

FINAL STATEMENT OF REASONS

PERMIT IMPLEMENTATION (AB 1497) REGULATIONS

December 2006

GENERAL COMMENTS APPLICABLE TO STATEMENT OF REASONS

The California Integrated Waste Management Act (Act), Public Resources Code (PRC) section 40000 et seq., provides for the protection of public health and safety and the environment through waste prevention, waste diversion, and safe waste processing and disposal. PRC section 40502 requires the California Integrated Waste Management Board (CIWMB) to adopt rules and regulations including minimum standards for solid waste handling and disposal which do not duplicate any requirements that are already under the authority of the State Air Resources Board or the State Water Resources Control Board (PRC Section 43020). PRC Section 43021 requires the regulations to include standards for the design, operation, maintenance, and ultimate reuse of solid waste facilities. PRC Section 44002 prohibits the operation of a solid waste facility by any person who has not been issued a solid waste facilities permit. PRC Section 44004(a) prohibits an operator of a solid waste facility from making a significant change in the design or operation of a solid waste facility that is not authorized by the existing permit, unless the change is approved by the enforcement agency (EA), the change conforms with the Act and all regulations adopted pursuant to the Act, and the terms and conditions of the solid waste facilities permit are revised to reflect the change. The term “significant change in the design or operation of a solid waste facility that is not authorized by the existing permit” is not defined in statute or regulation.

Chapter 823 of the Statutes of 2003 (AB 1497, Montanez), amended PRC Section 44004 to require that the CIWMB (to the extent resources are available) adopt regulations that define the term “significant change in the design or operation of the solid waste facility that is not authorized by the existing permit.” AB 1497 also required the CIWMB to implement new public noticing and hearing requirements applicable to the EA when processing applications for permit revisions. Prior to AB 1497, there was no requirement that the EA notice and hold a public hearing when processing an application for a permit revision. The only other hearing requirements for permit actions taken by the EA are for new construction, demolition and inert debris (CDI) permit applications (Title 14 sections 17383.10 and 17388.6). The CIWMB directed staff at its January 2004 meeting to investigate the application of the CDI hearing requirements for new CDI permits to other solid waste facilities in order to provide consistent hearing and notice requirements for different types of solid waste facilities. The CIWMB further directed staff at its November 2004 meeting to implement the permit regulation development plan presented by staff, which includes the AB 1497 requirements, the application of the CDI hearing requirements for new permits to other solid waste facilities, and other permitting requirements to provide clarification and consistency to the existing regulations.

The proposed regulations:

- define the phrase “significant change in the design or operation of the solid waste facility that is not authorized by the existing permit,” which determines when a solid waste facilities permit needs to be revised

- establish a methodology (accompanied by an explanatory decision tree) for EAs to follow when presented with a request by an operator to make changes to a solid waste facilities permit; by applying the methodology, the EA determines how to accommodate the changes proposed by the operator – through a report of facility information (RFI) amendment, a modified permit, or a revised permit
- establish, apart from the methodology, a list of changes in the design or operation of a solid waste facility that would always be considered significant and would require a revision to a solid waste facilities permit
- authorize a “modified permit” as a new method to change activities at a solid waste facility that will allow modifications to a permit for changes that are less than a “significant change...,” as defined in the proposed regulations
- implement additional noticing requirements for amendments to the RFI and modified, new and revised permits, and establish informational meeting (hearing) requirements for new and revised full permits
- clarify that an operator can make minor changes as currently practiced at a solid waste facility which do not require EA review and approval if the change meets specified criteria, the operator notifies the EA as required, and the change is on the minor change list or meets specified criteria
- clarify the relationship between the solid waste facilities permit and local land use decisions and approvals
- establish a new requirement that operators include with the permit application a list of all public notices and meetings conducted relative to the permit application
- require the EA to notify all facility operators when they must apply for a five-year permit review of their permit, bringing consistency to the process
- require the EA to conduct its inspection program so that facility inspections are unannounced and random, insofar as possible

Staff has conducted an extensive, year-long informal rulemaking process to solicit input from stakeholders in the scoping and drafting of the proposed regulations. To start the process, a team of CIWMB staff and EAs was assembled to develop possible approaches to address the AB 1497 requirements and CIWMB-directed changes to permitting requirements. These approaches were presented by CIWMB staff at public scoping meetings on April 4, 2005 in Sacramento and on April 7, 2005 in Diamond Bar. Both meetings were audiocast via the internet and the meeting in Sacramento included a video conference with stakeholders in Fresno. On August 22, 2005, staff held a public workshop to solicit feedback on a preliminary draft of the proposed regulations. This workshop was webcast via the internet and four teleconferencing locations were available. Staff summarized comments from the scoping meetings and the workshop, along with audio recordings of all three sessions, and from written comments received during the informal comment periods for developing the regulatory scope and drafting regulatory language. All of this information can be found on a web page created for the project at <http://www.ciwmb.ca.gov/Rulemaking/PermitImplem/>.

The web page serves as the main foundation for the project and all information relative to the informal and formal rulemaking processes is posted on the web page, which is kept current. In addition to the web page, an extensive mailing list of over 2,000 individuals or organizations has been put together, which includes the CIWMB’s Listserv for CIWMB/Committee meetings, all

owners/operators for active solid waste facilities, all EAs, stakeholders list for CDI regulations, and a list of stakeholders derived from the Cal/EPA Environmental Justice (EJ) project. This mailing list has been used to notify stakeholders of upcoming workshops and meetings, and encouraged stakeholders to check the web page frequently to get current information and to provide comments on what is being proposed.

Staff presented draft regulations to the CIWMB's Permitting and Enforcement Committee at its meeting in November 2005, and requested direction from the Committee to initiate the formal rulemaking process with a 60-day comment period. The Committee directed staff to initiate a 60-day formal comment period on the proposed regulations and to work with stakeholders in the development of two lists that could be inserted into the regulations prior to beginning the comment period: first, a list of minor changes that would not require EA review and approval prior to the operator carrying out a proposed change at a facility, and, second, a list of changes that would always require a revision to the permit before the operator may carry out the proposed change. A work group of interested stakeholders was formed to generate the lists and meetings were held November 21 and 29, 2005, and December 16, 2005. These lists were identified in Section 21620 of the proposed regulations for the 60-day comment period as alternatives 1, 2, and 3. The proposed regulations were then submitted to the Office of Administrative Law for a 60-day formal public notice and comment period, which was initiated on April 7, 2006. In preparation of the formal comment period, staff conducted informal presentations on April 3 and 5, 2006 in Sacramento and Diamond Bar, with audio broadcasting on the web, to provide an overview and contextual explanation of the regulations proposed for the 60-day comment period. A public hearing was held on June 5, 2006 in Sacramento, with audio broadcasting on the web, to receive comments on the 60-day regulations and the comment period closed on June 6, 2006.

On September 5, 2006, after considering comments from stakeholders and the public, the Committee directed staff to initiate an additional 15-day comment period and to make further modifications to the proposed regulations, including incorporating into the regulations the three lists as follows: 1) Alternatives 1 and 2 were combined into one minor change list and revised to provide clarity and correct redundancy, with language added that minor changes "include but are not limited to" what is listed; and 2) Alternative 3 as the significant change list. The comment period ran from September 11, 2006 to September 26, 2006. On October 17, 2006, after considering comments from stakeholders and the public, the CIWMB adopted the proposed regulations.

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Title 27:	Environmental Protection
Division 2:	Solid Waste
Chapter 4:	Documentation and Reporting for Regulatory Tiers, Permits, WDRs, and Plans
Article: 1	General

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

Section 21563. CIWMB – Scope

Subsection (a)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (b) and (b)(1) and (c)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (d)(3)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (d)(4)

A definition of “informational meeting” is added and is necessary to establish the nature of the meeting and to distinguish it from a “public hearing” held in connection with certain legislative or adjudicative proceedings by public agencies. AB 1497 requires the EA to hold a public hearing before making a determination on the action to be taken by the EA on an accepted application package. The hearing as described in AB 1497 is an informational meeting where the public is provided an opportunity to hear about the proposed solid waste activities to be permitted and to comment on the preliminary determination being espoused by the EA. No decision is made at the meeting. In contrast, at a typical “public hearing” by a government agency, a decision is made at or after the hearing on the basis of the information presented at the hearing. To clarify this point, a statement is added to the definition that an EA-conducted informational meeting fulfills the AB 1497 requirements for a public hearing. Note that proposed Section 21660.4 allows an EA to substitute a previously held public meeting or hearing in place of the required informational meeting if specified criteria are met and the applicant does not object, in which case that meeting or hearing would satisfy the AB 1497 requirements.

Subsection (d)(5)

A definition of “nonmaterial change” is added to identify the type of change proposed by an operator that would qualify for a permit modification, rather than a permit revision. This

definition is necessary because “nonmaterial change” is a term used in the regulations to identify certain activities. To qualify as a “nonmaterial change,” the proposed change must not result in any physical change that would alter the approved design or operation of the facility. The definition includes clarification that the term “nonmaterial change” only applies to permit modifications, making it clear that the term does not apply to other permit-related processes, such as minor changes, RFI amendments, or revised permits.

Subsection (d)(6)

A definition of “significant change” is added to comply with AB 1497, which requires the CIWMB to adopt regulations that define the term “significant change in the design or operation of the solid waste facility that is not authorized by the existing permit.” This definition is necessary because “significant change” is a term used in the regulations to identify certain activities. For a proposed change to be deemed a significant change by the EA, it must be a change in the design or operation of a solid waste facility that the EA has determined, using the methodical process described in Section 21665, to be of such consequence that the permit needs to include further restrictions, prohibitions, mitigations, terms, conditions, or other measures to adequately protect public health, public safety, ensure compliance with State minimum standards or to protect the environment. Included within the definition is the methodical process used by the EA in determining whether a change is significant or not. This allows the EA to consider site-specific considerations and circumstances when making the determination, because what may be significant at one facility may not necessarily hold true for another. Whether a change is significant or not depends on each facility’s existing permit conditions, unique characteristics, local issues, community, and climate. The definition includes clarification that it is only for the purpose of determining when a permit should be revised as a process for reviewing and approving the requested changes in design and operation of the facility, and it should not be utilized for any other purpose, such as determining when a change in design or operation at a facility requires compliance with CEQA.

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PERMIT IMPLEMENTATION (AB 1497) REGULATIONS

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Title 27:	Environmental Protection
Division 2:	Solid Waste
Chapter 4:	Documentation and Reporting for Regulatory Tiers, Permits, WDRs, and Plans
Article: 2	CIWMB – Applicant Requirements

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

Section 21570. CIWMB – Filing Requirements

Subsection (a)

This subsection is amended to add a new requirement that the operator of a disposal site that is required to have a new, modified, or revised full solid waste facilities permit, submit a copy of the application form to the director of the local agency that oversees local land use planning in the jurisdiction in which the site is located at the same time an application for a solid waste facilities permit is submitted to the EA. This is necessary to help ensure that the local planning department is aware that the operator has proposed a new facility or to make changes to an existing facility. The local planning department may not be informed by the operator of changes that may require some action relative to land use entitlements. By providing a copy of the application, an opportunity is created for the local planning department to make an independent determination of the need for the local entitlements to be addressed. It also allows for an increase in the opportunity for communication between the EA and the land use authority during the permitting process. The local planning department could then take action, if it so chooses, if a facility proposed to operate as described in the solid waste facilities permit application in a manner that would be inconsistent with local land use entitlements or other local land use regulations. The appropriate agency for verifying if a facility would operate consistent with a local land use entitlement is the entity that granted the entitlement, namely local government, and not the State of California through the EA programs.

Minor typographical corrections are made with no change to the existing requirements.

Subsection (b)

This subsection is amended to add a new requirement that the operator of a solid waste facility that is required to have a new, modified, or revised full solid waste facilities permit, other than a disposal site, submit a copy of the application form to the director of the local agency that oversees local land use planning in the jurisdiction in which the site is located at the same time an application for a solid waste facilities permit is submitted to the EA. This is necessary to help ensure that the local planning department is aware that the operator has proposed a new facility

or to make changes to an existing facility. The local planning department may not be informed by the operator of changes that may require some action relative to land use entitlements. By providing a copy of the application, an opportunity is created for the local planning department to make an independent determination of the need for the local entitlements to be addressed. It also allows for an increase in the opportunity for communication between the EA and the land use authority during the permitting process. The local planning department could then take action, if it so chooses, if a facility proposed to operate as described in the solid waste facilities permit application in a manner that would be inconsistent with local land use entitlements or other local land use regulations. The appropriate agency for verifying if a facility would operate consistent with a local land use entitlement is the entity that granted the entitlement, namely local government, and not the State of California through the EA programs.

Minor typographical corrections are made with no change to the existing requirements.

Subsection (c)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (f)(6)

In the “*Note*” section the minor typographical corrections are made with no change to the existing requirements.

Subsection (f)(9)

This subsection is deleted to remove the specific requirement that the operator include as part of a complete and correct application package a copy of land use entitlements for the facility. This is necessary to avoid promoting/creating any conflict between the local jurisdiction’s land use permit/entitlement and the solid waste facilities permit process. Under existing regulations, a complete permit application requires inclusion of the land use and/or conditional use permit (CUP) applicable to the facility. EAs are required to review the permit application to determine if it is correct. Other than using the information provided in the land use or CUP to better understand the project described in the application, it is not clear in existing regulation what the EA should be doing relative to reviewing the land use or CUP. Delays in the processing of some permit applications have resulted when EAs reject applications because they find them to be inconsistent with the land use entitlements. State law has not mandated that the EA be an agency required to verify if the information in the land use approval is correct or if the facility has the approval of the local government to operate as proposed under a solid waste facilities permit. The appropriate agency for making local land use determinations is the local government having jurisdiction, in most cases, the city or county in which the facility is located.

To provide clarity, the proposed regulations remove the requirement that applicants submit land use entitlements to the EA in their applications, thus excluding local land use from EA decisions on acceptance of a complete and correct permit application package. In its place, the new regulation advise (but do not require) the EA to consider land use entitlements when drafting permit terms and conditions, which is when the EA considers the content of other entitlements, permits, and approvals when processing a solid waste facilities permit (see Section 21650(i)). The Note in Section 21650(i) is amended to clarify that when writing permit conditions the EA should be aware of and take into consideration other permits, entitlements and approvals, such as local use permit conditions, mitigation measures imposed under the California Environmental Quality Act, Air Pollution Control District/Air Quality Management District permits to construct

and operate, Department of Fish and Game permits, Coastal Commission approvals, and others. Further clarification is provided that when writing permit conditions the EA should take into consideration PRC Section 44012, which requires the EA to ensure that primary consideration is given to protecting public health and safety and preventing environmental damage, and the long-term protection of the environment. This approach acknowledges that the EA should be aware of and take into consideration other permits and approvals when writing permit terms and conditions, but does not put the EA in the position of enforcing local land use permit conditions by not processing a solid waste facilities permit application. Nothing in the proposed regulations will prevent or hinder a local jurisdiction from carrying out their responsibility relative to enforcing local land use requirements. Operators are still bound to comply with local land use permit conditions, which are enforced by local agencies that are charged with the responsibility.

Subsection (f)(9)

The subsection, formerly (f)(10), is renumbered to conform with the deletion of Subsection (f)(9). A minor typographical correction is made with no change to the existing requirements.

Subsection (f)(10)

The subsection, formerly (f)(11), is renumbered to conform with the deletion of Subsection (f)(9). A minor typographical correction is made with no change to the existing requirements.

Subsection (f)(11)

This subsection is added to establish a new requirement that the operator of a solid waste facility that is required to have a new, modified, or revised solid waste facilities permit, submit to the EA, as part of the application package, a list of all public hearings and other meetings open to the public that have been held or copies of notices distributed that are applicable to the proposed solid waste facilities permit action. CIWMB agenda items for new and revised permit actions currently include a description of the level of community outreach used for purposes of addressing Environmental Justice (EJ) as it relates to the permit actions being considered. This information assists the CIWMB in determining what additional actions if any might be needed to meet EJ objectives. The information is received from EAs who often depend on operators for details. Requiring the operator to submit a list of all public notices and other meetings open to the public that have been conducted relative to the changes being requested in the application strengthens the reporting of this information to the CIWMB and the furthering of EJ in the consideration of permit actions. This is necessary to be consistent with the intent of AB 1497, which requires that EJ concerns be considered in developing the regulations and new public noticing and hearing requirements be implemented for permit revisions.

Section 21580. CIWMB – Submittal of an Incomplete Application Package

This section is amended to add a new requirement that clarifies the timing for an EA to notice and hold an informational meeting on a new or revised permit application after the EA has deemed the incomplete application package as complete and correct. The EA is required to notice and hold an informational meeting within 30 days after deeming an application complete and correct. This clarification is necessary to conform to the public noticing and informational meeting requirements in Section 21660 and AB 1497.

Minor typographical corrections are made with no change to the existing requirements.

Section 21620. CIWMB - Change in Design or Operation

This section provides the process for operators and EAs to follow when the operator is proposing to make a change in the design or operation at a facility. This section is amended to conform to Section 21665, which establishes a new methodology for EAs to use in determining if a change proposed by the operator would require a change to the RFI or to the solid waste facilities permit. Accordingly, this section as amended now applies to changes proposed by the operator in the design or operation at a solid waste facility where the EA determines that an amendment to RFI is required or the permit needs to be modified or revised. The methodology was developed to comply with AB 1497 requirements that the CIWMB adopt regulations that define the phrase “significant change in the design or operation of the solid waste facility that is not authorized by the existing permit.” Because what is significant depends on each facility’s existing permit conditions, unique characteristics, location, local issues, community, climate, and other factors, the most feasible approach to defining significant change is to provide a methodical process or decision tree for EAs to follow when presented with a request by an operator to make proposed changes in the design or operation at a solid waste facility. Using this methodology, the EA determines if the RFI needs to be amended or the permit needs to be modified or revised. If the EA determines that the permit needs to include further restrictions or conditions to adequately protect public health, public safety, ensure compliance with State minimum standards or to protect the environment, then the EA has determined that the change is significant and can be made only if the permit is revised. Creation of the new methodology provides a consistent analytical process for EAs to use in making their determinations, while giving them the flexibility necessary to address site specific conditions.

This section is further amended to include 1) a list of minor changes that could be made by an operator in the design or operation of a solid waste facility that would not require EA review and approval if the change meets specified criteria, the operator notifies the EA as required, and the change is on the minor change list or if not listed meets the criteria; and 2) a list of significant changes that would always require a revision to the permit. The purpose of these lists is to provide certainty to operators and EAs on what actions are required by the EA to address the change. The listed changes fall outside the scope of the methodology, and, thus, from the exercise of the EA’s discretion. The CIWMB directed staff to work with stakeholders in the development of the minor change and significant change lists and to insert these lists into the regulations prior to beginning the 60-day formal comment period so that commenters could consider both the merit of the list concept as well as the content of the lists. A work group of interested stakeholders was formed to generate the lists. After considering comments from stakeholders and the public during the 60-day and 15-day comment periods, the CIWMB adopted, at its October 17, 2006 meeting, the proposed regulations, which include 1) the minor change list as revised to provide clarity and correct redundancy, with language added that minor changes “include but are not limited to” what is listed; and 2) the significant change list.

Subsection (a)

This subsection is amended to conform to the new methodology in Section 21665; the addition of a list of minor changes that would never require EA review and approval if the change meets specified criteria, the operator notifies the EA as required, and the change is on the minor change list or if not listed meets the criteria; and a list of significant changes that would always require a revision to the permit. Accordingly, this subsection now applies to changes proposed by the operator in the design or operation at a solid waste facility that would require the RFI to be amended, the permit to be modified or revised, or are listed on the minor change list or if not listed meet the criteria, or are listed on the significant change list and require no action by the

EA. Consequently, the existing requirement that the operator file an amendment to the RFI for a “significant change” has been deleted since a significant change would always require a permit to be revised rather than the RFI to be amended or the permit modified. This is necessary to be consistent with AB 1497, which requires the CIWMB to define the phrase “significant change in the design or operation of the solid waste facility that is not authorized by the existing permit;” and to be consistent with PRC Section 44004(a), which provides that an operator of a solid waste facility cannot make a “significant change...not authorized by the existing permit” unless the change is approved by the EA, conforms with the California Integrated Waste Management Act (Act) and all regulations adopted pursuant to the Act, and the terms and conditions of the permit are revised to reflect the change. Except with respect to specific changes included on either 1) the minor change list or if not listed meet the criteria for minor change, or 2) the significant change list, both of which fall outside the scope of the methodology, the methodology serves as a decision-making tool that provides a consistent analytical process for EAs to use in making their determinations, while giving them the flexibility necessary to address site specific conditions. No change is made to existing EA authority. Consequently, in reviewing a change proposed by an operator in the design or operation of a facility, the EA may find that the RFI needs to be amended or the permit needs to be modified or revised, or the EA may find that the change is such that the RFI does not need to be amended or the permit changed, which is consistent with existing practice. Clarification is added that the meaning of “design” and “operation” is already defined in existing regulation, Section 21663(a). It is further clarified that this subsection only applies to changes that are subject to the EA’s authority when acting in accordance with the Integrated Waste Management Act (Act) or regulations developed under the Act, and does not apply to changes that do not fall under EA authority when acting in accordance with the Act.

Subsection (a)(1)

This subsection is new and is necessary to meet CIWMB direction to work with stakeholders in the development of minor change and significant change lists and to insert these lists into the regulations prior to beginning the 60-day formal comment period so that commenters could consider both the merit of the list concept as well as the content of the lists. After considering comments from stakeholders and the public during the 60-day and 15-day comment periods, the CIWMB adopted, at its October 17, 2006 meeting, the proposed regulations, which include 1) the minor change list as revised to provide clarity and correct redundancy, with language added that minor changes “include but are not limited to” what is listed; and 2) the significant change list. This subsection provides a list of minor changes that could be made by an operator in the design or operation of a solid waste facility that would never require EA review and approval if the change meets specified criteria, the operator notifies the EA as required, and the change is on the minor change list or if not listed meets the criteria. The purpose of this list is to provide certainty to operators and EAs on what actions are required by the EA to address the change. These changes whether listed or not are supposed to be so minor that EA review and approval is not needed prior to the operator making the change. These changes fall outside the scope of the methodology, since no discretion is provided to EAs. For a proposed change to qualify as a minor change, it needs to meet the following criteria: be subject to EA authority, consistent with State minimum standards, consistent with the solid waste facilities permit, not conflict with the design and operation of the facility as provided in the current RFI, and the operator needs to notice the EA in writing within 30 days after the change has been made. If the EA finds the change does not meet the criteria, the EA is required to provide a written finding to the operator explaining why the change did not qualify as a minor change and to require the operator to comply with all applicable requirements. This could include the EA using the decision tree in

Section 21665 to determine that the change requires an amendment to the RFI, a modified permit, or a revised permit.

Subsection (a)(2)

This subsection provides the process for operators and EAs to follow when the operator is proposing to make a change in the design or operation at a facility where an amendment to the RFI is required. This subsection is amended to conform to the new methodology in Section 21665. Accordingly, clarification is added that an operator shall file an amendment to the RFI as specified if the proposed change does not qualify as a minor change under subsection (a)(1) and the EA has determined that an amendment to the RFI is required. It is further clarified that the operator may file an application for an RFI amendment less than 180 days prior to making the proposed change if the EA determines after consulting with the operator that the proposed change meets the criteria for an RFI amendment in Section 21665(c). This clarification is necessary to confirm in regulation that a shorter process time is allowed if the EA finds after early consultation with the operator that the proposed change qualifies for an RFI amendment. This helps to streamline the process where the proposed change clearly qualifies for an RFI amendment. Additional typographical corrections are made with no change to the existing requirements.

Subsection (a)(3)

This subsection is amended to conform to the new methodology in Section 21665 and now provides the process for operators and EAs to follow when the operator is proposing to make a change in the design or operation at a facility where a modified solid waste facilities permit is required. Accordingly, clarification is added that an operator shall submit an application package as specified for a modified permit if the proposed change does not qualify as a minor change under Subsection (a)(1) or an RFI amendment under Subsection (a)(2), but the EA has determined it does meet the requirements for a modified permit.

Subsection (a)(4)

This subsection is amended to conform to the new methodology in Section 21665 and now provides the process for operators and EAs to follow when the operator is proposing to make a change in the design or operation at a facility where a revised solid waste facilities permit is required. Accordingly, clarification is added that an operator shall submit an application package as specified for a revised permit for all other changes in design or operation. In other words, if the proposed change does not qualify as a minor change under Subsection (a)(1) or an RFI amendment under Subsection (a)(2) or a modified permit under Subsection (a)(3), then it requires a revised permit in accordance with the criteria in Section 21665(e).

This subsection is further amended to meet CIWMB direction to work with stakeholders in the development of minor change and significant change lists and to insert these lists into the regulations prior to beginning the 60-day formal comment period so that commenters could consider both the merit of the list concept as well as the content of the lists. After considering comments from stakeholders and the public during the 60-day and 15-day comment periods, the CIWMB adopted, at its October 17, 2006 meeting, the proposed regulations, which include 1) the minor change list as revised to provide clarity and correct redundancy, with language added that minor changes “include but are not limited to” what is listed; and 2) the significant change list. This subsection provides a list of changes in design or operation of a facility that are, by definition, considered to be significant, and that would always require a revision to the permit.

The purpose of this list is to provide certainty to operators and EAs on what changes could be made by an operator in the design or operation of a solid waste facility that would always be considered significant and always require a permit revision. These changes fall outside the scope of the methodology, since no discretion is provided to EAs. For all other changes in the design or operation of a facility proposed by the operator that do not qualify as a minor change, the EA will use the decision tree in Section 21665 to determine if the proposed change can be approved through an RFI amendment, modified permit, or revised permit.

A Note is added to this section which reminds persons using these regulations that proposed changes that relate only to the RFI and not the permit can be processed as an RFI amendment under Section 21666, which allows a maximum 30-day process for RFI amendments.

The Note includes a flow chart to facilitate understanding of the process for RFI amendment, and modified, revised and new solid waste facilities permits. The flow chart identifies the steps for each part of the process and the applicable timelines. The flow chart is only to facilitate understanding of the process and does not supplant any regulations.

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- Title 27: Environmental Protection
- Division 2: Solid Waste
- Subchapter 3: Development of Waste Discharge Requirements (WDRs) and Solid Waste Facility Permits
- Article: 3 CIWMB – Enforcement Agency (EA) Requirements

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

Section 21650. CIWMB – EA Processing Requirements

Subsection (e)

This subsection is added to establish a new requirement that specifies the timing for an EA to notice and hold an informational meeting on a new or revised permit application after the EA has accepted the application as complete and correct. The EA is required to notice and hold an informational meeting after acceptance of the application as complete and correct and within 60 days of receipt of the application by the EA. The 60-day period is consistent with AB 1497, which requires the EA to inform the operator and the CIWMB within 60 days from the date of receipt of the application of its determination on the action to be taken by the EA, and to hold at least one public hearing on its proposed determination. Where the EA determines the permit application qualifies for modification rather than revision, clarification is provided that the EA is only required to give notice after finding the permit application complete and correct and within 60 days of receipt of the application by the EA. This subsection is necessary to conform to the public noticing and informational meeting requirements in Section 21660 and AB 1497.

Subsection (f)

The subsection is renumbered to conform to the addition of Subsection (e). A new requirement is added that as a condition of acceptance of an incomplete application by the EA, both the operator and the EA are required to waive the statutory time limit. This is necessary to ensure that the waiver is effective to the operator as well as the EA. To clarify the timing for noticing and holding an informational meeting after the EA deems a previously submitted incomplete package to be complete and correct, a reference is added to the Note that Section 21580 is the section for this information. Section 21580 provides the process for handling incomplete application packages, including the requirement that the EA notice and conduct an informational meeting within 30 days after deeming a previously submitted incomplete application package as complete and correct.

Subsection (g)

The subsection is amended to conform to the new requirements in Subsection (e) and renumbered to conform to the addition of Subsection (e).

Subsection (g)(1)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (g)(3)

This subsection is amended, with no change to existing requirements, to update section numbers in Titles 27 and 14 that require a RFI be included with a permit application for the different types of solid waste facilities, such as a composting site, transfer/processing facility, and construction and demolition facility. Minor typographical corrections are made with no change to the existing requirements.

Subsection (g)(4)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (g)(5)

This subsection is amended to require the EA to include with the accepted application package that is submitted to the CIWMB, in addition to written public comments received, a summary of comments received at the informational meeting, and, where applicable, any steps taken by the EA relative to those comments. This information will provide the CIWMB with informational meeting comments and place the comments in the record of approval along with any written comments received, including the steps that were taken by the EA in response to those comments. This information assists the CIWMB in determining what general actions if any might be needed to meet EJ objectives. This is necessary to be consistent with the intent of AB 1497, which requires that EJ concerns be considered in developing the regulations and new public noticing and hearing requirements be implemented for permit revisions. CIWMB staff already asks EAs for this information currently when writing agenda items for CIWMB meetings. CIWMB staff will develop guidance for the EA after the regulations are adopted on how they may wish to handle comments received in writing or orally at the informational meeting. An additional typographical correction is made with no change to the existing requirements.

Subsection (g)(6-7)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (h)

The subsection is renumbered to conform to the addition of Subsection (e). Minor typographical corrections are made with no change to the existing requirements.

Subsection (i)

The Note in Section 21650(i) is amended to clarify that when writing permit conditions the EA should be aware of and take into consideration other permits, entitlements and approvals, such as local use permit conditions, mitigation measures imposed under the California Environmental Quality Act, Air Pollution Control District/Air Quality Management District permits to construct and operate, Department of Fish and Game permits, Coastal Commission approvals, and others. This is necessary to clarify that it is when the EA is writing permit conditions that it should be

aware and consider local jurisdiction's land use permit/entitlements. Under existing regulations, a complete permit application requires inclusion of the land use and/or conditional use permit (CUP) applicable to the facility. EAs are required to review the permit application to determine if it is correct. Delays in the processing of some permit applications have resulted when EAs reject applications because they find them to be inconsistent with the land use entitlements. State law has not mandated that the EA be an agency required to verify if the information in the land use approval is correct or if the facility has the approval of the local government to operate as proposed under a solid waste facilities permit. The appropriate agency for making local land use determinations is the local government having jurisdiction, in most cases, the city or county in which the facility is located.

To provide clarity, the proposed regulations remove the requirement that applicants submit land use entitlements to the EA in their applications, thus excluding local land use from EA decisions on acceptance of a complete and correct permit application package. In its place, the new regulation advise (but do not require) the EA to consider land use entitlements when drafting permit terms and conditions, which is when the EA considers the content of other entitlements, permits, and approvals when processing a solid waste facilities permit. Further clarification is provided that when writing permit conditions the EA should take into consideration PRC Section 44012, which requires the EA to ensure that primary consideration is given to protecting public health and safety and preventing environmental damage, and the long-term protection of the environment. This approach acknowledges that the EA should be aware of and take into consideration other permits and approvals when writing permit terms and conditions, but does not put the EA in the position of enforcing local land use permit conditions by not processing a solid waste facilities permit application. Nothing in the proposed regulations will prevent or hinder a local jurisdiction from carrying out their responsibility relative to enforcing local land use requirements. Operators are still bound to comply with local land use permit conditions, which are enforced by local agencies that are charged with the responsibility.

The subsection is renumbered to conform to the addition of Subsection (e). Minor typographical corrections are made with no change to the existing requirements. The words, "the EA proposes to include in the permit" are deleted since they are redundant.

Section 21660. CIWMB – Public Notice and Informational Meeting Requirements

This section is amended to include additional public notice requirements for RFI amendments, modified permits, new and revised permits, and informational meeting requirements for new and revised permits. This is necessary to comply with AB 1497 requirements, as well as to be consistent in providing a transparent and accessible permit process. AB 1497 requires the CIWMB to adopt regulations that implement new public noticing and hearing requirements for the EA to conduct when processing applications for permit revisions. Prior to AB 1497, there was no requirement that the EA notice and hold a public hearing when processing an application for a permit revision. The only other hearing requirements for permit actions taken by the EA are for new CDI permit applications (Title 14 sections 17383.10 and 17388.6). The CIWMB directed staff to apply the CDI regulatory requirements to other solid waste facilities in order to provide consistency among different types of solid waste facilities. The notice and informational meetings requirements are the same for new and revised full permits. "Informational meeting," referred to as a "public hearing" in AB 1497, is defined in Section 21563(d)(4). Where the EA determines the permit application qualifies for modification rather than revision, the EA is only required to give notice similar to the requirements new and revised permits, and is not required

to hold an informational meeting since the change would be determined by the EA to be less than significant. The same is true for new registration and standardized permits. The noticing requirements for RFI amendments are less than those for modified, revised or new permits. The increased level of public noticing is consistent with the spirit and intent of AB 1497, which requires that environmental justice concerns be considered in developing the regulations. Having a transparent process that allows the public to be informed is one of the key elements in addressing environmental justice.

Subsection (a)

This subsection is amended, with no change to existing requirements, to clarify that the existing requirements in subsections (a)(1), (a)(2), and (a)(3) apply to applications for new solid waste facilities permits, revised and modified permits, and RFI amendments. This clarification is necessary to conform to the public noticing and informational meeting requirements in Section 21660.

Subsection (a)(1)

This subsection is renumbered, with no change to the existing requirement, to conform to the change in Subsection (a).

Subsection (a)(2)

This subsection is renumbered to conform to the change in Subsection (a) and amended to add a “time certain” for EAs to send written notice to people who have requested being noticed of applications for RFI amendments and new, revised, and modified permits. This change is necessary for people requesting such notice to be informed in a timely manner. EAs are required to mail the written notice five days after receiving the application for modified, revised, and new permits, giving the EA five days to write the notice while clarifying when the notice should be provided. For RFI amendments, the EA is required to mail the written notice within five days after approving the application for an RFI amendment. Ideally all noticing protocols should be similar, but because RFI amendments are processed differently than permits, a different noticing process is proposed for RFI amendments than for new, revised, and modified permits. In particular, RFI amendments have a shorter, 30-day process time whereas new, revised and modified permits have a 180-day process; RFI amendments are approved by the EA without CIWMB concurrence whereas new, revised, and modified permits require CIWMB concurrence; and RFI amendments require the EA to determine that the amendments are consistent with CEQA, State minimum standards, and the terms and conditions in the current permit whereas new, revised and modified permit applications might not meet some of these criteria and would require additional review and findings from the EA and the CIWMB. This will reduce the need for the EA to notice applications for RFI amendments that are determined to be incomplete or incorrect and are rejected, or where the EA determined that findings could not be made and the application was denied.

Subsection (a)(3)

This subsection is renumbered, with no change to the existing requirement, to conform to the change in Subsection (a).

Subsection (b)

This subsection is new and serves as an index for finding in the following sections (sections 21660.1 through 21660.4) specific provisions relating to the content of notices, distribution and publishing of notices, and informational meetings.

Section 21660.1. CIWMB – Notice for RFI Amendment Applications

Subsection (a)

This subsection is added to establish a new requirement that specifies the content of the public notice that the EA is required to give when an application for an RFI amendment is approved by the EA. The information specified is necessary for the public to be adequately informed of a change proposed by the operator of the solid waste facility that was approved by the EA as an RFI amendment, the timing of the process, and information on the availability of appeals to challenge the EA's approval of the RFI amendment. This includes providing the name and location of the facility submitting the application, the date the application was received by the EA, a description of the change proposed in the application, the date the EA approved the RFI amendment, the EA's finding relative to the permit application, and EA and operator contact information. The version of the proposed regulations noticed during the 60-day comment period indicated the notice for the RFI amendment was to be a pre-notice that would take place before the EA took action, similar to the pre-notice for modified, revised, and new permits. However, comments received during the comment period raised concern about the existing short, 30-day process time for RFI amendments (including acceptance/rejection and approval/denial of the application) and the difficulty associated with pre-noticing by the EA. Based on these comments, CIWMB staff determined that the appropriate time for the EA to post the notice pursuant to Section 21660.1(b) was after the EA had accepted/approved the application. This will reduce the need for the EA to notice applications that are determined to be incomplete or incorrect and are rejected, or where the EA determined that findings could not be made and the application was denied. Currently, the EA is not obligated to notice RFI amendments, except under the general requirement of mailing a written notice of an application to every person who has submitted a written request for such notice. Requiring the additional noticing should increase the transparency of the process, allowing the public to be better informed of changes proposed by the operator that are approved by the EA.

Subsection (b)

This subsection is added to establish a new requirement that specifies different types of publication as well as the timing required for the notice prepared under Subsection (a). This includes the operator being required to prepare and post within 5 days after the EA approves the application for at least 10 days a temporary notice at the facility entrance, and the EA being required to prepare and post the notice at one of several locations, including the EA's web site. The publication is to take place within 5 days after the EA approves the application for at least 10 days. The version of the proposed regulations noticed during the 60-day comment period indicated the notice for the RFI amendment was to be a pre-notice that would take place before the EA took action, similar to the pre-notice for modified, revised, and new permits. However, comments received during the comment period raised concern about the existing short, 30-day process time for RFI amendments (including acceptance/rejection and approval/denial of the application) and the difficulty associated with pre-noticing by the EA. Based on these comments, CIWMB staff determined that the appropriate time for the EA to post the notice is 5 days after the EA has accepted/approved the application. This will reduce the need for the EA to notice applications that are determined to be incomplete or incorrect and are rejected, or where

the EA determined that findings could not be made and the application was denied. This gives the EA 5 days to write the notice and post it. The EA is required to post the notice for at least 10 days, which provides the public with the same number of days of noticing as what was proposed earlier. Currently, the EA is not obligated to notice RFI amendments, except under the general requirement of mailing a written notice of an application to every person who has submitted a written request for such notice. Requiring the additional noticing is necessary to increase the transparency of the process, allowing the public to be better informed of changes proposed by the operator that are approved by the EA.

Section 21660.2 Informational Meeting for New and Revised Full Solid Waste Facilities Permit Applications

Subsection (a)

This subsection is added to establish a new requirement that the EA conduct an informational meeting for all new and revised full solid waste facilities permit applications. The additional informational meeting requirement is necessary to comply with AB 1497 requirements, as well as to be consistent in providing a transparent and accessible permit process. AB 1497 requires the CIWMB to adopt regulations that implement new public noticing and hearing requirements for the EA to conduct when processing applications for permit revisions. Prior to AB 1497, there was no requirement that the EA notice and hold a public hearing when processing an application for a permit revision. The only other hearing requirements for permit actions taken by the EA are for new CDI permit applications (Title 14 sections 17383.10 and 17388.6). The CIWMB directed staff to apply the CDI regulatory requirements to other solid waste facilities in order to provide consistency among different types of solid waste facilities. The notice and informational meetings requirements are the same for new and revised full permits. "Informational meeting," referred to as a "public hearing" in AB 1497, is defined in Section 21563(d)(4).

The version of the proposed regulations noticed during the 60-day comment period had required informational meetings to be conducted for new registration and standardized permits. However, this requirement was deleted based on comments received during the comment period. Every time there is a change at a site with these types of permits a new permit is required since the existing permit cannot be modified or revised. This means every change to a permit could require an informational meeting if the requirement is not deleted from the proposed regulations. In the case of registration permits, they are ministerial approvals. The EA has 30 days to find the application for a registration permit complete and correct, and to accept it for filing, leaving little time for holding an informational meeting. Continuing to require noticing, on the other hand, for new registration and standardized permits does not interfere with the shorter process times while still providing the public a heads-up about upcoming changes at a solid waste facility. The level of noticing is the same as a modified permit.

This subsection authorizes the EA to require the operator to pay all costs incurred by the EA in connection with the meeting. The authority for EAs to charge a fee to recover their costs comes from PRC sections 43213, 44004(h)(1)(B), and 44006(c). This new regulation is consistent with Section 21570(c), which requires each application for a permit submitted to the EA to be accompanied with a filing fee established by the EA, and clarifies that the authority to charge a fee is applicable to the notice and meeting requirements. It is also consistent with the CDI regulations that require a public hearing for new permit applications (Title 14 sections 17383.10(a) and 17388.6(a)), which authorize the EA to require the operator to pay all costs

incurred by the EA in connection with the hearing. This provision is necessary to provide consistency among different types of solid waste facilities.

The informational meeting can be combined with another public meeting in which the EA participates that meets the criteria specified in subsections (b) and (c), below. This is necessary to avoid the obligation of the EA having to hold two separate public meetings when the meetings could be combined. The combined meeting is required to meet the same criteria specified for an informational meeting in subsections (b) and (c) with the purpose of increasing the transparency of the process, allowing the public to be better informed of a pending new facility or changes to an existing facility that are being proposed by the operator and considered by the EA. This is consistent with the CDI regulations that require a public hearing for new permit applications (Title 14 sections 17383.10(a) and 17388.6(a)), which allows the public hearing to be combined with another hearing in which the EA participates that meets specified criteria.

Subsection (b)

This subsection is added to establish a new requirement that specifies the timing for an EA to hold an informational meeting on a new or revised full permit application after the EA has accepted the application as complete and correct. The EA is required to hold an informational meeting after acceptance of the application as complete and correct and within 60 days of receipt of the application by the EA. The EA is also required to submit a copy of the informational meeting notice to the CIWMB at the time the notice is issued. This is necessary to comply with AB 1497 requirements, as well as to be consistent in providing a transparent and accessible permit process. The 60-day period is consistent with AB 1497, which requires the EA to inform the operator and the CIWMB within 60 days from the date of receipt of the application of its determination on the action to be taken by the EA, and to hold at least one public hearing on its proposed determination.

Subsection (c)

This subsection is added to establish a new requirement that specifies the criteria the informational meeting is required to meet. This includes holding the meeting in a suitable location not more than 1 mile from the facility that is the subject of the meeting, if a suitable and available location can be found by the EA, and scheduling the meeting on a day and time that will enable attendance by residents living in the vicinity of the facility. The EA is authorized to undertake additional measures to encourage attendance, such as additional posting at the facility entrance, noticing beyond 300 feet if the nearest residence or business is not within 300 feet of the site, posting in a local newspaper of general circulation, and multilingual notice and translation. This is consistent with the CDI regulations that require a public hearing for new permit applications (Title 14 sections 17383.10(a) and 17388.6(a)), which require the same criteria to be met by the public hearing. This new requirement is necessary to increase the transparency of the process, allowing the public to be better informed of a pending new facility or changes to an existing facility that being proposed by the operator and considered by the EA.

Subsection (d)

This subsection is new and authorizes the EA to substitute a previous public meeting or hearing as specified in Section 21660.4 if the applicant does not object. This is necessary to avoid the obligation of the EA holding a duplicative informational meeting on a proposed new facility or facility change when a previous public meeting qualifies pursuant to the criteria in Section 21660.4. This subsection is consistent with the CDI regulations that require a public hearing for

new permit applications (Title 14 sections 17383.10(a) and 17388.6(a)), which allow a comparable public hearing held within the year prior to the date the EA accepted the application as complete and correct to be substituted for a new information public hearing. For the substitution to be valid, Section 21660.4 requires the EA to have attended the previously held hearing/meeting, been recognized by the presider of the meeting, and was available to answer questions. EA presence at the previously held public hearing to answer questions that only the EA can answer with regard to a proposed new solid waste facility or facility change is consistent with the intent of holding an informational meeting, which is to allow the public to be better informed of changes proposed by the operator. To further increase transparency of the process and the use of a substituted meeting by the EA, Section 21660.4, subsections (a) and (b) require the EA to notice the public of the pending new facility or change to an existing facility that is being proposed by an operator and considered by the EA, the timing of the process, and the use of a substituted meeting. The level of noticing is equivalent to the requirement for an informational meeting.

Section 21660.3 - Notice of New, Revised and Modified Permit Applications and EA Conducted Informational Meeting

Subsection (a)

This subsection is added to establish a new requirement that specifies the content of the public notice that the EA is required to give when an application for a new, revised, or modified permit is submitted to the EA for consideration. The information specified is necessary for the public to be adequately informed of a pending new facility or change to an existing facility that is being proposed by the operator of the solid waste facility and considered by the EA, and the timing of the process. This includes providing the name and location of the facility submitting the application; a description of the permit modification/revision/new permit application; the purpose of the public informational meeting for new and revised full permits; the date, time, and location of the public informational meeting for new and revised full permits; the EA's preliminary finding relative to the permit application for modified and revised permits; information on the availability of appeals to challenge the EA's issuance or denial of a modified, revised, or new permit; and EA and operator contact information. This should increase the transparency of the process, allowing the public to be better informed of a pending new facility or change to an existing facility that is being proposed by the operator and considered by the EA.

The proposed regulations originally combined the noticing requirements for RFI amendments and modified permits together in Section 21660.1, but because of the processing differences between the two and that modified permits are processed similar to new and revised permits, modified permits were removed from this section and added to Section 21660.3. In particular, RFI amendments have a shorter, 30-day process time whereas new, revised and modified permits have a 180-day process; RFI amendments are approved by the EA without CIWMB concurrence whereas new, revised, and modified permits require CIWMB concurrence; and RFI amendments must be consistent with CEQA, State minimum standards, and the terms and conditions in the current permit whereas new, revised and modified permit applications might not meet some of these criteria and would require additional review and findings from the EA and the CIWMB.

Subsection (b)

This subsection is added to establish a new requirement that the EA distribute the notice prepared under Subsection (a) as specified. This includes posting the notice in the manner set

forth in Government Code Section 65091, which requires the EA to send a written notice at least 10 days prior to the informational meeting to 1) the owner, 2) each local agency expected to provide services, 3) to all owners of real property within 300 feet of the site or, if the number of owners within 300 feet is greater than 1,000, a local agency, in lieu of a mailed or delivered notice, may place an ad in a newspaper of general circulation, and 4) if the notice is mailed or delivered to all owners within 300 feet, the notice shall either be published in a newspaper of general circulation or posted at three public places. The EA is also required to send the public notice to the governing body of the local jurisdiction and appropriate State legislators. The EA is authorized to undertake additional measures to encourage attendance, such as additional posting at the facility entrance, noticing beyond 300 feet if the nearest residence or business is not within 300 feet of the site, posting in a local newspaper of general circulation, and multilingual notice and translation. This is consistent with the noticing requirements of AB 1497 and the CDI regulations that require a public hearing for new permit applications (Title 14 sections 17383.10(a) and 17388.6(a)). For new registration and standardized permits as well as modified permits, the EA is required to meet the same noticing requirements in Government Code Section 65091, except for registration and standardized permits the EA is required to post the notice within 5 days after finding the permit application complete and correct, and for modified permits the EA is required to post the notice after finding the application complete and correct and within 60 days of receipt of the application by the EA. The EA is authorized to undertake additional measures to increase public notice for new registration and standardized permits as well as modified permits. The new noticing requirement is necessary to increase the transparency of the process, allowing the public to be better informed of a pending new facility or changes to an existing facility that are being proposed by the operator and considered by the EA.

Section 21660.4 Substitute Meetings in Place of EA-Conducted Informational Meetings

This section is new and authorizes the EA to substitute a previous public meeting or hearing as specified as long as the applicant does not object. It is necessary to avoid the obligation of the EA holding a duplicative informational meeting on a proposed new facility or facility change, and to specify the criteria a substitute meeting must meet. This section is consistent with the CDI regulations that require a public hearing for new permit applications (Title 14 sections 17383.10(a) and 17388.6(a)), which allow a comparable public hearing held within the year prior to the date the EA accepted the application as complete and correct to be substituted for a new information public hearing. For the substitution to be valid, the EA is required to have attended the previously held hearing/meeting, been recognized by the presider of the meeting, and was available to answer questions. The EA is required to provide the same level of noticing when using a substitute meeting as required for an informational meeting. EA presence at the previously held public hearing to answer questions that only the EA can answer with regard to a proposed new solid waste facility or facility change is consistent with the intent of holding an informational meeting, which is to allow the public to be better informed of changes proposed by the operator.

Subsection (a)

This subsection is added to establish a new requirement that specifies the content of the public notice that the EA is required to give when a previously held public meeting is to be used to substitute for an informational meeting regarding the application for a new or revised full permit. The information specified is necessary for the public to be adequately informed of a pending new facility or change to an existing facility that is being proposed by the operator and considered by the EA, and the timing of the process. This includes providing the name and location of the

facility submitting the application; a description of the permit revision/new full permit application; the date and purpose of the previously held public informational meeting; the EA's preliminary finding relative to the permit application; information on the availability of appeals to challenge the EA's issuance or denial of a revised or new full permit; and EA and operator contact information. This should increase the transparency of the process, allowing the public to be better informed of a pending new facility or changes to an existing facility proposed by the operator that are being considered by the EA.

Subsection (b)

This subsection is added to establish a new requirement that the EA distribute the notice prepared under Subsection (a) as specified. This includes posting the notice 10 days prior to the EA making a final determination in the manner set forth in Government Code Section 65091, which requires the EA to send a written notice to 1) the owner, 2) each local agency expected to provide services, 3) to all owners of real property within 300 feet of the site or, if the number of owners within 300 feet is greater than 1,000, a local agency, in lieu of a mailed or delivered notice, may place an ad in a newspaper of general circulation, and 4) if the notice is mailed or delivered to all owners within 300 feet, the notice shall either be published in a newspaper of general circulation or posted at three public places. The EA is also required to send the public notice to the governing body of the local jurisdiction and appropriate State legislators 10 days prior to the EA making a final determination on the permit application. The EA is authorized to undertake additional measures to increase public notice, such as additional posting at the facility entrance, noticing beyond 300 feet if the nearest residence or business is not within 300 feet of the site, posting in a local newspaper of general circulation, and multilingual notice and translation. The new noticing requirement is consistent with the noticing requirements of AB 1497 and the CDI regulations that require a public hearing for new permit applications (Title 14 sections 17383.10(a) and 17388.6(a)). This new requirement is necessary to increase the transparency of the process, allowing the public to be better informed of a pending new facility or changes to an existing facility that are being proposed by the operator and considered by the EA.

Section 21663. CIWMB – Issuance of Solid Waste Facilities Permit

Subsection (a)

This subsection is amended to provide that concurrence from the CIWMB's Executive Director is sufficient for the issuance of modified solid waste facilities permits. Existing law provides that concurrence from the CIWMB is needed for the issuance of new and revised solid waste facilities permits. This clarification is necessary to conform to Section 21665(d), which creates a modified permit process to allow modifications to a solid waste facilities permit for changes that are deemed less than significant by the EA. Examples of changes that could qualify as permit modifications include clarification of limits or conditions in the permit that do not result in a physical change at the site; incorporation of a new RFI into the permit; or corrections of errors in the permit for height, acreage, depth that do not result in a physical change at the site. The Executive Director has already been delegated by the CIWMB to concur on non-significant permit modifications. PRC Section 40430 allows the CIWMB to delegate any power, duty, purpose, function and jurisdiction which it deems appropriate to the Executive Director. The CIWMB has delegated to the Executive Director in its "Board Governance Policies for Governance and Board-Staff Linkage" Resolution, October 17, 2006, the approval of non-significant modifications to solid waste facilities permits, while retaining approval authority on

permit revisions. In adopting the delegation, the CIWMB acknowledged that once the Permit Implementation Regulations are adopted, the delegation language will be simplified to say: “Approve modified permits in accordance with 27 CCR Section 21663(a).” Currently the only process defined in existing regulations to make any changes to a permit is the issuance of a revised permit. This means less than significant changes must be processed by the EA and brought to the CIWMB at a regular or special CIWMB meeting for concurrence as a revised permit. In contrast, changes proposed by an operator that do not require the permit to be changed currently can be done through amendments to the RFI, which are processed by the EA and do not go to the CIWMB for concurrence. Requiring concurrence by the CIWMB’s Executive Director for permit modifications is consistent for changes that are less than significant. The process used by CIWMB staff in reviewing and making a recommendation on concurrence would be the same for modified and revised permits.

Minor typographical corrections are made with no change to the existing requirements.

Section 21665. CIWMB – Processing Proposed Changes at Solid Waste Facility

The purpose of this section is to define the phrase “significant change in the design or operation of the solid waste facility that is not authorized by the existing permit” and to provide a methodology for EAs to use when presented with a request from an operator to make proposed changes at a solid waste facility. This section is necessary to comply with the requirements of AB 1497 and to establish a methodology that provides a consistent analytical process for EAs to use in determining if a proposed change requires an RFI amendment or the permit to be modified or revised. The Legislature required in AB 1497 that the CIWMB define this phrase. The CIWMB has determined that EAs should apply certain criteria in determining whether a change proposed at a solid waste facility is “significant,” and thus requires a revision in the existing solid waste facilities permit. This regulation establishes a methodology for EAs to follow in making this determination and in determining whether a proposed change requires an amendment to the RFI or the permit to be modified or revised.

This section is amended to establish a new methodology for EAs to follow when presented with a request from an operator to make proposed changes in the design or operation at a solid waste facility. Accordingly, the title is changed to reflect this. The methodology was developed to comply with AB 1497 requirements that the CIWMB adopt regulations that define the phrase “significant change in the design or operation of the solid waste facility that is not authorized by the existing permit.” This phrase appears in PRC Section 44004(a), which subsection provides that an operator of a solid waste facility cannot make a “significant change...not authorized by the existing permit” unless the change is approved by the EA, conforms with the California Integrated Waste Management Act (Act) and all regulations adopted pursuant to the Act, and the terms and conditions of the permit are revised to reflect the change. The phrase “significant change... not authorized by the existing permit” is not defined in statute or regulation. One reason for the difficulty in defining “significant change” is the need to address site specific conditions, because what may be significant at one facility may not necessarily be significant at another facility. Whether a change is significant or not depends on each facility’s existing permit conditions, unique characteristics, location, local issues, community, climate, and other factors. The most feasible approach to define the phrase is to provide a methodical process or decision tree for EAs to follow when presented with a request by an operator to make proposed changes at a solid waste facility. Using this methodology, the EA determines if a proposed change qualifies as an amendment to the RFI or requires the solid waste facilities permit to be modified or

revised. If the EA determines through use of the methodology that the permit needs to include further restrictions, prohibitions, mitigations, terms, conditions, or other measures to adequately protect public health, public safety, ensure compliance with State minimum standards or to protect the environment, then the EA has determined that the change is significant (i.e., is a “significant change in the design or operation of the solid waste facility that is not authorized by the existing permit”) and requires a revised solid waste facilities permit. Any change that may be made by means of an RFI amendment or a modified permit, as determined by the EA’s application of the specified methodology, is not a “significant change...” Creation of the new methodology provides a consistent analytical process for EAs to use in making their determinations, while giving them the flexibility necessary to address site specific conditions.

To keep the methodology as a whole in one section of these regulations, subsections (d) through (f) were moved out of Section 21665 into Section 21666 as subsections (a) through (c). These subsections consist of requirements, other than the criteria used in the methodology, that the EA must follow when processing an application for an RFI amendment. This should facilitate understanding of the methodology among EAs and operators, promoting effective application of the methodology.

Subsection (a)

This subsection is amended and is necessary to conform to the addition of the new methodology and now applies to changes proposed by the operator that would require a change to the solid waste facilities permit or the RFI. Accordingly, specific reference to the “RFI amendment” is deleted so that the application package required to be submitted by the operator now includes changes to the permit or the RFI. This section is also amended, with no change to existing requirements, to update section numbers in Title 14 that require a RFI be included with a permit application for the different types of solid waste facilities, such as a composting site, transfer/processing facility, and construction and demolition facility.

Subsection (b)(1-3)

This subsection is amended and is necessary to conform to the addition of the new methodology and now applies to changes proposed by the operator that would require a change to the solid waste facilities permit or to the RFI. Accordingly, specific reference to “amendments to the RFI” is deleted so that the required EA review of the applicant’s proposed change includes changes to the permit or the RFI. It is further clarified that in making the determination about whether a proposed change by the operator qualifies as an RFI amendment or requires a change to the solid waste facilities permit, the EA shall further determine if the permit needs to be modified or revised. An index is provided to facilitate finding the criteria for an RFI amendment, permit modification, and permit revision (Section 21665 (c) through (e)). Additional minor conforming changes are made with no change to the existing requirements.

Subsection (c)(1-3)

This subsection is amended to conform to the addition of the new methodology. It is necessary to specify the criteria for determining if an operator’s proposed change qualifies as an RFI amendment. Accordingly, specific reference to “modifying” the solid waste facilities permit is added to clarify that the EA may approve a proposed change as an RFI amendment without revising or modifying the permit if the criteria are met. For a proposed change to qualify as an RFI amendment, it needs to meet all of the criteria in this subsection. The criteria are existing requirements and only (1) is amended, which is to clarify what it means for the EA to find a

proposed change consistent with all applicable certified and/or adopted CEQA documents. Clarification is added that a proposed change is consistent with CEQA if the EA finds that no subsequent EIR or Negative Declaration or supplemental EIR is needed, or the EA finds the proposed change is exempt from CEQA requirements. Additional typographical corrections are made with no change to the existing requirements.

Subsection (d)(1-2)

This subsection is new and is necessary to conform to the new methodology. The subsection is further necessary to specify the criteria for determining if a proposed change qualifies as a modified solid waste facilities permit. For a proposed change to qualify as a modified permit, the EA has determined that the proposed change does not qualify as an RFI amendment and is either 1) a “nonmaterial change” or 2) the proposed change is such that the permit does not need to be changed to include further restrictions, prohibitions, mitigations, terms, conditions or other measures to adequately protect public health, safety, ensure compliance with State minimum standards or to protect the environment. A nonmaterial change is defined in Section 21563(d)(5) as a change that would require a change to the solid waste facilities permit, but would not result in any physical change that would alter the approved design or operation of the facility. Examples of changes that could qualify as permit modifications include clarification of limits or conditions in the permit that do not result in a physical change at the site; incorporation of a new RFI into the permit; or true corrections to the permit for height, acreage, depth that do not result in a physical change at the site. Under the second criterion, a proposed change can qualify for a modified permit even if it would result in a physical change to the existing design or operation of the facility (i.e., it is not a “nonmaterial change”), if the EA does not see the need to add to the existing permit further restrictions, prohibitions, mitigations, terms, conditions, or other measures to protect public health, public safety, ensure compliance with State minimum standards, and to protect the environment. This means that as long as the proposed change that requires the permit to be changed (be it a physical change or not) does not require additional restrictions, prohibitions, mitigations, terms, conditions, or other measures to protect public health, public safety, ensure compliance with State minimum standards, and to protect the environment to be added to the permit by the EA, it can qualify as a permit modification. Currently, the only process defined in existing regulations to make any changes to a solid waste facilities permit is to revise the permit. This means less than significant changes to a permit must be processed and brought to the CIWMB at a regular CIWMB meeting for concurrence as a revised permit. Creating a modified permit process allows modifications to a permit for changes that are less significant. Because the changes are less than significant, concurrence to a modified permit is by the CIWMB’s Executive Director, rather than the CIWMB.

Subsection (e)

This subsection is new and is necessary to conform to the new methodology. The subsection is further necessary to specify the criteria for determining if a proposed change at a facility requires a revised solid waste facilities permit. For a proposed change to qualify as a revised permit, the EA must determine that the proposed change is a “significant change” and does not qualify as an RFI amendment or a modified permit. A “significant change” is defined in Section 21563(d)(6) as a change in design or operation of a solid waste facility where the EA has determined through the methodology that the change is of such consequence that the solid waste facilities permit needs to include further restrictions, prohibitions, mitigations, terms, conditions or other measures to adequately protect public health, safety, ensure compliance with State minimum standards or to protect the environment. The definition includes clarification that it is only for

the purpose of determining when a permit should be revised as a process for reviewing and approving the requested changes in design and operation of the facility, and it should not be utilized for any other purpose, such as determining when a change in design or operation at a facility triggers compliance with CEQA. Defining “significant change” is a requirement of AB 1497, which requires the CIWMB to adopt regulations that define the phrase “significant change in the design or operation of the solid waste facility that is not authorized by the existing permit.” This phrase appears in PRC Section 44004(a), which provides that an operator of a solid waste facility cannot make a “significant change...” unless the change is approved by the EA, conforms with the California Integrated Waste Management Act (Act) and all regulations adopted pursuant to the Act, and the terms and conditions of the permit are revised to reflect the change. The phrase “significant change...” is not defined in existing statute or regulation. One reason for the difficulty in defining “significant change” is the need to address site specific conditions, because what is significant at one facility may not be significant at another facility. Whether a change is significant or not depends on each facility’s existing permit conditions, unique characteristics, local issues, community, and climate. The most feasible approach is to provide a methodical process or decision tree for EAs to follow when presented with a request by an operator to make proposed changes at a solid waste facility. Using this methodology, the EA determines if a proposed change qualifies as an amendment to the RFI, qualifies as a modified permit, or if found significant, requires a revised permit.

To facilitate understanding of the methodology by the affected public, a Note is added that presents the methodology in the form of a diagram to make it easier to follow the process. The diagram is only to facilitate understanding of the process and does not supplant any of the regulations in Section 21665. The diagram provides the process for operators and EAs to follow when the operator is proposing to make a change in the design or operation at a facility. Using the methodology the EA determines if a change proposed by the operator would require an amendment to the RFI or the permit needs to be modified or revised. The methodology was developed to comply with AB 1497 requirements that the CIWMB adopt regulations that define the phrase “significant change in the design or operation of the solid waste facility that is not authorized by the existing permit.” Because what is significant depends on each facility’s existing permit conditions, unique characteristics, location, local issues, community, climate, and other factors, the most feasible approach to defining “significant change...” is to provide a methodical process or decision tree for EAs to follow when presented with a request by an operator to make proposed changes in the design or operation at a solid waste facility. Using this methodology, the EA determines if the RFI needs to be amended or the permit needs to be modified or revised. If the EA determines that the permit needs to include further restrictions or conditions to adequately protect public health, public safety, ensure compliance with State minimum standards or to protect the environment, then the EA has determined that the change is “significant” and can be made only if the permit is revised. The methodology provides a consistent analytical process for EAs to use in making their determinations, while giving them the flexibility necessary to address site specific conditions.

Section 21666. CIWMB – Processing Report of Facility Information (RFI) Amendment(s)

This section is new and consists of requirements that the EA must follow when processing an application for an RFI amendment. These include requirements on the timing for processing an application, who should be notified, and actions needed to be taken when an application is denied. These requirements are taken directly from the former Section 21665, subsections (d) through (f), and relocated to Section 21666, subsections (a) through (c). They do not include the

criteria used by the EA in determining whether a change proposed by an operator of a solid waste facility qualifies as an amendment to the RFI. This has been retained in Section 21665 and incorporated into a new methodology for EAs to follow when presented with a request by an operator to make proposed changes at a solid waste facility. Using this methodology, the EA determines if a proposed change qualifies as an amendment to the RFI or requires the solid waste facilities permit to be modified or revised. By moving the processing requirements that do not apply to the criteria used in the methodology out of Section 21665 and into Section 21666, the methodology is kept as a whole in one section. This is necessary to facilitate understanding of the methodology process by EAs and operators, promoting effective application of the methodology.

Subsections (a-c)

These subsections are amended and are necessary to conform with the changes made to Section 21665, where the criteria used by the EA in determining whether a proposed change qualifies as an amendment to the RFI has been retained in Section 21665, while the remainder of the processing requirements (subsections (d) through (f) of the former Section 21665 have been moved to the new Section 21666. In Subsection (a) clarification has been added that the EA can either accept or reject some or all of the amendments, making it clear that the EA has flexibility in processing an application for an RFI amendment. In Subsection (b) clarification was added that notification of the regional water quality control board is only when applicable. Additional typographical corrections are made with no change to the existing requirements.

Section 21675. CIWMB – Review of Solid Waste Facilities Permits

Subsection (a)

This subsection is amended to add the concept of “permit modification” to the requirement that a solid waste facilities permit may need to be revised if the EA finds it necessary from their 5-year review. This clarification is necessary to conform to Section 21665(d), which creates a modified permit process to allow modifications to a solid waste facilities permit for changes that are deemed less than significant by the EA. Currently there is only one process defined in existing regulations to make any change to a permit, a revised process.

Minor typographical corrections are made with no change to the existing requirements.

Subsection (b)(1-2) and (c)

Minor typographical corrections are made with no change to the existing requirements.

FINAL STATEMENT OF REASONS

PERMIT IMPLEMENTATION (AB 1497) REGULATIONS

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Title 27: Environmental Protection
Division 2: Solid Waste
Chapter 4: Criteria for Landfills and Disposal Sites
Article: 3.1 CIWMB Requirements

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

Section 21685. CIWMB – Proposed Solid Waste Facilities Permit; CIWMB Processing Requirements

Subsection (a)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (b)(1-4)

This subsection is amended to clarify that the CIWMB shall not concur in the issuance of a proposed new and revised solid waste facilities permits, and the CIWMB's Executive Director shall not concur in the issuance of a proposed modified permit, unless specified information has been submitted. This amendment is necessary to conform to Section 21665(d), which creates a modified permit process to allow modifications to a solid waste facilities permit for changes that are deemed less than significant by the EA. Examples of changes that could qualify as permit modifications include clarification of limits or conditions in the permit that do not result in a physical change at the site; incorporation of a new RFI into the permit; or true corrections to the permit for height, acreage, depth that do not result in a physical change at the site. The Executive Director has already been delegated by the CIWMB to concur on non-significant permit modifications. PRC Section 40430 allows the CIWMB to delegate any power, duty, purpose, function and jurisdiction which it deems appropriate to the Executive Director. The CIWMB has delegated to the Executive Director in its "Board Governance Policies for Governance and Board-Staff Linkage" Resolution, October 17, 2006, the approval of non-significant modifications to solid waste facilities permits, while retaining approval authority on permit revisions. In adopting the delegation, the CIWMB acknowledged that once the Permit Implementation Regulations are adopted, the delegation language will be simplified to say: "Approve modified permits in accordance with 27 CCR Section 21663(a)." Currently there is only one process defined in existing regulations to make any changes to a permit, a revised process. Under that process, even less than significant changes must be processed by the EA and brought to the CIWMB at a regular or special CIWMB meeting for concurrence as a revised permit. In contrast, changes proposed by an operator that do not require the permit to be changed currently can be done through amendments to the RFI, which are processed by the EA and do not go to the CIWMB for concurrence. Requiring concurrence by the CIWMB's

Executive Director for permit modifications is consistent for changes that are less than significant. The process used by CIWMB staff in reviewing and making a recommendation on concurrence is the same for modified and revised permits.

Minor typographical corrections are made with no change to the existing requirements.

Subsection (b)(4)(A-B)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (b)(5)(i-iii)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (b)(6)

This subsection is deleted to remove the specific requirement that the proposed solid waste facilities permit submitted to the CIWMB for concurrence include a copy of land use entitlements for the facility. This is necessary to conform with the deletion of Subsection 21570(f)(9), which required the operator to include as part of a complete and correct application package a copy of land use entitlements for the facility. The deletion of land use entitlements as part of a complete and correct application package is to avoid promoting or creating any conflict between the local jurisdiction's land use entitlement and the solid waste facilities permit process. Under existing regulations, a complete permit application requires inclusion of the land use and/or conditional use permit (CUP) applicable to the facility. EAs are required to review the permit application to determine if it is correct. Other than using the information provided in the land use or CUP to better understand the project described in the application, it is not clear in existing regulation what the EA should be doing relative to reviewing the land use or CUP. Delays in the processing of some permit applications have resulted when EAs reject applications because they find them to be inconsistent with the land use entitlements. State law has not mandated that the EA be an agency required to verify if the information in the land use approval is correct or if the facility has the approval of the local government to operate as proposed under a solid waste facilities permit. The appropriate agency for making local land use determinations is the local government having jurisdiction, in most cases, the city or county in which the facility is located.

To provide clarity, the proposed regulations remove the requirement that applicants submit land use entitlements to the EA in their applications, thus excluding local land use from EA decisions on acceptance of a complete and correct permit application package. In its place, the new regulation advise (but do not require), the EA to consider land use entitlements when drafting permit terms and conditions, which is when the EA considers the content of other entitlements, permits, and approvals when processing a solid waste facilities permit (see Section 21650(i)). The Note in Section 21650(i) is amended to clarify that when writing permit conditions the EA should be aware of and take into consideration other permits, entitlements and approvals, such as local use permit conditions, mitigation measures imposed under the California Environmental Quality Act, Air Pollution Control District/Air Quality Management District permits to construct and operate, Department of Fish and Game permits, Coastal Commission approvals, and others. Further clarification is provided that when writing permit conditions the EA should take into consideration PRC Section 44012, which requires the EA to ensure that primary consideration is given to protecting public health and safety and preventing environmental damage, and the long-term protection of the environment. This approach acknowledges that the EA should be aware of

and take into consideration other permits and approvals when writing permit terms and conditions, but does not put the EA in the position of enforcing local land use permit conditions by not processing a solid waste facilities permit application. Nothing in the proposed regulations will prevent or hinder a local jurisdiction from carrying out their responsibility relative to enforcing local land use requirements. Operators are still bound to comply with local land use permit conditions, which are enforced by local agencies that are charged with the responsibility.

Subsection (b)(6-7)

These subsections, formerly (b)(7-8) are renumbered to conform with the deletion of Subsection (b)(6).

Subsection (b)(8)

This subsection, formerly (b)(9) is renumbered to conform with the deletion of Subsection (b)(6). Minor typographical corrections are made with no change to the existing requirements.

Subsection (c)

This subsection is amended to clarify that the CIWMB shall either concur or object to the issuance of a proposed new and revised solid waste facilities permits within 60 days, and to specify that the CIWMB's Executive Director shall either concur or object to the issuance of a proposed modified permit within 60 days. Further clarification provides that the Executive Director shall follow the same procedure as the CIWMB when he or she objects to the proposed solid waste facilities permit. This amendment is necessary to conform to Section 21665(d), which creates a modified permit process to allow modifications to a solid waste facilities permit for changes that are deemed less than significant by the EA. Examples of changes that could qualify as permit modifications include clarification of limits or conditions in the permit that do not result in a physical change at the site; incorporation of a new RFI into the permit; or true corrections to the permit for height, acreage, depth that do not result in a physical change at the site. The Executive Director has already been delegated by the CIWMB to concur on non-significant permit modifications. PRC Section 40430 allows the CIWMB to delegate any power, duty, purpose, function and jurisdiction which it deems appropriate to the Executive Director. The CIWMB has delegated to the Executive Director in its "Board Governance Policies for Governance and Board-Staff Linkage" Resolution, October 17, 2006, the approval of non-significant modifications to solid waste facilities permits, while retaining approval authority on permit revisions. In adopting the delegation, the CIWMB acknowledged that once the Permit Implementation Regulations are adopted, the delegation language will be simplified to say: "Approve modified permits in accordance with 27 CCR Section 21663(a)." Currently there is only one process defined in existing regulations to make any changes to a permit, a revised process. Under that process even less than significant changes must be processed and brought to the CIWMB at a regular CIWMB meeting for concurrence as a revised permit. In contrast, changes proposed by an operator that do not require the permit to be changed currently can be done through amendments to the RFI, which are processed by the EA and do not go to the CIWMB for concurrence. The proposed regulations require the Executive Director to report to the CIWMB at its next regularly scheduled meeting on his or her concurrence or denial of modified permits, or the Executive Director can report this information to the CIWMB via a memo. To further public awareness of the action taken by the Executive Director, the information reported to the CIWMB will also be posted on the CIWMB's web site or agenda. Requiring concurrence by the CIWMB's Executive Director for permit modifications is consistent for changes that are less than significant. The process used by CIWMB staff in

reviewing and making a recommendation on concurrence is the same for modified and revised permits.

Minor typographical corrections are made with no change to the existing requirements.

Subsection (d)

This subsection is amended to make a conforming change to the reference to Subsection (e) of Section 21650 so that it now reads Subsection (f).

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PERMIT IMPLEMENTATION (AB 1497) REGULATIONS

December 2006

Title 14:	Natural Resources
Division 7:	CIWMB
Chapter 3:	Minimum Standards for Solid Waste Handling and Disposal
Article: 5.9	Construction and Demolition and Inert Debris Transfer/Processing Regulatory Requirements

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

Section 17383.10 (a-c) Public Hearing

These subsections are deleted to remove the specific requirement in the CDI regulations that the EA hold an informational public hearing on an application for a registration or a full solid waste facilities permit. This requirement has been broadened to include all solid waste facilities, not just CDI facilities. Title 27 Section 21660.2(a) requires the EA to conduct an informational meeting for all new and revised full solid waste facilities permit applications. The CIWMB directed staff to apply the CDI informational public hearing requirements to other solid waste facilities and EA requirements in order to provide consistency to the existing regulations. The informational meeting requirement is necessary to comply with AB 1497 requirements.

AB 1497 requires the CIWMB to adopt regulations that implement new public noticing and hearing requirements for the EA to conduct when processing applications for permit revisions. The notice and informational meetings requirements are the same for new and revised full permits. "Informational meeting," referred to as a "public hearing" in AB 1497, is defined in Section 21563(d)(4).

The version of the proposed regulations noticed during the 60-day comment period had required informational meetings to be conducted for new registration and standardized permits. However, this requirement was deleted based on comments received during the comment period. Every time there is a change at a site with these types of permits a new permit is required since the existing permit cannot be modified or revised. This means every change to a permit could require an informational meeting if the requirement is not deleted from the proposed regulations. In the case of registration permits, they are ministerial approvals. The EA has 30 days to find the application for a registration permit complete and correct, and to accept it for filing, leaving little time for holding an informational meeting. Continuing to require noticing, on the other hand, for new registration and standardized permits does not interfere with the shorter process times while still providing the public a heads-up about upcoming changes at a solid waste facility. The level of noticing is the same as a modified permit.

Consistent with the replaced CDI regulations, under these new regulations the EA can require the operator to pay all costs incurred by the EA in connection with the meeting; the informational

meeting can be combined with another public meeting in which the EA participates that meets criteria specified in Title 27 Section 21660.2(a); the EA can substitute a previous public meeting or hearing as specified in Title 27 Section 21660.4 if the applicant does not object; the EA should hold the informational meeting in a suitable location not more than 1 mile from the facility that is the subject of the meeting, if a suitable and available location can be found by the EA; the meeting should be scheduled on a day and time that will enable attendance by residents living in the vicinity of the facility; the EA can undertake additional measures to encourage attendance at the meeting; and noticing of the meeting includes posting the notice in the manner set forth in Government Code Section 65091, subdivisions (a) through (c).

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PERMIT IMPLEMENTATION (AB 1497) REGULATIONS

December 2006

Title 14: Natural Resources

Division 7: CIWMB

Chapter 3: Minimum Standards for Solid Waste Handling and Disposal

Article: 5.95 Construction and Demolition Waste and Inert Debris Disposal Regulatory Requirements

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

Section 17388.3 Inert Debris Engineered Fill Operations

Minor typographical corrections are made with no change to the existing requirements.

Subsection 17388.3(b)

This subsection is amended to delete the specific requirement in the CDI regulations that all inspections by the EA be unannounced and conducted at irregular intervals, to the greatest extent possible. This requirement has been broadened to include all solid waste operations and facilities, not just CDI operations and facilities. Subsection 18083(b), which applies to all operations and facilities, has been amended to require the EA to conduct inspections, whenever possible, without prior notice to the owner or operator, on randomly selected days, during normal business hours or the site's operating hours. Requiring the EA to conduct random inspections, whenever possible, is necessary to strengthen the concept that inspections should be conducted as surprise random inspections when possible and provides consistency among all types of solid waste facilities and operations in requiring random and unannounced inspections. Inspection conducted in this manner avoids the potential for an operator to anticipate the arrival of an inspector and therefore the potential of the operator to implement short term "cosmetic" change in operations to avoid violations. This potentiality would prevent the inspector from observing the site as it might normally be operated and would reduce the effectiveness of periodic inspections. The CIWMB directed staff to apply the CDI inspection requirements to other solid waste facilities and EA requirements in order to provide consistency among all types of solid waste facilities and operations, which includes the requirement for random, unannounced inspections. The requirement is further strengthened in Section 18077 where a new requirement is added that the EA include in its Enforcement Program Plan (EPP) procedure manual for inspection and investigation that the inspection and investigation be random and unannounced. Requiring the EA to include this in their EPP strengthens the inspection program by allowing EA performance to be evaluated on whether the EA is conducting random and unannounced inspections as provided in their EPP.

Subsection 17388.3(c-i)

Minor typographical corrections are made with no change to the existing requirements.

Section 17388.4 Inert Debris Type A Disposal Facilities

Minor typographical corrections are made with no change to the existing requirements.

Subsection 17388.4(b)

This subsection is amended to delete the specific requirement in the CDI regulations that all inspections by the EA be unannounced and conducted at irregular intervals, to the greatest extent possible. This requirement has been broadened to include all solid waste operations and facilities, not just CDI operations and facilities. Subsection 18083(b), which applies to all operations and facilities, has been amended to require the EA to conduct inspections, whenever possible, without prior notice to the owner or operator, on randomly selected days, during normal business hours or the site's operating hours. Requiring the EA to conduct random inspections, whenever possible, is necessary to strengthen the concept that inspections should be conducted as surprise random inspections when possible and provides consistency among all types of solid waste facilities and operations in requiring random and unannounced inspections. Inspection conducted in this manner avoids the potential for an operator to anticipate the arrival of an inspector and therefore the potential of the operator to implement short term "cosmetic" change in operations to avoid violations. This potentiality would prevent the inspector from observing the site as it might normally be operated and would reduce the effectiveness of periodic inspections. The CIWMB directed staff to apply the CDI inspection requirements to other solid waste facilities and EA requirements in order to provide consistency among all types of solid waste facilities and operations, which includes the requirement for random, unannounced inspections. The requirement is further strengthened in Section 18077 where a new requirement is added that the EA include in its Enforcement Program Plan (EPP) procedure manual for inspection and investigation that the inspection and investigation be random and unannounced. Requiring the EA to include this in their EPP strengthens the inspection program by allowing EA performance to be evaluated on whether the EA is conducting random and unannounced inspections as provided in their EPP.

Minor typographical corrections are made with no change to the existing requirements.

Subsections 17388.4(c-j)

Minor typographical corrections are made with no change to the existing requirements.

Section 17388.5. CDI Waste Disposal Facilities

Subsections 17388.4(a-b)

Minor typographical corrections are made with no change to the existing requirements.

Subsection 17388.4(c)

This subsection is deleted to remove the specific requirement in the CDI regulations that all inspections by the EA be unannounced and conducted at irregular intervals, to the greatest extent possible. This requirement has been broadened to include all solid waste operations and facilities, not just CDI operations and facilities. Subsection 18083(b), which applies to all operations and facilities, has been amended to require the EA to conduct inspections, whenever possible, without prior notice to the owner or operator, on randomly selected days, during normal business hours or the site's operating hours. Requiring the EA to conduct random inspections, whenever possible, is necessary to strengthen the concept that inspections should be conducted as surprise random inspections when possible and provides consistency among all types of solid

waste facilities and operations in requiring random and unannounced inspections. Inspection conducted in this manner avoids the potential for an operator to anticipate the arrival of an inspector and therefore the potential of the operator to implement short term "cosmetic" change in operations to avoid violations. This potentiality would prevent the inspector from observing the site as it might normally be operated and would reduce the effectiveness of periodic inspections. The CIWMB directed staff to apply the CDI inspection requirements to other solid waste facilities and EA requirements in order to provide consistency among all types of solid waste facilities and operations, which includes the requirement for random, unannounced inspections. The requirement is further strengthened in Section 18077 where a new requirement is added that the EA include in its Enforcement Program Plan (EPP) procedure manual for inspection and investigation that the inspection and investigation be random and unannounced. Requiring the EA to include this in their EPP, strengthens the inspection program by allowing EA performance to be evaluated on whether the EA is conducting random and unannounced inspections as provided in their EPP.

Section 17388.6 Public Hearing

Subsections (a-c)

These subsections are deleted to remove the specific requirement in the CDI regulations that the EA hold an informational public hearing on an application for a registration or a full solid waste facilities permit. This requirement has been broadened to include all solid waste facilities, not just CDI facilities. Title 27 Section 21660.2(a) requires the EA to conduct an informational meeting for all new and revised full solid waste facilities permit applications. The CIWMB directed staff to apply the CDI informational public hearing requirements to other solid waste facilities and EA requirements in order to provide consistency to the existing regulations. The informational meeting requirement is necessary to comply with AB 1497 requirements. AB 1497 requires the CIWMB to adopt regulations that implement new public noticing and hearing requirements for the EA to conduct when processing applications for permit revisions. The notice and informational meetings requirements are the same for new and revised full permits. "Informational meeting," referred to as a "public hearing" in AB 1497, is defined in Section 21563(d)(4).

The version of the proposed regulations noticed during the 60-day comment period had required informational meetings to be conducted for new registration and standardized permits. However, this requirement was deleted based on comments received during the comment period. Every time there is a change at a site with these types of permits a new permit is required since the existing permit cannot be modified or revised. This means every change to a permit could require an informational meeting if the requirement is not deleted from the proposed regulations. In the case of registration permits, they are ministerial approvals. The EA has 30 days to find the application for a registration permit complete and correct, and to accept it for filing, leaving little time for holding an informational meeting. Continuing to require noticing, on the other hand, for new registration and standardized permits does not interfere with the shorter process times while still providing the public a heads-up about upcoming changes at a solid waste facility. The level of noticing is the same as a modified permit.

Consistent with the CDI regulations being replaced by these regulations, the EA can require the operator to pay all costs incurred by the EA in connection with the meeting; the informational meeting can be combined with another public meeting in which the EA participates that meets

criteria specified in Title 27 Section 21660.2(a); the EA can substitute a previous public meeting or hearing as specified in Title 27 Section 21660.4 if the applicant does not object; the EA should hold the informational meeting in a suitable location not more than 1 mile from the facility that is the subject of the meeting, if a suitable and available location can be found by the EA; the meeting should be scheduled on a day and time that will enable attendance by residents living in the vicinity of the facility; the EA can undertake additional measures to encourage attendance at the meeting; and noticing of the meeting includes posting the notice in the manner set forth in Government Code Section 65091, subdivisions (a) through (c).

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PERMIT IMPLEMENTATION (AB 1497) REGULATIONS

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Title 14: Natural Resources

Division 7: CIWMB

Chapter 5: Enforcement of Solid Waste Standards and Administration of Solid Waste Facility Permits; Loan Guarantees

Article: 2.1 EA Certification Requirements

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

Section 18077. Enforcement Program Plan (EPP)

Subsections (a)(2), (7), (9), (10)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (a)(12)

This subsection is amended to require the EA to include in its Enforcement Program Plan (EPP) procedure manual for inspection and investigation that the inspection and investigation be random and unannounced. This requirement is necessary to strengthen the new requirement in Section 18083(b) that requires the EA to conduct inspections, whenever possible, without prior notice to the owner or operator, on randomly selected days, during normal business hours or the site's operating hours. Current regulation authorizes the EA to conduct inspections without prior notice to the owner or operator during normal business hours or the site's operating hours whenever possible, but does not require the EA to do so, and the EA is not required to conduct the inspection on randomly selected days. Requiring the EA to conduct random inspections, whenever possible, is consistent with current CDI regulatory requirements. Inspection conducted in this manner avoids the potential for an operator to anticipate the arrival of an inspector and therefore the potential of the operator to implement short term "cosmetic" change in operations to avoid violations. This potentiality would prevent the inspector from observing the site as it might normally be operated and would reduce the effectiveness of periodic inspections. The CDI regulations require that all site inspections for CDI Inert Debris Engineered Fill Operations (Section 17388.3(b)), Inert Debris Type A Disposal Facilities (Section 17388.4(b)), and CDI Waste Disposal Facilities (Section 17388.5(c)) be unannounced and conducted at irregular intervals to the greatest extent possible. The CIWMB directed staff to apply the CDI inspection requirements to other solid waste facilities and EA requirements in order to provide consistency among all types of solid waste facilities. Requiring the EA to include this in their EPP, strengthens the inspection program by allowing EA performance to be evaluated on whether the EA is conducting random and unannounced inspections as provided in their EPP.

Minor typographical corrections are made with no change to the existing requirements.

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PERMIT IMPLEMENTATION (AB 1497) REGULATIONS

December 2006

Title 14:	Natural Resources
Division 7:	CIWMB
Chapter 5:	Enforcement of Solid Waste Standards and Administration of Solid Waste Facility Permits; Loan Guarantees
Article: 2.2	EA Performance Standards, Evaluation Criteria, and Duties and Responsibilities

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

Section 18083. EA Duties and Responsibilities for Inspections

Subsection (a)(1), (4), (5), (7)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (b)

This subsection is amended to require the EA to conduct inspections, whenever possible, without prior notice to the owner or operator, on randomly selected days, during normal business hours or the site's operating hours. Current regulation authorizes the EA to conduct inspections without prior notice to the owner or operator during normal business hours or the site's operating hours whenever possible, but does not require the EA to do so, and the EA is not required to conduct the inspection on randomly selected days. Requiring the EA to conduct random inspections, whenever possible, is necessary to strengthen the concept that inspections should be conducted as surprise random inspections when possible and provides consistency among all types of solid waste facilities and operations in requiring random and unannounced inspections. Inspection conducted in this manner avoids the potential for an operator to anticipate the arrival of an inspector and therefore the potential of the operator to implement short term "cosmetic" change in operations to avoid violations. This potentiality would prevent the inspector from observing the site as it might normally be operated and would reduce the effectiveness of periodic inspections. The CDI regulations require that all site inspections for CDI Inert Debris Engineered Fill Operations (Section 17388.3(b)), Inert Debris Type A Disposal Facilities (Section 17388.4(b)), and CDI Waste Disposal Facilities (Section 17388.5(c)) be unannounced and conducted at irregular intervals to the greatest extent possible. The CIWMB directed staff to apply the CDI inspection requirements to other solid waste facilities and EA requirements in order to provide consistency to the existing regulations.

Clarification is added that the inspections shall be conducted as specified in the EA's Enforcement Program Plan (EPP) in accordance with Section 18077. This clarification is necessary to conform to the new requirement in Section 18077(12) that the EA include in its EPP

procedure manual for inspection and investigation that the inspection and investigation be random and unannounced. Requiring the EA to include this in their EPP, further strengthens the inspection program by allowing EA performance to be evaluated on whether the EA is conducting random and unannounced inspections as provided in their EPP.

FINAL STATEMENT OF REASONS

PERMIT IMPLEMENTATION (AB 1497) REGULATIONS

December 2006

Title 14:	Natural Resources
Division 7:	CIWMB
Chapter 5:	Enforcement of Solid Waste Standards and Administration of Solid Waste Facility Permits; Loan Guarantees
Article: 3	Regulatory Tier Requirements

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

Section 18104.1 Filing Requirements

Minor typographical and editing corrections are made to provide better clarity with no change to the existing requirements.

Subsection (e)(2)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (g)

This subsection is added to establish a new requirement that the operator of a solid waste facility that is required to have a new solid waste facilities permit must submit a copy of the application form to the director of the local agency that oversees local land use planning in the jurisdiction in which the site is located at the same time an application for a solid waste facilities permit is submitted to the EA. This subsection is necessary to help ensure that the local planning department is aware that the operator has proposed a new facility or a change to an existing facility. The local planning department may not be informed by the operator of changes that may require some action relative to land use entitlements. By providing a copy of the application, an opportunity is created for the local planning department to make an independent determination of the need for the local entitlements to be addressed. It also allows for an increase in the opportunity for communication between the EA and the land use authority during the permitting process. The local planning department could then take action, if it so chooses, if a facility proposed to operate as described in the solid waste facilities permit application would be inconsistent with local land use entitlements or other local land use regulations. The appropriate agency for verifying if a facility would operate consistent with a local land use entitlement is the entity that granted the entitlement, namely local government, and not the State of California through the EA programs.

Subsection (h)

This subsection is added to establish a new requirement that the operator of a solid waste facility that is required to have a new solid waste facilities permit, submit to the EA, as part of the application package, a list of all public hearings and other meetings open to the public that have

been held or copies of notices distributed that are applicable to the proposed solid waste facilities permit action. CIWMB agenda items for new permit actions currently include a description of the level of community outreach used for purposes of addressing Environmental Justice (EJ) as it relates to the permit actions being considered. This information assists the CIWMB in determining what additional actions if any might be needed to meet EJ objectives. The information is received from EAs who often depend on operators for details. Requiring the operator to submit a list of all public notices and other meetings open to the public that have been conducted relative to the changes being requested in the application strengthens the reporting of this information to the CIWMB and the furthering of EJ in the consideration of permit actions. This is necessary to be consistent with the intent of AB 1497, which requires that EJ concerns be considered in developing the regulations and new public noticing and hearing requirements be implemented for permit revisions.

Section 18104.2 Enforcement Agency Processing Requirements

Subsection (a, c-d)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (e)

This subsection is added to establish a new requirement that the EA provide notice on a new permit application in accordance with Title 27 sections 21660.2 through 21660.4. This requirement is necessary to conform to the public noticing and informational meeting requirements in Title 27 Section 21660. The version of the proposed regulations noticed during the 60-day comment period had required informational meetings to be conducted for new registration and standardized permits. However, this requirement was deleted based on comments received during the comment period. Every time there is a change at a site with these types of permits a new permit is required since the existing permit cannot be modified or revised. This means every change to a permit could require an informational meeting if the requirement is not deleted from the proposed regulations. In the case of registration permits, they are ministerial approvals. The EA has 30 days to find the application for a registration permit complete and correct, and to accept it for filing, leaving little time for holding an informational meeting. Continuing to require noticing, on the other hand, for new registration and standardized permits does not interfere with the shorter process times while still providing the public a heads-up about upcoming changes at a solid waste facility. The level of noticing is the same as a modified permit.

Subsections (f-h)

These subsections are renumbered, with no change to the existing requirement, to conform to the change in Subsection (e).

Section 18104.7 Permit Review & Reissuance

Subsection (b)

This subsection is amended to require the EA to notify the operator of the need to apply for a five-year permit review, rather than having the CIWMB provide the noticing. Current regulation requires the CIWMB to notify the operator and the EA of the need for the operator to apply for a five-year permit review for registration permits (this section) and standardized permits (Section 18105.9(b)). On the other hand, current regulation requires the EA to notify the operator of the

need to apply for a five-year permit review for all full solid waste facilities permits (Title 27 Section 21675). Requiring the EA, instead of the CIWMB, to notify all facility operators of the need to apply for a five-year permit review, including for registration and standardized permits, is necessary to bring consistency to the task and to eliminate confusion among EAs as to their responsibilities.

Subsections (c-d)

Minor typographical corrections are made with no change to the existing requirements.

Section 18105.1. Filing Requirements

Minor typographical and editing corrections are made to provide better clarity with no change to the existing requirements.

Subsection (f)(1)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (g)(1-2)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (i)

This subsection adds a new requirement that the operator of a solid waste facility that is required to have a solid waste facilities permit must submit a copy of the application form to the director of the local agency that oversees local land use planning in the jurisdiction in which the site is located at the same time an application for a solid waste facilities permit is submitted to the EA. This subsection is necessary to help ensure that the local planning department is aware that the operator has proposed a new facility or to make a change to an existing facility. The local planning department may not be informed by the operator of changes that may require some action relative to land use entitlements. By providing a copy of the application, an opportunity is created for the local planning department to make an independent determination of the need for the local entitlements to be addressed. It also allows for an increase in the opportunity for communication between the EA and the land use authority during the permitting process. The local planning department could then take action, if it so chooses, if a facility proposed to operate as described in the solid waste facilities permit application would be inconsistent with local land use entitlements or other local land use regulations. The appropriate agency for verifying if a facility would operate consistent with a local land use entitlement is the entity that granted the entitlement, namely local government, and not the State of California through the EA programs.

Subsection (j)

This subsection is added to establish a new requirement that the operator of a solid waste facility that is required to have a solid waste facilities permit, submit to the EA, as part of the application package, a list of all public hearings and other meetings open to the public that have been held or copies of notices distributed that are applicable to the proposed solid waste facilities permit action. CIWMB agenda items for new permit actions currently require a description of the level of community outreach used for purposes of addressing Environmental Justice (EJ) as it relates to the permit actions being considered. This information assists the CIWMB in determining what additional actions if any might be needed to meet EJ objectives. The information is received from EAs who often depend on operators for details. Requiring the operator to submit a list of all public notices and other meetings open to the public that have been conducted relative

to the changes being requested in the application strengthens the reporting of this information to the CIWMB and the furthering of EJ in the consideration of permit actions. This is necessary to be consistent with the intent of AB 1497, which requires that EJ concerns be considered in developing the regulations and new public noticing and hearing requirements be implemented for permit revisions.

Section 18105.2 Enforcement Agency Processing Requirements

Subsections (a) and (c)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (f)(1)

Minor typographical corrections are made with no change to the existing requirements.

Subsection (f)(2)

This subsection is added to establish a new requirement that the EA provide notice on a new permit application in accordance with Title 27 sections 21660.2 through 21660.4. This requirement is necessary to conform to the public noticing and informational meeting requirements in Title 27 Section 21660. The version of the proposed regulations noticed during the 60-day comment period had required informational meetings to be conducted for new registration and standardized permits. However, this requirement was deleted based on comments received during the comment period. Every time there is a change at a site with these types of permits a new permit is required since the existing permit cannot be modified or revised. This means every change to a permit could require an informational meeting if the requirement is not deleted from the proposed regulations. In the case of registration permits, they are ministerial approvals. The EA has 30 days to find the application for a registration permit complete and correct, and to accept it for filing, leaving little time for holding an informational meeting. Continuing to require noticing, on the other hand, for new registration and standardized permits does not interfere with the shorter process times while still providing the public a heads-up about upcoming changes at a solid waste facility. The level of noticing is the same as a modified permit.

Subsection (f)(3) and (4)

These subsections are renumbered, with no change to the existing requirement, to conform to the change in Subsection (f)(2).

Subsection (h)

Minor typographical corrections are made with no change to the existing requirements.

Section 18105.9. Permit Review and Reissuance.

Subsection (b)

This subsection is amended to require the EA to notify the operator of the need to apply for a five-year permit review, rather than having the CIWMB provide the noticing. Current regulation requires the CIWMB to notify the operator and the EA of the need for the operator to apply for a five-year permit review for standardized permits (this section) and registration permits (Section 18104.7(b)). On the other hand, current regulation also requires the EA to notify the operator of the need to apply for a five-year permit review for all full solid waste facilities permits (Title 27

Section 21675). Requiring the EA, instead of the CIWMB, to notify all facility operators of the need to apply for a five-year permit review, including for registration and standardized permits, is necessary to bring consistency to the task and to eliminate confusion among EAs as to their responsibilities.

Subsections (c-d)

Minor typographical corrections are made with no change to the existing requirements.



The following explanations apply to all the proposed regulations contained in this Initial Statement of Reasons for the regulatory package entitled *Permit Implementation (AB 1497) Regulations*.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

The CIWMB considered the alternative of making no amendment to the regulation and continuing to implement existing practice, but determined that the proposed amendment is necessary to clarify the requirements and determined that no alternative would be as effective and less burdensome to private persons or businesses while at the same time protecting human health and safety and the environment.

TECHINICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT OR DOCUMENTS

CIWMB did not rely on any technical, theoretical, or empirical studies, reports or documents in developing the proposed regulations. CIWMB relied upon the PRC and applicable regulations adopted pursuant to the PRC, analysis by CIWMB staff, and written and oral comments and public workshop input from other regulatory agencies, including CIWMB-certified Enforcement agencies, from the regulated community, and from the public.

INITIAL DETERMINATION THAT THE ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CIWMB staff made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. In making this determination, the CIWMB relied upon an analysis by Cal/EPA's Agency-wide Economic Analysis Program.

DUPLICATION OR CONFLICTS WITH CODE OF FEDERAL REGULATIONS

No unnecessary duplication or conflict exists between the proposed regulations and federal regulations contained in the Code of Federal Regulations because federal law either reinforces portions of the new regulation or does not contain comparable requirements.