

Attachment 1

Improvements to the State of California Solid Waste Landfill Post-Closure Care and Financial Assurance Mechanisms

1. ***Trust Fund.*** Establish a "post" post-closure care statewide Landfill Care Trust Fund (LCTF) to provide a source of funding in the event that some solid waste landfill operators will be unable to provide sufficient funding through available financial resources or approved financial assurance mechanisms to continue adequate corrective action (CA) or post-closure care (PCC). According to the CIWMB there are 279 solid waste landfills that have been or will be required to establish PCC financial assurance mechanisms. Also according to the CIWMB, an annual investment of \$18 million beginning in 2005 would be necessary to offset the future value of un-funded PCC costs accruing in the next 50 years. This assumes that the full amount of annual PCC will continue undiminished for the next 50 years – a very conservative approach that likely overestimates the required amount of PCC. The CIWMB has also estimated that, using the same assumptions, an annual investment of \$46 million beginning in 2005 would be necessary to offset the future value of un-funded post-closure costs accruing in the next 100 years.

Based on historical default rates, it is unlikely that more than 5% of all landfill owners or operators would be in a default situation that would require the use of such a trust fund. The vast majority of landfills will be in the control of local governments or financially secure private entities with substantial assets other than a single closed landfill. Further, it is realistically expected that the annual cost of required PCC will decline over time. There are many examples of closed landfills that have been successfully transformed into business parks, recreational facilities, and open space requiring a minimum of ongoing expenditures in excess of available revenues. Thus, not more than about \$5 million per year would be necessary to build up a sufficient reserve to provide a sufficient financial reserve to provide adequate PCC and CA for the small number of solid waste landfills that might be in a default situation. This amount of funding could be generated with a \$0.15/ton surcharge on existing solid waste disposal in California. Such a trust fund would also have the following provisions:

- ***\$0.15/ton land disposal surcharge.*** The \$0.15/ton solid waste LCTF surcharge would be imposed on the disposal of any solid waste into a solid waste landfill in California starting January 1, 2010. This would allow sufficient time for solid waste service providers to adjust contracts and franchise agreements to allow these costs to be covered by those contracts. The CIWMB would be given the authority to additionally increase the surcharge to not more than \$0.25/ton based on a finding that such increase is necessary to maintain the fund given the amount of ongoing and anticipated fund expenditures.
- ***Capping the Fund.*** The LCTF would be capped at \$50 million. Thus, collection of the trust fund surcharge would be suspended at such time the trust fund reaches a balance of \$50 million and would be restarted whenever the trust fund balance falls below \$45 million.
- ***Expenditure by CIWMB.*** Expenditures from the LCTF would be by the CIWMB for legitimate post-closure care or corrective action based on a finding by the CIWMB that the owner of a closed landfill property is unable to provide sufficient funding to cover

reasonable PCC or CA costs at the closed facility and the CIWMB is unable to secure funds from an Financial Assurance mechanism established for the closed facility.

- ***Facilities eligible for Trust Fund expenditures.*** Trust Funds could only be expended at solid waste disposal units that were required to have financial assurance for PCC pursuant to PRC 43600 *after* January 1, 1990.
2. ***Post-Closure Care Period.*** Provide the CIWMB with the clear authority to lengthen or shorten the post-closure care period consistent with federal regulations. There will still be a 30-year PCC period that must begin at the time of closure of the solid waste facility or unit. However, the CIWMB would be allowed to extend that period at any time based on a finding that such extension is necessary to protect human health and the environment. Similarly, an owner of a closed landfill may request to the CIWMB that a PCC period be shortened if the owner is able to demonstrate that protection of human health and the environment will be maintained. The language would be consistent with and no less stringent than federal regulations
 3. ***Corrective Action.*** Provide the CIWMB with the clear authority to require the owner to provide financial assurance for both known and reasonably foreseeable corrective action (CA). Reasonably foreseeable CA would mean that financial assurance coverage must be adequate to address the estimated largest release that a given waste management unit could have prior to the release being reliably detected and contained. Reasonably foreseeable CA does not include response to natural or manmade disasters in excess of the required design standards of state law.
 4. ***Financial Assurance.*** Maintain maximum flexibility for operators to have access to all financial assurance mechanisms allowed under federal law. However, the CIWMB would have access to audited financial statements of the provider of financial assurance and have the authority to require a third-party audit of the financial assurance mechanism at any time.
 5. ***Cost estimate of actual post-closure exposure.*** The CIWMB should require that the cost estimate of PCC and CA must meet the full, anticipated PCC and CA costs at any time. However, the owner should not be required to maintain a cost-estimate or financial assurance for more than is actually estimated to be required going forward from that particular point in time. The cost estimate would be adjusted annually, pursuant to approval by the CIWMB annually during the operating life of the facility or during the approved post-closure care period. However, in addition, the operator should be required to provide an annual estimate of PCC cost for each year during the PCC period required by the CIWMB.
 6. ***Periodic post-closure care evaluation.*** Landfill owners would be required to conduct a periodic review of landfill conditions at the time of closure and at least every 5 years thereafter using landfill evaluation tools acceptable to, and approved by, the CIWMB. The tools must evaluate the threat posed by a closing or closed landfill to human health and the environment and indicate actions that must be taken to protect to human health and the environment.
 7. ***Discounting.*** The CIWMB should be provided with the authority to allow "discounting" of future PCC and costs to take the real value of money into account. That is, in order to guarantee that the availability of, say, \$1 million 20 years from now, only \$553,700 is needed in present-day dollars at a discount rate of 3%.