

***Allied Waste Services
California Refuse Removal Council
Republic Services, Inc.
Sanitation Districts of Los Angeles County
Waste Management***

January 5, 2007

Margo Reid Brown, Chair
California Integrated Waste Management Board
1001 I Street, 25th Floor
PO Box 4025
Sacramento, CA 95812-4025

Subject: Draft Proposed Regulations -- Long-Term Postclosure Maintenance and Corrective Action Cost Estimates and Financial Assurance Demonstrations for Landfills

Dear Chairperson Brown:

Thank you for recently meeting with representatives of our informal solid waste industry group to discuss concerns regarding the draft regulations recently proposed by your staff regarding, "Long-Term Postclosure Maintenance and Corrective Action Cost Estimates and Financial Assurance Demonstrations for Landfills".

The draft regulations proposed by CIWMB staff at the November 27, 2006 Workshop followed the global direction that the CIWMB provided to staff on July 18, 2006, before AB 2296 (Montanez) was signed. AB 2296 has since provided clear direction and focus with deadlines to have regulations for preparing cost estimates adopted by January 1, 2008, and that subsequent regulation for corrective action and financial assurance be adopted by July 1, 2009, based on the findings of a study that is to be completed by January 1, 2008. Continuing with the draft regulations of November 27, 2006 will counter the focus of AB 2296 which may cause the CIWMB to miss the first AB 2296 deadline. We would recommend that the regulations be bifurcated with a phased approach to meet AB 2296 goals.

Although we have many specific concerns regarding the draft proposed regulations as further articulated in the attachment, our broad concern with these regulations is that they are contrary to subsequent legislative direction that was given to the Waste Board relative to this matter in the form of AB 2296, and thus the scope of the regulatory package should be realigned accordingly to be consistent with those directives. Earlier language contained in AB 2296 was of grave concern to the solid waste industry in California. We worked in good faith to amend the bill into the form that was ultimately passed by the legislature and signed into law by Governor Schwarzenegger and which contains essentially two parts:

1. ***Immediately Improved Cost Estimating Procedures.*** Direction to the board to adopt regulations by the end of 2007 that focuses on the basis for estimating costs of closure and post-closure care based on the reasonably foreseeable costs the state may incur if the state would have to assume responsibility for the closure and post-closure maintenance. ***Our solid waste industry group believes that this was intended to focus the board's immediate attention on the development of improved cost-estimating procedures for closure and post-closure care to include a requirement to use "prevailing wages", better annual inflation adjustments, and other standardizations when making such cost estimates.***
2. ***Longer Term Risk Evaluation Study.*** Direction to the Board to conduct a comprehensive study during 2007 to define the conditions that potentially affect solid waste landfills, including technologies and engineering controls and financial assurance mechanisms designed to mitigate potential risks, in order to identify potential long-term threats to public health and safety and the environment. This study is to be followed by recommended regulatory changes to be considered by your board by July 1, 2009. ***Our solid waste industry group firmly believes that the legislature intended this study to encompass broader considerations regarding the Board's regulation of closure, post-closure care, corrective action and financial assurance. We strongly believe that it was the intent of the legislature to defer substantive regulatory and legislative changes pertaining to these issues (i.e., beyond "cost-estimating procedures") until after the completion of this study by early 2008, but not later than July 1, 2009.***

The solid waste industry is committed to working with the Board in a cooperative fashion to address *reasonable* concerns relative to closure, post-closure care, corrective action and financial assurance. We believe that the Board has a reasonable concern regarding the source of funding in the potential event that a landfill owner or operator has insufficient resources to address closure, post-closure care and corrective action activities. By the same token, we believe that the vast majority of landfill owners and operators are, and will be, capable of appropriately maintaining closed landfills as long as they continue to own them and be responsible for their care and immediate precipitous action is simply not warranted. *We request that near term regulatory changes related to this broader purview of the study be deferred until the study has been completed by early 2008.*

We hope to work closely with the Board and your staff during 2007 as part of the longer term risk evaluation study to develop comprehensive and cost-effective regulatory, and potentially statutory, approaches to ensure and adequate level of long term closure, post-closure, corrective action and financial assurance care of California's solid waste landfills. Failure to consider cost-effectiveness of alternative proposals will inevitably result in substantial capital being "locked-up" and therefore unavailable for other important priorities such as GHG emissions reductions, diversion programs, and Bioenergy. *We would therefore request that the study include an evaluation of establishing a limited pooled-fund or other financial instrument to only cover those remote instances where an operator will be unable to fulfill its obligations for post*

closure maintenance or corrective action, rather than a broader pool that assumes that 100 percent of the operators will be unable to meet their post-closure care, corrective action or financial assurance obligations.

Thank you for your interest and consideration in this matter.

Sincerely,

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Attachment

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