REQUEST FOR APPROVAL

To:	Scott Smithline Director
From:	Howard Levenson Deputy Director, Materials Management and Local Assistance Division
Request Date:	Sept 15, 2015
Decision Subject:	Consideration of the California Used Mattress Recovery and Recycling Plan, Budget, and Notice of Exemption
Action By:	October 1, 2015

Summary of Request:
The Mattress Recycling Council submitted the Used Mattress Recovery and Recycling Plan (Plan) and Budget to the Department on July 1, 2015. As directed by the Used Mattress Recovery and Recycling Act [Chapter 388, Statutes of 2013 (Hancock, Senate Bill 254)], Public Resources Code sections 42985-42994, CalRecycle must approve, disapprove, or conditionally approve the Plan and Budget within 90 days of submittal. This item requests the Director's compliance determination with regards to the Plan and the Budget, and direction for associated requirements under the California Environmental Quality Act (CEQA).

Recommendation:
Staff recommends that the Department file a Notice of Exemption (NOE) for the Plan with the State Clearinghouse as provided under CEQA. Staff recommends conditional approval of the Used Mattress Recovery and Recycling Plan, pending submittal of a revised Plan that adequately addresses the issues outlined in this item. Staff recommends approval of the Used Mattress Recovery and Recycling Plan Budget.

Action:
On the basis of the information and analysis in this Request for Approval, and the findings set out above, I hereby direct staff to file a Notice of Exemption with the State Clearinghouse for the Plan as provided under the California Environmental Quality Act. I approve the Used Mattress Recovery and Recycling Budget. In addition, I conditionally approve the Used Mattress Recovery and Recycling Plan submitted by the Mattress Recycling Council on July 1, 2015, pending submittal of a revised Plan that adequately addresses the issues outlined in this item. Full approval of the Plan is contingent on completion of the following actions:

- The MRC resubmitting the Plan within 60 days of the date of conditional approval;
- The MRC adequately addressing the issues discussed in the Staff Recommendations section below.

Dated: 10/1/15

Scott Smithline, Director

Attachments:

1. Used Mattress Recovery and Recycling Plan Cover Letter
2. Used Mattress Recovery and Recycling Plan, dated July 1, 2015
3. Errata Sheet for the Used Mattress Recovery and Recycling Plan, dated July 24, 2015
4. Used Mattress Recovery and Recycling Budget Cover Letter
5. Used Mattress Recovery and Recycling Plan Budget, dated July 1, 2015
6. Notice of Exemption (NOE), dated September 30, 2015
7. Minor Revisions to the Used Mattress Recovery and Recycling Plan
8. Mattress Recycling Council Plan 30 Day Completeness Review Letter, dated July 30, 2015

BACKGROUND

Senate Bill (SB) 254 (Chapter 388, Statutes of 2013) established the Used Mattress Recovery and Recycling Act (Act). Subsequently, the Governor signed clean-up legislation – SB 1274 (Chapter 371, Statutes of 2014) – which provided additional clarity regarding definitions, report submittals, and record keeping requirements under the Act.

The Act requires implementation of the Used Mattress Recovery and Recycling Program (Program) in order to reduce illegal dumping, increase recycling, and substantially reduce public agency costs for the end-of-life management of used mattresses. Mattress manufacturers, via a mattress recycling organization, are required to develop, finance, and implement a convenient and cost-effective Program, which is consistent with the state's solid waste management hierarchy, to recover and recycle used mattresses generated in California. A mattress recycling organization must be certified by CalRecycle and submit a budget and plan that details the proposed mattress stewardship Program to the Department by July 1, 2015. To date, CalRecycle has certified the Mattress Recycling Council (MRC), a non-profit organization created by the International Sleep Products Association, as a mattress recycling organization.

CalRecycle is tasked with specific oversight and enforcement responsibilities that include appointing the members of the MRC Advisory Committee; reviewing and approving mattress stewardship plans submitted by the MRC; reviewing and approving annual reports required from the MRC, mattress recyclers and mattress renovators, and from solid waste facilities; reviewing and approving the MRC's annual budget and the mattress recycling charge; posting a list of compliant manufacturers and renovators on CalRecycle's website; and imposing an administrative fee sufficient to cover the Department's full costs of administering and enforcing the Act. Additionally, based on information required in the plan and first annual report, CalRecycle must establish the state mattress recycling baseline and the state mattress recycling goals on or before January 1, 2018. CalRecycle's enforcement responsibilities will be comprised of a combination of activities including evaluating the MRC's progress in implementing its plan,

performing audits, and, if necessary, imposing civil penalties for non-compliance. In evaluating the MRC's progress, CalRecycle will solicit stakeholder input via transparent, public discussions.

The Department adopted regulations on May 22, 2015, to add clarity to statue and outline administrative procedures. The regulations were approved by the Office of Administrative Law on July 21, 2015, and filed with the Secretary of State on the same day. As requested by the Department, the regulations became effective immediately. Additionally, the Department filed a notice of exemption (NOE) for the regulations with the State Clearinghouse as provided under the California Environmental Quality Act.

Plan Submittal and Review Timeline:

On July 1, 2015, as required by Public Resources Code (PRC) section 42987.1, the MRC submitted a Used Mattress Recovery and Recycling Plan (Plan) and Budget to the Department, (see Attachments 1, 2, 4, and 5). A subsequent errata sheet was submitted on July 24, 2015 (see Attachment 3). California Code of Regulations section 18962(c) requires the Department to determine if the Plan is complete, and notify the MRC within 30 days of receipt of the Plan. CalRecycle notified the MRC that the Plan submitted was complete on July 30, 2015. The Plan completeness letter was posted on the Department's website at: http://www.calrecycle.ca.gov/Mattresses/Plans/default.htm.

PRC section 42987.3(a) requires that the Department make a determination of approval, conditional approval, or disapproval within 90 days of receiving the Plan.

ANALYSIS

Staff Recommendations – Used Mattress Recovery and Recycling Budget:

Staff recommends approval of the Budget; however, staff notes that it does not contain the level of detail that will be needed in subsequent budgets. In future budgets (beginning July 1, 2016, and thereafter) more details will be necessary to delineate anticipated revenues and costs to implement the Program, including itemization of anticipated costs for each specific budget category. The cost category titled "Administration, Research and Advisory Expenses" will need to separate administration, research, and advisory costs into individual subcategories and include line item costs. For example, the research category will be expected to include anticipated costs for each specific research task that will be performed in the following calendar year, such as researching alternatives for removing steel from pocketed coil innersprings, or developing end use markets for specific recycled mattress components.

Staff Recommendations – Used Mattress Recovery and Recycling Plan:

Staff finds that in the Plan the MRC has set an ambitious initial goal of increasing the number of mattresses recycled by up to five times within the first full year of Program implementation, established a 75% by weight recycling target for its recyclers, reached out to all permitted solid waste facilities to determine if they would be suitable collection sites, conducted a transparent request for proposal process for transportation and recycling services, consulted with stakeholders (including the MRC Advisory Committee and the Illegal Dumping Task Force) in the development of the Plan, developed education and outreach materials and an associated two

year communication plan, set up a registration process for manufacturers, renovators, and retailers, and hired a number of California staff to develop and implement the Program.

While the MRC has submitted a Plan with a number of laudable elements, staff recommends the Director conditionally approve the Plan and that full approval be contingent upon the MRC adequately addressing the following issues in a revised and resubmitted Plan.

1. *Waste Hierarchy.* Staff found that the Plan should be revised to clarify it is consistent with the waste management hierarchy, and describe how it places a priority on source reduction (which includes reuse) over recycling, composting, and biomass conversion.
    a) Source Reduction: Because source reduction is an important component of the state's waste hierarchy, CalRecycle requests that the MRC remove the statement that implementing source reduction efforts is beyond the scope of the Act and the Plan.
    b) Renovators: Coordination with renovators, who are required to be members of the MRC, is not adequately addressed in the Plan. PRC section 42987.1(o) requires that the Plan include a provision that allows an individual to drop off a mattress at a participating recycler, renovator, mattress recycling center, permitted solid waste facility, authorized solid waste operation, or other municipal facility, if an agreed upon payment between the MRC and such entities can be reached. Negotiations between the MRC and interested renovators to reach such agreement are not mentioned or described in the Plan. The Plan needs to include information about how the MRC, and its recyclers, will work with renovators and ensure they are not adversely impacted by the Program. The Plan needs to describe how the MRC will monitor the impact of the Program on renovators and what steps will be taken if renovators are adversely impacted.
    c) Processing Fee: The report submitted by the MRC Advisory Committee (Appendix J, page 10) notes that "the MRC has agreed to pay an approved recycler an agreed upon processing fee regardless of whether the recycler sells the separated components, such as foam, steel, etc. to the recycling market or to licensed renovators and/or carpet rebonders." However, no mention of this agreement is noted in the Plan. Staff is aware that the request for proposals issued by the MRC also provides compensation to recyclers for mattresses that are unrecyclable and must be landfilled. The Plan should describe how the MRC intends to continue working with recyclers and renovators to set processing fees, and how these payments will be monitored and adjusted to ensure the Program is consistent with the waste management hierarchy.
    d) Research: The Plan's section on Research should be revised to include possible research topics and activities to develop end use markets to increase the reuse of mattress components.
    e) Biomass: On Page 7, the Plan states that materials may go to biomass conversion if "any" of the other management options higher up on the waste management hierarchy are not feasible. The Plan needs to be revised to state that biomass conversion may be used as a management alternative if "all" of the other options listed above it in the waste hierarchy are not feasible. Additionally, clarification is

needed that only "wood" may be used for biomass conversion, not "material" as is currently stated.

f) On or before January 1, 2018, CalRecycle will establish the state mattress recycling goals, which could include tiers for source reduction, recycling, composting, and biomass conversion. Staff expects that the MRC will include the quantity of material managed via source reduction (e.g., reuse of mattress components), recycling, composting, biomass conversion, and landfilling separately in the Annual Reports.

2. *Brick-and-Mortar Stores.* The Errata Sheet submitted by the MRC revised the third bullet on page 12 of the Plan to read: "[t]he charge does not apply to mattresses or foundations sold by brick-and-mortar stores located outside of California for delivery in California." This Plan provision contradicts the definition of "sale" in PRC section 42986(r), which states that "sale" or "sell" includes any transfer of title of a mattress for "eventual consumption in the state." Therefore, any mattress sale by a manufacturer, distributor, or retailer, or any remote sale, where the mattress is for use by a consumer in California is subject to the mattress recycling charge. Accordingly, the revised third bullet on page 12 of the Plan must be deleted.

3. *Contracting.* The Plan does not provide adequate detail regarding the contracting process. Recycling contracts will be essential to ensure the Program has sufficient infrastructure and transportation, both at the onset of the Program, and as it develops. As such, recycling contracts should be fair and transparent with clear criteria and a process that is open and competitive. Thus, the Plan should provide additional detail about contracts, such as stating the average or set length of contracts, describing how the MRC will monitor and evaluate the performance of contracted service providers, the frequency with which RFPs will be issued, and an explanation of how the MRC will facilitate participation in the Program by additional service providers, since competition has been shown to spur innovation and drive down costs in other recycling programs.

4. *Illegal Dumping – Fund for Local Governments.* For calendar year 2016 the MRC has allocated $750,000 to fund this portion of the plan and will pay registered collectors of illegally dumped mattresses up to $10 per unit. While staff believes the three-pronged strategy to combating illegal dumping as described in the Plan is reasonable, the MRC should also explain what activities will be undertaken if the number of illegally dumped mattresses does not decline as expected, and instead stagnates or increases. The Plan needs to discuss how the MRC will reevaluate the effectiveness of the illegal dumping strategy and the process that will be utilized to determine the amount and distribution of funding in subsequent years.

5. *Mattress Recycling Charge.* The MRC has proposed a single charge of $11.00 for all units, regardless of size. Staff shares the concern expressed by stakeholders that the charge may impose a hardship for lower income individuals. However, establishing a charge and developing a budget without precise data on sales of mattresses in California is challenging. Page 15 of the Plan should explicitly state that the sales data the MRC will collect from all sellers of mattresses and foundations in the state will include the number, size (e.g., full, twin, queen, etc.), and type (e.g., innerspring, foam, etc.) of mattresses and

foundations sold. This data will enable evaluation of the charge, and consideration of the impact of two different charges rather than one set charge for all units.

6. *Annual Report.* Staff notes that the description under this heading does not reference the corresponding section in the Used Mattress Recovery and Recycling Program Regulations (CCR section 18964), which details the MRC's specific reporting requirements. The resubmitted Plan needs to state that the annual reports will meet the requirements of CCR section 18964.

7. *Convenience.* The Plan does not explain how the MRC will monitor the Program and determine if consumers have a convenient opportunity to recycle mattresses. The Plan needs to describe how the MRC defines convenience, how they will monitor the Program to determine whether there are convenient mattress collection and drop-off opportunities, and what actions will be undertaken if there are not convenient collection and drop-off opportunities. To that end, the Plan should state that the MRC's consumer-focused website (byebyemattress.com) will maintain a current list of all collectors and drop-off locations, including renovators, recyclers, and solid waste facilities. The Plan should also specify a timeline for the Program to provide convenient mattress collection and drop off opportunities and describe any role of retailers.

8. *Mattress Collector Incentive.* The Plan establishes a $3.00 monetary incentive for residents delivering their mattresses directly to incentive payment locations. Currently, only the MRC's 11 recycling/consolidation facilities will serve as incentive payment locations. The Plan should describe the MRC's vision for expanding the number of incentive payment locations to provide residents in other geographic areas the opportunity to receive a monetary incentive for delivering their mattress to a MRC-designated location.

9. *Minor Corrections.* Attachment 7 identifies a number of non-substantive revisions for inclusion in the revised Plan.

10. *Appendices Updates.* The revised Plan needs to incorporate updates to the appendices, as listed below in the MRC Advisory Committee comments (item #10 below).

MRC Advisory Committee Comments:
Members of the MRC Advisory Committee (AC) were appointed by the Director in March 2014 per PRC section 42987(a)(3). The Advisory Committee met with the MRC multiple times during the development of the Plan and its report is included in the Plan (Appendix J). The Advisory Committee also submitted a comment letter identifying its concerns with the Plan.

The MRC Advisory Committee's comments are summarized below:

1. *Waste Hierarchy.* The AC expressed concern that the waste hierarchy, as outlined in the plan, lists "reuse" after "recycle" in order of priority. The AC notes that reuse is near the top of the waste hierarchy, and should be encouraged.

2. *Source Reduction*. The AC does not believe the Plan adequately addresses source reduction and notes that statute calls for the Plan to include program objectives consistent with the state's solid waste management hierarchy. The AC suggests that the MRC remove the statement that implementing source reduction efforts is beyond the scope of the Act and the Plan.

3. *Biomass Conversion*. The AC requested that the Plan specify that biomass conversion can only be used if all other options higher on the waste hierarchy (e.g. reuse, recycling, and composting) are not feasible. It also noted the Plan should be revised to clarify that only "wood" may be used for biomass conversion.

4. *California Residency*. The AC expressed concern with usage of the terms "California residents" and "state residents" to reference those who qualify to participate in the Program. The AC noted that SB 254 does not use these terms and that a used mattress "generated in California" should be eligible for no cost drop-off or incentive payments, regardless of who drops it off. The AC further requests that if California residency is needed that the MRC should explain how proof of residency will be enforced.

5. *Recycling Charge*. The AC expressed concerns with the single charge of $11.00 that will be applied to all units regardless of size. The MRC advised that two different fees should be set, as allowed under the Act. The AC recommended that the MRC set a lower fee for twins/fulls and a higher fee for queens/kings.

6. *Brick and mortar sales outside of California.* The AC stated that the Plan should retain the text that was deleted in the Errata Sheet (submitted July 24, 2015) regarding the charge applying to sales at stores located out-of-state for delivery into California, in order to ensure a level playing field.

7. *Research and Market Development.* The AC suggested a revision to the "Foam" research category in order to separately identify the two primary types of foam: polyurethane and latex. The AC noted that post-consumer mattress polyurethane foam has a limited, though strong, number of end markets with some material going to licensed renovators and the vast majority used for carpet padding. The AC further explained that latex is increasing in volume in the waste stream and suggested the MRC make latex a priority for research to identify end use markets for reuse and/or recycling of this material.

8. *Mattress Collector Incentive*. The AC requested that the MRC provide recyclers with an allowance and reimbursement for when collectors drop off a mattress that is not recyclable.

9. *Article XIII of California Constitution.* The AC could not determine the relevance of this provision in the Plan. They also said the paragraph beginning with "MRC understands that…" was not written clearly.

10. *Appendix Updates.* The AC noted several necessary corrections to the Plan Appendices, as listed below:

a. *Appendix E – Stakeholder Consultation*. The Committee noted that the following dates on which the MRC and MRC Advisory Committee met were not included in this appendix: August 6, 2014, October 28, 2014, January 21, 2015, and February 11, 2015.

b. *Appendix G – Communications Plan*. The Committee believes the outreach to the retailers detailed in this appendix may be insufficient. It suggested that the MRC send out regular messages to retailers to keep them informed of the Program, especially new employees that enter the system due to new staff turnover.

c. *Appendix I – Interested Solid Waste Facility Participants*. The following corrections should be made.
   - Alameda County – San Leandro: Davis Street Transfer Station was omitted.
   - Santa Clara County – Milpitas: "New Island Landfill" should be "Newby Island Landfill"
   - Yolo County – Davis: "Davis Street Transfer Station" should be "Davis Waste Removal"
   - Ventura County – Ventura: Gold Coast Recycling, 5275 Colt Street, Ventura, CA 93004. (805) 642-9236
   - Ventura County – Simi Valley: Simi Valley Landfill and Recycling Center, 2801 Madera Road, Simi Valley, CA 93065. (805) 579-7479

Stakeholder Comments:
The Department received a number of additional stakeholder comments, which are summarized below. A complete list of comments as submitted by stakeholders is located online at: http://www.calrecycle.ca.gov/Mattresses/Plans/default.htm.

1. *Renovators*. One stakeholder stated renovators are not adequately addressed in the Plan, and that used mattresses are being directed to recyclers and not to renovators. The stakeholder requested that the MRC explain in the Plan how the Program will not interfere with renovation activities that comply with state and federal law.

2. *Annual Report.* One stakeholder commented that the Plan's section on the Annual Report should list the criteria required by CCR section 18964(b), which guides the development of the Annual Report.

3. *Expansion of Mattress Recycling Industry*. Several stakeholders mentioned that once the Program starts, new recycling companies are bound to emerge, and the Plan should detail when and how often new proposals will be accepted for additional recyclers who are interested in competing for contract opportunities with the MRC to meet infrastructure needs.

4. *Free Mattress Drop-Off.* One stakeholder expressed concern that there was no limit on the amount of mattresses that can be dropped off for free at a solid waste facility. The stakeholder suggested that a daily limit of 5 or 6 mattresses should be established.

5. *Identification of Illegally Dumped Mattresses.* One stakeholder commented that the Plan should distinguish between illegally dumped units and units collected by bulky-item programs that are delivered to recyclers.

6. *California Business Code.* One stakeholder commented that the Plan needs to specify the capture and handling of information that recyclers need to collect from each individual delivering mattresses to their facilities in accordance with the California Business and Professions Code Sections 21605 and 21606.

Staff Response to Stakeholder Comments:
Staff considered all comments submitted by both the Advisory Committee and stakeholders, and a vast majority of the comments are reflected in the analysis and issues that staff recommends the MRC needs to address in a revised Plan in order for the Department to approve the Plan. However, seven stakeholder comments were not incorporated into the analysis and issues that the MRC needs to address in a revised Plan.

1. *Research and Market Development.* A number of stakeholders requested more specificity in the Plan regarding research and market development activities the MRC will undertake. While staff agrees that markets are critical for success of recycling programs, the current markets for mattress materials are more developed than for other commodities, such as carpet. The MRC Plan states that the budget allocates funding to conduct research on how to improve the efficiency of mattress collection and recycling processes, as well as develop additional uses and end markets for recycled mattress components. Through the Plan, the MRC has set an ambitious initial goal of increasing the number of mattresses recycled by up to five times within the first full year of Program implementation and established a 75% by weight recycling target for their recyclers. Additionally, staff expects that the MRC will report the quantity of material managed via source reduction (e.g., reuse of mattress components), recycling, composting, biomass conversion, and landfilling separately in the annual reports. CalRecycle will work with the MRC and stakeholders to monitor the markets for recycled mattress components, closely review the annual reports to see how market development and research dollars have been spent, and carefully review budgets to ensure that adequate funding is allocated for needed research and market development activities.

2. *California Residency.* Staff discussed the Advisory Committee's concerns regarding Plan's use of the terms "California residents" and "state residents" with the MRC. The MRC explained that it used the terms "California residents" or "state residents" to simply reflect that this was a California Program, and that the MRC has no intention to require proof of residency to drop off a mattress for free or to receive a monetary incentive for dropping off a mattress. Staff notes that nothing in the statute or regulations requires verification of residency in order to drop off a mattress, and therefore did not request any revisions to the Plan to address this concern.

3. *Free Mattress Drop-Off.* One stakeholder commented that the Plan should limit the number of mattresses that could be dropped off for free in order to limit fraud in the Program. Staff believe that fraud is less likely to occur when an individual drops off mattresses for free at a solid waste facility as compared to when an individual delivers mattresses to an MRC incentive payment location. While the Plan does not limit the number of mattresses that can be dropped off for free, it does set a daily limit of 5 units per person that may be dropped off to receive the monetary incentive. Additionally, the MRC has stated it intends to monitor the incentive payments and may adjust them based on a number of factors, including the volume of mattresses collected via the incentive program and fund availability. CalRecycle believes the Plan is designed to minimize fraud and will work closely with the MRC to stay apprised of potential fraudulent activities and confer with the MRC as needed to minimize fraud in the Program on a continual basis.

4. *Identification of Illegally Dumped Mattresses.* One stakeholder commented that the Plan does not adequately describe how mattresses collected via bulky item pick-up would be distinguished from illegally dumped mattresses. Staff determined that the Plan proposes a reasonable process for identifying illegally dumped mattresses from those collected during bulky item pick-up events. The "Compensation Application and Request Process" (page 23 of the Plan) outlines the nine steps entities must complete before they can collect compensation for illegally dumped mattresses. Some of the steps required by the MRC to identify illegally dumped mattresses include: entity application to participate in the illegally dumped mattress collection effort, provision of a map showing the applicant's jurisdiction and population serviced, provision of collection logs and other evidence as requested by the MRC, description of current funding sources for their illegally dumped mattress collection program, and provision of a signed statement attesting the quantity of collected mattresses reported were illegally dumped. Staff believes the Plan establishes an adequate processes for distinguishing illegally dumped mattresses separately from mattresses collected via bulky item pick-up events.

5. *Communication to Retailers*. The Advisory Committee expressed concern that the outreach to retailers may be insufficient. Staff reviewed the Education and Outreach section of the Plan, as well as the 3-year Communications Plan outlined in Appendix G, and determined that the MRC intends to conduct outreach to retailers on a monthly basis. While the Plan appears adequate with respect to education and outreach, the effectiveness of these activities is instrumental to the success of the Program. Staff will work closely with the MRC and stakeholders to monitor the effectiveness of education and outreach efforts.

6. *California Business and Professions Code.* One stakeholder commented that the Plan needs to specify the capture and handling of information that recyclers need to collect from individuals delivering mattresses to their facilities in accordance with the California Business and Professions Code. CalRecycle does not implement or enforce the California Business and Professions Code and therefore is not requesting any changes to the Plan.

7. *Article XIII C of the California Constitution*. The Advisory Committee stated the second paragraph of this section of the Plan is unclear. Statute requires the Plan to address this article; staff determined the Plan is sufficient and no changes are requested.