



July 17, 2006

Hon. Margo Reid Brown, Chair, and the
Members of the California Integrated
Waste Management Board
001 "I" Street, P.O. Box 4025
Sacramento, CA 95812-4025

Dear Chairperson Reid Brown and Members of the Board:

We are writing to applaud the Waste Board's efforts to reform its wholly inadequate financial assurance regulations. However, at the same time, we are concerned that nowhere is one of the current rule's key failings identified for reform.

That is the use of the financial means test as an approved mechanism for showing assurance, which is relied upon by Waste Management, Inc., for its major landfills in California.

We strongly object to this mechanism because it provides neither a segregated fund nor a sound third party to provide assurance. Instead, like captive insurance, which the CIWMB commendably proscribed in 1999 for failing to provide meaningful assurance, the means test relies on the assets of the landfill owner or operator. The only thing that the means test adds to the rejected captive insurance is the appearance of a corporation that, today, has substantial net worth. However, the apparent financial health of a company today bears no relation to its state 30 or more years in the future. It also says nothing about the company's willingness to expend substantial funds to maintain and possibly remediate a facility that has not produced revenues for more than 30 years. Moreover, with companies such as Waste Management that have repeatedly engaged in massive accounting frauds, little reliance should be placed on its books.

The Securities and Exchange Commission sued stating: "[o]ur complaint describes one of the most egregious accounting frauds we have ever seen." (Jonathan Weil, "Waste Management Suit by SEC Zings Anderson," Wall Street Journal (March 27, 2002). On its face, recourse back to the company itself provides virtually no assurance, which is the whole purpose of this process

On its face, recourse back to the company itself provides virtually no assurance, contrary to the purpose of the regulations.

The utter travesty of the means test to the interests of the taxpayers of California can be seen in the comments by the waste industry trade magazine that castigated the U.S. Environmental Protection Agency for permitting states to allow the financial means test:

**No Wetlands Landfill Expansion
CIWMB Landfill Financial Assurance**

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"In it, EPA develops its rationale for the action, taking pride in reducing costs involved in the issuance of third-party assurance instruments by an estimated \$68 million per year. Pegging the total potential liability for closure and post-closure care costs at \$6.8 billion [not counting the costs of corrective action or damages for personal injury] – you may feel a twitch in your gizzards at what appear to be remarkably low estimates given the cost of recent environmental restoration projects – the agency adds a few novel twists to the notion of 'assurance.' These appear to allow larger landfill-owners to substitute creative accounting practices for rock-ribbed guarantees that real reserves will be there if ever needed. As we've all just recently seen, some larger landfill-owners have demonstrated a real talent when it comes to creative accounting practices, and those with a strong sense of humor will appreciate the timing of EPA's high regard for accounting ethics given those recent revelations. Perhaps renaming the agency WSPA (Wall Street Protection Agency) makes sense...

"In this, along with a great many other burdens of our overextended lifestyle, we seem hell-bent on passing down the costs of proper stewardship to our heirs....

"When Subtitle D was proposed, it seemed that EPA was doing just that [not ignoring the long term costs of landfilling], but now one has to wonder. When we allow politics to enjoy equal footing with principle, we're asking for trouble." (John Trotti, "Editors Comments: Landfill Financial Responsibility: Whose Interests Are We Protecting Now?", MSW Management (May/June 1998), at p. 6.)

Failing to limit financial assurances to reliable instruments is a deliberate and conscious decision to foist massive tax increases on future taxpayers in California.

We urge you to specifically direct staff to restrict the use of the totally inappropriate means test.

Sincerely yours,

Christopher Gilkerson, Chair
No Wetlands Landfill Expansion, Marin County

Gordon Bennet, Chair
Sierra Club, Marin County Group

David Yearsley, Executive Director
Friends of the Petaluma River, Sonoma County

David Tam, Legislation Chair
Northern Ca. Recycling Assoc., Berkeley

Leo P. O'Brien, Executive Director
Baykeeper, San Francisco