

Allied Waste

**From:** Elizabeth Garcia [mailto:egarcia@norcalwaste.com]

**Sent:** Fri 4/29/2005 3:24 PM

**To:** Levenson, Howard

**Cc:** Garcia, Bobbie; De Bie, Mark

**Subject:** Industry Comment Letter regarding Permit Implementation Regulations (Assembly Bill 1497)

Allied Waste

Norcal Waste Systems, Inc.

Waste Management

April 30, 2005

Howard Levenson, Ph.D.

Deputy Director, Permitting & Enforcement

California Integrated Waste Management Board, MS #16

P.O. Box 4025

Sacramento, CA 95812-4025

**Subject:** Permit Implementation Regulations (Assembly Bill 1497)

Dear Mr. Levenson,

Thank you for providing an opportunity for public comment on the proposed subject regulations. The letterhead organizations collaborate in an informal coalition of companies and organizations involved in the collection, processing, recycling and disposal of solid waste in California. We submit the following concerns regarding the possible regulatory approaches described during the April 4, 2005 Permit Implementation Regulations Workshop. As a group, we fully support the California Integrated Waste Management Board (CIWMB), its mission, and the directives of Assembly Bill 1497. At this time, we believe the processes the draft regulatory language describes stray from the legislative intent of AB 1497 and focus already scarce human resources on the development of unwarranted or redundant processes.

For the sake of clarity, this letter will refer to the issues as numbered in the April 4, 2005 Workshop. Specifically, the letter addresses the following issues.

Issue 1: Significant Change and Modified Permit Process

Issue 3: Relationship of Solid Waste Facilities Permit to Local Land Use

Issue 4: Tracking Community Outreach Efforts

Issue 6: Surprise Random Inspections

We do not have comments on issues 2 and 5.

Issue 1: Significant Change and Modified Permit Process

Though the first section of chaptered Assembly Bill 1497 (Montanez, 2004) reads "the

bill would impose a state-mandated local program by imposing new duties upon enforcement agencies with regard to solid waste facilities permits, thereby imposing a state mandated local program," only a definition, not a modified permit process, is mandated by the statutes. Section 44004(i)(1) as amended by AB 1497 directs the CIWMB to adopt regulations that establish a new hearing requirement and to define the term "significant change in the design or operation of the solid waste facility that is not authorized by the existing permit." No such section or amended section exists for the modified permit process.

If AB 1497 requires the CIWMB to become involved to a greater degree in the permitting process, we request that the board take this opportunity to streamline the process, by defining "significant change..." in order to improve existing RFI and administrative permit change processes.

The Modified Permit Process may be unwarranted and unnecessary in light of already established mechanisms for handling administrative and non-significant changes. The Report of Facilities Information (RFI) process represents the existing method for dealing with "any" changes in design or operation, (changes that could also be physical). The RFI already gives the local enforcement authority (LEA) the obligation and authority to decide if an operator must undergo a permit revision. LEAs hold operators to the requirement that if the design or operational change is significant, then a permit revision is necessary. If the change is not significant, no permit revision is needed. Accordingly, it should be apparent why AB 1497 requires the CIWMB to define significant change. It is critical to the RFI process.

Regarding "administrative" type changes to a permit document (changes where a text change is necessary to the permit, but the text change does not facilitate a significant design or operation change), existing CEQA law and the Permit Streamlining Act (PSA) provide for an "expedited" permit revision process. "Administrative" text changes to a permit are considered to be non-discretionary. CEQA does not apply to non-discretionary actions. Accordingly, a permit that needs a non-discretionary change is exempt from CEQA. An LEA would be able to advance a non-discretionary permit change to the CIWMB expeditiously when it is not subject to CEQA.

Furthermore, the PSA requires agencies to establish certain maximum time allotments for their processing. We know that the CIWMB requires 120 days in order for an LEA and CIWMB to process a permit revision, once the permit application has been accepted. But, this 120-day period is a maximum. Nothing prevents the LEA and CIWMB from taking action sooner. Certainly for a non-discretionary permit change, the 120-day period could be shortened significantly. Therefore, we do not believe the Modified Permit Process (which we understand to be designed to address "administrative" revisions to a permit) improves on the current orderly, established processes for RFI amendments and non-discretionary actions.

Issue 3: Relationship of Solid Waste Facilities Permit to Local Land Use

Neither statutes nor the chaptered bill text call for the CIWMB to clarify the level of consistency of the permit application to local land use entitlements. We believe questions of local land use fall outside of the scope of the authority of responsible agencies such as the LEA and the CIWMB. Again, we request that the CIWMB adhere as closely as possible to the statutory requirements of AB 1497.

#### Issue 4: Tracking Community Outreach Efforts

We understand the CIWMB lacks a system for tracking community outreach efforts for a facility or a project and is required by AB 1497 and the recommendations of the Working Group on Environmental Justice to develop one. However, the Board staff has already initiated a very aggressive reporting mechanism when reviewing permits and permit revisions. Each agenda item on every permit or permit revision now includes a comprehensive summary of EJ activities and community outreach efforts. We do value community outreach and the push for public agencies to ensure that their policies reflect EJ considerations. At this time, however, we can't wholeheartedly voice support for a "community outreach log" without reasonable parameters.

Currently solid waste operators engage in "community outreach" much like any other good business in a community. Businesses tailor outreach to their own needs, objectives and the location of their facilities (e.g., industrial or residential). In fact, many facilities conduct community outreach in the normal course of business and because they are concerned members of their communities. We believe that significant additional human resources would be required if facilities were required to track and log all community outreach efforts. We also concerned about the additional requirements that would be necessary to enforce a facilities record of "community outreach."

While we fully agree with the need for proactive environmental justice and community outreach efforts and understand the role that data plays within the requirements of Sections 7113-7115 of the Public Resources Code (PRC), we find an operator log of community outreach to be neither the most cost-effective nor the most informative form of data collection. Furthermore, a simple log does not insure that community outreach efforts are effective.

#### Issue 6: Surprise Random Inspections

In the effort to remain consistent and true to the legislative intent, if the CIWMB goal is to "apply to other solid waste operations and facilities [Construction, Demolition and Inert Debris] regulatory requirements," we request that the CDI surprise random inspection regulations be applied directly.

Section 17383.6(g) of the Public Resources Code reads

Large volume CDI debris processing facilities shall be inspected monthly by the EA in accordance with PRC section 43218. To the greatest extent possible, all inspections shall be unannounced and shall be conducted at irregular intervals.

Section 17388.3 (b) of the Public Resources Code reads  
Inert debris engineered fill operations shall be inspected as necessary by the EA to verify compliance with State Minimum Standards. Inspections shall be conducted quarterly, unless the EA determines a lesser frequency is sufficient, but in no case shall the inspection frequency be less than annual. To the greatest extent possible, all inspections shall be unannounced and shall be conducted at irregular intervals.

We believe the suggested language below addresses the application, the permissiveness, the surprise and flexibility the presentation slides sought.

Solid waste operations shall be inspected as necessary by the EA to verify compliance with State Minimum Standards. Inspections shall be conducted monthly, unless the EA determines a lesser frequency is sufficient, but in no case shall the inspection frequency be less than annual. To the greatest extent possible, all inspections shall be unannounced and shall be conducted at irregular intervals.

The solid waste industry thanks you for considering our needs, interests and our request to help shape a practical set of regulations. Please contact any of the undersigned parties if you have any questions or require further information regarding our concerns.

Sincerely,

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Allied Waste

Don Gambelin  
Norcal Waste Systems, Inc.

Charles A. White, P.E.  
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Cc: Bobbie Garcia and Mark de Bie  
Permitting and Enforcement CIWMB Members