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SOLID WASTE MANAGEMENT COMMITTEE/
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July 23, 2009

The Honorable Anthony Portantino
State Capitol, Room 2003
Sacramento, CA 95814

Dear Assembly Member Portantino:

**ASSEMBLY BILL 274 (AMENDED JULY 9, 2009)
VOLUNTARY STATE SOLID WASTE POSTCLOSURE TRUST FUND**

The Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force) **opposes unless amended** Assembly Bill 274 (AB 274) which proposes to establish a voluntary State Solid Waste Postclosure Trust Fund.

The Task Force recognizes that AB 274 attempts to address the potential financial exposure to the State when a solid waste landfill operator fails to perform the required postclosure maintenance and corrective actions. If enacted, AB 274 would establish a dedicated trust fund by initially collecting \$0.12 per ton from operators of a solid waste facility, on a voluntary basis, to cover postclosure maintenance and corrective actions in the event the operators fail to perform them. However, the Task Force believes that the bill, as written, is insufficient in addressing the technical aspects of the trust fund and does not address how the trust fund may recover its expenditures if a private operator files for bankruptcy. Accordingly, we offer the following comments/concerns:

All references to the landfill "operator" or "owner or operator" should be changed to landfill "owner and operator" since the owner will ultimately be held legally responsible for postclosure maintenance and corrective action financial assurance. Additionally, in the event the property owner and landfill operator are separate entities, such as a public owner and a private operator, a written notice for participating in the trust fund should be required from both entities.

1. Subdivision 48010(b) of the Public Resources Code (PRC)

This subdivision should be revised to clarify the definition of a “solid waste disposal fee” since it is unclear whether it refers to the fee established pursuant to Section 48000 of the PRC.

2. Subdivision 48010(c) of the PRC

This subdivision should be revised to include an up-front restriction on how and when the proposed \$0.12-per-ton fee may be increased, similar to the fee schedule identified in Section 48000 of the PRC.

3. Subdivisions 48011(a) and 48014(a) of the PRC

These subdivisions should clarify the difference, if any, between a “written notice” and a “letter of participation”. It is unclear why the bill requires a “written notice” on or before September 1, 2010, while a “letter of participation” is required on or before July 1, 2010. If the intent of the bill is for a “letter of participation” to serve as a non-binding agreement, the California Integrated Waste Management Board (Waste Board) will not be able to accurately determine if the required 50-percent participation rate is met. For example, an operator may submit a letter of participation, but not submit a written notice or vice versa. Under the latter, the Waste Board may prematurely render the trust fund inoperative.

To avoid confusion, these subdivisions should be revised to establish a firm deadline for those electing to participate prior to the Waste Board making a determination on whether the trust fund would be operative.

4. Subdivision 48011(b) of the PRC

This subdivision should be revised to clarify how the 5 percent penalty will be applied and the specified period of time (e.g. daily, quarterly, or yearly). In addition, since the trust fund is voluntary, landfill owners/operators that elect to participate in the program at a later date should not be subject to any penalty.

5. Subdivision 48012(a) of the PRC

Paragraph 4 of this subdivision needs to be revised to replace the term “public operators” with “landfill owner/operator” since it is unreasonable to require public operator’s (and not the private operator’s) financial assurance mechanisms to be exhausted before the Waste Board can expend the trust fund to cover the postclosure maintenance and corrective actions that a private operator fails to perform.

6. Subdivision 48012(b) of the PRC

This subdivision should be expanded to ensure that the trust fund is not used for any other purpose than for the postclosure and corrective actions impacting those participating landfill owners/operators. In addition, this section should impose a ceiling, such as up to 5 percent, on administrative charges by the Waste Board and the California Board of Equalization consistent with other approved legislative solid waste management statutes.

7. Subdivision 48012(d) of the PRC

The subdivision should be expanded to release local governments from liability or obligation for closure, postclosure maintenance, and corrective actions, should landfill owners/operators walk away from their fiduciary responsibility.

8. Subdivision 48012(e) of the PRC

This subdivision should be expanded to address how the Waste Board would recover the expended funding in the event a private landfill owner/operator files for bankruptcy. Unlike a public owner/operator, a private landfill owner/operator could conceivably walk away from such responsibility leaving the State unable to recover the funds except from local governments.

9. Subdivision 48014(a) of the PRC

This subdivision should be amended to replace "volume" with "tonnage" to avoid confusion with other units of measurement since the State utilizes tonnage as the primary mechanism to track disposal quantities.

Pursuant to Chapter 3.67 of the Los Angeles County Code and the California Integrated Waste Management Act of 1989 (Assembly Bill 939, as amended), the Task Force is responsible for coordinating the development of all major solid waste planning documents prepared for the County of Los Angeles and its 88 cities in Los Angeles County with a combined population in excess of ten million. Consistent with these responsibilities and to ensure a coordinated and cost-effective and environmentally-sound solid waste management system in Los Angeles County, the Task Force also addresses issues impacting the system on a Countywide basis. The Task Force membership includes representatives of the League of California Cities-Los Angeles County Division, County of Los Angeles Board of Supervisors, City of Los Angeles, waste management industry, environmental groups, the public, and a number of other governmental agencies.

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The Task Force applauds the introduction of AB 274, and stands ready to assist the Legislature in amending the bill to address the above concerns.

If you have any questions, please contact Mr. Mike Mohajer of the Task Force at (909) 592-1147.

Sincerely,



Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Management Committee/
Integrated Waste management Task Force and
Mayor, City of Rosemead

LS/SK:cw

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cc: Governor Arnold Schwarzenegger
Senate President Pro Temp Darnell Steinberg
Senator Dennis Hollingsworth, Minority Leader
Each Member of the Senate Appropriations Committee
Each Member of the Los Angeles County Legislative Delegation
California State Association of Counties
League of California Cities
League of California Cities, Los Angeles County Division
San Gabriel Valley Council of Governments
South Bay Cities Council of Governments
Gateway Cities Council of Governments
Each Member of the County of Los Angeles Board of Supervisors
Each City Mayor in Los Angeles County
Each Member of the Los Angeles County Integrated Waste
Management Task Force