

Enforcement Advisory Council

Solid Waste Management Through Partnership

April 19, 2006

Howard Levenson, Deputy Director
Permitting and Enforcement Division
California Integrated Waste Management Board
1001 "T" Street
Sacramento, Ca. 95812-4025

Subject: **Enforcement Advisory Council Resolution 2006-02.** Providing
Comments and Recommendations on the Proposed Permit Implementation
Regulations during the formal 60 day Review Period.

Dear Mr. Levenson:

The Enforcement Advisory Council (EAC) met on March 7, 2006 and passed Resolution 2006-02. The EAC discussed the Proposed Permit Implementation Regulations (AKA Permit Package A, 1497 Regulations). The EAC discussed the most important and critical area of the proposed regulations, which is the attempt to define significant change using a decision tree and the minor, optional minor and significant change lists.

The EAC adopted Resolution 2006-02 arriving at a consensus on the following:

1. Fully support the Decision Tree as a process to identify whether a change in operation or design, is an RFI amendment, Modified or Revised permit action [Title 14, Section 21665].
2. Not support the Alternative 1 Minor Change, Alternative 2 Optional Minor Change or Alternative 3 Significant Change lists as criteria that must be met to implement a change or revise a permit without LEA/EA review or approval [Title 14, Section 21620(a)(1)(4)].
3. Maintain local control and discretionary actions as central to the permit process.

A group of Board Staff, Management, LEAs and EAs conducted the initial working group in designing the draft regulations prior to development of the lists. The group identified areas in the permit regulations that were difficult to implement in the permit process. The Decision Tree describes a process, via a flow chart, to determine whether a change of operation is significant and the appropriate permit process necessary to make the change. The major aspect of the flowchart is it provides for and maintains LEA and EA discretion on determining whether a change is significant or not. The proposed lists

attempt to identify items that would be considered non-significant or significant but would be problematic in keeping the review and approval a discretionary action. The proposed items in the list could be construed as significant or non-significant depending on the type of operation or facility, existing language in a facility's supporting documentation, or an urban vs. rural environment, etc. If the lists were "all-inclusive", any and all proposed non-significant change items would have to be consistent throughout the state with no question of discretion. This does not appear to be possible. Another problematic aspect to the lists is that they can not be all-inclusive in which there will always be another item that should/could be on the list but is not. Each proposed change must be treated on its own merit and the LEA would most likely be challenged as to why a particular proposed change would not be considered the same as the "approved list". Thus, any approved list can not be all-inclusive.

The initial working group, in reviewing *significant change*, examined the current permitting structure, a previous 1986 report on Significant Change by a CIWMB Advisory Committee, as well as other available materials to determine that *lists* would not serve stakeholders in addressing the limitless variety of circumstances that could constitute changes at solid waste facilities.

Thank you for considering our comments and recommendations on the issues outlined in EAC Resolution 2006-02. Should you have any questions please contact me at (619) 533-3696 or by email at: wprinz@sandiego.gov.

Sincerely,

William E. Prinz, Chair
Enforcement Advisory Council

Cc: EAC Members
Ben Gale, Chair, CCDEH Solid Waste Policy Committee
Bobby Garcia, CIWMB