

REQUEST FOR APPROVAL

To: Scott Smithline
Director

From: Howard Levenson
Deputy Director, Materials Management and Local Assistance Division

Request Date: January 26, 2016

Decision Subject: Consideration of the California Used Mattress Recovery and Recycling Revised Plan

Action By: January 29, 2016

Summary of Request:

The Mattress Recycling Council (MRC) submitted the Used Mattress Recovery and Recycling Plan and Budget to CalRecycle on July 1, 2015. As directed by the Used Mattress Recovery and Recycling Act [Chapter 388, Statutes of 2013, Public Resources Code sections 42985-42994, CalRecycle approved the Budget and granted conditional approval of the Plan on October 1, 2015. Final approval is pending submittal of a revised Plan that adequately addresses the issues outlined in the September 15, 2015, Request for Approval. The MRC submitted a revised Plan to CalRecycle on November 30, 2015. This item requests the Director's compliance determination of the revised Plan.

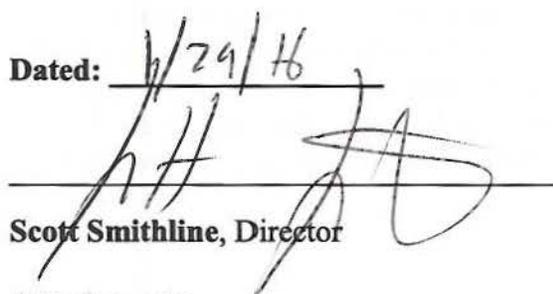
Recommendation:

Staff recommends approval of the revised Used Mattress Recovery and Recycling Plan as meeting the statutory requirements of the Act, as well as the regulatory requirements of California Code of Regulations (CCR) sections 18959-18971.

Action:

On the basis of the information and analysis in this Request for Approval, and the findings set out above, I hereby approve the revised Used Mattress Recovery and Recycling Plan submitted by the Mattress Recycling Council on November 30, 2015.

Dated: 1/29/16



Scott Smithline, Director

Attachments:

1. Used Mattress Recovery and Recycling Plan, Revised November 30, 2015

2. Request for Approval, Consideration of the California Used Mattress Recovery and Recycling Plan, September 15, 2015

BACKGROUND

Senate Bill (SB) 254 (Chapter 388, Statutes of 2013) established the Used Mattress Recovery and Recycling Act (Act). Subsequently, the Governor signed clean-up legislation – SB 1274 (Chapter 371, Statutes of 2014) – which provided additional clarity regarding definitions, report submittals, and record keeping requirements under the Act.

The Act requires implementation of the Used Mattress Recovery and Recycling Program (Program) in order to reduce illegal dumping, increase recycling, and substantially reduce public agency costs for the end-of-life management of used mattresses. Mattress manufacturers, via a mattress recycling organization, are required to develop, finance, and implement a convenient and cost-effective Program, which is consistent with the state's solid waste management hierarchy, to recover and recycle used mattresses generated in California. A mattress recycling organization must be certified by CalRecycle and submit a budget and plan that details the proposed mattress stewardship Program to the Department by July 1, 2015. To date, CalRecycle has certified the Mattress Recycling Council, a non-profit organization created by the International Sleep Products Association, as a mattress recycling organization.

CalRecycle is tasked with specific oversight and enforcement responsibilities that include appointing the members of the MRC Advisory Committee; reviewing and approving mattress stewardship plans submitted by the MRC; reviewing and approving annual reports required from the MRC, mattress recyclers and mattress renovators, and from solid waste facilities; reviewing and approving the MRC's annual budget and the mattress recycling charge; posting a list of compliant manufacturers and renovators on CalRecycle's website; and imposing an administrative fee sufficient to cover the Department's full costs of administering and enforcing the Act. Additionally, based on information required in the plan and first annual report, CalRecycle must establish the state mattress recycling baseline and the state mattress recycling goals on or before January 1, 2018. CalRecycle's enforcement responsibilities will be comprised of a combination of activities including evaluating the MRC's progress in implementing its plan, performing audits, and, if necessary, imposing civil penalties for non-compliance. In evaluating the MRC's progress, CalRecycle will solicit stakeholder input via transparent, public discussions.

The Department adopted regulations on May 22, 2015, to add clarity to statute and outline administrative procedures. The regulations were approved by the Office of Administrative Law on July 21, 2015, and filed with the Secretary of State on the same day. As requested by the Department, the regulations became effective immediately. Additionally, the Department filed a notice of exemption (NOE) for the regulations with the State Clearinghouse as provided under the California Environmental Quality Act.

Plan Submittal and Review Timeline:

On July 1, 2015, as required by PRC section 42987.1, the MRC submitted a Used Mattress Recovery and Recycling Plan¹ (Plan) and Budget² to the Department. A subsequent errata sheet³ was submitted on July 24, 2015. CCR section 18962(c) requires the Department to determine if the Plan is complete and notify the MRC within 30 days of receipt of the Plan. On July 30, 2015, CalRecycle notified the MRC that the submitted Plan was complete. The Plan completeness letter was posted on the Department's website at: <http://www.calrecycle.ca.gov/Mattresses/Plans/default.htm>.

PRC section 42987.3(a) requires that the Department make a determination of approval, conditional approval, or disapproval within 90 days of receiving the Plan. On October 1, 2015, the CalRecycle Director conditionally approved the Plan. The MRC was given 90 days to resubmit a revised Plan that adequately addressed the issues outlined in the September 15, 2015, Request for Approval.

On November 30, 2015, the MRC submitted a revised Plan (see Attachment 1). CalRecycle accepted public comments through December 21, 2015, and staff reviewed the new Plan to evaluate whether CalRecycle's concerns with the previously submitted Plan had been resolved (see Staff Recommendations in Attachment 2).

ANALYSIS

Used Mattress Recovery and Recycling Plan Revisions:

Each item that CalRecycle requested the MRC to address in the September Request for Approval is listed below, followed by an explanation of the specific revisions (shown with *italics*) that were made to the new Plan submitted on November 30, 2015. Staff reviewed all modifications and additional information provided in the revised Plan and found the MRC has addressed the Department's concerns, as follows:

1. *Waste Hierarchy*. Staff requested revisions to the Plan to clarify it is consistent with the waste management hierarchy, and describe how it places a priority on source reduction (which includes reuse) over recycling, composting, and biomass conversion.
 - a) Source Reduction: Source reduction is an important component of the state's waste hierarchy; thus, CalRecycle requested the MRC to remove the following statement from page 7 of the Plan: "*Therefore, implementing source reduction efforts is beyond the scope of both the Act and the Plan.*" This italicized statement was deleted from the Plan.
 - b) Renovators: CalRecycle requested the MRC to provide additional information regarding its negotiations with interested renovators to the Plan. CalRecycle also asked the MRC to describe how it, and its contracted recyclers, will work with renovators and ensure they are not adversely impacted by the Program. CalRecycle will continue to monitor reuse opportunities and MRC's communication with

¹ <http://www.calrecycle.ca.gov/Actions/Documents%5c112%5c20152015%5c1438%5c2%20CA%20Plan%207-1-15.pdf>

² <http://www.calrecycle.ca.gov/Actions/Documents%5c112%5c20152015%5c1438%5c5%20CA%202016%20Budget.pdf>

³ <http://www.calrecycle.ca.gov/Actions/Documents%5c112%5c20152015%5c1438%5c3%20MRC%20Plan%20errata%207-24-15.pdf>

renovators through the annual reporting process and MRC Advisory Committee reports. Staff identified the following details in the revised Plan that describe the negotiations to date, as well as the MRC's commitment to work with renovators:

- i. On page 21 of the revised Plan the MRC states it: "*evaluated all proposals based on a combination of factors, including price, experience, transportation capabilities, geographic location and completeness of RFP response*" and "*did not disqualify bids that included the sale of some materials to renovators that are in compliance with state and federal law.*"

Staff have found, through analyzing similar programs, that a rigorous, fair, and transparent RFP process spurs innovation, increases competition among bidders, and reduces costs. The additional statements (above) in the revised Plan demonstrate that the MRC intends to allow renovators to participate in the program as downstream vendors, further aligning the program with the waste management hierarchy.

- ii. Under the "Mattress Collector Incentive" section, on page 22, the MRC added the following statement: "*The incentive 'will not undermine existing used mattress recycling, resale, refurbishing, and reuse operations that are in compliance with state and federal law' because it is less than the prices we are informed that renovators may pay for used mattresses.*" Coupled with item iv, below, staff finds that renovators will have the opportunity to be full participants in the program, and their status as registered entities with the MRC will be monitored quarterly per CCR section 18961(a)(4).
- iii. Text was added to page 33 of the Plan that explains the MRC will post on its consumer-focused website a list of all entities, including renovators, who notify the MRC that they will accept free drop-offs of discarded mattresses. Therefore, it is staff's assessment that MRC clarified consumers will have access to information regarding their options to drop off used mattresses – which will include locations of renovators.
- iv. As noted on page 22 of the Plan, renovators will pay more than recyclers for whole units. By including registered renovators on byebyemattress.com, and allowing contracted recyclers to sell components to renovators, the MRC has addressed the Department's recommendations.

- c) **Processing Fee:** CalRecycle requested that the Plan describe how the MRC intends to continue working with recyclers and renovators to set processing fees, and to explain how these payments will be monitored and adjusted to ensure the Program is consistent with the waste management hierarchy.

Under the "Contracted Recyclers" section of the Plan, page 21, the following information was added: "*MRC did not set a fixed processing fee that it would pay the recyclers. Instead, the responses provided a starting point for negotiations between MRC and the respondents on issues regarding the processing fee and other important aspects of the recycling contract.*" After the two year contact term, the MRC will evaluate the performance, costs and processing capabilities of existing recyclers and

determine whether or not to contract with the current entities or open the contracts to all interested parties. During this time, it is expected that the MRC will begin negotiations again, including the amount of the processing fee, with interested parties.

- d) Research: CalRecycle requested the Plan's section on Research be revised to include possible research topics and activities to develop end-use markets to increase the reuse of mattress components.

Staff finds the Department's recommendation has been addressed by the following additions to page 14 of the Plan: *"By partnering with universities, government agencies, industry groups and individual companies, MRC intends to initiate research programs targeted at identifying new end-use markets for mattress materials. MRC anticipates that initial efforts will focus on researching the development of new uses and markets for mattress components that have limited or nonexistent end markets. Additionally, MRC intends to initiate research to identify more efficient means for preparing discarded mattress materials for transport to end-use markets, and to identify additional potential purchasers for these materials."*

- e) Biomass: CalRecycle requested a revision to the statement regarding biomass conversion on page 7 of the Plan. The MRC addressed CalRecycle's concern and made the suggested change as follows: *"If all of the options described above are not feasible, the wood may be used for bio-mass conversion."*

2. *Brick-and-Mortar Stores*. The Errata Sheet submitted by the MRC revised the third bullet, regarding brick-and-mortar stores, on page 12 of the Plan. The MRC complied with CalRecycle's request and removed the bullet from the Plan; it formerly stated: *"[t]he charge does not apply to mattresses or foundations sold by brick-and-mortar stores located outside of California for delivery in California."*
3. *Contracting*. CalRecycle requested the Plan include additional details about contracts, such as stating the average or set length of contracts, describing how the MRC will monitor and evaluate the performance of contracted service providers, the frequency with which RFPs will be issued, and an explanation of how the MRC will facilitate participation in the Program by additional service providers, since competition has been shown to spur innovation and drive down costs in other recycling programs.

Staff determined that the MRC addressed these requests by adding information detailing the contracting process on pages 21 and 22 of the Plan. Specifically the MRC stated the following: *"Contract terms will be for a minimum of two years with annual extensions possible. MRC will monitor and evaluate the performance of each contractor with on-line tracking software that monitors in-bound volumes and out-bound commodity shipments. After the initial contract term, MRC will evaluate the performance, costs and processing capabilities of existing recyclers. Based on these factors, MRC may choose to re-bid some or all of the regions, and possibly contract with additional recyclers. MRC will publicize a request for proposals and open the contracts to all interested parties."*

4. *Illegal Dumping – Fund for Local Governments*. CalRecycle requested that the MRC explain what activities will be undertaken if the number of illegally dumped mattresses does not

decline as expected, and instead stagnates or increases. Also, staff requested more information on how the MRC will reevaluate the effectiveness of the illegal dumping strategy and the process that will be utilized to determine the amount and distribution of funding in subsequent years.

Staff finds the MRC addressed these recommendations on page 24 of the Plan, which now contains the following statements: *“MRC will review the effectiveness of this effort annually...MRC anticipates that it will be necessary to experiment with several different alternatives before one or more satisfactory solution are identified... [I]f the data MRC collects as a result of this effort shows that the number of illegally dumped mattresses has not declined over time, MRC will solicit input from interested parties in an effort to identify why that has occurred and to develop additional options for further addressing the problem. The alternatives that MRC will consider may include higher funding levels or other strategies for discouraging residents and others from illegally dumping used mattresses.”*

5. *Mattress Recycling Charge.* CalRecycle requested the Plan to explicitly state that the sales data the MRC will collect from all sellers of mattresses and foundations in the state will include the number, size (e.g., full, twin, queen, etc.), and type (e.g., innerspring, foam, etc.) of mattresses and foundations sold. This data will enable evaluation of the charge, and consideration of the impact of two different charges rather than one set charge for all units.

The MRC added information to page 12 of the revised Plan regarding sales data. It states: *“MRC has decided to set one flat rate charge for all mattress and foundation sizes and types when it launches the Program. MRC will review the impact of this decision annually. MRC notes that the International Sleep Products Association (ISPA) annually collects and publishes national mattress size sales data in its Report of Sales and Trends. MRC will review the ISPA annual data on sales of mattresses by size in assessing whether to set two different charges based on size in the future.”* Based on the MRC’s commitment to review impacts of a single charge every year, and its obligation to annually consult with the Advisory Committee, staff finds there will be opportunities in the future to assess the appropriateness of one charge for all units versus two different charges in accordance with size. Further, data will be presented to and analyzed by staff during CalRecycle’s development of a state mattress recycling baseline and goals as required by PRC section 42987.5(a).

6. *Annual Report.* CalRecycle staff noted in the original Plan that the description under this heading did not reference the corresponding section in the Used Mattress Recovery and Recycling Program Regulations (CCR section 18964), which details the MRC’s specific reporting requirements. The MRC added this missing reference on page 13 and the Plan now states: *“MRC will submit its annual report for the 2016 calendar year to meet the requirements of Section ...18964 of the [r]egulations.”*
7. *Convenience.* CalRecycle requested that the Plan describe how the MRC defines convenience, how it will monitor the program to determine whether there are convenient mattress collection and drop-off opportunities, and what actions will be undertaken if there are not convenient collection and drop-off opportunities. The Department also requested the Plan to state that the MRC’s consumer-focused website (byebyemattress.com) will maintain

a current list of all collectors and drop-off locations, including renovators, recyclers, and solid waste facilities. Further CalRecycle requested that the Plan include a specified a timeline for providing convenient mattress collection and drop off opportunities and a description of any role of retailers. Staff notes these requests were all incorporated into the Plan as follows:

- a) The MRC added a “Convenience” section to the Plan on pages 33-34. This section details the convenience options for consumers, including retailer take-back of used mattresses upon delivery, participating municipal curbside collection or waste site drop-off services, alternative drop-off events such as MRC-funded recycling events, as well as the option to drop off discarded mattresses at contracted recyclers directly.
 - b) Page 33 of the revised Plan states that the MRC will post on its consumer-focused website a list of all mattress drop-off locations, including renovators, recyclers, solid waste facilities, etc., that notify the MRC that they will accept free drop-offs of discarded mattresses, and that are in compliance with state and federal law, along with their location and hours of operation.
 - c) Once the program is operational, the MRC will annually evaluate the volumes of discarded mattresses collected throughout the state (page 34). If the MRC finds some geographic areas are underserved, it will consider establishing additional collection alternatives, including more no-cost mattress collection events, or consider possible partnerships with neighboring jurisdictions or host sites to provide collection opportunities.
 - d) Page 34 lays out a timeline for implementing a convenient collection system, which includes the July 1, 2014 retailer take-back requirement, and a deadline of December 31, 2016 for the MRC to determine at least one free drop-off site in each county. It also explains that for those counties that are not served by a free drop-off site by the end of 2016, the MRC will offer at least one MRC-funded community used mattress collection event annually.
8. *Mattress Collector Incentive.* CalRecycle requested that the Plan describe the MRC’s vision for expanding the number of incentive payment locations to provide residents in other geographic areas the opportunity to receive a monetary incentive for delivering their mattress to a MRC-designated location. In response, the MRC complied and added the following sentence to page 23 of the Plan: “MRC will assess resident participation in this program during the first year and consider whether and how to expand locations where the incentive is offered, including possible municipal or private waste sites.”
9. *Minor Corrections.* CalRecycle provided the MRC with a minor corrections list, which identified a number of non-substantive revisions. The MRC made all of the corrections, except the suggestion to replace “bio-mass” with biomass. This is considered a minor oversight and does not impact CalRecycle’s consideration of approval of the Plan.
10. *Appendices Updates.* CalRecycle advised the MRC to incorporate updates suggested by the MRC Advisory Committee to the appendices. The minor corrections included updates to Appendices E, G, and I. A few of the suggested edits were not made; however, these minor errors will not impact the Department’s consideration of approval of the Plan.

- a) The MRC revised Appendix E as suggested; however, it still indicates January 28, 2015 instead of January 21, 2015 for one of the dates the MRC and Advisory Committee met. This is considered a minor oversight and does not impact CalRecycle's consideration of approval of the Plan.
- b) Appendix G was not changed; however, staff found the Communications Plan to be comprehensive. CalRecycle has discussed its and the Advisory Committee's concerns regarding retailer outreach efforts with the MRC and will review their ongoing communications strategy and annual reports to determine if retailer-targeted communication is sufficient.
- c) The MRC made all the suggested changes in Appendix I, with the exception of correcting the name of "Newby Island Landfill"; the Plan still states "New Island Landfill." This is considered a minor oversight and does not impact CalRecycle's consideration of approval of the Plan.

MRC Advisory Committee Comments:

The Advisory Committee informed staff on December 21, 2015 that it does not intend to submit comments.

Stakeholder Comments:

CalRecycle accepted comments on the revised Plan through December 21, 2015. None were received.