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Comments attached

Comments on California Proposed Landfill Methane Rules¹
by Paul Burke, Camarillo, California, info@CO2List.org 11/10/2025

“Many communities made up primarily of people of color or people living on a low income are located near landfills. They are disproportionately exposed to many toxic contaminants.”²

That exposure is a big reason why these rules matter. I write as an individual, but I’m informed by participating in the California Water Boards’ Wastewater Needs Assessment Advisory Group, and seeing the challenges of biosolids disposal (sewage sludge). When biosolids don’t meet standards for spreading on land, they need to go in landfills, where they produce large amounts of methane. For fence-line communities and all of us, CARB’s rule needs to control these emissions of methane and other gases. The proposed regulations make progress. More can be done.

1. CARB needs a public website to show reported emissions and highlight the highest emissions. The site would let people monitor what directly affects them. CARB also needs to offer an email list for each county, which residents, community groups and local governments can sign up for, to receive notices of emissions in counties of their choice. This would be like the email lists which Water Boards offer for water information.³
2. § 95471(c)(1)(A) exempts the working face from monitoring for half a year. These are the main emissions harming fence-line communities. An 11/5/2025 paper in *Nature* finds that, “[T]he small fraction of open active areas in managed landfill accounts for almost all of the emissions detected by GHGSat.”⁴ The rule needs to require that areas being actively filled must be as small as are stable, and that each such area must be sealed and monitored as soon as the full depth is filled. In big landfills, this can be daily.
3. Several paragraphs on pp.9-13, 31-32 require sampling every 15 minutes and need to require automated alarms to report actionable conditions immediately and require action within a day.
4. Inspections by walking a path 100 feet away from the previous path are not thorough, in § 95471(c)(1)(C) on p. 55. The idea that 3, 6 and 9 months later other paths will be walked, so that, over a year, inspection paths are 25 feet apart, leaves too light an inspection. § 95471(d) on p. 57 allows dangerous areas to use remote sensing, which must be required to cover all areas in every inspection, at least monthly. The 11/5/2025 paper in *Nature* finds that remote monitoring detects twice as much methane as ground methods.⁵
5. Most repairs and retests are not urgent enough. Taking 3 or more days to start repairs and 10 or more days to retest and report, needs to change to 1 day to start repairs, 3 days to retest, and 1 more day to report. Particularly egregious are 60 and 120 days allowed in § 95469(e)(1)(C) on p. 33.
6. “Non-repeatable Momentary Readings” in § 95475(a)(28) on p. 69, used on pp.9, 16, 66, need to be based on non-detection by continuous or closely repeated sampling for 5 minutes, not a single repeat.

¹ <https://ww2.arb.ca.gov/rulemaking/2025/landfill-methane-regulation-0>

² www.ewg.org/news-insights/news/2024/03/forever-chemicals-landfills-threaten-environmental-justice-communities

³ https://www.waterboards.ca.gov/resources/email_subscriptions/

⁴ <https://www.nature.com/articles/s41586-025-09683-8>

⁵ <https://www.nature.com/articles/s41586-025-09683-8>

7. § 95464(a) on p. 5 allows a year to submit a plan. It needs to be done in 30 days, with another 30 days in rare circumstances. § 95464(b)(5) on p.13 allows 90 days for updates when equipment changes. Updates also need to be done in 30 days.
8. § 95464(b)(4) on p.13 allows component testing every 1 or 3 years. These need to be monthly or 3-monthly. Missing a problem for 3 months is bad enough. Missing it for 3 years is unreasonable.
9. § 95469(a)(1) on p. 24 says some areas “may be monitored every three quarters”. There needs to be a requirement.
10. The definition of construction wastes in § 95475(a)(5) on pp.66-67 includes all housing construction materials. It needs to exclude straw bales,⁶ since they can rapidly decay to methane.
11. Most deadlines for government review are not urgent enough. Government reviews need to be done in 15 or 30 days, not 120. Taking 4 months to say yes or no, followed by the time for the applicant to act, or revise the application, is too much delay. Many actions will be similar, and staff can become quick at reviewing. The rule can be 15 days, with the option to take another 15 days in a minority of cases.
12. Repeated change from “must” to “shall” needs justification or to be dropped. Courts have given “shall” many weak meanings, while “must” is an unambiguous requirement. Unless there’s a court interpretation which the state needs to follow, the change signals a weakening of the rules. CARB staff report says “*This change is necessary to clearly communicate required actions.*” However it doesn’t cite cases for why staff think “shall” is clearer than “must”, when other agencies go the other direction. Interesting that staff use “must” throughout the rest of their own report.⁷

California Prison Industry changed from shall to must in 2021, and gave a thorough explanation.⁸ “*Nearly every jurisdiction has held that the word ‘shall’ is ambiguous.*”⁹ “*U.S. Supreme Court issued a decision in Gutierrez de Martinez v. Lamagno that under certain contexts, shall could be construed as may... many opinions have interpreted shall to mean must, while others have interpreted it to mean may or will.*”¹⁰ Since 2007, rule 1, Note 3 of Federal Rules of Civil Procedure, has said the “*rules replace ‘shall’ with ‘must,’ ‘may,’ or ‘should,’ depending on which one the context and established interpretation make correct in each rule.*”¹¹ California Mental Health Rules use shall, but define it to mean must.¹² “*Black’s Law Dictionary reports at least five distinct, and sometimes contradictory, meanings for the word [shall] including has a duty to, should, may, will, and is entitled to. And courts have interpreted shall to mean must, may, will, and is among others. In short, shall is complicated because it is vague.*”¹³

Thank you for the improvements you have made, and further improvements you can still make.

⁶ <https://strawbuilding.org/>

⁷ <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/LMR/isor.pdf>

⁸ www.calpia.ca.gov/wp-content/uploads/calpia/Regulations/8001/Explanatory%20Statement-sht-Shell-PIA.pdf

⁹ https://axaxl.com/fast-fast-forward/articles/design-professional-perspective_what-shall-we-do-about-shall

¹⁰ <https://www.lexology.com/library/detail.aspx?g=aeee1c5f-28d7-4ac4-b2f5-4922be377300>

¹¹ https://www.law.cornell.edu/rules/frcp/rule_1

¹² <https://www.law.cornell.edu/regulations/california/9-CCR-514>

¹³ <https://www.lesusacanada.org/shall-we-remove-shall/>