



LINDA S. ADAMS
SECRETARY FOR ENVIRONMENTAL
PROTECTION

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD



ARNOLD SCHWARZENEGGER
GOVERNOR

1001 I STREET, SACRAMENTO, CALIFORNIA 95814 • P.O. BOX 4025, SACRAMENTO, CALIFORNIA 95812-4025
(916) 341-6000 • WWW.CIWMB.CA.GOV

MARGO REID BROWN
CHAIR
MBROWN@CIWMB.CA.GOV
(916) 341-6051

SHEILA JAMES KUEHL
SKUEHL@CIWMB.CA.GOV
(916) 341-6039

JOHN LAIRD
JLAIRD@CIWMB.CA.GOV
(916) 341-6010

CAROLE MIGDEN
CMIGDEN@CIWMB.CA.GOV
(916) 341-6024

ROSALIE MULE
RMULE@CIWMB.CA.GOV
(916) 341-6016



September 29, 2009

Ms. Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Management Committee/
Integrated Waste Management Task Force
P.O. Box 1460
Alhambra, CA 91802-1460

RE: 2009 Agenda Item 8 – AB 32 Mandatory Commercial Recycling Measure

Dear Ms. Clark:

On behalf of the Board, I am pleased to respond to your September 11, 2009 letter regarding mandatory commercial recycling. In your letter you expressed five specific concerns that I would like to address.

1. Process leading to the development of regulations -- This process began in early 2008 with the Air Resources Board (ARB) drafting its AB 32 Scoping Plan. The ARB provided numerous opportunities for public comment as part of its process for adoption of the Scoping Plan. In response to stakeholder comments, the ARB included commercial recycling as a mandatory measure in the AB 32 Scoping Plan that it adopted in December 2008. As a result, the CIWMB was charged with and has embarked on the pathway of developing the required regulation. Please let me assure you that the regulations developed for this measure will be fully vetted with all stakeholders by the CIWMB and the ARB as well. As you are aware, the Board held two public workshops to discuss the mandatory commercial recycling regulation. The input we received at the workshop on topics such as enforcement of regulations, thresholds for businesses, and multi-family housing will be taken into full consideration as staff prepares the draft regulations. To that end, Board staff developed its draft concept for regulations to allow jurisdictions a flexible approach in implementing mandatory commercial recycling programs that meet local needs. This also includes a provision for not requiring jurisdictions to implement a new program if they already have an existing commercial recycling program. The draft concept was presented to the Board at the August 2009 Strategic Policy Development Committee meeting to allow for additional stakeholder feedback.
2. Need for additional infrastructure and markets -- We agree with your assessment that as the amount of recyclables increase, there will be a need for additional infrastructure to process these materials. Ultimately, the expansion of this infrastructure is a local siting decision and the Board will assist a jurisdiction in any way it can while not usurping the authority of the local decision making body.
3. Greenhouse gas (GHG) reduction estimates are unsubstantiated -- We respectfully disagree with this statement. We used the U.S. Environmental Protection Agency Waste Reduction Model (WARM), which is widely used around the country, for our calculations. The WARM Model is also designed to account for transportation emissions. Also, GHG emissions typically associated with transportation are outnumbered by the significant GHG reductions at the point of remanufacturing due to fossil fuel savings and extraction of virgin materials.

Furthermore, the GHG Tool we are developing as part of our Lifecycle Assessment of Organic Materials and Economic Analysis of GHG Reduction Options project will allow the user to change not only transportation distances but transportation modes. As you may be aware, the success of a lifecycle analysis is dependent on the data that is available. Since over 60% of the waste stream is from the commercial sector and over two-thirds of this material is clean recyclables, we believe that the GHG emission reductions for this measure are very achievable.

4. Need for assessment of environmental impacts -- The Board is also aware that the Governor's Office of Planning and Research will be developing guidelines regarding GHG emissions and the California Environmental Quality Act (CEQA). As the proposal will need to be adopted in regulations, we will be following all guidelines required by the Office of Administrative Law in the development of the regulations including CEQA compliance.
5. Unfunded mandate -- We appreciate your concerns about unfunded state mandates. As noted in #1 above, the Board's draft approach to this regulation would provide jurisdictions with a flexible approach in implementing mandatory commercial recycling that meets local needs. This would include flexibility on whether or not to include specific enforcement activities.

Thank you for your letter regarding our mandatory recycling measure. If you have any questions, please contact me at (916) 341-6051.

Sincerely,



Margo Reid Brown, Chair
California Integrated Waste Management Board



GAIL FARBER
CHAIR

LOS ANGELES COUNTY
SOLID WASTE MANAGEMENT COMMITTEE/
INTEGRATED WASTE MANAGEMENT TASK FORCE
900 SOUTH FREMONT AVENUE, ALHAMBRA, CALIFORNIA 91803-1331
P.O. BOX 1460, ALHAMBRA, CALIFORNIA 91802-1460
www.lacountyiswmtf.org

September 11, 2009

Ms. Margo Reid Brown, Chair
California Integrated Waste Management Board
1001 I Street
Sacramento, CA 95812-2815

Dear Ms. Brown:

SEPT 15, 2009 CIWMB AGENDA ITEM 8 - PRESENTATION OF AND REQUEST FOR DIRECTION ON STAKEHOLDER INPUT ON AB 32 SCOPING PLAN MANDATORY COMMERCIAL RECYCLING MEASURE

On behalf of the Los Angeles County Integrated Waste Management Task Force (Task Force), I wish to express our concerns regarding the California Integrated Waste Management Board's (CIWMB) current efforts to mandate statewide mandatory commercial recycling regulations.

Pursuant to Chapter 3.67 of the Los Angeles County Code and the California Integrated Waste Management Act of 1989 (AB 939, as amended), the Task Force is responsible for coordinating the development of all major solid waste planning documents prepared for the County of Los Angeles and its 88 cities in Los Angeles County with a combined population in excess of 10 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, the County of Los Angeles Board of Supervisors, the City of Los Angeles, the waste management industry, environmental groups, the public, and a number of other governmental agencies.

In response to the waste and recycling recommendations identified in the AB 32 Scoping Plan, which were adopted by the California Air Resources Board (CARB) based on recommendations provided by the CIWMB, the CIWMB is now developing regulations to implement mandatory commercial recycling statewide. We appreciate your consideration of the following comments and your response to our questions regarding statewide mandatory commercial recycling.

1. Concern with process leading to development of regulations

Initially the AB 32 Draft Scoping Plan stated that commercial recycling programs would be voluntary or a hybrid approach (please see our enclosed letter dated December 2, 2008). Although the CIWMB was involved in the development of the AB 32 Draft Scoping Plan, we were surprised that, at the November 20, 2008 CARB meeting, you as Chair of the CIWMB recommended that the hybrid approach be revised to be *mandatory*. This recommendation was not adopted by the CIWMB in a public meeting and thus there was no opportunity for stakeholders and members of the public to comment on this recommendation. Based on the adoption of this recommendation by the CARB, the CIWMB is now establishing regulations that would potentially have the force of law, while circumventing the legislative process as well as any open discussion of the recommendation. We have grave concerns that the impacts of this policy decision have not been fully vetted, as further discussed below.

2. Greenhouse gas reduction estimate is unsubstantiated

The regulations currently being developed by the CIWMB are intended to reduce greenhouse gas emissions (GHGs) by 5 million metric tons of carbon dioxide equivalent (MMT_{CO₂e}) to meet the State's climate change goals. The *Mandatory Commercial Recycling Workshop White Paper* developed by the CIWMB for the recent stakeholder workshops indicates that a statewide mandatory commercial recycling program diverting 2.7 million tons of certain materials (including cardboard, lumber, glass, plastic, paper and metals) would achieve the AB 32 Scoping Plan goal of a 5 MMT_{CO₂e} reduction.

We are unable to see how such significant GHG reductions can be claimed, when the vast majority of California's recyclables are shipped to Pacific Rim countries where environmental impacts are difficult to ascertain. While these materials are being diverted from California landfills, they are being shipped incredibly long distances to countries that have limited or no environmental oversight. Even the CIWMB's own draft "Life Cycle Assessment and Economic Analysis of Organic Waste Management and Greenhouse Gas Reduction Options" concedes that "...data characterizing the energy and emissions for manufacturing operations in East Asia is not available." In the absence of such data, we do not believe it is responsible to proceed with a mandatory regulation that would push additional materials towards foreign markets.

We also request your consideration of the enclosed letter from the South Coast Air Quality Management District to the California Natural Resources Agency (dated August 27, 2009) regarding Proposed CEQA Guidelines Amendments regarding Greenhouse Gas Emissions. It further supports the fact that we must consider potential GHGs from facilities in other countries due to processing our recycling exports in this analysis. The third paragraph of page 2 references the

Attorney General's opinion (58 Ops Cal. Atty. Gen. 614 (1975)) regarding the definition of a project's environment. To paraphrase the Attorney General's opinion, the effects from a project can't be restricted to California. CEQA must apply to a project wherever impacts occur.

3. Mandatory commercial recycling is an unfunded mandate for local governments

The *White Paper* and workshop discussions to date have yet to address how such regulations would be enforced. Statewide mandatory commercial recycling regulations would likely place a significant unfunded mandate on local governments at a time when every city and county in California is facing record budget shortfalls.

4. If additional materials will be added to the recycling markets, local markets and infrastructure needed to be expanded

Additionally, this new regulation would result in an increase in the amount of recyclables collected without addressing the need for markets that make use of the recyclables. The current global economic downturn and collapse of the global recycling market have negatively affected the State's already weakened recycling infrastructure and industries. With less demand for recycled materials, collecting more materials may further weaken the value of these commodities. It is therefore critical from an economic and environmental standpoint, as well as to make a positive impact on climate change, to establish local markets for recyclable materials.

If we want to truly reduce our GHG emissions, it is vital that we expand the local infrastructure so that it is capable of managing our recyclables in California. Working with local jurisdictions, the State can help create strong statewide and regional markets by providing economic incentives and assistance to innovative businesses. The Task Force looks forward to the opportunity to work with CIWMB in regard to this matter. Until that time, we do not support counting GHG reductions from materials collected through mandatory commercial if they are sent to a facility outside of California and/or outside of the United States *unless* the facility is developed and operated in a manner that is as protective of the human health and safety and the environment as a similar facility located in California. Otherwise, we are simply transferring the problem to "*somebody else's backyard*", including, but not limited to, Pacific Rim Countries.

5. Need for assessment of environmental impacts that may result from these regulations

Finally, we would like clarification as to whether this current mandatory commercial recycling proposal is subject to the California Environmental Quality

Ms. Margo Reid Brown
September 11, 2009
Page 4

Act (CEQA) and if so, whether the State has completed the appropriate environmental documentation? Additionally, would each individual city and county who adopt an ordinance also be subject to CEQA?

The Task Force has sent several letters to the CIWMB on this issue (copies enclosed); however, we have yet to receive a response. Given the substantial potential impact of this regulation on the various constituents represented by the Task Force, and the significance of the issues raised by our members, who include experts in their respective fields, we hope you will take this opportunity to review and address our comments. Should you have any questions, please contact Mr. Mike Mohajer of the Task Force at (909) 592-1147. We look forward to your response.

Sincerely,

Margaret Clark

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

TM/CS:

Enc.

cc: Governor Arnold Schwarzenegger
Each Member of the California Integrated Waste Management Board
California Integrated Waste Management Board (Mark Leary, Howard Levenson & Tracey Harper)
California State Association of Counties
League of California Cities
League of California Cities, Los Angeles County Division
Each Member of the County of Los Angeles Board of Supervisors
Each City Mayor in the County of Los Angeles
South Bay Cities Council of Governments
San Gabriel Valley Council of Governments
Gateway Cities Counsel of Governments
Southern California Association of Governments
Each City Recycling Coordinator in Los Angeles County
Each Member of the Los Angeles County Integrated Waste Management Task Force

**SEPT 15, 2009 CIWMB AGENDA ITEM 8 - PRESENTATION OF AND REQUEST
FOR DIRECTION ON STAKEHOLDER INPUT ON AB 32 SCOPING PLAN
MANDATORY COMMERCIAL RECYCLING MEASURE**

<p style="text-align: center;">Task Force Comment – Letter dated 9/11/09</p>	<p style="text-align: center;">CIWMB Response – Letter dated 9/29/09</p>
<p>Concern with process leading to development of regulations</p> <p>Initially the AB 32 Draft Scoping Plan stated that commercial recycling programs would be voluntary or a hybrid approach (please see our enclosed letter dated December 2, 2008). Although the CIWMB was involved in the development of the AB 32 Draft Scoping Plan, we were surprised that, at the November 20, 2008 CARB meeting, you as Chair of the CIWMB recommended that the hybrid approach be revised to be mandatory. This recommendation was not adopted by the CIWMB in a public meeting and thus there was no opportunity for stakeholders and members of the public to comment on this recommendation. Based on the adoption of this recommendation by the CARB, the CIWMB is now establishing regulations that would potentially have the force of law, while circumventing the legislative process as well as any open discussion of the recommendation. We have grave concerns that the impacts of this policy decision have not been fully vetted, as further discussed below.</p>	<p>Process leading to the development of regulations</p> <p>This process began in early 2008 with the Air Resources Board (ARB) drafting its AB 32 Scoping Plan. The ARB provided numerous opportunities for public comment as part of its process for adoption of the Scoping Plan. In response to stakeholder comments, the ARB included commercial recycling as a mandatory measure in the AB 32 Scoping Plan that it adopted in December 2008. As a result, the CIWMB was charged with and has embarked on the pathway of developing the required regulation. Please let me assure you that the regulations developed for this measure will be fully vetted with all stakeholders by the CIWMB and the ARB as well. As you are aware, the Board held two public workshops to discuss the mandatory commercial recycling regulation. The input we received at the workshop on topics such as enforcement of regulations, thresholds for businesses, and multi-family housing will be taken into full consideration as staff prepares the draft regulations. To that end, Board staff developed its draft concept for regulations to allow jurisdictions a flexible approach in implementing mandatory commercial recycling programs that meet local needs. This also includes a provision for not requiring jurisdictions to implement a new program if they already have an existing commercial recycling program. The draft concept was presented to the Board at the August 2009 Strategic Policy Development Committee meeting to allow for additional stakeholder feedback.</p>
<p>Greenhouse gas reduction estimate is unsubstantiated</p> <p>The regulations currently being developed by the CIWMB are intended to reduce greenhouse gas emissions (GHGs) by 5 million metric tons of carbon dioxide equivalent (MMTCO₂e) to meet the State's climate change goals. The Mandatory Commercial Recycling Workshop White Paper developed by the CIWMB for the recent stakeholder workshops indicates that a statewide mandatory commercial recycling program diverting 2.7 million tons of certain materials (including cardboard, lumber, glass, plastic, paper and metals) would achieve the AB 32 Scoping Plan goal of a 5 MMTCO₂e reduction.</p>	<p>Greenhouse gas (GHG) reduction estimates are unsubstantiated</p> <p>We respectfully disagree with this statement. We used the U.S. Environmental Protection Agency Waste Reduction Model (WARF), which is widely used around the country, for our calculations. The WARF Model is also designed to account for transportation emissions. Also, GHG emissions typically associated with transportation are outnumbered by the significant GHG reductions at the point of remanufacturing due to fossil fuel savings and extraction of virgin materials.</p>

<p>We are unable to see how such significant GHG reductions can be claimed, when the vast majority of California's recyclables are shipped to Pacific Rim countries where environmental impacts are difficult to ascertain. While these materials are being diverted from California landfills, they are being shipped incredibly long distances to countries that have limited or no environmental oversight. Even the CIWMB's own draft "Life Cycle Assessment and Economic Analysis" of Organic Waste Management and Greenhouse Gas Reduction Options" concedes that "...data characterizing the energy and emissions for manufacturing operations in East Asia is not available." In the absence of such data, we do not believe it is responsible to proceed with a mandatory regulation that would push additional materials towards foreign markets.</p>	<p>Furthermore, the GHG Tool we are developing as part of our Lifecycle Assessment of Organic Materials and Economic Analysis of GHG Reduction Options project will allow the user to change not only transportation distances but transportation modes. As you may be aware, the success of a lifecycle analysis is dependent on the data that is available. Since over 60% of the waste stream is from the commercial sector and over two-thirds of this material is clean recyclables, we believe that the GHG emission reductions for this measure are very achievable.</p>
<p>We also request your consideration of the enclosed letter from the South Coast Air Quality Management District to the California Natural Resources Agency (dated August 27, 2009) regarding Proposed CEQA Guidelines Amendments regarding Greenhouse Gas Emissions. It further supports the fact that we must consider potential GHGs from facilities in other countries due to processing our recycling exports in this analysis. The third paragraph of page 2 references the Attorney General's opinion (58 Ops Cal. Atty. Gen. 614 (1975)) regarding the definition of a project's environment. To paraphrase the Attorney General's opinion, the effects from a project can't be restricted to California. CEQA must apply to a project wherever impacts occur.</p>	<p>Unfunded mandate</p> <p>We appreciate your concerns about unfunded state mandates. As noted in #1 above, the Board's draft approach to this regulation would provide jurisdictions with a flexible approach in implementing mandatory commercial recycling that meets local needs. This would include flexibility on whether or not to include specific enforcement activities.</p>
<p>Mandatory commercial recycling is an unfunded mandate for local governments</p> <p>The White Paper and workshop discussions to date have yet to address how such regulations would be enforced. Statewide mandatory commercial recycling regulations would likely place a significant unfunded mandate on local governments at a time when every city and county in California is facing record budget shortfalls.</p>	<p>Need for additional infrastructure and markets</p> <p>We agree with your assessment that as the amount of recyclables increase, there will be a need for additional infrastructure to process these materials. Ultimately, the expansion of this infrastructure is a local siting decision and the Board will assist a jurisdiction in any way it can while not usurping the authority of the local decision making body.</p>
<p>If additional materials will be added to the recycling markets, local markets and infrastructure needed to be expanded</p> <p>Additionally, this new regulation would result in an increase in the amount of recyclables collected without addressing the need for markets that make use of the recyclables. The current global economic downturn and collapse of the global recycling market have negatively affected the State's already weakened recycling infrastructure and industries. With less demand for recycled materials,</p>	<p>Need for additional infrastructure and markets</p> <p>We agree with your assessment that as the amount of recyclables increase, there will be a need for additional infrastructure to process these materials. Ultimately, the expansion of this infrastructure is a local siting decision and the Board will assist a jurisdiction in any way it can while not usurping the authority of the local decision making body.</p>

<p>collecting more materials may further weaken the value of these commodities. It is therefore critical from an economic and environmental standpoint, as well as to make a positive impact on climate change, to establish local markets for recyclable materials.</p> <p>If we want to truly reduce our GHG emissions, it is vital that we expand the local infrastructure so that it is capable of managing our recyclables in California. Working with local jurisdictions, the State can help create strong statewide and regional markets by providing economic incentives and assistance to innovative businesses. The Task Force looks forward to the opportunity to work with CWMB in regard to this matter. Until that time, we do not support counting GHG reductions from materials collected through mandatory commercial if they are sent to a facility outside of California and/or outside of the United States unless the facility is developed and operated in a manner that is as protective of the human health and safety and the environment as a similar facility located in California. Otherwise, we are simply transferring the problem to "somebody else's backyard", including, but not limited to, Pacific Rim Countries.</p>	
<p>Need for assessment of environmental impacts that may result from these regulations</p> <p>Finally, we would like clarification as to whether this current mandatory commercial recycling proposal is subject to the California Environmental Quality Act (CEQA) and if so, whether the State has completed the appropriate environmental documentation? Additionally, would each individual city and county who adopt an ordinance also be subject to CEQA?</p>	<p>Need for assessment of environmental impacts</p> <p>The Board is also aware that the Governor's Office of Planning and Research will be developing guidelines regarding GHG emissions and the California Environmental Quality Act (CEQA). As the proposal will need to be adopted in regulations, we will be following all guidelines required by the Office of Administrative Law in the development of the regulations including CEQA compliance.</p>