Enforcement Advisory Council
Solid Waste Management through Partnership

December 15, 2011

Rebecca Ng, Chair
California Conference of Directors of Environmental Health
Solid Waste Policy Committee

RE: Five-year Permit Reviews
EAC Resolution No. 2011-04

Dear Ms. Ng:

Introduction

On December 15, 2011, the Enforcement Advisory Council (EAC) adopted Resolution No. 2011-04 that addresses the issue of Five-year Permit Reviews. Last year the Enforcement Advisory Council began discussions on issues surrounding the 5-year permit review process. While this discussion opened up a host of related topics, the basic issue is that many Local Enforcement Agencies (LEA) perform a level of review for their permit revisions and modifications that is at least as rigorous as that done for a standalone 5-year permit review. In these cases, many LEAs have at the completion of the revision or modification process "reset" the due date for the next required 5-year permit review. For example, if a solid waste facility permit requires a 5-year review by June 30, 2013 and the LEA conducted a thorough review as part of a permit revision completed on March 15, 2011, the LEA might revise the due date for the next 5-year review to March 15, 2016.

Though this is a longstanding practice in many jurisdictions, CalRecycle is concerned that it is not fully consistent with existing statutes and regulations. CalRecycle prepared a chart which compares the requirements associated with a 5-year review, permit revision, and permit modification. This chart was circulated to the LEA rountables for their review and discussion; the goal was to identify the problem and come up with possible solutions to recommend to the California Conference of Directors of Environmental Health Solid Waste Policy Committee (SWPC).

During this process, several LEAs suggested that a standalone 5-year permit review is unnecessary, and the SWPC may wish to consider this, also. Additionally, it was suggested that the previous requirement for an independent engineering review of these facilities was a useful alternative. This resolution, though, is based on the assumption that the requirement for a periodic, thorough review of a solid waste facility by the LEA remains in effect, in the form of a

5-year review (or equivalent). The goal is to meet this need with consistency across jurisdictions and minimize any unnecessary duplication of effort within an LEA.

Issues and Problems Identified with a Five-Year Permit Review

A number of issues and problems were identified by the LEAs as part of these discussions:

1. **Permit reviews are routinely viewed by most LEAs as being conducted during a permit revision /modification.**

   LEAs are required to accept a permit revision application package as being complete and correct and to ensure that the application package contains all items required by 27 CCR 21570(f) (including proposed RFI amendments). A permit review application contains no additional submittal information that is not already required by 27 CCR 21570, nor is there any statutory or regulatory requirements to review any less or more information as reviewed during the permit revision process. The LEAs consider the permit revision process sufficient (in practice and by law) to be considered a permit review. If a separate report to CalRecycle consistent with 27 CCR 21675(b)(1) is requested as part of the permit revision process, the LEAs may be able to accommodate CalRecycle by preparing such a report.

   Additionally, if the LEAs are providing adequate regulatory oversight of a facility correctly (e.g., thorough inspections, review RFI, review permit, keep up on SMS issues), there should be few outstanding operational issues to address during a "focused" permit revision. In this case, the stand alone 5-year review is not as critical.

2. **Lack of ability to make administrative changes to the Solid Waste Facility Permit during a 5-Year Permit Review.**

   The LEAs find the 5-Year Permit Review process to be less useful than it could be since administrative changes to the Solid Waste Facility Permit cannot be made to update the permit at the 5-year review. Administrative changes desired, for instance, would include updating the dates and numbers of referenced permits, modifying the LEA or operator mailing address if changed, and updates to the estimated closure date based on current site capacity information.

3. **Five-year Permit reviews that ultimately lead to RFI Amendments and Permit Revisions are seen as a redundant and inefficient process for both LEA and operator.**

   If the operator submits an application for a 5-year permit review "in a manner specified in §27 CCR 21570 and 21590", then the LEA should receive a complete and correct application package, which includes any proposed changes to the design or operation of the site. Upon completion of the LEA review, it seems redundant to issue a directive to the operator to re-submit an application package for an RFI Amendment (or permit revision as necessary) since the documents already prepared by the operator and their

consultant cannot be approved by the LEA through the current permit review process. A better solution may be to review the permit review application package within the initial 30-days to assess whether the proposed changes to the JTD/PCPCMP would require an RFI Amendment or Permit Revision/Modification consistent with permit processing requirements of 27 CCR 21650. If no significant changes have been made or are proposed, the LEA could then complete the permit review report in the next 120 days consistent with 27 CCR 21675.

4. **LEA notice to operator generally seen as inadequate.**

   The LEAs have found that notice to the operator before the regulatory 180 days specified in 27 CCR 21675 is necessary to ensure that an application package is submitted within 150 days of the 5-Year Permit Review due date. While this practice does not conflict with regulation, it is generally recognized that the 180 day notice is insufficient to ensure compliance with permit review timeframes.

5. **Application timing, fees, and processing conflicts exist within the 5-Year Permit Review regulations.**

   LEAs find that the differing (or at least unclear) time frames for application processing, lack of clarity on process for incomplete or rejected permit review applications, and conflicts with timing for other concurrent reviews (i.e. non-water release corrective action plans due at the next permit review) continue to create inconsistent processing standards across jurisdictions. Furthermore, if a permit revision is required after completion of a permit review, it is also unclear when the next five-year permit review due date should be set (i.e. at the time of permit issuance or at the time of permit report issuance). The general recommendation is that 5-year permit review applications should be processed in the same manner as any other application package, which would provide a greater range of possible permit outcomes based on the changes identified by the LEA during the review of the site and application package.

Suggestions to Improve the Process

Based on these findings and consideration of current practice, the recommendation of the EAC is as follows:

1. Whenever a permit revision or modification process is at least as thorough as that required for a standalone 5-year permit review, allow the LEA to reset the due date for the next permit review, accordingly.

2. Allow permit revisions during a standalone 5-year permit review.

3. Work with CalRecycle to identify and suggest changes to the statutes, regulations, and/or CalRecycle guidance so that these are consistent with current practice in many LEAs and the goals described above.

4. A workshop for industry and other interested parties is recommended to allow for their input, particularly if a change to statutes, regulations, or advisories is found necessary.

If you have any questions or if the EAC can be of further assistance in this matter, please contact me at (925) 692-2535.

Sincerely,

Joseph G. Doser, Jr., Chair

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