

**Sanitation Districts of Los Angeles County  
Fresno County Public Works & Planning  
San Bernardino County Department of Public Works Solid Waste Division  
Recology  
Ventura Regional Sanitation District  
OC Waste & Recycling  
Rural Counties' Environmental Services Joint Powers Authority  
Waste Management  
Lassen Regional Solid Waste Management Authority  
Republic Services  
Riverside County Waste Management Department  
Waste Connections  
San Joaquin County Department of Public Works  
Kern County Waste Management Department  
City of Santa Cruz  
League of California Cities  
California State Association of Counties**

June 12, 2009

Chair Margo Reid Brown  
California Integrated Waste Management Board  
1001 I Street  
P.O. Box 4025  
Sacramento, CA 95812

Dear Chair Brown:

**Proposed Corrective Action (CA) Funding Requirement to Cover the  
Greater of the Water Quality Reasonably Foreseeable CA Cost Estimate  
Or the Replacement of the Entire Landfill Final Cover**

On May 19, 2009, the California Integrated Waste Management Board (CIWMB) directed staff to include a CA funding requirement in the proposed financial assurance (FA) regulations where the landfill operator would be required to provide sufficient funding to cover the greater of the water quality reasonably foreseeable CA cost estimate or the replacement of the entire landfill cover. All the signatories to this letter, which collectively represent most of the solid waste management infrastructure in California, are opposed to this proposed funding requirement. The use of replacement of the entire landfill final cover as a measure of requisite funding is not appropriate given that the operator is required to annually maintain the final cover throughout postclosure such that each repair brings the cover back to its original condition or performance standard. Alternatively, we propose a separate non-water quality CA fund or FA instrument be established based on the language currently used for water quality related CA – that which is reasonable and foreseeable (Title 27, Section 20380(b)). These criteria are appropriate because it takes into account both the risk and time element of potential corrective action.

If the concern of the Board is that one fund would be used for both water and non-water quality correction actions, then a separate non-water quality CA fund or FA instrument should be created based on what is reasonably foreseeable. This approach would be consistent with that of the Regional Water Quality Control Boards. Each landfill operator would determine what non-water quality CA is reasonably foreseeable based on the site-specific situation, which would then be concurred with and approved by the agency prior to implementation as the approved reasonably foreseeable CA. Replacing the entire landfill cover is beyond any corrective action that is reasonable or foreseeable since it presumes that an unforeseen extraordinary event or calamity will occur to such an extent that it results in the complete loss of the cover. This is not realistic. Requiring the operator to come up with capital that is an order of magnitude greater than any water quality CA for something that is not even realistic is arbitrary and capricious. It would create a financial burden to all California landfills (closed and active) that is simply not sustainable. Corrective action funding should be based on both reasonable and foreseeable, which is the case for the water quality CA.

If the concern of the Board is that the final cover degrades to the point of requiring complete replacement, that concern is unfounded. Most final landfill covers are comprised of soil with certain properties. Soil does not degrade since it is inert. Cracks and erosion of the final cover are easily repaired as part of the routine postclosure care of the site. The physical integrity and original performance standard of the final cover is maintained through proper care with oversight by the local enforcement agency. Routine repair or replacement of other types of final cover, such as plastic, should be part of the annual postclosure maintenance. The proposed regulations require the operator to participate in a proactive monitoring program in order to qualify for a step down in FA. This program includes routine testing and monitoring of the final cover reviewed by CIWMB. Consequently, financial incentives and regulatory oversight are incorporated into the proposed regulations to ensure that the final cover is properly maintained.

Out of the 282 landfills in California subject to FA, CIWMB staff points to one landfill that required replacement of the final cover. The final cover for Jamestown Landfill slid soon after its placement, which indicates that it is likely due to improper design or construction. Apparently closure had not been certified yet when the failure occurred since the Regional Water Quality Control Board had not received the documentation related to the construction of the final cover and as a result issued the operator an Administrative Civil Liability Complaint. Therefore, this landfill is not relevant to long-term postclosure care or corrective action, nor is it a case of long-term degradation of the final cover. Consequently, there is no case of a California Subtitle D landfill where the entire final cover required replacement due to improper care, degradation, or earthquake.

We, therefore, ask that you consider a separate non-water quality CA fund or FA instrument that is based on what is reasonably foreseeable and not the total replacement of the final cover. For administrative reasons, some operators may desire a single fund or FA instrument that combines water quality and non-water quality monies, so the regulations should offer this possibility.

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Yours very truly,

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