

### **Task 3, Step 2 White Paper: Review Pooled Funds Experience**

As part of the Task 3 report, CIWMB asked for a review of existing California pooled funds (e.g., underground tank fund) and pooled funds in other states that could be applicable to long-term PCM and CA at active and closed solid waste landfills.

In the course of conversations with the CIWMB Contract Managers, ICF has developed a better understanding of what CIWMB staff means by a “pooled fund.”

By “pooled fund,” ICF understands that for this study CIWMB staff means a fund that:

- is established by statute
- is used exclusively for CA and/or PCM, [including Post 30-PCM](#)
- is funded to a great degree<sup>1</sup> by assessments on an industry and/or fees on its products/services/feedstocks
- generally is available as a source of funds only to those (1) directly contributing to the fund or (2) whose need for CA and/or PCM is due to use of products on which taxes or fees are contributed to the fund.

Conversely, ICF understands that a pooled fund for this study is not one that:

- is established voluntarily, such as a risk retention group, group captive insurance, or a mutual insurance entity
- addresses issues other than CA and/or PCM
- is funded primarily by general tax revenue, borrowings, and/or cost recovery

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<sup>1</sup> Some funding can come from general tax revenues and/or borrowings, but such sources should be relatively small contributions to the fund.

- is available as a source of funds to a wide variety of parties regardless of whether they have previously contributed to the fund directly or whether the need for CA and/or PCM is due to use of specific products.

Other types of “pooled funds” in the state and elsewhere would include many state underground storage tank funds, as well as certain programs for heating oil tanks, used oil management, and waste tire management. The definition of pooled fund would exclude most state environmental funds established to address orphan sites, spills needing cleanup, and/or PCM.(as the state’s responsibility following CERCLA actions). ICF requested further guidance from the CIWMB Contract Manager whether loan funds should be included in the review.

ICF submitted this written understanding of “pooled fund” to the CIWMB Contract Managers for review and approval. The CIWMB Contract Managers directed ICF to review only those pooled funds that can be used exclusively for CA and/or PCM. The CIWMB Contract Managers also directed ICF to include qualifying loan funds in its review

Following further research, ICF will collect available documentation and summarize experience with a cross-section of different types of pooled funds, including funds used in California (e.g., State Underground Storage Tank (UST) Fund), funds found in other states (e.g., Mississippi Nonhazardous Solid Waste Corrective Action Trust Fund, Twin Cities (Minnesota) Metropolitan Landfill Contingency Action Trust), and lessons learned from the repealed federal post-closure liability trust fund (PCLTF), which was supported by a waste-end tax.

For this task, ICF can draw upon excellent documentation we have collected (including some audit reports) regarding the ups and downs of state UST funds; a number of states are in the

process of sunseting their state funds and relying instead on private mechanisms such as insurance. Some of these states have delayed the sunseting process due to various concerns. ICF also will review our internal library of financial responsibility documents (e.g., Report to Congress on PCLTF) and our research for Environment Canada<sup>2</sup> for other pertinent experience (e.g., *Financial Responsibility Long Term Study*, State Water Resources Control Board (Jan. 1995)). ICF will prepare a list of pooled funds (or types of funds) to be covered, for review and approval of the CIWMB Contract Manager. ICF does not plan an exhaustive review, but an illustrative review.

Because of the different ways we can present this material, ICF will develop an outline for discussion with the CIWMB Contract Manager. We anticipate including such information as types of facilities and costs covered, source(s) of funds, conditions or limits on payments (e.g., compliance with financial assurance rules), and how funds are prioritized when needs are greater than current balances. ICF also will include information on type (e.g., mandatory or voluntary) and size of the fund. A mandatory participation feature is an uncommon feature of most state funds. We believe the size of the fund is important because fewer than 300 landfills make up the universe of concern for this project, whereas many pooled funds for USTs cover thousands of locations.

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<sup>2</sup> *A Fact-Finding Analysis of the Liability and Compensation Regimes for Hazardous Wastes and Hazardous Recyclables Management in Canada, the United States, and Mexico, Final Report*, prepared for Environment Canada by ICF Consulting, October 24, 2003