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November 25, 2009

Richard Castle
California Integrated Waste Management Board
Cleanup, Closure, and Financial Assurance Division MS-10A-18
P.O. Box 4025
Sacramento, CA 95812-4025

RE: Notice of Proposed Changes to Proposed Regulations Regarding Closure, Postclosure Maintenance, and Corrective Action Cost Plan Cost Estimates and Related Financial Assurance Demonstrations (Phase 2 – 15-Day Comment Period)

Dear Mr. Castle:

On behalf of the twenty two member Rural Counties' Environmental Services Joint Powers Authority (ESJPA), we appreciate the opportunity to provide comments during the 15-day comment period on the Long-Term Postclosure Maintenance and Corrective Action Cost Estimates and Financial Assurance Demonstrations for Landfills (Phase 2). We have provided the attached comments on the proposed regulations. Our major concerns include:

- Revising the definition of Corrective Action to exclude actions to readily correct a problem
- Allow corrective action estimates to reflect the realistic repair of landfill final covers rather than full replacement
- Unnecessary restriction and costs for limiting corrective action plan preparation and certification by professional registered civil engineers or certified engineering geologists

Thank you again for the opportunity to provide comments on these proposed regulations and we appreciate the CIWMB staff efforts to address these issues. Please contact us if you have any questions.

Sincerely,

Larry Sweetser
ESJPA Consultant

cc: ESJPA Member Counties
California Integrated Waste Management Board Members
Mark Leary, Executive Director, CIWMB
Ted Rauh, CIWMB Program Manager
Scott Walker, CIWMB Division Chief
Robert Holmes, CIWMB Branch Chief

Closure, Postclosure Maintenance, and Corrective Action Cost Plan Cost Estimates and Related Financial Assurance Demonstrations – 15-day

21865. CIWMB -Amendment of Closure and Postclosure Maintenance Plans – We appreciate the revision, we requested in our previous comments, to allow an operator to submit a statement that there is no change requiring an amendment to the closure and postclosure maintenance plans rather than preparing new plans.

§22100. CIWMB – Scope and Application (c)(1) – It is appreciated that the definition of “corrective action” does not include routine maintenance. Many problems can be corrected without triggering a formal corrective action event. We request that the definition also exclude these types of releases and remediations.

We propose the following changes:

(1) “Corrective action” means an activity, including restoring the integrity or establishing the adequacy of a damaged or inadequate containment structure or environmental monitoring or control system, to: bring a landfill into compliance with the applicable requirements, prevent a reasonably foreseeable release, or remediate a known release to the environment. Corrective action does not include routine maintenance or corrections completed without formal corrective action.

§22101. CIWMB – Corrective Action Cost Estimate Requirements (b)(1)(A) – The requirement to provide “a new estimate of the cost of complete replacement of the final cover” is not appropriate for all types of sites. Some landfills are approved to allow non-synthetic liner covers such as clay and soils. These types of final covers, and even many synthetic liners, would be repaired and replaced in portions or discrete units on an ongoing basis as part of postclosure maintenance. Full cover replacement will not occur since the site is required to maintain these covers at all times.

The proposed regulations should allow for site specific replacement rather than full replacement. We request that the language be changed as follows:

*(A) By providing a new estimate of the cost of replacement of the final cover as specified in the plan, including, but not limited to, the cost of removing the existing cover and preparing for and installing the new cover, as necessary, depending on the replacement final cover system design:
or,*

§ 22102. CIWMB –Corrective Action Plan Requirements. (c)(1) – We remain concerned regarding the cost and implications of imposing unwarranted restrictions on the use of professional registered civil engineer or certified engineering geologist for preparation and certification of corrective action plans.

Unnecessary Restriction

In imposing this requirement, the Board is effectively impugning the professionalism of registered civil engineers or certified engineering geologists that are legally bound to prepare accurate work products. This requirement also discredits the California Department of Consumer Affairs rigorous process for licensing these professionals.

Any misrepresentation on their part will be subject to extensive professional and legal sanctions. This requirement undermines the basis of the California Business and Profession Code Section 6775 and 7860 mandating extensive professional and legal sanctions for any misrepresentation, fraud, negligence, or incompetence. These standards are imposed on registered civil engineers or certified engineering geologists regardless of their employer.

In addition, the proposed requirements would significantly restrict agencies or firms from hiring qualified individuals due to their affiliation with another entity that is working on the landfill design or corrective action estimate.

Unnecessary Expense

In many rural areas, there are limited firms with engineers or engineering geologists with the qualifications to properly prepare and certify a landfill corrective action plan. Most rural counties use either qualified local government employees or companies for all aspects of solid waste landfill design, installation, and plan preparation. These professionals will utilize additional resources or organizations as necessary.

In order to prepare the required corrective action plan, a third party will need to devote significant time to learning all of the aspects of the landfill design and construction. A rural jurisdictions operator would be required to pay both the consultant designing the facility and the third party preparing the corrective action estimate to communicate with each other all of the information necessary. This additional review is a significant additional cost to landfill operators especially in rural areas in these difficult economic times.



LASSEN REGIONAL SOLID WASTE MANAGEMENT AUTHORITY

(a California public agency)

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Robert Pyle (County Alternate)

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Manager: Tom Valentino
Program Coordinator: Paula Wesch
Landfill Manager: Paul Payne
Counsel: James Curtis
Clerk of the Board: Deborah Rivas

November 25, 2009

Mr. Richard Castle
California Integrated Waste Management Board
Cleanup, Closure and Financial Assurance Division
P.O. Box 4025
Sacramento, CA 95812

Re: Comments on Proposed Regulatory Changes, Closure and Post-Closure Maintenance Standards for Disposal Sites and Landfills

Dear Mr. Castle:

The Lassen Regional Solid Waste Management Authority offers comments on proposed regulatory changes to the Closure and Post-Closure Maintenance Standards for Landfill. Specifically, our agency objects to verbiage inserted in §22102 – Corrective Action Plan Requirements – that would prohibit registered engineers (and certified engineering geologists) from preparing corrective action plans at the same sites where they previously have prepared landfill design plans.

We have three objections to the proposed regulatory changes: 1) the prohibition will unreasonably increase costs; 2) the regulation establishes a precedent that could provide a basis for similar restrictions; and 3) the regulation calls into question the integrity of State of California Registered Engineers and Certified Engineering Geologists.

Unreasonable Increase of Costs. By restricting registered professionals who have previously worked on landfill design and engineering plans at specific sites from preparing corrective action plans (CAP) at those same sites, consultant costs for landfill owners and operators will increase without any improvement in the accuracy or integrity of the CAP. Ostensibly, the proposed regulatory change is to establish independence for the CAP and its associated cost estimate. However, the

cost to recruit, bind, and educate a consulting engineer with no experience at a particular site far exceeds the value of preparation of a CAP by a third party. Rather, the design and engineering professionals who have previously worked on particular landfills are best equipped to prepare an accurate CAP and cost estimate – because they already possess detailed knowledge of the landfill, its environmental conditions and surroundings, and the economic conditions (cost of local materials, supplies and labor) of the area.

We strongly urge staff of the CIWMB to consider the increased cost of complying with the proposed regulatory change and not just with §22102. Budgets for management of solid wastes are stressed, and not just in Lassen County but throughout California. Our revenues are off by about 15% this fiscal year, due entirely to the economic downturn. Recovery is not expected anytime soon. Increased regulatory compliance costs takes money away illegal disposal prevention, recycling and resource recovery efforts, and waste disposal facility improvements.

Please consider the imposition of increased costs on the regulated community judiciously.

Establishment of Precedent. If the restriction of certain registered professionals from preparing a CAP is retained in the proposed changes in §22102, a precedent will be established that could be used for further prohibitions of professionals from other waste management facility design, engineering or monitoring activities. It's not difficult to envision similar prohibitions placed on professional engineers and certified engineering geologists for many regulatory compliance issues. All, again, with increased costs and no increase (and perhaps a decrease) in accuracy of design and engineering and/or the integrity of monitoring system design and reporting.

Please consider the impact the proposed changes contained in §22102 may have on future regulations.

Integrity of Professional Engineers and Engineering Geologists. Perhaps most onerous and, quite frankly as a State of California registered civil engineer, most concerning, is the implication in §22102 that professional engineers and certified engineering geologists lack the integrity to prepare accurate and honest corrective action plans and cost estimates.

Mr. Richard Castle
November 25, 2009

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We refer the CIWMB to CCR Title 16, §475 – Code of Professional Conduct, Professional Engineering, to wit: *“To protect and safeguard the health, safety, welfare, and property of the public, every person who is licensed by the Board as a professional engineer...shall comply with this Code of Professional Conduct. A violation of this Code in the practice of professional engineering constitutes unprofessional conduct and is grounds for disciplinary action.”*

In 16 CCR §475(a), *“A licensee shall provide professional services for a project in a manner that is consistent with the laws, codes, ordinances, rules, and regulations applicable to that project.”*

And in §475(c)(11), *“A licensee shall not misrepresent data and/or its relative significance in any professional engineering report.”*

From the above conduct code, it is absolutely clear that the State of California demands ethical conduct by professional engineers with the warning that violations will result in disciplinary action (which includes revocation of license). This conduct code is something that I personally take seriously and I know my professional engineering colleagues do also.

Please consider the requirements (and penalties) of the Code of Profession Conduct for State of California professional engineers with respect to the proposed regulatory changes in §22102.

Thank you for the opportunity to submit comments.

Sincerely,
LRSWMA



Thomas G. Valentino, P.E.
Manager
RCE 43100

cc: California Integrated Waste Management Board Members
Mark Leary, Executive Director, CIWMB
Ted Rauh, CIWMB Program Manager
Scott Walker, CIWMB Division Chief
Robert Holmes, CIWMB Branch Chief
Board of Directors, LRSWMA



COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (562) 699-7411, FAX: (562) 699-5422
www.lacsd.org

STEPHEN R. MAGUIN
Chief Engineer and General Manager

November 23, 2009

Richard Castle
California Integrated Waste Management Board
Cleanup, Closure, and Financial Assurance Division
P.O. Box 4025
Sacramento, CA 95812

Dear Mr. Castle:

Comments on Proposed Regulations Regarding Closure, Postclosure Maintenance, and Corrective Action Plan Cost Estimates and Related Financial Assurance Demonstrations (Phase II)

The Sanitation Districts of Los Angeles County (Sanitation Districts) continue to oppose the proposed subject regulations given that they will have a detrimental and disparate impact on cash financial assurance (FA) demonstrations such as trust funds. The money set aside in trust funds, which was collected for the very purpose of maintaining the landfill after closure, will be frozen or inaccessible to the operator. The California Integrated Waste Management Board (CIWMB) would retain all or most of the operator's money indefinitely. In effect the proposed regulations will render the use of trust funds, the most secure FA mechanism available, infeasible from a local government cost standpoint.

We recognize that CIWMB intends on adopting the proposed FA regulations in December 2009. Given that, we are requesting clarification on two specific issues and that the clarifications be included in the Final Statement of Reasons (FSOR). We also ask that the FSOR be available to stakeholders prior to CIWMB's adoption of the proposed regulations.

1. Clarify that the Closure Cost Estimate Does Not Include Operating Costs

The closure cost estimate has been the subject of many workshops during this rulemaking process. The text in § 21820(a) of the proposed regulations has been changed several times during the rulemaking to accurately reflect that the closure cost estimate only includes the scope of activities required to close the landfill, as delineated in § 21820(b), and not the costs to build the landfill, which are considered operating costs.

The last sentence in § 21820(a)(2) reads "To reflect the potential for premature closure, each cost estimate shall include all activities required for closure yet to be completed at the time of preparation of the estimate." The phrase "yet to be completed" is sometimes misinterpreted as meaning all activities to build or develop the landfill even though in the same sentence it clearly states "all activities required for closure." We request that CIWMB clearly state in the FSOR that closure costs do not include the operating costs.

2. Time Limit for CIWMB to Render a Decision on a Request for a Step Down

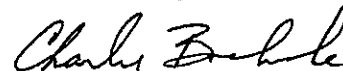
As proposed, it is unclear if there is a time limit for CIWMB to evaluate and render a decision on a landfill operator's request for step down in their FA level. Without a time limit, the landfill operator could be waiting several months or years for a response to their petition for a step down, potentially delaying any release of monies to the operator.

Since the step down request is part of the 5-year permit review cycle, it makes sense that the review of step down request is part of the 120-day time limit stipulated under § 21860(e) for the review of closure and postclosure plan submittals. However, unless this is clearly stated in the proposed regulations or in the FSOR, it is only an inference. Consequently, we request that the time limit for CIWMB's review of a step down request be clearly stated in the FSOR.

Thank you for your consideration of our comments. Please feel free to contact Mr. Glenn Acosta at (562) 908-4288, extension 2723, should you have any questions.

Very truly yours,

Stephen R. Maguin



Charles Boehmke
Assistant Department Head
Facilities Planning Department

CB:GA

cc: CIWMB Board
Mark Leary, CIWMB Executive Director
Ted Rauh, CIWMB Program Manager
Scott Walker, CIWMB Division Chief
Robert Holmes, CIWMB Branch Manager



LOS ANGELES COUNTY
SOLID WASTE MANAGEMENT COMMITTEE/
INTEGRATED WASTE MANAGEMENT TASK FORCE
900 SOUTH FREMONT AVENUE, ALHAMBRA, CALIFORNIA 91803-1331
P.O. BOX 1460, ALHAMBRA, CALIFORNIA 91802-1460
www.lacountyiswmf.org

GAIL FARBER
CHAIR

November 24, 2009

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

Dear Ms. Brown:

**COMMENTS REGARDING PROPOSED REGULATIONS ON LONG-TERM
POSTCLOSURE MAINTENANCE AND CORRECTIVE ACTION COST ESTIMATES
AND FINANCIAL ASSURANCE DEMONSTRATIONS FOR LANDFILLS
(RELEASED NOVEMBER 10, 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 (CIWMB) for its efforts in developing the proposed regulations to strengthen the existing regulations on long-term postclosure maintenance and corrective action cost estimates, and financial assurance mechanisms for landfills. We have reviewed the proposed regulations amending Title 27 of the California Code of Regulations, Division 2, Subdivision 1, and would like to offer the following comment:

Section 22211, CIWMB - Amount of Required Coverage

- Subsection (a)(2)(C)(2) – Page 21, Lines 22-25 – The requirements specified for the “proactive monitoring program” should be expanded to include maintenance of landscaping and vegetation in accordance with a CIWMB approved postclosure plan. Proper maintenance of landscaping and vegetation would reduce soil erosion and slope failure, thereby preserving the integrity of landfill final cover. In addition, maintenance of landscaping and vegetation could enhance the aesthetics of the closed landfill site and mitigate visual impacts. For landfills located in an urbanized area such as Los Angeles County, this could be of particular importance to the surrounding communities. If an owner/operator cannot show diligence in maintaining landscaping and vegetation as detailed in its postclosure plan, the owner/operator should not be eligible for a reduction in the level of financial assurance.

Ms. Margo Reid Brown, Chair

November 24, 2009

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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 the Los Angeles County with a combined population in excess of ten million. Consistent with these responsibilities and to ensure a coordinated, 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.

The Task Force appreciates your consideration and looks forward to our continued collaboration to ensure the effective operation and long-term maintenance of landfills in order to protect public health and safety and the environment. If you have any questions, please contact Mr. Mike Mohajer of the Task Force at (909) 592-1147.

Sincerely,



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

JB:lb

P:\Sec\Task Force\Letters\Phase II Reg TF Ltr 112409

cc: Each Member of the California Integrated Waste Management Board
Executive Director, California Integrated Waste Management Board (Mark Leary)
California Integrated Waste Management Board (Mark Leary, Ted Rauh, Scott Walker, Richard Castle, Robert Holmes)
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