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October 26, 2005

Ms. Leticia Gallegos  
California Integrated Waste Management Board  
P.O. Box 4025  
Sacramento, CA 95812-4025

Dear Ms. Gallegos:

### **AB 939 ALTERNATIVE DIVERSION COMPLIANCE MEASUREMENT**

This is in reference to the Alternative Diversion Compliance System Paper dated October 12, 2005, (copy enclosed). It is anticipated California Integrated Waste Management Board (CIWMB) will consider the Paper as early as November 2005. The Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force) respectfully requests the Paper's consideration be postponed so that further dialogue with stakeholders can refine the proposal to garner more support. In addition, we invite CIWMB staff to provide a presentation on the Paper at our next Task Force meeting, on November 17, 2005.

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 the 88 cities in Los Angeles County. Consistent with these responsibilities, and to ensure a coordinated and cost-effective solid waste management system in Los Angeles County, the Task Force 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.

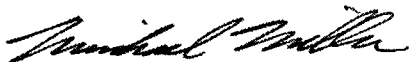
We applaud the CIWMB for initiating open and constructive dialogue with stakeholders to improve the State's Diversion Compliance System in an effort to make the system more accurate, enhance program implementation, and ultimately result in more waste being diverted from disposal. However, the Paper in its current form, may create inequities between jurisdictions and establish a hidden, ever expanding diversion goal that may be unattainable without significant State investment.

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The Paper currently recommends establishing a Countywide disposal reduction goal for measuring compliance with AB 939, which would be measured against a newly established "base year" disposal rate. For example, compliance would be attained only if the total amount disposed by a jurisdiction for all future years was at or below their base year disposal. We are concerned that without accounting for growth in population and other economic factors, this goal sets up jurisdictions to fail and ultimately creates more paperwork and scrutinizing of numbers, rather than focusing on program implementation which we believe is the CIWMB's intent in developing this Paper. While the Paper recommends this approach for rural jurisdictions, the Task Force's long-standing position has been to allow all jurisdictions to be measured on the basis of their program implementation as identified in their CIWMB-approved Source Reduction and Recycling Element (or other programs mutually agreed upon by the jurisdiction and the CIWMB), which ultimately is all a jurisdiction can directly control.

For the above reasons, the Task Force respectfully requests a reasonable delay on consideration of this issue to allow CIWMB staff to provide a presentation on the Paper and answer questions on this issue. The Task Force looks forward to working with the CIWMB in finalizing a proposal that tangibly improves the diversion measurement system. Should you have any questions or accept our invitation to attend our next Task Force meeting, please contact Mr. Mike Mohajer of the Task Force at (909) 592-1147.

Sincerely,



Michael Miller, Vice-Chair  
Los Angeles County Solid Waste Management Committee/  
Integrated Waste Management Task Force and  
Councilmember, City of West Covina

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Enc.

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cc: Governor Arnold Schwarzenegger  
Cal EPA  
Cabinet Secretary (Terry Tamminen)  
Senate President Pro Tem Don Perata  
Assembly Speaker Fabian Nunez  
Each Member of the Assembly Natural Resources Committee  
Each Member of the Senate Environmental Quality Committee  
Each Member of the Los Angeles County State Legislative Delegation  
California Integrated Waste Management Board (Mark Leary)  
Each Member of the County of Los Angeles Board of Supervisors  
Each City Mayor in the County of Los Angeles  
California State Association of Counties  
League of California Cities  
League of California Cities, Los Angeles County Division  
Southern California Association of Governments  
San Gabriel Valley Council of Governments  
South Bay Cities Council of Governments  
Solid Waste Association of North America  
Each Member of the Los Angeles County Integrated Waste Management Task Force  
Each City Recycling Coordinator in Los Angeles County



Alan C. Lloyd, Ph.D.  
Secretary for  
Environmental  
Protection

## California Integrated Waste Management Board

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Arnold Schwarzenegger  
Governor

October 12, 2005

**To: Interested Parties**

**Subject: Alternative Diversion Compliance System Paper**

A series of public workshops to discuss future improvements to the AB 939 diversion compliance system have been conducted over the last two years. At its June 2005 Sustainability and Markets Development Committee Meeting, the Board directed staff to obtain additional stakeholder input on refining the structure of the diversion compliance system to meet the intent of AB 939 while simplifying the measurement system. Subsequently two workshops were held, one in Sacramento and one in Long Beach. Additionally, written comments were submitted to the Board. Staff's response to the comments is included as Attachment 2 of this paper.

At the September 2005 Sustainability and Markets Development Committee meeting staff updated the Board on the status of the overall efforts. It received generally favorable comments from speakers in attendance. Since then, staff has developed a paper for consideration by the Board and it is being submitted for your comments before it is heard by the Board. You can view this document at <http://www.ciwmb.ca.gov/LGCentral/DivMeasure/AltMeasSys.doc> (MS Word, 140KB). Additional comments and suggestions will be incorporated in the future agenda item, anticipated for the November or December Board meetings.

**Please submit your comments by October 21, 2005.** If you send your comments via e-mail, please include Alternative Compliance Comments in the subject line.

**Submit comments to:**

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P.O. Box 4025  
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Phone (916) 341-6268  
FAX (916) 319- 7281  
E-mail: [dplaola@ciwmb.ca.gov](mailto:dplaola@ciwmb.ca.gov)  
Subject line: Alternative Compliance Comments

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California Environmental Protection Agency

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## DRAFT ALTERNATIVE MEASUREMENT SYSTEM

The original Integrated Waste Management Act of 1989 (AB 939) has contributed greatly to establishing a vast diversion program infrastructure, the most extensive in the country. Overall implementation of AB 939 has been extremely successful, with an estimated statewide diversion rate increase from about 10% in 1990 to a current level just under 50%. Along with this significant overall increase of diversion has been the reduction of well over 200 million tons of disposal that would have otherwise gone to landfills.

As a result of statute each jurisdiction plans, selects and implements a variety of diversion programs to achieve 50 percent diversion. Every two years the Board reviews each jurisdiction's progress in implementing diversion programs and achieving the diversion requirement. While marked successes have been experienced with the current program, many concerns have also arisen regarding the existing diversion measurement system. As a result of concerns about accuracy of original base-years, use of adjustment factors and the disposal reporting system, the Board has embarked on a process to reevaluate and potentially recommend changes in statute or regulations to improve the accuracy and simplify the existing diversion measurement system.

Board staff is presenting this paper in response to many inquiries and efforts to develop a "new" measurement system in response to difficulties in meeting the goals of AB 939. Since 1993 there have been many discussions and subsequent attempts to improve the measurement system. The latest and most comprehensive being follow up to the SB 2202 (Statutes of 2000) report submitted to the legislature (see the report on the Board's web site at <http://www.ciwnb.ca.gov/lglibrary/SB2202Rpt/>). As a result of the SB 2202 report, to date the Board has implemented major changes to the disposal reporting system and adjustment factor calculation, two major components of the diversion rate. In general terms the current diversion rate calculation is based upon three components; development of a base year, disposal reporting system and adjustment factors. The diversion calculation is based upon jurisdiction data, however because of the complexity of the calculation, as a service to jurisdictions, the Board receives the data for the three components from jurisdictions and other sources and then calculates all jurisdiction's diversion rates on the Board's web site. If a jurisdiction disagrees with the calculation the issue is resolved through the annual reporting process. The 2002 annual report process indicated that approximately 90% of all jurisdictions agreed with their published diversion rate. One of the major recommendations of the Board approved SB 2202 report was that the diversion rate calculation should be treated as an indicator of program implementation. This is especially true for rural jurisdictions where diversion numbers may be very volatile. Finally, one other recommendation was to continue to investigate improvements to the existing measurement system, which is the focus of this paper.

The focus of proposed changes to the current diversion measurement system is to move from a more complex system of estimating diversion rates using mathematical formulas to a simpler and a more timely system. Additionally, the new system would consist of a more appropriate indicator of diversion program success, disposal reduction, which is also consistent with the intent of statute, that of reducing our current reliance on landfills.

The first workshop was held on October 5, 2004, in Sacramento. The workshop was organized as a group exercise anchored with a panel of representative interested parties. Each member of the panel was initially asked two questions. The first question focused on describing the strengths and weaknesses of the existing compliance system and the second asked if “building the optimal compliance system what would the characteristics be?” After panel members presented their comments, the entire audience was presented with an opportunity to convey their thoughts on these questions. Finally, the entire audience and panel members were asked to participate in prioritizing optimal compliance characteristics, in order of importance. Results are shown on the right hand side of Table 1, below.

**Table 1**

<b>Characteristics Identified at 10/5/2004 Workshop</b>	<b>Goals Identified at 11/30/2004 and 12/2/2004 Workshops</b>
1. More timely	1. Timely
2. Flexible	2. Flexible
3. Accountability	3. Accountability
4. Simplify calculations	4. Simple
5. Cost effective	5. Cost effective
6. Numbers as indicators	6. Indicators
7. Reflect jurisdiction differences	7. Maximize Diversion
	8. Equitable/fairness

The format of the November 30, 2004, workshop in Sacramento and December 2, 2004, workshop in Long Beach was different. To facilitate discussion and allow extensive input from participants, these two workshops were structured with small discussion groups. At these two workshops, there were a total of 11 small discussion groups and each was comprised of 8-11 members representing diverse interests. Each group’s charge was to define their overall goal in determining an alternative compliance system and then put together the framework for what the alternative system would look like. The groups were limited to about three hours to develop their goal and put together their framework. A representative from each group then presented an oral report and answered clarifying questions regarding their proposed alternative system framework.

The most common themes expressed are included in the column on the left in Table 1. It is interesting to note that findings to date indicate overall consistency with what the goal of an alternative compliance system should be with the major characteristics of that

## **Further Input From Stakeholders**

Staff developed options for changing the system based on characteristics identified by stakeholders as important during the three public workshops in late 2004 and the public comment period on the workshop summary in early 2005. Staff analyzed information received from stakeholders and developed a concept proposal for an alternative compliance system. To solicit feedback on the concept, staff shared the concept with the League of California Cities and the Regional Council of Rural Counties at a meeting held in Sacramento on March 11, 2005. As a result of all of the feedback received from the jurisdictions, haulers, consultants, and other interested parties, staff has prepared several options for proposed alternative compliance concept for discussion by the Board.

## **Description of the Proposed Alternative Measurement System**

The focus of the options is on changing the current measurement system for determining a jurisdiction's compliance with the diversion requirements of AB 939 to a simpler and more accurate system. This paper concentrates on developing a streamlined and workable measurement structure. The paper does not address a disposal and/or compliance goal: that would be developed by Legislature after the Board considers a proposed structure.

Existing statute states that jurisdictions must meet and maintain 50% diversion by the year 2000 and thereafter. To simplify how this is determined, the options set the basis for future measurement on disposal reduction amounts, and not diversion calculations. The program implementation requirements would remain. Jurisdictions would continue to select and implement their choice of diversion programs based on their discreet waste stream. The countywide disposal number would be used as an indicator; however, jurisdictions would continue to be evaluated for compliance based upon their diversion program implementation.

The following is an overview and description of an alternative measurement system, including: 1) Alternative Measurement System Overview; 2) Jurisdiction biennial review reporting; 3) Compliance process; 4) Technical assistance tools and outreach; and 5) Conclusion.

### **1. Alternative Measurement System Overview:**

- The paper does not address a disposal and/or compliance goal: that would be developed by Legislature after the Board considers a proposed structure.
- Proposed system for compliance purposes would be similar to the existing system. The alternative measurement system would be based on program implementation and a simplified disposal based measurement system using countywide disposal numbers. Jurisdictions will continue to have the ability to voluntarily select programs with guidance and support from the Board. Goal measurement would only include tons disposed by all jurisdictions in a county. "Countywide" and "County" includes both the unincorporated area and all of the incorporated cities.
- Jurisdictions would describe the growth that has occurred within their boundaries as part of their annual report. This description would be considered as part of the

include updated program implementation efforts, and disposal goal information.

- Disposal reporting process would be based upon the recently approved regulations, or future amendments.
- Board will provide each jurisdiction with countywide disposal numbers and jurisdiction-specific disposal data. Jurisdiction-specific disposal numbers would be made available for jurisdictions to assess their own waste stream for program implementation and other purposes. This data would still allow jurisdictions to calculate a diversion rate, if needed.

### **3. Compliance Process:**

The following is an overview of the Biennial Review schedule and review process. See Attachment 1 for a simplified schematic that shows the compliance process.

#### **A. Biennial Review Schedule:**

Upon completion of the 2005/2006 Biennial Review under the existing compliance system, the Board would review jurisdictions' program implementation biennially. The Biennial Review for program implementation and countywide numeric compliance would commence dependent upon the timing of future Legislative action.

#### **B. Biennial Review Process:**

Compliance would continue to rely on CIWMP (Countywide Integrated Waste Management Plan) Enforcement Part 2 modified for the selected option. Existing CIWMP Enforcement Part 2 consists of four tiers that include:

1. Meeting disposal reduction goal and fully implementing programs.
2. Not meeting disposal reduction goal and fully implementing programs.
3. Meeting disposal reduction goal and not fully implementing programs.
4. Not meeting disposal reduction goal and not implementing programs.

If statute is changed to require countywide numeric measurement then the Biennial Review process would consist of the following evaluation of jurisdiction's compliance with respect to the four tiers:

- Tier 1: If the countywide disposal reduction goal is met, then jurisdictions within the county would require a streamlined review of program implementation efforts. A streamlined review would consist of assessing if the programs are being implemented as described in the jurisdiction's annual reports. If all of the jurisdictions are fully implementing their diversion programs, then they would be deemed in compliance.
- Tier 2: If the countywide disposal reduction is not met, then all of the jurisdictions in the county would be scrutinized regarding their program implementation efforts. Board staff would evaluate each jurisdiction's level of program implementation on a case by case basis, and would make a determination regarding each jurisdiction's program implementation. If jurisdictions are fully



- Enhancing outreach to jurisdictions regarding program implementation, including developing case studies, peer matching, workshops and other activities.
- Disseminating information on different examples of successful programs that reflect varying types of communities, including cost effectiveness, how-to steps, and public education examples.
- Providing targeted implementation assistance for jurisdictions most in need.

## **5. Conclusion:**

In conclusion, based upon stakeholder feedback, a disposal based system appears to address the stakeholders' objectives with modifying the existing measurement system from a more complex system of estimating diversion rates using mathematical formulas to a simpler and a more timely system. As mentioned previously, modifying the existing measurement system would create more accuracy while simplifying the current measurement system. Additionally, a system that focuses on disposal would consist of a more appropriate indicator of diversion program success, disposal reduction, which is also more direct with the intent of statute, that of reducing our current reliance on landfills.

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## Attachment 2 Response to Comments

Comments have been combined and the staff response is below each comment.

1. Comment: It is critical that any system intended to measure compliance with a goal is designed specifically for that goal. How can stakeholders provide meaningful input regarding the adequacy of this system in the absence of knowing what the goal will be? The Board staff should provide a detailed analysis of the alternatives that allows jurisdictions to see how the alternatives would be applied.

Response: This proposal reflects changes to simplify the measurement system that have been requested many times over the years. If the measurement system can be simplified and improved, then the discussion at the Legislature can be focused on what the actual goal should be. What is important is developing a sound structure. Once the structure is developed then discussion of goals can take place.

2. Comment: Proposal says the Board will not address the goal, but the materials sent out talk about a disposal reduction goal rather than a 50% diversion goal.

Response: The proposal looks at a simplified measurement system. The proposal is to change from measuring waste generation (disposal + diversion) and using that data to estimating future diversion, to measuring only disposal. This paper does not set a particular goal level to be achieved, that will be done in the Legislature. This proposal is based upon the assumption that jurisdictions will have either met the 50 percent requirement or been deemed Good Faith Effort and have met the requirements so all jurisdictions will be in compliance by 2006. 2006 would be the earliest year that the statute could designate a new goal year.

3. Comment: The Board needs to change its diversion facility permitting structure, develop markets to divert waste and increase RMDZ funding. This proposal does not address permitting, market development and funding issues.

Response: The Board is undertaking a variety of activities to promote diversion in the permitting and markets areas. This proposal is only one part of the Board's activities.

4. Comment: Disposal Reporting System (DRS) data is more accurate at the county level, and using county level data would reduce costs to jurisdictions.

Response: Comment noted.

5. Comment: The proposal relies on county level DRS data for enforcement and then if the county level goal is not met relies, on jurisdiction level data.

9. Comment: The Board should change the paradigm and make programs the focus of AB939 and put the guidelines and evaluation standards for program implementation in writing.

Response: The Board's adopted Countywide Integrated Waste Management Plan (CIWMP) Enforcement Policy, Part II focuses on program implementation and was reviewed by all interested parties, revised and adopted by the Board in 2001.

10. Comment: The adjustment method, while not perfect, levels the playing field between jurisdictions and allows for changes over time. The new proposal does not include growth and using subjective measurements with no clear basis for approval or denial.

Response: To acknowledge the challenges of high growth areas there would be language incorporated into statute so that jurisdictions would have opportunity to include an explanation of growth and changes in their biennial reports to the Board on progress in implementing diversion programs and achieving the goal. This would be much easier than complex numerical adjustments for growth which could have the same types of delays and issues as the existing system. Developing prescriptive guidelines and policies could make the system more complex, which would be contrary to simplifying the system.

11. Comment: The proposal to reduce the frequency of jurisdictions submitting reports from annual to biennial is good.

Response: Comment noted.

12. Comment: The proposal to provide one-on-one assistance is good with Board staff providing case studies, local success stories and assistance with financing. Jurisdictions also want to be able to calculate diversion rates for their city councils and county boards of supervisors.

Response: Under the proposal, staff would have more time to provide technical assistance and would continue to provide diversion rate calculator for jurisdictions to use for their own purposes.

13. Comment: Each jurisdiction's compliance determination should be based solely on program implementation, since this is the only aspect of the proposed system that jurisdictions have any authority to control.

Response: The existing CIWMP Enforcement Policy, Part 2 and this proposal focus compliance determination on diversion program implementation with numbers used as an indicator. Without any numeric indicator there would be no way to determine overall program success.

18. Comment: Consider options that allow for different treatment of waste streams such as school district or CalTrans generated waste over which the jurisdiction has no control.

Response: This is beyond the scope of issues that the Board is looking at in this proposal.

19. Comment: Rural counties support reliance on primarily diversion program implementation for evaluation of compliance when county-wide disposal is less than 100,000 tons. Currently, small rural jurisdictions show large inaccuracies in diversion percentages based on even small changes in disposed tonnage and adjustment factors.

Response: The proposal has been clarified to say rural counties will be evaluated primarily on diversion program implementation.

20. Comment: The proposal would reduce the jurisdiction's accountability to meet 50% diversion and would greatly impede individual jurisdiction's ability to control recycling. If accountability shifts to the county, programs could be easily deleted in times of budget constraints.

Response: The proposal uses countywide disposal as an indicator, but relies on individual jurisdiction diversion program implementation to determine compliance with the requirements. The proposal would put more emphasis on individual jurisdiction program implementation.

21. Comment: Multi-county regional agencies should be able to determine compliance based on the countywide disposal amounts for each member county, rather than on the combined disposal amount for all member counties.

Response: The proposal is for countywide compliance. The disposal facilities would need to collect county level disposal data, rather than assigning all tons to the multi-county regional agency in order to obtain the countywide information.

22. Comment: The proposal would require regular waste generation studies to represent their diversion and would be an additional cost that takes money from diversion program implementation. Countywide generation studies (by jurisdiction) would allow underperforming jurisdictions to be more easily identified should compliance become an issue at a countywide level.

Response: Under the proposal no waste generation studies would be required. The countywide disposal data would be used to indicate whether jurisdictions had reduced their waste.

23. Comment: If the countywide goal is not achieved, additional evaluations should be performed to determine the diversion rate of each jurisdiction. Enforcement action or

28. Comment: The Board should commission a study of other factors or methods for projecting growth than the current adjustment factors to accurately project growth.

Response: At its September 2005 meeting, the Board approved recommendations from the Adjustment Method review working group. All jurisdictions and other stakeholders were invited to participate in a series of 4 meetings during 2004-5. Analyses showed that for jurisdictions with a newer base year, the adjustment method was quite accurate.

29. Comment: Board review of jurisdiction performance should be more frequent than 5 years after legislation is changed to ensure continuity in diversion program implementation and performance statewide.

Response: The proposal does not change the frequency of the Board biennial review of jurisdiction performance.

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