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June 30, 2010

Ms. Margo Reid Brown, Director
California Department of Resources
Recycling and Recovery (CalRecycle)
801 K Street, MS, 19-01
Sacramento, CA 95814

Dear Ms. Brown:

COMMENTS REGARDING PROPOSED DRAFT MANDATORY COMMERCIAL RECYCLING DRAFT REGULATIONS TO REDUCE GREENHOUSE GAS EMISSION

On behalf of the Los Angeles County Integrated Waste Management Task Force (Task Force), we appreciate the opportunity to comment on the Department of Resources Recycling and Recovery's (CalRecycle) proposed draft regulations for mandatory commercial recycling discussed at its June 16, 2010, Workshop. Mr. Mike Mohajer of the Task Force attended the workshop and provided limited comments due to time constraints. The Task Force would like to offer the following for your strong consideration, separated under General Comments regarding the overall proposal, and Specific Comments regarding particular documents/sections of the proposed draft regulations.

GENERAL COMMENTS

1. CalRecycle does not have statutory authority to impose the proposed mandatory commercial recycling regulations

The Task Force remains concerned that CalRecycle is proceeding with development of the proposed regulations without identifying the statutory authority upon which these regulations are based. This concern is reinforced by the fact that legislation has been introduced to mandate commercial recycling in California and is currently pending in the legislature. Given that this legislation has yet to be enacted, we believe these regulations are premature.

2. Adopting mandatory commercial recycling does not make sense at this time due to lack of markets for recyclables

The mandatory commercial recycling regulations would result in an increase in the amount of recyclables collected without addressing the need for markets that make use of the recyclables collected. Since the current global economic downturn has resulted in less demand for recycled materials, collecting more materials may further weaken the value of these commodities. It is therefore critical from an economic and environmental standpoint, as well as to make a positive impact on climate change, to establish in-State markets for recyclable materials.

Prior to mandating additional recycling, it is imperative that the State take a lead role in the development of such in-State markets and infrastructure. Working with local jurisdictions, the State can help create strong statewide and regional markets by providing economic incentives and assistance to innovative businesses.

3. Greenhouse gas reduction estimate is unsubstantiated

The Assembly Bill 32 (AB 32) scoping plan hopes to achieve a reduction of 5 million metric tons of CO₂ equivalent (MMTCO₂e) through this regulation. However, this emission reduction estimate has not been substantiated. The Task Force has consistently raised concerns regarding how these greenhouse gas (GHG) reductions will be achieved and quantified.

Currently, the majority of California recyclables are shipped overseas for processing in facilities that do not operate under the same environmental standards we have in California. Not only do these foreign facilities produce large amounts of GHG and toxic emissions, but the working standards in those facilities can be very dangerous to workers. Even when materials are shipped to facilities in the U.S., there are additional environmental impacts associated with the transport and processing of the materials in these facilities such as the generation of dioxins and furans by the aluminum recycling industry. As such, the Task Force does not support adoption of the proposed mandatory commercial recycling regulations. Also, the Task Force does not support counting GHG reductions from materials collected through mandatory commercial recycling if they are sent to a facility outside of California and/or outside of the U.S. unless the facility is developed and operated in a manner that is as protective of the human health and safety and the environment as a similar facility located in California.

The above concerns are validated by CalRecycle's draft Life Cycle Assessment and Economic Analysis of Organic Waste Management and Greenhouse Gas Reduction options, which states, "...data characterizing the energy and emissions for manufacturing operations in East Asia is not available."

4. Mandatory commercial recycling is an unfunded mandate for local governments

Statewide mandatory commercial recycling regulations would place a significant unfunded mandate on local governments at a time when every city and county in California is facing record budget shortfalls.

No provisions have been incorporated that would offer a waiver to jurisdictions facing budget shortfalls or that would have the State provide those jurisdictions with financial assistance. The Task Force's concerns are consistent with those of Governor Schwarzenegger who has not supported the imposition of mandatory commercial recycling given the cost that will be passed down to local governments, businesses, and residents. Last year, in his veto message of Assembly Bill 473 — Multifamily Recycling, Governor Schwarzenegger made the following statement regarding Statewide mandatory recycling: "I support efforts to reduce the amount of solid waste going to the state's landfills. However, this bill could place costly requirements directly on the owner/operators of multifamily dwellings. It is problematic for the State to be engaged in this activity when local governments already have the authority to mandate the action envisioned by this bill."

5. Need for assessment of environmental impacts that may result from these regulations

The Task Force would like clarification as to whether this current mandatory commercial recycling proposal is subject to CEQA, and if so, whether the State has completed the appropriate environmental documentation.

SPECIFIC COMMENTS

Notwithstanding the above general comments, we offer the following specific comments on the proposed regulations:

Comments on Attachment 2—Proposed Draft Regulations

- **Subsection 9XXX1(b)(5)** – “Commercial solid waste.” Please expand on the proposed definition to specifically indicate that “commercial solid waste” does not include multifamily residential dwellings of four units or less.
- **Subsection 9XXX1(b)(6)** – “Diversion or divert.” The proposed definition specifically disallows transformation as “diversion.” This is contrary to State law, Section 41783 of the California Public Resource Code, which provides 10 percent diversion credit. Additionally, the proposed definition is further uncalled for since the goal of the proposed regulations is to reduce GHG emissions. As substantiated by the California Air Resources Board, CalRecycle, State Bioenergy Interagency Working Group, and University of California at Riverside, conversion technologies significantly reduce GHG emissions as compared to landfilling. Additionally, as indicated by CalRecycle, the existing waste-to-energy facilities have also benefited the State in reducing GHG emissions. Therefore, the proposed definition needs to be revised by deleting the phrase, “but for the purpose of this Articles does not include transformation, as defined in Public Resources Code Section 40201,” from the end of the proposed Subsection.
- **Subsection 9XXX1(b)(8)** – “Franchise.” The proposed definition needs to be modified to limit its applicability to “commercial solid waste” as defined in Subsection 9XXX1(b)(5).
- **Subsection 9XXX1(b)(12)** – “Recycle or Recycling.” Please see comments on Subsection 9XXX1(b)(6) and delete the statement “Recycling does not include transformation as defined in Public Resources Code Section 40201.”
- **Subsection 9XXX1(b)(9)** - Defines “hauler” as “**any person or commercial 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” (emphasis added). Since certain public agencies collect their own trash, it would be important to clarify whether the proposed definition of hauler applies to public agencies or only private haulers.
- **Subsection 9XXX2(a)(1)** – “**Source separating recyclable materials from the solid waste they are discarding...**” (emphasis added). As defined in Subdivision 9XXX1(b)(5) of the draft regulations, “commercial solid waste” applies to businesses and multi-family residential dwellings consisting of five units or more, but the term “solid waste” does not apply to businesses, as

defined, that generate less than four cubic yards of “commercial solid waste” and recyclables per week as well as multi-family residential dwellings consisting of four units or less. The proposed draft regulations use the terms “solid waste” and “commercial solid waste” interchangeably throughout the document. To avoid confusion, a single term needs to be used throughout the document.

- **Subsection 9XXX2(d)(1) and (2)** – The provisions of the proposed Paragraphs (1) and (2) need to be revised to be consistent with the definition indicated in Subsection 9XXX1(b)(8).
- **Subsection 9XXX3(a)** – The proposed regulations require that “Effective July 1, 2012, each jurisdiction shall implement a commercial recycling program which diverts solid waste generated by businesses as defined....” This would require each jurisdiction to verify whether each business [private and possibly public (including but not limited to local, regional, state and federal agencies, school districts, colleges and universities, etc.)] and each multi-family residential dwelling consisting of five units or more is in compliance with the proposed regulations. The result would be that jurisdictions would have to take responsibility for enforcement of the mandate. This will result in a significant unfunded mandate on local governments at a time when cities and counties in California are facing record budget shortfalls. To date, the Task Force has not seen any language that would offer a waiver to jurisdictions facing budget shortfalls, and/or provide local governments with the necessary resources to implement this proposed unfunded State mandate.
- **Subsection 9XXX3(d)** – The provisions of this Subsection further substantiate CalRecycle’s intent, through its Enforcement Policy, to require jurisdictions to either implement a new or expand an existing commercial recycling program without any legislative authority.
- **Subsection 9XXX3(e)** – The provisions of the Subsection need to be revised to be consistent with the “Franchise” definition as listed in Subsection 9XXX1(b)(8).
- **Subsection 9XXX3(g)** – The proposal requires each jurisdiction to develop and implement education and outreach components within their mandatory commercial recycling program. This is an additional unfunded state mandate unless CalRecycle is willing to pay for the cost of development and implementation of the education and outreach program.
- **Subsection 9XXX3(h)** – The proposal mandates each jurisdiction to **identify and monitor** each business [private and possibly public (including local, regional, state, federal agencies, school districts, etc.) and multi-family residential

dwellings consisting of five units and more] to **assess if each entity subscribes to recycling services and participates in recycling services** (emphasis added). Implementation of the proposed mandate exposes each jurisdiction, especially in urbanized areas, to a significant expenditure as well as requiring a significant number of additional staffing and other resources. Further, the proposal also fails to recognize that many jurisdictions operate their commercial waste collection and recycling services under an open market system, which would cause additional burden on such jurisdictions.

Failure of a jurisdiction to implement the above mandate may subject the jurisdiction to a daily penalty of \$10,000 and/or significantly higher amount pursuant to the proposed Sections 9XXX4 and 9XXX5, respectively. As such, it is imperative for CalRecycle to thoroughly analyze and evaluate the impact of the proposal before imposing such a mandate on local governments.

- **Subsection 9XXX3(i)** – last paragraph on Page 8, and **(j)**, first paragraph on Page 9, need to be renumbered to (j) and (k), respectively.
- **Subsection 9XXX4(b)** – The proposal indicates that “**CalRecycle may also review whether a jurisdiction is in compliance with Section 9XXX3 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.**” (emphasis added). The Task Force questions the need for such an open-ended requirement. The proposal must either be deleted or CalRecycle must establish a standardized process for auditing jurisdictions, rather than making jurisdictions subject to additional scrutiny “at any time” on the basis that CalRecycle receives “information”, the source of which can be undefined and/or unverified.
- **Subsection 9XXX4(c)(1)** – The proposal requires each jurisdiction to quantify the amount of disposal that is diverted from businesses, as defined, as well as the number of businesses within the jurisdiction that are subscribing to mandatory commercial recycling. The Task Force questions the need for the said information unless CalRecycle is intending to implement a mathematical compliance system similar to the one that was eliminated by SB 1016 (2008).
- **Subsection 9XXX4(c)** – The proposal states that CalRecycle will evaluate whether a jurisdiction is implementing the commercial recycling program in part based on “the extent to which the businesses, as defined in §9XXX1(4), have subscribed to recycling services” and “the extent to which the jurisdiction is monitoring businesses, as defined in §9XXX1(4), and notifying those businesses that are out of compliance.” Not all jurisdictions in the State have a mechanism for verifying which businesses are subject to the proposed regulations or

verifying whether those businesses are complying with the mandate. Establishing such mechanisms will be a costly and time consuming burden on local governments and aggravates the nature of this unfunded mandate on local governments.

Further, the proposal provides that **“A jurisdictions’ failure to implement its commercial recycling plan may be a sufficient basis for issuance of a compliance order pursuant to Public Resource Code Section 41825, even if the jurisdiction has met its 50% per capita equivalent disposal target.”** We believe it is inappropriate to tie compliance with this regulation to an unrelated existing statute (AB 939, as amended; PRC Section 40000 et. seq.) since CalRecycle has claimed that the authority for implementation of these regulations relies on the adoption of the AB 32 Scoping Plan and is not tied to the diversion requirements of AB 939. Therefore, all references to the 50% diversion requirement should be removed.

- **Subsection 9XXX4(f)** – The proposal states that “Pursuant to Public Resources Code §41850, CalRecycle shall hold a hearing to determine whether the jurisdiction has complied with the terms of the compliance order... [and] **may impose administrative civil penalties upon the jurisdiction of up to ten thousand dollars (\$10,000.00) per day** until the jurisdiction implements the program....” As discussed above, the authority to implement these regulations is independent of PRC 41850. Therefore, it is inappropriate to make jurisdictions subject to this potential fine of up to \$10,000 per day in relation to the proposed regulations. In addition, this potential fine seems excessive when coupled with the California Air Resources Board’s authority to impose daily fines of several thousand of dollars for failure to implement AB 32.

Pursuant to Chapter 3.67 of the Los Angeles County Code and the California Integrated Waste Management Act of 1989 (Assembly Bill 939, as amended), the Task Force is responsible for coordinating the development of all major solid waste planning documents prepared for the County of Los Angeles and the 88 cities in Los Angeles County with a combined population in excess of ten million. Consistent with these responsibilities and to ensure a coordinated and cost-effective and environmentally sound solid waste management system in Los Angeles County, the Task Force also addresses issues impacting the system on a countywide basis. The Task Force membership includes representatives of the League of California Cities-Los Angeles County Division, County of Los Angeles Board of Supervisors, City of Los Angeles, waste management industry, environmental groups, the public, and a number of other governmental agencies.

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We would appreciate your prompt response to our concerns and look forward to working constructively with CalRecycle on this and other pressing issues. If you have any questions, please contact Mr. Mike Mohajer of the Task Force at (909) 592-1147.

Sincerely,



Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Management Committee/
Integrated Waste management Task Force and
Council Member, City of Rosemead

PGT/RG:ts

cc: CalRecycle (Mark Leary, Howard Levenson, Cara Morgan, Brenda Smyth)
Lester A. Snow, Secretary, California Natural Resources Agency
Office of Administrative Law
League of California Cities
League of California Cities, Los Angeles County Division
California State Association of Counties
Each Member of the County of Los Angeles Board of Supervisors
Each City Mayor and City Manager in the County of Los Angeles
South Bay Cities Council of Governments
San Gabriel Valley Council of Governments
Gateway Cities Counsel of Governments
South California Association of Governments
Los Angeles County Department of Public Works (Pat Proano)
Each City Recycling Coordinator in Los Angeles County
Each Member of the Los Angeles County Integrated Waste Management Task Force
Each Member of the Task Force Alternative Technologies Advisory Committee