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SUBJECT: Comments to CalRecycle's AB 341 Implementation Plan - Measurement

Dear Mr. Sitts:

We would like to thank the California Department of Resources Recycling and Recovery (CalRecycle) for presenting the two Assembly Bill (AB) 341 workshops on September 19, 2012. The morning session addressed issues of Measurement, and the afternoon was concerned with related yet discrete consideration of developing performance standards for materials recovery facilities and the need to determine proper handling options for MRF residuals.

Toward the end of the second session, staff requested that stakeholders provide written comments within two weeks. We were also asked to keep in mind that although very inter-dependent, the two workshops were presented separately because CalRecycle needs to address the concerns separately. We are pleased to respond with our comments and concerns regarding Measurement as addressed in the first workshop.

AB 341 and the Need for Recycling "Measurement"

Staff led the workshop discussion by stating that Recycling was a "short hand term for a larger group of methods and processes." In both our recent [Legislative Analysis of AB 341](#) and in our [formal comments](#) to the first draft AB 341 Plan, we note that the term and practice of Recycling has been precisely defined in California law as constituting the entire process in which recyclable materials are diverted from disposal and returned to use:

Public Resources Code § 40180. "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. "Recycling" does not include transformation, as defined in Section 40201."

Presented as a simple flow diagram, California's legal recycling definition looks like this:

Recycling = Collect > Sort > Clean > Treat > Reconstitute > Market Ready Raw Material

We understand that CalRecycle must balance recycle segregation accounting at the municipal level with overall statewide goals for recycling. Yet none of the five methods of measurement suggested touch on the underlying problem, the lack of accountability among brokers of recyclates to document the destination of the recyclable materials once they have been measured and the data submitted for payment.

We contend that this systemic break in chain of custody documentation of recyclable materials makes the claim that Recycling has been completed insupportable under existing law.

Completing the Recycling process within the state is constrained by a lack of sufficient "recycling manufacturing facilities" to purchase the recyclable materials that have been collected. The lack of reprocessing facilities means that the legally mandated last steps of converting the segregated materials into market ready raw material cannot easily be accomplished at the community level. The lack of infrastructure to finish the Recycling process transfers pressure on upstream sorting at materials recycling facilities (MRF), resulting in pricing fluctuations that literally dictate in real time whether or not a particular recyclable material will be segregated from the waste stream on a day to day basis.

The state has institutionalized a lack of transparency; brokers of segregated materials destined to be recycled have no legal requirement to document where recyclates go for reprocessing. Put another way, there is no documentation that the Recycling process has been completed. We do know that an inordinate amount of recyclates must travel great distances to be reprocessed in other states or countries. This long distance transport creates excessive greenhouse gas (GHG) emissions while exporting not only the resources, but the jobs that would come with localized conversion.

To complete the legally defined Recycling process train, the recyclable materials that once were waste must become raw material ready for the marketplace. Yet CalRecycle only requires proof of sorting and measuring. There is no requirement for documentation that those materials have been "cleansed, treated, and reconstituted" and made ready for the market. Without proof of these last steps, CalRecycle cannot determine if there is any overall environmental benefit to recycling, and cannot legally prove that Recycling has even been accomplished.

Recommendations

CalRecycle must improve transparency in the Recycling process train sufficient to provide uninterrupted chain of custody documentation throughout the legally-mandated recycling pathway. AB 341 provides that CalRecycle can initiate new law and regulation where crucial to the overall policy goal to increase recycling.

Yet this must be accomplished without undermining existing in-state, interstate, and international commerce in recyclate brokerage. Knowing where the resources are going is the first step in determining the actual GHG emissions as required by AB 32, the instigation of AB 341 as a driver for increased commercial recycling, and understanding how and where to develop cost-effective, environmentally sound in-state reprocessing infrastructure capacity.

The following steps are suggested to correct this deficiency in documentation and tracking:

(1) Require Recyclate Brokers to Identify and Document Destinations of Materials.

Without prejudice regarding current markets to which recyclates are sent by public and private Recycling industry parties for final cleaning, pre-treatment and reprocessing, require documentation of type, tonnage, date, and destination for each shipment. It is not necessary or appropriate to inquire into pricing, but the data identified are imperative for GHG determinations that actual destinations per unit of material be manifested.

(2) Profile and Certify Reprocessing Facilities.

Document: (a) in-state, (b) out-of-state but in-country, and (c) out-of-country recycle reprocessing facilities to which materials are being sent, generating a thorough profile assessing environmental standards compliance, types of raw materials that each can reconstitute / reprocess, the location of the facility and distance from key California sources of that raw material, and the capacity to maintain and expand current operations. Where data are available and to the extent possible, certify existing facilities that meets minimum legal standards. Identify facilities that cannot at this time be certified either for lack of data, or obvious non-compliance.

(3) Compare Available Reprocessing to Available Recyclates

This step allows "measurement" of the current and the needed in-state Reprocessing infrastructure, while also facilitating transport heuristics of type and distance to tonnage shipped, necessary for determining compliance with AB 32 mandates to reduce GHGs and critical to cross-platform regulatory determinations between AB 341, the Low Carbon Fuel Standard, and the Cap and Trade program.

I am available for follow-up discussions at your convenience. Please contact me at (530) 613-1712 or mtheroux@jdmt.net if you have any questions.

Sincerely,

JDMT, Inc



Michael Theroux
Vice President

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