

**Asamblea Poder Popular de Gonzales
California Resource Recovery Association
Californians Against Waste
Center for Biological Diversity
Global Alliance for Incinerator Alternatives
Greenaction for Health and Environmental Justice**

January 23, 2012

Caroll Mortensen, Director
California Department of Resources Recycling and Recovery (CalRecycle)
1001 I St.
Sacramento, CA 95814

Re: Notification of Intention to File Petition Regarding Underground Regulation

Dear Director Mortensen,

We are writing to provide notice that CalRecycle has issued an underground regulation and we intend to file a petition pursuant to Section 260 of Title 1, Chapter 2 of the California Code of Regulations. CalRecycle's November 23, 2010 letter on the regulatory status of the proposed Plasco Salinas Valley project constitutes a regulation and the Administrative Procedures Act was not followed in the adoption of this regulation. We will be filing the petition after 30 days of receipt of this letter unless the underground regulation is rescinded and clarification is given that CalRecycle is intending to enforce its longstanding standards on the interpretation of Public Resources Code §40117.

Government Code §11342.600 clearly states that a "regulation means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure."

CalRecycle's November 23, 2010 letter to Plasco marks a clear revision to a well-established interpretation of the law enforced and administered by CalRecycle.

PRC §40117(b) states that "the technology produces no discharges of air contaminants or emissions, including greenhouse gases, as defined in subdivision (g) of Section 42801.1 of the Health and Safety Code." CalRecycle's letter substantially modifies and reinterprets the meaning and intent of this language, by saying "produces no air, water, or hazardous discharges *in excess of standards*" (emphasis added). The addition of substantive language is not only inconsistent with the statute but is also not in line with previous CalRecycle interpretations of this statute which have always considered "no discharges or emissions" to mean zero discharges or emissions.

One example of this previous interpretation of the statute can be found in a letter to the legislature dated April 15, 2010 from CalRecycle, the Air Resources Board, and the California

Energy Commission. This letter was written to the legislature in support of AB 222, a bill seeking to change this statutory provision, and clearly states “AB 222 ... would achieve this by removing current statutory restrictions that require thermal conversion projects to have zero emissions, a standard required of no other energy generation technology or manufacturing process in the State and one that effectively precludes any municipal solid waste (MSW) conversion technology from qualifying for California’s Renewables Portfolio Standard (RPS).”

When the proposed legislation failed, it appears that CalRecycle took it upon itself to modify the perceived deficiency in statute by claiming a new interpretation of the same statute. The Administrative Procedures Act was not followed in adopting this new regulation, nor could it have been because it clearly was outside the scope of CalRecycle’s statutory authority. We ask that you rescind this underground regulation and continue to enforce the statute the way it had been previously enforced.

Sincerely,

Maria Perea, *President*
Asamblea Poder Popular de Gonzales

Tracie Onstad Bills, *President*
California Resource Recovery Association

Mark Murray, Executive Director
Californians Against Waste

Brian Nowicki, *California Climate Policy Director*
Center for Biological Diversity

Monica Wilson, *U.S. and Canada Program Director*
Global Alliance for Incinerator Alternatives

Bradley Angel, *Executive Director*
Greenaction for Health and Environmental Justice

CC: Senate President pro Tem Darrell Steinberg
Assembly Speaker John A. Pérez
Secretary John Laird, Natural Resources Agency
Commissioners, California Energy Commission
Cliff Rechtschaffen, Office of Governor Jerry Brown
Martha Guzman, Office of Governor Jerry Brown
Julia Levin, Deputy Secretary for Climate Change, Resources Agency