

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Permitting & Enforcement Committee

September 16, 1997

AGENDA ITEM 16

ITEM: UPDATE AND DISCUSSION OF RECOMMENDATIONS FOR REVISIONS TO THE INFORMAL DRAFT REGULATIONS FOR TRANSFER, MATERIAL RECOVERY, AND PROCESSING OPERATIONS AND FACILITIES

I. SUMMARY

Under current regulations, solid waste transfer facilities, with the exception of limited volume transfer operators, can only be issued a full solid waste facility permit. This "one-size-fits-all" permit has not provided the California Integrated Waste Management Board (Board) and enforcement agencies flexibility in overseeing these types of operations, resulting in the perception of over-regulation by some operators. Under the informal draft regulations, the level of Board review and oversight for these operations would be reduced to a regulatory tier level that is more commensurate with the amount of oversight necessary to achieve mitigation of potential impacts these operations may pose to public health, safety, and the environment. The regulations will define transfer/processing operations and facilities, place the operations and facilities into the regulatory tiers, and establish minimum operating standards to protect public health, safety, and the environment.

In April 1994, the Permitting and Enforcement Committee (Committee) directed staff to develop a concept proposing a tiered permitting structure for all solid waste operations. The Board adopted the regulatory tier regulations at its November 1994 general business meeting. The Office of Administrative Law approved the regulatory tier regulations in March 1995. These regulations established a new flexible regulatory framework for a wide range of solid waste operations and facilities. With this framework, the level of regulatory oversight would be commensurate with the potential impact that the operation or facility may pose to public health, safety and the environment. The regulations did not place solid waste operations and facilities into tiers.

Also in March 1995, the Board approved a process for determining Board authority for types of operations, and a general methodology for determining placement of those operations, and facilities within the regulatory tier structure. Transfer stations were identified by the Board as types of operations and facilities to be considered for Board authority and placement.

The purpose of this item is to update the Committee and receive direction on six major issues raised during the informal comment period and workshops recently held in Redding, Diamond Bar and Sacramento.

II. PREVIOUS COMMITTEE AND BOARD ACTION ON RECYCLING OPERATIONS AND TRANSFER/PROCESSING FACILITIES

At the August 16, 1995 Board meeting, the Board adopted the following recommendations:

1. The Board determined that operations and facilities that handle source separated recyclables with a minimal amount of residual waste (as determined by the Board) are outside the Board's regulatory tiers but are within the Board's investigative authority.
2. The Board directed staff to work with the appropriate industry and environmental groups during the rulemaking process to set specific percentage, tonnage, or volume of residual that would exceed the minimum level and would constitute handling of solid waste.
3. The Board reaffirmed its authority to continue to regulate transfer stations as defined in Public Resources Code (PRC) 40200.
4. The Board reaffirmed its authority to continue to regulate material recovery facilities under its existing authority to regulate processing stations as defined in PRC 40200.
5. The Board approved a revised schedule for placement of material recovery facilities, transfer stations and recycling operations into the regulatory tiered structure.

After hearing extensive public comment at the October 24, 1995 Board meeting, the Board adopted the following recommendations:

1. The Board determined that an upper limit (or cap) on the amount of residual waste generated at recycling operations was not necessary to distinguish material recovery facilities that receive mixed solid waste, from recycling operations that receive only source separated recyclables.
2. The Board directed staff to use the previously approved definitions of "Source Separation" and "Separation for Reuse" as the first criteria for determining whether a material handling operation is also handling solid waste and subject to regulation by the Board under the Regulatory Tiers.
3. The Board directed staff to use the percentage of residual waste, measured as the total weight of the waste sent to disposal each month divided by the total weight of the incoming recyclable materials received during that month, as an indicator of whether an operation is truly handling only

source separated materials, and as the second criteria for determining whether a material handling operation is subject to regulation by the Board under the Regulatory Tiers.

4. The Board directed staff to establish 10% as the initial limit on the amount of residual waste that can be generated at recycling operations receiving only source separated materials. Recycling operations that wish to be outside of the regulatory tier structure will be required to be below the 10% limit within one year of the date that the implementing regulations are in effect.
5. The Board directed staff to develop an exception procedure that would exclude operations that cannot meet the residual percentage number, but do not handle solid waste and are currently characterized as outside of the Board's regulatory tier authority. (E.g. wire choppers, couch and mattress recyclers, auto dismantlers, circuit board recyclers, etc.)
6. The Board directed staff to develop a standardized record keeping procedure that documents the residual percentage of material recovery facilities and all other operations and facilities that fall under the Board's regulatory tier authority.
7. Staff shall ensure that the record keeping requirements are enforceable and minimize, to the extent feasible, the impact on the regulated operations. Staff was also directed to develop a standard form with which non-regulated recycling operations can voluntarily report their residual percentage to local enforcement agencies (LEAs) and the Board.
8. The Board directed staff to establish a procedure for developing compliance schedules for operations that cannot meet the residual percentage limits.
9. The Board directed staff to develop draft regulations that implement the preceding recommendations.

See Attachment #1 for more Information regarding the two-part test. (Board recommendations, Nos. 2 and 3 above) [Additional information regarding Committee/Board actions on transfer operations is contained in Section V. Analysis.]

III. OPTIONS FOR THE COMMITTEE

Staff would like direction from the Committee on the following six major issues that arose during the informal comment period:

1. Two-part Test (10% residual) and an Alternative Plan by an LEA
2. "Source Separated" & "Separated for Reuse" Definitions
3. Placing Transfer/Processing Facilities within the Tiers
4. Additional Exclusions
5. Obtaining the Appropriate Tiered Permit
6. Cal OSHA - Memorandum of Understanding

Committee members may provide direction regarding the next step of the regulatory process:

1. Direct staff to begin the 45 day public review and comment period without revisions to the proposed regulations
2. Direct staff to modify the proposed regulations, and notice the proposed regulations for a 45-day public review and comment period.
3. Direct staff to modify the proposed regulations and return to the Committee to begin the 45-day public review and comment period without another informal comment period.
4. Direct staff to modify the proposed regulations, begin another informal comment period and return to Committee to notice the proposed regulations.

IV. STAFF RECOMMENDATION

Staff recommend option number 2.

V. ANALYSIS

Limited Volume Transfer Operations Regulations

When Assembly Bill (AB) 59 was enacted in 1995, the Board evaluated the potential impact of that legislation on the LEA programs and the regulated community. One of the major areas of potential impact of AB 59 was the revision to PRC section 44002. This section required LEAs to issue a cease and desist order for any unpermitted solid waste operation or facility after October 16, 1996. At the March 1996 meeting, the Board directed staff to accelerate the promulgation of regulations for transfer stations where no processing of waste occurs.

At the July 1996 Permitting and Enforcement Committee meeting, Committee members directed staff to limit the scope of the regulation package to only include exclusions, limited volume transfer operations and the sealed container transfer operations.

The reduction in the scope of the regulation package addressed those small transfer operations that LEA's identified as being in the greatest risk of closure due to AB 59. The remaining transfer and processing operations and facilities were to be slotted at a later date.

At the August 1996 Board's general business meeting, the Board adopted the placement of the Limited Volume Transfer Operations into the Enforcement Agency Notification tier. These regulations were approved by the Office of Administrative Law and became effective October 11, 1996.

Informal Draft Regulations

In June and July 1997, staff conducted three public workshops to solicit input on the informal draft regulations regarding transfer and processing operations and facilities. Workshop attendees included operators, industry representatives, local agencies, local and state regulators, and other interested parties.

The draft regulations, as presented during the informal comment period, were developed to reflect earlier Board discussions and discussions made during the limited volume transfer station rulemaking process. The informal comment period began on April 18, 1997 with a June 13, 1997 written comment response due date. However, staff has continued to accept comments to date. Staff received twenty-five written comment letters during the informal comment period and numerous verbal comments during the three workshops.

The following issues outline some of the more controversial subject areas raised during the informal comment period. Staff has analyzed each subject area and has suggested solutions for some of the issues. In addition, staff will make other minor changes such as streamlining of definitions with the Department of Conservation, and numerous minor language changes to the text of the draft regulations.

ISSUES

1. Two-part Test (10% residual) and an Alternative Plan submitted by an LEA

On October 24, 1995 the Board directed staff to develop regulations to place recyclers who meet the two-part test outside the Board's authority. The two-part test contains the criteria whereby a recycling operation must receive materials that have been "source separated" or "separated for reuse" and generate less than 10% residual waste, measured on a monthly basis. If a recycling operation fails either part of the test, it will be

subject to the Board's authority and placed into the appropriate regulatory tier.

Recycling operations receiving loads of mixed or municipal solid waste will not qualify under the proposed regulations as recycling operations. In addition, recyclers that receive separated for reuse materials but generate more than 10% residual waste will be considered solid waste handlers and will be regulated under the Board's tiered structure. Staff proposes to place within the regulatory tiers those operations that do not meet the two-part test. Solid waste operations and facilities would be placed into the tiers based on the amount of residuals. During the informal comment period, staff originally proposed to place operations and facilities within the regulatory tiers based on the type of operation (for more information on placement into the tiers by type of operation, see Attachment #2). Attachment #3 illustrates a staff proposed placement into the regulatory tiers of separated for reuse material operations which do not meet the two-part test.

During the informal comment period, an Alternative Plan to the Board's two-part test was submitted to Board staff by Mr. Richard Hanson, Chief of the Los Angeles County Department of Environmental Health, and presented at two of the workshops. The motivation behind the Alternative Plan was that the regulations as proposed during the informal comment period were unenforceable.

The Alternative Plan assumes that all source separated material (SSM) processing operations (which would include recycling operations) have a waste residual of 10%. Consequently, the Alternative Plan would have the Board regulate all SSM processing operations according to the output of solid waste from the operation. SSM processing operations would be required to maintain records of incoming loads of waste and recyclables on a ton per day basis and these operations would also be subject to the Board's tiered regulations. Note: For more detail on the Alternative Plan, please refer to Attachment #4.

Staff believes that the assumption in the Alternative Plan that all SSM operations contain a residual of 10% is inaccurate based on data researched by staff. Staff has found there to be a range of 2% to 20% residuals in recycling facilities.

Staff of the Legal Office believe that the Alternative Plan conflicts with the Board's previous interpretation of its legal authority. After numerous public hearings, the Board determined that based on the provisions of PRC 40200(b)(2), it does not have authority to regulate operations that primarily handle materials that are source-separated or separated for reuse.

PRC 40200(b)(2) provides that a "transfer or processing station" does not include:

"A facility, whose principal function is to receive, store, convert, or otherwise process wastes which have already been separated for reuse and are not intended for disposal."

The second part of the two-part test (10% residual) is designed to determine whether an operation is truly one that is primarily handling material that is separated for reuse.

The practical effect of the Alternative Plan would be to convert the term "principal function" in PRC 40200(b)(2) to "sole function." This would subject all recycling operations to the jurisdiction of the Board no matter how small an amount of solid waste is mixed in with its separated materials. For example, the Alternative Plan assumes that a recycler with less than 1% residual, has 10% solid waste mixed with his separated materials and depending on the size of the operation, might require it to obtain a solid waste facilities permit.

Staff brings this forward as an issue for discussion and possible direction from the Committee. Comments received during the workshops from the Southern California LEAs have generally been in support of the Alternative Plan based on record-keeping requirements of all SSM processing operations. Staff do not know how widely the Alternative Plan was circulated and whether it is supported by most LEAs.

2. "Source Separated" & "Separated for Reuse" Definitions

The following two definitions "Source Separated" and "Separated for Reuse" were approved by the Board at their October 1995 monthly meeting.

"Source Separated"

Source separated recyclables are materials, including commingled recyclables, that have been separated or kept separate from the solid waste stream by their owner, at the point of generation, for the purpose of recycling or reuse.

"Separated for Reuse"

Recyclables separated for reuse are materials, including commingled recyclables that have been separated or kept separate from the solid waste stream by their owner for the purpose of recycling or reuse.

The only distinction between the two definitions above relates to the location at which the separation occurs. Source separated

recyclables are separated or kept separate from solid waste at the point of generation (i.e. at the source). Recyclables separated for reuse fit into a slightly broader category that recognizes that recyclables may also be separated from waste at a transfer/processing facility, or other non-generator locations and transported to a recycling operation.

Since the two terms are always used together, the two definitions were combined in the informal draft regulations, using one term "Separated for Reuse", for the purpose of greater clarity and simplicity. Staff believes that the Board's intent has not changed; however, staff received input from some members of the recycling industry that they wanted the two definitions to remain unchanged. The definitions were combined as follows:

"Separated for Reuse" means materials, including commingled recyclables (which have been commingled for transport purposes), that have been kept separate or separated from the solid waste stream for the purpose of recycling or reuse, prior to receipt at a solid waste operation, facility or recycling center.

Staff believe the above definition could be improved (i.e.: adding the following language, "kept separate or" to the above definition before the word "separated" in the body of the definition. This issue is brought forward for discussion and possible direction from the Committee.

3. Method of Placement within the Tiers

Staff proposed in the informal draft regulations to place transfer and processing facilities in the tiers based on the type of operations regardless of amount of waste received. However, staff received feedback during the workshops that it should place operations and facilities into the permit tiers based on the amount of waste received, transferred or processed instead of by operation type. Commentors also stated that there should be no difference in tiered placement between transfer and processing activities since most transfer operations or facilities do some type of processing.

LEAs generally wanted facilities handling municipal solid waste to be placed into the full permit tier rather than the standardized permit tier to allow for site specific conditions to be placed in the permit. The following table illustrates the consensus from a range of commentors regarding proposed tier placement.

Tier	Regulatory Name
Full Permit	Large Volume Transfer/Processing Facilities
Registration	Small Volume Transfer/Processing Facilities
Notification	Limited Volume Transfer Operations and Emergency Transfer/Processing Operations
Outside Board Authority	Recycling Centers that meet the two-part test
Placed into tiers based on the amount of residual	Recycling Centers that do not meet the two-part test

During the informal period, commentors provided various ranges for placing operations and facilities into the tiers based on amount of waste received. Most of the commentors felt that the proposed ranges included placing facilities that receive 60 cu. yds - 100 tons into the registration tier and facilities that receive over 100 tons into the full tier. The majority of commentors felt that the Standardized permit tier was not appropriate for solid waste transfer/processing operations or facilities. The table below lists the thresholds provided by commentors during the informal comment period for the placement of transfer/processing operations and facilities into the permit tiers.

	Enforcement Agency Notification	Registration	Full
Threshold for Tiers	0 - 60 cu. yds	0 - 60 cu. yds 60 -200 cu. yds > 60 - 100 cu. yds > 60 cu. yds - 100 tons 0 -100 tons	> 60 cu. yds > 100 cu. yds > 200 cu. yds > 100 tons ≥ 500 tons

Staff brings this issue forward to the Committee for discussion and possible direction regarding placement into the permit tiers by threshold levels.

4. Additional Exclusions

The current regulations contain exclusions for the following types of operations:

1. Locations where 15 cubic yards or less of combined container volume is provided to serve as multi-residence receptacles for residential refuse and ranch use and are located at the place of generation;
2. Storage receptacles at the place of generation for waste from multi-residential buildings or for commercial solid wastes at the place of generation;
3. Containers used to store construction or demolition wastes at the place of generation; or
4. Containers used to store salvaged materials

Staff proposes to add additional exclusions to the existing regulations for: waste collection yard operations, rendering plants, "igloos", scrap metal recyclers and dealers, and auto dismantlers based on comments received during the informal comment period. Staff brings this forward as an issue for discussion and direction from the Committee. Comments received during the workshops have been in support for adding some additional exclusions.

5. Operators Obtaining the Appropriate Tiered Permit

The informal draft regulations included a provision that those operators already possessing a valid full permit obtain the appropriate tiered permit at the next permit review or revision. This would mean that an operator possessing a permit (i.e., full permit) when eligible for a lesser permit (i.e., standardized or registration) must obtain the appropriate permit at the next permit review or revision. Staff received feedback during the workshops that it should be the operators decision to maintain a higher tiered permit.

The following are advantages for allowing an operator to retain a higher tiered permit as voiced during the workshops:

1. Some operators believe that having a "full" permit allows them more flexibility regarding their operations and that it may provide a marketing or competitive advantage over lower tiered permitted operations.

2. Keeping the permit may minimize unnecessary additional public comment on planned operational expansions.
3. The permitting process was expensive and the operator wants to retain what they paid for.

The following are advantages for requiring the appropriate permit tier be obtained:

1. The tier framework was established with the intent to place all operations and facilities into the appropriate tier using generic methodology based on environmental indicators or necessary mitigation.
2. Statewide uniformity for tier placement.
3. Flexibility would not be reduced, because the operator would apply for the desired tier based on the operation description (including a planned expansion) in the submittal documents.
4. The appropriate tier reduces unnecessary regulator oversight and stringent permit application and review procedures.
5. There would be accurately reflected record-keeping in the Solid Waste Information System regarding true operational parameters.

Staff brings this forward as an issue for discussion and direction from the Committee.

6. Cal OSHA - Memorandum of Understanding

During the informal comment period, commentators raised the issue of regulatory overlap with the Department of Industrial Relations, Division of Occupational Safety and Health (more commonly referred to as Cal OSHA). Staff met with Cal OSHA representative Mr. Les Michaels regarding potential overlap issues. Many of the overlap issues identified by Cal OSHA, however, have been in Board regulations for close to twenty years and are historic health and safety standards.

Cal OSHA raised some areas of concern regarding any Board regulations which may unnecessarily duplicate and incorrectly reference their Title 8 regulations without a Memorandum of Understanding (MOU). The areas of concern are as follows: section 17408.7 Personnel Health and Safety, section 17409.2 Sanitary Facilities, and section 17410.3 Training. In order to remedy this situation, staff proposes an MOU between the Board and Cal OSHA which would address any potential regulatory overlap. The MOU is a mechanism that has been used by several other State agencies under similar circumstances.

It is staff's intention to streamline the LEA worker health and safety referral process to Cal OSHA by implementing the MOU while retaining the Boards historic health and safety standards. Some LEAs support a position of referral to Cal OSHA on immediate threats to worker health and safety and don't want to establish stricter standards than are outlined in the informal draft regulations. Other LEAs, however, would not mind having a bit more worker health and safety authority. Nevertheless, there was a consensus among workshop attendees that LEAs should not be held liable for noise restriction violations. Staff brings the MOU concept forward as an issue for discussion and direction from the Committee.

VI. ATTACHMENTS

1. Board Authority Over Solid Waste Handling at Recycling Operations (Two-Part Test)
2. Informal Comment Period Placement Matrix
3. Separated for Reuse Material and the Regulatory Tiers
4. Alternative Plan Submitted by Mr. Richard Hanson, LA Co. LEA

VII. APPROVALS

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