

## REQUEST FOR APPROVAL

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

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

**Request Date:** August 16, 2013

**Decision Subject:** State Agency and Large State Facility 2011/2012 Biennial Report  
Review Findings

**Action By:** September 17, 2013

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### **Summary of Request:**

Staff is submitting the biennial report review findings for 2011/2012 for the 282 reporting State agencies and large State facilities. Local Assistance and Market Development Division (LAMD) staff conducted a review of the waste diversion activities reported by each State agency and large State facility. Staff found that the vast majority of State agencies and large State facilities are meeting, or have made a good faith effort to meet, statutory diversion requirements. As a part of this review, four agencies are being recommended for a finding of non-compliance for program implementation, and four are out of compliance for non-submittal of the 2012 annual report. These eight agencies will be referred to the Jurisdiction, Product and Compliance unit for further compliance action. One other agency will continue on compliance from the prior cycle.

### **Recommendation:**

Staff recommends approval of the biennial report review findings for 2011/2012 for the 282 reporting State agencies and large State facilities as listed in attachments 1-5.

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### **Deputy Director Action:**

On the basis of the information and analysis in this Request for Action and the findings set out herein, I hereby approve the biennial review findings for the 2011/2012 reports for the 282 State agencies and large State facilities as indicated below:

- Approve the finding that the 178 State agencies and facilities listed in Attachment 1 submitted full reports as required and are adequately implementing solid waste diversion programs and are compliant with statutory diversion requirements.
- Approve the finding that the 69 State agencies and facilities listed in Attachment 2 submitted modified reports as required and are adequately implementing solid waste diversion programs and are compliant with statutory diversion requirements.
- Approve the finding that the 26 State agencies and facilities listed in Attachment 3 submitted full reports as required and have made a good faith effort to be compliant with statutory diversion requirements.
- Approve the finding that the four large State facilities listed in Attachment 4, Department of Transportation, District 12; California Institute for Men, Chino; California Institute for

Women, Chino; and the 28<sup>th</sup> District Agricultural Association are not adequately implementing solid waste diversion programs and are not compliant with statutory diversion requirements, and direct that these facilities be referred to the Jurisdiction and Product Compliance Unit to begin the process of compliance oversight.

- Approve the finding that four State agency/facilities listed in Attachment 5 did not submit the required Waste Management Annual report for 2012 and are not compliant with statutory reporting requirements and direct that these facilities and agency be referred to the Jurisdiction and Product Compliance Unit. The four non-reporters listed in Attachment 5 are the 24<sup>th</sup>, 26<sup>th</sup>, 38<sup>th</sup> and 49<sup>th</sup> District Agricultural Associations.
- Continue with compliance review for one state agency, 1A District Agricultural Association, which is under the review of the Jurisdiction and Product Compliance Unit from the 2010 reporting cycle.

Dated: \_\_\_\_\_

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Howard Levenson, Deputy Director  
Materials Management and Local Assistance

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**Attachments:**

1. Attachment 1: Agencies/Facilities Submitting Full Reports Finding of Adequate Program Implementation and Compliance With Statutory Diversion Requirements
2. Attachment 2: Agencies/Facilities Submitting Modified Reports Finding of Adequate Program Implementation and Compliance with Statutory Diversion Requirements
3. Attachment 3: Agencies/Facilities Submitting Full Reports Finding of Good Faith Effort to Adequately Implement Programs and be Compliant with Statutory Diversion Requirements
4. Attachment 4: Agencies/Facilities Submitting Full Reports Finding of Inadequate Program Implementation and Non-compliance with Statutory Diversion Requirements
5. Attachment 5: Agencies/Facilities Submitting Full and Modified Reports Finding of Non-compliance with Statutory Reporting Requirements (Non-Submission of Annual Report).

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**Background Information, Analysis, and Findings**

The State Agency Integrated Waste Management Act (Chapter 764, Statutes of 1999, Strom-Martin) took effect on January 1, 2000. Among other requirements, the Act mandated that State agencies develop and implement an integrated waste management plan. State agencies and large State facilities must divert at least 50 percent of their solid waste from disposal facilities by and after January 1, 2004. In addition, annually by May 1, each State agency and large facility must submit a report to CalRecycle that summarizes progress in implementing solid waste diversion programs.

In 2000, the California Integrated Waste Management Board approved a policy that provides an alternative reporting structure to those agencies that have fewer than 200 employees and generate less than 100 tons of waste annually. This alternative reporting structure is called a ‘modified’ annual report and allows State agencies that meet these criteria to submit information only on the types of on-going programs; they do not have to report total disposal. Under the modified annual report structure qualifying State agencies that have implemented the number and types of effective programs which represent the reasonable and feasible solid waste diversion opportunities available for that agency will be found in compliance with statutory diversion mandates.

In 2008, the Per Capita Disposal Measurement System Act (SB 1016, Wiggins, Public Resources Code Chapter 343, Statutes of 2008) was enacted. This changed the way State agencies measure their progress toward meeting the statutory waste diversion mandate. Under this Act, State agencies are still required to maintain the 50 percent waste diversion requirement as required by the State Agency Integrated Waste Management Act. However, an assessment of solid waste diversion program implementation and per capita disposal are now used as indicators of agency/facility progress toward meeting the mandate.

Per policy adopted in 2007 by the California Integrated Waste Management Board (the oversight entity at the time), CalRecycle conducts an annual review of all reporting agencies/facilities. A biennial compliance review of selected agency/facility reports for which the submitted data indicate a likelihood of inadequate program implementation and/or non-compliance with statutory diversion mandates is also conducted. The biennial compliance review is CalRecycle’s independent evaluation of each State agency and large State agency’s progress in implementing solid waste diversion programs and in meeting the statutory diversion requirement. As a result of this review, CalRecycle may find that: 1) a State agency/large State facility has adequately implemented its diversion programs and has achieved the statutory diversion requirement; 2) a State agency/large State facility has made a good faith effort to implement diversion programs and achieve the statutory diversion requirement; or 3) a State agency/large State facility has failed to adequately implement solid waste diversion programs, and the process of compliance oversight should commence.

The following is a summary of the LAMD staff review process and findings for all reporting State agencies and large State facilities. There were 282 agencies that were required to report (212 with full reports and 70 with modified reports) in 2011 and 2012. Of these 282 agencies and large state facilities, 278 (209 with full reports and 69 with modified reports) submitted a report. Note, that this does not include 125 community colleges or districts that were not required to submit their annual report for the 2012 reporting cycle.<sup>1</sup>

With the exception of the four non-reporters and three new reporting entities for 2012, reports from both years were analyzed by LAMD staff as well as prior years for the purpose of determining disposal trends and program implementation history.

- **Agencies/Facilities Submitting Full Reports: Finding of Adequate Program Implementation and Compliance with Statutory Diversion Requirements (Attach. 1):**

Staff found 178 of the 209 State agencies and facilities that submitted full reports to have fully implemented programs and met the diversion mandates. These agencies/facilities submitted reports that provide information on the diversion programs implemented and the total tons of material disposed by the reporting agencies/facilities. Each of these 178 agencies/facilities reported per capita disposal for the 2012 calendar year that was less than the 50% equivalent per capita disposal target for their agency/facility. Staff review primarily consisted of an analysis of the information submitted in the electronic annual report. Site visits were not conducted in most instances.

- **Agencies/Facilities Submitting Modified Reports: Finding of Adequate Program Implementation and Compliance with Statutory Diversion Requirements (Attach. 2):**

Staff found all of the 69 State agencies and facilities that submitted modified reports meet the requirements of CalRecycle's alternative reporting structure, and are compliant with statutory diversion mandates. These agencies/facilities submitted reports that provide information on the diversion programs implemented by the reporting agencies/facilities. They do not report disposal totals and do not have a 50% equivalent per capita disposal target for their agency/facility. Staff review primarily consisted of an analysis of the information submitted in the electronic annual report, including an analysis to determine if the agency still meets the modified reporting criteria. Site visits were not conducted in most instances.

- **Agencies/Facilities Submitting Full Reports: Finding of Good Faith Effort to Adequately Implement Programs and be Compliant with Statutory Diversion Requirements (Attach. 3):**

Staff found 26 of the 209 State agencies and facilities that submitted full reports to be adequately implementing solid waste diversion programs and making a good faith effort to be compliant with statutory diversion requirements. These agencies/facilities submitted reports that provide information on the diversion programs implemented and the total tons of material disposed by the reporting agencies/facilities.

Staff found that the agencies/facilities have made reasonable and feasible efforts to implement effective diversion programs even though the majority reported per capita disposal for the 2012 calendar year that was in excess of the 50% equivalent per capita disposal target for their agency/facility and/or reported an increase in disposal over time.

Staff review consisted of an analysis of the information submitted in the electronic annual report and one or more site visits to each of these State agencies/large State facilities to assess program implementation and effectiveness. Staff analyses indicate that the agencies exceeded their target for one of the following reasons:

- a. Construction and/or demolition activities increased overall disposal even though the agency/facility has programs in place to divert a large quantity of the construction/demolition materials. These activities are limited in duration and staff believes that per capita disposal for the affected agencies/facilities will drop below

the 50% per capita equivalent disposal target once construction and/or demolition activities are complete.

- b. The 2006 data upon which the 50% equivalent per capita disposal target is based is anomalous. For a variety of reasons, such as a year of relative inactivity, the 2006 generation data submitted is much less than the general trend for a given agency/facility. Subsequently, the 50% per capita equivalent disposal target that was calculated using that data is lower than would be expected given the historical trend.
  - c. The data reported for the last calendar year is more accurate than the data that was reported in 2006 and used to calculate the 50% per capita equivalent disposal target. Due to high turnover rates among State agency recycling coordinators, the current recycling coordinator may be unable to verify the source and accuracy of the 2006 generation and disposal data or has found that it was underreported. Thus, more accurate reporting may result in the current reporting year per capita disposal exceeding 50% per capita equivalent disposal target.
  - d. The data reported for the 2012 calendar was less accurate than the data reported in previous years. Due to high turnover rates among State agency recycling coordinators and a reduction of overall staff, the methodology used to calculate previous years data was difficult to determine. In many cases, data collection and extrapolation were unknown to the new State agency recycling coordinator. In several cases, they were provided with assistance in person or via email and telephone communication to rectify any errors.
  - e. Technical assistance is underway to verify the disposal composition, disposal practices, disposal calculations, and whether the lack of certain programs or inefficient programs may be contributing factors to any increase or fluctuation in disposal.
- **Agencies/Facilities Submitting Full Reports: Finding of Inadequate Program Implementation and Non-compliance with Statutory Diversion Requirements (Attach. 4):**

Staff found four of the 209 State agencies and large State facilities that submitted full reports for 2012 to not be adequately implementing diversion programs and to be non-compliant with statutory diversion mandates. These agencies are Department of Transportation, District 12; California Institute for Men, Chino; California Institute for Women, Chino; and the 28<sup>th</sup> District Agricultural Association. These agencies/facilities submitted reports that provide information on the diversion programs implemented and the total tons of material disposed by the reporting agencies/facilities.

These four agencies and large State facilities reported disposal for the 2012 calendar year that was in excess of the 50% equivalent per capita disposal target for their facility. Staff review consisted of an analysis of the information submitted in the electronic annual report and one

or more site visits to each facility to assess program implementation and effectiveness. Despite their attempts to provide technical assistance, LAMD staff has found that these large State facilities have not made reasonable and feasible efforts to implement effective diversion programs. These four agencies/facilities will be referred to the Jurisdiction and Product Compliance Unit to begin the compliance process.

Additionally, one state agency, 1A District Agricultural Association, is already under the review of the Jurisdiction and Product Compliance Unit from the 2010 reporting cycle.

- **Agencies/Facilities Submitting Full and Modified Reports Finding of Non-compliance with Statutory Reporting Requirements (Non-Submission of Annual Report) (Attach. 5):**

Four agencies, the 24<sup>th</sup>, 26<sup>th</sup>, 38<sup>th</sup>, and 49<sup>th</sup> District Agricultural Associations, were found non-compliant by failing to submit their 2012 annual report and therefore not fulfilling the statutory reporting requirements. After several attempts from staff to provide assistance and to collect the annual reports, these four agencies will be referred to the Jurisdiction and Product Compliance Unit to begin the compliance process.

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<sup>i</sup> Community Colleges are not required to submit a calendar year 2012 annual waste report that is inclusive of Fiscal Years 2011/12 and 2012/13 in accordance with the Budget Act and the conditions of Government Code 17581.5 (a)(1) and (2) [17581.5 was added by AB 114/Committee on Budget/Chapter 43, Statutes of 2011]. This temporary suspension may apply to Fiscal Years 2013/14 and effect the submission of the calendar year 2013 annual waste report.