

**State of California
Department of Resources Recycling and Recovery**

**Public Hearing for the Consideration of
Action for Noncompliance with the Annual Reporting Mandates (Public Resources Code
(PRC) Section 42926) by the 26th and 49th District Agricultural Associations**

April 15, 2014
10:00 am
Byron Sher Auditorium

I. ISSUE

For reporting year 2012, the Department of Resources Recycling and Recovery (Department) has identified 282 State agencies and large State facilities that are required to comply with the mandates of the State Agency Integrated Waste Management Plan Act, Public Resources Code (PRC), Section 42920 et sec. Department staff has identified three (3) District Agricultural Associations (DAAs) as being noncompliant. Two of the DAAs are noncompliant due to the non-submittal of the mandated annual report which are addressed in this item. The other noncompliant DAA will be addressed separately. The two DAAs in this item include:

- 26th DAA (Amador County Fair) located in Plymouth; and,
- 49th DAA (Lake County Fair) located in Lakeport.

Statute mandates that each State agency submit an annual report (PRC Section 42926) to the Department summarizing its progress in reducing solid waste (PRC Section 42921). The 2012 annual report was due on or before May 1, 2013. Additionally, statute mandates that each State agency and large State facility on and after January 1, 2004, shall divert at least 50 percent of all solid waste from landfill disposal (PRC Section 42921 (b)). Due to the absence of an annual report, staff is unable to determine compliance with the diversion mandate.

II. HISTORY

This is the first time that either of the DAAs have been determined to be noncompliant with the requirement to submit an annual report and with failure to meet the diversion mandate.

III. DEPARTMENT OPTIONS

1. Place the DAAs on the noncompliance section of the Department's website;
2. Direct Department staff to develop a letter reporting the noncompliance with the annual report filing mandate to the Legislature and Governor and additionally note that the Department cannot determine compliance with the 50 percent diversion mandate due to the non-submittal and has thus determined that the 50 percent diversion mandate has not been met;

3. Direct the Local Assistance and Market Development Branch (LAMD) to be available to assist DAAs with achievement of compliance;
4. Take no action at this time and provide staff with further direction.

IV. DEPARTMENT STAFF RECOMMENDATION

Staff recommends that the Department approve options 1, 2, and 3 for the DAAs identified in this hearing item.

V. ANALYSIS

Legal Background

Statute requires each State agency and large State facility to submit an annual report to the Department summarizing its progress in reducing solid waste on or before May 1, 2012, and on or before May 1 in each subsequent year (PRC Section 42926). Additionally, statute mandates that, on and after January 1, 2004, each State agency and large State facility shall divert at least 50 percent of all solid waste from landfill disposal (PRC Section 42921 (b)).

Beginning January 1, 2009, the method of measuring the 50 percent diversion requirement of PRC Section 42921 was changed from using the diversion rate of each State agency and large State facility to using its per capita disposal rate (PRC Section 42921.5 (a)). The diversion rate is now determined by comparing each State agency and large State facility's actual per capita disposal rate for the evaluation period with its 50 percent per capita rate (target rate). The target rate and the reported per capita rate for the reporting period are used as factors in determining whether the Department needs to more closely examine the State agency and large State facility's planned implementation efforts or require the expansion of existing or implementation of new programs (PRC Section 42921.5 (c)).

Although PRC Sections 42921 (b) and 42926 outline the requirements, it does not provide clear direction as to the Legislature's intent should a State agency or large State facility not comply with the mandate. The PRC does not provide the Department with authority for specific enforcement action against a State agency or large State facility that is noncompliant or that has misreported to the Department. Therefore, the Department has instituted procedures designed to inform the Legislature and the public in the event a State agency or large State facility is noncompliant.

Key Issues

Based on PRC Section 42926, the large State facilities identified in this item are not in compliance with the annual report filing mandate.

In 2011, the State Agency Reporting Center (SARC) system came online. This system streamlined the submittal process allowing State agencies and large State facilities to submit electronic annual waste management reports easily and manage related information. The system tracks diversion programs in six categories: recycling, organics recycling, material

exchange, waste prevention/re-use, green procurement and training & education. State agencies or large State facilities report their annual tons disposed, number of employees, and programs implemented. The system automatically calculates each agency's annual rate (per capita disposal), and immediately compares the annual rate against their pre-determined target (per capita disposal calculation, approximately equivalent to the 50 percent diversion requirement).

SARC is managed by the LAMD branch. In addition to monitoring the SARC database, LAMD also provides assistance to State agencies and large State facilities, including DAAs.

Prior to the 2012 annual reporting cycle, all State agencies and large State facilities, including the 26th and 49th DAAs, have successfully used the electronic reporting system to comply with the annual reporting requirement.

Analysis

On March 1, 2013, LAMD sent a reminder email to all State agencies and large State facilities, including DAAs, that the deadline to submit the annual report was May 1, 2013.

After May 1, 2013, there were a total of eight DAAs that did not submit their annual report. These eight DAAs were referred by LAMD to the Jurisdiction and Product Compliance Unit (JPCU) on June 17, 2013, as part of the process to get them to comply with the requirement to submit their annual reports. JPCU staff was able to work with six (6) of the eight (8) DAAs to submit their annual reports. However, JPCU staff's work did not result in getting the 26th or the 49th DAAs to submit their annual report.

Department staff (LAMD and JPCU) repeatedly contacted the two DAAs identified in this hearing item to ascertain the status of submitting their annual report. Detailed communication logs for the 26th and 49th DAAs are in Attachment 1 and Attachment 2, respectively.

Findings

Department staff has determined that the following two (2) DAAs have not submitted their annual report, as required by PRC Section 42926:

- The 26th District Agricultural Association (Amador County Fair) located in Plymouth; and,
- The 49th District Agricultural Association (Lake County Fair) located in Lakeport.

Without evidence to the contrary staff cannot determine compliance with their target disposal rate pursuant to PRC Section 42921.

VI. ATTACHMENTS

1. Communication Log for the 26th DAA (Amador County Fair)
2. Communication Log for the 49th DAA (Lake County Fair)
3. Request for Action for the 26th and 49th DAAs

VII. DEPARTMENT STAFF RESPONSIBLE FOR ITEM PREPARATION

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Communication Log for the 26th District Agricultural Association (Amador County Fair)

The 26th DAA was contacted four times to check on the status of submitting the annual report and to offer assistance. The following table is an overview of those communications.

Date Contacted	Name of Contact	Discussion	Outcome
April 30, 2013	Troy Bowers, CEO	LAMD staff sent an email to remind the 26 th DAA that their annual report is due by May 1 st .	See next entry for email response from 26 th DAA.
May 2, 2013	Troy Bowers, CEO	The 26 th DAA staff sent an email response to LAMD staff regarding their annual report.	Email from 26 th DAA stated that the annual report would not be submitted due to State funding cuts.
July 10, 2013	Troy Bowers, CEO	JPCU staff called to check on the status of submitting the annual report and offered assistance in filing the annual report.	Staff was informed that the annual report would not be submitted because of State funding cuts.
July 22, 2013	Troy Bowers, CEO	JPCU staff called to check on the status of submitting the annual report and offered assistance.	A clear message was delivered that no effort on the Department's part would persuade the 26 th DAA to submit their annual report. They were told that if the 26 th DAA did not submit a report, they would be considered to be noncompliant with the reporting requirement.
February 28, 2014	Troy Bowers, CEO	JPCU staff called to inform DAA of public hearing for noncompliance.	Call went unanswered. A voicemail was left informing the 26 th DAA of the public hearing scheduled in April to consider noncompliance with the reporting requirement. Assistance was offered.

As of the preparation of this item, the 2012 annual report for the 26th DAA has not been filed.

Communication Log for the 49th District Agricultural Association (Lake County Fair)

The 49th DAA was contacted four times to check on the status of submitting the annual report and to offer assistance. The following table is an overview of those communications.

Date Contacted	Name of Contact	Discussion	Outcome
May 7, 2013	Richard Persons, Director	LAMD staff checked on the status of submitting the annual report.	Staff was informed that the annual report would not be submitted due to State funding being cut.
July 10, 2013	Richard Persons, Director	JPCU staff called to check on the status of submitting the annual report and offered assistance.	Call went unanswered. A voicemail was left to check on the status of submitting the annual report and assistance was offered. It was also stated that if the report was not received, the 49 th DAA would be considered noncompliant with the reporting requirement.
July 22, 2013	Richard Persons, Director	JPCU staff called to check on the status of submitting the annual report and to offer assistance. It was also stated that if the 49 th DAA did not submit a report, they would be deemed to be noncompliant with the reporting requirement.	Staff was informed that the annual report would not be submitted because of the loss of State funding. An additional comment was made that no efforts on the part of the Department would persuade the 49 th DAA to submit their report.
February 28, 2014	Richard Persons, Director	49 th DAA staff was informed of the public hearing scheduled in April to consider noncompliance with the reporting requirement. Assistance was offered.	49 th DAA staff acknowledged the upcoming hearing, but was unresponsive to assistance being offered.

As of the preparation of this item, the 2012 annual report for the 49th DAA has not been filed.