

Countywide Integrated Waste Management Plan (CIWMP) Enforcement Policy Part II:

Failure to Implement a SRRE and HHWE,
Including Failure to Implement MCR,
MORe, and AB 1594

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BACKGROUND

On November 17, 1993, CalRecycle's predecessor, the California Integrated Waste Management Board (Board) approved Part 1 of the Staff Analysis, CIWMP Enforcement report. Part 1, entitled "Adequacy of CIWMP and Elements," outlines the procedures CalRecycle staff will use to determine the adequacy of Countywide Integrated Waste Management Plans (CIWMPs), Source Reduction and Recycling Elements (SRREs), Household Hazardous Waste Elements (HHWEs), Nondisposal Facility Elements (NDFEs), and Countywide Siting Elements (CSEs).

This report constitutes Part 2 of the CIWMP Enforcement report. CalRecycle must determine, for each jurisdiction, whether the SRREs and HHWEs have been implemented. Annual reports submitted by the jurisdictions will be used, in combination with the Jurisdiction Review process and other information, such as information from site visits, data from haulers, etc., to determine implementation. This report recommends criteria CalRecycle will use during the Jurisdiction Review to determine whether local jurisdiction SRREs, HHWEs, Mandatory Commercial Recycling (MCR), Mandatory Organics Recycling (MORe) and any required AB 1594 Greenwaste/ADC programs have been implemented, mechanisms CalRecycle and local jurisdictions will use to achieve compliance with implementation mandates, and the structure of penalties that may be imposed on jurisdictions failing to implement their SRREs, HHWEs, and/or Mandatory Commercial Recycling, Mandatory Organics Recycling and any required AB 1594 Greenwaste/ADC programs

WHAT IS IMPLEMENTATION?

Full implementation, for the purposes of this report, includes executing the programs as described in the SRRE and HHWE and as required for MCR, Mandatory Organics Recycling and any required AB 1594 Greenwaste/ADC programs, using the jurisdiction's annual per capita disposal rate and, more importantly pursuant to SB 1016, diversion programs implementation as factors in determining compliance with the diversion requirements. The per capita disposal rate is not determinative of compliance. Criteria for determining the level of SRRE, HHWE, MCR, Mandatory Organics Recycling and AB 1594 Greenwaste/ADC, implementation are outlined separately.

CalRecycle staff will refer to the various components of the SRRE and HHWE, information from a jurisdiction's annual report, CalRecycle's Jurisdiction Review, and other sources to determine how fully a jurisdiction has implemented its SRRE, HHWE, MCR, Mandatory Organics Recycling and AB 1594 Greenwaste/ADC. (Also see "Determination of SRRE and HHW Implementation" section.)

SRRE IMPLEMENTATION

Criteria for SRRE Implementation

Each SRRE outlines the source reduction, recycling, composting, and public education and information programs a jurisdiction will implement. Additionally, the SRRE identifies funding mechanisms and monitoring for these programs, and describes their integration into a comprehensive waste diversion program. A fully implemented SRRE means a jurisdiction is both carrying out the selected programs and achieving the diversion requirements.

Staff has identified four scenarios to use in determining SRRE implementation:

- I. Implementing all or most programs, and meeting diversion requirements.
- II. Implementing some/all programs, but not meeting diversion requirements.
- III. Implementing a small number of programs and meeting diversion requirements.
- IV. Not implementing programs and not meeting diversion requirements.

To determine the level of SRRE implementation, staff use annual reports submitted by local jurisdictions, CalRecycle's Jurisdiction Review process, and provide technical assistance, when requested. This applies to all four scenarios.

Staff uses the following criteria to determine the extent to which a jurisdiction has implemented, or shown a good faith effort to implement, their selected diversion programs.

These criteria reflect the four scenarios above, and may not be all-inclusive. These criteria are provided to serve as an example. The criteria are not prescriptive and they are not a "checklist". They indicate the issues that will be examined when CalRecycle performs its Jurisdiction Reviews. There is no intent in this document to mandate that each criterion be adhered to, and that, if not, that a local jurisdiction would be in a "failure" situation.

It is not CalRecycle's intention to micro-manage local jurisdiction's decisions on which diversion programs have been identified and selected for implementation. CalRecycle will attempt, with the identified criteria, to assist local jurisdictions who may need help in identifying why implementation of diversion programs is failing to achieve the results expected, or is failing to meet the diversion requirements.

Note: In scenarios II and IV, criteria for evaluating AB 1594 Greenwaste/ADC are addressed. AB 1594 is included here because implementation of its provisions is directly tied to measurement of per-capita disposal. In contrast, implementation of

MCR and MORE is not linked to per-capita disposal and hence is addressed later in this document.

I. Implementing All or Most Programs and Meeting Diversion Requirements.

Jurisdictions implementing all or most of their diversion programs and achieving or below their 50% equivalent per capita disposal target are not subject to fines by CalRecycle. These jurisdictions will be subject to future CalRecycle review at least once every four years.

Jurisdictions will be required to submit information to CalRecycle stating why diversion programs identified in SRREs have not been implemented. Staff recommends using the following criteria to determine if a jurisdiction fits this scenario.

- What is the measured annual per capita disposal rate?
- What programs have been implemented, or what existing programs have been continued or expanded, to achieve the diversion requirements?
- Will these programs maintain the desired level of diversion?
- Are contingency programs selected and available to implement, if necessary, to maintain diversion levels?
- Pursuant to PRC 41074 and PCC 22150, how is the jurisdiction implementing its environmentally preferable procurement program?
 - Has the jurisdiction conducted an evaluation of the feasibility of procurement preferences for the purchase of recycled products?
 - Has the jurisdiction purchased recycled content products instead of non-recycled products whenever recycled products are available, at the same or a lesser total cost than non-recycled items and when fitness and quality are equal?
 - Has the jurisdiction implemented an environmentally preferable procurement policy? Has the jurisdiction educated its employees about the policy?
 - Regarding organics, what efforts has the jurisdiction made to promote the use and purchase of products made from organic waste materials (as defined in SB 1383 regulations), such as compost, mulch, renewable transportation fuel, energy, etc., by its various departments that are responsible for projects involving landscaping, erosion control, stormwater control, fleets, and fire reparation, etc?

II. Implementing Some/All Programs, But Not Meeting Diversion Requirements.

If a jurisdiction is implementing some or all selected diversion programs and yet not achieving its 50% equivalent per capita disposal target, it may be that the SRRE is in need of revision.

Staff investigates the extent to which a jurisdiction has tried to meet the diversion requirements through its selected diversion programs, and the reasons it has failed to

implement some or all of those diversion programs. Staff may recommend that a jurisdiction has either made a good faith effort to implement its SRRE, or should be put on a compliance schedule. In the case of a rural jurisdiction, CalRecycle could instead recommend the jurisdiction apply for a diversion rate reduction as allowed in PRC Section 41787. If a compliance schedule was ordered and the jurisdiction failed to meet the requirements of the order, CalRecycle could then consider levying an administrative fine against the jurisdiction. A fine, if determined to be appropriate, would be decided by CalRecycle on a case-by-case basis, and could be assessed at up to \$10,000 per day.

Staff uses the following criteria to assess the specific conditions that may have prevented a jurisdiction from meeting its 50% equivalent per capita disposal target, and whether a good faith effort was made by the jurisdiction to meet the requirements.

- Have some/all selected diversion programs been implemented? If **yes**, then what may be the cause for not reaching the requirements? For example:
 - What is the measured annual per capita disposal rate?
 - Does the jurisdiction have a CalRecycle approved reduced diversion requirement?
 - Were waste quantification problems encountered when calculating achievement of the 50% equivalent per capita disposal target?
- Have participation and program effectiveness been low?
 - Has the jurisdiction utilized public education and information programs to promote its diversion programs?
 - Has the jurisdiction targeted the appropriate sector (commercial/residential/industrial) in its public education and information campaign?
 - Is the program accessible to the targeted audience? Have language barriers been addressed?
 - Have incentives for participation been used (e.g., cash for recyclables, free/reduced cost compost bins for workshop attendance, etc.)?
 - What other program alternatives have been used to promote waste prevention and reduction programs (e.g., increased tip fees, local land use restrictions, increased business fees, etc.)?
 - Has the jurisdiction utilized CalRecycle's free public information materials?
- Have markets for diverted materials continually remained low or poor?
 - Have China's or other countries' import policies caused the absence or loss of a market for recyclable materials diverted by solid waste facilities that necessitated the disposal of those materials as a temporary measure to avoid a public health

- threat associated with storing recyclable materials in amounts that exceed the permitted or design capacity of a solid waste facility?
- To what extent is the lack of an available market for one or more types of recyclable materials the result of circumstances beyond the reasonable control of the jurisdiction, and to what extent did this prevent the jurisdiction from fully implementing its diversion programs?
 - To what extent has the jurisdiction made efforts to reduce contamination and improve the quality of recycled materials such that they can be used as feedstocks in the manufacturing of new recycled-content products, e.g., were rates increased to address additional processing costs and education?
- Pursuant to PRC 41074 and PCC 22150, how is the jurisdiction implementing its environmentally preferable procurement program?
 - Has the jurisdiction conducted an evaluation of the feasibility of procurement preferences for the purchase of recycled products?
 - Has the jurisdiction purchased recycled content products instead of non-recycled products whenever recycled products are available, at the same or a lesser total cost than non-recycled items and when fitness and quality are equal?
 - Has the jurisdiction implemented an environmentally preferable procurement policy? Has the jurisdiction educated its employees about the policy?
 - Regarding organics, what efforts has the jurisdiction made to promote the use and purchase of products made from organic waste materials (as defined in SB 1383 regulations), such as compost, mulch, renewable transportation fuel, energy, etc., by its various departments that are responsible for projects involving landscaping, erosion control, stormwater control, fleets, and fire reparation, etc?
 - Has the jurisdiction investigated local and regional marketing options?
 - Has the jurisdiction investigated development opportunities with the private sector?
 - Has the jurisdiction worked with CalRecycle's market development program?
 - Has the jurisdiction applied to CalRecycle's Recycling Market Development Zone (RMDZ) program?
 - Were all significant waste materials selected in the SRRE targeted in the implemented programs?
 - Have conditions changed to make these materials less targetable and/or marketable?
 - Have waste generation characteristics changed such that selected programs would no longer be feasible or appropriate?
 - Were sufficient funds available to implement programs?

- Has the jurisdiction investigated grants and loans available from CalRecycle, the U. S. Environmental Protection Agency (US EPA), etc.?
- Has the jurisdiction investigated regional approaches to programs and expenses?
- Has the jurisdiction investigated all financial options selected in the SRRE, including contingency funding?
- Have periods projected in the SRRE been met?
 - What factors have affected these timeframes?
 - Will time frames be adjusted to continue program implementation?
- Were local diversion programs implemented but the jurisdiction had disposal increases due to a regional diversion facility generating and disposing significant amounts of residue within the "host" jurisdiction's borders?
- Have other state-mandated programs affected solid waste disposal tonnage (such as a doubling of street sweeping activities due to Clean Water Act requirements for certain cities)?
- What other problems has the jurisdiction encountered in program implementation?
- Have all selected diversion programs been implemented? If no, then what may be the reason for not implementing the programs? For example:
 - What diversion programs were not implemented, and why?
 - What selected diversion facilities (e.g., material recovery, composting) are not yet online?
 - Did financing options for a selected diversion facility (e.g., material recovery, composting) fail?
 - Did a jurisdiction face unavoidable regulatory delays? If so, explain the regulatory delays and how they affected the project time lines.
 - Did a jurisdiction elect to recover a certain type of material (e.g., cardboard), but the hauler/operator will not cooperate and recover the waste type on behalf of the jurisdiction? Is the failure to recover the material(s) due to logistical problems?
- Was insufficient staff available to implement programs?
 - Has the jurisdiction investigated volunteer or internship programs?
 - Has the jurisdiction investigated regional approaches to programs, expenses, and staffing?
 - Was there a high turnover in staff?

- Did the jurisdiction allot reasonable resources?
- Have time frames projected for program implementation in the SRRE been met?
 - What factors have affected these timeframes?
 - Have time frames been adjusted to continue program implementation?
- Have waste generation characteristics changed (e.g., a military base closure, or a manufacturing/industry relocated or closed), such that selected programs would no longer be feasible or appropriate?
- Have contingency diversion programs been implemented to reach the diversion requirements?
 - If contingency programs are significant in scale, has that caused a delay?
- Have existing contractual or legal issues prohibited a jurisdiction from implementing programs?
 - Can the jurisdiction amend franchise agreements? If not, when do the agreements expire?
 - Can the jurisdiction prepare a request for proposal(s) for the implementation of programs and facilities?
- What technical assistance can CalRecycle provide to assist local jurisdictions in implementing diversion programs?

AB 1594

In September 2014, Governor Brown signed AB 1594, Williams (Chapter 719, Statutes of 2014), mandating that as of January 1, 2020, the use of green material as alternative daily cover (ADC) does not constitute diversion through recycling and will be considered disposal in terms of measuring a jurisdiction's annual 50 percent per capita disposal rate.

Beginning with the 2020 Electronic Annual Report (due August 1, 2021), a jurisdiction that, as a result of not being able to claim diversion for the use of green material as ADC, does not meet its 50 percent per capita disposal target, must report additional information to CalRecycle about how it will address diverting greenwaste that was being sent as ADC. Staff will investigate the extent to which a jurisdiction has tried to meet the diversion requirements through its efforts to find other means of diverting greenwaste.

Staff will use the following criteria to assess the specific conditions that may have prevented a jurisdiction from meeting its 50% equivalent per capita disposal target, as a result of not being able to claim diversion for the use of green material as ADC, and whether a good faith effort was made by the jurisdiction to meet the diversion requirements.

- Did the jurisdiction commencing with the 2017 Electronic Annual Report (due August 1,

2018) include information on plans to address the diversion requirements by diverting green material that is being used as ADC?

- Were the plans reasonable?
- If the jurisdiction did not include plans commencing with the 2017 EAR on how to divert green materials, in 2020 or any time thereafter if the jurisdiction is not meeting its target did it address how it is diverting green material that is being used as ADC?
- Did the jurisdiction commencing with the 2020 Electronic Annual Report (due August, 1, 2021) provide the following:
 - Were the barriers to recycling green material identified and addressed?
 - Are there adequate existing facilities to process greenwaste within a reasonable vicinity?
 - Are there existing solid waste and organic waste recycling facilities within the jurisdiction that may be suitable for potential expansion or colocation of organic waste processing or recycling facilities?
 - What time frame could this be accomplished?
 - Are there efforts that are underway to develop new private or public regional organic waste recycling facilities and the anticipated timeline for completion of those facilities?
 - Are there other nondisposal opportunities or markets for greenwaste (e.g., on-site composting, etc.)?
 - Are there appropriate zoning and permit requirements for the location of new or expanded organic waste recycling facilities to help with siting?
 - Are there local incentives available, if any, for developing new organic waste recycling facilities within the jurisdiction?
 - Have markets for recycled organic materials continually remained low or poor?
 - Has the jurisdiction investigated local and regional marketing options?
 - Has the jurisdiction investigated organics recycling opportunities with the private sector, e.g., partnering to site and build organics recycling facilities, collaborating with large commercial generators to manage waste on-site, such as small scale anaerobic digestion facilities, etc.?
 - Are sufficient funds available to implement programs?
 - Has the jurisdiction investigated funding resources, e.g., CalRecycle grants/loans, Treasurer's Office loans and bonds, CA Energy

Commission grants, etc.?

- Has the jurisdiction investigated regional approaches to programs and expenses?
- What selected organics recycling facilities are not yet on-line?
 - Did financing options for a selected diversion facility fail?
 - Did the facilities face unavoidable regulatory delays? If so, did the jurisdiction explain the regulatory delays and how they affected the project time lines?
 - Did a jurisdiction elect to recover a certain type of material (e.g., food waste), but the hauler/operator will not cooperate and recover the waste type on behalf of the jurisdiction? Is the failure to recover the material(s) due to logistical problems?
- Is sufficient staff available to implement programs?
 - Has the jurisdiction investigated volunteer or internship programs?
 - Has the jurisdiction collaborated with the hauler(s)?
 - Has the jurisdiction investigated regional approaches to programs, expenses, and staffing?
- Are there existing contractual or legal issues that need to be addressed that are a barrier to diverting greenwaste that was being used as ADC?
 - Can the jurisdiction amend franchise agreements, contracts, or permits? If not, when do the agreements expire?
 - Can the jurisdiction prepare a request for proposal(s) for the implementation of programs and facilities?
- What other considerations, including but not limited to market development obstacles, population density, waste generation rates, dominant waste generation categories and types, and geographic, demographic and economic factors, have affected the jurisdiction's ability to implement its organics recycling program?
- If sufficient capacity at facilities that recycle green material is not expected to be operational before the jurisdiction's next review pursuant to Section 41825, was a reasonable plan to address those barriers that are within the control of the local jurisdiction provided?
 - Did the jurisdiction identify all barriers under its control?
 - Did the jurisdiction provide sufficient explanation and supporting

information to explain how it would address this, or why it still cannot do so? I.e., is the plan reasonable in light of the barriers?

- Did it provide a timeline for addressing the barriers?

III. Implementing a Small Number of Programs and Meeting the Diversion Requirements.

This Scenario focuses on the level of SRRE implementation, and reinforces the statutory requirement for SRRE (i.e., program) implementation in addition to meeting the 50% equivalent per capita disposal target. Meeting the per capita disposal target is a factor in evaluating performance but is not determinative of compliance. This scenario will allow CalRecycle to make a case-by-case determination of whether a jurisdiction has made a good faith effort to implement its SRRE, or whether it should be issued a compliance order. Jurisdictions will be required to submit information to CalRecycle stating why diversion programs selected for implementation in the SRRE have not been implemented.

Staff uses the following criteria to determine if a jurisdiction fits this Scenario:

- What is the measured annual per capita disposal rate?
- What programs have been implemented, or what existing programs have been continued or expanded, to achieve the diversion requirements?
- Will these programs maintain the desired level of diversion?
- Are contingency programs selected and available to implement, if necessary, to maintain diversion levels?
- Have any implemented programs been dropped, and if so, why?
- Have programs selected for implementation not been implemented? If not, why not?
 - What selected diversion facilities (e.g., material recovery, composting) are not yet on-line?
 - Did financing options for a selected diversion facility (e.g., material recovery, composting) fail?
 - Did a jurisdiction face unavoidable regulatory delays? If so, explain the regulatory delays and how they affected the project time lines.
 - Did a jurisdiction elect to recover a certain type of material (e.g., cardboard), but the hauler/operator would not cooperate and recover the waste type on behalf of the jurisdiction? Is the failure to recover the material(s) due to logistical problems?
- Were sufficient funds available to implement programs?
 - Has the jurisdiction investigated grants and loans available from

CalRecycle, US EPA, etc.?

- Has the jurisdiction investigated regional approaches to programs and expenses?
- Has the jurisdiction investigated all financial options selected in the SRRE, including contingency funding?
- Was insufficient staff available to implement programs?
 - Has the jurisdiction investigated volunteer or internship programs?
 - Has the jurisdiction investigated regional approaches to programs, expenses, and staffing?
 - Was there a high turnover in staff?
 - Did the jurisdiction allot reasonable resources?
- Have participation rates and program effectiveness been too low?
 - Has the jurisdiction utilized public education and information programs to promote its diversion programs? Has the jurisdiction targeted the appropriate sector (commercial/residential/industrial) in its public education and information campaign?
 - Is the program accessible to the targeted audience? Have potential language barriers been addressed?
 - Have incentives for participation been used (e.g., cash for recyclables, free/reduced cost compost bins for workshop attendance, etc.)?
 - What other program alternatives have been used to promote waste prevention and reduction programs (e.g., increased tip fees, local land use restrictions, increased business fees, etc.)?
 - Has the jurisdiction utilized CalRecycle's free public information materials?
- Have markets for diverted materials continually remained low or poor?
 - Have China's or other countries' import policies caused the absence or loss of a market for recyclable materials diverted by solid waste facilities that necessitated the disposal of those materials as a temporary measure to avoid a public health threat associated with storing recyclable materials in amounts that exceed the permitted or design capacity of a solid waste facility?
 - To what extent is the lack of an available market for one or more types of recyclable materials the result of circumstances beyond the reasonable control of the jurisdiction, and to what extent did this prevent the jurisdiction from fully implementing its diversion programs?

- To what extent has the jurisdiction made efforts to reduce contamination and improve the quality of recycled materials such that they can be used as feedstocks in the manufacturing of new recycled-content products, e.g., were rates increased to address additional processing costs and education?
- Pursuant to PRC 41074 and PCC 22150, how is the jurisdiction implementing its environmentally preferable procurement program?
 - Has the jurisdiction conducted an evaluation of the feasibility of procurement preferences for the purchase of recycled products?
 - Has the jurisdiction purchased recycled content products instead of non-recycled products whenever recycled products are available, at the same or a lesser total cost than non-recycled items and when fitness and quality are equal?
 - Has the jurisdiction implemented an environmentally preferable procurement policy? Has the jurisdiction educated its employees about the policy?
 - Regarding organics, what efforts has the jurisdiction made to promote the use and purchase of products made from organic waste materials (as defined in SB 1383 regulations), such as compost, mulch, renewable transportation fuel, energy, etc., by its various departments that are responsible for projects involving landscaping, erosion control, stormwater control, fleets, and fire preparation, etc?
 - Has the jurisdiction investigated local and regional marketing options?
 - Has the jurisdiction investigated development opportunities with the private sector?
 - Has the jurisdiction worked with CalRecycle's market development program?
 - Has the jurisdiction applied to CalRecycle's RMDZ program?
- Were all significant waste materials selected in the SRRE targeted in the implemented programs?
 - Have conditions changed to make these materials less targetable and/or marketable?
 - Have waste generation characteristics changed such that selected programs would no longer be feasible or appropriate?
- What other problems has the jurisdiction encountered in program implementation?
 - Have waste generation characteristics changed (e.g., has a military base closed, or a manufacturer/industry relocated or closed), such that selected programs would no longer be feasible or appropriate?
- Have contingency diversion programs been implemented to reach the diversion requirements?
 - If contingency programs are significant in scale, has that caused a

delay in implementation?

- Have existing contractual or legal issues prohibited a jurisdiction from implementing programs?
 - Can the jurisdiction amend franchise agreements? If not, when do the agreements expire?
 - Can the jurisdiction prepare a request for proposal(s) for the implementation of programs and facilities?
- What technical assistance can CalRecycle provide to assist the local jurisdiction in implementing diversion programs?

IV. Not Implementing Programs and Not Meeting Diversion Requirements.

Staff will investigate the reasons a jurisdiction has failed to implement diversion programs and thus failed to meet the 50% equivalent per capita disposal requirements. Staff will recommend that CalRecycle issue compliance schedules to jurisdictions in this scenario. If the requirements of the compliance schedule are not met, CalRecycle could, at a public hearing, consider assessing the jurisdiction an administrative fine of up to a maximum of \$10,000 per day.

Staff recommends using the following criteria to determine if a jurisdiction fits this scenario.

- What is the measured annual per capita disposal rate?
- Why were programs not implemented?
- Were sufficient funds available to implement programs? If sufficient funds were available, explain why they were not dedicated to implementing programs. For example:
 - Did the jurisdiction investigate grants and loans available from CalRecycle, US EPA, etc.?
 - Did the jurisdiction investigate regional approaches to programs and expenses?
 - Did the jurisdiction investigate all financial options selected in the SRRE?
- Is there a lack of markets for diverted materials, and therefore programs were not implemented? For example:
 - Have China's or other countries' import policies caused the absence or loss of a market for recyclable materials diverted by solid waste facilities that necessitated the disposal of those materials as a temporary measure to avoid a public health threat associated with storing recyclable materials in amounts that exceed the permitted or design capacity of a solid waste facility?

- To what extent is the lack of an available market for one or more types of recyclable materials the result of circumstances beyond the reasonable control of the jurisdiction, and to what extent did this prevent the jurisdiction from fully implementing its diversion programs?
- To what extent has the jurisdiction made efforts to reduce contamination and improve the quality of recycled materials such that they can be used as feedstocks in the manufacturing of new recycled-content products, e.g., were rates increased to address additional processing costs and education?
- Pursuant to PRC 41074 and PCC 22150, how is the jurisdiction implementing its environmentally preferable procurement program?
 - Has the jurisdiction conducted an evaluation of the feasibility of procurement preferences for the purchase of recycled products?
 - Has the jurisdiction purchased recycled content products instead of non-recycled products whenever recycled products are available, at the same or a lesser total cost than non-recycled items and when fitness and quality are equal?
 - Has the jurisdiction implemented an environmentally preferable procurement policy? Has the jurisdiction educated its employees about the policy?
 - Regarding organics, what efforts has the jurisdiction made to promote the use and purchase of products made from organic waste materials (as defined in SB 1383 regulations), such as compost, mulch, renewable transportation fuel, energy, etc., by its various departments that are responsible for projects involving landscaping, erosion control, stormwater control, fleets, and fire repair, etc?
 - Did the jurisdiction investigate local and regional marketing options?
 - Did the jurisdiction work with CalRecycle's market development program and apply for market development zone designation?
- Was sufficient staff available to implement programs? Was staff allocated?
 - Did the jurisdiction investigate volunteer or internship programs?
 - Did the jurisdiction investigate regional approaches to programs, expenses, and staffing?
- Have existing contractual or legal issues prohibited a jurisdiction from implementing programs?
 - Can the jurisdiction amend franchise agreements?
 - Can the jurisdiction prepare a Request For Proposal (s) for the implementation of programs and facilities?
- What other problems has the jurisdiction encountered that resulted in no diversion program implementation?

AB 1594

In September 2014, Governor Brown signed AB 1594, Williams (Chapter 719, Statutes of 2014), mandating that as of January 1, 2020, the use of green material as alternative daily cover (ADC) does not constitute diversion through recycling and will be considered disposal in terms of measuring a jurisdiction's annual 50 percent per capita disposal rate.

Beginning with the 2020 Electronic Annual Report (due August 1, 2021), a jurisdiction that, as a result of not being able to claim diversion for the use of green material as ADC, does not meet its 50 percent per capita disposal target, must report additional information to CalRecycle about how it will address diverting greenwaste that was being sent as ADC. Staff will investigate the extent to which a jurisdiction has tried to meet the diversion requirements through its efforts to find other means of diverting greenwaste.

Staff will use the following criteria to assess the specific conditions that may have prevented a jurisdiction from meeting its 50% equivalent per capita disposal target, as a result of not being able to claim diversion for the use of green material as ADC, and whether a good faith effort was made by the jurisdiction to meet the diversion requirements.

- Did the jurisdiction commencing with the 2017 Electronic Annual Report (due August 1, 2018) include information on plans to address the diversion requirements by diverting green material that is being used as ADC?
 - Were the plans reasonable?
 - If the jurisdiction did not include plans commencing with the 2017 EAR on how to divert green materials, in 2020 or any time thereafter if the jurisdiction is not meeting its target did it address how it is diverting green material that is being used as ADC?
- Did the jurisdiction commencing with the 2020 Electronic Annual Report (due August 1, 2021) provide the following:
 - Were the barriers to recycling green material identified and addressed?
 - Are there adequate existing facilities to process greenwaste within a reasonable vicinity?
 - Are there existing solid waste and organic waste recycling facilities within the jurisdiction that may be suitable for potential expansion or colocation of organic waste processing or recycling facilities?
 - What time frame could this be accomplished?
 - Are there efforts that are underway to develop new private or public regional organic waste recycling facilities and the anticipated timeline for completion of those facilities?

- Are there other nondisposal opportunities or markets for greenwaste (e.g., on-site composting, etc.)?
- Are there appropriate zoning and permit requirements for the location of new or expanded organic waste recycling facilities to help with siting?
- Are there local incentives available, if any, for developing new organic waste recycling facilities within the jurisdiction?
- Have markets for recycled organic materials continually remained low or poor?
 - Has the jurisdiction investigated local and regional marketing options?
 - Has the jurisdiction investigated organics recycling opportunities with the private sector, e.g., partnering to site and build organics recycling facilities, collaborating with large commercial generators to manage waste on-site, such as small scale anaerobic digestion facilities, etc.?
- Are sufficient funds available to implement programs?
 - Has the jurisdiction investigated funding resources, e.g., CalRecycle grants/loans, Treasurer's Office loans and bonds, CA Energy Commission grants, etc.?
 - Has the jurisdiction investigated regional approaches to programs and expenses?
- What selected organics recycling facilities are not yet on-line?
 - Did financing options for a selected diversion facility fail?
 - Did the facilities face unavoidable regulatory delays? If so, did the jurisdiction explain the regulatory delays and how they affected the project time lines?
 - Did a jurisdiction elect to recover a certain type of material (e.g., food waste), but the hauler/operator will not cooperate and recover the waste type on behalf of the jurisdiction? Is the failure to recover the material(s) due to logistical problems?
- Is sufficient staff available to implement programs?
 - Has the jurisdiction investigated volunteer or internship programs?
 - Has the jurisdiction collaborated with the hauler(s)?
 - Has the jurisdiction investigated regional approaches to programs, expenses, and staffing?
- Are there existing contractual or legal issues that need to be addressed that are a barrier to diverting greenwaste that was

being used as ADC?

- Can the jurisdiction amend franchise agreements, contracts, or permits? If not, when do the agreements expire?
- Can the jurisdiction prepare a request for proposal(s) for the implementation of programs and facilities?
- What other considerations, including but not limited to market development obstacles, population density, waste generation rates, dominant waste generation categories and types, and geographic, demographic and economic factors, have affected the rural jurisdiction's ability to implement its commercial organics recycling program?
- If sufficient capacity at facilities that recycle green material is not expected to be operational before the jurisdiction's next review pursuant to Section 41825, was a reasonable plan to address those barriers that are within the control of the local jurisdiction provided?
 - Did the jurisdiction identify all barriers under its control?
 - Did the jurisdiction provide sufficient explanation and supporting information to explain how it would address this, or why it still cannot do so? I.e., is the plan reasonable in light of the barriers?
 - Did it provide a timeline for addressing the barriers?

Additional Considerations for SRRE Implementation

Statute provides for specific variations to the 25 and 50 percent diversion requirements. These variations include:

1. No more than 10 percent of the average (2003 through 2006) calculated per capita generation tonnage may be counted for a city, county, or regional agency's use of a CalRecycle- permitted transformation project (PRC Sections 41783);
2. Petitions for reduction for rural jurisdictions (PRC Section 41787);
3. Regional and rural regional agency formation (PRC Sections 40970 and 41787.1);
4. A two-year time extension for rural jurisdictions (PRC Section 41787.4);
5. A time extension granted by CalRecycle to a city that incorporated after January 1, 1990, and before January 1, 2001, (PRC Section 41820.5);
6. Pursuant to PRC Section 41784, if CalRecycle determines that a jurisdiction's SRRE will not achieve the 50 percent diversion requirement and a city or county chooses not to use a transformation project to achieve the 50 percent diversion requirement, CalRecycle shall not require the jurisdiction to use a transformation project to achieve

the 50 percent requirement;

7. A reduction of the diversion requirements of PRC Section 41780 for any city or county which, on or before January 1, 1990, disposed of 75 percent or more of its solid waste, collected by the jurisdiction or its authorized agents or contractors, by transformation if certain conditions exist (PRC Section 41786).

Staff considers the following criteria, as applicable, in addition to the previous criteria outlined above.

Rural Jurisdictions

[Note that, pursuant to SB 1016 (Wiggins, 2008) as of January 1, 2009, the definition of rural city, rural regional agency and rural county has changed. See PRC Sections 40183 and 40184 before applying this section]

- Has the rural jurisdiction utilized CalRecycle's rural assistance information and programs?
- Has the rural jurisdiction investigated regional approaches to program implementation?
- Is the rural jurisdiction qualified to petition for a reduction in diversion requirements?
- What other considerations, including but not limited to market development obstacles, population density, waste generation rates, dominant waste generation categories and types, and geographic, demographic and economic factors, have affected the rural jurisdiction's ability to meet the diversion requirements?

Approved Petition for Reduction

- Are rural cities and rural counties that are members of a rural regional agency eligible for a reduction in diversion requirements? If so, then the rural regional agency may be eligible for a reduction of the diversion requirements of PRC Section 41780. Has the rural regional agency petitioned CalRecycle for a reduction in the diversion requirements?
- Has a jurisdiction that qualifies for a reduction petitioned for a reduction in the diversion requirements?
- Did a jurisdiction petition for a reduction in diversion requirements and receive a reduced diversion requirement? If so, were the conditions of the petition reduction request met by the jurisdiction?
- If the jurisdiction has a CalRecycle-approved reduced diversion requirement, was the reported total reporting year disposal tonnage equal to or less than the maximum allowable disposal for that reduced disposal percentage?
- Has the jurisdiction implemented the programs specified in the approved petition?

- Are there any other considerations that affect the jurisdiction's ability to meet its reduced diversion requirements?

Extensions

- Did a newly incorporated city (incorporated after January 1, 1990) receive a time extension from the diversion requirements (PRC Section 41820.5)?
- Has the rural city, rural county, or rural regional agency been granted a two-year time extension (PRC Section 41787.4)?
- Is the jurisdiction achieving the maximum feasible amount of source reduction, recycling, and composting within its jurisdiction?

Regional Agencies

Jurisdictions that form a regional agency to share planning and diversion requirements of the Integrated Waste Management Act are required by PRC Section 40975(b)(2) to describe the method by which any civil penalties imposed will be allocated among the agency members. Each member of a regional agency, which is formed to allow its members to share diversion, is liable for the sum of the penalties that may be imposed against each member of the regional agency. Thus, a regional agency that has five members would be subject to a maximum penalty of \$50,000 per day. However, CalRecycle may consider the relevant circumstances that resulted in a regional agency (as described in PRC Sections 40970-40976) not achieving the diversion requirements and the individual members who may have contributed to the circumstances that resulted in a failure to achieve the diversion requirements.

PRC Section 40974 establishes the maximum liability for civil administrative penalties imposed pursuant to PRC Section 41813 or PRC Section 41850 at \$10,000 per day for each member of a regional agency. The remainder of PRC Section 40974 may be interpreted to provide an option for members of a regional agency to agree among themselves to a different maximum liability through an apportionment of the sum of the penalties that may be imposed against each member of the regional agency.

CalRecycle may consider a regional agency's joint powers agreement that specifies that all liability for fines rests with the non-complying agency member with no liability assigned to the regional agency or the authority.

An apportionment of penalties on agency members and not the regional agency may provide for flexibility for the regional agency to continue to resolve the issue that is causing the agency members to not meet the diversion requirements. CalRecycle may consider limiting penalties to a maximum of \$10,000 per day if a member's failure does not cause other members or the regional agency to fail to implement the programs in the regional SRRE. Consideration of no fines or penalties on a member or the regional agency may be given by CalRecycle if the agency member has demonstrated to the satisfaction of CalRecycle to have made good faith efforts to implement the programs assigned to it in the regional SRRE. Questions to consider include:

- Is the jurisdiction part of a regional agency or rural regional agency?
- Is the regional agency implementing its programs and meeting its diversion requirements?
- If a regional agency was dissolved, will each of the agency members meet the 50% equivalent per capita disposal requirements?

Transformation

- Did the jurisdiction claim no more than 10 percent of the average (2003 through 2006) calculated per capita generation tonnage (PRC Section 41783)?
- Did the jurisdiction dispose of 75 percent or more of its solid waste by transformation, and if so, were the statutory conditions in PRC Section 41786 met?

MANDATORY COMMERCIAL RECYCLING IMPLEMENTATION

Commencing July 1, 2012, each jurisdiction shall implement a commercial solid waste recycling program that consists of education, outreach and monitoring of businesses, that is appropriate for that jurisdiction and is designed to divert commercial solid waste from businesses, whether or not the jurisdiction has met the requirements of PRC Section 41780. Each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach and monitoring, and if applicable, enforcement efforts and exemptions, by providing updates in its electronic annual report.

To determine the level of Mandatory Commercial Recycling (MCR) implementation, staff review programs and data as part of the annual site visits, and use annual report information submitted by local jurisdictions, and other information, such as recovery rate data, educational materials both print and electronic, etc. Jurisdictions' compliance with the MCR requirements will be determined during the formal Jurisdiction Review (either during a two or four-year review cycle depending on which cycle the jurisdiction is on).

Staff uses the following criteria to determine the extent to which a jurisdiction has shown a good faith effort to implement its mandatory commercial recycling program. These criteria are provided to serve as an example. The criteria are not prescriptive and they are not a "checklist". They indicate the issues that will be examined when CalRecycle performs its Jurisdiction Reviews. There is no intent to mandate that each criterion be adhered to, and that, if not, that a local jurisdiction would be in a "failure" situation. The criteria are broken down into four sections: 1) Identifying Commercial Generators, 2) Conducting Education/Outreach, 3) Monitoring, and 4) Ensuring Commercial Recycling Services.

1. Identifying Commercial Generators

- Did the jurisdiction make a reasonable effort to annually identify the commercial generators that are required to recycle?
 - Did the jurisdiction provide data on the following in the Annual Report beginning August 1, 2013?
 - Number of regulated businesses.
 - Number of regulated multifamily complexes.
 - Number of regulated businesses that are recycling.
 - Number of regulated multifamily complexes that are recycling.
 - If any of this data is not available, did the jurisdiction explain why and how they are addressing gathering the data?
 - If applicable, did the jurisdiction provide the amount of recyclable material that is being diverted by businesses/multifamily complexes?
 - If any of the data was not provided, did the jurisdiction have a reasonable explanation and is the jurisdiction demonstrating that it is trying to address the gap?

 - If the jurisdiction is phasing in identification, did the jurisdiction provide adequate rationale?
 - Based upon this information CalRecycle will assess the extent to which businesses have complied with Section 42649.2, including information on the amount of disposal that is being diverted from the businesses, if available, and on the number of businesses that are subscribing to service.
 - If the number of businesses that have recycling service decreases during the review cycle, CalRecycle would assess the reasons further with the jurisdiction, including did the jurisdiction cease any active education or outreach efforts, did the rate structure change, etc.?
- 2.** CalRecycle would also assess the availability of markets for collected recyclables.
- 3.** Conducting Education/Outreach
- Did the jurisdiction provide information about its annual education and outreach efforts?
 - Did the jurisdiction use a variety of education and outreach approaches to inform covered businesses and multifamily complexes about the law and how to recycle, including electronic, print, and direct contact approaches?
 - Is this occurring annually?
 - Are there activities that were intended to be only one-time and did the jurisdiction provide an explanation that is reasonable?
 - Is education and outreach accessible to the targeted sector, e.g., can affected commercial customers readily find information on the jurisdiction or hauler's websites, is information provided at least annually, etc.?
 - Have language barriers been addressed, e.g., if needed, have materials been translated into other languages, is the website information available in other

languages, etc.?

- Have any incentives been provided to covered businesses and multifamily complexes, e.g., free or reduced cost collection services, technical assistance, awards and recognition, etc.?
- Has the jurisdiction utilized CalRecycle's free public information related to mandatory commercial recycling?
- Was sufficient staff available to implement the education and outreach? If not, were there budgetary constraints? How did the jurisdiction try to address this?
 - Has the jurisdiction investigated volunteer or internship programs?
 - Has the jurisdiction investigated regional approaches to programs, expenses, and staffing?
 - Was there a high turnover in staff?
 - Did the jurisdiction allot reasonable resources?
- If the jurisdiction is phasing in education and outreach, did the jurisdiction provide adequate rationale?
- In the case of a rural jurisdiction, what were the effects of small geographic size, low population density, or distance to markets?

4. Monitoring

- For those covered businesses and multifamily complexes that were not in compliance with the MCR law were covered businesses and multifamily complexes annually identified?
- Were covered businesses and multifamily complexes that were not in compliance annually notified about the law and how to comply with the law, e.g., non-compliant businesses were sent a letter by the jurisdiction, contacted via phone call, received an on-site meeting, etc.?
- If the jurisdiction is phasing in monitoring, did the jurisdiction provide adequate rationale?
- If any of the data was not provided, did the jurisdiction have a reasonable explanation and is the jurisdiction demonstrating that it is trying to address the gap?
- Were there staffing or budgetary constraints?
- In the case of a rural jurisdiction, were there issues regarding monitoring related to the geographic size of the jurisdiction, or low population density?

5. Ensuring Commercial Recycling Services

Pursuant to statute, jurisdictions may include, but are not limited to, the following elements in their commercial waste recycling services:

1. Requiring a hauler under a franchise contract or agreement to provide commercial recycling services for on-site collection of recyclables from

businesses.

2. Requiring permitted or contract haulers to provide commercial recycling services for on-site collection of recyclables from businesses in a non-franchised jurisdiction.
3. Implementing a mandatory commercial waste recycling policy or ordinance that requires businesses to hire a service provider to haul its recyclables to a source separated or mixed processing system that diverts recyclables from disposal, or to self-haul.

Additional program elements that might support a program include:

1. Establishing certification requirements for self-haulers.
2. Enforcement provisions, including a structure for fines and penalties.
3. Charging businesses a fee to cover the jurisdiction's costs of implementing the commercial waste recycling program.

Note: A jurisdiction may implement or enforce commercial recycling requirements that are more stringent or comprehensive than the law.

Determining Progress Achieved in Implementing a Commercial Recycling Program:

In addition to the questions above, what constitutes “commercial waste recycling services” will vary depending on many factors, such as the types of commercial generators and the types of recyclables that are generated, the types of existing or potential infrastructure for processing recyclable materials, on-site collection options, etc. The commercial waste recycling services must be appropriate for the jurisdiction and

meet the needs of its businesses; it must provide opportunities for the regulated businesses to avail themselves of organics recycling services.

- Did the jurisdiction sufficiently demonstrate that the commercial recycling programs available to regulated businesses and multifamily complexes are adequate?
- What is the recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses? Note: Pursuant to statute, CalRecycle may review the recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses, as well as all information, methods, and calculations, and any additional performance data.
- If the jurisdiction has not been able to implement a commercial recycling program that is appropriate for the jurisdiction and meets the needs of its businesses, has it done the following:
 - Have markets for recycled materials continually remained low or poor?
 - Have China's or other countries' import policies caused the absence or loss of a market for recyclable materials diverted by solid waste facilities that necessitated the disposal of those materials as a temporary measure to avoid a public health threat associated with storing recyclable materials in amounts that exceed the permitted or design capacity of a solid waste facility?
 - To what extent is the lack of an available market for one or more types of recyclable materials the result of circumstances beyond the reasonable control of the jurisdiction, and to what extent did this prevent the jurisdiction from fully implementing its diversion programs?
 - To what extent has the jurisdiction made efforts to reduce contamination and improve the quality of recycled materials such that they can be used as feedstocks in the manufacturing of new recycled-content products, e.g., were rates increased to address additional processing costs and education?
 - Has the jurisdiction investigated local and regional marketing options?
 - Has the jurisdiction investigated recycling opportunities with the private sector, e.g., partnering to site and build recycling manufacturing facilities, etc.?
 - Were sufficient funds available to implement programs?
 - Has the jurisdiction investigated funding resources, e.g., CalRecycle grants/loans, Treasurer's Office loans and bonds, CA Energy Commission grants, etc.?
 - Has the jurisdiction investigated regional approaches to programs and expenses?

- What selected recycling facilities are not yet on-line?
 - Did financing options for a selected diversion facility fail?
 - Did a jurisdiction face unavoidable regulatory delays? If so, did the jurisdiction explain the regulatory delays and how they affected the project timelines?
 - Did a jurisdiction elect to recover a certain type of material, but the hauler/operator will not cooperate and recover the waste type on behalf of the jurisdiction? Is the failure to recover the material(s) due to logistical problems?
- Was insufficient staff available to implement programs?
 - Has the jurisdiction investigated volunteer or internship programs?
 - Has the jurisdiction collaborated with the hauler(s)?
 - Has the jurisdiction investigated regional approaches to programs, expenses, and staffing?
 - Was there a high turnover in staff?
 - Did the jurisdiction allot reasonable resources?
- Have existing contractual or legal issues prohibited a jurisdiction from implementing programs?
 - Can the jurisdiction amend franchise agreements, contracts, or permits? If not, when do the agreements expire?
 - Can the jurisdiction prepare a request for proposal(s) for the implementation of programs and facilities?
- What other considerations, including but not limited to market development obstacles, population density, waste generation rates, dominant waste generation categories and types, and geographic, demographic and economic factors, have affected the rural jurisdiction's ability to implement its commercial recycling program?

MANDATORY COMMERCIAL ORGANICS RECYCLING IMPLEMENTATION

On and after January 1, 2016, each jurisdiction is required to implement an organic waste recycling program that is appropriate for that jurisdiction and designed specifically to divert the organic waste generated by businesses subject to Section 42649.81, whether or not the jurisdiction has met the requirements of Section 41780.

The intent of AB 1826, the Mandatory Commercial Organics Recycling law is to divert

organic materials from landfills, primarily by requiring: 1) a business that generates a specified amount of organic waste per week to arrange for recycling services for that organic waste; and 2) jurisdictions to implement mandatory organic waste recycling programs.

Every jurisdiction's organic waste recycling program at a minimum **must** consist of the following for the businesses that meet the required thresholds (described in more detail on the following pages):

1. Identifying the businesses that are required to recycle their organic waste.
2. Education and outreach to inform businesses about the law and how to recycle organics in the jurisdiction.
3. Implementing annual monitoring activities to identify those not recycling and to inform them of the law and how to recycle organics in the jurisdiction.
4. Ensuring that organic waste recycling services are available to businesses in the jurisdiction that meet the required threshold.

To determine the level of Mandatory Commercial Organics Recycling (MORe) implementation, staff would review programs and data as part of the annual site visits, and use information such as annual report information submitted by local jurisdictions, tonnage data, education information, etc. Jurisdictions' compliance with the MORe requirements will be determined during the formal Jurisdiction Review (either during a two or four-year review cycle depending on which cycle the jurisdiction is on).

As part of this, CalRecycle recognizes that the AB 1826 requirement for jurisdictions to implement mandatory organic waste recycling programs may require more than what AB 341 required for mandatory commercial recycling. For example, if the jurisdiction has to implement new or expanded commercial organic recycling programs and if determining the businesses that meet the compliance threshold is more complex, e.g., due to complexity of identifying businesses that generate certain thresholds of organic material. To assist jurisdictions in developing appropriate programs and understanding how CalRecycle will assess program implementation and compliance, CalRecycle developed a separate analytical tool to demonstrate the nature of the questions and information that staff will use in reviewing jurisdiction programs – e.g., has the jurisdiction done the following:

- Identified covered businesses and the amount of organic material they generate,
- Assessed if the covered businesses are already diverting their organic material,
- Determined the availability of existing organics recycling services to those covered businesses and the need for additional services,
- Determined what else it will need to implement to meet the needs of its covered

businesses, and,

- Reported to CalRecycle if there are barriers and developed and provided a plan to address the barriers?

While jurisdictions do not need to use this analytical tool, they should be aware that it reflects the types of information that CalRecycle will be looking to assess as part of the formal Jurisdiction Review.

CalRecycle has incorporated the substance of this approach into the following criteria that staff would use to determine the extent to which a jurisdiction has shown a good faith effort to implement its mandatory organics recycling program. These criteria are provided to serve as an example. The criteria are not prescriptive and they are not a "checklist". They indicate the issues that will be examined when CalRecycle performs its Jurisdiction Reviews. There is no intent to mandate that each criterion be adhered to, and that, if not, that a local jurisdiction would be in a "failure" situation. The criteria are broken down into four sections: 1) Identifying Commercial Generators of Organic Materials, 2) Conducting Education/Outreach, 3) Monitoring, and 4) Ensuring Commercial Recycling Services.

Note: If jurisdictions meet the criteria for a rural exemption as provided for in AB 1826 and submitted the exemption resolution to CalRecycle, they will be exempt from implementing the requirements of AB 1826 and not subject to enforcement.

1. Identifying Covered Commercial Businesses of Organic Materials

- Did the jurisdiction make a reasonable effort to annually identify the commercial businesses that are required to recycle their organic waste?
 - How did the jurisdiction identify the covered commercial organics businesses?
 - Did the jurisdiction identify the types of existing organics diversion programs that the covered commercial businesses have in place?
 - Did the jurisdiction identify the types of programs that it has for covered commercial organics businesses?
 - Did the jurisdiction identify expanded or new programs that are needed to meet the needs of businesses?

- Did the jurisdiction provide data on the following regarding covered businesses in the Annual Report beginning August 1, 2017?
 - Number of covered businesses.
 - Number of covered multifamily complexes.
 - Number of covered businesses that are recycling organic waste.
 - Number of covered multifamily complexes that are recycling green waste, landscape and pruning waste, and nonhazardous wood waste.
 - The methodology used to identify covered businesses and multifamily complexes.
 - If any of this data is not available, an explanation of why and how the

- jurisdiction is are addressing gathering the data
 - If applicable, the amount of organic material that is being diverted by covered businesses/multifamily complexes
- If any of the data was not provided, did the jurisdiction have a reasonable explanation and is the jurisdiction demonstrating that it is trying to address the gap?
- If the jurisdiction is phasing in identification, did the jurisdiction provide adequate rationale?
- Based upon this information CalRecycle will assess the extent to which jurisdictions have monitored which covered businesses are in compliance with Section 42649.81, including information on the amount of organic waste that is being diverted from covered businesses, if available, and on the number of covered businesses that are subscribing to service. If the number that have recycling service decreases during the review cycle, then CalRecycle would explore further with the jurisdiction to assess the reasons, including did the jurisdiction cease any active education or outreach efforts, did the rate structure change, etc.?

2. Conducting Education/Outreach

- Did the jurisdiction provide information about its annual education and outreach efforts?
- Did the jurisdiction use a variety of education and outreach approaches to inform covered businesses and multifamily complexes about the law and how to recycle organics, including electronic, print, and direct contact approaches?
 - Is this occurring annually?
 - Are there activities that were intended to be only one-time and did the jurisdiction provide an explanation that is reasonable?
- Is education and outreach accessible to the targeted sector, e.g., can affected commercial businesses readily find information on the jurisdiction or hauler's websites, is information provided at least annually, etc.?
- Have language barriers been addressed, e.g., if needed, have materials been translated into other languages, is the website information available in other languages, etc.?
- Have any incentives been provided to covered businesses and multifamily complexes, e.g., free or reduced cost collection services, technical assistance, awards and recognition, etc.?
- Has the jurisdiction utilized CalRecycle's free public information related to mandatory organics recycling?
- Was insufficient staff available to implement the education and outreach? Were there budgetary constraints? How did the jurisdiction try to address this?

- Has the jurisdiction investigated volunteer or internship programs?
- Has the jurisdiction investigated regional approaches to programs, expenses, and staffing?
- Was there a high turnover in staff?
- Did the jurisdiction allot reasonable resources?
- If the jurisdiction is phasing in education and outreach, did the jurisdiction provide adequate rationale?
- In the case of a rural jurisdiction, what were the effects of small geographic size, low population density, or distance to markets?

3. Monitoring

- Were covered businesses and multifamily complexes annually identified that were not in compliance with the Mandatory Organics Recycling law?
- Were covered businesses and multifamily complexes that were not in compliance annually notified about the law and how to comply with the law, e.g., non-compliant businesses were sent a letter by the jurisdiction, contacted via phone call, received an on-site meeting, etc.?
- If the jurisdiction is phasing in education and outreach, did the jurisdiction provide adequate rationale?
- If any of the data was not provided, did the jurisdiction have a reasonable explanation and is the jurisdiction demonstrating that it is trying to address the gap?
- Were there staffing or budgetary constraints?
- In the case of a rural jurisdiction, were there issues regarding monitoring related to the geographic size of the jurisdiction, or low population density?

4. Ensuring Organic Waste Recycling Services

Pursuant to statute, jurisdictions may include, but are not limited to, the following three elements in their organic waste recycling services:

1. Requiring a hauler under a franchise contract or agreement to provide commercial organic recycling services for on-site collection of organics from businesses.
2. Requiring permitted or contract haulers to provide commercial organic recycling services for on-site collection of organics from businesses in a non-franchised jurisdiction.
3. Implementing a mandatory commercial organic waste recycling policy or ordinance that requires businesses to either hire a service provider to haul its organic waste to a source separated or mixed processing system that diverts organic waste from disposal, or to self-haul

These three elements also might be implemented in conjunction with food rescue programs, on-site composting/AD, self-hauling by businesses, and landscaping services that collect the greenwaste and recycle it. Additional program elements that might support a program include:

1. Establishing certification requirements for self-haulers or businesses that manage organics on site.
2. Enforcement provisions, including a structure for fines and penalties.
3. Charging businesses a fee to cover the jurisdiction's costs of implementing the organic waste recycling program.

Note: A jurisdiction may implement or enforce organic waste recycling requirements that are more stringent or comprehensive than the law.

Determining Progress Achieved in Implementing a Commercial Organics Waste Recycling Program:

What constitutes "organics waste recycling services" will vary depending on many factors, such as the types of commercial generators and the types of organics that are generated, the types of existing or potential infrastructure for processing organic materials, on-site collection options, etc. The organics waste recycling services must be appropriate for the jurisdiction and meet the needs of its businesses; it must provide opportunities for the regulated businesses to avail themselves of organics recycling services.

1. Looking at the data regarding generators (see *Identifying Generators* above), did the jurisdiction sufficiently demonstrate that the commercial organics recycling programs available to regulated businesses and multifamily complexes are adequate?
 - a. How is the program sufficient, e.g., if the jurisdiction only has food rescue and allows businesses to manage it onsite via composting or anaerobic digestion, and there is no on-site collection services, did the jurisdiction demonstrate that this is sufficient to meet the needs of the businesses and multifamily complexes?
2. Did the jurisdiction demonstrate that its commercial organics recycling programs are effective?
 - a. What is the recovery rate of the commercial waste from the material recovery facilities that are utilized by the covered businesses? Note: Pursuant to statute, CalRecycle may review the recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses, as well as all information, methods, and calculations, and any additional performance data.
 - b. Are the programs, in combination with other available services, sufficient to provide for the collection where needed of all organic

materials from regulated businesses?

3. If the jurisdiction has not been able to implement a commercial organics recycling program that is appropriate for the jurisdiction and meets the needs of its covered businesses, has it done the following:
 - a. Have markets for recycled organic materials continually remained low or poor? (See *Additional Reporting and Analysis Requirements* below.)
 - i. Has the jurisdiction investigated local and regional marketing options?
 - ii. Has the jurisdiction investigated organics recycling opportunities with the private sector, e.g., partnering to site and build organics recycling facilities, collaborating with large commercial generators to manage waste on site, such as small scale anaerobic digestion facilities, etc.?
 - b. Were sufficient funds available to implement programs?
 - i. Has the jurisdiction investigated funding resources, e.g., CalRecycle grants/loans, Treasurer's Office loans and bonds, CA Energy Commission grants, etc.?
 - ii. Has the jurisdiction investigated regional approaches to programs and expenses?
 - c. What selected organics recycling facilities are not yet on-line? (See *Additional Reporting and Analysis Requirements* below.)
 - i. Did financing options for a selected diversion facility fail?
 - ii. Did a jurisdiction face unavoidable regulatory delays? If so, did the jurisdiction explain the regulatory delays and how they affected the project time lines?
 - iii. Did a jurisdiction elect to recover a certain type of material (e.g., food waste), but the hauler/operator will not cooperate and recover the waste type on behalf of the jurisdiction? Is the failure to recover the material(s) due to logistical problems?
 - d. Was insufficient staff available to implement programs?
 - i. Has the jurisdiction investigated volunteer or internship programs?
 - ii. Has the jurisdiction collaborated with the hauler(s)?
 - iii. Has the jurisdiction investigated regional approaches to programs, expenses, and staffing?
 - iv. Was there a high turnover in staff?

- v. Did the jurisdiction allot reasonable resources?
 - e. Have existing contractual or legal issues prohibited a jurisdiction from implementing programs?
 - i. Can the jurisdiction amend franchise agreements, contracts, or permits? If not, when do the agreements expire?
 - ii. Can the jurisdiction prepare a request for proposal(s) for the implementation of programs and facilities?
 - f. What other considerations, including but not limited to market development obstacles, population density, waste generation rates, dominant waste generation categories and types, and geographic, demographic and economic factors, have affected the rural jurisdiction's ability to implement its commercial organics recycling program?
4. Note: Due to the amount of organics generated by the commercial sector, the jurisdiction may be able to phase in organics recycling services. For example, some jurisdictions may not have any businesses that generate 8 cy/week of organics, but do have businesses that generate 4 cy/week of organics. For these jurisdictions they may not need to implement organics recycling services until 2017. For jurisdictions that don't have businesses that generate 4 cy/week of organics and have businesses that generate 4 cy/week of trash, they may not need to implement organics recycling services until 2019.
5. Did the jurisdiction meet additional reporting and analysis requirements?

The following shall be reported in the Electronic Annual Report beginning August 1, 2017, for compost, anaerobic digestion and chip and grind facilities, and may include other facilities that recycle organic waste. This information will be analyzed by CalRecycle to determine if the jurisdiction's efforts to implement an organics recycling program are adequate.

- a. The names of compost, anaerobic digestion and chip and grind facilities, within a reasonable vicinity and the capacities available for materials to be accepted at each facility?
- b. Existing solid waste and organic waste recycling facilities within the jurisdiction that may be suitable for potential expansion or colocation of organic waste processing or recycling facilities?
- c. Efforts of which the jurisdiction is aware that are underway to develop new private or public regional organic waste recycling facilities and the anticipated timeline for completion of those facilities?
- d. A summary of closed or abandoned sites that may be available for new

organic waste recycling facilities?

- e. Other nondisposal opportunities or markets (e.g., food donation, on-site composting, etc.)
- f. Are there appropriate zoning and permit requirements for the location of new organic waste recycling facilities to help with siting?
- g. Are there local incentives available, if any, for developing new organic waste recycling facilities within the jurisdiction?
- h. If there are known barriers to siting or expanding organic waste recycling facilities in the area that are in the jurisdiction's control, did the jurisdiction provide a summary of the jurisdiction's plan to remedy the barriers?

HHWE IMPLEMENTATION

Each HHWE describes programs for the safe collection, recycling, treatment and disposal of hazardous wastes generated by households, a monitoring program, funding sources, and a specific implementation time frame. CalRecycle staff recommends using the following criteria to determine whether selected programs were implemented, and to assess the reasons a jurisdiction has failed to implement its HHW programs. CalRecycle staff will also determine if the jurisdiction is following the HHWE implementation schedule. Jurisdictions failing to fully implement their HHWE may be fined up to \$10,000 per day.

Criteria for HHWE Implementation

Programs Implemented

Jurisdictions implementing their HHW programs are not subject to fines by CalRecycle. Staff recommends the following criteria be used to determine if programs were implemented. For example:

- Was a HHW event or a permanent collection facility made available to all households in the jurisdiction, regardless of actual participation?
- What expenditures have been devoted to HHW collection, treatment, recycling, and disposal?
- What efforts have been made to inform the public about HHW and HHW collection events and/or facilities?
- Have the time frames specified in the HHWE for implementing programs been followed (considering reasonable barriers to implementation)?

Programs Not Implemented

Staff recommends investigating the extent to which a jurisdiction has implemented programs, and the reasons they have failed to implement programs. Based upon the evaluation, staff may recommend to CalRecycle that a jurisdiction be issued a compliance order. CalRecycle may consider assessing fines of up to \$10,000 per day to jurisdictions that fail to meet the requirements of their compliance orders, on a case-by-case basis. Example criteria include:

- What programs were not implemented?
- Has the jurisdiction investigated local and regional waste exchange, recycling and reuse options?
- Were insufficient funds available to implement programs?
 - Has the jurisdiction investigated grants available from CalRecycle, the US EPA, etc.?
 - Has the jurisdiction investigated regional approaches to programs and expenses?
 - Has the jurisdiction investigated all financial options selected in the HHWE?
- Have time frames projected in the HHWE been met?
 - What factors have affected these timeframes?
 - Will time frames be adjusted to continue program implementation?
- What other problems has the jurisdiction encountered in program implementation?
- Was insufficient staff available to implement programs?
 - Has the jurisdiction investigated volunteer or internship programs?
 - Has the jurisdiction investigated regional approaches to programs, expenses, and staffing?
- Have existing contractual or legal issues prohibited a jurisdiction from implementing programs?

DETERMINATION OF SRRE AND HHWE IMPLEMENTATION

CalRecycle staff will refer to the various components of the SRRE and HHWE, information from a jurisdiction's annual report, CalRecycle's Review, and other information sources to determine how fully a jurisdiction has implemented its SRRE and HHWE.

Annual Reports

SRRE Information

Each jurisdiction is required to annually submit a report to CalRecycle summarizing its progress in implementing waste diversion programs and achieving the diversion requirements. A jurisdiction's annual per capita disposal rate and up-to-date information on its diversion programs should be included in each annual report.

Annual reports must be submitted to CalRecycle by August 1 of each year following the year of Board approval of a jurisdiction's SRRE, with the first annual report (for 1995) due by August 1, 1996, and each year thereafter.

CalRecycle will provide jurisdictions with a model annual report.

Commencing with the 2012 Annual Report (due August 1, 2013) each jurisdiction must report annually on its implementation of MCR. Commencing with the 2016 Annual Report (submitted on August 1, 2017) each jurisdiction must report annually on its implementation of MORE. Commencing with the 2017 Electronic Annual Report (due August 1, 2018) each jurisdiction must report annually on its implementation of AB 1594. CalRecycle will provide jurisdictions with guidance in the Electronic Annual Report on the information that needs to be reported.

HHWE Information

Each jurisdiction is also required to include in its annual report information summarizing its progress in implementing the household hazardous waste programs selected in its HHWE.

CalRecycle Jurisdiction Review Cycles

Based on the information provided in a jurisdiction's annual reports submitted pursuant to PRC Section 41821 and any other relevant information, CalRecycle shall make a finding as to whether each jurisdiction was in compliance with PRC Section 41780 for the calendar year 2006 and shall review a jurisdiction's compliance with the diversion requirements of PRC Section 41780 as follows (PRC Section 41825), as well as PRC Section 42649 (MCR and MORE), and PRC Section 41781.3:

- If the jurisdiction was in compliance for the calendar year 2006, commencing January 1, 2012, and at least once every four years thereafter, CalRecycle shall review whether the jurisdiction has implemented its SRRE, HHWE, MCR and MORE.
- If the jurisdiction made a good faith effort to implement its SRRE and HHWE, commencing January 1, 2010, and at least once every two years thereafter, CalRecycle shall review, whether the jurisdiction has implemented its SRRE, HHWE, MCR and MORE.

- If the jurisdiction was not in compliance for the calendar year 2006, commencing January 1, 2010, and at least once every two years thereafter, CalRecycle shall review, whether the jurisdiction has implemented its SRRE, HHWE, MCR and MORE.
- If a jurisdiction subject to a two-year schedule subsequently comes into compliance with PRC Section 41780, CalRecycle has discretion to switch the jurisdiction to a four-year review schedule.
- If a jurisdiction subject to a four-year schedule subsequently falls out of compliance with PRC Section 41780, CalRecycle has discretion to switch the jurisdiction to a two-year review schedule.
- In addition to the above requirements, CalRecycle may review whether a jurisdiction is in compliance with PRC Section 41780 at any time that CalRecycle receives information that the jurisdiction may not be making a good faith effort to implement its SRRE, HHWE, MCR or MORE.

Compliance Measurements

Pursuant to SB 1016, as of January 1, 2009 the 50% equivalent per capita disposal target is the amount of disposal a jurisdiction would have had during the base period if it had been exactly at a 50% diversion rate. It is calculated using the average of 2003-2006 per capita generation for each jurisdiction (in pounds). It then divides this generation average in half to determine the 50% equivalent per capita disposal target. This is the only time that generation will be used. This target will be specific to each jurisdiction and is not comparable to those of other jurisdictions.

The target is an indicator for comparison with that jurisdiction's annual per capita per day disposal rate beginning with the 2007 program year.

Disposal reporting requirements are described in 14 CCR, Article 9.2, Sections 18800-18813. A jurisdiction will determine its yearly disposal amount based on disposal information provided by one or more counties as part of CalRecycle's Disposal Reporting System. Jurisdictions will measure and report on their achievement of the 25 percent diversion requirement for the years 1995 through 1999, and achievement of the 50 percent diversion requirement for 2000 and beyond.

A jurisdiction will measure its progress toward achieving the applicable waste diversion requirement as required in PRC Section 41780 by following the requirements outlined in PRC Sections 41780.05, 41780.1 and 41780.2, and Sections 41781 through 41786, as applicable.

Criteria for Measuring Diversion Requirements

Staff recommends using the following criteria to determine whether the applicable diversion requirement has been achieved. Information will be obtained from the

electronic annual report, information provided by the jurisdiction, and other sources as necessary.

- Has the jurisdiction updated its SRRE and/or, HHWE through the electronic annual report to include any new or expanded programs it has implemented or plans to implement?
- Has the jurisdiction updated its NDFE through the electronic annual report to reflect any new or expanded non-disposal facilities it is using or planning to use?
- Is the total actual per capita disposal amount reported in the jurisdiction's applicable annual report equal to or less than the 50% equivalent per capita disposal allowable to meet the applicable diversion requirement of PRC Section 41780, or CalRecycle-approved reduced diversion requirement?
- Has the jurisdiction summarized its progress in diverting construction and demolition material, including information on programs and ordinances implemented by the local government and quantitative data, where applicable?
- Has the jurisdiction included other information relevant to compliance with PRC Section 41780 including, but not limited to:
 - Information on disposal reported pursuant to PRC Section 41821.5 that the jurisdiction believes may be relevant to CalRecycle's determination of the jurisdiction's per capita disposal rate.
 - Disposal characterization studies or other completed studies that show the effectiveness of the programs being implemented.
 - Factors that the jurisdiction believes would affect the accuracy of or mitigate the amount of solid waste disposed by the jurisdiction including but not limited to either of the following:
 - Whether the jurisdiction hosts a solid waste facility or any regional diversion facility.
 - The effects of self-hauled waste and construction and demolition waste.
 - The extent to which the jurisdiction previously relied on biomass diversion credit and the extent to which it may be impacted by the lack of the credit.
 - Information regarding the programs the jurisdiction is undertaking to address specific disposal challenges and why it is not feasible to implement programs to respond to other factors that affect the amount of waste that is disposed.
- Is the actual per capita disposal rate reflective of actual programmatic performance?

Not Meeting Diversion Requirements

- If the total annual per capita disposal rate is greater than the jurisdiction's 50% equivalent per capita disposal target, how much greater is it?
- Is the increase in per capita disposal rate the result of the jurisdiction's disposal increasing faster than the jurisdiction's growth?
- Is the actual per capita disposal rate reflective of actual programmatic performance?
- Has the jurisdiction provided relevant and substantive documentation indicating that the factors used in calculating its annual per capita disposal rate may have resulted in rate 50% equivalent per capita disposal target that is inaccurate and may require correction?

ENFORCEMENT

The preceding sections entitled "SRRE Implementation," "HHWE Implementation," MCR Implementation, and MORE Implementation outline the criteria staff uses to determine level of implementation. The following section outlines the enforcement processes recommended to be used by CalRecycle.

Steps Toward Issuance of a Compliance Order

CalRecycle's Jurisdiction Review process will be used to assess the level of implementation of jurisdictions' SRREs and HHWEs. Also, CalRecycle's Jurisdiction Review process will be used to assess the level that each jurisdiction has made in implementing MCR, MORE, and AB 1594. For example, for the 1999/2000 Biennial Review, staff evaluated the program implementation and diversion rate information in jurisdictions' 1999 and 2000 Annual Reports to determine their progress in implementing diversion programs selected in their SRREs (and HHWEs) and in meeting the 50 percent diversion requirement in 2000. Staff then presented the results of that review and their recommendations to the Board at a regularly scheduled meeting. To the extent possible, this hearing will be held in the local or regional agency's jurisdiction (PRC Section 41825).

If CalRecycle finds, after the public hearing, that a jurisdiction has failed to adequately implement its SRRE and/or HHWE and fits into Scenarios II or III, CalRecycle may issue an Order of Compliance, including a compliance schedule (PRC Section 41825). CalRecycle will follow the procedures for issuing compliance orders it adopted at the January 23-24, 2001, Board meeting. Jurisdictions determined to be in Scenario IV will be issued an Order of Compliance, including a compliance schedule. The compliance order will identify the programs of the SRRE and/or HHWE that are not being implemented or attained by the jurisdiction, or identify areas of the SRRE and/or

HHWE that require revision. Staff recommends that CalRecycle set a specific schedule for the jurisdiction to act on these findings, to be determined on a case-by-case basis.

CalRecycle will follow the requirements of PRC Section 41825 regarding issuing a jurisdiction a compliance order for failure to adequately implement its SRRE and/or HHWE.

If CalRecycle finds, after the public hearing, that a jurisdiction has failed to adequately implement its MCR and/or MORE requirements regardless if it met the diversion requirements of PRC Section 41780 and has not demonstrated a good faith effort to implement one or both of these programs, CalRecycle may issue an Order of Compliance, including a compliance schedule (PRC Section 41825). CalRecycle will follow the procedures for issuing compliance orders it adopted at the January 23-24, 2001, Board meeting. The compliance order will identify the programs for mandatory commercial recycling and mandatory commercial organics recycling that are not being implemented by the jurisdiction. CalRecycle will set a specific schedule for the jurisdiction to act on these findings, to be determined on a case-by-case basis. CalRecycle will follow the requirements of PRC Section 41825 regarding issuing a jurisdiction a compliance order for failure to adequately implement its MCR and/or MORE programs.

If CalRecycle finds, after the public hearing, that a jurisdiction has failed to adequately implement its requirements under AB 1594 and fits into Scenarios II or IV and has not made a good faith effort to address the barriers to divert greenwaste that was being used as ADC, CalRecycle may issue an Order of Compliance, including a compliance schedule (PRC Section 41825). CalRecycle will follow the procedures for issuing compliance orders it adopted at the January 23-24, 2001, Board meeting. The compliance order will identify the greenwaste programs that are not being implemented. CalRecycle will set a specific schedule for the jurisdiction to act on these findings, to be determined on a case-by-case basis.

CalRecycle will follow the requirements of PRC Section 41825 regarding issuing a jurisdiction a compliance order for failure to adequately implement AB 1594's requirements.

If a jurisdiction fails to meet the requirements of its compliance order and CalRecycle is determining whether or not to impose a fine, or determining the amount of a fine, including cases where a jurisdiction failed to meet the diversion requirements due to the inability to count the excluded wastes (agricultural waste, inert solids, scrap metals and white goods), CalRecycle will follow the requirements of PRC Section 41850(b). That Section states that in determining the amount of any penalties imposed, including penalties imposed due to the exclusion of solid waste pursuant to PRC Section 41781.2 which results in a reduction in the quantity of solid waste diverted by a city or

county, CalRecycle shall consider only those relevant circumstances which have prevented a city or county or regional agency from meeting the diversion requirements. PRC Section 41850 provides a non-exclusive list of potential circumstances CalRecycle shall consider before assessing a fine, as noted in the “Statutory Relief Considerations” section below.

Statutory Relief Considerations

The preceding criteria will be used to recommend to CalRecycle whether a jurisdiction has implemented its SRRE, HHWE, and met the MCR, MORE, and AB 1594 requirements. Administrative civil penalties of up to \$10,000 per day per may be levied on jurisdictions failing to implement their SRRE and HHWEs, or for failing to meet these other requirements; however, statute allows CalRecycle to consider the following circumstances when determining the amount of the civil penalty.

- Disasters or acts of nature, such as the Northridge, Ferndale, and Loma Prieta earthquakes, the Oakland Hills and Malibu fires, or the mudslides that are common to California, which result in short-term increases in the amount of wastes sent to landfills and short or long-term re-direction of city and county personnel who must respond to the health and safety issues resulting from the acts of nature.
- Budgetary conditions within a jurisdiction that could not be remedied by the imposition or adjustment of solid waste fees. Examples include high unemployment, a limited tax base, or existing solid waste contracts that cannot be altered.
- Work stoppages that directly prevent a jurisdiction from implementing its source reduction and recycling element. This may include unanticipated industry closures, closure of privately-owned composting or materials recovery facilities, strikes by city or county labor unions, or work stoppages in private industries that provide support and/or materials to a jurisdiction through a public-private partnership.
- The extent to which a jurisdiction has implemented additional source reduction, recycling, and composting activities to comply with the diversion requirements. This would include the implementation of programs not initially selected in the SRRE, but chosen to make up for an unanticipated diversion shortfall in a selected program or to adjust to meet changes in the composition of the jurisdiction's waste stream.
- The extent to which a jurisdiction is meeting the diversion requirements.
- The extent to which a jurisdiction has made good faith efforts to implement its SRRE or HHWE. "Good faith effort" is shown when a city, county, or regional agency has made all reasonable and feasible efforts to implement those programs or activities identified in its SRRE or HHWE, or alternative programs or activities

that achieve the same or similar results. A jurisdiction will be required to demonstrate to CalRecycle its good faith efforts. CalRecycle will determine the adequacy of the effort, as described by the city, county or regional agency.

- MCR has some specific provisions for determining Good Faith Effort at PRC 42649.3 (i)(1-7).
- MORE has some specific provisions for determining Good Faith Effort at PRC 42649.82 (h)(1-10).

Compliance Order and Schedule

Jurisdictions that are issued Compliance Orders by CalRecycle will work with staff to develop compliance schedules for implementing the Order. CalRecycle staff will monitor the progress of the jurisdiction throughout the compliance period. In determining the appropriate compliance schedule, staff recommends CalRecycle consider the following:

- a) Existing budgetary and/or personnel constraints or other compelling issues within the jurisdiction (for example, time required to solicit proposals, conduct bid processes, establish pilot programs, generate funding);
- b) Alternative programs the jurisdiction may undertake to meet the diversion requirements (including MCR, MORE, and AB 1594) and/or SRRE implementation requirements;
- c) Local regulatory or zoning conditions that would prohibit or postpone compliance; and
- d) Impacts of the compliance schedule to public health and the environment.

Staff recommends CalRecycle include specific requirements in the compliance schedule to ensure compliance is attained, including, but not limited to, the following:

- a) A date by which the jurisdiction will achieve compliance with the requirements set forth by CalRecycle; and
- b) A specific monitoring schedule for CalRecycle to assess progress toward compliance.

Time frames for monitoring a jurisdiction's performance may include periodic (e.g., quarterly) progress reports of the jurisdiction's efforts to attain compliance.

Penalty Structure

CalRecycle may impose fines only after a jurisdiction fails to adhere to the Compliance Order and schedule requirements. Fines would be levied according to the cause of

failure to adequately implement a SRRE, HHWE, or meet the MCR, MORE and/or AB 1594 requirements, as listed below. Staff will recommend to CalRecycle an appropriate level of penalty, based on an analysis of the above-mentioned criteria.

1. "Serious" failure includes jurisdictions that fail to implement their SRRE, HHWE, MCR or MORE requirements 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 jurisdictions that fail to implement their SRRE, HHWE, MCR or MORE requirements 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 jurisdictions that have implemented some or all programs, but have failed to meet the diversion requirements to some extent. Fines will be based on information provided by jurisdictions as outlined in the above criteria for implementation, 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 to up to \$1,000 per day.

Notwithstanding the above penalty structure, if a jurisdiction demonstrates that it has made a good faith effort to implement its SRRE and to meet the MCR, MORE, and AB 1594 requirements, including achieving the diversion requirements, CalRecycle, on a case-by-case basis, shall not impose any penalties.

Removal of Penalties

Jurisdictions 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.

CONCLUSION

CalRecycle staff has prepared this report that explains the method and criteria staff recommends using to determine whether local jurisdiction SRREs, HHWEs, and the requirements of MCR, MORE, and AB 1594 have been adequately implemented. It also proposes a process that CalRecycle and local jurisdictions would use to achieve compliance with implementation requirements, and the structure of penalties that may be imposed on jurisdictions that fail to adequately implement their SRREs and HHWEs and the requirements of MCR, MORE, and AB 1594.

APPENDICES

Appendix A: Definitions

"Disasters/Acts of Nature" includes the proclamation by the Governor or a local governing body of the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state or local area caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake or other conditions which, by reason of their magnitude, are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city.

"Disposal" means all waste created by all sources within each jurisdiction (including businesses, government agencies and residents) which is disposed at CalRecycle-permitted landfills or CalRecycle-permitted transformation facilities, or is exported from the state. CalRecycle tracks tons of waste disposed by each jurisdiction using its Disposal Reporting System. Also, see Public Resources Code Section 41821.5.

"Diversion program" means a program in the source reduction and recycling element of a jurisdiction's integrated waste management plan, specified in Chapter 2 (Commencing with Section 41000) of, or Chapter 3 (commencing with Section 41300) of, Part 2 and that has the purpose of diverting solid waste from landfill disposal or transformation through source reduction, recycling, and composting activities. "Diversion program additionally includes any amendments, revisions, or updates to the element, and any programs set forth in a time extension, alternative requirement, or compliance order approved by CalRecycle pursuant to Part 2 (commencing with Section 40900).

"Employment" means the estimate of the annual average number of employees by jurisdiction as prepared by the California Employment Development Department (EDD). It is the number of people aged 16 years or older employed at places within each jurisdiction's boundaries (industry employment)--not the number of jurisdiction residents with jobs (labor force employment). Employment includes full-time and part-time employees even if the employee is on paid vacation or paid sick leave, but not if the employee is involved in a labor-management dispute. Self-employed, unpaid family workers, and private household employees are not included. It is a benchmark estimate to compare year-to-year employment change.

"Estimated generation amounts" The estimated reporting year generation amount is calculated by adjusting the base-year generation for changes in population and economics. The uniform method for adjusting waste disposal to account for changes

in population and economics adjusts the maximum allowable reporting year disposal amount using a combination of the ratios of base-year to report-year population, employment, taxable retail sales and Consumer Price Index factors. Waste tonnage from the residential sector are calculated separately from waste from the non-residential sector (i.e., commercial/industrial wastes); then the waste tonnage from both sectors are added together, as the adjustment factors influence residential and non-residential wastes in a slightly different way. Pursuant to SB 1016 (Wiggins, 2008) as of January 1, 2009, measurement of the PRC Section 41780 diversion requirement has changed to a disposal based measurement system. Accordingly jurisdictions are no longer required to calculate their estimated generation amount for each reporting year.

"Excluded waste types" PRC Section 41781.2 specifies that agricultural wastes, inert solids, scrap metals, and white goods that were diverted in the base year as a result of diversion programs that began prior to January 1, 1990, are not allowed to count toward base-year diversion claims unless CalRecycle receives documentation showing that three specific criteria are met. These waste types are referred to by CalRecycle as "restricted wastes."

"Full implementation" means the accomplishment of the program tasks, including the achievement of waste diversion requirements, as identified in each component of the Source Reduction and Recycling Element or Household Hazardous Waste Element.

"Good Faith Effort" means all reasonable and feasible efforts by a city, county, or regional agency to implement those programs or activities identified in its Source Reduction and Recycling Element and Household Hazardous Waste Element, or alternative programs or activities that achieve the same or similar results [PRC Section 41850 (d) (1)]. Good faith effort is further defined in PRC Section 41850(d) (2) and (3). Subsection (3) refers to the criteria in this policy document. Good Faith Effort is defined for MCR in PRC section 42649.3(i) and for MORE in PRC Section 42649.82(h).

"Jurisdiction" means the city, county, or regional agency that is approved by CalRecycle pursuant to Section 40975.

"Multicounty regional agency" means a regional agency, as defined in PRC Section 40181, that includes all of the jurisdictions that are located in at least two or more rural counties.

"Per capita disposal" is a numeric indicator of reported disposal divided by jurisdiction population (residents) or in some cases jurisdiction industry employment (employees) to obtain disposal by individual.

"50 percent per capita disposal target" is the amount of disposal that is approximately equivalent to the current 50 percent diversion requirement. To meet the 50 percent goal, jurisdictions must dispose of not more than their 50 percent per capita disposal target. For most jurisdictions, the 50 percent per capita disposal target will be based on the average of 50 percent of generation in 2003 through 2006 expressed in terms of per capita disposal.

"Population" means the January 1 estimate of the number of inhabitants occupying a jurisdiction as prepared by the California Department of Finance (DOF) for each non-Census year (calendar year ending with a digit other than zero). "Population" also means the April 1 U.S. Census count for each Census year (calendar year ending with the digit zero). Population includes each person at the place where the person lives and sleeps most of the time. This place is not necessarily the same as the person's voting residence or legal residence. Noncitizens who are living in the United States are included, regardless of their immigration status. Persons are included regardless of characteristics such as: college student, commuter worker, domestic worker or live-in nanny, foreign national, homeless, hospital or nursing home patient, prisoner, intermittent resident or "snow-bird," military member, tourist or undocumented worker. The fundamental goal is to count each person once, only once, and in the correct "usual residence" location according to U.S. Census residence rules.

"Rural city" or "rural regional agency" means a city or regional agency that is located within a rural county as defined in PRC Section 40183(a).

"Rural county" means a county or multicounty regional agency that annually disposes of no more than 200,000 tons of solid waste as defined in PRC Section 40184(a).

Appendix B: Relevant Waste Reduction Statutes

- PRC Section 40973 states that the regional agency, and not the cities or counties which are member agencies of the regional agency, may be responsible for compliance with Section 41780 if specified in the agreement pursuant to which the regional agency is formed. PRC Section 40973(c) states that if all member jurisdictions of a regional agency are rural cities or rural counties, as defined in PRC Sections 40183-40184, respectively, the regional agency may be eligible for a reduction of the diversion requirements of PRC Section 41780.
- PRC Section 40974 states that notwithstanding PRC Section 40972, each city or county which is a member agency of a regional agency is liable for any civil penalties which may be imposed by CalRecycle pursuant to PRC Sections 41813 or 41850. However, an agreement which establishes a regional agency may apportion any civil penalties between or among the cities or counties which are member agencies of the regional agency if the total amount of civil penalties which may be imposed against the regional agency is equivalent to that amount which is the sum of the penalties which may be imposed against each city or county which is a member agency of the regional agency.
- PRC Section 41780 requires jurisdictions to reduce the amount of waste sent to landfills by 25 percent by 1995 and 50 percent by the year 2000.
- PRC Section 41781.3 as amended by AB 1594 provides the new ADC/Green Waste requirements.
- PRC Section 41782 allows CalRecycle to make adjustments to the amounts reported pursuant to subdivisions (a) and (c) of PRC Section 41821.5, if the city, county, or regional agency demonstrates, and CalRecycle concurs, based on substantial evidence in the record, that achievement of the diversion requirements of PRC Section 41780 is not feasible due to the fact that a medical waste treatment facility, as defined in Health and Safety Code Section 25025(a), accepts untreated medical waste, which was generated outside of the jurisdiction, for purposes of treatment, and the medical waste, when treated, becomes solid waste.
- PRC Section 41783 allows a jurisdiction submitting a SRRE after January 1, 1995, and on or before January 1, 2009, to include diversion of not more than 10 of the 50 percent diversion requirement through transformation if statutory requirements are met and allows for SRREs submitted thereafter to reduce the per capita disposal rate by an amount to achieve the same effect (up to 10 of the 50% diversion rate equivalent).

- PRC Section 41820.5 allows CalRecycle to grant a time extension from the diversion requirement of Section 41780 to a city if it incorporated after January 1, 1990 and if the county within which the city is located did not include provisions in its franchises which ensured that the now incorporated area would comply with the diversion requirements of Section 41780.
- PRC Section 41825 states that according to either a two or a four year schedule based upon whether the jurisdiction was in compliance with PRC Section 41780 for the calendar year 2006, CalRecycle shall review each city, county, or regional agency SRRE and HHWE. If, after a public hearing, which, to the extent possible, is held in the local or regional agency's jurisdiction, CalRecycle finds that the city, county, or regional agency has failed to implement its SRRE or its HHWE, CalRecycle shall issue an order of compliance with a specific schedule for achieving compliance. The compliance order shall include those conditions which CalRecycle determines to be necessary for the local agency or regional agency to complete in order to implement its SRRE or HHWE
- PRC Section 41850 allows CalRecycle, after holding a public hearing and issuing an order of compliance pursuant to Section 41825, to impose administrative civil penalties of up to ten thousand dollars per day (until the jurisdiction implements the element) on jurisdictions that have failed to make a good faith effort to implement their SRRE or HHWE. This section directs CalRecycle to consider only those relevant circumstances that have prevented a jurisdiction from meeting the diversion requirements, and provides examples of legitimate relevant circumstances. This section also describes what is meant by "good faith effort".
- PRC Section 41850.5 states that any administrative civil penalty imposed by CalRecycle pursuant to Sections 41813 or 41850 shall be deposited in the Local Government Assistance Account. Funds deposited in that account shall be used solely for the purposes of assisting local governments in complying with the diversion requirements.
- PRC Section 42649 et seq. describes the MCR requirements.
- PRC Section 42649.8 et seq. describes the MORE Requirements.