



COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

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

STEPHEN R. MAGUIN
Chief Engineer and General Manager

November 1, 2007

File No.: 31R-10.10

Ms. Bobbie Garcia
California Integrated Waste Management Board
Waste Compliance and Mitigation Program
1001 I Street
Sacramento, CA 95814

Dear Ms. Garcia:

**Draft Report on Study to
Identify Potential Long-Term Threats and Financial Assurance Mechanisms for
Long-Term Post-closure Maintenance and Corrective Action at Solid Waste Landfills**

Thank you for the opportunity to submit comments on the subject Draft Report, which is intended to satisfy the mandates in Assembly Bill 2296 (AB 2296). As enacted in 2006, AB 2296 requires the study to: (1) define the conditions that potentially affect solid waste landfills, including technologies and engineering controls designed to mitigate potential risks, in order to identify potential long-term threats to public health and safety and the environment; and (2) study various financial assurance mechanisms that would protect the state from long-term postclosure maintenance (PCM) or corrective action (CA) costs if a landfill owner or operator fails to meet its legal obligation to fund PCM or CA during the postclosure period.

The Draft Report has failed to adequately address this first objective as it only provides a cursory or minimal discussion of engineering controls and does not reduce the risk or need for CA based on these sophisticated technologies that are in place at most modern landfills. The Draft Report has proposed a financial model for a statewide-pooled fund with virtually no technical basis for the fundamental parameters that drive the modeling, resulting in flawed conclusions. Much of the report is subjective and judgmental which is inappropriate considering that it could have far-reaching and costly implications to landfill operators across the State for years to come. To further demonstrate these points, we offer the following comments on the Draft Report:

POLICY-LEVEL COMMENTS

1. The County Sanitation Districts of Los Angeles County supported the subject study in the context that a statewide-pooled fund that covered defaults of PCM and CA would be in lieu of extending the PCM period for financial assurance. We believe that the number of postclosure defaults would be very small, particularly for publicly operated landfills where there are no indications or history of defaults in California. Additionally, the Regional Water Quality Control Board (Regional Boards) already require financial assurance demonstration for reasonably foreseeable CAs. Furthermore, the currently proposed Phase I regulations are intended to improve the cost estimates in closure and PCM plans, and add a contingency to hedge against uncertainty or an underestimation of costs. While the Draft Report explores multiple financial assurance options (statewide pooled fund and/or insurance coverage for PCM and CA defaults) and ways of extending PCM trust funds such as retaining monies from PCM trust funds, we see no justification for multiple layers of financial assurance mechanisms to address a problem that is not pervasive.

2. The financial model in the Draft Report recommends a mandatory statewide-pooled fund that covers the 282 landfills in California (permitted and active after 1988). Since 128 of the landfills are now closed, this fund would be paid by the active landfills. Closed landfills would benefit without any contribution. Consequently, active landfills that have already spent millions of dollars to install extensive environmental control systems would potentially be subsidizing closed landfills that have not made any capital investments to protect public health and safety. Landfills that close in the near-term would also benefit from making fewer contributions but would have equal coverage to those paying more. Additionally, landfills closed prior to 1988 do not necessarily pose a lower risk, so 1988 may not necessarily be the appropriate starting point for the pooled fund.
3. The Draft Report assumes that a potential risk will automatically result in the need for corrective action without any factual basis for that conclusion. There is data available to compare their assumptions for risk to actual CA at California landfills. But this study relies on assumed risk resulting in assumed CA. Additionally, the study does not take into consideration the effectiveness of current enforcement as a means to reduce future risks.

SPECIFIC COMMENTS

4. The financial model is based on overly simplistic and unsubstantiated parameters that do not have a direct connection to a release or probability of a CA, yet these parameters drive the model and its conclusions:
 - *Proximity to Urban Areas* – A landfill in an urban area usually has more oversight from local government and regulators than in rural areas. In addition, an urban landfill may have a large buffer zone, but there are no provisions or allowances in the financial model to account for this as a risk reduction.
 - *Permitted Capacity* – Landfills are engineered structures that are required to meet strict standards, such as slope stability and seismic displacement of liner systems. Adherence to these requirements is irrespective of size. Consequently, permitted capacity or landfill size does not directly translate into risk or need for CA.
 - *Engineering Controls* – The financial model considers engineering control to be whether a landfill is lined or unlined and capped or not capped. There are numerous other technologies and engineering controls installed that are not considered by the financial model. The financial model does not account for these extensive engineering control systems in determining the number of CAs. Landfills, which have spent millions of dollars to put these systems in place, get no credit in the financial model, no reduction in risk, and no minimization of the number of CAs.
 - *Rainfall Intensity* – All landfills are required to design permanent drainage controls to handle the rainfall intensity associated with a 100-year storm. A landfill subject to greater rainfall intensity would have installed a higher capacity drainage system. Consequently, there is no automatic association between rainfall intensity and the need for corrective action.
 - *Depth to Groundwater* – Landfills with underdrains, liner systems, and leachate collection greatly diminish the probability of a release irrespective of the depth to groundwater.
5. The number and duration of correction actions for a landfill are entirely subjective or “best judgment.” There is no technical basis for the numbers used in the financial model. This was reaffirmed by ICF at the October 25th Workshop. To illustrate this point, if the numbers in Exhibits 3-12 and 3-17 of the Draft Report were used, large landfills would always be in CA. For the 240-year horizon in the financial model, large landfills would be in CA virtually every year of that time period:

Low Cost CA = 15 * 3 yr duration = 45 years of CA
Medium Cost CA = 10 * 5 yr duration = 50 years of CA
High Cost CA = 4 * 35 yr duration = 140 years of CA

TOTAL YEARS OF CA = 235 years

Again, this is not based on any fact (science, research, or technical reports).

6. The funding level of \$3.3 million per year suggested in Exhibit 3-38 of the Draft Report will be unsustainable after year 2050 when 90 percent of landfills are expected to close. The remaining 10 percent of landfills will likely be unable to sustain that level of funding. As indicated in the Draft Report, funding is only from active landfills.
7. The Regional Boards already mandate funding for existing CA and for reasonable foreseeable CA. Gas collection and control systems are installed during the active life of the landfill due to requirements by the local, state and federal regulations. Active landfills that have these systems in place should have a lower risk of CA during postclosure and therefore less risk of default due to unexpected funding needs stemming from CA.
8. In Chapter 2 of the Draft Report, ideas are offered by ICF on extending the assurance period of trust funds, such as retaining money. Trust fund monies need to be available for their intended purposes. Retaining money could actually create financial distress or defaults, which is contrary to the goal of study.
9. The risk model, like the financial model, does not fully consider the complete array of engineering control systems that may be in place at a landfill.
10. The term "CA" is generally associated with actions taken to address or remediate a release to the environment. The Draft Report expands the scope or definition of "CA" to include activities not related to releases to environment. This expanded definition of "CA" is not that used in AB 2296, by the Regional Boards, or currently in statute. Another term should be used in the Draft Report to more accurately describe these activities. Additionally, the Draft Report refers to "CA" in the context of active landfills. The AB 2296 mandate only applies to PCM and "CA" during the postclosure period.

Thank you for considering our comments. If you should have any questions, please call (562) 908-4288 and contact Mr. Glenn Acosta, extension 2723 or Mr. Lory Rising, extension 2722.

Very truly yours,

Stephen R. Maguin



Charles Boehmke
Section Head
Planning Section

CEB:GA:ld

cc: Board Members, CIWMB
Mark Leary, Executive Director, CIWMB
Ted Rauh, Program Director, CIWMB
Bill Orr, Division Chief, CIWMB