



MARK PESTRELLA, CHAIR
MARGARET CLARK, VICE - CHAIR

LOS ANGELES COUNTY
SOLID WASTE MANAGEMENT COMMITTEE/
INTEGRATED WASTE MANAGEMENT TASK FORCE
900 SOUTH FREMONT AVENUE, ALHAMBRA, CALIFORNIA 91803-1331
P.O. BOX 1460, ALHAMBRA, CALIFORNIA 91802-1460
www.lacountyiswmtf.org

July 16, 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 JUNE 2019 PROPOSED REGULATION TEXT FOR
SENATE BILL 1383**

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 June 2019 Proposed Regulation Text, Second Formal Draft (proposed regulations, linked below), which was released on June 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/proptextjune2019.pdf>

An electronic copy of this comment letter will be emailed to the following:
SLCP.Organics@calrecycle.ca.gov

A. GENERAL COMMENTS

1. The Second Formal Draft of 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 landfill 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, and excessive inspection and monitoring reporting, while requiring counties and cities to impose steep penalties on residents and businesses.

The Task Force believes that the Second Formal Draft of the proposed regulations stipulate a number of mandates that are inconsistent with the provisions of the Article XI of the California Constitution in re to general law and charter cities and counties as well as provisions of the California Public Resources Code (PRC), Subdivision 40059 (a) which, in part, states, “*each county, city, district, or other local governmental agency may determine all the following:*”

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)

(as an example, see provisions of Articles 3, 14, and 15 through 17 of the mandates stipulated by the Second Formal Draft of the proposed regulations.)

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 landfill disposal 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 Second Formal Draft of 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 Second Formal Draft of the proposed regulations disproportionately place the responsibility on counties and cities even though they may encounter much more difficulty in raising charges, fees, or assessments than 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 Second Formal Draft of the proposed regulations be revised consistent with the provisions of the California Constitution and the California Law 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. SB 1383 does not provide CalRecycle with the authority to require local jurisdictions such as counties and cities to impose civil (monetary) penalties on residential or commercial organic waste generators for non-compliance. This requirement as stipulated by CalRecycle exceeds the authority granted to CalRecycle by State law.**

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 states 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).

However, the proposed regulations (Article 16, Section 18997.1) specify that jurisdictions “shall *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).” As proposed, a single-family dwelling may be subject to a penalty of \$100 for the first offense, \$200 for the second offense, and \$500 for the third and each subsequent offense in a given year.

In requiring counties and cities to impose steep civil penalties of up to \$500 per offense 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).

3. SB 1383 does not preclude CalRecycle from considering county or city “good faith efforts” to comply with the regulations as stated in the Second Formal Draft of the proposed 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.

4. Procurement Requirements.

The Second Formal Draft of the proposed regulations require local governments to purchase recovered/recycled organic waste products targets set by CalRecycle. While the Task Force 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 incurring for complying with the extensive programmatic requirements of the proposed regulations. Therefore, the Task Force respectfully requests 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 Second Formal Draft of the proposed regulations would impose a new program on local governments and neither the draft regulations nor the Amended 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 (emphasis added). 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. Overreaching Regulations – the Second Formal Draft of the Proposed Regulations.

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.

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):

(39.5) “Lifecycle greenhouse gas emissions or “Lifecycle GHG emission” - In reference to Section 18983.2 (a) (3), it is our understanding that the calculated greenhouse gas reduction of 0.30 MTCO_{2e}/short ton from composting organic waste is based on a modified assessment as documented in the Initial Statement of Reasons. For example, some factors such as the impact of greenhouse gas emission due to transportation of organic waste to distant facilities were omitted from analysis. We strongly believe that for the purpose of determination of technologies that constitute a reduction in landfill disposal, the impact of GHG emission from transportation need to be considered and the standard of 0.30 MTCO_{2e}/short ton of organic waste standard needs to be adjusted.

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

(39.5) “Lifecycle greenhouse gas emissions” or “Lifecycle GHG emissions” means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions), related to the full lifecycle of the technology or process that an applicant wishes to have assessed as a possible means to reduce landfill disposal of organic waste. The lifecycle analysis of emissions includes all stages of organic waste processing and distribution, including collection from a diversion location, waste processing, delivery, use of any finished material by the ultimate

consumer, ultimate use of any processing materials. The mass values for all greenhouse gases shall be adjusted to account for their relative global warming potential. However, for the purposes of Article 2 of these regulations, the aggregated quantity of greenhouse gas emissions shall not include emissions associated with other operations or facilities with processes that reduce short-lived climate pollutants, as that term is used in Article 2, that are similar to or consistent with those emissions that were excluded as the basis for developing the 0.30 MTCO₂e/short ton of organic waste standard.

2. In regards to the definition of “Organic Waste” as defined in Paragraph (46), at the CalRecycle’s SB 1383 Public Workshop held at the South Coast Air Quality Management District on June 18, 2019, a member of audience asked if “Organic Waste as defined includes Plastic?” to which Mr. Hank Brady responded “NO.” Therefore, the definition of “Organic Waste” needs to be revised to exclude plastic products.

The definition of “organic waste” in the regulations conflicts with 14 CCR §18720, which defines “organic waste” as “solid wastes originated from living organisms and their metabolic waste products, and from petroleum, which contain naturally produced organic compounds, and which are biologically decomposable by microbial and fungal action into the constituent compounds of water, carbon dioxide, and other simpler organic compounds.” Because this definition of organic waste includes solid waste originating from petroleum, i.e. plastics, the regulations should clarify that plastics are not considered “organic waste.”

The “organic waste” definition as proposed in Paragraph 46 includes the phrase “organic textiles and carpets.” The proposed regulations do not define the phrase “organic textile and carpets” and the definition needs to be provided.

- Proposed Regulatory Text and **Recommended Changes/Revisions:**
(46) “Organic 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. “Organic waste” does not include plastic products.

(53.5) “Plastic products” means any non-hazardous and non-putrescible solid objects made of synthetic or semi-synthetic organic compounds.

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

are determined to constitute a reduction in landfill disposal pursuant to Section 18983.2. (emphasis added).

- Proposed Regulatory Text and **Recommended Changes/Revisions:**
(62) “Renewable Gas” means gas derived from ~~organic waste that has been diverted from~~ a landfill or organic waste 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.

ARTICLE 2. LANDFILL DISPOSAL AND REDUCTIONS IN LANDFILL DISPOSAL

Section 18983.1. Landfill Disposal and Recovery

4. Comment(s):

The proposed regulations without establishing any definitions/restrictions use the term “disposal” and the phrase “landfill disposal” intermittingly and thus causing confusion. As established by AB 939, (1989), and its implementing regulations, the term “disposal” includes “landfill disposal” as well as other type of disposal, including transformation. However, within the scope of SB 1383, the term “disposal;” is limited to “landfill disposal” reduction only. As such, we recommend that the proposed regulations be expanded to define the term “disposal” and the phrase “landfill disposal.”

5. Comment(s):

SB 1383 requires the state to achieve specified targets to reduce the landfill disposal of organics. However, the regulations consider any disposition of organic waste not listed in Section 18983.1 (b) to be landfill disposal, including any thermal conversion technologies (CTs) besides biomass conversion. Public Resources Code (PRC) 40195.1 defines “solid waste landfill” as “a disposal facility that accepts solid waste for land disposal,” indicating that non-combustion thermal CTs which produce energy or fuels from solid waste rather than disposing solid waste on land should not be categorized as landfill disposal. The definition of “landfill” in Section 18983.1 (c) of these regulations contradicts PRC 40195.1. Section 18983.1 (c) defines “landfill” as “permitted landfills, landfills that require a permit, export out of California for disposal, or any other disposal of waste as defined by Section 40192 (c) of the Public Resources Code [the final deposition of solid wastes onto land].” The definition of “export out of California for disposal” could potentially include thermal CTs, while the definition of “solid waste landfill” in PRC 40195.1 is clearly limited to land disposal only and does not include thermal CTs.

It is our understanding that thermal CTs are classified as landfill disposal due to concerns over their emissions. Although thermal CTs produce some limited emissions of greenhouse gases, dioxins, furans, volatile organic compounds, and criteria pollutants, these emissions do not have the multiplicative effects of methane emissions, which are 72 times more powerful than emissions of carbon dioxide in terms of atmospheric warming

according to the California Air Resources Board. By replacing sources of fossil-based energy, thermal CTs actually reduce life-cycle methane emissions. Therefore, the regulations should not exclude any process or technology from being considered a reduction in landfill disposal, except for final deposition at a landfill or organic waste used as alternative daily cover, pursuant to Assembly Bill 1594 (Chapter 719 of the 2014 State Statutes).

- Proposed Regulatory Text and **Recommended Changes/Revisions:**
 - (a) The following dispositions of organic waste shall be deemed to constitute landfill disposal:
 - (1) Final deposition at a landfill.
 - (2) Use as Alternative Daily Cover or Alternative Intermediate Cover at a landfill.
 - (A) The use of non-organic material as landfill cover shall not constitute disposal of organic waste.
 - (B) If as a part of the approval process pursuant to Section 20690 or 20700 of Title 27 Division 2, the operator demonstrates that approved material recovery fines that will be used for cover material do not include organic waste, the use of material recovery fines shall not constitute disposal of organic waste.

~~(3) Any other disposition not listed in subsection (b) of this section.~~

6. Comment(s):

In addition to anaerobic digestion and composting, biosolids and digestate can also be processed through gasification. Biosolids and digestate that are gasified produce biochar, an organic soil amendment. The Task Force recommends that CalRecycle include the land application of biochar produced from biosolids and digestate 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 of compostable material, consistent with Section 17852 (a) (24.5) of this division subject to the following conditions on particular types of compostable material used for land application:
 - (A) Green waste or green material used for land application 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 used for land application 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 used for land application 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 or gasified, 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 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

7. 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 (a) (3) states “To determine if the proposed operation counts as a permanent reduction in landfill disposal, the Department in consultation with CARB’s Executive Office shall compare the permanent lifecycle GHG emissions reduction of metric tons of carbon dioxide equivalent (MTCO_{2e}) per short ton organic waste reduced by the process or technology, with the emissions reduction from *composting* organic waste (0.30 MTCO_{2e}/short ton 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*).

The regulations state that the Department shall provide a response to all applicants requesting verification of new technologies that constitute a reduction in landfill disposal within 180 days. The regulations should be revised so that if the Department fails to provide a response, the application is considered approved and verified as a technology that constitutes a reduction in landfill disposal.

- Proposed Regulatory Text and **Recommended Changes/Revisions:**
(2) The Department shall consult with The Executive Officer of the California Air Resources Board to evaluate if the information submitted by the applicant is sufficient to estimate the greenhouse gas emissions and permanent lifecycle GHG emissions reduction of the proposed recovery process or operation. Within 30 days of receiving the application, the Department shall inform the applicant if they have not submitted sufficient information to estimate the greenhouse gas emissions and permanent lifecycle greenhouse gas emissions reductions associated with the proposed recovery process or operation. For further consideration of any application submitted without sufficient information, the applicant is required to submit the requested information. The Department shall provide a response to the applicant within 180 days of receiving all necessary information as to whether or not the proposed recovery process or operation results in a permanent reduction in greenhouse gas emissions, and therefore counts as a reduction in landfill disposal. **If the Department fails to provide a response to the applicant within 180 days of receiving all necessary information, the application shall be considered approved and the proposed recovery process or operation shall count as a reduction in landfill disposal.**

ARTICLE 3. ORGANIC WASTE COLLECTION SERVICES

Section 18984.9. Organic Waste Generator Requirements.

8. Comment(s):
Generators that are not commercial businesses are not required to provide organic waste collection containers in restrooms. However, the definition of “organic waste” in Section 18982 (a) (46) includes “paper products.” “Paper products” are defined in Section 18982 (a) (51) to include paper janitorial supplies, tissue, and toweling. Therefore, the Task Force requests clarification from CalRecycle on whether paper products generated in the restroom of a commercial business are required to be diverted through any of the activities listed in Section 18983.1 (b) and whether a commercial business or a jurisdiction could be penalized for disposing paper products generated in the restroom of commercial business.

Section 18984.12. Waivers and Exemptions Granted by the Department

9. Comment(s):
There are numerous areas of the County with elevations around 1,000 feet above sea level or higher that experience significant issues with bears and other wild animals scavenging for food in trash cans. CalRecycle should consider authorizing the

Department of Fish and Wildlife to grant elevation waiver extensions for areas at elevations lower than 4,500 feet above sea level that experience similar challenges to food waste collection.

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

- (d) Elevation Waivers:

- (1) An incorporated city may apply to the Department for a waiver for the jurisdiction and some or all of its generators from the requirement to separate and recover food waste and food soiled paper if the jurisdiction is located at or above an elevation of 4,500 feet. An incorporated city may apply to the Department of Fish and Wildlife for a waiver for the jurisdiction and some or all of its generators from the requirement to separate and recover food waste and food soiled paper if the jurisdiction is located at or above an elevation of 1,000 feet and below an elevation of 4,500 feet.

- (2) A county may apply to the Department for a waiver for some or all of its generators from the requirement to separate and recover food waste and food soiled paper in census tracts located in unincorporated portions of the county that are located at or above 4,500 feet. A county may apply to the Department of Fish and Wildlife for a waiver for some or all of its generators from the requirement to separate and recover food waste and food soiled paper in census tracts located in unincorporated portions of the county that are located at or above an elevation of 1,000 feet and below an elevation of 4,500 feet.

10. 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:**

- (e) Nothing in this section exempts a jurisdiction from:

- (1) Its obligation to provide organic waste collection services that comply with the requirements of this article to businesses subject to the requirements of Section 42649.81 of the Public Resources Code, although the Department may grant waivers and/or extensions to any jurisdiction that has made good faith efforts to comply with the requirements of this article but has been unable to comply due to circumstances outside its control.

Section 18984.13. Emergency Circumstances, Abatement, and Quarantined Materials

11. Comment(s):

The Task Force believes that the regulations should not require jurisdictions to separate or recover organic waste discarded in publicly-accessible waste bins, such as at public parks and beaches, to protect public health and safety. It may be very difficult to prevent the public from placing prohibited container contaminants in public organic waste collection bins. Furthermore, public organic waste collection bins may encourage

scavenging practices, posing significant public health and safety issues in urban jurisdictions such as Los Angeles County.

- Proposed Regulatory Text and **Recommended Changes/Revisions:**
(c) A jurisdiction is not required to separate or recover organic waste that is removed from homeless encampments, **and illegal disposal sites, and publicly-accessible waste receptacles at beaches, parks, or other similar facilities** as part of an abatement activity to protect public health and safety. If the total amount of solid waste removed for disposal **from homeless encampments and illegal disposal sites** pursuant to this subdivision is expected to exceed 100 tons annually the jurisdiction shall record the amount of material removed.

12. Comment(s):

The waivers in this section allow organic waste removed from homeless encampments or illegal disposal sites and organic waste subject to quarantine to be disposed to protect public health and safety. The regulations should clarify that any organic waste subject to these waiver exemptions that is disposed will not count toward jurisdiction waste disposal calculated for compliance with Assembly Bill 939 and any future waste disposal reduction or waste diversion compliance mandates.

In addition, local county agricultural commissioners have delegated authority from the California Department of Food and Agriculture (CDFA) to regulate quarantined waste. Therefore, the regulations should be revised to allow jurisdictions to receive the necessary approvals from local county agricultural commissioner's instead of the CDFA to dispose of specific types of organic waste that are subject to quarantine.

- Proposed Regulatory Text and **Recommended Changes/Revisions:**
(c) A jurisdiction is not required to separate or recover organic waste that is removed from homeless encampments and illegal disposal sites as part of an abatement activity to protect public health and safety. If the total amount of solid waste removed for disposal pursuant to this subdivision is expected to exceed 100 tons annually the jurisdiction shall record the amount of material removed. **The Department shall not count any organic waste that is removed from homeless encampments and illegal disposal sites and subsequently disposed toward jurisdiction waste disposal for compliance with any existing or future state waste disposal reduction or waste diversion compliance mandates.**
(d) A jurisdiction may dispose of specific types of organic waste that are subject to quarantine and meet the following requirements:
 - (1) The organic waste is generated from within the boundaries of an established interior or exterior quarantine area defined by the California Department of Food and Agriculture for that type of organic waste;
 - (2) The California Department of Food and Agriculture or the County Agricultural Commissioner determines that the organic waste must be disposed at a solid waste landfill and the organic waste cannot be safely recovered through any of the recovery activities identified in Article Two of this chapter;

(3) The Jurisdiction retains a copy of the California Department of Food and Agriculture or the County Agricultural Commissioner approved compliance agreement for each shipment stating that the material must be transported to a solid waste landfill operating under the terms of its own compliance agreement for the pest or disease of concern.

(4) The Department shall not count any organic waste subject to quarantine that is disposed toward jurisdiction waste disposal for compliance with any existing or future state waste disposal reduction or waste diversion compliance mandates.

ARTICLE 4. EDUCATION AND OUTREACH

Section 18985.1. Organic Waste Recovery Education and Outreach

13. 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:**
(7) If a jurisdiction allows generators subject to its authority to self-haul organic waste pursuant to Section 18988.1, the jurisdiction shall require solid waste facility operators accepting organic material from the jurisdiction to provide information regarding self-hauling requirements ~~shall be included in education and outreach material.~~

ARTICLE 11. ORGANIC WASTE RECYCLING CAPACITY PLANNING

Section 18992.1. Organic Waste Recycling Capacity Planning

14. Comment(s):

In Section 18992.1 (f), the regulations include “digestate and biosolids” within the organic waste material types that must be analyzed for capacity planning purposes. In the latest version of CalRecycle’s Characterization of Solid Waste in California report, these two materials are not included in the report. Since there is no guarantee that the county and/or jurisdictions within will develop their own waste characterization study with quantities for digestate and biosolids, the Task Force recommends that CalRecycle allow a third means of estimating the disposal to assist in the capacity planning analysis; for example, reports from local wastewater treatment plants that quantify the tonnage (or percentage) of biosolids that are sent to land disposal.

- Proposed Regulatory Text and **Recommended Changes/Revisions:**
(a) Counties, in coordination with cities and regional agencies located within the county, shall:

- (1) Estimate the amount of all organic waste in tons that will be disposed by the county and jurisdictions within the county by:
 - (A) Multiplying the percentage of organic waste reported as disposed in the Department's most recent waste characterization study by the total amount of disposal attributed to the county and each jurisdiction located within the county by the Recycling and Disposal Reporting System; or,
 - (B) Using a waste characterization study or studies performed by jurisdictions located within the county and applying the results of those studies to the total amount of disposal attributed to the county and each jurisdiction located within the county by the Recycling and Disposal Reporting System. Local studies may be used if the studies:
 1. Are more recent than the Department's most recent waste characterization study,
 2. Include at least the same categories of organic waste as the Department's most recent waste characterization study
 3. Include a statistically significant sampling of solid waste disposed of by the jurisdiction conducting the study.

(C) Using a published report or another form of data generated by the appropriate solid waste management entities within the county that provides organic waste disposal tonnages or percentages for one, or all, of the organic waste material types that must be analyzed for capacity planning purposes.

Section 18992.2. Edible Food Recovery Capacity

15. Comment(s):

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.

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

(b) In complying with this section, the county in coordination with cities and regional agencies located within the county shall consult with edible food recovery organizations and edible food recovery services regarding existing, or proposed new and expanded, capacity that could be accessed by the jurisdiction and its commercial edible food generators. **If a city, regional agency, or edible food recovery agency fails to provide the information necessary to comply with the requirements of this article within 120 days, the county is not required to include estimates for that jurisdiction or edible food recovery agency in the report it submits pursuant to Section 18992.3.**

ARTICLE 12. PROCUREMENT OF RECOVERED ORGANIC WASTE PRODUCTS

Section 18993.1. Recovered Organic Waste Product Procurement Target

16. Comment(s):

The per capita procurement target was increased from 0.07 to 0.08 tons of organic waste per California resident per year. The Amendment to the Original January 2019 Initial Statement of Reasons (ISOR) was not updated to explain why the per capita procurement target is now 0.08 tons per resident per year. The ISOR should be updated to provide a justification for the increase in the procurement target, or the regulations should be revised to change the procurement target back to 0.07 tons per resident per year.

- Proposed Regulatory Text and **Recommended Changes/Revisions:**
 - (b) Annually, the Department shall confirm and provide notice of the annual recovered organic waste product procurement target for each jurisdiction, which shall be calculated by multiplying the per capita procurement target by the jurisdiction population where:
 - (1) Per capita procurement target = **0.07** ~~0.08~~ tons of organic waste per California resident per year.

17. Comment(s):

The recovered organic waste products that a jurisdiction may procure to satisfy its procurement requirements should be expanded to include all recovered organic waste products from composting, anaerobic digestion, biomass conversion, and all other technologies determined to constitute a reduction in organic waste disposal. For example, the Task Force recommends that the procurement of all organic waste products produced from biomass conversion, such as transportation fuel, heating, and pipeline injection, should also satisfy a jurisdiction's procurement target.

- Proposed Regulatory Text and **Recommended Changes/Revisions:**
 - (f) For the purposes of this article, the recovered organic waste products that a jurisdiction may procure to comply with this article are:
 - (1) Compost, subject to any applicable limitations of Public Contract Code Section 22150, that is produced at:
 - (A) A Compostable material handling operation or facility permitted or authorized under Chapter 3.1 of this Division; or
 - (B) A Large volume in-vessel digestion facility as defined and permitted under Chapter 3.2 of this Division that compost on-site. [NOTE: Digestate, as defined in Section 18982 (a) (16.5), is a distinct material from compost and is thus not a recovered organic waste product eligible for use in complying with this Article.]
 - (2) Renewable gas used for fuel for transportation, electricity, heating applications, or pipeline injection,
 - (3) Electricity from biomass conversion**
 - (g) The following conversion factors shall be used to convert tonnage in the annual recovered organic waste product procurement target for each jurisdiction to equivalent amounts of recovered organic waste products:
 - (1) One ton of organic waste in a recovered organic waste product procurement target shall constitute:
 - (A) 21 diesel gallon equivalents, or "DGE," of renewable gas in the form of transportation fuel.

- (B) 242 kilowatt-hours of electricity derived from renewable gas
- (C) 22 therms for heating derived from renewable gas
- (D) 27 therms for pipeline injection of renewable gas
- ~~(E) 650 kilowatt-hours of electricity derived from biomass conversion~~
- (F) 0.58 tons of compost, or 1.45 cubic yards of compost.

ARTICLE 14. ENFORCEMENT REQUIREMENTS

18. 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. take enforcement action(s)} of non-local entities, federal agencies/facilities, and local education agencies with appropriate requirements of this Article. Although a local jurisdiction may educate non-local entities, federal agencies/facilities, universities/colleges and local education agencies (community colleges and school districts) of the requirements of this chapter, a local jurisdiction does not have the authority to enforce compliance on non-local entities, federal agencies/facilities, and local education agencies.

Section 18995.1. Jurisdiction Inspection and Enforcement Requirements

19. Comment(s):

This section refers to “garbage accounts” for commercial businesses for which the jurisdiction must complete a compliance review. The regulations should define the term “garbage accounts” for clarity to allow jurisdictions to satisfy this requirement.

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

Section 18997.2. Penalty Amounts

20. Comment(s):

The regulations should allow jurisdictions to provide hardship waivers to certain generators, property owners, or business owners to reduce the financial burden of the penalties. The hardship waivers would not in any way exempt a regulated generator, property owner, or business owner from subscribing to organic waste collection services and would only provide a partial or whole exemption from paying a financial penalty. The criteria for granting hardship waivers would be developed by local jurisdictions and approved by the Department.

- Proposed Regulatory Text and **Recommended Changes/Revisions:**
 - (b) Consistent with the requirements prescribed in Government Code Sections 53069.4, 25132 and 36900 the penalty levels shall be as follows:
 - (1) For a violation classified as Level 1, the amount of the base penalty may be \$50-\$100 per offense:

- (2) For a violation classified as Level 2, the amount of the base penalty may be \$100-\$200 per offense:
- (3) For a violation classified as Level 3, the amount of the base penalty may be \$250-\$500 per offense.
- (4) For any violation classified as Level 1, Level 2, or Level 3, a generator, property owner, or business owner may request a financial hardship waiver from the jurisdiction imposing the penalty.**

Section 18997.3. Department Penalty Amounts

21. Comment(s):

The titles of Tables 6, 8, 9, and 10 should be revised to clarify whether the penalties in these tables would be imposed by jurisdictions on applicable entities, by CalRecycle on the appropriate listed entity, OR on jurisdictions for failing to enforce the requirements on the applicable entities, such as haulers, organic waste generators, property owners, etc. This issue needs to be addressed by the next formal draft of the proposed regulations.

22. Comment(s):

Pursuant to Section 41850 (a) of the Public Resources Code, SB 1383 authorizes CalRecycle to impose penalties of up to \$10,000 per day upon jurisdictions for failure to comply with regulations. However, as currently written, Section 18997.3 of the second draft of the proposed regulations appears to provide for CalRecycle's penalties to be concurrent and cumulative (emphasis added). For example, if CalRecycle finds a jurisdiction in violation of several requirements (let's assume nine) of the proposed regulations and each violation is subject to a maximum stipulated penalty of \$10,000 per day, then the jurisdiction could be subject to a penalty of \$90,000 per day. This is not consistent with state law (PRC, Section 42652.5). Therefore, Section 18997.3 needs to be revised to include provisions which specifically prohibit CalRecycle from imposing cumulative penalties, regardless of the number of violations by a jurisdiction, while limiting the amount of penalties that CalRecycle is allowed to impose on a jurisdiction for failure to comply with any or all requirements of the proposed regulations to a maximum amount of \$10,000 per day.

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

(f) Penalties imposed on a jurisdiction for violations of the regulations as stipulated in the Article 16 are not cumulative, regardless of number of penalties at a given time. Additionally, the maximum penalty amount that the Department is authorized to impose on a jurisdiction for failure to comply with any or all requirements of this Chapter is limited to an amount not to exceed \$10,000 per day.

23. Comment(s):

The intent of Subsection 18997.3 (e) is unclear. The Task Force assumes that the intent is to provide a mechanism to apply partial fines on a jurisdiction for not meeting the full procurement target of the proposed regulations. However, this needs to be clarified in order to avoid the misperception that the regulation is establishing a daily procurement

target/expectation (emphasis added). It is unreasonable to expect that jurisdictions in state purchase organic waste byproducts (fuel, RNG, compost, etc.) on a daily basis and thus CalRecycle needs to establish a daily penalty if a jurisdiction fails to meet its expected/calculated daily procurement target. Additionally, due to lack of adequate infrastructure, we believe that the subject proposal should be deleted until sometime in the future pending market and infrastructure development. As an alternative, CalRecycle can consider the following:

- Proposed Regulatory Text and **Recommended Changes/Revisions:**
 - (e) For violations of the Recovered Organic Waste Product Procurement requirements in Section 18993.1, where a jurisdiction fails to procure a quantity of recovered organic waste products that meets or exceeds its **annual** recovered organic waste product procurement target, the Department shall determine penalties based on the following:
 - (1) The Department shall calculate the jurisdictions daily procurement target Equivalent for **each jurisdiction by dividing the procurement target by 365 days.**
 - (2) The Department shall determine **each jurisdiction annual the number of days a jurisdiction was in compliance with the annual procurement target by dividing the total amount of recovered organic waste products procured by the daily procurement target equivalent.**
 - ~~(3) The Department shall determine the number of days a jurisdiction was out of compliance with the procurement target by subtracting the number of days calculated in (2) from 365 days.~~
 - ~~(4-3)~~ The penalty amount shall be calculated by determining an appropriate penalty level based on the factors in subdivision (d), above, **and multiplying that number by the number of days determined according to subsection (e)(3), above.** The penalty amount shall not exceed \$10,000 per **day year.**

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
July 16, 2019
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We respectfully request CalRecycle to address these comments, concerns, and recommendations in the next formal draft of the proposed 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
Mayor, City of Rosemead

KV:mq

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cc: CalRecycle (Howard Levenson, Mark de Bie, Cara Morgan, Hank Brady, Georgianne Turner, Chris Bria, Marshalle Graham, and Gwen Huff)
California Air Resources Board (Mary Nichols and David Mallory)
California Department of Fish and Wildlife
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 and Plan Review Subcommittee