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December 1, 2009

Ms. Margo Reid Brown, Chair  
California Integrated Waste Management Board  
1001 I Street  
Sacramento, CA 95812-2815

Dear Ms. Brown:

**RESPONSE TO YOUR SEPTEMBER 29, 2009, LETTER  
REGARDING MANDATORY COMMERCIAL RECYCLING**

On behalf of the Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force), I would like to thank you for your September 29, 2009, response to our September 11, 2009, letter regarding the California Integrated Waste Management Board's (CIWMB) proposed mandatory commercial recycling. We are concerned that many of our original comments have yet to be addressed. Given that your Board is nearing the end of its term, we would appreciate your timely response to our questions and concerns as listed below. For the ease of reference, we have listed each of our original questions/concerns, your response, and our subsequent comments if the response had failed to adequately address our questions/concerns.

**1. Process leading to development of regulations**

***Task Force September 11, 2009, Comments***

Initially the AB 32 Draft Scoping Plan stated that commercial recycling programs would be voluntary or a hybrid approach. Although the CIWMB was involved in the development of the AB 32 Draft Scoping Plan, we were surprised that, at the November 20, 2008, California Air Resources Board (CARB) meeting, you as Chair of the CIWMB, recommended that the hybrid approach be revised to be *mandatory*. This recommendation was not adopted by the CIWMB in a public meeting, and thus there was no opportunity for stakeholders and members of the public to comment on this recommendation. Based on the adoption of this recommendation by the CARB, the CIWMB is now establishing regulations that would potentially have the force of law, while circumventing the legislative process, as well as any open discussion of the recommendation. We have grave concerns that the impacts of this policy decision have not been fully vetted, as further discussed below.

***CIWMB September 29, 2009, Response***

California Air Resources Board (CARB) provided numerous opportunities for stakeholder comments as part of its process for the adoption of the Scoping Plan. In response to stakeholder comments, the CARB included commercial recycling as a mandatory measure in the AB 32 Scoping Plan that it adopted in December 2008. As a result, the CIWMB is charged with and has embarked on a pathway of developing the required regulation.

***Task Force December 1, 2009, Response***

Since February 2008, the Task Force has been participating in the AB 32 Scoping Plan stakeholder process through CARB, and when the proposed AB 32 Scoping Plan was released in October 2008, commercial recycling was not recommended as a mandatory program. Instead, it was a potential option along with voluntary programs, protocols, enhanced partnerships with local governments, and the provision for appropriate financial incentives. The recommendation for mandatory commercial recycling came in an addendum directly following your recommendation, as Chair of the CIWMB, at the November 20, 2008, CARB meeting. As such, the action circumvented the legislative and open discussion process all at the expense of local governments.

**2. Greenhouse gas reduction estimate is unsubstantiated**

***Task Force September 11, 2009, Comments***

The *Mandatory Commercial Recycling Workshop White Paper* developed by the CIWMB for the recent stakeholder workshops indicates that a Statewide mandatory commercial recycling program diverting 2.7 million tons of certain materials (including cardboard, lumber, glass, plastic, paper and metals) would achieve the AB 32 Scoping Plan goal of a 5 MMTCO<sub>2</sub>e reduction. We are unable to see how such significant greenhouse gas (GHG) reductions can be claimed, when the vast majority of California's recyclables are shipped to reprocessing facilities in the Pacific Rim countries where there is not a verifiable record of environmental performance.

Further, as provided by the Attorney General's opinion (58 Ops Cal. Atty. Gen 614 (1975)), the effect from a "project", such as GHG emissions, cannot be disregarded pursuant to the California Environmental Quality Act (CEQA) simply because needed facilities (handling recovered recyclables) emitting GHG are located outside of California, i.e. in the Pacific Rim Countries, etc.

***CIWMB September 29, 2009, Response***

We used the U.S. Environmental Protection Agency Waste Reduction Model (WARM), which is widely used around the country, for our calculations. Furthermore, the GHG Tool that we are developing as part of our Lifecycle Assessment of Organic Materials, and Economic Analysis of GHG Reduction Options project will allow the user to change not only transportation distances but transportation modes.

***Task Force December 1, 2009, Response***

We agree that WARM is a credible resource to determine GHG emissions, and is readily used around the country; ***however, the results of WARM are only as viable as the input data*** (*emphasis added*). The validity of the input data is specifically our concern. As we have noted previously, and as supported by the CIWMB's own draft Life Cycle Assessment and Economic Analysis of Organic Waste Management and Greenhouse Gas Reduction Options, "...data characterizing the energy and emissions for manufacturing operations in East Asia is not available." In the absence of such data, we do not believe it is responsible to proceed with a mandatory program.

No response in regard to the Attorney General's opinion and comment has been noted. The Task Force respectfully requests your response.

3. **Mandatory commercial recycling is an unfunded mandate for local governments**

***Task Force September 11, 2009, Comments***

The *White Paper* and workshop discussions to date have yet to address how such regulations would be enforced. Statewide mandatory commercial recycling regulations would likely place a significant unfunded mandate on local governments at a time when every city and county in California is facing record budget shortfalls.

***CIWMB September 29, 2009, Response***

We appreciate your concerns about unfunded State mandates. The Board's draft approach to this regulation would provide jurisdictions with a flexible approach to implementing mandatory commercial recycling that meets local needs. This would include flexibility on whether or not to include specific enforcement activities.

***Task Force December 1, 2009, Response***

In CIWMB staff recommendations to your Board on September 15, 2009, meeting (agenda item 8, Attachment 2), staff indicated that mandatory commercial recycling regulations would “require each local jurisdiction to implement a commercial recycling program by July 1, 2012, that includes education and outreach to businesses, regardless of whether the jurisdiction has met its 50 percent equivalent per capita disposal target. If a jurisdiction already has a commercial recycling program that addresses outreach/education, monitoring/enforcement, and other appropriate components, it shall not be required to implement a new or expanded program.” This requirement would apply to every city and county in California without regard to the condition of their budget or availability of resources. To date, we have not seen any language in staff recommendations that would offer a waiver to jurisdictions facing budget shortfalls, and/or would have the State provide local governments with needed financial assistance to implement the said mandatory program which is being finalized without any legislative mandate.

The Task Force’s concerns are consistent with those of Governor Schwarzenegger who has not supported the imposition of mandatory commercial recycling given the cost that will be passed down to local governments, businesses, and residents. In his veto message of Assembly Bill 473 – Multifamily Recycling, on October 11, 2009, Governor Schwarzenegger stated the following statement regarding the imposition of Statewide mandatory recycling: “I support efforts to reduce the amount of solid waste going to the state’s landfills. However, this bill could place costly requirements directly on the owner/operators of multifamily dwellings. It is problematic for the State to be engaged in this activity when local governments already have the authority to mandate the action envisioned by this bill.”

4. **If additional materials will be added to the recycling markets, local markets and infrastructure needed to be expanded**

***Task Force September 11, 2009, Comments***

The mandatory commercial recycling regulations by the CIWMB would result in an increase in the amount of recyclables collected without addressing the need for markets that make use of the recyclables. Since the current global economic downturn has resulted in less demand for recycled materials, collecting more materials may further weaken the value of these commodities. It is therefore critical from an economic and environmental standpoint, as well as to make a positive impact on climate change, to establish local markets for recyclable materials. Working with local jurisdictions, the State can help create strong Statewide and regional markets by providing economic incentives and assistance to innovative businesses. The Task Force looks forward to the opportunity to work with the CIWMB in regard to this matter. Until that time, we do not support counting GHG reductions from materials collected through mandatory commercial if they are sent to a facility outside of California and/or outside of the U.S. **unless** the facility is developed and operated in a manner that is as protective of the human health and safety and the environment as a similar facility located in California.

***CIWMB September 29, 2009, Response***

The development and expansion of the needed infrastructure is a local siting decision and the CIWMB will assist a jurisdiction in any way it can while not usurping the authority of the local decision making body.

***Task Force December 1, 2009, Response***

While we appreciate programs, such as the CIWMB's Recycling Market Development Zone (RMDZ), that offer low-interest loans and assistance to companies utilizing recycled materials, the need continues to exist for Statewide permitting and regulatory pathways, as well as additional economic incentives that would promote the creation of local recycling markets and infrastructure. Until that is a reality, we cannot support regulations that mandate increasing the diversion of materials that have no local markets.

Governor Schwarzenegger expressed a similar concern in his October 11, 2009, veto message of Senate Bill 402 – Expanding the Bottle Bill: "Furthermore, while the bill proposes to capture more beverage containers for the recycling market rather than the waste stream, there are, at present, no known California end users for the material types SB 402 adds to the Program. This bill proposes that CRV be applied to products that will likely end up in a landfill."

5. **Need for assessment of environmental impacts that may result from these regulations**

***Task Force September 11, 2009, Comments***

"Finally, we would like clarification as to whether this current mandatory commercial recycling proposal is subject to CEQA, and if so, whether the State has completed the appropriate environmental documentation? Additionally, would each individual city and county who adopts an ordinance also be subject to CEQA?"

***CIWMB September 29, 2009, Response***

The CIWMB "is also aware that the Governor's Office of Planning and Research will be developing guidelines regarding GHG emissions and CEQA. As the proposal will need to be adopted in regulations, we will be following all guidelines required by the Office of Administrative Law in the development of the regulations including CEQA compliance."

***Task Force December 1, 2009, Comments***

Unfortunately, the CIWMB's response fails to address the question. Specifically, the Task Force would like to know if the CIWMB's proposal is subject to compliance with the requirements of CEQA. And if so, why has the State not completed the appropriate environmental documentation?

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 with a combined population in excess of 10 million. Consistent with these responsibilities, and to ensure a coordinated and cost-effective and environmentally sound solid waste management system in Los Angeles County, the Task Force also 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.

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Again, we appreciate your prompt response to our concerns and we hope that we can use this opportunity to work with the CIWMB on the issue of commercial recycling so that true environmental benefits are achieved through the program and local governments are protected from any unfunded burden. Should you have any questions, please contact Mr. Mike Mohajer of the Task Force at (909) 592-1147.

Sincerely,

*Margaret Clark*

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: Governor Arnold Schwarzenegger  
Linda Adams, Secretary, California Environmental Protection Agency  
Mike Chrisman, Secretary, California Natural Resources Agency  
Each Member of the California Integrated Waste Management Board  
California Integrated Waste Management Board (Mark Leary, Howard Levenson)  
California State Association of Counties  
League of California Cities  
League of California Cities, Los Angeles County Division  
Each Member of the County of Los Angeles Board of Supervisors  
Each City Mayor in the County of Los Angeles  
South Bay Cities Council of Governments  
San Gabriel Valley Council of Governments  
Gateway Cities Counsel of Governments  
Southern California Association of Governments  
Each City Recycling Coordinator in Los Angeles County  
Each Member of the Los Angeles County Integrated Waste Management Task Force