

June 20, 2012

Carroll Mortensen, Director
Department of Resources Recycling and Recovery
1001 I Street
P.O. Box 4025
Sacramento, CA 95812-4025

Subject: AB 341 Implementation – California’s 75% Recycling Plan

Dear Ms. Mortensen,

OC Waste & Recycling appreciates the opportunity to provide comments on CalRecycle’s plan titled “*California’s New Goal: 75% Recycling*,” outlining concepts to further advance California’s recycling infrastructure pursuant to AB 341, signed by the Governor on October 6, 2011. We also appreciate CalRecycle’s foresight in drafting its initial plan well ahead of the January 1, 2014 deadline. This provides all stakeholders and members of the public sufficient time to review and comment prior to CalRecycle submitting its final report to the State Legislature.

The purpose of this letter is to raise OC Waste & Recycling’s concerns related to CalRecycle’s plan with hope that CalRecycle staff will engage in meaningful and productive dialogue with its stakeholders prior to its finalization.

AB 341 Called for 75% Diversion...Not Recycling

OC Waste & Recycling’s primary concern is that CalRecycle’s current approach on defining the 75% policy goal is based on a “*recycling*” metric rather than the “*diversion*” metric established by AB 341. By referring to the 75% target as a recycling goal, CalRecycle’s plan goes above and well beyond the language of the law as approved by the Legislature. Ultimately, CalRecycle has independently established a new target of 90% in terms of a statewide diversion rate given that CalRecycle’s plan proposes to ban certain diversion credits currently allowed under AB 939 for purposes of meeting the statewide goal.

As pointed out in CalRecycle’s plan, California is unique in that it uses “*diversion*” rather than “*recycling*” as the metric for measuring waste reduction and recycling activities throughout the state. This metric has been used since the adoption of the Integrated Waste Management Act of 1989 (AB 939), which gives diversion credit for certain materials and activities (e.g. ADC and transformation) for meeting the 50% diversion mandate imposed on local government. Because of AB 939, the state has created one of the most robust solid waste systems in the nation, creating avenues to manage our waste stream and finding pathways to economically reuse many previously discarded materials. According to CalRecycle’s website, the resident-based equivalent statewide diversion rate in 2010 was approximately 65%.

With the success of AB 939, it was expected that the Legislature will take the next step and establish a 75% diversion goal by building upon the infrastructure that has been created over the past two decades. From the day the bill was introduced until the day the Governor signed it into law, the subject heading of AB 341 has always been “Solid Waste: Diversion.” Originally, when AB 341 was introduced, the intent was to raise the 50% diversion rate imposed on jurisdictions to 75%. As it was amended, the implementation of the 75% changed from a jurisdictional mandate to a statewide mandate to finally a statewide policy goal. During the metamorphosis of the bill, the standard metric for waste reduction was always discussed and measured in terms of diversion. At no time throughout the legislative process was the term “**diversion**” ever replaced with the term “**recycling**.”

For example, the legislative analysis dated September 8, 2011, presented on the Assembly Floor, summarized AB 341 as such (bold lettering and underline added for emphasis):

*“**SUMMARY:** Establishes a state policy goal that 75% of solid waste generated be diverted from landfill disposal by 2020; requires a commercial waste generator to arrange for recycling services; and, requires local governments to implement commercial solid waste recycling programs designed to divert solid waste from businesses.”*

This summary was provided to the Assembly just prior to AB 341 being enrolled to the Governor. From this summary, the legislative intent and public understanding was in the context of a diversion goal, not a recycling goal.

Similarly, the legislative analysis, dated August 31, 2011, presented before the Senate Appropriations Committee, of AB 341 was summarized in the following manner:

*“**BILL SUMMARY:** AB 341 requires the Department of Resources Recycling and Recovery to increase the diversion of solid waste from the currently required level of 50 percent to 75 percent by 2020.”*

These excerpts are a few of many examples that can be found in the legislative record that the standard measurement was based on diversion. The bill did not call for a paradigm shift in how the 75% diversion goal was to be measured or to deviate from the accounting procedures of AB 939. We suggest that CalRecycle revise its plan using diversion as the standard measurement to be consistent with the mandates of AB 341 and other solid waste laws.

CalRecycle’s 75% Plan Hurts Local Governments

As CalRecycle is well aware, local governments have invested millions of dollars to develop waste reduction programs to educate the public on the proper disposal of various waste materials. Securing the funds to maintain these programs has been a challenge during these lean economic times. It was much to our disappointment that CalRecycle’s plan is proposing to phase out certain diversion credits such as alternative daily cover (ADC) and the 10% diversion credit allowed for transformation facilities for purposes of meeting the 75% goal. These diversion

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credits are extremely important to local governments in meeting their 50% diversion mandate and must be protected.

With respect to ADC, the statute specifically identifies it as diversion. Moreover, the process by which ADC is processed constitutes recycling:

*“41781.3. (a) The use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including use of **alternative daily cover**, which reduces or eliminates the amount of solid waste being disposed pursuant to Section 40124, **shall constitute diversion through recycling** and shall not be considered disposal for the purposes of this division.”*

Therefore, even in CalRecycle’s plan, the usage of ADC at solid waste landfills should be considered recycling. The usage of ADC at a landfill has tangible applications in that it can be specifically used to minimize vectors, odors, and for stormwater control. The application of ADC at a landfill is no different than Caltrans usage of mulch on its roadways for hydroseeding, erosion control, and aesthetic purposes. The usage of ADC, just like mulch, should be treated no differently in that both materials are beneficially being reused and should be considered as a resource material rather than a waste.

If ADC and the 10% diversion credit for transformation facilities are phased out, local governments will be forced to expend additional monies and resources to develop new recycling programs to replace the diversion credits that were lost. In order for local governments to maintain the 50% diversion mandate or above, CalRecycle’s plan needs to be harmonized with AB 939 rather than seen as a separate goal that can be independently achieved without unnecessary negative consequences to local governments under the AB 939 framework. Instead, AB 341 should be viewed as mutually inclusive of AB 939 with consistent approaches and strategies since both laws have the same goal of reducing waste through source reduction, recycling, and composting.

We look forward to working with CalRecycle over the next eighteen months to develop a plan that provides practical strategies to capitalize on our decades of progress in reducing waste and to meet the diversion goals of AB 341. If you have any questions regarding this letter, please contact me at 714-834-4147 or at chip.monaco@ocwr.ocgov.com.

Sincerely,

CHIP MONACO, DEPUTY DIRECTOR
Government & Community Relations

cc: Mark Leary, Chief Deputy Director
Howard Levenson, CalRecycle Deputy Director
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