

Comments on CalRecycle MRF Standards Rule Making
From James L. Stewart
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You have asked your stakeholders for comment on your pending policy for MRF Performance Standards.

The BioEnergy Producers Association applauds your effort to seek input and promulgate regulations that are fair to all concerned.

However, we sadly find that your current exercise is just one more step in a 10-year collaboration between the legislative bureaucracy and CalRecycle to refine and institutionalize the recycling practices of the past at the expense of technological advancement and the practical potential of recycling in the future.

A true recycling rate of 75% that honestly defines what constitutes recycling, we believe, will be virtually impossible to achieve without new technologies and an honest admission and implementation of what constitutes recycling under California statute.

As per the Public Resources Code, that definition is as follows:

PRC §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.

This definition states that materials that have been segregated from the municipal waste stream have not been legally "recycled" until this pathway has been effectively completed. CalRecycle's administration must ensure those practices that receive credit as recycling adhere to this legal definition, both now and in the future.

Numerous inconsistencies in California's recycling statistics, which mislead the public as to the true recycling percentages in this state, need to be addressed. These include such practices as crediting as recycling engineered fill and the use of green waste as alternate daily cover--and the fact that a substantial percentage of the state's recyclables is being shipped overseas, where there is no oversight whatsoever as to what happens to the materials, and yet, they qualify as recycling the moment they leave California's docks. These should not be credited as recycling until it can be verified that they have returned *"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."*

An honest assessment and definition of recycling would put the AB 341 goal of 75% recycling much farther off in the future than your agency professes.

Further, CalRecycle policy, which should be innovative and forward-looking, refuses to even acknowledge what is clear to state after state across America: that before the end of this decade, there will be a new definition of recycling that addresses the “recycling of carbon” rather than the recycling of finished goods. This concept will embrace newly emerging conversion technologies that are capable of turning things like diapers, kitty litter, dog poop, medical wastes and plastic bags into practical products like advanced biofuels and drop-in fuels, electricity and an entire range of renewable chemicals.

MRFs should not be bound by impossible to meet waste characterization and waste composition parameters that suffocate the use of MRF residuals for such practical purposes.

Your agency, in collaboration with the bureaucracy that underpins legislative policy in this state, remains devoted to institutionalizing and maintaining scientifically inaccurate definitions in statute and a regulatory environment that shut the door on both new technologies and innovative thinking.

Last year, the state placed 29.3 million tons of solid waste in landfills, a two percent decline from the prior year. These materials hold potential as feedstocks that could produce in excess of one billion gallons of biofuels per year.

If California were to continue to reduce per capita disposal at its current rate, it will still be landfilling at least 23 million tons of MSW annually by 2020, and in the interim it will have disposed of an additional 175 million tons. What is CalRecycle doing to encourage alternatives to that?

Even if the state could reach a goal of 75% recycling by 2020, which this Association deems to be impossible without recognizing the role that conversion technologies can play in this effort, it will still be placing 10-15 million tons of municipal solid waste in landfills each year.

Conversion technologies clearly meet the statutory definition of recycling. It is unequivocal that conversion technologies “***treat, and reconstitute materials that would otherwise become solid waste, and return 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.***” These products include electricity, liquid fuels and biobased chemicals that contribute to national security, energy independence, a strengthened economy and a better environment, as calculated by any life-cycle standards.

These processes and products as surely *merit* credit as landfill diversion to the same extent as a process that returns a bottle to the economic marketplace as another bottle.

In January, 2010, the California Air Resources Board stated that 24 commercial scale biofuel facilities would be needed in California by 2020—18 new biofuels from waste products and six new biodiesel/renewable diesel plants—in order to meet the goals of the state’s new Low Carbon Fuels Standard.

Why has CalRecycle not taken steps to assist in implementing this goal?

Instead, existing statute and the anticipated past and current direction of CalRecycle rule making have forced emerging biobased technology providers to turn their back on California. These companies have now either moved out of the state or located in other states at least one billion dollars in capital expenditures for conversion technology products. This month, Cool Planet Energy Systems announced its intention to move its entire operations out of California, joining a line of companies that began with Bluefire Renewables several years ago.

These companies, for which time to market is critical, cannot afford to risk their time and limited capital to attempt to do business under California’s uncertain regulatory environment.

As to your current rule-making process, which is intended to meet the Mandatory Commercial Recycling statutory requirements of AB 341, we believe that your evaluation process, although well intended, is inescapably tied to the recycling practices of the past, rather than providing the flexibility for emerging conversion technologies to address and process a wide range of materials that hold greater economic potential as *new products which meet the quality standards necessary to be used in the marketplace.*

Post-recycled materials should be made available to conversion technologies with full diversion credit for their organic content. They should be made available without limitations as to organic content or the percentage of moisture in these residuals. Mixed Waste Processing Facilities should not be required to bear the cost of, or additional reporting requirements required to meet pre-determined standards for the composition of post-recycled materials that are destined for treatment by conversion technologies.

CalRecycle’s emerging regulations should make provision the highest and best use for the treating and reconstituting of post-recycled materials in a free market economy that will encourage innovation and a better environment and economy for the state.

cc: David Roberti, Kay Martin