

REQUEST FOR APPROVAL

To: Ken DaRosa
Acting Director

From: Matt Henigan
Deputy Director, Materials Management and Local Assistance
Division

Request Date: July 21, 2020

Decision Subject: Consideration of the Mattress Recycling Council California, LLC
Contingency Plan

Action By: July 28, 2020

Summary of Request:

Statute, as amended by Assembly Bill 187 (Garcia, Chapter 673, Statutes of 2019), requires the mattress recycling organization to submit a contingency plan that describes how program activities in its used mattress recovery and recycling plan will continue to be carried out should the mattress recycling organization be decertified, or the plan expire, be disapproved, or be revoked. The Mattress Recycling Council submitted its Mattress Recycling Council California, LLC Contingency Plan (Attachment 1) on April 30, 2020.

Staff evaluated the Mattress Recycling Council California, LLC Contingency Plan and determined that it meets the statutory requirements.

Options:

1. Approve the Mattress Recycling Council California, LLC Contingency Plan.
2. Conditionally approve the Mattress Recycling Council California, LLC Contingency Plan
3. Disapprove the Mattress Recycling Council California, LLC Contingency Plan

Recommendation:

Staff recommend Option 1, approval of the Mattress Recycling Council California, LLC Contingency Plan.

Action:

On the basis of the information and analysis in this Request for Approval, I hereby approve the Mattress Recycling Council California, LLC Contingency Plan, dated April 30, 2020, as an addendum to its Used Mattress Recovery and Recycling Plan.

Dated: July 27, 2020

Signed by Ken DaRosa

Ken DaRosa, Acting Director

Attachments:

1. [Mattress Recycling Council California, LLC Contingency Plan:](https://www2.calrecycle.ca.gov/Docs/Web/117423)
<https://www2.calrecycle.ca.gov/Docs/Web/117423>
2. [The Mattress Recycling Council's Used Mattress Recovery and Recycling Plan:](https://www.calrecycle.ca.gov/docs/cr/mattresses/plans/july2015.pdf)
<https://www.calrecycle.ca.gov/docs/cr/mattresses/plans/july2015.pdf>
3. [CalRecycle's April 17, 2020 Letter Responding to Advisory Committee Comments:](https://www2.calrecycle.ca.gov/Docs/Web/117432)
<https://www2.calrecycle.ca.gov/Docs/Web/117432>
4. [The Mattress Recycling Council's Responses to the Advisory Committee Comments on the Draft Contingency Plan:](https://www2.calrecycle.ca.gov/Docs/Web/117429)
<https://www2.calrecycle.ca.gov/Docs/Web/117429>

Background

The requirements of Assembly Bill 187 became effective on January 1, 2020. Public Resources Code (PRC) section 42987.1(r) requires the mattress recycling organization's (MRO) used mattress recovery and recycling plan to include a contingency plan should the mattress recycling organization be decertified, or the plan expire, be disapproved, or revoked. The contingency plan must demonstrate how the activities of the MRO's used mattress recovery and recycling plan will continue to be carried out by the MRO or by department through some entity such as an escrow company until a new used mattress recovery and recycling plan is approved.

The Mattress Recycling Council (MRC) submitted its draft contingency plan to the Mattress Advisory Committee (AC) on March 16, 2020, and the AC provided its responses on April 6, 2020. The MRC submitted its final contingency plan to CalRecycle on April 30, 2020.

Summary of the MRC's Contingency Plan

Pursuant to PRC section 42987.1(r), the MRC's Contingency Plan is part of its Used Mattress Recovery and Recycling Plan (Attachment 2). Pursuant to 42989.3(C) the MRC's Contingency Plan outlines the steps for two scenarios in the event the MRC is decertified; one scenario where the department requests and the MRC agrees to provide transitional services for program administration until a new successor organization is certified, and one where the MRC does not agree to provide transitional services, and transfers operations to CalRecycle. Examples of services to continue under either scenario are the continuation of operations related to managing contractors and service providers and paying for the collection, transportation, processing, and recycling of mattresses. The Contingency Plan also includes a description of activities that would occur if the MRC's plan expires or CalRecycle disapproves or revokes the used mattress recovery and recycling plan.

The MRC's Contingency Plan outlines the process by which the MRC will establish a trust fund or escrow account and transfer all unexpended funds within 30 days if directed to do so by CalRecycle. Within 30 days after the trust fund or escrow account is established, the MRC will transfer to CalRecycle, its appointed agent, or the new certified successor organization, the remainder of the charge revenue in its accounts

and all other assets and liabilities, and all financial statutory, contractual and other legal rights and responsibilities.

Consultation with the Advisory Committee

Pursuant to PRC section 42987(a)(3)(C), the MRC submitted its draft Contingency Plan to the AC on March 16, 2020. The AC reviewed the draft Contingency Plan on April 6, 2020, and provided the MRC with a letter containing recommended clarifications and questions. The MRC incorporated some of the clarity recommendations from the AC by revising the Contingency Plan to use consistent terminology. The MRC also coordinated with CalRecycle to respond to some of the AC's questions regarding whether there was a preference for a trust fund or an escrow account, clarification of the term "agent", the department's authority to approve or disapprove the transfer of pending litigation involving the MRC, and clarification of reimbursement obligations associated with the establishment of a trust fund or escrow account. CalRecycle provided responses to the AC's questions to the MRC on April 17, 2020 (Attachment 3). The MRC submitted its responses to the recommendations and questions from the AC (Attachment 4) along with its Contingency Plan to CalRecycle on April 30, 2020. Staff appreciate both the AC and the MRC for working together on the Contingency Plan under the extremely challenging circumstances presented by the COVID-19 pandemic.

Staff Analysis

Staff evaluated the MRC's Contingency Plan for compliance with the requirements of statute. PRC section 42987.1(r) requires that a contingency plan shall describe how the used mattress recovery and recycling plan objectives can be carried out, in accordance with subdivision (c) of Section 42989.3, in the absence of a used mattress recovery and recycling plan, either by the mattress recycling organization, or by the department through some entity such as an escrow company.

The MRC's Contingency Plan will allow the department to carry out core program activities needed to maintain and support the mattress recycling industry until a used mattress recycling and recovery plan from a successor organization is approved. Staff determined the MRC's Contingency Plan fulfilled the requirements of PRC section 42987.1(r), including the transfer of all assets and liabilities to a successor organization within 30 days of department certification of a successor organization.

In the event that the department decertifies and does not request the MRC to provide transitional services, the department may require the MRC to set up a trust fund or escrow account. Under MRC's Contingency Plan, all unexpended funds and control of the trust fund or escrow account will be transferred to CalRecycle, its appointed agent, or new successor organization within thirty days if directed to do so. For these reasons, CalRecycle determined that the MRC's Contingency Plan satisfies the requirements set forth in statute.

Stakeholder Comments

CalRecycle solicited public comments on the MRC's Contingency Plan from May 5, 2020, through May 18, 2020, and received no stakeholder comments.