

September 17, 2009

Los Angeles County Solid Waste Management Committee/
Integrated Solid Waste Task Force Meeting

AB 2296

Financial Assurance Draft

Regulations Dated August 20, 2009

Change of Ownership

- New owner is required to bring financial assurance up to 30x, but may submit a request to CIWMB to reduce the multiplier to the level provided by the old operator.
- Must meet certain criteria
 - Experience
 - Affidavit
 - Finances
- Minimum of 15x FA



Post-Closure Maintenance

- Landfills operating after 01/01/1988

Active

- Operators are required to provide financial assurance for 30x the estimated annual cost of post-closure maintenance.

Closed/Closing

- Landfills with an approved post-closure maintenance plan can apply to reduce multiplier corresponding to the number of years since certified closure to a minimum of 15x.

Post-Closure Maintenance

- Operators can step down FA by 5x after every five years of post-closure maintenance to a minimum of 15x provided certain criteria are met:
 - No enforcement order
 - Compliance with enforcement orders
 - Proactive monitoring
 - No disbursements from corrective action FA
 - Ongoing PCM consistent with approved PCM plan
- CIWMB can require operator to step up assurance in 5x increments if operator fails to meet conditions

Proactive Monitoring

- Continuously performed
- Must address, but is not limited to:
 - Leachate quality and quantity
 - Landfill gas generation and migration
 - Groundwater quality
 - Final cover settlement, stability, integrity, and maintenance history including repair and replacement
- Need several years of data to demonstrate trends

Corrective Action

- Applies to landfills operating after 07/01/1991
- Operators must provide FA for the higher of the estimated cost of the water or non-water corrective action.
- The non-water corrective action can be the cost of final cover replacement or a site-specific corrective action plan.



Task Force's Letter

- Most of Task Force's comments were incorporated
 - Criteria for step-downs
 - Step-up provision
- Several were not – see table

Proposed Regulations on Long-Term Post-closure Maintenance and Corrective Action Cost Estimates and Financial Assurance Demonstrations for Landfills (Released August 20, 2009)

No.	Task Force's Letter of April 9, 2009 to the Waste Board	Proposed Regulations Released August 20, 2009	Comment Addressed?
1A	<p>Section 21200. Waste Board-Change of Ownership during Closure or Post-closure Maintenance Subsection (a) should also require the owner or operator to notify the director of the local agency that oversees local land use planning for the jurisdiction in which the disposal site is located. This notification ensures transparency by making the host jurisdiction aware of a significant change occurring with the disposal site.</p>		No, the local land use planning agency is only notified upon certification of closure.
1B	<p>Subsection (c)(1) should also require the Enforcement Agency (EA) to notify the director of the local agency that oversees local land use planning for the jurisdiction in which the disposal site is located. This notification ensures transparency by making the host jurisdiction aware that the new owner or operator has complied with all said requirements.</p>		No, the local land use planning agency is only notified upon certification of closure.
1C	<p>Subsection (c)(2) should also require the EA to notify the existing owner or operator and the director of the local agency that oversees local land use planning for the jurisdiction in which the disposal site is located. The proposed regulations require the EA to inform the new owner or operator and the Waste Board of their adverse determination within 30 days of receipt of the notification of transfer; however, it does not require the EA to notify the existing owner or operator or the host jurisdiction of this adverse determination. This notification is important in the event the determination affects the outcome of the transfer.</p>	<p><i>Section 21200 (c)(2)</i> <i>If the EA determines that the new owner or operator has complied with all requirements, the EA shall send written notification to the prior owner or operator, new owner or operator, RWQCB, and CIWMB within 30 days of receipt of the notification of transfer of title.</i></p>	The prior owner or operator will be notified, but the local land use planning agency will not.
1D	<p>Add Subsection (d) to require the owner/operator of the disposal site to include a statement in the "property title" to be filed with the Registrar-Recorder/County Clerk of the County where the disposal site is located, indicating that the site is and/or has been used as a disposal site and that the new owner/operator must document financial assurance demonstration to the satisfaction of the EA and the Waste Board prior to close of escrow transferring the site ownership. This action ensures both the title and the escrow companies are aware of this important requirement.</p>		No

No.	Task Force's Letter of April 9, 2009 to the Waste Board	Proposed Regulations Released August 20, 2009	Comment Addressed?
2	<p>Sections 21570, 21640, and 21685. Waste Board-Proposed Solid Waste Facilities Permit; Waste Board Processing Requirements Subsections 21570(0)(7), 21640(b)(5), and 21685(b)(6) needs to be expanded to define the phrase "most recent" since it is ambiguous and subject to arbitrary interpretation.</p>	<p><i>21570 (7) For disposal sites, a copy of the most recently submitted detailed written estimate or latest approved estimate, whichever identifies the greatest cost, to cover the cost of known or reasonably foreseeable corrective action activities.</i></p>	<p>Yes, the phrase "most recently submitted detailed written estimate or latest approved estimate, whichever identifies the latest cost" was added.</p>
3	<p>Section 21880, Waste Board—Certification of Closure Add Subsection (h) to read <i>"Once the certification of closure has been approved by the Waste Board, Regional Water Quality Control Board, and the EA, the approving agencies shall send a copy of the certificate of closure to the director of the local agency that oversees local land use planning for the jurisdiction in which the disposal site is located."</i> Since the host jurisdiction is responsible to ensure their citizen's health and safety and the environment, the jurisdiction will ultimately be held liable should a private landfill owner/operator file bankruptcy. It is imperative that the host jurisdiction be made aware of this important closure certification document.</p>	<p><i>21880 (f) Once the certification has been approved by the CIWMB, RWQCB, and the EA, the CIWMB shall release the operator from the financial mechanism for closure. CIWMB shall notify the local planning agency of this determination.</i></p>	<p>Yes, the phrase "CIWMB shall notify the local planning agency of this determination" was added.</p>
4A	<p>Section 22100, Waste Board—Scope and Applicability Subsection (a) indicates that this subchapter (Subchapter 5 Non-Water Quality Corrective Action Cost Estimate and Financial Assurance Requirements) applies to owners and operators of solid waste landfills operating on or after July 1, 1991. As an active participant of the AB 2296 Consulting Group, it was our understanding that these regulations applied to all landfills operating on or after January 1, 1988 (as supported by proposed Section 21865(a)(1)). Please clarify this potential discrepancy.</p>		<p>Yes, CIWMB staff clarified that the July 1, 1991 date is consistent with the date of the Water Board requirements for corrective action financial assurance.</p>
4B	<p>Subsection (a) needs to be expanded to restate (or clearly define) the terms "post-closure maintenance" and "corrective action." In addition, because corrective action activities are itemized, post-closure maintenance activities should also be itemized in this subsection.</p>		<p>Yes, post-closure maintenance activities are itemized in section 21840.</p>

No.	Task Force's Letter of April 9, 2009 to the Waste Board	Proposed Regulations Released August 20, 2009	Comment Addressed?
5A	<p>Section 22211, Waste Board—Amount of Required Coverage We are opposed to the step-down provisions as proposed in this section. These provisions are inconsistent with the intent of AB 2296 since it will have a disproportionate impact on operators utilizing Trust Fund as their financial assurance mechanism. In addition, it does not address the impact on those disposal sites that are certified closed prior to the effective date of the proposed regulations, nor explain how closed sites with a Trust Fund mechanism will be able to generate revenue to meet the proposed requirements. It may have the unintended consequence of discouraging the further use of trust funds as a financial assurance mechanism. Therefore, the Waste Board should strongly consider other alternatives that are consistent with the intent of AB 2296, less burdensome to affected stakeholders utilizing Trust Fund financial assurance mechanism, protective of local governments since they will be left 'holding the bag' once a disposal site owner/operator files for bankruptcy, and above all, instill public confidence that health and safety and the environment are protected.</p>	<p><i>22211 (b) For each solid waste landfill with approved final closure and postclosure maintenance plans on or before [effective date of regulations], the postclosure maintenance cost estimate multiplier must be equal to thirty (30), except that: (1) Upon request by the operator and verification by CIWMB, the operator may reduce the multiplier to an amount corresponding to the number of years of postclosure maintenance completed since the approval of the certification of closure of the entire solid waste landfill pursuant to §21880, but shall not reduce the multiplier to less than fifteen (15).</i></p>	<p>Yes, sites that have an approved final closure plan and post-closure maintenance plan can maintain their existing level of financial assurance, to a minimum of 15X.</p> <p>The trust fund issue is not addressed.</p>
5B	<p>If the step-down provisions are adopted, Subsection (a) should be expanded to include a step-up provision to allow the Waste Board to increase the multiplier if the operator of disposal site with a financial assurance mechanism other than Trust Fund fails to keep up with good performance. As stated in our previous letter dated September 25, 2008 (copy enclosed), the proposed regulations provide a "step-down" mechanism for landfill owners and operators to be rewarded with a less stringent financial assurance requirement if their performance meets certain criteria. However, the proposal does not include a "step-up" mechanism in the event that a landfill owner and/or operator fail to keep up with good performance. This is a critical issue as a "step-up" situation could happen several years after landfill closure, and a less stringent financial assurance requirement may burden the State and local agencies.</p>	<p><i>22211 (a) (2) (C) 1 c If the multiplier was previously approved for reduction pursuant to a and b CIWMB may require the multiplier to be increased in increments of five to a maximum multiplier of thirty if at any time subsequent to the approved reduction the operator fails to continue to meet the conditions specified in a and b.</i></p>	<p>Yes, a step up provision is added in increments of 5X up to 30X.</p>

No.	Task Force's Letter of April 9, 2009 to the Waste Board	Proposed Regulations Released August 20, 2009	Comment Addressed?
5C	Subsection (a)(2) should be expanded to include the criteria to be satisfied in order to qualify for a year-to-year reduction since it is unclear how the owner or operator may request the year-to-year reduction and what criteria must be met to be granted the reduction.	<p><i>22211 (a) (2) (C)</i> <i>(C) During the five (5) year interval, the operator shall meet all of the following conditions:</i></p> <ol style="list-style-type: none"> <i>1. The operator has not been subject to an enforcement order issued by EA, CIWMB, or RWQCB has not issued an enforcement order... except if:</i> <ol style="list-style-type: none"> <i>a. The agency that issued the enforcement order has determined that:</i> <ol style="list-style-type: none"> <i>i. Any required capital improvements have been satisfactorily constructed, and</i> <i>ii. The activities required by the enforcement order either:</i> <ol style="list-style-type: none"> <i>I. Are in the operation and maintenance phase, or</i> <i>II. Have been satisfactorily completed, and</i> <i>iii. The activities required by the enforcement order are effectively remedying the subject(s) of the enforcement order, and</i> <i>b. The remaining costs of the activities required by the enforcement order are addressed in the postclosure maintenance and/or the corrective action financial assurance demonstrations.</i> <i>2. The operator has proposed and continuously performed a proactive monitoring program for approval by the EA...</i> <i>3. There shall has not be been a disbursement for corrective action in accordance with §22234, and</i> <i>4. The postclosure maintenance activities and costs are consistent with and not greater than the estimated postclosure maintenance activities and costs in the approved postclosure maintenance plan.</i> 	Yes, criteria for qualifying for the step downs have been included.
5D	Subsection (a)(3)(C)(2) needs to be expanded to define the term "proactive monitoring program" and its components to ensure program consistency and expectations.		No

No.	Task Force's Letter of April 9, 2009 to the Waste Board	Proposed Regulations Released August 20, 2009	Comment Addressed?
6	<p>Section 22220, Waste Board—Scope and Applicability Subsection (b) indicates that this article (Article 4 Financial Assurance Requirements for Corrective Action) applies to operators of all disposal facilities that have been or will be operated on or after July 1, 1991. As an active participant of the AB 2296 Consulting Group, it was our understanding that these regulations applied to all landfills operating on or after January 1, 1988, (as supported by proposed Section 21865(a)(1)). Please clarify this potential discrepancy.</p>		<p>Yes, CIWMB staff clarified that the July 1, 1991 date is consistent with the date of the Water Board requirements for corrective action financial assurance.</p>
7	<p>Section 22234, Waste Board—Disbursements from Financial Mechanisms Subsection (b) should be expanded to read "Corrective action financial mechanism(s) shall be replenished to the level prescribed by Section 22221 within five years of the initial disbursement unless Waste Board and Regional Water Quality Control Board agree to an alternative schedule <i>of less than five years.</i>" This clarification ensures that any discretionary alternative schedule is capped at five years, thereby avoiding a potential escape clause.</p>		<p>No.</p>