

Attachment B

SWIG/SWICS Concerns with CalRecycle's Interpretation of the AB 341 75% "Recycling Goal"

The SWIG/SWICS coalition is extremely concerned about the CalRecycle Interpretation of the AB 341 75% "Recycling Goal". In fact, the 75% goal is not just about recycling, it is a "Recycling, Composting and Source Reduction Goal" as expressly provided in the language of AB 341. In interpreting this goal, CalRecycle is using the term "disposal related" for various activities that are considered either recycling or diversion under current California law. These activities include:

- Alternative Daily Cover (ADC) and landfill beneficial use. As expressly provided in PRC 41781.3, "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."
- Waste to Energy (WTE). Under currently law, WTE is allowed to count as diversion for up to 10 of a jurisdiction's 50% diversion pursuant to AB 939 (PRC 41783). Even though WTE under this section is still not "recycling" per se, the SWIG/SWICS Coalition believes this is more akin to "recycling related" than "disposal related".
- Use Tire Derived Fuel. Although this is a very small amount, we believe this is more akin to "recycling-related" than "disposal related."

As a result of considering the above activities as "disposal related", CalRecycle has reached approximately the following conclusions in order to achieve a 75% "recycling" goal:

- "Disposal Related" including ADC, landfill beneficial use, and WTE -- 22 million tons of "disposal related materials" must be newly recycled by 2020 to achieve 75% "recycling" (Note, a year ago this number was 19 million tons in their AB 341 report. Thus, disposal and "disposal related", includes, for 2010:
 - ADC (even though ADC is *recycling* under current law) and landfill beneficial use – 5.7 million tons.
 - WTE (even though jurisdictions can achieve 10 of 50% diversion under AB 939) – 0.8 million tons.
 - Used Tire Derived Fuel – 0.07 million tons
- Current tons "disposed" – 30.4 million tons
- Total "disposed" and "disposal related" tons – 37 million tons
- Assuming an 11.4 % increase in population the disposal and disposal related number would increase to 41.2 million tons.

- Thus, apparently, of the 41.2 million tons of “disposal related” materials – 22 million tons (more than 50%) must be source reduced, recycled, or composted – leaving about 19 million tons for “disposal“ and “disposal related” activities.

It seems clear that CalRecycle is using both the AB 32 Scoping plan and AB to maximize landfill diversion in excess of any clear legislative or regulatory requirement. This has resulted in CalRecycle’s quest, and perhaps that of the ARB, to remove 22 million tons of waste from disposal in landfills by 2020 in order to achieve their declared “mandated goal” of 75% recycling.

Rather than working with the current waste management structure that has achieved well over 60% diversion, CalRecycle and ARB appear to be relying upon the ARB’s AB 32 regulatory authority to impose ever greater and excessive recycling and GHG reduction mandates on the Waste Management Sector. However, the Waste Management Sector has historically been the most successful industrial sectors, achieving significant GHG reductions over the past 30 years (See Weiss, Thornaloe and Zannes paper included here as Attachment C).

We are concerned that additional GHG reductions from the solid waste sector appear to be used to make up anticipated shortfalls from other sectors. The capitol cost of achieving these added levels of “recycling” is likely to exceed \$2 billion (\$100/ton/year) – and this does not include operation and maintenance costs that would likely double this expense. Is this level of investment warranted?

75% Diversion from AB 939 Perspective

Alternatively, the SWIG/SWICS coalition requests that CalRecycle look at the 75% goal from the AB 939 “diversion” standpoint -- which a more reasonable outcome. Instead of considering the above listed items as “disposal related”, in the context of AB 939 they should be considered “recycling related” under current statutory law.

In 2010 CalRecycle estimates that about 86.8 million tons were “generated” with 30.4 million tons disposed, leaving 56.4 million tons “diverted” with approximately a 65% diversion rate. Assuming that waste “generation” increases by a projected population increase of 11.5%, this puts the generation level in 2020 at about 96.8 million tons. Thus, a 75% “diversion rate” would be 72.6 million tons with 24.2 million tons disposed. If current disposal rates stay the same as 2010, the 2020 disposal tonnage would increase to about 33.9 million tons. Thus, achieving a statewide goal of 75%, under the AB 939 approach, would still require about 16.2 million tons of added recycling capacity of which about 9.7 million tons of additional diversion beyond today’s business as usual (BAU) (33.9-24.2 = 9.7). This, in our view, would still be a sizeable accomplishment that would still be very difficult and expensive to achieve – at least \$1.5 billion of capital investment.

The following table summarizes the above discussion:

	CalRecycle AB 341 75% Interpretation		Traditional AB 939 75% Interpretation	
	2010	2020	2010	2020
Generated	86.8 MT	96.8 MT	86.8 MT	96.8 MT
Recycled or Diverted	49.8 MT (57%)	72.6 MT (75%)	56.4 MT (65%)	72.6 MT (75%)
Disposed	30.4 MT (35%)	? MT	30.4 MT (35%)	24.2 MT (25%)
Disposal Related	6.6 MT (8%)	? MT	N/A	N/A

Total Disposal + DR	37 MT (43%)	24.2 MT (25%)	N/A	N/A
Additional 2020 Recycled or Diverted		22.8 MT		16.2 MT total, 9.7 MT Beyond Business as Usual

Note: MT = Million Tons per Year

***Current law defines ADC and Landfill Beneficial Use as Recycling,
Not Disposal-Related***

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.

(b) Prior to December 31, 1997, pursuant to the board's authority to adopt rules and regulations pursuant to Section 40502, the board shall, by regulation, establish conditions for the use of **alternative daily cover** that are consistent with this division. In adopting the regulations, the board shall consider, but is not limited to, all of the following criteria:

(1) Those conditions established in past policies adopted by the board affecting the use of **alternative daily cover**.

(2) Those conditions necessary to provide for the continued economic development, economic viability, and employment opportunities provided by the composting industry in the state.

(3) Those performance standards and limitations on maximum functional thickness necessary to ensure protection of public health and safety consistent with state minimum standards.

(c) Until the adoption of additional regulations, the use of **alternative daily cover** shall be governed by the conditions established by the board in its existing regulations set forth in paragraph (3) of subdivision (b) of, and paragraph (3) of subdivision (c) of, Section 18813 of Title 14 of the California Code of Regulations, as those sections read on the effective date of this section, and by the conditions established in the board's policy adopted on January 25, 1995.

(d) In adopting rules and regulations pursuant to this section, Section 40124, and this division, including, but not limited to, Part 2 (commencing with Section 40900), the board shall provide guidance to local enforcement agencies on any conditions and restrictions on the utilization of **alternative daily cover** so as to ensure proper enforcement of those rules and regulations.

(Added by Stats. 1996, Ch. 978, Sec. 5. Effective January 1, 1997.)