



LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD



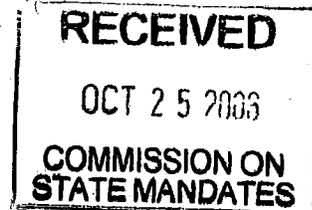
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October 26, 2006

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
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Re: **Final Staff Analysis and Proposed Statewide Cost Estimate**
Integrated Waste Management Board 00-TC-07
Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1
Statutes 1999, Chapter 764; Statutes 1992, Chapter 1116
State Agency Model Integrated Waste Management Plan (February 2000)
Santa Monica and South Lake Tahoe Community College Districts, Co-
Claimants

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Dear Ms. Higashi:

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This letter is intended to provide comments on, and request changes to, the Proposed Statewide Cost Estimate entitled above. The California Integrated Waste Management Board (CIWMB) agrees with Commission staff that this estimate is inaccurate and for that reason the CIWMB believes that it should not be forwarded to the Legislature as currently proposed. This letter provides evidence that should be used to revise the statewide cost estimate to make it more accurate.

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CONTEXT OF PREVIOUS CIWMB COMMENTS

As noted in the Staff's analysis, the CIWMB provided comments and participated in a pre-hearing conference on the draft estimate. Those comments were based upon Commission staff's request in the January 9, 2006 draft analysis that

“the costs seem excessive and no correlation exists between district size and the costs claimed ... staff requests any additional information regarding the costs associated with diversion ... that may assist in the



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development of a more accurate statewide cost estimate ... specifically from the [CIWMB].”

The CIWMB's comments were thus directed at providing information that it believed would enable the Commission staff to evaluate the costs claimed and come up with a more accurate estimate of what the claimed costs should be. Unfortunately, the information provided was not the kind of information that Commission staff felt that they could use. The final staff analysis states that “the additional comments did not provide enough evidence to help staff reduce the proposed estimate by deducting offsets that should have been realized.”

For the record, it should be noted that at no time did the Commission staff request any specific information about specific claims, nor provide any indication as to the type of “evidence” that it could use for reducing the claims. Furthermore, the CIWMB was not provided with any information on most of the claimants (only portions of information from 8 were included in the draft estimate) until it received the “final” analysis ten days ago. To date, the only information about the claims that the CIWMB has received is in these two documents. With all due respect, it is disingenuous at best to expect that the CIWMB could even deduce what would be necessary to provide as “evidence” to reduce the claims when it had not been provided with specific information about the claims, nor with specific questions from the Commission staff as to what type of information the Commission staff was seeking. (Interestingly enough, Commission staff did not use the information about inaccurate claims that it identified on its own to reduce the claims – multiple claims for one-time costs).

The CIWMB still believes that its comments on the draft statewide estimate are germane (Exhibit B of the Commission's materials), and believes that the evidence could have been used to reduce the estimate. Nevertheless, at this time, based upon the additional information provided in the Final Analysis, the CIWMB would like to offer additional evidence that it believes should be used to reduce the statewide cost estimate and make it more accurate.

SUBMISSION OF EVIDENCE OF OFFSETTING REVENUES TO REDUCE THE STATEWIDE ESTIMATE

As noted in the Final Analysis, revenues generated from recyclable materials can be used to offset the claimed costs. These revenues are expressly included in the Parameters and Guidelines (see page 6 of the Final Staff Analysis). This is based upon Public Contract Code section 12167.1 which provides that those entities can sell the recyclable materials they collect and retain the revenues generated.

Based upon the reports submitted to the CIWMB, a statewide estimate of revenue generation by placing the collected materials into the recycle markets can be derived. This estimate is based on the following:

Official District and College reported diversion of listed commodities; and, the market prices of the listed commodities and published in the industry's informational sheet know as the "yellow sheet." (See attachments)

Based upon these two factors it can be estimated that the total value of the collected recyclables, as sold through the commodity markets could generate total revenues from 2001-2005 of \$22,676,296.01. (See attachments)

The proposed statewide cost estimate on page 12, Table 3, of the Final Analysis notes that the estimated total cost claimed from 1999-2008 to be \$10,785,532. Thus, the estimated revenue generated from the sale of recyclables would more than wipe out the estimated potential costs. Therefore, based upon this evidence, the CIWMB believes that the statewide cost estimate should be zero (in fact, as these estimate numbers show, there would be a net gain).

ALTERNATIVELY, OFFSETTING SAVINGS SHOULD ALSO BE USED TO REDUCE THE STATEWIDE ESTIMATE

Previously, the Commission staff rejected the CIWMB's request to offset claimed costs by subtracting savings that resulted from implementing the program. Specifically, avoided disposal costs as a result of implementing diversion programs were rejected. (Avoided disposal costs occur when material is recycled instead of being sent to the landfill thereby reducing disposal costs which are typically charged based upon the tons disposed). The Commission staff has explained that since disposal costs were not part of a previous mandate, they can not be credited now that those costs are avoided (page 8 of final analysis).

However, the CIWMB believes that the Commission Staff's recommendation not to include avoided disposal costs in the statewide estimate is a result of a hyper-literal reading of the CIWMB's statute and a selective reading of the Commission's own regulations. As noted in the Final Analysis, Public Resources Code section 42925(a) provides that cost savings must be directed to fund the integrated waste management plan, only "to the extent feasible." Based upon this phrase, the Commission Staff concludes that this offset should not be included. This interpretation of the CIWMB's statute is inappropriate in a situation such as this where the cost savings must occur automatically as a result of implementing the mandated program.

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Standard rules of statutory construction provide that a statute should not be interpreted in a way that would lead to an absurd result. It is true that in a typical situation the phrase "to the extent feasible" would allow an entity to opt out of doing something where there is a barrier of some kind – be it financial, staffing or other resources. However, in a case where the action occurs automatically (i.e. there is no exercise of discretion necessary) as in avoided disposal costs, there would be no barriers to the accrual of savings, nor even any decision to make on applying those cost savings to the program. In fact, through the day to day operation of a District of College campus there exists a method of recording and tracking the savings. This is directly linked to the monthly billings obtained for waste services that are charged and processed by the accounting offices of every District and campus. Therefore, the direction of these savings to the program are by definition feasible.

The Legislature's direction in this regard is further evidenced by other portions of the relevant statute that expressly recognize reduced disposal as part of the implementation of the diversion plan:

"42920. (b) (1) ...shall develop ... an integrated waste management plan ...that will reduce solid waste..."

"42926. ... shall submit a report to the board summarizing its progress in reducing solid waste as required by Section 42921.... (b) ...annual report to the board shall, at a minimum, include all of the following:
(1) Calculations of annual disposal reduction...."

In addition to the Legislature recognizing the need to include the avoided disposal costs within the off-setting costs of implementing a program, the Solid Waste Industry has recognized through numerous newspaper and magazine articles over the past ten years that the use of avoided disposal costs are a necessary component of calculating the cost of implementing diversion programs.

The CIWMB's interpretation of its statute is further bolstered by the Commission's own regulations which states that "**any offsetting savings to the same program experienced as a result of the same statutes** found to contain a mandate **shall be deducted** from the costs claimed." (2 CCR 1183.1(a) (9) [emphasis added]). In this case, avoided disposal costs are by definition **a result of the same statutes** that require the diversion program to be implemented. Furthermore, the Commission's statutes provide that the "reasonable reimbursement methodology" used should identify the costs to implement the mandate in a **cost-efficient manner**." (Government Code section 17518.5 [emphasis added]). This statute would seem to require that the costs claimed must take account of savings that result directly and automatically from the implementation of the mandate.

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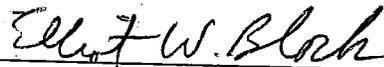
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For the years 2001-2005, Community College Districts collectively reported the diversion of waste in the tonnage amount noted in the attached table. While disposal fees vary around the state, the statewide average for 2001-2004 has ranged between \$36 and \$39 per ton. The reported figures of diversion amount to an estimated cost savings of \$21,979,208.92 for the years 2001-2005. The estimated avoided disposal costs would more than wipe out the potential costs estimated. Therefore, the CIWMB submits that that the statewide cost estimate should be set at zero using this evidence of avoided disposal costs. (See attachments).

I certify, under penalty of perjury, that I am an authorized representative of the California Integrated Waste Management Board and that the statements made in this document are true and correct to the best of my personal knowledge and belief.

Executed this 26th day of October, 2006 in Sacramento, California, by:



Elliot Block
Acting Chief Counsel
California Integrated Waste Management Board
1001 I Street
Sacramento, CA 95812

Enclosures

Statewide Cost Estimate of Generated Revenues by Community College Districts based on Actual Reported Tonnage

Year	Recycling Program	Reported and Approved Tonnage	Average Commodity Value Per Ton	Total Statewide Estimate of Available Revenue
2001	Beverage Containers*	1407.72	\$500.00	\$703,860.00
2001	Cardboard	14017.968	n/a	
2001	Newspaper	1704.603	n/a	
2001	Office Paper (white) **	6322.819	n/a	
2001	Office Paper (mixed)	16751.705	n/a	
2001	Scrap Metal	8479.25	\$74.90	\$635,095.83
2001	Plastics	885.819	n/a	
2001	Glass	697.309	n/a	
2002	Beverage Containers*	4582.456	\$500.00	\$2,291,228.00
2002	Cardboard	16284.691	\$85.55	\$1,393,155.32
2002	Newspaper	2028.279	\$62.50	\$126,767.44
2002	Office Paper (white) **	9607.937	\$107.50	\$1,032,853.23
2002	Office Paper (mixed)	16844.351	\$50.28	\$846,933.97
2002	Scrap Metal	7648.094	\$92.56	\$707,907.58
2002	Plastics	1041.92	n/a	
2002	Glass	869.518	n/a	
2003	Beverage Containers*	2172.063	\$500.00	\$1,086,031.50
2003	Cardboard	17240.114	\$65.00	\$1,120,607.41
2003	Newspaper	2137.022	\$53.75	\$114,864.93
2003	Office Paper (white) **	6693.81	\$65.00	\$435,097.65
2003	Office Paper (mixed)	18481.867	\$53.33	\$985,637.97
2003	Scrap Metal	7606.819	n/a	
2003	Plastics	1149.974	n/a	
2003	Glass	840.337	n/a	
2004	Beverage Containers*	2609.807	\$500.00	\$1,304,903.50
2004	Cardboard	16543.721	\$85.63	\$1,416,638.83
2004	Newspaper	2461.519	\$62.50	\$153,844.94
2004	Office Paper (white) **	7185.629	\$133.34	\$958,131.77
2004	Office Paper (mixed)	20771.529	\$65.43	\$1,359,081.14
2004	Scrap Metal	7527.441	n/a	
2004	Plastics	1631.838	n/a	
2004	Glass	1027.378	n/a	
2005	Beverage Containers*	2781.245	\$500.00	\$1,390,622.50
2005	Cardboard	16593.197	\$82.50	\$1,368,938.75
2005	Newspaper	2522.955	\$58.33	\$147,163.97
2005	Office Paper (white) **	6289.428	\$116.67	\$733,787.56
2005	Office Paper (mixed)	19980.812	\$63.33	\$1,265,384.82
2005	Scrap Metal	12914.793	\$85.00	\$1,097,757.41
2005	Plastics	1382.334	n/a	
2005	Glass	1058.378	n/a	

Estimated Grand Total of Available Revenues

\$22,676,296.01

Statewide Cost Estimate of Generated Revenues by Community College Districts Based on Actual Reported Avoided Disposal Tonnage

Avoided Disposal by Year	Total Tons Reported Diverted	Price Index ***	Total Avoided Disposal Costs
2001	80,211.40	\$36.39	\$2,918,892.85
2002	61,209.60	\$36.17	\$2,213,951.23
2003	66,620.20	\$36.83	\$2,453,621.97
2004	193,435.30	\$38.42	\$7,431,784.23
2005	181,180.60	\$39.12	\$6,960,958.65

Estimated Grand Total of Avoided Disposal \$21,979,208.92

Total Estimated Revenues Generated Through Implementation of Public Resource Code (PRC) Section 42920 et. sec.:

\$44,655,504.93

Foot notes:

* Beverage Containers based on average commingled value per lbs (Division of Recycling)

** Value for Office Paper based on SOP (Standard Office Pack). If paper were graded to White Ledger values would be:

Year	Value per ton
2001	n/a
2002	\$166.94
2003	\$190.00
2004	\$214.58
2005	\$200.93

*** Solid Waste Price Index based on 2004 study conducted by Solid Waste Digest

**** 2005 Index not available at time this report was prepared. Have used 2004 to establish estimate.

Average Recycle Paper Prices*

2002	Mixed	News (6)	News (8)	OCC	SOP	White Ledger
April-June	45.83	52.50	64.17	90.83	87.50	147.50
July-Sept	54.17	67.50	92.50	100.00	108.33	170.00
Oct-Dec	50.83	67.50	84.17	65.83	126.67	183.33
Yearly Avg	\$50.28	\$62.50	\$80.28	\$85.55	\$107.50	\$166.94
2003	Mixed	News (6)	News (8)	OCC	SOP	White Ledger
Jan-March	50.83	57.50	67.50	59.17	133.33	190.00
April-June	57.50	57.50	77.50	69.17	115.00	190.00
July-Sept	52.50	50.00	69.16	65.83	101.67	190.00
Oct-Dec	52.50	50.00	69.19	65.83	101.67	190.00
Yearly Avg	\$53.33	\$53.75	\$70.84	\$65.00	\$112.92	\$190.00
2004	Mixed	News (6)	News (8)	OCC	SOP	White Ledger
Jan-March	59.17	59.17	87.50	75.83	115.00	210.00
April-June	67.50	65.83	90.83	89.17	121.67	210.00
July-Sept	67.50	62.50	87.50	90.00	150.00	225.00
Oct-Dec	67.50	62.50	90.00	87.50	146.67	213.33
Yearly Avg	\$65.42	\$62.50	\$88.96	\$85.63	\$133.34	\$214.58
2005	Mixed	News (6)	News (8)	OCC	SOP	White Ledger
Jan	67.50	62.50	92.50	87.50	145.00	220.00
Feb	67.50	62.50	92.50	92.50	145.00	220.00
March	67.50	62.50	92.50	92.50	140.00	220.00
April	67.50	62.50	92.50	92.50	130.00	220.00
May	67.50	62.50	92.50	92.50	105.00	200.00
June	67.50	62.50	92.50	87.50	105.00	190.00
July	67.50	62.50	87.50	87.50	105.00	190.00
Aug	57.50	52.50	80.50	77.50	105.00	190.00
Sept	57.50	52.50	82.50	72.50	105.00	190.00
Oct	57.50	52.50	82.50	72.50	105.00	190.00
Nov	57.50	52.50	82.50	67.50	105.00	190.00
Dec	57.50	52.50	82.50	67.50	105.00	190.00
Yearly Avg	\$63.33	\$58.33	\$87.75	\$82.50	\$116.67	\$200.83

* Information obtained from the Yellow Sheet Official Board Markets Transacted Paper Stock Prices. Prices represent board and paper mill purchase prices, bailed, F.O.B. seller's dock, San Francisco port.

Average California Landfill Prices*

2001	Price per ton	2002	Price per ton	2003	Price per ton
Jan	36.15	Jan	36.20	Jan	36.51
Feb	36.15	Feb	36.20	Feb	36.51
March	36.15	March		March	36.80
April		April		April	
May	36.17	May	36.15	May	36.76
June	36.61	June	36.15	June	
July	36.58	July		July	
Aug	36.58	Aug	35.97	Aug	
Sept	36.58	Sept		Sept	36.65
Oct	36.58	Oct		Oct	36.89
Nov	36.58	Nov	35.98	Nov	
Dec	36.13	Dec	36.51	Dec	37.71
Yearly Avg.	\$36.39	Yearly Avg.	\$36.17	Yearly Avg.	\$36.83

2004	Price per ton	2005	Price per ton
Jan	37.71	Jan	
Feb		Feb	
March		March	
April		April	
May		May	
June	39.12	June	
July		July	
Aug		Aug	
Sept		Sept	
Oct		Oct	
Nov		Nov	
Dec		Dec	
Yearly Avg.	\$38.42	Yearly Avg.	

* Information obtained from the Solid Waste Digest - Solid Waste Price Index.