

SOLID WASTE MANAGEMENT ADVISORY COMMITTEE AND LOCAL TASK FORCE

July 27, 2012

AUG - 2 2012

Ms. Carol Mortensen, Director
CalRecycle
P. O. Box 4025; MS 25A
Sacramento, CA 95812-4025

Dear Ms. Mortensen:

Subject: California's New Goal: 75% Recycling

The Kern County Local Task Force (KCLTF) appreciates the opportunity to comment on the early stage of development of CalRecycle's *California's New Goal: 75% Recycling*, outlining concepts to identify feasible strategies that will improve the ability of Californians to reach the new statewide 75% solid waste disposal reduction goal through source reduction, recycling or composting by the year 2020. The purpose of this letter is to communicate the KCLTF's concerns related to CalRecycle's plan. We look forward to these concerns being addressed in a collaborative effort to ensure that the recommended strategies meet the legislative intent of AB 341 and result in realistic, achievable and sustainable programs.

The KCLTF does not support the overarching concept of the CalRecycle Plan, and instead would prefer that the report to the legislature focus on the task at hand – the policy goal of achieving 75% diversion through source reduction, recycling and composting. CalRecycle's plan goes above and well beyond the scope of AB 341 as approved by the Legislature in four specific areas:

- Proposes to redirect the 75% goal from source reduction, recycling and composting to emphasize only recycling, while at the same time narrowing the definition of recycling.
- Proposes to redefine the Base for average per capita solid waste generation.
- Proposes to eliminate programs previously defined as recycling, such as beneficial use of greenwaste, woodwaste and inert materials at landfill sites.
- Proposes to construct an alternate metric for evaluating statewide compliance vs. jurisdictional compliance.

The KCLTF is concerned that the CalRecycle Plan's focus on recycling is inconsistent with the scope of the report requested by the legislature in AB 341. Public Resources Code Section 41780.02 requires CalRecycle to provide "strategies to achieve the state's policy goal that not less than 75 percent of solid waste generated be source reduced, recycled, or composted by the year 2020."

c/o Kern County Waste Management Department
2700 "M" Street, Suite 500, Bakersfield, CA 93301 (661) 862-8900

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It would appear that CalRecycle's initial intent was to use the report to undermine the accomplishment of the 50% diversion mandate, and construct a new reality in which the statewide diversion is really only 49% instead of the currently recognized 65%. The KCLTF believes that the legislature called on CalRecycle to continue the work that has been done on diversion, not construct an entirely new definition of how we approach management of the waste stream.

Recycling vs. Diversion:

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**."

The KCLTF's primary concern is that CalRecycle's current approach to define the 75% policy goal is based on a "**recycling**" metric rather than the "**diversion**" metric established by AB 341. 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."

Finally, Legislative Counsel's Digest of AB 341 draws a corresponding comparison between the current 50% goal under AB 939 of "divert 50% of all solid waste from landfill disposal or transformation by January 1, 2000, through source reduction, recycling and composting activities" and the 75% goal of AB 341 of "not less than 75% of solid waste generated be source reduced, recycled or composted by the year 2020." Nothing in the Legislation or its analysis gives any inclination of intent to redefine the scope and terms of diversion goals in the State of California.

The New Baseline:

The Kern County Local Task Force is also concerned with the proposed new baseline to be used under AB 341. For CIWMA, the diversion measurement was changed in 2008 by SB 1016 proposed by the CIWMB and sponsored Senator Wiggins, to a per capita disposal measurement (lbs/resident/day). The baseline was discussed at length and the average generation rate from 2003 to 2006 was approved as 12.6 lbs/resident/day. CalRecycle is now proposing to use yet another different baseline for AB 341 purposes, which is the long-term average (1990 to 2010) generation rate of 10.7 lbs/person/day. With the 75% recycling goal, this lowers the allowable residential disposal rate from 3.2 lbs/resident/day to 2.7 lbs/resident/day, correspondingly increasing the diversion goal.

The CalRecycle Plan indicates that the SB 1016 methodology is somehow flawed because 2003 to 2006 was “nearly at the peak in terms of historical generation.” Diversion is simply a calculation, measuring the difference between projected waste generation and actual waste disposed. Prior to 2008, waste generation was based on the 1990 base year generation sequentially escalated using population, employment and taxable sale. Generation was escalated for both population and economic growth. In 2008, SB 1016 capped waste generation based on a prior four year average (2003 to 2006) reducing the 2007 generation and disallowing any adjustments for economic growth. The KCLTF believes any further modifications are both unwarranted and excessive.

CalRecycle staff have assured stakeholders that the new measurement is not intended to supersede the measurements of CIWMA for local jurisdictions, that the new measurement system will only be applied to the statewide goals (2.7 lbs/person/day), while the current system will be used on jurisdictional basis (3.2 lbs/person/day). The KCLTF believes having two measurement systems will cause considerable confusion and arbitrarily raises the bar for what must be achieved, which in turn will greatly increase the difficulty and cost of implementation. Again, nothing in the Legislation or its analysis gives any inclination of intent to redefine the terms of diversion goals in the State of California.

Current Base vs. Proposed Base

CalRecycle: 75% Recycling

Criteria	Current Base (lbs/person/day)	Proposed Base (lbs/person/day)
Base	12.6	10.7
Max Disposal (50% Goal)	6.3	5.4
Max Disposal (75% Goal)	3.2	2.7
Net Diversion	75%	78.6%

Beneficial Reuse at Solid Waste Facilities:

We recognize that AB 341 uses the terms source reduction, recycling and composting in the 75% policy goal and does not include the term “diversion”. It is important to note that while the industry commonly refers to receiving “Diversion Credit” for a specific program, there is really no

such thing as a "Diversion Credit." In actuality, diversion is simply a calculation, measuring the difference between projected waste generation and actual waste disposed. With respect to beneficial reuse of waste material, the statute specifically identifies it as diversion.

"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."

The CalRecycle Report appears to have a distinct bias against the beneficial reuse of materials on a landfill site as not being "intellectually honest" recycling from a "purist's perspective." Consistent with existing regulations, landfills in Kern County routinely recycle waste materials for beneficial reuse by separating and grinding inert materials for construction of all-weather roads and unloading pads, separating and grinding wood material for use as mulch to stabilize sideslopes and prevent run-off and erosion, and using chipped tires in lieu of aggregate to backfill landfill gas extraction trenches. These are cost effective, sustainable recycling programs which keep waste materials from landfill disposal and reduce the import of virgin materials.

The CalRecycle Report proposed to expand the definition of Disposal to include Disposal Related Activities. Disposal Related Activities appear to include any beneficial reuse of waste materials on a solid waste facility. This results in a number of conflicting and counter-productive actions.

- Clean asphalt and concrete rubble crushed and utilized on a solid waste facility for entrance roads, drainage improvements and all-weather pads would constitute disposal, while the same material hauled off-site and utilized for the same purpose would be considered recycling. As a result,
 - Solid Waste facilities would be required to purchase and import aggregate, while at the same time hauling suitable material off-site.
 - CalRecycle would discourage the recycling of suitable but atypical materials such as ceramic tile and broken toilets for which there are no existing markets.
- Woodwaste separated, ground and applied to soil stockpiles and exposed sideslopes to prevent erosion and run-off required under NPDES would constitute disposal, but the same material hauled off-site and used for the same purpose by CalTrans would constitute recycling. As a result,
 - Solid Waste facilities would be required to purchase and import mulch, while at the same time shipping suitable material off-site.
- While some jurisdictions utilize greenwaste as ADC, other jurisdictions utilize fines for C&D Recycling as ADC. Fines from C&D recycling have no current market and provide valuable cover material to sites with limited soil for cover.

Going back to the purpose of the CIWMA, the term "reuse" is included after reduce and recycle. To that extent, many jurisdictions that cannot recycle some materials in an efficient and cost-

effective manner can reuse the materials at landfills for other beneficial uses and in a manner that conserves water, energy, and other natural resources. It would appear that CalRecycle has lost sight of the prime objective of AB 32, to reduce greenhouse gas emissions. In an attempt to disallow the beneficial reuse of material at solid waste facilities, CalRecycle purposes to expand the definition of disposal to materials used in any manner not deemed appropriate by CalRecycle.

Alternate Statewide Metric:

CalRecycle's *California's New Goal: 75% Recycling* proposes to establish a new metric to measure success in attaining 75% recycling. While CalRecycle staff have assured stakeholders that establishing a new metric will not affect existing goals established by AB 939, and that local jurisdictions will not be held accountable for the new metric and enforcement will not be pursued for not meeting the proposed new metric, it is perplexing to understand how this goal will be accomplished with the State and local jurisdictions marching to different and conflicting standards.

Recommendation:

The order of focus areas in the CalRecycle Plan seems inconsistent with the policy drivers of the Plan. *The KCLTF recommends reorganizing the order of the issues to put product stewardship, lifecycle analysis and market development first.*

1 - INCREASE RECYCLING INFRASTRUCTURE

1a – Funding of Infrastructure: The first focus area, the very first issue identified by the CalRecycle Plan is the need for more money for CalRecycle so that CalRecycle can provide financial incentives for recycling facilities. The second sentence identifies potential source of funds, starting with increasing landfill fees to subsidize recycling infrastructure. However, as pointed out in Focus Area 8 of the Plan, this self-defeating proposition carries its own incentive to continue to rely on landfills. If recycling is truly to replace disposal, it must be self-sustaining. Furthermore, it is unclear how the proposed fees would be allocated, and if they would accomplish any of the “drivers” listed on page 12. Given that drivers include preserving local control and reducing cost to local government, this approach seems counterproductive. *The KCLTF recommends identifying funding sources that can be provided automatically to private recyclers and local government, without placing Sacramento in between those that are diverting the materials and the funds.*

1b1 - Regulatory Oversight: The Plan points out that reporting and oversight at solid waste facilities (other than landfills) is lacking. This existing deficit makes it difficult to know how effective these facilities are at diverting waste. While reporting is needed, facilities should not be overburdened with reporting, nor prohibited from making rapid changes based on market conditions, technology innovations, throughput composition or other factors. Oversight should avoid duplicative or meaningless measurements that impose unnecessary burdens on operators. *The KCLTF is in agreement that this issue needs consideration, and*

recommends that the costs of oversight be borne by the facility, based on factors such as throughput and diversion rate, and should not be shifted to local government or to disposal operations.

1g – Streamline Planning Documents: One of the streamlining recommendations is to change the measurements made under SB 1016 to countywide measurements. Unless the potential for fines of \$10,000 per day is repealed, this proposal is unworkable. It would make one jurisdiction responsible for the actions of another jurisdiction over which it has no control. *Therefore, the KCLTF recommends against this approach.*

Another streamlining recommendation would allow State agencies to keep revenue from the sale of recyclable materials. The role of State agencies in providing leadership should be called out as a separate focus area. One way to improve the role of State agencies as leaders in waste diversion would be to impose the same type of financial penalty against State facilities that fail to meet the 50% waste reduction target as is what is imposed against the host local government for the same failure. The fines should go to the host jurisdiction. *The KCLTF recommends that, to support the 75% target, penalties against a State agency should accrue for failing to divert 75%.*

2 - ORGANICS

This section begins by calling for repeal of the law allowing the use of ADC. However, as explained above, credit for ADC should only be removed after appropriate study.

2b – Organics Disposal Phase-out: Calls for increased organic waste diversion. Clarity is needed with regard to the definition of organic waste. Such clarity could help define what materials are being targeted for removal from the waste stream, so that potential uses and markets could be evaluated. It is unlikely that diversion rates will increase until this issue is resolved. The KCLTF recommends that target organic materials be specified and methods of diversion evaluated for feasibility.

2c – Funding for Organics Infrastructure: Calls for funding for incentives. Again CalRecycle is proposing to obtain the funding from landfills and to filter the money through Sacramento. As explained above, the KCLTF recommends against this approach.

2e – Regulatory Changes re: ADC, food, etc.: The KCLTF recommends the following regulatory changes that we believe will support the growth of composting capacity in California, which in turn is necessary to assist the achievement of the statewide goal of diverting 75% of solid waste from disposal.

- ◆ While compost facilities that are not co-located with landfills must have proper stormwater controls, duplication should not be required for co-located facilities.

- ◆ Base groundwater protection requirements on verifiable threats to groundwater that can be substantiated via field analysis, data or other technical information.
- ◆ CalRecycle and the Air Resources Board, in concert with local APCDs/AQMDs, should coordinate on a strategy for the regulation of volatile organic compounds and greenhouse gas emissions from compost operations.
- ◆ CalRecycle, Department of Food and Agriculture (CDFA), Air Resources Board (CARB), and Water Board should use consistent regulatory definitions for terms including, but not limited to 'organic waste,' 'compostable organic waste,' 'agricultural waste,' 'food waste,' 'composting operation,' 'compostable products' and 'biomass'.
- ◆ CalRecycle and CDFA should help develop markets for compost. For example, they should promote the use of compost in agriculture and by State departments such as CalTrans and CalFire.
- ◆ CalRecycle, CDFA, CARB and the Water Board should provide coordinated outreach and education on composting issues to their regulatory staff and to stakeholders.

The issue of regulatory changes and interagency cooperation should be a focus area unto itself. In general, regulations should be more consistent among State agencies. However, some interagency coordination may be accomplished without legislative or regulatory change. For example, many environmental impact reports fail to address solid waste management at all. Those that do address solid waste often only address disposal capacity, whereas disposal is only one aspect of solid waste management. Transportation, processing, public education, etc. are also essential components. CalRecycle could coordinate with OPR on the development of guidance on impact identification, and on formulation of appropriate mitigation measures. *The KCLTF recommends that CalRecycle coordinate with other State agencies to ensure that the impacts of waste generation are appropriately and consistently considered by all State and local government agencies.*

4 - ESTABLISH EXTENDED PRODUCER RESPONSIBILITY

The CalRecycle Plan narrows the description of the benefits of EPR primarily to packaging, whereas EPR involves other components, including toxicity, durability and end-of-life management. A more appropriate organization would be to provide a discussion of EPR as a sub-issue of source reduction. *The KCLTF recommends a stronger emphasis on extended producer responsibility and a broader consideration of what this focus entails.*

5 - REFORM BEVERAGE CONTAINER PROGRAM

The KCLTF supports the proposed reforms because the current program is underfunded and the reforms will assist with meaningful diversion.

6 - INCREASE PROCUREMENT/DEMAND

The KCLTF believes that this focus area is vital. Without better domestic markets, the 75% diversion goal cannot be met. Within this focus area, the CalRecycle Plan appropriately addresses State agency procurement first and includes a recommendation for an enforcement mechanism. Secondly it addresses development of incentives for incorporation of post-consumer content. *The KCLTF recommends making this a high priority and including additional activities to promote markets.*

7 - OTHER MATERIALS

This focus area addresses mechanisms for reducing tires, plastics, e-waste, construction and demolition materials (C&D), fiber, resin and used oil in the waste stream. The KCLTF supports many of the proposed activities. For example, polystyrene is exceptionally expensive to recycle. Another material for consideration is "compostable picnicware," much of which is not actually compostable.

7f – Fiber: The CalRecycle Plan proposes an expansion of the ban on e-waste disposal and a cardboard ban, respectively. Landfill bans should be based on threat to the environment, not as a mechanism for recycling and EPR. *The KCLTF recommends that landfill bans should only be implemented when an appropriately funded alternative method of handling the material has been put in place.* In the case of cardboard, since this is a relatively high value item, a more appropriate focus for increased diversion of this material may be public education.

7d – Construction & Demolition: A landfill surcharge is proposed. As previously pointed out, funds that are directed to Sacramento often do not make it back to the jurisdiction of origin. Some landfills, including the Bakersfield Metropolitan (Bena) Sanitary Landfill in Kern County, already impose a higher gate fee for construction and demolition debris entering the landfill. Such local approaches should not be compromised. *The KCLTF recognizes that a surcharge on specific materials can aid diversion, but the revenues associated with such a surcharge should not be directed to Sacramento.*

8 - GOVERNANCE/FUNDING

The CalRecycle Plan asserts that the existing \$1.40 tipping fee is so low as to provide no disincentive for the disposal of recyclable, compostable or reusable materials. However, although increasing landfill fees may promote recycling, it may also promote illegal dumping and littering, which has environmental impacts, public health and safety threats, encourage export of waste out of state and imposes costs on local government. Additionally, landfills pay more fees and are more highly regulated than any other waste management facility. Permitting and expansion of landfills is already difficult and expensive to the point of impossibility.

For other waste management approaches to be successful in the long term, as land disposal is phased out, they must have a more appropriate and reliable funding source for necessary oversight. Furthermore, in some cases increased landfill fees would come

directly from local government general funds, leaving less revenue for essential waste management programs and other civic services. *The KCLTF recommends against further disproportionate reliance on landfills for funding.*

9 - SOURCE REDUCTION

Although in theory source reduction is the top of the waste management hierarchy, the CalRecycle Plan addresses this focus area ninth. Source reduction should be addressed first and EPR should be discussed next or even within this focus area. *The KCLTF recommends that this focus area be moved to earlier in the analysis. Additionally, source reduction should be a consideration within all focus areas.*

10 - THE OTHER 25%

There are several factors that need to be considered in evaluating different technologies. For example, when considering energy recovery, the avoided impacts associated with alternative forms of energy production need to be considered. *The KCLTF recommends that in the absence of a thorough case specific analysis, artificial costs and barriers to using materials as fuels should not be imposed.*

9c – Zero Waste: The CalRecycle Plan identifies no technical barriers to zero waste. However, technical barriers are, of course, the reason California still produces millions of tons of waste each year. As pointed out on page 13, without appropriate tools, including use of new energy technologies, zero waste will continue to be elusive. *The KCLTF recommends keeping the tools available to accomplish waste reduction as broad as possible.*

Again, thank you for this opportunity to comment on *California's New Goal: 75% Recycling*. We look forward to working together on this important issue.

Sincerely,



Michael Geyer, Chairman, PE, CIH, CSP
Kern County Local Task Force

Sincerely,



Douglas E. Landon, Director
Kern County Waste Management Dept.