



California Fair Political Practices Commission

May 16, 1986

David J. Levy
City Attorney
City of Pinole
2131 Pear Street
Pinole, CA 94564

Re: Your Request for Advice
Our File No. A-86-129

Dear Mr. Levy:

You have written requesting advice on behalf of Richard Nelson, Mayor of the City of Pinole. The facts as presented in your letter are as follows:

FACTS

In addition to being the Mayor of Pinole, Mr. Nelson represents the City as a member of the Board of Directors for a Solid Waste Management Authority, (referred to herein as "the Authority") a joint powers agency composed of the cities of El Cerrito, Hercules, Pinole, Richmond, San Pablo and the West Contra Costa Sanitary District. The Authority was created to "satisfy the dictates of Government Code Section 66755" relating to solid waste. The Authority may employ consultants, conduct studies and make recommendations to the member agencies that act independently through their own legislative bodies.

Mr. Nelson is employed as a Laboratory Technician by Chevron Research, an independent, wholly owned subsidiary of Chevron Corporation. His work is non-management. There are two non-management and two management levels of supervision above him at Chevron Research. Additionally, through his employment, he has acquired an interest in Chevron Corporation stock worth about \$50,000.00.

At issue before the Authority are questions relating to, and participation by, the public agencies in a proposed solid waste disposal method known as a "burn plant" or "waste to energy plant."

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At this time, you believe the material effects of any decision by the Authority or the City of Pinole "vary from conjectural to vague to none." You have enclosed with your letter a news article from the April 10, 1986, edition of the West County Times. The article indicates that proponents of the burn plant believe that a decision on the burn plant could affect Chevron Corporation's ability to expand its refining operation near Point Richmond because of air pollution standards.

QUESTIONS

You have asked:

a) Assuming Mr. Nelson did not own stock in Chevron Corporation, does his employment by Chevron Research give him an economic interest in Chevron Corporation?

b) Assuming that Chevron Corporation has taken no position on the burn plant, has no plans to expand and doesn't plan to make a decision to expand in the future, can there be an increase or decrease in Chevron Corporation's gross revenues, expenses or liabilities that may constitute a conflict of interest affecting a decision by Mr. Nelson?

c) Assuming that Chevron Corporation "opposes" the plant, will that factor alone (without a showing of an increase or decrease of gross revenues, expenses or liabilities) constitute a conflict of interest affecting a decision by Mr. Nelson?

d) Assuming that "emissions from a burn plant next to the refinery would take up the limited amount of additional emissions in the region permitted by the air board" will that factor alone (without a showing of an increase or decrease of gross revenues, expenses or liabilities) constitute a conflict of interest affecting a decision by Mr. Nelson?

e) Assuming that "Chevron Corporation might be blamed for accidental emissions from the burn plant," will that factor alone, (without a showing of an increase or decrease of gross revenues, expenses or liabilities) constitute a conflict of interest affecting a decision by Mr. Nelson?

ANALYSIS

The Political Reform Act (the "Act")^{1/} prohibits public officials from making, participating in making or in any way attempting to use their official position to influence a governmental decision in which they have a financial interest. Section 87100.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(a)-(e)

Mr. Nelson is an employee of Chevron Research, receives income from Chevron Research, and holds an investment interest in Chevron Corporation. Accordingly, he may not participate in any governmental decision, either as a city councilmember or as a member of the Authority, where it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on either Chevron Research or Chevron Corporation.

Your first question was as follows:

- a) Assuming Mr. Nelson did not own stock in Chevron Corporation, does his employment by Chevron Research give him an economic interest in Chevron Corporation?

Commission regulation 2 Cal. Adm. Code Section 18706 provides:

An official has a financial interest in a decision within the meaning of Government Code Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has one of the interests defined in Government Code Section 87103(a), (c) or (d).

Accordingly, as an employee of Chevron Research, Mr. Nelson has a financial interest in, and may not participate in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on Chevron Research or its parent, Chevron Corporation.

Your remaining questions were as follows:

- b) Assuming that Chevron Corporation has taken no position on the burn plant, has no plans to expand and doesn't plan to make a decision to expand in the future, can there be

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an increase or decrease in Chevron Corporation's gross revenues, expenses or liabilities that may constitute a conflict of interest affecting a decision by Mr. Nelson?

c) Assuming that Chevron Corporation "opposes" the plant, will that factor alone (without a showing of an increase or decrease of gross revenues, expenses or liabilities) constitute a conflict of interest affecting a decision by Mr. Nelson?

d) Assuming that "emissions from a burn plant next to the refinery would take up the limited amount of additional emissions in the region permitted by the air board" will that factor alone (without a showing of an increase or decrease of gross revenues, expenses or liabilities) constitute a conflict of interest affecting a decision by Mr. Nelson?

e) Assuming that "Chevron Corporation might be blamed for accidental emissions from the burn plant," will that factor alone, (without a showing of an increase or decrease of gross revenues, expenses or liabilities) constitute a conflict of interest affecting a decision by Mr. Nelson?

Each of these questions relates to the issue of whether a decision regarding the burn plant will have a reasonably foreseeable material financial effect on Chevron Corporation. If so, Mr. Nelson may not participate in the decision.

It should first be noted that Mr. Nelson may not participate in any decision in which Chevron Research or Chevron Corporation "appears" before him in connection with the decision. 2 Cal. Adm. Code Section 18702.1(a)(1) and (2). A person or business entity "appears" before an official in connection with a decision when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request;

(2) Is a named party in the proceeding concerning the decision before the official or the body on which the official serves.

2 Cal. Adm. Code Section
18702.1(b)(1) and (2).

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In addition, Commission regulation 2 Cal. Adm. Code Section 18702.2(c) provides that the effect of a decision on a business entity listed on the New York Stock Exchange will be material if:

(1) The decision will result in an increase or decrease to the gross revenues for a fiscal year of \$250,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. non-industrial corporations, in which case the increase or decrease in gross revenues must be \$1,000,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$100,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. non-industrial corporations, in which case the increase or decrease in expenditures must be \$250,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$250,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. non-industrial corporations, in which case the increase or decrease in assets or liabilities must be \$1,000,000 or more.

2 Cal. Adm. Code Section
18702.2(c)(1)(2) and (3)

Chevron Corporation is traded on the New York Stock Exchange and is one of the Fortune 500 companies. Therefore, Mr. Nelson may not participate in a decision if it is reasonably foreseeable that the effect of the decision will be to increase or decrease Chevron Corporation's gross revenues, assets or liabilities by \$1,000,000 or more, or to increase or decrease Chevron Corporation's expenses by \$250,000 or more.

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You have asked whether Chevron Corporation's position on the burn plant, Chevron Corporation's plans regarding expansion of its refinery, or the possibility that Chevron might be blamed for accidental emissions from the burn plant could be a basis for disqualification. More specifically, the question becomes whether or not these factors are relevant to a determination of the reasonably foreseeable material financial effect which the decision will have upon Chevron Corporation. In analyzing this question, we must look at each of the factors individually.

Chevron's positions on the burn plant

We believe that Chevron Corporation's position on the burn plant is relevant to a determination of the financial effect that the decision regarding the burn plant will have upon Chevron Corporation's revenues, assets, liabilities or expenses. However, its position, alone, does not indicate that the effect upon Chevron will be material. Since Chevron is not "appearing" in the proceeding (See 2 Cal. Adm. Code Section 18702.1) its appearance and taking of a position is not sufficient. The ultimate question then becomes whether the reasonably foreseeable effects will, in fact, be material under the standards set for the above.

Chevron's plans regarding expansion

Again, we must look at whether Chevron Corporation's subjective intent regarding expansion of its refinery is relevant to a determination of the financial effect which the decision will have upon Chevron Corporation. In analyzing whether or not the decision regarding the burn plant will have a material financial effect on Chevron Corporation's assets, we must look at the effect the decision will have on the current fair market value of its refinery. Section 82025.5. It appears that one possible effect of building the burn plant is that it may, because of air pollution standards, limit Chevron Corporation's ability to expand its refining plant. Undoubtedly, such a limitation would have some effect upon the fair market value of Chevron Corporation's property. The precise extent of this effect cannot be determined by us based upon the limited facts provided. However, Chevron Corporation's subjective intentions regarding future expansion of its refinery, should not be used to modify the determination of the effect the decision regarding the burn plant will have on the property's current fair market value. See Legan Opinion (85-001), 9 FPPC Opinions at 9-11, August 20, 1985.

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Chevron Corporation's intentions regarding expansion of the refinery may, however, be relevant to a determination of whether or not the decision regarding the burn plant will have a material financial effect on Chevron Corporation's gross revenues or expenses. For example, the news article provided by you indicates that an official of the Bay Area air board believes that if the burn plant is built, Chevron Corporation may still be able to expand its refinery if it takes some of its equipment out of operation or buys "pollution offsets." If this is correct, and if Chevron Corporation intends to expand its refinery, it would be foreseeable that the decision regarding the burn plant would have an effect on Chevron Corporation's expenses or revenues because in order to expand, Chevron Corporation would need to take equipment out of operation or buy pollution offsets.

Possibility of accidental emmissions

We do not have enough facts to determine whether or not the fact that Chevron Corporation could be blamed for accidental emissions from the burn plant could be relevant to a determination of the effect which the decision will have upon Chevron Corporation. However, if, for example, Chevron Corporation would be forced to buy pollution offsets, or to take equipment out of operation as a result of such accidental emissions, this factor may be relevant. Absent such practical considerations, the "blame" factor would not appear to be relevant.

If you should have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



John G. McLean
Counsel
Legal Division

JGM:sm



Pinole California

2131 Pear Street,

Pinole, CA 94564

(415) 724-9000

APR 21 6 48 AM '86
April 18, 1986

Fair Political Practices Commission
1100 K Street
P. O. Box 807
Sacramento, CA 95804

Attention: Legal Division

Re: Request for Opinion
Financial Conflict of Interest
West Contra Costa Solid Waste
Management Authority, City of
Pinole, Office of Mayor

Ladies and Gentlemen:

On behalf of Richard Nelson, Mayor of the City of Pinole, your opinion is requested as to whether a potential conflict of interest exists if he were to participate in governmental decisions under circumstances herein described.

In addition to being the Mayor of Pinole, Mr. Nelson represents the City as a member of the Board of Directors for a Solid Waste Management Authority, (referred to herein as "The Authority") a joint powers agency composed of the cities of El Cerrito, Hercules, Pinole, Richmond, San Pablo and the West Contra Costa Sanitary District created to "satisfy the dictates of Government Code Section 66755" relating to solid waste. In practice The Authority may employ consultants, conduct studies and make recommendations to the member agencies that act independently through their own legislative bodies. Attached is a copy of the Joint Exercise of Power Agreement dated September 25, 1985 which establishes The Authority.

Mr. Nelson is employed as a Laboratory Technician by Chevron Research, an independent, wholly owned subsidiary of Chevron Corporation. His work is non-management. There are two non-management and two management levels of supervision above him at Chevron Research. Additionally, through his employment, he has acquired an interest in Chevron Corporation stock worth about \$50,000.00.

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At this time, the material effects of any decision by the Joint Powers Authority or the City of Pinole vary from conjectural to vague to none, based primarily upon the report in the public press as described in the enclosed news article from the April 10, 1986, edition of the West County Times. At issue before The Authority are questions relating to, and participation by, the public agencies in a proposed solid waste disposal method described in the news article as a "burn plant" or "waste to energy plant."

For purposes of your opinion we ask that you assume the factual situations as indicated and answer each specific question.

Questions

- a) Assuming Mr. Nelson did not own stock in Chevron Corporation, does his employment by Chevron Research give him an economic interest in Chevron Corporation?
- b) Assuming the Chevron Corporation has taken no position on the burn plant, has no plans to expand and doesn't plan to make a decision in the future, can there be an increase or decrease in Chevron Corporation's gross revenues, expenses or liabilities that may constitute a conflict of interest affecting a decision by Mr. Nelson?
- c) Assuming that Chevron (Corporation) "opposes" the plant, will that factor alone (without a showing of an increase or decrease of gross revenues, expenses or liabilities) constitute a conflict of interest affecting a decision by Mr. Nelson?
- d) Assuming that "emissions from a burn plant next to the refinery would take up the limited amount of additional emissions in the region permitted by the air board" will that factor alone (without a showing of an increase or decrease of gross revenues, expenses or liabilities) constitute a conflict of interest affecting a decision by Mr. Nelson?
- e) Assuming that "Chevron (Corporation) might be blamed for accidental emissions from the burn plant," will

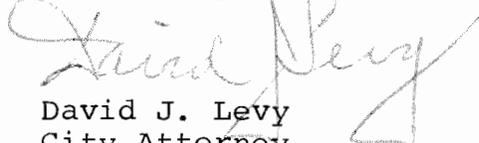
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that factor alone, (without a showing of an increase or decrease of gross revenues, expenses or liabilities) constitute a conflict of interest affecting a decision by Mr. Nelson?

Please indicate whether or not your opinion has equal application to Mr. Nelson's serving on The Authority as well as Mayor of the City of Pinole.

As you can see, these questions are current and subject to considerable concern by the public as well as Mayor Nelson. Anything you can do to expedite a reply will be appreciated. Thank you.

Yours very truly,


David J. Levy
City Attorney

DJL/car

Enclosure

cc: Honorable Richard Nelson, Mayor

Foes see Nelson conflict on burn

By Greg Berardi

Staff writer

RICHMOND — Proponents of a waste-to-energy plant are charging that an outspoken critic of the project should be disqualified from participation in decisions on the plant because he may have a conflict-of-interest.

Representatives from the West Contra Costa Sanitary District have charged that any decision that Pinole Councilman Rich Nelson participates in could result in a gain or loss for Chevron USA, his employer for the past 15 years.

Nelson, a lab technician, scoffs at the allegation and says the attacks are a political ploy by his opponents to discredit him and the West Contra Costa Solid Waste Management Authority.

Nelson said Pinole City Attorney David Levy has advised him that he has no conflict, and said he would step aside if one arises.

"I can't see how this fits," Nelson said. "There is absolutely no way where a decision on the waste-to-energy plant is going to affect Chevron."

The brouhaha over Nelson's alleged conflict dates back at least seven weeks and has been simmering below the public discussions of the Authority, the body trying to solve West County's solid waste disposal problems.

Ted Wooten, who represents the West Contra Costa Sanitary District on the Authority, charged that Nelson has a conflict because Chevron might be affected — one way or the other — no matter how Nelson votes.

Everett Jenkins, attorney for the Authority, said he took a " cursory" look at the charge seven weeks ago and determined that Nelson had no conflict.

-West County Times

Thursday, April 10, 1980

Since then, the charge has circulated among Authority officials and has been repeated by sanitary district president Leonard Battaglia and district lobbyist Bud Wakeland. The district has invested \$13 million in planning and designing a burn plant and is strongly urging that one be built to solve the garbage problem.

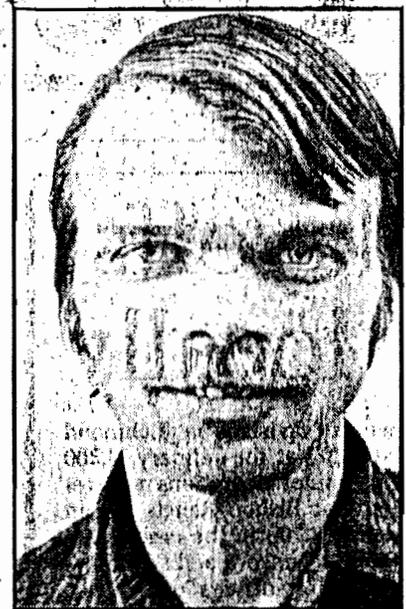
If the waste-to-energy plant is built, plant proponents reason, then Chevron would be handcuffed if it tried to expand its refining operation near Point Richmond. Thus, Nelson's vote could affect Chevron's future plans and is a conflict, they say.

Lynn Montgomery, spokeswoman for the Fair Political Practices Commission, says state law defines a conflict as any decision which could result in a loss or gain of \$1 million or a savings in operating costs of \$250,000 for a company as large as Chevron.

Peter Hess, deputy air pollution control officer with the Bay Area air board, said he doesn't believe the construction of a waste-to-energy plant could affect Chevron's ability to expand because the air board has already taken into account that five burn plants would be built by 2000.

If Chevron wanted to expand, he said it would have to take some of its own equipment out of operation or buy "pollution offsets."

"It's not a valid theory with the rules on the books right now," Hess



Councilman Rich Nelson

said talking about possible limits on any expansion plans Chevron might have.

Hal Holt, Chevron's director of governmental and public affairs, said he can't see how Nelson has a conflict and noted that Nelson works for Chevron Research Company, a corporation autonomous from the refinery.

Further, Holt said Chevron has taken no position on the burn plant, has no plans to expand and doesn't plan to make a decision in the future.

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JOINT EXERCISE OF POWERS AGREEMENT
BY AND AMONG THE FRANCHISING ENTITIES OF
WEST CONTRA COSTA COUNTY

Entered into as of the
25th day of September, 1985

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JOINT EXERCISE OF POWERS AGREEMENT
BY AND AMONG THE FRANCHISING ENTITIES OF
WEST CONTRA COSTA COUNTY

THIS AGREEMENT, entered into this 25th day of September, 1985, by and between the undersigned public agencies, all of said parties referred to collectively as the "Agencies";

WITNESSETH:

WHEREAS, California Government Code Section 66755 requires that public agencies make adequate provision for solid waste handling within their respective jurisdictions; and

WHEREAS, each of the public agencies which are a party to this agreement has reservations about its individual ability to provide for adequate solid waste handling within its jurisdiction; and

WHEREAS, each of the aforementioned public agencies believes that a combination of their separate powers and abilities may enable them to satisfy the dictates of Government Code Section 66755; and

WHEREAS, California Government Code Section 6500, et seq. provides that two or more public agencies, by agreement, may jointly exercise any power that any one of the agencies could exercise separately,

NOW, THEREFORE, THE AGENCIES AGREE AS FOLLOWS:

1. OBJECTIVE AND COMMISSION

The objective of this joint exercise of powers agreement is to create a city-special district solid waste management authority which will protect and advance the interests of West

Contra Costa County communities with regard to solid waste management issues in general and the utilization of the West Contra Costa Sanitary Landfill (WCCSL) in particular. More specifically, the authority created by this agreement is commissioned to:

(a) Review the proposed solid waste collection rate increases for closure and post-closure care of the WCCSL;

(b) Explore the feasibility of:

(1) Expanding the WCCSL facility; and

(2) Developing methods which may increase the WCCSL life expectancy;

(c) Examine various resource recovery methods such as:

(1) Recycling;

(2) Composting; and

(3) Waste-to-energy;

(d) Assess the need for a transfer station located in the West Contra Costa County area;

(e) Consider the development of a supplemental West Contra Costa County landfill site;

(f) Advise the party Agencies on solid waste management issues;

(g) Coordinate the actions and responses of the party Agencies with regard to solid waste issues;

(h) Formulate solid waste management policy statements;

(i) Sponsor educational forums, workshops, and discussions on solid waste matters; and

(j) Gather information necessary to carry out the foregoing purposes.

2. DEFINITIONS

Certain words as used in this Agreement shall be defined as follows:

(a) "Board" shall mean the board constituted herein pursuant to this Agreement to administer and execute this Agreement.

(b) "Agency" shall mean each City or special district which is a signatory to this Agreement.

(c) "Solid Waste Management Authority" shall mean the public and separate agency created by this Agreement.

3. EFFECTIVE DATE

This Agreement shall become effective thirty (30) days after execution by the Agencies.

4. CREATION OF AUTHORITY

There is hereby created a Solid Waste Management Authority (hereinafter referred to as "Authority") to exercise in the manner hereinafter set forth the powers common to each of the Agencies. The Authority shall be a public entity separate from the Agencies. No debt, liability, or obligation of the Authority shall constitute a debt, liability, or obligation of any Agency, and each party's obligation hereunder is expressly limited only to the appropriation and contribution of such funds as the parties hereto may agree to and direct in accordance with this Agreement.

5. POWERS

The powers of the Authority shall include and be limited to the following:

(a) to make and enter into contracts;

(b) to apply for and accept grants, advances, and contributions;

- (c) to employ or contract for the services of agents, consultants, engineers, attorneys, and such other persons or firms as it deems necessary;
- (d) to conduct studies;
- (e) to periodically review the Contra Costa County Solid Waste Management Plan and recommend amendments thereto;
- (f) to incur debts, liabilities, or obligations, subject to limitations herein set forth;
- (g) to levy and collect fees and charges from all entities to which the law applies, both signatory and non-signatory to this Agreement;
- (h) to annually adopt a budget setting forth all operational expenses for the Authority, together with the apportionment of such expenses to each agency.
 - (1) The budget of the Authority shall be prepared by April 1 of each fiscal year and shall be submitted for review to each member Agency prior to its adoption on or after July 1 of each fiscal year.

6. BOUNDARIES

The boundaries of the Authority shall be the boundaries of the party Agencies.

7. ORGANIZATION

(a) Solid Waste Management Authority Board

The Authority shall be governed by the Solid Waste Management Authority Board which shall exercise all powers and authority on behalf of the Authority.

The Board is empowered to establish its own procedures. The Board may do any and all things necessary to carry out the purposes of this Agreement.

(b) Members

The Board shall consist of one member appointed by the governing body of each of the Agencies. Upon execution of this agreement, the governing body of each Agency shall appoint one of its elected members to serve as a member of the Board and another of its members to serve as an alternate member of the Board to serve in the absence of the regular appointee. Each member and alternate shall hold office from the first meeting of the Board after his appointment until a successor is selected. Each member and alternate shall serve at the pleasure of the governing body of the appointing Agency. Each member and alternate shall serve without compensation.

(c) Officers

The Authority shall have two officers: Chair and Vice Chair. The Board members shall select from the Board a Chair and Vice Chair who shall hold office for a period of one year, commencing July 1 of each and every fiscal year; provided, however, the first Chair and Vice Chair appointed shall hold office from the date of appointment to the following June 30; provided further, that in the event that an Agency removes from the Board a member serving as an officer, the Board shall appoint a member from the Board to fill the vacant office for the remainder of that fiscal year.

(1) Chair. The Chair shall preside at the meetings of the Board, call meetings to order, adjourn meetings, announce

the business and the order it is to be acted upon, recognize persons entitled to the floor, put to vote all questions moved and seconded, announce results of votes, maintain the rules of order, execute documents and official actions on behalf of the Board when duly approved, and carry out other duties set forth in the by-laws.

(2) Vice Chair. The Vice Chair shall serve as Chair in the absence of the regularly elected Chair.

(d) Vote

Each member Agency shall have one vote.

(e) Vote Required

A majority vote of four member Agencies shall be required for the adoption of any course of action.

(f) Meetings of the Board

(1) Regular Meetings

The Board shall hold at least one regular meeting each month. The date, hour and place at which each such regular meeting shall be held shall be fixed by resolution of the Board.

(2) Special Meetings

Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the California Government Code.

(3) Notice of Meetings

All meetings of the Board shall be held subject to the provisions of the Ralph M. Brown Act, being Sections 54950, et seq. of the California Government Code, and other applicable laws of the State of California requiring notice of meetings of public bodies to be given.

(4) Minutes

The Board shall cause minutes of all meetings to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to each Agency.

(5) Quorum

A majority of the members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time.

(g) Bylaws

The Board shall adopt from time to time such bylaws, rules or regulations for the conduct of its affairs as may be required.

(h) Mandatory Abstention

Each of the Agencies shall abstain from participating in activities or actions which do not directly affect said Agency.

8. STAFFING

Upon request of the Board, each of the Agencies shall strive to provide the necessary staff support to the Board as may be necessary for the Board to fulfill its duties.

9. RESTRICTIONS UPON EXERCISE OF POWER OF BOARD

This Agreement is entered into under the provisions of Article I of Chapter 5, Division 7, Title 1 of the Government Code, concerning joint powers agreements. The powers to be exercised hereunder shall be subject to the restrictions upon the manner of exercising the power of the party Agencies.

10. FUNDS, AUDIT AND ACCOUNTING SERVICES

Pursuant to the requirements of Section 6505.5 of the Government Code, the Finance Director of the City of Richmond is designated to be the depository and to have custody of all Authority funds from whatever source, and to perform the following functions:

- (a) Receive and receipt for all money for the Authority and place it in the Treasury of City of Richmond for the credit of the Board;
- (b) Be responsible upon official bond for the safekeeping and disbursement of all Board money so held;
- (c) Pay any sums due from the Board from Board money, or any portion thereof, only upon warrants of the public officer performing the functions of auditor or controller who has been so designated pursuant to this Agreement; and
- (d) Verify and report in writing on the first day of July, October, January and April of each year to the Board and to the contracting parties to this Agreement the amount of money the Treasurer holds for the Board, the amount of receipts and the amount paid out since the last report to the Board;

The functions of the auditor shall be performed for the Board by the Finance Director of the City of Richmond. The Auditor shall draw warrants to pay demands against the Board when the demands have been approved by the Board or by a person authorized by the Board to so approve.

There shall be strict accountability of all funds and the Finance Director of the City of Richmond shall report to the Board the Finance Director of the City of Richmond shall report

to the Board of Control all receipts and disbursements. In addition, the Finance Director of the City of Richmond will either make or contract for an audit of the accounts and records at least annually as prescribed by Section 6505 of the Government Code. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code and the audit shall conform to generally accepted auditing standards.

11. OBLIGATIONS OF THE AGENCIES

Each Agency shall:

(a) Upon execution of this Agreement, pay to the City of Richmond the sum listed after the name of each Agency, which sum represents each Agency's share of the estimated expenses for a review of the Richmond Sanitary Service's closure and post-closure cost rate increase request:

City of El Cerrito	\$ 2,500
City of Hercules	\$ 2,500
City of Pinole	\$ 2,500
City of Richmond	\$ 2,500
City of San Pablo	\$ 2,500
WCCSD	\$ 2,500

(b) Pay, upon demand, its proportionate share of expenses which exceed the above budget or which are accrued after October 1, 1985. The proportionate share for each Agency shall be determined according to the following formula:

(1) Fifty percent of the expenses shall be allocated on a pro rata basis (i.e., 1/6 of 50% of the budgeted expenses shall be paid by each of the signatories to this agreement); and

(2) The remaining fifty percent shall be allocated on a landfill usage basis as evidenced by the following 1985-86 percentages:

City of El Cerrito	16 %
City of Hercules	6 %
City of Pinole	10 %
City of Richmond	45 %
City of San Pablo	16 %
WCCSD	7 %

The Agencies agree that the following table accurately represents the proportionate share of each Agency for the period of October 1, 1985 through June 30, 1986.

City of El Cerrito	_____	16%	_____
City of Hercules	_____	12%	_____
City of Pinole	_____	13%	_____
City of Richmond	_____	31%	_____
City of San Pablo	_____	16%	_____
WCCSD	_____	12%	_____

All bills and invoices for expenses incurred pursuant to this Agreement shall be directed to the City of Richmond, who shall calculate the amount owed by each Agency under the formula set forth above and bill each Agency accordingly. Bills shall be prepared for each calendar quarter in which activity occurs and shall be payable to the City of Richmond immediately upon demand.

(c) Each of the Agencies retains the right to not participate in activities or actions which do not affect said Agency or in which the Agency does not desire to participate. Whenever an Agency determines that it does not desire to participate in an action or activity, it should abstain from voting on or discussing the action or activity during the Board meetings. A member Agency shall not be financially obligated for any action or activity in which it chooses to not participate.

(d) Whenever an Agency abstains pursuant to Paragraph 7(h), said Agency shall be relieved of any financial obligation with regard to any action or activity from which it abstained.

12. DISPOSITION OF AUTHORITY FUNDS UPON TERMINATION

Authority funds, including any interest earned on deposits, remaining upon termination of the Solid Waste Management Authority after payment of all obligations, shall be returned in proportion to the contribution to each Agency during the term of this Agreement. Decisions of the Board shall be final in this regard.

13. WITHDRAWAL

Any Agency upon sixty (60) days' written notice given to the Richmond City Attorney's Office may withdraw from this Agreement; provided, however, that the withdrawing Agency shall be liable for its proportionate share of any expenses incurred up to the date notice of termination is received which exceeds the withdrawing Agency's contribution under Paragraph 11; and provided further, that in no event shall a withdrawing Agency be entitled to a refund of all or any part of its contribution made under paragraph 11.

14. TERMINATION

(a) This Agreement may be terminated by mutual agreement of all the member Agencies.

(b) This Agreement shall terminate as to any individual Agency upon the failure of said Agency to pay its proportionate share of expenses within sixty (60) days of the date of invoice.

15. AMENDMENTS

This Agreement may be amended by the affirmative vote of the governing bodies of not less than two-thirds of all member Agencies.

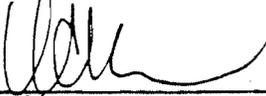
16. NOTICES

All notices to Agencies shall be deemed to have been given when mailed to the legislative body of each Agency. Notices to the Solid Waste Management Authority shall be sent to the Authority Board at an address to be officially established by the Authority's Board.

IN WITNESS WHEREOF, each Agency has executed approval of this Agreement and filed said approval with the Clerk of the County of Contra Costa.

Executed on September 3, 1985, 1985, at El Cerrito, California, by:

CITY OF EL CERRITO

By 
Mayor

Attest:

By 
City Clerk

Approved as to form:


City Attorney



California Fair Political Practices Commission

April 22, 1986

David J. Levy
City Attorney
2131 Pear Street
Pinole, CA 94564

Re: 86-129

Dear Mr. Levy:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script that reads "John G. McLean".

John G. McLean
Counsel
Legal Division

JGM:plh