

*Inland Empire Disposal Association  
Kern County Waste Management Department  
Los Angeles County Waste Management Association  
Orange County Waste & Recycling  
Regional Council of Rural Counties  
Republic Services  
Riverside County Waste Management Department  
Sanitation Districts of Los Angeles County  
Solid Waste Association of North America, CA Chapters  
Solid Waste Association of Orange County  
Waste Connections  
Waste Management*

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Margo Reid-Brown, Director  
Department of Resources Recycling and Recovery (CalRecycle)  
1001 I Street  
PO Box 4025  
Sacramento, CA 95812-4025  
Via Email: [Margo.Reid.Brown@CalRecycle.ca.gov](mailto:Margo.Reid.Brown@CalRecycle.ca.gov)

Dorothy Rice, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100  
Via Email: [drice@waterboards.ca.gov](mailto:drice@waterboards.ca.gov)

***Subject: Integrated Waste Management Account Funding of SWRCB/RWQCB programs and Proposed SWRCB WDR Fee on Operating Solid Waste Landfills***

Dear Ms. Reid-Brown and Ms. Rice:

We are writing this joint letter to raise our concerns to you regarding a proposed new Waste Discharge Requirement (WDR) fee by the State Water Resources Control Board (SWRCB) on operating solid waste landfills. Historically since January 1994 (with the enactment of AB 1220

(Eastin, 1994), operating landfills have not been subject to such a fee and, instead, the regulatory activities of the SWRCB and Regional Water Quality Control Boards (RWQCBs) related to such facilities has been covered by funding from the Integrated Waste Management Account (IWMA).

The possible imposition of this new fee first came to our attention on Monday March 1, 2010 at a stakeholder meeting convened by SWRCB staff to present proposed WDR fee changes for FY 2010-11. We learned that the reduced funding from the IWMA to SWRCB/RWQCB programs is about \$2.3 million/year (reduced funding from \$6.7 million/year to \$4.4 million/year – a 34% reduction). SWRCB staff informed us at the stakeholder meeting that the \$2.3 million in reduced funding is proposed by CalRecycle and is reflected in the Governor's proposed budget.

In response, the SWRCB proposes to impose new WDR fees on operating solid waste landfills for the first time since 1994 – apparently contrary to the legislative intent of AB 1220. The proposed new fee on operating solid waste landfills is intended to raise \$2.3 million in new funding to replace the like amount that is being cut from the IWMA. These new fees would be imposed on solid waste landfills that, on the average, have themselves been subject to a 30% reduction in waste volumes and revenues since 2005.

### ***SWRCB Fee Proposal is Contrary to Legislative Intent***

Public Resources Code (PRC) Section 48004, as amended by AB 1220, clearly indicates that revenues from the IWMA are to be used to support the following purposes:

1. For administration and implementation of PRC Division 30 by CalRecycle, and
2. The SWRCB's and RWQCBs' administration and implementation of Water Code Division 7 at solid waste landfills.

PRC 48004 goes on to state:

- It is the intent of the Legislature that an amount which is sufficient to fund state water board and regional water board regulatory activities for solid waste landfills be appropriated from the (IWMA) account by the Legislature in the annual Budget Act. Those persons who are required to pay the fee imposed pursuant to Section 48000 shall not be required to pay the annual fee imposed pursuant to subdivision (d) of Section 13260 of the Water Code with regard to the same discharge.
- If the (IWMA) fee . . . does not generate revenues sufficient to fund the programs specified in this section, or if the amount appropriated by the Legislature for these purposes is reduced, those reductions shall be equally and proportionally distributed between funding for the solid waste programs of the state water board and the regional water boards and the board.

Thus, it appears that if there is a shortfall in IWMA revenues then the reduced revenues shall be “equally and proportionally” distributed between funding for the SWRCB, RWQCBs and CalRecycle.

Water Code (WC) Section 13260 (d)(3), as amended by AB 1220, also indicates that WDR fees are to be waived for any solid waste landfill that pays a fee into the IWMA:

- Any person who would be required to pay the annual (WDR) fee . . . applicable to discharges of solid waste . . . at a waste management unit that is also regulated under PRC Division 30 . . . and who is or will be subject to the (IWMA) fee . . . in the same fiscal year, shall be entitled to a waiver of the annual fee for the discharge of solid waste at the waste management unit . . . upon verification by the state board of payment of the (IWMA) fee imposed . . . and provided that the (IWMA) fee . . . generates revenues sufficient to fund the programs specified in Section 48004 of the Public Resources Code and the amount appropriated by the Legislature for those purposes is not reduced.

Thus, while this section waives the WDR fee for solid waste landfills paying the IWMA fee, such waiver is contingent on sufficient revenues to fund the programs of CalRecycle, SWRCB, and RWQCBs. It is apparently on this basis that the SWRCB is proposing to establish new WDR fees on operating solid waste landfills.

### **30% Reduction from IWMA Inconsistent with Imposition of 85% of WDR Fee**

Although it has not been clearly explained to us, the basis for this new WDR fee to be imposed by the SWRCB appears to be the fact that IWMA revenues are down about 30% as landfill disposal tonnages are down about 30% since 2005. There are a variety of reasons for this including continuing landfill diversion efforts and the effect of the current recession. Clearly, a 30% decline in IWMA receipts is of concern -- but the imposition of a new fee that is 85% of the full WDR fee is simply not appropriate. Those entities operating landfills have all had to reduce their operating costs during these difficult times to reflect reduced revenues, and we respectfully suggest that this program must also do that, since imposition of a new Water Board fee will only create further economic challenges for these facilities.

Further, it is critical that any discussion of a proposed imposition of a WDR fee on operating landfills must be clearly predicated on the commitment that any new fee must remain in effect only until the appropriate level of IWMA funding can be determined.

### **Request for Meeting with Solid Waste Landfill Stakeholders**

The undersigned parties would appreciate an opportunity to discuss this matter more fully with both the staff of CalRecycle and the SWRCB to any action being taken by the SWRCB to impose a new fee on landfill operators. Please contact Chuck White with Waste Management to schedule a meeting to discuss this matter with solid waste landfill owners and operators.

Sincerely,

Eric Greenwood, PE, PG, CHg  
Supervising Engineer  
Kern County Waste Management Department  
661-862-8918  
[ericg@co.kern.ca.us](mailto:ericg@co.kern.ca.us)

Mike Giancola  
Director  
OC Waste & Recycling  
(714) 834-4122  
[Mike.Giancola@ocwr.ocgov.com](mailto:Mike.Giancola@ocwr.ocgov.com)

Mary Pitto  
Regulatory Affairs Advocate  
Regional Council of Rural Counties  
(916) 447-4806  
[mpitto@rcrcnet.org](mailto:mpitto@rcrcnet.org)

Hans Kernkamp  
General Manager & Chief Engineer  
Riverside County Waste Management Depart.  
(951) 486-3200  
[HKERNKAM@co.riverside.ca.us](mailto:HKERNKAM@co.riverside.ca.us)

Anthony M. Pelletier, P.E.  
Director, Engineering and Environmental  
Management  
Republic Services, Inc., West Region  
925-201-5807  
[TPelletier@republicservices.com](mailto:TPelletier@republicservices.com)

Sharon Green  
Legislative & Regulatory Liaison  
Sanitation Districts of Los Angeles County  
562-699-7411, x2503  
[SGreen@lacsdsd.org](mailto:SGreen@lacsdsd.org)

Paul Yoder  
Legislative Advocate  
Solid Waste Association of North America,  
California Chapters  
916-446-4656  
[Paul@shawyoderantwih.com](mailto:Paul@shawyoderantwih.com)

Paul Ryan  
Executive Director - IEDA  
Regulatory Affairs Consultant - LACWMA,  
SWAOC  
951-288-5049  
[enviropablo@sbcglobal.net](mailto:enviropablo@sbcglobal.net)

Tom Reilly  
Regional Engineering Manager  
Waste Connections  
925-672-3800  
[tomr@wcnx.org](mailto:tomr@wcnx.org)

Chuck White, P.E.  
Director of Regulatory Affairs/West  
Waste Management  
916-552-5859  
[cwhite1@wm.com](mailto:cwhite1@wm.com)

Cc: Mark Leary, CalRecycle, [Mark.Leary@CalRecycle.ca.gov](mailto:Mark.Leary@CalRecycle.ca.gov)  
Tom Estes, CalRecycle, [Tom.Estes@CalRecycle.ca.gov](mailto:Tom.Estes@CalRecycle.ca.gov)  
David Ceccarelli, SWRCB, [dceccarelli@waterboards.ca.gov](mailto:dceccarelli@waterboards.ca.gov)  
Glen Osterhage, SWRCB, [goosterhage@waterboards.ca.gov](mailto:goosterhage@waterboards.ca.gov)  
David Bott, SWRCB, [dbott@waterboards.ca.gov](mailto:dbott@waterboards.ca.gov)

