

California Department of Resources Recycling and Recovery

It Has Not Provided the Oversight Necessary to Ensure That the Mattress Recycling Program Fulfills Its Purpose

Report 2018-107

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August 30, 2018

2018-107

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the California Department of Resources Recycling and Recovery's (CalRecycle) oversight of California's mattress recycling program (mattress program) as administered by the Mattress Recycling Council (Mattress Council)—a nonprofit entity founded by a mattress industry association and based in Virginia. The State enacted the Used Mattress Recovery and Recycling Act (recycling act) to reduce illegal dumping and increase recycling of mattresses and box springs (mattresses), and to substantially reduce public agency costs for the end-of-use management of mattresses.

This report concludes that CalRecycle has not provided the necessary oversight to ensure the mattress program fulfills its purpose. CalRecycle has missed an opportunity to ensure that the mattress program aligns with legislative intent because it has not established goals in three critical program areas: increasing consumer convenience, reducing illegal dumping, and ensuring consistency with the State's overall approach to waste management. Further, when it established goals for mattress recycling, CalRecycle was faced with poor quality data and thus set its goals based only on the recycling activity of the Mattress Council's contracted recyclers. As a result, the goals do not reflect all mattress waste management statewide. Further, CalRecycle has not taken adequate action to ensure mattress retailers comply with the requirements of the recycling act. CalRecycle identified violations in 74 percent of the 285 retailer, renovator, and manufacturer inspections for which it made compliance determinations during the period we reviewed, however it has not levied penalties against any violators. For five retailer inspection cases we reviewed, we determined CalRecycle could have pursued combined penalties as high as \$2.8 million if it pursued the maximum penalty for intentional, knowing, or reckless violations.

The Mattress Council has amassed excessive reserve funding. As of December 2017, the Mattress Council had over \$42 million in unrestricted net assets. State law intends that the Mattress Council operate the program over a multiyear period in a prudent and responsible manner. However, we determined that the amount of reserve funding the Mattress Council has accumulated is significantly higher than necessary to meet its stated reasons for needing a reserve. Further, the Mattress Council has opportunities to increase consumer convenience and should establish measures of success in the areas of consumer awareness and research into new technologies. Without such measures, the Mattress Council cannot show that its spending in those areas has been effective and sufficient.

Respectfully submitted,



ELAINE M. HOWLE, CPA
California State Auditor

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Summary

Results in Brief

The Legislature enacted the Used Mattress Recovery and Recycling Act (recycling act) to reduce illegal dumping, increase recycling, and substantially reduce public agency costs for the management of discarded mattresses and box springs (mattresses). Effective January 2014, the recycling act established a framework for a mattress recycling program (mattress program) using an extended producer responsibility (EPR) approach. Under an EPR approach, product manufacturers or other industry groups are responsible for operating a program to recycle or safely dispose of products consumers no longer want. In this instance, the Mattress Recycling Council (Mattress Council)—a nonprofit entity founded by a mattress trade association—operates the mattress program. To pay for the mattress program's costs, the Legislature authorized the Mattress Council to collect a recycling charge, which is currently \$10.50, from each consumer who purchases a new mattress in California. Effective oversight of the Mattress Council—a nongovernmental entity—is crucial to ensure that it uses the funding it collects from consumers effectively so that the State can realize its goals for waste diversion. However, the California Department of Resources Recycling and Recovery (CalRecycle) has not provided the oversight necessary to ensure that the mattress program's performance aligns with legislative intent and that the State meets its mattress recycling goals.

CalRecycle did not establish goals for the mattress program in three critical areas: increasing convenience for consumers, reducing illegal dumping of mattresses, and ensuring consistency with the State's overall approach to waste management, which prioritizes source reduction. According to the supervisor of CalRecycle's EPR unit, CalRecycle did not have sufficient data to set goals in these areas. However, legislative findings and declarations indicate the areas' importance, and we believe that CalRecycle could have set goals related to them based on the available data. For example, it is unclear what additional data CalRecycle needed to create goals related to the mattress program's convenience other than the information to which it already had access: publicly available census data and the mattress program locations at which consumers could drop off used mattresses. By not setting these goals, CalRecycle missed a critical opportunity to ensure that the Mattress Council's implementation of the mattress program aligns with the legislative intent behind the recycling act.

Further, the recycling act required CalRecycle to develop state goals for mattress recycling by January 2018. However, CalRecycle set goals that do not encompass recycling activities statewide but

Audit Highlights . . .

Our audit of the mattress program concluded the following:

- » *CalRecycle did not establish goals for the mattress program in three critical areas: increasing convenience for consumers, reducing illegal dumping of mattresses, and ensuring consistency with the State's overall approach to waste management, which prioritizes source reduction.*
- » *Although required to develop state goals for mattress recycling by January 2018, CalRecycle set goals that focus on only those mattresses that the Mattress Council's contractors collect.*
- » *CalRecycle has not imposed penalties to ensure that mattress retailers comply with the requirements of the recycling act.*
 - *We estimated that the potential total penalties in five cases we reviewed would have ranged from roughly \$280,000 to about \$2.8 million.*
- » *Although the Mattress Council has collected millions of dollars in revenue from California consumers to operate the mattress program, it has not used all the funds to ensure that the mattress program achieves the program goals.*
 - *The Mattress Council has accumulated net assets of more than \$42 million.*
- » *The Mattress Council cannot demonstrate that it met key objectives of the mattress program.*

rather focus on only those mattresses that the Mattress Council's contractors collect. As a result, CalRecycle's goals will lead it to monitor the growth of the mattress program but not the total statewide progress toward diverting mattresses from landfills—an approach that does not reflect the requirements or intent of the recycling act. CalRecycle indicated that it chose these more limited goals because the data it collected about statewide mattress recycling and disposal in 2016 were not complete enough to use to establish statewide goals. Although we acknowledge that poor data hindered CalRecycle from establishing a true statewide goal in 2017, it has since collected improved data, which positions it to set true statewide recycling goals in the future.

In addition, CalRecycle has not taken adequate action to ensure that mattress retailers comply with the requirements of the recycling act. Under the recycling act, retailers are required to perform specific actions, such as registering with the Mattress Council, collecting recycling charges from consumers, and remitting the charges to the Mattress Council. CalRecycle conducts inspections of mattress retailers, renovators, and manufacturers to ensure their compliance with these requirements. We found that although CalRecycle identified violations in 74 percent of the 285 inspections in which it made compliance determinations from March 2016 through February 2018, it did not levy administrative penalties against any violators. When we examined five cases in detail, we estimated that the potential total penalties in these cases would have ranged from roughly \$280,000, if each penalty were assessed at the maximum allowed by the recycling act of \$500 per day for unintentional violations, to about \$2.8 million, if each penalty were assessed at \$5,000 per day, the maximum amount allowed for intentional, knowing, or reckless violations. Because it has chosen not to assess any penalties—even in a case of multiple violations—CalRecycle has not ensured compliance and has gone without penalty revenue that could defray its administrative costs.

Although the Mattress Council has collected millions of dollars in revenue from California consumers to operate the mattress program, it has used a significant portion of this revenue to amass a reserve rather than spending the funds to ensure that the mattress program achieves the program goals. At the end of December 2017, the Mattress Council had already accumulated net assets of more than \$42 million—an amount that is about equal to 12 months of the mattress program's budgeted expenses. Our analysis suggests that this amount is much higher than necessary. Further, California's paint EPR program, which CalRecycle also oversees, defines its reserve as an amount equal to six months of expenses, and the Government Finance Officers Association of the United States and Canada recommends government organizations establish a minimum reserve of two months of expenses. Although the

recycling act does not currently prohibit the Mattress Council from accumulating its existing level of net assets, the law intends the Mattress Council to operate the program over a multiyear period in a prudent and responsible manner. We believe it can do so with less in reserve than it had at the end of 2017.

Finally, the Mattress Council has built up its net assets and cannot demonstrate that it met key objectives of the mattress program. For example, the legislative intent of the recycling act was for the Mattress Council to implement a convenient program to collect and recycle used mattresses in California. In its mattress recycling plan, the Mattress Council indicated that within the first year of the program it would identify one permanent mattress drop-off site or hold at least one collection event annually in every county in California. However, as of June 2018, seven out of 58 counties did not have permanent drop-off sites. Although the Mattress Council has held at least one collection event in most of the seven counties that are without permanent drop-off sites, these collection events are not as convenient for consumers because they are time-limited. Our analysis found that 700,000 residents in the San Francisco Bay Area are without convenient access to permanent drop-off sites. Further, in two key areas the Mattress Council cannot demonstrate that it operates a cost-effective program to recover and recycle used mattresses in California. Specifically, the Mattress Council has not established measures of success in the key program areas of consumer awareness and research on new technologies. Therefore, it cannot show that its spending in those areas has been effective. Although state law does not specifically require the Mattress Council to institute measures of success in these areas, the Mattress Council cannot demonstrate that its spending is achieving the intent of the law without such measures.

Selected Recommendations

Legislature

The Legislature should amend the recycling act to require CalRecycle to establish goals for the mattress program that relate to increasing consumer convenience, encouraging source reduction, and reducing illegal mattress dumping, as well as for any other areas that CalRecycle identifies as critical to the mattress program achieving the intent of the recycling act. It should require CalRecycle to establish goals in the first three specified areas by July 2020.

The Legislature should amend the recycling act to require the Mattress Council to maintain a reserve equal to no more than six months of the mattress program's budgeted expenses. Further, the Legislature should amend the recycling act to provide CalRecycle the ability to direct the spending of any amount of funding that the Mattress Council accumulates over this amount or to adjust the mattress recycling charge.

The Legislature should amend the recycling act to require the Mattress Council to include in its recycling plan measurable goals in the areas of consumer awareness and research on new technology. Further, the Legislature should require that the Mattress Council's annual report include information about the mattress program's progress toward meeting these program goals.

CalRecycle

By January 1, 2020, CalRecycle should update its goals for mattress recycling to reflect the most current available information it has on mattresses disposed of statewide. In addition, it should ensure that its recycling goals are statewide in scope by including information from entities that do not contract with the Mattress Council.

In order to bring violators of the recycling act into compliance, CalRecycle should assess penalties for noncompliance with the recycling act.

Agency Comments

CalRecycle indicated that it agreed with the recommendations we made to the Legislature. CalRecycle disagreed that it had not exercised sufficient oversight of the mattress program. In response to most of the recommendations we made to it, CalRecycle did not indicate clearly whether it agreed with or planned to implement the recommendations.

Introduction

Background

Responding to concerns about the large number of mattresses and box springs (mattresses) that are discarded each year by Californians, the Legislature created the mattress recycling program (mattress program) in 2013 by enacting the Used Mattress Recovery and Recycling Act (recycling act). It did so in light of estimates that very few of the two million mattresses that Californians discarded each year were recycled and were instead being illegally dumped or sent to landfills. In addition, the State was responding to estimates that illegal dumping of mattresses cost local governments significant amounts of money annually. According to legislative analyses of the recycling act, the city of Oakland estimated that its annual cost to manage illegally dumped mattresses was about \$500,000 and the city of Los Angeles estimated that it recovered between 120 and 150 illegally dumped mattresses daily. Therefore, the State enacted the recycling act to reduce illegal dumping, increase recycling, and reduce public agency costs for the management of discarded mattresses.

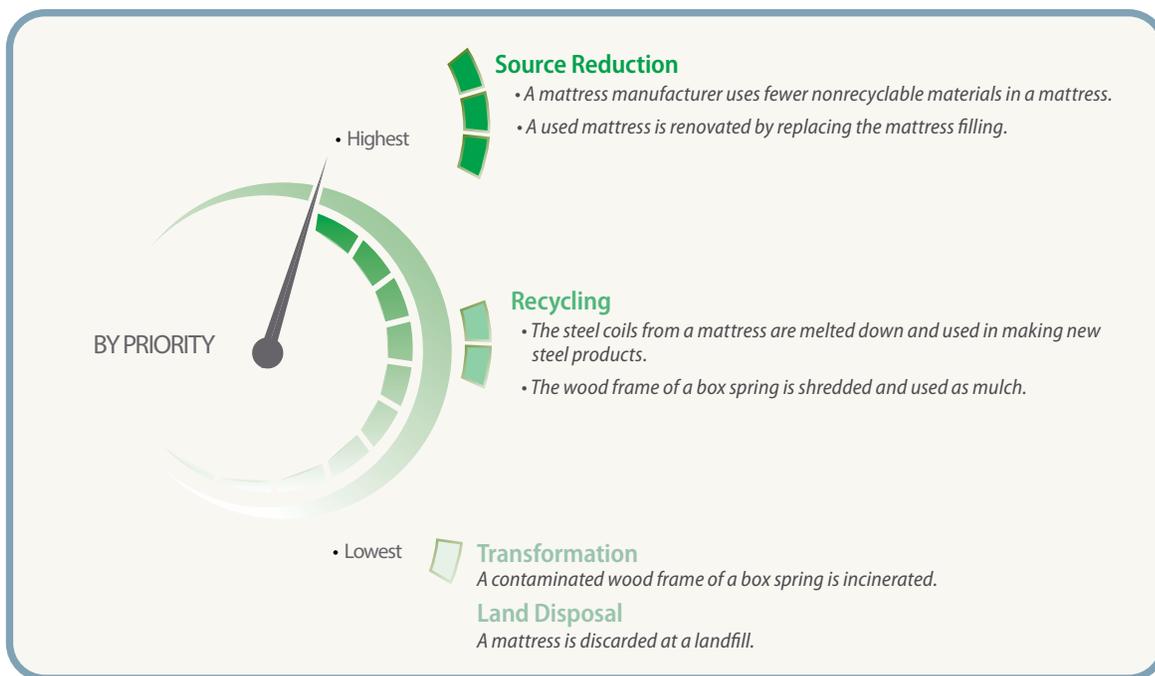
California's Approach to Mattress Recycling

State law codifies California's overall statewide waste diversion goal. Specifically, state law establishes a policy goal that by 2020, 75 percent of solid waste should be diverted from landfills through a variety of methods. These methods include source reduction—which encompasses efforts to prevent the generation of waste—as well as recycling and composting. To guide the effort to achieve this goal, state law establishes a hierarchy of waste management practices, as Figure 1 on the following page illustrates. According to state law, this hierarchy is designed to reduce the amount of solid waste that must be disposed of by transformation and land disposal. As we discuss in more detail below, the California Department of Resources Recycling and Recovery (CalRecycle) oversees the State's progress toward the goal of 75 percent waste diversion.

In part to meet the State's goal, the recycling act established an extended producer responsibility (EPR) approach to mattress recycling, effective January 2014. Under an EPR approach, product manufacturers or other industry groups are responsible for operating a program to recycle or safely dispose of products consumers no longer want. This contrasts with the traditional approach to waste management in the United States, wherein local governments bear responsibility for disposing of all discarded products. According to a study from Harvard University's Kennedy School of Government, the EPR approach has been used

as a framework to operate waste management programs since at least 1991. Numerous countries in Europe and many states currently use EPR programs to manage particular types of waste, such as electronics and paint. In fact, California currently uses this approach for recycling paint and carpet. Consistent with the EPR approach, the recycling act provides for the mattress program to be operated by a mattress recycling organization, which must be established by a qualified industry association. The organization must be composed of mattress manufacturers, renovators, and retailers, and must be certified by CalRecycle.

Figure 1
California's Waste Management Hierarchy Prioritizes Source Reduction



Source: Public Resources Code sections 40051 and 40196, CalRecycle, and the Mattress Council's 2017 annual report.

In November 2014, CalRecycle approved the Mattress Recycling Council (Mattress Council) as the organization responsible for operating the State's mattress program. The International Sleep Products Association—a mattress trade industry association—established the Mattress Council as a nonprofit entity. It is headquartered in Virginia and also operates EPR mattress recycling programs in Connecticut and Rhode Island. To fund California's mattress program, the recycling act permits the Mattress Council to collect a charge for each new mattress purchased in California. Consumers pay the charge at the point of sale, which the retailers

then remit to the Mattress Council. Initially, the Mattress Council imposed an \$11 charge per mattress, but it lowered this charge to \$10.50 per unit effective January 1, 2018.

To participate in the mattress program, individuals may discard their mattress through one of three collection channels: permanent collection sites, special collection events, or retailer pickup upon purchase and delivery of a new mattress. As the text box shows, different types of entities accept used mattresses. As of June 2018, the Mattress Council had contracted with 10 recycling sites and 168 other permanent collection sites, mostly consisting of solid waste facilities and also including some municipalities that offer curbside pickup of mattresses, to collect mattresses for recycling in California. CalRecycle’s data from 2017 shows that 12 recycling sites and about 380 solid waste facilities were required to report information related to mattress waste. Individuals receive a \$3 incentive per mattress if they drop off mattresses directly with any of the recycling sites that participate in the mattress program. This incentive is capped at a maximum of five mattresses per day per vehicle. In addition, large institutional collectors, such as hotels and educational facilities, may discard their mattresses at no cost at any of the recycling sites.

Roles of Entities That Accept Used Mattresses

- **Mattress recyclers** disassemble used mattresses and sell the components for use in other products.
- **Mattress renovators** refurbish used mattresses for resale.
- **Mattress retailers** pick up used mattresses upon delivery of a newly purchased mattress.
- **Solid waste facilities** collect and store used mattresses for subsequent recycling or disposal.

Source: [Public Resources Code](#).

The recycling act does not assign the Mattress Council sole responsibility for mattress waste management in California, and the Mattress Council’s contractors do not include the entire statewide set of recycling sites, renovators, and solid waste facilities. In fact, the recycling act specifically prohibits the Mattress Council from operating the mattress program in a way that undermines the previously existing industry of mattress recycling, resale, refurbishing, and reuse.

CalRecycle’s Oversight of the Mattress Program

State law requires that CalRecycle oversee the mattress program, along with the statewide EPR programs for paint and carpet. Under the recycling act, CalRecycle obtains reimbursement from the Mattress Council to cover the cost of its oversight activities. As part of its oversight, CalRecycle is responsible for reviewing and approving the Mattress Council’s mattress recycling plan (recycling plan), budgets, and annual reports to ensure that these documents comply with the recycling act. The Mattress Council created its recycling plan following CalRecycle’s approval of the Mattress Council as the State’s mattress recycling organization in November 2014. The recycling plan describes the actions the

Mattress Council will take to implement and sustain the mattress program. The Mattress Council's budgets contain its projected spending and revenues for each upcoming calendar year. Finally, its annual reports contain quantitative data for the previous completed year of operations, as well as audited financial statements. The EPR unit at CalRecycle is responsible for reviewing the annual report and preparing for the director of CalRecycle a recommendation for approval or disapproval.

The recycling act further empowers CalRecycle to ensure that mattress retailers, renovators, recyclers, and manufacturers comply with the act's requirements, such as registering with the Mattress Council and making the recycling charge visible on receipts and other billing documents. To determine compliance, CalRecycle inspects registered entities. CalRecycle's EPR compliance unit (compliance unit) performs the inspections and is allowed by the recycling act to impose civil penalties for noncompliance. The compliance unit has the authority to impose penalties up to \$500 per day for unintentional violations of the act and up to \$5,000 per day for intentional, knowing, or reckless violations. Both CalRecycle and the Mattress Council play a role in ensuring that retailers, renovators, recyclers, and manufacturers are aware of their responsibilities under the recycling act. CalRecycle educates entities about their responsibilities through its compliance program. The Mattress Council performs outreach and education through activities such as direct mail campaigns, presentations at industry events, and news articles in industry publications.

Finally, to measure the State's progress in managing mattress waste, the recycling act provides that CalRecycle must establish and report on goals for state recycling activity. The act required CalRecycle to establish a baseline recycling amount and goals for recycling by no later than January 2018. Further, CalRecycle must review and, if necessary, update the baseline amount and goals by July 1, 2020, and every four years thereafter. To facilitate the oversight of the program and the State's overall recycling activities, the recycling act also requires mattress recyclers, solid waste facilities, and renovators to report to CalRecycle the number of used mattresses they collect, recycle, renovate, reuse, and send to landfill in California each year. Beginning in July 2019, the Mattress Council is required to report annually on its efforts to support the goals that CalRecycle has established.

Scope and Methodology

The Joint Legislative Audit Committee (Audit Committee) directed the California State Auditor to review the mattress program. Specifically, the Audit Committee directed us to review

CalRecycle’s oversight of the mattress program, evaluate the Mattress Council’s finances, and assess whether the Mattress Council is spending enough to achieve the program’s goals and objectives. Table 1 lists the objectives that the Audit Committee approved and the methods used to address those objectives.

Table 1
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed relevant laws, regulations, and other background materials applicable to the mattress program and CalRecycle’s oversight.
2 Assess CalRecycle’s oversight of the mattress program, including, to the extent possible, whether the Mattress Council is complying with relevant laws, rules, and regulations significant to its administration of the mattress program, including its funding, plan for collection and recycling, and reporting.	<ul style="list-style-type: none"> • Reviewed CalRecycle’s oversight of the Mattress Council by determining whether it conducted an adequate review of the Mattress Council’s recycling plan, annual report, and budgets. • Determined the actions CalRecycle took to improve the reporting of key program data. • Determined whether CalRecycle had established adequate goals and metrics for measuring statewide mattress recycling. • Interviewed CalRecycle staff to determine why CalRecycle did not set goals for convenience, source reduction, and reducing illegal dumping.
3 Review financial information for the mattress program since its inception, including annual budgets, revenues, expenses, and fund balances and, to the extent possible, determine the following:	
a. The mattress program’s major expense categories.	Reviewed the Mattress Council’s internal expense reports, budgets, and its 2016 and 2017 annual reports to determine the mattress program’s spending by category for each year.
b. Whether the mattress program’s financial resources are sufficient for the Mattress Council to achieve California’s mattress recycling goals and carry out the recycling plan.	<ul style="list-style-type: none"> • Compared estimated revenues in budgets to the Mattress Council’s estimated expenses. • Reviewed the process the Mattress Council uses to change and set the recycling charge and assessed its basis and assumptions for reasonability. We found that the process for setting the charge appeared reasonable. • Visited two mattress retailers to determine whether they accurately remitted recycling charges to the Mattress Council. We did not find any material difference between the number of mattresses sold by these retailers and the number they reported to the Mattress Council. Therefore, we have no concerns in this area.
c. Whether the mattress program’s fund balance has been unreasonable and, if so, how the Mattress Council plans to address this situation.	<ul style="list-style-type: none"> • Interviewed Mattress Council staff to determine its process for setting the mattress program’s funding reserve targets and its plans for the cash it does not consider part of the mattress program’s reserve. • Identified guidance related to reserve amounts for similar entities and compared those to the Mattress Council’s reserve goal. • Analyzed past mattress sales and general economic activity to determine the likely length of time that the Mattress Council’s reserve funding would allow it to continue operating the mattress program during a recession with no changes to its expenses and also with increases to its expenses.

AUDIT OBJECTIVE	METHOD
<p>4 Determine the sufficiency of the Mattress Council's expenses for achieving the mattress program's goals and objectives, including, but not limited to, those relating to public education, investments in new technology, mattress processing, and mattress transportation.</p>	<ul style="list-style-type: none"> • Compared the amounts the Mattress Council spent to the amounts it had proposed in its budget. We assessed whether the Mattress Council's spending was sufficient and appropriate for it to meet the intent of the mattress program. • Reviewed whether the Mattress Council had established goals for its public education (consumer outreach) or investments in new technologies. • Determined that transportation and processing costs are the largest expense category in the mattress program. The Mattress Council's expenses for processing and transportation per mattress collected in California increased in the first two years of the program. We used the mattress program's budget and the recycling goals CalRecycle established to determine whether the Mattress Council planned to continue increasing the amount it spends per mattress on transportation and processing in successive years provided that it collects the number of mattresses included in the state goals. We found that it does. • Examined whether the Mattress Council was spending enough to ensure that all California residents have convenient access to free permanent drop-off sites by using geographic information system software to assess whether residents of major populated areas of the State lived within a convenient driving distance of a drop-off site. • Assessed the reliability of the Mattress Council's internal financial reports. To gain some assurance these reports were reliable, we compared the total revenues and the total expenses in these reports to the totals listed in the Mattress Council's 2016 and 2017 audited financial statements and found the totals materially matched.
<p>5 Determine whether the Mattress Council's contracts are sufficient to meet the goals of the mattress program and do not undermine existing mattress recycling, resale, refurbishing, and reuse operations.</p>	<ul style="list-style-type: none"> • Reviewed the geographical dispersion of the Mattress Council's contracts to determine whether the Mattress Council has ensured that California consumers have reasonable access to the mattress program. • Examined a selection of 10 of the Mattress Council's contracts to determine whether the Mattress Council set performance measurements for its contractors and whether the scope of its contracts aligned with program goals. We found no significant issues. • Reviewed four disputed, canceled, or terminated contracts and determined whether the Mattress Council resolved each instance in accordance with the terms of the contract. We found no significant issues. • Examined the Mattress Council's accounting manual and internal guidance to determine whether the Mattress Council established controls to prevent overbilling. We determined the Mattress Council's controls appeared to be designed to prevent overbilling. • Determined that—to ensure that it did not undermine existing recycling, resale, reuse, or refurbishing operations—the Mattress Council established the mattress program's consumer incentive at only \$3. The Mattress Council informed us it consulted with a large renovator before setting the incentive and the renovator indicated its business would be affected if the incentive was higher. Further, the Mattress Council offers its incentive at only about 10 locations statewide and caps the maximum payment it will give to any one individual at \$15 per day. Therefore, we believe it is unlikely that the consumer incentive established by the Mattress Council has undermined existing recycling, resale, reuse, or refurbishing operations.
<p>6 Review and assess any other issues that are significant to the audit.</p>	<ul style="list-style-type: none"> • Compared and contrasted the goals of the Mattress Council's other mattress recycling programs in Connecticut and Rhode Island with the California mattress program. • Identified EPR best practices in professional literature and compared them with the framework established for the mattress program. • Evaluated CalRecycle's enforcement of retailer compliance with the recycling act by reviewing 10 inspection cases. We determined that it generally collected sufficient evidence to determine compliance. However, as we discuss in Chapter 1, it did not ensure compliance in cases in which it found violations of the recycling act. • Evaluated five retail inspection cases to review whether CalRecycle had assessed penalties and to determine possible penalty amounts in cases in which CalRecycle had not assessed a penalty.

Source: Analysis of the Audit Committee's audit request number 2018-107, planning documents, and information and documentation identified in the table column titled *Method*.

Assessment of Data Reliability

The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of the computer-processed information that we use to materially support our findings, conclusions, or recommendations.

In performing this audit, we relied on electronic data obtained from the Mattress Council's list of permanent drop-off sites and the location of those sites. We performed accuracy testing by comparing a selection of addresses from the list with facility websites and found no errors. We did not perform completeness testing on the statewide set of permanent drop-off sites, because the source documents for this information are stored at different locations and not always in the State. However, we worked with the Mattress Council to review the drop-off sites located in three major metropolitan areas—the San Francisco Bay Area, Los Angeles, and San Diego—and found the data to be complete for the purpose of determining the convenience of the locations in relation to California's residents in those three key areas of the State.

We also relied on electronic data obtained from CalRecycle's Sharepoint EPR database (ShEPRd). We used these data to make a selection of inspection cases for review, to determine the total number of inspections CalRecycle completed with a compliance determination through February 21, 2018, and to determine the percent of those inspections that identified noncompliance. We verified the completeness of the data by tracing a selection of inspection files back to the data and found no issues. Therefore, we determined that the data were complete for the purpose of selecting files for review and determining the number of inspections CalRecycle performed with a compliance determination. We verified the accuracy of the data by comparing information in a selection of inspection files to the data and found no significant errors. Consequently, we found the ShEPRd data to be sufficiently reliable for the purposes of reporting the percent of inspections that identified noncompliance.

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Chapter 1

CALRECYCLE HAS NOT PROVIDED THE OVERSIGHT NECESSARY TO ENSURE THE SUCCESS OF THE MATTRESS PROGRAM

Chapter Summary

CalRecycle has not done enough to ensure the success of the mattress program. For example, CalRecycle has not set any goals for the mattress program related to increasing convenience for consumers, reducing illegal dumping of mattresses, and encouraging source reduction—important areas that are necessary to fulfill the intent of the recycling act. Further, instead of establishing state recycling goals that include all used mattresses eligible for recycling, CalRecycle set a recycling baseline and goals based on the activity of the Mattress Council’s contracted recyclers only. As a result, CalRecycle’s goals will lead it to measure and monitor only the mattress program’s performance and not the true statewide recycling activity. In addition, CalRecycle did not require the Mattress Council to address in its recycling plan key concerns about waste management, nor did it always obtain information that would have provided greater transparency regarding the mattress program’s budget. Finally, CalRecycle has provided inadequate oversight of retailer compliance with the recycling act. Despite finding many retailers in violation of the recycling act, CalRecycle has not yet levied any administrative penalties, even if the cases involved multiple violations. For the five cases we examined, CalRecycle failed to assess penalties with a combined maximum amount of about \$2.8 million.

The Goals That CalRecycle Has Established for Mattress Recycling Will Make Evaluating the Mattress Program’s Success and the State’s Recycling Efforts Difficult

Although CalRecycle could have set mattress program goals related to increasing consumer convenience, reducing illegal dumping, and encouraging source reduction, it did not do so. Because CalRecycle did not establish goals in these areas, the Legislature and the public may not have the information necessary to determine whether the mattress program is achieving the outcomes the State intended. Further, CalRecycle has set goals for mattress recycling that are inadequate for fully evaluating the State’s success in meeting waste diversion goals. Citing the poor quality of the available data, CalRecycle set a recycling baseline and related goals that did not take into account all eligible discarded, renovated, or recycled mattresses throughout the State. Instead, it limited these goals to

the activity of the Mattress Council's contracted recyclers. As a result, when it assesses progress, CalRecycle's goals will lead it to measure and monitor only the mattress program's performance and not the true statewide recycling activity.

CalRecycle Has Not Yet Set Key Goals for the Mattress Program

In addition to requiring CalRecycle to establish mattress recycling goals, which we discuss in the next section, the recycling act also identifies several priorities that the mattress program should address, including ensuring convenience for consumers, reducing illegal dumping, and developing program objectives that are consistent with California's waste management hierarchy, which prioritizes source reduction. Although the recycling act does not explicitly require CalRecycle to establish goals in these three areas, legislative findings and declarations from the recycling act indicate the importance they held for the Legislature when it enacted the recycling act. Therefore, measurable goals in these three areas would significantly enhance CalRecycle's ability to determine whether the mattress program is meeting its legislative intent.

Nonetheless, CalRecycle has not yet set goals related to these areas. When setting the state mattress recycling goals, CalRecycle initially proposed a goal related to the mattress program's convenience but removed it before approving the final goals. CalRecycle did not propose any goals for reducing illegal dumping or encouraging source reduction in its initial goal-setting documents. In December 2017, when CalRecycle approved the state mattress recycling goals, it stated that as part of the 2020 baseline- and goal-setting process, it will consider establishing additional recycling goals, including goals related to increasing program convenience, reducing illegal dumping, and encouraging source reduction. According to the supervisor of the EPR unit (EPR supervisor), CalRecycle has not yet set goals in these areas because of insufficient data. She indicated that if CalRecycle were to set goals without accurate and complete data, it could result in arbitrary goals that were not realistic or achievable and therefore would not improve the mattress program's performance. However, by not developing goals in these areas, CalRecycle missed an opportunity to establish accountability for the mattress program achieving the legislative intent of the recycling act.

We believe that CalRecycle could have set goals in key program areas to create more accountability for the program.

We believe that CalRecycle could have set goals in key program areas to create more accountability for the program. For example, our review of the available information suggests that CalRecycle could have created a goal related to the convenience of the mattress program. In its 2016 annual report, the Mattress Council shared data with CalRecycle regarding the locations

of its collection sites and collection events. In combination with publicly available census data, this information about the geographical distribution of the mattress program's collection sites and events is sufficient for CalRecycle to set convenience goals. Moreover, CalRecycle initially proposed a convenience goal related to the number of counties with no-cost mattress collection sites before deciding to remove it from the goals it announced in December 2017, which indicates that CalRecycle believed at one point that establishing a goal related to convenience was important and that it had enough data to establish such a goal. CalRecycle's assertion that it had insufficient data to set this goal is therefore unconvincing. We discuss our assessment of program convenience in Chapter 2.

In addition, we believe that CalRecycle could also have set goals related to the Mattress Council's illegally dumped mattress initiative. In 2016 the Mattress Council implemented an initiative to compensate approved participants—such as local governments—for collecting illegally dumped mattresses. As part of this initiative, the Mattress Council collected data to measure the number of illegally dumped mattresses that these entities collected and to determine whether those recovered mattresses were recycled. In 2016 the Mattress Council spent almost \$238,000 of the \$750,000 it budgeted for the illegally dumped mattress initiative. Its annual report for 2016 states that 40 participants collected 23,794 illegally dumped mattresses from March through December 2016.

Although the number of participants in the initiative and the number of illegally dumped mattresses that they recover annually are two key indicators for knowing whether the program is having the desired effect of reducing illegal dumping of mattresses, CalRecycle did not establish goals related to these indicators when it published the state recycling goals in December 2017. The supervisor of CalRecycle's Product Stewardship and Innovative Technology Section (EPR manager) indicated that he believed the data the Mattress Council collected on illegally dumped mattresses were underreported and that CalRecycle had insufficient data for setting a baseline and goals to reduce illegal dumping. He further noted that measuring a reduction in illegal dumping activity can be challenging because entities such as local governments are not required to report data on illegal dumping and because no direct connection exists between the number of illegally dumped mattresses collected and the number that are illegally dumped. Nevertheless, CalRecycle could have increased the accountability of the Mattress Council's initiative by establishing goals for the number of participants and the number of illegally dumped mattresses that the participants collect. Goals in these areas could have demonstrated whether the mattress program was making

CalRecycle initially proposed a convenience goal that indicates that CalRecycle believed at one point that establishing a goal related to convenience was important.

CalRecycle could have set source reduction goals, despite its belief that it lacked adequate data.

progress towards achieving its legislative intent and could have shown stakeholders the extent to which the mattress program addressed illegal dumping.

Finally, CalRecycle could have set source reduction goals, despite its belief that it lacked adequate data. As the Introduction describes, California's waste management hierarchy identifies source reduction—preventing waste from being generated in the first place—as the highest-priority activity for waste management. The EPR supervisor indicated that forming a source reduction goal at the start of the mattress program would have been challenging because source reduction efforts—such as using less material to manufacture mattresses—can be difficult to quantify. She further explained that CalRecycle has historically found it challenging to establish metrics for source reduction. However, establishing a source reduction goal could have been as simple as CalRecycle requiring the Mattress Council to spend a specific amount of money on research to find new ways to manufacture mattresses. Additionally, according to the EPR supervisor, mattress renovation may be considered source reduction for the purpose of the mattress program. As Table 2 shows, CalRecycle set a goal for mattress renovation that stays flat over time. It established this particular goal because it believed that it had an incomplete understanding of the number of mattresses that were renovated and decided that the flat goal would provide a mechanism for monitoring whether the mattress program adversely affected renovation. However, CalRecycle could instead have set a goal for mattress renovation that would encourage an increase over time. By setting such goals, CalRecycle can help ensure that the mattress program advances source reduction activities—the highest priority in the State's waste management hierarchy.

The Mattress Council believes that CalRecycle lacks the authority to set program goals for increasing convenience, reducing illegal dumping, and encouraging source reduction. In a September 2017 letter commenting on CalRecycle's proposed recycling goals, the Mattress Council president stated that CalRecycle cannot set goals in these areas because state law requires CalRecycle to establish recycling goals, rather than program goals. He expressed his belief that the Mattress Council is responsible for establishing program goals in its recycling plan. Based on this perspective, the Mattress Council's president asked CalRecycle to remove the convenience goal from its proposed recycling goals, and he further wrote that CalRecycle should not add goals related to reducing illegal dumping and encouraging source reduction. However, when CalRecycle approved the original recycling goals in 2017, it stated that it intended to consider adding goals in these areas when it reexamines the recycling goals in 2020. This indicates that CalRecycle believed at one time that it had the authority to set these goals. In discussion

with us during our audit, an attorney from CalRecycle stated that CalRecycle’s authority to set program goals is not explicit in statute and has been disputed. A clarification to state law that explicitly directs CalRecycle to develop program goals would help to resolve any further dispute about CalRecycle’s authority and ensure that it develops goals that are critical to helping the mattress program fulfill all of its purposes.

Table 2
State Mattress Recycling Baseline and Goals

	BASELINE	ESTIMATED TOTAL BY GOAL YEAR			
	2016	2017	2018	2019	2020
Renovation goal (number of units)	150,000	150,000	150,000	150,000	150,000
Recycling goals:					
Mattresses collected for recycling (number of units)	955,000	1,242,000	1,428,000	1,557,000	1,697,000
Percentage of materials recovered from recycled mattresses (by weight)	64%	66%	69%	72%	75%

Source: CalRecycle’s approved state mattress recycling baseline and goals.

CalRecycle’s Goals for Mattress Recycling Do Not Reflect Statewide Measurements of Recycling Activity

To ensure that CalRecycle can evaluate the success of mattress recycling activity in California, the recycling act required CalRecycle to establish state mattress recycling goals by January 2018. The recycling act required that CalRecycle consult with the Mattress Council before setting these goals; that CalRecycle base the goals on the Mattress Council’s methodology for determining the number of mattresses available for collection and the number recycled statewide, as well as information from the Mattress Council’s first annual report; and that CalRecycle consider relevant economic and practical considerations. The recycling act also establishes that the mattress program shall strive for the maximum feasible level of used mattress recovery and recycling in support of the statewide goal that at least 75 percent of all solid waste be recycled by the year 2020.

Although the recycling act requires CalRecycle to set goals related to statewide mattress recycling activity, CalRecycle chose to establish more limited goals instead. As Table 2 shows, the

state mattress recycling goals—effective January 2018—include a baseline, a mattress renovation goal, and two recycling goals, one of which is based on the number of mattress units collected for recycling and the other on the percentage of material recycled from mattresses by weight. However, these goals are specific to the mattresses collected and recycled by the Mattress Council’s contracted recyclers only. Therefore, they do not reflect statewide mattress waste management.

When it announced the state mattress recycling goals, CalRecycle explained that it did not set a true statewide recycling rate because of poor data. The recycling act requires all mattress recyclers, solid waste facilities, and renovators—not just entities affiliated with the mattress program—to report annually to CalRecycle the number of mattresses they recycled, renovated, and disposed of in California in the preceding calendar year. However, not all required reporters submitted data to CalRecycle in 2016. In a presentation of its proposed goals, CalRecycle included information about the number of entities it believed were potentially required to report and the number that actually did report. According to that presentation, CalRecycle believed that most of the required mattress recyclers—11 of 13—had reported data, but that a significant number of required renovators and solid waste facilities—50 of 56 and 177 of 509, respectively—had not reported. Because of what it believed were low reporting levels as well as other concerns about data quality, CalRecycle decided to set a recycling baseline and related goals based on the data of only the entities affiliated with the mattress program instead of on the data that all mattress recyclers, renovators, and solid waste facilities statewide had reported.

CalRecycle set public expectations for the growth of the mattress program for a three-year period but not the total statewide progress towards recycling mattresses.

As a result of its program-specific goals, CalRecycle set public expectations for the growth of the mattress program for a three-year period but not the total statewide progress towards recycling mattresses. Specifically, in 2016 the recyclers the Mattress Council contracted with recycled about 64 percent of the material by weight of the mattresses they handled. However, using the available 2016 data from the Mattress Council’s annual report, we calculated that the Mattress Council’s recyclers only recycled, at most, about 42 percent by weight of eligible discarded mattresses statewide. This difference shows why it is important for CalRecycle’s goals to reflect actual statewide measurements of mattress waste management rather than program measurements. Further, the gap between statewide activity and program activity will grow if mattress recyclers stop participating in the mattress program. According to the Mattress Council’s 2017 annual report, most recycling activity in the State at that time was likely occurring within the mattress program. However, if that is no longer the case in the future, CalRecycle’s goals will become even less relevant to

the true level of statewide recycling activity. Until it revises its goals to reflect all mattress waste management, CalRecycle's goals will not lead it to monitor whether the State is actually achieving its waste diversion goal with respect to mattresses.

When we discussed the gap between program performance and statewide performance with the EPR manager, he asserted that the current structure of the goals for the mattress program is appropriate at this time and that in the future, as better data on activities such as the number of units renovated become available, adjustments to the goals may be necessary. He further stated that because all California consumers pay the recycling charge when purchasing new mattresses, they should all have the opportunity to recycle their mattresses through the mattress program, which is funded through that charge. The EPR manager also indicated that the mattress program should be responsible for all eligible mattresses disposed of in the State. He stated that he believes that if a large percentage of mattresses were to be handled outside the program, CalRecycle would not consider the program successful. In other words, without an opportunity to recycle their mattresses through the program, consumers would have paid for a service they did not have the chance to use.

However, the EPR manager's perspective does not reflect the intent of the recycling act. Although it is true that the recycling act requires each manufacturer, renovator, retailer, or distributor that sells a mattress to a consumer to remit the recycling charge to the Mattress Council, it does not require all mattress waste diversion to occur through the mattress program. In fact, for that reason, the Mattress Council requested during the goal-approval process that CalRecycle clarify that numerical unit and percentage by weight recycling goals—as Table 2 on page 17 shows—were statewide goals, not program-specific goals. According to the Mattress Council, the mattress program plays a significant but not exclusive role in increasing the number of mattresses recycled. The Mattress Council also stated that it has no control over the growth of mattresses reused or renovated. In response, CalRecycle did not directly address the Mattress Council's concern, express the viewpoint that the EPR manager shared with us, or clarify whether the Mattress Council is responsible for statewide recycling activity. Instead, CalRecycle indicated its intent to consider a statewide recycling rate once it has collected better data about discarded mattresses. As a result, CalRecycle missed an opportunity to clarify how it will use the goals in Table 2 when it assesses whether the Mattress Council is making a good faith effort to collect and recycle mattresses.

When it collected data about mattress waste management for 2017, CalRecycle obtained information from a greater number of renovators and solid waste facilities than it had in the previous

Until it revises its goals to reflect all mattress waste management, CalRecycle's goals will not lead it to monitor whether the State is actually achieving its waste diversion goal with respect to mattresses.

CalRecycle significantly narrowed the number of renovators and solid waste facilities that it believed were required to report.

year. CalRecycle staff took a series of actions to improve data reporting, including developing a document for reporting entities that answers frequently asked questions; surveying recyclers, renovators, and solid waste facilities to determine the challenges they face in data reporting; conducting a webinar instructing entities about their annual reporting requirements; coordinating with various groups to send out informational messages to members; and reaching out to individual reporting entities by phone and email. As a result, as of May 2018, CalRecycle had obtained data from 28 renovators and 355 solid waste facilities. In addition, CalRecycle significantly narrowed the number of renovators and solid waste facilities that it believed were required to report. Specifically, CalRecycle identified that only 30 renovators were required to report—down from 56 in the previous year—and that only 381 solid waste facilities were required to report—down from 509. According to the EPR supervisor, CalRecycle winnowed from its database entities not required to report based on information such as whether a solid waste facility accepted mattresses from the public, obtained through a range of activities, including direct phone calls to businesses. When we followed up with CalRecycle, the EPR supervisor explained that as of June 2018, CalRecycle was waiting on data from only two renovators and seven solid waste facilities. Further, CalRecycle told the Mattress Council that it had greater confidence in the 2017 data than in the 2016 data.

The recycling act requires CalRecycle to review and update as necessary the mattress recycling baseline and goals on or before July 1, 2020, to ensure that the mattress program advances the overall state recycling goal to divert 75 percent of waste from landfills. Although we acknowledge that poor data hindered CalRecycle from setting true statewide goals in December 2017, we believe that CalRecycle will be well positioned to update the goals by January 2020, which is earlier than the existing statutory deadline and would allow CalRecycle to establish a true state recycling goal before the start of 2020. By January 2020, CalRecycle's update will be informed by two years of more completely reported data on mattress recycling and disposal statewide, as well as by the Mattress Council's 2017 and 2018 annual reports. This should allow CalRecycle to set a baseline and recycling goals based on statewide data rather than on data from only entities affiliated with the mattress program, therefore ensuring that CalRecycle establishes an accurate means of assessing statewide recycling activity and measuring the progress the mattress program is making toward achieving state mattress recycling goals.

CalRecycle Has Not Ensured That the Mattress Council Prioritizes Source Reduction and Provides Budget Transparency

CalRecycle approved a recycling plan that does not ensure that the Mattress Council will operate the mattress program in a manner consistent with the State's waste management hierarchy. The recycling act requires that the Mattress Council's recycling plan contain program objectives that are consistent with the waste management hierarchy, which prioritizes source reduction. However, the Mattress Council originally submitted a recycling plan to CalRecycle that stated that implementing source reduction efforts was beyond the scope of both the recycling act and the plan. After reviewing this original recycling plan, CalRecycle pointed out that the plan was not consistent with the waste management hierarchy. Additionally, the Mattress Council's advisory committee recommended that the Mattress Council formulate concrete plans for source reduction.¹ CalRecycle asked the Mattress Council to remove the statement that source reduction was outside the scope of the recycling act and the plan. In response to CalRecycle's direction, the Mattress Council removed this language but did not otherwise change its statements about how it would address source reduction. Nonetheless, CalRecycle approved the revised recycling plan.

In the section of the recycling plan related to source reduction, the Mattress Council argues that the mattress industry manufactures durable mattresses that reduce the rate at which mattresses are discarded. The Mattress Council then asserts that the purpose of the recycling act is "to divert discarded mattresses from the solid waste stream through recycling and to increase the volume of discarded mattresses that are recycled." Federal law defines *source reduction* as any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment before recycling, treatment, or disposal. In other words, recycling is not source reduction because recycling can only occur after waste is generated. Although recycling recovers raw material that is then used for other products, source reduction is important because it prevents waste from being generated in the first place.

The recycling act requires that the Mattress Council's recycling plan contain program objectives that are consistent with the waste management hierarchy, which prioritizes source reduction.

¹ The Mattress Recycling Organization advisory committee (advisory committee) is composed of 13 representatives from local government, the environmental community, and the private sector, all appointed by the director of CalRecycle. The advisory committee consulted with the Mattress Council during the development of the plan and maintains an advisory role to the Mattress Council during program implementation and ongoing operation.

CalRecycle's ability to require the Mattress Council to describe how it will address source reduction is now limited.

Because it did not require the Mattress Council to clearly explain how it will advance source reduction, CalRecycle approved a recycling plan that lacks a strategy for addressing the State's highest priority in terms of waste management practices. The Legislature implemented integrated waste management laws in order to preserve landfill capacity in California; to conserve water, energy, and other natural resources within the State; and to protect the State's environment. The EPR manager and the EPR supervisor explained that to get the mattress program operating as soon as possible, CalRecycle has prioritized ensuring that the Mattress Council focuses on program basics, such as creating a recycling infrastructure, registering retailers, collecting remittances from retailers, and addressing illegal dumping. Further, they indicated that CalRecycle would work with the Mattress Council on source reduction efforts as the program matures. Although a focus on program basics is understandable, such an emphasis should not have precluded CalRecycle from ensuring that the recycling plan contained objectives that were consistent with the waste management hierarchy, as state law requires.

Further, CalRecycle's ability to require the Mattress Council to describe how it will address source reduction is now limited. The recycling act required the Mattress Council to submit a recycling plan to CalRecycle. However, the recycling act does not specify an expiration date for the recycling plan. CalRecycle's regulations require the Mattress Council to resubmit the recycling plan for approval if a significant or material change occurs. However, because this regulation applies when there are changes to the mattress program, it is not apparent to us how it could be used to improve the Mattress Council's approach to source reduction—which is an issue that the recycling act already required the Mattress Council to address in its plan. Because CalRecycle approved the Mattress Council's recycling plan, and the plan does not expire, CalRecycle would need to determine that the Mattress Council did not meet a material requirement of the recycling act to require the Mattress Council to resubmit the recycling plan. CalRecycle could find it difficult to conclude that the Mattress Council did not meet the requirement related to source reduction because it previously approved the recycling plan, which indicates that it found the plan compliant with state law. However, if the Mattress Council does not amend the recycling plan, CalRecycle and mattress program stakeholders cannot readily hold the Mattress Council accountable for taking action to address source reduction.

In addition, CalRecycle has not always ensured that the Mattress Council provides it with all of the financial information it requests. State law requires the Mattress Council to annually prepare and submit to CalRecycle a proposed mattress program budget for

the following calendar year that includes anticipated revenues and costs of program implementation. When it reviewed and approved the Mattress Council's 2016 budget, CalRecycle stated that the budget did not contain the level of detail that it would need in subsequent budgets. However, the Mattress Council did not add any of the requested additional detail to its 2017 budget. Nevertheless, CalRecycle approved the Mattress Council's 2017 budget and directed the Mattress Council to include more detail in its 2018 budget. Although the Mattress Council generally provided most of this detail, it did not provide the level of detail CalRecycle requested related to its budgeted expenses for research activities. In its approval of the 2018 budget, CalRecycle noted additional areas in which it requested the Mattress Council to provide further budget detail in its 2019 budget.

According to the EPR supervisor, the primary reason CalRecycle requested that the Mattress Council provide it additional budget detail was to increase program transparency and to provide CalRecycle and stakeholders a better understanding of the mattress program's activities. She elaborated that although CalRecycle considers the requested information valuable, these additional details are not required by law and are therefore optional for the Mattress Council to provide. The recycling act requires CalRecycle to approve or disapprove the Mattress Council's mattress program budget, but our review of the recycling act found that it does not explicitly address how much detail the Mattress Council is required to provide when describing its costs. Further, unlike the portion of the recycling act related to the recycling plan, the section of the act that addresses the content in the Mattress Council's budget does not require the Mattress Council to submit additional information that CalRecycle requests. Adding a provision to the recycling act that requires the Mattress Council to provide CalRecycle additional budget information that it requests would be beneficial because it would ensure that CalRecycle receives the information it deems necessary for its oversight of the mattress program.

Further, the recycling act does not address what would happen to the mattress program if CalRecycle were to disapprove the Mattress Council's annual budget. Specifically, the recycling act does not indicate whether the Mattress Council could continue to spend funding to operate the mattress program. According to an attorney at CalRecycle, nothing in the recycling act automatically freezes mattress program funding upon budget disapproval. She stated that if CalRecycle were unable to work with the Mattress Council to produce an approvable budget, CalRecycle could use its enforcement authority to impose penalties on the Mattress Council, revoke its recycling plan, or require it to resubmit a new recycling plan. Although these available enforcement options may be sufficient to convince the Mattress Council to submit an approvable

The Mattress Council did not add any of the requested additional detail to its 2017 budget.

budget, they do not clearly address the question of whether the Mattress Council would be allowed to continue spending funds without approval of its budget.

Because the Mattress Council receives consumer funds directly, without any involvement from the State, it is important that the State has meaningful control over the Mattress Council's spending. We believe that a clarification to the recycling act that defines the consequences if CalRecycle does not approve the annual budget would be beneficial. To address such a scenario, the Legislature could establish that the Mattress Council is prohibited from spending funds from recycling charges collected during any period of time for which it does not have an approved budget. Further, the Legislature could clarify that the Mattress Council is in violation of the recycling act if it operates without an approved budget during any period of time. These changes to the recycling act would benefit CalRecycle and the Mattress Council by making clear the consequences of a disapproved budget.

CalRecycle Has Not Adequately Enforced Retailer Compliance With the Recycling Act

CalRecycle's compliance unit conducts enforcement inspections of mattress retailers, renovators, and manufacturers in California to verify and, if necessary, enforce compliance with key provisions of the recycling act. The text box on this page shows examples of recycling act violations. From March 2016—when CalRecycle began conducting compliance inspections—through February 2018, CalRecycle discovered violations of the recycling act in 74 percent of the 285 inspections in which it made compliance determinations—the vast majority of which were inspections of retailers. In some instances, CalRecycle found multiple violations at a single retailer. The violations ranged in severity from retailers being unable to demonstrate that they were monitoring CalRecycle's website for changes in the list of manufacturers that are compliant with the recycling act to retailers failing to register with the Mattress Council. CalRecycle's Jurisdiction and Product Enforcement Section supervisor (enforcement manager) indicated that a retailer who has not registered with the Mattress Council may not be collecting recycling charges from consumers who purchase new mattresses or may be collecting but not remitting those charges to the Mattress Council. Both of those conditions would result in a loss of revenue for the mattress program.

Examples of Recycling Act Violations

- Retailer did not register with the Mattress Council.
- Retailer did not collect or remit recycling charges to the Mattress Council.
- Retailer did not maintain required records or did not provide CalRecycle staff with access to records.
- Retailer did not provide free mattress pickup with the delivery of a new mattress.

Source: CalRecycle inspection files.

State law allows CalRecycle to impose penalties on retailers that violate the recycling act. However, despite the frequency with which it identified violations, CalRecycle has not penalized retailers that fail to correct their noncompliance. When the compliance unit detects a violation, it requests that the retailer provide evidence of compliance within seven days. If CalRecycle is unable to determine compliance or if the retailer does not respond, CalRecycle's procedure is to begin a multiphase, progressive enforcement process, the final stage of which can include levying a penalty for noncompliance. Although CalRecycle's inspection data show that as of February 2018 it began the progressive enforcement process in 49 instances, its compliance unit supervisor (enforcement supervisor) confirmed that it had not assessed penalties on any retailers as of early July 2018. This is despite the fact that some retailers had not demonstrated that they were compliant with state law.

CalRecycle's enforcement manager described this progressive enforcement process as emphasizing compliance rather than punishment. According to the manager of the Waste Evaluation and Enforcement Branch (enforcement chief), CalRecycle has been focused on conducting a large number of inspections to encourage retailers to register with the Mattress Council. The Mattress Council has also conducted outreach and education efforts to ensure that retailers understand their requirements. The enforcement chief noted that most retailers do not comply because they do not understand the requirements that apply to them. She also indicated that workload and staffing issues have contributed to cases not moving forward to the penalty phase. Nevertheless, she agreed that penalties can be an important part of gaining compliance from violators when a warning from CalRecycle is not enough.

Because it has not levied penalties, CalRecycle has allowed noncompliance to persist and has foregone potentially significant amounts of money that could have been used to fund its enforcement activities. The recycling act requires CalRecycle to use all penalty revenue it collects to administer and enforce the act's provisions. To gain a better understanding of the amount of penalty revenue that CalRecycle could have collected, we analyzed a selection of five cases that had advanced to the last phase of CalRecycle's enforcement process. Three of these cases involved retailers that had not registered with the Mattress Council, among other violations CalRecycle identified. We estimate that for these five cases, CalRecycle could have applied penalties with a total combined dollar value ranging from roughly \$280,000, if each penalty were assessed at the maximum allowed by the recycling act of \$500 per day for unintentional violations, to about \$2.8 million, if each penalty were assessed at \$5,000 per day for

Because it has not levied penalties, CalRecycle has allowed noncompliance to persist and has foregone potentially significant amounts of money that could have been used to fund its enforcement activities.

intentional, knowing, or reckless violations, which the act also allows CalRecycle to assess. State regulations require CalRecycle to consider certain factors that could lower these amounts, such as the size of the violator and the economic effect of the penalty on the violator. However, even if the penalty amounts had been lower than our estimates, CalRecycle has still foregone a significant amount of potential revenue, particularly considering that we derived our estimates from only five progressive enforcement cases. Additionally, if it had assessed penalties and then publicized that fact, CalRecycle might have gained compliance from retailers it has not yet inspected.

In one particularly egregious case, CalRecycle neither gained compliance nor levied a penalty, despite the fact that the retailer in question did not demonstrate that it had registered with the Mattress Council or remitted any recycling fees for over a year after CalRecycle initially made contact with it in January 2017. Based on the penalty amounts included in the recycling act and the length of time the retailer had been noncompliant as of late February 2018, CalRecycle could have assessed a maximum penalty of approximately \$1.1 million. The enforcement supervisor indicated that the compliance unit needed time to gather evidence for this case and to prepare a document to proceed to the penalty phase. The compliance unit did not transmit this case to CalRecycle's legal department for review until late June 2018, about 17 months after it began its inspection process and approximately three months after we questioned why the case had not yet progressed that far in CalRecycle's process.

In addition to not assessing penalties, CalRecycle completed inspections without obtaining evidence that retailers had corrected their noncompliance.

In addition to not assessing penalties, CalRecycle completed inspections without obtaining evidence that retailers had corrected their noncompliance. We reviewed 10 inspection cases to assess the thoroughness of CalRecycle's compliance reviews and found that CalRecycle identified violations in six. However, it completed four of these six cases without obtaining evidence of compliance. In one instance, the compliance unit completed a case in which the retailer had neither registered with the Mattress Council nor collected or remitted recycling fees. The enforcement manager acknowledged that the compliance unit completed some inspection cases without evidence of compliance and explained that the unit intended to follow up on findings of noncompliance during reinspections of the same retailers, which its database indicates it began conducting in March 2018. In late April 2018, CalRecycle updated its procedures for enforcement field staff to indicate that in general, staff should not close inspection cases if the retailers have not registered with the Mattress Council. However, failure to register with the Mattress Council is not the only type of noncompliance that CalRecycle can identify during its inspections. Because CalRecycle did not ensure that all retailers it inspected

were fulfilling the recycling act's requirements, it will now have to reinspect retailers for which it initially found violations to ensure their compliance. According to the enforcement supervisor, after discussions with us about its failure to obtain evidence of compliance, CalRecycle reexamined all of its previous inspection cases and identified those in which it had not obtained evidence of compliance. According to an extract of CalRecycle's enforcement database that we obtained in August 2018, CalRecycle identified over 180 cases in which it will need to reinspect to obtain evidence of compliance with the recycling act.

Finally, the compliance unit has not carried out enforcement actions in a timely manner, resulting in an inspection and enforcement process that is longer than CalRecycle's procedures suggest. CalRecycle has established an initial period of seven to 15 days for retailers to demonstrate compliance, as well as a three-phase progressive enforcement process. During the first phase, CalRecycle sends a violator a letter requiring a response within 30 days. If the entity does not respond, CalRecycle moves to the second phase in which it sends another letter to the violator, giving them an additional 30 days to respond. Although the compliance unit established an initial period and deadlines for retailers to provide evidence of corrective action in each of the first two stages of its progressive enforcement process, the unit has not progressed through its inspection and enforcement process in a timely fashion. In the five progressive enforcement cases we examined, the time CalRecycle took to progress through its process beyond the timelines included in its procedures ranged from more than two months to nearly 10 months.

Managers of the compliance unit explained that the delays throughout the progressive enforcement process were the result of a number of factors, including the time necessary for staff to prepare notices and reports and for managers to review inspection documents. The enforcement manager noted that CalRecycle has given staff discretion to decide how to track when follow-up on inspection cases is necessary and that the supervisor reviews CalRecycle's enforcement database to see if follow-up has stalled. He also stated that CalRecycle has begun upgrading that enforcement database and that a component of that upgrade is the automation of reminders for staff and the supervisor about key impending dates, such as when to begin the next phase of enforcement. As the enforcement chief acknowledged, assessing penalties can be an effective means of gaining compliance, and therefore the longer that CalRecycle takes to progress through enforcement actions, the longer it allows retailer noncompliance with the recycling act to persist.

The compliance unit has not progressed through its inspection and enforcement process in a timely fashion.

Moreover, at the time we began our audit, CalRecycle did not have any procedures in place for the third phase of progressive enforcement, which involves documenting a case history of the findings of the inspection and developing a recommended penalty amount, creating additional delays for cases that may require the imposition of penalties. CalRecycle's procedures stated that it would establish the process for the penalty phase on a case-by-case basis. According to the enforcement manager, CalRecycle did not identify any retailer noncompliance in the paint or carpet programs. The enforcement supervisor indicated that CalRecycle had stated such cases should be handled on a case-by-case basis so that staff would know to work with their supervisor to finalize penalty documentation in a manner that met CalRecycle's requirements. However, without formalized procedures for the penalty phase, the compliance unit did not have established guidance or an expected timeline for how long the penalty phase should last. Subsequent to our discussions with CalRecycle's staff about procedures for the penalty phase, the enforcement supervisor provided us with a copy of CalRecycle's new procedures for the penalty phase. The procedures generally describe the steps staff must take to document the noncompliance and proposed penalties and who within CalRecycle must review and approve the penalty documentation. However, they do not include a timeline for how long the penalty phase should last.

Recommendations

Legislature

The Legislature should amend the recycling act to require CalRecycle to establish goals for the mattress program that relate to increasing consumer convenience, encouraging source reduction, and reducing illegal mattress dumping, as well as for any other areas that CalRecycle identifies as critical to the mattress program achieving the intent of the recycling act. It should require CalRecycle to establish goals in the first three specified areas by July 2020.

The Legislature should amend the recycling act to limit the time period for which the recycling plan is valid and to require the Mattress Council to regularly submit new plans to CalRecycle that are subject to its review and approval.

The Legislature should amend the recycling act to require the Mattress Council to submit with its annual budget any additional details that CalRecycle determines are reasonable for its effective oversight of the mattress program. The Legislature should amend

the recycling act to prohibit the Mattress Council from spending the recycling charges it collects in a year for which CalRecycle has not approved the mattress program's budget. Further, the Legislature should clarify that the Mattress Council's operating without an approved budget is a violation of the recycling act.

CalRecycle

By January 1, 2020, CalRecycle should update the baseline and goals for mattress recycling to reflect the most current available information it has related to the number of mattresses disposed of statewide. In addition, it should ensure that its recycling goals are statewide in scope by including information about recycling and renovation from entities that do not contract with the Mattress Council.

In order to bring violators of the recycling act into compliance and to ensure that its enforcement activities are timely, CalRecycle should do the following:

- Assess penalties for noncompliance with the recycling act.
- Publicize any penalties it assesses against violators of the recycling act as a deterrent to potential violators.
- Monitor inspection cases to ensure that it does not complete them before the retailers in question have remedied any instances of noncompliance.
- Execute a plan to verify compliance for all inspections in which it did not obtain evidence of compliance.
- Develop and implement a timeline for the penalty phase of the enforcement process.
- Regularly review the timeliness of its enforcement process and prioritize any overdue enforcement actions based on its enforcement timelines.

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Chapter 2

THE MATTRESS COUNCIL HAS ACCUMULATED A LARGE FINANCIAL RESERVE AND CANNOT DEMONSTRATE THAT IT HAS EFFECTIVELY SPENT ITS FUNDING IN KEY AREAS

Chapter Summary

The Mattress Council has built an unreasonably large financial reserve for the mattress program. Although the recycling act does not place a limit on the amount the Mattress Council can set as a reserve, the act requires the Mattress Council to submit a budget demonstrating that it will operate the mattress program over a multiyear period in a prudent and responsible manner. The Mattress Council has determined that it needs reserve funding equal to 12 months' worth of expenses, which it estimates is about \$42 million. As of the end of December 2017, the Mattress Council had a reserve of roughly \$31 million, with an additional \$11 million in other net assets above this amount. However, our analysis shows that a much smaller reserve should be sufficient to meet the mattress program's needs. In addition, as of June 2018, the Mattress Council had not established permanent mattress collection sites in seven of California's 58 counties, and pockets of the San Francisco Bay Area still did not have convenient access to collection sites. Further, the Mattress Council has not established measures of success for its spending on raising consumer awareness of the mattress program and researching new technology. Without such measures, the Mattress Council cannot readily demonstrate to stakeholders that its spending is effective in these areas.

The Mattress Council Has Amassed an Unreasonable Amount of Unspent Program Funding

Although the Mattress Council has collected millions of dollars in recycling charges from California consumers, it has dedicated a large amount of its revenue to establishing a reserve rather than on ongoing spending to achieve the mattress program's goals. The Mattress Council collects a recycling charge, which is currently \$10.50, for each mattress consumers purchase in California. Outside of a small amount of interest and dividends earned on unspent funding—roughly \$230,000 in 2017—the recycling charge is the mattress program's only source of revenue, and state law requires the Mattress Council to set the charge at an amount sufficient to fund the revenue requirements it identifies in its annual budget. According to the Mattress Council's audited financial statements, in 2017 it recorded over \$44 million in revenue from the recycling charge. State law requires the Mattress Council to recommend—

We believe the amount of funding that the Mattress Council has accumulated is excessive.

subject to approval by CalRecycle—a funding level sufficient to cover budgeted costs and to operate the program over a multiyear period in a prudent and responsible manner. In total, the mattress program’s net assets at the end of 2017 were about \$42.4 million. The recycling act does not prohibit the Mattress Council from accumulating a reserve, nor does it prescribe a limit to the reserve the Mattress Council can accumulate. However, we believe the amount of funding that the Mattress Council has accumulated is excessive.

The Mattress Council believes it needs to have a reserve equal to 12 months of what it expects the mattress program’s expenses will be in 2020, which its most recent audited financial statements indicate will be about \$42 million. In other words, the Mattress Council estimated that it needs a total reserve equal to the amount of net assets the mattress program already had at the end of 2017. However, the Mattress Council does not consider this entire amount to be the mattress program’s reserve. Rather, its board has designated only \$30.6 million of its net assets as the mattress program’s reserve. The meaning of the distinction between these reserved assets and the mattress program’s other available assets is unclear. The Mattress Council’s chief financial officer stated that it did not have any policies regarding how it can use its reserve that would distinguish the reserve from its other net assets. Therefore, we question the distinction and consider the entire amount of net assets the true amount of reserve funding that the Mattress Council has accumulated. The chief financial officer explained that the reserve funding is intended to stabilize the mattress program’s finances in situations when its existing operating capital is not sufficient, such as cash-flow shortages or economic downturns. She also expressed that the mattress program needs additional working capital beyond its reserve to fund ongoing operations. However, the Mattress Council’s budget for 2018 shows that it planned to operate at a surplus, indicating that it planned to fund the mattress program from its expected revenue, not from accumulated net assets. When it submitted its proposed 2019 budget to CalRecycle, the Mattress Council indicated for the first time in the program’s existence that it expected the mattress program to operate at a loss that could require it to use its reserve. However, the budget showed that expected spending would only exceed expected revenue by roughly \$260,000—an amount that can easily be funded by its net assets.

Other entities have set or advised much lower reserve targets. For example, PaintCare, the operator of California’s paint EPR program, identified a minimum reserve amount equal to two months of its annual expenses, a target reserve amount equal to six months of annual expenses, and a reserve ceiling equal to nine months of annual expenses. We note that—although the Mattress Council is a nonprofit entity—because state law establishes

a dedicated revenue stream that the Mattress Council relies on to operate the mattress program, the Mattress Council is similar to government entities that also operate based on revenue generated by statutory requirements. Guidance from the Government Finance Officers Association of the United States and Canada (GFOA) does not identify a specific maximum level of reserves but recommends governments maintain unrestricted funds at a minimum equal to two months of regular operating revenue or regular expenses. Although the Mattress Council could have sound reasons for setting the mattress program's reserve target somewhat higher than a two-month minimum, the reserve amount it has targeted is six times the minimum identified by PaintCare and the GFOA guidance. Additionally, its target is about 30 percent higher than the maximum reserve level established by PaintCare.

Further, the Mattress Council's explanation of its reserve target level does not align with the reason it provided to us for wanting such a reserve. According to its chief financial officer, the Mattress Council determined that it was important to have a reserve balance that was sufficient to carry the mattress program through a 12- to 18-month recession. However, our analysis—which used historic mattress sales data the Mattress Council provided—found that a reserve amount equal to the Mattress Council's \$42.4 million in net assets would be far more than enough for the Mattress Council to run the mattress program through a 12- to 18-month recession. In fact, we found such a reserve would likely cover the mattress program's expenses for at least six years during a recession similar to the most recent U.S. economic recession, which was the worst economic downturn in about 70 years. Even if the Mattress Council set a reserve equal to six months of the mattress program's budgeted expenses, this amount would still likely last the Mattress Council for more than three years under those same recessionary conditions. Our calculation of how long the Mattress Council's net assets would last under recessionary conditions likely underestimates that time. Specifically, to project a scenario in which the mattress program's reserve was at a higher risk for depletion, our analysis assumed the mattress program's annual expenses would remain the same as in prerecession years. However, we expect that it is more likely that the mattress program's expenses would fall, allowing its reserves to last even longer than our projection. This is because Californians would likely not purchase new mattresses as frequently during a recession and therefore would also less frequently dispose of their old mattresses. Such a decline in disposals would reduce the mattress program's costs to collect, transport, and recycle mattresses.

The reserve amount that the Mattress Council has targeted is six times the minimum identified by PaintCare and the GFOA guidance.

The recycling act does not provide CalRecycle effective options to prevent the Mattress Council's reserve from becoming too large.

In its proposed 2019 budget, the Mattress Council indicated that the mattress program needed its reserve to allow it to adjust to unforeseen circumstances that could have a substantial impact on its expenses, such as sudden changes in market dynamics that would affect its costs or a failure of secondary markets for recycled components. To determine how long the mattress program's projected reserve would last if its costs increased unexpectedly, we calculated how long the reserve would last under the same recessionary conditions described previously if the mattress program's expenses increased by 10 percent each year at the same time. Under this scenario, we found that the mattress program's net assets would last for at least three years, while a reserve amount equal to six months of expenses would last at least two years. Under these conditions, the Mattress Council likely would need to pursue an increase to the recycling charge to maintain operations no matter which of the two reserve amounts it maintains. Under the requirements of the recycling act, a six-month reserve would provide sufficient time for the Mattress Council to pursue such an increase.

The recycling act does not provide CalRecycle effective options to prevent the Mattress Council's reserve from becoming too large. The recycling act requires the Mattress Council to submit a budget to CalRecycle for approval each year by July 1. CalRecycle then has three months to approve it, disapprove it, or take no action, at which point it is approved by default. However, as we discuss in Chapter 1, the recycling act does not specify a consequence if CalRecycle disapproves of the Mattress Council's budget. In addition to the change to the recycling act we recommend for addressing that issue, we believe that other changes could create beneficial intermediate steps that CalRecycle could take to address concerns with the mattress program's reserve funding. For example, the recycling act could define a maximum reserve amount and provide CalRecycle with the ability to direct the spending of any funding that the Mattress Council accumulates over this amount or to adjust the mattress recycling charge. If CalRecycle were granted the authority to direct the Mattress Council to spend excess funding in specific areas, the State would be better positioned to ensure that the recycling charges that consumers pay are used to advance the mattress program and do not accumulate without reason.

As Table 3 shows, in the first two years of the mattress program's operation, its revenue outpaced its expenses, causing its net assets to increase. According to the Mattress Council's 2018 budget, most of the mattress program's expense categories were below budget in 2016, largely because the Mattress Council's contractors received fewer actual mattresses than it had anticipated and because not all municipal and solid waste facilities contracted with the Mattress Council. The mattress program's net assets increased by roughly

80 percent in 2017, from about \$23 million in January to more than \$42 million by December. The mattress program’s budget for 2018 shows that it expects this amount to continue growing by more than \$6 million.

Table 3
Actual and Budgeted Revenues and Expenses for the Mattress Council From 2016 Through 2019
Dollars in Thousands

	ACTUAL				BUDGETED			
	2016		2017		2018		2019	
Revenue Category								
Recycling charge revenue	\$42,263	100%	\$44,506	99%	\$39,723	99%	\$43,983	99%
Interest and dividend income	45	0	370	1	250	1	296	1
Total Revenue	\$42,308		\$44,876		\$39,973		\$44,279	
Expense Category								
Transportation and processing	\$10,484	60%	\$17,475	69%	\$21,595	65%	\$30,455	68%
Administration and legal*	3,733	22	3,046	12	3,633	11	4,544	10
Collection	1,640	9	2,819	11	4,266	13	4,370	10
Communications	1,492	9	1,902	8	3,308	10	4,222	10
Research and advisory	22	0	55	0	278	1	950	2
Total Expenses	\$17,371		\$25,297		\$33,079		\$44,541	
Revenues Minus Expenses	\$24,937		\$19,579		\$6,894		(\$262)	
Prior Year Net Assets†	(2,154)		22,783		42,362		49,256	
Net Assets	\$22,783		\$42,362		\$49,256		\$48,994	

Source: Mattress Council’s financial reports and budgets.

* We included the amount of CalRecycle’s oversight expense that it charges the Mattress Council as part of the administration and legal expense category.

† The prior-year balance for 2016 includes about \$2.1 million in prior-year expenses to start the program. The recycling act did not require the recycling charge to be collected before December 30, 2015. According to the Mattress Council’s managing director, the International Sleep Products Association funded all preprogram expenses through a combination of loans from the association and a line of credit against the association’s assets.

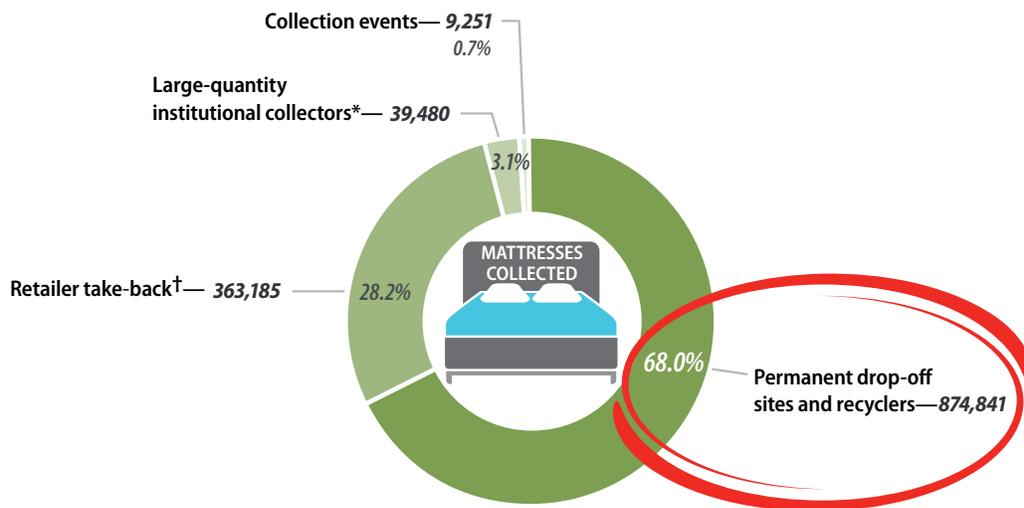
As we mentioned previously, the recycling act does not prescribe a limit to how much funding the Mattress Council can accumulate in a reserve. However, the legislative intent of the recycling act is for the Mattress Council to develop, finance, and implement a convenient and cost-effective program to collect and recycle used mattresses generated in the State. When the Mattress Council instead accumulates large amounts of unspent funding rather than spending it on the program, it raises concerns about the degree to which its decisions support the legislative intent of the recycling act.

The Mattress Council Has Opportunities to Increase the Convenience of the Mattress Program

The Mattress Council is responsible for operating the mattress program in compliance with the recycling act. To this end, the Mattress Council collects used mattresses through multiple channels: free consumer drop-off at permanent collection sites (which the Mattress Council's 2016 annual report stated were mostly solid waste facilities and also include recycling facilities), retailer used mattress take-back, large-quantity institutional collectors, and consumer drop-off at collection events. However, it collects far more mattresses from some channels than from others. According to the EPR supervisor, the mattress program is different from the carpet EPR program in that it includes a retailer used mattress take-back requirement, and CalRecycle expected this option to yield the most mattresses for recycling. However, as Figure 2 shows, the Mattress Council collects most mattresses through permanent drop-off sites throughout the State.

Figure 2

The Mattress Program Received Most Mattresses Through Permanent Drop-Off Sites in 2017



Source: The Mattress Council's 2017 annual report.

* Large-quantity institutional collectors are hotels, educational facilities, and other institutional purchasers of mattresses that, with limited exceptions, may drop off their discarded units at any Mattress Council-contracted recycling facility.

† State law requires retailers to offer consumers the option to have their used mattresses picked up for free if the retailers are delivering their new mattresses.

Permanent drop-off sites offer stable and predictable places for individuals to dispose of used mattresses, so providing consumers convenient access to these sites is critical to the Mattress Council's ensuring that it collects the maximum number of used mattresses for recycling. The Mattress Council's recycling plan states that within the first year of the mattress program's operation, it intended to identify at least one free drop-off site in each county in California or hold at least one collection event annually in counties not served by drop-off sites. However, the Mattress Council did not fulfill its intent: it neither established a permanent mattress drop-off site nor held a collection event in every county in California by the end of 2016. According to the Mattress Council's 2016 annual report, 122 collection sites and 11 recycling facilities were a part of the mattress program in 2016. The same report indicated that 15 of 58 counties did not have permanent drop-off sites as of December 2016, although the Mattress Council held at least one collection event in 2016 in six of these counties, with the number of events per county ranging from one to three. However, collection events are less convenient than permanent drop-off sites because they exclude anyone who wishes to dispose of mattresses but is unable to attend during that time. Further, there were nine counties in 2016 that did not have either a permanent drop-off site or a collection event. According to the Mattress Council's records, the mattress program had 168 collection sites and 10 recycling sites in its program as of June 2018. However, seven of 58 counties still did not have permanent drop-off sites. These seven counties are populated by more than 1.5 million people, or about 4 percent of California residents. Although the Mattress Council has held at least one collection event in most of these counties and some residents in these counties may have access to a free disposal site by driving to a neighboring county, having at least one permanent disposal site in each county would help to ensure that its residents have convenient access for disposing of a mattress.

Further, because of the large size and population dispersion of some California counties, a per-county measurement is not enough to fully assess the convenience of the mattress program. For example, as of the end of 2016, the Mattress Council had three free drop-off sites in Alameda County—one each in Hayward, Oakland, and San Leandro. When the Mattress Council publishes its annual report, CalRecycle allows the public and interested program stakeholders to comment on the report. The city manager of Newark, a city in Alameda County, stated in a comment on the 2016 annual report that the terms the Mattress Council offered to solid waste facilities had not been effective at establishing a collection site anywhere in east Alameda County, which he stated has two transfer stations, two landfills, and a permanent household hazardous waste facility. Further, he stated that the mattress program had no collection sites in the east, south, or north areas of Alameda County and that many heavily populated areas were far from the available collection sites. The city manager of Pleasanton made similar comments on the same annual report.

Having at least one permanent disposal site in each county would help ensure that its residents have convenient access for disposing of a mattress.

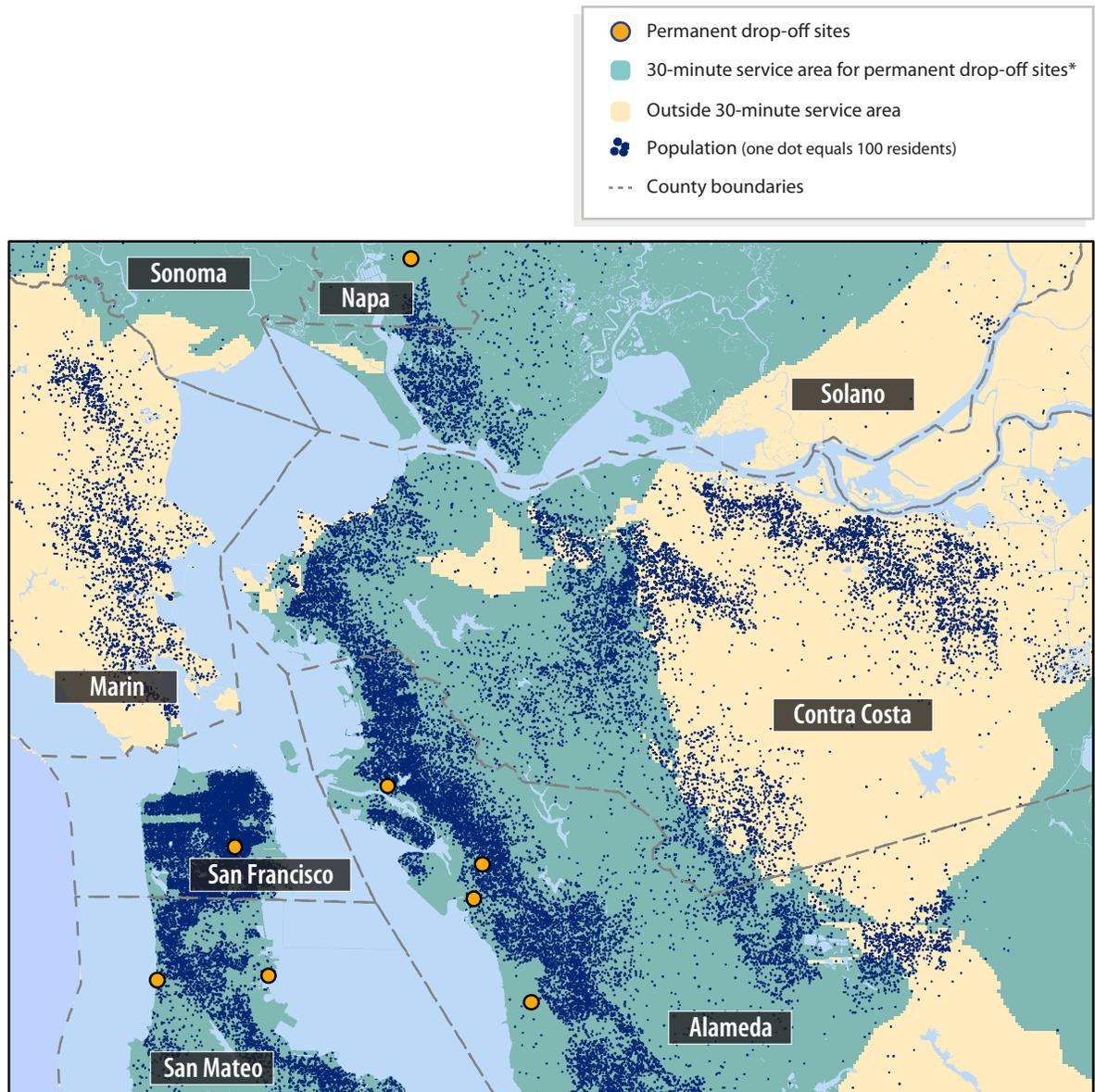
To assess whether Californians have convenient access to dispose of used mattresses at one of the program's drop-off sites, we defined *convenience* as a 30-minute drive to one of those drop-off sites. We then reviewed three major metropolitan areas—the San Francisco Bay Area, Los Angeles, and San Diego—to determine how many residents live conveniently nearby a permanent drop-off site within the program. Although we found the majority of residents in the Los Angeles and San Diego areas lived within a 30-minute drive of a permanent drop-off site, we identified significant groups of residents living beyond the 30-minute drive time in the eastern part of the Bay Area and in Marin County. Figure 3 shows the results of our analysis and the key areas in which individuals do not have convenient access to permanent drop-off sites in the Bay Area.

According to its managing director, the Mattress Council has faced challenges in establishing drop-off sites in some areas. For example, he explained that Marin County has a single solid waste service provider and that this entity has been indifferent to the Mattress Council's efforts to educate it about the mattress program's purpose. Additionally, he noted that limited real estate options have made finding an alternative location for mattress drop-off in that county difficult. As a result, as shown in Figure 3, most residents in Marin County are currently without a convenient free drop-off site to dispose of their mattresses within the program.

The Legislature should require CalRecycle to develop a goal that would measure the consumer convenience of the mattress program.

As we recommend in Chapter 1, we believe the Legislature should require CalRecycle to develop a goal that would measure the consumer convenience of the mattress program. According to its managing director, the Mattress Council does not currently measure consumer convenience because the recycling act does not require a convenience standard and the Mattress Council believes convenience is subjective and difficult to measure in the short term. He explained that the recycling act established multiple channels for used mattress collection to ensure that Californians have reasonable access to recycle their used mattresses. Nevertheless, our review of EPR program literature identified the importance of establishing performance measurements to monitor program goals, such as ensuring consumer convenience. The program's convenience could be measured in ways beyond those we describe in this section. For example, Washington state law, in requiring reasonably convenient collection for the state's electronic waste program, specifies offering collection services in every county and at least one collection site or alternative collection service in every city or town with a population of more than 10,000. Further, as we describe earlier in this chapter, the Mattress Council currently has unspent funding it could use to establish more collection sites to allow consumers more convenient access to drop off used mattresses. As the Mattress Council continues to expand its program, a defined standard for convenience will be an important guide for its future spending.

Figure 3
The Mattress Council Could Improve the Convenience of the Mattress Program
for Residents in the San Francisco Bay Area



700,000

**BAY AREA RESIDENTS LIVE FARTHER
THAN 30 MINUTES FROM A PERMANENT
DROP-OFF SITE**

Source: Analysis of permanent drop-off site locations as of June 2018, provided by the Mattress Council.

* The 30-minute service area is based on street lengths and speeds without adjustments for traffic.

Because the Mattress Council Has Not Established Measures of Success for Key Program Activities, It Cannot Demonstrate the Sufficiency of Its Spending in These Areas

The Mattress Council has not established measures of success to determine the effectiveness of its implementation of key program activities. The recycling act required the Mattress Council to describe in the recycling plan its intended activities in the areas of research and outreach to consumers, manufacturers, and retailers. However, it did not require the Mattress Council to establish metrics to measure the success of its spending on these activities. As a result, the Mattress Council does not have measurable goals for the mattress program related to consumer awareness and research on new technology. Because the recycling act requires the Mattress Council to report on its recycling activity on an annual basis, the State can determine if the Mattress Council achieves year-over-year increases in the number of mattresses collected and the amount of mattress material recycled. However, these aggregated results do not speak to the effectiveness of the Mattress Council's spending on activities in specific areas of the mattress program. Without measurable goals in those areas, the Mattress Council cannot demonstrate that its spending and activities are sufficient or successful.

During the first two years of the mattress program, the Mattress Council did not perform any studies or surveys to determine the level of consumer awareness of the mattress program.

The Mattress Council has only recently begun measuring whether its spending and activities concerning consumer awareness are effective. According to its managing director, during the first two years of the mattress program, the Mattress Council did not perform any studies or surveys to determine the level of consumer awareness of the mattress program. In the first half of 2018, the Mattress Council performed a survey of residents to evaluate consumer awareness that a mattress could be recycled, that mattress recycling was free under state law, and of how to dispose of a mattress so that it would be recycled. During our audit, the Mattress Council provided us with the survey's results and the Mattress Council disclosed a portion of the survey results in its 2017 annual report. However, its president asserted that the full results of that survey were confidential business proprietary information that could not be publicly disclosed. As a result, we do not include any information from that survey in this report. Nevertheless, the Mattress Council cannot demonstrate the sufficiency of its spending on advertising without goals to define how it would measure success.

The Mattress Council spent less on communication activities—which include consumer awareness activities such as advertising and market outreach—in the mattress program's first year than the State's paint EPR program spent in its first year. The Mattress Council's managing director stated that it developed

the mattress program's budgets based on the metrics of other EPR programs in the State, such as the paint EPR program. We compared the expenses for the paint and mattress programs in their first year of operation and found that each spent a similar proportion of its total expenses on administration. However, the Mattress Council spent a much lower percentage on communications than the paint program did. In 2016 the Mattress Council spent about \$1.5 million on communication activities, which was 9 percent of its total expenses. In contrast, in its first year of operation, the paint program spent about \$2.4 million on communications, which was 25 percent of its total expenses. The managing director of the Mattress Council explained that although the Mattress Council modeled some of its cost targets on similar programs such as the paint program, educating consumers about paint recycling opportunities is different from educating them about mattresses because of the lifespans of the products. The Mattress Council also expressed that the expenses for communication after the first year of the paint EPR program were lower than the 25 percent it spent in its first year; maintaining an average of about 13 percent of its costs per year. We acknowledge that the Mattress Council's spending a lower percentage of its costs on communications than the paint program does not prove that its spending on advertising and outreach was inadequate. However, the Mattress Council is more than two years into implementing the mattress program, and it has not yet determined whether its level of spending is sufficient, which we find a cause for concern. Without a focus on smaller and more immediately measurable goals, the Mattress Council will continue to spend millions of dollars on communications activities without knowing for certain that it is increasing awareness of the program, which in turn would contribute to an increase in mattress recycling.

Further, the Mattress Council could not demonstrate that it adequately funded research on new technology related to improving used mattress collecting, dismantling, and recycling operations. In 2016 the Mattress Council budgeted \$50,000 towards research and advisory studies. However, it spent only \$22,000—less than half of the planned amount. In 2017 the Mattress Council increased the budget to \$200,000, but it spent only about \$55,000. The Mattress Council's 2016 annual report states that the Mattress Council supports applied research and development efforts to improve the sustainability of mattress recycling through efforts focused on advancing the efficient collection, transportation, and recycling of discarded mattresses and on identifying new and better uses for extracted mattress components. However, according to the Mattress Council's managing director, research was not a priority in the initial years of launching the mattress program. Rather, he stated that the Mattress Council focused its efforts on tasks such as hiring staff; creating an outreach campaign for retailers, consumers,

The Mattress Council could not demonstrate that it adequately funded research on new technology related to improving used mattress collecting, dismantling, and recycling operations.

The Mattress Council missed a strategic opportunity to invest in the long-term viability of the mattress program.

and other stakeholders; developing a mechanism for retailers to remit payment; and establishing the network for mattress collection. He further asserted that funding research to help establish secondary markets for recycled mattress materials would have been premature if the Mattress Council had not first ensured that the mattress program would collect a substantial number of mattresses.

Although establishing a network for mattress collection is an essential part of the mattress program's success, the Mattress Council missed a strategic opportunity to invest in the long-term viability of the mattress program. In its proposed 2019 budget, the Mattress Council indicated that one of the reasons that it needed to maintain a reserve was to respond to unforeseen circumstances, such as a failure in the market for recycled materials wherein recyclers could not readily sell materials extracted from used mattresses. In its 2017 annual report, the Mattress Council indicated that if the recycled materials from mattresses declined in value, it would need to compensate its contracted recyclers more, thereby increasing the overall cost of the program. Research to identify additional uses for recycled materials could help reduce the likelihood that recyclers will have no market for the material they reclaim from mattresses. However, the Mattress Council spent only a fraction of a percentage of its overall expenses on research activities in the first two years of the mattress program while it accumulated a large amount of reserve funding.

The Mattress Council increased its budget for research and development costs in 2018 and 2019 to \$278,000 and \$950,000, respectively. Therefore, the Mattress Council would benefit from developing goals in the area of research—such as a target for how effective it would like to make the technology that recyclers use to recycle mattresses so that more mattress material is recovered for recycling—because it cannot determine whether its spending is adequate without goals and metrics to measure its success.

Moreover, the Mattress Council has created measurable goals for other EPR programs it administers, demonstrating that it has the ability to do so when required. For example, the Mattress Council established measurable goals for Rhode Island's mattress recycling program, such as ensuring that 80 percent of that state's solid waste facilities participate and contacting all retailers to explain their obligation to register and remit payments to the Mattress Council by the end of the second year of the program's operation. According to the Mattress Council's managing director, the law that established Rhode Island's mattress recycling program was specific about the Mattress Council developing metrics and measurable goals. Our review of Rhode Island law found that it required the Mattress Council to establish performance goals for

the first two years of the program and to submit these goals for approval by the Rhode Island Resource Recovery Corporation (Rhode Island Corporation), a public corporation created by statute. Rhode Island law then required the Mattress Council to submit updated goals for the Rhode Island Corporation's approval based on its experiences during the first two years of the program's operation.

In contrast to Rhode Island's law, the recycling act does not explicitly require the Mattress Council to include goals for the mattress program in its recycling plan. Based on our reviews of successful U.S. and European EPR recycling programs, we believe that setting clear targets that are acceptable to all stakeholders is a best practice and that state environmental agencies must ensure accountability when assessing progress towards performance goals. Further, without intermediate goals to measure the success of its spending in key program areas, neither the Mattress Council nor its stakeholders will be able to know whether its spending in these areas is adequate and effective.

Recommendations

The Legislature should amend the recycling act to require the Mattress Council to maintain a reserve equal to no more than six months of the mattress program's budgeted expenses. Further, the Legislature should amend the recycling act to provide CalRecycle the ability through its budget approval process to direct the spending of any amount of funding that the Mattress Council accumulates in excess of this amount or to adjust the mattress recycling charge.

The Legislature should amend the recycling act to require the Mattress Council to include in its recycling plan measurable goals in the areas of consumer awareness and research on new technology. Further, the Legislature should require that the Mattress Council's annual report include information about the mattress program's progress toward meeting those goals.

We conducted this audit under the authority vested in the California State Auditor by Government Code 8543 et seq. and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
California State Auditor

Date: August 30, 2018

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DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

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P.O. Box 4025, SACRAMENTO, CALIFORNIA 95812

August 15, 2018

The Honorable Elaine M. Howle*
State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: Audit Report 2018-107
Dear Ms. Howle:

Thank you for the opportunity to review and comment on the August 8, 2018, draft audit report entitled "California Department of Resources Recycling and Recovery: It Has Not Provided the Oversight Necessary to Ensure the Mattress Recycling Program Fulfills Its Purpose." This draft was provided to California Environmental Protection Agency Secretary Rodriguez, who asked the Department of Resources Recycling and Recovery (CalRecycle) to respond on his behalf.

CalRecycle appreciates the opportunity to provide feedback on the information and legislative recommendations contained in the report. The California Used Mattress Recovery and Recycling Act sets forth a program that is to be administered by a Mattress Recycling Organization based upon an approved Plan, with oversight provided by CalRecycle. This type of program, known as extended producer responsibility, assigns responsibility for program design and implementation to manufacturers.

The title of the draft report indicates that CalRecycle has not exercised sufficient oversight authority. As noted in previous discussions with audit staff, CalRecycle does not concur and holds that the program has been implemented consistent with the authority provided in the existing statute. However, CalRecycle agrees that additional authority would enhance the program's effectiveness in recovering and recycling mattresses and our oversight ability, and therefore we concur with the proposed legislative recommendations in the draft report. ①

CalRecycle believes the report's utility would benefit from additional context and analysis in the findings, which provide the basis for the draft report's recommendations. The draft report recognizes vagueness in statute and CalRecycle's lack of effective authority to acquire clear and concise data from industry. CalRecycle notes that additional context may have further informed the auditor's analysis. For example: ② ③



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- The draft report indicates CalRecycle has not established statewide recycling goals. The draft report then acknowledges that insufficient data was available to CalRecycle to do so. CalRecycle will establish additional statewide goals once sufficient data is available.
- The draft report also indicates CalRecycle has not established goals related to convenience, encouraging source reduction, and reducing illegal mattress dumping, though it is not explicitly mandated in statute. The report recommends that the Legislature grant CalRecycle the authority to establish these types of goals. CalRecycle agrees that current statutory authority is unclear, and that these goals should be explicitly defined in statute.
- The draft report contains findings about CalRecycle's approach to penalties, inspections and the timing of enforcement actions. CalRecycle notes that these findings omit a complete description of our inspection and enforcement process or any discussion of our level of effort and success in obtaining compliance using progressive enforcement.

CalRecycle agrees with the draft report's recommendations to the Legislature and, consistent with your auditors' request, has provided additional recommendations for legislative consideration. Furthermore, we are currently implementing a plan to follow-up with businesses that are failing to comply and to pursue penalties where compliance has not been achieved. CalRecycle looks forward to further conversations on how it can be helpful in ensuring mattress materials are safely and effectively managed statewide.

Please find attached CalRecycle's more specific comments to the draft audit report.
Sincerely,



Ken DaRosa
Chief Deputy Director

cc: Matthew Rodriguez, Secretary, California Environmental Protection Agency
Scott Smithline, Director, CalRecycle
Brian Boone, California State Auditor
Bob Harris, California State Auditor

Attachment: Detailed Responses

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Attachment: Detailed Responses

The title of the draft report, “California Department of Resources Recycling and Recovery: It Has Not Provided the Oversight Necessary to Ensure the Mattress Recycling Program Fulfills Its Purpose” implies that administrative oversight is the primary driver of programmatic success. While CalRecycle understands that this is a significant factor, ultimately the success of a program or the fulfillment of a statutory purpose is dependent on a variety of factors. These factors include adequacy of the statutory language, continual engagement with stakeholders and the regulated community, transparency of process, and ensuring the right goals and metrics are established and enforced. ⑥

Chapter 1 of the draft audit report states that CalRecycle has not provided the oversight necessary to ensure the success of the mattress program. Specifically, the report notes that the goals CalRecycle has established for mattress recycling will make evaluation of the state’s recycling efforts and mattress program’s success difficult. The chapter also provides findings and recommendations. In this attachment, CalRecycle responds to these findings and recommendations (note that the page numbers cited below correspond to pagination in the draft audit report provided to CalRecycle on August 5, not necessarily the pagination in the final report to be published by the California State Auditor).

1) Page 14 Finding: “CalRecycle has not yet set key goals for the Mattress Program.” ⑦

As described in CalRecycle’s November 2017 public meeting agenda item regarding the “Proposed State Mattress Baseline and Recycling Goals”,¹ CalRecycle set initial recycling goals for the mattress program based upon:

- 1) Statutory authority and the data available at the time;
- 2) Consultation with the Mattress Recycling Council (MRC) and the MRC’s first year annual report data as required per statute; and
- 3) CalRecycle’s public consultation process to solicit all stakeholders’ input into its proposed baseline and goals.

CalRecycle also indicated that it intended to review and update the goals by July 1, 2020. Additionally, CalRecycle stated that once sufficient data were collected, it would consider additional metrics that would provide a broader statewide description of used mattress management in California, including, but not limited to, program convenience, illegal dumping, and source reduction (all items mentioned by the

¹ <https://www2.calrecycle.ca.gov/PublicNotices/Documents/8532>

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report).

⑧

CalRecycle considers establishing meaningful, clear goals and metrics critical to successful measurement of used mattress management in California. As the draft audit report notes, CalRecycle was hindered by a lack of data when setting goals in November 2017.

During public consultation of its proposed mattress baseline and recycling goals process, stakeholders offered no written comments at that time relative to convenience, illegally-dumped mattresses, or source reduction, with the exception of the MRC's comments on the topic. Instead, the majority of the comments stated that CalRecycle's proposed baseline and goals are consistent with regulations and that a baseline for renovation should not be set until better data are available. For example, the Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force concurred that "the mattress recycling baseline and goals are consistent with current and upcoming recycling regulations." One renovator (the only one to offer formal comments) urged CalRecycle "...to reconsider setting a baseline for renovation using 2016 numbers, and to hold off until 2017 totals can be obtained." The MRC's Mattress Advisory Committee recommended (regarding the proposed renovation baseline) that "that number be removed from the listed goals, and a new number should not be set until better data becomes available."

Further, statute does not explicitly require CalRecycle to establish goals relative to convenience, illegally dumped mattresses, or source reduction. While it may be possible to interpret the statutory term "recycling goals" to include various recycling-related goals (e.g., convenience, illegally dumped mattresses, source reduction, and renovation-related goals), this term is not defined in statute and its interpretation has been disputed by stakeholders. Statute requires CalRecycle to establish, in consultation with the mattress recycling organization, the state mattress recycling baseline amount and state mattress recycling goals using methodology contained in the plan and information contained in the MRC's first annual report in accordance with the California Used Mattress Recovery and Recycling Act. During CalRecycle's consultation with the MRC as part of the initial state mattress baseline and recycling goal development process, the MRC took the position that goals such as convenience, illegal dumping, and source reduction cannot be recycling goals and argued that CalRecycle may only set a numeric recycling baseline and percentage rate recycling goal.

In determining whether to move forward with these additional recycling goals during the initial baseline and goal-setting process in 2017, CalRecycle considered the lack of clear statutory authority, and the risk of a legal challenge. While acknowledging that additional recycling goals would be beneficial for the mattress program, CalRecycle decided it would be in the interest of the state, its residents, and the

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program to focus resources on the immediate needs of ensuring the new program's effective implementation. CalRecycle decided to propose these and/or other recycling goals in the subsequent two years, as allowed per statute. Accordingly, CalRecycle focused on conducting significant education, outreach, and compliance efforts to make sure that mattress recyclers, renovators, and solid waste facilities required to report to CalRecycle accurately; ensuring the mattress recycling charge was being collected appropriately; working with the MRC to understand its programmatic activities and offer guidance regarding statutory responsibilities. This approach would allow additional annual reporting data to be considered, as statute requires the baseline and goals to be established based, in part, on annual reports.

As such, CalRecycle disagrees with the draft audit report's characterization of this issue, but agrees with the report's recommendation that the Legislature consider adding explicit language in statute to clarify that CalRecycle may set these and other types of recycling-related goals (see Response #6 below) so that authority on this issue is clear. ⑨

2) Page 19 Finding: "CalRecycle's goals for mattress recycling do not reflect statewide measurements of recycling activity." ⑦

This finding, along with the first finding above, is linked to the recommendation on pages 23 and 35: ⑦

"By January 1, 2020, CalRecycle should update the baseline and goals for mattress recycling to reflect the most current available information it has related to the number of mattresses disposed of statewide. In addition, it should ensure that its recycling goals are statewide by including information about recycling and renovation from entities that do not contract with the Mattress Council."

CalRecycle intends to establish a statewide recycling rate by July 1, 2020, however it believes the current recycling goals do provide a measure of statewide recycling activity. The MRC's plan estimated, with a 90 percent confidence level, that 1.9 million mattresses were disposed of in landfills in 2014; similarly, page 8 of the draft audit report states an estimated 2 million mattresses are discarded annually. CalRecycle's approved state mattress goals for 2017 are for 1.2 million mattresses to be recycled and 150,000 mattresses to be renovated. The goals can be used as a measure to gauge the program's impact on the statewide recycling of mattress. Using the approved goals (units renovated and units collected for recycling) as the numerator and the estimated number of mattresses discarded from the audit (adjusted to account for the 21 percent increase in disposal from 2014 to 2017), achieving the goals in 2017 would mean that at least 58 percent of the estimated number of mattresses discarded statewide were collected for recycling through MRC's program or were renovated. ⑩ ⑦

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Achieving the approved goals in 2020, assuming disposal remains stable between 2017 and 2020, would mean that at least 76 percent of the estimated number of mattresses discarded statewide were either collected for recycling through MRC's program or renovated.

- ⑦ Page 3 of the draft audit report states that "CalRecycle's goals will lead it to monitor the growth of the mattress program for the next three years but not the total statewide progress toward diverting mattresses from landfills – an approach that does not reflect the requirements or intent of the recycling act." As noted above, the goals do provide a measure of statewide progress. CalRecycle indicated in its November 2017 agenda item that the baseline and goals will be reviewed and potentially revised by July 1, 2020, a time period less than three years from the effective date of the initial baseline and goals. Further, CalRecycle is currently monitoring and will continue to closely monitor the statewide data as reported by mattress recyclers, renovators, and solid waste facilities that accept mattresses from the public as part of its ongoing oversight and implementation activities. According to data reported to CalRecycle, 382,925 mattresses were disposed of in landfills in 2017.

- ⑩
- ⑦ CalRecycle set goals in November 2017 based on authorizing statutes, the methodology contained in the MRC's plan, MRC's first annual report, and other verifiable data available at the time. The draft audit report's recommendation on pages 23 and 35 are consistent with CalRecycle's November 2017 public meeting agenda item cited above, in which CalRecycle explicitly stated its intent to review and update the goals by July 1, 2020. In particular, CalRecycle stated that it intends to establish a statewide recycling rate in 2020 based on a numerator of the number of mattresses reused, renovated, or recycled and a denominator of the total number of mattresses available for reuse, renovation, and recycling. This would use the best available data at the time, including data from entities not contracted with the MRC.

In order to facilitate improvements in data reporting by recyclers, renovators and solid waste facilities, CalRecycle has undertaken a number of efforts starting with the development and administration of a survey to assess the education and training needs of reporting entities (i.e., renovators, recyclers, and solid waste facilities). Based on the survey results and analysis of the data reported in the first year of the program, CalRecycle developed and conducted a custom training webinar to assist mattress recyclers, renovators, and solid waste facilities in preparation for the 2017 mattress annual reporting cycle. CalRecycle also provided extensive technical assistance to reporting entities regarding their reporting obligations, conducted extensive quality control and analysis on the reporting entities' 2017 data, mailed violation notices to all entities that failed to report by the May 1, 2018 deadline, and proceeded with progressive enforcement actions for those entities. Subsequent to CalRecycle's efforts, year two of the program saw a significant improvement in data reporting with 100% (9/9) of reports received from mattress recyclers, 93% (28/30)

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of reports received from mattress renovators, and 98% (382/389) of reports received from solid waste facilities. Improved data reporting is critical for CalRecycle to review and update the recycling goals by July 1, 2020.

3) Page 23 Finding: “CalRecycle has not ensured that the Mattress Council prioritize source reduction and provide budget transparency.”

Regarding source reduction, the MRC’s plan (page 7) states it will advance California’s hierarchy through eight elements, the first of which is source reduction: “The mattress industry manufactures durable mattresses that reduce the rate at which discards are generated.” While the plan does address source reduction, as acknowledged in the draft audit report on page 24, it is not clear that CalRecycle can require more specific details under existing statute (the draft audit report does not provide an explanation of what “prioritizing source reduction” means in addition to what MRC has included in its plan).

Despite the absence of such a requirement, the MRC’s 2016 and 2017 annual reports state that source reduction was met by:

- 1) Manufacturing durable mattresses that reduce the discard rate;
- 2) Capturing discarded mattresses before they enter the waste stream or diverting them from the waste stream once they have been collected; and,
- 3) Reducing the volume of units by dismantling them and recycling as much of the component material as possible.

However, with the exception of 1) above, the MRC’s description of source reduction activities is not consistent with Public Resources Code (PRC) Section 40196. Furthermore, the MRC did not include information on the extent, if any, to which mattress durability was improved or provide associated metrics to track durability.

In its August 2018 analysis of the MRC’s 2017 Annual Report (which was submitted on July 2, 2018), CalRecycle staff concluded that source reduction activities must be consistent with statutory definitions and that the MRC’s Annual Report should describe how the MRC’s objectives are advancing the solid waste management hierarchy as described in its Plan, with appropriate metrics. CalRecycle staff also concluded that the MRC must describe source-reduction activities it has undertaken and provide a detailed description of planned future efforts to address the source reduction requirement. Thus, while the submitted plan contained information on how MRC would be addressing source reduction, the annual report failed to provide information on how that is being implemented. Consequently, as of this writing, CalRecycle staff have recommended that the director of CalRecycle disapprove the 2017 Annual Report.

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⑦ ⑬ It is too soon to speculate as to what the MRC's response will be if the director disapproves the 2017 Annual Report, as the MRC would have 60 days to revise and resubmit the report to address its deficiencies. However, this situation provides an opportunity to address the confusion in the draft audit report (pp. 25-26) on how CalRecycle's regulations require resubmittal of a plan upon a significant or material change to the program. If, in order to remedy the reporting deficiency in the 2017 Annual Report regarding source reduction the MRC needs to adjust its program objectives or goals, any such change with regard to source reduction would likely meet the threshold of "significant or material," and CalRecycle would be able to require MRC revise and resubmit its plan.

Regarding budget transparency, the level of budgetary detail is specifically required by statute and the implementing regulations. CalRecycle requests additional information that might be of interest but transmittal of this information from the MRC is not required by statute and the implementing regulations. For all approved budgets to date, staff determined that the statutory and regulatory requirements were addressed, and were approved accordingly. When necessary, CalRecycle requests additional detail for the MRC to demonstrate it can perform its statutory responsibilities. CalRecycle also requests additional information that will be helpful for the public to have a better and more transparent understanding of MRC's budget, but there is no statutory or regulatory requirement that MRC submit this information. Therefore, while CalRecycle may make the request, it is up to MRC to determine whether it wants to volunteer the requested information.

In addition, the annual report approval process allows an additional opportunity for CalRecycle to request more robust information related to its budgetary activities. For example, in its August 2018 analysis of the MRC's independently audited financial statements included in the 2017 Annual Report, CalRecycle staff noted that the MRC's total net assets nearly doubled from 2016 to 2017 but that the MRC did not provide an explanation as to why the reserve grew substantially or a justification for carrying such a large reserve. The MRC stated that the reserve is intended to equal 12 months of what it projects it will spend in 2020, but it did not provide the 2020 expense forecast. CalRecycle staff therefore requested that the report provide information on "total net assets" to comply with the surplus funding reporting requirement, provide the 2020 projected expenses, and provide a detailed rationale for such a large reserve.

⑦ **4) Page 28 Finding: "CalRecycle has not adequately enforced retailer compliance with the recycling act."**

⑭ CalRecycle recognizes that enforcement alone does not necessarily achieve compliance. Instead, CalRecycle's progressive enforcement approach focuses first on assisting entities to achieve compliance, which has proven to be a much more successful model than issuing penalties at its first option.

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Since 2016, CalRecycle has conducted statewide enforcement on mattress retailers and used a progressive enforcement approach to achieve compliance, consistent with other programs throughout CalRecycle. The approach consists of inspecting a business, preparing an inspection report, and then publically issuing the report. The report's release is considered the inspection's completion.

If violations are found at the time of the inspection, a notice of noncompliance is presented on the inspection report, an enforcement case is opened, and the business is given time to come into compliance. During this time staff sends notices of noncompliance to the business and notifies them of potential penalties for failing to comply. This "compliance through education" strategy is particularly beneficial for new programs and when working with small businesses. The strategy allows for the efficient and effective use of resources while successfully gaining compliance. Furthermore, the approach assures due process and allows CalRecycle to prioritize the most significant violations and utilize limited resources to have the largest impact

CalRecycle's progressive enforcement process has been effective. Through these efforts, 116 retail businesses found ignoring or unaware of the laws, and the requirements to participate, are now registered with MRC. During this time, CalRecycle also undertook progressive enforcement efforts to address renovator and solid waste facilities failing to comply with reporting requirement, and subsequently 82 business came into compliance with the requirement to register in CalRecycle's annual reporting system. ⑮

In the first year of the program (2016), CalRecycle focused on reaching businesses to educate them and to assure they registered with the MRC. Although inspections in 2016 showed approximately 30 percent of the businesses contacted were in violation of registration requirements, through staff's progressive enforcement efforts, 98 percent of those businesses came into compliance with the registration requirement. ⑮

In the second year (2017), CalRecycle continued to focus on program registration and also evaluated compliance with the other required standards. Furthermore, CalRecycle focused on businesses MRC referred to CalRecycle that were thought to be out of compliance with the registration requirements. Of the businesses evaluated, 69 percent were found to be in violation of the registration requirements. CalRecycle's progressive enforcement efforts resulted in 82 percent of the businesses achieving compliance with the registration requirement. ⑮

The follow-up on violations of other required standards did not occur during the first two years due to the focus on registration requirements. CalRecycle determined that once businesses are registered with the MRC, the MRC tracks other standards such as the proper collection and payment of fees. If MRC becomes aware of

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potential violations, it may refer the business to CalRecycle for inspection and enforcement, as necessary.

Enforcement activities are prioritized in order to be the most efficient in gaining overall compliance. It is evident that prioritizing education and the opportunity for the business to understand the requirements and to voluntarily come into compliance has resulted in large gains in overall compliance.

⑦ On page 32, the draft audit report states:

“According to an extract of CalRecycle’s enforcement database we obtained in August 2018, CalRecycle identified 214 cases in which it will need to re-inspect to obtain evidence of compliance with the recycling act.”

⑩ CalRecycle did provide the audit team with this extract. However as is noted in the draft audit report CalRecycle’s database has limited capabilities. This specific extract contained 30 duplicative inspection numbers to account for businesses at a progressive enforcement phase. Accounting for these duplicates, the total number of business locations that require re-inspection is 184. We developed a new system in 2018 to track this information and negate the need for duplicate entries.

Having addressed this, CalRecycle is re-inspecting businesses that have not demonstrated compliance, and it will continue to do so. Businesses that remain in violation will proceed through the progressive enforcement process and violations will be resolved by the business achieving compliance or penalties will be pursued by CalRecycle. CalRecycle notes that it has finalized a Statement of Facts for a noncompliant business and the department’s Legal Office is preparing documents to proceed with legal action.

⑦ Finally, on page 33 the draft audit report makes the following statement:

“The enforcement manager noted that CalRecycle has given staff discretion to decide how to track when follow-up on inspection cases was necessary and that the supervisor reviews CalRecycle’s enforcement database to see if follow-up has stalled.”

⑩ For clarity, no inspector is provided discretion to decide when follow-up on inspection cases is necessary. Once a violation is found, the inspector is to provide timely follow-up. To manage and schedule this workload, CalRecycle provides discretion to staff regarding the appropriate tool (e.g., outlook calendar, spreadsheets, and database reports) to track and maintain their workload.

⑩ Compliance/enforcement cases have not and are not considered complete until compliance has been fully documented.

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5) Pages 34-35: Recommendations to the Legislature

⑦

The draft report provides four recommendations to the Legislature for amendments that focus on:

- 1) Requiring CalRecycle to establish additional goals (for encouraging source reduction, increasing consumer convenience, and reducing illegal dumping) by July 2020;
- 2) Limiting the time period for which the recycling plan is valid;
- 3) Requiring the MRC to submit with its annual budget any additional details that CalRecycle determines are reasonable for its effective oversight; and,
- 4) Prohibiting the MRC from spending the recycling charges it collects in a year for which CalRecycle has not approved the program's budget.

CalRecycle agrees that these recommendations would help in administering the program.

Additionally, and as requested by the auditors, CalRecycle finds that additional statutory changes could improve the program and program outcomes:

⑤

a. **Remove “good faith effort” for the Mattress Recycling Organization to comply with state recycling goals. PRC §42987.5(b).**

Removing the requirement that a mattress recycling organization demonstrate only the organization's “good faith effort” to comply with the state mattress recycling goals would allow CalRecycle to act more quickly to address a mattress recycling organization's poor performance/non-compliance (i.e., for MRC) through statutory tools such as penalties.

b. **Allow for greater transparency and communication with stakeholders. PRC §42988.1.**

Currently, the annual report and annual budget must be submitted by the Mattress Recycling Organization separately and must be reviewed and approved, disapproved, or conditionally approved by CalRecycle separately. CalRecycle is statutorily required to make those determinations within 90 days for the annual budget and 60 days for the annual report. Revising the timeframe to make the determination for the annual report to be 90 days would ensure adequate time for staff and stakeholders to concurrently analyze and consider each document, particularly when complex programmatic challenges must be considered.

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⑦ **6) Pages 35-36: Recommendations to CalRecycle**

The report first recommends that CalRecycle update the state mattress recycling baseline and goals to reflect the most current available information, and ensure that its recycling goals are statewide in scope by including information about recycling and renovation from entities that do not contract with the Mattress Council.

⑱ As explained above, CalRecycle plans to do so.

The draft audit report also outlined six recommendations related to enforcement. The Recommendations and CalRecycle responses are as follows:

a. “Assess penalties for noncompliance with the recycling act.”

CalRecycle believes that progressive enforcement has been shown to be an effective and efficient process for gaining the compliance of mattress retailers. For those that remain out of compliance, the process to levy penalties is being implemented.

After two years of program implementation, the industry has a better understanding of the program requirements and compliance has increased accordingly. CalRecycle plans to continue to implement its progressive enforcement process, with a focus on bringing businesses into the penalty phase at a faster rate.

⑳ Additionally, the auditor has stated that CalRecycle has foregone a significant amount of potential revenue from penalties. Penalties are not the same as revenue, and shouldn't be conflated. CalRecycle's revenue to administer the program is already authorized by statute and is limited to the amount necessary to carry out the program. CalRecycle takes enforcement action to ensure compliance, not to obtain additional funding.

CalRecycle, through its enforcement efforts, has and continues to provide full notification to those businesses that may be subject to penalties. For those businesses that continue to be out of compliance, CalRecycle has not forfeited its ability to collect penalties for all days a business has been determined to be in violation.

The statute clearly states the amount of a penalty and the timeframe for which a penalty may be collected. However, as part of any action, the regulations clearly state that factors in section 14 CCR Section 18970 must be considered to determine the amount of the penalty. CalRecycle takes into

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consideration all factors to ensure the penalty assessed is consistent with the law.

b. “Publicize any penalties it assesses against violators of the recycling act as a deterrent to potential violators.”

Once issued, all penalties will be publicized by posting the final decision on the CalRecycle enforcement website, as required by Government Code Section 6253.8.

c. “Monitor inspection cases to ensure that it does not close them before the retailers in question have remedied any instances of noncompliance.”

The finding of the draft audit report regarding the “closure” of an inspection before final compliance is determined appears to be a misunderstanding of the terminology used by CalRecycle staff during the interview process.

(21)

CalRecycle inspections are a “picture in time.” After staff conduct a site visit, the CalRecycle inspectors return to the office to write the inspection report, and then mail it to the business. Once the report is sent and received by the business, the inspection is “issued” and becomes part of the record. If violations occurred, a compliance (enforcement) case is opened and an enforcement case is complete only when compliance has been achieved.

d. “Execute a plan to verify compliance for all inspections in which it did not obtain evidence of compliance.”

CalRecycle has maintained a list of businesses that have not complied with registration requirements and businesses in violation of other standards.

CalRecycle is currently re-inspecting the businesses that continue to violate registration requirements. If those businesses are still in violation, an accusation will be pursued. Following the efforts on those businesses not registered, CalRecycle will be re-inspecting businesses that have not fully documented compliance with the other program standards. Noncompliant businesses will be prioritized based on severity of the violation and penalties will be pursued.

e. “Develop and implement a timeline for the penalty phase of the enforcement process.”

CalRecycle agrees that the penalty phase of the progressive enforcement process should be expedited now that the program is more mature. It is

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currently estimated that a compliance case with significant violations will be able to proceed to the penalty phase within one year of the initial finding of non-compliance. The most egregious cases will be prioritized to move through the process and the penalty phase. Priority will be on the businesses that have continued to fail to register with MRC and collect and pay the mattress fee.

f. “Regularly review the timeliness of its enforcement process and prioritize any overdue enforcement actions based on its enforcement timelines.”

CalRecycle agrees that this is an important part of any enforcement program and will continue to implement the ongoing procedures to review the enforcement process and set priorities.

COMMENTS

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

To provide clarity and perspective, we are commenting on CalRecycle's response to the audit. The numbers below correspond to the numbers we have placed in the margin of its response.

We stand by the overall conclusion of our report, reflected in the report title, that CalRecycle has not provided the necessary oversight to ensure the mattress program fulfills its purpose. This conclusion is supported throughout Chapter 1 of our report, where we discuss how CalRecycle has not established key goals for the program that would significantly enhance its ability to determine whether the mattress program is meeting its legislative intent, how CalRecycle has not ensured that the Mattress Council prioritizes source reduction and provides budget transparency, and that CalRecycle has not adequately enforced retailer compliance with the recycling act. In each of these areas, we believe CalRecycle did not robustly exercise its authority as an oversight entity.

①

We believe our report stands on its own and disagree with CalRecycle's belief that additional context and analysis would benefit our report's utility.

②

CalRecycle asserts that our report recognizes CalRecycle's lack of effective authority to acquire clear and concise data from industry and agrees that current statutory authority to establish certain program goals is unclear. Our report does not state that CalRecycle lacks the authority it references, and we do not state in our report that the law is unclear. Instead, on pages 16 and 17 we present the dispute between the Mattress Council and CalRecycle about its authority to set such goals. We include a statement on page 17 from an attorney at CalRecycle who believed that CalRecycle's authority is not explicit in statute. Therefore, on that same page we say that a clarification to state law that explicitly directs CalRecycle to develop program goals would help to resolve this dispute.

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CalRecycle asserts that our report does not include a complete description of the department's inspection and enforcement process. Our report contains the appropriate level of detail for readers to understand the findings and conclusions we present, and no additional detail is required.

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- ⑤ During our fieldwork, we had conversations with CalRecycle's staff in which we sought their perspective on our legislative recommendations. We did not request that CalRecycle provide its own legislative recommendations in its response to the audit report.
- ⑥ CalRecycle's comments discount the importance of effective oversight to the success of the mattress program. As the entity designated by state law to be responsible for overseeing the program, CalRecycle plays an essential role in ensuring that the program fulfills statutory requirements and the legislative intent of the recycling act.
- ⑦ CalRecycle's response uses page number references from a draft copy of our report. Since we provided CalRecycle the draft copy, page numbers have shifted.
- ⑧ CalRecycle is incorrectly using a statement from our report to support its position. We acknowledge on page 20 that CalRecycle was hindered by poor data when setting the statewide recycling goals. This statement is specific to the statewide recycling goals and is not applicable to our discussion of program goals. CalRecycle's response conflates these two discussions. Contrary to CalRecycle's suggestion, our discussion on pages 14 through 17 presents our conclusion that CalRecycle had adequate information to establish program goals in the areas of increasing consumer convenience, reducing illegal dumping, and establishing source reduction as a priority for the program. Finally, CalRecycle indicates our draft report stated it set statewide goals in November 2017. Independent of CalRecycle's response, to ensure clarity and consistency in our report we changed the date in this sentence to December 2017 to reflect the date CalRecycle approved, not set, these goals.
- ⑨ Our report provides the appropriate context for our discussion of program goals. We note on page 14 that the recycling act does not explicitly require CalRecycle to establish goals related to ensuring convenience for consumers, reducing illegal dumping, and developing program objectives consistent with California's waste management hierarchy, which prioritizes source reduction. However, we also note on the same page that legislative findings and declarations from the recycling act indicate the importance these areas held for the Legislature when it created the recycling act. Further, on page 16 we note that the Mattress Council believes that CalRecycle does not have the authority to set goals in these areas. Finally, on page 16 we note that CalRecycle has stated its intent to consider goals in these areas when it reexamines the recycling goals in 2020, and we include on page 17 the perspective of an attorney from CalRecycle that CalRecycle's authority to set program goals is not explicit in statute and has been disputed.

⑩ Although CalRecycle believes that its current recycling goals provide it a measure of statewide recycling activity, they do not. As we discuss on page 18, the goals CalRecycle established are based on the mattresses collected and recycled by the Mattress Council's contracted recyclers only. Therefore, these goals do not reflect statewide mattress waste management. CalRecycle's response indicates that it believes it can relate its goals to statewide mattress disposal activity by using estimates of disposals from previous years and applying a growth rate, a methodology that CalRecycle did not raise in its discussions with us during our audit and therefore we have not validated it. Nevertheless, if the goals it established were true measures of statewide recycling activity, the additional analysis CalRecycle describes in its response would not be required. Further, CalRecycle's assertion that its recycling goals are a measure of statewide recycling activity is puzzling because—as we discuss on page 18—CalRecycle has previously announced that it did not set a true statewide recycling rate.

CalRecycle's response appears to quote our audit report. We believe CalRecycle is referring to text that appears on page 21, which says: "The recycling act requires that the Mattress Council's recycling plan contain program objectives that are consistent with the waste management hierarchy, which *prioritizes source reduction*." We would expect CalRecycle to have ensured that the plan it approved contained content consistent with this requirement. Instead, as we state on page 22, CalRecycle approved a plan that lacks a clear strategy for addressing the State's highest priority in terms of waste management practices. Further, our report provides examples of how CalRecycle could have ensured an emphasis on source reduction. On page 16, we discuss two possible source reduction goals that CalRecycle could have adopted: a specific amount of money that the Mattress Council would spend on research to find new ways to manufacture mattresses and also a goal of increasing the number of renovated mattresses over time.

Contrary to the assertion made by CalRecycle that the Mattress Council's recycling plan contained information on how the Mattress Council would address source reduction, the plan does not do so. The recycling plan states that the mattress industry manufactures durable mattresses that reduce the rate at which mattresses are discarded. Although it was founded by an industry association, the Mattress Council does not manufacture mattresses and therefore the recycling plan does not discuss how the Mattress Council will advance source reduction. It merely makes an observation about the practices of mattress manufacturers. As we state on page 22, CalRecycle did not require the Mattress Council to clearly explain in its plan how it would advance source reduction.

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- ⑬ There is no confusion in our report. On page 22, we explain that CalRecycle’s regulations require the Mattress Council to resubmit its recycling plan for approval if a significant or material change in the mattress program occurs. However, program objectives that are consistent with the State’s waste management hierarchy—which places the highest priority on source reduction—have always been a required element of the recycling plan. The remainder of CalRecycle’s response related to this point relies on speculation as to how the Mattress Council will respond to CalRecycle’s request for changes to its 2017 annual report. This speculation cannot serve as evidence that CalRecycle will be able to use its regulations in the manner in which it suggests.
- ⑭ We do not recommend that CalRecycle issue penalties as a first option for obtaining retailer compliance with the recycling act. Rather, we recommend that CalRecycle do what it has not yet done up until this point, which is issue penalties upon reaching the penalty phase of its progressive enforcement process. As we indicate on page 27, CalRecycle has established a multiphase inspection and enforcement process, which includes two 30-day periods—during which retailers can demonstrate compliance—that precede the penalty phase of its process.
- ⑮ In describing its efforts to ensure retailers are registering with the Mattress Council, CalRecycle presents a variety of information about the number and percentage of businesses it has inspected that have subsequently registered with the Mattress Council. We have not independently verified this information. Contrary to its assertion that its progressive enforcement process has been effective, CalRecycle’s response shows that it is focused on a single type of violation and suggests that it did not evaluate compliance with other requirements for the first year of the program. As we describe on page 26, failure to register with the Mattress Council is not the only type of noncompliance that CalRecycle can identify during its inspections. In fact, we reviewed inspection records that showed retailers that had registered with the Mattress Council, but CalRecycle still found violations of other recycling act requirements when it evaluated compliance with them. Therefore, CalRecycle’s focus on one requirement fails to ensure that retailers comply with other vital elements of the recycling act.
- ⑯ During our audit, we verified with CalRecycle’s enforcement supervisor that 214 cases required reinspection according to the enforcement database. However, based on CalRecycle’s response, we reexamined the data it provided to us during the audit and removed duplicate entries from our total. We have made a modification to our report text to reflect this correction. This change does not affect our report’s conclusions or recommendations.

⑰ CalRecycle has taken a statement made by its enforcement manager out of the context in which we present the statement. In the context of our report, this statement does not require clarification. This statement appears in our report on page 27. In the paragraph that precedes this statement, we describe our conclusion that the compliance unit has not carried out enforcement actions in a timely manner. In the next paragraph, we include the enforcement manager's statement that CalRecycle has given staff the discretion to decide how to track when follow up on inspection cases was necessary. We then continue on in that same paragraph to discuss how CalRecycle plans to update its enforcement database to include automated reminders for staff and the supervisor about key impending dates. Therefore, in its full context it is clear that the enforcement manager was speaking about the discretion CalRecycle gave its staff to choose their own workload management tool.

CalRecycle's assertion that inspection cases have not been considered complete until compliance has been fully documented is false. As we explain on page 26, we found that CalRecycle completed inspections without obtaining evidence that retailers had corrected their noncompliance. On that same page, we include an acknowledgement by the enforcement manager that the compliance unit completed some inspection cases without evidence of compliance.

CalRecycle indicates that it plans to address our recommendation but has not completely quoted the recommendation in this area of its response. On page 49, CalRecycle fully quotes our recommendation which directs CalRecycle to update the statewide mattress recycling goals by January 1, 2020. On that page, CalRecycle states its intention is to establish a statewide recycling rate by July 1, 2020. Therefore, it is not clear whether CalRecycle plans to adhere to our recommended timeline for updating its goals, and we look forward to hearing more from CalRecycle when it provides its responses to our recommendations 60 days, six months, and one year after the publication of this report.

We do not conflate penalties and revenue. As we describe on page 25, the recycling act requires CalRecycle to use all penalty revenue it collects to administer and enforce the act's provisions. The other revenue source CalRecycle has available for its oversight of the recycling act is the reimbursement it receives from the Mattress Council, which is paid for out of the mattress recycling charge paid by consumers. Therefore, any revenue collected from penalties would offset the amount of funding CalRecycle uses from the mattress program.

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- ②① We did not misunderstand CalRecycle's staff. Our report generally uses the term *complete* to describe inspection cases that CalRecycle concluded. On page 26, we describe an update CalRecycle made to its procedures in April 2018 and use the term *close* in that instance because it is the term that appears in CalRecycle's procedures. The recommendation in our draft report also used this term. However, to avoid further confusion on CalRecycle's part during its 60-day, six-month, and one-year responses to this recommendation, we have adjusted the wording of our recommendation on page 29 to use the term *complete* instead of *close*.
- ②② CalRecycle indicates that a compliance case with significant violations will be able to proceed to the penalty phase within one year of the initial finding of noncompliance. However, CalRecycle's response does not directly address our recommendation on page 29 that CalRecycle develop and implement a timeline for the penalty phase of the enforcement process. We look forward to hearing more from CalRecycle about how it is addressing our recommendation when it provides its responses to our recommendations 60 days, six months, and one year after the publication of this report.