



## WASTE MANAGEMENT

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December 12, 2011

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Via Email: [climatechange@calrecycle.ca.gov](mailto:climatechange@calrecycle.ca.gov)

### **Subject: Waste Management Comments on Proposed Mandatory Commercial Recycling Regulations**

Dear Marshalle:

Thank you for the opportunity to comment on the proposed Mandatory Commercial Recycling Regulations (Proposed Regulations) for which the public comment deadline is 5:00 PM on December 12, 2011. Waste Management (WM) provides comprehensive waste collection, recycling, disposal, energy recovery services throughout California. Waste Management supports the proposed regulations, but requests that they be amended to conform to the provisions of recently enacted AB 341 (Chesbro).

#### ***Single Stream vs. Mixed Waste Processing***

WM is expanding its recycling and resource recovery operations to help the businesses we serve meet the requirements of these proposed regulations. WM made the strategic decision some time ago to focus on providing single-stream recycling services to the residences and businesses we serve in California. WM does not primarily utilize or rely on mixed waste processing to recover recyclables from the residences and businesses we serve. Rather, WM largely relies on single-stream recycling where recyclable materials are separated from refuse at the point of generation and collected in a separate container or containers. The recyclable materials are further processed at a single-stream Materials Recovery Facility (MRF) with recovery rates typically exceeding 90% for the separated single stream materials. When considering to total waste stream, recycling rates of 30% or more are not atypical.

Mixed waste processing, on the other hand, has a much higher level of recyclable material contamination and it is much more difficult to separate recyclables from the waste stream at a

mixed waste processing facility. Our experience has led us to believe that mixed waste processing typically results in less than 15% recovery – usually less than 10% recovery. Higher

levels of recovery are only possible to achieve at a mixed waste processing facility with a concerted effort and higher levels of processing line employees, more sophisticated equipment and longer processing times. Even so, greater than 20% recovery of mixed waste processing is very difficult (and expensive) to achieve – thus bringing the cost and recovery rates of mixed waste processing into alignment with source separated processing.

Single stream processing has several advantages over mixed waste processing:

- More paper grades may be collected, including junk mail, telephone books and mixed residential paper.
- Compared to mixed waste recycling, the public is much more informed about waste reduction issues and typically feels more “ownership” of and involvement in a recycling program. This typically results in higher recycling rates.
- Less recyclable materials are missed by the sorting processes.
- Recyclable materials are less contaminated and, thus, easier to market.
- A much greater range of recyclable materials are collected and processed.
- Source reduction is much easier to emphasize.
- Fewer worker health and safety concerns.
- Fewer odor problems.

On the other hand, Single Stream collection and processing has some disadvantages as compared to mixed waste processing – principally related to the cost of operations and education and commitment of waste generators in the service area.

- Higher Initial capital cost for:
  - Separate carts for recyclable materials and refuse
  - Different collection vehicles
  - More expensive processing facility
- More difficult to achieve the appearance of 100% participation in a recycling program. Mixed waste processing can claim 100% participation even though there is typically a lower rate of recyclable material recovery.
- More education and a higher level of involvement by waste generators.

***Inconsistency with Statute on Mixed Waste and Source Separated Processing***

The proposed regulations and recently enacted legislation (AB 341) have different language with respect to how single stream and mixed waste processing are addressed.

Here is the language of AB 341:

- (b) A commercial waste generator shall take at least one of the following actions:
- (1) Source separate recyclable materials from solid waste and subscribe to a basic level of recycling service that includes collection, self-hauling, or other arrangements for the pickup of the recyclable materials.
  - (2) Subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation.

Here is the parallel language of the proposed regulations:

- (a) On and after July 1, 2012, a business shall take at least one of the following actions in order to reuse, recycle, compost, or otherwise divert commercial solid waste from disposal:
- (1) Source separating recyclable and/or compostable materials from the solid waste they are discarding and either self-hauling, subscribing to a hauler, and/or otherwise arranging for the pick-up of, the recyclable and/or compostable materials separately from the solid waste to divert them from disposal.
  - (2) 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.

Clearly the text of the regulations does not mirror the text of the implementing statute. WM believes that CalRecycle is misinterpreting the language of the statute and, as a result, relaxing the requirements imposed by the statute on mixed waste processing facilities. Take for example, the text of the overriding Statute in subparagraph (2):

- (2) Subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation.

This subparagraph does not contain any commas separating the phrases. Thus the only interpretation that can be made is as follows:

- (2) Subscribe to a recycling service -- that may include mixed waste processing that yields diversion results comparable to source separation.

The statutory language seems clear that the mixed waste processing must achieve diversion results comparable to source reduction rather than the recycling service (that may include mixed waste processing) that yields diversion results comparable to source reduction. The only way that the language of the statute could have the interpretation given to it by CalRecycle would be if it read:

- (2) Subscribe to a recycling service, that may include mixed waste processing, that yields diversion results comparable to source separation.

But, this is NOT the way the implementing statute is written and thus, CalRecycle must conform its regulatory language to that of the statute by interpreting that the mixed waste processing must achieve diversion results comparable to source reduction processing – NOT that the overall recycling service (that may include mixed waste processing) that yields diversion results comparable to source separation. WM requests that the proposed regulations be amended to parallel the language of the statute and not try to read something into the statute that is not there.

Failure to make this adjustment to the proposed regulations will potentially severely disadvantage services that emphasize source separated recycling. For the reasons cited above, source separated recycling achieve higher levels of recycling, but with higher costs – unless sufficient processing worker time, resources and equipment and are added to mixed waste processing operations. To create a more level playing field the two types of processing operations must be directly compared. WM believes the proper interpretation of the statutory language is such that if a service uses mixed waste processing, the mixed waste processing operation must achieve recycling levels comparable to that of source separated recycling.

The regulations as written do not provide any standard for recyclable material recovery by recycling services. Thus the only way to treat them fairly is through a strict interpretation of the statute to directly compare mixed waste processing with source separated processing. As noted above, source separated recycling is more expensive to implement – unless the time and effort is made to achieve higher levels of mixed waste processing recyclable recovery by investing in increased time, materials, and workers to achieve even marginally comparable results.

### ***No standard or procedure for “comparability” between mixed waste and source separated processing***

Further, the statute clearly anticipates that some form of “comparable diversion” determination must be made between mixed waste processing facilities and source separated processing facilities. Yet the regulations do not include any such standard or procedure for determining comparability. WM believes that the statute demands that the regulations adopted by CalRecycle must include some standard or procedure for determining comparable diversion rates between

source separated and mixed waste processing. Failure to include such standards or procedures would clearly be inconsistent with the intent of the statute. WM requests that the regulations be amended to include a process for determining comparable diversion rates. We suggest the following language be added as subdivision (f) and (g) of proposed Section 14 CCR 18837:

- (f) Starting on March 1, 2013, any recycling service that provides commercial recycling services in accordance with this regulation shall report to CalRecycle the following information by March 1 of each year for the previous calendar year. The purpose of this information to assist CalRecycle in determining the comparable diversion rates as required by PRC 42649.2(b):
  - (1) The names of the cities or counties for which commercial recycling services are provided.
  - (2) The type of recycling processing used in each city or county including mixed waste processing, source separated (single stream) processing or other form or combination of processing services.
  - (3) The overall amount of materials disposed or recovered by all recycling and disposal services offered to the jurisdictions served by the recycling service.
  - (4) The amount of recyclable material recovery, by material type, by each mixed waste processing facility or source separated processing facility operated by the recycling service. The total tons of waste and recyclable materials handled, processing and/or disposed by the recycling service.
- (g) Not later than September 1 of each year, CalRecycle will prepare a report on the comparability of mixed waste processing and source separated processing in accordance with PRC 42649.2(b).

### ***Inconsistency with Statute on Requirements of Jurisdictions***

The regulations also contain another inconsistency with respect to the requirements imposed on jurisdictions in the proposed regulations related to the requirements that may be imposed by the jurisdiction on commercial solid waste. The statute reads as follows in 42649.2 (c):

- (c) The commercial solid waste recycling program shall be directed at a commercial waste generator, as defined in subdivision (b) of Section 42649.1, and may include, but is not limited to, any of the following:
  - (1) Implementing a mandatory commercial solid waste recycling policy or ordinance.
  - (2) Requiring a mandatory commercial solid waste recycling program through a franchise contract or agreement.

- (3) Requiring all commercial solid waste to go through either a source separated or mixed processing system that diverts material from disposal.

On the other hand, the parallel provisions of the regulations read somewhat differently, as follows in 14 CCR 18838 (b):

- (b) The commercial recycling program adopted pursuant to Subdivision (a) may include, but is not limited to,
- o implementing a commercial recycling policy or ordinance requiring businesses to recycle,
  - o requiring a mandatory commercial recycling program through a franchise agreement or contract, or
  - o requiring that commercial solid waste from businesses be sent to a mixed waste processing facility.

WM requests that the last requirement be amended to be consistent with statute as follows:

- o requiring that commercial solid waste from businesses ~~be sent to a~~ to go through either a source separated or mixed waste processing ~~facility~~ system that diverts material from disposal.

If a jurisdiction chooses the 3<sup>rd</sup> approach, they should be required to specify either a source separated or mixed waste processing system as required by statute.

Please do not hesitate to contact me if you have any questions or require further information regarding our concerns

Sincerely,



Charles A. White, P.E.  
Director of Regulatory Affairs/West

cc: Honorable Wes Chesbro, Assemblyman  
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