

## **REQUEST FOR APPROVAL**

**To:** Zoe Heller, Deputy Director  
Materials Management and Local Assistance Division

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

**Request Date:** March 2, 2023

**Decision Subject:** Compliance Investigation Results Regarding the Implementation of Mandatory Commercial Recycling (MCR) and/or Mandatory Commercial Organics Recycling (MORE) Programs for the Jurisdiction listed in Attachment 1

**Action By:** March 21, 2023

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### **Summary of Request:**

A key component in maintaining the success of the Mandatory Commercial Recycling (MCR) and Mandatory Organics Recycling (MORE) laws is CalRecycle's role in overseeing how well jurisdictions are implementing these programs. Pursuant to Public Resources Code (PRC) Sections 42649.3 (g) and 42649.82 (g)(1), CalRecycle reviews each jurisdiction's compliance with these laws as part of the reviews required by PRC Section 41825. Additionally, CalRecycle may evaluate at any time whether a jurisdiction is in compliance with these two laws pursuant to PRC Sections 42649.3 (h) and 42649.82 (g)(2). Specifically, CalRecycle can exercise its statutory authority to initiate a review and may refer a jurisdiction to enforcement at any time that CalRecycle receives information that a jurisdiction has not implemented, or is not making a good faith effort to implement, its required programs. This led to the development of the "At Any Time Review Process."

In January 2017, CalRecycle's Director sent a letter to all jurisdictions informing them of the "At Any Time Review Process." The process specifies that if staff identifies a gap in how a jurisdiction is implementing the requirements of either of these laws, then:

- Staff will inform the jurisdiction that a formal Letter of Concern from CalRecycle to the jurisdiction is coming. Once the letter is received, the jurisdiction will have 30 days to respond.
- After CalRecycle receives the jurisdiction's response to the letter, or lack thereof, an agenda item for approval by CalRecycle's Materials Management and Local Assistance Division (MMLA) Deputy Director will be presented at a CalRecycle monthly public meeting. The agenda item will indicate one of three potential staff recommendations:

1. The jurisdiction failed to respond, and staff recommends that the jurisdiction be referred to CalRecycle's Enforcement Branch for consideration of a compliance order; or
2. The jurisdiction's response to the letter is inadequate and staff recommends that the jurisdiction be referred to the Enforcement Branch for consideration of a compliance order; or
3. The jurisdiction's response to the letter is adequate and staff recommends that the program be monitored. However, if the same gaps persist within the next year, an agenda item that refers the jurisdiction to the Enforcement Branch for consideration of a compliance order will be presented at CalRecycle's next monthly public meeting.

This Request for Approval addresses Local Assistance and Market Development (LAMD) staff's review finding that the jurisdiction listed has gaps in program implementation for MCR and/or MORE. These gaps were determined during LAMD staff's annual review of the jurisdiction. LAMD staff informed the jurisdiction of the identified program gaps, sent them a Letter of Concern, and gave them at least 30 days to submit a response that explained how they intend to address the program gaps. The jurisdiction submitted a plan that, if implemented, may adequately address the MCR and/or MORE program gaps.

Accordingly, LAMD staff will closely monitor the jurisdiction. If at any time during this period staff finds that a jurisdiction has not made adequate progress on implementing the plan that it submitted to CalRecycle or otherwise addressing the gaps in its MCR and MORE programs, then LAMD will inform the Jurisdiction and Agency Compliance and Enforcement Branch (JACE) that the jurisdiction should be prioritized for an evaluation.

**Recommendation:**

Staff recommends that it be determined that the jurisdiction has submitted a plan that may adequately address its program gaps and that staff will monitor its progress.

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**Deputy Director Action:**

Based on the information and analysis in this Request for Action and the findings set out above, I hereby approve the recommendation that the jurisdiction indicated has submitted adequate responses in accordance with the "At Any Time Review Process." I direct staff to further monitor this jurisdiction. If, at any time during this period, the jurisdiction is found to not be fully implementing its plan to address the identified gaps, then LAMD will inform the JACE that the jurisdiction should be prioritized for an evaluation.

Dated: 03/21/2022

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Zoe Heller, Deputy Director  
Materials Management and Local Assistance

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Attachment 1 contains a listing of the Jurisdiction referenced in this Request for Approval.

### **Background Information**

Over the past several years, the Legislature and Governor have set ambitious goals to increase recycling and reduce solid waste disposal, in part driven by associated greenhouse gas emission reductions. In particular, Assembly Bill 341 set a goal of reducing landfill disposal by 75 percent by 2020 and established mandatory commercial recycling (MCR) requirements, and Assembly Bill 1826 established mandatory commercial recycling (MORE) requirements. The purpose of MCR and MORE is to reduce greenhouse gas emissions by diverting commercial solid waste to recycling efforts and to expand the opportunity for additional recycling services and recycling manufacturing facilities in California. Each jurisdiction is responsible to implement a MCR and a MORE program appropriate for that jurisdiction. The program is to be designed to divert commercial solid waste from regulated businesses, whether or not the jurisdiction has met the requirements of PRC Section 41780. Each jurisdiction is required to report its progress achieved in implementing the MCR and MORE laws, including identification of covered businesses, education and outreach provided to covered businesses, monitoring of program implementation, and if applicable, enforcement efforts taken by the jurisdiction, by providing updates in the annual report required by PRC Section 41821.

Statute requires CalRecycle to review each jurisdiction's report to determine whether the jurisdiction has complied with, or made a good faith effort to comply with, the requirements of the MCR and MORE laws. For purposes of this evaluation, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its commercial recycling program in accordance with the MCR and MORE laws (see PRC Sections 42649.3 (i) and 42649.82 (h)). CalRecycle need not wait for a jurisdiction's report, however, to review a jurisdiction's compliance. CalRecycle may also evaluate whether the jurisdiction is in compliance at any time CalRecycle receives information the jurisdiction has not implemented, or is not making a good faith effort, to implement its MCR and MORE programs (see PRC Sections 42649.3 (h) and 42649.82 (g)(2)).

In determining compliance with this requirement, CalRecycle's evaluation may include, but is not limited to, the following factors:

- The extent to which businesses have implemented the MCR and commercial MORE recycling programs;
- The recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses;
- The extent to which the jurisdiction is conducting education and outreach to businesses;

- The extent to which the jurisdiction is monitoring businesses and notifying those businesses that are out of compliance;
- The availability of markets for collected recyclables;
- Budgetary constraints; and
- In the case of rural jurisdictions, the effects of small geographic size, low population density, or distance to markets.

(See PRC Sections 42649.3 (h) and 42649.82 (g)(2).)

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

- 1) has made a good faith effort to implement its MCR and/or MORE programs; or
- 2) has failed to adequately implement its MCR and/or MORE program, and in such a case may further consider issuance of a compliance order. 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.

Staff's analysis of program implementation is based upon the Countywide Integrated Waste Management Plan Enforcement Policy Part II (Enforcement Policy), originally adopted on April 25, 1995, substantially amended on August 2001 (by CalRecycle's predecessor, the California Integrated Waste Management Board), and further revised by CalRecycle in June 2015, pursuant to AB 341, AB 1826, and AB 1594. Pursuant to PRC Section 41825 (e)(3), 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 MCR and MORE programs. The scenarios in the Enforcement Policy provide illustrative criteria that serve as examples of the issues staff utilizes in examining local jurisdiction program implementation.

## **Findings**

CalRecycle's LAMD staff extensively reviewed each jurisdiction during 2020, 2021, and 2022 as a part of its annual reviews by conducting conference calls and on-site visits to verify program implementation and by reviewing documentation, including annual reports, hauler data, outreach and education materials, etc. This investigation determined the extent to which each jurisdiction has implemented PRC Sections 42649 et seq. and 42649.8 et seq.

As a result, LAMD staff identified the program gaps listed below in this Request for Approval. Staff then discussed these program gaps with the jurisdiction and, pursuant to the "At Any Time Review Process" described above, sent a Letter of Concern that provided the jurisdiction at least 30 days to submit a plan to correct the gaps. Subsequently, the jurisdiction responded with information detailing how the gap would be addressed.

LAMD staff will closely monitor the jurisdiction. If at any time during this period LAMD staff finds that the jurisdiction has not made adequate progress on implementing the plan that it submitted to CalRecycle or has not otherwise addressed its MCR and/or

MORE program gaps, then LAMD will inform JACE that the jurisdiction should be prioritized for an evaluation.

The following is a summary of program gaps for the jurisdiction's MCR and/or MORE programs. The summary also includes the information provided by the jurisdiction on how it will correct these gaps.

### **California City (MCR and MORE)**

The jurisdiction is implementing its MCR and MORE programs; however, based on monitoring data submitted by the jurisdiction, there is still non-compliance for regulated businesses. The non-compliance rates as of January 2023 are provided in Table 1 below.

#### **Plan to Address MCR and MORE Program Gaps:**

- The City will identify all covered generators and covered generators not participating.
  - Determine if de minimis, due to self-hauling or low generation, or physical space waivers will be granted and what type.
- The City will perform follow up by sending letters to non-participating covered generators to inform them to sign up for service or they will be automatically enrolled in mandatory service with the start of service on a specified date, verify waivers, or verify self-hauling.
- The City will provide monitoring updates on progress of each activity:
  - Follow-up with non-participating MCR and MORE covered generators
  - Mandatory service provided to covered generators
  - Monitoring data
    - Total MCR and MORE covered generators
    - Total MCR and MORE covered generators not recycling organics

**Table 1: Non-Compliance Rates for MCR and/or MORE Programs**

<b>Jurisdiction</b>	<b>MCR Business</b>	<b>MCR Multifamily</b>	<b>MORE Business</b>	<b>MORE Multifamily</b>
<b>California City</b>	<b>17%</b>	<b>33%</b>	<b>41%</b>	<b>53%</b>