

# ELLMAN BURKE HOFFMAN & JOHNSON

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## VIA U.S. MAIL

David Zaltsman, Esq.  
Deputy County Counsel  
Marin County  
3501 Civic Center Drive, Suite 303  
San Rafael, CA 94903

Re: Redwood Landfill 1958 Use Permit

Dear Mr. Zaltsman:

This letter responds to yours of December 23, 2005. I appreciate the fact that your office does not “quarrel with the basic legal analysis contained in” my December 7, 2005 letter regarding the County’s right to conduct hearings to investigate landfill activities. I respectfully disagree with you, however, on several of the other points you have made.

First, you claim that I based my analysis on the assumption that my client, No Wetlands Landfill Expansion (“NWLE”), had presented credible evidence of violations. Although I believe that NWLE has presented such evidence, that was not the point. The point is that the evidence cited by NWLE provides more than sufficient call for the Board to exercise its power to review the scope and conditions of the permit and to investigate potential violations, particularly potential violations that could pose a human health risk. “The authority of local governments to regulate land use within their jurisdiction ... rests on their police power, which is the inherent power of government to provide for peace, order, health, morals, welfare, and safety of its citizens.” *Berman v. Parker* (1954) 348 U.S. 26; see also *Scrutton v. County of Sacramento* (1969) 275 Cal.App.2d 412; *DeVita v. County of Napa* (1995) 9 Cal.App.4th 763. Local citizens do not bear the responsibility to gather evidence of violations. That responsibility lies primarily with the County. The responsibility to investigate credible evidence that such violations might exist necessarily invokes such responsibility – the responsibility to exercise the police power to protect the citizenry *before the fact*. Prevention of threatened harm clearly falls within both the rights and responsibilities of the police power authorities.

Rather than focusing on *whether* sufficient evidence exists to revoke or suspend the landfill’s conditional use permit as a preliminary matter at staff level, the Board should be considering that question, i.e., whether to exercise its authority to review the facts and investigate

