

**Sanitation Districts of Los Angeles County**  
**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**  
**Lassen Regional Solid Waste Management Authority**  
**Republic Services**  
**Riverside County Waste Management Department**  
**Kern County Waste Management Department**  
**Salinas Valley Solid Waste Authority**  
**League of California Cities**  
**California State Association of Counties**  
**Solid Waste Association of North America, California Chapters**

July 2, 2009

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

Dear Chair Brown:

**Financial Assurance for Closed Landfills**

The signatories to this letter, which collectively represent most of the solid waste infrastructure in California, request that closed landfills be exempted from the proposed financial assurance (FA) regulations, which also contain the non-water quality corrective action funding requirements, since they will result in a substantial and unnecessary burden at a time when there are no existing sources of income to meet this new financial requirement. We instead request that the current federal regulations be applied to closed sites since they promote the same goals that underlie the proposed regulations and provide the landfill owners time to plan for and establish additional financial assurances when the current FA instruments are exhausted.

### **CIWMB Executive Director Already Has Authority to Extend Financial Assurance**

The proposed regulations are unnecessary for closed landfills. Current federal regulation (Title 40 CFR §258.61) allows the Executive Director to lengthen the postclosure care period on a case-by-case basis if it is necessary to protect human health and the environment. In lengthening the postclosure period, the operator would then be obligated to provide FA for that extended time period pursuant to Title 40 CFR §258.72 of the Subtitle D regulations. Therefore, if necessary, the Executive Director could extend the postclosure period beyond 30 years when the current FA demonstrations are exhausted and require the operator to establish a new FA instrument. In applying these standards, the state is protected since additional financial assurances would be established and operators would be given the opportunity to plan and budget for any new FA instrument. This approach would ensure site-specific conditions are considered in determining the extended level of FA that may be needed at some sites but unwarranted at others.

### **Retroactively Applying Proposed Regulations to Closed Sites May Cause Defaults**

In the case of cash FA demonstrations, monies were collected and set aside by the operator for the purpose of performing postclosure care. The proposed regulations will impair or take away the operator's vested right to that money since substantial amounts of the fund would be frozen and prevented from being used for its intended purpose. The operator would be forced to exhaust the accrued interest in the trust fund account prematurely. Consequently, any excess money above the FA funding requirement would soon disappear, leaving the operator without any significant financial resources to care for the site. Since the proposed regulations were unforeseen during the fund buildup period and the site is now closed, there is no real ability or time to replenish the fund. Given the state of the current financial markets, money to finance capital projects is already limited. Since closed sites have no revenue stream, there is no real ability to borrow or secure financing to cover operating costs.

The proposed regulations will also have a secondary retroactive effect in that the existing fund, which was approved under an earlier regulatory regime, will be impacted into the foreseeable future because additional monies will need to be added to the fund in order to always maintain the minimum of 15 years worth of FA. This is unsustainable for landfills already closed. The proposed regulations will, therefore, create a new financial obligation or duty on a past fund that at closure CIWMB deemed as fully funded and compliant with the regulations at that time.

Local governments are already severely constrained by the current recession and may not be able to pledge or reallocate funds to satisfy these new financial demands since funds are already scarce. The proposed regulations may result in a new financial mandate that cannot be met and, therefore, lead to operators defaulting. Furthermore, waste diversion programs will also be compromised if funds need to be transferred in order to meet the new financial requirements.

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Your consideration of our request to grandfather closed sites as described above would be greatly appreciated.

Yours truly,

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