

REQUEST FOR APPROVAL

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

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

Request Date: December 20, 2019

Decision Subject: Referrals for Compliance Investigation Regarding the Implementation of the Mandatory Commercial Recycling and the Mandatory Commercial Organics Recycling Programs for the Cities of Banning, Norco, and Riverside

Action By: January 21, 2020

Summary of Request:

The City of Banning had been previously identified as having significant program gaps in implementation of Mandatory Commercial Recycling (MCR) and Mandatory Commercial Organics Recycling (MORE) Programs (pursuant to Public Resources Code (PRC) Sections 42649.3(g) and 42649.82(g)(1)). To address the gaps the City had submitted a plan to CalRecycle. Local Assistance and Market Development (LAMMD) staff monitored program implementation efforts for this jurisdiction. As a result, staff has determined that the City of Banning has not taken sufficient actions constituting a good faith effort to implement their MCR and MORE programs.

In addition, this Request for Approval includes the Cities of Norco and Riverside for insufficient MCR and MORE implementation. LAMMD staff contacted each of these cities to inform them of the gaps and gave them 30 days to submit their plans to address the program gaps. However, these two cities submitted plans that provided inadequate and untimely implementation benchmarks.

Recommendation:

Staff recommends the following jurisdictions be referred to JCU for further investigation regarding meeting the requirements of Public Resources Code Sections 42649.3(g) and 42649.82(g)(1)): Cities of Banning, Norco, and Riverside.

Deputy Director Action:

On the basis of the information and analysis in this Request for Approval and the findings set out above, I hereby approve referring the Cities of Banning, Norco, and Riverside to JCU for further investigation regarding implementation of MCR and MORE programs.

Dated: _____

Matt Henigan, Deputy Director
Materials Management and Local Assistance

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 emissions from landfills. 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 Organics 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. PRC Sections 42649 et seq. and 42649.8 et seq. require each jurisdiction to implement a mandatory commercial solid waste recycling and organics recycling program appropriate for that jurisdiction. The program is to be designed to divert commercial solid waste from businesses subject to PRC Sections 42649.2 and 42649.81, whether or not the jurisdiction has met the requirements of PRC Section 41780. Each jurisdiction is also required to report its progress achieved in implementing the MCR and MORe laws, including education and outreach, identification, monitoring, and if applicable, enforcement efforts, by providing updates in the annual report required by PRC Section 41821.

PRC Sections 42649.3(g) and 42649.82(g) (1) require CalRecycle to review a jurisdiction to see if it has 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 and organics recycling programs in accordance with the MCR and MORe laws (see PRC Sections 42649.3(i) and 42649.82(h)). CalRecycle may also evaluate whether a jurisdiction is in compliance at any time CalRecycle receives information that 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 good faith effort with these requirements, CalRecycle’s evaluation may include, but is not limited to, the following factors:

- The extent to which businesses have implemented recycling and organics 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.

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

- 1) Has fully implemented the MCR and/or MORe laws;
- 2) Has not fully implemented the MCR and/or MORe laws; however, the jurisdiction has made a good faith effort to do so; or
- 3) Has failed to adequately implement its MCR and/or MORe program and consider issuance of a compliance order. Jurisdictions that fail to satisfy the conditions of a 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, originally adopted in August 2001 (by CalRecycle's

predecessor, the California Integrated Waste Management Board), revised in June 2015 pursuant to AB 341, AB 1826, and AB 1594, and further revised December 2018 to address changes in market conditions. 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 Part II provide illustrative criteria to serve as examples of the issues staff utilizes in examining local jurisdiction program implementation.

Findings

LAMD staff annually has reviewed and verified every jurisdiction's implementation of MCR and MORE programs. LAMD staff extensively reviewed each jurisdiction during 2019 as a part of its annual review 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. LAMD staff communicated with each jurisdiction on numerous occasions and reviewed each jurisdiction's continuing implementation of its MCR and/or MORE program. As a result, staff has determined that the three jurisdictions listed in this Request for Approval: Cities of Banning, Norco, and Riverside have still not adequately implemented MCR and MORE programs; nor have they taken actions constituting a good faith effort. LAMD staff therefore recommends that these three jurisdictions be referred to the Jurisdiction Compliance Unit (JCU) for further investigation. If the jurisdictions fully implement their MCR and/or MORE programs during JCU's investigation, then the jurisdiction(s) will be found to be in compliance with PRC Section 42649.3(g) and/or PRC Section 42649.82(g)(1). If program gaps remain, then JCU will consider issuance of a compliance order.

The following is a summary of the planned actions each jurisdiction committed to do in order to address its program gaps and the reasons for referral to JCU:

Banning

Planned Activities to Address MCR and MORE Program Gaps (April 2018 RFA):

- Education and outreach:
 - The City will coordinate with its hauler to update and improve outreach materials to covered entities; e.g., including recycling information on the City's cable channel and in flyers/brochures, and updating the City's website with more current information.
 - The City will provide training to other City staff, such as Business License and Code Enforcement staff, about the programs so they can convey requirements to regulated entities.
 - The City will conduct a workshop in 3rd quarter of 2018 for businesses.
- Monitoring:
 - The City will update its list of covered entities served by the hauler.
 - The City will schedule an on-site meeting with those entities not recycling to discuss the law and service options and follow-up within 60-120 days via phone calls and writing correspondence.
 - The City will conduct site visits/audits with the hauler by the end of April 2018 to verify covered entities and will identify and track covered entities that back-haul and/or utilize 3rd party recyclers.
 - The City will also target the 10 top generators that are not recycling in each quarter and report back to CalRecycle.
- The City will discuss and consider adoption of an ordinance requiring covered entities to recycle.

Reason for Referral:

While the City implemented some of its identification and monitoring activities, and increased education and outreach activities, the planned direct outreach to covered generators was not completed and identification issues remain. The City's plan included consideration of implementing an enforcement ordinance during 2018. This did not occur. The non-compliance rate for MCR covered commercial entities and multifamily complexes is still high (32% and 48%, respectively). The non-compliance rate for MORE covered commercial entities and multifamily complexes is also still high (51% and 66%, respectively). The City was again provided a letter on October 16, 2019, requesting a more effective updated plan within 30 days, or be referred to JCU. The City submitted the following:

- Possible Franchise Agreement update by July 2020, which could include automatic service and bundled rates.
- Hire one new City staff person for two days per week beginning July 2020.
- Adopt an enforcement ordinance by December 2020 requiring MCR and MORE entities recycle.

While recent plans include upgrades to programs, the proposed timeframes for the program upgrades are not reasonable. For example, a planned 2018 ordinance adoption has been delayed until the latter part of 2020. Also, the City has planned since fall of 2018 to renegotiate its franchise agreement. This has been delayed several times. The latest target date is July 2020, but, if negotiation is unsuccessful the City has indicated the possibility of having to go out to bid for new services in 2021.

Norco**Previously Planned Activities to Address MCR and MORE Program Gaps (March 2017 RFA)**

- MCR:
 - The City will improve monitoring, including the hauler contacting regulated entities that are not recycling via email and individual phone calls.
 - The City will improve its education activities, including each commercial customer being sent an email with MCR information and those customers without an email address being sent a hardcopy in the mail.
 - All businesses will receive information directly in the form of bill stuffers, as well as when renewing their business license.
 - The City will provide education at public events.
 - The City and hauler have committed to work closely together to focus their efforts on contacting businesses directly to improve recycling participation in the business sector.
- MORE: See directly below. An adequate plan was not submitted.

Reason for Referral:

Although the City conducted the items in the March 2017 RFA, activities were ineffective. Participation levels remained low for both MCR and MORE. Commercial recovery rates also stayed very low. In mid-2018, it was requested the City update its plan to include more specific implementation strategies for both MCR and MORE programs. Methods chosen by the city (surveys, letters, and adoption of an ordinance which was not enforced) have again been ineffective and not fully implemented. The non-compliance rate for MCR covered commercial entities is still high (53%). The non-compliance rate for MORE covered commercial entities is also very high (96%).

Riverside

Reason for Referral:

The City did not provide an adequate plan to address the gaps for MCR and MORE programs.

In August 2018, CalRecycle notified the City that its MCR and MORE programs were deficient. The City had not adopted an organics recycling program for the business community, identification of covered generators was inconsistent and inadequate, and the noncompliance rate for both businesses and multifamily complexes were still high, indicating ineffective education, outreach and monitoring efforts. The City responded with a plan on September 20, 2018. The plan was vague on specific timelines and efforts to address the MCR and MORE gaps. During the next year the City worked with contractors to address its solid waste programs, including compliance with MCR and MORE laws.

By October 2019 no substantive program changes had been made. The City still had not developed a MORE program that met the needs of the business community. The number of covered businesses and multifamily complexes out of compliance for MCR remained high with no significant trends toward compliance (47% and 57%, respectively). The number of covered businesses and multifamily complexes out of compliance for MORE also remained high (95% and 93%, respectively). The identification of covered generators for both MCR and MORE was inconsistent from year to year, and the City's annual monitoring follow-up methods were ineffective at increasing compliance rates.

In October 2019, CalRecycle again sent a letter to the City requesting a plan, containing specific milestones and timeframes, addressing the City's MCR and MORE program deficiencies, to be submitted within 30-days, or be referred to the Jurisdiction Compliance Unit. The City's response did not provide enough information to determine if the plans would adequately address the program deficiencies.