May 2, 2012

MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA AIR RESOURCES BOARD AND THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT REGARDING IMPLEMENTATION AND ENFORCEMENT OF REGULATION TO REDUCE METHANE EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS

1. PARTIES

This Memorandum of Understanding is entered into by and between the California Air Resources Board ("ARB" or "Board") and the South Coast Air Quality Management/ District ("District"). ARB and the District are collectively referred to herein as "the Parties."

2. PURPOSE

2.1 The Parties, two government agencies, share a common goal of protecting the People of the State of California through regulation and enforcement of air pollutant emission reductions. In entering into this Memorandum of Understanding ("MOU"), the Parties commit to efficiently pursuing this common goal, considering their respective financial constraints and available resources.

2.2 The Parties recognize that a municipal solid waste landfill is a unique stationary source that is very different from other sources regulated under the California Global Warming Solutions Act of 2006 (Chap. 488, Stats. 2006) as codified in Health and Safety Code Division 25.5, sections 38500 et seq. (Assembly Bill 32, "AB 32"). This is in part because Districts have been implementing and enforcing federal and local requirements for municipal solid waste landfills since the mid-1980s in furtherance of their primary authority for issuing permits to, and reducing emissions from, stationary sources, including landfills, that emit air pollutants. The Parties believe this MOU is appropriate to implement and enforce the ARB greenhouse gas rule for municipal solid waste landfills.

2.3 This MOU is intended to: (1) provide for the coordination of the Parties' efforts to implement and enforce the Regulation to Reduce Methane Emissions From Municipal Solid Waste Landfills, as considered by the Board and effective on June 17, 2010 (hereinafter "ARB Landfill Regulation"); and, (2) further a collaborative model that builds upon the Parties' extensive implementation and enforcement experience.

2.4 Nothing in this MOU shall limit the existing authority of the District.

3. BACKGROUND

3.1 Powers of ARB. Pursuant to California Health and Safety Code section 39603, ARB may enter into agreements for services as necessary for the performance of its powers and duties, including powers and duties arising under AB 32.

3.2 Powers of District. Pursuant to California Health and Safety Code section 40701, the District may enter into agreements with a state agency as necessary or proper to accomplish the purposes of Division 26 of the Health and Safety Code. One such purpose is for the District to enter into an MOU with ARB in order to coordinate enforcement of ARB's Landfill Regulation adopted pursuant to AB 32.

3.3 Responsibilities Under State Law. Under California law, ARB is the state agency charged with monitoring and regulating sources of emissions of greenhouse gases that cause global warming in order to reduce emissions of greenhouse gases (Health and Safety Code § 38510), and ARB is to monitor compliance with and enforce any regulation it adopts pursuant to AB 32 (Health and Safety Code § 38580). Pursuant to Health and Safety Code sections 39002 and 40000, Districts have primary responsibility for control of air pollution from all sources other than vehicular sources; and, pursuant to Health and Safety Code section 40001, districts shall, subject to the Board's powers and duties, enforce all applicable provisions of state and federal law. .

3.4 Coordinated Effort. In Health and Safety Code section 39001, the Legislature declares that a coordinated state, regional, and local effort to protect and enhance ambient air quality should be encouraged whenever possible. In Health and Safety Code section 38501, the Legislature stated its intent for the Board to design greenhouse gas emission reduction regulations to complement the state's efforts to improve air quality and to consult with various stakeholders in implementing AB 32.

3.5 The AB 32 Scoping Plan and Early Action List

3.5.1 In June 2007, pursuant to Health and Safety Code § 38560.5, the Board identified a measure to reduce methane emissions from municipal solid waste landfills as a discrete early action measure.

3.5.2 On August 24, 2010, pursuant to Health and Safety Code § 38561, the Board approved a Climate Change Scoping Plan for achieving greenhouse gas emission reductions from many sources, including from municipal solid waste landfills.

3.5.2.1 Board Resolution 11-27 adopting the Climate Change Scoping Plan directed ARB's Executive Officer to "design greenhouse gas regulations that affect stationary sources so that they utilize, to the extent practical and appropriate, local air district permitting programs and compliance determination mechanisms."

3.6 ARB Landfill Regulation. In implementing its plans and carrying out its responsibilities under state law, the Board has adopted the "Regulation to Reduce Methane Emissions from Municipal Solid Waste Landfills," effective in final form on June 17, 2010. The adopted regulations are set forth at California Code of Regulations, title 17, sections 95460 through 95476, and Appendix I thereto.

3.6.1 California Code of Regulations, title 17, section 95473, explicitly provides ARB's Executive Officer with the discretion to enter into an agreement with any air quality management or air pollution control district ("district") to implement and enforce the ARB Landfill Regulation.

3.6.2 Section 95473 further provides that pursuant to such an agreement, an owner or operator of a MSW landfill must pay any fees assessed by a District for the purpose of recovering the District's cost of implementing and enforcing the ARB Landfill Regulation.

3.6.3 Section 95473 further requires that District implementation and enforcement of other law as described in Section 95474 cannot result in a standard, requirement, or prohibition less stringent than provided in the regulation, as determined by ARB's Executive Officer.

3.6.4 ARB Board Resolution 09-38, directs ARB staff to work with Districts to develop and consider agreements with Districts to implement and enforce the ARB Landfill Regulation.

3.7 Legal Authority for ARB Regulations: ARB's authority for adopting the Landfill Regulation is one or more AB 32 provisions providing ARB authority to adopt rules and regulations to achieve maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources. These AB 32 provisions include, but are not limited to, Health and Safety Code section 38560.5(c).

3.8 Enforcement Authority

3.8.1 ARB Enforcement Authority

3.8.1.1 Health and Safety Code section 39515 directs the Board to appoint an Executive Officer, who shall serve at the pleasure of the Board, and provides that the Board may delegate any duty to the Executive Officer that the Board deems appropriate, except that certain statutory reviews by the Executive Officer of district attainment plan activities are subject to the California Administrative Procedure Act, Government Code sections 11340 et seq.

3.8.1.2 Health and Safety Code section 39516 provides that any power, duty, purpose, function, or jurisdiction which the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless it is shown that the Board, by affirmative vote recorded in its minutes, specifically has reserved the same for the Board's own action.

3.8.1.3 Resolution 78-10, adopted by the Board on February 23, 1978, identifies powers, duties, purposes, functions and jurisdictions that the Board has specifically reserved unto itself.

3.8.1.4 Enforcement of ARB regulations is not a power or function that the Board has specifically reserved to itself under Resolution 78-10 or Resolution 05-40 and is therefore conclusively presumed to have been delegated to the ARB Executive Officer.

3.8.1.5 In carrying out ARB enforcement responsibilities, the ARB Executive Officer may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action. (*California School Employees Assn. v. Personnel Com. of Pajaro Valley Unified School Dist.* (1970) 3 Cal.3d 139.)

3.8.2 District Enforcement Authority

3.8.2.1 Pursuant to Health and Safety Code section 40001, the District shall enforce rules and regulations, including applicable state and federal law, subject to the powers and duties of the Board.

3.8.2.2 Pursuant to Health and Safety Code section 40752, the Air Pollution Control Officer ("APCO") of each district must enforce Parts 3 and 4 of Health and Safety Code Division 26 (§§ 10000 - 41357, and 41500 - 41708, respectively) as well as all orders, regulations, and rules prescribed by the district's governing board.

3.8.2.3 Pursuant to Health and Safety Code sections 39013, 38594, 40702, and 42300, and *Western Oil & Gas Association v. Monterey Bay Air Pollution Control District* (1989) 49 Cal.3d 408, The District has independent authority to adopt, implement, and enforce local landfill rules and regulations that are as stringent or more stringent than those in the ARB Landfill Regulation.

3.8.2.4 On April 1, 2011, South Coast Air Quality Management District amended a local landfill rule that is as or more stringent as the ARB Landfill Regulation ("Rule 1150.1 – Control of Gaseous Emissions from Active Landfills").

3.9 Need for Implementation and Enforcement of ARB Regulations

3.9.1 Most districts in California have previously established and have ongoing regulatory control over landfills in their district. Districts[, including the South Coast Air Quality Management District,] have historically regulated municipal

solid waste landfills under local district rules implementing federal New Source Performance Standards (NSPS) and Emission Guidelines (EG) (40 CFR Part 60 Subparts WWW and Cc) for MSW landfills, and National Emission Standards for Hazardous Air Pollutants (NESHAP) for municipal solid waste ("MSW") landfills (40 CFR Part 63 Subpart AAAA). Many districts, [including the South Coast Air Quality Management District, also issue air pollution control permits to construct and operate landfill gas collection systems and control equipment used at landfills. Some districts, including the South Coast Air Quality Management District, have their own rules that apply smog reduction requirements more stringent than federal NSPS or NESHAP.

3.9.2 The ARB Landfill Regulation builds on many of the same methane collection and control, component leak testing, and surface emissions monitoring requirements identified in 3.9.1 that districts were already implementing and enforcing.

3.9.3 Compliance with the ARB Landfill Regulation and the South Coast Air Quality Management District's Local Landfill Rule, is necessary to achieve additional significant reductions in greenhouse gas emissions or to reduce redundant reporting and enforcement from sources within the South Coast Air Quality Management District, toward ensuring that statewide emission reductions are achieved as expected from this regulation to meet the 2020 statewide greenhouse gas limits.

4. AGREEMENT

4.1 Implementation and Enforcement of the ARB Landfill Regulation

4.1.1 The Parties hereby agree to the following in order to coordinate enforcement efforts and roles, and to authorize the District to exercise certain duties and discretion of the ARB Executive Officer regarding the ARB Landfill Regulation.

4.1.1.1 In implementing and enforcing the ARB Landfill Regulation, the District will perform the functions necessary to determine a source's compliance, including, but not limited to, receiving and reviewing relevant source plans and reports and conducting investigations.

4.1.1.2 In implementing and enforcing the ARB Landfill Regulation, the District's Air Pollution Control Officer (or delegate by operation of law including any District rule) serves as the "Executive Officer" as stated in said ARB Landfill Regulation.

4.1.1.3 The District may perform one or more of the implementation and enforcement tasks identified in this section 4.1 in conjunction with exercising other District powers or fulfilling other District responsibilities under federal, state, or local law.

4.1.2 The District will issue Notices of Violation (NOV) or other citations for violations of any of the ARB Landfill Regulation or the local District rule as well as to any subsequent amendments thereto.

4.1.3 ARB hereby authorizes the District to review and approve alternative compliance options to the compliance regulations, monitoring requirements, test methods and procedures of sSections 95464, 95469, and 95471 of the ARB Landfill Regulation.

4.1.4 ARB hereby authorizes the District to review and determine the applicability of the ARB Landfill Regulation, including any exemptions thereto in accordance with sections 95461, and 95462 of the ARB Landfill Regulation.

4.1.4 ARB retains enforcement authority to enforce the ARB Landfill Regulation, and this MOU shall not be interpreted to diminish in any manner ARB authority to enforce its regulations, either alone or jointly with the District.

4.1.5 This authorization shall not be interpreted to impose upon the District any obligation to enforce the ARB Landfill Regulation.

4.1.6 The District retains enforcement authority to enforce any duly adopted local landfill rule, and this MOU shall not be interpreted to diminish in any manner the District's independent authority to implement and enforce its regulations, either alone or jointly with the ARB.

4.2 <u>Standards of Performance</u>

4.2.1 When implementing and enforcing the ARB Landfill Regulation, the following standards of performance shall apply:

4.2.1.1 The District shall carry out implementation and enforcement activities pursuant to this MOU in accordance with ARB regulations, rules, policy, guidance, and training.

4.2.1.2 The District's implementation and enforcement activities pursuant to this MOU shall be carried out by qualified inspectors or trained enforcement staff.

4.2.1.3 ARB shall provide the District with periodic training as needed.

4.2.1.4 In the event of a disagreement between the District and a third party regarding the interpretation of an ARB regulation, ARB must be notified by the District in a timely manner and ARB will provide input and assistance in resolving the dispute.

4.3 ARB Oversight

4.3.1 With advance notice to the District, ARB personnel may accompany District personnel on inspections and other enforcement activities and may review any District records related to enforcement of the ARB Landfill Regulation. District personnel may accompany ARB personnel on inspections for purposes of training, ensuring consistency, and joint enforcement.

4.3.2 ARB may periodically evaluate the performance of the District in implementing and enforcing the ARB Landfill Regulation and shall review and discuss any evaluations with the District with a primary aim of ensuring consistency between ARB and District enforcement activities.

4.3.3 For all ARB Landfill Regulation implementation and enforcement activities conducted pursuant to this MOU, the District shall submit an annual report to ARB including all of the following (annual reports submitted by landfill owners/operators in compliance with the regulation can be forwarded to ARB by the District and any data from previous annual reports do not need to be included):

4.3.3.1 A summary of NOVs or other citations issued by the District specifying the issue date, landfill name, and, section of the ARB Landfill Regulation or equivalent District rule or other citation.

4.3.3.2 The total number of instantaneous surface methane readings of 200 ppmv or greater pursuant to sections 95470(a)(1)(D) and 95471(c)(2)(A) of the ARB Landfill Regulation.

4.3.3.3 A summary of alternative compliance options approved by the District pursuant to section 95468 for sections 95464, 95469, and 95471 of the ARB Landfill Regulation. The District shall provide the landfill name, address, nature of request, approval date, and section of the ARB Landfill Regulation or cited for each alternative compliance option approved by the District.

4.3.3.4 The emission data required in section 95470(b)(3)(A) through 95470(b)(3)(I) of the ARB Landfill Regulation for each landfill since the previous annual report, except a topographic map of the landfill need only be submitted on a one-time only basis.

4.3.4 Districts that have not adopted a separate District landfill rule that is as or more stringent than the ARB Landfill Regulation shall also submit the information required in Section 4.3.3.1. in a semiannual report to ARB.

4.4 Implementation and Enforcement Coordination

4.4.1 ARB will conduct joint inspections and investigations as requested by the District.

4.4.2 ARB may pursue litigation or settlement using the authority, mechanisms, and remedies available to it under California law.

4.5 Civil Penalties. When the District issues a NOV/citation for violation of the ARB Landfill Regulation and refers the violation to ARB for litigation or settlement, any civil penalties for the violation, or payments made in settlement as civil penalties or in lieu thereof obtained by ARB shall be shared equally between the Parties. When the District litigates or settles any violation, in addition to District costs, the District will seek reasonable costs ARB incurs pursuant to section 4.4.1, to the extent requested by ARB, as part of the District's penalty award or assessment. The District is not required to reimburse ARB for any costs incurred by ARB that cannot be collected as part of the District's penalty award or assessment.

4.6 Term. This MOU shall be effective upon full execution by both Parties and shall continue in full force and effect unless terminated by either Party pursuant to the terms of the MOU.

4.7 Termination. Either Party may terminate this MOU for any reason by providing a written notice of termination no later than 60 days before the date of termination.

4.8 Indemnification. Each Party agrees to indemnify, defend and hold harmless the other party, and the officers, employees, agents and contractors of the other, from and against any claims, liabilities, costs or losses of any kind that arise from, or are alleged to arise from the Party's actions under or the performance of this MOU, except for any such loss, damage, injury or death to the extent caused by the active negligence or other wrongful conduct of the other Party.

4.9 Entire Agreement. This MOU represents the entire agreement of the Parties, and merges and supersedes any prior written or oral representations, discussions, understandings or agreements by or between the Parties relating to the subject matter of this MOU.

4.10 Modification. No addition to or modification of any term or provision of this MOU will be effective unless set forth in writing and signed by an authorized representative of each of the Parties.

4.11 Authority. Each Party represents and warrants that it has the right, power, and authority to execute this MOU. Each Party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it, and the persons executing this MOU for it, to enter into this MOU.

4.12 Limitations. Except as provided in this MOU, this MOU does not create and shall not be construed to create any right, permission, or requirement for the District to implement or enforce any authority of ARB regarding regulation adopted by ARB pursuant to AB 32.

4.13 Third Parties. This MOU shall not be construed to bind any Party in any manner with respect to any person or entity that is not a Party to this MOU, or a successor or assign of a Party.

4.14 Notices. Any notice or report required or permitted to be given under this MOU shall be in writing and shall be deemed to be given when served personally, or on the third day after mailing if mailed in the United States mail, postage prepaid, addressed to the address for each Party set forth below:

To ARB:
Attention: James Ryden
Chief of the Enforcement Division
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812

To District:
Attention: Edwin Pupka
Senior Enforcement Manager
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

IN WITNESS WHEREOF, this MOU has been executed by the parties hereto.

CALIFORNIA AIR RESOURCES BOARD

James N. Goldstene, Executive Officer

Date 6/8/2012

Approved as to form

Ellen M. Peter, Chief Counsel
Date 6/7/2012

South Coast Air Quality Management District

Barry R. Wallerstein, D.Env
Air Pollution Control Officer
May 2, 2012

Approved as to form

Kurt Wiese, District Counsel
May 2, 2102