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December 9, 2015

Scott Smithline, Director
California Department of Resources Recycling and Recovery
1001 I Street
Sacramento, CA 95812

Dear Director Smithline:

**DECEMBER 8, 2015, CALIFORNIA'S ENVIRONMENTAL GOALS AND FUNDING
WASTE MANAGEMENT INFRASTRUCTURE WORKSHOP, AND
ASSEMBLY BILL 1063- LAST AMENDED AUG 17, 2015**

On behalf of the Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force), I would like to express our sincere appreciation for the opportunity to discuss, in concert with other stakeholders, CalRecycle's projected revenue shortfall, the reasons for the shortfall, and potential solutions at the December 8, 2015, workshop in Southern California. As promised, the following comments and suggestions complement the input provided at the workshop which, given the time limitations and workshop structure, did not permit a more complete exposition of the Task Force's position on this issue.

The Task Force understands and appreciates CalRecycle's need for sufficient resources to operate in its capacity as one of the State's principal environmental regulatory agencies. However, we continue to be very concerned about the way the State has acted to address the issue. A last minute proposal, such as AB 1063, clearly designed to replenish the State's diminishing solid waste disposal/tipping fees, per AB 939, is not consistent with how historically the State has, or should, approach this dilemma. In particular, this proposal fails to appropriately reciprocate a proportionate amount of the funds collected back to the jurisdictions, businesses, and residents who are forced to accept the new fees without being provided a reasonable or adequate time to prepare or even provide comment, public or otherwise.

Therefore, the Task Force thanks CalRecycle for its decision to conduct the Southern California workshop to obtain input from local stakeholders before resuming work on the AB 1063 legislative proposal which appears to be CalRecycle's selected mechanism to address its revenue shortfall. While we do not know the current status of AB 1063, which was last amended on August 17, 2015, I would like to briefly summarize the bill and its impact on cities and counties. Effective January 1, 2017 (one year from now), the bill would:

- **Substantially increase the Disposal Fee** imposed on operators of disposal facilities for each ton of solid waste disposed at their facility from the current rate of \$1.40 per ton to \$4.00/ton (an increase of almost 190%, generating additional revenue of \$81 million per year, based on the 2014 disposal rate). The additional revenues is allocated to CalRecycle and the State Water Resources Control Board (Water Board) and should there be any funds left in the account, up to \$1.50/ton would be used for grants and possibly incentives for infrastructure development. This \$1.50 would sunset on December 31, 2021, and the \$4.00/ton fee would be allocated in full to CalRecycle and the Waster Board.
- **Create and impose a new fee (*Solid Waste Generator Charge [Charge]*)** on all solid waste generators, including residents, businesses, public institutions, and self-haulers throughout the State, effective January 1, 2019 (the staff presentation at the Workshop, which indicated that the *Charge* would first be imposed on residential generators, does not appear consistent with this AB 1063 provision). Initially, the *Charge* would be set to generate \$15 million/year through December 31, 2021, with no money being allocated for grants to local and/or to provide for needed infrastructure.

Effective January 1, 2022, the *Charge* would be solely established by the Administration/CalRecycle based on CalRecycle's projected annual operational cost. Unlike the existing statutory limit on the Disposal Fee increases, AB 1063 does not establish any limit on future increases in the amount of the *Charge*.

As proposed, cities and counties at their own cost would be required to collect the *Charge* from their residents and businesses which may require an election and approval by impacted property owners. Cities and counties would then be required to transfer the collected funds to the state for expenditure by CalRecycle and the Water Board.

- **Declare that the bill is to take effect immediately** as an urgency statute.

Revenues derived from the above fees would first be used to provide for CalRecycle's operational cost and then a minimum of \$0.50 would be allocated to the Water Board to subsidize their expenditures (the staff presentation did not identify whether any of the funding would be allocated for local enforcement agency inspections). Remaining revenue, if any, would then be allocated towards activities that promote recycling and what CalRecycle deems as the highest and best use of materials.

AB 1063 and its subsequent amendments were developed with little engagement of the select stakeholders and appear to have solely been developed by CalRecycle staff and a chosen few which, to the best of our knowledge, excluded cities in Los Angeles County and the County. The lack of engagement by the most affected/impacted stakeholders combined with the lack of transparency by CalRecycle may **explain why**

the tipping fee would be increased more than two-fold in addition to the proposed Solid Waste Generation Charge without compelling justification for such substantial increases.

Since the enactment of AB 939 and subsequent AB 939-related statutes, cities and counties have worked extremely hard (and have borne significant costs) to maximize their solid waste recycling activities while minimizing their solid waste landfill disposal. As a result, jurisdictions across the State have reduced their solid waste landfill disposal by over 60 percent compared to 1990. Under the provisions of AB 1063, jurisdictions would essentially be penalized by the State's aggressive recycling program implementation which has caused a reduction in the landfill tipping fee revenues collected by CalRecycle. CalRecycle has been well aware of its current revenue source's structural problem and has been "very slow," so to speak, in developing a solution. Now, CalRecycle has introduced a proposal, namely AB 1063, that penalizes jurisdictions for their successful efforts in reducing disposal.

To assist CalRecycle in addressing its existing structural problem while considering the burden posed on cities and counties to collect the proposed Solid Waste Generator Charge, as well as significant cost that jurisdictions must bear in implementation of the State mandated organic and food waste recycling programs, the Task Force would like to offer the following comments and suggestions for CalRecycle's rewritten evaluation and consideration:

1. The recently released report, dated August 2015, that was prepared pursuant to Assembly Bill 341 (Chapter 476, 2012) as stipulated in Section 41780.02 of the Public Resources Code including, but not limited to, Subdivision (b) (4), (5), and (7) was intended to provide the legislature with, among other things, recommendations for legislative changes that are necessary to achieve the 75 percent source reduction, recycling, and composting goal established pursuant to AB 341. However, among other things, the report failed to:
 - a. Address the need for a life-cycle analysis to fully understand the benefits and disadvantages of the various diversion options;
 - b. Provide adequate recognition to new technologies for the production of non-fossil fuels and renewable energy and the importance of eliminating barriers to their development; and
 - c. Recognize and address the cost of the proposed programs to cities and counties.
2. Review and eliminate any unnecessary rules, regulations, policies, procedures and guidelines which are currently in existence and promote **micromanagement** by CalRecycle and/or currently being developed and pursued by CalRecycle. For example, the recently developed guidelines by CalRecycle as a part of its Assembly Bill 1826 (Chesbro, 2014) implementation.

Laws which are forcibly implemented through guidelines and/or frequently asked questions (FAQs) have wide-spread consequences throughout the State and ought to have a transparent stakeholder regulatory process in which the resulting regulations have the weight of law. However, CalRecycle has chosen to forego this process, instead releasing guidelines for AB 1826 and AB 1126 (Gordon, 2013). These guidelines do not have the weight of law and thus are merely **interpretations** of said legislation, subject to **reinterpretation in the future** if CalRecycle so chooses.

3. Implement approaches that reflect the changing nature of the solid waste management system. For example, CalRecycle has long supported Extended Producer Responsibility (EPR) as a mechanism to relieve local governments from the expensive practice of managing solid waste. However, CalRecycle has not introduced legislation that would create an EPR system for difficult-to-manage wastes. For example, placing a fee on manufacturers who create the waste (which local governments must manage) would provide an incentive for manufacturers to redesign their products to minimize components, including packaging, that need to be managed at the end of their useful life.
4. Rather than placing the entire burden on disposal facilities to make up the revenue loss, consider the imposition of a tipping fee at all non-disposal facilities in concert with implementation of AB 901 (Chapter 746 of 2015 State Statutes) to compensate for the loss of revenue from the disposal fee. This alternative, if implemented appropriately, also eliminates the need for Solid Waste Generation Charge (see Item 5, below).
5. Avoid any mandate(s) on local governments requiring them to collect “fees”, “charges”, “assessments”, “taxes” or any other revenue generating mechanisms from their residents and businesses, and then transfer said revenues to the State. Local governments are already stretched by the diversion and recycling mandates placed on them. Further, they are facing the enormous cost of implementing the state-mandated organic and food waste recycling programs and how to recover their costs from their residents and businesses. To now force them to collect on behalf of the State in order to recoup decreased State revenue reinforces the notion that CalRecycle is out of touch with the difficulties jurisdictions are experiencing as they strive to comply with solid waste mandates/requirements and lack of viable alternative options.
6. Recognize and mitigate the fact that to residents, businesses, and other stakeholders at the local level it does not matter whether or not the proposed fees and increases are from the State. What matters to them is that their waste management, recycling, and collection rates will go up, and they will oppose the increases, making it very difficult to implement them at the local level. As such, any fees assessed should be charged and collected directly by the State/

CalRecycle (possibly as an element of the State Income Tax and/or Sales Tax processes, or develop a system for collection of revenues by CalRecycle/Board of Equalization), rather than being imposed upon local governments for collection and administration.

7. If cities and counties are legally mandated to collect fees on behalf of the State, CalRecycle must reimburse local governments for collection. As stated above, local governments are already stretched thin as they strive to comply with the State solid waste management requirements. At the very least, the State should reimburse local governments for the cost of providing this service.
8. Develop criteria in concert with affected stakeholders for grant and loan eligibility and distribution. In order to assure fair and equitable distribution of funding, criteria must include factors involving population, solid waste revenues generated by a jurisdiction, and State geographical location. For too long, the Los Angeles County region has been short-changed when it comes to recouping funding provided to the State for solid waste endeavors.
9. Deposit all revenues generated pursuant to AB 1063 in the Integrated Solid Waste Management Account. Limit the use of any funds out of the Account to CalRecycle only and prohibit the use of these funds by new legislative mandate(s) and/or by other CalEPA member agencies as well as any other State agency or fund/account.

The Task Force welcomes a transparent process for this proposal and would appreciate inclusion thereof. Should you have any questions regarding this matter, please contact Mr. Mike Mohajer of the Task Force at MikeMohajer@yahoo.com or at (909) 592-1147.

Sincerely,



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

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CC:

CalRecycle (Howard Levenson, Ken DaRosa)
Assembly Member Das Williams
Each Member of the Los Angeles County Legislative Delegation
Each Member of the Los Angeles Board of Supervisors

Los Angeles County Chief Executive Officer
California State Association of Counties
League of California Cities
League of California Cities, Los Angeles County Division
Each City Mayor and City Manager in LA County
San Gabriel Valley Council of Governments
South Bay Cities Council of Governments
Gateway Cities Council of Governments
Each Recycling Coordinator in Los Angeles County
Each Member of Los Angeles County Integrated Waste Management Task Force