

## NOTICE OF PROPOSED RULEMAKING

Title 27.	Environmental Protection
Section 21200.	CIWMB - Change of Ownership During Closure or Postclosure Maintenance.
Section 21570.	CIWMB - Filing Requirements.
Section 21640.	CIWMB - Review of Permits.
Section 21685.	CIWMB - Proposed Solid Waste Facilities Permit; CIWMB Processing Requirements.
Section 21820.	CIWMB - Closure Cost Estimates.
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Section 21880.	CIWMB - Certification of Closure.
Section 22100.	CIWMB - Scope and Applicability.
Section 22101.	CIWMB - Amount of Required Coverage and Corrective Action Cost Estimate Requirement.
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Section 22234.	CIWMB - Disbursements from Financial Mechanisms.
Section 22245.	CIWMB - Pledge of Revenue.
Section 22248.	CIWMB - Closure and/or Postclosure Maintenance and/or Reasonably Foreseeable Corrective Action Insurance.
Appendix 3	Financial Assurance Forms
CIWMB 100	Trust Agreement.
CIWMB 106	Certificate of Insurance for Closure, Postclosure Maintenance, Reasonably Foreseeable Corrective Action.
CIWMB 114	Pledge of Revenue Requirements.

### PROPOSED REGULATORY ACTION

The California Integrated Waste Management Board (CIWMB) proposes to amend Title 27, California Code of Regulations (27 CCR), §§ 21200, 21570, 21640, 21685, 21820, 21840, 21865, 21880, 22100, 22101, 22102, 22103, 22211, 22220, 22221, 22231, 22234, 22245, 22248, Appendix 3 - CIWMB 100, CIWMB 106, and CIWMB 114. The proposed changes modify existing regulations governing change of ownership requirements, permit application, permit review, and CIWMB permit processing requirements, closure cost estimates, postclosure maintenance plans and cost estimates, certification of closure requirements, known or reasonably foreseeable corrective action plans, cost estimates and financial assurance requirements, cancellation or nonrenewal of financial assurance mechanisms, postclosure maintenance financial assurance requirements, and financial assurance forms and mechanisms.

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the CIWMB. **The written comment period for this rulemaking ends at 5:00 p.m. on April 13, 2009.** The CIWMB will also accept oral and written comments during the public hearing described below. Please submit your written comments to:

Richard Castle  
 Financial Assurances Section  
 Waste Compliance and Mitigation Program  
 California Integrated Waste Management Board  
 P.O. Box 4025, M.S. 10A-18  
 Sacramento, CA 95812-4025  
 e-mail: <mailto:rcastle@ciwmb.ca.gov>  
 Phone: (916) 341-6343 Fax: (916) 319-7392

## **PUBLIC HEARING**

A public hearing to receive comments on the proposed rulemaking will be scheduled for April 16, 2009. The hearing will be held in Room 550 (Fifth Floor) at the Joe Serna, Jr. Cal/EPA Building, 1001 I Street, Sacramento, California. The hearing will begin at 12:00 p.m. and conclude after the public gives all testimony. The CIWMB requests that persons who make oral comments at the hearing submit written copies of their testimony at the hearing. Room 550 is wheelchair accessible.

## **INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW**

Existing Law and Regulation: Public Resources Code section 40502 requires the CIWMB to adopt rules and regulations, as necessary, to carry out its duties under Division 30 of the Public Resources Code. Public Resources Code section 43020 requires the CIWMB to adopt and revise regulations which set forth minimum standards for solid waste handling, transfer, composting, transformation, and disposal. Public Resources Code section 43021 requires CIWMB regulations to include standards for the design, operation, maintenance, and ultimate reuse of solid waste facilities.

Existing regulations contain the compliance requirements for change of ownership, permit application, and permit review, the CIWMB permit processing requirements, and the compliance requirements relating to closure cost estimates, certification of closure, postclosure maintenance plans and cost estimates, known or reasonably foreseeable corrective action plans, cost estimates and financial assurance demonstrations, cancellation or nonrenewal of financial assurance mechanisms, postclosure maintenance financial assurance and financial assurance forms and mechanisms. Existing regulations also identify the process for access to financial assurance demonstrations.

The proposed regulations would clarify and adjust the change of ownership requirements, permit application, permit review and CIWMB permit processing requirements, the certification of closure requirement, and the closure cost estimate and postclosure maintenance plan and cost estimate components. The proposed regulations would also require reasonably foreseeable corrective action demonstrations to address non-water quality related exposures, clarify the disbursement and replenishment process for corrective action financial assurance, and define the required amounts of postclosure maintenance financial assurance demonstrations. The proposed regulations would also clarify and adjust requirements relating to existing financial assurance mechanisms, including cancellation or nonrenewal procedures and the insurance mechanism. Further, the proposed regulations would clarify the terms and conditions of two existing financial assurance forms (the Trust Agreement and Certificate of Insurance for Closure and/or Postclosure Maintenance and/or Reasonably Foreseeable Corrective Action), and create a new submittal form for an existing financial assurance demonstration (Pledge of Revenue Agreement CIWMB 114).

## **PLAIN ENGLISH REQUIREMENTS**

CIWMB staff prepared the proposed regulatory changes pursuant to the standard of clarity provided in Government Code §11349 and the plain English requirements of Government Code §§11342.580 and 11346.2(a)(1). The proposed regulations are considered non-technical and can be easily understood by those who will use them.

## **AUTHORITY AND REFERENCES**

PRC §§40002, 40502, 40508, 43020, 43021, 43040, 43050 and 43103 provide authority for this proposed regulation change. The purpose of the proposed regulation is to implement, interpret

and make specific referenced sections PRC §§40052, 40508, 43020, 43021, 43040, 43101, 43103, 43500 - 43610, 44001 - 44017, 44100, 44101, 44300, 44301, 44500 - 44503, 44813 - 44816, and Title 40, Code of Federal Regulations, §§258.72 - 258.74.

### **FEDERAL LAW OR REGULATIONS MANDATE**

These regulatory changes either comply with or exceed the minimum standards set by federal regulations (40 CFR, § 258.1 et. seq.)

### **MANDATE ON STATE AGENCIES, LOCAL AGENCIES, OR SCHOOL DISTRICTS**

CIWMB staff has determined that adoption of the proposed regulations will not impose a mandate on local agencies or school districts.

CIWMB staff has further determined that the proposed regulation changes will result in no costs or savings to state agencies, no costs to any local agency or school district that is required to be reimbursed under Part 7 (commencing with §17500) of Division 4 of the Government Code, no other non-discretionary costs or savings imposed on local agencies, and no costs or savings in federal funding to the state.

### **FINDING ON NECESSITY OF REPORTS**

The proposed regulation does not require a report.

### **EFFECT ON HOUSING COSTS**

CIWMB staff made an initial determination that the proposed regulation changes would not have a significant effect on housing costs.

### **EFFECT ON BUSINESSES**

CIWMB staff made an initial determination that the proposed regulation changes would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

### **EFFECT ON SMALL BUSINESSES**

CIWMB staff made an initial determination that the proposed regulation changes would not have a statewide adverse economic impact on small businesses including the ability of California businesses to compete with businesses in other states. Due to the capital investment required, few small businesses own/operate solid waste disposal sites. Disposal sites are more likely to be run by local government agencies or large businesses.

### **EFFECT ON CREATION OR ELIMINATION OF JOBS, EXISTING OR NEW BUSINESS IN THE STATE OF CALIFORNIA**

CIWMB staff has determined that the proposed regulatory action will not affect: 1) the creation or elimination of jobs within the State of California; 2) the creation of new or the elimination of existing businesses with California; or 3) the expansion of businesses currently doing business with the state.

## **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

There are no cost impacts known to CIWMB staff that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations.

## **CONSIDERATION OF ALTERNATIVES**

The CIWMB must determine that no reasonable alternative considered by the CIWMB or that has otherwise been identified and brought to the attention of the CIWMB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The CIWMB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

## **CONTACT PERSONS**

Inquires concerning the proposed administrative action or the substance of the proposed regulations may be directed to:

Richard Castle  
Financial Assurances Section  
Waste Compliance and Mitigation Program  
California Integrated Waste Management Board  
P.O. Box 4025, M.S. 10A-18  
Sacramento, CA 95812-4025  
e-mail: <mailto:rcastle@ciwmb.ca.gov>  
Phone: (916) 341-6343 Fax: (916) 319-7392

Back-up contact person to whom inquires concerning the proposed administrative action or the substance of the proposed regulations may be directed:

Elizabeth Castañeda  
Financial Assurances Section  
Waste Compliance and Mitigation Program  
California Integrated Waste Management Board  
P.O. Box 4025, M.S. 10A-18  
Sacramento, CA 95812-4025  
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Phone: (916) 341-6323 Fax: (916) 319-7509

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The CIWMB will have the entire rulemaking file and all information upon which the proposed regulations are based available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Richard Castle at the address, e-mail, or telephone number listed above. For more timely access to the proposed text of the regulations and in the interest of waste prevention, interested parties are encouraged to access the CIWMB's website at <http://www.ciwmb.ca.gov/RuleMaking/Postclosure/Phase2/default.htm>. Additionally, the final statement of reasons will be available at the above listed Internet address or you may call the contact persons named above.

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

The CIWMB may adopt the proposed regulation changes as described in this notice. If the CIWMB makes modifications which are sufficiently related to the proposed text, it will make the modified text – with changes clearly indicated – available to the public for at least 15 days before the CIWMB adopts the regulations as revised. Requests for the modified text should be made to the contact person. The CIWMB will transmit any modified text to all persons who testify at a public hearing if one is held; all persons who submit written comments at a public hearing; all persons whose comments are received during the comment period; and all persons who request notification of the availability of such changes. The CIWMB will accept written comments on the modified regulations for 15 days after the date on which they are made available.



**TITLE 27. ENVIRONMENTAL PROTECTION**  
**DIVISION 2. SOLID WASTE**  
**SUBDIVISION 1. CONSOLIDATED REGULATIONS FOR TREATMENT, STORAGE, PROCESSING OR DISPOSAL OF SOLID WASTE**  
**CHAPTER 3. CRITERIA FOR ALL WASTE MANAGEMENT UNITS, FACILITIES, AND DISPOSAL SITES**  
**SUBCHAPTER 5. CLOSURE AND POST-CLOSURE MAINTENANCE**  
**ARTICLE 2. CLOSURE AND POST-CLOSURE MAINTENANCE STANDARDS FOR DISPOSAL SITES AND LANDFILLS**

**§ 21200. CIWMB - Change of Ownership During Closure or Postclosure Maintenance.**  
**(14:Section 17792)**

(a) An owner or operator of a disposal site who plans to sell, transfer or convey the ownership or operation of the disposal site to a new owner or operator shall notify the EA and CIWMB 45 days prior to the anticipated transfer. This notification shall include the name(s), address(es) and phone number(s) of the new owner or operator.

(b) The new owner or operator shall provide the following to the EA and CIWMB:

(1) Documentation of the financial assurance demonstrations of the new owner or operator, in compliance with the requirements of Articles 2 and 4 of Subchapter 2, Chapter 6 of this Title.

(2) An affidavit from the new owner or operator stating that the new owner or operator has read the governing SWFP (if applicable), closure plan, and postclosure maintenance plan and will comply with all terms and conditions in the SWFP (if applicable), closure plan, and postclosure maintenance plan, and that all new information submitted is correct.

(c) The EA shall review the submitted information to determine if the new owner or operator has provided the required information and if the new owner or operator will be able to comply with the terms and conditions of the SWFP (if applicable), closure plan, and the postclosure maintenance plan. The EA shall also obtain written confirmation from CIWMB that the new owner or operator has complied with the financial assurance requirements of Articles 2 and 4, Subchapter 2, Chapter 6.

(1) If the EA determines that the new owner or operator has complied with all requirements, the EA shall send written notification to the owner or operator and CIWMB within 30 days of receipt of the notification of transfer. Within 15 days thereafter, the EA shall send the owner or operator a copy of a changed SWFP, if applicable.

(2) If the EA determines that the new owner or operator has not complied with all requirements, the EA shall send written notification of this determination to the new owner or operator and

CIWMB within 30 days of receipt of the notification of transfer. The EA shall include the basis for this determination of inadequacy.

~~(a) Before the title to a disposal site is transferred to another person during closure or postclosure maintenance, the new owner shall be notified by the previous owner or his agent of the existence of these standards and of the conditions and agreements assigned to assure compliance.~~

~~(b) The previous owner shall notify the EA of the change in title within thirty (30) days and shall provide the name, firm, mailing address, and telephone number of the new owner.~~

Note: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code.  
Reference: Sections 43021, 43103 and 44005, Public Resources Code; and Section 66796.22(d), Government Code.

**CHAPTER 4. DOCUMENTATION AND REPORTING FOR REGULATORY TIERS, PERMITS, WDRS, AND PLANS**  
**SUBCHAPTER 3. DEVELOPMENT OF WASTE DISCHARGE REQUIREMENTS (WDRS) AND SOLID WASTE FACILITY PERMITS**  
**ARTICLE 2. CIWMB - APPLICANT REQUIREMENTS**

**§ 21570. CIWMB—Filing Requirements. (E14:§18201)**

(a) Any operator of a disposal site who is required to have a full solid waste facilities permit and waste discharge requirements pursuant to Public Resources Code, Division 31 and §20080(f) shall submit an application package for a solid waste facilities permit in duplicate to the EA pursuant to ¶(f). The applicant shall also simultaneously submit one copy of the application form and the Joint Technical Document (JTD) to the Regional Water Quality Control Board (RWQCB) and one copy of the application form to the director of the local agency that oversees local land use planning for the jurisdiction in which the site is located. The applicant shall ensure demonstration of financial assurances to the CIWMB pursuant to Chapter 6 of this Subdivision.

(b) All other applicants who are required to have a full solid waste facilities permit shall submit an application package for a solid waste facilities permit in duplicate to the EA pursuant to ¶(f) and one copy of the application form to the director of the local agency that oversees local land use planning for the jurisdiction in which the site is located. The applicant shall also simultaneously submit one copy of the application form to the RWQCB.

(c) Any application package submitted to the EA shall be accompanied by the fee specified by the EA pursuant to Public Resources Code §44006(c).

(d) The application package shall require that information be supplied in adequate detail to permit thorough evaluation of the environmental effects of the facility and to permit estimation of the likelihood that the facility will be able to conform to the standards over the useful economic life of the facility. The application package shall require, among other things, that the applicant and the owner give the address at which process may be served upon them.

(e) All information in the application package shall be certified by the applicant and the owner of the site as being true and accurate to the best knowledge and belief of each. The applicant, owner of the facility, or both, shall supply additional information as deemed necessary by the EA.



(f) A complete and correct application package shall include, but not necessarily be limited to, the following items:

(1) Application For Solid Waste Facilities Permit/Waste Discharge Requirements Form (CIWMB E-1-77, Version 8-04, Appendix 1); and

(2) Complete and correct Report of Facility Information. In the case of disposal sites, this will be a Report of Disposal Site Information (RDSI) in the format of a JTD or a Disposal Site Facility Plan or Disposal Facility Report in the format of a JTD; and

(3) California Environmental Quality Act (CEQA) compliance information as follows:

(A) Evidence that there has been compliance with the CEQA, Division 13 (commencing with §21000) of the Public Resources Code, regarding the facility; or

(B) Information on the status of the application's compliance with the CEQA regarding the facility, including the proposed project description. Once there has been compliance with the CEQA regarding the facility, evidence of compliance shall be submitted to the EA; and

(4) Any CEQA Mitigation Monitoring Implementation Schedule; and

(5) Conformance finding information, including one of the following:

(A) Until a countywide or regional agency integrated waste management plan has been approved by the CIWMB, the application shall include statements that: the facility is identified and described in or conforms with the County Solid Waste Management Plan, or otherwise complies with Public Resources Code §50000; and that the facility is consistent with the city or county General Plan and compatible with surrounding land use, in accordance with Public Resources Code §50000.5; or

(B) After a countywide or regional agency integrated waste management plan has been approved by the CIWMB, the application shall include a statement that: the facility is identified in either the countywide siting element, the nondisposal facility element, or in the Source Reduction and Recycling Element for the jurisdiction in which it is located; or, that the facility is not required to be identified in any of these elements pursuant to Public Resources Code §50001; and

(6) For disposal sites, completeness determination of Preliminary or Final Closure/Postclosure Maintenance Plan as specified in §§21780, 21865, and 21890 (Subchapter 4 of this Chapter); and

*[Note: The operator has the option of submitting the preliminary closure plan with the JTD, in which case the EA, RWQCB, and CIWMB would review it at the same time. If deemed complete by the reviewing agencies, the solid waste facilities permit application package could then be accepted for filing if all other information in the JTD is accepted by the EA. Or the operator can submit a stand alone preliminary closure plan to be deemed complete by reviewing agencies before the application package is submitted to the EA. For CIWMB purposes, all final closure/postclosure plans are stand alone documents but can be processed jointly with a proposed solid waste facilities permit revision as long as the final plan is determined complete prior to approval of the proposed solid waste facilities permit. The JTD Index prepared for the EA should show where each closure requirement is addressed in the closure/post-closure plan.]*

(7) For disposal sites, a copy of the most recent detailed written estimate to cover the cost of known or reasonably foreseeable corrective action activities, pursuant to §22221(a)(1);

(78) For disposal sites, current documentation of acceptable funding levels for required closure, postclosure maintenance, and corrective action Financial Assurance Mechanism (in accordance with Chapter 6, Division 2); and

(89) For disposal sites, current documentation of compliance with operating liability requirements in accordance with Chapter 6;

(910) For disposal sites permitted for more than 20 tons-per-day, a ground or aerial survey to be completed at least once every five years or more frequently as determined by the EA. For disposal sites permitted for 20 tons-per-day or less, a ground aerial survey must be completed at least once every ten years. Survey results must be submitted as a CADD or vector graphics data file including at least two strata, i.e., 1) a stratum showing the base and finished ground surfaces, and 2) a stratum showing the existing and finished ground surfaces. For disposal sites where a change in permitted volume is proposed, a third stratum showing the base and proposed finished ground surface must be included. For each stratum the following information shall be included: site name, stratum name, surface1 name, surface2 name, volume calculation method (grid, composite, section), expansion (cut) factor, compaction (fill) factor, cut volume, fill volume and net volume. All volumes shall be reported in cubic yards. If the base ground surface is uncertain, the operator is allowed to provide the best available information as a substitute for the actual as-built contours. If selecting this substitute method, the operator must provide an explanation of the basis for using the substitute base ground surface. For the purposes of this section the following definitions apply:

(A) "base ground surface" - the best available excavation plan surface that existed prior to the placement of any waste;

(B) "CADD" - computer aided design and drafting;

(C) "compaction (fill) factor" - the factor used to correct for expected compaction of fill material; this factor should normally be unity (one); if the factor is not unity (one), an explanation must be provided for the basis of the volumetric correction;

(D) "cut volume" - for any stratum, the volume removed by a cut of a lower surface to achieve the upper surface;

(E) "existing ground surface" - the topography that exists at the time of the subject survey;

(F) "expansion (cut) factor" - the factor used to correct for expected expansion of a cut surface; this factor should normally be unity (one); if the factor is not unity (one), an explanation must be provided for the basis of the volumetric correction;

(G) "fill volume" - for any stratum, the volume bound between the upper and lower surfaces;

(H) "finished ground surface" - the final fill plan surface as shown in the approved closure plan for the disposal site;

(I) "net volume" - the fill volume less the cut volume;

(J) "site name" - the name of the disposal site for which the survey information is being submitted;

(K) "stratum (plural: strata)" - a particular volume of a solid waste landfill bound by specified upper and lower surfaces;

(L) "stratum name" - a descriptive name for the stratum for which volumetric information is being submitted, e.g., total volume including proposed expansion;

(M) "surface names" - names for the pair of surfaces that define a named stratum, e.g., base ground surface and proposed finished ground surface;

(N) "survey" - a comprehensive examination of the disposal site under the direction of registered civil engineer or licensed land surveyor for purposes of determining the topography of the base, existing and finished ground surfaces, and the volumes bound by those surfaces;

(O) "vector graphics" - computer generated images comprised of lines and shapes of given origin, direction, thickness, color and other attributes;

(P) "volume calculation method" - grid, composite, section or other method approved by the enforcement agency.

(4011) For disposal sites, one of the following:

(A)(i) In-place density (pounds of waste per cubic yard of waste). The in-place density is the estimated or measured density of in-place waste material achieved by mechanical or other means in the development of the current lift of the current operating waste cell, and

(ii) Waste-to-cover ratio, estimated, (volume:volume). The waste-to-cover ratio estimate is a unit-less expression of the proportion of the volumes of waste and cover that comprise a volume of compacted fill material, e.g. 4:1. The cover portion of the waste-to-cover ratio estimate should include only soil or approved daily or intermediate alternative cover that is not considered a waste material, i.e., payment of fees to the CIWMB is not required. The waste portion of the waste-to-cover ratio estimate should include only waste material for which payment of fees to the CIWMB is reported, or

(B) Airspace utilization factor (tons of waste per cubic yard of landfill airspace). The airspace utilization factor (AUF) is the effective density of waste material in the landfill. The AUF is recorded as the total weight of waste material passing over the landfill scales that is placed in a known volume of landfill airspace in a given period of time. The waste portion of the AUF should include only waste material for which payment of fees to the CIWMB is reported.

(4112) List of all public hearings and other meetings open to the public that have been held or copies of notices distributed that are applicable to the proposed solid waste facilities permit action.

**Note:** Authority cited: Sections 40002, 40502 and 43020, Public Resources Code.

Reference: Sections 43103, 44001-44017, 44100-44101, 44300-44301, 44500-44503, and 44813-44816, Public Resources Code.

**§ 21640. CIWMB—Review of Permits. (T14:§18213)**

- (a) Except as provided in §21680, all full SWFPs shall be reviewed and, if necessary, revised, from the date of last issuance at least once every five years.
- (b) No less than 150 days before the permit is due for review, the operator shall submit an application for permit review. The application shall be made in the manner specified in §§21570 and 21590 and shall contain the following:
- (1) Identify the proposed changes in design and operation; and
  - (2) Updated amendments to the Report of Facility Information (RFI);
  - (3) For disposal sites only, the updated amendments shall include an estimate of the remaining site life and capacity;
  - (4) For disposal sites only, an amended closure plan as specified in §§21780, 21865, and 21890.
  - (5) For disposal sites only, a copy of the most recent detailed written estimate to cover the cost of known or reasonably foreseeable corrective action activities, pursuant to §22221(a)(1);

Note: Authority Cited: Sections 40502 and 43020, Public Resources Code.  
Reference: Section 43103 and 44015, Public Resources Code.

**Article 3.1. CIWMB - CIWMB Requirements**

**§ 21685. CIWMB - Proposed Solid Waste Facilities Permit; CIWMB Processing Requirements. (T14:§18207, §17608)**

- (a) The CIWMB shall stamp the proposed solid waste facilities permit with the date of receipt at the time the envelope is opened. The CIWMB shall consider each proposed solid waste facilities permit, any public testimony, and comments. Written comments may be submitted to the CIWMB and will become part of the CIWMB record. Such written comments shall be made available to the EA.
- (b) The CIWMB shall not concur in issuance of the proposed solid waste facilities permit for new and revised solid waste facilities permits, and the Executive Director of the CIWMB for modified solid waste facilities permits, if the following information, if applicable, has not been submitted to the EA and the CIWMB pursuant to Public Resources Code §44009:
- (1) Complete and correct Report of Facility Information as certified by the EA,
  - (2) EA's Solid Waste Facilities Permit Review Report pursuant to §21675,
  - (3) EA's proposed solid waste facilities permit written pursuant to this Subchapter.
  - (4)(A) Information that the facility is identified and described in or conforms with the County Solid Waste Management Plan (Public Resources Code §50000); and that the facility is consistent with the

city or county General Plan and compatible with surrounding land use, in accordance with Public Resources Code §50000.5; or

(B) After a countywide or regional agency integrated waste management plan has been approved by the CIWMB, the EA's finding that the facility has met the requirements of Public Resources Code §50001.

(5) Documentation sufficient for the CIWMB to deem that a Preliminary or Final Closure/Postclosure Maintenance Plan is consistent with closure and postclosure maintenance state minimum standards (including, but not limited to, Chapters 3 and 4) for those portions of the plan subject to CIWMB jurisdiction, if applicable;

(i) For closure plans submitted as part of a JTD, the determination whether the plans are consistent with state minimum standards shall be made within 60 days of the plans being considered complete pursuant to §21860(c).

(ii) This preliminary determination shall constitute the staff recommendation for the Board consideration of concurrence with a solid waste facilities permit unless the application package, of which the JTD was a part, is amended or modified.

(iii) This determination is solely for the Board consideration of concurrence with a solid waste facilities permit and does not constitute any final determination for the closure plans review process pursuant to §21860.

(6) For disposal sites, a copy of the most recent detailed written estimate to cover the cost of known or reasonably foreseeable corrective action activities, pursuant to §22221(a)(1);

(67)(A) Current documentation of acceptable funding levels for required closure, postclosure maintenance, and corrective action Financial Assurances Documentation in accordance with Chapter 6, if applicable; and

(B) Current documentation of compliance with Operating Liability Requirements, if applicable (Chapter 6).

(78) The CIWMB shall ensure the facility is operating consistent with State Minimum Standards, pursuant to Subchapter 4 of Chapter 3 of this subdivision or applicable minimum standards in Title 14 (§17200 et seq.),

(89) The EA finding that existing CEQA documentation is consistent with and supports the proposed solid waste facilities permit and RFI or supporting information indicating the EA has found that approval of the proposed solid waste facilities permit would not lead to any adverse environmental impacts and is exempt from the requirements of CEQA.

(c) The CIWMB, with respect to new and revised solid waste facilities permits, and the Executive Director of the CIWMB, with respect to modified solid waste facilities permits, shall either concur or object to the issuance of the proposed solid waste facilities permit within sixty days of receipt, except as authorized by Public Resources Code §44009, or by operator's consent. If the CIWMB or Executive Director objects to a proposed solid waste facilities permit, it shall accompany its

objection with an explanation of its action, which may suggest conditions or other amendments that may render the proposed solid waste facilities permit unobjectionable; however, such suggestions do not constitute approval of the proposed permit subject to incorporation of the suggestions. The Executive Director shall report to the CIWMB on his or her concurrence or denial of modified permits at its next regularly scheduled meeting or via a memo, and post this information on the CIWMB's web site or agenda.

(d) For the purposes of CIWMB's determination to concur in or to object to a proposed permit pursuant to ¶(c) above, a facility that has landfill decomposition gases exceeding the compliance levels in §§20919.5 or 20921, or at which a hazard or nuisance may exist pursuant to §20919, shall be considered to be consistent with State Minimum Standards specified in §§20919, 20919.5, and 20921 for purposes of ¶(b)(8) of this section if all of the following requirements have been satisfied with respect to the facility (for the purpose of this subsection, "facility" includes "disposal site"):

(1) The operator shall have delivered all notices to the EA and owner as required by §§20919, 20919.5, and 20937 as applicable.

(A) The site-specific compliance level applicable to the facility shall be lesser of that specified in (i) the facility's JTD/RFI, closure and postclosure maintenance plans, or the permit for the facility, or (ii) shall be the levels specified in §§20919.5 or 20921, as applicable.

(B) The facility's compliance boundary for landfill decomposition gas migration shall be the permitted facility boundary or other alternate boundary within the permitted facility boundary approved by the EA.

(2) The EA shall have forwarded to the CIWMB all notifications received pursuant to ¶(d)(1) above.

(3) Landfill gas monitoring has been and is being conducted at least monthly, at a minimum, after notice to the EA and shall continue until the operator has complied with the enforcement order issued pursuant to ¶(d)(6) below.

(4) The EA has determined that landfill gas decomposition gas generated by the facility does not constitute an imminent and substantial threat to public health and safety or the environment.

(A) For purposes of this section, an imminent and substantial threat to public health and safety or the environment is defined as a condition which is creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the harm to persons, property, natural resources, or the public health or safety.

(5) The EA has determined that to come into compliance with §§20919, 20919.5, and 20921 it will take the operator longer than 90 days due to the time it takes to plan and implement appropriate corrective measures.

(6) The facility is operating under an enforcement order issued to the operator and which meets all of the following requirements:

(A) The order was issued pursuant to 14 CCR §18304.1(a)(3) and includes a compliance schedule for bringing the facility into compliance with §§20919, 20919.5, and 20921.

(B) A final order has been issued pursuant to 14 CCR §18304.2.

(C) A copy of the proposed order and any amended order proposed by the EA was provided to the CIWMB for review and comment prior to its issuance.

(7) The EA has reviewed and approved and the CIWMB has reviewed all investigation reports or results, proposed workplans, or proposed gas mitigation measures submitted pursuant to the enforcement order issued pursuant to ¶(d)(6).

(A) If possible, all parties shall mutually agree to time frames for EA and CIWMB review of the submitted documents so that all reviews can be completed expeditiously. In the event agreement cannot be reached, the EA and CIWMB shall determine the schedules for their review.

(8) The operator is in compliance with the approved gas mitigation measures or workplan approved by the EA and specified in the enforcement order.

(A) If the operator fails to comply with the enforcement order, the EA shall, as necessary and appropriate:

(i) Take additional enforcement action, which may include the imposition of administrative civil penalties in an amount from one hundred dollars (\$100) up to five thousand dollars (\$5,000) for each day on which a violation occurs pursuant to §45011 of the Public Resources Code, or

(ii) Take direct cleanup action pursuant to an appropriate enforcement order.

(B) If the EA fails to take appropriate enforcement action as specified in 14 CCR §18084(d), CIWMB may take enforcement action pursuant to 14 CCR §18350.

(C) If the CIWMB takes enforcement action in lieu of the EA, any required public hearing shall be conducted by the CIWMB Executive Director or his/her designee.

(9) For facilities that propose a facility property boundary expansion, a footprint expansion, or any other increase in facility capacity as part of the permit application, investigations or analyses respecting landfill decomposition gases at the facility must have been conducted by the operator prior to the submittal of the permit application to the EA and the results of such investigations and analyses shall be submitted to the EA, CIWMB, RWQCB, APCD/AQMD, and any other appropriate agency prior to or concurrent with the permit application:

(A) The investigations or analyses shall evaluate:

(i) Whether the proposed expansion may increase the magnitude or complexity of the noncompliance with §§20919, 20919.5, and 20921.

(ii) Whether the proposed expansion may cause potential impacts to water quality and air quality or other impacts outside the jurisdiction of the EA.

(B) If the results of the investigations and analyses conducted pursuant to ¶(d)(9)(A)(i) warrant, the operator shall include an analysis and additional feasible control measures as part of the gas mitigation measures or workplan specified in the order required by ¶(d)(6)

(e) If an applicant or enforcement agency requests that revisions, additions or amendments be considered, these will be considered in accordance with the conditions specified in §21580 and ¶(f) of §21650 respectively.

Note: Authority Cited: Sections 40502 and 43020, Public Resources Code.  
Reference: Section 43103, 44007 - 44010 and 44014, Public Resources Code.

**CHAPTER 4. DOCUMENTATION AND REPORTING FOR REGULATORY TIERS, PERMITS, WDRS, AND PLANS**  
**SUBCHAPTER 4. DEVELOPMENT OF CLOSURE/POSTCLOSURE MAINTENANCE PLANS**

**§ 21820. CIWMB - Closure Cost Estimates.**

(a) The operator shall provide a written cost estimate, in current dollars, of the cost of hiring a third party to close the landfill in accordance with the submitted closure plan. Cost estimates shall meet the following criteria:

(1) Cost estimates shall equal the cost of closing the landfill at the point in its active life when the extent and manner of operation would make closure the most expensive, as indicated by the closure plan.

(A) When closing discrete units in phases, according to the requirements of partial closure, the estimate may account for closing only the maximum area or unit of a landfill open at any time, or

(B) If not closing discrete units in phases pursuant to ¶(a)(1)(A), the estimate shall account for the entire permitted landfill except for those areas certified closed by the CIWMB, RWQCB, and EA pursuant to §21880;

(2) Cost estimates shall include the cost of activities necessary to close the site pursuant to ¶(b). Cost estimates shall be developed for the activities anticipated for scheduled closure. The closure cost estimates shall always be high enough to ensure that, if, at any time, the landfill had to begin to close, the cost of activities for closure would not exceed the cost estimate. To reflect the potential for premature closure, each cost estimate shall include all activities yet to be completed at the time of preparation of the estimate. ;

(3) Cost estimates shall include or reflect the design, materials, equipment, labor, administration and quality assurance necessary for closure;

(4) The total closure cost estimate shall be increased by a factor of 20% to account for cost overruns due to unforeseen circumstances, such as adverse weather conditions and inadequate site characterization, which would result in increased closure costs. The operator may apply to the CIWMB for, and the CIWMB may approve, a contingency percentage of less than 20% at the



time that the final closure plan is approved, provided that the CIWMB finds that a lesser percentage will provide acceptable coverage of potential cost overruns;

(5) The operator shall increase the closure cost estimate when changes to the plan or at the landfill increase the cost of closure; and

(6) The operator may reduce the closure cost estimate when changes to the plan or at the landfill decrease the costs of closure. The request for reduction shall be submitted to the CIWMB for approval.

(b) Closure cost estimates shall include, but are not limited to, the following information:

(1) If the documents are preliminary closure and postclosure maintenance plans, an estimate of the cost of developing final closure and postclosure maintenance plans;

(2) an estimate of the cost to prepare plans and specifications, bidding documents, and other construction related documents; and

(3) an estimate of the cost of closure activities including schedules for implementation activities. The activities described shall include, but are not limited to, an estimate of the cost:

(A) to install or upgrade site security;

(B) for structure removal;

(C) to install or upgrade the monitoring and control systems, including landfill gas, leachate, and ground water systems if one or more of these systems is required by CIWMB, RWOCB, or EA.

(D) to install the final cover; and

(E) to install or upgrade drainage and erosion control systems.

Note: Authority cited: Section 40502, Public Resources Code.  
Reference: Sections 43020, 43021 and 43103, Public Resources Code.

#### **§ 21840. CIWMB - Postclosure Maintenance Cost Estimates.**

(a) The operator shall provide a written estimate, in current dollars, of the cost of hiring a third party to maintain, monitor, and inspect the closed landfill in accordance with the postclosure maintenance plan requirements. Cost estimates shall be subject to the following requirements:

(1) Cost estimates shall be based on the activities described in the postclosure maintenance plan and account for postclosure maintenance of the entire landfill;

(A) Cost estimates shall be based on the current monitoring and maintenance requirements. Cost estimates shall not anticipate future reductions in maintenance and/or monitoring.

(2) Cost estimates shall be of sufficient detail to identify the maintenance costs, repair costs, and replacement costs throughout the postclosure maintenance of the landfill;

(3) The cost estimate ~~used to demonstrate financial assurance, shall be the annualized cost of maintenance and monitoring anticipated during the postclosure period, multiplied by thirty (30);~~ and

(A) Cost estimates for those maintenance and monitoring activities which occur less frequently than annually shall be prorated to an annual cost. The expected recurrence period shall be specified in the postclosure maintenance plan; and

(i) Cost estimates for those maintenance and monitoring activities which occur less frequently than every 30 years shall be calculated as occurring every 30 years;

(4) The operator shall modify the postclosure cost estimate, in accordance with §21865 of this Subchapter, when changes in the plan or landfill conditions indicate an increase or decrease in postclosure maintenance costs. Requests for modifications shall be submitted to the CIWMB for approval.

(b) Postclosure maintenance plans shall include a detailed estimate of the annual costs for postclosure monitoring and maintenance, including the following:

(1) site security pursuant to §21135;

(2) maintenance and integrity of the final cover including material acquisition, labor, and placement for repair of the final cover as required due to the effects of settlement, slope failure, or erosion;

(3) maintenance of vegetation including fertilization, irrigation and irrigation system maintenance;

(4) monitoring, operation and maintenance of the environmental monitoring and control systems, including, but not limited to, the landfill gas, leachate, and ground water systems;

(5) maintenance of the drainage and erosion control systems including clearing materials blocking drainage conveyances and repairing drains, levees, dikes and protective berms.

Note: Authority cited: Sections 40502 and 40508, Public Resources Code.  
Reference: Sections 40508, 43020, 43021, 43103, 43501 and 43509, Public Resources Code; and Title 40, Code of Federal Regulations, Section 258.72.

**§ 21865. CIWMB - Amendment of Closure and Postclosure Maintenance Plans.**

(a) ~~Preliminary c~~losure and postclosure maintenance plans shall be submitted every time a review or revision of the SWFP is conducted.

(1) For disposal sites without a solid waste facilities permit, the operator shall initially submit updated plans in accordance with the following schedule:

(A) Approval of Certification of Closure pursuant to §21880 on or after January 1, 1988 but prior to December 31, 1996, shall submit updated plans on or before [2 years after effective date of regulations];

(B) Approval of Certification of Closure pursuant to §21880 on or after January 1, 1997 but prior to January 1, 2001, shall submit updated plans on or before [3 years after effective date of regulations];

(C) Approval of Certification of Closure pursuant to §21880 on or after January 1, 2001 or has initiated closure activities on or before February 25, 2003 but not received approval of Certification of Closure pursuant to §21880, shall submit updated plans on or before [4 years after effective date of regulations].

(2) After complying with ¶(1), the operator shall submit updated plans at least once every five years. The plans shall be submitted as part of the JTD or a separate document in the form of a distinct component of a JTD. If the preliminary closure and postclosure maintenance plans have been previously approved and a new horizontal or vertical expansion of a solid waste landfill is not proposed, the form of submittal shall be as amendments to the existing plans as necessary. Submittal shall be in accordance with §21780. The evaluation and approval of the plans amendments shall be as specified under §21860.

(b) The plans shall be amended to reflect the following:

(1) Any change in

(A) operation-Operation or solid waste landfill design which would affect the implementation of the closure and/or postclosure maintenance plans;

(2B) A change in-†The anticipated year of closure;

(3C) Any change in-†The financial mechanism required pursuant to §22227, "Substitution of Mechanisms" or §22231, "Cancellation or Nonrenewal by a Provider of Financial Assurance";  
orand

(42) Updates of the cost estimates shall be based on the current costs on a unit basis (unit costs) for closure and postclosure maintenance. Cost estimate adjustments based only on inflation factors are not acceptable.

*[Note: The intent of subsection (b) is to assure adequate review of the amended portions of the plans and not to institute a comprehensive review of the portions of the plan not subject to the amendments.]*

Note: Authority cited: Section 40502, Public Resources Code.  
Reference: Section 43103, 43505, and 43509, Public Resources Code.

**§ 21880. CIWMB -Certification of Closure. (T14:s18275)**

(a) The operator shall submit to the CIWMB, the EA, and the RWQCB for approval a certification, under penalty of perjury, that the solid waste landfill has been closed in accordance with the approved final closure plan.

(1) The certification submittal shall also include the as-built costs of closure in the same arrangement and sequence as the estimated costs of closure included in the approved final closure plan.

(b) The certification shall be completed by a registered civil engineer or certified engineering geologist and include a report with supporting documentation. The report shall include a Final Construction Quality Assurance (CQA) report pursuant to ~~Article 2 of Subchapter 1 of Chapter 3~~ (§§20323 and §20324 et seq.) and any other documentation as necessary to support the certification. The certification, Final CQA report and any other documentation as necessary to support the certification shall be incorporated into the approved postclosure maintenance plan.

(c) The certification shall be submitted within 180 days of the completion of closure construction activities unless CIWMB, EA, and RWQCB approve an alternate schedule.

(d) Within 120 days of receipt of the certification, CIWMB, RWQCB, and EA shall complete a detailed review of the submittal and submit their comments to the operator.

(e) If the certification is not approved by the CIWMB, RWQCB, or EA, the operator shall submit a revised certification within 60 days following such determination unless the CIWMB, RWQCB, and EA approve an alternate schedule.

(ef) Once the certification has been approved by the CIWMB, RWQCB, and the EA, the CIWMB shall release the operator from the financial mechanism for closure.

(dg) On the day that the certification of closure is approved, the solid waste landfill shall be considered closed and in postclosure maintenance.

Note: Authority cited: Section 40502, Public Resources Code; and ~~Section 66796.22(d), Government Code.~~  
Reference: ~~Section 66796.22(d), Government Code;~~ and Sections 43020, 43021, 43103 and 44006, Public Resources Code.

**SUBCHAPTER 5. CIWMB - NON-WATER QUALITY CORRECTIVE ACTION  
COST ESTIMATE AND FINANCIAL ASSURANCE  
REQUIREMENTS**

**§ 22100. CIWMB – Scope and Applicability.**

(a) This subchapter applies to owners and operators of solid waste landfills operating on or after July 1, 1991.

(b) In order to protect public health, safety and the environment, an operator shall demonstrate financial responsibility to CIWMB to conduct activities required as a result of non-water quality corrective actions. These corrective actions include, but are not limited to, waste disposal outside the permitted disposal area, landfill gas migration, leachate seeps, slope failures, erosion, and/or surface and subsurface fires.

(c) An operator shall demonstrate this required financial responsibility by submitting one financial assurance demonstration to cover both non-water quality correction actions, as required by ¶(b), and water quality corrective actions, as required by §22220.

Note: Authority cited: Section 40502, 43020, 43021, 43050, and 43103, Public Resources Code.  
Reference: Sections 40052, 43020, 43021, and 43101, Public Resources Code.

**§ 22101. CIWMB – Amount of Required Coverage and Corrective Action Cost Estimate Requirement.**

(a) Notwithstanding the requirement to demonstrate financial responsibility to conduct non-water quality corrective action activities pursuant to §22100(c), the operator is not required to submit a separate financial assurance demonstration or cost estimate covering these activities. Rather, the amount of the financial assurance demonstration required by §22100(c) shall be equal to the amount of the water quality corrective action estimate prepared pursuant to §22221(a)(1).

(b) The operator shall submit a copy of the cost estimate prepared pursuant to §22221(a)(1) to CIWMB each time that the submission of the non-water quality corrective action financial assurance to CIWMB is required.

Note: Authority cited: Section 40502, 43020, 43021, 43050, and 43103, Public Resources Code.  
Reference: Sections 43020, 43021, and 43101, Public Resources Code.

**§ 22102. CIWMB – Disbursements from the Corrective Action Financial Assurance Mechanism.**

(a) The CIWMB shall authorize disbursements from a corrective action financial assurance mechanism to the RWQCB for water quality corrective actions pursuant to §22234(c) and shall authorize disbursements for non-water quality corrective actions pursuant to §22234(a), as appropriate.

Note: Authority cited: Section 40502, 43020, 43021, 43050, and 43103, Public Resources Code.  
Reference: Sections 43020, 43021, and 43101, Public Resources Code.

**§ 22103. CIWMB – Updated Corrective Action Cost Estimate.**

(a) An operator shall submit an updated corrective action estimate to CIWMB at each SWFP review conducted pursuant to §§21640 and 21675 and each time the SWFP is revised pursuant to §21620. For disposal sites without a SWFP, an operator shall submit an updated corrective action cost estimate at least once every five years.

Note: Authority cited: Section 40502, 43020, 43021, 43050, and 43103, Public Resources Code.  
Reference: Sections 43020, 43021, 43101, 43103, 44004 and 44015, Public Resources Code.

**CHAPTER 6. FINANCIAL ASSURANCES AT SOLID WASTE FACILITIES AND  
AT WASTE MANAGEMENT UNITS FOR SOLID WASTE  
SUBCHAPTER 2. FINANCIAL ASSURANCE REQUIREMENTS  
ARTICLE 2. FINANCIAL ASSURANCE FOR POSTCLOSURE  
MAINTENANCE**

**§ 22211. CIWMB – Amount of Required Coverage (~~14:Section 18282~~)**

(a) Except as otherwise noted in ~~section §22225~~, the operator of each solid waste landfill shall demonstrate financial responsibility to the CIWMB for postclosure maintenance in at least the amount of the current postclosure maintenance cost estimate pursuant to §21840 multiplied by a factor as identified below.

(1) The multiplier shall be thirty (30) from the time the postclosure maintenance cost estimate is initially prepared and continuing throughout the first year after approval of the certification of closure of the entire solid waste landfill pursuant to §21880, which will initiate the postclosure maintenance period of the closed landfill.

(2) At the end of each year of postclosure maintenance from year one through year fifteen (15), the operator may request a reduction in the financial assurance demonstration provided to the CIWMB on a one-for-one basis with the number of years of postclosure maintenance completed. This reduction shall not cause the multiplier to be less than fifteen (15).

(A) For each solid waste landfill certified closed pursuant to §21880 prior to [effective date of regulations], the operator may request a reduction in the multiplier corresponding to the number of years of postclosure maintenance completed. This reduction in the postclosure maintenance cost estimate multiplier shall not cause the multiplier to be less than fifteen (15).

(3) After fifteen (15) years of completed postclosure maintenance activities, at each postclosure maintenance plan review conducted pursuant to §21865, the operator may submit a request to CIWMB for approval to use a reduced multiplier. CIWMB shall approve the use of a reduced multiplier if CIWMB determines all the following criteria have been satisfied:

(A) The operator request for a reduced multiplier shall occur at five (5) year intervals, the first request occurring no earlier than the end of the twentieth (20) year of postclosure maintenance,

(B) The operator request shall be for a reduction in the multiplier in increments of five (5), but in no instance shall the multiplier be reduced below five (5) until the operator is released from postclosure maintenance pursuant to §21900, and

(C) During the five (5) year interval, the operator shall meet all of the following conditions:

1. The EA, CIWMB or RWQCB has not issued an enforcement order, including but not limited to, a Notice and Order, Cleanup and Abatement Order, Cease and Desist Order, Time Schedule Order, or similar controlling order within the current Waste Discharge Requirements of the RWQCB or the SWFP against the operator of the closed solid waste landfill, and the CIWMB has not placed the closed solid waste landfill on the Inventory of Facilities Violating State Minimum Standards.

2. The operator has proposed and continuously performed a proactive monitoring program for approval by the EA, CIWMB and RWQCB that is a systematic evaluation of the characteristics and trends of leachate, landfill gas, groundwater and final cover to optimize postclosure maintenance. The program shall address, but not be limited to the following: leachate quality and quantity; landfill gas generation and migration; groundwater quality; and final cover settlement, stability, integrity, and maintenance history including repair and replacement,

3. There shall not be a disbursement for corrective action in accordance with §22234, and

4. The postclosure maintenance activities and costs are consistent with and not greater than the estimated postclosure maintenance activities and costs in the approved postclosure maintenance plan.

(4) After fifteen (15) years of completed postclosure maintenance activities, if an operator does not qualify for a reduction in the multiplier pursuant to ¶(a)(3)(C), CIWMB shall require the multiplier to be maintained at the current multiplier.

Note: Authority Cited: Section 40502, and 43050, Public Resources Code.  
Reference: Sections 43103, and 43501, 43509(a), 43600, 43601, 43602, and 43604 Public Resources Code

#### **ARTICLE 4. FINANCIAL ASSURANCE REQUIREMENTS FOR CORRECTIVE ACTION**

##### **§ 22220. CIWMB - Scope and Applicability. (new)**

(a) This article requires operators of disposal facilities to demonstrate the availability of financial resources to conduct corrective action activities as required under ~~Article 1, Subchapter 3, Chapter 3~~ (§section-20380 et seq.) and §22100.

(b) The requirements of this article apply to operators of all disposal facilities that are required to be permitted as solid waste landfills and have been or will be operated on or after July 1, 1991.

Note: Authority cited: Sections 40502 and 40508, Public Resources Code  
Reference: Sections 40508, and 43103, Public Resources Code; Section 258.73, Title 40 Code of Federal Regulations.

**§ 22221. CIWMB - Amount of Required Coverage. (~~T14:Section 17258.73~~)**

(a) Except as otherwise Noted in ~~§section-22226~~, the operator of each disposal facility shall demonstrate financial responsibility to the CIWMB for initiating and completing corrective action for all known or reasonably foreseeable releases from the disposal facility as required under ~~§Article 1, Subchapter 3, Chapter 3 (section 20380 et seq.)~~ and §22100 in at least the amount of the current corrective action cost estimate reviewed and approved by submitted to the appropriate RWQCB.

(1) The operator of each disposal facility required to demonstrate financial responsibility to undertake a corrective action program must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under ~~§Article 1, Subchapter 3, Chapter 3 (section 20380 et seq.)~~ and §22100. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period.

(2) The operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with ~~§Article 1, Subchapter 3, Chapter 3 (section 20380 et seq.)~~ and §22100.

(3) The operator must increase the corrective action cost estimate and the amount of financial assurance provided under (a) if changes in the corrective action program or disposal facility conditions increase the maximum costs of corrective action.

(4) The operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under (a) if the cost estimate exceeds the maximum remaining costs of corrective action. The operator must receive authorization from the CIWMB approving the reduction of the corrective action cost estimate before adjusting the financial mechanism used to demonstrate coverage.

Note: Authority cited : Sections 40502 and 40508, Public Resources Code  
Reference: Sections 40508 and 43103, Public Resources Code; Section 258.73, Title 40, Code of Federal Regulations.

**SUBCHAPTER 3. ALLOWABLE MECHANISMS**

**ARTICLE 1. CIWMB - GENERAL REQUIREMENTS FOR MECHANISMS**

**§ 22231. CIWMB - Cancellation or Nonrenewal by a Provider of Financial Assurance. (~~T14:s17258.74,s18242,18294~~)**

(a) Except as otherwise provided in §22232, a provider of financial assurance may cancel or not renew a financial assurance mechanism by sending a notice of termination by certified mail to the operator, and the CIWMB.

(1) Termination of a letter of credit, a surety bond, an insurance policy, or a guarantee shall not occur until 120 days after the date on which the operator, and the CIWMB have received the notice of termination, as evidenced by the return receipts.



(2) If a provider of financial assurance cancels or fails to renew a mechanism for reasons other than its bankruptcy or incapacity, the operator shall obtain alternate coverage within 60 days after receiving the notice of termination. If the operator fails to obtain alternate coverage within the 60 days, the operator shall notify the CIWMB of such failure.

(b) The closure and/or postclosure maintenance and/or reasonably foreseeable corrective action costs insurance policy, issued in accordance with §22248, shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the operator, and the CIWMB 120 days in advance of cancellation. If the insurer cancels the policy, the operator must obtain alternate financial assurance as specified in §22228. If the operator fails to demonstrate alternate financial assurance as specified in §22228 within 60 days after receiving the notice of termination, the CIWMB may allow the insurer an extension to the term of the insurance policy for a period of time shorter than one year. Cancellation, termination, or failure to renew will not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(1) The CIWMB or ~~enforcement agency~~EA deems the disposal facility abandoned; or

(2) The permit is terminated or revoked or a new permit is denied by the CIWMB or ~~enforcement agency~~EA; or

(3) ~~Partial or complete closure, postclosure maintenance, or corrective action~~ is ordered by the CIWMB, EA, RWQCB, other government entity, ~~or any other state or federal agency~~, or a court of competent jurisdiction; or

(4) The operator is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code; or

(5) All delinquent premium payments have been brought current.

(c) Cancellation or nonrenewal of third party operating liability insurance or self-insurance and risk management for third party operating liability coverage shall occur no less than 60 days after the date on which the operator, and the CIWMB have received the notice of termination, as evidenced by the return receipts; except in the case of non-payment of insurance premiums, in which case cancellation shall occur no less than 10 days after the date on which the operator, and the CIWMB have received the notice of termination.

Note: Authority cited: Sections 40502 and 43040, Public Resources Code.  
Reference: Sections 43040, 43103 and 43500-43610, Public Resources Code.

#### § 22234. CIWMB - Disbursements from Financial Mechanisms

(a) The operator, or other person authorized to conduct closure, postclosure maintenance, or corrective action activities may request disbursements from the CIWMB for these expenditures

in advance of the activities or as reimbursement for activities completed. Requests for disbursement will be granted by the CIWMB only if:

- (1) Sufficient funds are remaining in the financial mechanism(s) to cover the remaining costs of closure, postclosure maintenance, or corrective action; and
- (2) Justification and documentation of the cost is presented to the CIWMB for review and approval in conjunction with approved final closure and postclosure maintenance plans, or an approved corrective action plan.

(b) Corrective action financial mechanism(s) shall be replenished to the level prescribed by §22221 within five (5) years of the initial disbursement unless CIWMB and RWQCB agree to an alternate schedule.

(bc) The CIWMB shall authorize disbursements from an established closure or postclosure maintenance financial assurance mechanism to the RWQCB for the costs of closure or postclosure maintenance if the RWQCB finds that the operator has failed to perform closure or postclosure maintenance as required by the closure plan or postclosure maintenance plan as approved by the RWQCB and the CIWMB, or as required by an Order issued by the RWQCB, including Waste Discharge Requirements (WDRs), Cease and Desist Orders (CDOs), and/or Cleanup and Abatement Orders (CAOs).

(ed) The CIWMB shall authorize disbursements from an established corrective action financial assurance mechanism to the RWQCB for the costs of corrective action if the RWQCB finds that the operator has failed to perform corrective action as required by the corrective action workplan as approved by the RWQCB and the CIWMB, or as required by an Order issued by the RWQCB, including WDRs, CDOs, and/or CAOs.

Note: Authority cited: Section 40502, Public Resources Code.  
Reference: Sections 43103 and 43500 – 43610. Public Resources Code, Title 40, Code of Federal Regulations, Section 258.74(a)(7).

## **ARTICLE 2. CIWMB - FINANCIAL ASSURANCE MECHANISMS**

### **§ 22245. CIWMB - Pledge of Revenue. (T14-s18290)**

(a) A pledge of revenue shall consist of a resolution by the governing body of the operator or provider of financial assurance authorizing an agreement between the operator or provider of financial assurance and the CIWMB to establish the pledge. The resolution and the agreement shall remain effective continuously throughout the period in which the pledge of revenue is used to satisfy the requirements of Subchapter 2 of this Chapter.

(b) The agreement establishing the pledge of revenue shall contain the following items:

- (1) The types and sources of pledged revenue;
- (2) The amount of revenue pledged from each source;

(3) The period of time that each source of revenue is pledged to be available; and

(4) The solid waste landfill(s) and the current postclosure and/or corrective action cost estimate(s) that are covered by the pledge.

(5) The authorization for the CIWMB to direct payment for postclosure maintenance and/or corrective action if the CIWMB determines that the operator has failed or is failing to perform postclosure maintenance or corrective action activities covered by the mechanism.

(c) An operator or provider of financial assurance shall pledge the following types of revenue that the operator or provider of financial assurance controls and that will be available in a timely manner to pay for postclosure maintenance or corrective action:

(1) User fees, rents, or other guaranteed revenue from existing or planned solid waste facilities;

(2) Tax increases within statutory limitations; and/or

(3) Other guaranteed revenues that are acceptable to the CIWMB.

(d) If an operator or provider of financial assurance ceases at any time to retain control of its ability to allocate any pledged revenue to pay postclosure maintenance or corrective action costs, the operator or provider of financial assurance shall notify the CIWMB and shall obtain alternate coverage within 60 days after control lapses.

(e) Each resolution and agreement shall be submitted with a completed pledge of revenue form CIWMB 114 (02/2009).

Note: Authority cited: Section 40502, Public Resources Code.  
Reference: Sections 43103 and 43500-43610, Public Resources Code.

**§ 22248. CIWMB -Closure and/or Postclosure Maintenance and/or Reasonably Foreseeable Corrective Action Insurance.**

(a) The issuer of the insurance policy shall be an insurer, including a captive insurance company that, at a minimum, is licensed by the California Department of Insurance to transact the business of insurance in the State of California as an admitted carrier.

(b) If coverage is not available as specified in ¶(a), the operator may seek coverage from an insurer, including a captive insurance company that, at a minimum, shall be eligible to provide insurance as an excess or surplus lines insurer in California.

(c) If coverage is obtained as described in ¶(b), the insurance shall be transacted by and through a surplus lines broker currently licensed under the regulations of the California Department of Insurance [California Insurance Code (CIC), Division 1, Part 2, Chapter 6] and upon the terms and conditions prescribed by the California Department of Insurance.

(d) The CIWMB or its designee may object to the use of any insurer at anytime, whether before or after placement of coverage based on information obtained from, but not limited to, the Surplus Line Association of California, Best's Insurance Reports, and/or the Non- Admitted Insurers Quarterly List.

(e) The closure or postclosure maintenance insurance or reasonably foreseeable corrective action policy shall guarantee that funds will be available to close the solid waste landfill whenever closure occurs or to provide postclosure maintenance for the solid waste landfill whenever the postclosure maintenance period begins or provide for corrective action for the solid waste landfill if corrective action is deemed necessary, whichever is applicable. The policy shall also guarantee that once the closure or postclosure maintenance or corrective action program begins, the insurer will be responsible for the paying out of funds to the operator or person authorized to conduct closure or postclosure maintenance or corrective action, up to an amount equal to the face amount of the policy.

(f) The insurance policy shall be issued for a face amount at least equal to the most recently approved closure and/or postclosure maintenance and/or reasonably foreseeable corrective action cost estimate(s) whichever is applicable, unless the policy is being used in combination with another acceptable mechanism. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability may be lowered by the amount of the payments.

(g) An operator, or any other person authorized to conduct closure or postclosure maintenance or corrective action, may receive disbursements ~~reimbursements~~ for closure or postclosure maintenance or corrective action expenditures, which ever is applicable. Requests for disbursements ~~reimbursements~~ will be granted by the insurer only if ~~the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure maintenance or corrective action and if the expenditures have been reviewed and approved in writing by the~~ CIWMB or its designee.

(h) Notwithstanding any other provisions of this section, if either partial or complete closure, postclosure maintenance or corrective action activities are ordered by the CIWMB, EA, RWQCB, or other government entity or court of competent jurisdiction ~~its designee~~ as a result of failure by the operator or other authorized person ~~authorized~~ to conduct such activities, the policy shall also guarantee that the insurer shall be responsible for paying out funds to the CIWMB for deposit into a special account established by the CIWMB for closure, postclosure maintenance or corrective action activities of the facility. The policy shall further guarantee that the insurer shall, without delay, pay to the CIWMB the amount the CIWMB requests, up to an amount equal to the face amount of the policy, regardless of any remaining premiums to be paid. CIWMB requests for payment will be based on current estimated expenses as determined by the CIWMB for closure, postclosure maintenance or corrective action activities. Any payments made by the insurer that exceed the actual expenses incurred in performing the insured activity will be repaid to the insurer at the completion of the insured activity.

(i) Each policy shall contain a provision allowing assignment of the policy to a successor operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

~~(j) Except as provided in §22231, the insurer may not cancel, terminate, or fail to renew the policy. The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator, and the CIWMB 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in §22228.~~

(k) For insurance policies providing coverage for postclosure maintenance, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increases must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(l) The operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in §22227, or if the operator is no longer required to demonstrate financial responsibility in accordance with the requirements of Subchapter 2 of this Chapter.

(m) Each closure and/or postclosure maintenance and/or reasonably foreseeable corrective action insurance policy shall be evidenced by a certificate of insurance established by using form CIWMB 106 (02/200908/2001), which is incorporated by reference. Each certificate of insurance shall contain the insurer's warranty that the policy conforms in all respects with the requirements of this Subdivision, as applicable, and as such regulations were constituted on the date the policy is certified to on an annual basis. In addition, the insurer shall agree that any provision of the policy inconsistent with these regulations is amended to eliminate such inconsistency by submittal of the certification for closure and/or postclosure maintenance and/or reasonably foreseeable corrective action insurance.

Note: Authority cited: Section 40502, Public Resources Code.  
Reference: Sections 43103 and 43500-43610, Public Resources Code.

