

Solid Waste Industry Group

Sanitation Districts of Los Angeles County
San Bernardino County Department of Public Works Solid Waste Division
Recology
Ventura Regional Sanitation District
OC Waste & Recycling
Rural Counties' Environmental Services Joint Powers Authority
Waste Management
Republic Services
Riverside County Waste Management Department
Waste Connections
San Joaquin County Department of Public Works
Kern County Waste Management Department
League of California Cities
California State Association of Counties
Solid Waste Association of North America, California Chapters

May 11, 2009

Chair Margo Reid Brown
California Integrated Waste Management Board
1001 I Street
P.O. Box 4025
Sacramento, CA 95812

Dear Chair Brown:

**Proposed Rolling 30-Year Financial Assurance Funding Requirement for
Postclosure for All California Landfills Closed or Operating Since 1988
Contained in the May 19, 2009 Board Agenda Item No. 6**

On April 21, 2009, the California Integrated Waste Management Board (CIWMB) directed staff to bring back a proposal for Board consideration where all California landfills closed or operating since 1988 would now have to fund and maintain 30 years worth of financial assurance (FA) for postclosure maintenance at all times. This new proposal would essentially disregard the collaborative work between stakeholders and CIWMB staff to reach the previously proposed FA framework. While we had substantial concerns with the previous proposal in that it would tie up exorbitant amounts of capital, this new proposed level of financial assurance will have even greater financial impacts to landfill operators and local government statewide. The impacts of this policy shift have not been adequately analyzed or deliberated. All the signatories to this letter, which collectively represent much of the solid waste management infrastructure in California, believe that requiring 30 years worth of FA in perpetuity is excessive and are, therefore, opposed to this new policy shift.

The impetus for these regulations has been the premise that failures or defaults are inevitable and, therefore, the State has financial exposure. This premise ignores the fact that local public agencies and counties do maintain their sites regardless if any FA requirement to the State even existed and that defaults by landfill operators in California are rare because the existing regulatory framework is already protective. The level of risk or exposure has been artificially inflated because the assumptions used by CIWMB staff in their financial model are both ultra conservative and not directly applicable to California landfills. These assumptions are questionable. For example, CIWMB staff assumes that all single private operators will fail. The failure rate of start-up companies was used in the case of divestitures. The failure rates for public and private landfills are unrelated to landfills.

Creating an extreme and financially burdensome program, as now being proposed with a rolling 30-year FA demonstration, was not the intent of AB 2296 and does not implement any of the findings in the ICF Study that was directed by the same bill. Instead it would effectively eliminate cash demonstrations, which account for one-third of all FA monies in California used for postclosure care, and likely orphan closed sites that use this type of FA. A rolling 30-year demonstration would also have the following direct impacts:

- **Closed Sites With Trust Funds Would Be Financially Orphaned**
For landfills that are currently closed, operators using trust funds (controlled by CIWMB) rely on withdrawing the monies previously set aside to perform postclosure maintenance. In suddenly freezing that money, the operator is placed in the precarious position of not having money immediately available to continue maintaining the site. To make matters worse, as now proposed, the operator would now be required to increase his financial assurance funding to cover 30 years worth at a time when the site has long closed and no gate fee revenue is available. Landfills already in postclosure typically do not generate sufficient revenue to cover the cost of this proposed increase in postclosure maintenance funding. This financial jolt will jeopardize the postclosure care of the site, either temporarily or permanently. This is contrary to the intent of AB 2296 to protect the State from potential abandonment of closed sites due to lack of financial resources.
- **Impacts the Ability to Finance Capital Projects**
Providing financial assurance requires the operator to pledge revenues from assets. Landfill operators also pledge or dedicate revenues in order to finance capital projects. In requiring a rolling 30-year financial assurance demonstration for postclosure care, the operator will have to pledge significant assets or revenue to meet this pledge. This impacts local government's ability to finance capital projects or solid waste management infrastructure through the sale of bonds. Similarly for private operators, carrying a rolling 30-year liability impacts their credit worthiness and ability to finance needed infrastructure for diversion and alternative technologies.
- **Level of Financial Assurance Never Decreases**
CIWMB has not defined when postclosure ends or established the criteria for determining when the landfill no longer poses a threat to public health, safety and the environment. Consequently, the landfill operator cannot determine when he is 30 years away from the end of postclosure and, therefore, able to start withdrawing monies or reducing his financial

assurance demonstration. This means that, for all practical purposes, CIWMB will withhold the operator's money or financial assurance in perpetuity.

- **Cash Demonstrations Will No Longer Be Used for Active Landfills**

Landfill operators will cease to use cash demonstrations to fund postclosure care given that they would never be able to use their money for the purpose for which it was collected once it is deposited in the trust fund account. It is very likely that the cash (trust and enterprise) accounts containing about \$600 million statewide will be replaced with other demonstrations. Regulations should not target, eliminate, or be detrimental to any class of FA demonstration deemed protective by the ICF Study.

For the reasons stated above, we are opposed to the proposed rolling 30-year demonstration. Adopting a rolling 30-year demonstration will have the effect of undermining three years of good faith collaborate efforts between stakeholders and CIWMB staff. The proposed rolling 30-year demonstration will likely impact taxpayers at a time when they are already impacted by the recession, either as a direct pass-through charge to ratepayers or as a consequence of operators defaulting on postclosure care because of this new financial mandate. We respectfully request that you not adopt the proposed rolling 30-year financial assurance requirement. Instead, we ask that you take into account that the existing regulatory framework is already protective, as evidenced by the rarity of defaults, and that any improvements be measured and appropriate.

Yours very truly,

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