

California Integrated Waste Management Board

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

July 29, 1998

AGENDA ITEM 14

ITEM:

CONSIDERATION OF LEGAL AUTHORITY ISSUES AND STAFF OPTIONS RELATING TO BIOSOLIDS TIER REGULATIONS

I. SUMMARY

The purpose of this item is to bring forward for consideration the CIWMB's legal authority and proposed options for the regulation of "biosolids" operations and facilities.

II. PREVIOUS BOARD AND COMMITTEE ACTION

The Permitting and Enforcement Committee had not heard this item prior to the time was written for inclusion in the Board agenda packet. The Board has not previously considered this particular item. Past considerations that are related to the item are summarized in the background portion of Section V.

III. OPTIONS FOR THE BOARD

1. Direct staff to draft regulations for those biosolids operations and facilities not already covered by existing CIWMB regulations and/or revise existing regulations.
2. Direct staff to draft regulations only to specifically "exclude" POTWs and biosolids land application from the CIWMB's regulations.
3. Determine that additional regulations for biosolids operations and facilities are not necessary at the present time.

IV. STAFF RECOMMENDATION

Staff recommend option 3. As discussed below, CIWMB staff have no information to indicate that additional (or revised) CIWMB regulations are necessary for biosolids activities that are within CIWMB jurisdiction. CIWMB staff have not been made aware of a pressing need to expressly "exclude" POTWs and biosolids land application from its regulations. If necessary, an LEA Advisory could be developed to provide clarity.

V. ANALYSIS

Background:

Historically, California Integrated Waste Management Board (CIWMB) regulation of solid waste had been designed specifically for landfills and transfer stations. These regulations were not readily applicable to nontraditional operations, which dealt with waste derived material other than municipal solid waste (MSW). Applying CIWMB regulations to these nontraditional operations resulted in confusion among the regulated community and Local Enforcement Agencies (LEA), creating uneven application of statutory and regulatory requirements throughout the state. Additionally, the "one-size-fits-all" permit did not provide the flexibility needed by the CIWMB and LEAs to oversee nontraditional solid waste operations.

In April 1994, the Committee directed staff to further develop a concept proposing a tiered permitting structure for all solid waste operations. Draft regulatory tier regulations were developed and distributed during an informal public review period. The draft regulations were revised based on comments received and distributed as part of the formal public rulemaking. The CIWMB adopted the regulatory tier regulations at its November 16, 1994, general business meeting. The Office of Administrative Law approved the regulatory tier regulations on March 1, 1995.

These regulations established a new, flexible framework of regulatory oversight by the CIWMB for a wide range of solid waste operations and facilities. The level of regulatory oversight can be set to be commensurate with the potential impact that the operation/facility might pose to public health, safety, and the environment. These regulations did not place any solid waste operation/facility into a particular tier.

At its March 29, 1995 general business meeting, the CIWMB approved a process for determining CIWMB legal authority and a general methodology for determining placement of those operations where the CIWMB has authority. The process for determining CIWMB authority has been used as the first step in the process of drafting tier regulations for a number of types of operations and facilities since that time.

Status of Tier Regulations Schedule

So far, the following tier regulations have been adopted:

REGULATORY PACKAGE	EFFECTIVE DATE OF REGULATIONS
Composting	7/30/95
Nonhazardous Contaminated Soil	4/24/96
Limited Volume Transfer	10/11/96
Chipping/Grinding & Storage of Organics (Emergency)	4/7/97
Nonhazardous Ash	9/26/97
Chipping/Grinding & Storage of Organics (Permanent)	1/9/98

The CIWMB has also adopted a schedule (revised, 5/98) for considering other tier regulations as follows:

REGULATORY PACKAGE	PROPOSED EFFECTIVE DATE
MRF's, Transfer/Processing, "Two-Part Test"	November 1998
Construction/Demolition/Inerts	January 1999
Biosolids	August 1999
Organics	November 1999

The last revision of the schedule noted that the biosolids tasks, which were to begin in June 1998, would only be performed if necessary. As discussed below, staff believes that these regulations are not necessary at this time.

Key Issues:

Legal Framework for CIWMB legal authority over biosolids

The CIWMB's jurisdiction is primarily defined in terms of solid waste facilities and handling. PRC section 40194 provides that:

"Solid waste facility' includes a solid waste transfer or processing station, a composting facility, a transformation facility, and a disposal facility."

PRC section 40195 provides that:

"Solid waste handling' or 'handling' means the collection, transportation, storage, transfer, or processing of solid wastes."

Each of these activities is separately defined and the CIWMB is given authority to permit facilities and to establish standards for solid waste facilities and handling.

The CIWMB's statutes also define solid waste as follows:

PRC 40191. (a) Except as provided in subdivision (b), "solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, **dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes**, and other discarded solid and semisolid wastes.... (emphasis added)

Note: Although most statutes refer to "sludge," it has become common to refer to sludge by the term "biosolids." For the purposes of this agenda item, these terms are synonymous.

Types of Biosolids Handling

Staff have identified seven broad categories of handling for biosolids:

Disposal	Composting	Beneficial Land Application
Transfer/Processing	Treatment	
Storage	Transformation	

The first six handling methods fit squarely within the CIWMB's general jurisdiction as set forth in PRC section 40194. (Transfer/processing is defined as including storage, treatment, and transformation in PRC section 40200).

The last of these handling categories, beneficial land application, has been the subject of considerable analysis and discussion in the past. During the consideration of regulations for nonhazardous ash operations and facilities, the Board determined that beneficial land application of waste-derived materials was outside of the CIWMB's general jurisdiction based upon the definition of recycling set forth in PRC section 40180:

"...the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace..."

Land application that did not constitute beneficial use would be considered disposal.

Existing CIWMB Regulations for Biosolids

Currently, the CIWMB has the following regulations which apply directly, or indirectly, to biosolids:

- Disposal

The general permitting and minimum standards contained in Title 27 of the California Code of Regulations would apply to biosolids received at a disposal facility.

- Transfer/Processing and Storage

The general permitting and minimum standards contained in Title 14 of the California Code of Regulations would apply to biosolids handling at a transfer/processing facility. In addition, proposed section 17407.5(c) [currently 17407.6 and 17564] applies specifically to biosolids. This standard provides, in essence, that:

Liquid wastes and sludges shall not be accepted or stored at an operation or facility unless the operator has written approval to accept such wastes from the appropriate agencies, and the EA. The EA shall authorize acceptance of these wastes only if the operation, facility, and the transfer vehicles are properly equipped to handle such wastes, in a manner to protect public health, safety, and the environment.

- Composting

These regulations, commencing at 14 CCR 17850, contain permitting and minimum standards provisions that apply specifically to the composting of biosolids.

- Transformation

The general permitting and minimum standards provisions contained in Title 14 of the California Code of Regulations would apply to biosolids handling at a transformation facility.

Activities that currently are not covered by CIWMB Regulations

The CIWMB does not currently have regulations applicable to the following types of biosolids handling:

- Treatment

The CIWMB currently does not have any regulations that specifically apply to the treatment of biosolids at Publicly Owned Treatment Works (POTW). While these activities may fit within the CIWMB's general grant of authority, POTWs are subject to extensive regulation by the Water Boards (State and Regional) as set forth in Title 23 of the California Code of Regulations. PRC sections 43020 and 43021 prohibit the CIWMB from establishing regulations regarding matters that are within the jurisdiction of the Air and Water Boards. CIWMB staff have not identified any additional CIWMB standards that would be necessary for POTWs, that are not already covered by Title 23 regulations. (See survey discussion below).

- Beneficial Land Application

The CIWMB currently does not have any regulations that specifically apply to the beneficial land application of biosolids. As noted above, the Board has previously determined that such activity is outside of its jurisdiction for nonhazardous ash. CIWMB staff believes that the same determination should be made for biosolids. Both the Department of Food and Agriculture (CDFA) and the State Water Resources Control Board (SWRCB), the agencies that have primary jurisdiction over this issue, are in the process of developing standards for the land application of biosolids.

CDFA has begun development of standards regarding the heavy metal content of waste derived material that is applied to land. Last month, the CIWMB approved an MOU (conditional upon the final form of the MOU not changing significantly) to work cooperatively with CDFA on this issue.

As required by California Water Code section 13274, the SWRCB is developing general waste discharge requirements for the land application of biosolids. The general waste discharge requirements are required to set forth minimum standards for agronomic applications of sewage sludge and other biological solids and the use of that sludge and those other solids as a soil amendment or fertilizer in agriculture, forestry, and surface mining reclamation, and may permit the transportation of that sludge and those other solids and the use of that sludge and those other solids at more than one site. The requirements are also to include provisions to mitigate significant environmental impacts, potential soil erosion, odors, the degradation of surface water quality or fish or wildlife habitat, the accidental release of hazardous substances, and any potential hazard to the public health or safety. The general waste discharge requirements will supersede regulations adopted by any other state agency to regulate biosolids applied directly to agricultural lands at agronomic rates. The SWRCB is also in the process of developing an EIR for this project. The CIWMB is part of an interagency task force that has been put together to review these documents.

Survey of Interested Parties

A survey was sent to over 700 stakeholders regarding CIWMB regulation of biosolids. The stakeholders included:

LEAs	State Agencies	U.S. EPA
POTWs	Other Local Agencies	Private Parties and Associations

The survey questions were as follows:

- Should the CIWMB regulate biosolids?
- Are there loopholes the CIWMB can close? Is there a niche the CIWMB can fill?

- Are biosolids adequately regulated by other agencies?
- Should the CIWMB take over regulation of biosolids from other agencies?
- Are the Federal 503 standards adequate?
- Should the CIWMB pursue 503 certification?
- Should CIWMB regulations cover only sewage sludge or should the regulations also address septic tank pumpings, water treatment sludge, industrial sludge, etc.?

The CIWMB received 45 responses. Only 9 of those responding thought the CIWMB should develop additional regulations. Another 12 responded that some additional statewide regulation of biosolids was needed, but that it was not clear whether the CIWMB or a different state agency would be the appropriate lead agency. 24 responded that there was no need for additional CIWMB regulation of biosolids.

Most interestingly, those responding yes or maybe indicated that the additional statewide regulation was necessary to deal with issues relating to land application. None of those responding identified a concern regarding biosolids handling that is within the CIWMB 's jurisdiction. The lack of response from a large number of those surveyed may also be an indication that there is not a significant demand for additional CIWMB regulation in this area. Attachment 2 contains a brief outline of the responses to the survey, grouped by category of stakeholder.

VI. ATTACHMENTS

1. Resolution # 98-255
2. Brief Outline of Biosolids Survey Results

VII. APPROVALS

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