

REQUEST FOR APPROVAL

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

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

Request Date: March 11, 2013

Decision Subject: Approval of 2007-2011 Jurisdiction Review Findings For The Source Reduction And Recycling Element, Household Hazardous Waste Element, And Approval Of Transformation Claims For The Following:
Butte County: Oroville; Fresno County: Huron, Mendota, Fresno Unincorporated, Sanger, San Joaquin; Humboldt County: Ferndale; Mariposa County: Mariposa Unincorporated; Nevada County: Nevada Unincorporated; Orange County: Laguna Woods; Plumas County: Portola; San Mateo County: Daly City; Sierra County: Sierra County Regional Agency

Action By: April 16, 2013

Summary of Request:

A key component in maintaining the success of AB 939, the Integrated Waste Management Act of 1989, is CalRecycle's role in overseeing how well cities and counties are implementing the diversion programs that they each have selected as part of their Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE). This emphasis on program implementation was further codified by SB 1016 (Chapter 343, Statutes of 2008). Public Resources Code (PRC) Section 41825 requires CalRecycle to review each City, County, and Regional Agency SRRE and HHWE at least once every four years, and in some cases once every two years. (For ease of writing and reading, staff uses the term "jurisdiction" in the remainder of this item to refer to cities, counties, and Regional Agencies.) The Jurisdiction Review is CalRecycle's independent evaluation of each jurisdiction's progress in implementing its SRRE and HHWE programs and in meeting the AB 939 diversion requirement.

As a result of the two- and four-year Reviews, CalRecycle may find that: 1) a jurisdiction has adequately implemented its diversion programs and has achieved the 50 percent equivalent per-capita disposal requirement; 2) a jurisdiction has made a good faith effort to implement diversion programs, but has not achieved the 50 percent equivalent per-capita disposal requirement; or 3) a jurisdiction has failed to adequately implement its SRRE and the process to consider issuance of a compliance order should commence. Jurisdictions that fail to satisfy the conditions of a subsequent compliance order may be subject to a fine of up to \$10,000 per day.

This Request for Approval addresses those jurisdictions that CalRecycle has determined made a good faith effort to implement their programs. Staff analysis finds that although these jurisdictions have not met the 50 percent equivalent per-capita disposal requirement, each has made reasonable and feasible efforts to implement diversion programs and should be determined as having made a good faith effort to implement their SRRE programs.

While each of these jurisdictions has demonstrated a good faith effort to implement their programs, it is important to note that as the economy rebounds businesses will likely produce more, consumers will buy more, and construction will increase. While this would be great news, we consequently also expect that more solid waste will be generated and discarded. As a result, continuing the jurisdictions' diversion programs is critical to ensuring continued compliance with AB 939, as well as implementing the requirements of the Mandatory Commercial Recycling law. Therefore, subsequent to approval of this request, staff will continue (as mandated in SB 1016) to visit each jurisdiction annually to ensure that the programs are being fully implemented and to ensure there are not current gaps in the programs preventing the jurisdictions from meeting their 50 percent equivalent per capita disposal target. Staff will also provide assistance, as needed.

Recommendation:

Staff recommends that these jurisdictions be found to have made a good faith effort to implement programs to meet the requirements of Public Resources Code Sections 41780 and 41825, respectively.

Deputy Director Action:

On the basis of the information and analysis in this Request for Action and the findings set out above, I hereby approve the Jurisdiction Review findings for 2007-2011 for the jurisdictions noted through the title above.

Dated: _____

Howard Levenson, Deputy Director
Materials Management and Local Assistance

Attachments: The attachments to this Request for Approval contain summaries of the information that staff used for the evaluation.

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1. Staff Jurisdiction Analysis Summary (alphabetized by City name) --describing the programs implemented for each of these Good Faith Effort compliance Jurisdictions.

2. a. Jurisdiction Disposal Rate Trend (alphabetized by City name) -- provides a summary of each jurisdiction's 50% equivalent per capita disposal target and annual per capita rate.
b. Jurisdiction Program Summary Report (alphabetized by City name) -- contains a SRRE and HHWE diversion program listing for each jurisdiction.
3. Transformation Claims (alphabetized by County then City name) -- identifies those jurisdictions that have transformation claims, respectively.

Background Information

A key component in maintaining the success of AB 939, the Integrated Waste Management Act of 1989, is CalRecycle's role in overseeing how well cities and counties are implementing the diversion programs that they each have selected as part of their Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE). Public Resources Code (PRC) Section 41825 specifies that CalRecycle periodically and independently review each jurisdiction's progress in implementing its programs and in meeting the AB 939 diversion requirement and that CalRecycle make a finding of whether each jurisdiction was in compliance with PRC Section 41780 during the review period.

As a result of its review, CalRecycle may find that a jurisdiction:

- 1) has adequately implemented its diversion programs and has achieved the diversion requirement;
- 2) has not achieved the diversion requirement, but has made a good faith effort to implement diversion programs; or,
- 3) has failed to adequately implement its SRRE and/or HHWE and the process should commence to consider whether issuance of a compliance order would be appropriate. Jurisdictions that fail to satisfy the conditions of a compliance order may be subject to a fine of up to \$10,000 per day.

Senate Bill 1016 (Statutes of 2008, Chapter 343) amended the PRC Sections 41825 and 41850. As a result of this legislation, the 50 percent diversion requirement is now measured in terms of per-capita disposal expressed as pounds per person per day. SB 1016's new per capita disposal and goal measurement system codified how the previous California Integrated Waste Management Board and now CalRecycle utilize the number as an indicator of program performance along with its evaluation of program implementation, instead of using estimated diversion rates or per capita disposal as the determinative factor for compliance.

Staff's analysis of program implementation is based upon the Countywide Integrated Waste Management Plan Enforcement Policy Part II, originally adopted (by CalRecycle's predecessor, the California Integrated Waste Management Board) in August 2001 and revised, pursuant to SB 1016, in June 2010. Staff utilizes the criteria delineated in the Enforcement Policy to determine the extent to which a jurisdiction has implemented, or has shown a good faith effort to implement, its selected diversion programs. For those jurisdictions that did not meet their per-capita disposal requirement, staff evaluates their program implementation to determine if they

have made a good faith effort to implement the programs selected in their SRRE. The scenarios in the Enforcement Policy Part II provide illustrative criteria to serve as examples of the issues that staff utilizes in examining local jurisdiction program implementation.

CalRecycle's Local Assistance and Market Development Division staff extensively reviewed each jurisdiction in this review cycle by conducting on-site visits to verify program implementation and by reviewing documentation, including annual reports, hauler data, outreach and education materials, etc. This investigation determines the extent to which a jurisdiction has tried to meet the diversion requirements through its selected diversion programs. Based upon this comprehensive investigation, staff then proposes one of the three findings listed above. If the Local Assistance and Market Development Division staff recommends a finding that a jurisdiction is not implementing its SRRE and/or HHWE programs, then that jurisdiction is referred to CalRecycle's Jurisdiction and Product Compliance Unit for a second independent evaluation. If warranted, the Jurisdiction and Product Compliance Unit then submits a separate Request for Approval recommending that the jurisdiction be placed on a compliance order.

Findings

Based on comprehensive analysis of the 13 jurisdictions that are the subject of this Request for Approval, Local Assistance and Market Development Branch staff finds that these jurisdictions have made a good faith effort to implement diversion programs and that each is in compliance with PRC Section 41780.