

Reforming Designations: Issues to Consider

The following are issue areas anticipated to be discussed at the December 16, 2015 stakeholder workshop focusing on reforms to the “designated approve collector” (DAC) provision within the covered electronic waste (CEW) recycling program. The issues are presented with the goal of strengthening oversight of DAC operations conducted on behalf of California local governments.

While presented as issue areas to discuss, the following may contain preferences, proposals, or recommendations put forward by CalRecycle program staff as a starting point. This document is marked as “draft” as these are not necessarily formally adopted positions of CalRecycle.

Issue Area: Issuing Designations

- Definition of “California local government”?
 - Regulation currently states that designations can be secured from a California local government to provide a service on behalf of that entity. Is that limited to cities and counties, or should it include special districts and authorities with solid waste / hazardous waste responsibilities?
- Who should be authorized to issue to avoid unauthorized or inappropriate designations?
 - Which individual(s) within a California local government should have the power to select a DAC and bestow a designation? Can the authority reside in a delegated official (e.g. Public Works Director), or should it be sought from a higher authority (e.g. City Council, Mayor, City Manager, etc.)? Should the selection be tied to a competitive process, or folded into routine operations? Can rules be structured flexibly to accommodate the breadth of California local governance?
- “Secured from” vs “issued by”?
 - As currently constructed, regulations are unclear as to the lead establishing interest in the DAC / local government relationship. Within definitions a DAC is described as an entity that is designated by a local government, yet the burden of securing the “proof of designation” falls into the prospective DAC. Since the purpose of the DAC provision is to assist the local government provide services, program believes that rules should be amended to more clearly require affirmative actions on the part of local government (e.g. solicitation, selection, etc.) to establish a DAC.
- Pre-authorization, by local or State?
 - Are there factors, such as alignment with existing waste management plans or demonstrated understanding and compliance with of applicable rules, which should be a component of determining whether a designation can or should be issued?

- Connections to other matters (e.g. Form 303)?
 - CEW program staff view the issuance of a designation as essentially the establishment of a local government household hazardous waste (HHW) program. As such, CEW recovered under a designation likely should be accounted for through annual Form 303 reporting. Although CEW is identified as a category of reportable waste, neither the Form 303 rules nor the DAC rules explicitly connect the actions of a DAC to reporting requirements. Does this apparent but uncodified relationship inform the consideration of issuing a designation?

Issue Area: Advanced Notification

- Similar to DTSC's handler notification?
 - Rule associated with the handling of universal waste electronic devices, including CEW, require a 30 day advance notification of intent on a site-by-site basis. CEW program staff believe that it would be appropriate to require a clearly demonstrated designation in advance of activities conducted under that designation.
- Timeframes?
 - How far in advance should a designation be issued before it can be used? To whom and in what format should the designation be noticed? CEW program staff believe a dated "proof of designation" issued 30 days in advance of use should be issued to the DAC, with a copy sent to CalRecycle. Is this reasonable? Should there be exceptions?
- Issuing authority or designated collector?
 - If there is a requirement for advance notification for all issued designations, who is responsible for notifying the State? If CalRecycle can establish an electronic or online designation portal, should it be a required means of issuing designations?
- State review and approval?
 - Should the State (presumably CalRecycle, perhaps in consultation with DTSC) be allowed to or required to review notifications of designation? Should the State have any veto authority over proposed designations?

Issue Area: Context and Conditions

- Relationship between authority and designee?
 - The formality of designations have ranged from multi-year contracts (e.g. HHW contractors) to seemingly whimsical one-day events pushed through at the last minute. How prescribed should the relationship between the designating authority

and the DAC be? Can other aspects, such as responsibilities and liabilities, be relied upon to adequately govern the relationship?

- Contracts or other binding agreements?
 - Currently there is no requirement that the designation is issued within the context of an explicit legal agreement or contract. The act of issuing a designation may establish legal obligations not yet tested. How best to protect the interests of the State, the local government, and the DAC?
- Rationale for issuance?
 - Does a local government need to have a stated reason for issuing a designation? The intent of the provision is for the DAC to act and provide CEW recovery service on behalf of the local government, but in practice the local government has often been badgered into issuing designations.
- Scope of operations?
 - The allowances provided to a DAC, namely relief from recording source-specific identities on residential and small quantity generators of CEW on collection logs, aligns closely with the services that a local government would provide via HHW collection if the CEW program didn't exist. However, program believes that designations have been used beyond the intended scope of the designation (activities, geography, etc.). How best to ensure that the DAC's operation with the services intended by the designating local government?

Issue Area: Limitations

- Limitations on operational models?
 - Currently there are no limits on operational models for DACs; Activities have included one-day collection events, curbside, HHW facilities, "brick and mortar" operations, and even retail "take back". The case for the DAC provision was initially made to minimize backlog at crowded events, but use of the provision has expanded to activities not envisioned at the time of rulemaking. Is there any reason or need to limit operational models that involve the use of a DAC?
- Other uses (e.g. source anonymous)?
 - The concept of "source anonymous CEW" was established in recognition that there will be cases of otherwise eligible California-sourced CEW becoming disassociated from the source identity, such as load-check and abandonment. While not seeking to condone illegal material management, the program rule sought to provide incentive to divert mishandled CEW toward proper management. However, it was believed that certain instances of source anonymous, specifically general illegal

disposal clean-up, should be managed by limited entities to avoid the prospect of undocumented volumes assaulting the CEW system. DACs with the proper scoping are allowed to conduct this activity.

- Payment for CEW?
 - The Electronic Waste Recycling Act, which does not address the regulatory concept of designations, declares that the CEW recovery and recycling payment system is intended to foster cost free and convenient CEW collection and recycling opportunities for generators of CEW in California. However, there are currently no prohibitions on participants engaging in “business” beyond the scope of program rules, such as recyclers paying collectors more than the recovery payment rate, or collectors paying sources of CEW or upstream handlers (so long as required documentation is maintained). However, program experience has been that when collectors pay for CEW, the quality of source documentation suffers, raising questions about the actual source of the CEW. This is because entities other than the California source begin accumulating CEW and transferring it into the program.

While the source identities are effectively masked for CEW recovered under a designation, and it is presumed that any and all CEW collected under a designation originated from within the scope of the local government’s jurisdiction, offering payment may entice third-party accumulators to deliver CEW from unknown origin.

Is it feasible to limit payments by collectors, and DACs in particular?

- Use of outside “labor”?
 - Program has attempted to accommodate flexible interpretations of the designation provision to allow for operational models that best fulfill the intent of the provision and provide efficient service on behalf of local government. However, the concept has been strained by the use of handlers unaffiliated with the DAC beyond being a supplier of accumulated CEW. This practice seems to conflict with source documentation requirements that require the identification of upstream collectors and handlers, as well as default source-identified logs. Can the designation provision strike a workable balance to innovatively reach generators within the scope of the designation without compromising the integrity of the concept.

Issue Area: Duration and Termination

- Limits on the length of designations?
 - At present, there are no regulated limits to the length of a designation other than a stated start and end date. Most designations are issued annually or so, and some are for one day and some are for one decade. However, an approval is issued to a CEW collector for two year, and barring compliance issues may be indefinitely

renewed. Some DACs may be engaged in a multi-year service agreement with a local government, such as an HHW contractor or hauler. Is there a reasonable length of time that should be the maximum length before a new designation must be established?

- Mechanisms for local government to rescind?
 - Currently there are no rules explicitly providing for a local government to rescind an issued designation. Common sense suggests that a designating authority should hold the reins and that any designation is an “at will” arrangement. Still, the DAC may have interests worthy of protection, such as capital investments made in order to perform under a designation. CEW program staff believe that it should be the prerogative of the designating authority to terminate the designation, however are there legal considerations that should be embodied in law?
- Mechanisms for State to rescind?
 - Short of suspending, revoking, or expiring an approval, the State (CalRecycle) has no regulated mechanism in place to terminate a designation. As noted above, CEW program staff believe that the local government should hold the prerogative to issue and rescind designations, however might there be circumstances wherein the State should be able to intercede to protect the integrity of the program?
- Interruption of approval status?
 - Understandably, if a DAC encounters a lapse in its approval status, any designation it holds is likewise void, if only temporarily. An expired approval, a suspension of approval due to noncompliance, a revocation for cause, etc., necessarily also suspend the designation. Should an interruption in approval status trigger more significant consequences? Notification to the designating authority? A requirement for affirmative re-designation?

Issue Area: Accountability and Consequence

- Monitoring designees’ activities?
 - The purpose of the designation is so that the DAC can perform a service on behalf of the designating local government. Many local governments have established regular check-ins or quarterly reports to track DAC actions and performance. CEW program staff believe that, to maintain integrity in the CEW program and use of the designation provision, it is imperative that the local government monitor the CEW recovery services performed on its behalf. To what degree must this monitoring be a regulated standard?
- Reporting (e.g. Form 303)?

- California regulations ([CCR, Title 14, Division 7, Chapter 9, §18751.2](#)) mandate that each public agency responsible for household hazardous waste (HHW) management shall ensure the amount of material (in pounds) collected through their program during the preceding reporting period (July 1 through June 30) is reported to CalRecycle by October 1 each year. This annual household hazardous waste program reporting, also known as Form 303, captures activities performed by and amounts recovered by local government programs. As noted earlier in this document, CEW program staff believe that the issuance of a designation effectively constitutes the establishment of a local HHW program and should be monitored and recorded accordingly.
- Agency? Liability? Transparency?
 - Since the issuance of a designation authorizes the DAC to perform a service on behalf of the designating local government, how explicit must the legal bonds be to adequately protect and serve the interests of the local government?

Issue Area: Other Issues and Options

- Are Designated Approved Collectors needed?
 - The concept of a designated approved collector was developed due to the interplay between the statutory definitions of an “authorized collector” and the regulatory obligations of anyone handling universal waste electronics. Since not all local governments provide CEW recovery services directly, it was viewed that the benefits afforded to CEW collectors that are local governments be extendable to service providers. Is this view still valid? Must this provision still exist?
- Other models to ensure California sourcing?
 - All otherwise eligible CEW must be compliantly documented to demonstrate its California sourcing. The default method is through collection logs that record the name and address of the California source. The designation provision relieves the DAC of having to record source-specific information under limited circumstances. (There is also a pathway for the occasional limited circumstance of “source anonymous” to accommodate mismanagement of CEW.)

Operational life could be much simpler if the CEW program, both operator and administrators, did not need to worry about California sourcing. Are there other models possible under the existing statutory framework that could ensure program integrity more effectively or more efficiently?

- Other issues?