

CIWMB Staff Draft Concepts for Mandatory Commercial Recycling Regulation

Suggested Overall Approach

Based on the AB 32 Scoping Plan Commercial Recycling Measure and input from stakeholders at the July 20 and August 6, 2009, workshops, staff suggests that the mandatory commercial recycling regulation:

- Require businesses to recycle solid waste that they generate.
- Achieve sufficient recycling statewide to result in at least 5 million metric tons in CO₂e reductions.
- Provide jurisdictions flexibility in developing and maintaining commercial recycling programs.
- Protect existing franchise agreements, contracts, licenses, and the right of businesses to sell or donate recyclable materials.
- Make the CIWMB responsible for evaluating jurisdiction performance and for measuring greenhouse gas emissions reductions associated with commercial recycling.

As part of implementing the regulation, the CIWMB would provide technical assistance and training, model ordinances and contracts, and other assistance.

Draft "Conceptual" Provisions

To further define this approach and lay the groundwork for preparing draft regulatory language, staff suggests the following more detailed conceptual provisions.

- 1) Require all businesses that generate more than four cubic yards of total solid waste and recyclable materials per week to subscribe to recycling services, consistent with local requirements, to the extent that these services are available, or to self-haul their recyclable materials to a recycling facility.
 - a. As part of its commercial recycling program (see 2 below), a jurisdiction may consider a business to be in compliance if the business already subscribes to a recycling service, and/or has implemented significant source reduction programs, and/or self-hauls materials to a recycling facility.
 - b. A business that self-hauls must take its materials to a recycling facility, which may include a mixed waste processing facility that yields diversion results comparable to source separation.
- 2) Require each local jurisdiction to implement a commercial recycling program by July 1, 2012, that includes education and outreach to businesses, regardless of whether the jurisdiction has met its 50% equivalent per capita disposal target. If a jurisdiction already has a commercial recycling program that addresses outreach/education, monitoring/enforcement, and other appropriate components, it shall not be required to implement a new or expanded program.
 - a. The jurisdiction's commercial recycling program could include, but is not limited to, implementing a mandatory commercial recycling policy or ordinance, requiring mandatory commercial recycling through the franchise contract or agreement, and/or requiring that all commercial recycling materials go through a mixed waste processing system that diverts material at a certain level.
 - b. Jurisdictions would have flexibility to implement a mandatory commercial program that meets their local needs, works with their existing infrastructure, and does not impact existing franchise agreements.
 - i. Jurisdictions would have the flexibility to determine the specific material types to be included in the program. Materials to be considered could include but are not limited to paper, plastics, glass, metals, cardboard, food waste, and C&D.

- ii. The commercial recycling program may include enforcement and monitoring, including a penalty/fine structure if appropriate. The jurisdiction also could work with its franchised/permitted hauler/service provider to have the hauler report infractions, for subsequent enforcement action by the jurisdiction. Any fees collected could go to the jurisdiction for outreach, education, administration, etc.
 - iii. The commercial recycling program may include certification requirements for self-haulers.
 - iv. The jurisdiction may choose to adopt design standards that specify space requirements, beyond existing requirements for development projects (Public Resources Code 42900 *et seq.*)
 - v. The jurisdiction may also provide exemptions to businesses based on criteria such as lack of storage space, lack of markets, already diverting materials to the maximum extent feasible, not generating recyclable materials, etc.
- 3) The CIWMB is responsible for ensuring that each jurisdiction is implementing its commercial recycling program. The CIWMB also is responsible for measuring whether, at a statewide level, the AB 32 Scoping Plan goal of 5 MMTCO₂E emissions reductions is being met.
 - a. Local jurisdictions are required to provide an update on their mandatory commercial recycling program in their electronic Annual Report. The update could include reporting on outreach and education, enforcement activities, etc.
 - i. While the AB 32 Scoping Plan requires implementation of the mandatory commercial recycling regulation by January 1, 2012, jurisdictions would have until July 1, 2012, to adopt and begin implementation of their commercial recycling programs. Jurisdictions could inform the CIWMB through their Annual Report if and why they need additional time to implement their programs.
 - b. The CIWMB will review jurisdictions commencing in 2012 to evaluate whether they have an adequate mandatory commercial recycling program during its biennial or quadrennial review cycles, pursuant to AB 939 as amended by SB 1016, of jurisdiction implementation of the Source Reduction and Recycling Element programs.
 - c. The CIWMB would conduct waste characterization studies in 2014 and 2019 to measure emissions reductions at the statewide level.
- 4) Definitions:
 - “Business” means a commercial entity operated by a firm, partnership, proprietorship, joint stock company, corporation, association that is organized as a for-profit or nonprofit entity, or a multi-family residential dwelling of five units or more.
 - The term “self-hauler” means a business that hauls its own waste and/or recyclables rather than contracting for that service.