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February 25, 2019

Ms. Gwen Huff  
Materials Management and Local Assistance Division  
California Department of Resources Recycling and Recovery  
P.O. Box 4025  
Sacramento, CA 95812

Dear Ms. Huff:

## **COMMENTS ON THE JANUARY 2019 PROPOSED REGULATION TEXT**

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 the opportunity to comment on the January 2019 Proposed Regulation Text (proposed regulations, link below), which was released on January 18, 2019, for Senate Bill 1383 (Lara, Chapter 395 of the 2016 State Statutes) Short-Lived Climate Pollutants (SLCP).

<https://www.calrecycle.ca.gov/docs/cr/laws/rulemaking/slcp/proposedregulations.pdf>

An electronic copy of this comment letter will be emailed to:  
[SLCP.Organics@calrecycle.ca.gov](mailto:SLCP.Organics@calrecycle.ca.gov).

### **A. GENERAL COMMENTS**

#### **1. The proposed regulations place a disproportionate burden on counties and cities.**

The Task Force recognizes the significant responsibility CalRecycle has under State law to achieve the Statewide 75 percent “recycling” goal by 2020, reduce organic waste disposal by 75 percent by 2025, support the Air Resources Board in reducing climate pollutants, and the limited time granted by the State Legislature to achieve these goals. However, while the Task Force strongly supports efforts to reduce climate pollutants, the Task Force is very concerned about the approach that CalRecycle has selected, which places a tremendous burden and responsibility on counties and cities (more than any other stakeholder group, including, but not limited to, state agencies, public and private colleges and universities, school districts, local education agencies and non-local entities as defined in Article 1, Section 18982 (a) (40) and (42), respectively, etc.), while relying on extremely prescriptive requirements, excessive “bean counting” and reporting, and requiring counties and cities to impose steep penalties on residents and businesses.

State law, Section 40001(a) of the Public Resources Code (PRC), declares that “the responsibility for solid waste management is a shared responsibility between the state and local governments (*emphasis added*).” Furthermore, SB 1383 recognizes the shared responsibility “the waste sector, state government, and local governments” have in achieving the organic waste reduction goals for 2020 and 2025, and thus requires CalRecycle to analyze the progress made by the three sectors, *in that order*, including “commitment of state funding”, in achieving the said goals {PRC Section 42653. (a)} (*emphasis added*). However, under the proposed regulations, the responsibility weighs much more heavily on counties and cities, including programmatic and penalty requirements, than on state agencies, school districts, and special districts, local education agencies, and non-local entities (as an example, see provisions of Articles 14 and 15 of the proposed regulations).

For example, SB 1383 notes that the California Constitution requires the state to “reimburse *local agencies* and *school districts* for certain costs mandated by the state (see SB 1383, preamble). SB 1383, Section 7 further states that “No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution *because a local agency or school district has the authority to levy service charges, fees, or assessments* sufficient to pay for the program or level of service mandated by this act...” While both local agencies and school districts may have authority to levy service charges, fees, or assessments, the proposed regulations disproportionately place the responsibility on counties and cities, even though they may encounter as much difficulty in raising charges, fees, or assessments as school districts. State agencies similarly are held to a much lower standard than counties and cities, while not being subject to a measurable penalty.

Therefore, the Task Force strongly recommends the proposed regulations be revised to provide for a more equitable distribution of the responsibility for achieving the disposal reduction goals among all sectors, including industry, state government, school districts, public and private colleges and universities, and other non-local entities and local education agencies, etc.

2. **The proposed regulations impose requirements on counties and cities that exceed the authority granted to CalRecycle by State law or are contrary to it.**
  - a. **SB 1383 does not provide CalRecycle with the authority to require local jurisdictions to impose civil (monetary) penalties on residential or commercial organic waste generators for non-compliance.**

The proposed regulations (Article 16, Section 18997.1) require jurisdictions to “*adopt ordinance(s) or enforceable mechanisms to impose penalties* that are equivalent or stricter than those amounts in Section 18997.2...” (*emphasis added*).

In addition, Section 18997.2. Penalty Amounts, requires: “(a) *A jurisdiction shall impose penalties* that are equivalent or stricter than those amounts in Table 1 of this section and shall be calculated by determining the type of violations that have occurred, the number of violations that have occurred, and the corresponding penalty level in subsection (b).” (*emphasis added*).

While SB 1383 grants CalRecycle the authority to “require local jurisdictions to impose requirements on generators or other relevant entities within their jurisdiction,” this authority does not extend to the imposition of penalties (*emphasis added*). SB 1383 only provides that CalRecycle “may authorize local jurisdictions to impose penalties on generators for noncompliance” {*see Section 42652.5. (a)(1) of the Public Resources Code (PRC)*} (*emphasis added*).

In requiring counties and cities to impose steep civil penalties (\$500 per day per violation) on residents and businesses for non-compliance with each requirement of the regulations, CalRecycle would exceed its authority under the law. Such authority is vested on local governmental agencies by PRC Section 40059, which states that, “each county, city, district, or other local governmental agency may determine...aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, *charges and fees*, and nature, location, and extent of providing solid waste handling services.” (*emphasis added*).

Therefore, the Task Force strongly recommends the proposed regulations be revised to delete any and all provisions that *require* counties and cities to impose civil (monetary) penalties on their residents or businesses. The language may be revised pursuant to PRC Section 42652.5 (a)(1) to authorize counties and cities to do so, as they deem appropriate (*emphasis added*).

b. **SB 1383 does not preclude CalRecycle from considering county or city “good faith efforts” to comply with the regulations.**

CalRecycle’s Statutory Background and Primary Regulatory Policies document states, in part, that “**Legislative guidance directs CalRecycle not to**...utilize the “Good Faith Effort” compliance model specified in PRC Section 41825.” *This is inaccurate and contrary to the language of SB 1383.*

Section 42652.5. (a)(4) of the PRC specifically requires CalRecycle to consider “good faith effort” in determining a jurisdiction’s progress in complying with the law. It states that CalRecycle “**shall** base its determination of progress on relevant factors, including, but not limited to, **reviews conducted pursuant to Section 41825**...” (*emphasis added*).

Since PRC Section 41825 establishes the process to determine whether a jurisdiction has made a “good faith effort” to comply with the law, it is clear that

CalRecycle is required to consider “good faith effort” in making its determination of a jurisdiction’s progress. Therefore, the proposed regulations need to be revised to provide for this provision.

3. As proposed, the definition of “organic” is extremely broad and basically includes plastics. The inclusion of plastic does not fit into the concept of organic collection and processing. This definition should be narrowed to prevent confusion, be consistent with state law, and should not include textiles, carpets, fiber, biosolids, digestate, or sludges. Textiles, carpets, and any other new materials should not be considered “organic” material unless their greenhouse gas (GHG) potential is analyzed. See the “Specific Comments” section of this letter, Article 1, Section 18982 (a) (46), for further comments and recommendations.
4. The proposed regulations require local governments to purchase recovered/recycled organic waste products targets set by CalRecycle. While we cannot see any statutory procurement requirement within the provisions of SB 1383, the implementation of these requirements will result in substantial additional costs to local governments over and above the costs jurisdictions already anticipate to incur for complying with the extensive programmatic requirements of the proposed regulations. Therefore, the Task Force respectfully request that CalRecycle instead work to develop markets for recovered/recycled organic waste products.

Further, the additional costs that will result from complying with the proposed regulations’ procurement requirements represent an unfunded state mandate under California Constitution, Article XIII B, Section 6 (a) since the proposed regulations would impose a new program on local governments and neither the draft regulations nor the Initial Statement of Reasons identifies a state funding source. CalRecycle should not rely on the fee authority granted to local governments in SB 1383. Any fee that a city, a county or city and county attempts to impose to fund the additional costs of these regulations would likely be treated as a tax under Cal. Const. Art. XIII C, sec. 1(e) (Prop. 26) as it would not meet any of the exceptions identified in that section. Further, even if a fee were to survive scrutiny under Proposition 26, it is questionable whether a jurisdiction would not have the authority to impose the fee without first complying with the majority protest procedures of Cal. Const. Art. XIII D, sec. 6 (Proposition 218). This latter concern is currently the subject of litigation in the Third District Court of Appeal (Paradise Irrigation District v. Commission on State Mandates, Case No. C081929). For these additional reasons, the Task Force requests that the proposed procurement requirements be addressed in a separate regulatory proceeding.

5. The Task Force strongly believes that jurisdictions and regulated agencies would like to see the proposed regulations to be less prescriptive, more flexible, and less punitive, as well as to include reasonable timeframes for compliance. At the same time CalRecycle should focus state efforts on market development, technical

support, including efforts to investigate emerging technologies leading to the development of new facilities and products, and funding for infrastructure.

## **B. SPECIFIC COMMENTS**

### **CALIFORNIA CODE OF REGULATIONS TITLE 14, DIVISION 7 CHAPTER 12: SHORT-LIVED CLIMATE POLLUTANTS (NEW)**

#### **ARTICLE 1. DEFINITIONS**

##### **Section 18982. Definitions**

1. Comment(s):  
“Special Districts” should be defined in the regulations. Furthermore, the regulations should clarify whether special districts are considered “jurisdictions” or “non-local entities,” since “special districts” are included in both definitions.
2. Comment(s):  
The proposed definition of "Food recovery organization" as written includes temporary food facilities, as defined under Section 113842 of the Health and Safety Code. According to the Health and Safety Code (H&SC):

Nonprofit charitable temporary food facilities" means either one of the following:

- (a) A temporary food facility, as defined in Section 113930 of the H&SC, that is conducted by a nonprofit charitable organization, as defined in Section 113841 of the H&SC.
- (b) An established club or organization of students that operates under the authorization of a school or other educational facility.

Should these clubs and organization be included, local jurisdictions would have to:

- 1) Annually identify all clubs or organizations at schools and other educational facilities (which are considered non-local entities) operating within the jurisdiction and maintain these school clubs and organizations on the jurisdiction’s website and outreach materials as potential temporary food facilities for use by commercial edible food generators - pursuant with Section 18985.2 of the proposed regulations.
- 2) Assess the edible food recovery of school clubs and organizations which are involved in food recovery activities - pursuant to Section 18991.2(a)(2) of the proposed regulations.

The Task Force recommends that nonprofit charitable temporary food facilities be excluded from the requirements listed under Section 18985.2(a)(1) and Section 18991.2(a)(2) of the proposed regulations, as they do not contribute greatly

to existing food recovery capacity, and it would be an undue burden to both jurisdictions and student organizations to have to comply with these regulations.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(25) “Food recovery organization” means an entity that primarily engages in the collection or receipt of edible food from edible food generators and distributes that edible food to the public for consumption, including, but not limited to:

(A) A food bank as defined in Section 113783 of the Health and Safety Code;  
(B) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,

~~(C) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.~~

3. Comment(s):

The definition of “organic waste” as specified in the proposed regulations is extremely broad and means “solid wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges.” This highly broad definition seems to state that organic waste includes any type of waste other than “inert waste.” It may include solid waste, medical waste, non-inert hazardous waste, etc. The scope of this proposed definition can be reduced by limiting it to “organic solid waste.” Furthermore, the definition in the regulations is inconsistent with the definition of “organic waste” in Section 42649.8(c) of the Public Resources Code (PRC), as established by Assembly Bill 1826 (2014). AB 1826 defines “organic waste” as “food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste.” The intention of SB 1383 is to establish a statewide goal to reduce the landfill disposal of the types of organic waste listed under AB 1826. Therefore, the definition of organic waste in the proposed regulations should be revised to be consistent with the definition in AB 1826. Also see General Comment No. 3.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(46) “Organic waste” or “organic solid waste” means ~~solid wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges.~~ food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste.

4. Comment(s):

The definition of “renewable transportation fuel” without any justifiable reason and/or scientifically supported analysis, limits it to fuel derived from renewable gas through in-vessel digestion of organic waste only. The regulations should expand the definition of “renewable transportation fuel” to include fuel derived from renewable gas from other technologies, including thermal conversion technologies such as gasification and pyrolysis, as well methane gas generated from municipal solid waste landfills since it is biogenic in origin.

• Proposed Regulatory Text and Recommended Changes/Revisions:

(62) “Renewable transportation fuel” means fuel derived from renewable gas generated from organic waste that has been diverted from a landfill, and processed at an in-vessel digestion facility that is permitted or otherwise authorized by Title 14 to recycle organic waste, a biomass conversion facility that is permitted or otherwise authorized by Division 30 of the Public Resources Code to recycle organic waste, or any other process or technology that is subsequently deemed under section 18983.2 to constitute a reduction in landfill disposal.

5. Comment(s):

The term “entity,” which is referenced multiple times in the regulations, should be defined in the regulations.

6. Comment(s):

The term “regional agency,” which is referenced in Sections 18981.2 (b) (2), 18987.2 (a) (1), 18992.1 (a), 18992.1 (b), 18992.2 (a), and 18992.3 (a), should be defined in the regulations.

7. The term non-organic waste, which is referenced in Sections 18982 (55) (A), 18984.1 (a) (1), 18984.1 (a) (2), 18984.1 (a) (3), 18984.2 (a) (2), 18984.2 (a) (3), 18984.9 (b) (1), 18986.1 (b), and 18986.2 (b), should be defined in the regulations.

8. Comment(s):

The definition of “jurisdiction” has been modified in the proposed regulations to include “special districts that provide solid waste handling services.” No definition of solid waste handling is included in the proposed regulations; however, this phrase is defined in two sections of the Public Resources Code, (1) Section 40195 “the collection, transportation, storage, transfer, or processing of solid wastes”, and (2) Section 49505 “the collection, transportation, storage, transfer, or processing of solid waste for residential, commercial, institutional, or industrial users or customers.” This has created a problem in that some special districts provide some of those services but not all of them. Therefore, the Task Force requests that the proposed regulations be modified to only apply the requirements intended for a “jurisdiction” (as defined in the PRC Section 40145). As such the proposed change

in the definition of jurisdiction is overly broad and should be narrowed to be consistent with the Public Resources Code definition of “jurisdiction” contained in Section 40145. In general, the Task Force recommends that CalRecycle keeps the definitions consistent with those in the Public Resources Code.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(36) “Jurisdiction” means a city, or county or a city and county ~~or a special district that provides solid waste handling services~~. A city, county or county and city may utilize a Joint Powers Authority to comply with the requirements of this chapter, except that the individual city, county, or city and county shall remain ultimately responsible for compliance.

## **ARTICLE 2. LANDFILL DISPOSAL AND REDUCTIONS IN LANDFILL DISPOSAL**

### **Section 18983.1. Landfill Disposal and Recovery**

#### 9. Comment(s):

In addition to anaerobic digestion and composting, biosolids can also be processed through gasification. Biosolids that are gasified produce biochar, an organic soil amendment. The Task Force recommends that CalRecycle include the land application of biochar produced from biosolids as a reduction of landfill disposal. The California Energy Commission’s *2017 Integrated Energy Policy Report (2017 IEPR)*, published on April 16, 2018, states that the gasification of biosolids to produce biochar is a revenue source to promote the development of renewable natural gas (RNG) projects, which will be needed if jurisdictions are to meet the requirements to procure RNG transportation fuel per Section 18993.1(f)(2) of the proposed regulations.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(b) (6) Land application, as defined in Section 17852(a)(24.5), of this division subject to the following conditions:
  - (A) Green waste or green material shall meet the definition of Section 17852(a)(21) and shall have been processed at a solid waste facility, as defined by Section 40194 of the Public Resources Code.
  - (B) Biosolids shall:
    - 1. Have undergone ~~anaerobic digestion or composting~~, any of the pathogen treatment processes as defined in Part 503, Title 40 of the Code of Federal Regulations, Appendix B, or gasification, as defined in Section 40117 of the Public Resources Code, to produce biochar, as defined in Section 14513.5. of the Food and Agriculture Code, and,
    - 2. Meet the requirements in Section 17852(a)(24.5)(B)(6) of this division for beneficial reuse of biosolids.
  - (C) Digestate shall:

1. Have been anaerobically digested at an in-vessel digestion operation or facility, as described in 14 CCR sections 17896.8 through 17896.13; and, 2. Meet the land application requirements described in 14 CCR Section 17852(a)(24.5)(A).
3. Have obtained applicable approvals from the State and/or Regional Water Quality Control Board requirements.

### **Section 18983.2 Determination of Technologies that Constitute a Reduction in Landfill Disposal**

10. Comment(s):

SB 1383, Section 42652 of the PRC reads as follows: “The Legislature finds and declares all of the following:

“(a) The organic waste disposal reduction targets are essential to achieving the statewide recycling goal identified in Section 41780.01.

(b) Achieving organic waste disposal reduction targets require significant investment to develop organics recycling capacity.

(c) More robust state and local funding mechanisms are needed to support the expansion of organics recycling capacity.”

Based on the foregoing, it is clear that the Legislature and the Governor, as a part of the SB 1383 enactment, emphasized the need for development of alternative technology facilities beyond composting and anaerobic digestion technologies/facilities, upon which CalRecycle has heavily relied, while not placing sufficient emphasis on development of alternative technologies and even subjecting them to heavily restrictive standards that other methods and processes are not subjected to (such as land application). In doing so, the state has created a significant obstacle to development of facilities utilizing these technologies without a clear and scientifically substantiated justification. For example, Section 18983.2 states “To determine if the proposed operation counts as a permanent reduction in landfill disposal, the Department and/or CARB’s Executive Office shall compare the metric tons carbon dioxide equivalent (MTCO<sub>2e</sub>) per short ton organic waste reduced by the process or technology, with the emissions reduction from *composting organic waste*” (*emphasis added*). To be consistent with requirements of PRC Section 42652 and technically correct, the analysis should be made in comparison to “landfilling” and not “composting.” The Task Force would like to emphasize that the SB 1383 mandates reduction of organic waste disposal in landfills and not any other type of facilities such as those utilizing conversion technology, (*emphasis added*).

11. Comment(s): This section does not specify obligations on the Department or the California Air Resources Board (CARB) to review the applications in a timely manner. The regulations must require the Department and CARB to make a

determination in a realistic timeframe to facilitate the development of organics recycling infrastructure.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(2) The Department shall consult with CARB's Executive Officer within 30 days of receiving the application to evaluate if the information submitted by the applicant is sufficient to determine the greenhouse gas emissions reduction potential of the proposed operation, and whether or not the proposed operation results in a permanent reduction in greenhouse gas emissions, and therefore counts as a reduction in landfill disposal. The Department shall provide a response to the applicant within 90 days of receiving the application whether the information submitted by the applicant is sufficient to determine the greenhouse gas emissions reduction potential of the proposed operation and, in the response, request additional information, if needed. The Department shall make a determination whether or not the proposed operation results in a permanent reduction in greenhouse gas emissions, and therefore counts as a reduction in landfill disposal, and inform the applicant of the decision within 180 days of receiving the application.
12. Comment(s): CalRecycle and CARB have joint authority over the verified technology determination. As the SB 1383 regulation text currently reads, either CalRecycle, CARB, or both can make this determination. The roles must be better defined to avoid delaying the technology verification process and to facilitate the development of new infrastructure.
13. Comment(s): Section 18983.2 specifies the process used to determine if operations, facilities or activities not expressly identified in the regulation shall be deemed to constitute a reduction of landfill disposal. Once this determination is made, it would be reasonable for comparable processes or technologies to be similarly deemed to constitute a reduction of landfill disposal. Section 18983.2(c) appears to provide this opportunity. The regulations must clarify if this is the intent and the section must be expanded to more specifically outline the streamlined approach that would be followed. To facilitate infrastructure development, future applicants should not be required to repeat the verification process for an already-approved process.

### **ARTICLE 3. ORGANIC WASTE COLLECTION SERVICES**

#### **Section 18984.**

14. Comment(s):  
The regulations are prescriptive in the requirements for organic waste collection services provided by the jurisdictions. Section 42652.5. (a)(4) of the PRC specifically requires CalRecycle to consider "good faith effort" in determining a jurisdiction's progress in complying with the law. It states that CalRecycle "**shall** base its *determination of progress* on relevant factors, including, but not limited to, **reviews**

***conducted pursuant to Section 41825...*** (emphasis added). Therefore, the Task Force recommends that CalRecycle revise the regulations to incorporate provisions for jurisdictions demonstrating a “good faith effort” to comply.

- Proposed Regulatory Text and Recommended Changes/Revisions:
  - (a) This article specifies the minimum recommended standards for organic waste collection services provided by jurisdictions, outlines efforts jurisdictions must demonstrate a good faith effort to engage in to reduce container contamination, delineates recommended container color and labeling requirements, specifies criteria for rural jurisdictions to be exempt from specified requirements of this section and criteria for jurisdictions to waive requirements for specified generators. This article additionally specifies associated recordkeeping requirements for these standards.

15. Comment(s):

Please see General Comments.

16. Comment(s):

Pursuant to SB 1383, Subdivision 45652 of the PRC, the Legislature, among other things, finds and declares that “(a) The organic waste disposal reduction targets are essential to achieving the statewide recycling goal identified in Section 41780.01.” The “simplest” way to measure the reduction of organic waste disposal is to quantify the tonnages of organic waste being diverted. As such, the Task Force questions the prescriptive/mandatory collection services, including the required containers and their colors, which would be mandated by the proposed regulations, are unnecessarily onerous and would impose a significant cost to counties, cities, and their residents and businesses. The Task Force strongly recommends that CalRecycle conduct and make available a detailed cost benefit analysis of the various alternative approaches to the mandatory organic waste collection service requirements considered. The Task Force also believes that said requirements are inconsistent with the state law, PRC Section 40059.

The Task Force respectfully requests CalRecycle to address these issues in the next version of the proposed regulations.

#### **Section 18984.4. Recordkeeping Requirements for Compliance with Organic Collection**

17. Comment(s): The Task Force is concerned about the requirement (a)(3)(D) which states that the jurisdiction must provide the geographical areas served by the haulers, along with routes serviced, or a list of addresses served. Jurisdictions, through their franchise agreements/contracts, have committed to protecting proprietary information which may result in an economic disadvantage should the information be disclosed to haulers' competitors. The Task Force recommends

removing the requirement for jurisdictions to provide a list of addresses served in order to protect the hauler's proprietary information.

- Proposed Regulatory Text and *Recommended Changes/Revisions:*
  - (a) A jurisdiction shall include the following information and documents in the Implementation Record required by Section 18995.2 of this chapter:
    - (1) A description of which collection method(s) it will use to comply with this article.
    - (2) The geographical area for each collection method
    - (3) If the jurisdiction is using a service that requires the contents of containers provided by the jurisdiction to be transported to a high diversion organic waste processing facility, the jurisdiction shall at a minimum:
      - (A) List all high diversion organic waste processing facilities used by the jurisdiction.
      - (B) Include copies of, quarterly and annual average mixed waste organic content recovery rates, for each of those facilities, as defined in Section 18984.3.
      - (C) List all approved haulers in the jurisdiction that are allowed to take organic waste to the jurisdiction's identified high diversion organic waste processing facility or facilities.
      - (D) The geographical area the hauler(s) serves, *or* the routes serviced, ~~*or a list of addresses served.*~~

#### **Section 18984.5. Container Contamination Minimization**

18. Comment(s): The regulations require jurisdictions to monitor containers and conduct route reviews as part of the container contamination minimization protocol. Furthermore, Section 18997.3 Base Table 1 lists monetary penalties for jurisdictions not implementing a container contamination minimization protocol. However, Section 17409.5.7.(c), Section 17409.5.11(b)(4), Section 17867(a)(4)(E), Section 17896.25.1(d), and Section 20901(d) state that the enforcement agency (EA) may approve an alternative frequency for load checking at a facility if the facility receives waste from jurisdictions that are monitoring containers using the container contamination minimization described in Section 18984.5. This implies that a jurisdiction's implementation of the container contamination minimization protocol is not required. CalRecycle should clarify in the regulations whether jurisdictions are required to implement a container contamination minimization protocol.
19. Comment(s): This section indicates that if a jurisdiction is utilizing a two or three-container collection system, all collection routes must be reviewed quarterly for prohibited container contaminants. Due to the size of a jurisdiction, such as the County of Los Angeles geographical jurisdiction and the number of routes presently served, this presents an incredible burden on the jurisdiction's labor and financial resources. The Task Force recommends reducing the monitoring frequency requirement to something that jurisdictions may more realistically meet. The Task Force recommends shifting this requirement to not less than annually with

statistically representative sampling. The Task Force believes similar results can be derived if certain routes are sampled by specific geographic regions (such as community) or population density.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(b) A jurisdiction shall conduct a route review for prohibited container contaminants on randomly selected containers in a manner that results in all collection routes being reviewed ~~quarterly~~ annually.

#### **Section 18984.10. Property and Business Owner Responsibilities**

20. Comment(s): The Task Force recommends that this section be revised to specify that residential property owners do not have to arrange for access to individual residential unit, but only to common areas where solid waste and recycling containers are stored or may be stored. Inspectors cannot enter a private property without a Court order. However, inspections of residential containers can be made once the containers are placed in the designated area for collection.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(c) Property and business owners shall provide or arrange for access to their properties, excluding the interior of each residential unit within the property, during all inspections conducted pursuant to Article 14 of this chapter (commencing with Section 18995). Residential containers can be inspected if they are placed in the designated area for collection.

#### **Section 18984.12. Waivers and Exemptions Granted by the Department**

21. Comment(s):

This section does not recognize the good faith efforts of a jurisdiction to comply with the provisions of this chapter but that is unable to fully comply due to circumstances beyond its control. Provisions need to be provided for good faith efforts.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(d) The Department may grant waivers and/or extensions to any generator, hauler, or jurisdiction that has made good faith efforts to comply with the requirements of this article but has been unable to identify a facility with sufficient capacity to process the materials.

22. Comment(s): Chapter 3.1, Article 3, Section 17867 and Chapter 3.2, Article 3, Section 17867 of the proposed regulations state that material subject to a quarantine on movement issued by a county agricultural commissioner is considered incompatible material rather than organic waste. The regulations should clarify whether quarantined green waste will be exempt from the landfill disposal reduction requirements for organic waste. If quarantined green waste is required to be

disposed in landfill for public health and safety reasons, the regulations should clarify that the disposed tonnage will not count against the 50 percent and 75 percent landfill disposal reduction targets.

In addition, CalRecycle should grant a waiver or exemption for material subject to a quarantine on movement issued by a county agricultural commissioner. Once this quarantined material is collected, it could be transferred to a facility outside of the quarantined zone contaminating other non-quarantined organic waste and spread disease, pests, or harmful bacteria or microorganisms. Additionally, the regulations should also provide a definition for “quarantined material.”

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(d e) Quarantined Material

(1) The Department shall grant an exemption for organic waste collection, as specified in this chapter, for material subject to a quarantine on movement issued by a county agricultural commissioner. A jurisdiction may dispose of organic material if it is subject to a quarantine on movement issued by a county agricultural commissioner.

23. Comment(s):

Please clarify if the definition of “organic waste” that is required to be separated either at the source or at a high-diversion materials recovery facility and diverted from landfill includes organic waste collected from routine non-emergency debris and catch basin cleanouts. The Task Force recommends that organic waste collected from debris and catch basin cleanouts be excluded from the diversion requirements. Because this organic waste accumulates in the stormwater system and is not disposed by any particular generator in a container, it is likely to contain significant contamination and is difficult to separate from other waste and recycle. The Task Force recommends adding a waiver to the regulations addressing organic waste collected from routine cleanouts of debris basins, catch basins, and other stormwater infrastructure.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(d) Stormwater Infrastructure Exemptions:

(1) The Department shall grant waivers for organic waste collected from routine clean-outs of catch basins, debris basins, and other stormwater infrastructure. A local jurisdiction or private contractor may apply to the Department for a general waiver to exempt the organic waste collected from stormwater infrastructures.

(d e) Nothing in this section exempts a jurisdiction from complying with the other requirements to promote and provide information to generators about, waste prevention, community composting, managing organic waste on-site, and other means of recovering organic waste, or any other requirements of this chapter.

## Section 18984.13, Emergency Circumstances

### 24. Comment(s):

This section does not address compliance requirements for those cases for which “State of Emergency” as proclaimed by the Governor and defined by the California Code of Regulations, Title 14, Section 17210.1 (k).

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(b) (3) In a case of a “State of Emergency” as proclaimed by the Governor and defined in Section 17210.1 (k) of this division, the Department shall grant a waiver to a jurisdiction(s) from complying with the requirements of this article. Additionally, disaster debris generated from such an emergency shall not be counted as jurisdictional disposal for the purpose of measuring compliance with requirements of this chapter by the Department.

### 25. Comment(s):

The Department should grant a waiver for jurisdictions demonstrating a good faith effort to comply with the regulations but are unable to do so due to factors outside of their control. Section 42652.5. (a)(4) of the PRC specifically requires CalRecycle to consider “good faith effort” in determining a jurisdiction’s progress in complying with the law. It states that CalRecycle “shall base its determination of progress on relevant factors, including, but not limited to, reviews conducted pursuant to Section 41825...” (emphasis added).

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(c) Rural Exemptions:  
(1) The Department shall grant an exemption from complying with the organic waste collection requirements specified in this article for Rural Jurisdictions that meet the definition of a “Rural Jurisdiction” in Section 42649.8 of the Public Resources Code, if the governing body of the jurisdiction adopts a resolution that includes a finding as to the purpose of and need for the exemption.  
(2) An exemption implemented pursuant to this subdivision shall be valid until January 1, 2025, or until five years after the Department makes a determination pursuant to Section 42649.82 (a)(2)(D) that the statewide disposal of organic waste has not been reduced to 50 percent of the level of disposal during the 2014 calendar year, whichever is later.  
(d) Good Faith Effort Exemptions:  
(1) The Department shall grant an exemption from complying with a part of or all of the requirements of the regulations for a jurisdiction demonstrating a “good faith effort” to comply but cannot do so due to factors outside of its control.  
(e) Nothing in this section exempts a jurisdiction from complying with the other requirements to promote and provide information to generators about, waste

prevention, community composting, managing organic waste 41 on-site, and other means of recovering organic waste, or any other requirements of this chapter.

## **ARTICLE 4. EDUCATION AND OUTREACH**

### **Section 18985.1. Organic Waste Recovery Education and Outreach**

26. Comment(s):

Since solid waste facility operators are in direct contact with self-haulers and jurisdictions currently have no way of identifying a generator who is a self-hauler, the Task Force recommends giving solid waste facility operators the defined role of providing information regarding the requirements of Section 18988.3 of this chapter to the self-haulers.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(b) Prior to February 1, 2022, and annually thereafter, a jurisdiction solid waste facility operators shall provide to self-haulers information regarding the requirements of Section 18988.3 of this chapter.

27. Comment(s):

Los Angeles County is a very linguistically diverse county. Within the unincorporated areas alone, there are many generators that are "Limited English Speakers". The Task Force is concerned that the regulations may require jurisdictions to provide the education and outreach materials in every language spoken by generators within a given jurisdiction.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(f) If more than five percent of a jurisdiction's generators are defined as "Limited English Speaking Households," or "linguistically isolated," as defined by the U.S. Census Bureau, the jurisdiction shall provide the information required by this section in a the most common language or languages that will assure the information is understood by those generators and may provide the information required by this section in other languages, upon request from a generator.

## **ARTICLE 5. GENERATORS OF ORGANIC WASTE**

28. Comment(s): Please see General Comments

### **Section 18986.1. Non-Local Entities Requirements**

29. Comment(s):

Section 18986.1. Non-Local Entities Requirements states that "materials subject to a quarantine on movement issued by a county" shall not be deposited in organic waste containers (green) or recycling containers (blue). However, the proposal does

not prohibit disposal in the gray container, leading to the ultimate transfer of these materials to solid waste facilities which would cause the spread of contamination and/or disease. This issue needs to be addressed in the next version of the proposed regulations. Furthermore, collection requirements for non-local entities should be consistent with the requirements for collection services provided by jurisdictions to other generators, including residents and businesses. The requirements for collection services provided by local jurisdictions do not make reference to restrictions on the disposal of “materials subject to a quarantine on movement by a county” in any collection container.

### **Section 18986.2. Local Education Agencies Requirements**

30. Comment(s):

The requirements for local education agencies are not consistent with the requirements for commercial businesses, multifamily properties, and non-local entities. Unlike the other aforementioned groups, Section 18986.2 does not include requirements for local education agencies to prohibit the placement of organic waste in containers not designated for organic waste, and to periodically inspect collection containers for and inform employees of observed contamination. The Task Force recommends that the Department create uniform requirements for all regulated entities, included local education agencies, so as to afford equal treatment.

- Proposed Regulatory Text and *Recommended Changes/Revisions:*

- (b) Local education agencies shall *also:*

- (1) Provide containers for the collection of organic waste and non-organic recyclables in all areas where disposal containers are located. The containers provided shall conform to the requirements of the containers provided through the organic waste recovery service to which the local education agency is subscribed.

- (2) Prohibit their employees and students from placing organic waste in containers not designated for organic waste as set forth in Section 18984.1.(a)(5) and Section 18984.2.(a)(5) of this chapter.*

- (3) Periodically inspect organic waste containers for contamination and inform employees if containers are contaminated, and of the requirement to only use those containers for organic waste*

## **ARTICLE 6. BIOSOLIDS GENERATED AT A PUBLICLY OWNED TREATMENT WORKS (POTW)**

### **Section 18987.2. Biosolids and Sewage Sludge Handling at a POTW**

31. Comment(s):

It is unclear what conditions would render sewage sludge and biosolids not suitable for additional processing or recovery and require them to be sent for disposal. In

addition, as written, the regulations seem to indicate that biosolids can only be disposed if they cannot be recovered. CalRecycle should not require all biosolids to be recovered and should not limit landfill disposal of biosolids as long as the organic waste landfill disposal reduction targets can be satisfied. Additionally, the remaining sewage sludge and biosolids sent for disposal to appropriate permitted disposal facilities should not be counted as disposal against the host jurisdictions in which the POTW and disposal facility is located.

- Proposed Regulatory Text and Recommended Changes/Revisions:
  - (a) Sewage sludge and biosolids generated at a POTW ~~shall~~ may be:
    - (1) Transported ~~only~~ to a solid waste facility or operation for additional processing, composting, in-vessel digestion, or other recovery as specified in Section 20.1(b) of this Division, or
    - (2) ~~Notwithstanding subdivision (a)(1), sewage sludge and biosolids not suitable for additional processing or recovery may be s~~ Sent for disposal to a permitted facility that can receive that sewage sludge and biosolids and has obtained the applicable approvals by the local, regional, state, and federal agencies having appropriate jurisdiction.
    - (3) Residual sewage sludge and biosolids that are remaining after treatment at a POTW and destined for disposal are not subject to requirements of this chapter including, but not limited to, organic waste disposal reduction .

## **ARTICLE 7. REGULATIONS OF HAULERS**

32. Comment(s):  
Please see General Comments

### **Section 18988.3. Self-haulers of Organic Waste**

33. Comment(s):  
As written, the regulations require self-haulers to source-separate all organic waste generated on site. Self-haulers should not be held to more stringent standards than contracted haulers and should also be allowed to take mixed waste to an approved high-diversion organic waste processing facility meeting all applicable requirements.
- Proposed Regulatory Text and Recommended Changes/Revisions:
    - (a) Generators of organic waste may, in compliance with Section 18988.1 of this Division self-haul their own organic waste.
    - (b) A generator who is a self-hauler of organic waste shall comply with the following:
      - (1) ~~The generator shall source-separate all organic waste generated on site in a manner consistent with 14 CCR Section 30.1 and 30.2 of this chapter.~~
      - (2) (1) The generator shall haul source-separated organic waste to a solid waste facility operation, activity, or property that processes or recovers source-separated organic waste.

~~(3)~~ (2) The generator shall keep a record of the amount of organic waste delivered to each solid waste facility, operation, activity, or property that processes or recovers organic waste; this record shall be subject to inspection by the jurisdiction.

(A) The records shall include delivery receipts and weight tickets from the entity accepting the waste.

(B) The record shall indicate the amount of material in cubic yards or tons transported by the generator to each entity.

(C) Notwithstanding subdivision (b)(3)(A), if the material is transported to an entity that does not have scales on-site, the self-hauler is not required to record the weight of material but shall keep a record of the entities that received the organic waste.

~~(4)~~ (3) A self-hauler shall annually report the following to the jurisdiction in which it is located:

(A) The total amount of source-separated organic waste in tons that was self-hauled; and,

(B) The location or address of each entity that accepted self-hauled waste from the generator.

~~(5)~~ (4) A residential organic waste generator that self-hauls organic waste is not required to record or report the information identified in subdivision (b)(2) and (b)(3).

#### **Section 18988.4. Recordkeeping Requirements for Compliance with Jurisdiction Hauler Program**

##### 34. Comment(s):

The Task Force is concerned about the requirement (a)(3)(A) which states that the jurisdiction must provide copies of all reports required by haulers to the Department (emphasis added). Jurisdictions, through their franchise agreements/contracts, have committed to protecting proprietary information which may result in an economic disadvantage should the information be disclosed to haulers' competitors. The Task Force recommends removing the requirement for jurisdictions to provide copies of all reports in order to protect the hauler's proprietary information.

- Proposed Regulatory Text and Recommended Changes/Revisions:

(a) A jurisdiction shall include all relevant documents supporting its compliance with this article in the Implementation Record required by Article 14 of this chapter. Records maintained shall include but are not limited to copies of:

(1) Ordinances, contracts, franchise agreements, policies procedures, or programs relevant to this section.

(2) A description of the jurisdiction's hauler program including:

(A) Type of hauler systems the jurisdictions uses.

(B) Type and conditions of approvals per type of hauler, and criteria for approvals, denials and revocations.

- (C) Process for issuing, revoking, and denying written approvals.
- (D) Any requirements associated with self-hauling and back-hauling.
- (3) A record of hauler compliance with local ordinance(s) and the requirements of this article including the following information:

~~(A) Copies of all reports required by haulers.~~

~~(B-A)~~ Copies of reports from self-hauler as required by Section 18988.3.

~~(C-B)~~ Copies of all written approvals, denials, and revocations.

- (b) All records required by this article shall include the date of action, the name of the hauler, and the type of the action taken by the jurisdiction.

## **ARTICLE 8. CAL GREEN BUILDING STANDARDS**

### **Section 18989.1 Cal Green Building Code**

#### 35. Comment(s):

The “non-local entities” and “local education agencies” do not report to local jurisdictions and, in most cases, they are not regulated by the local jurisdiction’s building officials. As such, the Department is the best entity for managing the requirements of Section 18989.1. for these generators. The Department will be responsible for tracking and ensuring compliance by non-local entities and local education agencies.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(b) Non-local entities and local education agencies are to comply with requirements of Subsections (a)(1) and (a)(2) and reporting to the Department.

## **ARTICLE 9. LOCALLY ADOPTED STANDARDS AND POLICIES**

### **Section 18990.1. Organic Waste Recovery Standards and Policies**

#### 36. Comment(s):

Based on provisions of Subsection (c)(4), the proposed requirements of the Subsection(b)(3) contradict the decision in **UNITED HAULERS ASSOCIATION, INC., ET AL V. ONEIDA-HERKIMER SOLID WASTE MANAGEMENT AUTHORITY ET AL.**, that prevents jurisdictions to utilize flow control.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(b)(3) Limit the export *outside* of organic waste to a facility, operation, property or activity outside the jurisdiction that recovers the organic waste through a method identified in Article 2 of this chapter.  
(c)(4) Prohibit a jurisdiction from arranging through a contract or franchise for hauler or a self-haul organic waste generator to transport organic waste to a particular solid waste facility or operation for processing or recovery.

## **ARTICLE 10. JURISDICTION EDIBLE FOOD RECOVERY PROGRAMS, FOOD GENERATORS, AND FOOD RECOVERY**

### **Section 18991.1. Jurisdiction Edible Food Recovery Program**

37. Comment(s):

The Task Force recommends that the State specify that jurisdictions are required to provide education and monitor compliance of commercial edible food generators but that this requirement excludes certain Tier Two commercial edible food generators, namely “non-local entities” and “local education agencies”. Because non-local entities and local education agencies do not report to local jurisdictions, the Department is the best entity for managing the requirements of Section 18991.1 for these generators. The Department will be responsible for tracking waivers and exemptions for these groups and would be in the best position to education, monitor, and conduct outreach to these generators.

- Proposed Regulatory Text and *Recommended Changes/Revisions:*
  - (a) A jurisdiction shall implement an edible food recovery program that shall include the actions that the jurisdiction plans to take to accomplish the following:
    - (1) Educate commercial edible food generators *with the exception of non-local entities and local education agencies* as set forth in Section 18985.2.
    - (2) Increase *the access of* commercial edible food generators *access with the exception of non-local entities and local education agencies* to edible food recovery organizations and edible food recovery services.
    - (3) Monitor *the compliance of* commercial edible food generators *compliance with the exception of non-local entities and local education agencies* as required in Article 14.
    - (4) Increase edible food recovery capacity if the analysis required by Section 18992.1 indicates that the jurisdiction does not have sufficient capacity to meet its edible food recovery needs.
  - (b) A jurisdiction may fund the actions taken to comply with this section through franchise fees, local assessments, or other funding mechanisms.

### **Section 18991.2. Recordkeeping Requirements for Jurisdiction Edible Food Recovery Program**

38. Comment(s):

See previous comment 37.

- Proposed Regulatory Text and *Recommended Changes/Revisions:*
  - (a) A jurisdiction shall include all documents supporting its compliance with Section 18991.1 in the Implementation Record required by Section 18995.2 of this chapter and shall also include at a minimum:

(1) A list of commercial edible food generators with the exception of non-local entities and local education agencies in the jurisdiction that have arrangements with edible food recovery organizations or services. Non-local entities and local education agencies are to report to the Department, as appropriate.

### **Section 18991.3. Commercial Edible Food Generators**

39. Comment(s)

If a large event is held at a State-owned facility, such as a state park, the regulations should clarify that it is the responsibility of the Department to ensure compliance with this Section 18991.3. and Section 18997.2. Penalty Amounts.

## **ARTICLE 11. ORGANIC WASTE RECYCLING CAPACITY PLANNING**

### **Section 18992.1. Organic Waste Recycling Capacity Planning**

40. Comment(s):

It should be recognized that the local task force created pursuant to Section 40950 of the Public Resource Code can be an asset to the county and the cities within the county in data collection and planning efforts listed in Section 18992.1(a).

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(a) "Counties in coordination with cities, ~~and~~ regional agencies located within the county, and the local task force created pursuant to Section 40950 of the PRC, shall:"

41. Comment(s):

There is major concern with jurisdictions being required to "verify" that capacity is available to them through contracts, permits, franchise or guarantees of access documentation. Considering that there is already a shortfall in organic waste management capacity statewide, it is inevitable that some jurisdictions will be without capacity. This may result in a competitive bidding war and/or implementation of flow control by some entities.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(a) (2) The jurisdiction in which the facility is located, and all appropriate Regional, State and Federal non-local entities and local education agencies, shall identify the amount in tons of the existing organic waste recycling infrastructure capacity at each fully permitted facility, which they are or intent to use, located both in the county and outside of the county, that is verifiably available to the county, ~~and~~ jurisdictions, *non-local entities and local education agencies* located within the county.

(A) A county can demonstrate the capacity is verifiably available to the county or its jurisdictions through a contract, permit, franchise, or other documentation of the following:

1. ~~A guarantee of access to existing permitted or authorized capacity at a~~ A binding guarantee of access and tonnage capacity to an existing and fully permitted facility, activity, operation, or property that recovers organic waste.
2. A guarantee of access to new or expanded capacity at a fully permitted facility, activity, operation, or property that recovers organic waste that will be available prior to the end of the reporting period.

42. Comment(s):

Cities or regional agencies are required to respond within 120 days to a county when contacted about the amount of organic waste in tons that will be disposed by the cities. A similar requirement also needs to be imposed on non-local entities and local education agencies because most likely these entities will be using facilities/capacity within the said county. Since counties are penalized financially for failing to estimate organic waste disposed, the Task Force recommends including language within this section that ensures that counties are not liable if cities, non-local entities, local education agencies or regional agencies fail to respond within the given time frame.

- Proposed Regulatory Text and Recommended Changes/Revisions:

(b) A city, non-local entity, local education agency or regional agency contacted by a county pursuant to subdivision (a) shall respond to the county's request for the information necessary to comply with the requirements of this article within 120 days of receiving the request from the county.

(1) If a city, non-local entity, local education agency or regional agency does not provide the necessary information to the County within the required timeframe, the County will not be held liable for failing to fully comply with requirements of this Article 11. ~~report on this jurisdiction's organic waste disposal.~~

43. Comment(s):

The regulations state that the county shall conduct community outreach regarding locations being considered for new or expanded facilities, in- or outside the county. We recommend that this responsibility be the role of the jurisdiction (host city or host county for unincorporated area) in which the new or expanded facility is being proposed, and not solely the role of the county regardless of the location of the new or expanded facility.

In addition, the regulations state that haulers and owners of facilities, operations, and activities that recover organic waste shall respond to the jurisdiction regarding potential new or expanded capacity at their facilities; however, it does not include "existing capacity".

- Proposed Regulatory Text and Recommended Changes/Revisions:  
(c) In complying with this section, the county, city, and/or regional agency depending on the location of the facility or activity shall:
  - (1) Consult with the Enforcement Agency and the local task force created pursuant to Section 40950 of the Public Resources Code on the status of locations for new or expanded solid waste facilities including the potential capacity increase each facility may provide if approved.
  - (2) Consult with haulers and owners of facilities, operations, and activities that recover organic waste including, but not limited to, compost facilities, in-vessel digestion facilities, and Publicly Owned Treatment Works to gather information on the existing capacity and potential new or expanded capacity at those facilities, operations, and activities.
    - (A) Entities contacted by a jurisdiction shall respond within 60 days of receiving the request to the jurisdiction regarding existing and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes

44. Comment(s):

The regulations state that the county shall conduct community outreach regarding locations being considered for new or expanded facilities. The regulations should clarify if this outreach must be done throughout an entire city that a new or expanded facility is being considered or within a radius of a certain number of miles from the address at which the facility is being proposed.

For example, if a facility is being considered in City A, does the outreach need to take place in all areas of City A, only or does it need to take place within an "X" mile radius of the proposed facility?

- Proposed Regulatory Text and Recommended Changes/Revisions:
  - (3) Conduct community outreach regarding locations being considered for new or expanded facilities, operations, or activities to seek feedback on the benefits and impacts that may be associated with new or expanded facilities, operations, or activities. The community outreach shall:
    - (A) Be conducted within a X mile radius of the location of the proposed new or expanded facility.
    - ~~(A)~~(B) Include at least one of the following forms of communication: public workshops or meetings, print noticing, and electronic noticing.
    - ~~(B)~~(C) If applicable be conducted in coordination with potential solid waste facility operators that may use the location identified by the county.
    - ~~(G)~~(D) Specifically include communication to disadvantaged communities that may be impacted by the development of new facilities at the locations identified by the county. If more than five percent of that community is defined as "Limited English Speaking Households," or "linguistically isolated," as defined by the U.S. Census Bureau, the jurisdiction shall provide the

information required by this section in a language or languages that will assure that the information is understood by that community.

45. Comment(s):

According to SB 1383, CalRecycle, in consultation with CARB, shall adopt regulations that achieve the specified targets for reducing organic waste in landfills (i.e., a 50-percent reduction by 2020 and a 75-percent reduction by 2025). The current draft of the regulations state that a jurisdiction that lacks sufficient capacity shall “demonstrate how it will ensure there is enough new or expanded capacity to recover the organic waste currently disposed by generators within their jurisdiction by the end of the report period.” The way it is currently written, it appears that the regulations are requiring that all organic waste that is currently disposed be recovered (or planned for recovery) by the end of the report period.

- Proposed Regulatory Text and Recommended Changes/Revisions:

(d) If a county determines that organic waste recycling capacity, in addition to the existing and proposed capacity identified pursuant to subsection (a), is needed within that county, the county shall notify the jurisdiction or jurisdictions that lack sufficient capacity that each jurisdiction is required to:

(1) Submit an implementation schedule to the Department that demonstrates how it will ensure there is enough new or expanded capacity to recover an amount of ~~the~~ organic waste that is equivalent to a 50-percent reduction in 2014 organic waste disposal levels by 2020, and a 75-percent reduction by 2025 currently disposed by generators within their jurisdiction by the end of the report period set forth in Section 18992.3 of this article.

46. Comment(s):

Including options that would require jurisdictions to plan for obtaining funding or provide financial support for expansion of organic waste recycling facilities would put an undue burden on jurisdictions. The Task Force recommends that this language be removed and replaced with other options including efforts by the Department and State to promote the development of new facilities.

- Proposed Regulatory Text and Recommended Changes/Revisions:

(d)(1) Submit an implementation schedule plan to the Department that demonstrates how it will ensure there is enough new or expanded capacity to recover the organic waste currently disposed of by generators within their jurisdiction by the end of the report period.

(A) The implementation schedule plan shall include timelines and milestones for planning efforts to access strategies for ensuring additional new or expanded capacity, including, but not limited to:

47. Comment(s):

“Identify” is spelled incorrectly.

- Proposed Regulatory Text and Recommended Changes/Revisions:

(d)(2) ~~Identify~~ Identify proposed new or expanded organic waste recycling facilities that will be used to process the organic waste identified pursuant to subsection (a)(3).

48. Comment(s):

For capacity planning purposes, the regulations include “digestate and biosolids” within the organic waste material types. In the latest version of CalRecycle’s Characterization of Solid Waste in California report, these two materials are not included in the report. Since the regulations lists the waste characterization study as a means to estimate the countywide disposal, will CalRecycle provide counties with the disposal composition of these materials to assist in the capacity planning analysis? We recommend that CalRecycle provide counties with the statewide disposal composition of digestate and biosolids before the first capacity plan is due to CalRecycle on February 1, 2022.

### **Section 18992.2. Organic Edible Food Recovery Capacity**

49. Comment(s):

Counties are required to “Estimate the amount of edible food that will be disposed of by commercial edible food generators . . .”. Currently, there are no tools to quantify the amount of edible food in the disposal stream. Therefore, we recommend that CalRecycle provide Counties with a methodology to estimate the amount of edible food within the disposal stream.

50. Comment(s)

It should be recognized the local task force created pursuant to Section 40950 of the Public Resource Code can be an asset to the county and the cities within the county in data collection and planning efforts listed in Section 18992.2 (a).

In addition, the regulations should include a requirement on cities, regional agencies and edible food recovery organizations to respond to and provide the requested capacity data/information to Counties or other applicable jurisdictions for edible food capacity planning purposes.

Additionally, in Section 18992.2(a)(3), counties are required to “Identify proposed new or expanded edible food recovery organizations”. Additionally, in Section 18992.2(b)(2), jurisdictions are required to “Consult with edible food recovery organizations. . . regarding existing, or proposed new and expanded capacity”. This appears to be a very repetitive requirement. We recommend that Counties be required to focus on existing edible food recovery capacity and cities (jurisdictions) be required to focus on the new or expanded edible food recovery capacity.

- Proposed Regulatory Text and Recommended Changes/Revisions:
  - (a) Counties in coordination with cities, ~~and~~ regional agencies located within the county, and the local task force created pursuant to Section 40950 of the PRC shall:
    - (1) Estimate the amount of edible food that will be disposed of by commercial edible food generators that are located within the county and jurisdictions within the county.
    - (2) Identify existing capacity at edible food recovery organizations that is available to commercial edible food generators located within the county and jurisdictions within the county.
    - ~~(3) Identify proposed new or expanded edible food recovery organizations that will be used to process edible food identified pursuant to subsection (1).~~
    - ~~(4)~~(3) Identify the amount of capacity at edible food recovery organizations that is necessary to recover 20 percent of the edible food that is estimated to be disposed.
  - (b) A city or regional agency contacted by a county pursuant to subdivision (a) shall respond to the county's request for the information necessary to comply with the requirements of this article within 120 days of receiving the request from the county.
  - (c) Food recovery organizations contacted by a jurisdiction shall respond to the jurisdiction regarding potential new or expanded food recovery capacity at their facilities, operations, and activities.
  - ~~(b)~~ (d) If a county identifies that new or expanded capacity is needed to recover the amount of edible food identified in (a)(4), then each jurisdiction(s) within that county that lacks capacity shall.

51. Comment(s):  
The Task Force recommends that this section be expanded to add a subsection including appropriate provisions for compliance by non-local entities and local education agencies a consistent with requirements of this Article 11.

## **ARTICLE 12. PROCUREMENT OF RECOVERED ORGANIC WASTE PRODUCTS**

52. Comment(s):  
Please see General comments.
53. Comment(s):  
For the purpose of this Article, the discussions and requirements need to be expanded to include appropriate provisions for compliance by non-local entities and local education agencies consistent with requirements of this article.

### **Section 18993.1. Recovered Organic Waste Product Procurement Target**

54. Comment(s):

While the Task Force recognizes the need and importance of market development, such efforts must be mandated by legislative authority with associated funding to assist local jurisdictions. The Task Force recommends that the requirement for local jurisdictions to procure recovered organic waste products be eliminated from the regulations, since this requirement is not supported by legislative authority.

55. Comment(s):

In addition to compost and renewable transportation fuel, CalRecycle should add electricity generated from recycled organic waste to the list of recycled organic waste products that may be procured to meet the recovered organic waste procurement target. In-vessel digestion and biomass conversion are activities deemed to constitute a reduction in landfill disposal per Section 18983.1(b) (3) and (4) of the proposed regulations, respectively. In-vessel digestion produces biogas and biomass conversion produces syngas, both of which can be used to produce renewable natural gas (RNG) and electricity, as well as transportation fuel.

CalRecycle should be promoting, rather than limiting, the use of the recycled organic waste products that may be procured to provide jurisdictions flexibility and a variety of options to meet the procurement target. Producing compost in densely-populated urban and suburban jurisdictions can be challenging due to odors, space constraints, and permitting issues. The stringent requirements for pipeline injection of RNG transportation fuel in the state will make it extremely challenging for jurisdictions to procure RNG transportation fuel from remote production facilities and will require each jurisdiction to develop several of its own RNG production and on-site fueling facilities.

CalRecycle needs to be a tool rather than an obstacle in promoting development of facility using emerging technologies (such as low- and mid- temperate thermal conversion technologies) to develop products in assisting the reduction of organic waste landfill disposal.

56. Comment(s):

Should CalRecycle pursue any mandatory procurement requirements, then CalRecycle should phase in such requirements since the availability of these products may be limited in the first few years of program implementation and jurisdictions should not be penalized if they are unable to procure the required amounts of these products.

- Proposed Regulatory Text and Recommended Changes/Revisions:
  - (f) For the purposes of this article, the recycled organic waste products that must may be procured are:
    - (1) Compost.
    - (2) Renewable transportation fuel
    - (3) Electricity
    - (4) Renewable natural gas
    - (5) Any other recycled organic waste products approved by the Department
  - (g) The following conversion factors shall be used to convert tonnage in the annual recycled organic waste product procurement target for each jurisdiction to equivalent volumes of recycled organic waste products:
    - (1) One ton of organic waste in a recycled organic waste product procurement target shall constitute:
      - (A) 19 diesel gallon equivalents, or “DGE,” of renewable transportation fuel
      - (B) 0.58 tons of compost.
      - (C) XX kilowatts of renewable electricity
      - (D) XX cubic feet of renewable natural gas

### **ARTICLE 13. REPORTING**

57. Comment(s):  
Please see General Comments.
58. Comment(s):  
For the purpose of this Article, include a section to stipulate appropriate provisions for compliance by non-local entities and local education agencies consistent with requirements of this article.

### **Section 18994.2. Jurisdiction Annual Reporting**

59. Comment(s):  
The Task Force recommends that CalRecycle clarify that the jurisdictions' reporting requirements under this Article 13 exclude non-local entities and local education agencies not receiving services through local jurisdictions' collection systems.
- Proposed Regulatory Text and Recommended Changes/Revisions:
    - (b) Each jurisdiction shall report the following, relative to its implementation of the organic waste collection requirements of Article 3 of this chapter:
      - (1) The type of organic waste collection service(s) provided by the jurisdiction to its generators with the exception of non-local entities and local education agencies.
      - (2) The total number of generators that receive each type of organic waste collection service provided by the jurisdiction with the exception of non-local entities and local education agencies.

60. Comment(s):

Requiring a jurisdiction to be responsible for all tracking and reporting of self-haulers and non-exclusive franchise haulers as stipulates in subsections (d) and (f) requires strict regulation, inspection and enforcement activities by the jurisdiction while placing significant activities on small businesses like landscapers, small community composter, etc. To reduce the impact of this costly and time-consuming requirement, the proposal should allow the information collected from affected self-haulers pursuant to AB 901, Chapter 746 of the 2015 State Statutes.

- Proposed Regulatory Text and *Recommended Changes/Revisions:*

(d) Each jurisdiction shall report the following relative to its implementation of waivers pursuant to Article 3.

(1) The number of days an emergency circumstances waiver as allowed in 18984.13 was in effect and the type of waiver issued.

(2) The tons of organic waste that were disposed as a result of waivers identified in (1).

(3) The number of generators issued a de-minimis waiver.

(4) The number of generators issued a physical space waiver.

(5) A jurisdiction that receives a waiver from the Department pursuant to Section 18984.12 of Article 3 shall report the following information for each year the waiver is in effect:

(A) The number of generators waived from the requirement to subscribe to an organic waste collection service.

*(6) In lieu of the above, the jurisdiction and self-haulers can utilize the data collected pursuant to AB 901, Chapter 746 of the State Statute of 2015.*

(f) A jurisdiction shall report the following regarding its implementation of the hauler oversight requirements of Article 7.

(1) The number of haulers approved to collect organic waste in the jurisdiction.

(2) The Recycling and Disposal Reporting System number of each facility that is receiving organic waste from haulers approved by the jurisdiction.

(3) The number of haulers that have had their approval revoked or denied.

(4) The number of self-haulers approved to operate within the jurisdiction.

(5) The total amount, in tons, of source separated organic waste that was self-hauled by organic waste generators and reported to the jurisdiction pursuant to Section 18988.3.

*(6) In lieu of the above, the jurisdiction and self-haulers can utilize the data collected pursuant to AB 901, Chapter 746 of the State Statute of 2015.*

## **ARTICLE 14. ENFORCEMENT REQUIREMENTS**

61. Comment(s):

Please see General Comments.

62. Comment(s):

For the purpose of this Article, include a section to stipulate appropriate provisions and identify/specify the entity that would be responsible to measure compliance {i.e. conduct inspection(s), take enforcement action(s), recordkeeping, and possible imposition of penalties} of non-local entities, including federal agencies/facilities) and local education agencies} with appropriate requirements of this Article.

### **Section 18995.1. Jurisdiction Inspection and Enforcement Requirements**

63. Comment(s):

There is concern with maintaining confidentiality of some information in that in order to comply with the regulations, the jurisdiction would need to provide its customer lists to CalRecycle.

- Proposed Regulatory Text and Recommended Changes/Revisions:

(c) A jurisdiction shall generate a written report for each inspection, route review, and compliance review conducted pursuant to this Chapter. Each report shall include, at a minimum, the following information, unless such information is restricted by a confidentiality agreement or considered proprietary information:

(1) Identifying information for the subject or subjects of the inspection, route review or compliance review, such as, but not limited to:

~~(A) The name or account name of each person or entity.~~

~~(A B)~~ A general description of the route ~~and addresses~~ location covered by a route review.

~~(B C)~~ A general description of the list of accounts reviewed for each compliance review.

(C) A list of accounts, including addresses along with names of the account holders, determined by the jurisdiction to be subject to enforcement actions.

## **ARTICLE 15. ENFORCEMENT OVERSIGHT BY THE DEPARTMENT**

64. Comment(s): Please see General Comments

### **Section 18996.2. Department Enforcement Actions Over Jurisdictions**

65. Comment(s):

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, the Task Force recommends that the regulatory language include allowances for jurisdictions and other entities that demonstrate a substantial effort to comply with the regulations but are unable to do so due to factors outside of their control.

Furthermore, the Task Force recommends that CalRecycle revise the regulations to incorporate provisions for jurisdictions demonstrating a “good faith effort” to comply. Public Resources Code § 42652.5 (4) states, “The department shall base its determination of progress on relevant factors, including, but not limited to, reviews conducted pursuant to Section 41825...” (See General Comment A.2.b).

- Proposed Regulatory Text and Recommended Changes/Revisions:
  - (a) If the Department finds that a jurisdiction is violating one or more of the requirements of this Chapter, and has not made a good faith effort to fulfill these requirements, then the Department may take the following actions:
    - (1) Hold a public hearing, which, to the extent possible, shall be held in the local or regional agency’s jurisdiction, to determine whether or not the jurisdiction has failed to make a good faith effort towards compliance.
    - ~~(1)~~ (2) Issue a Notice of Violation requiring compliance within 90 days. An extension may be granted for an additional 90 days, if the jurisdiction submits a written request to the Department within 60 days of the Notice of Violation’s issuance that includes:
      - (A) Evidence that additional time is needed to comply.
      - (B) The steps the jurisdiction will take to correct the violation, including demonstration that it can comply within 180 days of the Notice of Violation’s issuance date.
    - ~~(2)~~ (3) The Department may extend the timeframe for a jurisdiction to comply beyond 180 days from the Notice of Violation issuance date by issuing a Corrective Action Plan (CAP) for up to 24 months, setting forth steps to achieve compliance, if the jurisdiction has demonstrated, that it has made a substantial good faith effort to comply and there are extenuating circumstances that have prevented it from complying.
      - (A) A jurisdiction shall submit a written request for the extension at least 30 days prior to the Notice of Violation final compliance date. The request shall provide documentation demonstrating its substantial good faith effort to comply, and the extenuating circumstances which prevents it from complying, and identify the critical milestones that the jurisdiction would need to meet in order to comply within 24 months.

1. If a jurisdiction claims that the cause of the delay is inadequate capacity of organic waste recovery facilities, it shall document the lack of capacity and demonstrate that it has provided service where possible and that it has only delayed compliance with this chapter for areas where service cannot be provided due to capacity limits. Implementation schedules, under Article 11, may be considered for purposes of developing a Corrective Action Plan; however, the Department may set compliance milestones other than those provided in the Implementation Schedule.

(B) For the purposes of this section, “substantial good faith effort” means that a jurisdiction has taken all practicable actions to comply. ~~Substantial effort does not include circumstances where a decision-making body of a jurisdiction has not taken the necessary steps to comply with the Chapter, including, but not limited to, a failure to provide staff resources, a failure to provide sufficient funding to assure compliance, or failure to adopt required ordinances.~~

(C) For the purposes of this section, “extenuating circumstances” means that a delay in compliance has been caused by:

1. Circumstances outside of a jurisdiction’s control; including acts of God and declared emergencies such as earthquake, fires, flooding, or delays in obtaining discretionary permits or other government agency approvals, or failure of non-local entities or local education agencies, located within the jurisdiction, to fully comply with requirements of this chapter.
2. A long term infrastructure or capacity change which requires a corresponding longer length of time to achieve compliance.
3. lack of adequate markets for the products produced from organic waste recycling activities.

(D) For the purposes of this section, “critical milestones” means all actions necessary for a jurisdiction to comply, including, but not limited to, receiving approval by decision-making bodies, permit application submittals and obtaining approvals, and tasks associated with the local contract approvals.

~~(3 4)~~ A Corrective Action Plan shall be issued by the Department for no longer than 24 months and shall include compliance dates for each milestone that describe the tasks and timeframe the jurisdiction needs to take to achieve full compliance by a final compliance date. The Corrective Action Plan shall include the penalties that may be imposed if a jurisdiction fails to comply by the final compliance date and may also include penalties for failing to meet milestones by the specified dates.

(b) If a jurisdiction can demonstrate to the Department that it has made a good faith effort to fulfill its responsibilities or obligations as required by this Chapter, but is unable to fulfill those responsibilities or obligations due to factors outside of its control then the Department may consider a hardship allowance for said jurisdiction.

### Section 18996.3. Department Enforcement When Jurisdiction Fails to Enforce

66. Comment(s):

See previous comment 65 on Section 18996.2.

- Proposed Regulatory Text and Recommended Changes/Revisions:
  - (a) If a jurisdiction fails to enforce the requirements set forth in this chapter, and has not made a good faith effort to do so, the Department may take enforcement action against an entity pursuant to Section 18996.9 of this chapter and also enforcement action against the jurisdiction pursuant to this article after providing the jurisdiction with:
    - (1) Written documentation of its lack of appropriate enforcement action.
    - (2) A request to hold a public hearing, which, to the extent possible, shall be held in the local or regional agency's jurisdiction, to determine whether or not the jurisdiction has failed to make a good faith effort towards compliance.
    - ~~(2)~~ (3) A written request to take enforcement action against the entity pursuant to Article 14 of this chapter or evidence within 60 days that the entity is in compliance.
  - (b) If the Department determines a good faith effort has not been made, the ~~The~~ Department may seek administrative penalties against the jurisdiction pursuant to Article 16 if the jurisdiction fails to take enforcement action as requested pursuant to subsection (a) (2).
  - (c) If a jurisdiction can demonstrate to the Department that it has made a good faith effort to enforce the requirements set forth in this chapter but is unable to fulfill those responsibilities or obligations due to factors outside of its control then the Department may consider a hardship allowance for said jurisdiction.

### Section 18996.6. Department Inspections and Compliance Review of State Agencies and Facilities

67. Comment(s):

See General Comment A.1.

- Proposed Regulatory Text and Recommended Changes/Revisions:
  - (a) If the Department finds that a state agency is violating Article 4, 5, 7, 8, 10, 11, 12, or Article 13 of this chapter, then the Department may take the following progressive enforcement actions:
    - (1) Issue a Notice of Violation requiring compliance within 90 days. If the state agency or state facility provides sufficient evidence that additional time is needed to comply, it may request, and the Department may grant an additional 180-day extension. The state agency or state facility extension request shall include:
      - (A) An explanation of why the violations have occurred, and all steps that have been taken to comply with this chapter.

- (B) An explanation as to why it cannot correct the violation by the compliance date.
  - (C) A proposed set of tasks and milestones necessary for the state agency or state facility to comply and an explanation and justification of the proposed timeline.
  - (D) Any additional information that supports the request to delay enforcement action.
- (2) If the department issues a Notice of to a state agency or facility it shall include, but is not be limited to:
- (A) A description of the violation and regulatory section that is the basis of the violation.
  - (B) Identification of the actions the state agency or state facility shall take to correct the violation(s).
  - (C) The timeframe in which each of the actions must be taken.
  - (D) The actions in subsection (a)(3) of this section that the Department may take if the state agency or facility fails to comply
- (3) If a state agency or state facility fails to comply with a Notice of Violation, the Department may take the following enforcement actions:
- (A) List the state agency or state facility on the Organic Waste Recovery Noncompliance Inventory described in Section 18997.4 of this chapter.
  - (B) Request that the Department of General Services (DGS) conduct an audit of the state agency or state facility for compliance with Public Contract Code (PCC) Section 12217(a).
  - (C) Notify the Governor.
  - (D) Notify the Legislature.
  - (E) Unless prohibited by State law, following the Legislature notification, the Department may impose administrative civil penalties on a state agency or state facility found in violation of Articles 4, 5, 7, 8, 10, 11, 12 or 13. The penalty amount shall be equivalent to those listed in Article 16 for a similar entity.*
- (4) The Department may not extend a compliance deadline in a Notice of Violation if the Department determines that the state agency or state facility has not made substantial efforts to comply with this chapter.
- (A) For the purposes of this section, “substantial effort” means that the state agency or state facility has taken all practicable steps to comply. Substantial effort does not include failure by the state agency or facility to take the necessary steps to comply, including, but not limited to, not providing adequate staff resources, failing to provide sufficient funding to assure compliance with the Chapter, or failure to adopt required policies.

## **Section 18996.7. Department Enforcement Action Regarding Local Education Agencies**

68. Comment(s):

See General Comment A.1.

- Proposed Regulatory Text and *Recommended Changes/Revisions:*
  - (a) If the Department finds that a local education agency is violating this chapter, the Department may issue a Notice of Violation requiring compliance within 90 days. If the local education agency fails to comply with the Notice of Violation, the Department may list the local education agency or a non-local entity on the Organic Waste Recovery Noncompliance Inventory pursuant to Section 18997.4.  
*(b) Unless prohibited by State law, following the Legislature notification, the Department may impose administrative civil penalties on a local educating Agency found in violation of this chapter. The penalty amount shall be equivalent to those listed in Article 16 for a similar entity.*

#### **Section 18996.9. Department Enforcement Actions Against Entities**

69. Comment(s):

See comment on 65 on Section 18996.2., and define the term “entity”.

- Proposed Regulatory Text and *Recommended Changes/Revisions:*
  - (a) The Department may take enforcement action against organic waste generators, including commercial edible food generators, haulers, and food recovery organizations and services, where a jurisdiction has failed to enforce this chapter *and has not made a good faith effort to do so* or where the entity is a non-local entity that is not a state agency or facility subject to enforcement under Section 18996.6 or a local education agency subject to enforcement under Section 18996.7.
  - (b) If an entity has been found in violation, the Department shall:
    - (1) For a first violation:
      - (A) Hold a public hearing, which, to the extent possible, shall be held in the entity’s jurisdiction, to determine whether or not the entity has failed to make a good faith effort towards compliance. If the Department determines that a good faith effort has not been made, the Department shall issue—Issue* a Notice of Violation (NOV) requiring compliance within 60 days.
      - (B) If the violation continues after the NOV compliance date, the Department shall issue a Notice and Order to Correct (NOTC) requiring compliance within 30 days. The NOTC shall include the potential penalties for failing to comply.
      - (C) If the violation continues after the NOTC compliance deadline of 30 days, the Department shall commence action to impose a penalty on the entity no later than 90 days after the issuance of the NOTC.
    - (2) For a second violation and all subsequent violations:
      - (A) Issue a Notice and Order to Correct (NOTC) requiring compliance within 30 days. The NOTC shall include the potential penalties for failing to comply.

- (B) If the violation continues after the NOTC compliance deadline, the Department shall commence action to impose a penalty on the entity no later than 90 days after its determination of the violation.
- (c) The Department may grant extensions to the compliance deadlines set forth in subsection (b) if it makes the following findings:
- (1) The entity is making timely progress toward compliance, and
  - (2) The entity's failure to comply within the deadline is due to:
    - (A) Extenuating circumstances outside its control, including a correction to a long term infrastructure or capacity change which requires a correspondingly longer length of time to achieve compliance. Examples of extenuating circumstances include acts of God such as inclement weather, and earthquakes, wildfires, mudslides, flooding, and other emergencies or natural disasters, and delays in obtaining discretionary permits or other government agency approvals, but where the entity's actions or failure to act was not the cause of the delay
    - (B) Limitations in infrastructure and the jurisdiction in which it is located is under a Corrective Action Plan (CAP) pursuant to Section 15.2 due to long term infrastructure or capacity deficiencies.
- (d) The Department shall provide the following information in any Notice of Violation or other enforcement notices:
- (1) The account name, name, or names of each person or entity to whom it is directed. Notices must go to the legally responsible party, such as a business owner, service account holder, property owner, etc.
  - (2) The list and description of the violations of this chapter, including the section of this chapter being violated.
  - (3) A compliance date by which the entity is to take specified action(s).
  - (4) The penalty for not complying within the specified compliance date
- (e) If an entity can demonstrate to the Department that it has made a good faith effort to comply with the requirements set forth in this chapter, but is unable to fulfill those responsibilities or obligations, due to factors outside of its control, then the Department may consider a hardship allowance for said entity.*

## **ARTICLE 16. ADMINISTRATIVE CIVIL PENALTIES FOR VIOLATIONS OF REQUIREMENTS OF THIS CHAPTER**

70. Comment – Please see General Comments

71. Comment(s):

Article 16 needs to be expanded to provide and discuss in detail the following:

(a) The process and the time frame that an affected organic waste generator and/or an entity could appeal the Department's decision regarding compliance with the requirements of this chapter and the agency that the appeal must be filed with.

(b) What are the allowable uses of revenue generated from the collected penalties and the agency with the decision-making authority for its use?

**Section 18997.2. Penalty Amounts**

72. Comment(s)

See General Comment A.2.a.

The monetary penalties for Property and Business Owners should not be based on established penalty severity levels. The penalties should have a maximum limit so as not to disproportionately penalize certified small businesses, non-profit organizations, or other entities for whom the penalties may cause substantial hardship.

The monetary penalties for residential organic waste generators should be given their own category in Table 1 separate from all other organic waste generators. The penalties for residential organic waste generators should not be based on established penalty severity levels. The penalties should have a maximum limit so as not to disproportionately penalize economically disadvantaged communities in the state.

- Proposed Regulatory Text and Recommended Changes/Revisions:  
 (a) A jurisdiction shall impose penalties that are equivalent or stricter than those amounts in Table 1 of this section, except in cases where these penalties may cause substantial hardship to certified small businesses, non-profit organizations, economically disadvantaged communities, or other applicable entities, and shall be calculated by determining the type of violations that have occurred, the number of violations that have occurred, and the corresponding penalty level in subsection (b).

Table 1

Requirement	Description of Violation	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	3 <sup>rd</sup> and Subsequent Violation
Property and Business Owner Responsibility Requirement Section XX.XX	X	<u>Level 0</u>	<u>Level 0</u>	<u>Level 0</u>
Organic Waste Generator Requirement Section XX.XX	X	<u>Level 0</u>	<u>Level 0</u>	<u>Level 0</u>

(b) Consistent with the requirements prescribed in Government Code Sections 53069, 25132 and 36900, the penalty severity levels are as follows:

(1) For a violation classified as Level 1, the amount of the base penalty may be \$50–\$500 per violation.

(2) For a violation classified as Level 2, the amount of the base penalty may be \$250–\$1000 per violation.

(3) For a violation classified as Level 3, the amount of the base penalty may be \$500–\$2,500 per violation.

(c) For the purposes of subsection (a), revoking, suspending, or denying a permit, registration, license, or other authorization shall be considered stricter than the penalties in this section.

*(d) For a violation classified as Level 0, certified small businesses, non-profit organizations, residents of economically disadvantaged communities, and other applicable organic waste generators may submit an application to the Department or to the jurisdiction imposing penalties requesting the penalties to be waived due to substantial economic hardship.*

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]), 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.

Ms. Gwen Huff  
February 25, 2019  
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We respectfully request CalRecycle to address these comments, concerns, and recommendations in the next formal draft of the proposed regulation text. 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  
Mayor Pro Temp, City of Rosemead

KW:cso

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cc: CalRecycle (Howard Levenson, Mark de Bie, Cara Morgan, Hank Brady,  
Georgianne Turner, Chris Bria, Marshall Graham, and Gwen Huff)  
California Air Resources Board (Mary Nichols and David Mallory)  
California Department of Food and Agriculture  
California Department of Public Health  
League of California Cities  
League of California Cities, Los Angeles 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 Solid Waste Management  
Committee/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