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LOS ANGELES COUNTY
SOLID WASTE MANAGEMENT COMMITTEE/
INTEGRATED WASTE MANAGEMENT TASK FORCE
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May 5, 2011

Mr. John Laird, Secretary
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Dear Mr. Laird:

**APRIL 14, 2011, ENVIRONMENTAL COALITION LETTER REGARDING
CALRECYCLE REGULATORY DETERMINATION FOR THE PLASCO SALINAS
VALLEY PROJECT**

The Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force) respectfully requests that you stand by the California Department of Resources Recycling and Recovery's (CalRecycle) November 23, 2010, regulatory determination that the Plasco Salinas Valley proposed project meets the definition of "gasification" under Public Resources Code 40117, and likewise, the electricity produced by this project would be considered a renewable resource under the Renewable Portfolio Standard. It is within the responsibilities of CalRecycle and the California Energy Commission (CEC) to make reasonable and appropriate interpretations of legislative intent.

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, 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.

In 2002, as a result of the efforts of the County of Los Angeles, the League of California Cities, the California State Association of Counties, and other interested stakeholders, the State Legislature enacted Assembly Bill 2770 (AB 2770 - Matthews). AB 2770 defined the term "gasification" and removed this technology from the umbrella of "transformation" thus removing from it the apparent stigma of being considered "incineration." AB 2770 also provided CalRecycle, the former California Integrated Waste Management Board on which you served, an appropriation of \$1.5 million dollars to evaluate conversion technologies and to report to the Governor and Legislature on its findings. The legislation required CalRecycle to evaluate conversion technologies including an evaluation of the life-cycle environmental and public health impacts in comparison to incineration and landfilling of solid waste, the technical performance characteristics of each technology, and the identification of the cleanest conversion technologies. In preparing their report, CalRecycle also subjected its findings to an external scientific peer review process and consulted with the State Energy Resources Conservation and Development Commission and other state, federal, or international governmental agencies.

CalRecycle found that conversion technologies, including gasification, offer better solutions to landfilling and incineration and would have no negative impact on recycling and compost markets. They recommended that the definition of gasification in statute be revised to be more scientifically accurate (a strict, narrow reading of the statutory language would mean a standard that is impossible to meet in real life conditions) and that the definition of transformation be replaced with a definition for combustion, which would more correctly describe the waste-to-energy process. Thus, CalRecycle's November 23, 2010, regulatory determination, which requires the subject project to meet all applicable state, federal, regional, and local regulatory standards, is appropriate within its regulatory authority and consistent with its findings and the intent of AB 2770 (2002).

In a letter dated April 14, 2011 (copy enclosed), a coalition of 13 advocacy organizations challenged the regulatory determination of CalRecycle regarding the proposed Plasco Salinas Valley Project and requested that you insist CalRecycle *rescind* the determination provided to this project. Additionally, Kip Lipper, Special Advisor to Senate President pro Tem Darrell Steinberg, made a similar request to members of the Governor's Administration in his e-mail dated March 30, 2011 (copy enclosed).

Plasco's technology uses a non-combustion thermal process to convert post-recycled solid waste to a clean-burning fuel for the purpose of generating electricity. The coalition's letter makes unsubstantiated claims regarding gasification facilities, such as the proposed Plasco facility, without providing scientific evidence backing up their claims. They fail to mention that these processes can easily meet and exceed federal emissions standards. Studies conducted by CalRecycle, the Air Resources Board, the CEC, University of California, and the County of Los Angeles have confirmed this fact.

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Based on the results of CalRecycle's study, findings by California Universities, the CEC, Air Resources Board, and the scientifically justified conclusions of other stakeholders, existing regulatory requirements including the California Environmental Quality Act, the only correct and unbiased decision for you is to support and uphold CalRecycle's decision regarding the Plasco Salinas Valley facility.

The Task Force is supportive of the Plasco Salinas Valley project because it provides an innovative alternative to landfill disposal and a way to locally produce renewable energy and create jobs. This support is predicated on the project's compliance with all applicable federal, state, regional, and local regulatory requirements. The letter provided by CalRecycle was the basis for substantial investment by Plasco and other companies in developing renewable energy projects in California. Retroactively rescinding the letter would create a climate of fear that would strongly discourage investment in our State by all manner of renewable energy companies, who already view California's regulatory environment as difficult to navigate.

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The Task Force requests that you affirm CalRecycle's determination. Should you or a member of your staff has any question regarding this matter, please contact Mr. Mike Mohajer of the Task Force at (909) 592-1147.

Sincerely,

Margaret Clark

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

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Enc:

cc: Senate President pro Tem Darrell Steinberg
Kip Lipper, Chief Policy Advisor to Senate President Pro Tem Steinberg
Dr. Robert B. Weisenmiller, Chair, California Energy Commission
Commissioners, California Energy Commission
Mark Leary, Acting Director, CalRecycle
CalRecycle (Elliot Block, Howard Levenson, Mark de Bie, Jacques Franco)
Julia Levin, Deputy Secretary for Climate Change, Resources Agency
Cliff Rechtschaffen, Office of Governor Jerry Brown
Ken Alex, Office of Governor Jerry Brown
Gareth Elliot, Legislative Affairs Secretary, Office of Governor Jerry Brown
Each Member of the County of Los Angeles Board of Supervisors
Each City Mayor and City Manager in the County of Los Angeles
California State Association of Counties
League of California Cities
League of California Cities, Los Angeles County Division
Southern California Association of Governments
San Gabriel Valley Council of Governments
South Bay Cities Council of Governments
Gateway Cities Council of Governments
Each Member of the Los Angeles County Integrated Waste Management Task Force
Each Member of the Alternative Technology Advisory Subcommittee

**Breathe California
California Resource Recovery Association
Californians Against Waste
Center for Biological Diversity
Center for Energy Efficiency and Renewable Technologies
Clean Power Campaign
Global Alliance for Incinerator Alternatives
Greenaction for Health and Environmental Justice
Natural Resources Defense Council
Northern California Recycling Association
Planning and Conservation League
Sierra Club California
Union of Concerned Scientists**

April 14, 2011

Secretary John Laird
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: CalRecycle violation of state law on gasification

Dear Secretary Laird,

We are writing to urge the Natural Resources Agency and CalRecycle to rescind CalRecycle's November 23, 2010 letter on the regulatory status of the proposed Plasco Salinas Valley project and issue a new letter clarifying that CalRecycle will interpret the PRC 40117 accurately, as described below. Further and equally as important, we request that the Natural Resources Agency and CalRecycle urge the California Energy Commission (CEC) to rescind its Renewables Portfolio Standard (RPS) eligibility pre-certification for this facility.

As you know, while over the last decade there have been a number of failed attempts in the legislature to weaken California's strong regulations on gasification, the legislature has upheld these protections for California's natural resources. Nevertheless, CalRecycle recently sent a letter, inconsistent with statute and not supported by the evidence, stating that a proposed waste-to-energy facility in Salinas meets the definition of "gasification," despite the fact that the proposed facility would not meet the environmental protections that were intentionally included in the definition of gasification and solid waste conversion when these definitions were drafted by the legislature. This interpretation of the definition of gasification is clearly contradictory to the letter and spirit of the statute and needs to be withdrawn posthaste.

The letter from CalRecycle to Plasco Energy Group, dated November 23, 2010, indicates that a determination was made that a proposed municipal solid waste gasification facility in the Salinas Valley Solid Waste Authority (SVWMA) in Monterey County would meet the definition of gasification, found in Public Resource Code 40117. *Remarkably, the letter substantively changed sections of PRC 40117:*

1. Section B of the definition states "The technology produces no discharges of air contaminants or emissions, including greenhouse gases, as defined in subdivision (g) of Section 42801.1 of the Health and Safety Code." However, CalRecycle's letter interprets this language as "produces no air, water, or hazardous discharges **in excess of**

standards.” (emphasis added) This is markedly different from PRC 40117, and while the code is clear about “no emissions,” CalRecycle’s interpretation is not only weaker but vague about “standards,” and ignores and violates the actual language of the law.

2. Section E of the definition states “To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner and operator of the facility certifies that those materials will be recycled and composted.” In contrast, CalRecycle’s interpretation of this language is that rather than the “technology” removing recyclable and compostable material, the “processing” removes recyclables. In addition the letter goes on to say that rather than actually removing recyclables or compostables, the existing curbside recycling programs are adequate.
3. The opening of PRC 40117 states “Gasification means a technology that uses a noncombustion thermal process to convert solid waste to a clean burning fuel for the purpose of generating electricity...” CalRecycle’s letter includes excerpts from Plasco documents describing the following: “Syngas from the storage tank will flow to 2 MW General Electric (GE) Jenbacher Gas Engine Generators.” Burning the gas in a generator is a combustion process. It appears that CalRecycle, for reasons that are not clear to us, is not considering this combustion to be a step in the process. It would be contradictory to consider, as CalRecycle apparently does, that this step in the process, which happens at the same site, is not part of the technology, while existing curbside collection programs (which are neither on site, nor under the supervision of the facility) are classified as close enough to the project to qualify the “technology” as removing all recyclable materials and marketable green waste compostable materials. Moreover, nothing in the project description indicates that the technology does not use at least some combustion in the actual gasification process.

Based on the determination in this letter, the CEC issued a pre-certification of a proposed facility for RPS eligibility on January 18, 2011, even though, based on the language in the RPS code (PUC 399.12 (c)(2) and PRC 25741 (b)(3)), these facilities would not meet the requirements to be considered RPS-eligible. If this were allowed to stand, we would expect to see many more proposals for pre-qualifying for RPS eligibility based on a grossly incorrect analysis of the law that would not likely withstand legal scrutiny. We see this effort by the CEC as a significant misinterpretation of the RPS code in PRC 25741 (b)(3) which has the same definition as PRC 40117 referred to above. The financing and development of facilities based on the assumption that they would qualify for state subsidies or RPS eligibility for which they are not genuinely eligible would undermine California’s recycling, composting and waste prevention goals and cause pollution, especially in environmental justice communities, among other consequences. Furthermore, providing CEC pre-qualification without clear statutory backing will likely create questions and uncertainty among those looking to invest in this type of technology.

CalRecycle’s letter and the CEC’s RPS pre-certification that followed appear to provide inappropriate official state support for this project and others like it. Whatever the potential for this technology in the future, the project is opposed by community members in the proposed host community of Gonzales and in the jurisdictions in the SVWMA. Plasco has had dozens of emissions exceedances at its test facility near Ottawa, Canada, among other operating setbacks. Furthermore, Ontario, the province in which the facility is located, does not consider this technology as a renewable technology under their overall renewables program.

Gasification, pyrolysis, and plasma are staged incinerators. The incineration process happens in two stages: in the first stage, materials are heated to produce gases, and in the second stage the gases are combusted, releasing emissions, including toxic contaminants, into the air. While this technology may indeed be different in some manner than the more traditional burning of solid waste, it is clear that gasification, pyrolysis and plasma are types of incineration. This is further evidenced by the fact that they are already considered incineration by the European Union.

These types of facilities have risks for California, including:

Toxic Emissions: High-heat conversion technologies have been shown to release dioxins, mercury, lead, carbon dioxide, and other harmful pollutants into the air, soil and water. Studies have shown dioxins created in plasmaⁱ, pyrolysisⁱⁱ and gasificationⁱⁱⁱ incinerators.

Environmental justice: Proposals for gasification, pyrolysis and plasma facilities, like older incinerators and landfills, have predominantly been in low income, communities of color, and new proposals would doubtlessly result in more polluting facilities in communities of color and low income communities.

Undermining recycling, composting and waste prevention: Recycling is a robust industrial sector and provides 85,000 Californian jobs. New waste disposal facilities would threaten some of these recycling industries by undermining our commitment to waste prevention, recycling and composting and subsidizing waste disposal technologies that squanders California's resources.

Undermining job creation potential of recycling: These facilities need the same materials that many communities currently recycle. The statewide job growth potential for higher recycling is significant, but gasification and related technologies provide 1/10th the number of jobs.

Creating unnecessary competition for the burgeoning renewable energy industry: Should these facilities end up generating electricity that is eligible for RPS credit, they would in effect be competing with potential and actual solar and wind energy facilities. It would be one thing to have these facilities generate electricity that might displace fossil fuels; however, by receiving RPS credit, they would be displacing cleaner solar, wind and other clean energy resources, which would be counter-productive to the goal of helping to grow renewable energy industries in our state.

We urge the Natural Resources Agency and CalRecycle to rescind CalRecycle's November 23, 2010 letter on the regulatory status of the Proposed Salinas Valley project and issue a new letter clarifying that CalRecycle will interpret the PRC 40117 accurately. Further, we request that you urge the CEC to rescind its RPS pre-certification for this facility.

Sincerely,

Andy Katz, *Government Relations Director*
Breathe California

Julie Muir, *President*
California Resource Recovery Association

Nick Lapis, *Legislative Coordinator*
Californians Against Waste

Brian Nowicki, *California Climate Policy Director*
Center for Biological Diversity

V. John White, *Executive Director*
John Shears, *Research Coordinator*
Center for Energy Efficiency and Renewable Technologies

Saúl Acosta Gómez, *Political Director*
Clean Power Campaign

Monica Wilson, *U.S. and Canada Program Director*
Global Alliance for Incinerator Alternatives

Bradley Angel, *Executive Director*
Greenaction for Health and Environmental Justice

Darby Hoover, *Senior Resource Specialist*
Natural Resources Defense Council

John Moore, *Zero Waste Advocacy Committee Chair*
Northern California Recycling Association

Jena Price, *Legislative Director*
Planning and Conservation League

Bill Magavern, *Director*
Sierra Club California

Dan Kalb, *CA Policy Manager*
Union of Concerned Scientists

CC: Senate President pro Tem Darrell Steinberg
Assembly Speaker John A. Pérez
Senator Joe Simitian
Assembly Member Wesley Chesbro
Commissioners, California Energy Commission
Mark Leary, Acting Director, CalRecycle
Julia Levin, Deputy Secretary for Climate Change, Resources Agency
Cliff Rechtschaffen, Office of Governor Jerry Brown
Ken Alex, Office of Governor Jerry Brown
Gareth Elliott, Legislative Affairs Secretary, Office of Governor Jerry Brown

ⁱ Hee-Chul Yang. Characteristics of dioxins and metals emission from radwaste plasma arc melter system. *Chemosphere* 57 (2004) 421-428.

ⁱⁱ Mohr K. et al. Behaviour of PCDD/F under pyrolysis conditions, *Chemosphere* 34 (1997).

ⁱⁱⁱ Press release from the district administration of Karlsruhe (Regierungspräsidium Karlsruhe), November 5, 1999.

From: Lipper, Kip [mailto:Kip.Lipper@SEN.CA.GOV]
Sent: Wednesday, March 30, 2011 4:50 PM
To: RWeisenm@energy.state.ca.us; Cliff.Rechtschaffen@GOV.CA.GOV;
ken.alex@GOV.CA.GOV; Julia Levin
Cc: Kealii Bright
Subject: CEC and Cal Recycle Mis-interpretation of Renewable and Recycling Laws

Guys:

Please forgive the long email.

Several enviro advocates brought to our attention the following example of CEC and Cal Recycle staffs' apparent creative interpretation of current renewable energy and solid waste law as it applies to a certain type of solid waste gasification. I've reviewed it with committee staff in both houses and they concur that the agencies got it wrong.

It's the sort of thing that causes problems for agencies over here, and leads to broader concerns about things like the "Bio-energy Action Plan (sic)." It no doubt will be another item discussed in confirmation and before the budget subs at some point.

To be clear, Senator Steinberg has no particular problem with this kind of technology itself, provided it is lawfully permitted etc.

But the two agencies' assertions that the technology constitutes RPS eligible renewable energy and that it can count towards state recycling ("diversion") targets is just plain wrong on the law, and probably bad environmental policy.

Cal Recycle apparently has provided the attached letter to Plasco Corp saying that 'the proposed project, as described, appears to meet the definition of "gasification."

Also attached is a certificate from CEC stating that the technology is RPS eligible.

The CalRecycle letter states, in relevant part:

The project, as described, will use a noncombustion thermal process to convert solid waste to a clean burning fuel for the purposes of generating electricity; uses air/oxygen only to maintain ambient temperature; produces no air, water or hazardous discharges in excess of standards; the processing removes recyclable materials from the waste stream to the maximum extent feasible (while the described process doesn't remove green waste from the MSW stream, the Salinas Valley Solid Waste Authority members (it is the local agencies within the Authority that will be using the facility) already have diversion programs that include curbside programs for separation of recyclables and a green waste compostable materials from the solid waste stream so that marketable material will have been separated prior to receipt by the facility; and, they all have diversion rate above 30 percent.

Regardless of whether the facility actually ends up meeting the definition, the Cal Recycle letter is inconsistent with the statute (below) (CEC RPS eligibility statutes are identical).

Note that Cal Recycle has creatively re-interpreted the definitional requirements of subdivisions (b), (c), & (d), with the term 'in excess of standards'. Moreover, it modifies the requirement that the 'technology removes all recyclable materials and marketable green waste compostable materials' with the terms 'to the maximum extent feasible'.

Here is the relevant statute:

40117. "Gasification" means a technology that uses a noncombustion

thermal process to convert solid waste to a clean burning fuel for

the purpose of generating electricity, and that, at minimum, meets

all of the following criteria:

(a) The technology does not use air or oxygen in the conversion

process, except ambient air to maintain temperature control.

(b) The technology produces no discharges of air contaminants or

emissions, including greenhouse gases, as defined in subdivision (g)

of Section 38505 of the Health and Safety Code.

(c) The technology produces no discharges to surface or groundwaters of the state.

(d) The technology produces no hazardous waste.

(e) To the maximum extent feasible, the technology removes all

recyclable materials and marketable green waste compostable materials

from the solid waste stream prior to the conversion process and the

owner or operator of the facility certifies that those materials will

be recycled or composted.

(f) The facility where the technology is used is in compliance

with all applicable laws, regulations, and ordinances.

(g) The facility certifies to the board that any local agency

sending solid waste to the facility is in compliance with this

division and has reduced, recycled, or composted solid waste to the

maximum extent feasible, and the board makes a finding that the local

agency has diverted at least 30 percent of all solid waste through

source reduction, recycling, and composting.

I would ask that you review this and let me know if you think there is any chance that the agencies will correct this problem or whether we should pursue a more formal discussion.

Thanks, as always for hearing me out.

Kip

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