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California Refuse Removal Council
Los Angeles County Sanitation Districts
Rural Counties Environmental Services Joint Powers Authority
SCS Engineers
Solid Waste Association of North America, California Chapters
Waste Management***

September 9, 2005

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California Integrated Waste Management Board
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SUBJECT: COMMENTS ON DRAFT PROPOSED PERMIT IMPLEMENTATION
REGULATIONS (AB 1497)

Dear Mr. de Bie:

Thank you for the opportunity to provide further comments on the draft proposed permit implementation regulations (AB 1497). As you know, the undersigned are representatives of a coalition of California entities providing comprehensive solid waste collection, transportation, processing, recycling, disposal and consulting services. While we strongly support the overall objective of the proposed regulations to clarify and enhance the requirements for solid waste facility permitting in California, consistent with statute, we would like to offer the following suggestions to further modify the draft proposed regulations.

One of our major concerns is the fact that the proposed regulations don't appear to address the intent of AB 1497. AB 1497 evolved from a *perception* that the EAs don't always make a correct determination regarding whether an RFI/RDSI change requires a RFI amendment or a permit modification or revision (i.e. whether a change is "significant" or not). The legislation calls for a public hearing prior to any such significant change to a permit by the EA, and for CIWMB staff to define "significant changes". These proposed regulations fail to really define significant changes, and, in addition, the regulations propose to give new regulatory authorities to the EA that are not mandated in the legislation.

We believe this regulatory package, which should implement the mandates of AB 1497, is the opportunity to improve the permit process and bring consistent statewide standards to all stakeholders. We fully support the California Integrated Waste Management Board (CIWMB), its mission, and the directives of Assembly Bill 1497. However, at this time,

we believe that the proposed informal draft regulatory language strays from the spirit and intent of AB 1497.

1. Change in Operation

We are most concerned with the language on page 1, line 21, that deletes the term “significant” from the regulations. As pointed out above, one of the mandates of AB 1497 was for the CIWMB to define “significant change” -- not delete it altogether. The resultant effect of this proposed language is that any change to an RFI, regardless of how minor, would trigger at least an RFI amendment process. This means that even minor changes could take at least 180 days to approve “unless otherwise determined by the EA”. We believe that there must be categories of “minor changes” (e.g., insignificant changes) that the regulations recognize as being sufficiently minor, or outside the purview of the EA, and can be made much more rapidly.

From a broader permitting perspective there is growing pressure to include descriptions of all activities at a solid waste facility in the RFI – regardless as to whether all activities are actually regulated by the EA and CIWMB. This could include activities that are not even subject to EA (or CIWMB) authority – such as AB 2020 drop-off centers. In proposing these regulatory changes, the CIWMB surely is not suggesting that the addition or change of an AB 2020 drop-off program described in a facilities RFI cannot be added or moved to another location within a permitted facility without an RFI amendment.

We suggest an approach that is modeled after the permitting regulations of the DTSC that recognizes a class of “minor modifications” that can be made to a facility with minimal difficulty at *hazardous waste facilities*. Because the EAs and the CIWMB deal with solid waste, we suggest a slightly more flexible approach than is required by DTSC for *hazardous waste facilities*.

We believe that the regulations should provide that minor changes can be made at a solid waste facility without any discretionary action on the part of the EA or the CIWMB. Minor changes should be able to be made immediately upon notice to the EA – and with necessary changes to the RFI, if required. Of course, these minor changes should be also considered non-discretionary within the meaning of CEQA

In Attachment A to this letter we have provided a description of those activities that should be considered “minor” changes.

2. RFI & Permit Amendments and CEQA.

For RFI amendments, permit modifications and permit revisions (or in other words, discretionary actions), LEAs are required by law to comply with CEQA – separate and distinct from regulations adopted by the CIWMB. CEQA compliance can take many forms -- from exemptions all the way through EIRs. EAs have to make a specific CEQA finding for each "approval" that they make. For example, if an EA determines that an RFI amendment or permit revision approval is necessary, that EA can use a previous CEQA document that was prepared for a prior "approval". Or the EA can prepare a Notice of Exemption, a negative declaration, or an EIR.

The proposed regulations mistakenly continue to expand on the concept that EAs are required to look back to previous CEQA documents in order to determine if an operational or design change was *specifically* addressed in the previous CEQA document. As further discussed below, this looking back will almost always result in a finding that the previous CEQA document did not address a design or operational change *specifically* (or apparently in order to meet the CIWMB's test, "word for word") because such document would have been prepared for an "approval" under a different set of circumstances.

We request that the CIWMB provide guidance to EAs and write regulations to use past CEQA documents more appropriately (and certainly more in line with local agency use of past CEQA documents). We believe that past CEQA documents (and CEQA case law and guidelines) should be used to determine if a proposed design or operational change presents a significant environmental consequence. If an EA finds that the change is not significant, then a notice of exemption would be appropriate. If a change is significant, and will lead potentially to significant environmental consequences, then additional CEQA review is warranted. For example, we understand that most local planning agencies, as a rule of thumb, apply a "10% rule" to proposed changes. Meaning, if a proposed change is within $\pm 10\%$ of what was in a CEQA document, then the change is insignificant. Thus, a change in traffic of up to $\pm 10\%$ could be considered insignificant.

The proposed changes to Section 21665(c)(1) limit the discretion of an enforcement agency to approve modest changes at a facility as RFI amendments and may have the unintended consequence of unnecessarily limiting opportunities for meaningful public participation in that decision making process. These changes also highlight long-standing concerns about the proper application of CEQA to the permit revision/RFI amendment process.

Existing Section 21665(c), as a whole, sets forth three criteria that must be satisfied in order to process a proposed change as an RFI amendment. The first criteria deals with the relationship between the proposed change and CEQA and requires that **either** the proposed change is "consistent with all applicable certified or adopted CEQA documents" **or** "has been determined by the LEA that the change would not create any adverse impacts and is exempt from the requirements of CEQA." The second criterion essentially requires that the proposed change be consistent with state minimum standards. The third criterion requires that the proposed change not conflict with any permit terms and conditions.

Staff proposes to change the first criteria dealing with the relationship between a proposed change and CEQA by requiring that it meet **both** of the following conditions:

1. the proposed changes is consistent with the all applicable certified or adopted CEQA documents, **and**
2. a subsequent EIR is not required pursuant to Title 14, Chapter 3, Article 11 section 15162 and the EA has determined that no other environmental documentation should be developed regarding the change pursuant to section 15162(b).

If one applies a literal interpretation of the phrase “consistent with the all applicable certified or adopted CEQA documents” (i.e. the proposed change was specifically addressed in such documentation) then under the proposed regulatory language change a permit modification or revision would still be required even though no subsequent EIR is required and the EA properly determined that no other environmental documentation should be developed regarding the change and that the proposed change is consistent with state minimum standards and does not conflict with the permit terms and conditions.

CEQA per se does not require this type of rigid consistency for a change in a project for which an EIR or Negative Declaration has been prepared. If the intent of that language is merely to assure compliance with the requirements of CEQA, then this language is not necessary and should be deleted. If the intent of this language is something different, please explain.

The staff proposed changes to the second part of the first criteria are an improvement over the existing regulatory language, but nonetheless are unnecessarily restrictive. Specifically, we believe that the RFI amendment should be permitted on the basis of an initial study and the adoption of Negative Declaration that requires a finding of “no significant impacts”. In effect, this would directly link the “significant change” language of PRC Section 44004 to “significant impact.” as determined under CEQA as was proposed to staff in an earlier letter. Such a change would also enhance opportunities for meaningful participation in that decision-making process. If an LEA believes that a proposed change will have no impact but also recognizes that it is a “close call”, the prudent course of action and one that facilitates public input would be to conduct an initial study and adopt a Negative Declaration (assuming the study confirmed the initial belief.) Under the proposed language, the LEA would have locked himself and the operator into a permit revision or modification. This creates a powerful incentive to proceed with a determination that no other environmental documentation should be developed and limits the opportunity for public input through the CEQA process.

We submit that Section 21665(c)(1) should be amended to read:

~~the EA finds that the proposed change is consistent with all applicable certified and/or adopted CEQA documents or has been determined by the EA that the change would not create any adverse environmental impacts and is exempt from the requirements of CEQA, and a subsequent EIR is not required pursuant to Title 14, Chapter 3, Article 11 section 15162 and the EA has determined that no other environmental documentation should be developed regarding the change pursuant to section 15162(b), or the EA has prepared an initial study and adopted a negative declaration, and;~~

3. Appeals

The solid waste industry strongly supports the language contained in Section 21666 that provides for a process to appeal an action by the EA in the interpretation of these regulations. We request that this or similar provisions be specifically included in the final regulations.

4. Review of Permits.

The provisions of Section 21675 do not appear to recognize that a five-year review may also result in a modified RFI without necessarily involving a permit modification or revision. Thus, we request that the following change be made to 27 CCR 21675 (a)

- (a) Except as provided in section 21680, all full SWFPs ***and accompanying RFIs*** shall be reviewed and, if necessary modified or revised ***and/or the RFI amended,*** from the date of last issuance at least once every five years.

5. Changes that do not result in Permit Changes

AB 1497 only established new requirements for changes to facilities that are not authorized by an existing permit. Thus, the new provisions of these regulations should only apply to those changes that require a change to the permit. If the permit itself does not change, then the new provisions related to public notices and public meetings should not apply. We question whether changes to a RFI that do not result in any change to the facility permit should be subject to these extensive new requirements. We request that the provisions related to AB 1497 only apply to those situations when the language of the permit must be changed. Minor changes and RFI changes should not be subject to any additional new procedural requirements. We specifically request that the notification requirements for RFI amendments that do not result in Permit Modifications or Revisions be dropped from the proposed regulations (e.g., subdivision (b) of proposed Section 21660.1).

6. Publication of Notice for Permit Modification Applications

The solid waste industry supports the notice publication requirement for RFI Amendments and Permit Modifications in Section 21660.1 but we are requesting clarity regarding the time for the notice to be posted as follows:

- (b) Publication of Notice for RFI Amendment and Permit Modification Applications

In addition ... the publication (in hard copy or electronically) shall occur at one or more of the following locations 10 days prior to EA accepting the application **for filing**:

This change will ensure that the notice is posted prior to acceptance for filing but after receipt of the proposed change and also avoid the expense of providing notice if the EA determines the application is not complete or correct.

7. Informational Meeting

An extension of the public notice requirement may be necessary in certain cases but the language in the proposed regulations is entirely open-ended. We propose revising section 21660.2 (c) as follows:

(3) EAs may undertake additional measures to extend public notice **by up to an additional 30 days** and to encourage attendance by any persons who may be interested in the facility that is the subject of the meeting.

8. Allowance of Meeting Substitution

The solid waste industry strongly supports the provisions of these regulations that allow previously held public meetings on the same project to meet the public meeting requirements of these proposed regulations. We request that these provisions, particularly proposed Section 21660.4, be retained in the final rule.

9. Definition of "Correct"

We also support maintaining a separation between the solid waste facility permit process and the conditional use permit (CUP). The proposed regulations include what appears to be an affirmative statement that "Correct" does not include a correctness review of the CUP. While we support this statement in concept, we are struggling with the proposed language inserted on Line 35-36, Page 17 and Line 21-22, Page 21. We would prefer that this language be deleted and that similar language be added on Line 26, Page 19 as follows:

(9) Land Use and/or Conditional Use Permits (This does not require a review of the land use or conditional use permit, only a verification that a land use permit or conditional use permit exists for the project.)

We appreciate the opportunity to provide these comments for your further consideration. Please contact any of the undersigned if you have any questions or require further information.

Sincerely,

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Attachment A: Minor Changes to Solid Waste Facilities

Cc: Rosario Marin, Chair, CIWMB
Rosalie Mulé, Member, CIWMB
Cheryl Peace, Member, CIWMB
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Attachment A

Minor Changes to Solid Waste Facilities

21621. Minor Changes

- a. Minor changes, including but not limited to those specified in subdivisions (b) and (c), may be made at a solid waste facility. The EA may identify other minor changes upon written notice to the CIWMB. Minor changes do not require prior approval by the EA. These changes may be made immediately at the facility. If the changes will result in modifications to the RFI, then copies of the changed pages of the RFI shall be provided to the EA and the CIWMB within 15 days of making the change.
- b. Changes that are not subject to the authority of the EA and CIWMB. These changes may be made at any time at a solid waste facility. Examples include programs, equipment and services that may be provided or required pursuant to other regulatory programs – but which are not subject to regulation by the EA and CIWMB.
- c. Minor Operational Changes
 1. Administrative and informational changes.
 2. Correction of typographical errors.
 3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls).
 4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the operator to provide for more frequent monitoring, reporting, sampling, or maintenance.
 5. Changes in interim compliance dates specified in permits provided the final compliance date is not changed and the interim compliance date are not part of a separate enforcement action.
 6. Changes in expiration date of permit to allow earlier permit termination.
 7. Changes in ownership or operational control of a facility.
 8. Changes in the facility to conform to new regulations adopted by the CIWMB or other agencies or changes to conform to revisions of other agency permits.
 9. Changes in procedures for maintaining the operating record or the RFI.
 10. Changes in the training plan that do not affect the type or decrease the amount of training given to employees.
 11. Changes in emergency procedures (i.e., spill or release response procedures) that include replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.
 12. Changes in name, address, or phone number of coordinators or other persons or agencies identified in any emergency response plan.

13. Changes in the construction quality assurance plan that the owner certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications.
14. Replacement of an existing environmental or operational monitoring point that has been damaged or rendered inoperable, without change to location or design of the monitoring point.
15. Changes in a sampling or analytical procedure or monitoring schedule that will not reduce accuracy or frequency.
16. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility provided that such changes do not exceed permit limits.
17. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period.
18. Changes in the expected year of final closure, where other permit conditions are not changed.
19. Changes in procedures for cleaning or decontamination of facility equipment or structures.
20. Changes in tanks or containers used for storage of materials associated with the operation of the facility.
21. Changes in name, address, or phone number of contact in post-closure plan.
22. Changes to the expected year of final closure, where other permit conditions are not changed.
23. Changes to maintenance operations associated with the operation of the facility.
24. Addition of a roof or other changes to a facility without alteration of the facility capacity.
25. Replacement of a waste storage or processing activity another waste storage or processing activity of the same design and capacity and meeting all conditions in the permit.
26. Modifications to un-constructed units to comply regulations adopted by the CIWMB.
27. Modifications to units or operations that result in a decrease in the amount of waste than can be handled at the facility.
28. Replacement of a building with a building that meets the same design standards provided the waste capacity is not increased and the replacement building meets the same conditions in the permit
29. Updated changes to documents that are included by reference in a permit or RFI.