



AB 1497

Date: November 5, 2003

To: All Local Enforcement Agencies

This all LEA e-mail was sent on behalf of Howard Levenson, Deputy Director of the Permitting and Enforcement Division of the California Integrated Waste Management Board.

On October 12, 2003, Governor Davis signed AB 1497 into law. The bill amends Public Resources Code sections 44004 and 45011, and adds section 43501.5. The provisions of the bill become effective January 1, 2004.

The purpose of this message is to notify you of the major provisions of the bill and provide you with interim guidance on implementing those provisions.

To assist with your comprehensive review of the new requirements the [attached document compares actual bill text to existing statutory language](#).

In summary, AB 1497 contains three major provisions:

1. Labor Transition Plan

- a. Requires the operator of a solid waste landfill to submit, with its final closure plan, a Labor Transition Plan, which must include provisions to ensure preferential reemployment and transfer rights of displaced employees. The operator must *certify* that the Labor Transition Plan will be implemented. The Plan is subject to any requirements already established under a collective bargaining agreement.

Follow up steps: Remediation, Closure and Technical Services Branch staff is developing guidance on this provision. Staff will be working with the EAC and the CIWMB legal office to complete and distribute the guidance to all landfill operators and Enforcement Agencies.

2. Public Hearing (GC 65091 attached)

1. Requires enforcement agencies to hold a public hearing before making a determination on an application for a revised permit.
2. Increases from 150 to 180 the number of days in advance of the date when the modification is to take place by which an application for permit revision must be filed.
3. Increases from 30 to 60 the number of days from the date of receipt of the application for a revised permit by which the enforcement agency must make a determination on the application.
4. Authorizes the Board, to the extent resources are available, to adopt regulations implementing the public hearing provision and defining "significant change in the design or operation of the solid waste facility that is not authorized by the existing permit."

Follow up steps: The Board is currently assessing its 2004 rulemaking calendar and will determine in December or January if and when it will adopt regulations on public hearings and on significant change. In any event, the Board will not adopt regulations prior to the effective date of the bill (January 1, 2004). The public hearing procedures set forth in statute are specific enough to implement directly until regulations can be developed. Enforcement agencies must hold a public hearing for any application for permit revision received on or after January 1, 2004. CIWMB staff may be providing additional guidance on other types of permit applications received by the LEAs as it relates to the public hearing requirements.

The statutory timelines described in 2.b. and 2.c. above are now *inconsistent* with regulations timelines. Until such time as the Board can make conforming changes to the regulations, enforcement agencies must **adhere to the statutory timelines**. Please see [Government Code Section 65091](#) with respect to Public Hearings.

3. Administrative Civil Penalties (ACP)

- a. Provides for the imposition of ACPs for disposal sites.

- b. Removes the \$15,000 per calendar year cap.
- c. Removes the prohibition on imposing an ACP for the first three minor violations of the same requirement or standard.
- d. Removes the requirement that enforcement agencies do all of the following before imposing an ACP:
 - Notify the governing body.
 - Consider nature, circumstances, extent, and gravity of the violation and appropriate remedies and penalties.
 - Consider alternatives to the imposition of an ACP.

Thank you,
Melissa Hoover-Hartwick
LEA Support Services

Please note: Past emails and other correspondence are retained for historical purposes. Over time, some information and links on these pages may become dated and/or inaccurate.

California Department of Resources Recycling and Recovery (CalRecycle)

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43501.5. (a) In addition to the requirements of this article, and Section 21780 of Title 27 of the California Code of Regulations, a person who is required to file a final closure plan shall also file with the enforcement agency a Labor Transition Plan that includes all of the following:

(1) Provisions that ensure, subject to any requirements already established pursuant to a collective bargaining agreement, preferential reemployment and transfer rights of displaced employees to comparable available employment with the same employer for a period of no less than one year following the closure of the solid waste facility.

(2) Provisions to provide displaced employees assistance in finding comparable employment with other employers.

(3) Provisions to ensure compliance with all applicable provisions of Chapter 4 (commencing with Section 1400) of Part 4 of Division 2 of the Labor Code.

(b) When submitting the final closure plan, the operator shall submit, in addition to the requirements of subdivision (a), a certification to the board and the enforcement agency that the provisions described in paragraphs (1) to (3), inclusive, of subdivision (a), will be implemented, subject to any requirements already established under a collective bargaining agreement.

(c) For the purposes of this section, "comparable employment" means the same or a substantially similar job classification at equal or greater wage and benefit levels in the same geographic region of the state.

44004. (a) ~~No~~An operator of a solid waste facility ~~shall make any~~ may not make a significant change in the design or operation of the solid waste facility that is not authorized by the existing permit, unless the change is approved by the enforcement agency, ~~and the change~~ conforms with this division and all regulations adopted pursuant to this division, and the terms and conditions of the solid waste facilities permit are revised to reflect the change.

(b) If the operator wishes to change the design or operation of the solid waste facility in a manner that is not authorized by the existing permit, the operator shall file an application for revision of the existing solid waste facilities permit with the enforcement agency. The application shall be filed at least ~~150~~180 days in advance of the date when the proposed modification is to take place unless the ~~150-day~~180-day time period is waived by the enforcement agency.

(c) The enforcement agency shall review the application to determine all of the following:

(1) Whether the change conforms with this division and all regulations adopted pursuant to this division.

(2) Whether the change requires review pursuant to Division 13 (commencing with Section 21000).

(d) Within ~~30~~60 days from the date of the receipt of the application for a revised permit, the enforcement agency shall inform the operator, and if the enforcement agency is a local enforcement agency, also inform the board, of its determination to do any of the following:

(1) Allow the change without a revision to the permit.

(2) Disallow the change because it does not conform with the requirements of this division or the regulations adopted pursuant to this division.

(3) Require a revision of the solid waste facilities permit to allow the change.

(4) Require review under Division 13 (commencing with Section 21000) before a decision is made.

(e) The operator has 30 days within which to appeal the decision of the enforcement agency to the hearing panel, as authorized pursuant to Article 2 (commencing with Section ~~44500~~44305) of Chapter 4. The enforcement agency shall provide notice of a hearing held pursuant to this subdivision in the same manner as notice is provided pursuant to subdivision (h).

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~~_~~ (f) Under circumstances ~~which~~that present an immediate danger to the public health and safety or to the environment, as determined by the enforcement agency, the ~~120-day~~180-day filing period may be waived.

(g) (1) A permit revision is not required for the temporary suspension of activities at a solid waste facility if the suspension meets either of the following criteria:

(A) The suspension is for the maintenance or minor modifications to a solid waste unit or to solid waste management equipment.

(B) The suspension is for temporarily ceasing the receipt of solid waste at a solid waste management facility and the owner or operator is in compliance with all other applicable terms and conditions of the solid waste facilities permit and minimum standards adopted by the board.

(2) ~~Any~~ owner or operator of a solid waste facility who temporarily suspends operations shall remain subject to the closure and postclosure maintenance requirements of this division and to ~~any other requirement~~all other requirements imposed by federal law pertaining to the operation of a solid waste facility.

(3) The enforcement agency may impose any reasonable conditions relating to the maintenance of the solid waste facility, environmental monitoring, and periodic reporting during the period of temporary suspension. The board may also impose any reasonable conditions determined to be necessary to ensure compliance with applicable state standards.

(h) (1) (A) Before making its determination pursuant to subdivision (d), the enforcement agency shall submit the proposed determination to the board for comment and hold at least one public hearing on the proposed determination. The enforcement agency shall give notice of the hearing pursuant to Section 65091 of the Government Code, except that the notice shall be provided to all owners of real property within a distance other than 300 feet of the real property that is the subject of the hearing, if specified in the regulations adopted by the board pursuant to subdivision (i). The enforcement agency shall also provide notice of the hearing to the board when it submits the proposed determination to the board.

(B) The enforcement agency shall mail or deliver the notice required pursuant to subparagraph (A) at least 10 days prior to the date of the hearing to any person who has filed a written request for the notice with a person designated by the enforcement agency to receive these requests. The enforcement agency may charge a fee to the requester in an amount that is reasonably related to the costs of providing this service and the enforcement agency may require each request to be annually renewed.

(C) The enforcement agency shall consider environmental justice issues when preparing and distributing the notice to ensure that the notice is concise and understandable for limited-English-speaking populations.

(2) If the board comments pursuant to paragraph (1), the board shall specify whether the proposed determination is consistent with the regulation adopted pursuant to subdivision (i).

(i) (1) The board shall, to the extent resources are available, adopt regulations that implement subdivision (h) and define the term "significant change in the design or operation of the solid waste facility that is not authorized by the existing permit."

(2) While formulating and adopting the regulations required pursuant to paragraph (1), the board shall consider recommendations of the Working Group on Environmental Justice and the advisory group made pursuant to Sections 71113 and 71114 and the report required pursuant to Section 71115.

45011. (a) ~~(1) Except as provided in paragraph (2), if~~ an enforcement agency determines that a solid waste facility ~~or disposal site~~, is in violation of this division, any regulations adopted pursuant to this ~~division applicable to a solid waste facility, or~~ division, any corrective action or cease and desist order, or ~~any other order issued under this division, or~~ poses a potential or actual threat to public health and safety or the environment, the enforcement agency may issue an order establishing a time schedule according to which the facility ~~or site~~ shall be brought into

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compliance with this division. The order may also provide for a civil penalty, to be imposed administratively by the enforcement agency, in an amount not to exceed five thousand dollars (\$5,000) for each day on which a violation occurs, ~~and not to exceed a total amount of fifteen thousand dollars (\$15,000) in any one calendar year~~ if compliance is not achieved in accordance with that time schedule.

~~(2) (A) Notwithstanding paragraph (1), an enforcement agency shall not impose a civil penalty pursuant to this section for the first three minor violations of the same requirement or standard established under this division, or any regulations adopted pursuant to this division applicable to a solid waste facility, identified at a solid waste facility.~~

~~—(B) For purposes of this paragraph, a "minor violation" is a violation that does not pose any threat to the public health, safety, or to the environment, and which does not pertain to the actual design or operation of a solid waste facility but only to a strictly procedural aspect of the solid waste facilities permit.~~

~~—(b) Prior to~~Before issuing an order that imposes a civil penalty pursuant to subdivision (a), an enforcement agency shall do both of the following:

(1) Notify the operator of the solid waste facility that the facility is in violation of this division.

(2) Upon the request of the operator of the solid waste facility, meet with the operator of the solid waste facility to clarify regulatory requirements and to determine what actions, if any, that the operator may voluntarily take to bring the facility into compliance by the earliest feasible date.

~~(c) Prior to imposing any administrative civil penalty against an operator of a solid waste facility, the enforcement agency shall do all of the following:~~

~~—(1) Notify the governing body of its intent to impose a penalty. Upon receipt of the notification, the governing body may direct the hearing panel to hold a duly noticed public hearing to provide an opportunity for the alleged violation or violations and the amount of any proposed civil penalty to be reviewed by the hearing panel pursuant to Section 44308.~~

~~—(2) Consider the factors described in subdivision (a) of Section 45016.~~

~~—(3) Consider alternatives to the imposition of an administrative civil penalty that would bring the solid waste facility into compliance and would achieve the same result without imposing the penalty.~~

~~**65091.** (a) When a provision of this title requires notice of a public hearing to be given pursuant to this section, notice shall be given in all of the following ways: (1) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to the owner of the subject real property or the owner's duly authorized agent, and to the project applicant. (2) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected. (3) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. In lieu of utilizing the assessment roll, the local agency may utilize records of the county assessor or tax collector which contain more recent information than the assessment roll. If the number of owners to whom notice would be mailed or delivered pursuant to this paragraph or paragraph (1) is greater than 1,000, a local agency, in lieu of mailed or delivered notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the proceeding is conducted at least 10 days prior to the hearing. (4) If the notice is mailed~~

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~~or delivered pursuant to paragraph (3), the notice shall also either be: (A) Published pursuant to Section 6061 in at least one newspaper of general circulation within the local agency which is conducting the proceeding at least 10 days prior to the hearing. (B) Posted at least 10 days prior to the hearing in at least three public places within the boundaries of the local agency, including one public place in the area directly affected by the proceeding. (b) The notice shall include the information specified in Section 65094. (c) In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable. (d) Whenever a hearing is held regarding a permit for a drive-through facility, or modification of an existing drive-through facility permit, the local agency shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation in any hearing on, or appeal of the denial of, a drive-through facility permit. The Legislature finds that access restrictions to commercial establishments affecting the blind, aged, or disabled, is a critical statewide problem; therefore, this subdivision shall be applicable to charter cities.~~