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AB-815 Integrated waste management plans: source reduction and recycling element and household hazardous waste element: dual stream recycling programs. (2019-2020)

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Assembly Bill No. 815

CHAPTER 182

An act to amend Section 41825 of the Public Resources Code, relating to solid waste.

[Approved by Governor August 30, 2019. Filed with Secretary of State August 30, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 815, Aguiar-Curry. Integrated waste management plans: source reduction and recycling element and household hazardous waste element: dual stream recycling programs.

The California Integrated Waste Management Act of 1989, which is administered by the Department of Resources Recycling and Recovery, establishes an integrated waste management program. Existing law requires each city, county, and regional agency, if any, to develop a source reduction and recycling element and a household hazardous waste element of an integrated waste management plan. The act requires the source reduction and recycling element to divert from disposal 50% of all solid waste subject to the element through source reduction, recycling, and composting activities, with specified exceptions.

Existing law requires a city, county, or regional agency to submit an annual report to the department summarizing its progress in reducing solid and household hazardous waste. Existing law requires the department to review a jurisdiction's compliance with the diversion requirements every 2 or 4 years, as specified, and requires the department to issue an order of compliance if the department finds, after considering specified factors, the jurisdiction failed to make a good faith effort to implement its source reduction and recycling element or household hazardous waste element. After issuing an order of compliance, existing law authorizes the department to impose administrative civil penalties upon that jurisdiction, as provided.

This bill would require the department to consider whether the jurisdiction has implemented a dual stream recycling program, as defined, when considering if the jurisdiction has made a good faith effort to implement its source reduction and recycling element or household hazardous waste element.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

- (1) The solid waste industry and local governments began using single stream recycling in the 1990s, in which paper, plastic, glass, aluminum, and cardboard are collected together in a single recycling bin.
- (2) When it began, single stream recycling focused on ease of collection and boosted diversion rates.

(3) Global markets for single stream material have historically been strong, regardless of the quality and usability of the single stream material.

(4) In February 2017, China announced its National Sword policy to ban importation of 24 categories of scrap material, including low grade plastics and unsorted mixed paper, and setting strict contamination standards for other recyclable material.

(5) According to the Department of Resources Recycling and Recovery (CalRecycle), prior to National Sword, approximately two-thirds of curbside collected recycled material was exported to foreign markets, with China receiving 62 percent of all exported recycled material.

(6) According to the waste hauling industry, on average, 25 percent of collected recycled material is contaminated, with some communities reaching 50 percent.

(7) High rates of contamination of recycled materials result in higher processing costs and make the use of recycled material more expensive than the use of virgin material.

(8) With fewer end markets, contaminated recycled material is stockpiled and may eventually be landfilled.

(9) To address the issue of contamination and to improve marketability of recycled material, some communities have adopted dual stream recycling collection programs.

(b) It is the intent of the Legislature in enacting this measure to incentivize, but not require, communities and waste haulers to implement dual stream recycling programs.

(c) It is not the intent of the Legislature in enacting this measure to authorize CalRecycle to withhold a good faith effort determination on the basis that a jurisdiction has not voluntarily implemented a dual stream recycling program.

(d) It is not the intent of the Legislature in enacting this measure to encourage CalRecycle to bring enforcement actions against local governments that do not implement dual stream recycling programs.

SEC. 2. Section 41825 of the Public Resources Code, as amended by Section 1 of Chapter 155 of the Statutes of 2017, is amended to read:

41825. (a) Using the information in the report submitted to the department by the jurisdiction pursuant to Section 41821 and any other relevant information, the department shall make a finding whether each jurisdiction was in compliance with Section 41780 for calendar year 2006 and shall review a jurisdiction's compliance with Section 41780 in accordance with the following schedule:

(1) If the department makes a finding that the jurisdiction was in compliance with Section 41780 for calendar year 2006, the department shall review, commencing January 1, 2012, and at least once every four years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(2) If the department makes a finding that the jurisdiction made a good faith effort to implement its source reduction and recycling element and household hazardous waste element, the department shall review, commencing January 1, 2010, and at least once every two years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(3) If the department makes a finding that the jurisdiction was not in compliance with Section 41780 for calendar year 2006 or for any subsequent calendar year, the department shall review, commencing January 1, 2010, and at least once every two years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(4) If, after determining that a jurisdiction is subject to paragraph (2), or, if, after determining that a jurisdiction is not in compliance with Section 41780 and is subject to paragraph (3), the department subsequently determines that the jurisdiction has come into compliance with Section 41780, the department shall review, at least once every four years, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element in the same manner as a jurisdiction that is subject to paragraph (1).

(5) If, after determining that a jurisdiction is in compliance with Section 41780 and is subject to paragraph (1), the department subsequently determines that the jurisdiction is not in compliance with Section 41780, the department shall review, at least once every two years, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element in the same manner as a jurisdiction that is subject to paragraph (2) or (3).

(b) In addition to the requirements of subdivision (a), the department may review whether a jurisdiction is in compliance with Section 41780 in accordance with the requirements of this section at any time that the department receives information that

indicates the jurisdiction may not be making a good faith effort to implement its source reduction and recycling element and household hazardous waste element.

(c) (1) Before issuing a compliance order pursuant to subdivision (d), the department shall confer with the jurisdiction regarding conditions relating to the proposed order of compliance, with a first meeting occurring not less than 60 days before issuing a notice of intent to issue an order of compliance.

(2) The department shall issue a notice of intent to issue an order of compliance not less than 30 days before the department holds a hearing to issue the notice of compliance. The notice of intent shall specify all of the following:

(A) The proposed basis for issuing an order of compliance.

(B) The proposed actions the department recommends are necessary for the jurisdiction to complete to implement its source reduction and recycling element or household hazardous waste element.

(C) The proposed recommendations to the department.

(3) The department shall consider any information provided pursuant to subdivision (c) of Section 41821 if the proposed issuance of an order of compliance involves changes to a jurisdiction's calculation of annual disposal.

(d) (1) If, after holding a public hearing, which, to the extent possible, shall be held in the local or regional agency's jurisdiction, the department finds that a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the department shall issue an order of compliance with a specific schedule for achieving compliance.

(2) The compliance order shall include those conditions that the department determines to be necessary for the jurisdiction to implement its diversion programs.

(3) In addition to considering the good faith efforts of a jurisdiction, as specified in subdivision (e), to implement a diversion program, the department shall consider both of the following factors in determining whether or not to issue a compliance order:

(A) Whether an exceptional growth rate may have affected compliance.

(B) Other information that the jurisdiction may provide that indicates the effectiveness of the jurisdiction's programs, such as disposal characterization studies or other jurisdiction specific information.

(e) For purposes of making a determination pursuant to this section whether a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the department shall consider all of the following criteria:

(1) For the purposes of this section, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.

(2) For purposes of this section, "good faith effort" may also include the evaluation by a jurisdiction of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the jurisdiction to adequately address all sources of significant disposal, the submission by the jurisdiction of a compliance schedule, and the undertaking of all other reasonable and feasible efforts to implement the programs identified in the jurisdiction's source reduction and recycling element or household hazardous waste element.

(3) In determining whether a jurisdiction has made a good faith effort, the department shall consider the enforcement criteria included in its enforcement policy, as adopted on April 25, 1995, or as subsequently amended.

(4) The department shall consider all of the following when considering whether a jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element:

(A) Natural disasters.

(B) Budgetary conditions within a jurisdiction that could not be remedied by the imposition or adjustment of solid waste fees.

(C) Work stoppages that directly prevent a jurisdiction from implementing its source reduction and recycling element or household hazardous waste element.

(D) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction.

(E) The extent to which the jurisdiction has implemented additional source reduction, recycling, and composting activities.

(F) The extent to which the jurisdiction has made program implementation choices driven by considerations related to other environmental issues, including climate change.

(G) Whether the jurisdiction has provided information to the department concerning whether construction and demolition waste material is at least a moderately significant portion of the waste stream, and, if so, whether the local jurisdiction has adopted an ordinance for diversion of construction and demolition waste materials from solid waste disposal facilities, has adopted a model ordinance pursuant to subdivision (a) of Section 42912 for diversion of construction and demolition waste materials from solid waste disposal facilities, or has implemented another program to encourage or require diversion of construction and demolition waste materials from solid waste disposal facilities.

(H) The extent to which the jurisdiction has implemented programs to comply with Section 41780 and to maintain its per capita disposal rate.

(I) Whether the jurisdiction has implemented a dual stream recycling program. For this purpose, "dual stream recycling program" means a program in which fiber materials to be collected for recycling must be separated from containers or from glass. A dual stream recycling program includes, but is not limited to, split cart collection, separate collection containers for fiber and containers, or alternating collection weeks for single collection containers containing only fiber or only containers.

(5) In making a determination whether a jurisdiction has made a good faith effort, pursuant to this section, the department may consider a jurisdiction's per capita disposal rate as a factor in determining whether the jurisdiction adequately implemented its diversion programs. The department shall not consider a jurisdiction's per capita disposal rate to be determinative as to whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element.

(f) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

SEC. 3. Section 41825 of the Public Resources Code, as amended by Section 2 of Chapter 155 of the Statutes of 2017, is amended to read:

41825. (a) At least once every two years, the department shall review each jurisdiction's source reduction and recycling element and household hazardous waste element for compliance with Section 41780.

(b) In addition to the requirements of subdivision (a), the department may review whether a jurisdiction is in compliance with Section 41780 in accordance with the requirements of this section at any time that the department receives information that indicates the jurisdiction may not be making a good faith effort to implement its source reduction and recycling element and household hazardous waste element.

(c) (1) Before issuing a compliance order pursuant to subdivision (d), the department shall confer with the jurisdiction regarding conditions relating to the proposed order of compliance, with a first meeting occurring not less than 60 days before issuing a notice of intent to issue an order of compliance.

(2) The department shall issue a notice of intent to issue an order of compliance not less than 30 days before the department holds a hearing to issue the notice of compliance. The notice of intent shall specify all of the following:

(A) The proposed basis for issuing an order of compliance.

(B) The proposed actions the department recommends are necessary for the jurisdiction to complete the implementation of its source reduction and recycling element or household hazardous waste element.

(C) The proposed recommendations to the department.

(3) The department shall consider any information provided pursuant to subdivision (c) of Section 41821, if the proposed issuance of an order of compliance involves changes to a jurisdiction's calculation of annual disposal.

(d) (1) If, after holding a public hearing, which, to the extent possible, shall be held in the local or regional agency's jurisdiction, the department finds that a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the department shall issue an order of compliance with a specific schedule for achieving compliance.

(2) The compliance order shall include those conditions that the department determines to be necessary for the jurisdiction to implement its diversion programs.

(3) In addition to considering the good faith efforts of a jurisdiction, as specified in subdivision (e), to implement a diversion program, the department shall consider all of the following factors in determining whether or not to issue a compliance order:

(A) Whether an exceptional growth rate may have affected compliance.

(B) Other information that the jurisdiction may provide that indicates the effectiveness of the jurisdiction's programs, such as disposal characterization studies or other jurisdiction specific information.

(e) For purposes of making a determination pursuant to this section as to whether a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the department shall consider all of the following criteria:

(1) For the purposes of this section, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.

(2) For purposes of this section, "good faith effort" may also include the evaluation by a jurisdiction of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the jurisdiction to adequately address all sources of significant disposal, the submission by the jurisdiction of a compliance schedule, and the undertaking of all other reasonable and feasible efforts to implement the programs identified in the jurisdiction's source reduction and recycling element or household hazardous waste element.

(3) In determining whether a jurisdiction has made a good faith effort, the department shall also consider the enforcement criteria included in its enforcement policy, as adopted on April 25, 1995, or as subsequently amended.

(4) The department shall consider all of the following when considering whether a jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element:

(A) Natural disasters.

(B) Budgetary conditions within a jurisdiction that could not be remedied by the imposition or adjustment of solid waste fees.

(C) Work stoppages that directly prevent a jurisdiction from implementing its source reduction and recycling element or household hazardous waste element.

(D) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction.

(E) The extent to which the jurisdiction has implemented additional source reduction, recycling, and composting activities.

(F) The extent to which the jurisdiction has made program implementation choices driven by considerations related to other environmental issues, including climate change.

(G) Whether the jurisdiction has provided information to the department concerning whether construction and demolition waste material is at least a moderately significant portion of the waste stream, and, if so, whether the local jurisdiction has adopted an ordinance for diversion of construction and demolition waste materials from solid waste disposal facilities, has adopted a model ordinance pursuant to subdivision (a) of Section 42912 for diversion of construction and demolition waste materials from solid waste disposal facilities, or has implemented another program to encourage or require diversion of construction and demolition waste materials from solid waste disposal facilities.

(H) The extent to which the jurisdiction has implemented programs to comply with Section 41780 and to maintain its per capita disposal rate.

(I) Whether the jurisdiction has implemented a dual stream recycling program. For this purpose, "dual stream recycling program" means a program in which fiber materials to be collected for recycling must be separated from containers or from glass. A dual stream recycling program includes, but is not limited to, split cart collection, separate collection containers for fiber and containers, or alternating collection weeks for single collection containers containing only fiber or only containers.

(5) In making a determination whether a jurisdiction has made a good faith effort, pursuant to this section, the department may consider a jurisdiction's per capita disposal rate as a factor in determining whether the jurisdiction adequately implemented its diversion programs. The department shall not consider a jurisdiction's per capita disposal rate to be determinative as to whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element.

(f) This section shall become operative on January 1, 2022.