

MEMORANDUM

To: Office of Administrative Law**Date:** September 26, 2016**From:**

Elliot Block, Chief Counsel

**DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
(CALRECYCLE)****Subject: FINDING OF EMERGENCY FOR GLASS PROCESSING EMERGENCY
REGULATIONS**

The attached regulations, approved by Director Scott Smithline on September 26, 2016, are being submitted as emergency regulations pursuant to Government Code section 11346.1.

The Director has found that an emergency exists which requires immediate action to avert a crisis-level statewide interruption in glass recycling and which cannot be addressed in sufficient time through nonemergency regulations, for the following reasons:

Background:

The Department of Resources Recycling and Recovery (CalRecycle) is responsible for implementing the California Integrated Waste Management Act of 1989 (Act) commencing with section 40000 of the Public Resources Code (PRC), as amended.

Certain types of solid waste facilities are exempt from the requirement to obtain a solid waste facility permit, but only if they meet certain defined requirements. PRC section 40200(b)(2) provides that a facility, whose principal function is to receive, store, convert, or otherwise process wastes that have already been separated for reuse and are not intended for disposal, is not a solid waste operation or facility and consequently is not subject to the Department's current regulatory requirements.

CalRecycle has promulgated regulations to specify how the exception in section 40200(b)(2) is implemented in California Code of Regulations (CCR), Title 14, section 17402.5(c). That regulation established what is commonly known as the three-part-test for determining whether or not a particular operation fell within the CalRecycle's regulatory authority as a recycling center or solid waste facility. This was necessary because there were many operations that claimed to be handling only recyclable material and not be subject to regulation, but which were in fact handling a significant enough amount of residual waste that they did not fit the exception. The three-part-test set some specific thresholds to distinguish between recycling centers and solid waste activities. Other Department regulations set forth regulatory tiers for different types of solid waste activities specifying whether a full permit or a lesser permitting document is required to operate and specifying the applicable minimum standards.

The proposed regulations are being submitted as emergency regulations pursuant to Government Code section 11346.1 to set forth minimum standards for Glass Container Processing Operations and place them within the Enforcement Agency Notification Tier (less than a full permit). Recent information received by the Department has indicated that Glass container processors may be receiving enough solid waste mixed in with the glass they are receiving which might mean that they would not meet the

definition of recycling centers. If they did not, they would be subject to regulatory requirements. Since no regulations regarding these types of facilities currently exist, if this information is true, these processors would be deemed a solid waste facility (transfer or processing stations) and thus, they would be operating without solid waste facility permit. Pursuant to PRC section 44002(b), these facilities would have to cease all activities immediately until they obtained a permit.

The emergency regulations place glass container processors within the regulatory tiers in such a way as to appropriately regulate them but also allow them to continue to operate without a lengthy (years long) process to obtain a solid waste facility permit (or at least up to a year before non-emergency regulations could be promulgated).

Need for Emergency Regulations:

As noted above, CalRecycle has recently received some preliminary information that glass processors may be receiving enough waste mixed in with the glass they receive from Material Recovery Facilities that they may not meet the exemption from being regulated by CalRecycle. Preliminary information indicates that this issue may be true for up to 90 percent of the state's glass processing infrastructure. If this is in fact the case, in the absence of specific regulations providing otherwise, these facilities would have to cease activities immediately as solid waste facilities (transfer or processing stations) operating without a required solid waste facility permit.

Existing regulations do not recognize a streamlined permit tier that would accommodate glass processors. Therefore, a full solid waste facility permit would be required absent an immediate regulatory change. The timeline for obtaining a full solid waste permit, including compliance with environmental review requirements under the California Environmental Quality Act (CEQA), would require glass processors to shut down under a mandatory cease and desist order, and these processors would be out of operation for a significant period of time. At minimum, the absolute best-case scenario for obtaining a full solid waste permit would be 6 months. A more common timeline would be at least a year. In some instances when there are complications with CEQA review or subsequent litigation, a worst-case scenario would involve a multi-year permit process. Given the number of potentially affected processors, the timeline for obtaining full solid waste facility permits under existing regulation would mean a crippling interruption in the state's ability to divert a major recyclable waste stream from landfill disposal, resulting in as much as 901,612 tons of glass being disposed of in landfills and threatening the continuing viability of California glass businesses necessary to accommodate the state's recycling needs (this is the most recent yearly glass processing tonnage available).

To address this potential problem, the emergency regulations would place glass processors within the regulatory tiers in such a way as to appropriately regulate them but also allow them to continue to operate without a lengthy (years-long) process to obtain a solid waste facility permit (or at least up to a year before nonemergency regulations could be promulgated). These glass processors have been in operation for many years and the Department has no information to indicate that any of them have been the subject of complaints from nearby residents regarding their operations.

This fiscal analysis is based on CalRecycle's estimation that these proposed emergency regulations would impact six existing glass processor facilities that handle 90% of the processing in the state. These regulations would increase the level of regulatory oversight beyond what is currently provided through local government requirements. Nothing in the proposed emergency regulations would allow any glass processor to expand their operations.