

**REQUEST FOR APPROVAL**

**To:** Mark Leary  
Acting Director

**From:** Howard Levenson  
Deputy Director, Materials Management and Local Assistance Division

**Request Date:** October 10, 2011

**Decision Subject:** Approval To Formally Notice Proposed Mandatory Commercial Recycling Regulation

**Action By:** October 10, 2011

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**Summary of Request:**

Staff requests approval to begin the formal rulemaking process and to formally notice the proposed Mandatory Commercial Recycling Regulation, to implement new statutory requirements regarding recycling of commercial solid waste (Chapter 12.8, Statutes of 2011 [Chesbro, AB 341]).

**Recommendation:**

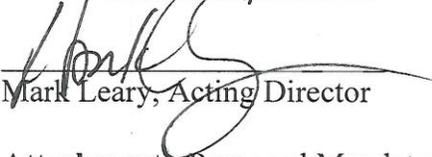
Staff recommends approval of the Proposed Mandatory Commercial Recycling Regulation so that it may be forwarded to the Office of Administrative Law (OAL) and the formal rulemaking process may begin.

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**Action:**

On the basis of the information and analysis in this Request for Approval and the background information and findings set out herein, I hereby approve the "Proposed Mandatory Commercial Recycling Regulation" and direct staff to forward the regulatory packet to the OAL so that the formal regulatory process may begin.

Dated: October 7, 2011

  
Mark Leary, Acting Director

**Attachment:** Proposed Mandatory Commercial Recycling Regulation

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## **Background Information**

### **Initial Rulemaking Effort Under AB 32:**

Assembly Bill (AB) 32, the California Global Warming Solutions Act of 2006 (Chapter 488, Statutes of 2006) directed the Air Resources Board (ARB) to work with all agencies to reduce statewide greenhouse gas (GHG) emissions to 1990 levels by the year 2020. Approved in 2008, ARB's AB 32 Scoping Plan outlined the actions to achieve this reduction in California's GHG emissions. Within the recycling and waste management sector, the AB 32 Scoping Plan specifically identified CalRecycle as lead in developing recycling-based solutions aimed at reducing GHGs, including the Mandatory Commercial Recycling measure.

This focus on the commercial sector was based on CalRecycle's 2008 Statewide Waste Characterization data, which estimated that the commercial sector (which includes businesses, along with multi-family units not serviced on residential routes) generates over two-thirds of the solid waste in California. While significant commercial recycling already occurs, much of the commercial sector waste disposed in landfills is clean enough to be recycled. Additionally, the commercial sector is not directly subject to the requirements of the Integrated Waste Management Act of 1989 (AB 939, Sher, Chapter 1095, Statutes of 1989).

Accordingly, the goal of the Mandatory Commercial Recycling measure in the Scoping Plan was to achieve a reduction in GHG emissions of 5 million metric tons of carbon dioxide equivalents (MMT $\text{CO}_2\text{E}$ ) by 2020, by diverting approximately 2 million tons of recyclable commercial solid waste from landfills. Using recycled materials lowers GHG emissions by reducing the energy requirements associated with multiple phases of product production including extraction of raw materials, preprocessing and manufacturing.

Under the Scoping Plan, CalRecycle was designated as the lead agency for developing the Mandatory Commercial Recycling (MCR) regulation, in large part because the regulation could be integrated efficiently into the existing AB 939 reporting, reviewing, and evaluation process. However, the authority to actually adopt the regulation was still vested with the ARB under its AB 32 authority. In the absence of statutory authority for CalRecycle to adopt and implement the regulation as a GHG reduction measure, CalRecycle developed a joint rulemaking and implementation plan with ARB; this ultimately was approved by CalRecycle in December 2009 (under the previous California Integrated Waste Management Board). Under this plan, CalRecycle staff, in collaboration with ARB, assumed the lead role in developing and implementing the mandatory commercial recycling regulation and ARB was to adopt the regulation through its rulemaking authority.

Beginning in March 2009, CalRecycle engaged in an informal rulemaking process to develop the regulation, including conducting eight informal stakeholder workshops in collaboration with ARB. Throughout this process CalRecycle and ARB staff met with representatives of several affected stakeholder groups in an attempt to reach consensus on outstanding issues, including:

- Definition of business
- Thresholds (e.g., multi-family)
- Transformation
- Mixed waste processing

- Rural “good faith effort”
- Franchise agreements and rights of businesses

The formal 45-day rulemaking public comment period began on September 3, 2011, and it was to run through October 19, 2011. The ARB Board then was scheduled to adopt the regulation at its October 20-21, 2011, Board meeting.

However, Assembly Bill (AB) 341 (Chapter 12.8, Statutes of 2011) was signed into law on October 6 2011, authorizing CalRecycle to implement mandatory commercial recycling. As a result, the ARB public hearing on the proposed regulation has been cancelled. Instead, at the same October 20-21 ARB meeting, CalRecycle and ARB staff will present an informational item on collaborative efforts to date, the new direction resulting from enactment of AB 341, and CalRecycle’s new plans to implement AB 341’s mandatory commercial recycling provision.

**Rulemaking Effort Pursuant To AB 341:**

The provisions of AB 341 regarding mandatory commercial recycling are consistent, with one major exception regarding an increase in multifamily units required to recycle, with the draft regulation previously developed by CalRecycle and ARB.

The provisions in AB 341 include:

- Require businesses (including public entities) that generate more than 4 cubic yards of commercial solid waste per week, and multifamily complexes consisting of 5 or more units), to recycle their commercial solid waste.
  - The primary difference between AB 341 and the draft regulations is that the statutory provision requires more multifamily complexes to recycle.
- Provide CalRecycle authority to implement mandatory commercial recycling, and review and enforce each jurisdiction’s implementation of education, outreach and monitoring programs.
- Require each jurisdiction to implement a program consisting of education, outreach, and monitoring, and to report on its program in its annual report to CalRecycle.

As a result, CalRecycle plans to commence its own, new rulemaking process to implement the statute; this Request For Approval requests the necessary departmental approval to formally begin this process. The new draft regulation (see Attachment) reflects the statutory provisions of AB 341, including the change in requirements regarding multifamily units, and provides additional procedural clarifications that were included in the prior CalRecycle/ARB draft regulation in response to stakeholder input at the lengthy series of public meetings described above. The draft regulation will continue to focus on flexibility for businesses and jurisdictions and maintain the parallel AB 939 program implementation and annual reporting by local jurisdictions.

In addition, CalRecycle expects that implementation of this regulation will increase the availability of recyclable materials, provide increased feedstock for recycled-content product manufacturers, and expand the opportunity for additional recycling manufacturing facilities and

associated job creation in California. From a GHG emissions standpoint, expanding and/or developing new recycling manufacturing infrastructure in California makes sense because most emission reductions occur at the point of remanufacturing and not at the origin of recycling. While some materials collected in California remain in the state for remanufacturing, the majority of the recycled materials are shipped to other parts of the United States or to global markets. CalRecycle will continue to work with ARB and other agencies on efforts to provide incentives for the enhancement of in-state recycling manufacturing.

Since the draft regulation is similar to the prior CalRecycle/ARB draft and is based on extensive stakeholder input received at the eight public workshops and numerous stakeholder meetings over the past two years, staff recommends that CalRecycle initiate the formal rulemaking with a 45-day comment period upon approval of this request.

#### Regulatory Timeline

The exact timing of this rulemaking will depend on when CalRecycle is able to finalize and submit a new regulatory package to the Office of Administrative Law (OAL) and receive OAL's approval to begin the rulemaking. CalRecycle staff anticipates that the formal rulemaking process will begin in November 2011. The law requires that affected businesses and jurisdictions begin implementation of the programs July 1, 2012.

Following is the tentative timeline for the rulemaking:

- Late November 2011: Start 45-day comment period, extending through January 2012.
- Mid-January 2012, Public Hearing: CalRecycle will hold a public hearing on the proposed regulation.
- February –March 2012: 15-day Public Comment Period if needed in response to written comments submitted to CalRecycle during the formal 45-day comment period.
- March 2012 Public Meeting: The finalized proposed regulations will be presented at the CalRecycle public meeting.

#### **Public Outreach and Implementation after Adoption of the Regulation:**

Once the regulations are finally adopted by CalRecycle and approved by OAL, CalRecycle will continue to provide technical assistance to local jurisdictions and businesses in the form of regional workshops, model ordinances and contracts, decision making tools, frequently asked questions, and other resources. CalRecycle will also partner with statewide business organizations, such as the California Chamber of Commerce, California Apartment Association, California Realtors Association, and California Manufacturers and Technology Association to ensure the business and multifamily community is aware of the new state law to recycle.

Additionally, CalRecycle will promote the following tools:

- Commercial Recycling Climate Calculator
- Facility Information Toolbox Project
- Institute for Local Government sample ordinance and associated outreach material

As new programs and tools are developed, they will be incorporated into the aforementioned education and outreach materials. CalRecycle is also in the process of compiling these and other

related resources into a general business assistance web portal. This resource is anticipated to be completed by spring 2012.

