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MEMORANDUM

To: ESJPA Board of Directors
From: Mary Pitto, Regulatory Affairs Director
Date: August 16, 2011
Re: Air Resources Board/CalRecycle
Mandatory Commercial Recycling Regulation

CalRecycle has been engaged in the process to develop the mandatory commercial recycling regulation for adoption by the ARB since July 2009. The ESJPA has been directly involved in the development of this regulation to ensure there is flexibility to address the challenges that face rural areas. The ESJPA staff has continually met over the last two years with CalRecycle staff and other local government representatives to discuss and refine the draft regulations.

CalRecycle released their final draft of the proposed regulations on June 30, 2011, and held their final public workshop on July 19th. The key provisions in the draft proposed regulations are:

- On or before July 1, 2012, a business, public entity, or multifamily units of 5 or more that generate four cubic yards or more of solid waste per week shall be required to recycle by source separating recyclable materials and self hauling or arranging for pick up, subscribing to a franchise hauling service, or use of a mixed waste processing service.
- Local jurisdictions will be required to implement a commercial recycling *program* by July 1, 2012, that provides outreach, education, and identification and monitoring of businesses. Local jurisdictions can, but are *not* required to enforce the regulation on businesses.
- If a jurisdiction has implemented a commercial recycling program prior to July 1, 2012, the jurisdiction will not be required to implement a new or expanded program.
- Jurisdictions will be required to report their compliance with this measure in their Electronic Annual Report starting August 1, 2013.

While CalRecycle will conduct review of local programs as part of a jurisdiction's source reduction and recycling element and household hazardous waste program reviews, the ARB will retain authority for oversight and implementation of the proposed regulation.

Issue

Throughout the informal regulatory process the ESJPA staff worked with CalRecycle staff to ensure the regulation addressed the challenges facing rural areas, and to clarify and refine the regulatory

language. While a rural exemption was considered but not included in the draft, CalRecycle worked with ESJPA staff on language that provides additional flexibility for rural counties. CalRecycle has attempted to make this proposal as flexible as possible within the AB 32 framework limitations. This allows jurisdictions to implement programs that meet local needs and works within existing infrastructures and resources. ESJPA staff is satisfied that the draft proposed regulation does just that. The county obligation is to develop a commercial recycling *program* (as opposed to an "ordinance") that contains a minimal set of requirements, which does not include enforcement. While the ESJPA staff was unsuccessful in making the monitoring requirement optional, the language allows for phasing in the monitoring implementation, if warranted, and customizing to the needs and resources of each jurisdiction.

In addition, rural jurisdictions currently have the assistance of CalRecycle's "good faith effort" provisions in the existing source reduction and recycling element biennial reporting and review regulations. In this draft language, two new factors will also be considered: "budgetary constraints" and, "in the case of a rural city or rural county as defined in Sec 956211(b)(14) the small geographic size, low population density, or distance to markets." CalRecycle staff will review a jurisdiction's "good faith effort" in implementing this measure during the standard AB 939 compliance annual review by looking at the jurisdiction's public education and outreach, extent of monitoring the business, and the number of businesses subscribing, and the amount of disposal.

As indicated earlier, CalRecycle is at the end of its informal regulatory development of the draft proposed Mandatory Commercial Recycling Regulation and nearing submittal to the ARB for the formal rulemaking process. From the public input received on the proposed draft regulation, CalRecycle expects some additional clarifying and refining edits. The draft proposed regulation is anticipated to be initiated by the ARB in September 2011, with adoption at their October 20, 2011 hearing. As discussed and approved at the June 2010 RCRC Board of Directors meeting, RCRC staff will be supporting the CalRecycle proposal to the ARB.

RCRC staff remains concerned that the environmental and health organizations are looking for much stronger requirements, including local enforcement, and will attempt to incorporate these requirements when the ARB formally considers the regulation. The ARB is generally very supportive of the environmentalists' concerns. CalRecycle has indicated that the draft proposed regulations have been designed to meet the requirements of the AB 32 Scoping Plan, aimed at the 5 mm tons of CO₂/year, the 2-3 tons of additional solid waste from the commercial sector. CalRecycle believes the regulations - as drafted - will meet this goal and it is not necessary to adopt the most stringent measures. While we know that the RCRC Board generally opposes any new unfunded mandates, RCRC staff believes it is important to show support for the CalRecycle proposal to ARB.

As with the previous legislative session, this year Assemblyman Wes Chesbro (D - Eureka), has introduced a diversion and mandatory commercial recycling bill - Assembly Bill 341. In its current version, the bill includes a "statewide" 75% diversion goal by 2020 (not a local mandate) and a mandated commercial recycling program similar to that proposed by CalRecycle with the one exception that it would be CalRecycle (not ARB) responsible for the program. RCRC ended the last legislative session in a "support" position on Assemblyman Chesbro's previous bill (which was

subsequently vetoed) since all of our concerns were addressed. However to date, RCRC has not taken a position on AB 341, but with additional changes to the current version, we may again be in a position to support. AB 341 awaits consideration in the Senate Appropriations Committee.

Attachment

- CalRecycle Proposed "Draft Regulation to Reduce Greenhouse Gas Emissions by Requiring Commercial Businesses to Recycle"

Proposed Draft Regulation to Reduce Greenhouse Gas Emissions by Requiring Commercial Businesses to Recycle

MANDATORY COMMERCIAL RECYCLING

TITLE 17:	PUBLIC HEALTH
DIVISION 3.	AIR RESOURCES
CHAPTER 1.	AIR RESOURCES BOARD
SUBCHAPTER 10,	CLIMATE CHANGE
ARTICLE 4,	REGULATIONS TO ACHIEVE GREENHOUSE GAS EMISSION REDUCTIONS
SUBARTICLE 10.	MANDATORY COMMERCIAL RECYCLING

§95620. Purpose.

This Article implements the Mandatory Commercial Recycling regulation pursuant to §38561 of the Health and Safety Code. The purpose of this regulation is to reduce greenhouse gas emissions by diverting commercial solid waste to recycling efforts and to expand the opportunity for additional recycling services and recycling manufacturing facilities in California.

§95621. Definitions.

- (a) Except as otherwise noted, the definitions of this Article supplement and are governed by the definitions set forth in Chapter 2 (commencing with §40100), Part 1, Division 30 of the Public Resources Code.
- (b) In addition to the definitions incorporated under subdivision (a), the following definitions shall govern the provisions of this Article.
 - (1) "Annual Report" means the electronic annual report, submitted annually by a jurisdiction, summarizing its progress in reducing solid waste, as required by §41821 of the Public Resources Code and 14 California Code of Regulations §§18794-18794.6.
 - (2) "CalRecycle" means the Department of Resources Recycling and Recovery.
 - (3) "Jurisdiction" means a city, county, city and county, or a regional agency that is approved by CalRecycle pursuant to §40975 of the Public Resources Code.

- (4) "Business" means any commercial or public entity, that generates four cubic yards or more of commercial solid waste per week, including, but not limited to, a firm, partnership, proprietorship, joint-stock company, corporation, or association that is organized as a for-profit or nonprofit entity, strip mall (e.g. property complex containing two or more commercial entities) school, school district, California State University, community colleges, University of California, special district or a federal, state, local, regional agency or facility. For purposes of this Article, "business" also includes a multi-family residential dwelling of five units or more that generates four cubic yards or more of commercial solid waste per week.
- (5) "Commercial solid waste" means all types of solid waste discarded, including recyclable materials that are discarded with the solid waste, by businesses as defined in subdivision (4), but does not include waste from single family residences or multifamily units of less than 4 units.
- (6) "Diversion" or "divert" means activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division, including Article 1 (commencing with § 41780) of Chapter 6.
- (7) "Disposal" means the final disposition of solid waste at a permitted landfill.
- (8) "Franchise" means any agreement between a jurisdiction and a hauler for transporting commercial solid waste.
- (9) "Hauler" means any person, commercial or public entity which collects, hauls, or transports solid waste for a fee by use of any means, including but not limited to, a dumpster truck, roll off truck, side-load, front-load, or rear-load garbage truck, or a trailer.
- (10) "Landfill" means a permitted disposal site which accepts solid waste.
- (11) "Mixed Waste Processing" means processing solid waste that contains both recyclable and compostable materials and trash.
- (12) "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products which meet the quality standard necessary to be used in the market place, as defined in §40180 of the Public Resources Code. Recycling does not include transformation as defined in Public Resources Code §40201.
- (13) "Recyclables" and "recyclable materials" means materials that have been separated from the solid waste stream prior to disposal and collected for

use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place and that are not landfilled. Recyclable materials can include, but are not limited to paper (including cardboard), plastics, glass, metals, organics, food waste, and construction and demolition materials.

- (14) "Rural jurisdiction" means a city or regional agency as defined in §40183 of the Public Resources Code or a rural county as defined in §40184 of the Public Resources Code.
- (15) "Self hauler" or "self hauling" means a business that transports its own waste and/or recyclables rather than contracting with a hauler for that service.
- (16) "Source separating" or "source separation" means the process of removing recyclable materials from solid waste at the place of generation, prior to collection, and placing them into separate containers that are separately designated for recyclables.
- (17) "Solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes as described in §40191 of the Public Resources Code.
- (18) "Transformation" means incineration, pyrolysis, distillation, or biological conversion other than composting. "Transformation" does not include composting, gasification, or biomass conversion.

§95622. Mandatory recycling of commercial solid waste by businesses.

- (a) On or before July 1, 2012, a business, as defined in §95621(b)(4), shall reuse, recycle, compost, or otherwise divert its commercial solid waste from disposal by taking one, or any combination, of the following actions:
 - (1) Source separating recyclable materials from the solid waste they are discarding and either self-hauling, subscribing to a service that hauls, and/or otherwise arranging for the pick-up of, the recyclable materials separately from the solid waste to divert them from disposal.
 - (2) Subscribing to a service that includes mixed waste processing that diverts recyclable materials from disposal and that yields diversion results comparable to source separation.

- (b) To comply with §95622(a), property owners of multi-family complexes may require tenants to source separate their recyclable materials. Tenants must source separate their recyclable materials as required by property owners of multi-family complexes.
- (c) Each business shall be responsible for ensuring and demonstrating its compliance with the requirements of this Section. The activities undertaken by each business pursuant to §95622(a) shall be consistent with local requirements, including, but not limited to, a local ordinance or agreement applicable to the collection, handling or recycling of solid waste.
- (d) Except as expressly set forth in §95622(e)(3), this Section does not limit the authority of a jurisdiction to adopt, implement, or enforce a recycling program that is more stringent or comprehensive than the requirements of this Section. Businesses located in such a jurisdiction must comply with any local requirements that have been enacted.
- (e) This Section does not modify or abrogate in any manner any of the following:
 - (1) A franchise granted or extended by a city, county, or other local government agency;
 - (2) A contract, license, or permit to collect solid waste granted or extended by a city, county, or other local government agency as of the effective date of this regulation;
 - (3) The right of a business to donate, sell or otherwise dispose of its recyclable materials, as provided by §41952 of the Public Resources Code. Nothing in these regulations is intended to prevent or otherwise regulate the sale or donation of recyclable materials by the owner of such materials to a third party for purposes of reuse or recycle prior to discarding the materials; or
 - (4) The existing provisions of §41783 of the Public Resources Code related to transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent. Materials sent to transformation facilities must meet the requirements of §41783(a)(2) of the Public Resources Code regarding front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent possible.

§95623. Implementation of commercial recycling program by jurisdictions.

- (a) Effective July 1, 2012, each jurisdiction shall implement a commercial recycling program which diverts from disposal commercial solid waste generated by businesses, as defined in §95621(b)(4).
- (b) The commercial recycling program shall apply to businesses, as defined in §95621(b)(4), but may also apply to any other commercial entity identified by the jurisdiction as being a source of commercial solid waste.
- (c) A jurisdiction shall determine the specific material types included in its commercial recycling program, which could include, but are not limited to, paper (including cardboard), plastics, glass, metals, organics, food waste, and construction and demolition.
- (d) If, prior July 1, 2012, a jurisdiction has implemented a commercial recycling program that meets all requirements of this Article, as determined by CalRecycle pursuant to §95624, the jurisdiction will not be required to implement a new or expanded program.
- (e) If, in order to satisfy the requirements of this Article, a jurisdiction must implement a new, or expand an existing, commercial recycling program, it shall not be required to revise its source reduction and recycling element nor comply with the requirements of Public Resources Code §41800 et seq. The jurisdiction shall include the addition or expansion of a commercial recycling program in its annual report.
- (f) The commercial recycling program adopted pursuant to Subdivision (a) may include, but is not limited to, implementing a commercial recycling policy or ordinance requiring businesses, as defined in §95621(b)(4), to recycle, requiring a mandatory commercial recycling program through a franchise agreement or contract, or requiring that commercial solid waste from businesses be sent to a mixed waste processing facility. This policy or ordinance cannot limit the right of a business to donate, sell or otherwise dispose of its recyclable materials, as provided by §41952 of the Public Resources Code.
 - (1) As part of developing a commercial recycling program under subsection (f), a jurisdiction shall consider if an exemption is warranted for multi-family complexes that lack sufficient space to provide additional recycling bins.
- (g) The commercial recycling program shall include education and outreach to businesses, as defined in §95621(b)(4). The jurisdiction shall determine the types of educational and outreach programs to insure that the program targets the components of the jurisdiction's commercial waste stream.

- (h) The commercial recycling program shall include identification and monitoring of businesses, as defined in §95621(b)(4), to assess if businesses are complying with §95622(a). If any businesses subject to these regulations are not in compliance with these provisions, the jurisdiction shall, at a minimum, notify those businesses that they are out of compliance.
- (i) The commercial recycling program may also include, but is not required to include:
 - (1) Enforcement consistent with a jurisdiction's authority, including, but not limited to, a penalty or fine structure that, incorporates warning notices, civil injunctions, financial penalties, or criminal prosecution. Any fees or penalties generated by the enforcement program could, in the jurisdiction's discretion, be used to pay the costs of operation, outreach, education, and other associated program costs;
 - (2) Building design standards that specify space requirements for storage of recyclables or other purposes that may assist the compliance of businesses, as defined in §95621(b)(4), with the program;
 - (3) Exemptions deemed appropriate by the jurisdiction such as, but not limited to, zoning requirements, lack of storage space, lack of markets, non-generation of recyclable materials, or current implementation by a business of actions that result in recycling of a significant portion of its commercial waste; or
 - (4) Certification requirements for self-haulers which may include, but are not limited to, requiring businesses, as defined in §95621(b)(4), to maintain written records demonstrating that all self-hauling activities have been completed in accordance with the standards imposed by the jurisdiction's commercial recycling program.
- (j) Each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, identification and monitoring, and if applicable enforcement efforts, by providing updates in its Annual Report required by §41821, et seq. of the Public Resources Code.
- (k) The recycling program implemented by the jurisdiction does not limit the existing right of any business to donate, sell or otherwise dispose of its recyclable materials as provided by §41952 of the Public Resources Code. Nothing in these regulations is intended to prevent or otherwise regulate the sale or donation of recyclable materials by the owner of such materials to a third party for purposes of reuse or recycle prior to discarding the materials.

§95624. CalRecycle Review

- (a) Commencing August 1, 2013, CalRecycle shall review a jurisdiction's compliance with §95623 as part of its review of the jurisdiction's source reduction and recycling element and household hazardous waste element programs, pursuant to 14 California Code of Regulations §18772 and §41825 of the Public Resources Code.
- (b) CalRecycle may also review whether a jurisdiction is in compliance with §95623 at any time that CalRecycle receives information that a jurisdiction has not implemented, or is not making a good faith effort to implement, its commercial recycling program.
- (c) During its review pursuant to this Section, CalRecycle shall determine whether each jurisdiction has made a good faith effort to implement its selected commercial recycling program. For this purpose, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its commercial recycling program. During its review, CalRecycle may include, but is not limited to, the following factors in its evaluation of a jurisdiction's "good faith effort":
 - (1) The extent to which the businesses, as defined in §95621(b)(4), have complied with §95622(a), including information on the amount of disposal that is being diverted from the businesses, if available, and on the number of businesses that are subscribing to service;
 - (2) The recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses, all information, methods, and calculations, and any additional performance data, as requested by the Department from the material recovery facilities pursuant to 14 California Code of Regulations §18809.4;
 - (3) The extent to which the jurisdiction is conducting education and outreach to businesses, as defined in §95621(b)(4);
 - (4) The extent to which the jurisdiction is monitoring businesses, as defined in §95621(b)(4), and notifying those businesses that are out of compliance;
 - (5) The availability of markets for collected recyclables;
 - (6) Budgetary constraints; and
 - (7) In the case of a rural jurisdiction, as defined in §95621(b)(14), the small geographic size, low population density or distance to markets.

A jurisdiction's failure to implement its commercial recycling program may suffice for CalRecycle to issue a compliance order pursuant to §41825 of the Public

Resources Code, even if the jurisdiction has met its 50 percent per capita equivalent disposal target as required by §41780.05 of the Public Resources Code.

- (d) If, after a public hearing on the matter, CalRecycle finds that a jurisdiction has failed to make a good faith effort to implement a commercial recycling program and meet the requirements of §95623, CalRecycle shall issue a compliance order with a specific schedule for achieving those requirements. CalRecycle shall issue the compliance order within 30 days after making its finding of non-compliance.
- (e) The compliance order shall identify the portions of the commercial recycling program which are not being implemented or attained by the jurisdiction, or identify areas of the commercial recycling program which need revision. CalRecycle shall also set a date by which the jurisdiction shall meet the requirements of the compliance order.
- (f) Pursuant to §41850 of the Public Resources Code, CalRecycle shall hold a hearing to determine whether the jurisdiction has complied with the terms of the compliance order in §95624(d). If CalRecycle determines that the jurisdiction has failed to implement its compliance order and meet the requirements of §95623, CalRecycle shall take additional enforcement action pursuant to an ARB/CalRecycle Enforcement Agreement, or, if an Enforcement Agreement does not exist, CalRecycle shall, within 60 days document its determination that the jurisdiction remains out of compliance, forward that documentation and make recommendations to the Air Resources Board for further enforcement action pursuant to Part 6, Division 25.5 (§ 38500) of the Health and Safety Code.

§95625. Air Resources Board Oversight and Enforcement

Nothing in this Article limits the Air Resources Board's authority pursuant to Division 25.5 (commencing with §38500 of the Health and Safety Code), to monitor compliance with and enforce this regulation. The Air Resources Board retains its oversight role and will take any further actions necessary to implement this regulation, including but not limited to invoking its enforcement authority as described in §38580 of the Health & Safety Code.