

## Oliver, Kirk@ARB

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**From:** Jacobs, Paul@ARB  
**Sent:** Friday, April 15, 2011 1:44 PM  
**To:** Oliver, Kirk@ARB; Ryden, Jim@ARB  
**Subject:** Fwd: Proposed ARB Enforcement Penalty Policy  
**Attachments:** TCEQ penalty polity.pdf

Sent from Samsung mobile  
Dear Mr. Jacobs --

Thank you for the extended opportunity to comment through April 15<sup>th</sup> on the California Air Resources Board (ARB) proposed Enforcement Policy (Policy) as mandated by SB 1402. The workshop you held on March 29<sup>th</sup> was very helpful and informative.

Waste Management (WM) provides comprehensive waste and recycling services in at numerous locations throughout California that are subject to the provisions of many of your regulations and governing statutes. We are supportive of the development of a Policy that is fair and balanced and promotes compliance.

- **Voluntary Disclosure Policy.** The proposed inclusion of Cal/EPA's Voluntary Disclosure Policy Guidance in the ARB policy is great. Similarly, we support CARB's stated willingness to still consider "reducing penalties for self-disclosures that do not meet all of the (Cal/EPA's) Guidance criteria. However, we would appreciate seeing a clearer statement that the Cal/EPA Guidance is clearly part and parcel of the ARB Enforcement Policy -- not just simply a reference to Cal/EPA's.
- **Financial Burden.** One of the penalty factors is "Financial Burden". WM is a \$13 Billion corporation with many subsidiaries and operating districts. If a penalty is imposed on a violation at one of our operating districts, is the financial burden based on WM as a whole, or on the assets, revenues and gross income of the specific district or operating entity? It seems unfair that the WM corporation as a whole would be the basis of financial "test" if the violation only occurred at a specific district or subsidiary of the corporation. We request that the Policy be clarified such that the assets, revenues and gross income of the violating WM district or entity be used as part of the this factor, NOT the corporation as a whole.
- **Confidentiality.** The Policy makes no mention of the word "confidential" in its entirety. The Policy should discuss the confidentiality of information being discussed between parties as part of a settlement arrangement. This would be particularly true if the penalty is based on a financial disclosure of an operating entity or subsidiary as expressed above (assets, revenues and gross income). We believe such financial factors should be considered by ARB in strict confidentiality if requested by the violating entity.
- **Dispute Resolution.** The Policy should include a clear and specific process for dispute resolution. The Policy does not currently describe a process by which a dispute over a proposed penalty can be appealed up to the Executive Officer, Board Chair or Board itself. WM requests that the policy include a clear process to appeal penalties up to and including the full board.

- **Calculation of Penalty Amounts for non-instantaneous compliance thresholds.** Many of the CARB penalties are based on a dollar amount per day per violation. This may make sense for continuous ongoing emission requirements. However, many new compliance thresholds are not measured in continuous ongoing emissions. In the case of GHG emissions, compliance is frequently measure in terms of tons/year. How are daily penalties (e.g., \$10,000/violation/day) applied to violations that are determined in tons/year? Trying to apply daily penalty amounts could result in astronomical penalties. The Enforcement policy should provide guidance for penalties associated with non-daily or non-instantaneous compliance thresholds.
- **Start at Maximum Penalty.** The policy states that state law dictates that CARB must start at the maximum penalty, but can be "mitigated" from there – the burden is on the violator to make the case for mitigation. However, there is no guidance or procedure for the violator to use to seek such penalty mitigation. The Enforcement Policy should provide guidance for violators to use in seeking reduced penalties. We believe the policy should be revised to better allow all parties to understand how penalties are calculated. For example, attached is the enforcement policy of the Texas Commission on Environmental Quality (Texas Policy). The Texas Policy provides clear guidance as to how the penalties are to be calculated based on such factors as:
  - Actual or potential releases,
  - Degree of harm

WM requests that ARB consider developing a similar schedule to describe how penalties are to be calculated and incorporate such a schedule into the Policy. This will serve to equalize penalties based on the appropriate factors.

Please let me know if you have any questions or require further information regarding these comments.

Very Truly Yours,

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