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Subject: Draft Report on the Study to Identify Potential Long-Term Threats and Financial Assurance Mechanisms for Long-Term Postclosure Maintenance and Corrective Action at Solid Waste Landfills

On behalf of the California State Association of Counties (CSAC) we thank you for the opportunity to comment on the subject draft report. These comments are based upon review of the draft report by members of the County Engineers Association of California (CEAC) Solid Waste Police Committee. CEAC committee members also attended the CIWMB October 25, 2007 workshop, where the draft study was presented.

It is understood that the purpose of this study, which emanated from AB 2296, was to protect the State General Fund, and therefore the taxpayers of California, from the financial burden of postclosure maintenance and corrective action remediation of closed landfills, where the owner has or may in the future default on their obligations. However, the study does not define the problem, i.e. what is the current frequency of default, what are the associated costs, and what has this issue cost the State of California so far? This information should be included in the introduction to the study to support that there really exists a problem that needs to be addressed.

Chapter 2 presents an analysis of the existing financial assurance mechanisms, and concludes that Pledge of Revenue is not a very good mechanism. Nowhere in this chapter is there any factual data that relates how many owner/operators currently use the various financial assurance (FA) mechanisms and what actual incidents of default have been experienced with each type of mechanism. CSAC opposes any recommendation to terminate Pledge of Revenue as an approved financial assurance mechanism for local governments.

Chapter 3 presents the consultant's analysis of creating a state pooled fund for financial assurance. Part of the analysis was to develop a working model that could be used to design the fund. The working model used the assumption that contributions to the fund would be mandatory for all active landfills and collected as a surcharge on disposal fees. Additionally, it was stated that the fund would be utilized only to cover defaults on postclosure maintenance (PCM) and Corrective Action (CA). The model life is 240 years, based on the maximum capability of EXCEL 2003, not any scientific data. Annual PCM cost estimates were stated to be held constant for the life of the model, as was the risk for CA incidents. Additionally, the average number of corrective actions over the modeling period was assumed to be related to the size of the landfill. These assumptions have no factual basis, they don't acknowledge the basic premise that Municipal Solid Waste (MSW) decomposes and becomes more inert over time. Landfill gas has a generation curve that declines to insignificance within 20-40 years, and leachate production declines over time as well, and therefore, presumably PCM costs decrease significantly over time and CA



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incidents should as well. The number of potential corrective actions that might occur at a landfill site in our experience has to do with how the site was operated and the site's physical features and original design, not the number of tons accepted. Therefore, the model would seem to be overly conservative and to collect more funds than necessary.

In contrast the fund is to be collected as a tip fee surcharge from all active landfills. This does not take into account that diversion rates, zero waste strategies and use of alternative/conversion technologies for solid waste could lead to a significant drop in overall tonnage of waste disposal statewide thereby undermining the ability to meet fund goals.

In theory the idea of a statewide pooled fund has some merit. However, the basis for the surcharge rate must be based on assumptions that are consistent with science, supported by actual empirical data to the extent possible, and acknowledge future trends in the waste disposal industry. Additionally, a pooled fund which is funded by all landfills, but is then only available for defaults, may actually encourage default by irresponsible operators. If such a fund is established there should be a defined process to assure that no parties receive funds that actually have the financial wherewithal to meet their obligations, i.e. bankrupt subsidiary corporations of highly solvent and capitalized parent companies.

Chapter 5 presents a risk screening methodology which when applied to any landfill can be used to determine its level of risk of PCM and CA. The methodology's basis is that there are quantifiable factors that impact a landfill's potential to be a threat to public health and safety and the environment. The study concluded that the methodology should be based on analysis of 13 factors, which were weighted as high, medium or low risk. Again, one of the dominant factors was stated to be the capacity of the site. In our experience the size of the site has little to do with its relative potential risk and in fact the larger the site the more likely it is to have the cash flow to support a higher level of engineering controls which mitigate risk.

It is unclear from the introduction to the study or the text of Chapter 5, what this risk screening methodology, used to categorize regulated landfills as low, medium, or high risk, will be used for. Were the results to be used by the insurers when considering appropriate gap coverage? Or to determine whether there really is a need for a statewide pooled fund in case of default? Or will it be used to require more Financial Assurances from a supposedly "high" risk landfill? Although, this risk screening methodology will generally, be an adequate tool to categorize the relative risk of a group of landfills, it should be acknowledged that each landfill is very individual in its true situation and these generalized categories should not be used as the basis for any permitting and regulatory decision making related to a specific site.

In conclusion, this study is titled "Study to Identify Long-Term Threats and Financial Assurance Mechanisms for Long-Term Postclosure Maintenance and Corrective Action at Solid Waste Landfills" and yet in reality the work product only provides the tools through the Working Fund Model and the Risk Screening Methodology to perform the actual analysis. In our opinion the Working Fund Model needs more refinement utilizing actual experience and empirical data for the results to be considered valid. The Risk Screening Methodology with some minor adjustment to remove the heavy reliance on landfill capacity should be an adequate tool to generally identify potential long-term threats.



Thank you for the opportunity to be a contributing member of the AB 2296 Consulting Group, we look forward to reviewing the results of the analysis and modeling, and continuing to work with the CIWMB toward productive resolution of these issues.

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If you have any questions, please contact me.

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