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: April 9, 2015

Decision Subject: Approval of 2012-13 Jurisdiction Review Findings For The Source Reduction And Recycling Element and Household Hazardous Waste Element For: Butte County: Oroville; Fresno County: Huron, Mendota, Sanger, San Joaquin; Humboldt County: Ferndale; Mariposa County: Mariposa Unincorporated; Nevada County: Nevada Unincorporated; Orange County: Laguna Woods; Plumas County: Portola; San Mateo County: Daly City; Sierra County: Sierra County Regional Agency

Action By: May 19, 2015

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 they each have selected as part of their Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE). This emphasis on program implementation was further codified by SB 1016 (Chapter 343, Statutes of 2008). The Jurisdiction Review is CalRecycle's independent evaluation of each jurisdiction's progress in implementing their SRRE and HHWE programs and in meeting the AB 939 diversion requirement. 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.) This Request for Approval consists of those jurisdictions that are currently on a two-year review cycle for 2012-2013.

As a result of the two and four year Reviews, CalRecycle may find that: 1) a jurisdiction has adequately implemented its diversion programs and has achieved the 50 percent equivalent per-capita disposal requirement; 2) a jurisdiction has made a good faith effort to implement diversion programs, but has not achieved the 50 percent equivalent per-capita disposal 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.

Each jurisdiction listed in this Request for Approval has either: 1) met the 50% diversion requirement and implemented effective diversion programs, or 2) has not met the 50% diversion requirement but has implemented effective diversion programs. Staff analysis finds that for each jurisdiction that has not met the 50 percent equivalent per-capita disposal requirement, each has made reasonable and feasible efforts to implement its diversion programs.

Additionally, this is the first formal review for implementation of Mandatory Commercial Recycling (MCR) pursuant to Public Resources code section 42649. Each of these jurisdictions has been reviewed and found to be adequately implementing the requirements. In the 2017 four year review cycle, all jurisdictions will be formally reviewed.

Each jurisdiction has been reminded that as the economy rebounds, businesses will likely produce more, consumers will buy more, and construction could increase resulting in more solid waste generation and disposal. As a result, continuing the jurisdictions' diversion programs is critical to ensuring continued compliance with AB 939, as well as implementing the requirements of the Mandatory Commercial Recycling and Mandatory Organics diversion laws.

Subsequent to approval of this request, staff will continue (as mandated in SB 1016) to visit each jurisdiction annually to ensure the programs are being fully implemented and to ensure there are not gaps in the programs. Staff will also provide assistance, as needed.

Recommendation:
Staff recommends that these jurisdictions be found to have met the requirements of Public Resources Code Sections 41780, 41825 and 42649, 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 these Jurisdiction Review findings for the jurisdictions listed in the title above.

Dated: 5/20/15

Howard Levenson

Howard Levenson, Deputy Director
Materials Management and Local Assistance

Attachments: The attachments to this Request for Approval contain summaries of the results and information used in each Jurisdiction's evaluation.

1a-k. Staff Jurisdiction Analysis Summary -- describes the programs implemented for each Jurisdiction.
2. Jurisdiction Disposal Rate Trend -- provides a summary of each jurisdiction's 50% equivalent per capita disposal target and annual per capita rate.
b. Diversion Programs Implementation Summary-- contains a SRRE and HHWE diversion program listing for each jurisdiction.

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. SB 1016's new per capita disposal and goal measurement system also codified how the previous California Integrated Waste Management Board and now CalRecycle utilize the number as an indicator of program performance along with its evaluation of program implementation, instead of using estimated diversion rates or per capita disposal as the determinative factor for compliance.

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 has 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 (LAMD) staff extensively reviewed each jurisdiction in this review cycle by conducting on-site visits to verify program implementation of its SRRE and HHWE programs. Analysis work included reviewing documentation such as annual reports, hauler data, outreach and education materials, etc. This analysis determines the extent to which a jurisdiction has tried to meet the diversion

requirements through its selected diversion programs. Based upon this comprehensive analysis, staff then proposes one of the three findings listed above. If the LAMD 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 Compliance Unit (JCU) for a second independent evaluation. If warranted, the JCU staff then submits a separate Request for Approval recommending that the jurisdiction be placed on a compliance order.

Findings

Based on comprehensive analysis of the 13 jurisdictions that are the subject of this Request for Approval, Local Assistance and Market Development Branch staff finds that these jurisdictions are in compliance with PRC Section 41780, 41825 and 42649. Please refer to Attachment 1 for details about each jurisdiction's diversion programs analyses.