REQUEST FOR APPROVAL

To: Howard Levenson, Deputy Director
Materials Management and Local Assistance Division

From: Cara Morgan, Branch Chief
Local Assistance and Market Development

Request Date: February 23, 2011

Decision Subject: 2007/2008/2009 Jurisdiction Review Findings For The Source Reduction And Recycle Element, Household Hazardous Waste Element, And Approval Of Transformation Claims For The Following Jurisdictions: Contra Costa County: Central Contra Costa Solid Waste Authority, Clayton, Concord, Pleasant Hill; El Dorado County: South Lake Tahoe; Fresno County: Fresno Unincorporated; Kerman; Humboldt County: Eureka, Ferndale, Fortuna, Rio Dell; Kern County: Arvin, California City; Kings County: Kings Waste And Recycling Authority; Lake County: Lake Unincorporated; Los Angeles County: Bell Gardens, Lawndale, Malibu, Norwalk, Rolling Hills, San Gabriel; Madera County: Madera; Mariposa County: Mariposa-Unincorporated; Mendocino County: Mendocino Unincorporated, Point Arena, Ukiah, Willits; Modoc County: Modoc Unincorporated; Orange County: Orange Unincorporated; Placer County: Loomis; Plumas County: Portola; Riverside County: Calimesa, Desert Hot Springs, Moreno Valley, Murrieta; Sacramento County: Rancho Cordova; San Benito County: San Benito County Integrated Waste Management Regional Agency; San Bernardino County: Adelanto, Grand Terrace, Highland, Needles, Redlands, San Bernardino Unincorporated; San Diego County: Lemon Grove, Vista; San Joaquin County: Manteca; San Mateo County: Half Moon Bay, San Bruno, San Carlos; Santa Barbara County: Guadalupe; Sierra County: Sierra County Regional Agency; Stanislaus County: Modesto; Tehama County: Tehama County Sanitary Landfill Regional Agency; Tulare County: Woodlake; Yolo County: Woodland

Action By: March 15, 2011

Summary of Request:

A key component in maintaining the success of AB 939, the Integrated Waste Management Act of 1989, is CalRecycle's role in overseeing how well cities and counties are implementing the diversion programs that they each have selected as part of their Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE). Public Resources Code (PRC) Section 41825 requires CalRecycle to review each City, County, and Regional Agency SRRE and HHWE at least once every four years, and in some cases once every two years . (For ease of writing and reading, staff uses the term "jurisdiction" in the remainder of this item to

refer to cities, counties, and Regional Agencies.) The 2007/2008/2009 Jurisdiction Review is CalRecycle's independent evaluation of each jurisdiction's progress in implementing its SRRE and HHWE programs and in meeting the AB 939 diversion requirement.

As a result of this review, CalRecycle may find that: 1) a jurisdiction has adequately implemented its diversion programs and has achieved the diversion requirement; 2) a jurisdiction has made a good faith effort to implement diversion programs, but has not achieved the diversion requirement; or 3) a jurisdiction has failed to adequately implement its SRRE and the process to consider issuance of a compliance order should commence. Jurisdictions that fail to satisfy the conditions of a subsequent compliance order may be subject to a fine of up to $10,000 per day.

This Request for Approval addresses 55 jurisdictions that did not meet the diversion requirement in the 2005/06 Biennial Review cycle, but which CalRecycle determined had made a good faith effort to implement their programs, as well as those jurisdictions that were not reviewed in the 2005/2006 Biennial Review because they were on a Compliance Order during that timeframe. Of the 55 jurisdictions, staff analysis finds that: 1) 46 have met the diversion requirement and have adequately implemented their diversion programs, and 2) 9 jurisdictions have not met the diversion requirement but have made all reasonable and feasible efforts to implement their programs and should be determined as having made a good faith effort to implement their SRRE programs. Another 3 jurisdictions are currently being reviewed by CalRecycle's Jurisdiction and Product Compliance Unit and will be presented at a later date. Except for those jurisdictions actually placed on a Compliance Order, all jurisdictions in the state (including those evaluated in this review cycle) will be evaluated as part of the next 2010/11 Jurisdiction Review cycle.

Recommendation: Staff recommends that these jurisdictions be found to have either adequately implemented their diversion programs and have met the diversion requirements, or for those jurisdictions that have not met the diversion requirements that they be deemed to have made a good faith effort to implement programs to meet the diversion requirement, as required by Public Resources Code Sections 41780 and 41825, respectively.

Deputy Director Action:

On the basis of the information and analysis in this Request for Action and the findings set out above, I hereby approve the Jurisdiction Review findings for 2007/2008/2009 for the jurisdictions noted above.

Dated: 4/1/11

Howard Levenson

Howard Levenson, Deputy Director
Materials Management and Local Assistance

Attachments: The attachments to this Request for Approval contain summaries of the information that staff used for the evaluation:

PRINT WARNING: ATTACHMENTS 1 and 2b ARE MANY PAGES LONG; VIEWING ON-LINE IS HIGHLY RECOMMENDED TO CONSERVE PAPER, INK AND PRINTER RESOURCES. YOU MAY ALSO LIMIT PRINT RANGE TO SPECIFIC PAGES AS NEEDED.

1. Staff Jurisdiction Analysis Summary (alphabetized by City name) -- summarizes of staff's analysis for each jurisdiction. It describes the programs these jurisdictions implemented.
2. a. Jurisdiction Disposal Rate Trend (alphabetized by City name--) provides a summary of each jurisdiction's 50% equivalent per capita disposal target and annual per capita rate.
   b. Jurisdiction Program Summary Report (alphabetized by City name) -- contains a SRRE and HHWE diversion program listing for each jurisdiction.
3. Transformation Claims (alphabetized by County then City name) -- identifies those jurisdictions that have transformation claims, respectively.
4. Jurisdictions with a Reduced Diversion Requirement (alphabetized by County then City name)-- identifies those jurisdictions in this item that have approved reduced diversion requirements.

Background Information

A key component in maintaining the success of AB 939, the Integrated Waste Management Act of 1989, is CalRecycle's role in overseeing how well cities and counties are implementing the diversion programs that they each have selected as part of their Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE). Public Resources Code (PRC) Section 41825 specifies that CalRecycle periodically and independently review each jurisdiction's progress in implementing its programs and in meeting the AB 939 diversion requirement, and that CalRecycle make a finding of whether each jurisdiction was in compliance with PRC Section 41780 during the review period.

As a result of its review, CalRecycle may find that a jurisdiction:

1) has adequately implemented its diversion programs and has achieved the diversion requirement;
2) has not achieved the diversion requirement, but has made a good faith effort to implement diversion programs; or,
3) has failed to adequately implement its SRRE and/or HHWE and the process should commence to consider whether issuance of a compliance order would be appropriate. Jurisdictions that fail to satisfy the conditions of a compliance order may be subject to a fine of up to $10,000 per day.

Senate Bill 1016 (Statutes of 2008, Chapter 343) amended the PRC Sections 41825 and 41850. As a result of this legislation, the 50 percent diversion requirement is now measured in terms of per-capita disposal expressed as pounds per person per day. The new per capita disposal and goal measurement system moves the emphasis from an estimated diversion measurement number to

using an actual disposal measurement number as a factor, along with evaluating program implementation efforts. These two factors are used by staff to help determine each jurisdiction's progress toward achieving its Integrated Waste Management Act (AB 939) diversion goals. This change in legislation also codified that the focus of CalRecycle's evaluation is on program implementation, instead of estimated diversion rates being the determinative factor for compliance.
This Request for Approval concerns the 2007/08/09 Jurisdiction Review cycle, which includes 58 jurisdictions. CalRecycle reviewed each jurisdiction's SRRE and HHWE program implementation to date and its per-capita disposal rate. Staff's analysis of program implementation is based upon the Countywide Integrated Waste Management Plan Enforcement Policy Part II, originally adopted (by CalRecycle's predecessor, the California Integrated Waste Management Board) in August 2001 and revised, pursuant to SB 1016, in June 2010. Staff utilizes the criteria delineated in the Enforcement Policy to determine the extent to which a jurisdiction has implemented, or shown a good faith effort to implement, its selected diversion programs. For those jurisdictions that did not meet their per-capita disposal requirement, staff evaluates their program implementation to determine if they have made a good faith effort to implement the programs selected in their SRRE. The scenarios in the Enforcement Policy Part II provide illustrative criteria to serve as examples of the issues that staff utilizes in examining local jurisdiction program implementation.

CalRecycle's Local Assistance and Market Development Division staff extensively reviewed each jurisdiction in this review cycle by conducting on-site visits to verify program implementation and reviewing documentation, including annual reports, hauler data, outreach and education materials, etc. This investigation determines the extent to which a jurisdiction has tried to meet the diversion requirements through its selected diversion programs. Based upon this comprehensive investigation, staff then proposes one of the three findings listed above. If the Local Assistance and Market Development Division staff recommends a finding that a jurisdiction is not implementing its SRRE and/or HHWE programs, then that jurisdiction is referred to CalRecycle's Jurisdiction and Product Compliance unit for a second independent evaluation. If warranted, the Jurisdiction and Product Compliance unit then submits a separate Request for Approval recommending that the jurisdiction be placed on a compliance order.

Findings

Based on its analysis of the 58 jurisdictions that are the subject of this review cycle, Local Assistance and Market Development Division staff is recommending findings that: 1) 46 jurisdictions have adequately implemented their diversion programs and achieved the diversion requirement; and 2) 9 jurisdictions have not met the 50% equivalent per-capita disposal requirement, but have made a good faith effort to implement diversion programs. The jurisdiction-specific recommendations are summarized in Attachment 1. In addition, 3 other jurisdictions are being evaluated by the Jurisdiction and Product Compliance unit as part of this 2007/08/09 Jurisdiction Review Cycle and will be brought forward for consideration at a later date with a recommendation of either finding 1 or 2 from the list above, or a recommendation that they be placed on a Compliance Order.

Implications of a Rebounding Economy for the Next Jurisdiction Review Cycle

Of the 55 jurisdictions considered here, 46 have met their per-capita disposal target. However, many of these jurisdictions have seen significant declines in disposal -- which directly translates to lower per-capita disposal rates -- over the last two to three years. In most cases, CalRecycle staff cannot ascertain with certainty how much of this is due to diversion program implementation and how much is due to the severe decline in the economy, but there should be little argument that the economy has played an important role. In particular, the downturn in construction and associated activities has resulted in a significant decline in overall waste generation and subsequent disposal.

As the economy rebounds in the next few years, it is likely that businesses will produce more, consumers will buy more, and construction will increase. While this would be great news for California, CalRecycle also expects that more solid waste will be generated and discarded. As a result, some jurisdictions that are currently meeting their 50% equivalent per capita disposal target in this Jurisdiction Review cycle may find themselves not meeting the 50% equivalent per capita disposal target in the next Jurisdiction Review cycle that will commence after receipt of the 2011 Annual Report. Given this potential, CalRecycle emphasizes the need for all communities throughout California, including those currently meeting their AB 939 diversion requirement, to continue to develop and implement recycling and waste management programs to prepare for the larger waste stream that a growing economy and population will produce.