REQUEST FOR APPROVAL

To: Caroll Mortensen
Director

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

Request Date: January 17, 2012

Decision Subject: Adoption of Proposed Mandatory Commercial Recycling Regulation

Action By: January 17, 2012

Summary of Request:

Staff requests adoption of the Mandatory Commercial Recycling Regulation, which is needed to implement the new statutory mandatory commercial recycling provisions enacted in 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]).

Recommendation:

Staff recommends adoption of the Mandatory Commercial Recycling Regulation (Attachment 1) so that it may be forwarded to the Office of Administrative Law (OAL) for approval and publishing. Staff also recommends that the Department file a Notice of Exemption with the State Clearinghouse as provided under the California Environmental Quality Act.

Action:

On the basis of the information and findings in this Request for Approval, I hereby approve the adoption of the Proposed Mandatory Commercial Recycling Regulation (Attachment 1) and direct staff to prepare and forward the regulatory package to the OAL for approval and publishing. I also direct staff to file a Notice of Exemption with the State Clearinghouse as provided under the California Environmental Quality Act.

Dated: 1/17/2012

Caroll Mortensen, Director

Attachments: 1. Proposed Mandatory Commercial Recycling Regulation

2. Summary Matrix of Comments, 45-Day Public Comment Period (Oct 28 - Dec 12, 2011)

Background Information

Assembly Bill (AB) 341 (Chapter 476, Statutes of 2011, Chesbro) authorizes CalRecycle to establish a new, mandatory commercial recycling program. Such a program is important both for diverting additional materials from landfills, especially since about three-fourths of what is disposed in landfills comes from the commercial sector, and for reducing greenhouse gas (GHG) emissions from multiple phases of product production including extraction of raw materials, preprocessing and manufacturing. CalRecycle has been given authority by the legislature to make regulations whenever there is substantial evidence that regulations are needed to implement, interpret, make specific, or to govern CalRecycle's procedure, to effectuate the purpose of the statute. Therefore, this rulemaking seeks to add clarity and establish the necessary administrative procedures to fulfill CalRecycle's responsibilities under AB 341.

CalRecycle also is responsible for the Mandatory Commercial Recycling measure in the AB 32 Scoping Plan, adopted by the Air Resources Board (ARB) in 2008, pursuant to AB 32, the California Global Warming Solutions Act (Chapter 488, Statutes of 2006). Prior to the enactment of AB 341, CalRecycle had been working with ARB to develop a Mandatory Commercial Regulation pursuant to this measure. CalRecycle and ARB were intending to take the proposed Mandatory Commercial Recycling regulations to the ARB meeting on October 21, 2011, for consideration. However, as a result of AB 341 being signed on October 6, 2011, the public hearing scheduled for that meeting to consider adoption of the regulations was cancelled. Instead, at the ARB meeting, CalRecycle and ARB presented an informational item on their collaborative efforts.

Rulemaking Timeline

While there are some distinctions between the draft regulations in the cancelled CalRecycle/ARB rulemaking effort and the commercial recycling program outlined in AB 341, the fundamental framework and principals are parallel. Therefore, CalRecycle staff adjusted the previous draft regulation for a new rulemaking (see Attachment 1 for the proposed regulatory language), and commenced its own rulemaking to implement the statute. In doing so, CalRecycle relied on the extensive stakeholder input received at eight (8) informal workshops conducted from July 2009 through July 2011 as part of the joint CalRecycle/ARB draft regulation process. These workshops offered stakeholders numerous informal opportunities to talk about design and implementation issues of this measure.

Formal rulemaking activities began in October 2011. A 45-day public comment period for the Proposed Mandatory Commercial Recycling Regulation ran from October 28 through December 12, 2011. CalRecycle staff held a public meeting on the proposed regulation on December 13, 2011, to receive additional comments.

Summary of Non-Substantive Revisions Incorporated as a Result of Comments Received

Attachment 2 summarizes comments received during the 45-day comment period and presents CalRecycle's responses. As noted in Attachment 2, CalRecycle did not agree with most comments and accordingly determined that no revision in the proposed regulation was needed for these. However, CalRecycle did agree that revisions were warranted in a few instances. These are noted with "Yes (non-substantive)" in Attachment 2, Column 4, and are shown in strikeout/underline in Attachment 1. CalRecycle's Legal Office has determined that all of these revisions are non-substantive in nature and, therefore, that an additional public comment period is not required.

The primary changes that CalRecycle made to the proposed regulations were to:

- Revise Section 18837(a)(2) regarding mixed waste processing, to conform to statute (CalRecycle has provided additional explanation of how it will implement this section in its response in Attachment 2 and will include this in the Final Statement of Reasons); and
- Revise Section 18837(e) regarding the right of a business to donate or sell its material, to conform to statute.

Findings

Staff also evaluated the potential environmental effects of the proposed regulations as required by CEQA and determined that the adoption of the regulation is exempt from CEQA on the ground that there is no possibility that the regulation will have an effect on the environment (the "common sense exemption"). A "project," as the word is utilized in CEQA, is an activity that "has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." CEQA Guidelines, Section 15378(a). The regulation establishes only administrative procedures necessary for CalRecycle to implement AB 341. The adoption of the regulation will have no direct and no indirect effects on the environment. Staff prepared a Notice of Exemption that will be filed with the State Clearinghouse as required by CEQA.

Staff has given careful consideration to all comments received throughout the rulemaking process and recommends that the Department adopt the Mandatory Commercial Recycling Regulation and direct staff to forward the regulatory package to the Office of Administrative Law (OAL) for approval and publishing. With approval of the regulation at this meeting, staff will prepare and submit the final rulemaking package to OAL.