From: Nick Lapis [mailto:nicklapis@cawrecycles.org]
Sent: Monday, December 12, 2011 4:57 PM
To: Levenson, Howard
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Subject: Commercial Recycling Comments

Howard,
Below are some comments on the proposed commercial recycling regulations. They are in line with comments we have made in public testimony, so I believe you are familiar with all of these issues.

- **Mixed Waste Processing.** CalRecycle should conform the regulation to the statutory language on mixed waste processing.

  The regulation currently allow businesses to comply with the program by "subscribing to a service that includes mixed waste processing alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials from disposal, and yielding diversion results comparable to source separation." This is substantively different and weaker than the language in AB 341, which allows businesses to "subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation". The language in the regulation and ISOR might be interpreted to be weaker than the language in statute. For instance, statute requires that the business subscribe to a "recycling service," which would not include a transformation facility. Furthermore, the broader "systems" approach described in the regulation might imply that a generator may do something other than that which is allowed in statute.

- **Transformation.** The regulations and ISOR need to clarify that a generator whose waste goes to a transformation facility still needs to comply with this regulation (by source separating their waste or subscribing to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation).

  Section §18837 (e) (3) of the regulation accurately, but unnecessarily, states that the regulation does not modify existing statutory requirements for transformation facilities. In describing this section, the ISOR says that "Subsection (e)(3) clarifies that interpretation of the provisions of Public Resources Code section 41783 are not affected by this regulation. <u>Commercial solid waste may be taken to a transformation facility, as long as the existing requirement in Public Resources Code section 41783 for front-end processing to remove recyclable materials to the maximum extent feasible is met. For example front-end processing includes source-separating recyclables or processing material at a mixed waste processing facility.</u> The subsection clarifies that there is no change to the existing provisions of section 41783 of the Public Resources Code related to transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent."

  This sends a confusing mixed message about whether a business needs to subscribe to recycling if its garbage goes to one of the state's three transformation facilities. Nowhere in AB 341 does it say that sending material to transformation facility satisfies the generator's recycling obligation, and the statutory definition of recycling specifically says that "recycling does not include transformation" (PRC §40180). Moreover, it is quite possible that a facility could meet all

the requirements of PRC §41783 but not, by itself, meet the requirements of the regulation. This is very unclear and needs to be made explicit in both the regulation and the ISOR.

- **Compost Emission Reduction Factor (CERF).** The CERF that was developed by the Air Resources Board to measure the greenhouse gas reductions achieved through this regulation inaccurately understates the greenhouse gas benefit of composting and needs to be modified.

  The CERF factor does not properly account for the greenhouse gas benefits of composting the organic fraction of the commercial waste stream because it does not attribute any benefit to avoided landfill emissions. This significant benefit had previously been included (qualitatively and quantitatively) in almost every analysis of the emission reduction potential of this technology (including in work done by CalRecycle, ARB, US EPA, the Climate Action Team, the ETAAC, the Climate Action Reserve, ICLEI, several universities, and many others). Not only does this set a bad precedent for compost emissions accounting by undercutting the benefits of the technology, but it also undercuts local government efforts to include organics in a commercial recycling program.

Please let me know if we can provide any additional information.

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