

California, No Longer the State where the Future Happens First

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For the past decade, repressive provisions in statute have discouraged developers of conversion technologies from operating in California.

Among its statutory roadblocks, the state has a scientifically inaccurate definition of gasification, which, if taken literally, would require zero emissions from the entire biorefining process. Think how many petroleum refineries or power plants there would be in California if they had to meet this standard. Zero.

Throughout this time, an entrenched alliance of Democratic staff members for the legislature's environmental committees, led by those of Senate President Pro Tem Darrell Steinberg, have collaborated with elements in the environmental community to thwart every attempted initiative that would provide realistic standards of performance for this industry.

As a result, California's emerging biobased technology companies have either moved out of the state, or sited elsewhere, thermal renewable energy projects amounting to at least \$1 billion in capital investment.

However, one company has made a good faith attempt to navigate the business environment that, for eight years, has been ranked by Executive.net as the worst in the nation.

In 2010, Plasco Energy Group was declared the winner of a two-year competitive proposal process to construct a solid waste gasification-to-electricity facility at a landfill owned by the Salinas Valley Solid Waste Authority.

During the same year, Democrats on the Senate Environmental Quality Committee blocked passage of comprehensive legislation sponsored by the BioEnergy Producers Association that would have enabled this industry to move forward with confidence. In so doing, the Committee swept aside endorsements from approximately 100 stakeholders, including the California Energy Commission, the California Air Resources Board and CalRecycle (the successor agency to the former Integrated Waste Management Board).

In November of that year, CalRecycle issued a formal ruling that Plasco could meet the intent of the existing gasification definition. This ruling had the effect of qualifying the electricity to be produced by Plasco for California's RPS, a step critical to their project's economic viability.

The logic of CalRecycle's ruling was simple. A legislature cannot pass a law with which no one can comply. The agency rightly interpreted "zero emissions" to mean no emissions exceeding the local standards that apply to all businesses throughout the state, including oil refineries and power plants.

When the Brown administration took office, representatives of the coalition that had blocked corrective legislation during the previous decade moved into leadership positions at CalRecycle, and in May of this year, rescinded the Plasco ruling.

The rescission notice came after Plasco and the Salinas Valley Solid Waste Authority had, in good faith, made a significant 18-month financial commitment to comply with CEQA and other permitting requirements in costly detrimental reliance upon what they understood to be a formal opinion by the State of California.

This notice created a firestorm of protest from the public agencies and biobased technology providers who seek to make productive use of the 30 million tons of post-recycled municipal solid waste that reach California's landfills each year—materials that contain the energy equivalent of more than 50 million barrels of crude oil.

The outrage may have caught the Brown administration off guard. On June 1st, Nancy McFadden wrote to Plasco on behalf of the Governor stating that his office would support legislation allowing Plasco's project to proceed on a "pilot" basis, in effect enabling Plasco to qualify for the state's RPS, but leaving all other conversion technology providers out in the cold. McFadden hand wrote at the bottom of the letter, "We can make this work."

However, the bureaucracy, it appears, had other plans. It is fairly evident that they knew the Governor's commitment would be undercut by Democratic Assemblymember Luis Alejo, in whose district Plasco's project was located. A close ally of the environmental dogmatists, he was prepared to block any legislation that would enable the construction of a gasification facility in his district, and that is what he did.

Since July, the Salinas Valley Solid Waste Authority has made multiple requests for CalRecycle to clarify their reasons for rescinding their previous legal opinion, and to date, it has not received a response.

In late August, David Roberti, a Democrat who served 27 years in the legislature, 13 as President Pro Tem of the State Senate, and who is now President of the BioEnergy Producers Association, wrote to Governor Brown, "Your administration stands on the threshold of a national embarrassment if nothing is done by the end of this week to provide Plasco Energy with the confidence to resume work on its municipal waste-to-renewable energy project."

However, the legislative session ended with nothing being done, and Plasco in the dark as to the future economic viability of its project.

In connection with AB 341, recently passed legislation that envisions 75% recycling in the state by 2020, CalRecycle has embarked upon a study to determine which elements of the municipal waste stream conversion technologies will be allowed to process, after which they may consider amending the gasification definition.

This ambiguous process is fraught with risk for biobased technology companies. It is uncertain that Materials Recovery Facilities would be willing to make the investment necessary to separate materials to the degree that could be mandated by this study, and these regulations appear destined to give priority to the recycling of products, such as paper or plastics, over the recycling of carbon, i.e., ignoring the concept of the highest and best use of organic wastes, and potentially restricting conversion technologies to recyclables that are of limited value to the industry. It will not likely address what has been the basic issue of this controversy from the beginning—equal access to California's waste streams in a free market economy.

The AB 341 study could also be interpreted as a bureaucratic excuse to delay statutory relief for this industry, because the gasification definition is universally acknowledged to be scientifically inaccurate, and the legislature could act to correct this definition at any time. However, as CalRecycle does not have to report to the legislature on its AB 341 studies until the end of next year, no corrective legislation is expected to pass and take effect until January 2015.

Considering the time that would then be necessary to navigate the state's convoluted permitting process, it appears that California is not likely to see the beginnings of a viable waste-based biofuels, biobased chemicals and renewable power industry much before the end of this decade.

Meanwhile, a substantial portion of its recyclable materials continue to be exported to Asia and elsewhere, beyond the state's regulatory oversight. Although their destinations, end uses and life-cycle benefits are never documented, these materials obtain credit as recycling the moment they leave the docks.

It is difficult to write an article like this, but more than 250 million tons of post-recycled solid waste—a critical renewable energy feedstock—have been placed in California's landfills since this Association began its quest for regulatory relief for this industry. Those who have blocked this effort need to be held accountable.

As to the Brown administration and the legislature's environmental committees, the impression is left that accommodating a small number of environmental dogmatists is more important to the state than jobs, a cleaner environment, an improved economy and energy independence—and this at a time when the Governor is asking the citizens of California to support higher taxes.

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