

September 26, 2011

TO: Howard Levinson, Deputy Director
Ty Moore, Staff Council

FROM: Mark Murray, Californians Against Waste

C.C. Mark Leary, Director
Kathy Frevert,

RE: Use of the Terms and Standards for Diversion in the Public Resources Code

Following up on your request, below are several citations from the California Public Resources Code which illustrates that 'diversion' in the statute generally refers to an action whereby materials are source reduced, recycled or composted from Solid Waste Disposal. And of course the term Solid Waste Disposal includes transformation. In those rare instances where the legislature has intended that some other activity or some capped percentage of some activity 'count' as diversion, the legislature has specifically designated that activity as such.

Additionally, I suspect that within the next several days, the new waste reduction goal for the state will read:

"it is the policy goal of the state that not less than 75 percent of solid waste generated be source reduced, recycled, or composted by the year 2020, and annually thereafter."

All of which is to make the point that the only 'measure' that has any meaning or should be referenced in the context of the carpet recycling program (or any other material specific recycling program), should be the amount of material that is source reduced, recycled or composted vs disposed.

Diversion Means:

PRC 40124. "Diversion" means activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division, including Article 1 (commencing with Section 41780) of Chapter 6.

PRC 40127. Diversion programs means a program in the source reduction and recycling element of a jurisdiction's integrated waste management plan, specified in Chapter 2 (commencing with Section 41000) of, or Chapter 3 (commencing with Section 41300) of, Part 2 and that has the purpose of diverting solid waste from landfill disposal or transformation through source reduction, recycling, and composting activities. "Diversion program" additionally includes any amendments, revisions, or updates to the element, and any programs set forth in a time extension, alternative requirement, or compliance order approved by the board pursuant to Part 2 (commencing with Section 40900).

Solid Waste Disposal Means:

PRC 40192. (a) Except as provided in subdivisions (b) and (c), "solid waste disposal," "disposal," or "dispose" means the final deposition of solid wastes onto land, into the atmosphere, or into the waters of the state.

(b) For purposes of Part 2 (commencing with Section 40900), "solid waste disposal," "dispose," or "disposal" means the management of solid waste through landfill disposal or transformation at a permitted solid waste facility, unless the term is expressly defined otherwise.

(c) For purposes of Chapter 16 (commencing with Section 42800) and Chapter 19 (commencing with Section 42950) of Part 3, Part 4 (commencing with Section 43000), Part 5 (commencing with Section 45000), Part 6 (commencing with Section 45030), and Chapter 2 (commencing with Section 47901) of Part 7, "solid waste disposal," "dispose," or "disposal" means the final deposition of solid wastes onto land.

State Diversion Requirements:

PRC 41780. (a) Each jurisdiction's source reduction and recycling element shall include an implementation schedule that shows both of the following:

(1) For the initial element, the jurisdiction shall divert 25 percent of all solid waste by January 1, 1995, through source reduction, recycling, and composting activities.

(2) Except as provided in Sections 41783 and 41784, for the first and each subsequent revision of the element, the jurisdiction shall divert 50 percent of all solid waste on and after January 1, 2000, through source reduction, recycling, and composting activities.

(b) This section does not prohibit a jurisdiction from implementing source reduction, recycling, and composting activities designed to exceed the requirements of this division.

Diversion 'credit' for Beneficial Reuse

PRC 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.

Specified and Limited Diversion Credit for Transformation

PRC 41783. (a) For a jurisdiction's source reduction and recycling element submitted to the board after January 1, 1995, and on or before January 1, 2009, the 50 percent diversion requirement specified in paragraph (2) of subdivision (a) of Section 41780 may include not more than 10 percent through transformation, as defined in Section 40201, if all of the following conditions are met:

(1) The transformation project is in compliance with Sections 21151.1 and 44150 of this code and Section 42315 of the Health and Safety Code.

(2) The transformation project uses front-end methods or programs to remove all recyclable materials from the waste stream prior to

transformation to the maximum extent feasible.

(3) The ash or other residue generated from the transformation project is routinely tested at least once quarterly, or on a more frequent basis as determined by the agency responsible for regulating the testing and disposal of the ash or residue, and, notwithstanding Section 25143.5 of the Health and Safety **Code**, if hazardous wastes are present, the ash or residue is sent to a class 1 hazardous waste disposal facility.

(4) The board holds a public hearing in the city, county, or regional agency jurisdiction within which the transformation project is proposed, and, after the public hearing, the board makes both of the following findings, based upon substantial evidence on the record:

(A) The city, county, or regional agency is, and will continue to be, effectively implementing all feasible source reduction, recycling, and composting measures.

(B) The transformation project will not adversely affect public health and safety or the environment.

(5) The transformation facility is permitted and operational on or before January 1, 1995.

(6) The city, county, or regional agency does not include biomass conversion, as authorized pursuant to Section 41783, in its source reduction and recycling element.

(b) On and after January 1, 2009, for purposes of the review authorized by Section 41825, with regard to a jurisdiction's compliance with Section 41780 for each year commencing January 1, 2007, the board may reduce the per capita disposal rate for a jurisdiction, as calculated pursuant to subdivision (d) of Section 41780.05, by no more than 10 percent of the average of the calculated per capita generation tonnage amount, if the jurisdiction otherwise meets the substantive requirements specified in paragraphs (1) to (6), inclusive, of subdivision (a), for solid waste to be included as diversion for purposes of that subdivision.

Specified and limited Diversion Credit for Biomass

PRC 41783.1. (a) For any city, county, or regional agency source

reduction and recycling element submitted to the board after January 1, 1995, the 50 percent diversion requirement specified in paragraph (2) of subdivision (a) of Section 41780 may include not more than 10 percent through biomass conversion if all of the following conditions are met:

(1) The biomass conversion project exclusively processes biomass.

(2) The biomass conversion project is in compliance with all applicable air quality laws, rules, and regulations.

(3) The ash or other residue from the biomass conversion project is regularly tested to determine if it is hazardous waste and, if it is determined to be hazardous waste, the ash or other residue is sent to a class 1 hazardous waste disposal facility.

(4) The board determines, at a public hearing, based upon substantial evidence in the record, that the city, county, or regional agency is, and will continue to be, effectively implementing all feasible source reduction, recycling, and composting measures.

(5) The city, county, or regional agency does not include transformation, as authorized pursuant to Section 41783, in its source reduction and recycling element.

Specified and Limited Diversion Credit for Sewage Sludge:

41781.1. (a) Prior to determining that the diversion of sludge may be counted toward the diversion requirements established under Section 41780, but within 180 days of receiving such a request, the board shall do both of the following:

(1) Make a finding at a public hearing, based upon substantial evidence, that the sludge has been adequately analyzed and will not pose a threat to public health or the environment for the reuse which is proposed.

(A) Except as provided in subparagraph (B), prior to making the finding required to be made pursuant to this paragraph, the board shall consult with each of the following agencies, and obtain their concurrence in the finding, to the extent of each agency's jurisdiction over the sludge or its intended reuse:

(i) The state water board and the regional water boards.

(ii) The State Department of Health Services.

(iii) The State Air **Resources** Board and air pollution control districts and air quality management districts.

(iv) The Department of Toxic Substances Control.

(B) If, prior to the board making the finding required to be made pursuant to this paragraph, an agency specified in subparagraph (A) issues a permit, waste discharge requirements, or imposes other conditions for the reuse of sludge, the agency shall have been deemed to have concurred in that finding.

(2) Establish, or ensure that one or more of the agencies specified in subparagraph (A) of paragraph (1) establishes, ongoing monitoring requirements which ensure that the proposed sludge reuse does not pose a threat to health and safety or the environment.

(b) It is not the intent of this section to require the board, or the agencies listed in subparagraph (A) of paragraph (1) of subdivision (a), to impose additional requirements or approval procedures for sludge or sludge reuse applications, apart from the requirements and approval procedures already imposed by state and federal law. It is the intent of this section to require that the board determine that each sludge diversion, for which diversion credit is sought, meets all applicable requirements of state and federal law, and thereby provides for maximum protection of the public health and safety and the environment.