

# CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

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## ***Limited Authority and Weak Oversight Diminish Its Ability to Protect Public Health and the Environment***

REPORT NUMBER 2000-109, DECEMBER 2000

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### ***Audit Highlights . . .***

***The California Integrated Waste Management Board (board) cannot fully achieve its mission to protect public health and safety and the environment because it:***

- Does not have the authority to object to a permit if it believes that additional landfill capacity is unnecessary or that the local governments are not addressing concerns about environmental justice.***
  - Has approved expansions for landfills even when the landfill owners or operators were continually violating state minimum standards.***
  - Allows operators who are violating the terms and conditions of their existing permits to continue to do so while seeking approval for revised permits.***
  - Allows operators to delay closure for extended periods and therefore bypass federal and state regulations.***
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The California Integrated Waste Management Board (board) lacks appropriate authority to fully protect the environment and public safety through its oversight of the State's 176 active solid waste landfills (landfills). Also, the board has weakened its ability to properly regulate landfills by adopting policies that contradict state law, not effectively monitoring landfill activity, and allowing extensive delays in landfill closures. These findings concern all Californians because weakly regulated landfill operations carry the potential to contaminate groundwater, release harmful gases into the air, and spread disease through animals and insects that are naturally attracted to landfills. Specifically, we found:

### **Finding #1: The board does not have the authority to reject permit proposals when additional capacity is not needed.**

The board has no express authority to object to an application for a landfill expansion if it determines that additional landfill capacity is unnecessary. However, before it can consider capacity in its permitting process, the board would need to research and resolve certain issues. For example, because the U.S. Supreme Court has found that solid waste is a commodity, the board would need to consider capacity in a manner that would not inadvertently discriminate against the free flow of that commodity on interstate commerce. Furthermore, even if it had the authority, the board does not possess sufficient data to facilitate its decision-making process because its database is incomplete and often contains erroneous and inconsistent data. Additionally, there is no standard method of reporting data, because some landfills report available capacity in tons, while others use cubic yards.

We recommended that the board explore its options for taking into account the necessity for increased landfill capacity as a factor in granting permits. The board also needs to update its database and require local governments to report accurate landfill capacity information on an annual basis in a consistent manner.

***Board Action: Partial corrective action taken.***

The board did not specifically address whether it plans to consider landfill capacity as a factor in granting permits. The board also did not address when it plans to update its database on landfill capacity, but it did indicate that staff are developing new standards for collecting and maintaining landfill capacity information. During the April 2002 meeting, staff will update the board regarding landfill capacity. Ultimately, the board plans to review capacity data semi-annually.

**Finding #2: The board has no authority to reject permit proposals that have environmental justice concerns.**

Environmental justice is the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. Although federal law and recent state legislation attempt to prohibit discrimination in this area, the board does not have the authority to consider or address environmental justice concerns when approving permits, nor does it maintain sufficient data to be able to do so. However, if the board fails to incorporate environmental justice concerns in its permitting process, it cannot ensure that it complies with federal and state laws prohibiting discrimination.

We recommended that the board develop a proposal for incorporating environmental justice into its permitting process and submit the proposal to the California Environmental Protection Agency for its approval. If the proposal is approved, the board should seek legislative authority to object to permit proposals if environmental justice concerns exist. The board should also track demographic information on the communities in which solid waste facilities are located, and make this information available to the public.

***Board Action: Partial corrective action taken.***

The board indicated that, at the October 2001 meeting, it approved detailed actions that would be implemented immediately to address environmental justice concerns focusing on grant programs, contracts, education, outreach, recycling, market development zones and awards. It also plans to continue to develop other actions to address environmental justice in all its programs. In addition, the board stated that staff have taken the first step toward creating a statewide map by updating location information for active and permitted solid waste facilities. Staff also added the capability to interactively access overlays of census tract demographic information with solid waste facility locations on its Web site. However, the board did not specifically address whether it was seeking legislative authority to object to permit proposals if environmental justice concerns exist.

**Finding #3: The board's permit policy does not ensure that landfill operators comply with state minimum standards.**

State law requires the board to object to provisions of a permit revision that are not consistent with state minimum standards for solid waste handling, transferring, composting, and disposal, and to return any such proposal to the Local Enforcement Agency (LEA). However, in 1994, the board adopted a policy that it would concur with a permit revision even though violations of state minimum standards might exist. The policy allows landfill owners or operators with long-term violations—those that take longer than 90 days to correct—to continue to operate so long as they demonstrate that the LEA has issued a Notice and Order, the violations do not pose an imminent threat to public health and safety and to the environment, and the operators are making a good faith effort to correct the violations. Despite the board stating that the policy would only apply to long-term violations with no threat to the environment or public health and safety, it has concurred with expansion for four landfills with long-term explosive gas violations that have the potential to harm public health and safety and the environment. Moreover, the board does not have a thorough understanding of whether its 1994 policy significantly affects the environment. In June 2000, it entered into a contract with a consultant to perform a study of the environmental impacts of landfills on air, water, and gas.

We recommended that the board discontinue the use of its 1994 policy. If the board believes this policy is necessary, it should request the Legislature to grant it the authority to issue permits to long-term violators under defined circumstances. Furthermore, the board needs to complete its study of the environmental impacts of landfills in the State.

***Board Action: Pending.***

During the January 2001 board meeting, the board directed staff to develop regulatory concepts that address the issues within its 1994 policy. The board planned to consider possible regulatory concepts at its December 2001 meeting. In addition, the contractor the board engaged to study the environmental impacts of landfills, indicated during the April 2001 board meeting that it would complete the required tasks for phase I of the contract by January 2002. However, as of February 22, 2002, according to the board, the contractor has not yet completed the phase I task.

**Finding #4: The board's enforcement policy allows operators to circumvent the law.**

In 1990 the board adopted a permit enforcement policy to resolve a statewide problem with out-of-date permits. The policy required LEAs to issue Notice and Orders to landfill owners or operators to bring landfills into compliance with the terms and conditions of their existing permits no later than August 1, 1992. Terms and conditions generally specify daily tonnage limits, height limits, and the types of solid waste a landfill can receive. However, since August 1, 1992, the board has continued this policy, and has allowed owners and operators of 56 landfills to violate their terms and conditions while seeking approval for revised permits from the LEAs and the board to address the violations.

By following this policy, the board will continue to allow operators to circumvent the law. For example, as part of the permit application process, a landfill owner or operator must provide evidence that it has complied with the California Environmental Quality Act, which requires the preparation of an environmental analysis and proper disclosure to decision makers and the public. However, because the 1990 policy does not require landfill owners or operators to file permit applications, they also do not prepare environmental analyses or seek comments from the public. Moreover, the board does not have a thorough understanding of whether its

1990 policy significantly affects the environment. In June 2000 it signed a two-year contract with a consultant to perform a study of the environmental impacts of landfills on air, water, and gas.

We recommended that the board discontinue the use of its 1990 enforcement policy. As previously stated in Finding #3, the board also needs to complete its study of the environmental impacts of landfills in the State.

***Board Action: Corrective action taken.***

The board reported that, during its June 2001 board meeting, it approved a modified policy that included limiting the policy's use to emergencies. Furthermore, at its August 2001 meeting, the board approved regulations to reflect the new policy, which the board submitted to the Office of Administrative Law for approval.

**Finding #5: The board's oversight of the LEAs is weak.**

The board's ineffective monitoring of landfill activity creates further environmental and health risks. The board did not monitor each landfill every 18 months, as state law requires, to ensure that the LEAs were adequately enforcing state minimum standards. Since 1995 the board was between 1 month and 4 years late in performing inspections at 132 of 176 active landfills. However, in the last year, it has made significant strides toward reducing the number of overdue inspections. The board also does not ensure that LEAs enforce landfill violations in a timely and effective manner. According to the board's database, as of August 31, 2000, LEAs had issued 64 active Notice and Orders to 47 landfill operators. Our analysis shows that for 43 of these orders, the operators have not met their deadlines and are overdue from 114 to 2,710 days. The board stated that its database may not be up-to-date because state law does not require LEAs to report on the final compliance deadlines or expiration dates of orders. Therefore, the board is in the process of revising its regulations to require them to do so.

Board staff told us that only one monetary penalty has been assessed in the past 10 years. By not assessing penalties against operators that fail to comply with orders, the board and LEAs allow them to continue to violate standards without consequences. Although the board believes that the statutory process for imposing civil penalties is cumbersome and that it often takes several years to resolve, it has not sought revisions to the statutes and modifications to regulations to address this issue.

Without appropriate board oversight, potential conflicts of interest between LEAs and landfill owners or operators cannot be mitigated and long-term violations can continue without correction. Conflicts of interest are possible because LEAs, which have enforcement responsibilities, are often part of the same local governments that receive revenues from owning and operating landfills.

We recommended that the board take the following actions:

- Continue to improve its performance in conducting landfill inspections every 18 months, as state law requires.
- Continue its efforts to modify regulations relating to tracking compliance with Notice and Orders.
- Ensure that LEAs require operators to comply with Notice and Orders by the date specified in the order, and issue penalties to those that do not comply.
- Seek legislation to streamline the current process for imposing civil penalties.

***Board Action: Partial corrective action.***

During the its July 2001 meeting, staff reported to the board that the current schedule for conducting landfill inspections would ensure 100 percent completion of all inspections within the 18-month time frame. In addition, the board adopted enforcement regulations that will require LEAs to report the status of their Notice and Orders to the board within 30 days of the compliance date included in the order. The Office of Administrative Law approved these regulations with an effective date of May 12, 2001. Staff also developed and implemented an internal tracking system for enforcement orders. Finally, the board stated that it directed staff to pursue legislative changes related to civil penalties.

**Finding #6: Current laws and regulations allow landfills to remain open for long periods.**

The board is allowing landfill operators to delay closure for extended periods. As a result, they are bypassing federal and state closure regulations established to address the fact that landfills not properly closed could threaten public health and the environment. Although state regulations require operators to submit final closure plans two years before completely ceasing operations, in 36 out of 289

instances, landfills had ceased operations before the board received the plans. Additionally, landfills are accepting only small amounts of waste, a process called “trickling waste,” to delay final closure and post-closure maintenance. Our telephone survey of landfill operators for 38 landfills in the State revealed that operators for 9 of the landfills want to close down but are unable to do so because they lack the financial resources they need to pay closure costs.

Before regulatory changes were made in 1997, the board was responsible for coordinating the review and approval of closure plans. However, currently, neither the board nor any other entity serves as the coordinating agency, and the board has limited authority in directly ensuring that closure plans are submitted and implemented as required. Consequently, the board believes that the lack of coordination, consistency, and cooperation with other agencies on certain issues hinders effective closure activities. However, the board has taken no action either to change regulations to prevent LEAs from extending deadlines for closure plan submission indefinitely or to assume the role of coordinating agency.

We recommended that the board modify its regulations to prevent LEAs from indefinitely extending deadlines for submitting closure plans and to reestablish its role as the coordinating agency for the review and approval of closure plans. It should also seek legislation that will allow it to offer loans or grants to landfill operators in need of financial assistance to close landfills.

***Board Action: Pending.***

The board stated that it directed staff to amend regulations, as necessary, to reestablish the board as the coordinating agency for reviewing and approving closure plans, and to prohibit trickling waste in order to delay closure. In addition, the board directed staff to seek legislation that would allow the board to offer loans or grants to landfill operators in need of financial assistance when closing a landfill.

**Finding #7: Local governments’ diversion rates are questionable.**

State law requires local governments to divert 25 percent of waste away from landfills by 1995 and 50 percent by 2000. However, the Legislature and the public may not be able to rely on the diversion rates local governments report to the board because those reported figures might not be accurate. The formula local governments use to calculate their diversion rates requires a reliable estimate of the

amount of solid waste generated in a base year. However, the amounts of solid waste generated have been inaccurate in the past because of erroneous estimates in the base-year numbers as well as a waste stream that constantly changes as population and economics vary. If local governments are reporting inaccurate diversion rates, the board cannot tell if they are complying with the law and cannot project California's future needs for landfills.

We recommended that the board modify its regulations to require local governments to revise their base-year figures at least every five years. Then, it should identify local governments that need to perform new base-year solid waste-generation studies and require them to do so.

***Board Action: Partial corrective action taken.***

The board stated that it does not have the statutory authority to require LEAs to revise their base-year figures every five years, but it believes it has the authority to require new studies if the existing measurement is found to be inaccurate. As a result, it has reviewed and approved approximately 80 revised base-year studies and it plans to review another 45 in the near future. However, we believe that the board has sufficient authority to require LEAs to revise their base-years periodically. Nevertheless, if the board believes it needs to seek legislative authorization, then it should do so.

**Finding #8: Revisions to the board's diversion study guidelines can create inconsistencies in local governments' diversion rates.**

Although the board did create a guide that contains various tools, strategies, and indicators for local governments to use in their efforts to meet the State's diversion goals, some suggestions outlined in the guide have received criticism. The act provides a broad definition of diversion to allow local governments flexibility to develop their own data for managing their programs and meeting diversion goals. In providing guidance to local governments, the board identified the types of materials they may count as diversion and have outlined some simple methods to quantify the amounts. When some board members and others expressed concern about the appropriateness of some of these methods, the board made revisions to its guide, but the result of these revisions can lead to inconsistent reporting of diversion data by local governments.



We recommended that the board should decide on the appropriate types of materials local governments can count as diversion and the methods to quantify those amounts. It should also seek concurrence from the Legislature as to whether its approach meets the original intent of the law.

***Board Action: Partial corrective action taken.***

The board indicated it believes the statutes currently identify the appropriate materials that locals may divert and it does not have the authority to make changes. However, the board did approve a diversion study guide during a meeting in April 2001 that will assist jurisdictions to properly identify their waste stream. The board also stated that it has reviewed the diversion rate measurement system as required by Senate Bill 2202, Statutes of 2000, and plans to present a draft report to the Legislature, which identifies potential improvements to the system. The board's agenda for its November 2001 meeting included consideration of the draft report for the board's approval. However, the board did not provide us with information indicating whether it ultimately approved the draft report during that meeting.

