

LOCAL ASSISTANCE AND PLANNING COMMITTEE
March 12, 1996

Attachment 1

AGENDA ITEM 15

ITEM: CONSIDERATION OF STAFF RECOMMENDATIONS ON THE ENFORCEMENT OPTIONS AVAILABLE TO THE BOARD WITH REGARD TO JURISDICTIONS THAT HAVE FAILED TO SUBMITTED A SOURCE REDUCTION AND RECYCLING ELEMENT AND/OR NONDISPOSAL FACILITY ELEMENT

I. SUMMARY:

Since the passage of the Integrated Waste Management Act of 1989 (IWMA) the State has experienced a substantial change in waste management practices on both a local and regional level. The IWMA originally required each jurisdiction to prepare and submit a Final Draft Source Reduction and Recycling Element (SRRE) to the county in 1991. Numerous legislative changes delayed the due dates for the SRREs to be submitted to the Board until 1994, and also required the submittal of a Nondisposal Facility Element (NDFE) along with the SRREs.

As a result of AB 440 (Sher), city, county and regional agency SRREs and Nondisposal Facility Elements (NDFEs) were required to be submitted to the Board in three phases; April 30 (144 SRREs and 144 NDFEs), August 31 (145 SRREs and 145 NDFEs), and December 31, 1994 (218 SRREs and 218 NDFEs).

As evident by the above submittal due dates, all jurisdictions, with the exception of newly incorporated cities, should currently have submitted their final SRRE and NDFE to the Board. Those jurisdictions that have failed to submit a final SRRE and NDFE to date are considered to be "late" submittals. Those final SRRE and/or NDFE that have been submitted to the Board but are missing required supporting documentation (i.e., CEQA documents, public notices, public hearing notices, etc.) are considered "incomplete" submittals at the present time. Incomplete submittals are not addressed in this agenda item. Table 1 provides the most recent list of jurisdictions, arranged by county, that have not submitted their final draft SRRE and/or NDFE at the present time.

II. PREVIOUS COMMITTEE/BOARD ACTION:

On February 15, 1996 the Local Assistance and Planning Committee (Committee) heard a status report on jurisdictions which had not submitted final SRREs and/or NDFEs. The Committee directed staff to present options for Board action regarding those jurisdictions at the March Committee Meeting. The Board sent a letter to each non-complying jurisdiction on March 1, 1996. The letter informed the jurisdiction of the discussion at the Committee Meeting, and requested participation and information on the status of submittals and explanation of the delays in submitting the SRRE and NDFE.

III. OPTIONS FOR THE COMMITTEE:

Committee Members may decide to adopt one or more of the following options which are set forth as a stepwise compliance program:

1. Send a Board Enforcement Process Notification Letter - Send a letter to each non-complying jurisdiction notifying them of the Board's intent to take enforcement action and the enforcement process which the Board has chosen [from options 1-7]. The

letter would ask them to identify their need for technical assistance and outline the first step in compliance as described in option 2, below.

Key Issues

- Informs jurisdictions, in advance, of the Board's compliance process.
 - Is the first phase of administrative action.
 - Documents each jurisdiction's need for technical assistance.
 - May be viewed as unequal treatment by jurisdictions with approved SRREs and NDFEs.
 - May extend the timeframe for statewide compliance.
2. **Direct Staff to Prepare Agenda Items with Compliance Schedules** - Instruct the Office of Local Assistance and Waste Characterization and Analysis Branch staff to meet with each non-complying jurisdiction, and develop a mutually agreed upon compliance schedule for the submittal of individual SRREs and/or NDFEs. This compliance schedule would be considered at Committee and Board meetings. If a jurisdiction did not participate in developing a schedule, other options could be initiated.

Key Issues

- Provides more specific timeframe for final SRRE/NDFE completion.
 - Reinforces the Board policy of working cooperatively with local jurisdictions.
 - Provides a clear threshold for future administrative action.
 - Allows Board action if the compliance schedule is not met.
 - May be viewed as unequal treatment by jurisdictions with approved SRREs and NDFEs.
 - May extend the timeframe for statewide compliance.
3. **Direct Staff to Prepare an Agenda Item Recommending Types of Action** - Instruct Office of Local Assistance and Waste Characterization and Analysis Branch staff to prepare an agenda item outlining reasons for non-compliance and staff recommendations which could be used as guidance for the Board on the appropriate level of administrative action or penalty (consistent with the outline in the County Integrated Waste Management Plan Enforcement Policy) for each type of reason.

Key Issues

- Sets general guidance for future Board action.
 - May be subject to intense debate.
 - May be considered by some to be arbitrary standards.
4. **Regional Board Hearings Prior to Ordering Compliance Schedules** - Hold Board hearings in or near the affected jurisdiction(s) on non-compliance with the IWMA. If the Board finds, at the public hearing, that a jurisdiction has failed to submit its SRRE and/or NDFE to the Board, and continues to fail to actively move towards submittal of the element, the Board may issue an Order of Compliance, including a compliance schedule, or schedule additional hearings. The compliance order will specify the timeframe within which the SRRE and/or NDFE must be submitted.

Key Issues

- Demonstrates the Board is holding jurisdictions accountable for compliance.
- Provides a local public forum where each jurisdiction can state its case.
- May result in more rapid statewide compliance.
- May be viewed as unequal treatment by jurisdictions with approved SRREs and NDFEs.
- May be viewed as overly harsh and punitive.

5. **Regional Board Hearings Leading to Possible Penalties** - Hold regional Board hearings to notify the jurisdiction(s) of non-compliance with the IWMA, and consider enforcement action consistent with Public Resources Code Section 41813. The Board would issue an order on the action to be taken. Board actions could range from setting a compliance date to the levying of fines.

Key Issues

- Demonstrates the Board is holding jurisdictions accountable for compliance.
- Provides a local public forum where each jurisdiction can state its case.
- May result in more rapid statewide compliance.
- Jurisdictions with approved SRREs and NDFEs may view it as equal application of standards.
- May be viewed as overly harsh and punitive.
- Some may view fines as counterproductive to achieving compliance.

6. **Restrict Grants and Loans to Jurisdictions with approved SRREs and NDFEs** - Specify in grant and loan criteria that awards will be restricted to jurisdictions with approved SRREs and NDFEs. Do not award discretionary grant or loan funds to non-complying jurisdictions.

Key Issues

- Provides economic incentive to comply with the IWMA.
- Makes more grant and loan funds available to jurisdictions which have approved SRREs and NDFEs.
- Decreases funding opportunities for non-complying jurisdictions.
- Is an indirect means of achieving compliance. May be viewed as overly harsh and punitive.
- Some may view withholding funds as counterproductive to achieving compliance.
- May require adoption of regulations.

7. **Monitor Progress** - Continue to request status reports at Committee Meetings and to monitor the progress of jurisdictions.

Key Issues

- May delay statewide compliance.
- Does not increase the incentive to comply with the IWMA.
- May be viewed as unequal treatment by jurisdictions with approved SRREs and NDFEs.

IV. STAFF RECOMMENDATION:

Staff recommends the Committee adopt a step-wise compliance program starting with Option #1 and, if necessary, moving to Option #5. Staff recommends that the Committee direct staff to investigate Option #6 with an interdivision team and the legal office for future Board consideration. Staff also recommends the Board continue to implement Option #7 with regular updates at Committee meetings.

A step-wise approach would demonstrate the Board is serious about compliance with the IWMA, allow the Board to identify and provide needed technical assistance, provide adequate time to prepare documents after technical assistance is received, establish an administrative record and allow continued cooperative relationships between the Board and jurisdictions.

Whenever a jurisdiction submits its documents, staff will follow standard procedures of working closely with them to assist them in coming into compliance.

V. ANALYSIS:

Background

The IWMA, as amended, requires each California jurisdiction to prepare and submit a final SRRE and NDFE. Due dates varied depending on the remaining disposal capacity of within each county. The three submittal due dates were April 30, 1994 (for counties with less than 8 years of remaining capacity), August 31, 1994 (for counties with between 8 years and 15 years of remaining capacity), and December 31, 1994 (for counties with 15 or more years of remaining capacity).

There are currently 528 jurisdictions in California which are required to submit a SRRE and NDFE as a result of the IWMA. Four cities are newly incorporated and therefore have later submittal dates.

The Board has statutory requirements under Public Resources Code (PRC) sections 41813 to enforce the provisions of the IWMA if a local jurisdiction fails to submit an adequate element or plan. Administrative civil penalties of up to \$10,000 per day may be imposed on local jurisdictions until the element or plan is submitted to the Board and is deemed adequate.

Staff has analyzed the jurisdictions which have failed to submit SRREs and NDFEs and to determine whether the jurisdictions were in a particular geographic region, or had low or high population. Staff found no obvious patterns for non-submittal. Jurisdictions which have not submitted documents are in both urban and rural areas throughout the state.

Legal Framework

Public Resources Code Section 41813 provides, in part, that:

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- (a) After conducting a public hearing pursuant to Section 41812, the board may impose administrative civil penalties of not more than ten thousand dollars (\$10,000) per day on any city or county, or, pursuant to Section 40974, on any city or county as a member of a regional agency, which fails to submit

an adequate element or plan in accordance with the requirements of this Chapter.

(b) The board shall not impose any penalty against a city or county pursuant to this section if the city or county is in substantial compliance with this part and if those aspects of a plan or element of a plan submitted by a city, county, or regional agency which is not in compliance with this part do not directly or substantially affect achievement of the diversion requirements of Section 41780.

(c) In determining whether a city, county, or regional agency is in substantial compliance, the board shall consider whether the city, county, or regional agency has made a good faith effort to implement all reasonable and feasible measures to comply....

This statute provides the Board with authority to impose fines upon jurisdictions which have not submitted their SRREs and NDFEs in a timely manner. The statute does provide that the Board must hold a public hearing prior to imposing any fine. It also provides several determinations that must be made by the Board in making a deciding whether to impose a fine and the amount of the fine:

- 1) whether or not the element or plan is adequate;
- 2) whether or not the inadequacy is causing a failure to meet the diversion requirements; and,
- 3) whether the city, county, or regional agency has made a good faith effort to implement all reasonable and feasible measures to comply.

Proposed Procedures

Full Information for Hearings

The statute does not supply any procedures to be followed prior to the holding of a public hearing to ensure that the information necessary to make these determinations is brought before the Board in a manner which will allow it to make a considered decision. Theoretically, the Board could simply start holding public hearings immediately for jurisdictions that have not submitted their SRREs and/or NDFEs. This is Option 5 provided above. However, given the range of information that may need to be considered in these public hearings, it is quite possible that Board may wish to have additional hearings for each jurisdiction in order to ensure that it has all the relevant information necessary for it to make a decision. Portions of the step-wise compliance program outlined above will provide a method for obtaining this information in advance for all jurisdictions so that any hearings which are necessary can be conducted in an efficient and effective manner. [Options 1, 2 and 4].

Eliminating Unnecessary Hearings

As noted above, jurisdictions have not submitted their SRREs and/or NDFEs for a variety of reasons. Some of their difficulties are easier to remedy than others. In many cases, it may be that formulating a compliance schedule, with the assistance of Board staff, that has definite tasks and due dates, will provide the incentive and assistance necessary for a jurisdiction to complete its planning

documents. This could prevent the need for holding hearings and imposing fines where appropriate compliance can be achieved through less onerous methods. [Options 1, 2 and 4].

VI. ATTACHMENTS:

1. Table 1. Summary of those Jurisdictions Which Have Not Submitted a final draft SRRE and/or NDFE to the Board.

VII. APPROVALS:

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Legal Review: _____ *ETS* Date/time: 3/4/96