State of California

California Environmental Protection Agency

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MEMORANDUM

To: Ted Rauh
Program Director
Waste Compliance and Mitigation Program

Rebecca Lafreniere, Chair
Enforcement Advisory Council

Date: JAN 08 2009

From:

Dennis Ferrier, City of San Jose LEA

Rebecca Lafreniere, San Diego County LEA

Robert McClellon , San Joaquin County LEA
Donna Heran for R. McClellon

Greg Piere, Napa County LEA

Subject: **REQUEST FOR THE CIWMB TO CLARIFY ISSUES REGARDING THE REVISED PERMIT APPLICATION FORM AND INSTRUCTIONS FOR COMPLETING THE APPLICATION FOR SOLID WASTE FACILITY PERMIT/WASTE DISCHARGE REQUIREMENTS (EAC RESOLUTION 2007-02)**

This memo is to provide you with an update on the workgroup that was formed to discuss the subject matter. It also provides 2 options on how to address and clarify this issue.

Background

In January, 2007, the EAC passed Resolution 2007-02 requesting actions to clarify the issues regarding the relationship between how tons per operating day is identified in the permit application form (E-1-77 (Rev 8-04) and in the solid waste facility permits. On October 15, 2007, the EAC Chair wrote a letter forwarding that resolution and request for response. By letter dated December 18, 2007 to the EAC Chair it was suggested that a workgroup be formed that would include LEAs and Board staff to review this issue and develop specific recommendations to address the problem identified. The workgroup was to provide an assessment of the problem and recommendations to the EAC and you for further action. Mary Madison-Johnson of the Board's Permitting & LEA Support Division staff was tasked with facilitating this workgroup.

LEA's were solicited during the regularly scheduled LEA/CIWMB Round Table Meetings to participate in the workgroup. The following are the members:

Dennis Ferrier
City of San Jose LEA

Rebecca Lafreniere
San Diego County LEA

Robert McClellon
San Joaquin County LEA

Greg Piere
Napa County LEA

The EAC workgroup met on several occasions during which much of the discussion focused on the Board policy excluding "material used for daily cover" reflected in LEA Advisory 25 that addressed what counts for tonnage limits in a solid waste facilities permit. Board Advisory #25 was rescinded in March 2005. For some jurisdictions LEA Advisory 25 enabled operators to receive large amounts of Beneficial Reuse and ADC (In some instances, ADC and Beneficial Reuse amounts were larger than the amount of waste received for disposal by that facility). This resulted in some materials brought into a facility and reported as ADC or Beneficial Reuse, but were ultimately disposed of, to avoid the tonnage limit. Additionally, discussion occurred relative to the regulation change that became effective in January 2005 that revised the solid waste facility permit application E-177 requiring that all material (waste and beneficial material) received at a facility count towards maximum allowed peak tonnage. Workgroup members were concerned that EA's would be required to revise permits when no change in tonnage was proposed, relative to the existing solid waste facilities permit. Thus operators may not be aware of the regulatory and policy change affecting what is interpreted as counting toward the permit tonnage limit. When operators complete an application, the tonnage amounts required to be included in the revised application may not coincide with the tonnage they are currently permitted to accept because previously excluded materials may now be interpreted as counting towards the permit maximum daily tonnage.

Below are the options developed by the workgroup for your consideration to address the issue.

Options

1. Revise the regulations as identified to clarify that the peak total amount, as identified on the application, of waste and material the facility receives through the gate is not required to be referred to as the "permitted" maximum tonnage and may not include "Other" materials such as 'Daily Cover'.

   Pursuant to the #1 regulations change, prepare a guidance document to clarify Board policy following the rescinding of Advisory #25 and the E-177 regulations change and send it to all EA's and Operators via e-mail. The guidance should include a methodology for determining acceptable amounts of ADC and Beneficial Reuse based on incoming waste volumes and ADC types. The guidance document should include criteria for stockpiled ADC material (accounting, length of time a material can be stockpiled, proximity to working face). Have them contact their Permits and Assistance Board staff if they have any questions.

2. Hold a workshop with EA's and operators to discuss the solid waste facility permit application (E-177) regulation to establish clear and consistent regulations and policy relative to what material tonnage/waste may be counted with respect to the permit maximum daily tonnage.

B. Facility Information

1. ***Information Applicable To All Facilities**: This portion of Part 3 must be filled out by every applicant regardless of the type of facility.*

a. ***Peak Daily Tonnage or Cubic Yards**: The peak total amount of waste and material the facility receives through the gate to store, process, transfer, or dispose per day. This amount shall be expressed in tons, if tonnage is not available or not applicable provide this in cubic yards with a conversion factor. This will be referred to as the "~~permitted~~ facility peak tonnage" and may or may not be the maximum tonnage identified in the permit. The facility maximum tonnage limit must be described in and consistent with the Report of Facility Information (RFI) and supported by existing California Environmental Quality Act (CEQA) documentation and/or within the scope of the analysis in a CEQA review, if any, that was being conducted at the time the application was submitted. Volume figures should be converted to tons and the conversion factor should be documented in the accompanying RFI.*

   1. ***Disposal/Transfer**: The amount of waste that comes through the gate and is disposed of on-site or transferred off site as waste; and*
   2. ***Other**: That amount of material that is recycled or used for beneficial use such as ADC or other on-site projects. Note: 1 and 2 should equal the facility peak daily tonnage or cubic yards.*

Instructions for filling out the application form would also be revised to follow the proposed language in the application form.

DRAFT LEA GUIDANCE DOCUMENT

Issue

Application Form Part 3(B)(1)(a) – Facility Information, Peak Daily tons, Other -- requires the operator to determine and include a "Facility's Peak Daily Tonnage or Cubic Yards" by adding the disposal/transfer amount with the "other" amount of material that is recycled or used as Beneficial Reuse Material (disposal/transfer tons + other tons).

Problem

Some current permits do not include reference to all of the material received, transferred, processed, used or disposed on site. Much of the discussion on tonnage allocations (disposal versus used on site; transferred for disposal versus recycled and sent to market) is found in the Report of Facility Information (RFI). Therefore it is not always apparent on first glance that the values reported on the revised application are consistent with the current approvals. The application identifies a total permitted maximum and one could assume that this is the value that should appear in the permit. Someone reviewing just the permit and the application may not be cognizant of the fact that the LEA may have initially issued the permit when LEA Advisory 25 still existed and used their discretion to select what values were included in the permit and which ones were left out of the permit and addressed only in the RFI. In some of the older issued permits there could be a conflict between the maximum permitted tonnage (defined by some permits as the disposal tonnage) and the maximum amount of tonnage the site receives (this included ADC, beneficial reuses, and other material reused on site). CIWMB 'Advisory 25' (1995 – 2005) excluded material used as daily cover to be counted toward the permit tonnage limits. Therefore, some of the older issued permits may not have included material used for daily cover in the permitted maximum tonnage limit. A perception could be formed that the LEA has not addressed all of the waste handling activities at the site. Given that all activities within the authority of the LEA must be adequately

addressed when the permit is issued, revised or modified this perception would be unfounded, however it may persist.

Solution

Clarify through guidance that the information reported to the LEA in the application is just that, information, and that the LEA has full discretion to determine what should be included in the permit they write and issue. The LEAs will continue to make sure the permit is consistent with SMS and the PRC and CEQA review. The guidance would indicate that LEAs have the flexibility to decide what tonnage figure(s) they place in the permit. They can choose to use the peak daily tonnage listed on the application for the total through the gate or just the transfer or disposal amounts or subsets of either. The guidance would also provide information on to determine reasonable amount of ADC based on material types and waste disposal volumes. The guidance would give examples of BMPs regarding stockpiling and accounting practices. The guidance would reiterate the regulatory requirements that the Report of Facility Information must clearly describe the activities occurring at the site to the level that it is clearly understood that the activities described must be consistent with standards and supported by CEQA. The guidance would emphasize that limits on tonnage and other aspects of operations in a permit are a key way of demonstrating and ensuring ongoing consistency, clarity and enforceability with what has been reviewed and approved and are supported with project descriptions developed during CEQA review.