

***Inland Empire Disposal Association
California State Association of Counties
Kern County Waste Management Department
League of California Cities
Los Angeles County Sanitation District
Los Angeles County Waste Management Association
Regional Council of Rural Counties
Riverside County Waste Management Department
Solid Waste Association of North America
Waste Connections
Waste Management***

June 2, 2010

The Honorable Bob Blumenfield, Chair
Assembly Budget Committee
State Capitol, Room 6011
Sacramento, CA 95814

The Honorable Denise Ducheny, Chair
Senate Budget and Fiscal Review Committee
State Capitol, Room 5035
Sacramento, CA 95814

SUBJECT: Integrated Waste Management Account Funding of SWRCB/RWQCB programs and proposed SWRCB WDF Fee on Operating Solid Waste Landfills

Dear Assembly Member Blumenfield and Senator Ducheny:

We are writing this joint letter to you regarding a proposed new Waste Discharge Requirement (WDR) fee by the State Water Resources Control Board (SWRCB) on operating solid waste landfills. This proposed fee is contained in Budget Change Proposal #3. 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. The proposed new fee on operating solid waste landfills is intended to raise \$2.4 million in new funding to replace the like amount that is being cut from the IWMA.

We are not necessarily opposing a reasonable fee increase to offset the reductions imposed on the SWRCB because of the reduced payments from the IWMA. We recognize the need to proceed carefully with this issue and support the agencies efforts to insure that necessary resources are available to support enforcement efforts and to process WDRs and permits in a reasonable timeframe. However, the increase of fees in these lean times is problematic for the public and private sector operators, whose volumes and revenues have decreased and average of 30% over the past few years, with the decline in the economy. With that said, we are very concerned with the budget proposals as presented in the two Budget Committees and would like you to consider the following comments we've outlined below:

Proposed SWRCB fee increase is disproportionate to the need.

Our understanding is that the basis for this new WDR fee to be imposed by the SWRCB is because IWMA revenues are down about 30% as landfill disposal tonnage is down about 30% since 2005. This decrease can primarily be attributed to the effect of the current recession. Clearly, a 30% decline in IWMA receipts is of concern. While we appreciate the IWMA has been impacted with a 30% reduction, the proposed 85% fee increase by SWRCB is exceedingly disproportionate compared to the need. We would like to understand the justification for an increase of 85%.

We also believe 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 be in effect only until the appropriate level of IWMA funding can be determined.

What are the true costs of enforcing waste discharge requirements at landfills?

Another element we would like clarification on is the calculations currently used to determine the SWRCB's costs in enforcing waste discharge regulations for landfills. As discussed above, the Water Board related funds derived from the IWMA were reduced 30%; and has been represented to us that the Water Board will still receive 70% of their funding from the IWMA. If this is true, the SWRCB/RWQCBs will still receive about \$5.4 million/year for regulating operating landfills. There are approximately 150 operating solid waste landfills in California, or about \$36,000 per landfill. This is roughly equivalent to the maximum fee in the current SWRCB fee tables for landfills with maximum complexity and threat to water quality. Yet, we know that there are only a very small fraction of landfills in this maximum threat and complexity tier.

Operating landfills have decreased in number.

When the IWMA funding for the SWRCB/RWQCB was established years ago (as part of the AB 1220 Eastin, 1994), there was approximately 230 operating landfills. Since that time the number of operating landfills has decreased by approximately 30% to about 150 operating landfills. Thus, the 30% fee reduction to the SWRCB/RWQCB from the IWMA for the regulation of operating landfills is roughly equivalent to the reduction in the number of operating landfills since 1994. Why is there even a need to impose a new fee on operating landfills? What is the exact number of operating landfills in California and how much funding is needed to regulate this activity?

There are no limits on the fee in BCP 3 or the draft trailer bill language.

BCP 3 repeatedly raises the need for increased funding for the WDPF and not just to replace the cuts made from CalRecycle. In fact, the trailer bill language completely eliminates the exemption contained in PRC Section 48004 for facilities that pay the IWMA if revenues are inadequate to fund waste discharge program. In other words, the proportional reductions mandated in PRC 48004 (c) would no longer apply. Is this a correct read? Will there be limits placed on fee increases like the IWMA - or can the Water Boards raise it anytime? The BCP, quoted above references: "This request is for authority to use the Waste Discharge Permit Fund to fund positions and contracts." We would like to know which contracts are covered by the WDPF?

We would like clarification on how the fees will be calculated.

The current fee schedule for operating closed landfills (attached) is currently based on a threat to water quality and complexity calculations. We need to understand how the Water Board's estimates the total cost of landfill regulation and how the \$2.3 million shortfall equates to a fee that is 85% of the current landfill fee. We have checked with a number of public and private sector landfills and they are uniformly unaware of how the threat to water quality or complexity number is calculated. The difference between a level 1 threat and a level 2 threat is the difference between \$28,560 and \$12,240 per year based on the current fee schedule. Are these landfill designations quantifiable or are the designations left up to the whim of regional boards? We would request an explanation of how the designation is calculated and what the numbers are for each site.

Other general concerns.

We have questions regarding the proposed fee schedule for active landfills versus closed landfills and how the new fee schedule will be developed. At our meeting, we were told that the fee schedule for 2010-11 would be developed in the fall of 2010. Will this new fee calculation include new and separate calculations for closed and open sites, or will the new schedule be the same for closed and open sites, but based on an assessment of the individual facilities' threat to the environment?

If the fee is approved in August, we would like to suggest the new fees begin next year so we can incorporate it into our own budgets. Once we understand how the new fee is calculated, we can then plan accordingly for our next budget cycle.

We understand that budget negotiations are advancing quickly and are concerned that a decision will be made to approve BCP 3 without a thorough understanding of the implications that this new fee will have on the state's landfills. If in fact, broad fee authority is granted to the SWRCB and regional boards, we hope that your committees will insure that there is a corresponding workload analysis conducted to validate the need for the fee.

We appreciate your consideration of our concerns and respectfully request that the committees reopen this BCP for a more detailed discussion of the proposal.

Sincerely,

Karen Keene
Legislative Representative
California State Association of Counties
916/492-2675

Douglas E. Landon
Director
Kern Co. Waste Management Department
661/862-8900

Kyra Emanuels Ross
Legislative Representative
League of California Cities
916/658-8252

Sharon Green
Legislative & Regulatory Liaison
Los Angeles Co. Sanitation District
562/699-7411 x 2503

Paul Yoder
Legislative Advocate
Solid Waste Assoc. of North America
916/446-4656

Hans Kernkamp
General Manager & Chief Engineer
Riverside Co. Waste Management Department
951/486-3200

Tom Reilly
Regional Engineering Manager
Waste Connections
925/672-3800

Chuck White, P.E.
Director, Regulatory Affairs/West
Waste Management
916/552-5859

Mary Pitto
Regulatory Affairs Advocate
Regional Council of Rural Counties
916/447-4806

Paul Ryan
Executive Director, IEDA
Regulatory Affairs Consultant, LACWMA
951/288-5049

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Cc: Assembly Member Jim Nielsen, Vice Chair Assembly Budget Committee
Senator Bob Dutton, Vice Chair Senate Budget & Fiscal Review Committee
Margo Reid-Brown, CalRecycle
Dorothy Rice, SWWRCB

Attachment: SWRCB 2009/10 Fee Schedule with landfill fees highlighted