

**Breathe California
Californians Against Waste
Center for Biological Diversity
Environmental Defense Fund
Global Alliance for Incinerator Alternatives
Natural Resources Defense Council
Sierra Club California**

August 11, 2011

Chair Mary Nichols
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Re: Comments on Inclusion of MSW Combustion in 15-day Changes to AB 32 Cap-and-Trade Regulation

Dear Chair Nichols:

The undersigned organizations would like to support the decision not to exempt the emissions from the combustion of municipal solid waste from having to hold compliance obligations under the cap-and-trade program. The July 7th discussion draft contained a categorical exemption for municipal solid waste incinerators, a significant and arbitrary change for which no public process had been held, and, while this was subsequently removed, we urge you not to include this exemption in any future changes to this regulation.

While very little explanation was given for the exclusion of incinerators, the document accompanying the discussion draft stated that “including emissions from these facilities in cap-and-trade would cause statewide GHG emissions to increase as a result of diversion of waste to landfills. This exclusion is based on staff’s analysis of the potential economic impacts created by a cap-and-trade program and the potential increase in methane emissions resulting from diversion of waste to landfills even after the implementation of early action measures.” Despite repeatedly asking for the release of staff’s analysis that supported the above conclusion, we have yet to see any information. Thus, we are unable to analyze the staff’s basis for the original decision.

Nonetheless, based on the limited information available to us at this time and the industry-supplied data that was posted on the ARB website, it appears that the conclusion was underpinned by the concept that an increase in the cost of incineration will lead to a significant amount of material being landfilled. We disagree with this conclusion for 3 primary reasons:

- GHG Benefits of Increased Recycling not Included
The analysis assumes that incineration and landfilling are the only end-of-life management option for California’s waste stream. In fact, disposal competes directly with recycling and composting—technologies that are being promoted as part of AB 32 implementation because of their greenhouse gas reduction benefits. In fact, any increase in the cost of incineration will contribute to the financial viability of expanding recycling and composting, and the greenhouse gas benefits of diverting material from incineration to recycling do not appear to have been considered.
- Competition with Other Diversion not Landfills
Given the fact that a significant portion of the material sent to transformation facilities

counts as diversion under the state's waste reduction and recycling law, these facilities largely compete with other diversion technologies not landfills. Under AB 939, local governments are required to divert 50% of the material they generate, and transformation is allowed to count as 10% of this diversion. Since local governments are using these facilities to comply with AB 939, they would likely send their material to the cheapest "diversion facility", whether that means continuing to send material to transformation or to the next cheapest form of diversion, recycling and composting. This is evidenced by the fact that most of the existing incinerators are more expensive than surrounding landfills and receive waste from jurisdictions that have closer landfill options. Furthermore, the inelasticity of incinerator demand caused by diversion credit has also been shown by the fact that the tonnage that went to these facilities only decreased slightly during the economic downturn, compared to the very significant decrease in landfilling.

- Level Playing Field

The industry's argument that they need to be exempt from cap-and-trade to ensure a level playing field with their competitors is incorrect because landfills are already subject to direct regulation under an AB 32 Early Action Measure. Even recycling facilities, such as material recovery facilities, are energy-intensive and would be substantially impacted by increases in energy costs that might result from AB 32.

In addition to the impact of an incinerator exemption on the state's waste reduction efforts, this change would likely result in adverse environmental impacts and localized health concerns that were not examined as part of the original environmental review or alternatives analysis. As this issue progresses, we look forward to reviewing and commenting on any additional analysis that your staff has performed, and we hope that future decisions on this issue will be made with the benefit of public input.

Sincerely,

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