REQUEST FOR APPROVAL

To:	Caroll Mortensen Executive Director
From:	Howard Levenson Deputy Director, Materials Management and Local Assistance Division
Request Date:	May 22, 2013
Decision Subject:	Adoption of Proposed Regulations For Form 303 Household Hazardous Waste Reporting
Action By:	May 29, 2013

Summary of Request: The "Form 303 Household Hazardous Waste Collection Information For Fiscal Year ____/____" is used to track the quantity of household hazardous waste (HHW) collected by local government agencies in California each fiscal year. CalRecycle staff seek to promulgate regulations that will streamline the Form 303 reporting process and allow for the accommodation of stewardship programs that collect HHW.

Recommendation: ~~If CalRecycle does not receive comments during the 15-day comment period that merit substantive changes to the regulations, s~~Staff recommends that CalRecycle file a Notice Of Exemption with the State Clearinghouse as provided under CEQA. Staff also recommends adoption of the "Proposed Regulations For Form 303 Household Hazardous Waste Reporting" (Attachment 1) so that it may be forwarded to the Office of Administrative Law (OAL) for approval and publishing.

Action: On the basis of the information and findings in this Request for Approval, I hereby direct staff to file a Notice of Exemption with the State Clearinghouse as provided under the California Environmental Quality Act. I also hereby approve the adoption of the "Proposed Regulations For Form 303 Household Hazardous Waste Reporting" (Attachment 1) and direct staff to prepare and forward the regulatory package to the OAL for approval and publishing.

Dated: 5/28/2013

Caroll Mortensen
Executive Director

Attachment 1: Proposed Regulations For Form 303 Household Hazardous Waste Reporting
Attachment 2: 45-day Matrix of Comments
Attachment 3: 15-day Matrix of Comments

Background Information, Analysis, and Findings:

To implement CalRecycle's responsibilities under Public Resources Code Section 47203, CalRecycle created the "Form 303 Household Hazardous Waste Collection Information For Fiscal Year ____/____", as described in the California Code of Regulations, Title 14, Section 18751.2. This form is used to track the quantity of household hazardous waste (HHW) collected by local government agencies in California each fiscal year. All public agencies responsible for HHW management are required to submit this form to the Department of Toxic Substances Control (DTSC) each year by October 1st. DTSC submits these forms to CalRecycle, and they are subsequently compiled and posted on the CalRecycle website.

CalRecycle seeks to promulgate regulations that will streamline the Form 303 reporting process and allow for the accommodation of stewardship programs that collect HHW. Staff is proposing changes that will allow for the creation of an online reporting system, which would streamline both the submittal and processing of Form 303 reports. Staff is also proposing changes that will combine the current Forms 303a and 303b into a single report and reduce the number of jurisdictions that are required to submit reports. Staff is further proposing the addition of a new disposition category for materials sent to stewardship programs for management.

Rulemaking Timeline

In the second half of 2012, CalRecycle staff conducted research, met with stakeholders, and prepared discussion draft documents in preparation for the formal rulemaking process. Staff presented draft documents and received input from stakeholders at informal workshops on August 22, 2012 in San Bernardino and September 27, 2012 in Sonora, and held a 14-day comment period for the informal draft regulations from October 22 to November 5, 2012. CalRecycle staff presented the proposed regulatory text for approval at a public meeting on November 19, 2012. Formal rulemaking activities began in March 2013. A 45-day public comment period for the Proposed Regulations For Form 303 Household Hazardous Waste Reporting ran from March 15 through April 29, 2013. CalRecycle staff held a public meeting on the proposed regulation on May 1, 2013. After considering comments received during the 45-day comment period and comments made at the public hearing, CalRecycle staff revised the regulations and initiated a 15-day public comment period to run from May 3 through May 20, 2013. Note: Text shown in yellow highlighted double underline (addition) and yellow highlighted ~~double strikeout~~ (deletion) depict proposed changes made after the 45-day comment period.

Summary of Comments Received

45-day Comment Period and May 1, 2013 Public Hearing

Staff received comment letters from five stakeholders, all of which are catalogued in the "45-day matrix of comments" along with CalRecycle staff's responses (Attachment 2). The primary comments and responses are summarized below:

- Staff received two comments noting that the Federal Regulations do not include definitions for certain categories of materials listed in section 18751.2.3(a) and suggested that these categories remain defined in the "Guide to Complete CalRecycle Forms 303" that is released annually with the Form 303.
    - CalRecycle response: Staff agrees that the definitions need to be clarified and has revised the regulations to ensure that all material categories are defined.
- Staff received comments in support of the creation of new specific subcategories for HHW materials not listed in the current Form 303.
    - CalRecycle response: Staff believes there is not sufficient need at this time to collect data on the specific categories requested by the commenter, as tracking these new categories would be costly and burdensome to jurisdictions. No change is proposed.
- Staff received comments in support of the creation of an on-line database that would streamline both the submittal and processing of Form 303 reports.
    - CalRecycle response: No change needed
- Staff received a comment requesting that ultimate disposition of paint (e.g., sent overseas for re-use) be included in the form.
    - CalRecycle response: Staff disagrees. If materials are sent to a stewardship organization, the ultimate disposition methods may not be known to the local jurisdictions that submit a Form 303, and requiring them to track the ultimate disposition of such materials would pose an undue burden. No change is proposed.
- Staff received a comment noting that while the regulations require agencies report "HHW collection amounts," most agencies also collect waste from Conditionally Exempt Small Quantity Generators and store these wastes together. The comment noted that excess recordkeeping would be needed to track these wastes separately.
    - CalRecycle response: Staff agrees and has revised the regulation to reflect that agencies should report on all wastes collected under their programs, and not just HHW.

- Staff received a comment noting that agencies often use different methods for counting the number of households, and recommending that the regulation be amended to allow the agency to indicate that they are using a non-standard definition of household.
    - CalRecycle response: Staff agrees and has revised the regulations to reflect this.
- Staff received a comment requesting that the reporting period for the Form 303 be changed to a Calendar year to coincide with DTSC E-waste report.
    - CalRecycle response: Staff believes that such a change would have a negative impact on all jurisdictions as a whole statewide. No change is proposed.

15-day Comment Period

Staff received comment letters from two stakeholders and has catalogued their comments in the "15-day matrix of comments" along with CalRecycle staff's responses (Attachment 3). The primary comments and responses are summarized below:

- Staff received a comment asking if the term "material" needs to be defined.
    - CalRecycle response: Staff believes that the common meaning of "material" is sufficient for the purposes of this regulation and does not need to be defined. No change is proposed.
- Staff received a recommendation that the reporting of collection through stewardship programs be consistent with reporting established for the Architectural Paint Recovery Program.
    - CalRecycle response: Staff believes that the reporting of materials sent to stewardship programs for management as described in the proposed regulations is compatible with the reporting requirements of the Architectural Paint Recovery Program. No change is proposed.
    - ~~[This section will be updated pending comments received]~~

Findings

CalRecycle staff has given careful consideration to all comments received throughout the rulemaking process~~. If CalRecycle does not receive comments during the 15-day comment period that merit substantive changes to the regulations, CalRecycle staff~~ and recommends that the department adopt the Proposed Regulations for Form 303 Household Hazardous Waste Collection Report and direct staff to forward the regulatory package with the OAL for approval and publishing. Pending OAL approval of the new regulation, staff plans to release the revised Form 303 for FY 2012/13 reporting year in early August 2013, giving local governments two months before the October 1, 2013 submittal deadline to fill out and submit the form.