



COUNCIL AGENDA: 12/4/18
FILE: 18-1599
ITEM: 7.2

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: November 13, 2018

Approved

D. DSYL

Date

11/19/18

SUBJECT: ACTIONS RELATED TO RECYCLE PLUS RESIDENTIAL SOLID WASTE AGREEMENTS AND CHINA'S POLICY ON IMPORTING RECYCLABLE MATERIAL

RECOMMENDATION

Adopt a resolution authorizing the City Manager to waive all or a portion of the contractor disincentives for not meeting the required diversion rates for calendar year 2018 if by March 1, 2019 the City Manager determines that the Recycle Plus contractors are unable to meet their required diversion rates because of China's "National Sword" policy on the import of recyclable materials.

OUTCOME

Approval of this recommendation would authorize the City Manager to waive all or a portion of the Recycle Plus recycling disincentives for calendar year 2018 if by March 1, 2019 the Recycle Plus contractors are unable to meet required diversion rates due to China's "National Sword" policy on the import of recyclable materials.

BACKGROUND

There have been significant disruptions in recyclables markets since China implemented their "National Sword" policy starting on March 1, 2018. This policy, which is detailed in the Council Information Memorandum "China Recycling Waste Ban", December 4, 2017 (<http://files.constantcontact.com/7a210436601/d557351a-2efd-4c89-bbba-3fa05a196861.pdf>), restricts the imports of paper, cardboard, and plastics. This memo, detailing the impacts of China's policy on the recycling industry, was published prior to the implementation of the import restrictions in March 2018. More recently, beginning May 4, 2018, China halted its pre-inspection program of US exports (essentially halting imports of all US recyclables for a month) and is requiring more rigorous inspections of loads destined for China. In August 2018, the

Chinese government implemented a 25 percent tariff on cardboard and other recovered paper, as well as scrap plastic. Additionally, U.S. aluminum sent to China now has a 50 percent tariff, which has further disrupted global recycling markets. While other countries such as Brazil, Indonesia, Korea, Malaysia, Mexico, and Vietnam are buying recyclables, but the capacity for these markets to absorb material that traditionally went to China is uncertain.

In the United States, China's policy is having the biggest effect on recyclers in the western states. Exports to China have been relatively inexpensive to ship and prices offered for the commodities were relatively high, in recent years. The impacts of the ban have led to Oregon recyclers sending over 13,500 tons of recyclable material to landfill since September 1, 2017, or approximately 2 percent of all material collected in curbside and drop-off programs statewide. In California, many municipalities have standing restrictions on disposing recyclables, which may need to be reevaluated considering China's new policy.

ANALYSIS

Many recycling contractors in the State have indicated that their ability to process material to the new market standards may be challenging, or even impossible, and that new contractor and municipal contractual arrangements should be pursued. On May 8, 2018, the State Department of Resources Recycling and Recovery (CalRecycle) responded to growing concerns in a letter to local governments and industry about the impacts of China's import policies (Attachment A). CalRecycle noted that local jurisdictions must meet certain diversion requirements under State law and are subject to enforcement if these diversion requirements are not met. However, CalRecycle recognizes the impact of international policies on global recycling markets and will consider "whether a good faith effort was made by the jurisdiction to meet [diversion] requirements."

In the immediate term, it is clear that recycling market conditions are uncertain because of China's "National Sword" policy. Staff recommends authorizing the City Manager to waive all or a portion of the contract disincentives related to calendar year 2018 diversion standards, if by March 1, 2019 the Recycle Plus contractors provide documentation that they were unable to market materials to the standards required by "National Sword", including documentation that materials previously accepted were no longer accepted, resulting in their inability to meet required diversion rates in San José, and evidence of similar difficulties experienced elsewhere in the state because of China's "National Sword" policy. San Jose has not authorized the landfilling of collected recyclables for any of our residential Recycle Plus or commercial contractors.

If approved, this would be a one-time waiver applying only to calendar year 2018 and to the current agreement. This waiver does not remove the diversion performance requirements in the Recycle Plus agreements, but would recognize that meeting such requirements may not be feasible in calendar year 2018 given the disruption created by the National Sword. Deciding to execute the waiver after the end of this year would allow the City to analyze all of calendar 2018 data and to further understand how the recycling industry is responding on local and national

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levels, including if other local jurisdictions, which could include Oakland and San Francisco, are responding with similar waivers to recycling requirements.

In future residential solid waste agreements, to address the significant uncertainty of recycling commodity markets, staff plans to include a "safety net" provision in the event recyclable commodity markets become not reasonably available. Under such extraordinary circumstances, the City and Recycle Plus contractors would meet to discuss a reasonable modification to recycling standards and/or other adjustments to Recycle Plus contractors' recycling obligations under the agreement with the City.

EVALUATION AND FOLLOW-UP

Should Council adopt the resolution associated with this memo, the City Manager would be authorized to waive all or a portion of the Recycle Plus contractor disincentives for not meeting the required diversion rates for calendar year 2018, if by March 1, 2019 the City Manager determines that the Recycle Plus contractors are unable to meet their required diversion rates because of China's "National Sword" policy on the import of recyclable materials. This determination will be reported at a Transportation and Environment Committee meeting.

POLICY ALTERNATIVES

Alternative: Do not authorize City Manager to waive any portion of the recycling disincentive

Pros: Maintains contractual requirements.

Cons: Does not recognize global changes to the recycling market that were not present when contracts were awarded.

Reason for not recommending: Contractors have expressed concern that China's "National Sword" may create a barrier to marketing recycled materials as required in the current contracts and should this occur staff would like the flexibility to waive disincentives if justified.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the December 4, 2018, City Council Meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

There is no commission recommendation/input associated with this action.

COST SUMMARY/IMPLICATIONS

Diversion disincentive payment deductions are not assumed when setting the contractor budgets; thus, waiving any applied disincentives will not result in expenditures surpassing budgeted amounts. The impact of all 2018 disincentives would have yielded savings in the Integrated Waste Management Fund of approximately \$550,000 through 2018-2019, representing approximately 0.7% of the budgeted amount for contractor payments, \$78.9 million.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment and File No. PP17-007, Preliminary direction to staff and eventual action requires approval from decision-making body.

/s/
KERRIE ROMANOW
Director, Environmental Services Department

For questions, please contact Valerie Osmond, Deputy Director, Environmental Services Department at (408) 535-8557.

Attachments:

- A. State Agency CalRecycle's National Sword Letter



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

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May 8, 2018

In light of recent changes to China's import policies, I'm writing to share an update on California's recycling markets, answer questions regarding jurisdiction compliance, emphasize the importance of health and safety at solid waste facilities, and discuss what lies ahead. On May 4th, China stopped accepting any imports of recyclable materials from the United States for one month. This decision follows China's implementation of its National Sword policy on March 1st, banning the imports of 24 categories of scrap materials including low grade plastics and unsorted mixed paper, and setting strict contamination standards for allowable bales of recyclable material. The exporting of recyclable commodities to China, primarily our traditional curbside materials, has historically been a key component of California's recycling infrastructure. Approximately two thirds of curbside collected material is exported to foreign markets. In 2016, 62 percent of the exported recyclable materials were sent to China. However, China's implementation of National Sword is a major disruption in recycling commodities markets, a signal that California can no longer be primarily reliant on exports to manage our recyclable materials.

These new policies provide California with an opportunity to take a couple of important steps: first, to reduce our waste, and second, to work together to build infrastructure and domestic markets to successfully and responsibly manage our recyclable materials. Each of these will take investment and collaboration across state and local governments, the solid waste industry, manufacturers, and rate-payers. These are critical steps to improve the environment and economy here in California and beyond, although they will take time.

We're already witnessing the effect of China's new policy. Material flow is significantly disrupted and the economics of recycling are unfavorable for many recyclable commodities, challenging what recycling means to Californians.

This letter is intended to address concerns I have been hearing from local governments and industry about the impacts of China's import policies. I would like to reassure local governments that we have existing statutory policies to address the impact of markets when determining whether or not a jurisdiction has made a good faith effort to implement its diversion programs for compliance with AB 939. I am aware that facilities are having a hard time moving recyclable materials and are keeping them on site in significant quantities. If facilities are temporarily storing materials for longer periods, public health and safety should be their number one priority. Finally, looking toward the long-term, we will need more domestic infrastructure to manufacture products using California's recycled content feedstock. This valuable infrastructure will not only support the domestic recyclable commodities market but also support SB 1383's goal to reduce disposal of organic waste by 75 percent.



Let me expand on these points.

Considering Market Factors When Evaluating Jurisdiction Performance

Given shifting markets for recyclable commodities, it is important to clarify that CalRecycle takes market conditions into consideration when evaluating a jurisdiction's compliance with the following state recycling laws: AB 939, mandatory commercial recycling, and mandatory organics recycling. I have heard many stakeholders express concerns that CalRecycle will not take market factors – e.g., the precipitous drop in ability to get collected materials to market at an adequate price or even at all – into consideration when we evaluate jurisdiction programs. Jurisdictions are concerned that this could lead to potential penalties for situations that jurisdictions cannot control. This is not what statute dictates. Specifically, under existing statute, regulations, and policy, CalRecycle already takes market conditions into consideration when determining "good faith effort" in evaluating each jurisdiction's program implementation. CalRecycle recognizes that over the short term, lack of markets is not indicative of a jurisdiction's efforts to implement its programs fully. Additionally, a jurisdiction's achievement of its 50 percent requirement is not determinative for assessing compliance. Instead, CalRecycle's jurisdictional review focuses on program implementation and includes the assessment of barriers a jurisdiction is facing, including a lack of markets.

The following is an overview of the applicable statutes, regulations, and policies utilized when evaluating a jurisdiction's performance. I am providing you with this level of detail because it is descriptive of how we have reviewed jurisdiction program implementation in the past and how we will continue to do so in light of National Sword.

California Public Resources Code [41825\(e\)\(3\)](#) establishes that CalRecycle must consider the enforcement criteria included in its enforcement policy, known as the Countywide Integrated Waste Management Plan (CIWMP) Enforcement Policy Part II. This is the guiding process for determining compliance for a number of programs. CalRecycle periodically revises this policy to incorporate the goals of new statutes, as it did for [AB 341](#) and [AB 1826](#). Staff uses the criteria delineated in the policy to determine the extent to which a jurisdiction has implemented, or shown a good faith effort to implement, its selected diversion programs. Staff also uses the identified criteria to assist local jurisdictions who may need help in identifying why implementation of diversion programs is failing to achieve the results expected, or is failing to meet the diversion requirements. We want jurisdictions to be successful in implementing diversion programs.

The [CIWMP Enforcement Policy Part II](#) specifically includes consideration of markets for [AB 939 Source Reduction and Recycling Element \(SRRE\)](#), [Mandatory Commercial Recycling \(AB 341\)](#) and [Mandatory Commercial Organics Recycling \(AB 1826\)](#) compliance review. The following are some of our current review processes and the factors we consider when determining if a jurisdiction has met their diversion goals.

AB 939 review: As part of the review process, CalRecycle investigates the extent to which a jurisdiction has tried to meet the diversion requirements through its selected diversion programs, and the reasons it has failed to implement some or all of those diversion programs. Staff uses the criteria in the Enforcement Policy to assess the specific conditions that may have prevented a jurisdiction from meeting its 50 percent equivalent per capita disposal target, and whether a good faith effort was made by the jurisdiction to meet the requirements. The analysis for a jurisdiction that is not meeting its 50 percent target includes considering availability of markets and specific criteria can be found here: [CIWMP Enforcement Policy Part II, pages 4 and 11.](#)

Mandatory Commercial Recycling (MCR) and Mandatory Commercial Organics Recycling (MORe) review: CalRecycle also reviews jurisdictions' implementation of their MCR and MORe

programs. If a jurisdiction has not been able to implement a commercial recycling program that is appropriate for the jurisdiction and meets the needs of its businesses, CalRecycle looks at a number of factors in assessing whether the jurisdiction has made a good faith effort to implement these programs. These factors include the impact of markets and the efforts the jurisdiction has made to investigate local and regional marketing options and recycling opportunities with the private sector. More specifics can be found in the [CIWMP Enforcement Policy Part II, page 22 re: MCR and 28-29 re: MORE](#), and [PRC 42649.3\(l\)\(5\)](#) and [42649.82\(h\)\(6\)](#) and 14 California Code of Regulations §18839.

Health and Safety Considerations Associated with Storage

We understand that National Sword is causing back-ups and longer storage times of processed recycled materials at solid waste facilities and recycling centers. Solid waste facility operators can [discuss potential permitting options](#) or request a Solid Waste Local Enforcement Agency to grant a temporary waiver of storage restrictions. The waiver would allow additional amounts of recyclables and longer timeframes to store recyclables at the solid waste site as long as the additional storage does not create public health and safety or environmental issues. The [process for requesting and processing a temporary waiver](#) is found in state solid waste regulations. In addition, public health and safety is a priority at solid waste facilities and recycling centers. Several industry sources have published best management practices for the storage of baled recyclable materials. We've provided a synopsis of these practices below:

Have a Storage Management Operations Plan describing procedures for receiving, storing, and shipping baled recyclables.

- Unload baled recyclables by forklift and stack in a specific storage area in a configuration that provides for long-term stability. If applicable, stacked bales may be overlapped or staggered to improve the stability of the stacks. Height of the bales should be no greater than four bales high.
- The bale storage area should allow forklift operators to safely move materials and allow for the safe loading of trailers that are picking up bales of materials.

To prevent contact with storm water, and to control vectors and nuisance, the following may be employed:

- Limit bale contact with the ground (e.g., on pallets and/or tarps)
- Maintain facility cleaning, housekeeping and litter control
- Remove putrescible material, if observed
- Maintain heavy equipment to ensure no oil or fuel leakage occurs; clean up spills or leaks immediately
- Establish a first in/first out material handling process
- Where necessary, place berms or other structures to divert storm water from coming into contact with bales

Fire Hazard Mitigations:

- Consult with your local fire district to employ fire hazard mitigations
- Keep adequate heavy equipment available on-site: (e.g., front loaders, bulldozers, water trucks, bobcats), fire hoses, dedicated fire pump and water tanks, and fire extinguishers.
- Identify a maximum size of the storage area including length/width/height.
- Maintain appropriate spacing between piles and the perimeter, maintain fire lanes
- Inspect piles daily for potential fire hazards
- Monitor pile temperatures at least once a week

Coordinate with the Local Enforcement Agency and any local or state authorities responsible for the regulatory oversight of the facility.

For further information on best practices for storing materials, here are some additional resources from [Waste 360](#) and [Environmental Protection Authority, Victoria](#).

Reducing Waste and Increasing Domestic Infrastructure

Reducing the generation of waste before it enters the waste stream reduces costs and conserves resources. Manufacturers, consumers, and governments all have a role to play in reducing waste. For example, manufacturers can reduce unnecessary packaging on products, consumers can choose to use reusable instead of single use, disposable products, and local government can procure products with recycled content. Waste prevention has the potential to reduce reliance on foreign markets, as there is no need to export what California has not generated. We will continue to work with you and all stakeholders to develop waste prevention opportunities and policies. With that said, we will continue to generate a significant amount of materials in California. Upstream solutions will need to be paired with the development of domestic processing and manufacturing for us to successfully manage our recyclables.

Building infrastructure to handle the materials we collect now, and the even greater amounts we will need to collect when SB 1383 goes into effect, is a daunting long-term task that will take years to achieve. Given the unpredictability of the marketplace, it's even more important that state and local governments and the private sector begin making siting and investment decisions now to develop more domestic (California and the U.S.) infrastructure for manufacturers using recycled content feedstock.

As CalRecycle communicated in January, we are committed to using our [available resources](#) to help build a more robust materials processing infrastructure in California. CalRecycle currently provides funding through its greenhouse gas (GHG) grant and loan programs and Recycling Market Development Zone program (RMDZ), and we work closely with the Governor's Office of Business and Economic Development (GO-Biz) to assist manufacturers that want to site or expand their operations in the state. Over the past four years, the GHG grant program has provided \$86 million in funding to 31 recycling projects and the GHG loan program has provided \$1.5 million in funding for two projects for construction, renovation, and expansion of new in-state capacity. The RMDZ loan program has provided \$145 million in funding to 192 recycling manufacturers in the state, since inception of the RMDZ loan program in FY 1993-94. There is increasing enthusiasm from companies interested in utilizing California's waste stream to make new products such as compost, biofuels, fibers and plastics. I urge you to take advantage of these.

Another opportunity to support manufacturers using recycled content feedstock is for jurisdictions to ensure their General Plan includes these types of facilities in their land use element. Just last year the California Governor's Office of Planning and Research (OPR) completed the first comprehensive update to the General Plan Guidelines (GPG) since 2003 ([General Plan Guidelines Update, Completed August 2, 2017](#)). One of the major changes includes an expanded section addressing the need for additional recycling, anaerobic digestion, composting, and manufacturing facilities in the land use element. This new guidance provides examples for local jurisdictions to use when updating their General Plans. Additional information is on the [OPR General Plan Guidelines website](#). You can stay informed about GPG-related information by [signing up for the GPG email list](#).

Next Steps

CalRecycle will host a workshop in Sacramento in early June to encourage dialogue and share information about the impacts of China's import policies. Workshop details will be posted on our [National Sword website](#). We will use this convening as an opportunity to discuss changing market dynamics, impacts on facilities, domestic capacity for processing and manufacturing using recycled content, and to identify other short and long-term solutions to the current recycling challenges. This is not the first time the international recycling commodities market has faced a major disruption and it won't be the last. California must capitalize on these disruptions and turn them into an opportunity to strengthen our environmental resilience and our economy. This will require us to reassess product design, materials collection, and processing systems. I look forward to working with you to build a more sustainable recycling infrastructure in California.



Scott Smithline
Director

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER TO WAIVE ALL OR A PORTION OF THE CONTRACT DISINCENTIVES FOR THE RECYCLE PLUS HAULERS THAT DO NOT MEET THE CITY'S REQUIRED DIVERSION RATES FOR CALENDAR YEAR 2018 IF THE CITY MANAGER DETERMINES BY MARCH 1, 2019 THAT THE RECYCLE PLUS HAULERS CANNOT MEET THEIR REQUIRED DIVERSION RATES BECAUSE, DUE TO CHINA'S "NATIONAL SWORD" POLICY, THERE WERE NO REASONABLE ALTERNATIVES FOR DIVERTING RECYCABLES MATERIALS HISTORICALLY EXPORTED TO CHINA

WHEREAS, the City of San Jose ("City") provides recycling and garbage services to more than 320,000 residential households from both single-family and multi-family dwellings through agreements with four service providers: GreenTeam of San Jose, GreenWaste Recovery Inc., Garden City Sanitation, and California Waste Solutions; and

WHEREAS, starting on January 1, 2000, the State of California has mandated the implementation of an Integrated Waste Management Plan that would result in the diversion of at least 50% of all solid waste from landfill through source reduction, recycling, and composting activities (See Cal. Pub. Resources Code § 41780.); and

WHEREAS, to meet the State's diversion standards, the City's contracts with GreenTeam of San Jose, GreenWaste Recovery Inc., and California Waste Solutions (collectively "Recycle Plus Haulers") for the processing of solid waste and recyclable material, and requires each of them, as part of their contracts, to meet certain minimum Diversion Standards; and

WHEREAS, to encourage the Recycle Plus Haulers to meet the City's Diversion Standards, each contract has a disincentive payment in some form that may be assessed as liquidated damages or as a deduction from the City's annual payment if the City's minimum Diversion Standards are not met; and

WHEREAS, an essential part in diverting solid waste from landfill is the export of recyclable materials to foreign markets, like China, for reuse; and

WHEREAS, the California Department of Resources Recycling and Recovery (CalRecycle), as of January 16, 2018, estimates that a third of all recyclable material generated in California annually is exported to foreign markets, and 62 percent of that total is exported to China; and

WHEREAS, per CalRecycle, China has historically been the largest importer of recyclable material; and

WHEREAS, in July 2017, China announced a policy called "National Sword" to limit the import of contaminated recyclable commodities and to increase inspections of recyclable commodity imports; and

WHEREAS, under China's "National Sword" policy, many recyclable materials are now banned and may no longer be imported; or must meet strict new contamination limits as a condition of import into China that, in certain cases, may be unachievable; and

WHEREAS, news articles report that China's "National Sword" policy has led to a significant decline in exports of mixed paper, cardboard, and plastics that has disrupted the global market for recyclable materials. (Tita, Bob. "Recycling, Once Embraced by Businesses and Environmentalists, Now Under Siege." *Wall Street Journal* 13 May 2018. [<https://www.wsj.com/articles/recycling-once-embraced-by-businesses-and->

environmentalists-now-under-siege-1526209200]; de Freytas-Tamura, Kimiko. "Plastics Pile Up as China Refuses to Take the West's Recycling." *New York Times* 11 Jan. 2018 [<https://www.nytimes.com/2018/01/11/world/china-recyclables-ban.html>]; Hook, Leslie and Reed, John. "Why the world's recycling system stopped working." *Financial Times* 26 Oct. 2018 [<https://www.ft.com/content/360e2524-d71a-11e8-a854-33d6f82e62f8>].); and

WHEREAS, China's "National Sword" policy is affecting the Recycle Plus Haulers ability to divert recyclable material from landfills, and is leading to the stockpiling of recyclable materials as they seek alternative markets that could potentially pose a threat to public health and safety; and

WHEREAS, the City recognizes that the current lack of available markets for one or more type of recyclable materials, in the short term, is the result of circumstances beyond the reasonable control of the Recycle Plus Haulers and the City; and

WHEREAS, in light of the China "National Sword" policy and its impact on the export of recyclable materials, this Council wishes to delegate to the City Manager the authority to waive all or a portion of the disincentives specified in the contracts with the Recycle Plus Haulers if by March 1, 2019 the Recycle Plus Haulers are unable to meet the City's minimum Diversion Standards;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The City Manager is hereby authorized to waive all or a portion of the disincentives specified in the contracts with the Recycle Plus Haulers for calendar year 2018 if the City Manager determines by March 1, 2019 that the Recycle Plus Haulers cannot meet the City's minimum Diversion Standard specified in their contracts because, due to

China's "National Sword" policy, there were no reasonable alternatives for diverting the recyclable materials they historically would have exported to China.

ADOPTED this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk