



Item #2

Discussion And Request For Direction Regarding The Board's Fulfillment Of The Requirements Of AB 2296 For Long-Term Postclosure Maintenance And Corrective Action

California Integrated Waste Management Board

November 10, 2008

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

**INTEGRATED WASTE
MANAGEMENT BOARD**



AGENDA

2:00 - 2:15

Introductions and General Overview - What we hope to accomplish by the end of this working meeting (Bill Orr)

2:15 – 3:00

Preview of 11/10/08 Permitting & Compliance Committee Agenda Item:

- **AB 2296 Accomplishment**
- **Options for completing final portion of AB 2296 requirements**

3:00 – 3:45

Pooled Fund Options:

- **Basic (backstop for defaults only)**
- **Comprehensive (backstop for defaults and divestiture)**
- **Public vs. Private share/access**

3:45 – 4:00

Wrap Up and Next Steps



Purpose of This Item

Has Board Fulfilled AB 2296 Requirements?

Are there any additional activities the Board would like to direct Staff to pursue to satisfy the AB 2296 requirements?

(i.e. Address Default and/or Divestiture)



AB 2296 Requirements

- **Adopt regulations** (referred to as Phase I) **by January 1, 2008**, that specify that closure and postclosure maintenance cost estimates be based on reasonably foreseeable costs the State may occur if it should assume responsibility for those activities due to an owner/operator's failure to do so;
- **Conduct a study by January 1, 2008**, to define conditions that potentially affect solid waste landfills and study various financial assurance mechanisms that would protect the State from long-term postclosure maintenance or corrective action costs;
- **Adopt regulations** (referred to as Phase II) **by July 1, 2009**, to implement the findings of the study; and
- **Develop recommendations for needed legislation by July 1, 2009** to implement findings of the study.



AB 2296 Requirements

- Phase I Rulemaking:
 - Adopted by the CIWMB on December 11, 2007
 - Approved by the Office of Administrative Law (OAL),
 - Became Effective February 25, 2008, and
 - Implemented within Title 27 of the California Code of Regulations.
 - Requires Closure and Postclosure Maintenance Cost Estimates Be Based on State Costs
- ☑ **The Phase I rulemaking package meets the AB 2296 requirement for adoption of regulations by January 1, 2008**



C/PC Cost Estimate Regulations Summary (Phase I)

- Clarify Third Party Costs are the State's Costs
 - Prevailing Wage
 - Caltrans Rates
 - Operator May Justify Alternative Costs
- Increase Financial Means Test from \$10M to \$15M
- Updated Estimates to Reflect "current costs on a unit basis (unit costs)"



AB 2296 Requirements

- Conduct a study by January 1, 2008, to define conditions that potentially affect solid waste landfills and study various financial assurance mechanisms that would protect the State from long-term postclosure maintenance or corrective action costs;
- ☑ **Together Contractor study and staff report meet the AB 2296 requirements for completion of a study by January 1, 2008.**



AB 2296 Study Status

- Final Study Package posted on CIWMB website
www.ciwmb.ca.gov/LEACentral/Financial/2007Study/Deliverables/FinalReport.pdf
 - Transmittal
 - Contractor Study
 - Staff Report
- Revised [Response to Comments](#) posted on CIWMB website
 - Contractor Study
 - Staff Report



AB 2296 Requirements

- Adopt regulations (referred to as Phase II) by July 1, 2009, to implement the findings of the study
- **The Phase II rulemaking package will meet the AB 2296 requirement for adoption of regulations by July 1, 2009 to implement findings of the study**



Extending Financial Assurance

- Draw-down the financial assurance from 30 times the annual postclosure maintenance cost to 15 times
- Require demonstration of good performance at each 5 year permit/plan review cycle in order to receive approval to step-down in 5 times multiplier increments to a minimum 5 times multiplier FA level.
- Maintain 5 times multiplier level until the waste is within 5 years of no longer posing a threat



AB 2296 Requirements

- Develop recommendations for needed legislation by July 1, 2009, to implement findings of the study.
- Does the Board have any recommendations for additional statutory authority needed?



AB 2296 Requirements

- Develop recommendations for needed legislation by July 1, 2009 to implement findings of the study
 - Direct staff under Option 2 regarding any proposed pooled fund legislation.
 - Direct staff under Option 3 regarding any proposed statutory changes that provide CIWMB additional authority to pursue all past owners and operators of a solid waste disposal site.



Has Board Fulfilled AB 2296 Requirements?

- ✓ Adopt Phase I Regulations by 1/1/08
- ✓ Complete Study by 1/1/08
- ✓ If Phase II Regulations Adopted by 7/1/09
- ? Any Statutory Recommendation by 7/1/09?



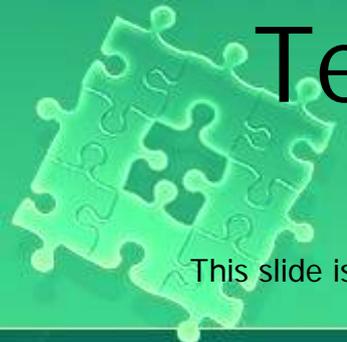
Are there any Statutory Recommendations the Board would like Staff to include in the Report to the Legislature?

Managing Long-Term PCM Risk of Landfill System

Scenario	Assured Risk	Unassured Risk	Std	Rural Publics	Sgl Pvt	Defaults	Divestitures	Total
43X	\$5,590	0	\$11	\$26	\$263	\$300	0	\$300
30X	4,562	\$1,232	29	26	41	96	0	96
15X	2,972	2,748	60	26	84	170	0	170
5X	2,153	2,955	75	26	103	204	\$578	782
Status Quo	1,822	3,172	83	26	120	229	667	896

\$ in Millions over 100 years

Note: A [text description of this table](#) is available.



Text Description of Table from Slide 15

This slide is not part of the original presentation, but is included to provide a description of the content on the previous slide (Slide 15), for accessibility purposes.

- This slide contains an image of a table of information regarding the postclosure maintenance cost exposure to the State presented for various categories of landfill operators and various options or scenarios that the Board considered as alternatives for amendments to current regulations for financial assurance demonstration requirements for postclosure maintenance costs which are faced over the next 100 years.
- The first row identifies the headings for each column.
- The column headings are abbreviated titles for – Scenario, Assured Risk, Unassured Risk, Standard Defaults, Rural Public Defaults, Single Private Defaults, Defaults (in total), Divestitures, Total Exposure (Defaults and Divestitures)
- The Scenarios are identified in each of the rows.
- The scenarios identify multiples of the annual postclosure maintenance costs to be provided in a financial assurance demonstration from the landfill operator to the State. The scenarios listed are 43 times the annual postclosure maintenance cost, 30 times, 15 times, 5 times, and the status quo - which is the current regulatory requirements carried out to a worse-case situation of no financial assurance demonstration at the end of 30 years.
- Listing the values of exposure under each column, the table identifies:
- For a scenario of 43 times the annual postclosure maintenance cost, the exposure in each category or risk is listed as - assured risk is \$5.59 million, unassured risk is \$0, standard defaults are \$11 million, rural public defaults are \$26 million, single private defaults are \$263 million, total defaults are \$300 million, divestitures are \$0, and Total Exposure is \$300 million.
- For a scenario of 30 times the annual postclosure maintenance cost, the exposure in each category or risk is listed as - assured risk is \$4.562 million, unassured risk is \$1.232 million, standard defaults are \$29 million, rural public defaults are \$26 million, single private defaults are \$41 million, total defaults are \$96 million, divestitures are \$0, and Total Exposure is \$96 million.
- For a scenario of 15 times the annual postclosure maintenance cost, the exposure in each category or risk is listed as - assured risk is \$2.972 million, unassured risk is \$2.748 million, standard defaults are \$60 million, rural public defaults are \$26 million, single private defaults are \$84 million, total defaults are \$170 million, divestitures are \$0, and Total Exposure is \$170 million.
- For a scenario of 5 times the annual postclosure maintenance cost, the exposure in each category or risk is listed as - assured risk is \$2.153 million, unassured risk is \$2.955 million, standard defaults are \$75 million, rural public defaults are \$26 million, single private defaults are \$103 million, total defaults are \$204 million, divestitures are \$578 million, and Total Exposure is \$782 million.
- For a scenario of the status quo, the exposure in each category or risk is listed as - assured risk is \$1.822 million, unassured risk is \$3.172 million, standard defaults are \$83 million, rural public defaults are \$26 million, single private defaults are \$120 million, total defaults are \$229 million, divestitures are \$667 million, and Total Exposure is \$896 million.

*Are there any additional
Recommendations the Board would like to
include in Report?*

- Default – a certain level is unavoidable under any regulatory option
 - Statutory
 - Limited Pooled Fund



Managing CA Risk of Landfill System

- \$1.8B modeled CA over 100 Yrs
- \$50 M modeled CA defaults over 100 Yrs
- Affect of Divestiture on CA Defaults not previously considered



Default

Limited Pooled Fund (Backstop only)

- Estimated Defaults \$220-254 M over 100 Yrs (\$170-204 M PCM + \$50 M CA)
- Estimated Tipping Fee=\$.06/ton
- Pooled Fund Cap=\$45 M

Are there any additional Recommendations the Board would like to include in Report?

- Divestiture

- Statutory

- Enhanced Pooled Fund (defaults+divestiture)
- Make Former Owners and Operators Liable

- Regulatory

- Add 5X Step-up provision for lack of continued performance
- Return to 15X for new owners
- Change to minimum 15X without Pooled Fund



Divestiture

Enhanced Pooled Fund (Backstop only)

- Estimated Defaults \$220-850+ M over 100 Yrs
- Estimated Tipping Fee=\$.15/ton
- Pooled Fund Cap=\$250 M

System Costs Associated With Risk

- A Certain Level of Defaults Will Occur Regardless of the Amount of Individual Financial Assurance
- Imposition of a 100-year scenario will likely precipitate an increase in early defaults of Single Private operators
- Divestiture Leading to Default Can Be Controlled:
 - Buyer Financial Means
 - Buyer Financial Assurance
 - All Owners Retain Responsibility



Management of Risk

- Operator FA Demonstration Level
- Encouraging Good Performance
- Managing Divestiture Through FA Requirements
- Minimizing Defaults



Options for Further Direction

1. Prepare a Report to the Legislature summarizing Board fulfillment of AB 2296 requirements including any statutory recommendations the Board directs
2. Further explore and provide technical support on any Pooled Fund legislation
3. Provide technical support on any legislation providing CIWMB authority to pursue former owners/operators
4. Modify Phase II rulemaking to address divestiture
5. Develop Phase III regulatory concepts to address divestiture if not dealt with by Legislature in 2009



Public-Private Options

- **Share**
 - Limited
 - Enhanced
- **Access**