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JOINT STATE OFFICE

July 16, 2012

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

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RE: AB 341 Implementation and the CalRecycle Draft Report to the Legislature

Dear Ms. Mortensen:

The California Refuse Recycling Council is comprised of companies engaged throughout the state in solid waste recycling activities ranging from collection to processing, composting and disposal. The Association has reviewed CalRecycle's draft plan, *California's New Goal: 75% Recycling*, and would like to convey the following comments and observations.

The Numbers! What Does 75% Recycling Mean?
We do not interpret AB 341 as intending to raise the bar "relative to what qualifies as recycling..." Neither the bill text nor the legislative record supports that conclusion; in fact, both suggest the opposite. Examples: Section 2 of the bill explicitly refers to the 75% policy goal as a "*diversion* target;" and the last analysis of the bill (prepared by the Assembly Natural Resources Committee as it considered concurrence in Senate amendments) describes the Senate amendments as "...change[ing] the 75% *diversion* requirement to a 75% goal." [Emphasis added]

We submit that there is nothing impure or "intellectually dishonest" about adhering to a compliance methodology that has worked well for more than 20 years. A sudden shift to a whole new set of calculations for measuring progress toward the 75% policy goal, while at the same time recommending to disqualify many existing practices, is a big step in the wrong direction that is likely to engender much unnecessary opposition. It's been only a few years since the last transition, to the disposal reduction approach required by SB 1016; no further change in the calculations is justified at this time.

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1a.Funding for Infrastructure
The use of "cap and trade" revenue under AB 1532 for recycling and composting facility development is critical. The state is in need of significant new waste processing, recycling and composting capacity if it is to have any chance of meeting the 75% policy goal, regardless of how compliance will be measured.

1b. Regulatory Oversight
Fully permitted SWF operators are already inspected on a monthly basis; there is no need for further inspection of these facilities. The focus of any additional CalRecycle oversight should be on operations that do not carry a full permit, as these facilities do not typically get inspected with the same frequency or otherwise receive adequate scrutiny.
We reserve comment on efforts to "review and adjust" regulations pending an examination of the proposed changes.

As to the tiered regulatory structure for facility types, we remain concerned that permissible contamination levels are not set too high, so as to enable or encourage true solid waste handling by those not authorized to receive or handle that material. When that occurs, a competitive imbalance results and public health and safety are threatened.

1c. Strategic Facilitation and Incentivizing Of Facility Siting
Solid waste industry members are the experts; we see little need for certification by the state for work we pioneered. An essential feature of AB 939 was that while the State identified the objective, the private sector identified the means. We are concerned about any effort to have government assume more "command and control" of our operations. We would, however, welcome assistance with facility siting and expansion, consistent with the intent of AB 341 as reflected in Section 2 of the bill. Facility development and operation has for too long been discouraged due to NIMBYs, environmental justice concerns, and conflict with air and water quality regulators who are not adequately focused on the need to harmonize their mission with that of CalRecycle.
A new IWMP requirement that local agencies plan for 15 years of waste/organics processing capacity would go a long way toward incentivizing further facility development.

We would also support legislation similar in form to AB 2257 (Achadjian), which failed passage earlier this year in the Assembly Local Government Committee. AB 2257 proposed to offer solid waste operations and activities limited protection from nuisance lawsuits similar to an existing statute that affords this protection to agricultural activities.

1f. Increase Collection Efficiency/Quality
We do not agree that the State should have a larger role than it now possesses in terms of assessing waste collection program efficiency or quality. The existing relationship between the solid waste industry and its local government partners has worked well.

1. What Did We Miss?
Infrastructure needs to meet the 75% policy goal extend beyond traditional SWFs (including MRFs) and anaerobic digestion (AD), and should include conversion or emerging technologies as well. For far too long, an anomalous provision in state law, defining gasification in a manner requiring "zero emissions" of these projects, has had the effect of constraining facility development. We urge CalRecycle to consider legislation to eliminate this obstacle, in order that these technologies are fairly judged alongside other alternatives.
With that being said, it is our firm view that the aforementioned strategies should be pursued in succession, and in the following order of priority (essentially a "MRF First" approach or hierarchy), so that existing investments in traditional recycling infrastructure are not stranded: first, traditional recycling & composting, next anaerobic digestion, and finally conversion technologies that meet reasonable (not "zero") emissions requirements, and that are subject to appropriate feedstock preprocessing requirements.

2a. Greenwaste ADC
We will support a transition away from greenwaste ADC when, but not before, suitable alternatives are commercially available. This is a regional issue, particularly for Southern California. We oppose elimination of diversion credit for other, inorganic waste materials that are beneficially used at landfills. In point of fact, a landfill is a construction project, and as long as the material is being used on site as part of that construction, it should be treated no differently than if it were being reused on some other form of construction project.

We support the eligibility of C&D MRF fines for use as ADC (see below).

2b. Organics Disposal Phase-out
We support legislation to codify the CIWMB's Strategic Directive 6.1, which establishes a statewide goal of diverting 50% of organics from landfills by the year 2020.
Success in achieving that goal will depend on real progress in eliminating barriers to establishing composting (including AD) facilities, particularly in Southern California.

2c. Funding for Organics Infrastructure
We will not support tipping fee increases that are potential targets for a sweep by BOE or others charged with balancing the State's budget. We could support a modest increase in the tipping fee surcharge if the funds remain available strictly for solid waste/organics facility development. Some form of control should also be added to ensure that those paying in the money will receive a proportionate allocation back (one community should not be subsidizing facility development in another).

2e. Regulatory Changes re: ADC, food, etc.
Reasonable ADC Standards/performance requirements that are achievable with C&D MRF fines would be acceptable.

2f. Cross-Agency Regulatory Issues
We support easing the regulatory burden on organics recycling entities to encourage facility siting and operation. However, compostable materials should continue to be regulated as a form of solid waste, consistent with current state law, and given their potential public health and safety impacts if handled improperly.

2g. Biomethane Pipeline Issue
The CRRC has yet to adopt a formal position on this issue, as the membership has not yet reached consensus. The legislation now pending that would provide a window of relief from the prohibition relative to landfill biomethane is supported by some, while others believe that anything which encourages landfill biomethane could inhibit the development of AD projects, and create unwelcome competition for RPS eligibility.

2. What Did We Miss?
Its been estimated that as many as 40,000 green jobs would be created, and some 18 million metric tons of GHG could be avoided, if a mere 9 million additional tons are diverted from landfills. The CalRecycle plan calls for a landfill diversion figure approaching 27 million tons. Whatever the numbers, it is clear that further landfill diversion will result in significant benefits to the state. We accordingly urge that each of the programs ultimately suggested in the Report should include figures presenting the estimated jobs creation and GHG reduction benefits.

3b. Increase Requirements for MRF (Material Recovery Facility) Performance
We believe that local governments should retain full authority to determine what form of program and/or facility they wish to utilize. That belief led CRRC to support amendments to AB 341 confirming the potential eligibility of mixed waste processing as an alternative to source-separation.

The issue now becomes one of assessing *comparability* in terms of the diversion results achieved. We can support the introduction of some modest MRF performance standards provided they make appropriate allowance for feedstock variations, among other factors that will affect results. These should also be "apples to apples" comparisons, with appropriate consideration being given to the entire set of programs, or the system-wide effort, being undertaken by the jurisdiction, along with unique local conditions, and other factors.

3c. Establish Business Enforcement Component
At this juncture, we believe it would be preferable for enforcement to be undertaken and administered at the local level.

5. What Did We Miss?
We support structural reforms that incentivize additional recovery and recycling of beverage containers. The role of curbside collection programs has for too long been understated under the current bottle bill program, resulting in an inadequate allocation of resources for these programs. Illegal scavenging also remains a huge problem for curbside operators, as their rates assume revenue from the redemption of beverage containers and sale of other recyclables which is lost when a theft occurs.

8a. New Models for Funding Waste/Materials Management
We earlier expressed potential support for a modest increase in the tipping fee surcharge, provided that the funds remain available for integrated waste management and recycling purposes and are sheltered from threat of an account sweep to satisfy state budget needs.

General Comments
1. The AB 341 Report should address the issue of landfill disposal of lumber (an estimated 5.7 million tons were disposed in 2008, representing 14.5% of total disposal). Converting lumber to biomass energy should be specifically addressed, and linked to the Governors BioEnergy Action Plan to promote distributed green energy from the conversion of wood chips.

2. Inorganic/inert ADC from C&D MRF fines should be designated as "reuse" since there is no other possible use for the material.

3. It is imperative that recyclable waste materials continue to be regulated as solid wastes consistent with applicable state law, for the mishandling of these materials carries many of the same potential threats to public health and safety as does MSW generally.

4. Consider incentives to promote or encourage more recycling of designated materials at landfills. These facilities must do their share, and despite all of the source separation and mixed waste processing programs industry has launched, a certain amount of recyclable materials inevitably reaches these disposal facilities.

5. Consider strategies to better reconcile and harmonize the objectives of AB 341 with those of AB 32 and AB 939. Some recognition by air and water quality regulators of the "net environmental benefit" offered by recycling facilities would be very helpful.

6. Consider requiring waste reduction plans and periodic audits of government facilities and commercial waste generators.

7. Both with prior legislation and early on in the AB 341 process, we encouraged the idea that some form of "host" diversion credit should be given to local agencies where SWFs are located, with extra credit available to cities that house larger facilities serving other communities. When the 75% mandate was later converted to a statewide goal, the "host" credit concept was tabled. We continue to believe, however, that local agencies must be incentivized, perhaps through some form of financial incentive, to support the development of local recycling and composting facilities.

As supporters of AB 341, the CRRC looks forward to the opportunity of working with CalRecycle to develop thoughtful approaches to implementing the objectives of that legislation. Your solicitation and consideration of these comments is very much appreciated.

If you have any questions regarding the contents of this letter, please don't hesitate to contact the undersigned (evan@edgarinc.org, jka@astor-kingsland) at your convenience.

Yours very truly,

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