

# *Allied Waste Industries, Inc.*

## *Waste Management*

June 5, 2006

Bobbie Garcia  
California Integrated Waste Management Board  
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Subject: Comments on Proposed Revisions to Solid Waste Permitting Regulations (aka: AB 1497 Regulations)

Dear Ms. Garcia:

Thank you for the opportunity to provide comments on the proposed changes to solid waste facility permitting regulations for which the public comment period runs to 5:00 pm on Monday June 6, 2006. Waste Management and Allied Waste Industries, Inc. provide comprehensive solid waste management and recycling services in California and own or operate a number of facilities that would be directly affected by these proposed regulations.

We support the development of these regulations to the extent that the regulations will promote increased public notice and greater clarity and consistency in the solid waste permitting process in California. However, we do have the following concerns in several key areas of the regulations related to “insignificant” and “significant” changes to solid waste facilities. These concerns have been shared with Board staff during the development stages of these proposed regulations. Our recommendations should not be interpreted in any way to discredit that process. We present these concerns again in an effort to achieve regulatory clarity in this very complex regulatory package. Therefore, we request your consideration of the following further modification of the proposed regulations prior to adoption by the Board.

1. “Nonmaterial Change”. The proposed definition at the top of page 2 relates to whether a proposed change would be eligible for a permit modification as opposed to a permit revision. If it were a “nonmaterial change” it would be potentially eligible for a permit modification. Consistent with our further comments below, we are concerned that very small physical changes to a facility should still be considered eligible for a permit modification. We request that the language of this definition 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.

The words “substantial” and “materially” (or something like them) are intended to clarify that a nonmaterial change could cause minor physical changes that do not materially alter the facility. This is consistent with the common usage of the term “nonmaterial”. Please see our further comments below related to “significant change”.

2. Minor Changes. We strongly support “Alternative 2” that provides a more extensive list of “minor changes”. We have reviewed both the Alternative 1 and Alternative 2 lists of proposed “minor changes” and believe that both lists should be used to define the nature and extent of allowable “minor changes”. We cannot see how any of the proposed minor changes would require any type of review and approval by the LEA before the change is made. However, the regulations clearly provide that the facility operator must notify the LEA within 10 days after making the “minor change”. If the LEA has reason to believe the change was not a minor change, the proposed regulations still provide a mechanism for the LEA to question whether a change is truly minor – and require the operator to fully comply with all applicable monitoring requirements. This “safety-net” provision should provide comfort that a broad inclusive list of “minor changes” is most appropriate.

However, we remain concerned that there may be additional minor changes that could be made at a solid waste facility without having to trigger a permit action or review by the LEA. We are concerned that even the broader list of minor changes under Alternative 2 will not cover all potential minor changes.

To address this concern, we request that additional language be added to allow LEAs to include additional minor changes – with advance written approval – to the minor change list for a particular facility. We believe that the LEA should be provided with broader latitude and discretion under the regulations to allow other types of minor changes in addition to those specifically listed in the regulations. For example, we suggest that the following change be made to line 7 on page 6 of the proposed regulations:

(D) the minor change is listed below, or, if not specifically listed, the EA makes a written determination in advance of the change that the minor change is consistent with the nature and scope of the minor changes listed below:

3. Substantial Change. Alternative 3 suggests that a list of 4 changes that would always be considered “significant”, related to:
  - Increase in permitted tonnage,
  - Increase in permitted acreage,
  - Increase in permitted hours of operation, and
  - For landfills only, increase in:

- i. Disposal footprint
- ii. Permitted final grade, and
- iii. Maximum overall height.

We do not dispute that many such changes are likely significant. However, we are sometimes faced with having to make minor changes in one of these categories to better coordinate the various permits we have received from the many agencies that regulate our facilities (SWFP, CUP, Air District, RWQCB, etc.). Further, the CIWMB has existing regulations related to emergency situations and is in the process of considering changes to those regulations. On the surface, it would appear that the inclusion of a fixed list of "significant changes" would jeopardize the flexibility of state and local government to respond to emergency situations.

The proposed regulations would appear to mandate a full permit revision, for example, even if the facility were proposing to add a ¼ acre parcel to the permitted facility without any change in the scope or configuration of the actual solid waste operation – or even in the even of an emergency situation. We believe that further latitude should be provided to the LEA to determine when any of the above changes are, or are not, truly "substantial". We would support, in descending order of preference, the following options for your further consider:

- Option 1: Do not specifically list any "Significant Changes". This would address the concern that some minor adjustments to the above list might be considered less than significant, but the regulations would still force a full permit revision for any changes that the LEA determines are covered under the definition of "Significant Change".
- Option 2: Provide a percentage cut-off to what would be considered a significant change. For example, consistent with generally accepted practices, a 10% change in something is not usually considered "significant". Thus the regulations would read:
  - (A) Greater than a 10% increase in maximum amount of permitted tonnage of all waste received.
  - (B) Greater than a 10% increase in the facility's permitted acreage.
  - (C) Greater than a 10% increase in the permitted hours of operation.
  - (D) For landfill, greater than a 10% increase in permitted disposal footprint; and/or permitted ~~(final grade)~~; or the maximum overall height.
- Option 3: Provide the LEA with discretionary latitude as to what would be considered significant. For example the proposed regulation could be modified to read as follows:
  - (A) Substantial increase in maximum amount of permitted tonnage of all waste received.
  - (B) Substantial increase in the facility's permitted acreage.

(C) Substantial increase in the permitted hours of operation.

(D) For landfill, substantial increase in permitted disposal footprint; ~~and/or~~ permitted ~~(final grade); or~~ the maximum overall height.

For purposes of this section, substantial increase means, as determined by the EA, a change of such magnitude that:

1. the operation of the facility would inconsistent with the most recent environmental documents prepared for the facility, and
2. the change is of such importance, value, degree, amount, or extent that the facility's operation would be materially different.

We believe that this provision, in conjunction with our proposed change to the definition of "nonmaterial change" earlier in these comments, would provide the LEA with discretionary latitude to allow minor changes in permitted tonnage, acreage, hours, footprint, final grade, or height without jeopardizing the standards of "significance".

We would further suggest that language be added to clearly allow departure from the significant change provision in order to respond to emergency situations.

Thank you for the opportunity to provide these comments for your further consideration. Please do not hesitate to contact either of us if you have any questions or require further information about our concerns.

Sincerely,

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for Allied Waste Industries, Inc.  
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cc: Rosalie Mule', Chair, CIWMB Permitting and Enforcement Committee  
and Committee members Cheryl Peace and Pat Wiggins  
Howard Levenson, Deputy Director for Permitting and Enforcement, CIWMB  
Mark DeBie, Branch Manager, Permitting and Inspection Branch, CIWMB