

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: January 11, 2016

Decision Subject: Approval of 2012-13 Jurisdiction Review Findings For The Source Reduction And Recycling Element and Household Hazardous Waste Element For: Fresno Unincorporated

Action By: February 16, 2016

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). 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 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 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.

This Request for Approval addresses Fresno Unincorporated's Jurisdiction Review for 2012-13. Local Assistance and Market Development (LAMD) staff reviewed the County's programs and found significant diversion program gaps in the areas of

As a result of this finding LAMD staff informed the County that these gaps needed to be addressed to prevent referral to CalRecycle's Jurisdiction and Product Compliance Unit (JPCU) for further investigation.

The jurisdiction has also 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 Commercial Organics Recycling diversion laws.

Subsequent to approval of this request, staff will continue (as mandated in SB 1016) to visit the jurisdiction annually to ensure the programs are being fully implemented and to ensure there are not current gaps in the programs preventing the jurisdictions from meeting their 50 percent equivalent per capita disposal target. Staff will also provide assistance, as needed.

Recommendation:

Because the County has addressed its diversion program gaps, staff recommends that the Jurisdiction 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: _____

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:

- 1a. Jurisdiction Disposal Rate Trend -- provides a five year trend of the 50% equivalent per capita disposal target and annual per capita rate.
- 1b. Jurisdiction Program Summary Report -- contains a SRRE and HHWE diversion program listing.

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 the Jurisdiction has selected as part of its 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 the jurisdiction's progress in implementing its programs and in meeting the AB 939

diversion requirement and that CalRecycle make a finding of whether the 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 and revised again in July 2015 pursuant to AB 341, AB 1826, and AB 1594.

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.

If the Local Assistance and Market Development (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 and Product Compliance Unit (JPCU) for a second independent evaluation. If warranted, the JPCU then submits a separate Request for Approval recommending that the jurisdiction be placed on a compliance order. If the jurisdiction addresses the program deficiencies during the JPCU evaluation, then they can be recommended as being in compliance and avoid being placed on a Compliance Order.

Findings

CalRecycle's Local Assistance and Market Development Division staff extensively reviewed the jurisdiction by conducting on-site visits to verify program implementation and by reviewing

documentation, including annual reports, hauler data, outreach and education materials, etc. LAMD staff found significant gaps in the County's Mandatory Commercial Recycling (MCR) and Construction and Demolition (C&D) program. Gap concerns were outlined in a letter dated August 21, 2015 and was sent to the Director of the Fresno County Department of Public Works and Planning. A meeting was arranged with LAMD staff and Fresno County staff on September 24, 2015 to discuss the concerns over the MCR and C&D programs with results as follows:

MCR:

After several discussions with County staff, with the most recent on June 12, 2015, it was unclear if the County's MCR program had been fully implemented. With the passage of AB 341 (enacted in 2012), each year, the County is to conduct education, outreach, and monitoring activities, and is to provide CalRecycle with an update each year. In order to assess the County's compliance with the State law, the following information is necessary for CalRecycle's evaluation:

- Confirm the total number of businesses and multi-family dwellings, determine how many meet the MCR threshold, and determine the total number of businesses and multi-family dwellings not recycling.
- Confirm that MCR education and outreach is occurring, e.g., provide documentation that all regulated commercial entities are receiving MCR education and outreach and that monitoring practices are in place.
- Confirm that Exclusive Service Area Providers (ESAP) haulers and non-ESAP haulers (including those who offer ten yards or more sized bins) are documenting education and outreach efforts, tracking waste assessments provided, and that they are assessing which generators are back-hauling materials and the effect this has on diversion, and are reporting this information to the County.
- Verify accurate reporting from ESAP haulers.

CalRecycle staff found data discrepancies among the three haulers that provide service but has worked with the County to resolve data reporting and verification.

CalRecycle's concerns regarding MCR have been addressed as follows:

The County has addressed misallocations and other reporting inaccuracies with all parties involved by requiring better information from each hauler that the County has reviewed. It created a list of important dates for MCR implementation and reporting, sent MCR notices to businesses and multi-family properties (see "toolkit" information below), provided a recycling checklist to determine MCR compliance, created a MCR non-compliance notice to distribute as appropriate, provided a list of MCR web resources and bilingual flyers to businesses and apartment complexes.

The majority of commercial entities in the unincorporated area now have (and participate in) recycling services. The County continues to work on implementing a more active MCR program by keeping its website current and monitoring hauler reports. A MCR "toolkit" containing information for the haulers to use is part of the County's demonstrated implementation work. Included is an initial MCR letter sent to all businesses, as well as flyers and notices for the haulers to use and send to all businesses regarding the MCR requirements. The toolkit informs haulers of their responsibilities, such as providing ongoing education and outreach, identifying

businesses with recycling services, identifying businesses falling under AB 341, and identifying business that are not in compliance.

The haulers have been successful in providing MCR education and outreach and reporting these activities to the County. However, many haulers are hesitant to provide customer information in the report for proprietary reasons. The County is aware of this concern and is working to resolve this issue. LAMD staff will continue to monitor and work with the County to help achieve its objective of implementing a mandatory recycling program to include multi-family complexes. The County has committed to determine the number of businesses and multi-family complexes in the unincorporated area and to determine how many are served and those that still need implementation.

Specific steps to be taken during 2015-2016:

- County staff will meet one on one with ESAP haulers to discuss and review MCR program
- County will verify data provided by haulers against the County's GIS system
- After verifying data, the County will send letters to businesses that are non-compliant

C&D:

During this Review Cycle, LAMD staff checked on the County's compliance with Building Standards Code (CALGreen) requirements. The County was unable to provide any program metrics for CalRecycle staff to review. In order to assess the performance of the County's C&D program, the County needs to closely monitor the C&D program, ensure diversion requirements are met, guarantee tracking mechanisms are in place, and ensure the requirements of the Green Building Standards Code (CALGreen) are incorporated in the program. A fully implemented C&D program is especially important so that the County will be poised to know that C&D materials are diverted instead of landfilled.

CalRecycle's concerns regarding C&D diversion have been addressed as follows:

As a result of LAMD staff meetings, the County revised its process from the point of permit application to the time when the final building occupant permit is issued. A copy of this process, including flow charts and examples, has been provided to CalRecycle.

Additionally, through the establishment of frequent meetings with the haulers, the County has improved education and outreach and established franchise/service rate areas by modifying boundaries for service areas.

The County now has a building ordinance requiring all projects to follow the 2010 and 2013 California Green Building Standards (CALGreen) to achieve 50% diversion minimum. In 2014, procedures were created to track permits and ensure waste management plans are implemented and proper documentation is submitted by construction projects. Data input glitches to this system have been identified and corrected. The County also implemented a C&D ordinance that bans the disposal of C&D debris at County landfills. The County ensures that project applicants are aware of the requirements and provides a directory of recycling opportunities on the County's Building and Safety webpage.

The implementation success of these programs could have significant impacts on the County's overall efforts to divert materials from disposal. To ensure that these programs, in addition to the County's other SRRE programs, continue to be implemented LAMD staff will conduct the required annual site visit, as well as an interim review of the County's recycling efforts.

Based on comprehensive analysis of Fresno County's diversion programs that is the subject of this Request for Approval, Local Assistance and Market Development Branch staff finds that this jurisdiction is in compliance with PRC Section 41780, 41825 and 42649.