

September 19, 2011

Clerk of the Board  
Air Resources Board  
1001 I Street  
Sacramento, CA 95814

**Subject: AB 32 Mandatory Commercial Recycling Regulation**

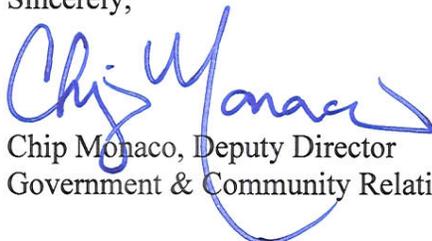
Dear Air Resources Board,

Thank you for the opportunity to provide comments on the Proposed Draft Regulation to Reduce Greenhouse Gas Emissions by Requiring Commercial Businesses to Recycle, and the supporting documents released August 31, 2011. The purpose of the regulation is to support AB 32, the Global Warming Solutions Act, by reducing greenhouse gas emissions of 5 MMTCO<sub>2</sub>E by 2020 through mandatory commercial recycling. In addition, a secondary benefit of the regulation is to enhance recycling activities throughout the State and to further support the Integrated Waste Management Act of 1989 (AB 939).

The regulatory package presented before the Board represents extensive informal rulemaking efforts for the past two years between stakeholders and CalRecycle and Air Resources Board staff. We have previously provided comment letters, dated March 4 and July 27, 2011, on the draft regulation and believe that the existing regulatory language adequately addresses our concerns. More importantly, the requirements and evaluation criteria for local jurisdictions to implement the mandatory commercial recycling builds upon AB 939 which local jurisdictions are very familiar with. Given the close nexus of this regulation and AB 939, we certainly support the Memorandum of Understanding between CalRecycle and the Air Resources Board which authorizes CalRecycle to implement and enforce this regulation as a means of practicality and efficiency.

We commend the collaborative efforts of CalRecycle and the Air Resources Board in working with stakeholders to develop a regulation that will provide local government and businesses the flexibility to implement commercial recycling programs that are appropriate for that jurisdiction. We look forward to working with both agencies during the implementation phase of the regulation.

Sincerely,



Chip Monaco, Deputy Director  
Government & Community Relations

Clerk of the Board, Air Resources Board  
September 19, 2011  
Page 2 of 2

Attachments

cc: Teri Wion, CalRecycle  
Robert Krieger, Air Resources Board  
Michael B. Giancola, OC Waste & Recycling  
Dick Harabedian, OC Waste & Recycling  
Kevin Kondru, OC Waste & Recycling  
Jeff Southern, OC Waste & Recycling  
Dylan Wright, OC Waste & Recycling  
John Arnau, OC Waste & Recycling

March 4, 2011

Mr. Howard Levenson, Deputy Director  
California Department of Resources  
Recycling and Recovery (CalRecycle)  
1001 I Street  
PO Box 4025  
Sacramento, CA 95812-4025

Dear Mr. Levenson:

**Subject: Comments Regarding Proposed Mandatory Commercial Recycling Regulation to Reduce Greenhouse Gas Emissions**

On behalf of the County of Orange, OC Waste & Recycling appreciates the opportunity to comment on the proposed mandatory commercial recycling (MCR) regulation discussed at its January 19, 2011, workshop. The draft regulation is developed by CalRecycle in partnership with the California Air Resources Board to support the implementation of the AB 32 Global Warming Solutions Act Scoping Plan. At this time, OC Waste & Recycling would like to offer the following comments related to the current version of the proposed MCR regulatory language for transformation and on the proposed performance standard for mixed waste materials recovery facilities (MRFs).

### **Transformation**

OC Waste & Recycling appreciates the changes made by CalRecycle to the draft regulation regarding transformation. We requested that these changes be retained. OC Waste & Recycling concurs with the County Sanitation Districts of Los Angeles County comments (dated January 26, 2011) and believes that the revised draft language is now consistent with:

- State Law Related to Diversion – In accordance with Public Resources Code (PRC) §41783, jurisdictions are allowed to receive up to 10 percent of their AB 939 diversion credit from transformation processes provided there are front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent possible.

Transformation is a post-recycling alternative to landfilling where energy is produced from end-of-the-line wastes containing virtually no recyclables and which have no other beneficial use. Without transformation, these end-of-the-line wastes would simply be landfilled and the opportunity for reducing greenhouse gas (GHG) emissions through non-fossil fuel energy production would be lost.

- Health and Safety Code 41516 – As codified in this State code, the Legislature made the finding and declaration that resource recovery technology exists to convert municipal waste to energy and that such projects should therefore be “encouraged as a matter of state policy.”
- California Air Resources Board (CARB) Directives and Resolutions – On December 16, 2010, CARB directed staff to add the following resolve to Cap and Trade resolution 10-42 to support and encourage waste-to-energy in California:

“Be it further resolved, that in accordance with Section 41615 of the Health and Safety Code which required that resource recovery projects should be encouraged as a matter of State Policy, the Board directs the Executive Office to determine and report back to the Board a mechanism to satisfy all the risk of emissions leakage and compliance obligations of existing municipal waste-to-energy facilities in the proposed cap and trade program.”

Given that the proposed mandatory commercial recycling regulations are CARB regulations, they must be consistent with CARB policies and resolutions. The inclusion of the new language regarding transformation would provide this consistency.

- AB 32 – The purpose of the proposed mandatory commercial recycling regulations is to reduce GHG emissions. The County believes that significant GHG reductions are achieved in operating the three transformation facilities in California (over 400,000 MTCO<sub>2</sub>E per year). Therefore, the proposed regulations should not hinder transformation, instead it should be encouraged.

### **Mixed Waste Processing**

OC Waste & Recycling also concurs with the County Sanitation Districts of Los Angeles County concerns about the proposed performance requirement on mixed material recovery facilities (MRFs), where a diversion rate comparable to source separation has to be achieved. Mixed MRFs were not designed to achieve a recovery rate comparable to source separation. These types of facilities do not yield comparable diversion results to other processing methods such as single stream processing. CalRecycle would impose a requirement that is not physically possible for MRFs to achieve with space limitations or other operational constraints.

Mixed processing facilities are very important and are often an essential component of a jurisdiction’s “tool box” of diversion programs. The regulations must not jeopardize the continued viability of MRFs. Communities and waste companies rely upon these facilities and have invested tens of millions of dollars both for their construction and long-term operation. It is important to note that there is already a built-in incentive for MRFs to recover as many recyclables as possible in order to defray the cost of operating the facilities, so there is no need for an artificial or unachievable recovery rate requirement.

Therefore, OC Waste & Recycling requests that the text on page 3 of the draft regulations be changed to:

(11) "Mixed Waste Processing" means processing solid waste that contains both recyclable materials and trash and yields ~~diversion results comparable to source separation~~ a level of diversion comparable to similar permitted facilities operating in the state.

We also request that the text on page 5 of the draft regulations be changed to:

(2) Subscribing to an alternative type of recycling service that includes mixed waste processing that diverts recyclable materials from disposal and that ~~yields diversion results comparable to source separation~~ yields a level of diversion comparable to similar permitted facilities operating in the state.

In closing, we commend staff's effort in developing the rule language and supporting documents. If you have any questions on our letter, please contact David Tieu at (714) 834-4064 or by via email at [david.tieu@ocwr.ocgov.com](mailto:david.tieu@ocwr.ocgov.com). Thank you for your consideration of our comments.

Sincerely,



Chip Monaco, Deputy Director  
Government & Community Relations

cc: Alisa Drakodaidis, Deputy CEO, County of Orange  
Michael B. Giancola, Director, OC Waste & Recycling  
Dick Harabedian, Deputy Director, OC Waste & Recycling  
Kevin Kondru, Deputy Director, OC Waste & Recycling  
Jeff Southern, Deputy Director, OC Waste & Recycling  
Dylan Wright, Deputy Director, OC Waste & Recycling  
John Arnau, Strategic Environmental Projects Manager, OC Waste & Recycling

July 27, 2011

Mr. Howard Levenson, Deputy Director  
CalRecycle  
1001 I Street  
PO Box 4025, MS-9A  
Sacramento, CA 95812-4025

**Subject: Comments on the Draft Mandatory Commercial Recycling Regulations**

Dear Mr. Levenson,

Thank you for the opportunity to provide comments on the draft Mandatory Commercial Recycling Regulations which were presented to stakeholders at the July 19, 2011 workshop in Sacramento. We appreciate the open communication CalRecycle and the Air Resources Board has had with stakeholders in developing regulations that will provide local government and businesses the flexibility to implement commercial recycling programs that are appropriate for that jurisdiction. Given the diversity within the State, a wide variety of options and programs will need to be implemented at the local level to achieve the regulation's goal of reducing greenhouse gas emissions of 5 MMTCO<sub>2</sub>E by 2020. The following comments are offered in support of the Mandatory Commercial Recycling Regulations.

**Mixed Waste Processing**

We appreciate the changes made to the definition of "Mixed Waste Processing" and the background information provided in the *Summary of the Proposed Regulation* to clarify the performance criteria for achieving diversion comparable to source separation processing of recyclable materials. As stakeholders have commented, it is very difficult to achieve the same level of diversion at a Materials Recovery Facility (MRF) compared to programs that utilized source separation. In order to achieve diversion results that are comparable to source separation, a variety of programs will need to be implemented in addition to the traditional MRF. Some of these programs include sending materials to composting facilities, developing Construction and Demolition (C&D) recycling programs, employing onsite organic dehydrators to process food waste, and distributing compost bins to school districts.

These diversion programs have been very successful in Orange County to reduce the amount of recyclable materials generated by businesses that could have ended up in landfills. For example, in 2009, the County of Orange, in partnership with three cities, implemented a Regional Commercial Food Waste Diversion Program in restaurants, hotels, and community centers in which food dehydration units were installed. The food dehydration units reduce up to 90% of the food waste original volume and weight. The process results in a small amount of nutrient rich residual material that can be beneficially reused as compost, soil amendment, or waste-to-energy fuel. Such use of the residual material creates a fully sustainable recycling solution that will

yield 100% food waste diversion. These diversion programs are critical components to the recycling infrastructure and should not be overshadowed by MRFs in terms of their ability to divert waste and reduce greenhouse gas emissions. It is important that these programs be recognized in the Mandatory Commercial Regulations as viable tools that are available to local government and businesses. In addition, the regulations needs to be progressive to account for future developments in the recycling industry and technological advancements that could provide local government more options in implementing their commercial recycling programs.

As indicated in the *Summary of the Proposed Regulation*, it is our understanding the definition of "Mixed Waste Processing" was not meant to be inclusive of MRFs but rather a broad definition that considers a myriad of processes to recover recyclables and divert waste from landfills of which MRFs is one option. Mixed Waste Processing along with other programs and administrative policies implemented by local government could result in diversion that is comparable to source separation. It is important that the regulatory text captures the different types of Mixed Waste Processing facilities so as to allow local government a menu of choices to design a program that is best suited for that community. We offer the following suggestions to the definition of Mixed Waste Processing:

*"Mixed Waste Processing" means processing solid waste that contains both recyclable and compostable materials and trash. Examples include, but are not limited to, processing commercial waste at materials recovery facilities, compostable materials handling facilities, transformation facilities, anaerobic digestion facilities, and food dehydration units.*

A jurisdiction's ability to successfully comply with subsection 95622 (a)(2) needs to be measured against an integrated system of recycling services and programs rather than focusing on Mixed Waste Processing facilities. We suggest the following changes to Section 95622 to provide additional clarity:

***§95622. Mandatory recycling of commercial solid waste by businesses.***

- (a) *On or before July 1, 2012, a business, as defined in §95621(b)(4), shall reuse, recycle, compost, or otherwise divert its commercial solid waste from disposal by taking one, or any combination, of the following actions:*
- (1) *Source separating recyclable materials from the solid waste they are discarding and either self-hauling, subscribing to a service that hauls, and/or otherwise arranging for the pick-up of, the recyclable materials separately from the solid waste to divert them from disposal.*
  - (2) *Subscribing to a service that includes mixed waste processing and may include other programs, activities, and processes that diverts recyclable materials from disposal and that yields diversion results comparable to source separation.*

Thank you for consideration of our comments. We appreciate staff's hard work on developing regulations that are flexible to local government and businesses while recognizing the budgetary

constraints that many of us are still subject to as the economy recovers. If you have any questions on our comments please contact David Tieu at (714) 834-4064 or via e-mail at [david.tieu@ocwr.ocgov.com](mailto:david.tieu@ocwr.ocgov.com).

Sincerely,

A handwritten signature in black ink that reads "Chip Monaco". The signature is written in a cursive, flowing style.

Chip Monaco, Deputy Director  
Government & Community Relations

cc: Tracey Harper, CalRecycle  
Teri Wion, CalRecycle  
Robert Krieger, Air Resources Board  
Mei Fong, Air Resources Board  
Michael B. Giancola, OC Waste & Recycling  
Jeff Southern, OC Waste & Recycling  
Kevin Kondru, OC Waste & Recycling  
Dick Harabedian, OC Waste & Recycling  
Dylan Wright, OC Waste & Recycling