



LOS ANGELES COUNTY
SOLID WASTE MANAGEMENT COMMITTEE/
INTEGRATED WASTE MANAGEMENT TASK FORCE
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GAIL FARBER
CHAIR

April 9, 2009

Ms. Margo Reid Brown, Chair
California Integrated Waste Management Board
Cal-EPA Building
1001 "I" Street
Sacramento, CA 95812-4025

Dear Chairperson Brown:

COMMENTS REGARDING PROPOSED REGULATIONS ON LONG-TERM POST-CLOSURE MAINTENANCE AND CORRECTIVE ACTION COST ESTIMATES AND FINANCIAL ASSURANCE DEMONSTRATIONS FOR LANDFILLS (RELEASED FEBRUARY 27, 2009)

On behalf of the Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force, I would like to commend the California Integrated Waste Management Board (Waste Board) for its efforts in developing the proposed regulations to strengthen the existing regulations on long-term post-closure maintenance and corrective action cost estimates, and financial assurance mechanisms for landfills. We have reviewed the proposed regulations and would like to offer the following comments/concerns.

Pursuant to Chapter 3.67 of the Los Angeles County Code and the California Integrated Waste Management Act of 1989 (Assembly Bill 939, as amended), the Task Force is responsible for coordinating the development of all major solid waste planning documents prepared for the County of Los Angeles and the 88 cities in Los Angeles County with a combined population in excess of ten million. Consistent with these responsibilities and to ensure a coordinated and cost-effective and environmentally-sound solid waste management system in Los Angeles County, the Task Force also addresses issues impacting the system on a Countywide basis. The Task Force membership includes representatives of the League of California Cities-Los Angeles County Division, County of Los Angeles Board of Supervisors, City of Los Angeles, waste management industry, environmental groups, the public, and a number of other governmental agencies.

We would like to offer the following comments/concerns regarding the proposed regulations.

1. Section 21200. Waste Board-Change of Ownership during Closure or Post-closure Maintenance (page 1)

- a. Subsection (a) should also require the owner or operator to notify the director of the local agency that oversees local land use planning for the jurisdiction in which the disposal site is located. This notification ensures transparency by making the host jurisdiction aware of a significant change occurring with the disposal site.
- b. Subsection (c)(1) should also require the Enforcement Agency (EA) to notify the director of the local agency that oversees local land use planning for the jurisdiction in which the disposal site is located. This notification ensures transparency by making the host jurisdiction aware that the new owner or operator has complied with all said requirements.
- c. Subsection (c)(2) should also require the EA to notify the existing owner or operator and the director of the local agency that oversees local land use planning for the jurisdiction in which the disposal site is located. The proposed regulations require the EA to inform the new owner or operator and the Waste Board of their adverse determination within 30 days of receipt of the notification of transfer; however, it does not require the EA to notify the existing owner or operator or the host jurisdiction of this adverse determination. This notification is important in the event the determination affects the outcome of the transfer.
- d. Add Subsection (d) to require the owner/operator of the disposal site to include a statement in the "property title" to be filed with the Registrar-Recorder/County Clerk of the County where the disposal site is located, indicating that the site is and/or has been used as a disposal site and that the new owner/operator must document financial assurance demonstration to the satisfaction of the EA and the Waste Board prior to close of escrow transferring the site ownership. This action ensures both the title and the escrow companies are aware of this important requirement.

2. Sections 21570, 21640, and 21685. Waste Board-Proposed Solid Waste Facilities Permit; Waste Board Processing Requirements (pages 4, 6, and 7, respectively)

Subsections 21570(f)(7), 21640(b)(5), and 21685(b)(6) needs to be expanded to define the phrase “most recent” since it is ambiguous and subject to arbitrary interpretation.

3. Section 21880, Waste Board–Certification of Closure (page 14)

Add Subsection (h) to read “Once the certification of closure has been approved by the Waste Board, Regional Water Quality Control Board, and the EA, the approving agencies shall send a copy of the certificate of closure to the director of the local agency that oversees local land use planning for the jurisdiction in which the disposal site is located.” Since the host jurisdiction is responsible to ensure their citizen’s health and safety and the environment, the jurisdiction will ultimately be held liable should a private landfill owner/operator file bankruptcy. It is imperative that the host jurisdiction be made aware of this important closure certification document.

4. Section 22100, Waste Board–Scope and Applicability (page 15)

- a. Subsection (a) indicates that this subchapter (Subchapter 5 Non-Water Quality Corrective Action Cost Estimate and Financial Assurance Requirements) applies to owners and operators of solid waste landfills operating on or after July 1, 1991. As an active participant of the AB 2296 Consulting Group, it was our understanding that these regulations applied to all landfills operating on or after January 1, 1988 (as supported by proposed Section 21865(a)(1)). Please clarify this potential discrepancy.
- b. Subsection (a) needs to be expanded to restate (or clearly define) the terms “post-closure maintenance” and “corrective action.” In addition, because corrective action activities are itemized, post-closure maintenance activities should also be itemized in this subsection.

5. Section 22211, Waste Board—Amount of Required Coverage (page 16)

- a. We are opposed to the step-down provisions as proposed in this section. These provisions are inconsistent with the intent of AB 2296 since it will have a disproportionate impact on operators utilizing Trust Fund as their financial assurance mechanism. In addition, it does not address the impact on those disposal sites that are certified closed prior to the effective date of the proposed regulations, nor explain how closed sites with a Trust Fund mechanism will be able to generate revenue to meet the proposed requirements. It may have the unintended consequence of discouraging the further use of trust funds as a financial assurance mechanism. Therefore, the Waste Board should strongly consider other alternatives that are consistent with the intent of AB 2296, less burdensome to affected stakeholders utilizing Trust Fund financial assurance mechanism, protective of local governments since they will be left 'holding the bag' once a disposal site owner/operator files for bankruptcy, and above all, instill public confidence that health and safety and the environment are protected.

- b. If the step-down provisions are adopted, Subsection (a) should be expanded to include a step-up provision to allow the Waste Board to increase the multiplier if the operator of a disposal site with a financial assurance mechanism other than Trust Fund fails to keep up with good performance. As stated in our previous letter dated September 25, 2008 (copy enclosed), the proposed regulations provide a "step-down" mechanism for landfill owners and operators to be rewarded with a less stringent financial assurance requirement if their performance meets certain criteria. However, the proposal does not include a "step-up" mechanism in the event that a landfill owner and/or operator fail to keep up with good performance. This is a critical issue as a "step-up" situation could happen several years after landfill closure, and a less stringent financial assurance requirement may burden the State and local agencies.

- c. Subsection (a)(2) should be expanded to include the criteria to be satisfied in order to qualify for a year-to-year reduction since it is unclear how the owner or operator may request the year-to-year reduction and what criteria must be met to be granted the reduction.
- d. Subsection (a)(3)(C)(2) needs to be expanded to define the term “proactive monitoring program” and its components to ensure program consistency and expectations.

6. Section 22220, Waste Board–Scope and Applicability (page 17)

Subsection (b) indicates that this article (Article 4 Financial Assurance Requirements for Corrective Action) applies to operators of all disposal facilities that have been or will be operated on or after July 1, 1991. As an active participant of the AB 2296 Consulting Group, it was our understanding that these regulations applied to all landfills operating on or after January 1, 1988, (as supported by proposed Section 21865(a)(1)). Please clarify this potential discrepancy.

7. Section 22234, Waste Board–Disbursements from Financial Mechanisms (page 20)

Subsection (b) should be expanded to read “Corrective action financial mechanism(s) shall be replenished to the level prescribed by Section 22221 within five years of the initial disbursement unless Waste Board and Regional Water Quality Control Board agree to an alternative schedule of less than five years.” This clarification ensures that any discretionary alternative schedule is capped at five years, thereby avoiding a potential escape clause.

The Task Force appreciates your consideration and looks forward to our continual collaboration to ensure the proper operation and long-term maintenance of landfills is protective of public health and safety as well as the environment.

Ms. Margo Reid Brown, Chair
April 9, 2009
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If you have any questions, please contact Mr. Mike Mohajer of the Task Force at (909) 592-1147.

Sincerely,

Margaret Clark

Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Management Committee/
Integrated Waste Management Task Force and Mayor
City of Rosemead

LS:cw

P:\Taskforce\Phase II Task Force letter

Enc.

cc: Each member of the California Integrated Waste Management Board
Executive Director, California Integrated Waste Management Board (Mark Leary)
California Integrated Waste Management Board (Ted Rauh, Bill Orr,
Richard Castle, Bernie Vlach)
California State Association of Counties
League of California Cities
League of California Cities, Los Angeles County Division
Regional Council of Rural Counties
Assembly Bill 2296 Consulting Group
Each member of the Los Angeles County Board of Supervisors
Each City Mayor in Los Angeles County
San Gabriel Valley Council of Governments
South Bay Cities Council of Governments
Gateway Cities Council of Governments
Each member of the Los Angeles County Integrated Waste Management Task Force



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DEAN D. EFSTATHIOU
CHAIRMAN

September 25, 2008

Ms. Margo Brown, Chair
California Integrated Waste Management Board
1001 I Street
Sacramento, CA 95812-2815

Dear Ms. Brown:

**PROPOSED PHASE II DRAFT REGULATIONS FOR LANDFILL CLOSURE,
POSTCLOSURE MAINTENANCE, AND CORRECTIVE ACTIONS COST ESTIMATES
AUGUST 19, 2008, WASTE BOARD AGENDA, ITEM 6**

On behalf of the Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force), I would like to commend the California Integrated Management Waste Board (Waste Board) for its efforts in developing the proposed regulations to strengthen the existing financial assurance mechanisms. As an active participant of the AB 2296 Consulting Group and in communication with the Waste Board and its staff (see enclosures), the Task Force continues to be concerned with the Waste Board's direction discussed at its meeting of August 19, 2008, regarding the proposed draft regulations.

Pursuant to Chapter 3.67 of the Los Angeles County Code and the California Integrated Waste Management Act of 1989 (Assembly Bill 939, as amended), the Task Force is responsible for coordinating the development of all major solid waste planning documents prepared for the County of Los Angeles and its 88 cities in Los Angeles County with a combined population in excess of ten million. Consistent with these responsibilities and to ensure a coordinated and cost-effective solid waste management system in Los Angeles County, the Task Force also addresses issues impacting the system on a Countywide basis. The Task Force membership includes representatives of the League of California Cities-Los Angeles County Division, County of Los Angeles Board of Supervisors, City of Los Angeles, waste management industry, environmental groups, the public, and a number of other governmental agencies.

We would like to offer the following comments regarding the Waste Board's direction for the proposed draft regulations:

1. Representatives of cities and counties have consistently expressed their strong opposition to the formation of a "pooled fund" to provide for landfill closure, postclosure maintenance, and corrective actions in case of a default by landfill owners and operators. As directed by the Waste Board, the proposed draft regulations appear to solely benefit private landfill owners and operators since they can shirk their legal responsibilities to maintain and/or remediate their site by filing for bankruptcy at any time. In contrast, cities, counties, and other public agencies do not have this option and ultimately will be held liable since their primary responsibility is to ensure the protection of their residents' public health and safety as well as the environment.
2. The proposed draft regulations fail to clearly define and list those activities that are considered postclosure maintenance and those that are corrective actions. Failure to make a distinction between "repair" and "replacement" activities including those relating to landfill gas control and monitoring systems creates confusion for both the regulator and the regulated industry.
3. The proposed regulations provide a "step-down" mechanism for landfill owners and operators to be rewarded with a less stringent financial assurance requirement if their performance meets certain criteria. However, the proposal fails to include a "step-up" mechanism in the case that owners and operators fail to keep up with good performance. This is a critical issue as a "step-up" situation could happen several years after landfill closure, and a break in the financial assurance requirement may burden the State and local agencies.

Ms. Margo Brown
September 25, 2008
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The Task Force appreciates your consideration and looks forward working with you and your staff to ensure the proper operation and the long-term maintenance of disposal facilities in order to protect public health and safety and the environment while ensuring that they would not become a financial burden to the State and local governments. If you have any questions, please contact Mr. Mike Mohajer of the Task Force at (909) 592-1147.

Sincerely,

Margaret Clark

Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Management Committee/
Integrated Waste Management Task Force and
Councilmember, City of Rosemead

LL:kp

P:\SECFinancial Assurance Letter to Brown.doc

Enc.

cc: Governor Arnold Schwarzenegger
Each member of the California Integrated Waste Management Board
California Integrated Waste Management Board (Mark Leary, Bill Or, Ted Rauh)
California State Association of Counties
League of California Cities
League of California Cities, Los Angeles County Division
Regional Council of Rural Counties
Assembly Bill 2296 Consulting Group
Each member of the Los Angeles County Board of Supervisors
Each City Mayor in Los Angeles County
Each member of the Los Angeles County Integrated Waste Management Task Force
San Gabriel Valley Council of Governments
South Bay Cities Council of Governments
Gateway Cities Council of Governments

From: Mike Mohajer [mikemohajer@yahoo.com]
Sent: Monday, August 18, 2008 3:23 PM
To: 'Margo Reid Brown'; 'Wesley Chesbro'; 'Rosalie Mule'; 'Cheryl Peace'; 'Gary Petersen'
Cc: Mark Leary; Ted Rauh; Bill Orr
Subject: 8/19/08 CIWMB Agenda Item 6 -- Request For Rule Making For PCM, CA & FA (Class III Landfills)
Attachments: RE: PCM & CA ITEMS and CONTENGENCIES (Class III Landfills)

Madam Chair and Members of the Board,

As a member of the Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force serving on the Waste Board AB 2296 Consulting Group, I want to commend your staff for their hard work to insure compliance with deadlines established by the Board and AB 2296 as well as their efforts to be responsive to stakeholders representing various interest groups. I would like to reiterate the following concerns that were expressed at the Working Group's meetings (see the attachment) and have yet to be addressed by staff.

1. Representatives of cities and counties have been adamantly opposed to the formation of a "pooled fund" to provide for a landfill closure, postclosure maintenance (PCM) and corrective actions (CA) in case of a default by landfill owners/operators. The purpose of the proposed pooled fund appears to be solely for financial protection of private landfill owners/operator since they can simply file for bankruptcy and walk away from their responsibilities. This is an option not available to cities, counties and other public agencies since they cannot walk away from their responsibilities while insuring their citizens' health and safety, and ultimately they are held liable.
2. The staff proposal continues to fail to clearly define and list those activities that are considered to be a part of the PCM and those that are a part of CA activities. There is a need to make a distinction between "repair" and "replacement" activities including those relating to landfill gas control and monitoring systems.
3. As drafted, the PCM financial assurance and its proposed "Step Down" component provide a mechanism for release of money to a landfill owner/operator from the landfill PCM funds. However, the proposal fails to include any requirement to insure the financial assurance in case of a "Sep Up" situation. This is a critical issue as it relates to private landfill owners/operators since a "Step Up" situation could happen several years after the landfill closure and thus there would be no revenue sources.

Based on the foregoing and considering the failure of AB 2886, it is recommended that your Board adopt Option III.3 of the staff proposal.

Thank you for your consideration. Should you have any questions, please contact me at 909-592-1147.

Regards,

Mike Mohajer, Member
Los Angeles County IWM Task Force
MikeMohajer@yahoo.com

Cc: Task Force Members & Alternates
Members of the AB 2296 Consulting Group & staff

From: Mike Mohajer [mikemohajer@yahoo.com]
Sent: Sunday, August 03, 2008 9:44 PM
To: 'Adams, Garth'; 'Bill Magavern'; 'Peter Anderson'; scottsmithline@cawrecycles.org; 'Brigitta Corsello'; 'David Tieu'; 'Larry Sweetzer'; 'Mary Pitto'; 'Susan Klassen'; 'Karen Keene'; 'Kyra Ross'; Aiyetiwa, Martins; 'Michael Miller'; 'Chuck Helget'; cwhite1@wm.com; 'Drew Lehman'; 'Evan Edgar'; 'George Larson'; 'Glenn Acosta'; 'Lory Rising'; 'Rachel Oster'; 'Tony Pelletier'; 'David Tieu'; 'Pierre, Ron [IWMD]'; VMChan@SolanoCounty.com; ja.cupps@hotmail.com; davidtieu92685@yahoo.com; 'Larry Sweetser'; hermanr@co.kern.ca.us; 'Mark Aprea'; 'Quinones, Justine'; 'Bax, Beth'; 'Jeff Gow'; 'Ferrier, Dennis'; wall.steve@epa.gov; Mike Mohajer; Bill Orr; Ted Rauh
Cc: EWosika@waterboards.ca.gov; LBabcock@waterboards.ca.gov; 'Castle, Richard'; 'Marino, Andy'; 'Orr, Bill'; 'Packard, Rubia'; 'Vlach, Bernie'; 'Wohnick, Michael'; 'Bromberg, Shelly'; 'Bajurin, Jonalyn'; 'Byrne, JoAnne'; 'Jestreby, Nancy'; lgraves@waterboards.ca.gov; 'Rauh, Ted'; 'Levine, Steve'; 'Castaneda, Elizabeth'
Subject: RE: PCM & CA ITEMS and CONTENGENCIES (Class III Landfills)

Ted Rauh/Bill Orr,

Unfortunately, I have a conflicting schedule and will not be able to attend the meeting in Sacramento, tomorrow.

I fully recognized that there are a number of deadlines that CIWMB staff must meet but the issues listed below are critical to insure public health and safety and as such cannot continue to be ignored and must be addressed. Thanks

Mike Mohajer

MikeMohajer@yahoo.com

From: Mike Mohajer [mailto:mikemohajer@yahoo.com]
Sent: Monday, July 21, 2008 1:10 PM
To: 'Mike Mohajer'; 'Adams, Garth'; 'Bill Magavern'; 'Peter Anderson'; 'scottsmithline@cawrecycles.org'; 'Brigitta Corsello'; 'David Tieu'; 'Larry Sweetzer'; 'Mary Pitto'; 'Susan Klassen'; 'Karen Keene'; 'Kyra Ross'; 'Martins Aiyetiwa'; 'Michael Miller (millereviron@earthlink.net)'; 'Chuck Helget'; 'cwhite1@wm.com'; 'Drew Lehman'; 'Evan Edgar'; 'George Larson'; 'Glenn Acosta'; 'Lory Rising'; 'Rachel Oster'; 'Tony Pelletier'; 'David Tieu'; 'Pierre, Ron [IWMD]'; 'VMChan@SolanoCounty.com'; 'ja.cupps@hotmail.com'; 'davidtieu92685@yahoo.com'; 'Larry Sweetser (sweetser@aol.com)'; 'hermanr@co.kern.ca.us'; 'Mark Aprea (maprea@apreamicheli.com)'; 'Quinones, Justine'; 'Bax, Beth'; 'Jeff Gow'; 'Ferrier, Dennis'; 'wall.steve@epa.gov'
Cc: ' (EWosika@waterboards.ca.gov)'; ' (LBabcock@waterboards.ca.gov)'; 'Castle, Richard'; 'Marino, Andy'; 'Orr, Bill'; 'Packard, Rubia'; 'Vlach, Bernie'; 'Wohnick, Michael'; 'Bromberg, Shelly'; 'Bajurin, Jonalyn'; 'Byrne, JoAnne'; 'Jestreby, Nancy'; 'lgraves@waterboards.ca.gov'; 'Rauh, Ted'; 'Levine, Steve'; 'Castaneda, Elizabeth'
Subject: PCM & CA ITEMS and CONTENGENCIES (Class III Landfills)

Hi Bill,

I am still hoping for a resolution of the items I had listed in my 5/23/08 email, see below. While these items were discussed subsequently, no clear and defined resolution was arrived at. So, for the record, I would ask that the CIWMB clearly define and list those activities that are considered to be a part of the PCM and those that are a part of CA. Also, the list should clearly make a distinction between repair and replacement activities including those relating to landfill gas control and monitoring systems. Additionally, is the proposed 10% contingency applicable to all PCM activities, including but not limited to repair and replacement costs? Further, what formula is proposed to be used in providing contingencies for the Correction Action's activities?

In re to the pooled fund during the past meetings, I have raised the issue that if a State pooled fund is established, would the State be willing to indemnify cities and counties from any further personal and/or environmental contamination resulting from landfill activities (for those items under the purview of the CIWMB and the Water Board). As you know, local governments are responsible for the protection of their citizens' health and safety and as such without any indemnification from the State, local governments will ultimately be responsible (deep pockets) while the same is not applicable to the private sector since they can file for bankruptcy and walk away from their responsibilities, e.g. EMRON, BKK, IndyMac, etc. As such, the purpose of the pooled fund appears to be solely for the financial protection of private landfill owners and operators, and therefore, should such a mechanism be adopted by the State, then all private landfill owners/operators should be allowed only the use of the trust fund mechanism in providing financial assurance of the landfill Closure, Post Closure Maintenance as well as the Correction Action for both water and non-water related activities.

At our July 17th meeting after the presentation by Mike Houlihan of Geosyntec Consultants, I indicated the existence of a

09/25/2008

number of landfills in Los Angeles County that even though they have ceased operation for over 40 years, they still continue to generate landfill gas at levels that may potentially be hazardous to public health and safety. To the best of my knowledge, the data may be reviewed at the County of Los Angeles Department of Public Works, Environmental Programs Division, 900 South Fremont, Alhambra, CA 91803.

Mike Mohajer

MikeMohajer@yahoo.com

From: Mike Mohajer [mailto:mikemohajer@yahoo.com]

Sent: Friday, May 23, 2008 1:55 PM

To: Adams, Garth; 'Bill Magavern'; 'Peter Anderson'; 'scottsmithline@cawrecycles.org'; 'Brigitta Corsello'; 'David Tieu'; 'Larry Sweetzer'; 'Mary Pitto'; 'Susan Klassen'; 'Karen Keene'; 'Kyra Ross'; 'Martins Aiyetiwa'; 'Michael Miller (millereviron@earthlink.net)'; 'Chuck Helget'; 'cwhite1@wm.com'; 'Drew Lehman'; 'Evan Edgar'; 'George Larson'; 'Glenn Acosta'; 'Lory Rising'; 'Rachel Oster'; 'Tony Pelletier'; 'David Tieu'; 'Pierre, Ron [IWMD]'; 'VMChan@SolanoCounty.com'; 'ja.cupps@hotmail.com'; 'davidtieu92685@yahoo.com'; 'Larry Sweetser (sweetser@aol.com)'; 'hermanr@co.kern.ca.us'; 'Mark Aprea (maprea@apreamicheli.com)'; 'Quinones, Justine'; 'Bax, Beth'; 'Jeff Gow'; 'Ferrier, Dennis'; 'wall.steve@epa.gov'; Mike Mohajer

Cc: ' (EWosika@waterboards.ca.gov)'; ' (LBabcock@waterboards.ca.gov)'; Castle, Richard; Marino, Andy; Orr, Bill; Packard, Rubia; Vlach, Bernie; Wochnick, Michael; Bromberg, Shelly; Bajurin, Jonalyn; Byrne, JoAnne; Jestreby, Nancy; 'lgraves@waterboards.ca.gov'; Rauh, Ted; Levine, Steve; Castaneda, Elizabeth

Subject: RE: Additional Attachments forCIWMB- 5/27/08 Phase II Informal Rulemaking Workshop

I am looking forward to finalize the definition of PCM, non-water related CA and clearly define all activities that would fall within each categories. The issue has been very dynamic in that each person has its own definition for the activities that would fall under PCM and CA which varies from a meeting to another. I clearly understand that there may be a need for a flexibility and I support that. However, one should not expect to have a system that a train load of uncertainties can be driven through it at any time and/or for any cause

MIKE MOHAJER

mikemohajer@yahoo.com

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