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SOLID WASTE ASSOCIATION
of North America

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LEGISLATIVE TASK FORCE

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August 11, 2009

The Honorable Christine Kehoe
Chair, Senate Appropriations Committee
State Capitol Building, Room 2206
Sacramento, CA 95814

Re: AB 274 (Portantino) Solid Waste: landfills: closure plans- **Oppose Unless Amended**

Dear Chairwoman Kehoe,

The Solid Waste Association of North America (SWANA), the largest association of solid waste professionals (7,700 members), is committed to advancing the practices of environmentally and economically sound management of municipal solid waste. On behalf of their California Chapters, I am writing to **oppose unless amended** AB 274 (Portantino) regarding the closure plans of solid waste landfills.

AB 274 would prohibit the owner or operator of a closed solid waste landfill that is subject to a closure or a postclosure maintenance plan from selling or offering for sale any portion of a closed waste management unit unless the intended purchaser provides evidence, to the satisfaction of the board, of his or her ability to meet the financial assurance requirements of the act. The bill would also establish a dedicated trust fund by initially collecting \$0.12 per ton from operators of a solid waste facility, on a voluntary basis, to cover postclosure maintenance and corrective actions in the event the operators fail to perform them.

While SWANA appreciates the efforts taken by the author and the sponsors to develop this program, they have some amendments they would like to see in order to make this a program they could support.

1. Subdivision 48010(b) of the Public Resources Code (PRC)

This subdivision should be revised to clarify the definition of a "solid waste disposal fee" since it is unclear whether it refers to the fee established pursuant to Section 48000 of the PRC.

2. Subdivision 48010(c) of the PRC

This subdivision should be revised to include an up-front restriction on how and when the proposed \$0.12-per-ton fee may be increased, similar to the fee schedule identified in Section 48000 of the PRC.

3. Subdivisions 48011(a) and 48014(a) of the PRC

These subdivisions should clarify the difference, if any, between a "written notice" and a "letter of participation". It is unclear why the bill requires a "written notice" on or before September 1, 2010, while a "letter of participation" is required on or before July 1, 2010. If the intent of the bill is for a "letter of participation" to serve as a non-binding agreement, the California Integrated Waste Management Board (Waste Board) will not be able to accurately determine if the required 50-percent participation rate is met. For example, an operator may submit a letter of participation, but not submit a written notice or

vice versa. Under the latter, the Waste Board may prematurely render the trust fund inoperative. To avoid confusion, these subdivisions should be revised to establish a firm deadline for those electing to participate prior to the Waste Board making a determination on whether the trust fund would be operative.

4. Subdivision 48012(a) of the PRC

Paragraph 4 of this subdivision needs to be revised to replace the term “public operators” with “landfill owner/operator” since it is unreasonable to require public operator’s (and not the private operator’s) financial assurance mechanisms to be exhausted before the Waste Board can expend the trust fund to cover the postclosure maintenance and corrective actions that a private operator fails to perform.

5. Subdivision 48012(b) of the PRC

This subdivision should be expanded to ensure that the trust fund is not used for any other purpose than for the postclosure and corrective actions impacting those participating landfill owners/operators. In addition, this section should impose a ceiling, such as up to 5 percent, on administrative charges by the Waste Board and the California Board of Equalization consistent with other approved legislative solid waste management statutes.

6. Subdivision 48012(d) of the PRC

The subdivision should be expanded to release local governments from liability or obligation for closure, postclosure maintenance, and corrective actions, should landfill owners/operators walk away from their fiduciary responsibility.

7. Subdivision 48012(e) of the PRC

This subdivision should be expanded to address how the Waste Board would recover the expended funding in the event a private landfill owner/operator files for bankruptcy. Unlike a public owner/operator, a private landfill owner/operator could conceivably walk away from such responsibility leaving the State unable to recover the funds except from local governments.

8. Subdivision 48014(a) of the PRC

This subdivision should be amended to replace “volume” with “tonnage” to avoid confusion with other units of measurement since the State utilizes tonnage as the primary mechanism to track disposal quantities.

For these reasons, SWANA regretfully must **oppose unless amended** AB 274 (Portantino).

Sincerely,



Paul Yoder
Legislative Advocate

Cc: Members and Consultants, Senate Appropriations Committee
The Honorable Anthony Portantino