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July 21, 2017

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

Dear Mr. Smithline:

**COMMENTS ON THE INFORMAL RULEMAKING STAKEHOLDER WORKSHOP FOR  
SB 1383 SHORT-LIVED CLIMATE POLLUTANTS (SLCP)**

The Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force) would like to express our appreciation to the California Department of Resources Recycling and Recovery (CalRecycle) for providing the opportunity to comment on the Informal Rulemaking Stakeholder Workshops for SB 1383 Short-Lived Climate Pollutants (SLCP) held on June 21, 2017 and June 26, 2017. These comments will also be submitted through the online commenting form.

<http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=2127&aiid=1939>  
<http://www.calrecycle.ca.gov/actions/PublicNoticeDetail.aspx?id=2130&aiid=1941>

The Task Force would appreciate CalRecycle's consideration of the following comments as part of the SB 1383 SLCP Rulemaking Process:

**DEFINITIONS:**

**Definitions:**

- Slide 9 - The definition of organic waste in the regulations should be consistent with state law. Section 42649.8 (c) of the Public Resources Code (PRC) 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." Therefore, the definition of "organic waste" in the upcoming regulations should not include "applicable textiles and carpets," "fiber," "manure," "biosolids," "digestate," or "sludges."

CalRecycle has stated that to achieve emission reductions from landfills to meet the 40 percent methane reduction mandate, all material of biogenic origin must be included in its regulations. However, the fact remains that "organic waste" has already been defined in state law pursuant to Chapter 727 of the 2014 State Statute. To minimize confusion, CalRecycle should use an alternative term instead of

“organic waste” for these regulations. For example, CalRecycle could use the term “biogenic waste” instead of “organic waste.”

CalRecycle is proposing to define “organic waste” as “solid waste containing material originated from living organisms and their metabolic waste products...” The term “containing” should be changed to “made of,” because non-organic waste could possibly contain a certain amount of organic material but should not be subject to the landfill diversion requirements. The term “originated” expands the definition of “organic waste” as provided in Section 42649.8 (c) of the PRC to include materials such as fossil fuels, plastics, and other petroleum generated by-products which are technically originated from living organisms, but do not appear to be subject to SB 1383’s landfill diversion requirements.

Furthermore, while carpet and textiles may contain biogenic materials, it is difficult to distinguish the difference between carpets made of wool versus synthetic polymers. For this reason, CalRecycle should not include carpet and textiles in the definition of “organic waste” or “biogenic waste” and address the recycling of those materials through separate avenues.

If carpets and textiles continue to be included in the definition of organic waste, the regulations need to specify how textiles and carpet diversion will be measured as part of the state’s progress toward achieving the 50 and 75 percent targets. In addition, the definition of organic waste only includes “applicable textiles and carpets.” The regulations should specify which textiles and carpets will be considered “applicable.”

For the potential inclusion of “biosolids,” “digestate,” or “sludges,” further clarification is needed to determine what constitutes recycling of these materials. If recycling options cannot be determined for “biosolids,” “digestate,” or “sludges,” CalRecycle should not include them in the definition of “organic waste” or “biogenic waste” and address the recycling of these materials through separate avenues.

In addition, the definition of “organic waste” or “biogenic waste” should be expanded to include compostable packaging.

- Slide 11 - The term “generator” is already defined in Section 18450 of Title 14 of the CCR. Instead, CalRecycle should provide a definition for “organic waste generator.” It should be defined within the regulations as: “Organic waste generator means a public or private entity that is responsible for the initial production of organic waste and that may also be responsible for the initial production of solid waste and/or recyclable material.” The definition of organic waste generator within the regulations should be expanded to include the examples of generators, including residential and commercial entities; local, state, federal agencies (governmental entities); special events, such as farmers’ markets, sporting events, etc. As opposed to definition provided in the workshop presentation, the definition of “generator” in the SB 1383 Local Organic Waste Collection Concepts is “a person that is responsible for the

initial creation of solid waste, organics, and recyclable material.” In the future, the definitions should be consistent between the workshop presentations and the concept papers.

- Slide 12 - “Mandatory Organic Waste Recycling Service” is defined as a collection service that recycles organic waste and is automatically provided to all generators of organic waste, potentially with opt out provisions for generators that are already recycling. The opt-out provisions for mandatory organic waste service should be clearly specified. For example, it should be specified whether facilities that self-haul organic waste, back-haul organic waste, process organic waste on-site, or do not meet a minimum threshold of organic waste generation will not be required to have organic waste service.
- Slide 41 – The definition of “edible food” is “all food intended and usable for human consumption.” CalRecycle should specify which entity determines whether food is intended and usable for human consumption and the process by which this would be determined. The Task Force recommends that local health officers be in charge of this determination and develop a standardized certification process to determine what is considered edible food and ensure that it “meets relevant public health and food safety standards.”

### **Edible Food Recovery Baseline**

- Slide 40 – According to SB 1383, the regulations “shall include requirements intended to meet the goal that not less than 20 percent of edible food that is currently disposed of is recovered for human consumption by 2025.” The regulations must provide the baseline year that will be considered “current.” Because SB 1383 was signed into law in 2016, it is assumed that the baseline year will be 2016.

## **ORGANIC WASTE COLLECTION SERVICES:**

### **Jurisdictions:**

- Slide 14 - During the June 26 workshop, CalRecycle stated that source-separated organic waste programs are preferred, but that jurisdictions could utilize mixed-waste processing if the mixed-waste processing system is in place by 2020. CalRecycle stated that the development of mixed-waste processing systems for organic waste after 2020 is discouraged. CalRecycle should not limit industry operations to source-separated organic waste systems because there is a possibility that highly efficient and cost-effective mixed-waste organic programs could be developed beyond 2020.
- Slide 17 - Placing public organics recycling bins wherever refuse bins are located in public places will be very costly and inefficient for areas where negligible organic

waste is generated. CalRecycle should not include this as a requirement in the regulations.

- General Comment – The SB 1383 Regulatory Concepts presented in previous workshops proposed “keep[ing] organic [waste] materials clean and recoverable” to manage contamination. The regulations should clarify whether it is the responsibility of the individual, the generator (residence, commercial entity, etc.), or the local government to “keep organic [waste] materials clean and recoverable.” The regulations should also provide a clear definition of “clean” and “recoverable.”

A program to keep organic waste materials “clean” may be difficult to implement in a multi-residential complex. Therefore, the regulations should be written to require that organic waste materials be kept “recoverable” only, but not necessarily “clean” (emphasis added).

In developing regulations, CalRecycle should consider that requiring local governments to collect food waste separately from other organic waste to keep it “clean” may be costly and difficult to implement, and not include such a requirement in the regulations unless it is environmentally and economically justified while ensuring the process is protective of public health.

- Slide 22 – Any education programs for managing organics should include education for elected officials.

## **ORGANIC WASTE PROCESSING, RECYCLING, AND SOLID WASTE FACILITY CONCEPTS:**

### **Operations at Facilities Receiving, Processing, and/or Recycling Organic Waste:**

- Slide 25 - No minimum organic waste diversion requirement should be imposed on individual solid waste facilities. Due to the contamination level of the organic waste received, complying with such a requirement may not be feasible for facilities without producing a contaminated, low-value product.
- Slide 31 - The regulations should specify the desired accuracy of the measurable criteria and should not require unnecessary accuracy for the regulatory programs and goals. For example, it was indicated during the June 21 and June 26 workshops that measuring contamination at transfer/processing facilities and organics recycling facilities that receive source-separated organics or organic waste that was separated for reuse at a prior facility will require load checking for feedstock contamination and reporting on the level of contamination. A visual inspection, with no sorting or characterization of waste, should be sufficient for

measuring contamination. In addition, the acceptable threshold for contamination should not be so precise that it cannot be determined by visual inspection.

#### **New and Expanded Solid Waste Facilities:**

- General Comment - In order to promote the development of new facilities that can process organic waste, CalRecycle should develop Programmatic Environmental Impact Reports for biomass conversion facilities and composting facilities.

#### **INFRASTRUCTURE CAPACITY AND PLANNING:**

##### **Comments:**

- Slide 25 - Per the California Air Resources Board (CARB) Revised Proposed Short-Lived Climate Pollutant Reduction Strategy (SLCP Strategy), approximately fifty-four new facilities would need to be built in California by 2020 and approximately seventy-three new facilities would need to be built by 2025 to achieve the organic waste diversion targets in Senate Bill 1383. Permitting and constructing a new organic waste processing facility in California can take five to ten years, and can take much longer and be much more difficult in densely-populated urban areas such as Los Angeles County. Building the needed facilities to achieve 75 percent organic waste diversion is not likely to be feasible by 2025 without changes in State law and regulations to streamline permitting and CEQA processes. In developing organic waste regulations pursuant to SB 1383, CalRecycle must take a proactive position in identifying solutions for overcoming the barriers to permitting new organic waste processing facilities, especially in urban areas, and work with the Legislature, the Governor, and the stakeholders to implement these solutions.

Furthermore, the SLCP Strategy estimates that the capital cost to build enough facilities to achieve 75 percent organic waste diversion is over \$2 billion. Developing new and expanded infrastructure to achieve the organic waste diversion targets is not feasible without significant capital investment by the State, local governments, and the private sector. The Task Force questions the viability of funds/grants such as the Greenhouse Gas Reduction Fund (GGRF) since it is subject to annual adjustment, reduction, and/or elimination by the Legislature and the Governor during the State Budget adoption process. Assembly Bill 1613 (2016) appropriated only \$40 million in GGRF funds to CalRecycle for waste diversion (including organic waste diversion), GHG reduction programs, and infrastructure development. In developing regulations, CalRecycle should consider identifying funding sources for organic waste processing facilities. Furthermore, for Fiscal Year 2016-17, CalRecycle provided only \$12 million in GGRF grants for digestion projects, a sum which does not even provide for the siting of a single anaerobic digestion (AD) facility with 100 tons of organic waste per day capacity. The Governor, the California Air Resources Board (CARB) and CalRecycle should consider allocating more funding to projects with significant methane reduction benefit potential, such as AD infrastructure or co-digestion projects at wastewater treatment facilities.

- General Comment - The SB 1383 Regulatory Concepts presented in previous workshops propose expanding AB 876 (Chapter 593 of the 2015 state statute) organics recycling capacity requirements to include plans by jurisdictions to address insufficient capacity. CalRecycle should clarify whether regulations developed pursuant to SB 1383 have the authority to expand requirements established by AB 876. If not, AB 876 requirements should not be expanded. Furthermore, infrastructure capacity and planning should be limited to counties and regional agencies, since solid waste disposal and diversion planning is conducted more effectively on a countywide and regional scale.

## **EDIBLE FOOD RECOVERY:**

### **Local Jurisdiction Concepts:**

- Slide 41 - Proposition 218 requires that local governments must hold an election for any new property-related fees. Refuse collection fees are exempted from this requirement. The draft definition of edible food states that edible food is not solid waste. Therefore, it may be difficult to impose a fee on generators of edible food due to Proposition 218 requirements if edible food is not considered solid waste.

### **Additional Issues to Consider**

- Slide 4 – CalRecycle has specified that food waste makes up 18.1 percent of the disposal stream. It will be very difficult to quantify the progress in reaching the goal to recover 20 percent of edible food that is currently disposed of in landfill, because there is no existing data on how much of the food waste in the disposal stream is actually edible. CalRecycle's upcoming waste characterization study should quantify the amount of edible food in the waste stream.
- Slide 41 – If edible food is no longer considered solid waste, a significant portion of the disposal stream will no longer be considered. This means that a greater percentage of other types of organic waste will need to be diverted from landfill disposal to meet the 50 percent and 75 percent diversion goals. As such, is it the intent of CalRecycle to further require expansion of organic waste recycling programs by jurisdictions?

### **Tracking and Reporting of Edible Food Recovery:**

- Slide 49 - Jurisdictions and generators of edible food should not be responsible for tracking food donation data. Tracking should be done by food recovery organizations.

## **REPORTING:**

### **Tracking Organic Waste Disposal and Methane Reduction Mandate:**

- General Comment - The regulations should address how methane leakage will be avoided. There are limitations on the regulation of interstate commerce as it pertains to directing the flow of solid waste (including the organic portion), as established by the U.S. Supreme Court ruling on *C&A Carbone, Inc. v. Town of Clarkstown* in 1994. Therefore, there can be no prohibition on transporting organic waste to solid waste management facilities located outside of California and/or in foreign countries with lax solid waste regulations and low tipping fees. For example, if organic waste is transported to Arizona, it will then be disposed of in landfills, negating the intention of SLCP Strategy.

## **MARKET DEVELOPMENT:**

### **Comments:**

- General Comment - Any regulations pertaining to markets for organic waste by-products should consider the amount and type (woody, green, or other) of organic waste materials and by-products generated throughout the year. The regulations should consider where this organic waste material can be stored and how much space will be needed for storage of this material if it cannot be put on the market immediately, because organic waste materials and possibly by-products stored in piles can generate heat that could potentially cause fires and can also release greenhouse gases (GHGs). The regulations should also ensure that storage and/or management of organic waste materials and appropriate by-products are consistent with the requirements of other State agencies, including, but not limited to, the California Department of Food and Agriculture and the California Department of Forestry and Fire Protection.
- General Comment - The regulations should incentivize the development of alternatives to AD and composting. A substantial amount of organic waste and digestate remains after the AD process, and composting it all is not feasible in urban settings. The draft language deems organic waste sent to an operation or facility with processes that reduce SLCPs as determined by the Executive Officer of CARB to constitute a reduction of landfill disposal. Because non-combustion thermal conversion of digestate and other residuals from organic waste processing reduces SLCPs, the regulations should include these non-combustion thermal conversion technology processes as an acceptable means to reduce landfill disposal of organic waste as determined by the Executive Officer of CARB.
- General Comment - The regulations for using chipping and grinding and land application to manage organic waste should incorporate input from the California Department of Public Health, Food and Agriculture, and the State Water Resources

Control Board to ensure public health and safety while protecting our natural resources an environment.

## **MISCELLANEOUS AND OTHER COMMENTS:**

### **Additional Comments:**

- General Comment - CalRecycle and CARB must develop regulations within the framework of state law. The implementing regulations should not exceed the authority granted in the law to the point that they are neither cost-effective nor feasible.
- Slide 4 - The regulations should target the types of organic waste that are the greatest sources of methane production. For example, lumber generates little methane and the diversion of lumber from landfill should not be given equal priority to other types of organic waste such as food waste that generate large amounts of methane.

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

We respectfully request CalRecycle to address these questions, concerns, and recommendations in the next stakeholder workshop and any upcoming draft regulations.

Should you have any questions regarding these comments, please contact Mr. Mike Mohajer, a member of the Task Force, at MikeMohajer@yahoo.com or at (909) 592-1147.

Sincerely,



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



Mr. Scott Smithline  
July 21, 2017  
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cc: CalRecycle (Howard Levenson, Mark de Bie, Cara Morgan, Chris Bria & Graham  
Marshall)  
California Air Resources Board (Mary Nichols and David Mallory)  
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 (Carl Morehouse and Huasha Liu)  
Each City Recycling Coordinator in Los Angeles County  
Each Member of the Los Angeles County Integrated Waste Management Task  
Force  
Each Member of the Task Force Alternative Technology Advisory Subcommittee  
Each Member of the Task Force Facility Plan Review Subcommittee