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 31, 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:

As a result of the two- and four-year Jurisdiction reviews, 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.

This Request for Approval addresses Fresno Unincorporated's (County) two-year Jurisdiction Review for 2012-13. Local Assistance and Market Development (LAMD) staff reviewed the County's programs and found, in June 2015, significant diversion program gaps in the areas of Mandatory Commercial Recycling and Construction and Demolition. Another major concern was the potential for significant impact on the County's diversion programs if the Board of Supervisors failed to approve amended Exclusive Service Area Providers (ESAP) Agreements. Without the Board of Supervisors' approval of amended agreements, implementation of the County's AB 939 diversion programs could have been jeopardized.

As a result of this finding, staff informed the County that these gaps needed to be addressed to prevent referral to CalRecycle's Jurisdiction Compliance Unit (JCU) for further investigation. Based on extensive subsequent interactions in August through December of 2015 between LAMD staff and the County, the County has now taken significant steps to address these gaps and to amend the ESAP Agreements.

Subsequent to approval of this request, staff will continue (as mandated in SB 1016) to visit the County annually to ensure the programs are being fully implemented and to ensure the recently approved ESAP Agreements are structured in a manner that adequately supports the County's AB 939 diversion programs.

Recommendation:
Because the County continues to address the major 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 Fresno Unincorporated

Dated: 2/16/16

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:

4) has adequately implemented its diversion programs and has achieved the diversion requirement;
5) has not achieved the diversion requirement, but has made a good faith effort to implement diversion programs; or,
6) 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 Compliance Unit (JCU) for a second independent evaluation. If warranted, the JCU 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 JCU 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 County's programs by conducting on-site visits to verify program implementation and by reviewing documentation, including annual reports, hauler data, outreach and education materials, etc. Staff found significant gaps in the County's Mandatory Commercial Recycling (MCR) and Construction and Demolition (C&D) programs. Gap concerns were outlined in a letter dated August 21, 2015, and sent to the Director of the Fresno County Department of Public Works and Planning. A meeting was arranged with staff and Fresno County staff on September 24, 2015, to discuss the concerns over the MCR and C&D programs. Additionally, staff discussed the concern regarding the sunsetting of the County's ESAP Franchise Agreements in 2018. Without the Board of Supervisors' approval to amend or renew the Franchise Agreements, implementation of the County's diversion programs could have been jeopardized.

The discussion between CalRecycle LAMD staff and Fresno County staff resulted in the following.

1) MCR:
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 annual update. However, after discussions during the review cycle and in early 2015 with County staff, it was unclear if the County's MCR program had been fully implemented. CalRecycle staff found data discrepancies among the reports from the eleven haulers that provide service to the commercial businesses, the processing facilities, and the landfills. Additionally, staff found a lack of a comprehensive education and outreach program, as well as an incomplete identification of businesses and multi-family properties that meets the criteria for AB 341.

CalRecycle's concerns regarding MCR have been addressed as follows:
The County has addressed data discrepancies and other reporting inaccuracies with all parties involved by requiring better information from each hauler. The County has also demonstrated its commitment through program enhancements and continues to work on implementing a more active MCR program by keeping its website current and monitoring hauler reports. Furthermore, 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, and provided a list of MCR web resources and bilingual flyers to businesses and apartment complexes.

Additionally, the County has demonstrated improvements by developing a MCR "toolkit" containing information for the haulers to use. Included is an initial MCR letter sent to all businesses in 2015, 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.

Specific steps to be taken during 2015-2016:
In order to assess the County's continued compliance with the State law, the following information from the County is necessary for CalRecycle's evaluation:

- County staff will meet one on one with ESAP haulers to discuss and review their MCR program. Then, County staff will need to confirm that 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 assessing which generators are back-hauling materials and the effect this has on diversion.
- County staff will confirm the total number of businesses and multi-family dwellings against the County's GIS system. Then, the County will need to determine how many meet the MCR threshold, and determine the total number of businesses and multi-family dwellings not recycling.
- After verifying that MCR education and outreach is or is not occurring, the County will send letters to businesses that are non-compliant.

- County staff will confirm and monitor that there is accurate reporting from ESAP and non-ESAP haulers.
- LAMD staff will continue to monitor and work with the County to help achieve its objective of implementing a mandatory commercial recycling program that includes providing education, recycling services and monitoring to multi-family complexes.

2) Exclusive Service Area Providers Franchise Agreements:
Currently, each of the eleven ESAP haulers has its own separate franchise agreement with the County. The County Board of Supervisors controls amending the contracts and has the option to renew, extend, amend the current contracts or go out for a request for proposal (RFP). Given that the Fresno County ESAP franchise agreements will expire on February 26, 2018, County staff presented options to the County Board of Supervisors in three workshops from February through April of 2015 for future contract agreements. If the Board of Supervisors had failed to negotiate or approve one of the options proposed by County staff, it would have affected the solvency of the current franchise agreements and jeopardized the County's SRRE programs.

CalRecycle's concerns regarding ESAP franchise agreements have been addressed as follows:
During mid-2015, LAMD staff provided recommendations to the County to consider in the renewal of the franchise agreements for new program and reporting requirements. On October 27, 2015, the Fresno County Board of Supervisors voted to: 1) amend and extend the ESAP franchise agreements; 2) create an ordinance to address the non-exclusive roll-off haulers and require these haulers to sign an agreement with the County in order to provide collection of six yard or more containers; and 3) create an RFP for the Mayfair district (a county island) for a mandatory three-cart program in the district.

Specific steps to be taken during 2015-2016:
To ensure agreements have been amended and staff's comments to the implementation of the SRRE diversion programs have been incorporated, CalRecycle staff will ask the County to provide:

- Copies of the amended franchise agreements from each of the haulers.

3) C&D:
During this Review Cycle, LAMD staff checked on the County's C&D program, which is centered on implementing the Building Standards Code (CALGreen) C&D recycling requirements and compliance monitoring. A fully implemented C&D program is important so that the County will be poised to know that C&D materials are diverted instead of landfilled. During the review, 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 should have been able to demonstrate that it was closely monitoring the C&D program, ensuring diversion requirements are met and tracking mechanisms are in place, and ensuring the requirements of the Green Building Standards Code (CALGreen) are incorporated in the program.

CalRecycle's concerns regarding C&D diversion in 2015 were addressed as follows:
As a result of LAMD staff meeting with County staff, the County has now revised its process from the point of permit application to the time when the final building occupant permit is

issued. To document implementation, a copy of this process, including flow charts and examples, has also been provided to CalRecycle.

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 mid-2015, the data input glitches to the reporting system were identified and corrected. The County demonstrated that it is ensuring that project applicants are aware of the requirements and is providing a directory of recycling opportunities on the County's Building and Safety webpage.

Concluding Remarks

The implementation success of the MCR and C&D programs, along with the recent renewal and amendment of the ESAP franchise agreements, should have significant positive 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.

The County 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 County's 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.

Based on comprehensive analysis of Fresno Unincorporated'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.