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January 26, 2011

Howard Levenson, Deputy Director
CalRecycle
1001 I Street
Sacramento, CA 95812-4025

RE: Proposed Mandatory Commercial Recycling Regulation Informal Stakeholder Feedback

Dear Mr. Levenson:

On behalf of the 22 member Rural Counties' Environmental Services Joint Powers Authority (ESJPA), we would like to thank CalRecycle, you, and your staff for working with our organization on this proposed regulatory package.

As we near the end of the informal rulemaking, the ESJPA would like to offer the attached comments. These comments focus on the following topics:

- Clarify the definition of "rural city" and "rural county"
- Clarify rural "good faith efforts" criteria
- Clarify that the "good faith efforts" jurisdiction evaluation considers the extent that certain "businesses" are not within the authority of that jurisdiction.

Please contact me if you have any questions on these comments. Again, we appreciate all of your and your staff proactive efforts to work with our organization.

Sincerely,

Mary Pitto
Program Manager

Enclosure

cc: Mark Leary, Acting Director, CalRecycle
Daniel Donohue, Chief, Air Resources Board
Robert Krieger, Manager, Air Resources Board
Cara Morgan, Branch Chief, CalRecycle
Marshalle Graham, Senior Integrated Waste Management Specialist, CalRecycle
Teri Wion, Integrated Waste Management Specialist, CalRecycle
Tamar Dyson, Staff Counsel

**Proposed Informal Mandatory Commercial Recycling Regulation Comments
Rural Counties' Environmental Services Joint Powers Authority**

§9XXX1. Definitions. (16)

This definition should align with the Public Resources Code. The PRC additionally recognizes the term "rural regional agency" as a city or regional agency that is located within a rural county.

We recommend revising this definition to:

(16) "Rural city", "rural regional agency", or "rural county" means a city, regional agency, or county ~~that is located in a rural county~~ as defined in §40183 and §40184 of the Public Resources Code.

§9XXX4. CalRecycle Review (c)(7)

The ESJPA appreciates the recognition of the unique issues of diversion in California's rural jurisdictions. Diversion programs in rural areas are difficult to initiate and maintain given a number of factors. The current proposed regulations state that:

During its review, CalRecycle may include, but is not limited to, the following factors in its evaluation of a jurisdiction's "good faith effort":

(6) budgetary constraints; and

(7) in the case of a rural city or rural county as defined in §9XXX1(b)(16), the small geographic size or low population density.

Budgetary constraints are a legitimate issue in our rural counties. The disproportional cost to implement many of the diversion programs in rural areas, as evidenced by the Cost Study on Commercial Recycling prepared for CalRecycle by HFH, only exacerbates the problem. In evaluating budgetary constraints, the relative benefit of any increased diversion efforts to any actual increase in diversion potentially achieved should be considered in light of its effect to the overall statewide goal. Additionally, the cost/benefit of CalRecycle's efforts to increase a proportionately insignificant actual statewide increase in diversion needs to be taken into account.

We request that the current proposed language be revised to:

(6) budgetary constraints and proportional diversion benefit; and

With respect to (7), the current language lists only two criteria – small geographic size or low population density. Although the “good faith efforts” evaluation states that these, and other, factors “may include, but is not limited to” the listed factors, there is another more critical factor for our rural members and that is the distance to markets for the recyclables.

Many of our rural jurisdictions experience small geographic size or low population density but also there are some that are small in geographic size AND have low population density. This combination of factors can exist in a jurisdiction located in an urban area as well. A small city can exist in an otherwise urban, well populated county relatively near markets for recyclables. Therefore, the current criteria do not fully address the rural diversion dilemma.

Many of our counties have multiple cities or town population centers scattered throughout a large county area. Collecting the recyclable materials from these pockets and consolidating them for transport is not economical in most cases.

The transportation costs to haul collected recyclables to a viable market can be hundreds of miles. In many documented cases, the cost to haul certain recyclables, like light weight materials, is so prohibitive that the costs would have to be heavily subsidized. The Cost Study on Commercial Recycling prepared for CalRecycle by HFH illustrates the greater cost of rural transportation in all Transportation Analysis scenarios in Figures 5-29 through 5-32. In some cases, it is over twice the urban cost per ton. The study is not clear whether these cost assumptions account for the fact that the vehicles used in rural areas tend to be significantly older fleets than urban areas and thus are less efficient than urban transporters. The criteria should not be limited to only one of the listed criteria. In addition as indicated above, this section should also include rural regional agencies.

We request that the current proposed language be revised to:

(7) in the case of a rural city, rural regional agency, or rural county as defined in §9XXX1(b)(16), the small geographic size, or low population density, and/or distance to viable markets.

§9XXX4. CalRecycle Review (c)(1)

The revision to the definition of a “business” to include public entities has the impact of a jurisdiction’s evaluation potentially including “businesses” that are outside the control of a jurisdiction’s solid waste and recycling authority. Particularly, school districts, some federal agencies, and tribal institutions impact a jurisdiction’s disposal tonnages. Even though recycling services are made available to these entities, the jurisdiction may lack authority to impact solid waste management practices of these entities.

This issue is recognized in the current "good faith efforts" review in the Public Resources Code Section 41825 (e)(4)(D) that includes the following criteria in the determination of "good faith efforts":

(D) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction.

It would be appropriate to recognize this limitation in the "good faith effort" review by revising the definition to:

(1) the extent to which the eligible businesses, as defined in §9XXX1(b)(4), have subscribed to recycling services, including information on the amount of disposal that is being diverted from the eligible businesses, if available, and on the number of eligible businesses that are subscribing to service;