



# County of Santa Cruz

## DEPARTMENT OF PUBLIC WORKS

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JOHN A. FANTHAM  
DIRECTOR OF PUBLIC WORKS

**AGENDA: JUNE 20, 2000**

June 8, 2000

SANTA CRUZ COUNTY BOARD OF SUPERVISORS

701 Ocean Street  
Santa Cruz, CA 95060

**SUBJECT: CLASS II DESIGNATED WASTE INCLUSION IN ASSEMBLY BILL 939  
WASTE DIVERSION CALCULATIONS**

Members of the Board:

Ralph Chandler, Executive Director of the California Integrated Waste Management Board (CIWMB) recently clarified his Board's interpretation of statute regarding the inclusion of designated Class II wastes in all jurisdictional calculations for compliance with Assembly Bill (AB) 939 waste diversion mandates.

"It is the Board's interpretation of statute that the designated wastes entering a landfill that handles Class II waste is solid waste and is intended to be included in the AB 939 goal measurement process."

Class II wastes include materials such as petroleum contaminated soils, asbestos containing wastes, drilling muds, chemically treated lumber, lead paint contaminated wood, and industrial process sludge. The County's Buena Vista Landfill is a Class III facility and does not accept these types of waste materials, nor are there County programs in place to divert these materials for recycling or reuse. It is the strong belief of most solid waste professionals who participated in the development and implementation of AB 939 that Class II wastes were never contemplated for inclusion in local recycling programs. Attachment "A" is a summation of the legislative history behind the definition of wastes subject to AB 939 diversion actions. Our County and the incorporated cities did not include or give consideration to this waste stream in development of our County Integrated Waste Management Plan as it was our understanding at that time that Class II wastes by definition were excluded.

Class II wastes pose a potentially significant problem regarding our county and the incorporated cities' ability to comply with AB 939 goals.

1. There are few, if any, diversion options for Class II type wastes in California, and particularly no programs exist within this region. Traditional recycling or diversion methods cannot be applied to these waste types and our County Integrated Waste Management Plan does not address this waste stream.
2. In our county, most Class II type wastes are typically generated as the result of some remediation activity such as clean-up of a leaking underground storage tank, or asbestos removal from a demolished or remodeled building. As such, it is impossible to predict the generation volumes and material types or plan diversion activities on a year-to-year basis,
3. As this type of material must be disposed of at facilities outside of Santa Cruz County, we have little control over the disposition of the waste stream or how it may be diverted.
4. A single remediation project in any given year, such as a large contaminated soil removal project, could generate several hundred to several thousand tons of non-recyclable and hazardous, Class II waste. These large volume projects can significantly impact our compliance with the AB 939 waste diversion mandates. Under this circumstance, meeting the diversion mandates can only be resolved through further increasing diversion of the existing Class III solid waste stream to compensate for these types of singular and sporadic waste generation events.


While the reduction in Santa Cruz County's diversion percentage is currently less than one percent due to this recent interpretation, future remediation projects or clean-up programs could jeopardize our ability to comply with the waste diversion mandates of AB 939. Many jurisdictions across the state are now attempting to jointly address this recent interpretation through the legislative process. Attachment "B" is a resolution requesting legislative action to remove designated Class II wastes from the list of materials that are subject to AB 939 diversion actions. Attachment "C" is a draft letter from the chairperson to Senator Byron Sher, Senator Bruce McPherson and Assemblyman Fred Keeley transmitting this resolution and requesting their assistance in correcting this legislative oversight in AB 939.

It is therefore recommended that the Board of Supervisors take the following actions:

1. Adopt the attached resolution requesting legislative action to remove Class II defined wastes from the list of materials subject to AB 939 diversion actions.

2. Direct the Chairperson of the Board of Supervisors to transmit the resolution to Senator Byron Sher, Senator Bruce McPherson and Assemblyman Fred Keeley on behalf of the Board.

Yours truly,

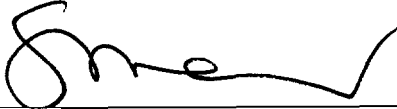


JOHN A. FANTHAM  
Director of Public Works

RPM:bbs

Attachments

RECOMMENDED FOR APPROVAL:



County Administrative Officer

copy to: Tom Horton, San Joaquin County Integrated Waste Management Department  
Public Works Department

**LEGISLATIVE HISTORY - DEFINITION OF WASTES SUBJECT TO AB 939**

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All jurisdictions in the State of California have been developing and adopting a variety of waste diversion activities since the early 1990's in response to the mandates of AB 939, the Integrated Waste Management Act of 1989. These programs have been centered around diversion of non-hazardous municipal, commercial and industrial refuse generated within each jurisdiction. Most, if not all, jurisdictions have utilized the Class III refuse definition as the commonly accepted standard for refuse subject to AB 939 diversion actions. The California Integrated Waste Management Board has recently amended this interpretation to also include Class II wastes under AB 939 diversion actions. Class II wastes are highly problematic as they are not readily and economically recyclable or re-usable due to the potential toxicity of the wastestream. However, we believe that sufficient written evidence exists within legislation that specifically limited AB 939 requirements to Class III waste, as indicated by the following:

In 1987, Assemblywoman Eastin proposed Assembly Bill 2448 which created the Solid Waste Disposal Site Cleanup and Maintenance Account (Account) to be funded by a surcharge on landfills. As originally proposed, the Account was to be used as a grant program for landfills which were polluting the environment.

Landfill operators were concerned with the proposed Bill in that it would shift the financial burden of landfill operators who may have operated their landfills inappropriately to operators who were doing a good job operating their landfills. Also, Class III landfill operators were concerned with being liable for the high costs associated with environmental cleanup of Class I and II landfills that had accepted hazardous waste. Consequently, Assemblywoman Eastin amended her Bill establishing the Account as a loan guarantee program and restricting its use to municipal type landfills. The Bill was adopted, signed into law, and codified as Part 6, Division 30 of the Public Resources Code, titled "Solid Waste Disposal Cleanup and Maintenance".

Section 46027 of this code specifically defined landfills as those accepting Class III waste. This definition was placed in the Bill so that Class III landfill operators would not be liable for cleanup of Class I and II landfills.

In 1989, Assembly Bill 939 was adopted which established the Integrated Waste Management Act of 1989 (ACT). The ACT retained the essential elements of the Account, including the limiting definition of solid waste landfill given in Section 46027. Further, the ACT, in Section 40122, specifically refers to Section 46027 in its definition of landfill. Section 40100 states, "Unless the context otherwise requires, the definitions in this article govern the construction of this division".

The ACT's requirements were specifically limited to Class III waste except in areas where the ACT's context specifically designates otherwise.

Part 2, Chapter 3, Article 2, "Waste Characterization Component", lists the legislative requirements for preparing county waste characterization studies. No exception is made in this Article to the limited Class III definition of landfills. Accordingly, Santa Cruz County and its incorporated jurisdictions prepared their waste characterization reports based on Class III waste generation.

Part 2, Chapter 3, Article 9, "Facility Capacity Component", lists the legislative requirements for determining and reporting county disposal facility capacity. No exception is made in this Article to the limited Class III definition of landfills. Accordingly, Santa Cruz County and its incorporated jurisdictions prepared their Facility Capacity Components based on Class III waste generation.

Part 2, Chapter 4, "Countywide Siting Elements", lists the legislative requirements for preparing the disposal facility Siting Element. No exception is made in this Chapter to the limited Class III definition of landfills. Therefore, Santa Cruz County prepared its Countywide Siting Element based on Class III waste disposal sites.

Part 2, Chapter 6, Article 1, "Waste Diversion", lists the legislative waste diversion goals and methods for determining achievement of the goals. No exception is made in this Article to the limited Class III definition of landfills. Therefore, Santa Cruz County should not be required to add Class II waste to its waste disposal reports, divert Class II type wastes for AB 939 waste diversion purposes, develop treatment and diversion facilities for Class II wastes, or develop a Class II landfill.

Part 2, Chapter 7, Article 3, "Other Provisions", lists the legislative disposal reporting requirements. No exception is made in this Article to the limited Class III definition of landfills. Therefore, Santa Cruz County should not be required to report Class II waste for AB 939 purposes.

Based on the above legislative requirements, Santa Cruz County prepared its 1990 and 1998 waste characterizations studies utilizing Class III waste only. Further, the County prepared and adopted its Source Reduction and Recycling Element based on the above legislative requirements. The Element listed strategies to be implemented and the facilities to be constructed which would enable the County to meet its waste diversion goals. The California Integrated Waste Management Board approved the County's Element, and the County has and continues to proceed with development of the necessary infrastructure for diverting Class III wastes.

In 1993, Assemblywoman Eastin sponsored Assembly Bill 1220 which, in part, repealed Division 30, Part 6, "Solid Waste Disposal Cleanup and Maintenance". The Section 46027 definition of landfills was eliminated as part of the broad stroke repealing of Part 6. We do not believe that it was the Legislature's intent to drastically change the definition of landfills for AB 939 reporting or diversion purposes. This belief is borne by the fact that the definition in Section 40122 referring to the deleted Section 46027 continued intact through the year 1996.

Redefining disposal sites to include Class II waste at this late date creates a hardship on the County of Santa Cruz and its incorporated jurisdictions in that most Class II waste disposed of at the few permitted Class II landfill in the State may not be readily or feasibly diverted from disposal. Further, most of these landfills are Privately owned and operated and the County has no ability to direct its waste stream to processing facilities, if such facilities could be developed. Ultimately, the County would be forced to divert a much greater portion of its waste stream from other Class III sources to make up for the deficit caused by including Class II waste in its waste disposal stream.

BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. \_\_\_\_\_

On the motion of Supervisor  
duly seconded by Supervisor  
the following resolution is adopted:

RESOLUTION REQUESTING LEGISLATIVE ACTION TO REMOVE CLASS II DEFINED  
WASTES FROM THE LIST OF MATERIALS SUBJECT TO AB 939 DIVERSION ACTIONS

WHEREAS, the people of the State of California have enacted Assembly Bill (AB) 939, the Integrated Waste Management Act of 1989 (AB 939) that among other things requires each governmental jurisdiction in the state (unincorporated counties and incorporated cities) to establish programs to annually divert a minimum of 50 percent of all its municipal, commercial and industrial refuse from being landfilled by the end of 2000; and

WHEREAS, AB 939 originally defined solid waste as that waste designated for disposal in Class III landfills and did not contemplate inclusion of Class II designated hazardous wastes as being subject to AB 939 diversion actions; and

WHEREAS, the County of Santa Cruz and the incorporated cities have each developed and implemented programs directed toward compliance with AB 939 waste diversion mandates for non-hazardous municipal, commercial and industrial Class III waste streams; and

WHEREAS, the County and the incorporated cities adopted the County-wide Integrated Waste Management Plan in April 1996 and the California Integrated Waste Management Board approved this plan in September 1996, absent any programs directed toward diversion of Class II designated hazardous wastes.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Santa Cruz hereby requests immediate legislative action to correct the oversight that has resulted in the recent California Integrated Waste Management Board interpretation to include Class II designated hazardous wastes with the list of materials subject to AB 939 diversion actions.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this day of \_\_\_\_\_, 2000, by the following vote:

AYES: SUPERVISORS

NOES: SUPERVISORS

ABSENT: SUPERVISORS

\_\_\_\_\_  
Mardi Wormhoudt, Chairperson  
Board of Supervisors

ATTEST: \_\_\_\_\_  
Clerk of the Board

Approved as to form:

*Sam Tan* 6/7/00  
\_\_\_\_\_  
Assistant County Counsel

DISTRIBUTION: County Administrative Officer  
County Counsel  
Public Works

CLASB

Sample Letter

## Attachment "C"

Honorable Byron Sher  
 Senator, 11<sup>th</sup> District  
 State Capitol, Room 2082  
 Sacramento, CA 958 14

Honorable Bruce McPherson  
 Senator, 1 5<sup>th</sup> District  
 701 Ocean Street, Room 3 18  
 Santa Cruz, CA 95060

Honorable Fred Keeley  
 Assemblyman, 27<sup>th</sup> District  
 701 Ocean Street, Room 3 18  
 Santa Cruz, CA 95060

SUBJECT: EXCLUSION OF CLASS II WASTE FROM AB 939 DIVERSION ACTIONS

Senator Sher:

The County of Santa Cruz has been developing and implementing a wide variety of waste diversion and reduction programs over the last ten years in order to meet the waste diversion mandates of AB 939. Millions of dollars in public funding have been expended towards these programs, such as:

- Expanded curbside recycling, including yardwaste
- Rate modifications/incentives (pay-as-you-throw and reduced fees for recycling)
- Construction and demolition material recycling
- Rural recycling and buy-back centers
- Public education and outreach
- Home composting
- Business waste audits and diversion assistance
- Source reduction education

The California Integrated Waste Management Board (CIWMB) has recently provided a new interpretation of the Integrated Waste Management Act of 1989 (AB 939) that now includes Class II designated hazardous wastes in the materials subject to AB 939 diversion actions. Class II wastes include designated hazardous materials such as petroleum contaminated soils, asbestos containing materials, industrial process sludge, and lead paint contaminated wood.

The County of Santa Cruz has serious reservations over this recent interpretation, as it appears to be contradictory to the original intents and objectives of AB 939. Our interpretation and understanding of AB 939 was limited in application to Class III, non-hazardous municipal, commercial and industrial wastes. As with most jurisdictions in the State, we have focused our waste diversion efforts and funding on our Class III waste stream. Few, if any, diversion programs exist in the State for designated, hazardous Class II wastes due to the hazards associated with these types of materials. The CIWMB's recent interpretation regarding Class II wastes may have significant impacts on our County's ability to meet the waste diversion mandates of AB 939 in the future.

The inclusion of Class II materials in our waste generation portfolio has only reduced our current waste diversion efforts by 1%, but many jurisdictions have seen a 10% or more reduction in their diversion numbers. Due to the relatively small size of our County, it would only take one or two medium sized environmental remediation projects (ie. leaking underground tank removal or demolition of a building with asbestos containing materials) to significantly reduce our diversion numbers in any given year.



Diversion of designated, hazardous Class II wastes is a laudable goal, but such diversion should not be included under the AB 939 legislative mandate. The CIWMB and the Legislature should first contemplate new diversion programs and markets for petroleum contaminated soils, asbestos containing waste, lead paint contaminated wood, industrial sludge and other designated wastes. Our county would be supportive of Class II waste diversion efforts if the Legislature can assist in finding recycling or diversion options for any of these materials. However, we suggest that these types of materials should be addressed for recycling or higher end use through a separate legislative mechanism other than AB 939.

On June 20, 2000, the Santa Cruz County Board of Supervisors adopted the attached resolution requesting legislative action to correct the oversight that has resulted in the recent CIWMB interpretation to include Class II designated, hazardous wastes with the list of materials subject to AB 939 diversion actions. Your attention to this matter would be greatly appreciated. Please feel free to contact myself or Patrick Mathews, Solid Waste and Recycling Manager in our Public Works Department at (83 1) 454-2160 if you have any questions regarding this matter. Thank you for your consideration.

Sincerely,

Marti Wormhoudt, Chair  
Santa Cruz County Board of Supervisors

Attachment: Resolution

cc: Winston Hickox (w/a)  
Secretary, Cal/EPA  
555 Capitol Mall - Suite 525  
Sacramento, CA 95814

Dan Eaton, Chairman (w/a)  
California Integrated Waste Management Board  
8800 Cal Center Drive.  
Sacramento, CA 95826