

Welcome
to the
Permit Implementation
Regulations (AB 1497)
Workshop

The Project

- Part of the Solid Waste Facility Permit Regulations Development Plan
- Approved by the Permitting and Enforcement Committee at its the November 2004 Committee Meeting (for more details go to: <http://www.ciwmb.ca.gov/Rulemaking/SWFPDevPlan/default.htm>)
- First of three rulemaking packages to be developed by staff to address various permit-related issues

Project Approach

- Assembled a working team to analyze the issues and make recommendations and draft regulatory language
- Extensive Informal Phase that includes:
 - Conducting Team Meetings
 - Attending Enforcement Agency Roundtables and Enforcement Advisory Council Meetings
 - Holding Public Workshops
 - Using the Internet for Comment Submissions

Web site Address:

<http://www.ciwmb.ca.gov/Rulemaking/PermitImplem/>

- Project timeframe is January 2005-July 2006

Purpose of the Workshop

- To inform stakeholders on work accomplished to date
- To gather feedback and answer questions
- To encourage future participation in the process

Workshop Agenda & Format

- 1:00 – 2:00 PowerPoint Presentation of the Issues & Approaches
- 2:00 – 2:10 Break
- 2:10 – 4:00 Comments & Questions from the Audience
- 6:00 – 8:00 Repeat Session if needed

Comment Period During Informal Process

- Comments taken at workshops
 - Verbally
 - In writing using the comment forms
- Comments taken via email to SWFacPermit@ciwmb.ca.gov until April 30, 2005

Updates and Progress

- All working drafts will be available for viewing at:
<http://www.ciwmb.ca.gov/Rulemaking/PermitImplem/>

Permit Implementation Regulations (AB 1497): Proposed Regulations - Microsoft Internet Explorer provided by CIWMB

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Proposed Regulations

Permit Implementation Regulations (AB 1497)

Description
New and revised regulations implementing the requirements of [Assembly Bill 1497](#) (Stats. 2003, Ch. 823), applying new construction and demolition requirements to the regulation of other solid wastes, and clarifying permit process requirements.

Existing Regulations That Would Be Affected
To be determined.

[Background](#) | [Key Issues](#) | [Status](#) | [Contact](#) | [Stakeholder Info](#) | [For More Info](#)

Background
In January 2004, [AB 1497](#) was enacted. The new law mandates several new solid waste facility permitting requirements and authorizes the Board to adopt regulations to implement these requirements. At its [January 2004 meeting](#), the Board directed staff to address, in a rulemaking, the application of new construction & demolition requirements to other solid waste facility and local enforcement agency requirements. Finally, in early 2004, the Board staff consulted with stakeholders to solicit their input on what they viewed as areas for improvement, consistency, and clarification related to the permitting process and/or requirements.

During the second half of 2004, Board staff solicited stakeholder input on regulatory concepts associated with the issues above via a process entitled the [Solid Waste Facility Permit Regulation Development Plan](#). At its [November 2004 meeting](#), the Board's Permitting and Enforcement Committee directed staff to implement the plan through three separate and staggered rulemakings. This rulemaking, Permit Implementation Regulations (AB 1497), is the first of the three rulemakings.

Key Issues
The key issues of the Permit Implementation Regulations (AB 1497) are:

1. [Public Hearings Requirements](#)
2. [Significant Change and Modified Permit Process](#)
3. [Report of Facility Information Requirements for Community Outreach Efforts Recordkeeping](#)
4. [Five Year Permit Review Noticing](#)

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Permit Implementation Regulations (AB 1497)

Key Issues

1. Significant Change and Modified Permit Process
2. Public Noticing and Hearing Requirements
3. Relationship of Solid Waste Facilities Permit to Local Land Use

Permit Implementation Regulations (AB 1497)

Key Issues

4. Tracking Community Outreach Efforts
5. Five Year Permit Review Noticing
6. Surprise Random Inspections

Issue 1: Significant Change and Modified Permit Process – Attachment C

Issue:

Inconsistent approach to approval of changes at facilities because phrase “significant change in design or operation of the SWF that is not authorized by the existing SWFP” has not been defined and which determines when a permit revision is required

Objective:

- Define the phrase to clarify when a permit needs to be revised
- Define a new process that would allow changes to permits for changes that do not require revision

Issue 1: Significant Change and Modified Permit Process – Attachment C

Reasoning:

- Defining the phrase would clarify when a permit needs revision
- Defining a new process would allow permits to be modified without going through the revision process

Existing Law/Regulations:

- PRC Section 44004(a) prohibits an operator from making a significant change in the design or operation of a SWF not authorized by the existing permit, unless
 - the change is approved by the EA,
 - the change conforms with the IWMA,
 - and the terms and conditions are revised

Issue 1: Significant Change and Modified Permit Process – Attachment C

Existing Law/Regulations:

- PRC 44004 (AB 1497)
 - CIWMB to adopt regulations that define the phrase
 - EAs to notice and hold a hearing for revised permits
- PRC Section 44012 requires EA when issuing or revising any permit to focus on:
 - Protection of public health and safety and the environment, and
 - Long-term protection of environment, and
 - Terms and conditions are consistent with local standards

Issue 1: Significant Change and Modified Permit Process – Attachment C

Existing Law/Regulations:

- PRC Section 44014 and 44009 refer to permit modifications
- Title 27 CCR 21655 allows approval of changes consistent with the permit through Report of Facility Information amendments

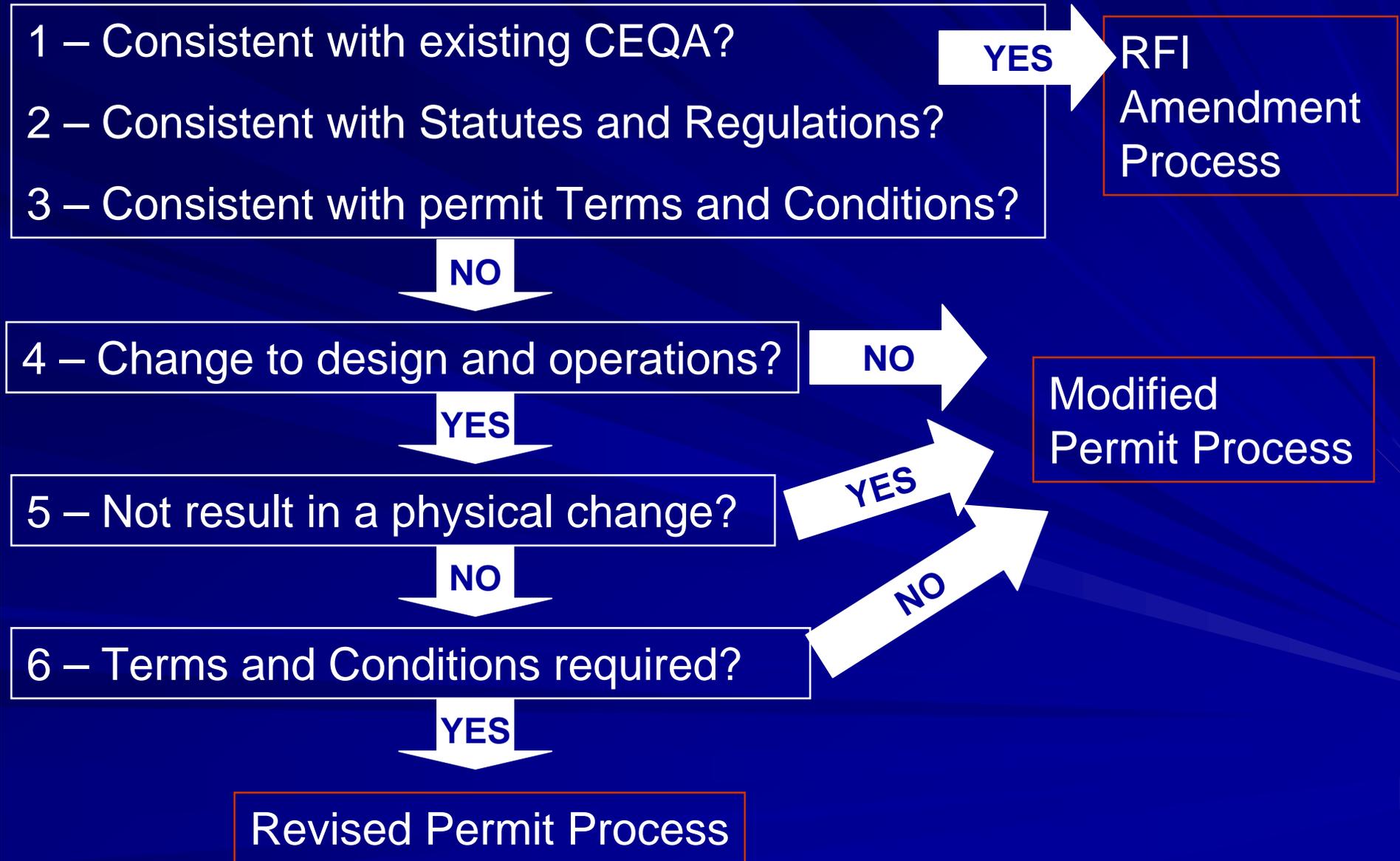
Issue 1: Significant Change and Modified Permit Process – Attachment C

Possible Regulatory Approaches:

Proposed “Decision Tree”:

- PRC 44004 (AB 1497) serves as basis for the definition, the phrase and not just “significant change”
- Criteria in the form of a decision tree which guides EA through “yes” or “no” questions in making a determination
- Answers to questions in decision tree determines if proposed change qualifies as a RFI amendment, a modified permit, or requires a revised permit

Issue 1: Significant Change and Modified Permit Process – Attachment C



Issue 1: Significant Change and Modified Permit Process – Attachment D

Possible Regulatory Approaches:

■ Revised Permit - all of the following criteria must apply

- Change to design or operation; and
- Will result in physical change at site; and
- Term or Condition(s) need to be added or changed

■ Proposed Modified Permit:

- Modified permit would require concurrence by CIWMB's Executive Director or designee, Revised permit requires CIWMB concurrence
- Modified permit would not require an EA hearing, Revised permit requires an EA hearing

Issue 2: Public Noticing and Hearing Requirements - Attachment A

Issue:

Inconsistency in public noticing and hearing requirements for permits

- Required for Revised and New CDI Permits
- Not required for all other permit actions

Objective:

- Adopt regulations that implement AB 1497
- Incorporate CDI permit requirements
- Apply noticing and hearing requirements to both new and revised permits
- Improve public awareness

Issue 2: Public Noticing and Hearing Requirements - Attachment A

Reasoning:

Clarifying that notice and hearing requirements apply to both new and revised permits should

- resolve inconsistency and
- improve public awareness

Issue 2: Public Noticing and Hearing Requirements - Attachment A

Existing Law/Regulations:

PRC Section 44004

- requires EA to notice and hold hearing on revised permit
- requires CIWMB to adopt regulations

CDI regulations

- require EA to notice and hold hearing on new permit allows comparable hearing

Title 27 Section 21565

- requires EA to hold hearing on exemption from permit

Issue 2: Public Noticing and Hearing Requirements - Attachment A

Possible Regulatory Approaches:

2 Tier Noticing Framework :

■ Basic Level

- RFI Amendment

■ Higher Level

- New Permit

- Revised Permit

- Exemption from Permit Requirements

- Modified Permit

Issue 2: Public Noticing and Hearing Requirements - Attachment A

Possible Regulatory Approaches:

Hearings (Meetings) Framework

- New Permit – Full and Registration
- Revised Permit - Full
- Exemption from Permit Requirements

Issue 2: Public Noticing and Hearing Requirements - Attachment A

Possible Regulatory Approaches:

“Public Hearing” means an informational meeting

The meeting is strictly informational as no decision by EA can be made at the meeting

Issue 2: Public Noticing and Hearing Requirements - Attachment B

Possible Regulatory Approaches:

List of Possibilities:

Provides existing requirements and possible alternatives for the following:

- Types of Noticing (Table)
- Timing for Noticing
- Information Contained in Notice
- Hearing Requirements
- More Food for Thought

Issue 3: Relationship of SWFP to Local Land Use – Attachment E

Issue:

Statewide inconsistency in how EAs review local land use permits when determining completeness and correctness of permit since not specified in regulation

- Some make completeness and correctness determination regardless of content of land use entitlement
- Others may reject a permit if local entitlement is inconsistent with other application documents

Objective:

Clarify the level of consistency of the permit application to local land use entitlements for purposes of determining when the permit application is “complete and correct”

Issue 3: Relationship of SWFP to Local Land Use – Attachment E

Reasoning:

Clarification could resolve inconsistency by making it clear:

- Which types of land use entitlement documentation must be included
- Role of operators in providing land use entitlement information
- Role of EAs in determining if information is complete and correct

Issue 3: Relationship of SWFP to Local Land Use – Attachment E

Existing Law/Regulations:

- EAs required to determine if application is complete and correct as defined in Title 27
- “Complete” means all requirements placed on operation of facility by statute, regulation, and other agencies have been addressed
- CUP part of an application
- “Correct” means all information provided by applicant must be accurate, exact, and fully describe parameters of facility
- Title 27 Section 21570(d) :
 - adequate detail for a evaluation of environmental effects
 - estimation that facility will conform to standards

Issue 3: Relationship of SWFP to Local Land Use – Attachment E

Possible Regulatory Approaches:

Clarification of Completeness and Correctness:

1. Complete - Applicant provides copy of CUP and documentation showing local planning agency finds SWF application consistent with CUP
2. Complete - documentation indicates no CUP required
3. Incomplete - #1 or # 2 not provided, or documentation indicates CUP must be revised or new CUP is needed to be consistent with SWF application
4. Incorrect – documentation found to be incorrect

Issue 3: Relationship of SWFP to Local Land Use – Attachment E

Possible Regulatory Approaches:

Clarification of Completeness and Correctness:

- Operator allowed to self-certify that proposed activity is authorized under local land use ordinances and plans based on all of the following actions:
 - Submitted copy of SWF application to local planning department
 - Notified planning department of intent to commence or change operations
 - Discussed proposed changes with planning department

Issue 4: Tracking Community Outreach Efforts

Issue:

No system for tracking community outreach efforts for a facility or project

Objective:

Clarify how and by whom tracking of community outreach efforts should be accomplished consistently and systematically

Reasoning:

The tracking of community outreach efforts could be helpful as CIWMB continues to consider and enhance its environmental justice practices and procedures

Issue 4: Tracking Community Outreach Efforts

Existing Law/Regulations:

No specific statute or regulations

Cal EPA addressing EJ issues

- Operators typically track community outreach information
- CIWMB agenda items for new and revised permit actions require description of level of community outreach

Issue 4: Tracking Community Outreach Efforts

Possible Regulatory Approaches:

- Require in regulation that operator keep log of all outreach efforts, such as meeting, notices, articles in paper, other permits, and enforcement actions
- Added to existing requirements for logging of special occurrences
- Notification, registration, standardized, and full permits

Issue 4: Tracking Community Outreach Efforts

Possible Implementation Issues:

- Clarification would be needed on where records can be maintained and who is responsible for collecting information
- Clarification of expectations for tracking outreach not involving the operator

Issue 5: Five Year Permit Review Noticing

Issue:

Inconsistency in noticing responsibilities for 5-year permit reviews

- EA notifies operators of full permits
- CIWMB notifies operators and EAs for registration and standardized permits

Objective:

Establish consistency for noticing 5-year permit review

Reasoning:

Applying a systematic approach to process of noticing operators will improve consistency of procedural requirements and eliminate confusion

Issue 5: Five Year Permit Review Noticing

Existing Law/Regulations:

- EA notifies operator of five-year review for full SWFP
- CIWMB notifies operator of five-year review for registration permits and standardized permits

Possible Regulatory Approaches:

- Have EA provide all five-year noticing by changing language from “CIWMB” to “EA”

Issue 5: Five Year Permit Review Noticing

Implementation Issues:

During the transition time, CIWMB may need to provide assistance to EAs regarding their new responsibility:

- CIWMB maintain a database for tracking deadlines and allowing access to EAs
- CIWMB provide guidance on form and format of the notice

Issue 6: Surprise Random Inspections

Issue:

Surprise random inspections required for CDI sites only

Objective:

Apply to other solid waste operations and facilities CDI regulatory requirement that EAs conduct surprise and randomly scheduled inspections to the greatest extent possible

Reasoning:

- Make clear that surprise random inspections should be conducted for all SW operations and facilities.
- Acknowledge that there are some unique instances where total surprise inspections are not feasible.
- By making random inspections mandatory, EA performance could be evaluated on whether they are conducting random inspections.

Issue 6: Surprise Random Inspections

Existing Law/Regulations:

- In the CDI regulations, EAs are required to conduct surprise random inspections to the greatest extent possible at CDI operations and facilities.
- In Title 14, EA inspections may be surprise and random for all other SW operations and facilities, but it is not mandatory.

Issue 6: Surprise Random Inspections

Possible Regulatory Approaches:

- Change language in Title 14 from “may” to “will” and include the phrases, “whenever possible” and “on randomly selected days,” so it reads as follows:

“The LEA/EA will conduct any of the above inspections, whenever possible, without prior notice to the owner or operator, on randomly selected days during normal business hours or the site’s operating hours.”

Issue 6: Surprise Random Inspections

Implementation Issues:

- Change of permissive word “may” to “will” could indirectly erode authority of EA to conduct inspections
- In addition to “whenever possible,” add “wherever practical”
- Clarify those sites where it would not be possible or practical to conduct surprise inspections – Include list of sites in Enforcement Program Plans
- CDI regulations would need to be modified to align with proposed regulations.
- Guidance should be provided to EAs indicating how they can comply with the requirement to conduct surprise random inspections

Next Steps

- Informal Comment Period ends April 30, 2005
- Review comments and make changes to the informal regulatory scope
- Develop informal draft regulations
- Hold workshops on informal draft regulations
- Review comments and make changes to informal draft regulations
- Begin formal rulemaking