical areas. To become certified and maintain certification, an LEA must demonstrate a number of characteristics, including technical expertise, adequacy of staff and budget resources, and sufficient staff training. Also, each LEA must develop a board-approved enforcement program plan, which describes the LEA's plans and procedures to meet its solid waste management responsibilities as established in statute and regulations. When a city or county declines to appoint

an LEA, the board serves as the enforcement agency for solid waste management. As of November 2003, the board was the enforcement agency for the cities of Paso Robles, Berkeley, and Stockton, as well as for Stanislaus and Santa Cruz counties.

THE BOARD'S OVERSIGHT OF THE LOCAL ENFORCEMENT AGENCIES

In its oversight role, the board ensures that an LEA meets certification requirements both when it is certified and thereafter. The board has developed performance standards for evaluating the LEAs' inspections, enforcement programs, and issuance of solid waste facility permits. When the board finds performance shortcomings, it may require the LEA to develop a corrective action plan and monitor the LEA's progress toward resolving the shortcomings, or the board may schedule an administrative conference to resolve issues. When it determines that an LEA is failing to fulfill its responsibilities, the board can withdraw the LEA's designation or assume all or part of its solid waste management duties and recover the costs of such services.

More positively, statute requires the board to support and assist LEAs in meeting their solid waste management responsibilities. Among other things, the board facilitates communication between LEAs and board staff, promotes participatory decision-making processes for issue resolution, conducts research about and resolves solid waste issues, implements a needs-based training program for all LEAs, administers a grant fund that helps support local governments' solid waste enforcement programs, and provides continuous assistance to LEAs as program performance issues arise.

THE LOCAL ENFORCEMENT AGENCIES' PERMIT AND INSPECTION PROCESSES

The LEAs review, evaluate, and accept or deny applications for permits that potential solid waste facility operators submit. A solid waste facility permit prescribes the site-specific terms and conditions for operating a solid waste facility, including design and operational requirements. The permit terms and conditions that an LEA imposes must satisfy at least the board's minimum regulatory standards for a solid waste facility. To get a solid waste facility permit approved, the applicant must comply with the CEQA, which may require preparing an environmental impact

For a project subject to the California Environmental Quality Act (CEQA), state law requires evidence of compliance with the CEQA either through the preparation, circulation, and adoption/certification of an environmental document or by determining that the proposal is categorically or statutorily exempt before project approval.

report (EIR) disclosing to decision makers and the public the significant environmental effects of proposed activities. It also identifies mitigation measures and reasonable alternatives to avoid or substantially minimize any significant effects.

As Figure 1 indicates, the applicant must meet other state and local requirements. The board must concur before the LEA can issue a permit to operate a solid waste facility. Before most permits are issued, the board inspects the site to assess

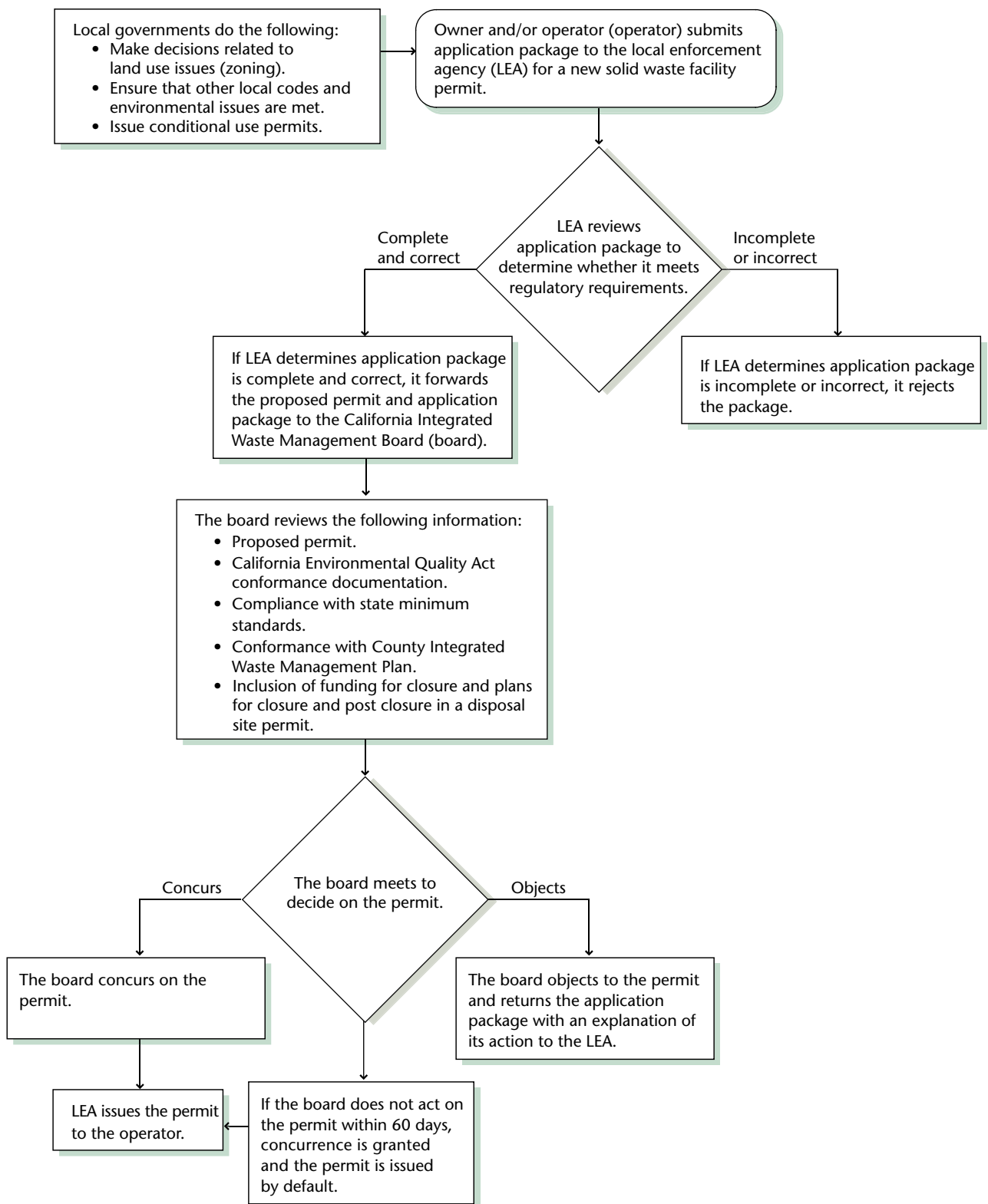
independently that the proposed facility is consistent with board standards. LEAs are expected to review permits at least every five years from the date of issue.

State law also requires LEAs to regularly inspect solid waste facilities to verify compliance with solid waste facility permits and state solid waste laws and regulations, including state minimum standards, all of which help ensure the protection of the environment and public health. State regulations require LEAs to forward inspection reports to the owner and/or operator (operator) and to the board within 30 days of the inspections. Also, the Waste Act requires the board, in conjunction with LEA inspections, to regularly inspect each solid waste landfill and transformation facility in the State. Figure 2 on page 10 illustrates the general inspection process.

Under a solid waste facility permit, the LEA has enforcement authority within regulation, and the Waste Act provides a variety of enforcement options that the LEA can take without going to court, including issuing a compliance order, a corrective action order, or a cease and desist order. When LEAs determine that an operator of a facility or operation has violated solid waste law, regulations, or terms of permits—or causes or threatens to cause hazards to public health and safety or the environment—the LEA has authority to issue “notice and orders.” These identify the violation and the basis of the allegation, establish a schedule for corrective action, specify the penalty for noncompliance, and disclose the operator’s right to appeal the notice and orders. An operator failing to comply with enforcement actions may be subject to penalties the LEA imposes, including the possible revocation or suspension of a permit. 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

FIGURE 1

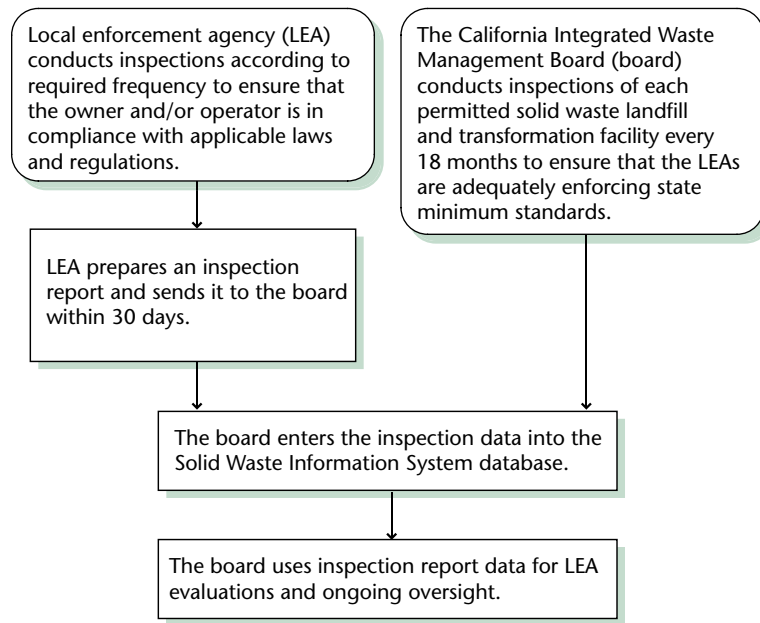
Solid Waste Facility Permit Process



Note: When there is no LEA in a jurisdiction, the board acts as the enforcement agency. See Appendix C for definitions.

FIGURE 2

Process for Inspecting Solid Waste Facilities



Note: When there is no LEA in a jurisdiction, the board acts as the enforcement agency. See Appendix C for definitions.

safety or the environment, the board itself may take appropriate enforcement action against the operator and may implement measures to strengthen the LEA's enforcement.

THE ROLE OF THE CITIES AND COUNTIES IN REGULATING SOLID WASTE FACILITIES

With the authority to adopt and enforce zoning regulations, as long as they do not conflict with state laws, cities and counties review applications related to land use and issue conditional use permits within their jurisdictions. A conditional use permit allows a city or county to approve special uses of land, such as solid waste operations, that may be essential or desirable to a particular community but that are not allowed as a matter of right within a zoning district. A conditional use permit also enables a municipality to control certain uses that could have detrimental effects on the community.

Before approving a conditional use permit, the city or county must evaluate the land use proposal to determine any significant adverse effects on the environment. As part of this evaluation,

the local government may route the proposal to various internal departments, such as the fire, water, traffic, and police departments, for comment. The local government also may send the request for a conditional use permit to the LEA for comment and to determine whether the proposed activity on the site must be issued a solid waste facility permit or notification before beginning operations. In addition, the local government may hold a public hearing in which the local zoning board or administrator hears and considers the opinions of proponents and opponents, often nearby property owners, in deciding whether to approve the conditional use permit for the activity.

A city or county that issues a conditional use permit may enforce the permit's terms and conditions by filing a petition in Superior Court requesting a court order that compels the holder of the conditional use permit to comply with the permit's terms and conditions. Other remedies for noncompliant activities, such as cease and desist orders, actions under nuisance laws, and revocation of the conditional use permit, are also available to cities and counties.

THE SOLID WASTE REGULATORY TIER SYSTEM

Until 1994 any person who proposed to handle solid waste was subject to the requirement of first obtaining a "full" solid waste facility permit. In 1994 the board adopted a regulatory tier system and removed the one-size-fits-all permit that previously applied to all facilities. Trying to streamline the regulatory process and lessen the regulatory burden on public and private entities, the

board designed the regulatory tier system to provide regulatory oversight commensurate with the public health and environmental impacts of a solid waste handling or disposal activity.

The board assigns solid waste handling activities to the tiered framework according to a general methodology that examines, for example, environmental indicators and their related mitigation measures. According to the regulations coordinator for the board's Permitting and Enforcement Division, the size of the solid waste handling activity is a key factor in determining placement in the tier, as larger facilities pose larger public health and safety and environmental impacts, and consequently require a higher

The board's general methodology for establishing regulatory tiers is as follows:

- Identifying environmental indicators.
- Defining agency jurisdiction.
- Defining critical factors (for example, the nature of the material being handled).
- Establishing thresholds for critical factors.
- Identifying mitigation measures necessary to address impacts.
- Identifying the level of review and oversight necessary to achieve mitigation.

level of mitigation. For example, large-scale construction and demolition wood debris chipping and grinding facilities processing over 500 tons of debris per day require a full permit. Conversely, smaller volume operations that process 200 tons or less per day are deemed by the board to pose less of a threat, requiring a lower level of review and approval, and are placed in the enforcement agency notification tier. A single solid waste location may have several types of activities. If the activities are distinctly separate, they can be regulated separately under the tiered system. If the activities are not distinctly separate, they are regulated as one facility under a full solid waste facility permit.

Table 1 illustrates that, within the regulatory tier system, the enforcement agency notification and excluded regulatory tiers do not require the solid waste facility permits required by the other three tiers. In addition, the excluded tier solid waste operations are not required to meet state minimum standards, but the LEA does have authority to inspect a site at any time to ensure that it qualifies for its status as an excluded site.

TABLE 1

Regulatory Tier System		
Regulatory Tier	Requires a Solid Waste Facility Permit	Subject to State Minimum Standards
Full permit	Yes	Yes
Standardized permit	Yes	Yes
Registration permit	Yes	Yes
Enforcement agency notification	No	Yes
Excluded	No	No

Source: California Integrated Waste Management Board Web site.

Appendix B describes in more detail the five tiers of regulation for solid waste handling activities, differing requirements under each tier, and an example of the facilities regulated under the tiers. When public health and environmental impacts associated with a solid waste activity found through the tier methodology process do not warrant direct regulation by the State, the waste management standards and oversight of such activities by the State are only then reduced. In deciding whether to reduce the oversight and waste management standards, the board considers whether the activity

is already fully regulated by other agencies or the volume, type, or handling is such that it will pose little or no impact to public health and safety and the environment.

For example, an activity requiring a full permit will be subject to monthly LEA inspections and various reporting requirements. On the other hand, a site with an activity in the excluded tier does not need a permit to operate and is not required to have inspections; in fact, 26 of 48 LEAs responding to a survey we sent them indicated they visit excluded tier sites only when the LEAs receive complaints about the sites' operations. As long as such a solid waste handling activity does not significantly change, the regulatory tier system assumes that the potential threat to public health and safety and the environment from excluded tier operations will remain minimal. However, if solid waste handling activities at these sites grow larger or encompass different types of activities or materials, the potential threat increases. If an operator does not report changes to the LEA and the LEA does not inspect the sites, the board and the LEA could be unaware of the changes—possibly allowing a threat to public health and safety and the environment to emerge. It is important to note that LEAs and the board have the authority to inspect the solid waste handling activities at excluded tier operations where regulations do not require the operators to either seek a permit or provide notification of their intent to change operations to the enforcement agency.

The board tracks permitted and enforcement agency notification solid waste facilities and operations throughout the State in its Solid Waste Information System (SWIS) database. SWIS maintains data for almost 50 different types of waste handling practices, including landfills, transfer stations, material recovery facilities, composting sites, transformation facilities, and closed disposal sites. However, the board does not routinely track excluded tier sites in SWIS because their regulations do not require it to do so. Board staff enter the information into SWIS and use it to monitor LEA activities on a continuous basis and as an information source on LEA practices during formal LEA performance evaluations.

The board works in an evolving environment, one in which new types of waste or activities can develop or be identified as needing separate regulation. As the board becomes aware of such new waste streams and activities, it has to assess the risk they pose to public health and safety and the environment and determine whether separate regulations are needed for their oversight and, if so, what priority to assign the task of writing new regulations.

In January 2003, a fire broke out at the Archie Crippen Excavation Site (Crippen Site), a large site receiving construction and demolition waste in the city of Fresno. At the time, the board had not issued final regulations for construction and demolition debris sites, and the city of Fresno monitored the Crippen Site only if complaints arose. After about a month of local, state, and federal fire suppression efforts, the fire was finally contained. However, the fire's damage to local air quality and the potential hazard to public health resulted in vigorous public concern, an impetus for the legislative request for this audit. Appendix A more fully describes the Crippen Site fire.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) review the board's and local jurisdictions' oversight of solid waste sites. Specifically, the audit committee asked us to evaluate the board's and selected LEAs' policies and procedures for granting solid waste site permits and to oversee solid waste facilities, including monitoring and inspection activities. Finally, the audit committee asked us to review how the board and LEAs coordinated and provided emergency assistance in response to the fire at the Crippen Site and to determine whether the actions taken were timely and effective.

To determine the board's role in granting permits to solid waste facilities, we interviewed various board staff and reviewed the board's policies and procedures related to certifying and evaluating LEAs. We also selected certain LEAs and determined whether the board conducted evaluations of LEAs on a three-year cycle by reviewing the board's log of evaluations and any related corrective action plans.

To identify criteria for determining what regulatory tier a facility should be placed in, including the excluded tier, and how the board ensures those criteria are met, we reviewed information about classifying a facility the board gives to LEAs that issue permits. Further, we reviewed the conditions at the Crippen Site to understand why this site was not required to have a solid waste facility permit and to determine whether the potential for hazardous conditions and materials was considered.

To identify how the board tracks solid waste facilities, including those in the excluded tier, we reviewed the board's SWIS to gain an understanding of the tracking system. This review also helped us determine the type and adequacy of information the board receives from LEAs regarding these facilities.

We visited two sites that accept construction and demolition debris and reviewed the regulations of their oversight cities and counties to determine the type of oversight the board and other entities provide over such sites. We obtained an understanding of the related cities' and counties' policies and procedures for issuing and monitoring conditional use permits for sites in their jurisdictions. We also selected a sample of conditional use permits to discover when and how they are monitored. Additionally, we surveyed the LEAs to determine their level of oversight over construction and demolition debris waste sites.

To assess whether the new construction and demolition debris regulations will address the problems that contributed to the lack of oversight of the Crippen Site, we reviewed the new regulations to assess the oversight they require. We reviewed the results of the board's survey of LEAs, intended to identify those sites that will now be monitored as a result of the new regulations. However, as of October 2003 the LEAs were still in the process of identifying construction and demolition sites and the tiers under which they will be regulated. LEAs have 90 days after the effective date of the regulations (August 9, 2003) in which to make these determinations.

Finally, we interviewed the board and local agencies to determine whether they have an emergency response plan to handle potential disasters, such as the Crippen fire, that could occur at construction and demolition debris processing sites. We discussed with the Governor's Office of Emergency Services its emergency response to the Crippen Site fire and any improvements in the procedures it might recommend. We determined the status of cleanup efforts at the Crippen Site and compiled data and cost estimates from agencies participating in the fire's suppression and site cleanup. ■

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AUDIT RESULTS

A SERIOUS FIRE BROKE OUT AT A SITE ACCEPTING CONSTRUCTION AND DEMOLITION WASTE THAT WAS NOT YET SUBJECT TO REGULATIONS

When a serious fire erupted at the Archie Crippen Excavation Site (Crippen Site) in January 2003, a site receiving construction and demolition waste, the California Integrated Waste Management Board (board) had not yet finalized regulations for construction and demolition waste sites. The board's lack of regulatory guidance on construction and demolition debris sites contributed to the Crippen Site's operating with minimal monitoring. Unfortunately, the large amount of waste material and its distribution on the Crippen Site—an indication that the Crippen Site was not complying with the terms of its conditional use permit from the city of Fresno—caused substantial air pollution and hampered fire suppression efforts. Because of questions about the board's interim directions for dealing with waste types that regulations did not yet cover, lack of communication between some agencies that observed conditions at the Crippen Site, and the failure to cite those conditions, the problems at the Crippen Site were not remediated.

Construction and demolition wastes include the waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

In November 1980 the county of Fresno approved a conditional use permit allowing concrete and asphalt processing at the 20-acre Crippen Site. In 1983, when annexing land that included the Crippen Site, the city of Fresno accepted the conditional use permit's terms without modification and monitored the site's operations on a complaint basis—that is, the city did not routinely visit the site to determine if the operator was complying with the terms of the conditional use permit, but instead visited only in response to complaints. In 1994 the city of Fresno issued a revised conditional use permit that allowed the Crippen Site to expand its operations onto additional property. In contrast to the city's oversight, a solid waste facility permit issued by the local enforcement agency (LEA) would have required considerably more monitoring and oversight.

Until Recently, the Board Had Only an Advisory Statement in Place of Regulations for Construction and Demolition Debris Sites

While working on regulations for construction and demolition debris sites during the last six years, the board advised the LEAs to follow its LEA Advisory #12 (advisory) for permitting of “nontraditional” facilities, including construction and demolition debris waste sites. The advisory’s purpose is to guide LEAs and board staff on the permitting of nontraditional facilities with activities not yet covered by regulations. “Nontraditional facilities” are those facilities other than landfills, transfer stations, and composting facilities that handle or process solid waste. Although not precluding LEAs from accepting applications for solid waste facility permits at these sites, the advisory strongly encourages LEAs not to accept applications for solid waste facility permits for materials and handling methods that are under evaluation. However, the advisory also states that should an LEA consider a facility proposal that appears to fall into the nontraditional facility category, but not be certain whether the advisory’s interim policy applies to the particular facility, the LEA can contact the board’s permitting branch representative for assistance.

Although not precluding LEAs from accepting applications for solid waste facility permits, the board’s advisory strongly encourages LEAs not to accept applications for solid waste facility permits for materials and handling methods that are under evaluation.

The board has indicated that, when it prepared the advisory, construction and demolition debris typically was handled as part of the mixed solid waste stream, rather than as a separate waste stream, and the board therefore did not specifically address construction and demolition debris in the advisory. In the years following issuance of the advisory, though, changes occurred in the waste management industry and certain operations began exclusively handling construction and demolition debris. Once the board became aware of sites handling this material as a separate unique waste stream, it determined that the handling requirements of this material were potentially different from the handling requirements of municipal solid waste.

The board then initiated development of construction and demolition regulations in the summer of 1997. In September 1998 the board issued for public comment the text of its proposed regulations on construction and demolition debris. However, according to the board, there was significant opposition to the proposed regulations, even after multiple workshops and meetings, and no consensus on the proposed regulations could be reached prior to the Administrative Procedures Act deadline for approving the regulations. Thereafter, the board directed staff to initiate a new rulemaking process for construction

and demolition debris regulations. According to the board, as part of this renewed effort to address construction and demolition debris through regulations, the board directed staff to separate the rulemaking into two phases, the first dealing with construction and demolition debris transfer and processing activities and the second dealing with disposal activities.

In August 2003, after many draft proposals and public comments, the first phase of the regulations became effective, covering the transfer and processing of construction and demolition debris. At that time, work was also progressing on the second phase, dealing with the disposal of construction and demolition debris. The board has indicated it adopted regulations for construction and demolition debris disposal in September 2003, and they are scheduled to become effective in January 2004.

Fire at the Crippen Site, Which Accepted Construction and Demolition Waste, Endangered Public Health and Required 30 Days of Fire Suppression Efforts

On January 11, 2003, the Crippen Site caught fire and burned for about 30 days, creating air pollution that required several health advisories. Operating under a conditional use permit, the site contained wood, concrete, green waste, and other assorted construction and demolition material for processing and recycling. According to an internal board report, the debris pile that caught fire covered five continuous acres and was over 40 feet high (see photograph on the following page). Under his conditional use permit, the operator was required to process, recycle, and remove the material. The large size of the mound, lack of access to the pile for fire-fighting equipment, and lack of fire-rated, on-site water supply delayed fire suppression activities. The board's report also stated that the need to construct temporary roads for access to the pile to bring in an adequate water supply system and allow use of heavy equipment to excavate the pile to suppress smoldering material, gave the fire time to spread through the debris pile and prolonged the fire suppression efforts. The fire was extinguished in February 2003, after about 30 days of fire suppression activities to control both a surface and subsurface fire. Before the January 11 fire, the Crippen Site had operated for more than 20 years with minimal monitoring of its activities, although the local fire department had responded to at least one smoldering fire at the site in February 2002.

According to an internal board report, the debris pile that caught fire covered five continuous acres and was over 40 feet high.



Source: Photo provided by the Governor's Office of Emergency Services.

This photo illustrates the size of the debris pile at the Crippen Site that the city of Fresno Fire Department had to contain.

Depositing soot on vehicles and homes within a mile of the site, smoke from the fire contributed to significant air pollution, which required local health officials to post air quality advisories to local residents. The San Joaquin Valley Air Pollution Control District indicated that inhaling particulate matter, such as soot and ash, could aggravate health conditions such as bronchitis and asthma, increasing the risk of heart attack for people with heart disease. A public health group presented an additional health advisory at a town hall meeting on January 23 and at the Fresno Unified School District the next day. In response to public health concerns and reports of symptoms from residents living near the fire, local legislators convened a health-screening service at which local volunteer medical experts conducted interviews and medical evaluations that revealed many residents were experiencing irritation and inflammation of the respiratory tract. Also, medical experts advised residents with preexisting chronic respiratory or cardiovascular illnesses to seek further medical care for their conditions.



Source: Photo provided by the California Integrated Waste Management Board.
This photo illustrates the amount of smoke that was generated from the Crippen Site fire.

Representatives of Several Enforcement Entities Had Observed Conditions at the Crippen Site Before the Fire

In the two years before the Crippen Site fire, staff of the city of Fresno Code Enforcement Division (Code Enforcement), the city of Fresno Fire Department (fire department), the Fresno LEA, and the board visited the site. According to the city of Fresno's Planning Commission resolution to revoke the Crippen Site's conditional use permit after the fire, the Crippen Site had accumulated material in type and quantity that violated the terms of the conditional use permit, and the debris pile had existed for at least seven years before the fire. Thus, staff of each of these agencies observed the conditions at the Crippen Site. However, because of questions about the board's directions, lack of communication between some of these agencies, and failure to cite the conditions, the problems at the Crippen Site were not remediated.

Code Enforcement is responsible for enforcing compliance with conditional use permits the city of Fresno issues and therefore had the authority to require the Crippen Site to correct

any conditions violating the terms of the permit. The city of Fresno opted to have Code Enforcement monitor and visit sites with conditional use permits only in response to complaints. The city file on the Crippen Site shows that the city received the most recent complaint about the Crippen Site in 2001. However, according to testimony that the Code Enforcement division manager presented to a Senate select committee on Central Valley air quality in February 2003, Code Enforcement inspectors did not enter the Crippen Site in 2001 to assess whether its operations were in accordance with the location's zoning requirements, which allowed the Crippen Site to operate a solid waste processing facility. Instead, they looked at the site from outside the gate and did not find zoning or code violations at that time. The division manager indicated that the inspectors could have sought inspection warrants or asked permission from the property owner to enter the property for a more thorough investigation.

The city's Code Enforcement Division manager indicated the inspectors could have sought inspection warrants or asked permission from the property owner to enter the property for a more thorough investigation.

On February 20, 2002, the fire department responded to a fire at the Crippen Site but only stayed to ensure that the operator isolated and extinguished the fire. The fire department should have both the expertise to notice and the authority to cite violations related to fire hazards. Although the deputy fire marshal said "there were complaints" around the time of the February 2002 fire, the fire department did not cite any fire code violations or tell the operator that it had any concerns with the debris pile's size nor did it notify Code Enforcement of any problems.

Staff from the Fresno LEA and the board also observed conditions at the Crippen Site and specifically discussed regulatory concerns about the site. Board staff had driven past the Crippen Site in late 2001 and visited the site again in late 2002, but their purpose was only to gain a better understanding of the types of sites that claimed to be construction and demolition debris sites then in existence. The manager from the board's Permitting and Inspection Branch assisted in conducting a survey of sites that were thought to be potential construction and demolition debris sites in an effort to better facilitate development of the new regulations.



Source: Photo provided by the Governor's Office of Emergency Services.
This photo illustrates the types of material brought to the Crippen Site.

About five months before the fire, however, the Fresno LEA had raised concerns to board staff about inappropriate types of materials brought to the Crippen Site and asked what it could do about this situation. The Fresno LEA and the board differ about the guidance the board provided at this time. According to the Fresno LEA, board staff advised them to wait for regulations on construction and demolition activities before requiring the Crippen Site to get a solid waste facility permit, which would give the Fresno LEA more direct authority over the site.

However, the manager of the board's Permitting and Inspection Branch believes he suggested that the Fresno LEA continue working with the city of Fresno, because the board understood the Crippen Site was being regulated under the conditional use permit the city issued the site. In addition, he stated that he suggested to the Fresno LEA that it begin discussing pending permit requirements for construction and demolition debris and for compostable organic materials with the operator of the Crippen Site, so the Fresno LEA and operator could plan to properly permit the site once the specific regulatory

The Fresno LEA and the board have differing perspectives about the guidance the board provided when the Fresno LEA raised concerns about the Crippen Site.

requirements became effective. The manager has also stated that he did not believe the Crippen Site would be regulated as a construction and demolition debris site if it continued to receive and process the green waste observed on the site. Instead, he has indicated he communicated to the Fresno LEA his belief that the site could have been subject to the transfer station regulations and could require a full solid waste facility permit. However, internal Fresno LEA memorandums written at the time of its discussions with the board make no reference to the manager's having questioned the Crippen Site's status as a construction and demolition debris site. Rather, one of the memorandums indicates the manager provided guidance on what the Fresno LEA could do once the regulations were in place.

According to the board's deputy director of the Permitting and Enforcement Division, since there were no written regulations and no definitions of operations and sites to address how to handle construction and demolition debris facilities, the LEAs were advised to look to the advisory for guidance, "with the ultimate decision regarding permitting still being vested with the LEA." However, as we indicated on page 18, questions have arisen about the guidance in the advisory, of which the express purpose was to provide guidance to both the board and LEAs' staff. The advisory also does not explicitly say that an LEA has the final decision on issuing a permit. Instead, it says it does not "preclude LEAs from accepting applications for a solid waste facilities permit if specific local concerns exist which can be addressed only through the issuance of a solid waste facilities permit." In addition, the board must concur with an LEA's decision before the LEA can issue a solid waste facility permit.

According to its division manager, in February 2003 Code Enforcement began implementing a proactive, risk-based monitoring of land use. As of September 2003 Code Enforcement was developing policies and procedures for its team of investigators, who will be responsible for inspecting, monitoring, and enforcing compliance at high-risk land uses. Code Enforcement expects to establish a program to train the team to identify issues related to fire, hazardous materials, and chemicals, which are areas that investigators have not reviewed in the past. The training program will also teach investigators when to call in an expert, such as the fire department and LEA, to assist in identifying and resolving problems like those at the Crippen Site that were not addressed prior to the fire.

As of May 7, 2003, the city of Fresno revoked the Crippen Site's conditional use permit, and in August 2003 the board's regulations for construction and demolition debris became effective. According to the Fresno LEA, the Crippen Site would have required a full solid waste facility permit under the new regulations. This permit would require regular monitoring and provide the LEA with a variety of enforcement tools to use against those who improperly manage the storage and disposal of solid waste.

TOTAL COSTS OF FIRE SUPPRESSION AND REMEDIATION AT THE ARCHIE CRIPPEN EXCAVATION SITE EXCEEDED \$6 MILLION

The board paid over \$2.6 million of the total costs of suppressing and cleaning up the Crippen Site fire. Responding through the State's Standardized Emergency Management System (SEMS), several state, federal, and local agencies provided help to contain the Crippen Site fire at a cost that exceeded \$3 million, not including those costs associated with monitoring the air quality, water, or other effects from the fire. Besides the suppression costs, some of these agencies also incurred costs to remove the remaining debris piles, which was estimated at \$3.4 million as of the end of September 2003. Of this amount, the board funded \$1.9 million, and the U.S. Environmental Protection Agency (EPA) provided the remaining \$1.5 million. After the fire, a city of Fresno task force investigating the response to the fire made 24 recommendations for improving its responses. As of October 2003, seven remained outstanding, according to the city's task force status report.

Once Activated, the Emergency Response to the Fire Followed State Procedures

California response agencies use SEMS to manage responses to multi-agency and multi-jurisdiction emergencies in California. Using a uniform method of emergency management that participating agencies agree to follow, SEMS standardizes the organizational structure and terminology for these response agencies. Also, SEMS facilitates coordination among all responding agencies and expedites the flow of resources and communication within all organizational levels.

The fire started on January 11, 2003, and took the combined efforts of numerous agencies almost a month to suppress. Around 3 a.m. on January 11, 2003, the fire department responded to a report of a fire at the Crippen Site. By 5:30 p.m. the fire department departed, leaving the site owner to monitor the fire. For over three hours later in the evening, there was some confusion with Fresno's handling of multiple calls reporting the fire, when the magnitude of the fire and appropriate response were not clear.

A subsequent city of Fresno internal investigation of the response to the fire disclosed that the fire department instructed the fire dispatcher to send fire crews to the site again if the dispatcher received multiple calls about the fire or if a call came from the Crippen Site itself. According to the internal investigation, 12 calls were received between 6:30 p.m. and 10 p.m., at which time the fire crews were again dispatched to the Crippen Site. Two of these calls were from the Crippen Site itself, although the dispatcher may not have been aware of the caller's identity or location. The internal investigation concluded that personnel receiving the calls were confused about the initial information and instructions the fire department provided when it left the Crippen Site at 5:30 p.m., and they did not always elicit necessary information from the callers or write up reports on some of the calls they received.

Questions also have arisen about the city of Fresno's handling of the escalating concerns about the dangers the fire posed in the next several days. For example, during a hearing of a Senate select committee on air quality in the Central Valley, questions arose about the city of Fresno's preparedness for the emergency, its fire-fighting techniques, and its timing of requests for expert assistance. On January 13, 2003, the fire department, realizing the fire suppression needs exceeded its capacity, contacted the Governor's Office of Emergency Services (OES), Inland Region, to request state resources to assist with the fire. The OES Inland Region, acting under the State's SEMS, referred the request to the OES Fire and Rescue Branch.

On January 15, after being contacted by the county of Fresno the day before, board personnel and EPA staff began to arrive at the scene. On January 16 OES announced that it would provide coordination for the state agencies involved in the response, as well as serve as lead agency for a joint information center. Responding state, federal, and local agencies then worked together to address the crisis and organize resources necessary to suppress the fire. According to the supervisor of the board's waste site cleanup program, the board provided the unified command with technical assistance from staff experienced in subsurface and solid waste site fires. Also, the board's environmental services contractor provided necessary equipment, labor, and technical assistance for the heavy operations tasks, which involved digging into the burning pile and moving debris in order to extinguish the fire. By February 10 the Crippen Site fire was declared 90 percent contained. Appendix A gives a fuller chronology of

***By February 10, 2003,
after a month of fire
suppression efforts,
the Crippen Site
fire was declared
90 percent contained.***

the fire suppression efforts. Table 2 lists the names of entities that provided resources for suppressing the fire and those resources' costs, which exceeded \$3 million, as well as the costs to clean up after the fire.

TABLE 2

Suppression and Cleanup Costs of the Crippen Site Fire

Agency	Costs Incurred
Suppression costs	
U.S. Environmental Protection Agency	\$1,490,000
California Integrated Waste Management Board	682,000
City of Fresno Fire Department	607,000
California Department of Forestry and Fire Protection	131,000
Governor's Office of Emergency Services	82,000
County of Fresno	68,000
Subtotal	3,060,000
Cleanup costs	
California Integrated Waste Management Board	1,929,000
U.S. Environmental Protection Agency	1,459,000
Subtotal	3,388,000
Total suppression and cleanup costs	\$6,448,000

Sources: Auditor compilation from documents provided by the California Integrated Waste Management Board (board), the city of Fresno Fire Department, the Governor's Office of Emergency Services, the California Department of Forestry and Fire Protection, and the county of Fresno. The board provided an estimate for the U.S. Environmental Protection Agency amount.

Note: This table does not include the value of in-kind equipment and services, such as a water truck, trash bins, other equipment, and services provided by the city of Fresno. It also does not include the costs related to public health issues, such as the monitoring of air quality.

In April 2003 a city of Fresno task force made up of selected concerned citizens, representatives of various interest groups, city and county officials and staff, and current and former members of the City Council issued its report on the events associated with the Crippen Site fire and made 24 recommendations for addressing identified problems. Areas the recommendations covered included, but were not limited to, issuing of permits, monitoring sites with conditional use permits, setting staffing levels and providing training, determining the adequacy of policies and procedures for code enforcement, establishing adequate means for communicating warnings about health hazards, and assessing the adequacy of the emergency response

plan. As of late October 2003 the city's status report on its implementation of the recommendations indicated that only seven recommendations remained outstanding.

Cleanup of the Crippen Site Was Costly

In the fire's aftermath, the board and the EPA provided financing for the Crippen Site's cleanup, which cost around \$3.4 million. The board operates a waste site cleanup program to fund the cleanup of solid waste disposal and codisposal sites when the responsible party either cannot be identified or is unable or unwilling to pay for a timely remediation, and when cleanup is needed to protect public health and safety or the environment. The city and county of Fresno, as well as the site's owner, stated that they lacked the resources to fully clean up the Crippen Site. In its June 2003 meeting, the board approved the Crippen Site remediation under the solid waste cleanup program and voted to approve an emergency augmentation from the Solid Waste Disposal Site Cleanup Trust Fund for the costs of the cleanup.

State law requires that if the board spends any cleanup program funds, it will "to the extent possible, seek repayment from responsible parties in an amount equal to the amount expended, a reasonable amount for the board's cost of contract administration, and an amount equal to the interest that would have been earned on the expended funds." Cleanup efforts at the Crippen Site began in late July 2003 and were completed about eight weeks later. The board determined that the most cost-effective cleanup alternative was removal and transportation of debris to an acceptable lined disposal facility. As of November 2003 the board reported that 4,111 truckloads removed approximately 103,000 tons of debris plus contaminated soil from the Crippen Site. As Table 2 on the previous page indicates, the EPA and the board have paid almost \$3.4 million for the cleanup of the Crippen Site fire.

As of November 2003, the board reported that it took 4,111 truckloads to remove approximately 103,000 tons of debris and contaminated soil from the Crippen Site.

NEW REGULATIONS ADDRESS THE LACK OF OVERSIGHT OF CONSTRUCTION AND DEMOLITION DEBRIS SITES, BUT CERTAIN OPERATIONS STILL LACK ADEQUATE REGULATION

The board's new requirements for processing construction and demolition debris now provide regulatory guidance for oversight of facilities and operations. However, some construction and demolition operations and facilities may fit into the excluded

The board's regulations do not require operators in the excluded tier to notify the LEA of their intent to operate, and these operators who increase their activity enough to require a permit are merely "honor bound" to notify the LEA of any changes that modify their current operations.

tier of the board's regulatory system.¹ The board's regulations do not require operators in the excluded tier to notify the LEA of their intent to operate, and such operators who increase their activity enough to require a permit are merely "honor bound" to notify the LEA of any changes that modify their current operations. If the LEA is not aware that an excluded tier activity is taking place, the LEA is unable to monitor the activity. Relying on operators to self-report or the industry to self-monitor is insufficient to ensure that all excluded tier activities are accounted for, tracked, and monitored to ensure that materials on site are stable and will not harm public health and safety.

On August 9, 2003, regulations took effect that place facilities and operations handling construction and demolition debris and inert debris, such as rock, concrete, and brick, into the regulatory tiers we discuss in the Introduction. These regulations require sites to obtain a full solid waste facility permit to process the type and volume of construction and demolition waste that flowed into the Crippen Site. Under the full permit tier requirements for a large volume construction and demolition debris processing facility, debris stored for more than 15 days that has not been processed and sorted for resale or reuse—or debris that has been processed and sorted for resale, or reuse, but remains stored on site for more than one year—is considered unlawfully disposed and therefore subject to enforcement action. Also, the maximum amount of material, both unprocessed and processed, that an operator may store on-site is 30 days' worth of the maximum amount of incoming material permitted each day. LEAs are now required to inspect these large-volume facilities monthly, with the inspections unannounced and at irregular intervals, if possible. These requirements could result in an increase in oversight at these types of sites. For example, the new regulations limit the size of the debris piles to prevent accumulation into unmanageable, harmful volumes.

However, according to the board, when it is found through the tier methodology process that a site does not warrant direct regulation by the State, either because it is already fully regulated by other agencies or the volume, type, or handling is such that it will pose little or no impact to public health and safety, the operation is placed in the excluded tier. As a

¹ Examples of an excluded operation may include, but are not limited to, chipping of wood material when less than 500 cubic yards of material is on the site at any one time; biomass conversion sites; and wood, paper, or wood product manufacturing sites.

result, operators of activities that would fall into the excluded tier are not required to notify the LEA of their existence. Also, the burden falls upon the operators to notify the LEA or local governments when they change their activity level or type of material enough to require formal notification or a permit under the regulations. This honor system of reporting has obvious shortcomings, with operators who are unscrupulous or unaware of reporting requirements failing to report changes. Responding to a survey we conducted on LEA practices, several LEAs described one way these shortcomings are sometimes mitigated: Other operators complain when a competitor changes its activity level. However, depending on complaints alone is not a reliable method of tracking excluded activities.

Regulations specify that the LEA or the board can inspect an excluded tier activity to verify that the activity continues to qualify as an excluded tier activity and can take any appropriate enforcement action. However, our survey of LEAs indicated that 26 of 48 responding LEAs, including the two LEAs we reviewed, monitor excluded tier activities only by responding to complaints or reports from other entities. None of these LEAs stated that it performs periodic on-site visits or inspections outside of receiving a complaint.

Of the 48 LEAs responding to our survey, 26 stated that they do not perform periodic on-site visits or inspections on excluded sites outside of responding to a complaint.

Of the 48 LEAs responding to our survey, 43 told us that they track the existence of excluded tier activities when they are notified that a local government is considering a conditional use permit or when another entity or department files a complaint with the LEA. However, regulations do not require this tracking, and our visit to one LEA identified that after initially confirming that an activity falls in the excluded tier, the LEA does not track or perform any further monitoring of that activity to determine whether the operator has maintained or changed its activity level. Also, local governments may not forward all conditional use permits to their LEAs for review, so some operations may remain unknown to the LEAs.

THE BOARD MONITORS LOCAL ENFORCEMENT AGENCIES TO ENSURE THEY ARE FULFILLING THEIR STATUTORY DUTIES, BUT THE REVIEWS SHOULD BE MORE TIMELY

The board has several mechanisms to monitor the LEAs' performance and ensure they are meeting their regulatory responsibilities and tracking solid waste handling facilities and

disposal sites. The board conducts formal evaluations of the LEAs' permitting, inspecting and monitoring, and enforcement of compliance of solid waste facilities. The board also inspects permitted solid waste facilities and conducts pre-permit inspections of facilities whose operators have filed for a solid waste facility permit. In a less formal monitoring activity, the board maintains frequent interaction with the LEAs, which allows the board to monitor activity, identify problems that may develop between regular evaluations, and offer assistance to correct shortcomings in performance. Although these mechanisms provide the board with the ability to monitor LEAs, the required oversight of LEAs should be more timely.

State law requires the board to review the performance of certified LEAs at least once every three years. In some cases, an evaluation outside of the three-year cycle may be needed—for example, if conditions at a facility site cause a threat to public health and safety or the environment. The board conducts its formal compliance evaluation using established performance standards to evaluate and review each LEA's implementation of the permit, inspection, and enforcement program. Board procedures call for the evaluations to review the LEA's compliance with six specific areas outlined in statute and a seventh that the regulations require.

The board reviews LEAs to determine whether they do the following:

- Exercise due diligence in the inspection of solid waste facilities and disposal sites.
- Represent the results of inspections appropriately.
- Prepare permits, permit revisions, or closure and postclosure maintenance plans appropriately.
- Approve permits, permit revisions, or closure and postclosure maintenance plans that are consistent with the law.
- Take appropriate enforcement actions.
- Comply with or take actions that are consistent with or authorized by statute or regulations.
- Continue to comply with certification requirements.

When it determines that an LEA is not fulfilling its responsibilities and the LEA agrees, board procedure is to instruct the LEA to develop a corrective action plan (workplan). The LEA then submits a proposed workplan to the board for review to ensure that the workplan adequately addresses the findings the board identified in the evaluation process. Once it approves this workplan, the board typically monitors the LEA at three-, six-, and nine-month intervals to ensure that the LEA implements the workplan. Because findings are particular to each LEA, the board has no standard format for an LEA evaluation workplan. However, the supervisor of the board's LEA evaluation program emphasized that workplans must contain at least three general elements critical for monitoring LEA progress in implementing the workplan: an identification of the facility or site with an identified problem, the compliance task designed to address the problem, and a timeline specifying the expected process for meeting the workplan parameters.

If the LEA disagrees with the findings of an evaluation, an administrative conference is held to resolve any conflicts arising from the evaluation or subsequent monitoring of the evaluation workplan. If issues are resolved in the administrative conference, the LEA develops workplans for the board's review and approval. However, if administrative remedies to improve LEA performance fail, the board may exercise one or more statutory actions, including setting a probationary period for the LEA or assuming partial responsibility for specified LEA duties. Also, the board may conduct more frequent site inspections and evaluations or take other measures it deems necessary to improve LEA compliance. When the LEA performance significantly contributes to solid waste sites' noncompliance with state minimum standards, the board has the authority to withdraw its approval of the LEA designation.

Board Evaluations Are Substantially Appropriate in Scope, but Do Not Meet the Three-Year Mandate

Our review of five LEA evaluations the board completed found that the established scope of the evaluation is appropriate and that the board complied with that scope. The evaluation covers all six specific areas of interest identified in regulations and further ensures that the LEAs continue to comply with certification requirements. However, the board is not timely with its LEA evaluations, beginning or scheduling evaluations to begin on average about 11 months after the end of the mandated three-year cycle. Further, the board's definition of the three-year cycle contributes to evaluation delays. Such delays may hamper the identification and correction of any problem areas in the LEAs' administration.

The board is not timely with its LEA evaluations, beginning or scheduling evaluations to begin on the average about 11 months late.

The board uses three years of data drawn from the Solid Waste Information System (SWIS), a database of continuously updated information on solid waste facilities, operations, and disposal sites throughout the State. For each facility, the database includes such information as facility type, regulatory and operational status, authorized waste types, and the LEA. The database tracks many types of facilities, including landfills, transfer stations, and composting sites; but it does not routinely include those sites and operations classified as excluded under the regulatory tier system.

Although the scope of the LEA evaluation is adequate and provides the board an opportunity to develop a comprehensive analysis of LEAs' performance, the evaluation process can

be time-consuming. Our review of the five LEA evaluations determined that the time required for completing an evaluation ranged from about four months to 11 months. In three of the five cases, the board required a workplan, increasing the time period between the start of the evaluation and the board approval of the workplan to between 12 months and 15 months. The supervisor of the LEA evaluation program indicated that the evaluation process might be lengthy in part because it involves data collection and verification, obtaining guidance and information from other board staff, and communication with the LEA. These factors are magnified, according to the evaluation program supervisor, as the size and complexity of the LEA's jurisdiction and issues under evaluation increase.

For 33 of 56 LEAs, more than three years have passed since the board's last evaluation.

More problematic, however, is our finding that the board does not meet its mandate to evaluate each LEA every three years. The board's tracking documents indicate that, for 33 of 56 LEAs, more than three years have passed since the last evaluation, with evaluations beginning or scheduled to begin about 11 months late on average. For five of the 33 LEAs, the time lag was 20 months or longer. However, the board's definition of what represents a three-year cycle increases the problem. The board defines the three-year cycle as beginning at the conclusion of the LEA's last evaluation and ending at the date the next evaluation is initiated. Our interpretation of the statutory requirement, however, is that LEA performance evaluations should be completed every three years or more frequently. Thus, if an evaluation is completed on February 1, 2001, the next should be completed no later than February 1, 2004. The board's approach, when combined with the time required to actually conduct an evaluation and develop a workplan, if necessary, may delay the discovery and resolution of potential performance shortcomings in an LEA.

We also reviewed the implementation of workplans developed for three of the five LEAs in our sample. Although the three workplans differed in emphasis, all included a specific facility or site with an identified problem, the compliance task designed to address the problem, and a timeline for meeting the workplan parameters. Our review found that the board had appropriately monitored the LEAs' progress in implementing the workplans and apprised the LEAs on the status of the monitoring activity.

Identified Problems Can Trigger Additional Board Monitoring of LEAs

The board also has established a set of triggers that help its staff identify potential problems when they review LEA solid waste program information.

The board also has established a set of triggers that help its staff identify potential problems when they review LEA solid waste program information. The board shares its definitions of what constitute triggers with LEAs and encourages them to review the data to identify problems on their own. Triggers in the solid waste inspection program, for example, would identify whether LEAs are inspecting sites according to the required frequency, and whether the LEA sends inspection reports to the board within 30 days as required. Following up on triggers would lead to increased communication between the LEA and board staff, who then offer assistance to LEAs with identified problems in any of the five program areas: inspection, enforcement, permitting, closure, and certification of solid waste sites. According to the Permitting and Inspection Branch manager, specific examples of board assistance may include the following: help in reviewing proposed permit packages before submittal, clarification of regulatory or statutory requirements, side-by-side (LEA-board) inspections, review of possible enforcement options, discussion of possible strategies to gain compliance from facility operators, and contacts with other agencies that could provide assistance.

Correspondence between the board and LEAs illustrates that the board uses triggers to initiate oversight. These letters indicate that shortcomings in LEA performance have been identified through an LEA's inadequate reporting of program activity and through inspections by the board's Permitting and Inspections Branch. The letters also illustrate that before the correspondence was sent, the board had identified a problem in the LEA program and, through informal channels (telephone calls and e-mail), had requested LEA action to correct the situation or communicate with the board for additional clarification or assistance.

The trigger mechanism allows the board to promptly identify shortcomings in LEA performance and initiate increased communication with the LEA, but the time involved in resolving the problems can be lengthy. For example, in one case we reviewed, the board identified problems with the LEA's performance during a February 2002 board inspection of a solid waste facility. According to the supervisor of the LEA evaluation section, board staff inspecting the facility noted a number of violations particularly with changes in operations, violations that the board believed occurred over a period of time, but that the LEA's inspection reports had not documented. After a series

of communications between board staff and the LEA, the board initiated an evaluation of the LEA earlier than scheduled. By September 2003 the evaluation was complete, and the LEA proposed changes, including revisions to its permit tracking system and inspection and enforcement procedures, made a staffing change, and agreed to submit a training program for new staff by November 2003. In another case, the board initially identified performance problems as early as June 2002 and documented them in an April 2003 letter. In a September 2003 letter, the LEA indicated how it agreed to address the board's concerns.

LEGAL CHALLENGES CAN SIGNIFICANTLY DELAY CORRECTION OF IDENTIFIED PROBLEMS AT NONCOMPLYING SOLID WASTE SITES

Even if all regulations were in place, all monitoring occurred promptly, and enforcement actions were initiated promptly, identified problems would not necessarily be corrected immediately. The process to correct violations can be lengthy, and it may involve hearings and legal proceedings, including appeals of decisions in each. The California Integrated Waste Management Act of 1989 (Waste Act) contains a comprehensive enforcement scheme for solid waste facilities, designed to allow LEAs to bring various enforcement actions against owners and operators for violations of the Waste Act. Under certain circumstances, the board may take enforcement actions itself. This enforcement scheme includes the ability to issue a corrective action order or a cease and desist order, to administratively impose civil penalties, and to suspend or revoke a permit under certain conditions. However, this enforcement scheme allows a person who is the subject of any of these enforcement actions to request a hearing before a local hearing panel, which must be established pursuant to the requirements and procedures delineated in Public Resources Code, and then before the board. If a hearing is requested, the enforcement order is "stayed," or rendered inoperative, until all appeals to the local hearing panel and the board have been exhausted or the time for filing an appeal has expired, unless the LEA can make a finding that the activity constitutes an imminent threat to the public health and safety or environment. Consequently, a person who is the subject of an LEA enforcement order can continue the activity that is the subject of the order until all appeals have been exhausted.

The process to curtail violations can be lengthy, and may involve hearings and legal proceedings, including appeals of decisions in each.

One facility that has been able to continue operations throughout its appeals and mediation to resolve issues with the city of Sacramento and the Sacramento LEA is Florin-Perkins in the city of Sacramento. Florin-Perkins is an inert debris landfill that conducts a variety of activities, such as chipping and grinding organic compostable materials, and processing construction and demolition debris and green and wood wastes, and recycling concrete, sheetrock, and metal. According to the Sacramento LEA's summary documents, the city and the LEA have cited the Florin-Perkins' operator for making changes at the facility without obtaining prior approval. The operator appealed several issues that have since gone into litigation. Resolving these issues may take a substantial amount of time because of the nature of the appeals process.

Since November 2002 the Sacramento LEA issued Florin-Perkins five notice and orders for various violations, according to the LEA's summary of events. Currently, there are four active notice and orders: one for the landfill, one for the transfer station, and two for the chipping and grinding operation at which the Sacramento LEA ordered operations to cease because Florin-Perkins does not have a permit for the activity. Florin-Perkins appealed all four notice and orders. The LEA's summary indicates the hearing panel attempted to address the appeals against the landfill and one of the chipping and grinding notice and orders in March and October 2003. However, according to the LEA's summary, counsel for the operator challenged the proceedings each time, citing a conflict of interest for one of the hearing panel members. When the administrative law judge ruled in summer 2003 that the panel is valid, the counsel filed a complaint in Sacramento County Superior Court, appealing the judge's ruling. According to the chief of the Environmental Health Division, the case is scheduled for January 31, 2004, and the Sacramento LEA expects to schedule the next hearing panels to begin addressing all four notice and orders for early February, pending the outcome in Superior Court.

According to the chief of the Environmental Health Division, until the lawsuit and appeals are resolved, the LEA feels that it cannot schedule any other notice and order appeal hearings with any other operators in its jurisdiction without their also contesting the hearing panel. The Sacramento LEA indicated that there are no other outstanding notice and orders as of October 2003. Meanwhile, the operator continues business, without resolving the violations in question.

RECOMMENDATIONS

To help protect public health and safety and the environment, the board should do the following:

- To ensure that sites are adequately monitored, the board should clarify the intent of the advisory for currently known or newly identified nontraditional sites for which regulations are not yet in place. For example, the board should resolve the ambiguity between the advisory's statement that LEAs are strongly encouraged not to accept applications for solid waste facility permits for materials and handling methods under evaluation, on the one hand, and its statement that it is ultimately the responsibility of the LEAs to determine whether to require solid waste facility permits for such sites, on the other hand.
- To meet the goals of the California Integrated Waste Management Act of 1989 (Waste Act) and improve regulation of solid waste, the board should complete and implement as promptly as possible its work on the second phase of regulations for construction and demolition debris sites, covering the disposal of the waste materials.
- When it determines that an LEA has inappropriately classified a site—for example, treating a composting site as a construction and demolition debris site—the board should work with the LEA to correct the classification.
- To ensure the enforcement community is aware of excluded operations that could potentially grow into a public health, safety, or environmental concern, the board should require, pursuant to the Public Resources Code, Section 43209(c), LEAs to compile and track information on operations in the excluded tier. To track this information, each LEA should work with its related cities and counties to develop a system to communicate information to the LEA about existing and proposed operations in the excluded tier with the potential to grow and cause problems for public health, safety, and the environment. For example, cities and counties might forward to LEAs information about requests for conditional use permits, revisions to current conditional use permits, or requests for new business licenses. We are not suggesting that the LEA track all operations in the excluded tier—for example, backyard composting or disposal bins located at construction sites. In addition, the board should require LEAs to periodically monitor operations in the excluded tier to ensure that they

still meet the requirements for this tier. Finally, in its triennial assessments of each LEA, the board should review the LEA's compliance with these requirements regarding excluded sites.

- To comply with existing law, the board should complete evaluations of LEAs within the three-year cycle. If that is not feasible, the board should propose a change in law that would allow a prioritization system to ensure that it at least evaluates LEAs with a history of problems every three years. Similarly, when the board identifies problems with an LEA through its analysis of trigger information, the board should establish firm deadlines for the LEA's corrective action. If the LEA does not meet the deadline, the board should perform a thorough evaluation of the LEA and take administrative action, if necessary.

To ensure that it appropriately permits, monitors, and enforces compliance with the terms of its conditional use permits and has an adequate system in place to deal with emergencies, such as the Crippen Site fire, the city of Fresno should continue steps to implement the remaining recommendations from its task force report on the response to the Crippen Site fire. In particular, it should ensure the proper training of staff to ensure they identify existing problems at sites with conditional use permits and effectively enforce compliance with regulations and the terms of conditional use permits, and Code Enforcement should continue implementing its proactive, risk-based monitoring of conditional use permits. It should also take steps to ensure its response to emergencies is effective and prompt.

The Legislature may wish to consider amending the current provisions of the Waste Act that allow a stay of an enforcement order upon the request for a hearing, and to streamline or otherwise modify the appeal process to make it more effective and timely and enhance the ability to enforce the Waste Act.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive, flowing style.

ELAINE M. HOWLE
State Auditor

Date: December 10, 2003

Staff: Lois Benson, CPA, Audit Principal
Dawn S. Tomita
Dawn M. Beyer
Kyle D. Gardner, Ph.D.
KC George
Amari B. Watkins, CPA

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APPENDIX A

Chronology of Events at the Archie Crippen Excavation Site

This chronology describes significant events in the suppression of the fire that began at the Archie Crippen Excavation Site (Crippen Site) on January 11, 2003. At the time, the Crippen Site was operating under a conditional use permit from the city of Fresno, which was originally issued by the county of Fresno. The fire was declared contained on February 11, 2003.

TABLE A.1

Chronology of Events at the Archie Crippen Excavation Site

Date	Event
1980	The county of Fresno issued a conditional use permit to the Crippen Site.
1982	The owner received his license to operate at the Crippen Site.
1983	The city of Fresno annexed the Crippen Site property.
1994	The Crippen Site owner expanded his business, and the city of Fresno modified the conditional use permit to expand onto an additional parcel of land.
January 11, 2003	At approximately 3 a.m., the city of Fresno Fire Department (fire department) dispatched fire engines to respond to a surface fire at the Crippen Site. At approximately 5:30 p.m., the fire department turned operations over to the Crippen Site owner, who was to monitor for possible flare-ups, in which case he was to call the fire department again. Instructions to the police and fire dispatcher were to send the fire department to the Crippen Site if the dispatcher received multiple calls or if a call originated from the Crippen Site itself. An internal investigation of the dispatch chronology discovered the city had received 12 calls about the Crippen Site fire between 6:30 p.m. and 10 p.m.; two of these calls were from the Crippen Site. At 10 p.m. the fire department was dispatched again to the fire at the Crippen Site. The fire was spreading in the mound of debris.
January 12, 2003	The fire continued to spread to the west side and the top of the pile. Water runoff was about to contaminate the neighbors' property. The fire department was still on scene, and heavy equipment was used to cut firebreaks.
January 13, 2003	The fire department contacted the Governor's Office of Emergency Services (OES), Inland Region, to request state resources to assist with the fire. OES directed the fire department's request through the fire mutual-aid system, part of the State's Standardized Emergency Management System.
January 14, 2003	The local enforcement agency assessed the site and contacted the California Integrated Waste Management Board (board) for assistance. The board contacted the U.S. Environmental Protection Agency (EPA) and requested technical assistance and air-monitoring support for the site. The San Joaquin Valley Unified Air Pollution Control District began issuing warnings of unhealthy air.

continued on next page

Date	Event
January 15, 2003	The board and the EPA arrived on the scene to assess the situation. The EPA began air monitoring. The board, the EPA, and the fire department established a unified command. At 10 a.m. the San Joaquin Valley Unified Air Pollution Control District notified the State Air Resources Board of the fire. The board's management was asked to request state resources.
January 16, 2003	The board and the EPA committed state and federal funds and resources to fight the fire. OES committed personnel and equipment to assist with the fire. OES indicated it would lead a joint information center—a group of local, state, and federal public information officers—to coordinate media information and requests, develop and distribute fact sheets, and assist with news releases. The Fresno Regional Water Quality Control Board conducted a preliminary assessment and initially reported that there was little impact to ground or surface water. The State Air Resources Board arrived to monitor air quality. Entities and individuals participating in a meeting to discuss the approach to the Crippen Site fire included, but were not limited to, the EPA, the California Environmental Protection Agency, the National Weather Service Hanford Office, the State Water Quality Control Board, the OES Fire and Rescue, the California Department of Forestry and Fire Protection, the city of Fresno Fire Chief, the Fresno County Environmental Health, and the board.
January 17, 2003	The Fresno city manager proclaimed the fire a local emergency. The county administrative officer declared a local emergency for the county of Fresno. A joint meeting to plan the specific approach to the fire established its overall objectives: (1) to provide safety for responders and the community, (2) to keep the response organization as small and uncomplicated as possible, (3) to minimize the financial and operational impact on the Crippen Site owner, (4) to ensure formation and use of a joint information center, (5) to minimize health and environmental impacts, and (6) to extinguish the fire by February 3, preparing local forces to assume control.
January 18, 2003	The city manager sent a letter to city residents to inform them of potential risks from the fire and contacts for assistance.
January 19, 2003 through February 9, 2003	Fire suppression and environmental monitoring activities continued, and various public briefings and meetings took place.
February 10, 2003	OES assigned the California Department of Forestry and Fire Protection to help the fire department investigate the fire. The fire was declared 90 percent contained.
February 11, 2003	The fire was declared contained. The EPA stayed to help stabilize the mounds of debris.

Sources: City of Fresno, *Report of the Southwest Fire Process Improvement Task Force* (April 2003); Governor's Office of Emergency Services' *Chronology of Marks Nielsen Fire, Information as of February 13, 2003*.

Note: The Archie Crippen Excavation Site Fire is also known as the Marks Nielsen Fire.

APPENDIX B

Regulatory Tier Framework

This appendix illustrates important differences among the tiers in the California Integrated Waste Management Board's (board) regulatory tier framework. The appendix presents an overview of basic information about each tier: the public and environmental threat that a facility or operation poses, its need for a permit, the type of review the permit proposal receives, the information the operator must provide, the standards the operation must meet, the inspections to which it is subject, and the oversight the operation receives. Using the example of one type of solid waste activity (chipping and grinding of wood debris from construction and demolition), the appendix illustrates how the scale of the activity determines the tier in which the operation will be classified, which in turn affects the amount of oversight it will receive. Table B.1 begins on the following page.

Regulatory Tier Framework

	Excluded	Enforcement Agency Notification	Registration Permit	Standardized Permit	Full Permit
Level of public health or environmental threat	The operation itself poses no environmental or public health and safety concerns that are not already addressed through other requirements.	The operation itself poses minimal environmental or public health and safety concerns.	The facility itself poses minimal environmental threat or public health and safety concerns.	The facility itself poses a threat to the environment and public health and safety regardless of the location. Standard conditions in permits applicable to all such operations suffice to mitigate public health and safety and environmental impacts.	The facility itself poses a threat to the environment and public health and safety. Site-specific conditions may necessitate specific controls or conditions in permits to mitigate public health and safety and environmental impacts.
Type of operation or facility*	Containers used to store construction and demolition debris or inert debris at the place of generation.	Small-volume construction and demolition wood debris chipping and grinding operations (less than 200 tons per day).	Medium-volume construction and demolition wood debris chipping and grinding facilities (equal to or more than 200 tons per day but less than 500 tons per day).	No standardized permit for construction and demolition facility.	Large-volume construction and demolition wood debris chipping and grinding facility (greater than 500 tons per day).
Permit vs. nonpermit	Nonpermit	Nonpermit	Permit	Permit	Permit
Nature of permit review†	Not applicable	No review is required; no discretionary action takes place.	Local enforcement agency (LEA) reviews for completeness and accuracy; no discretionary action takes place.	LEA and board review for completeness, accuracy, and ability to comply with state minimum standards (SMS); discretionary action takes place; board concurs or objects to permit.	LEA and board review for completeness, accuracy, and ability to comply with SMS; discretionary action takes place; board concurs or objects to permit.
Permit information required of applicant	None‡	Letter from owner and/or operator (operator) notifying the LEA of the operation's existence: name, address, phone number of operator; description of operations; section authorizing eligibility; certification that information is true and accurate.	Complete application; site map and location map; California Environmental Quality Act (CEQA) compliance is not required for board action.	Complete application; report of facility information;§ CEQA compliance is required for board action.	Complete application; report of facility information;§ CEQA compliance is required for board action.
Inspections¶	LEA may inspect to ensure correct placement within the tiers. No frequency will be mandated.	LEA may inspect to ensure correct placement within the tiers and compliance with SMS.	LEA inspects monthly to ensure correct placement within the tiers and compliance with SMS and permit.	LEA inspects monthly to ensure correct placement within the tiers and compliance with SMS and permit.	LEA inspects monthly to ensure correct placement within the tiers and compliance with SMS and permit; board inspects solid waste landfill and transformation facilities once every 18 months.

	Excluded	Enforcement Agency Notification	Registration Permit	Standardized Permit	Full Permit
State minimum standards (SMS)	Not subject to SMS	Subject to SMS	Subject to SMS	Subject to SMS	Subject to SMS
Enforcement tools available	Not applicable. However, see Inspections above.	Civil penalties Notice and orders	Civil penalties Notice and orders Revocation of permit	Civil penalties Notice and orders Revocation of permit	Civil penalties Notice and orders Revocation of permit

Sources: California Integrated Waste Management Board Web site; Division 30, Public Resources Code; Title 14, California Code of Regulations; Title 27, California Code of Regulations.

Note: When there is no LEA in a jurisdiction, the board acts as the enforcement agency.

* This table uses one type of construction and demolition activity (chipping and grinding) and solid waste material (wood debris) for illustration.

† According to board staff, “discretionary action” means that the enforcement agency (LEA or board as enforcement agency) has the authority to allow or disallow an activity to operate. For the excluded, enforcement agency notification, and registration tiers, the enforcement agency has no discretionary action to allow or disallow the activity if the operation or facility meets all specified regulatory requirements. For standardized and full permits, the LEA has the authority (discretion) to reject an application if the application does not meet specified requirements. If the application is rejected, the facility cannot operate without a permit.

‡ Operators of excluded solid waste operations are not required to notify the enforcement agency or submit an application for a solid waste facilities permit.

§ To obtain or revise a solid waste facility permit, the operator must file with the LEA or enforcement agency a Report of Facility Information (RFI) or other report or plan, as regulations require. An RFI is an operations and design plan that describes the facility and states how it will comply with state minimum design and operating standards. Operators are required to keep RFIs current.

|| Operations in the enforcement agency notification tier are not subject to the statutorily mandated monthly inspection. According to board staff, through regulation, the board has either specified an inspection frequency (for example, quarterly, annually, as necessary for the protection of public health, safety, and the environment) or not specified an inspection frequency for this tier, leaving it to the discretion of the LEA.

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APPENDIX C

Glossary

CALIFORNIA ENVIRONMENTAL QUALITY ACT

State law requires any project subject to the California Environmental Quality Act (CEQA) to provide evidence of compliance with CEQA, either through the preparation, circulation, and adoption or certification of an environmental document or by determining that the proposal is categorically or statutorily exempt prior to project approval. The full and standardized solid waste permit tiers require CEQA compliance.

CEASE AND DESIST ORDER

An order requiring the owner or operator of a facility, disposal site, or operation to cease and desist any improper action by a specified date. A cease and desist order may be issued when a facility, disposal site, or operation is in violation of the California Integrated Waste Management Act of 1989 (Waste Act) or any regulations adopted pursuant to the Waste Act or causes or threatens to cause a condition of hazard, pollution, or nuisance.

CHIPPING AND GRINDING

Authorized chipping and grinding activities mechanically reduce the size of lumber and other wood material to produce construction and demolition mulch. They do not produce active compost.

CONDITIONAL USE PERMIT

A permit that a city or county issues to a landowner that allows, through a public hearing process, special uses of land that may be essential or desirable to a particular community but that are not allowed as a matter of right within a zoning district. A municipality can also employ a conditional use permit to control certain uses that could have detrimental effects on the community.

CONSTRUCTION AND DEMOLITION WASTES

These include the waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

ENFORCEMENT AGENCY

The entity responsible for enforcing solid waste handling laws and regulations in a particular jurisdiction in the State. When there is no local enforcement agency, the California Integrated Waste Management Board (board) usually acts as the enforcement agency.

EXCLUDED

Refers to solid waste handling operations that are in the excluded tier of the board's regulatory tier system. Operators of excluded tier operations are not required to notify the enforcement agency of their intent to operate or submit an application for a solid waste facility permit. Also, excluded tier operations are not subject to state minimum standards.

LOCAL ENFORCEMENT AGENCY

A local government entity that acts as a solid waste enforcement agency. The local enforcement agency (LEA) performs permitting, inspection, and enforcement duties for solid waste handling activities in its jurisdiction. When there is no LEA, the board usually acts as the enforcement agency.

NONTRADITIONAL FACILITIES

Solid waste handling and disposal activities on sites other than solid waste landfills, transfer stations, and composting facilities.

NOTICE AND ORDER

An enforcement procedure wherein the enforcement agency provides formal notice to an owner or operator of a facility or

operation regarding a schedule by which the operator is to take specified action(s) and the penalty for not complying with the specified schedule.

REGULATORY STATUS

The status of a particular waste handling facility, operation, or site in relation to the terms and conditions of the plan or permit under which the waste handling activities are to be conducted—whether under a permit, closure plan, never having been required to have a permit, or currently not required to have a permit.

REGULATORY TIER SYSTEM

The regulations designed to provide a level of regulatory oversight commensurate with the potential impacts of a solid waste handling or disposal activity. From the highest level of regulation and oversight to the lowest, the tiers are the following: full, standardized, registration, enforcement agency notification, and excluded. Any solid waste handling activity classified in the registration, standardized, or full tiers is referred to as a facility. Any solid waste handling activity placed in the excluded or enforcement agency notification tiers is referred to as an operation.

SOLID WASTE

All putrescible (capable of decomposition) and nonputrescible solid, semisolid, and liquid wastes, including garbage; trash; refuse; paper; rubbish; ashes; industrial wastes; demolition and construction wastes; abandoned vehicles and parts thereof; discarded home and industrial appliances; dewatered, treated, or chemically fixed sewage sludge that is not hazardous waste; manure; vegetable or animal solid and semisolid wastes; and other discarded solid and semisolid waste. However, solid waste does not include hazardous or radioactive wastes, as defined in statute, or certain medical waste.

SOLID WASTE DISPOSAL SITE

Includes the place, location, tract of land, area, or premises in use, intended to be used, or that has been used for the landfill disposal of solid wastes.

SOLID WASTE FACILITY

Includes a solid waste transfer or processing station, a composting facility, a gasification facility, a transformation facility, and a disposal facility. Solid waste facilities require full, standardized, or registration solid waste facility permits. (See “regulatory tier system.”)

SOLID WASTE INFORMATION SYSTEM

A database containing information on solid waste facilities, operations, and disposal sites throughout California. The types of facilities found in the database include landfills, transfer stations, material-recovery facilities, composting sites, transformation facilities, waste tire sites, and closed disposal sites. For each facility, the database contains information about location, owner, operator, facility type, regulatory and operational status, authorized waste types, and LEAs.

SOLID WASTE MANAGEMENT

Includes a planned program for effectively controlling the generation, storage, collection, transportation, processing and reuse, conversion, or disposal of solid wastes in a safe, sanitary, aesthetically acceptable, environmentally sound, and economical manner. It includes all administrative, financial, environmental, legal, and planning functions, as well as the operational aspects of solid waste handling, disposal, and resource recovery systems necessary to achieve these established objectives.

SOLID WASTE OPERATIONS

Solid waste activities that do not require a solid waste facility permit and that pose little or no threat to public health and safety or the environment. (See “regulatory tier system.”)

TRANSFER OR PROCESSING STATION

Sites used to receive solid wastes; temporarily store, separate, convert, or otherwise process the materials in the solid wastes; or transfer the solid wastes directly from smaller to larger vehicles for transport.



Terry Tamminen
Agency Secretary

California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control
Integrated Waste Management Board • Office of Environmental Health Hazard Assessment
State Water Resources Control Board • Regional Water Quality Control Boards



Arnold Schwarzenegger
Governor

November 25, 2003

Ms. Elaine M. Howle*
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

Dear Ms. Howle:

Thank you for providing me with the draft report, "California Integrated Waste Management Board: Its New Regulations Establish Rules for Oversight of Construction and Demolition Debris Sites, but Good Communication and Enforcement Are Also Needed to Help Prevent Threats to Public Health and Safety," prepared in response to the request made by the Joint Legislative Audit Committee in the aftermath of the January 2003 Archie Crippen Fire in the City of Fresno.

As requested, I am enclosing the California Integrated Waste Management Board's (Board) response, both as a hard copy and electronically. As stated in Chair Linda Moulton-Patterson's cover letter, due to the confidential nature of the document and the fact that the Board may not deliberate except in a noticed public meeting, the Board itself has not been able to discuss this response. She anticipates further Board discussion once the report is published and an agenda item can be calendared.

If you have any questions concerning this response, please contact the Board's Chair, Ms. Moulton-Patterson, at (916) 341-6024 or Mr. Mark Leary, Executive Director, at (916) 341-6544.

Best regards,

Terry Tamminen
Agency Secretary

* California State Auditor's comments appear on page 61.



Terry Taiminen
Secretary for
Environmental
Protection

California Integrated Waste Management Board

Linda Moulton-Patterson, Chair
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Arnold Schwarzenegger
Governor

November 25, 2003

Elaine M. Howle, State Auditor
555 Capitol Mall
Sacramento, CA 95814

Dear Ms. Howle:

Thank you for the opportunity to review and comment on the draft report, "California Integrated Waste Management Board: Its New Regulations Establish Rules for Oversight of Construction and Demolition Debris Sites, but Good Communication and Enforcement Are Also Needed to Help Prevent Threats to Public Health and Safety," prepared in response to the request made by the Joint Legislative Audit Committee in the aftermath of the January 2003 Archie Crippen Fire in the City of Fresno. The Integrated Waste Management Board (Board) played a major role in suppressing the Crippen fire and in the subsequent site cleanup completed in September 2003, and we are very proud of this.

This report raises questions about the identification and regulation of what are known as "excluded" sites (although the Crippen site did not fall into this category) by the Board, local enforcement agencies (LEAs), and city and county authorities. It also raises questions about the status of the Board's regulations for construction, demolition, and inert debris handling and disposal activities and the timeliness of the Board's evaluations of LEA performance. I am pleased to report that the Board approved two major regulatory packages this year to clarify the regulatory framework for construction, demolition, and inert debris activities. The Board also initiated a third cycle of LEA performance evaluations and anticipates completing these within the mandated three-year period. As always, we will continue to work with local government, industry partners, environmental groups, and members of the public to fully protect our environment and the citizens of California.


Elaine M. Howle
November 25, 2003
Page Two

Attached is the response prepared by Board staff (Attachment 1). I wish to note here that we have not seen the full draft report itself, but rather a redacted portion that we received on November 19, so our comments only pertain to the parts we have been able to see. We organized the draft report's six recommendations into five categories, each of which includes the appropriate recommendation(s) and our specific response.

Due to the confidential nature of the document and the fact that the Board may not deliberate except in a noticed public meeting, the Board itself has not been able to discuss this response. In order to ensure sufficient time for public comment and Board discussion, I have directed staff to prepare an agenda item to be heard at an upcoming public meeting of the Board. This will provide the Board with the opportunity to fully discuss the issues presented in the report and to take actions it deems appropriate.

I would like to commend you and your staff on the professional way the information for the report was gathered and prepared. If you have any questions concerning this response, please contact me or Mark Leary, Executive Director; Julie Nauman, Chief Deputy Director, or Howard Levenson, Deputy Director for Permitting and Enforcement.

Sincerely,



Linda Moulton-Patterson
Chair

Attachment 1— Response of the California Integrated Waste Management Board

Response of the California Integrated Waste Management Board

Introduction

In response to this report, it is important to fully understand the functions and responsibilities of the Integrated Waste Management Board (Board). The Board's mission is to reduce waste, promote the management of all materials to their highest and best use, and protect public health and safety and the environment, in partnership with all Californians. The Integrated Waste Management Act, which took effect January 1, 1990, provides the statutory authority under which the Board operates. During the ensuing years, the Board has worked in partnership with local governments, industry, environmental advocates, the Legislature, and others to reduce waste and assure that solid waste management presents no threat to public health and safety or to the environment.

The Act specifically requires the Board to adopt and revise regulations that set forth minimum standards for solid waste handling. Prior to 1995, all solid waste handling activities required a full solid waste facilities permit. However, the Board was concerned that sites handling specific waste streams other than municipal solid waste may have been regulated at a level that was not commensurate with associated potential public health, safety and environmental impacts. As a result, the Board began examining whether its existing regulations properly addressed the actual level of concern posed by sites. In 1995, the Board adopted a tiered framework that allows for a level of review and oversight that is commensurate with potential impacts that a facility or operation may pose to public health, safety, and the environment. The framework includes three tiers that require solid waste facility permits; a fourth tier that regulates operations which do not need a permit but which nevertheless must still meet minimum standards and notify local enforcement agencies (LEAs) of their existence; and a fifth tier that provides "exclusions" from the regulations for activities (such as backyard composting or placement of bins at construction sites for collection of recyclable materials) that are considered to constitute negligible risks to public health, safety, and the environment. It is important to note that the Board never considered activities at the Archie Crippen site to be in the excluded activity tier; in fact, the waste stream entering the Crippen site, as described in the draft report, would have qualified the site as a transfer and processing site, not as a construction and demolition debris handling site.

The Board works in partnership with many agencies to ensure that solid waste handling and disposal activities are designed and operated in a manner that complies with the minimum standards and that they are appropriately placed within the regulatory tier framework. To help accomplish this, one of the Board's major statutory responsibilities is to ensure that LEAs effectively perform their duties and responsibilities. The Board is required to oversee and evaluate each LEA's performance on a three-year cycle that includes monitoring the compliance status of solid waste operations and facilities within the LEA's geographic jurisdiction. In support of this, the Board also provides extensive LEA training, guidance, and assistance.

Advisory 12 and Assistance to LEAs

Recommendations: *To ensure that sites are adequately monitored, the board should clarify the intent of the LEA Advisory #12 for the remaining nontraditional sites for which regulations are not yet in place. For example, the board should resolve the ambiguity between the advisory's statement that LEAs are strongly encouraged not to accept applications for solid waste permits for materials and handling methods under evaluation, on the one hand, and its statement that it is ultimately the responsibility of the LEAs to determine whether to require solid waste permits for such sites, on the other hand.*

When it determines that an LEA has inappropriately classified a site – for example, the LEA treats a composting site as a construction and demolition debris site – it should work with the LEA to ensure the classification is correct.

Response: Subsequent to the adoption of Phase II of the Construction and Demolition Debris and Inert Debris regulations, Board staff determined that Advisory #12 no longer provided needed guidance and therefore suspended it.

When the Board issued LEA Advisory #12 in March 1994, the regulatory framework at that time required every solid waste handling activity to get a full permit and comply with standards associated with the handling of municipal solid waste. In 1995, the Board adopted a tiered framework that provides review and oversight commensurate with the potential impact that a facility or operation may pose to public health, safety, and the environment. The process of placing activities into this tiered framework has now been completed with the adoption of the last set of regulations for construction and demolition debris. Even before then, however, Advisory #12, as with all advisories developed by the Board, provided guidance only. Advisories do not supersede statutory or regulatory requirements nor are they enforceable. For example, the guidance provided would have had no affect on LEAs' responsibility to require, receive, and process a permit application. The guidance would not have prevented a permit from being issued if the application was deemed complete and correct and the Board found it consistent with statutory requirements.

The Board has and will continue to assist LEAs in placing solid waste handling activities, including ones handling new or unique wastestreams, within the appropriate tier of the regulatory framework. This assistance will continue to include periodic training on the regulations, solid waste facility type definitions, and tier permit requirements, as well as ongoing technical support through direct contact with Board staff and through the Board's website.

Construction and Demolition Debris Disposal Regulations

Recommendation: *To meet the goals of the California Integrated Waste Management Act of 1989 and improve regulation of solid waste, the board should complete as promptly as possible its work on the second phase of regulations for construction and demolition debris sites, covering the disposal of the waste materials.*

Response: The Board already adopted the second phase of regulations for construction and demolition debris sites, on September 17, 2003.

● To address construction and demolition debris sites through regulations, the Board directed staff to separate the rulemaking into two phases, the first dealing with transfer and processing activities and the second dealing with disposal activities. The first phase of the regulations became effective in August 2003. The Board adopted regulations for the second phase, dealing with construction and demolition debris disposal, on September 17, 2003, and submitted them to the Office of Administrative Law (OAL) on November 10, 2003 (Regulatory Action Number 03-1110-04S). OAL's 30 working day review period will end on December 26, 2003. The regulations will become effective soon after approval by OAL and filing with the Secretary of State.

Excluded Sites

Recommendation: *To ensure the enforcement community is aware of excluded sites that could potentially grow into a public health, safety, or environmental concern, the board should require, pursuant to Public Resources Code 43209(c), LEAs to compile and track information on operations in the excluded tier. For the LEAs to track this information, each LEA and its related cities and counties should work together to develop a system to communicate information to the LEA about existing and proposed operations in the excluded tier with the potential to grow and cause problems for public health, safety, and the environment. For example, the system may include forwarding information to LEAs on requests for conditional use permits, revisions to current conditional use permits, or requests for new business licenses. We are not suggesting that LEAs track such operations in the excluded tier as backyard composting or disposal bins located at construction sites. In addition, the board should require the LEAs to periodically monitor these operations in the excluded tier to ensure they still meet the excluded requirements. Finally, in its triennial assessments of each LEA, the board should review the LEA's compliance with these instructions regarding excluded sites.*

Response: While the Board understands this recommendation, the basis for it seems to stem primarily from the Crippen situation. As noted earlier, the Crippen situation is not appropriate for drawing conclusions about or recommendations for "Excluded operations" because the Board does not consider Crippen an "Excluded operation."

Excluded operations, by design, are activities that do not require full permitting or a high level of regulatory oversight because the type of waste and/or size of the activity pose little threat to public health, safety, or the environment, or because they are sufficiently regulated by other entities. The Board placed operations into the Excluded tier through rulemaking pursuant to the Administrative Procedures Act, which includes full participation by stakeholders and potentially affected parties. The placement is based on professional technical and scientific analysis. Indeed, the Board defines these excluded activities so that there is regulatory certainty that they do not require permits.

Nevertheless, LEAs are still responsible for being aware of changes in activities located in their jurisdiction. Accordingly, there may be some value in encouraging LEAs, in concert with other local regulatory entities, to develop mechanisms for identifying and tracking activities that may trigger additional regulatory requirements. This could include any activities, regardless of their placement within the regulatory tiers, that are knowingly or unknowingly operating or proposing to operate outside the requirements of the tiers; unscrupulous operators and operators unaware of reporting requirements pose a threat regardless of the where their activities fit within the tiered regulatory structure. Systems to track these activities should be locally developed and maintained because local government jurisdictions are in the best position to recognize a growing concern and can alert the board and request assistance, as necessary. These systems would not encompass the entire population of the regulatory tier framework because, as the recommendation suggests, it is not necessary to track all excluded operations. Board staff will continue to provide assistance to LEAs regarding the appropriate classification of solid waste handling activities and the enforcement options available for these activities.

Public Resources Code, Section 43209(c) provides the board with the authority to request information it deems necessary to evaluate LEAs, but it does not provide the Board with authority to require the implementation of the type of tracking system discussed above. Staff will work with

the Board and LEAs to consider whether information related to such tracking systems should be included as part of the Board's evaluation of LEA performance.

Appeals of Enforcement Orders

Recommendation: *The Legislature may wish to consider amending the current provisions of the Waste Act that stay the operation of an enforcement order, upon the request for a hearing, and to streamline or otherwise modify the appeal process, subject to any relevant due process considerations, to make it more effective and timely and enhance the LEAs' ability to enforce the Waste Act.*

Response: When the Legislature enacted AB 59 in 1995, it included a provision for a balanced appeal process (Public Resources Code 45017(a)(1)) that "stays" an enforcement order pending the conclusion of all appeals to a local hearing panel and then to the Board. It also provided that enforcement orders (except in case of an imminent and substantial threat; see PRC 45017(a)(2,3)) should not take effect until all appeals had run their course.

After 8 years of experience, however, it may be time to re-examine the effectiveness of this provision. The report cites the Florin-Perkins situation as an example of how an operator can stymie effective and timely enforcement by LEAs of the State's minimum standards and permitting requirements. Board staff agrees that this issue warrants further consideration. For example, this could include examining the benefits of imposing stricter time limits to make the appeal process more timely and effective, or considering removing the local hearing appeal provision entirely and instead relying on the courts to decide, on a case-by-case basis, whether a stay is warranted.

Some related enforcement issues were addressed in the 2000 audit report. In response, in June 2001 the Board adopted findings about statutory barriers to an effective civil penalties process and also found that time limits are needed for appeals to the Local Hearing Panel and for filing a petition for writ of mandate challenging a decision of the Board. The Board subsequently worked with Cal/EPA and the Governor's Office on a legislative proposal to address these issues. The Board was successful in including one aspect of the proposal as a provision in AB 1497 (Chapter 823, Statutes of 2003), which removed one of the barriers to assessing administrative civil penalties by removing the cap on penalties. However, this legislation did not impose time limits or otherwise amend the appeal process.

LEA Evaluation and Board Action on LEAs

Recommendation: *To comply with existing law, the board should complete evaluations of LEAs within the three-year cycle. If that is not feasible, the board should propose a change in law that would allow a prioritization system to ensure that it at least evaluates LEAs with a history of problems, within every three years. Similarly, when the board identifies problems with an LEA through its analysis of trigger information, the board should establish firm deadlines for the LEA's corrective action. If the LEA does not meet the deadline, the board should perform a thorough evaluation of the LEA and take administrative action, if necessary.*

Response: Board staff understands and agrees with the Auditor's finding regarding the timeliness of evaluations. However, as stated in the report, most jurisdictions were evaluated within an appropriate timeframe that also includes the time needed to resolve outstanding data issues with LEAs.

Staff believes that the third cycle can be completed within the 3-year cycle, partly because of the experience it has gained during the last two cycles. In addition, Board staff constantly re-examines its internal practices and will continue to work with the Board on methods to streamline the evaluation process, such as firmer deadlines for internal fact-finding and report review. The report suggests an alternative approach to the current statutory scheme for LEA evaluation, i.e., the establishment of a prioritization system. The Board will consider this suggestion as it reviews this recommendation. It also could include examining other evaluation models such as the one for Certified Unified Program Agencies, which are responsible for the regulation of hazardous waste and which are overseen by the Department of Toxic Substances Control.

With respect to the last part of the recommendation above, the report determined that the Board should establish firm deadlines for a LEA's corrective action, due to the apparent length of time it takes the Board and LEA to find and resolve problems within the LEA's jurisdiction. A firm deadline for LEA action does need to be reasonable, which by necessity means taking into account the underlying issues that have caused the LEA to be required to take corrective action. This is because some long-term problems may not be within the LEA's direct control, for example a local planning issue that takes time to correct or a CEQA issue that must be addressed before the LEA can begin the permit process. Should staff find that the LEA has failed to take appropriate action to identify and resolve the underlying problem, the Board will continue to utilize the statutory and regulatory remedies available for taking action over the LEA.

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COMMENTS

California State Auditor's Comments on the Response From the California Integrated Waste Management Board

To provide clarity and perspective, we are commenting on the California Integrated Waste Management Board's (board) response to our audit report. The number corresponds to the number we have placed in the response.

- Our recommendation is based on our assessment of the regulatory tier structure, independent of observations about the Archie Crippen Excavation Site (Crippen Site). As we recommended on pages 3-4 and 37-38, some excluded activities (backyard composting, construction site waste bins) appear to pose little risk and we are not proposing that the local enforcement agencies (LEAs) track these activities. However, other excluded activities—for example, chipping of wood material and wood, paper, or wood product manufacturing sites—do have a greater potential for the risk of expanded or altered operations, and we recommend that these activities be tracked.
- As we reported on pages 18 and 24 of our report, the guidance that the advisory provided to the LEA was not clear. In addition, we also report that the board and the LEA have differing perspectives on what was communicated during the visits prior to the Crippen Site fire.
- On page 19, we noted that the board had indicated it adopted regulations for the second phase of the construction and demolition debris regulations. To clarify the intent of our recommendation on pages 3 and 37, we have added the words “and implement” so the recommendation now reads “To meet the goals of the California Integrated Waste Management Act of 1989 (Waste Act) and improve regulation of solid waste, the board should complete and implement as promptly as possible its work on the second phase of regulations for construction and demolition debris sites, covering the disposal of the waste materials.”

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Agency's comments provided as text only.

County of Fresno
2281 Tulare Street, Room 300, Hall of Records
Fresno, California 93721-2198

November 26, 2003

Elaine M. Howle, State Auditor*
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

The County of Fresno Solid Waste Local Enforcement Agency (LEA) appreciates the opportunity to review and comment on the Bureau of State Audit's draft audit report titled "California Integrated Waste Management Board: Its New Regulations Establish Rules for Oversight of Construction and Demolition Debris Sites, but Good Communication and Enforcement Are Also Needed to help Prevent Threats to Public Health and Safety." The purpose of this letter is to provide the Fresno LEA's comments as follow for consideration for modification of the audit report.

Under the heading "Representatives of Several Enforcement Entities Had Observed Conditions at the Crippen Site Before the Fire," the report on page 26 references a statement made by the California Integrated Waste Management Board's (CIWMB) manager of the Permitting and Inspection Branch. The statement indicates he had communicated to the LEA his belief that the site could have been subject to transfer station regulations and could require a full solid waste facility permit.

The LEA disagrees with the draft audit report regarding the Permitting and Inspection Branch manager's having communicated on this point. LEA staff has neither recollection nor internal documentation of such communication from the manager, nor is the LEA aware of any written documentation representing this direction or position from the CIWMB. The LEA's position on this subject is consistent with the draft audit report's findings regarding internal Fresno LEA memorandums written at the time of the CIWMB site visit and discussions. These documents contain no reference to the manager communicating regarding the Crippen site's potential status as a transfer facility or questioning the site's status as a construction and demolition debris site.

Further, such a statement would have been contradictory to then-existing CIWMB regulations, since there was no evidence the Crippen facility would fall under the regulatory definition, requirements, and criteria for the permitting and operation of transfer stations. In addition, the CIWMB LEA

* California State Auditor's comment appears on page 69.

ELAINE M. HOWLE, STATE AUDITOR

November 26, 2003

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Advisory #12 - March 29, 1994 "Permitting of Nontraditional Facilities" (attached) strongly encourages LEAs not to accept applications for a solid waste facilities permit for materials and handling methods which are under evaluation. Finally, suggesting this facility could submit an application for a transfer permit would have been counterintuitive from the perspective of timing, in light of the fact that the proposed construction and demolition regulations were scheduled to be heard and possibly approved by CIWMB approximately one month later.

Thank you for your consideration of Fresno County's response to the draft audit report. Questions regarding this matter may be addressed to Brad Maggy, Interim Director of Community Health at (559) 445-3200 or to Tim L. Casagrande, Director of Environmental Health at (559) 445-3391.

Sincerely,

(Signed by: Juan Arambula)

Juan Arambula, Chairman
Board of Supervisors

Attachment

PERMITTING OF NON-TRADITIONAL FACILITIES



To All Local Enforcement Agencies

The purpose of this advisory is to provide guidance to Local Enforcement Agencies (LEAs) and Board staff on the PERMITTING OF NON-TRADITIONAL FACILITIES.

Solid waste facility permits are required to be obtained by those persons operating or proposing to operate a solid waste facility. Current statutory requirements and implementing regulations provide for a range of interpretations regarding facilities which may be exempted from or not subject to these requirements. The primary means for interpretation has rested with LEAs and Board staff.

Increased emphasis in the past several years on streamlining the permit process, as well as providing a predictable and reliable regulatory structure, has prompted the Board to comprehensively evaluate the practices associated with the handling of solid waste. The Board has directed that a workgroup, comprised of affected State and local agencies, be formed to address the applicability of the requirement to obtain a solid waste facilities permit for non-traditional facilities. Non-traditional facilities are those facilities, other than landfills, transfer stations, and composting facilities which handle or process solid waste.

The purpose of the working group is to evaluate these practices based upon: documented or perceived threats to public health and safety and the environment; the existence of federal, state or local requirements; and, statutory authority and intent. Recommendations of the workgroup will be presented to the Board for consideration in determining the categories of facilities that should be subject to the requirement to obtain a solid waste facilities permit; and, the appropriateness of the existing permitting structure relating to these facilities.

Determinations on the applicability of the requirement to obtain a solid waste facilities permit are currently applied inconsistently throughout the State. This eliminates predictability in the permitting process and may serve to establish precedent without proper evaluation. **Until the Board takes action on specific handling methods, LEAs are strongly encouraged not to accept applications for a solid waste facilities permit for materials and handling methods which are under evaluation. A delay in the processing of these permits would eliminate the administrative burden of revising or modifying such permits if changes to this process are included in the Board's action.**

This direction is in no way intended to preclude such facilities from future regulation based upon Board determination or statutory revision and does not affect the need to comply with all other applicable federal, state and local requirements. This direction is also not intended to preclude LEAs from accepting applications for a solid waste facilities permit if specific local concerns exist which can be addressed only through the issuance of a solid waste facilities permit.

The Board's Permitting and Enforcement Committee anticipates to begin deliberations on identified categories in April 1994. The Board encourages all LEAs to participate in this process. Please contact the appropriate LEA representatives below to convey your interest:

Southern California

Terry Gilday
 County Resource Management Agency
 Mail Location: 1730
 8001 South Victoria Avenue
 Ventura, CA 93309
 (805) 654-2815

Northern California

Charles Nicholson
 County Health Department
 Division of Environmental Health
 1111 Ward Street
 Martinez, CA 94553
 (510) 646-2571

A listing of the waste types for which handling methods and facilities are to be examined by the workgroup is included below. For each waste type, several examples are provided. Should you be dealing with a facility proposal that appears to fall into the non-traditional facility category, but are not certain whether this interim policy applies to the particular facility with which you are dealing, please contact your Permitting Branch representative.

Included Waste Types

<i>Liquids:</i> Such as ponds and manufacturing effluent.
<i>Agricultural:</i> Such as nut hull processing and fruit pit disposal.
<i>Ash:</i> Such as landspreading, solidification, and use as feedstock.
<i>Sludge:</i> Such as landspreading, incineration, and activities at Publically Owned Treatment Works undertaken by the operator under the operator's permits.
<i>Wood:</i> Such as incineration and mulching.
<i>Mining:</i> Such as mining wastes disposed off site.
<i>Industrial Solids:</i> Such as contaminated soil remediation and drilling muds handling.
<i>Inert:</i> Such as landfilling and processing (crushing).

March 28, 1994
Page 3

Sincerely,

Douglas Okumura
Deputy Director
Permitting and Enforcement Division

(LEA Advisory # 1, Oct. 6, 1992, Asbestos Containing Waste Disposal)
(LEA Advisory # 2, Feb. 17, 1993, 1992 Legislation Impacts Existing Waste Programs)
(LEA Advisory # 3, June 10, 1993, Site Investigation Process for Investigating Closed, Illegal, and Abandoned Disposal Sites)
(LEA Advisory # 4, Sept. 23, 1993, Permitting of Fuel Contaminated Soils Treatment/Processing facilities)
(LEA Advisory # 5, Dec. 15, 1993, Use of Non Hazardous Contaminated Soil as Daily Cover)
(LEA Advisory # 6, Dec. 16, 1993, Aspergillus, Aspergillus, and Composting Operations in California)
(LEA Advisory # 7, Dec. 30, 1993, Subtitle D Questions and Answers)
(LEA Advisory # 8, January 31, 1994, Interim Guidance for Enforcement of Some Minimum Standards at Disposal Sites)
(LEA Advisory # 9, February 10, 1994, Solid Waste Ranking System User Guide: Site Investigation Process (SIP) Part II)
(LEA Advisory #10, March 7, 1994, Procedural Change in Approving Alternative Cover Demonstration Projects Using Geosynthetic Blankets)
(LEA Advisory #11, March 24, 1994, Metallic Discards Management)

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COMMENT

California State Auditor's Comment on the Response From the County of Fresno

To provide clarity and perspective, we are commenting on the County of Fresno's response to our audit report. The number corresponds to the number we have placed in the response.

- As we state on pages 23 and 24, we are reporting what the manager of the California Integrated Waste Management Board's (board) Permitting and Inspection Branch asserted to us he communicated to staff of the Fresno local enforcement agency (LEA). We believe our description of the communication between the board and LEA staff appropriately distinguishes between information asserted to us and information contained in written documentation, including the Fresno LEA's internal memorandums. Thus, we have not modified the report.

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Agency's comments provided as text only.

City of Fresno
2600 Fresno Street
Fresno, California 93721-3601

November 24, 2003

Elaine M. Howle, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

RE: AGENCY RESPONSE - "CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD: ITS NEW REGULATIONS ESTABLISH RULES FOR OVERSIGHT OF CONSTRUCTION AND DEMOLITION DEBRIS SITES, BUT GOOD COMMUNICATION AND ENFORCEMENT ARE ALSO NEEDED TO HELP PREVENT THREATS TO PUBLIC HEALTH AND SAFETY" - 2003-113

Dear Ms. Howle:

The City of Fresno has reviewed your Draft Audit Report as referenced above. Our response is as follows:

"The City of Fresno fully concurs with the audit recommendations. As of November 25, 2003, twenty-one (21) of the twenty-four (24) Southwest Fire Process Improvement Task Force Recommendations have been adequately implemented. The remaining three (3) outstanding recommendations are anticipated to be fully implemented by January 1, 2004. A copy of the current recommendations Matrix reflecting the status of all twenty-four (24) Task Force recommendations is also enclosed as part of the City's response."

As per your request via your November 20th cover letter, we have also enclosed a diskette containing a copy of this letter/response.

The City of Fresno wishes to thank you for your audit. A special thanks to your staff, Ms. Lois E. Benson, CPA, and Dawn S. Tomita, for their professionalism and efficiency in conducting this audit in a timely and effective matter. If you have any questions or need any additional information,

November 24, 2003

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please do not hesitate to contact Mr. Nick Yovino, Director, Planning & Development at (559) 621-8001 or Bob Koury, Principal Internal Auditor at (559) 621-7072.

Sincerely,

(Signed by: Daniel G. Hobbs)

Daniel G. Hobbs
City Manager

Enclosures

SOUTHWEST FIRE PROCESS IMPROVEMENT TASK FORCE RECOMMENDATIONS - STATUS REPORT
AS OF NOVEMBER 25, 2003

REC. #	REPORT RECOMMENDATIONS	RESPONSIBLE DEPT./AGENCY	STATUS/COMMENTS
1	Any business operating under a County issued CUP or other land use entitlement shall be in full compliance with such CUP/entitlement prior to the business being annexed ("grandfathered") into the City of Fresno.	Planning & Development (Nick)	Implemented - Planning & Development Director issued written order on 4/29/03 to require Fresno County entitlement review and compliance at annexation initiation.
2	The City shall amend appropriate sections of the FMC and related Ordinances that would a) require thorough reviews of CUP's for businesses/properties annexed ("grandfathered") into the City of Fresno to ensure those entities would operate under the existing land use requirements set forth by the City of Fresno, and b) allow the Director of Planning and Development to summarily revoke or suspend a CUP when he has determined that the land use under the CUP presents an imminent or ongoing threat to health and safety of the public or to property in the City of Fresno.	Planning & Development and City Attorney (Nick & Jesse)	Implemented - Ordinance Bill package addressing this recommendation and accompanying City Attorney staff report finalized 11/13/03. Package forwarded to City Council for review/introduction at November 18, 2003 Council Meeting. To be resubmitted by City staff/Attorney's Office in December for final approval.
3	Applicable City staff from Planning and Development, Fire, City Attorney and City Manager's office shall become more knowledgeable and proficient with regard to the City's Ordinances, FMC's and policies related to the CUP revocation process. Planning and Development and City Attorney's office shall work in a more coordinated effort to ensure that the proper and timely legal action related to CUP revocation is taken when appropriate.	Planning & Development, Fire, City Attorney and City Manager (Nick & Jesse)	Implemented - City Attorney final training/briefing memorandum to Management and staff outlining "must know" CUP revocation requirements revised per staff comments and released in final form week of 9/15/03.
4	The City shall adopt an Ordinance apart from the Zoning Ordinance, in the Health and Safety Chapter, that addresses specifically recyclable material operators within the City of Fresno. Such Ordinance shall include remedies and punishments, including criminal and financial penalties for violations.	Planning & Development and City Attorney (Nick & Jesse)	Implemented - Ordinance Bill package addressing this recommendation and accompanying City Attorney staff report finalized 11/13/03. Package forwarded to City Council for review/introduction at November 18, 2003 Council Meeting. To be resubmitted by City staff/Attorney's Office in December for final approval.

SOUTHWEST FIRE PROCESS IMPROVEMENT TASK FORCE RECOMMENDATIONS - STATUS REPORT
AS OF NOVEMBER 25, 2003

REC. #	REPORT RECOMMENDATIONS	RESPONSIBLE DEPT./AGENCY	STATUS/COMMENTS
5	The City shall require all establishments conducting business within the City to be properly entitled and permitted for their particular operations. Owners of such property shall maintain sufficient liability insurance and be verified by the City prior to issuance of a CUP or other entitlement. The City shall also perform "background checks" on all operators to determine if inappropriate and/or criminal business practices by said operator have occurred prior to issuance of the CUP.	Planning & Development, City Attorney and Police (Nick & Jesse)	Implemented - Ordinance Bill package addressing this recommendation and accompanying City Attorney staff report finalized 11/13/03. Package forwarded to City Council for review/introduction at November 18, 2003 Council Meeting. To be resubmitted by City staff/Attorney's Office in December for final approval.
6	Any business that has commenced operations in the City of Fresno without securing the appropriate entitlements and following the City's established procedures and legal processes shall cease operations immediately. Code Enforcement shall ensure that this policy is strictly adhered to. When warranted, the City shall initiate immediate legal action against the business owner and close/red tag the facility.	Planning & Development and City Attorney (Nick & Jesse)	Implemented - The City Attorney's Office to assist management and staff with the research and development of a "strict" enforcement policy, and timely initiation of litigation consistent with applicable prosecutorial standards. Ability to close ("red tag") individual operations depends on facts of each case. City Attorney to respond to individual requests for enforcement as they occur.
7	The City shall amend appropriate sections of the FMC and related Zoning Ordinances to require a monitoring, on-site inspection/reporting system for all land uses related to waste/recyclable facilities. The amendments shall include requirements on CUP's for on-site inspections by either appropriate City staff or contracted inspectors. It is also recommended that the costs of these inspections be borne by the business operators.	Planning & Development and City Attorney (Nick & Jesse)	Implemented - Ordinance Bill package addressing this recommendation and accompanying City Attorney staff report finalized 11/13/03. Package forwarded to City Council for review/introduction at November 18, 2003 Council Meeting. To be resubmitted by City staff/Attorney's Office in December for final approval.
8	Planning and Development shall thoroughly evaluate the current Code Enforcement staffing and utilization of such staff, as well as future budgetary constraints, prior to proceeding with implementation of the March 4th report recommendations. A "paralegal" type position within Planning and Development should also be considered within the staffing framework. A pro-active Code Enforcement program must be implemented as soon as possible.	Planning & Development (Nick & Ray Villa)	Implemented - The CUP "Strike Team" was implemented/in place as of 9/7/03. The legal assistant joined the department/"strike team" as of 9/29/03.

SOUTHWEST FIRE PROCESS IMPROVEMENT TASK FORCE RECOMMENDATIONS - STATUS REPORT
AS OF NOVEMBER 25, 2003

REC. #	REPORT RECOMMENDATIONS	RESPONSIBLE DEPT./AGENCY	STATUS/COMMENTS
9	Code Enforcement's current operational policies and procedures shall be thoroughly reviewed and updated, as appropriate, to best implement the recommendations within this report.	Planning & Development (Nick & Ray Villa)	Implemented
10	The Police and CHP "911" emergency dispatch centers shall immediately review and revise, as necessary, their emergency dispatch procedures and protocol specific to the handling of fire emergencies within the City of Fresno for improved efficiencies and effectiveness. Appropriate staff from the Police, CHP and Fire Department shall then meet to discuss and formalize, in writing, an emergency dispatch protocol memorandum of understanding for implementation by all responsible parties.	Police, Fire, CHP and City's "Emergency Preparedness Officer" (Robert Nevarez)	Implemented - PD emergency dispatch procedures and policies related specifically to handling of fires were revised on 5/12/03 and distributed to all appropriate employees on 5/16/03. Dispatch protocols are now much more specific and clear between PD, CHP and Fire, i.e. a formal MOU is not considered necessary at this time.
11	Additional training shall be provided to the Police Department "911" emergency dispatch personnel to ensure all calls are logged and handled properly and in a timely manner, and department policies are strictly complied with by dispatch personnel.	Police (Robert Nevarez)	Implemented - Additional training for "911" dispatch communications personnel was provided in daily briefings between 4/2/03 - 4/10/03; compliance with established policies and procedures is also being monitored on an ongoing basis.
12	FMC, Article 7 of Chapter 9, shall be amended to limit the size of debris piles within City of Fresno recyclable material facilities. Debris piles shall be protected by an approved water supply for firefighting purposes, in accordance with Section 903 of the Uniform Fire Code. The piles must be separated from adjacent piles or other exposures by Fire Department access roads. The grounds at the facility shall have a heavy lining to prevent any contaminated solution from seeping into the ground and water table.	Planning & Development, Fire and City Attorney (Nick & Jesse)	Implemented - Was presented before the City Council on 6/10/03 and was adopted.
13	Sufficient and appropriate training shall be provided to all Fire Department supervisors in fire management functions through the State Fire Marshal's Office, to include training specific to the circumstances of the Crippen fire and other similar emergencies.	Fire (Joel)	Implemented - Fire management personnel Fall Symposium training classes completed.

SOUTHWEST FIRE PROCESS IMPROVEMENT TASK FORCE RECOMMENDATIONS - STATUS REPORT
AS OF NOVEMBER 25, 2003

REC. #	REPORT RECOMMENDATIONS	RESPONSIBLE DEPT./AGENCY	STATUS/COMMENTS
14	The Fire Department shall develop and implement a "Fire Watch Policy and Protocol" which establishes procedural requirements for the Fire Department to perform prior to releasing property back to its owner and leaving the scene of a fire. A written agreement shall be executed between the Fire Department and property owner which will dictate the plan of action to be carried out by both the Fire Department and property owners when a fire has occurred.	Fire (Joel)	Implemented
15	The Fire Department, in conjunction with the Air District and County Community Health Department, shall develop fire safety messages for unhealthy situations caused by an emergency incident (fire, hazardous spill, etc.), as well as a mechanism/procedure to disseminate these messages in a timely and effective manner to the community in closest proximity to the incident.	Fire, City's "Public Information Officer", "Emergency Preparedness Officer" (Matt/Joel)	Implemented - The Fire Department and City's Public Information Officer will coordinate the dissemination of fire safety messages upon occurrence of any future emergency situations, e.g. fires, hazardous spills, etc.
16	A well-publicized, telephonic "menu line" shall be developed and implemented with appropriate health, safety and emergency responses/resource referrals for a wide variety of important citizen information sharing circumstances. An alternative would be the development and implementation of a Citywide emergency "hotline" that would be activated during a citywide emergency situation. Appropriate City and County agencies shall meet and discuss the logistics, user needs and feasibility of this recommendation prior to its implementation.	City's "Emergency Preparedness Officer", "Public Information Officer" (Matt)	Implemented - A City-wide Emergency "Hotline" has been established (621-7474) which can also record messages; procedures to use and access emergency number completed; A Public Information Officer's (PIO) Contact List has also been developed.

SOUTHWEST FIRE PROCESS IMPROVEMENT TASK FORCE RECOMMENDATIONS - STATUS REPORT
AS OF NOVEMBER 25, 2003

REC. #	REPORT RECOMMENDATIONS	RESPONSIBLE DEPT./AGENCY	STATUS/COMMENTS
17	The Fresno County Department of Community Health shall inquire of the State Department of health Services and the EPA as to the existence of any studies or data from previous similar incidents, and seek assistance in conducting a local study to evaluate any lingering health effects in the community of closest proximity to the Crippen fire. The study shall be coordinated by a Committee made up of at least one-third representatives from Southwest Fresno. <u>All EPA and other agency test results and monitoring data from these studies shall become a subsequent attachment to this report as soon as they become available.</u>	County Department of Community Health (Dr. Ken Bird & Tim Casagrande)	In Process - County Health Department has received written response from State DHS regarding health effects study; EPA has received final report from their contractor. EPA Project Manager reviewing and copying report (very large document) for distribution to County Health Department. If a study is deemed appropriate based on the State and Federal response/report, a Committee as recommended will be established to further discuss/address this issue. Estimated completion date is 12/31/03.
18	The City, in conjunction with Fresno County Department of Community Health, shall develop a formalized communication network/protocol that will dictate and coordinate health and safety issues and related responsibilities between the San Joaquin Air Pollution Control District, EPA, School Districts, local law enforcement and fire safety agencies, hospitals, Community Based Organizations and other agencies as appropriate. The development of this communication network/formalized protocol is critical in order to communicate accurate, timely and sufficient information throughout the Fresno community when emergency type situations occur, e.g. fires, floods, earthquakes, terrorist activity, etc.	City's "Emergency Preparedness Officer", "Public Information Officer" (Matt)	Implemented - The communication network (contact list) between all appropriate agencies is in place to communicate accurate, timely and sufficient information throughout the Fresno community when emergency type situations occur.
19	The City's Emergency Operation Plan dated August 2001 shall be reviewed by the Emergency Preparedness Officer and updated, as necessary, to ensure it adequately addresses all types of emergencies and disasters that may occur in the City of Fresno. Revisions to the Plan document should be made as a result of the Crippen fire emergency to include areas identified as not within the Plan document, e.g. formalized and structured communication protocol between the City, County, State, and other agencies and the community, based on the type and severity of the particular emergency, "first responders" primary functions and role, etc.	City's "Emergency Preparedness Officer", "Public Information Officer" (Rainer)	Implemented - The City's Emergency Operation Plan document has been updated by the City's Emergency Preparedness Officer in compliance with this recommendation.

SOUTHWEST FIRE PROCESS IMPROVEMENT TASK FORCE RECOMMENDATIONS - STATUS REPORT
AS OF NOVEMBER 25, 2003

REC. #	REPORT RECOMMENDATIONS	RESPONSIBLE DEPT./AGENCY	STATUS/COMMENTS
20	The City's Emergency Preparedness Officer's role shall be more specifically defined and recognized by the City, to ensure prompt engagement and participation in the coordination of needed emergency response resources and communication within an effected community. In addition, quarterly announcements and updates regarding the City's Emergency Preparedness Program shall be disseminated throughout the community to ensure all Fresno citizens are aware of and familiar with this Program.	City's "Emergency Preparedness Officer", City Manager and City's "Public Information Officer" (Rainer)	In Process - Recommendations 20 & 21 to be dealt with and completed concurrently. Reorganization of the command structure for the City Emergency Ordinance (Article 27) will position the Office of Emergency Services Coordinator (change from EPO) directly under the Fire Chief. Police Chief, Fire Chief and City Manager concurred with this reorganization. Amended Article 27 will be submitted to City Council for approval by 12/31/03.
21	FMC, Article 27, Emergency Services Ordinance, shall be reviewed by all appropriate City Departments who would be directly or indirectly involved in any type of City emergency, in order to be thoroughly familiar with this Ordinance and their Department's respective functions and responsibilities when emergencies occur in the City of Fresno.	Police, Fire, City Manager, City's "Emergency Preparedness Officer" and "Public Information Officer" (Rainer)	In Process - Recommendations 20 & 21 to be dealt with and completed concurrently. Reorganization of the command structure for the City Emergency Ordinance (Article 27) will position the Office of Emergency Services Coordinator (change from EPO) directly under the Fire Chief. Police Chief, Fire Chief and City Manager concurred with this reorganization. Amended Article 27 will be submitted to City Council for approval by 12/31/03.
22	All Governmental, Municipal and educational agencies within the City of Fresno shall obtain written verification from the appropriate City and/or County departments that the waste transport and recyclable material operators they are going to utilize are in full compliance with all local Ordinances, CUP's, and regulations prior to entering into contracts for services with such businesses.	Planning & Development, City Attorney, Purchasing and County Health Department (Nick)	Modified Implementation - Not considered reasonable nor practicable to require written verification from governmental agencies that waste transport/recyclers are in full compliance with all local Ordinances; however, the City has implemented a requirement that all demolition permits identify the waste site. The waste site is reviewed by the Planning Division to make certain that it is a City-approved site.

SOUTHWEST FIRE PROCESS IMPROVEMENT TASK FORCE RECOMMENDATIONS - STATUS REPORT
AS OF NOVEMBER 25, 2003

REC. #	REPORT RECOMMENDATIONS	RESPONSIBLE DEPT./AGENCY	STATUS/COMMENTS
23	The City's Planning and Development Department shall establish and maintain a list of all approved and properly established waste transport and recyclable material operators within the City of Fresno. They shall be monitored on an ongoing basis for compliance with CUP's and/or business license requirements and, if found to be out of compliance at any time, shall be removed from the City's approved operators listing.	Planning & Development (Nick & Ray Villa)	Implemented - List established by P&D on 3/11/03. To now be monitored on an ongoing basis by P&D staff and updated, as necessary.
24	The City shall evaluate all future requests by recyclable material/waste facilities to establish their business operations within the City limits in order to prevent and/or minimize any further health and safety risks and exposure to the citizens of Fresno.	City Council, City Attorney and Planning & Development (Nick & Jesse)	Implemented - This will be an ongoing process/procedure, with both the Planning & Development and City Attorney's Office working jointly in a concerted effort. City Attorney will continue to assist in the development of appropriate review criteria and in the application of said criteria and evaluation of projects as they arise.

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Agency's comments provided as text only.

County of Sacramento
Environmental Management Department
Mel Knight, Director
8475 Jackson Road, Suite 200
Sacramento, CA 95826-3904

November 25, 2003

Elaine M. Howle
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Thank you for providing a copy of the report titled "California Integrated Waste Management Board: Its New Regulations Establish Rules for Oversight of Construction and Demolition Debris Sites, but Good Communication and Enforcement Are Also Needed to Help Prevent Threats to Public Health and Safety." The report was well written and accurate in its portrayal of this complex and important issue. The Sacramento County Environmental Management Department, Local Enforcement Agency for Solid Waste Management offers the following comments relative to this issue and report:

1. The management of Solid Waste in local jurisdictions is most often carried out, through State delegation, by Counties or Cities. Funding of programs is an area that is a significant consideration, and it is problematic to charge fees to businesses that are exempt or in categories that may not require inspection or regulation. Although fees and funding are complex issues with many local variations, funding issues should not be overlooked in considering new approaches to regulatory oversight.
2. Local jurisdictions use a proactive approach utilizing education, audit (inspection) and enforcement in ensuring compliance with applicable laws and regulations. The current mandated process for solid waste enforcement (i.e. AB 49) is particularly cumbersome, protracted and costly. The Legislature, CalEPA and the Waste Board should consider allowing or mandating an enforcement process more consistent with other successful processes in State and local environmental regulatory programs.
3. Innovations in the management, recycling and diversion of solid wastes make the oversight of the various types of operations an ever-changing challenge. As the Waste Board changes or modifies requirements on these operations, consideration should continue to be given to the training and necessary timelines for implementation by local jurisdictions.

Elaine M. Howle
November 26, 2003
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We encourage CalEPA and other interested parties to continue to work with the California Conference of Directors of Environmental Health, as the single group representing virtually all LEAs in California. Should you have any questions regarding this letter, please contact me at (916) 875-8444.

Sincerely,

(Signed by: Mel Knight)

Mel Knight
Director



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CITY MANAGER

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November 26, 2003

California State Auditor
Bureau Of State Audits
Elaine M. Howle, State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear California State Auditor Howle:

The City of Sacramento has reviewed the redacted draft copy of your report titled "California Integrated Waste Management Board: Its New Regulations Establish Rules for Oversight of Construction and Demolition Debris Sites, but Good Communication and Enforcement are Needed to Help Prevent Threats to Public Health and Safety". Since no findings or recommendations were directed at the City of Sacramento, the City has no comments on the report's findings or recommendations.

However, the "Audit Results" section of the report states that

"According to the Sacramento I.E.A.'s summary documents, the City and the I.E.A. have cited the Florin-Perkins' operator for making changes at the facility without obtaining prior approval."

It is worthwhile to note that the City of Sacramento also used our normal administrative enforcement procedures to address violations of the City code and planning entitlement conditions at the Florin-Perkins Landfill.

We appreciate the courtesy and professionalism demonstrated by your audit staff during this examination.

Sincerely,

Martin Kolkin
Sacramento Internal Audit Manager

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press