THE CITY OF SAN DIEGO

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JUN 12 2006

May 31, 2006

Bobbie Garcia, Permitting and Enforcement
California Integrated Waste Management Board
PO Box 4025, MS 16
1001 I Street
Sacramento, CA 95812-4025

SUBJECT: Permit Implementation Regulations (AB1497)

Dear Ms. Garcia:

Thank you for the opportunity to review these regulations. The Environmental Services Department operates the Miramar Landfill. The department seeks the dual goals of protecting public health and safety and the environment and also streamlining regulations. The following comments are intended to further these goals.

1. Concurrent processing. Section 21563, subsection d(1) should make it clear that permitting agencies must accommodate concurrent processing. This section should specifically state that concurrent processing is allowed. It should be made very clear that "addressed" does not mean "completed." Furthermore, the regulations should make it clear that the applicant can waive statutory timelines, because this may be necessary in order to accommodate other permitting processes.

2. Multi-purpose meetings. Several laws contain requirements for public meetings on permit applications. Section 21660.4 specifies that a CEQA scoping meeting held BEFORE the required EA "informational meeting" may substitute for the information meeting; however, it should also specifically allow that the applicant may waive the timeline during which the informational meeting must be conducted. This meeting could then be combined with a CEQA scoping meeting that comes too late for the LEA to include it within the specified time limits (section 21580). This comment also applies to section 21563 subpart d(4), section 21570 subpart b, section 21650, subparts e and g(7), and section 21660.2, subpart b. In section 18104.2, subsection e, the following words should be added to the end "or shall attend and participate in a similar public meeting held on the project."

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3. Minimizing paperwork. In some cases, such as Gregory Canyon Landfill, land use authority was displaced as a result of a voter initiative. For facilities located at MCAS Miramar, there is no local land use authority; instead the facility is subject to a federal land use authority. The land use authority, when there is one, requires applicants to submit whatever information it deems appropriate. The CIWMB should not require that their permits applications be sent to the land use authority. The underlined language in section 21570 (a) and section 18105.2, subsection (i) should be deleted.

4. Ensuring that the regulations are appropriate to all situations. Notwithstanding the above, the following would be more flexible: "and one copy of the application form to the agency that oversees land use planning where the facility is located, when there is one." In section 21570 subsection f(5)A, section 21685, subsection b(4), and section 18105.1, subsection g(1), the words "or applicable planning document, when there is one" should be added.

5. Assuring an end to the permitting process. If requirements can be identified that fully address all problems associated with a facility, and the applicant agrees to all requirements, the project should be approved. Clarity and an end to the process, even if the answer is no, is of great value. Section 21685 subsection c should be changed accordingly. However, an appeal process should be provided when an applicant disagrees with the Executive Director's decision.

6. Providing discretion to EAs. Regulations cannot anticipate every situation and cannot predetermine the significance of what an inspector may find. The EAs need regulations that are strong, but flexible enough to cover a broad array of circumstances. The decision tree approach of Title 22, California Code of Regulations section 21665 provides EAs with an opportunity to consider the specific circumstances of a facility. While acknowledging the great effort that went into providing a reasonable list, the "decision tree" approach fulfills the goals of ESD better than the "list" approach.

If there must be a list, in section 21620, subsection a(1)D, the most appropriate delegation of discretion to EAs would be provided with Alternative 2. Within this alternative, however, there is no existing requirement to change permits because of a change made in the structure of the regulatory agency. Therefore xii is not needed and should be deleted. In subsection a(4), EAs should be given discretion to make judgment calls about the severity and importance of issues. Agency staff should be allowed to waive cumbersome procedures if they can make a determination that there would be no negative impacts to the environment or to public heath and safety. This is analogous to the "common sense" exemption under CEQA.

Alternative 3, the significant change list, provides no discretion at all to LEAs. This was added during the workshops held on these implementing regulations, but are not related to the purpose of streamlining the process, and remove discretion from LEAs, potentially resulting in needless processing.

7. Potential confusion. As existing regulations are written, under section 18105.2 subsection i, if the Board is tied, then concurrence is assumed without an affirmative vote. However the Board, as a responsible agency, must also adopt the CEQA document. To avoid confusion, it should be made clear what the status of the CEQA document is under this circumstance. The cleanest way would be to make it "adopted" in this case.

8. Minor cleanups. Section 17388.4, subsection i and section 17388.5, subsection b, can be deleted, since it is now past February 24, 2005.

Section 18104.1, subsection e(2): SRREs can and should be updated with annual reports. The words "as amended with the annual report" should be added.

Throughout the document, changing Facility to Facilities did not improve readability.

Page 1 line 32, page 10 line 6, page 22 line 39 page 26, line 16, "which" should be "that."

Page 2 line 2, "Denial" – D should be small case.

Page 3 line 36, "enforcement agency" should be EA.

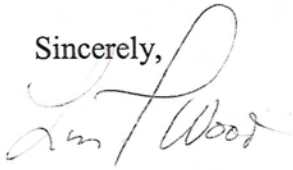
Page 25 line 34, there should be a comma before the "which."

Page 25 line 35, to avoid possible multiple meanings of this sentence, a period should be placed after the word "agency" and a new sentence should begin, "The application shall be accompanied . . .."

Page 27 line 24, delete "which is."

Again, thank you for the opportunity to review these regulations. Please call me at (858) 573-1236 if you have any questions about these comments.

Sincerely,



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