



April 17, 2020

Mike O'Donnell
Mattress Recycling Council
501 Wythe St.
Alexandria, VA 22314

Re: Mattress Recycling Council Draft Contingency Plan

Dear Mike,

Please see CalRecycle staff's responses to the requested clarifications from the mattress advisory committee regarding the Mattress Recycling Council's (MRC) draft contingency plan. Please note that the responses may change pending the outcome of any clarification during the regulatory process.

The numbered items below are taken directly from the mattress advisory committee's letter regarding the MRC Draft Contingency Plan, dated April 1, 2020:

4. Narrowing the choice between a trust and escrow account

Under Section (G), the plan directs MRC to transfer unexpended funds to either a trust or escrow account. Given the fact that these two programs function quite differently, we seek further clarification on which account type is preferred. It is the recommendation of the AC that the department evaluates which type they are most familiar with to have information on hand in the situation the CP is needed.

CalRecycle response: Assembly Bill (AB) 187 provided the department with the authority to direct the MRC to establish a trust fund or escrow account in the event that the MRC is decertified and not providing transitional services. Because it is up to the department to determine which type of account is necessary, the MRC should leave language allowing either in its contingency plan. It is our understanding that both can be setup within the specified timeframe (30 days). The department will determine which type of account is necessary in an appropriate timeframe to ensure an account is established in a timely manner and to ensure Program operations continue.

5. Clarification of "agent" description

Throughout the plan, the option is given to allow an "agent" to administer the program while a SO is established. While the duties are clearly spelled out, we seek further clarification of who selects or appoints the agent, the qualifications for selecting the agent, and whether it is designed to be an individual or board.

CalRecycle response: The contingency plan uses the term agent in two locations – escrow agent and when referring to the department appointing an agent to administer

the program temporarily. An escrow agent that performs escrow services in California is an individual/company licensed to perform those duties by the appropriate government agency or an individual that is exempt from licensing requirements under California law, such as banks and attorneys. Statute states that the department will direct the payments from the trust fund or escrow account. The department will determine which employee from CalRecycle, such as the director or deputy director, will have that authority.

7. Pending litigation obligations

Under Section (F)(ii)(7), it is noted that MRC will be responsible for pending litigation and other disputes. The AC seeks further clarification on the authority the Department has to approve/disapprove the transfer of pending litigation.

CalRecycle response: The department was given authority in AB 187 in Public Resources Code (PRC) 42989.3(c)(3): “Before any financial liability is transferred to the successor organization, the decertified organization shall first obtain approval from the department for each item of liability. Transferred liabilities may include, but shall not be limited to, notes payable, accounts payable, salaries payable, wages payable, interest payable, other accrued expenses payable, income taxes payable, customer deposits, vendor contracts, and any other contractual liabilities. Transferred liabilities shall not include any civil or criminal liabilities or fines or penalties issued by the state.”

8. Clarification on reimbursement obligations

Under Section (D)(iii)(5), the AC wants reassurance that the Department will have access to the additional administrative funds needed to establish the trust or escrow account

CalRecycle response: As required by PRC Section 42989.3(c)(5)(2) “the department may direct, in writing, the decertified organization to set up a trust fund or escrow account and to transfer all unexpended funds into that account within 30 days”. Therefore, the department will not need any additional funds as the trust or escrow account is setup by the MRC, not the department.

In addition, as noted above in items 6 and 7, the department will be responsible for directing the escrow/trust payments and will ensure payments to the department for administrative costs of overseeing the program be made to reimburse for any costs associated with these tasks.

Sincerely,



Heather Beckner
Acting EPR Unit Supervisor