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June 30, 2010

Mr. Howard Levenson
Assistant Director
CalRecycle
1001 I Street
P.O. Box 4025
Sacramento, CA 95812

RE: Comments on Proposed Regulations for Mandatory Commercial Recycling

Dear Mr. Levenson:

On behalf of the 22 rural counties member Rural Counties' Environmental Services Joint Powers Authority (ESJPA), we appreciate the opportunity to provide comments on the proposed regulations for Mandatory Commercial Recycling. We especially appreciate you and your staff's efforts to meet with our members on several occasions to discuss this proposal and address our concerns.

The proposed regulations provide essential flexibility for jurisdictions to meet the Mandatory Commercial Recycling mandate. Unlike other AB 32 measures, the successful implementation of solid waste and recycling programs is dependent upon incorporation into each jurisdiction's existing unique infrastructure. Solid waste and recycling programs in rural areas are much different and more challenging than in urban areas. A keystone of the proposed regulations allows jurisdictions the flexibility to implement programs appropriate to their needs.

The ESJPA is requesting consideration of the following additional key revisions to the proposed regulations. Additional details of the requested changes are included in the attachment.

- Allow a rural exemption given limited resources and the extraordinary cost for greenhouse gas reductions of this measure for rural areas.
- Clarify that a jurisdiction can initiate the monitoring phase some time after the July 1, 2012 implementation date for businesses to comply with a program
- Clarify the requirement for a jurisdiction to notify "any" business not in compliance

Thank you again for you efforts on development of this requirement. If you have any questions in this matter, please contact me at (510) 703-0898 or sweetser@aol.com or Mary Pitto, Program Manager, at (916) 447-4806 or mpitto@rcrcnet.org.

Sincerely,

Larry Sweetser
ESJPA Consultant

Enclosure

cc: Mr. Mark Leary, CalRecycle
Ms. Cara Morgan, CalRecycle
Ms. Brenda Smyth, CalRecycle
Ms. Tracey Harper, CalRecycle
Ms. Marshalle Graham, CalRecycle

Comments on Proposed Regulations for Mandatory Commercial Recycling
Rural Counties' Environmental Services Joint Powers Authority (ESJPA)

General – Rural Exemption

Rural areas have made great strides in implementing diversion programs. Many rural jurisdictions have met or exceeded the mandated goals. In some cases however, some rural jurisdictions have encountered sufficient challenges to warrant approval of rural reductions to the mandated goal. The ESJPA is requesting that the proposed regulations mandatory commercial recycling include a provision that allows for a consistent rural reduction or exemption.

AB 32 allows for consideration of cost impacts related to implementation of greenhouse gas reduction measures. In our discussions with CalRecycle staff, it was indicated that preliminary studies of the implementation cost impacts of this proposed mandatory commercial recycling requirement are more than ten times the cost for rural areas than for urban areas. Assumably, this is due to the remoteness of rural areas from the recycling markets.

Rural areas do not have the resources to collect and sort materials. Program staffing in rural areas is also more extensively limited than in urban areas. In many cases, rural solid waste staffs are performing a multitude of duties. In addition, the current economic times have adversely impacted solid waste programs in rural jurisdictions. Many rural solid waste programs are experiencing drastic reductions in available funds and have implemented cuts to staffing and services. Even when the economy improves, the impacts in rural areas will last far longer than in urban areas.

Rural jurisdictions are committed to maintaining diversion efforts, but in some cases an exemption from mandatory diversion programs is warranted. We are requesting that the proposed mandatory commercial recycling requirements include a provision allowing for a rural exemption.

§9XXX2. Mandatory commercial recycling by business.

(a)(1) – This section describes actions that a business can use to meet the recycling requirements. There are a number of creative recycling programs that have been developed over the years and this section should recognize those possibilities. Section 1 allows for segregated hauling but could be interpreted to not recognize that some collection of recyclables is conducted using split trucks or split carts. Although collected separately, the solid waste and recyclables are hauled together. We suggest revising this section as follows:

(a)(1) Source separating recyclable materials from the solid waste they are discarding and either self-hauling, or subscribing to a service that collects and/or hauls, the recyclable materials separately from the solid waste to divert them from disposal; or

In addition, we suggest adding a third section that allows for alternative recycling service. A business may even use both listed options so it should not be limited to only one action at a time. A business may not need a regular subscription service but may utilize a periodic program or

even donate recyclables to a local service group. This could include collection of certain materials that are sent for conversation technologies, ethanol production, or other non-mixed processing that maybe be developed in the future. It could also include validation of source reduction by the business which is a topic not currently included in the proposed regulations. We propose the following language change:

(a) On or before July 1, 2012, the owner or operator of a business, as defined in §9XXX1(4), shall, consistent with local requirements, recycle its commercial solid waste by taking ~~one~~ any of the following actions:

- (1) Source separating recyclable materials from the solid waste they are discarding and either self-hauling, or subscribing to a service that hauls, the recyclable materials separately from the solid waste to divert them from disposal; ~~or~~
- (2) Subscribing to an alternative type of recycling service that includes mixed waste processing that diverts recyclable materials from disposal; and/or
- (3) Utilizing other recycling services or waste reduction efforts

§9XXX23 (h). Implementation of commercial recycling program by jurisdictions

Since implementation of a recycling program can take some time to get established, it is appropriate that time be allowed prior to the jurisdiction conducting monitoring. Please clarify that a jurisdiction can initiate the monitoring phase some time after the July 1, 2012 implementation date for businesses to comply with a program.

Rural jurisdictions have limited resources to monitor implementation and thus we are concerned about the provision to notify “any” business of non-compliance. This could be interpreted that a jurisdiction will need to identify “all” businesses that are not in compliance. We are requesting that the requirement be revised as follows:

If a jurisdiction identifies that any businesses subject to these regulations is ~~are~~ not in compliance with these provisions, the jurisdiction shall, at a minimum, notify those businesses that they are out of compliance.



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SOLID WASTE ASSOCIATION
of North America

June 30, 2010

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Comments on Proposed Regulations for Mandatory Commercial Recycling

The Solid Waste Association of North America (SWANA), the leading association of solid waste professionals in North America with over 8,000 members, is committed to advancing the practices of environmentally and economically sound management of municipal solid waste. On behalf of their California Chapters, I thank you for the opportunity to comment on these Draft AB 32 Mandatory Commercial Recycling Regulations.

The proposed regulations will financially impact businesses and local governments across California at a time when the current recession has caused significant budget shortfalls, unemployment, and many programs have been cut or eliminated. It is unlikely that the economy will recover by 2012 when the regulations will take effect. Because these types of unfunded mandates have significant financial implications, the Legislative Task Force for the California Chapters of SWANA developed a "white paper" (attached) to help decision makers appreciate the impacts of higher diversion mandates and to delineate the tools that local governments need in order to implement such mandates.

As currently drafted, the regulations will have the following impacts:

1. All jurisdictions (city, county, city & County and regional agency) must implement a commercial recycling program by 7/1/2012, regardless of whether or not it has met its 50% waste reduction requirement. In addition, this program must include components for both public education & outreach.
2. All private businesses (commercial, industrial, institutional, manufacturing, etc and multi-residential consisting of five units and more) that generate 4 cubic yards or more of solid waste & recyclable materials per week, must implement a recycling program, as defined by the regulations.
3. Jurisdictions must identify all businesses within their boundaries and monitor each business to ensure that the business is (a) subscribing to recycling services, and (b) participating in recycling services. Each jurisdiction, at a minimum, must notify each business that fails to implement commercial recycling.
4. A jurisdiction's annual report to CalRecycle must include sufficient information for CalRecycle's verification of implementation. Ultimately, a jurisdiction that has not adequately implemented is mandatory commercial recycling program will be subject to a penalty of \$10,000 per day. Additionally, the jurisdiction may be subject to unknown additional penalties by the Air Resources Board.

The California Chapters of the SWANA Legislative Task Force provides the following comments:

1. Both CARB & CalRecycle have claimed that recycling will reduce greenhouse gas (GHG) emissions without a "true" lifecycle environmental and economic cost analysis that accounts for the increased emissions and added costs of processing of these recyclables out of state. It needs to be recognized that management facilities in other states and foreign countries do not operate under the same rules and regulations as if they were located in California and therefore the impact of those facilities needs to be evaluated. (White Paper Task # 2).
2. This proposal fails to provide for the development of needed infrastructures in California to handle the recovered materials. (White Paper Task #3).
3. This proposal fails to recognize the need for and viability of conversion technologies, and disregards the finding by the ARB and CalRecycle that utilization of transformation facilities will result in net reduction in GHG emissions. CalRecycle and the Air Resources Board should recognize that transformation actually helps California meet the GHG reduction goals of AB 32 and should be more proactive in including transformation as part of the green infrastructure that lessen the dependence on fossil fuel and reduces GHG emissions. (White Paper Task # 4).
4. The current proposal results in an unfunded State mandate. In particular, the scope and detail is unclear regarding what constitutes local government "monitoring" of business compliance and what constitutes a local government's "good faith" effort to conduct the monitoring. Considering the current financial situation of local governments, the proposal will subject jurisdictions to significant financial burdens unless the state can help locals with financial means. (White Paper Task #7).

Thank you very much for the opportunity to communicate our concerns with you. We look forward to working with you on these regulations in the future. If you have any questions regarding our comments or positions, please feel free to contact me at 916-446-4656.

Thank you,



Tressa Wallace
Legislative Advocate

attachment

Cc: Margo Reid-Brown, Director, Department of Resources Recycling and Recovery
Mark Leary, Deputy Director, Department of Resources Recycling and Recovery
Howard Levenson, Assistant Director, Department of Resources Recycling and Recovery



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Achieving Greater Waste Diversion in California: Fundamental Strategies and Essential Tools

California has led the nation in creating integrated solid waste management programs that place a priority on diverting waste materials away from landfills. Indeed, California is now diverting more than half of the solid waste generated in the state. This is possible, in large part, because local governments and solid waste management companies across the state have made enormous financial investments over the years to develop and implement waste diversion programs as well as constructing and operating recycling facilities.

The members of the California Chapters of the Solid Waste Association of North America (SWANA) are proud of these achievements and will continue to be part of the solution as the state moves forward in achieving even greater diversion milestones. However, tomorrow's milestones can only be reached by thoughtful consideration today of the tools needed for success.

Tool 1: Reduction of Solid Waste Generation through Product Stewardship

Preventing waste from ending up in a landfill should start with the initial product itself and continue with those involved in the life cycle of that product. Local government's public outreach can facilitate reducing, reusing and recycling to a certain extent, but ultimately products need to be recyclable to have a complete reuse cycle. Producers should be responsible for designing, manufacturing, and packaging a sustainable recyclable product. Distributors and retailers should also be involved in establishing and managing end-of-life systems for difficult-to-recycle products as an integral part of their marketing and customer service. Product stewardship can be achieved in California but it requires a new approach, such as legislation that incentivizes manufacturers to make an investment in redesigning products that promotes environmental sustainability while establishing a convenient way for consumers to return used or unwanted products to the manufacturer. Without legislative incentives to drive this shift in responsibility, many products will continue to become a waste at the end of their useful life placing the task of their final handling, diversion or disposal on local government, which is not always the most practical and cost effective approach.

Tool 2: Analysis of the True Lifecycle Environmental and Economic Costs of Recycling

With the AB 32 Scoping Plan requiring for California businesses to participate in commercial waste recycling, a greater percentage of the recyclable goods will be removed from the municipal solid waste stream and less virgin materials will be extracted from the earth. While recycling offers environmental benefits, it also can have environmental impacts, particularly greenhouse gas (GHG) emissions, within California and across the planet. Accurate assessment of global environmental effects and the costs associated with recycling choices is important in planning overall environmentally sound and sustainable waste management and diversion systems. Recyclable goods are often shipped overseas and processed under

significantly less stringent or non-existent air pollution control, health, and safety standards. Only when accounting for all environmental impacts in a life cycle analysis can we determine the true environmental and economic benefits of California's recycling choices.

Tool 3: Infrastructure and End Market Development in California

Recycling is sustainable only when there are sufficient markets for the goods recovered. The State needs to help develop robust markets by providing economic incentives and assistance to innovative businesses. Facilitation of new processing infrastructure and markets in California for recyclable goods would not only lessen the global environmental impacts associated with recycling noted above, but it would also give the state more control over the recycling markets while creating "green" jobs in the process. In many instances, the infrastructure exists but markets do not. For example, many processing facilities could easily recover additional materials from the waste stream, such as low-value or no-value plastics and fibers, but do not solely because markets are not available. Just as California strives to be the largest producer of recyclable materials, it should equally strive to put them to use in California. To achieve this, regulatory and permitting requirements need to be streamlined to facilitate the development of end markets and processing infrastructure and not impede them.

Tool 4: Ushering in New Technologies for Solid Waste

Once recyclable materials are optimally removed from the solid waste stream, the waste materials that are left behind have little to no beneficial reuse value in today's infrastructure. Business as usual is to landfill these materials. While today's landfills can safely and cost-effectively contain these materials, many of these waste materials can be beneficially used to produce energy or fuel using new types of technologies – conversion technologies. For example, renewable power can be produced from organics placed in biological tanks – anaerobic digesters. These digesters produce methane, which can be captured and used as a fuel in electric generators. Commercially available conversion technologies, such as gasification, can also produce clean power and advanced transportation fuels by utilizing the gas that is created under a thermal process. By removing the existing regulatory and legislative barriers and granting diversion credits, conversion technologies can provide substantial new sources of energy or clean fuel and provide new markets for materials otherwise disposed of in landfills. It should also be recognized that landfills across California currently recover and use landfill gas as a fuel source to produce power, contributing to state's renewable energy portfolio. Governor Schwarzenegger has directed that by 2020 renewable energy comprise a third of the electricity produced in the state. All of these technologies help in achieving this goal.

Tool 5: Clear Definition of Organic Waste Diversion Policies

Policies at the state level call for increased diversion of "organics" from landfills. Strictly speaking, organic material is anything containing carbon. "Organics" are the largest fraction of the MSW stream and include "compostable organics," such as food wastes, yard trimmings, and wood waste, and non-compostable or other "organic waste." Without differentiating the organics, an uncalled for level of uncertainty is introduced and new diversion programs to address specific waste streams cannot be appropriately considered or developed. Achieving greater diversion of organics from landfills requires new processing infrastructure and new markets for the end products. However, siting new compostable organics processing facilities in many parts of California, particularly urban areas and areas where air quality requirements are stringent, is very

difficult, if not impossible. Consequently, regulatory and permitting requirements need to be streamlined and consistent among various agencies to facilitate the development of end markets and processing infrastructure. In addition all alternative technologies that divert organics while complying with environmental standards need to be fully considered in future waste diversion milestones.

Tool 6: Retention of Local Government Discretion by Allowing a Range of Alternative Programs for Achieving Increased Diversion

Given the wide diversity of California's communities, any increase in diversion mandates must allow for consideration of locally specific factors such as economics and environmental impacts, with the goal of facilitating the choices best suited to the community. This will ensure the greatest chance of success in going beyond the existing diversion mandate while maintaining a sound and stable solid waste management system.

Tool 7: Funding to Implement New Programs

The current recession is placing an extraordinary burden on local government. Cities and counties are grappling with how to close their budget shortfalls. This is made even more challenging with cutbacks from the drop in waste revenues that fund solid waste programs. Mandating increased diversion during this economic downturn is untenable without new funding by the state. Increased diversion requires new or augmented public outreach programs as well as new infrastructure. Capital for maintaining existing programs is already severely limited and financing new projects may not be possible in today's financial climate. Local government cannot afford to implement any new diversion programs or mandates without new types of funding resources.

Tool 8: Recognition of the Value of Adequate, Safe Landfill Capacity

As noted above, the state's priority for waste management is diversion of wastes from landfills. Because of this, at times, landfills have been characterized as being unsafe and even unnecessary. However, until all of the infrastructure, the markets, the funds, and public and political support are in place to divert all wastes, assuming that is even possible, landfills will continue to serve a critical role in managing solid waste in California. Today's landfills are integrated facilities and not just long-term repositories for solid waste that cannot be recycled; they are designed to protect the environment and public health, serve as a recycling outlet for beneficial reuse of waste materials, and allow production of significant renewable energy from very effective methane capture. Adequate landfill capacity must be a key component of any integrated waste management program.

Types of Successful Diversion Programs Implemented by Member Jurisdictions of the California Chapters of SWANA:

- Volumetric service rate structure that encourages waste reduction and recycling.
- Widespread use of separate container curbside collection programs in conjunction with comprehensive materials recovery and composting facilities.

- Non-recycled solid waste taken to waste-to-energy facility rather than disposed in landfills.
- Using financial incentives under a Recycling Market Development Zone to encourage recycling and requiring private haulers to provide recycling services to their multi-family and commercial accounts.
- Creative education and public outreach tools to communicate effectively the benefits of waste reduction, reuse and recycling.
- Diverting certain compostable organics to composting facilities.
- Conducting mobile household hazardous waste (HHW) and e-waste collection programs.
- Significant financial investments to develop and operate materials recovery facilities, permanent HHW and e-waste collection facilities, and other solid waste management infrastructure.
- Invested significant amounts of time and capital to study and evaluate conversion technologies, and analyze data from operating facilities overseas.

Please contact Paul Yoder or Tressa Wallace of Shaw / Yoder / Antwih, Inc. at (916) 446-4656 for further information on this paper or for other information regarding the SWANA LTF.