TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF A PROPOSED REGULATION TO REDUCE GREENHOUSE GAS EMISSIONS BY REQUIRING MANDATORY COMMERCIAL WASTE RECYCLING

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider the adoption of a new regulation to reduce greenhouse gas (GHG) emissions by requiring businesses, certain multifamily residences, and public entities, to recycle commercial solid waste material.

DATE: October 20, 2011

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium, Second Floor
1001 I Street
Sacramento, California 95814

This item may be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., October 20, 2011 and may continue at 8:30 a.m., October 21, 2011. This item may not be considered until October 21, 2011. Please consult the agenda for the meeting date and time, which will be available at least 10 days before October 20, 2011, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of California Code of Regulations, title 17, division 3, chapter 1, subchapter 10, article 4, subarticle 10, Mandatory Commercial Waste Recycling, sections 95620, 95621, 95622, 95623, 95624, and 95625.

Background:

The California Global Warming Solutions Act of 2006 (Chapter 488, Statutes of 2006), Assembly Bill (AB) 32, directs the ARB to work with all agencies to reduce statewide GHG emissions to 1990 levels by the year 2020. For the solid waste sector, potential strategies to achieve GHG emission reductions include mandatory commercial waste recycling, landfill methane capture, organic waste diversion alternatives, and product stewardship. The Department of Resource Recovery Waste and Recycling (CalRecycle) has been designated as the lead agency for developing the Mandatory Commercial Waste Recycling Regulation (Commercial Recycling Regulation or regulation). However, the authority to adopt this GHG reduction measure lies with the ARB.

Because of these joint responsibilities, CalRecycle developed the proposed regulation in concert with ARB staff. CalRecycle will implement and enforce the regulation in a manner similar to its current roles. ARB staff will maintain an oversight role and assist CalRecycle in the enforcement of the regulation where necessary. CalRecycle is the appropriate State agency to lead the development and implementation of the Commercial Recycling measure given its historical authority and expertise in solid waste management activities. Chief among these authorities is the California Integrated Waste Management Act of 1989 (Assembly Bill (AB) 939). This legislation establishes a 50 percent waste diversion mandate for local jurisdictions and requires CalRecycle to periodically (every 2 or 4 years) evaluate jurisdictions' implementation of diversion programs.

Commercial waste (also known as commercial solid waste) is material generated by public and private business that is generally disposed of by landfilling. About 75 percent of the 36 million tons of solid waste deposited in California's landfills each year is from the commercial sector. The commercial sector includes businesses; multifamily residential complexes; and local, state and federal governmental entities. In 2008, the commercial sector accounted for 28 million tons of solid waste. Collection, transportation, and landfill management of 28 million tons of commercial waste costs $2.66 billion annually.

The proposed regulation requires businesses, multifamily residences (with five or more dwelling units), and public entities, that generate 4 cubic yards or more of commercial solid waste per week to recycle. The proposed regulation requires local jurisdictions to implement a commercial recycling program that consists of providing education and outreach to affected businesses and monitoring compliance with the proposed regulation.

Description of the Proposed Regulatory Action

The purpose of the proposed Commercial Recycling Regulation is twofold: (1) to reduce greenhouse gas emissions by diverting commercial solid waste to recycling efforts; and (2) to expand the opportunity for additional recycling services and recycling manufacturing facilities in California. The increased diversion (through recycling and composting) of about 1.7 million tons of commercial solid waste would reduce GHG emissions at full implementation in 2020 by 5 million metric tons of carbon dioxide (CO_2) equivalents ($MMTCO_2e$). GHG reduction would begin in 2012 and is expected to increase by about 0.5 $MMTCO_2e$ per year until reaching the full implementation goal in 2020.

Applicability

The proposed regulation applies to all businesses, multifamily residences with five or more dwelling units, and public entities, that generate 4 cubic yards or more of commercial solid waste per week. The proposed regulation also applies to local jurisdictions that are responsible for solid waste disposal activities within their city,

county, or region. The regulation does not apply to single family dwellings, multiple family dwellings of 4 or fewer units, or those that generate less than 4 cubic yards of commercial solid waste per week. Local jurisdictions, in consultation with CalRecycle, can establish other specific exemptions.

Requirements for Businesses, Multifamily Dwellings, and Public Entities

The proposed regulation will require businesses, multifamily dwellings of five or more units, and public entities, that generate 4 cubic yards or more of commercial solid waste per week to take the following actions beginning July 1, 2012:

(1) Separate recyclable materials from their solid waste stream and either self-haul, subscribe to a hauler, and/or otherwise arrange for the pickup of recyclables, so that the separated material is diverted from disposal to recycling, reuse, or composting activities; or

(2) Subscribe to a recycling service that includes mixed waste processing alone or in combination with other programs, activities or processes that diverts recyclable materials from disposal, yielding diversion results comparable to source separation.

The proposed regulation does not specify how much or what type of materials businesses must recycle, nor does it limit the types of materials that could be included in a recycling program.

Requirements for Local Jurisdictions

Each local jurisdiction is required to implement a commercial recycling program by July 1, 2012. The program must consist of providing education and outreach to affected businesses to inform them of the requirement to recycle and how to recycle in the jurisdiction, and monitoring the businesses' compliance with the proposed regulation. If a jurisdiction already has a commercial recycling program that targets affected businesses and addresses the outreach, education, and monitoring components of the regulation, the jurisdiction would not be required to implement a new or expanded program.

A jurisdiction's commercial recycling program could also include, but is not limited to: (1) implementing a mandatory commercial recycling policy or ordinance; (2) requiring mandatory commercial recycling through the franchise contract or agreement; and/or (3) requiring that all commercial recycling materials go through a mixed waste processing system that, as part of a system in combination with other programs, activities, and processes, diverts material at a level comparable to source separation. Jurisdictions are allowed flexibility to design and implement a commercial recycling program that meets their needs, meets the needs of the businesses that are required to recycle, and works within their existing infrastructure. Jurisdictions may, but are not

required to, implement an enforcement component to address non-complying businesses.

COMPARABLE FEDERAL REGULATIONS

There are no federal regulations that mandate commercial waste recycling. However, there are a number of federal programs that encourage and support waste recycling/reduction activities by State and local governments including Executive Order 13514 (2009), Resource Conservation and Recovery Act of 1976, Pollution Prevention Act of 1990, and the Resource Conservation Challenge (2002).

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

CalRecycle and ARB staff have prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The ISOR is entitled, "Initial Statement of Reasons for the Proposed Regulation to Reduce Greenhouse Gas Emissions by Requiring Mandatory Commercial Waste Recycling."

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on ARB's website listed below, or may be obtained from ARB's Public Information Office, Visitors and Environmental Services Center, 1001 I Street, First Floor, Sacramento, California, 95814, (916) 322-2990, on August 31, 2011.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons identified below, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Ms. Teri Wion, Senior Integrated Waste Management Specialist, CalRecycle, at (916) 341-6374, Mr. Robert Krieger, Manager, Emissions Evaluation Section, Air Resources Board, at (916) 323-1202, or Ms. Mei Fong, Air Resources Engineer, Air Resources Board, at (916) 324-2570.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, and Ms. Trini Balcazar, Regulations Coordinator, (916) 445-9564.

The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are also available on ARB's website for this rulemaking at http://www.arb.ca.gov/regact/2011/recycling11/recycling11.htm

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulation are presented below.

Costs to State Government and Local Agencies

Pursuant to Government Code section 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer makes an initial determination that this proposed action will not impose a mandate on local agencies or school districts and will not impose costs to local agencies requiring reimbursement or other nondiscretionary cost or savings upon local agencies.

Local jurisdictions, CalRecycle, and ARB may experience costs implementing and enforcing the requirements of the proposed regulation. Local jurisdictions are required to provide education, outreach, and monitoring. To implement these requirements, staff estimates that local jurisdictions will experience increased annual costs of approximately $12,000 for small jurisdictions to $110,000 for large jurisdictions at full implementation of the regulation in 2020 (i.e., about ¼ to 1 person year (PY) depending on the size of the jurisdiction). The total annual statewide cost for local jurisdictions to implement the proposed regulation is estimated to be about $12 million per year when the regulation is fully implemented in 2020.

Staff estimates that costs to CalRecycle will be approximately $500,000 per fiscal year (5 PYs) for monitoring, oversight, and enforcement. These costs can be met within the existing budget. Additionally, CalRecycle anticipates contract costs of about $1 million in 2014 and 2019 for waste characterization studies needed to determine the program's effectiveness and approximately $90,000 (0.5 PY) for contract development and management; these costs cannot be met within the existing budget. ARB costs are estimated to be about $200,000 per fiscal year through 2020. This cost can be met within the existing budget.

The Executive Officer has determined that the proposed regulatory action imposes no costs on local agencies that are required to be reimbursed by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government code, and does not impose a mandate on local agencies or school districts that is required to be reimbursed pursuant to section 6 of Article XIII B of the California Constitution.

Costs to Businesses and Private Individuals

In developing this regulatory proposal, staff evaluated the potential economic impacts on representative private persons or businesses. Staff considered cost impacts to

businesses at full implementation in 2020 and over the time it will take to implement the regulation from 2012 to 2020.

Implementation of the proposed regulation will be gradual, beginning in July of 2012 with full implementation in 2020. Systemwide costs in the beginning years of the program will result in a cost savings for the first seven to eight years; costs will gradually increase over time until full implementation in 2020. The net cost savings that result in the early years are due primarily to using existing collection system capacity. As collection tonnages increase beyond a certain level, costs of collection would increase. Over the 2012 through 2020 time period, the average annual savings to a typical business would be between $119 and $180 per year, and for an average household living in a multifamily complex a savings of between $5 and $7 per year. During this period, the proposed regulation will result in a system-wide savings of between $343 million to $519 million.

As discussed above, the cost of the regulation will increase as collection tonnages increase beyond a certain level. By 2020, the estimated costs for an average business would increase by between $8 to $14 per month, for an average household living in a multifamily complex covered by the rule costs would increase by between $0.30 and $0.60 per month.

The cost estimates are based on reasonable expectations of how businesses will comply with the proposed regulation. Several additional factors may contribute to even lower cost estimates including: waste reduction through increased business efficiencies, greater reuse of materials, less waste through more efficient packaging, and lower recycling costs through economy of scale.

On a statewide basis, the average cost-effectiveness of the proposed regulation in 2020 is anticipated to be $6 to $11 per metric ton of CO_2e reduced. However, due to cost savings in the early years of the program the average cost-effectiveness over the 2012 through 2020 time period is a savings of $14 to $21 per metric ton of CO_2e.

Pursuant to Government Code section 11346.5(a)(8), the Executive Officer makes an initial determination that this proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Executive Officer has made an initial determination that the proposed regulatory action may have a beneficial economic impact directly affecting businesses.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

Implementation of the proposed regulation is estimated to result in economic benefit to California and create approximately 1,500 to 1,600 new jobs in California. Previous

studies on the economic impact of recycling versus disposal have found significant positive effects in California. Recycling a ton of 'waste' has twice the economic impact of burying it in the ground. The additional benefits from recycling will not only generate additional jobs but would also result in additional goods and services. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses.

Staff estimates that about 320,000 businesses and multifamily residences will have to take specific actions to comply with the proposed regulations. Of this total, about 250,000 are businesses and an additional 70,000 are multifamily residences. The affected businesses represent approximately 20 percent of California's 1.5 million businesses and are responsible for about 75 percent of the commercial waste generated in California. Using the Department of General Services criteria for small business criteria (less than 100 employees), about 93 percent of these businesses and multifamily residences would be considered "small" businesses. The regulated multifamily residences represent about 60 percent of the waste from multifamily residences.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the proposed regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

Staff evaluated four key alternatives to the proposed regulation: (1) no action; (2) implementing a voluntary measure; (3) extending the time for full implementation by 5 years; and (4) decreasing the time for full implementation by 5 years. As discussed in the staff report, staff has determined that no alternative to the proposed regulation would be more effective and none would be as effective or less burdensome to affected stakeholders.

ENVIRONMENTAL ANALYSIS

In accordance with ARB's certified regulatory program, California Code of Regulations, title 17, sections 60006 through 60007, and the California Environmental Quality Act, Public Resources Code sections 21000 *et seq.*, ARB has conducted an analysis of the potential for significant long or short term adverse and beneficial environmental impacts associated with the proposed regulatory action. ARB has determined that the proposed regulatory action would not have a significant adverse effect on the environment and will

have beneficial impacts on the environment in terms of reduced greenhouse gases. A detailed environmental analysis of the proposed regulatory action can be found in the ISOR.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on September 3, 2011. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after September 3, 2011 and received **no later than 12:00 noon on October 19, 2011**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: http://www.arb.ca.gov/lispub/comm/bclist.php

New Feature

You can now sign up online in advance to speak at the Board meeting when you submit an electronic board item comment. For more information go to: http://www.arb.ca.gov/board/online-signup.htm

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted in California Health and Safety Code sections, 38501, 38510, 38560, 39562, 39580, 39600, and 39601. This action is proposed to implement, interpret, and make specific sections 38501, 38505, 38510, 38550, 38551, 38560, 39003, 39500, 39562, 39580, 39600, 39601, and

40001 (a), California Health and Safety Code, sections 40100-40201, 40183, 40184, 40191, 40192, 40975, 40192, 40195.1, 40183, 40184, 40192, 40195.1, 40201, 41780-41786, 41800, 41821, 41825, and 41850, 41952, Public Resources Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format (i.e., Braille, large print, etc.) or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia
- Documentos disponibles en un formato alterno (por decir, sistema Braille, o en impresión grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

CALIFORNIA AIR RESOURCES BOARD

James N. Goldstene
Executive Officer

Date: August 23, 2011

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.arb.ca.gov.