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December 7, 2011

Ms. Teri Wion

Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025, MS – 13A
Sacramento, CA 95812-4025

Dear Ms. Wion:

COMMENTS REGARDING A PROPOSED DRAFT REGULATION TO REQUIRE COMMERCIAL BUSINESSES TO RECYCLE

The Los Angeles County Integrated Waste Management Task Force (Task Force) appreciates the opportunity to review and comment on the Department of Resources Recycling and Recovery's (CalRecycle's) proposed draft mandatory commercial recycling (MCR) regulations released for the initial 45-day comment period on October 28, 2011. The following is offered:

§18836. Definitions.

- **§18836(a)(1) – Business** – Pursuant to Section 42649.1 (b) of the Public Resources Code (PRC) and Sections 17225.12 & 17225.35 of Title 14 of the California Code of Regulations (CCR), the proposed definition *should* exclude the “industry facility”/industrial facilities as further discussed in the Subdivision (a)(2)'s comments.
- **§18836(a)(2) – Commercial Solid Waste** – The proposed regulations define “Commercial solid waste” as “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.” The proposed definition is inconsistent with the one called for by the AB 341 [PRC 42649.1 (b)], which defines “Commercial solid waste” as having “the same meaning as defined in Section 17225.12 of Title 14 of the California Code of Regulations.” Section 17225.12 of Title 14 of the CCR defines “Commercial Solid Wastes” to “*include all types of solid wastes generated by stores, offices and other commercial sources, excluding residences, and **excluding industrial wastes***” (emphasis added). Further, Section 17225.35 of Title 14 of the CCR defines “Industrial Wastes” to “include all types of solid wastes and semi-solid waste which result from industrial processes and manufacturing operations.”

Based on the foregoing, clearly there is an inconsistency between the proposed definition and the one specified by AB 341. To eliminate this inconsistency, the proposed definition needs to be revised to read as follows: “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, **and excludes waste generated from industrial processes and manufacturing operations**” (addition).

- **§18836(a)(5) – Mixed Waste Processing** – The proposal defines “Mixed Waste Processing” to mean “processing solid waste that contains both recyclable and/or compostable materials and trash.” The term “processing” needs to be defined. Is “processing” limited only to physical separation of waste materials or does it include chemical, biological, or any combination of these processes?
- **§18836(a)(7) – Source Separating or Source Separation** – The proposed regulations define “Source Separation” to mean “the process of removing recyclable materials from solid waste at the place of generation....” Does the process include removal of **all** or **some** of the recyclable materials, or is it limited only to those materials listed in the jurisdiction’s **Source Reduction and Recycling Element**, the local agency’s **recycling ordinance**, or other **undefined programs**? This issue needs to be addressed by the proposed regulations. Further, the proposed definition should be expanded to include “compostable materials”.

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

- **§18837(a)(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.”

This section’s program requirement is self-contradictory since mixed waste processing does not yield diversion results that are comparable to source separation. Moreover, there is no baseline to compare the results of mix waste processing alone or in combination with other programs, activities, or processes to that of source separation. Since local jurisdictions are being held responsible for enforcement of the program by the proposed regulations, then the proposal must clearly define how to do so. Additionally, jurisdictions cannot be penalized if this concern is not appropriately addressed by the proposed regulations [see Section 18839 and Subdivisions 42649.3 (g), (h) and (i) of the PRC].

- **§18837(e)(3)** – Pursuant to Subdivision 41783 (a) (2) of the PRC, the last word in this paragraph needs to be revised from “possible” to “feasible.”

§18838. Implementation of commercial recycling program by jurisdictions.

As provided by Subsection 18836(a)(1) and Section 18839 of the proposed regulations and pursuant to Subdivisions 42649.3 (g), (h), and (i), the proposed regulations must clearly recognize that a jurisdiction has no means to enforce the requirements of this Section on public entities including, but not limited to, federal, state, and regional governments, school districts, state colleges, and universities, etc. This limitation must be recognized by the proposed regulations.

§ 18839. CalRecycle Review

- This Section needs to be expanded to include appropriate provisions to address the comments/concerns listed under Subdivision 18837(a)(2) and Section 18838.
- Subdivision 18839(b)(2) – The term “materials recovery facilities” needs to be defined. Further, the proposed regulations need to specifically define the difference between a “mixed waste processing facility” and a “material recovery facility.”
- Subdivision 18839(b)(5) – Expand to include the availability of composting facilities and markets for compost.
- Pursuant to Subdivision 42649.3 (h) of the PRC, CalRecycle “may also review whether a jurisdiction is in compliance with this section at any time that the department receives information that a jurisdiction has not implemented, or is not making a good faith effort to implement, a commercial recycling program.” The proposed regulations need to address the process or processes that may be used by CalRecycle to verify the accuracy of the “information” received prior to subjecting the jurisdiction to additional tasks.

Pursuant to the California Integrated Waste Management Act of 1989 (Assembly Bill 939, as amended) and Chapter 3.67 of the Los Angeles County Code, 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, 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-

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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

Thank you for the consideration of our comments. We look forward to continue working constructively with CalRecycle on this and other related issues. If you have any questions, please contact Mr. Mike Mohajer of the Task Force at MikeMohajer@yahoo.com or (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

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cc: CalRecycle (Caroll Mortenson, Mark E. Leary, Cara Morgan, Brenda Smyth)
California State Association of Counties
League of California Cities
League of California Cities, Los Angeles County Division
Contract Cities Association
Independent Cities Association
Municipal Management Assistants of Southern California
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
Each City Recycling Coordinator in Los Angeles County
Each Member of the Los Angeles County Integrated Waste Management Task Force