

**State of California  
Department of Resources Recycling and Recovery**

**Public Hearing to Consider  
The Completion of Compliance Order IWMA BR08-01  
For the City of Firebaugh, County of Fresno**

July 19, 2011  
10:00 a.m.  
Byron Sher Auditorium

**I. ISSUE**

The City of Firebaugh (City) has reported to the Department of Resources Recycling and Recovery (CalRecycle) its successful completion of all the requirements stipulated in Compliance Order IWMA BR08-01 (Compliance Order; Attachment 1). The City presented its progress through its 2009 annual report and its quarterly reports required by the Compliance Order. In addition, CalRecycle staff has conducted several site visits to the City to verify program implementation. Staff's most recent site visit was in April 2011 (see Attachment 2).

Public Resources Code 41850 and the Compliance Order require CalRecycle to hold a public hearing to determine if the City has complied with all of the conditions and requirements of the Compliance Order.

**II. ITEM HISTORY**

On December 16, 2008, the California Integrated Waste Management Board (predecessor of the Department of Resources Recycling and Recovery [CalRecycle]) issued Compliance Order IWMA BR08-01 to the City of Firebaugh. The issuance was based on the City's failure to adequately implement its diversion programs.

**III. OPTIONS FOR CONSIDERATION**

1. Find that the City of Firebaugh has fully implemented the requirements of Compliance Order IWMA BR08-01.
2. Direct staff to modify Compliance Order IWMA BR08-01 to reflect additional programs that the City of Firebaugh would need to implement. With this option, CalRecycle would also need to extend the overall timeframe of the Compliance Order.
3. Find that the City of Firebaugh is non-compliant for failing to meet the requirements of the Compliance Order. With this option, staff would need to be directed to schedule a public hearing to consider fining the City for failing to comply with the Compliance Order.

**IV. STAFF RECOMMENDATION**

Staff recommends Option 1: Find that the City of Firebaugh has fully implemented the requirements of Compliance Order IWMA BR08-01.

Approving the completion of the City’s Compliance Order will commence the transfer of the City from the Jurisdiction and Product Compliance Unit back to the Local Assistance and Market Development Branch. The Local Assistance and Market Development Branch will review the City in the next two-year cycle, which commences with the submission of the 2013 annual report, and will continue to monitor the City’s program implementation. This will provide the Department with the ability to monitor the City’s overall efforts of continued program implementation. This does not impact the Department’s ability to exercise its option to review the City’s efforts at any time, should an independent compliance review by the Jurisdiction and Product Compliance Unit be warranted (PRC Section 41825(b)).

**V. ANALYSIS**

On December 16, 2008, the City of Firebaugh was issued Compliance Order IWMA BR08-01 due to the City’s failure to adequately implement its diversion programs.

The Compliance Order [Section 3.1] required the City to submit a Local Implementation Plan (LIP) by February 28, 2009, and fully implement the LIP by December 31, 2009. The Compliance Order also stipulated that CalRecycle would monitor the City to ensure continued LIP implementation from December 31, 2009, through December 31, 2010.

The City adopted and implemented its LIP (Attachment 3), and CalRecycle staff monitored the City’s progress to ensure full LIP implementation by December 31, 2009. As required, CalRecycle staff continued oversight monitoring to evaluate and determine program effectiveness. This monitoring continued through April 2011, when CalRecycle staff made its final compliance verification site visit.

Existing Jurisdiction Conditions:

The City of Firebaugh was incorporated in 1914. The City is a central valley community encompassing 3.462 square miles. According to Department of Finance estimates, in 2009 the City had a population of 6,807.

Key Jurisdiction Conditions				
Calculated Disposal Rate (Lbs/person/day)		Waste Stream Data		
<i>50% per Capita Disposal Target (2006)</i>	<i>2009</i>	<i>Population (2009)</i>	<i>Non-Residential Waste Stream Percentage</i>	<i>Residential Waste Stream Percentage</i>
5.1	3.7	6,807	63	37

Staff’s Assessment

After analyzing the City’s reports and monitoring the City’s program development, CalRecycle staff believes that the City has implemented all programs incorporated into

the Local Implementation Plan (LIP) that resulted from Compliance Order IWMA BR08-01. As program improvements continue, further diversion increases can be expected. The City intends to implement, monitor, and improve all its LIP and Source Reduction and Recycle Element (SRRE) programs, as necessary.

The following table summarizes the City’s progress to date for each LIP program:

<b>Local Implementation Plan Program Requirements</b>	<b>Progress to Date</b>
<p><i>Residential Curbside Diversion Program</i></p>	<p><i>Implemented.</i></p> <p>The City switched to a new hauler and adopted a three-cart system for source-separated collection of trash, greenwaste, and recyclables. The City’s hauler provided larger, sturdier carts to all of the City’s 1,212 homes, and the hauler completed its first full citywide service cycle of the new residential program on February 2, 2009.</p> <p>The City’s hauler educated the City’s residents about the new program by delivering outreach packets to each household, distributing brochures at City Hall, and running informational booths at community events. Additionally, the greenwaste and recycling truck drivers avoid collecting contaminated carts, and they put tags on these carts explaining why they did not service them.</p> <p>Based on March 2011 estimates from California Employment Development Department, the City has one of the highest unemployment rates in the State of California. This high unemployment rate (31%) reduces residents’ purchases and the rate at which residents fill their garbage and recycling carts. Because of this, residents in Firebaugh set out their carts less frequently than do residents of larger cities. It is significant that, even despite these economic difficulties, about 75 percent of households set out recycling carts.</p> <p>The curbside recyclables and greenwaste have minimal contamination. The City’s hauler collects and processes each household’s residential recyclables once a week, every Monday or Wednesday.</p>
<p><i>Commercial Diversion Program</i></p>	<p><i>Implemented.</i></p> <p>The City began to enforce its ordinance for mandatory commercial recycling. To this end, the City’s hauler distributed containers to all businesses and began to service commercial recyclables on March 1, 2009. The first full citywide collection of commercial recyclables was on September 3, 2009.</p>

	<p>At the beginning of the Compliance Order, the City's hauler conducted waste audits at each business. Throughout the Compliance Order, the City's hauler continued to visit businesses to evaluate their sorting effectiveness and to inform them how to sort materials more effectively.</p> <p>The City's hauler collects and processes the City's commercial recyclables consistently. Businesses generally separate their materials effectively and provide recyclables with minimal contamination.</p>
<i>Agricultural/Industrial Diversion Program</i>	<p><i>Implemented.</i></p> <p>The City's hauler services agricultural/industrial locations as commercial businesses. Thus, when the City began to enforce its ordinance for mandatory commercial recycling, the City also ensured that all agricultural/industrial locations either have or share recycling containers.</p> <p>The City's hauler collects and processes these recyclables consistently, and agricultural/industrial locations generally separate their materials effectively and provide clean recyclables.</p>
<i>Contract with Franchise Hauler</i>	<p><i>Implemented.</i></p> <p>After the issuance of the Compliance Order, the City determined that there was a need to develop and award a new contract with a new hauler. The City's contract was also revised to include mandatory commercial recycling.</p>
<i>Construction and Demolition (C&amp;D) Diversion Program</i>	<p><i>Implemented.</i></p> <p>After the issuance of the Compliance Order, the City increased diversion enforcement and tracking of C&amp;D materials. On January 20, 2010, the City amended its C&amp;D plan to require all C&amp;D materials to be handled by the franchise hauler. Under the new system, before applicants can receive a certificate of occupancy, they must get a diversion rate estimate from the hauler and complete a diversion report.</p>
<i>City Office and City Building Diversion Program</i>	<p><i>Implemented.</i></p> <p>The City ensured that all City locations have recycling programs. These locations include City Hall, the senior center, the police department, and the community center.</p>

	<p>Staff found contamination in City Hall’s recycling and garbage bins. This observation suggests the need for ongoing outreach to attain even higher levels of diversion. However, some of this contamination may be from passersby from the nearby park. Regardless, this does not significantly impact the City’s overall diversion.</p>
<i>Schools Diversion Program</i>	<p><i>Implemented.</i></p> <p>The City’s hauler increased its outreach to the schools. The schools separate materials effectively and provide clean recyclables.</p>
<i>Multi-Family Diversion Program</i>	<p><i>Implemented.</i></p> <p>The City’s hauler initially established a pilot recycling programs at two multi-family locations. During the pilot period, other multi-family locations observed the program and requested their own recycling programs. The City’s hauler expanded the program in response to the demand.</p> <p>The City and the hauler are currently working to bring mandatory recycling to all multi-family locations.</p> <p>Staff found some contamination in the pilot programs’ recycling and garbage bins. However, this does not significantly impact the City’s overall diversion. Ongoing outreach can be an effective tool to attain even higher levels of diversion.</p>
<i>Disposal Reporting Accuracy</i>	<p><i>Implemented.</i></p> <p>Throughout the Compliance Order, the City did not find any disposal tonnage misallocations. In an ongoing effort to ensure that there are no misallocations, the hauler checks addresses associated with larger tonnages to verify that they are originating from the City.</p>
<i>Quarterly and Annual Reporting</i>	<p><i>Implemented.</i></p> <p>The City’s hauler has maintained the City’s Compliance Documentation Binder and has submitted all required quarterly and annual reports.</p>

## **Overview of the Options CalRecycle has Regarding Compliance Orders**

### Determination of Completion

Once a jurisdiction has reported full implementation of all of the conditions and terms of a Compliance Order, CalRecycle has the following general responsibilities regarding the consideration of the completion of the Compliance Order:

CalRecycle shall hold a public hearing to determine whether or not the jurisdiction has fully implemented the Compliance Order (PRC Section 41850(a)). This includes, but is not limited to, determining if the jurisdiction has

- Made a good faith effort to fully implement all Local Implementation Plan and Source Reduction and Recycling Element selected programs (PRC Section 41850(b)); and
- Met the diversion requirements of PRC Section 41780 (PRC Section 41850(b)).

### Penalty Structure

CalRecycle may impose fines only after a jurisdiction fails to adhere to the Compliance Order and/or schedule requirements. Fines may be levied according to the cause of failure to adequately implement a Source Reduction and Recycling Element and/or Household Hazardous Waste Element; staff would recommend to CalRecycle an appropriate level of penalty based on the criteria listed below.

1. “Serious” failure includes a jurisdiction that fails to implement its Source Reduction and Recycling Element or Household Hazardous Waste Element without reason or justification. The fine recommended for this type of violation would be no less than \$5,000 and up to the maximum \$10,000 per day.
2. “Moderate” failure includes a jurisdiction that fails to implement its Source Reduction and Recycling Element or Household Hazardous Waste Element due to mitigating circumstances that have no bearing on natural disasters, budgetary constraints and work stoppages. Mitigating circumstances would be determined on a case-by-case basis by CalRecycle. The fine recommended for this type of violation would be \$1,000 to \$5,000 per day.
3. “Minor” failure includes a jurisdiction that has implemented some or all programs, but has failed to meet the diversion requirements to some extent. Fines will be based on information provided by the jurisdiction and on statutory relief considerations. Fines, if determined to be appropriate, will be decided by CalRecycle on a case-by-case basis, and would range from \$1 per day up to \$1,000 per day.

A jurisdiction may only be fined after failing to adhere to the Compliance Order and schedule. Fines will continue until a jurisdiction has implemented the programs as outlined in the Compliance Order.

Notwithstanding the above penalty structure, if CalRecycle determines, on a case-by-case basis, that a jurisdiction demonstrates that it has made a good faith effort to implement its Source Reduction and Recycling Element and/or Household Hazardous

Waste Element, including achieving the diversion requirements, CalRecycle shall not impose penalties.

## **VII. ATTACHMENTS**

1. Compliance Order IWMA BR08-01
2. Site Visit Photo Report
3. Local Implementation Plan
4. City of Firebaugh Waste Diversion Program and Diversion Rate Summary
5. Request for Action for the Removal of Compliance Order IWMA BR08-01

## **VIII. STAFF RESPONSIBLE FOR ITEM PREPARATION**

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