

**DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

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September 14, 2010

Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Committee/
Integrated Waste Management Task Force
900 S. Fremont Avenue
Alhambra, CA 91803

Reply To August 10, 2010, Task Force Letter Concerning *SB1016 Implementation- CalRecycle's Enforcement Policy, Jurisdiction Review Tool and Outreach to Local Governments*

Dear Ms. Clark,

On behalf of Director Brown, I am pleased to respond to your letter dated August 10, 2010. Your letter raised four issues that I would like to address briefly. Additionally, Cara Morgan and I will be attending the Task Force's November meeting and we would be happy to further discuss these issues and answer any questions that you might have.

1. Lack of Adequate Outreach for the CIWMP Policy

While the Task Force raised its concern again about the lack of adequate outreach, we respectively disagree. We provided numerous opportunities for input from stakeholders, including:

- Sending out numerous e-mails to stakeholders,
- Providing stakeholders the ability to submit comments via e-mail,
- Posting any changes staff made to the document based upon stakeholders' suggestions,
- Notifying and providing time for stakeholders to comment on these changes,
- Web broadcasting the workshop that allowed all of our stakeholders around the state the opportunity to participate and speak via phone at no cost to them.

Moreover, the changes were intended only to conform the document to SB 1016 and no major policy changes were contemplated or made. Finally, staff does evaluate when and where workshops are needed. In light of jurisdictions and CalRecycle's limited resources, we are relying more and more upon webinars to communicate with our stakeholders without incurring travel costs.



2. Continued Development of the Mandatory Commercial Recycling Regulations

The Task Force raised a number of issues, including the question of this being an unfunded state mandate, the lack of statutory authority, the lack of environmental and cost analysis, and the lack of infrastructure to implement the regulation. We can discuss these concerns at the meeting in November also, but the following is a brief response. In general, CalRecycle and Air Resources Board (ARB) staff does not concur that the issues raised by the Task Force warrant halting the development of the regulation.

- CalRecycle staff is currently in the process of working with the ARB to determine whether this regulation is an unfunded mandate. Because local jurisdictions have the ability to charge fees it has not yet been determined if this regulation would create an unfunded mandate. Once a determination has been made, staff will inform stakeholders.
- Regarding the issue of authority, I would like to explain the agreement that provides CalRecycle the authority to proceed with the development of these regulations. Although the AB 32 Scoping Plan designates CalRecycle as the lead agency, current California statutes do not provide CalRecycle with authority to adopt or implement the commercial recycling regulation as a greenhouse gas reduction measure. Absent additional express statutory authority to adopt and implement the regulations that are required to complete the tasks assigned to it in the AB 32 Scoping Plan, CalRecycle worked with the ARB to develop a joint rulemaking and implementation plan. This plan was approved by CalRecycle's predecessor, the California Integrated Waste Management Board, in December 2009. Under the plan, CalRecycle staff has the lead role in developing the mandatory commercial recycling regulation, in collaboration with the ARB staff, with the ARB Board adopting the regulation through its rulemaking authority. This is similar to the process used to adopt the discrete early action regulation for methane control at landfills. ARB staff will assist as needed in regulation development to obtain ARB Board approval and meet all Administrative Procedures Act and Office of Administrative Law requirements.
- Staff has been addressing the environmental and cost analysis related to the regulation. These draft analyses will be presented as part of our workshop on September 21, which again will be broadcast as a webinar. The purpose of this workshop is to solicit stakeholder input and feedback on these analyses. Issues such as the impacts related to transportation (both domestically and internationally) and infrastructure needed to implement the regulation will be addressed at the workshop.

Finally, I would like to point out that staff has built the draft regulation so that it is extremely flexible for local jurisdictions, based in part upon significant stakeholder feedback, including input from a workshop that we held in Southern California in Diamond Bar in summer 2009. Additionally, we have been evaluating all of the L.A. Local Task Force comments in our draft rulemaking process and we are considering Mr. Mohajer's suggested changes made at the June 16 workshop to consider the draft regulatory language. The revised draft regulatory language will be shared with stakeholders later this year for additional input and comments.

3. Jurisdiction Review Tool Being a New Requirement

First, as Steve Uselton explained to you at the July Task Force meeting, our staff prepared a document that was provided to a few jurisdictions and that had the appearance of being an official "newsletter." This document contained erroneous and misleading information and was not reviewed by management. This "newsletter" gave the impression that the Jurisdiction Review Tool is a new tool containing new guidance on how staff is to review a jurisdiction's program implementation. This is incorrect, and I apologize for any confusion this has caused. Please be assured that nothing has changed in staff's review process for jurisdictions.

As Steve explained, this is merely an internal tool for staff and management to summarize staff's jurisdiction analysis using many different pieces of information from databases, annual reports, site visits, etc. It allows staff to compile and summarize the information they need for the recommendation they present to management regarding each jurisdiction's compliance status. It is built on previous internal tools used in past biennial reviews and it is not a regulatory tool. Staff has utilized numerous internal tools over the years for compiling their analysis of jurisdictions and then this analysis is summarized in the public documents, such as the Board Agenda Items and now the Department's Request for Approvals. This Jurisdiction Review Tool is simply one of these internal tools.

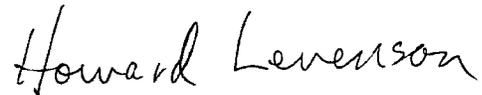
As we have done in past review cycles, staff continues to collaborate and work with the jurisdictions to complete their analyses of each jurisdiction's program implementation. In keeping with CalRecycle's commitment to provide for transparency in its decision-making process, we plan to continue providing staff's analysis in the Request for Approvals (which are akin to the previous "Items" presented to the CIWMB) that can be viewed by the public. We want to assure you that nothing has changed in our jurisdiction review process since the passage of SB 1016. Furthermore, SB 1016 codified how staff and the former California Integrated Waste Management Board has conducted jurisdiction reviews with the focus being on program implementation and the numbers being used as an indicator.

4. Green Building Code Reporting Requirements

As mentioned above, the "newsletter" that was developed by staff contained erroneous information, including some on the Green Building Code. The Task Force is correct that jurisdictions are not required to report on progress in their Annual Report. The information in the "newsletter" stating that jurisdictions are required to report to CalRecycle is erroneous. As with any program, jurisdictions will be able to report, if they so choose, in their electronic annual report on how the Green Building Code is being implemented in their community and how that relates to implementation of C&D programs, but they are not required to report. We have made sure this is clear on our website and we provided an oral update to clarify this at the Materials Management and Local Assistance public meeting on September 15.

Thank you again for sharing your comments. I hope this response helps to clarify your concerns, and Cara and I look forward to meeting with you at the Task Force meeting in November.

Regards,

A handwritten signature in cursive script that reads "Howard Levenson".

Howard Levenson, Ph.D.
Assistant Director, Materials Management and Local Assistance Program

cc: Margo Reid Brown, Director, CalRecycle
Mark Leary, Deputy Director, CalRecycle
Cara Morgan, Division Chief, Local Assistance and Market Development, CalRecycle



GAIL FARBER CHAIR
MARGARET CLARK VICE CHAIR

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August 10, 2010

Margo Reid Brown, Director
California Department of Resources
Recycling and Recovery (CalRecycle)
801 K Street, MS 19-01
Sacramento, CA 95814

Dear Ms. Brown:

**SB 1016 IMPLEMENTATION – CALRECYCLE’S ENFORCEMENT POLICY,
JURISDICTIONAL REVIEW TOOL AND OUTREACH TO LOCAL GOVERNMENTS**

On behalf of the Los Angeles County Integrated Waste Management Task Force (Task Force), I would like to thank your agency for its efforts to streamline the AB 939 compliance measurement system and incorporate the changes brought about by Senate Bill 1016 (2008) into the Enforcement Policy Part II (Enforcement Policy) and related guidelines, procedures, regulations, and tools. However, considering the significant financial impact of these measures on cities and counties, the Task Force remains deeply concerned with CalRecycle’s current outreach level to local governments.

We strongly believe CalRecycle’s outreach to jurisdictions needs to be significantly expanded to better engage cities, counties, and AB 939 regional agencies in the process. This means conducting workshops in various regions of the State including Southern California to discuss the Enforcement Policy, the proposed draft regulations for mandatory commercial recycling, CalRecycle’s Jurisdictional Review Tool (JRT) (enclosed), and the new State Green Building Code.

Pursuant to Chapter 3.67 of the Los Angeles County Code and the California Integrated Waste Management Act of 1989, the Task Force is responsible for coordinating the development of all major solid waste planning documents prepared for the County of Los Angeles and the 88 cities in Los Angeles County with a combined population in

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excess of ten million. Consistent with these responsibilities and to ensure a coordinated and cost-effective and environmentally sound solid waste management system in Los Angeles County, the Task Force also addresses issues impacting the system on a countywide basis. The Task Force membership includes representatives of the League of California Cities-Los Angeles County Division, County of Los Angeles Board of Supervisors, City of Los Angeles, waste management industry, environmental groups, the public, and a number of other governmental agencies.

In its April 29, 2010, letter to CalRecycle, the Task Force expressed concern regarding the lack of adequate outreach to local jurisdictions on the Enforcement Policy and other issues such as the exclusion of mandatory commercial recycling implementation in the Enforcement Policy document. Despite our expressed concern, the Enforcement Policy was adopted by CalRecycle.

On June 30, 2010, the Task Force forwarded a follow-up letter to your agency expressing further concern regarding the continued development of the proposed mandatory commercial recycling regulations - an unfunded State mandate. The Task Force's expressed concerns included, but were not limited to, failure of the proposal to:

- a. Identify the statutory authority upon which these regulations are based.
- b. Substantiate claiming greenhouse gas (GHG) reductions without conducting a true lifecycle environmental and economic cost analysis or considering the fact that a majority of the materials recovered in California through the existing recycling efforts are shipped overseas for processing and remanufacturing in facilities that operate under lower environmental standards than California's and produce significant amounts of GHGs and toxic emissions. This negatively impacts the well being of California citizens and our environment.
- c. Address the needed infrastructure in California to handle the recovered materials.

Without addressing the above issues, we believe development of these regulations is premature.

More recently, the Task Force was made aware of the JRT being used by CalRecycle to evaluate a jurisdiction's **diversion program implementation** and identify program gaps (emphasis added). Similar to the proposed mandatory commercial recycling regulations, factors to be considered by CalRecycle as stated in the enclosed JRT include, but are not limited to, Participation Rates, Set Out Rates, Recovery Rates, Container sizes, Collection Frequency, How is a Program's Effectiveness Tracked, etc. Depending on how the JRT is applied, it could expose a city or county to a significant additional financial burden to comply with CalRecycle's requirements. Unfortunately, the JRT was developed and put in practice without an opportunity for the regulated communities to provide input. As such, the JRT appears to be an underground regulation, procedure, guideline, directive, or tool, until such time as it is considered and approved by the State Office of Administrative Law.

The Task Force is also aware of the Building Standards Commission's (BSC) recent adoption of the 2010 State Green Building Code. This code will require applicable projects, with some exceptions, to develop a waste management plan and divert 50 percent of the project's waste. As stated on page 2 of the enclosed JRT, jurisdictions will be required by CalRecycle to report their progress on the implementation of the new Green Building Code in their 2011 Annual Reports. We have serious concerns with CalRecycle's adoption of this new requirement without identifying the applicable statutory authority.

Together, these series of actions by CalRecycle are claimed to be related to the enactment of SB 1016. Unfortunately, the logic and reasoning behind these actions have not been fully explained or made accessible to local jurisdictions. Given the expressed concerns, the Task Force is respectfully requesting, again, that CalRecycle take appropriate measures to develop and implement an effective outreach program to cities, counties, and AB 939 regional agencies. This outreach program should include, but not be limited to, conducting workshops throughout the State and Los Angeles County regarding the above matters. This would allow local governments to obtain information that may help them better understand CalRecycle's current compliance measurement and enforcement policies and provide feedback.

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We would appreciate your prompt response to our concerns and look forward to working constructively with CalRecycle on this and other pressing issues. If you have any questions, please contact Mr. Mike Mohajer of the Task Force at (909) 592-1147.

Sincerely,

Margaret Clark

Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Management Committee
Integrated Waste Management Task Force and
Council Member, City of Rosemead

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Enc.

cc: Governor Arnold Schwarzenegger
Lester Snow, Secretary, California Natural Resources Agency
CalRecycle (Mark Leary, Howard Levenson, Cara Morgan)
California State Association of Counties
League of California Cities
Each Member of the County of Los Angeles Board of Supervisors
Each City Mayor in the County of Los Angeles
League of California Cities, Los Angeles County Division
Southern California Association of Governments
San Fernando Valley Council of Governments
San Gabriel Valley Council of Governments
South Bay Cities Council of Governments
Gateway Cities Council of Governments
Each City Recycling Coordinator
Each Member of the Los Angeles County Integrated Waste Management Task Force

New Name Same Great Service

YOUR LAMD REPRESENTATIVE

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We're on the Web!
www.calrecycle.ca.gov

As of January 1, 2010, the California Integrated Waste Management Board (CIWMB) and the Department of Conservation's Division of Recycling (DOR) combined to become the *new* **Department of Resources Recycling and Recovery--CalRecycle**.

Brought about by SB 63, this new department within Natural Resources Agency brings together most of the CIWMB's programmatic functions along with the beverage container recycling program administered by DOR.

While stakeholders can expect to see a few changes (websites, e-mail domains, etc), the new organization is committed to minimizing disruption to program operations. Along with its new responsibilities under the Beverage Container Recycling and Litter Reduction Act, CalRecycle will continue its oversight of the Integrated Waste Management Act, including its integrated framework for program implementation, solid waste planning, and solid waste facility and landfill compliance.

Organizational charts and more information on departmental structure is available on our web site www.calrecycle.ca.gov. Please log-on often and let us know if there is anything we can do to serve you better. We appreciate your cooperation and patience throughout this transitional process.

Promote Your Local Businesses with WRAP



California businesses and nonprofits are encouraged to apply for the 2010 Waste Reduction Awards Program (WRAP).

Established in 1993, the WRAP program honors model programs that show innovation and leadership in waste prevention, recycling and composting, procurement, and education.

Applicants must be in current compliance with all applicable solid waste regulatory programs. Local, State, and federal

government entities-for example, city and county agencies, K-12 public schools qualify to apply.

The application is now available online at <http://www.calrecycle.ca.gov/wrap>. Previous applicants and winners are encouraged to apply.

WRAP application deadline: June 15, 2010.

For more information, please call (916) 341-6199, or contact the WRAP Program Coordinator at wrap@calrecycle.ca.gov.

You may also qualify for the 2010 Governor's Environmental and Economical Leadership Award (GEELA)-- Business Waste Reduction Award. The GEELA Program is California's highest environmental honor.

More information is available at: www.calepa.ca.gov/Awards/GEELA/

GEELA application deadline: June 1, 2010, 5:00 P.M.

2010 Electronic Annual Report Submissions



Jurisdictions will once again submit their CalRecycle 2009 Electronic Annual Report (EAR) via the Web. An email notification will come out once the application is available.

This will be the third year of reporting using the new measurement system signed into law in 2008. The newer system uses a jurisdiction's per capita disposal rate as one of several "factors" in determining a jurisdiction's compliance with the intent

of AB 939, and allows the CalRecycle and jurisdictions to focus primarily on successful implementation of diversion programs.

Please take time to update your diversion program notes for the key programs in your jurisdiction. The program implementation information is a critical component of CIWMB staff's review to assess your compliance with the AB939 requirements.

Reminder: Diversion rates will no longer be measured. With the passage of SB 1016, the Per Capita Disposal Measurement System, only per capita disposal rates will be measured. For 2007 and subsequent years, CalRecycle compares reported disposal tons to population to calculate per capita disposal expressed in pounds/person/day. This new goal measurement system is described in CalRecycle's [Goal Measurement: 2007 and Later](#) web page.

New State Green Building Code

The Building Standards Commissions (BSC) recently adopted the 2010 State Green Building Code which will apply **to nearly all non-residential and low-rise residential new construction beginning January 1, 2011**. This code will require those projects, with some exceptions, to develop a waste management plan and divert 50% of the project's waste. An email apprising Local Jurisdictions of the State Green Building Code has been distributed.

The State Code was developed to provide flexibility for locals by:

- 1) Deferring to the local C & D ordinance as long as it is as stringent as the code.
- 2) Allowing exemptions for projects that are essentially too far from diversion facilities.

(Section 5.408 is for non-residential and K-14 schools and Section 4.408 is for low-rise residential).

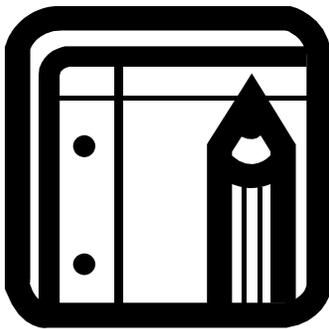
Jurisdictions will be required to report progress on how they are implementing the new Green Building Code starting in their 2011 Electronic Annual Report-- submitted in 2012. LAMD staff will be the contact ensuring jurisdictions are implementing the code via the normal jurisdiction reviews.

"Starting with their 2011 Electronic Annual Report, jurisdictions will be required to report progress on the new Green Building Code implementation."

What is the Jurisdictional Review Tool?

The Jurisdiction Review Tool (JRT) is intended to provide an annual, comprehensive, uniform summary of LAMD staff's understanding and analysis of a jurisdiction's overall diversion program performance.

This new tool will pull current information from past Annual Reports, site visit notes and other files that are available. Where needed, LAMD staff may schedule a site visit or send an email to complete any questions that are missing data. Each section of the JRT provides LAMD staff guidance in developing analysis while some sections may not be applicable to some jurisdictions.



The end-result should provide a list of the jurisdiction's major programs and any program changes, as well as an analysis of how effective programs are in diverting waste from disposal. The completed tool will be used to:

- Consistently evaluate diversion program implementation and identify program gaps.
- Identify exemplary programs.
- Determine Good Faith Efforts for jurisdictions above their target.

- Refer jurisdictions to JCA for compliance investigation determinations.
- Provide a basis of understanding for new staff taking on the jurisdiction.

Updated annually by LAMD staff, this tool will help jurisdictions identify gaps and provide LAMD staff tangible ways to assist when applicable.

Examples of JRT questions include:

- Participation Rates
- Set Out Rates
- Container Sizes
- Collection Frequency
- Recovery Rates
- How are Hauler Contracts Structured
- How is Program Effectiveness Tracked

Much of the information needed for the JRT can be found in past jurisdictional Annual Reports, but your LAMD representative may need to schedule a visit to go over the information collected and gather any data gaps.

Your time and cooperation in compiling each jurisdiction's JRT is appreciated. Once completed the JRT will be a useful communication tool between LAMD staff, the jurisdiction and CalRecycle management.

Dates to Remember:

- 4/15- 6/15: WRAP application period open
- 5/25: HHWIE; Fremont, CA
- 6/1: GEELA Award applications due
- 6/16: MMLA Public Meeting—Mandatory Commercial Recycling Workshop

Date Change for Mandatory Commercial Recycling Workshop

The Mandatory Commercial Recycling Regulation workshop will be held June 16 (instead of May 12th) at the monthly CalRecycle Materials Management and Local Assistance meeting. The workshop will also be broadcast for those who cannot make it to Sacramento.



For more information you can refer to any of these locations on any of these CalRecycle websites:

CalRecycle's Public Notices website: <http://www.calrecycle.ca.gov/Actions/Default.aspx>
 The Events calendar: <http://www.calrecycle.ca.gov/calendar/>
 Commercial Recycling webpage on the CalRecycle Climate Change website: <http://www.calrecycle.ca.gov/climate/>

About CalRecycle--

Message from the Director

From the CalRecycle Web Site

California's newly established Department of Resources Recycling and Recovery (CalRecycle) brings together the State's recycling programs and continues our tradition of pioneering environmental stewardship.

Through landmark initiatives like the Integrated Waste Management Act and Beverage Container Recycling and Litter Reduction Act, California works toward a society that uses less, recycles more, and takes resource conservation to higher and higher levels. Our state now leads the nation with a 59 percent recycling rate for all materials, and in the past 20 years, we have created 85,000 jobs through expanding recycling markets.

CalRecycle will continue the mission to ensure a healthy environment and, in turn, a healthy public. Through reducing, reusing and recycling, we will promote the stewardship of all materials to achieve their highest and best use, and explore new technologies that create less waste and pollution, improve the sustainability of our resources, and reduce the overall impact on land, air, and water.

Environmental responsibility has become second nature to the people of California. We already recycle 74 percent of our cans and bottles, and three-quarters of our used tires. E-recycling is local and convenient, and food composting is a growing movement.

CalRecycle looks forward to finding new ways to encourage innovative technologies to turn discards into usable products for business, agriculture, industry and the home. The economy and the environment can and should work together to help build a stronger California.

Margo Reid Brown
Director