

Mary Pitto

From: organicsinfo@calrecycle.ca.gov
Sent: Friday, October 07, 2011 6:01 PM
To: Mary Pitto
Subject: Mandatory Commercial Recycling Regulation - UPDATE

CalRecycle Organic Materials Management Listserv

CalRecycle and the Air Resources Board (ARB) had intended to address the proposed Mandatory Commercial Recycling regulations at the ARB meeting on Oct. 20-21, 2011, where ARB was to hold a public hearing to consider adoption of the proposed regulations.

However, as a result of Assembly Bill (AB) 341 being signed into law by Governor Brown on Oct. 6, 2011, please be advised that this public hearing on the proposed regulations has been cancelled.

Instead, at the same Oct. 20-21 ARB meeting, CalRecycle and ARB will present an informational item on our collaborative efforts to date, the new direction resulting from enactment of AB 341, and CalRecycle's plans to implement AB 341's mandatory commercial recycling provision. This informational item also will include discussion of opportunities to expand recycling services and recycling manufacturing in California, and of future collaboration with ARB on other AB 32 Scoping Plan measures.

AB 341 provides authority to CalRecycle to implement the mandatory commercial recycling program, and as a result, the department will commence its own rulemaking to implement the statute. These regulations will reflect the statutory provisions and provide additional procedural clarifications.

Because of the extensive stakeholder input received at eight public workshops and numerous stakeholder meetings over the past two years, CalRecycle plans to initiate the formal rulemaking with a 45-day comment period beginning in early November and a subsequent public hearing. The exact timing will depend on our ability to submit a new regulatory package to the Office of Administrative Law (OAL) and receive its approval to begin the rulemaking.

We look forward to starting this rulemaking as quickly as possible and to receiving your continued input and support during the process, which will include additional public hearings and 15-day comment periods as needed. To stay updated on this, please be sure to sign up for our listserv and visit our web page at www.calrecycle.ca.gov/Climate/Recycling/.

Once the final regulation is adopted by CalRecycle and approved by OAL, CalRecycle will provide guidance to jurisdictions and businesses in the form of frequently asked questions (FAQs), workshops, and consultations as needed. CalRecycle also will provide tools such as sample educational outreach materials developed in conjunction with the Institute for Local Government, as well as CalRecycle's Commercial Recycling Cost Calculator.

For more information, please contact CalRecycle's Mandatory Commercial Recycling Team at climatechange@calrecycle.ca.gov.

To subscribe to or unsubscribe from the Mandatory Commercial Recycling Listserv, please go to <http://www.calrecycle.ca.gov/Listservs>

REQUEST FOR APPROVAL

To: Mark Leary
Acting Director

From: Howard Levenson
Deputy Director, Materials Management and Local Assistance Division

Request Date: October 10, 2011

Decision Subject: Approval To Formally Notice Proposed Mandatory Commercial Recycling Regulation

Action By: October 10, 2011

Summary of Request:

Staff requests approval to begin the formal rulemaking process and to formally notice the proposed Mandatory Commercial Recycling Regulation, to implement new statutory requirements regarding recycling of commercial solid waste (Chapter 12.8, Statutes of 2011 [Chesbro, AB 341]).

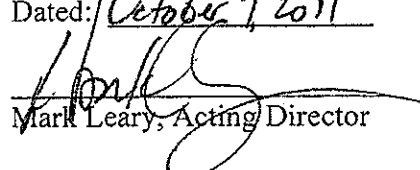
Recommendation:

Staff recommends approval of the Proposed Mandatory Commercial Recycling Regulation so that it may be forwarded to the Office of Administrative Law (OAL) and the formal rulemaking process may begin.

Action:

On the basis of the information and analysis in this Request for Approval and the background information and findings set out herein, I hereby approve the "Proposed Mandatory Commercial Recycling Regulation" and direct staff to forward the regulatory packet to the OAL so that the formal regulatory process may begin.

Dated: October 7, 2011


Mark Leary, Acting Director

Attachment: Proposed Mandatory Commercial Recycling Regulation

Background Information

Initial Rulemaking Effort Under AB 32:

Assembly Bill (AB) 32, the California Global Warming Solutions Act of 2006 (Chapter 488, Statutes of 2006) directed the Air Resources Board (ARB) to work with all agencies to reduce statewide greenhouse gas (GHG) emissions to 1990 levels by the year 2020. Approved in 2008, ARB's AB 32 Scoping Plan outlined the actions to achieve this reduction in California's GHG emissions. Within the recycling and waste management sector, the AB 32 Scoping Plan specifically identified CalRecycle as lead in developing recycling-based solutions aimed at reducing GHGs, including the Mandatory Commercial Recycling measure.

This focus on the commercial sector was based on CalRecycle's 2008 Statewide Waste Characterization data, which estimated that the commercial sector (which includes businesses, along with multi-family units not serviced on residential routes) generates over two-thirds of the solid waste in California. While significant commercial recycling already occurs, much of the commercial sector waste disposed in landfills is clean enough to be recycled. Additionally, the commercial sector is not directly subject to the requirements of the Integrated Waste Management Act of 1989 (AB 939, Sher, Chapter 1095, Statutes of 1989).

Accordingly, the goal of the Mandatory Commercial Recycling measure in the Scoping Plan was to achieve a reduction in GHG emissions of 5 million metric tons of carbon dioxide equivalents (MMT_{CO₂E}) by 2020, by diverting approximately 2 million tons of recyclable commercial solid waste from landfills. Using recycled materials lowers GHG emissions by reducing the energy requirements associated with multiple phases of product production including extraction of raw materials, preprocessing and manufacturing.

Under the Scoping Plan, CalRecycle was designated as the lead agency for developing the Mandatory Commercial Recycling (MCR) regulation, in large part because the regulation could be integrated efficiently into the existing AB 939 reporting, reviewing, and evaluation process. However, the authority to actually adopt the regulation was still vested with the ARB under its AB 32 authority. In the absence of statutory authority for CalRecycle to adopt and implement the regulation as a GHG reduction measure, CalRecycle developed a joint rulemaking and implementation plan with ARB; this ultimately was approved by CalRecycle in December 2009 (under the previous California Integrated Waste Management Board). Under this plan, CalRecycle staff, in collaboration with ARB, assumed the lead role in developing and implementing the mandatory commercial recycling regulation and ARB was to adopt the regulation through its rulemaking authority.

Beginning in March 2009, CalRecycle engaged in an informal rulemaking process to develop the regulation, including conducting eight informal stakeholder workshops in collaboration with ARB. Throughout this process CalRecycle and ARB staff met with representatives of several affected stakeholder groups in an attempt to reach consensus on outstanding issues, including:

- Definition of business
- Thresholds (e.g., multi-family)
- Transformation
- Mixed waste processing

- Rural “good faith effort”
- Franchise agreements and rights of businesses

The formal 45-day rulemaking public comment period began on September 3, 2011, and it was to run through October 19, 2011. The ARB Board then was scheduled to adopt the regulation at its October 20-21, 2011, Board meeting.

However, Assembly Bill (AB) 341 (Chapter 12.8, Statutes of 2011) was signed into law on October 6 2011, authorizing CalRecycle to implement mandatory commercial recycling. As a result, the ARB public hearing on the proposed regulation has been cancelled. Instead, at the same October 20-21 ARB meeting, CalRecycle and ARB staff will present an informational item on collaborative efforts to date, the new direction resulting from enactment of AB 341, and CalRecycle’s new plans to implement AB 341’s mandatory commercial recycling provision.

Rulemaking Effort Pursuant To AB 341:

The provisions of AB 341 regarding mandatory commercial recycling are consistent, with one major exception regarding an increase in multifamily units required to recycle, with the draft regulation previously developed by CalRecycle and ARB.

The provisions in AB 341 include:

- Require businesses (including public entities) that generate more than 4 cubic yards of commercial solid waste per week, and multifamily complexes consisting of 5 or more units), to recycle their commercial solid waste.
 - The primary difference between AB 341 and the draft regulations is that the statutory provision requires more multifamily complexes to recycle.
- Provide CalRecycle authority to implement mandatory commercial recycling, and review and enforce each jurisdiction’s implementation of education, outreach and monitoring programs.
- Require each jurisdiction to implement a program consisting of education, outreach, and monitoring, and to report on its program in its annual report to CalRecycle.

As a result, CalRecycle plans to commence its own, new rulemaking process to implement the statute; this Request For Approval requests the necessary departmental approval to formally begin this process. The new draft regulation (see Attachment) reflects the statutory provisions of AB 341, including the change in requirements regarding multifamily units, and provides additional procedural clarifications that were included in the prior CalRecycle/ARB draft regulation in response to stakeholder input at the lengthy series of public meetings described above. The draft regulation will continue to focus on flexibility for businesses and jurisdictions and maintain the parallel AB 939 program implementation and annual reporting by local jurisdictions.

In addition, CalRecycle expects that implementation of this regulation will increase the availability of recyclable materials, provide increased feedstock for recycled-content product manufacturers, and expand the opportunity for additional recycling manufacturing facilities and

associated job creation in California. From a GHG emissions standpoint, expanding and/or developing new recycling manufacturing infrastructure in California makes sense because most emission reductions occur at the point of remanufacturing and not at the origin of recycling. While some materials collected in California remain in the state for remanufacturing, the majority of the recycled materials are shipped to other parts of the United States or to global markets. CalRecycle will continue to work with ARB and other agencies on efforts to provide incentives for the enhancement of in-state recycling manufacturing.

Since the draft regulation is similar to the prior CalRecycle/ARB draft and is based on extensive stakeholder input received at the eight public workshops and numerous stakeholder meetings over the past two years, staff recommends that CalRecycle initiate the formal rulemaking with a 45-day comment period upon approval of this request.

Regulatory Timeline

The exact timing of this rulemaking will depend on when CalRecycle is able to finalize and submit a new regulatory package to the Office of Administrative Law (OAL) and receive OAL's approval to begin the rulemaking. CalRecycle staff anticipates that the formal rulemaking process will begin in November 2011. The law requires that affected businesses and jurisdictions begin implementation of the programs July 1, 2012.

Following is the tentative timeline for the rulemaking:

- Late November 2011: Start 45-day comment period, extending through January 2012.
- Mid-January 2012, Public Hearing: CalRecycle will hold a public hearing on the proposed regulation.
- February –March 2012: 15-day Public Comment Period if needed in response to written comments submitted to CalRecycle during the formal 45-day comment period.
- March 2012 Public Meeting: The finalized proposed regulations will be presented at the CalRecycle public meeting.

Public Outreach and Implementation after Adoption of the Regulation:

Once the regulations are finally adopted by CalRecycle and approved by OAL, CalRecycle will continue to provide technical assistance to local jurisdictions and businesses in the form of regional workshops, model ordinances and contracts, decision making tools, frequently asked questions, and other resources. CalRecycle will also partner with statewide business organizations, such as the California Chamber of Commerce, California Apartment Association, California Realtors Association, and California Manufacturers and Technology Association to ensure the business and multifamily community is aware of the new state law to recycle.

Additionally, CalRecycle will promote the following tools:

- Commercial Recycling Climate Calculator
- Facility Information Toolbox Project
- Institute for Local Government sample ordinance and associated outreach material

As new programs and tools are developed, they will be incorporated into the aforementioned education and outreach materials. CalRecycle is also in the process of compiling these and other

related resources into a general business assistance web portal. This resource is anticipated to be completed by spring 2012.

Attachment – Proposed Draft Regulation to Require Commercial Businesses to Recycle

DRAFT PROPOSED REGULATORY TEXT

MANDATORY COMMERCIAL RECYCLING

TITLE 14.

DIVISION 7.

CHAPTER 9.4.

MANDATORY COMMERCIAL RECYCLING

§18835. Purpose.

This Chapter implements the Mandatory Commercial Recycling regulation pursuant to §42649 of the Public Resources 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.

§18836. Definitions.

- (a) The following definitions shall govern the provisions of this Chapter.
- (1) "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), industrial facility, 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 Chapter,

"business" also includes a multi-family residential dwelling of five units or more, regardless of the amount of commercial solid waste generated.

- (2) "Commercial solid waste" means all types of solid waste, including recyclable materials that are discarded from businesses as defined in subdivision (1), but does not include waste from single family residences or multifamily units of less than 5 units.
- (3) "Franchise" means any agreement between a jurisdiction and a hauler for transporting commercial solid waste.
- (4) "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.
- (5) "Mixed Waste Processing" means processing solid waste that contains both recyclable and/or compostable materials and trash.
- (6) "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.
- (7) "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.

§18837. Mandatory recycling of commercial solid waste by businesses.

- (a) On and after July 1, 2012, a business shall take at least one of the following actions in order to reuse, recycle, compost, or otherwise divert commercial solid waste from disposal:
 - (1) Source separating recyclable and/or compostable materials from the solid waste they are discarding and either self-hauling, subscribing to a hauler, and/or otherwise arranging for the pick-up of, the recyclable and/or compostable materials separately from the solid waste to divert them from disposal.
 - (2) Subscribing to a service that includes mixed waste processing alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials from disposal, and yielding diversion results comparable to source separation.

- (b) To comply with §18837(a), property owners of commercial or multi-family complexes may require tenants to source separate their recyclable materials. Tenants must source separate their recyclable materials if required to by property owners of commercial or 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 §18837(a) shall be consistent with local requirements, including, but not limited to, a local ordinance, policy, contract or agreement applicable to the collection, handling or recycling of solid waste.
- (d) Except as expressly set forth in §18837(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 Subsection does not modify or abrogate in any manner any of the following:
 - (1) A franchise granted or extended by a city, county, city and 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; or
 - (3) 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.

§18838. Implementation of commercial recycling program by jurisdictions.

- (a) Effective July 1, 2012, whether or not the jurisdiction has met the requirements of Section 41780, each jurisdiction shall implement a commercial recycling program appropriate for that jurisdiction which is designed to divert commercial solid waste generated by businesses and that consists of the following components:
 - (1) The commercial recycling program shall include education and outreach to businesses. 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.

- (2) The commercial recycling program shall include identification and monitoring of businesses to assess if they are complying with §18837(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.
- (b) 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 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.
 - (c) When adopting its commercial recycling ordinance, policy, or program, a jurisdiction may also, but is not required to, consider the following:
 - (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.
 - (2) Building design standards that specify space requirements for storage of recyclables or other purposes that may assist the compliance of businesses with the program;
 - (3) Exemptions deemed appropriate by the jurisdiction such as, but not limited to, zoning requirements, lack of sufficient space in multi-family complexes to provide additional recycling bins, 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.
 - (4) Certification requirements for self-haulers which may include, but are not limited to, requiring businesses, 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.
 - (d) The commercial recycling program shall apply to businesses, but may also apply to any other commercial entity identified by the jurisdiction as being a source of commercial solid waste.
 - (e) A jurisdiction may 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 non-hazardous construction and demolition.

- (f) If, prior to July 1, 2012, a jurisdiction has implemented a commercial recycling program that meets all requirements of this Chapter, as determined by CalRecycle pursuant to §18839, the jurisdiction will not be required to implement a new or expanded program.
- (g) If, in order to satisfy the requirements of this Chapter, 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.
- (h) The jurisdiction shall include the addition or expansion of a commercial recycling program in its Annual Report required by §41821, et seq. of the Public Resources Code. Each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, identification and monitoring, and, if applicable, enforcement efforts, and the rationale for allowing exemptions, by providing updates in its Annual Report.

§18839. CalRecycle Review

- (a) Commencing August 1, 2013, CalRecycle shall review a jurisdiction's compliance with §18838 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) 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 have complied with §18837(a), including information on the amount of solid waste that is being diverted from disposal by 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, the role of that facility in the jurisdiction's overall waste diversion and recycling system, and all information, methods, and calculations, and any additional performance

data, as requested and collected by CalRecycle from the material recovery facilities operators pursuant to 14 California Code of Regulations §18809.4;

- (3) The extent to which the jurisdiction is conducting education and outreach to businesses);
 - (4) The extent to which the jurisdiction is monitoring businesses 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, the small geographic size, low population density or distance to markets.
- (c) 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 §18838, 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.
- (d) 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.