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SOLID WASTE MANAGEMENT COMMITTEE/
INTEGRATED WASTE MANAGEMENT TASK FORCE
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November 14, 2017

Mr. Scott Smithline, Director
California Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025

Dear Mr. Smithline:

COMMENTS ON THE OCTOBER 24, 2017 PROPOSED REGULATION TEXT FOR SENATE BILL 1383, SHORT-LIVED CLIMATE POLLUTANTS

The Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force) would like to thank the California Department of Resources Recycling and Recovery (CalRecycle) for providing the opportunity to comment on the October 24, 2017, Proposed Regulation Text (regulations) for Senate Bill 1383 (Lara, Chapter 395 of the 2016 State Statutes). These comments will also be submitted through the online commenting form.

<http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=2178&aiid=1987>
<http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=2234&aiid=2042>

GENERAL COMMENTS

1. As drafted, the regulations appear to mandate 100% of all organic waste to be recycled through mandatory source separation of organics pursuant to requirements of "Article 3 Mandatory Organic Waste Collection." The Task Force strongly believes that such a mandate is not consistent with requirements of SB 1383 and needs to be revised accordingly.
2. As further discussed below, the subject regulations are too prescriptive and essentially prohibit cities and/or counties from implementing other programs to achieve the SB 1383's goals except those stipulated by CalRecycle. The local jurisdictions are in a more informed position to select and implement programs which would best serve their residents and businesses while achieving the SB 1383 mandates. The subject regulations should be revised to recognize this fact and provide the maximum flexibility to local jurisdictions.

3. *“Good Faith Effort”* - The subject regulations provide for imposition of administrative and civil penalties (maximum of \$10,000/day) on a jurisdiction if it fails to comply with the organic waste recycling requirements as stipulated in the proposed SB 1383 regulations. However, there are numerous factors that are beyond a jurisdiction’s control, such as those identified in Section 42653 of the Public Resources Code (PRC):

- If commitments for State funding do not materialize or fall short
- If regulatory barriers remain largely in place
- If markets for the products collapse

The Task Force believes that pursuant to Sections 42652, 42652.5, and 42653 of the PRC, the proposed regulations need to include provisions for CalRecycle to determine if a jurisdiction has made a good faith effort to comply with the organics recycling regulatory requirements. Penalties or other enforcement actions should not be imposed on a jurisdiction that has made a good faith effort in complying with the provisions of these regulations.

4. CalRecycle should provide cities, counties and other stakeholders with a complete and detailed “Cost-Benefit” study of the proposed regulations. The cost-benefit study needs to include, but not be limited to, state and local governments’ costs as well as costs to publically/privately owned school districts, colleges and universities, and residents and businesses.
5. At the November 2, 2017 workshop, it was discussed that adoption of the subject regulations is subject to compliance with the California Environmental Quality Act (CEQA), and CalRecycle would be preparing a CEQA document. As such, the Task Force recommends that CalRecycle prepare a *“programmatic”* CEQA document and make it available to cities and counties for their use as a part of their compliance with SB 1383.

ARTICLE 1 - DEFINITIONS

Section xxxx1

- (29) *“Jurisdiction of residence”* – Please expand to include *“Commercial business.”*
- (34) Please define the term *“High diversion mixed waste processing facility”*.

- (xx) Please define the term “*high diversion mixed waste facility*”.
- (yy) Please define the subject term “*in-vessel digestion operation or facility*” as the term is not defined in the Title 14 or the listed Subsection 17896.2 (a) (14). This term is used in Section xxxx20.1, Landfill Disposal and Recycling.
- (37) “*Organics Waste*” – Please revise the definition to ensure exclusion of contaminated hazardous lumber/wood and green materials originating from quarantine areas infested by bugs as designated by the California Department of Food & Agriculture and/or local Agricultural Commission.
- (37b) *As currently defined, “organic waste” would include sediment deposited at reservoirs, sedimentation basins, and other flood control and stormwater management facilities, since the accumulated sediment contains material originating from living organisms, such as vegetative debris, dead insects and aquatic living organisms. The application of the proposed organic recycling regulatory requirements to sediment removal activities would impose a major cost impact to local flood control agencies and divert resources away from their primary responsibility to protect life and property. The Task Force strongly recommends that these activities be exempted from the proposed organic waste recycling requirements. Specific language is provided herein, where applicable.*

ARTICLE 2 - LANDFILL DISPOSAL AND REDUCTIONS IN LANDFILL DISPOSAL

Section xxxx20.1 Landfill Disposal and Recycling

- Section xxxx20.1 (a) (1) states that final deposition of organic waste at a landfill shall be deemed to constitute landfill disposal. This section should be expanded to state, “(a) (1) final deposition at a landfill except for deposition of sediment removed from dams, reservoirs, channels, and other flood control infrastructure or the accumulation of sediment flow resulting from a rain event.” Sediment accumulated in flood control infrastructure or in other areas due to rain events can cause flooding, landslides or other safety hazards and very large quantities of materials must be removed and disposed in a timely manner. The removal of sediment should not depend on available capacity at an organic waste recycling facility. Therefore, the regulations should not prohibit/restrict the disposal of sediment at a landfill at any time nor should such a landfill disposal be counted against jurisdictions for the purpose of compliance with SB 1383 requirements.

Additionally, disposal of organic waste from (a) quarantined areas due to infestation as designated by the California Department of Food and Agriculture (CDFA) and/or local Agricultural Commission, and (b) fire-affected/burned forest areas should not be counted as disposal against appropriate jurisdictions for the purpose of compliance with SB 1383 mandates.

- (b)(3) - Please define the term “In-vessel Digestion Operation or Facility.” This term is not defined in the Title 14 or the listed Subsection 17896.2 (a) (14).
- In calculating a jurisdiction’s disposal rate and per capita disposal rate, the jurisdiction should be allowed to consider population as well as economic factors. These factors have a direct impact on the rate of waste generation and, consequently, on the potential rate of methane gas generation.
- The proposed regulations should be expanded to consider a “landfill facility” as a “recycling facility” for the biogenic portion of the landfill gas that is recovered.

Section xxxx20.2 Verification of Technologies That Constitute a Reduction in Landfill Disposal

- Section xxxx20.2 (a) requires a facility to submit an application for consideration as an operation that constitutes a “reduction in landfill disposal.” CalRecycle should conduct a standard analysis of alternative technologies (such as, but not limited to, dehydrators and liquefiers) and other activities (such as appropriate State regulated land application) that may be considered as “reductions in landfill disposal” which will expedite the evaluation and application of these technologies and activities to achieve faster greenhouse gas (GHG) emission reductions. It will also help mitigate the costs impacts to organic waste generators and technology vendors. While it is understood that some technologies may vary by developer, the variance would have a negligible impact on the emissions. Dehydration technologies all have a very similar process, just like composting. A standard analysis of these technologies and activities would greatly reduce the amount of state, local, and private resources that would be needed to evaluate each individual application.
- Section xxxx20.2 (a) (1) states that CalRecycle will not deem a proposed operation to constitute a “reduction in landfill disposal” unless the applicant can demonstrate that the methane emission reductions are equivalent to or greater than those which are assumed from a composting operation in the California Air Resources Board (CARB) adopted Short-Lived Pollutant Reduction (SLCP) Strategy (March 2017). CalRecycle should not compare all landfill disposal reduction

activities to composting. Not all organic waste as defined in Article 1, Subsection xxx1 (37), such as textiles and carpets, can be processed through composting. Therefore, when evaluating technologies that will reduce landfill disposal of materials such as textiles and carpets, CalRecycle should compare the methane emission reductions of these technologies to the methane emission reductions of the existing recycling/management activities used to process these materials rather than composting.

- Section xxx20.2 (a) (1) should quantify the methane emission reductions assumed from a composting operation within the regulatory language instead of only referencing the SLCP Reduction Strategy as well as summarize what composting operations are utilized such as open windrow or aerated static pile.

ARTICLE 3 - MANDATORY ORGANIC WASTE COLLECTION

- See General Comments No.1 and No.2, and delete the word “Mandatory” from the title of this Article 3.
- Section xxx30.1 - CalRecycle should not limit collection methods that may be more efficient and effective than the method prescribed by the subject regulations. For example, a business that only generates food waste and trash could separate their food waste from trash with different color bags at the source but place those bags in the same dumpster, to be picked up by only one truck, that can be easily divided at a materials recovery facility. This method would very likely achieve high diversion (75% organics recycled). The implementation of the said method or other similar methods available to local jurisdictions should not be prohibited by CalRecycle and/or the SB 1383’s implementing regulations. Again, the goal is to reduce disposal of organics, reduce GHG emission and to comply with SB 1383 requirements.
- Section xxx30.15 – The stated proposals are numerous and too prescriptive, requiring significant human resources and unjustifiable expenses. The Task Force believes that that this section needs to be significantly revised. However, the Task Force would like to reserve its comments pending input from facility operators, haulers and the waste industry.
- Section xxx30.2 - CalRecycle should allow organic waste collected through mixed waste collection services to be processed through advanced organic waste processing technologies achieving high diversion after the year 2020. Jurisdictions

may work with industry to implement advanced organic waste processing technologies after 2020 that may be more effective than source separated organics collection and processing. These advanced organic waste processing technologies, which are different from “dirty MRFs,” include technologies such as Anaergia’s organics extrusion (OREX) press technology. If the state organic disposal reduction targets can be met by using mixed waste services, CalRecycle should not prohibit such services through a date limitation.

ARTICLE 4 - EDUCATION AND OUTREACH

Edible Food Recovery Education and Outreach - Section xxxx40.2 should be expanded to include the following Subsection:

“(c) A jurisdiction that has implemented an edible food recovery program prior to January 1, 2020 may forego the requirements stated in sections (a) and (b) if it can demonstrate that its existing program based on the 2018 CalRecycle organic waste disposal characterization has resulted in the recovery of at least 20 percent of the edible food stream generated by the jurisdiction by the year 2022.”

ARTICLE 5 - GENERATORS OF ORGANIC WASTE

Section xxxx50.1 Organic Waste Generator Requirements

- See General Comments No.1, No.2, and No.3 and revise to allow for locally adopted ordinances and policies which are better suited for implementation as compared to those mandated by CalRecycle and the subject regulations. The said ordinances and policies must be adopted by the jurisdiction’s governing body while ensuring full compliance with SB 1383 requirements.

ARTICLE 8 – RESTRICTIONS ON LOCALLY ADOPTED STANDARDS AND POLICIES

Section xxx80.1 Organic Waste Recycling Standards and Policies

- CalRecycle should clarify how Subsection (c) will affect existing wasteshed ordinances that were established by local governments. For example, CalRecycle should indicate whether wasteshed restrictions imposed by local governments on facilities that they own or wasteshed restrictions established by local jurisdictions by agreement with a facility owner/permittee would be nullified. If so, please cite the statute that provides CalRecycle the legal authority to do so.

- Subsections (b) through (e) may encroach into the land use authority of a jurisdiction. The Task Force may provide additional comments pending discussion with County Counsel.

ARTICLE 9.9 – ORGANIC WASTE RECYCLING CAPACITY PLANNING

Section 99.1 Planning by Cities and Counties

- Subsections (a) and (b) – These Subsections should be expanded to include the “Local Task Force” (LTF) formed pursuant to AB 939 (Sher, Chapter 1095 of the 1989 State Statutes). The expanded Subsections (a) and (b) should each read as follows:

“Commencing January 1, 2022, every county, in coordination with the Local Task Force (LTF), the Cities, and, if applicable, Regional Agencies in the county shall annually...”

- Subsection (a) (2) (B) should clarify how organic waste recycling capacity located outside of California should be verified. It may be difficult to verify whether organic waste sent to facilities outside of the state is recycled through an activity that is deemed to constitute a “reduction in landfill disposal” because these facilities will not be subject to the SB 1383 requirements.
- Subsection (a) (2) (B) 1. requires counties to consult with nearby counties. Please include explicit language stating that a County can rely on both in-County and out-of-County capacity.
- Subsection (b) (2) requires every county, in coordination with the “LTF”, cities and, if applicable, regional agencies in the county to estimate (using CalRecycle tools or alternative methods) the amount of edible food that will be disposed by all of the large and medium regulated generators located in the county and its cities in 2025 and every year thereafter for a 15-year period (Please note that we have included the LTF). CalRecycle should develop a methodology to assist counties, cities, and/or regional agencies in estimating edible food generation, similar to the adjustment method CalRecycle used in estimating changes in solid waste generation. In addition, CalRecycle should consider providing a one-time contract to assist counties, cities, and/or regional agencies in calculating baseline edible food disposal and establishing criteria for these jurisdictions to use in complying with this

requirement. This would also ensure that this calculation is performed consistently by all counties throughout the state.

- It is suggested that Subsection (b) (4) be edited to read “Based on the amount that is projected for disposal in (2) and the existing capacity identified in (3), identify the amount of edible food that will need to be recovered to ensure that 20 percent of the regulated generators’ edible food is recovered in 2025 and every year thereafter.”
- CalRecycle should clarify how jurisdictions will be required to verify available capacity to satisfy Subsection (a) (2) (B) and whether these requirements are different from the requirements of Subsection (e) on jurisdictions to demonstrate how they will secure access to existing, new or expanded capacity.

Additional Comments – Article 9.9

- a) The subject regulations need to add a requirement on facilities to provide capacity data/information to counties, cities, and other applicable jurisdictions for planning purposes.
- b) Large generators should be required to implement a textile recycling program for their facilities as well as a textile recycling education program for their employees.

PROPOSED NEW AND MODIFICATION TO EXISTING SOLID WASTE FACILITY REGULATIONS

- Please see General Comment Nos. 1 through 3 and 5.
- Amended Section 17402 – Please expand to include High Organic Waste Diversion Facility.

ARTICLE 10 – ENFORCEMENT, ARTICLE 11 – ENFORCEMENT OVERSIGHT BY CALRECYCLE & ARTICLE 12 – PENALTY

- See General Comments.
- The CDFA and the California Department of Public Health (CDPH) should also be given oversight roles. The CDFA should be included in the oversight of organic waste processing facilities under Article 10 and the CDPH should be included in the oversight of the development of food donation guides under Section xxxx40.2 (b).

Good Faith Efforts” - Pursuant § 42653 of the PRC, CalRecycle and CARB (not local jurisdictions) are responsible for identifying the barriers to organic waste recycling, the status of new organics recycling infrastructure development, the commitment of state funding to support infrastructure expansion, the progress in reducing regulatory barriers to the siting of organics recycling facilities, the timing and effectiveness of policies that will facilitate the permitting of organics recycling infrastructure, and the status of markets for the products generated by organics recycling facilities. Therefore, as previously indicated in General Comment No.3, the regulatory language needs to include allowances for jurisdictions that demonstrate a good faith effort to comply with the regulations but are unable to do so due to factors outside of their control.

- **Market Development**

- a) In establishing mulch use standards for landscaping on publicly owned lands and large commercial properties, CalRecycle should specify the maximum mulch application depth. In addition, CalRecycle should clarify whether it is the responsibility of counties, cities, special districts, public universities/colleges, State agencies (e.g. Caltrans) and/or involved Federal agencies to enforce the mulch use standards on all publicly owned lands and large commercial properties within their jurisdictions.
- b) In establishing compost and/or mulch minimum application standards for new landscaping projects which require a building or landscaping permit, CalRecycle should specify who (see previous paragraph) will be responsible for enforcing these standards.
- c) If CalRecycle extends the State Agency Buy Recycled Campaign (SABRC) procurement standards for recycled organic materials and products, CalRecycle should clearly specify which jurisdictions (i.e., cities, regional agencies, counties and/or the previously listed public agencies) will be required to comply with these procurement standards.
- d) Pursuant to the California Health and Safety Code (HSC) § 25420, “biogas” means gas that is produced from the anaerobic decomposition of organic material. To increase the purchase and use of Renewable Natural Gas (RNG) derived from organic waste recycling, CalRecycle should consider revising the definition of biogas to also include gas produced from biomass conversion as well as biogenic portion of the landfill gas.

Mr. Scott Smithline
November 14, 2017
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Pursuant to Chapter 3.67 of the Los Angeles County Code and the California Integrated Waste Management Act of 1989 (Assembly Bill 939 [AB 939], as amended), the Task Force is responsible for coordinating the development of all major solid waste planning documents prepared for the County of Los Angeles and the 88 cities in Los Angeles County with a combined population in excess of ten million. Consistent with these responsibilities and to ensure a coordinated, cost-effective, and environmentally sound solid waste management system in Los Angeles County, the Task Force also addresses issues impacting the system on a countywide basis. The Task Force membership includes representatives of the League of California Cities-Los Angeles County Division, County of Los Angeles Board of Supervisors, City of Los Angeles, the waste management industry, environmental groups, the public, and a number of other governmental agencies.

The Task Force respectfully requests that CalRecycle address these questions, concerns, and recommendations in any upcoming stakeholder workshops and any new or revised draft regulations. Should you have any questions regarding these comments, please contact Mr. Mike Mohajer, a member of the Task Force, at MikeMohajer@yahoo.com or at (909) 592-1147.

Sincerely,



Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Management Committee/
Integrated Waste Management Task Force and
Council Member, City of Rosemead

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cc: CalRecycle (Howard Levenson, Mark de Bie, Cara Morgan, Hank Brady,
Georgianne Turner, Chris Bria & Marshalle Graham)
California Air Resources Board (Mary Nichols and David Mallory)
California Department of Food and Agriculture (Secretary Karen Ross)
California Department of Public Health (Director Karen Smith)
League of California Cities
League of California Cities, Los Angeles County Division
California State Association of Counties
Each Member of the Los Angeles County Board of Supervisors
Sachi A. Hamai, Los Angeles County Chief Executive Officer

Each City Mayor/Manager in the County of Los Angeles
South Coast Air Quality Management District
South Bay Cities Council of Governments
San Gabriel Valley Council of Governments
Gateway Cities Counsel of Governments
Southern California Association of Governments (Frank Wen)
Each City Recycling Coordinator in Los Angeles County
Each Member of the Los Angeles County Integrated Waste Management Task
Force
Each Member of the Task Force Alternative Technology Advisory Subcommittee
Each Member of the Task Force Facility Plan Review Subcommittee