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June 6, 2006

Bobbie Garcia
California Integrated Waste Management Board
Permitting and Enforcement Division
P.O. Box 4025 MS-16
Sacramento, CA 95812-4025

RE: Comments on Proposed Permit Implementation (AB 1497) Regulations

Dear Ms. Garcia:

On behalf of its 22 member counties, the Rural Counties Environmental Services Joint Powers Authority (ESJPA) appreciates this opportunity to provide the California Integrated Waste Management Board (CIWMB) with the attached comments on the proposed Permit Implementation Regulations. The revised regulations will provide some clarity on determining what change in activity ranges from an insignificant to significant changes related to solid waste facility permitting.

The ESJPA supports the broadest possible latitude in what change constitutes a Minor Change including the items listed in Alternative 1 and Alternative 2 and allowing Enforcement Agency's discretion to go beyond these lists. Declaring a complete, comprehensive list of minor changes is not feasible given the minor changes occurring at facilities on almost a daily basis.

The other main concern of the ESJPA is that the term, "Nonmaterial change", should not be limited to non-physical changes. Physical changes can include nearly any change including some that are listed as minor changes. This term should be revised as indicated in the attached comments.

Since completely listing all possible minor changes in regulation is impossible, the regulations should also allow for Enforcement Agency discretion for other minor changes that will likely occur in the future. This flexibility is essential to smooth operation of solid waste facilities.

Please contact us if you have any questions. Thank you again for this opportunity to provide comments on this proposal.

Sincerely,

Larry Sweetser
ESJPA Consultant

cc: Members, California Integrated Waste Management Board
Mark Leary, Executive Director, CIWMB
Howard Levenson, Deputy Director, CIWMB
Mark de Bie, CIWMB
Rebecca Williams, CIWMB
ESJPA Board of Directors

Comments on Proposed Permit Implementation (AB 1497) Regulations

Section 21563(d)(1) “Complete” – Other agencies impose requirements upon solid waste facilities but are not appropriate to be included in the solid waste facility permit applications (e.g. building permits, safety requirements, air permit, ...). This definition should be revised to reflect that only those relevant to the activities regulated by the Public Resources Code and regulations under Title 14 and Title 27 are required to be submitted. The language currently used in 14 CCR Section 18101 (d) is appropriate for use in this section.

Section 21563(d)(2) “Correct” – The new clarification that the information in the land use and/or conditional use permit should not be verified for correctness is appropriate. This new language creates an inconsistency with the definition of “Correct” 14 CCR 18101 (e) that should be addressed.

Section 21563(d)(5) “Nonmaterial change” – There are physical changes that can occur at the solid waste facility, potentially including ones listed as minor changes, that should be included in the definition of “Nonmaterial change”. The term physical change is so broad and can include not only adding sizable physical structures but also adding or modifying small operational equipment. Minor physical changes can meet the criteria used in the Modified Solid Waste Facilities Permit Criteria in Section 21665 (d)(2) of:

the proposed change is such that the solid waste facilities permit does not need to include further restrictions, prohibitions, mitigations, conditions or other measures to adequately protect public health, public safety, ensure compliance with State minimum standards or to protect the environment.

Since a requirement of a Modified Solid Waste Facilities Permit is limited to changes that are “nonmaterial change”, this limitation to nonphysical changes creates a conflict. Some of the potential physical changes that might result from minor change list items include:

Alternative 1

- (iv) changes in emergency equipment – adding spill containment devices or additional fire extinguishers is a physical change
- (v) Replacing equipment is a physical change since it is physically different than what was there before.
- (vii) changes in tanks is a physical change since it is physically different than what was there before.
- (viii) changes in location of backup equipment is a physical change

Alternative 2

- (i) Replacing a monitoring point is a physical change
- (iv) Changes in containers used for storage is a physical change
- (vii) Changes to facility signage wording is a physical change
- (viii) changes to personal protective equipment is a physical change
- (ix) Changes to traffic patterns are a physical change

- (xv) Purchase of property adjacent to the facility is a physical change

Other potential nonmaterial physical changes might include:

- Adding a fence to screen or secure an area or delineate an operation area
- Moving a portable toilet from one area to another.
- Repair of building or electrical equipment
- Paving a road or parking area

Obviously, the list of minor physical changes is endless. We recommend the definition should be changed to:

(5) “Nonmaterial change” means a change that would require a change to the solid waste facilities permit but would not result in any substantial physical change that would materially alter the approved design or operation of the facility.

Section 21620 (1) Minor Changes – The ESJPA supports inclusion of both Minor Change Lists in the proposed regulatory package along with an allowance for Enforcement Agency discretion for including other activities as minor changes. Minor operational and documentation changes occur on a regular basis – personnel changes, new trainings are conducted, equipment is fixed or replaced. As stated in Section 21620 (a), a change (any change) not allowed as a minor change will need to undergo at least a RFI Amendment requiring noticing and approvals. State minimum standards and operational requirements define the standards that must be met. If the methods for compliance are changed, the question should be whether the standards are satisfied.

As demonstrated by the working group, there are many changes that are insignificant that prior approval is not required. This Minor change list should not be limited to a finite list. If a minor change results in a violation, then the Enforcement Agency will inform the operator of this violation. Most operators prefer this approach to requesting approval on every insignificant change.

Some examples of why certain items should remain as minor changes are listed below.

Typographical changes, changes in procedures, changes in back-up equipment sources, updated reference documents, changes in surrounding land uses, and maintenance procedure changes all are examples of paper changes with no material impact on the design or operation of the facility.

Training plans and personal equipment change as necessary. New or revised regulations prompt some of these changes. Tailgate trainings to immediately address a work situation should not have to wait pending an approval simply because it was not in the RFI training plan.

Equipment breaks or wears out. There is a need to replace that equipment quickly. Replacement with similar capabilities should not be delayed until approvals are received.

It is inconsistent that a (iv) change in containers used for storage of materials in the Minor Change List Alternative 2 but (vii) changes in tanks is listed in Alternative 1. Both of these items should be allowed on the Minor Change List

Changes outside the operators control should remain as minor changes. These include: background information outside the permitted boundary including change in land use unrelated to the facility, changes in enforcement agency, and regulation renumbering.

If a Minor Change list is not included in the regulations, then a list should be provided in an advisory as examples.

Section 21620 (4) Revised Permit

The ESJPA supports removing the list of significant changes and relying on the proposed decision tree methodology to guide Enforcement Agencies in determining what qualifies as a significant change. The proposed definition in Section 21563 (b)(6) provides adequate guidance that a significant change “needs to include further restrictions, prohibitions, mitigations, conditions or other measures to adequately protect public health, public safety, ensure compliance with State minimum standards or to protect the environment.”

We recommend that Alternative 3 be removed and language added that refers back to the definition of significant change and allows Enforcement Agency discretion.

Flow Diagram of the “Process For An RFI Amendment and Modified, Revised, and New Solid Waste Facility Permits”

The flow diagram entry the box “Under the RFI Amendment, 10 days prior to accepting an application” should also include Section 21660.1 (a) in the notice.

Section 21666 (b). CIWMB – Processing Report of Facility Information (RFI) Amendment(s). – This section should be changed to reflect the fact that RWQCBs are not typically involved in transfer station permits.. Please revise the section as follows:

(b) Within 5 days of acceptance for filing of the RFI amendment application package, the EA shall notify the operator, the CIWMB and the RWQCB, if applicable, of its determination. The EA shall include in their notification to the CIWMB, a copy of the accepted RFI amendment(s), and a copy of the application form along with the EA determination specified in ¶(a).