

Solid Waste Industry Group

***California Refuse Recycling Council
Inland Empire Disposal Association
Kern County Waste Management Department
Los Angeles County Waste Management Association
Los Angeles County Sanitation Districts
Monterey Regional Waste Management District
OC Waste & Recycling
Recology
Republic Services, Inc.
Rural Counties' Environmental Services Joint Powers Authority
SCS Engineers
Solid Waste Association of North America, California Chapters
Solid Waste Association of Orange County
Waste Connections
Waste Management***

February 1, 2013

CalEnviroScreen
c/o John Faust Chief, Community Assessment & Research Section
Office of Environmental Health Hazard Assessment
1515 Clay Street, Suite 1600
Oakland, CA 94612

Email: John.Faust@oehha.ca.gov

**Subject: Second Public Review Draft of the California Communities
Environmental Health Screening Tool (CalEnviroScreen)**

Dear Mr. Faust:

Thank you for the opportunity to comment on the subject document. We understand that the comments are due by COB on Friday, February 1, 2013. We would have preferred that more time would have been provided to review and comment on this document.

The undersigned parties are representatives of an informal group representing the interests of the solid waste industry in California, the Solid Waste Industry

Group (SWIG). We represent both public and private solid waste interests that have spent many millions of dollars to provide California solid waste and recycling infrastructure to meet and exceed all applicable local, regional, state and federal goals and standards.

The undersigned parties are in support of a fair and balanced approach to addressing Environmental Justice issues and concerns. We support initiatives that will result in improved circumstances for individuals and communities that are heavily burdened by environmental and socio-economic stressors. However, the degree of burden must be based on strong evidence that such a burden exists.

We were thus quite surprised to learn that the latest version of CalEnviroScreen treats the very presence of all solid waste and recycling facilities as sources of adverse environmental effects in the same overall category as:

- Toxic Cleanup sites,
- Groundwater Threats, and
- Impaired Water Bodies.

Toxic cleanup sites, groundwater threats and impaired water bodies are identified as such because of exceedances of environmental standards and regulations or a failure of environmental stewardship. On the other hand, waste facilities (both solid and hazardous waste) are highly regulated and have been developed to address human health, public safety and environmental problems that could be caused by the improper management of waste materials. From this standpoint, we view our services as essential to the well-being of the communities we serve. As such, we view our services as the solution, rather than the problem.

Solid waste (SW) operations have a state agency dedicated to the protection of human health, public safety and the environment that may result from the operation of solid waste and recycling facilities – the Department of Resources, Recycling and Recovery (CalRecycle). Similarly, hazardous waste (HW) operations have a state agency dedicated to the protection of human health, public safety and the environment that may result from the operations of hazardous waste facilities – The Department of Toxic Substances Control (DTSC). We see no logical reason why the mere presence of these highly engineered, permitted, and inspected and regulated facilities – providing essential public services -- would be assumed by CalEPA and OEHHA to have the similar environmental effects as leaking underground tanks, contaminated

water bodies, and other such sites. Does this imply that the waste facilities identified in the CalEnviroScreen tool are not in compliance with applicable standards or that CalRecycle and DTSC are not adequately or appropriately regulating these facilities to protect human health, public safety or the environment?

In California, in addition to CalRecycle, waste facilities are regulated at many levels including USEPA, CARB, Air Districts, SWRCB (and RWQCBs) and by local government. Overall, waste facilities probably are the most regulated here in California than anywhere in the world. As such we do not believe it is justified to uniquely single out this highly regulated and protective industry that delivers an essential public service as an "environmental indicator" in the CalEnviroScreen tool.

We recognize that some waste facilities may impose an increased environmental burden on California communities. This would be true if waste facilities were not properly constructed, operated, or regulated. Clearly, it has been demonstrated by sophisticated and highly technical analyses, along with satisfactory ongoing performance records, over many decades that the vast majority of waste handling facilities pose no significant increased risk to human health, public safety or the environment. Indeed, the extensive body of federal, state, regional and local regulations and permits are specifically designed to absolutely minimize such risks.

Waste Facilities are Uniquely Identified in CalEnviroScreen

Waste facilities are the only types of permitted industrial facilities that are specifically used to identify "Pollution Burden" in either the Environmental Effects or Exposure Factors as part of CalEnviroScreen. The Exposure Factors part of the Pollution Burden uses chemical concentrations in the environment. The Environmental Effects factor, where SW and HW facilities are included, also includes toxic cleanup sites, impaired water bodies, known groundwater threats and LUSTs. None of these other pollutant sources are permitted sites but are contaminated sites resulting from historically improper handling of materials and wastes. The implication of CalEnviroScreen is that SW and HW sites, although fully permitted, are also "contaminated sites." Nowhere in the report are refinery sites, power plants, chemical plants or other industrial facilities with known and permitted releases to the environment listed in a similar fashion. Only SW and HW facilities are treated in this fashion. Yet both SW and HW facilities are highly

regulated and permitted to ensure minimal releases to the environment -- both with specific agencies to ensure environmental protection: CalRecycle and DTSC. Therefore, it is not clear to the SW & HW industry why our facilities are thus used to identify "pollution burden" while other industrial sources are not similarly listed.

We understand that OEHHA has offered the following reasons for this:

- Other industrial sites are indirectly included by the TRI inventory of releases, and concentrations of Ozone, PM, pesticide use, traffic to air or water and other pollution burden factors.
 - SWIG Response: However, why can't these same factors be indicators of pollution burden of waste facilities – to the extent that waste facilities result in releases to the ambient environment? For the most part, waste facilities are subject to more stringent standards to control releases to the environment by CalRecycle and DTSC.
- The Environmental Effects factor is only treated with half the weight of the pollution burden factors and thus has a reduced impact on the overall score.
 - SWIG Response: The waste industry appreciates the reduced weight, but our operations are still in the same tier as un-permitted and uncontrolled releases to the environment (cleanup sites, impaired water bodies, and groundwater threats). It is highly inappropriate to classify permitted and highly regulated waste facilities in the same tier as these other threats caused by illegal or improper management practices.
- OEHHA's two sister agencies, CalRecycle and DTSC, directly regulate HW and SW sites and are the only CalEPA agencies to directly regulate specific types of facilities (i.e., waste facilities). Other industrial sources do not have similar activity specific agencies. It appears that OEHHA is seeking some way to ensure that CalRecycle and DTSC are involved, thus SW and HW facilities are used as Environmental Effects indicators.
 - SWIG Response: To the contrary, the very fact that California has specific agencies dedicated to the protection of human health and the environment should be the basis for viewing waste facilities as

a means of environmental and human health protection, rather than risk.

Proximity to Waste Facilities and Operations

Proximity to Waste Facilities, along with a 250-meter buffer (pages 10, 52-59) has been broadly included as an Environmental Effect risk factor (along with toxic cleanup sites, impaired water bodies, and groundwater threats from LUSTs). Solid and hazardous waste facilities are permitted to have minimal releases to the ambient environment, while many other types of industries are well known to have much greater permitted releases to the ambient environment. It is not clear from the report why solid waste and hazardous waste facilities are singled out for inclusion in this fashion, while other known emitting industries are not.

With respect to the solid and hazardous waste facility 250-meter buffer, it is not clear how it is applied. 250 meters from what? The facility property boundary? The facility permitted waste handling unit? Some facilities may already have extensive buffer property surrounding the facility. Other facilities may have minimal or no such buffer property. Adding a 250 buffer may only make sense if it is applied at the boundary of the permitted waste handling area – certainly not at the property boundary.

Use of NOVs as a Screening Tool for Solid Waste Facilities

We also object to the apparent use of “Violations” (pages 55, 56) as an indicator for solid waste facilities (but not for any other industrial sites). It is not clear from the document what “violations” are included here. There has been a long-standing discussion whether Notices of Violations (NOVs) for solid waste facilities are truly an “enforcement action.” Under the solid waste statute and regulations, enforcement actions are appealable by the recipient of the enforcement action. However, CalRecycle (and the prior CIWMB) have been reticent about acknowledging that NOVs are appealable by the operator. They have historically taken the position that NOVs are not appealable enforcement actions. Thus, a facility operator has no recourse to remove or rescind an incorrect NOV. Only agency actions such as “enforceable orders” are appealable.

Waste facilities are typically inspected at least monthly by state or local enforcement agencies. We are not aware of any other type of industrial activity

that has that many inspections. We believe that the potential for violations at waste facilities are unfairly represented as well as the types of violations usually are nuisance in nature and are thus not reflective of a significant threat to human health, public safety, and the environment.

Thus, we are adamantly opposed to using NOVs as the basis for a CalEnviroScreen score for solid waste facilities – if, indeed, they are being used for this purpose. If violations are included as an assessment of a solid waste facility's degree of environmental risk, it should be limited to only violations that are appealable by the solid waste facility operator. The SW industry has encountered NOVs that we do not believe are valid and has sought appeals to have them rescinded. Yet, to this day, CalRecycle has maintained that they are not appealable. Further, the extent and distribution of NOVs is not equal across the state among the various solid waste enforcement agencies. The screening tool report does not provide much detail on who sorted through the "Violations," and whether any criteria was used to determine whether the violations actually lead to environmental exposures. Why aren't violations at other industrial facilities that have resulted in releases to the ambient environment similarly used as an indicator of environmental and human health risk?

It has been our industry's experience that most NOVs issued to Solid Waste facilities are primarily procedural or nuisance issues – most of which are not a health or safety related issues. Solid waste regulatory agencies do not let these types of NOVs go on very long before they work with the facility to resolve the issue -- or if significant health, safety or environmental concerns are identified, an enforcement order is issued. Enforcement orders, not NOVs, should be the regulatory action of concern here.

The US EPA's National Environmental Justice Advisory Council report criticizes the use of NOVs in an EJ screening protocol because they reflect too many factors extraneous to exposure (like whether the facility is the type frequently or rarely inspected, and without distinguishing the severity of the NOV and its impact).

See <http://www.epa.gov/environmentaljustice/resources/publications/nejac/ej-screening-approaches-rpt-2010.pdf>, pp. 7-9.

The report should be revised to include only those enforcement actions that are "appealable" under California solid waste law such as Enforcement Orders or other such "appealable" enforcement actions. This would serve to exclude minor perceived infractions that may only generate a NOV but do not graduate to

the level of an Enforcement Order or which are indicative of genuine environmental harm.

Inclusion of Waste Facilities should be Narrowed.

Inclusion of waste facilities should be narrowed to only those that are known to pose a threat to human health, public safety or the environment – truly in a manner consistent with cleanup sites, groundwater threats, and impaired water bodies that are also known to pose an environmental effect. Otherwise, they should be treated as any other industrial site (refineries, chemical plants, power plants, etc) – based on the proximity to exposures measure through ozone, PM, pesticides, ambient TRI releases, and traffic density.

We recommend and request that waste facilities be used as a basis for calculating a CalEnviroScreen score only as follows:

- If there is a TRI, PM, Ozone, pesticide or traffic based release to the ambient environment (air or water) from waste facilities – similar to the manner that burden from other industrial facilities – then solid and hazardous waste facilities should be treated the same. Additional criteria for scoring waste facilities should not be used unless it is similarly applied to other industrial facilities.
- Beyond the above factors, do not include waste facilities if there have been well documented studies or assessments showing that the waste facilities do not have any additional pollution burden on human health, public safety, or the environment if those studies have been accepted or authored by a federal, state, or local environmental or health agency.
- Beyond the above factors, do not include waste facilities unless there have been one or more appealable violations against the facility for factors that could result in a direct impact on human health, public safety, or the environment. OEHHA and CalEPA also should consider whether this same standard be applied to all industrial facilities in California based on the records of all CalEPA BODs and local air districts.
- Beyond the above factors, the mere existence of waste facilities should not be used as a basis for inclusion in CalEnviroScreen. Only those waste facilities (and other industrial facilities) that are known to have violations resulting in releases to the ambient environment should be included.

Please do not hesitate to contact any one of the undersigned if you have any questions or wish to discuss these matters further. We would be pleased to meet with you to discuss these matters further.

Sincerely,

John Kelly Astor
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- The Los Angeles County Waste Management Assn,
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- The Solid Waste Association of Orange County

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