

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text and Availability of Additional Documents and Information

PUBLIC HEARING TO CONSIDER THE ADOPTION OF A PROPOSED REGULATION TO REDUCE METHANE EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS

Public Hearing Date: June 25, 2009
Public Availability Date: October 5, 2009
Deadline for Public Comment: October 21, 2009

At its June 25, 2009, public hearing, the Air Resources Board (ARB or Board) approved for adoption California Code of Regulations, title 17, article 4, subarticle 6, sections 95460 to 95476, Methane Emissions from Municipal Solid Waste Landfills. This regulation is a discrete early action greenhouse gas reduction measure, as described in the California Global Warming Solutions Act of 2006 (Assembly Bill 32; Stats. 2006, chapter 488). It will reduce methane emissions from landfills primarily by requiring owners and operators of certain uncontrolled landfills to install gas collection and control systems, and by requiring existing and newly installed gas collection and control systems to operate optimally.

At the hearing, the Board adopted Resolution 09-38, in which it approved the regulation originally proposed in the Staff Report released on May 8, 2009. Based on comments received at the hearing, the Board directed staff to provide additional flexibility for certain sources to qualify for the regulation's compliance incentives. The Board also directed staff to allow the exclusion from or modification of certain monitoring procedures based on site-specific conditions (e.g., monitoring in areas that present a safety risk) to be part of a source's alternative compliance request. In addition, the Board approved staff's recommended modifications in response to comments received since the Staff Report was published. These modifications include: clarifying the status of inert waste as exempt; clarifying the administrative process for amended Design Plans; clarifying that the regulation is a regulatory floor; and incorporating several additional minor modifications intended to improve the clarity and readability of the regulation. Resolution 09-38 directed the Executive Officer to adopt the proposed regulation and approved new sections, as modified, and to make such modifications available for a supplemental comment period of at least 15 days.

Attachment 1 to this notice contains text of the California Code of Regulations, title 17, sections 95462 through 95475, and shows the proposed 15 day modifications to the originally proposed regulatory language. The proposed 15 day modifications are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions, compared to the regulatory language originally noticed May 8, 2009. The symbol "*****" indicates that regulatory language not being amended is not shown. The rationale for the modifications to the regulation is set forth below.

I. Substantial Modifications

A. Providing Additional Flexibility for Sources with a Demonstrated History of Compliance

The regulation as originally proposed provides certain sources additional flexibility to qualify for the regulation's compliance incentives. These compliance incentives allow the walking pattern spacing to be increased from 25-foot to 100-foot intervals and the monitoring frequency to be decreased from quarterly to annually (for closed and inactive landfills). To qualify for the incentives, the landfill owner or operator must demonstrate compliance with the 25 parts per million (ppm) integrated and 500 ppm instantaneous surface methane emission limits in the past three years preceding the effective date of the regulation.

The Board received comments at the hearing that the regulation's quarterly monitoring requirement using a 25-foot grid spacing pattern will raise costs. The increased costs are due to the required increase in staff, extra monitoring, recordkeeping, and maintenance needed for compliance with the regulation. The Board directed staff to explore options for reducing these monitoring costs for sources that have demonstrated a history of compliance with the surface emission standards prior to the effective date of the regulation.

Since landfill operators were not previously required to conduct the integrated surface monitoring, section 95471(c)(1)(B)2. was modified to qualify owners and operators for the increased surface monitoring walking pattern spacing of 100 feet if they could demonstrate compliance in the past three years prior to the effective date of the regulation with only the 500 ppm limit specified in section 95465(a)(1). This change will reduce the need for extra field staff and other resources to comply with the monitoring requirements. However, landfill owners and operators of closed and inactive landfills must still demonstrate one year's worth of compliance with both surface methane limits in order to qualify for the decreased monitoring frequency from quarterly to annually.

B. Modifications to the Alternative Compliance Options to Include Monitoring Procedures

The regulation as originally proposed excludes monitoring of certain areas that present a safety risk (e.g., steep slopes, wet or icy surfaces, construction areas and other dangerous areas). The Board received comments at the hearing that all exclusions in the regulation should be handled under section 95468 (Alternative Compliance Options) where the landfill owner or operator can provide information to the Executive Officer to justify and document the exclusion. Therefore, section 95468 has been modified to include alternative walking patterns to address potential safety and other issues, such as steep or slippery slopes, monitoring instrument obstructions, and physical obstructions.

The sentences, “Portions of slopes that are 30 degrees and greater, wet or icy surfaces, construction areas, and other dangerous areas may be excluded from landfill surface inspection,” and “Paved roads that do not have any cracks, pot holes, or other penetrations may also be excluded,” have been deleted in section 95471(c)(1)(C) and moved to section 95468. As previously mentioned, this change was in response to comments that all exclusions in the regulation, such as alternative walking patterns, should be handled under section 95468 (Alternative Compliance Options) to require the landfill owner or operator to affirmatively provide information up front to the Executive Officer to justify and document the exclusion, rather than assuming the exclusions apply.

C. Clarifying the Status of “Inert Waste” as Exempt

The regulation as originally proposed currently exempts landfills that receive only construction and demolition (C&D) waste and non-decomposable waste. However, the Board received comments at the hearing that minor amounts of decomposable waste may be introduced to C&D sites by contamination of the waste load.

To clarify that inert waste such as C&D may contain minor amounts of decomposable waste, such as wood and other decomposable material, the term “Inert Waste” was added to section 95475 and has the same meaning as “Inert Waste” in Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 3, Subchapter 2, Article 2, Section 20230(a). Furthermore, the definition for “Non-decomposable Solid Waste” was modified to better characterize waste types that are unlikely to produce methane.

D. Clarifying the Administrative Process for Amended Design Plans

The regulation as originally proposed in sections 95464(a)(1)(H) and 95464(a)(4) currently allows landfill owners or operators to amend their Design Plans as necessary subject to approval by the Executive Officer. However, the Board received comments at the hearing that these sections do not provide a timeline for the approval of an amended Design Plan by the Executive Officer.

Future expansion of a landfill’s gas collection system is typically addressed through District permit modifications or compliance plans. Therefore, staff believes that it is unnecessary to require the prior approval by the Executive Officer of any changes to an existing Design Plan that has already been approved by a local air district. Tracking events that require a change to the Design Plan, such as repairs or expansion of the gas collection system, is all that is needed to satisfy the intent of the Board. For clarification, section 95464(a)(1)(H) was deleted, and section 95464(a)(5) has been added to require landfill owners or operators to submit the amended Design Plan to the Executive Officer within 90 days of any event that requires a change to the existing Design Plan.

E. Clarify that the Approved Regulations are a Regulatory Floor

Staff recommended to the Board that the regulatory text be modified to clarify that the regulation is a regulatory floor. The Board approved this recommended modification. Therefore, section 95473 was modified to indicate that implementation and enforcement of other federal, State, or local laws cannot result in a standard, requirement, or prohibition less stringent than provided in the regulation, as determined by the Executive Officer. This modification conforms with other State law establishing the supremacy of state air pollution control requirements over District rules in cases of conflict, and the inability of Districts to grant variances from ARB rules (see Health and Safety Code Sections 39002, 41508, and 42350).

II. Minor Modifications

In addition to the modifications described above, various modifications to the regulatory text have been made to remove typographical errors and to improve clarity. These conforming modifications include, but are not limited to the following:

- Section 95462(b) was modified to include landfills that receive only inert waste.
- Section 95462(c) was added to clarify that the regulation does not apply to closed or inactive MSW landfills with less than 450,000 tons of waste-in-place.
- Section 95465(a) was modified by inserting, “whichever is later” after “control system.”
- Section 95468(a)(2) was modified by inserting the phrase, “or adverse weather conditions that impede repair work,” after “repair.”
- Section 95473(b) was added to require landfill owners or operators to demonstrate that their landfills are exempt from the applicability criteria of the regulation, if requested by the Executive Officer. This modification would allow the Executive Officer to obtain the necessary documentation from landfill owners or operators in determining whether or not the landfill is exempt from the regulation.
- Section 95474 was modified by inserting, “Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, 39601, and 40001(a), Health and Safety Code.”
- Section 95475(a)(6) was modified by deleting the phrase “or can document that the landfill is no longer receiving solid waste.”

- Section 95475(a)(11) was modified by inserting the word “that” after “measurements.”
- Section 95475(a)(22) was modified by inserting the phrase, “uncontaminated concrete (including fiberglass or steel reinforcing rods embedded in the concrete), brick, glass, ceramics” after “fragments” and deleting the words “clay products.”
- Section 95475(a)(17) was modified by inserting the phrase, “or can document that the landfill is no longer receiving solid waste.”
- Section 95475(a)(27) was modified by inserting the phrase “an engineer holding a valid certificate issued by,” after “or.”

III. Additional Documents added to the Record

In the interest of completeness, staff has also included to the rulemaking record the following documents, all of which are referenced in the approved regulation:

- U.S. EPA Reference Method 18, Measurement of Gaseous Organic Compound Emissions By Gas Chromatography.
- U.S. EPA Reference Method 25, Determination of Total Gaseous Nonmethane Organic Emissions as Carbon.
- U.S. EPA Reference Method 25A, Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer.
- U.S. EPA Reference Method 25C, Determination of Nonmethane Organic Compounds in Landfill Gases.

IV. Comments and Subsequent Action

The Resolution and all other regulatory documents for this rulemaking are available online at the following ARB website:

<http://www.arb.ca.gov/regact/2009/landfills09/landfills09.htm>.

In accordance with the Government Code, section 11346.8, the Board directed the Executive Officer to adopt in the California Code of Regulations, title 17, sections 95460 to 95476, after making them available to the public for comment for a period of at least fifteen days. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if warranted.

Written comments will only be accepted on the modifications to the originally proposed regulatory text approved by the Board and set forth in Attachment I. The written comments may be submitted by postal mail or electronic mail submittal as follows:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you require a special accommodation or need this document in an alternate format or language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible.

Attachment

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see ARB's website at www.arb.ca.gov.