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California Refuse Recycling Council  
California State Association of Counties  
Inland Empire Disposal Association  
League of California Cities  
Los Angeles County Waste Management Association  
Republic Services  
Rural County Representatives of California  
Sacramento County  
Sanitation Districts of Los Angeles County  
Solid Waste Association of Orange County  
Urban Counties of California  
Waste Connections Inc.*

January 15, 2018

Mr. Hank Brady  
Senate Bill 1383 Manager  
California Department of Resources  
Recycling and Recovery  
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Transmittal Via E-mail: [SLCP.Organics@calrecycle.ca.gov](mailto:SLCP.Organics@calrecycle.ca.gov)

**RE: Comments on Senate Bill 1383 Draft Proposed Regulations – Dated October 24, 2017**

Dear Mr. Brady:

First, we want to offer our thanks for this opportunity to provide you with specific recommendations for revisions to the SB 1383 Draft Proposed Regulations. We understand that the CalRecycle Draft Regulations are a starting point for discussion and we offer our recommended changes in that same light. The regulations are complex and the recommendations presented in this document cover our principal concerns with the Draft Regulations. While we also have significant concerns about the details of the regulations, these concerns may be alleviated if our principal concerns can be resolved. We will most certainly provide additional comments as future Draft Regulations are released for informal and formal public comment.

At the outset, we want to note that while we support a reasonable goal of reducing SLCP's and the disposal of organics, we believe that these goals cannot be achieved without:

- A dramatic increase in markets for compost and renewable fuels.
- Substantial solid waste and recycling rate increases or other sources of funding,
- Historic revisions to existing state requirements for siting and permitting solid waste infrastructure including CEQA.

We have repeatedly cited CalRecycle reports that support the fact that we have built roughly 180 active anaerobic digesters and compost facilities in the past 25 years. We have also provided research, that has yet to be disputed, that to meet the 75 percent organics reduction goal set by SB 1383, we will need to finance, site, permit, and build at least double that number of facilities in the next 5-7 years at a cost of around \$3 billion in capital investment.

That is not to say we have not begun to work towards its implementation. In fact, we are aggressively engaged in implementing mandatory commercial recycling and mandatory commercial organics recycling. That work already in place should set the stage for the SB 1383 implementing regulations. We firmly believe that we are all partners in working toward achieving the state's goals. CalRecycle and other state agencies, federal agencies, the local public sector, the private sector, and the public all have a share of the responsibility. But we must bear that responsibility in a mindful manner that does not result in unintended negative structural or fiscal consequences.

- **Consistency with the Provisions of SB 1383**

Our main concern is that the proposed regulations take an approach that in our view is not supported by the language or intent of SB 1383. CalRecycle and ARB must develop regulations within the framework of existing state law. The implementing regulations should not exceed the authority granted in the law, and especially where they are neither cost-effective nor feasible.

We acknowledge that SB 1383 sets several aggressive targets for organics diversion over the next 5-7 years. But we also understand that the SB 1383 regulations must be developed within the express requirements and limitations of SB 1383. Furthermore, we do not believe that SB 1383 mandates a rejection of our existing solid waste franchise system and infrastructure.

- **Consistency with AB 939, AB 341 and AB 1826**

Further, we believe that any regulatory system that does not build off the billions of dollars invested in our very effective AB 939 infrastructure is destined to become a ratepayer disaster and an ultimate failure. Unless we make SB 1383 compliance cost effective, compliance will be extraordinarily expensive and will not result in greater compliance. Rather, such a system will produce local government and ratepayer backlash and an unwillingness by all to support recycling efforts.

Today's AB 939 infrastructure has also been the backbone of implementing commercial recycling under AB 341 and AB 1826. While we have certainly experienced some obstacles in implementing these programs, we have also seen significant progress. Yet, the fact that we have already experienced significant barriers in implementing AB 341 and AB 1826 (such as the resistance by customers and municipalities to increased solid waste handling costs; the lack of facilities; permitting obstacles) should serve as a cautionary tale in viewing the far more drastic changes that would be required under the proposed regulations.

- **Enabling the Franchise System**

AB 939 compliance was built from our system of local franchises. Billion dollar investments require long-term contracts and system stability. The current franchise system has been a key factor in this state's achievement of the 50% diversion mandate in AB 939 and a near 80% recycling rate for beverage containers.

We are concerned that the current proposed SB 1383 regulations do not adequately consider the potential for disruption of current local franchises. We believe that the regulations as written, rather than supporting local franchises, will require drastic revisions in existing franchises by imposing very specific new contamination standards, definitional changes that conflict with existing law and existing franchise agreements, unnecessarily restrictive and expensive container requirements, stringent sampling, and enforcement requirements that will need to be incorporated into existing franchises. These new requirements will unquestionably require substantial rate increases across the state.

Rather than allowing the franchise system to accommodate local and regional markets, existing local infrastructure and local preferences for programs, the draft regulations in many ways impose a one size fits all approach that does not consider the vastly varying demographics between California jurisdictions.

The following recommendations are based on the principles discussed above and are offered as an alternative solution that builds off our existing franchise system strengths.

We are presenting our recommendations in the form of specific amendments to the text of the initial Proposed Draft Regulations. We also included a description of our concerns and explanation of our proposed recommendations. Our amendments are highlighted in blue.

The members of the coalition submitting this letter are grateful for this opportunity to comment. We are still evaluating the proposed text, and understand that a new draft with revised text will issue shortly. Accordingly, we each reserve the right to submit individual comments and to identify additional concerns as this rulemaking progresses.

Again, we appreciate your consideration of these recommendations and we look forward to meeting with you for further discussion.

## PROPOSED SOLID WASTE INDUSTRY GROUP (SWIG) AMENDMENTS TO PROPOSED SLCP REGULATIONS

October 24, 2017 Draft

### A. ARTICLE 1 Definitions

#### 1. Definition of Organic Waste

The Proposed Regulations broadly define organics as solid wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food waste, green waste, landscape and pruning waste, applicable textiles and carpets, wood, lumber, fiber, manure, biosolids, digestate and sludges.

This definition is much broader than the Mandatory Commercial Organics Recycling definition of “Organic waste” in PRC Section 42649.8, which is:

“Organic waste” means food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste.

Thus, the definition of “organic waste” in the Proposed Regulation adds additional materials to the commercial recycling definition. It therefore creates an inconsistency between the Proposed Regulations and the PRC, and will likely sow confusion.

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 can generate greater amounts of methane.

**Recommendation:** We recommend that the focus be on high SLCP organics and only add new types of organics to the definition after an analysis that verifies that markets for that material are available and viable. The definition of “organics” contained in SB 1826 is the best starting point for SB 1383 for the reasons discussed above. If CalRecycle through a public process can show that markets are developing for organic materials contained in the expanded AB 1826 definition, only then should the regulations be amended.

**Amendment:** On page 4, delete lines 50-52 and insert: [“Organic waste” means food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste.](#)

### B. Article 2 Landfill Disposal and Reductions in Landfill Disposal

#### 1. Section xxxx20.1(a)(2) - Redefining Disposal

The proposed language in Section xxxx20.1(a)(2) defines all beneficial reuse at landfills as disposal. This proposal is inconsistent with the current statute.

Public Resources Code (“PRC”) Section 41781.3 states that “the use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including use of alternative daily cover, which reduces or eliminates the amount of solid waste being disposed pursuant to Section 40124, shall constitute diversion through recycling and shall not be considered disposal for purposes of this division.”

The “division” is the entire Waste Management Division in the PRC, sections 40000 thru the end. This rule is therefore embedded in all of the statutory authority for CalRecycle. PRC §40124 defines “diversion” to mean

“activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division, including Article 1 (commencing with Section 41780) of Chapter 6. Therefore, the Legislature has previously declared that the beneficial reuse of Solid Waste (obviously, this includes organics) at landfills is diversion and not disposal. To the extent SB 1383 amends Division 40, it does not redefine “disposal” or “diversion.” Instead it refers in general terms to “organic waste disposal reduction targets.”

From a practical perspective, there are many other uses of organic waste at landfills that provide legitimate uses and benefits such as slope stability and landscaping. If the same organic waste is processed offsite and then delivered as a material to the landfill for the same use, this would not count as disposal; therefore, on-site generation should not be considered disposal.

**Recommendation:** Use the current definition of disposal in PRC 41781.3 for the baseline and for defining nondisposal of organics at a landfill.

**Amendment:**

### **Section xxxx20.1 Landfill Disposal and Recycling**

- (a) The following dispositions of organic waste shall be deemed to constitute landfill disposal:
  - (1) Final ~~deposition at~~ disposal at a landfill.
  - (2) ~~Beneficial reuse at a landfill, including but not limited to Alternative Daily Cover and Alternative Intermediate Cover.~~
  - (2) Any other disposition in a landfill not listed in subsection (b) of this section.
- (b) Organic waste sent to a landfill for beneficial reuse or to any other of ~~one~~ the following facilities or activities shall be deemed not to constitute landfill disposal and shall constitute a reduction of landfill disposal, except for any residual material sent from one of these facilities for final disposal at a landfill disposal, as that term is defined in subsection (a) of this section, shall still be deemed to constitute landfill disposal:
  - (1) An operation that qualifies as a “Recycling Center” as set forth in section 17402.5(d), or is listed in section 17402.5(c);
  - (2) A “Compostable Material Handling Operation or Facility” as defined in section 17852(a)(12), or small composting activities that would otherwise be excluded from that definition pursuant to section 17855(a)(4);
  - (3) An “In-vessel Digestion Operation of Facility” as defined in section 17896.2(a)(14);
  - (4) A Biomass Conversion operation or facility as defined in section 40106 of the Public Resources Code;
  - (5) The beneficial reuse of solid waste at a landfill consistent with the provisions of section 41781.3 (a) of the Public Resources Code.
  - (6) Land application as defined in section 17852(a)(24.5).
  - (7) Other operations or facilities with processes that reduce short-lived climate pollutants as determined by the Director in consultation with the Executive Officer of the California Air Resources Board pursuant to section xxxx20.2.
- (c) For the purposes of this section, the term “landfill” includes permitted landfills, and 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.
- (d) For the purposes of this section, edible food that would otherwise be disposed that is recovered for human consumption shall constitute a reduction of landfill disposal.

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

We also have recommended changes to the process that is outlined in the proposed regulations regarding technology verification. While we recognize that CARB is generally the state agency charged with determining GHG reductions, the agency does not possess detailed expertise regarding solid waste industry technical issues, and therefore we believe these determinations should be made by the Director of CalRecycle in consultation with the CARB. Furthermore, in order to conserve both the State’s resources and be as efficient as possible, we propose

that the regulations specify that generic technology-based evaluations be prepared that project/facility developers can rely on, while a case-by-case application process would also be available for anything not qualifying for one of the generic technology-based evaluations. There may be analogous processes in existence already that could be used as a model, such as CARB's Low Carbon Fuel Standard or Carbon Offset Protocol programs.

**Recommendation:** Streamline the process for verification of technologies, and eliminate references to the Short-Lived Climate Pollutant Strategy. Provide that the Director makes the decision in consultation with CARB and stakeholders.

**Amendment:**

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

- (a) The Department shall make determinations that technologies qualify as non-landfill disposal technologies based on a determination that the methane emission reductions are equivalent to, or greater, than those which are assumed from a composting operation. Such determinations shall be based on an analysis conducted by the Department in consultation with the California Air Resources Board (CARB) and stakeholders. Determinations shall be made based on the types of organic materials that may be processed, the average moisture content, and industry standards for emission reduction factors for the technology. The Department shall make these determinations, as produced pursuant to paragraph (a), available on its website.
- (b) The Department shall review and approve applications from project developers based on a certification that their proposed facility qualifies under the determination.
- (c) For any organic waste recycling operations not covered under section xxx20.1(b)(1) through xxxx20.1(b)(5), technology for which the Department has not made a determination, an applicant may apply for a project or facility-specific determination, in accordance with the following process shall determine if the proposed organic waste recycling operation (proposed operation) shall be deemed to constitute a reduction of landfill disposal:
  - ~~(1) The Department shall not deem a proposed operation to constitute a reduction in landfill disposal unless the applicant can demonstrate that the methane emission reductions are equivalent to, or greater than those which are assumed from a composting operation based on an analysis conducted by the Department in consultation with in the California Air Resources Board (CARB) and stakeholders adopted Short Lived Pollutant Reduction Strategy (March 2017), which is incorporated by reference.~~
  - (2) The applicant shall submit the necessary information to the Department for it to determine if the proposed operation constitutes a reduction in landfill disposal. This information shall include, but may not be limited to the following information:
    - (A) Name and address of the facility.
    - (B) Type(s) of organic material being processed.
    - (C) Mass, in tons, of the organic material being processed per year.
    - (D) Average moisture content of the organic material being processed.
    - (E) Detailed explanation of the processes or technologies utilized by the applicant for the proposed organic waste recycling operation.
    - (F) All calculations, assumptions, and/or emission factors used by the applicant to determine the methane reduction potential of the proposed operation.
    - (G) Any other information relevant to make a determination.
  - (3) The Department shall consult with CARB to verify that the information submitted by the applicant is sufficient to determine the methane reduction potential of the proposed operation, and request a calculation of a methane emission reduction factor for the proposed operation consistent with the a calculation developed in a public process in consultation with the California Air Resources Board and stakeholders utilized to estimate GHG reductions for organics diversion activities in CARB's Short Lived Climate Pollutant Reduction Strategy.
  - (4) The results of CARB's calculation process will be used by the Department to determine if the proposed operation results in a reduction in landfill disposal.

### C. Article 3 Mandatory Organic Waste Collection

#### 1. **Section xxx30.1 Source-separated Organic Waste Collection Service – Waivers for Source-separated Organic Waste Collection Service**

This section requires jurisdictions to provide source-separated organic waste collection to every generator, except for jurisdictions that have mixed waste organic collection services that meet certain criteria. However, section xxx30.3 provides for waivers in certain situations.

**Recommendation:** We recommend adding the waivers as an exception in xxx30.1(a). WE also recommend adding split containers to the requirement that we provide generators with an organics bin.

**Amendment:**

#### **Section xxx30.1 Source-separated Organic Waste Collection Service**

*(a) Except as provided in section xxx30.2 and section xxx30.3 a jurisdiction shall provide a source-separated organic waste collection service that complies with the following:*

- (1) The service shall be provided to every organic waste generator located within the territory subject to its jurisdiction.*
- (2) Every generator shall be provided a separate container, split containers, or containers, for the separate collection of organic waste.*

#### 2. **Section xxx30.1 Source-separated Organic Waste Collection Service – Disposal Bin Requirements**

**Section xxx30.1 (a)(2)(C)** states that disposal containers shall only be intended for non-organic wastes and shall not be used for the collection of organic waste. And section xxx30.1(b) requires jurisdictions to require generators to comply with the Article 5, including placing materials in proper bins. This appears to constitute an outright ban on placing any amount of organic wastes in a non-organic waste container, when the goal of SB 1383 is 50 percent reduction of organic waste disposal in landfills by 2020 and 75 percent by 2025.

**Recommendation:** We recommend the following change to section xxx30.1 (a)(2)(C) to clearly state that the disposal bin is intended for non-organic materials and not impose an absolute and impossible to implement ban on any incidental organics in the disposal bin.

**Amendment:**

#### **Section xxx30.1 (a)(2)(C)**

*(C) The disposal container shall be intended for the collection of non-organic-recyclable solid wastes and shall not be used for the collection of organic waste.*

#### 3. **Section xxx30.1 (a)(2)**

Section xxx30.1 (a)(2) requires every generator to be provided a container or containers for organic waste. Since many rural areas do not have curbside service, mandating an individual to be provided a container with no collection service is not practical.

**Recommendation:**

This requirement should be allowed to be met by providing community drop-off locations instead of individual containers. These drop-offs could be at solid waste facilities or operations or other locations. Paragraph (a)(2)(D) should be added that states:

**Amendment:**

**Section xxx30.1 (a)(2)**

*(D) For areas without curbside service, In lieu of separate containers for each generator, drop-off locations can be established for organic wastes.*

**4. Section xxxx30.1 (a)(3)**

The proposed explicit labeling requirements for containers in section xxxx30.1 (a)(3) are too prescriptive. Many jurisdictions have already implemented container label requirements for their programs at significant expense. This prescriptive list also limits a jurisdiction's efforts if a once prohibited material is added to their program, new labels would need to be prepared and installed at significant expense. Stick-on labels also have limited life on a container exposed to weather. Under this proposal, missing labels would be a violation.

Also, the proposed language under Article 3, Section 30.1, Sub-Section (3) of the draft regulations for SB 1383 will have a significant economic impact on cities and counties across the state. These requirements will require significant premature replacement of many curbside containers (waste and recycling containers), creating undue economic hardship on those cities and counties. A recent analysis for total replacement of containers in the City of Antioch estimated a minimum of \$4 M.

**Recommendation:** The regulations should allow for the normal attrition of waste containers and only require this labelling and color coding on purchases of new containers after a specific date. This would have the least impact on cities and counties, as they would be normally replacing these carts anyway at the normal end of life of each container.

**Amendments:**

**Section xxx30.1 (a)**

*(a) Except as provided in section xxxx30.2 a jurisdiction shall provide a source-separated organic waste collection service that complies with the following:*

*(1) The service shall be provided to every organic waste generator located within the territory subject to its jurisdiction.*

*(2) Every generator shall be provided a separate or split container, or containers, for the separate collection of organic waste.*

*(A) Organic waste shall be collected in an organics container that is expressly limited to the collection of organic waste. The organics container or containers shall, at a minimum, be intended for the collection of the following materials: food waste, soiled paper, green waste, landscape and pruning waste.*

*(B) Dry lumber, wood and fibers may be collected in organics containers or in a commingled recycling container as long as it will be sent to a facility that recycles each organic waste intended for collection in that container*

*(C) The disposal container shall only be intended for the collection of non-organic solid wastes and shall not be used for the collection of organic waste.*

*(3) After January 1, 2022 each new waste container purchased shall be a color that is distinct from the other containers or have a lid that is a color that is distinct from the lids of the other containers. The new waste containers added after January 1, 2022 shall include labels as follows:*

*(A) The label on the container or containers shall*

*1. List each type of material intended for collection in that container in writing*

*2. Include at least three graphic examples of material that can be accepted in the container*

- 3. Include at least two graphic examples of materials that are prohibited from being placed in the container. The graphic example shall include a clear marker indicating that the specific materials are not accepted in the container.
- (B) The label on the disposal container shall include a statement that proper separation of waste is mandatory.
- (C) A jurisdiction or hauler may use educational material provided by CalRecycle, as appropriate to the jurisdiction, to comply with the labelling requirements of (A)-(C) of Paragraph (3).

**5. Section xxx30.15 Contamination of Source-Separated Organic Waste – Hauler Requirements**

Contamination is a significant hurdle in properly managing organics collection and processing. Contamination levels for effective composting and anaerobic digestion must be properly managed from generation, and through collection and processing. How a jurisdiction and collection program manage this issue should be flexible and based on local needs and organics processing capabilities that can handle different levels of contamination.

As mentioned above, we believe a robust education and outreach program, supported by CalRecycle, is the best means of achieving reduced contamination in our programs at the generator level. Reducing contamination at the origin of waste will reduce the concern of contamination throughout handling, processing and recycling the organics.

The regulatory language regarding how a hauler should inspect and report contamination at the curb is problematic and puts the hauler in the position of policing customers. Jurisdictions may choose to employ comparable methods in their own agreements, but this should not be mandated at the State level. Flexibility in program design will be key to meeting the goals of SB 1383. Educational outreach should commence well before the formal implementation occurs, and we would encourage the state to reconcile the various implementation challenges and dates that might be inconsistent with the timelines anticipated in SB 1383.

**Recommendation:** The regulations should not require a specific contamination threshold that will be virtually impossible to administer and enforce. Rather, allow local jurisdictions and the generators determine an acceptable level of contamination. Red tagging of contaminated containers is not a new requirement.

**Amendment:**

**Section xxx30.15 Contamination of Source-Separated Organic Waste**

- (a) It is the responsibility of a jurisdiction to ensure the proper sorting of organic waste into the appropriate reduce the presence of contaminants in organic waste containers, that are collected from the territory within their authority. Jurisdictions, or designated contractor, shall conduct audits of generators to establish compliance with xxx30.1. The Jurisdictions shall develop a plan for conducting audits, and at a minimum establish a metric for compliance and an appropriate frequency to represent volume of solid waste disposed in the community. Efforts to increase compliance will be through enhanced education.
- (1) For the purposes of this section, contamination may be measured by weight or volume.
- (b) A hauler, who, in the course of his or her duties, or during a random check for contamination, notices or identifies significant contamination of greater than 10 percent in an organics container that will prevent recycling of the organics may refuse to collect the container, or may dispose of the container.
  - (1) A random check of at least five containers shall be conducted at least once per day. A hauler may check a container prior to collecting or accepting the materials contained in an organics container.
  - (2) A hauler may identify contamination by a visual inspection of the contents of the container.
  - (3) A jurisdiction shall not find that a hauler is out of compliance with its contractual obligations for disposing of or refusing to collect a contaminated container as authorized by this section.
- (c) A hauler shall inform the jurisdiction of contamination that is discovered pursuant to subdivision (b) or section 17409.5 of Title 14 of the CCR in the following manner:

- (1) If contamination is identified pursuant to subdivision (b), the hauler shall inform the jurisdiction in writing of the address or addresses of all generators with contaminated waste and all containers that were rejected or disposed of due to contamination.
- (2) If a hauler is informed of contamination in a load of organic waste delivered to a solid waste facility by the solid waste facility operator pursuant to section 17409.5, the hauler shall keep a record of the notice and shall notify the jurisdiction or jurisdictions of the addresses of all generators on the collection route.
- (3) The notices provided to the jurisdiction shall note the date the container or collection route was identified as contaminated, and shall be provided in writing prior to the next date of collection for the identifies route or containers.
- (d) A jurisdiction that is informed by a hauler or solid waste facility operator serving the jurisdiction that the organic waste collected in a container or on one of the operator's service routes is contaminated, shall:
  - (1) Conduct targeted education and outreach to each generator identified in the notice. The outreach shall include at least one written notice that is placed on the container. The written notice shall include information regarding the generator's requirement to recycle organic waste and the requirements to properly separate materials into the appropriate containers pursuant to section xxx.50.1.
  - (2) Keep a record of the written notices received from a hauler or solid waste facility operator, and a copy of the notices provided to each generator as required by this section.
- (e) Nothing in this section limits or prohibits the authority of a jurisdiction to adopt contamination standards that are more stringent than the requirements of this section.

#### **6. Section xxx30.2 Mixed Waste Organic Collection Services**

We are very concerned about the language that prohibits mixed-waste processing infrastructure from being built post 2020. There should be an opportunity for further analysis that would indicate that improved technologies or processes that may prove to be significantly more cost-effective and efficient. As proposed in paragraph (c), after January 1, 2022 if a Mixed Waste Processing Facility (MWPF) does not meet the specified requirements for a high diversion facility "at any time", the jurisdiction is required to begin implementing a source-separated collection service within a year and a half of the due date of an implementation schedule.

**Recommendation 1:** Operators of a MWPF should have the option to make operational improvements to the facilities that have been already heavily invested in and have the same year and a half to demonstrate compliance. In addition, there should be an allowance to find another High Diversion MWPF rather than mandate a switch to a source-separated program that requires significant cost to change an existing system. Many High Diversion MWPFs will be utilized by multiple jurisdictions. The failure to meet requirements by the High Diversion MWPF may not be related to the jurisdiction's mixed organics.

#### **Amendment:**

(c) If the mixed waste organic collection service provided by the jurisdiction does not meet the requirements of (a) and (b) at any time after January 1, 2022, then the jurisdiction shall begin implementing at least one of the following a source-separated collection service, work with the High Diversion Mixed Waste Processing Facility on compliance, or contract with a different High Diversion Mixed Waste Processing Facility. Compliance with this provision must be within a year and half of the due date of an implementation schedule.

**Recommendation 2:** Also, the Draft Proposed Regulations prohibit the transport of mixed organics collection containers to any other facility than a high diversion facility. This requirement is overly restrictive since it does not account for transfer of small loads of mixed organics at a transfer station to larger loads of mixed organics.

**Amendment:**

*(b) A jurisdiction, or the hauler acting on behalf of a jurisdiction, shall not transport mixed organics solid waste to facilities, or operations, that are not High Diversion Mixed Waste Processing Facilities, except for locations where the mixed organics are consolidated for transfer to High Diversion Mixed Waste Processing Facilities.*

**7. Section xxx30.3 Waivers**

Jurisdictions need the flexibility to design programs based on a jurisdiction's specific needs and resources. In the infancy of implementation, the jurisdiction should focus on and build upon the available infrastructure. For example, rural residents predominately self-haul their own wastes and it is not feasible to have residents meet the extensive compliance and reporting requirements of the proposed regulations. We support the ability of jurisdiction to be able to evaluate its resources and grant waivers where appropriate.

**Recommendation:** Extend the waiver provisions to allow a jurisdiction to design their programs to be economically feasible.

**Amendment:**

**Section xxx30.3 Waivers *and Reduced Levels of Requirements***

*(a) A jurisdiction may provide waivers from some or all of the requirements of this chapter in the following circumstances. The department shall review waiver and may disapprove of waivers jurisdiction shall specify a date at which time the waiver will be reevaluated.*

- (1) Emergency Waiver. If a jurisdiction determines that any type of organic waste cannot feasibly be recycled for a limited time period due to emergency conditions, the jurisdiction may permit that type of organic waste to be deposited in landfill(s) for that limited time period. An emergency waiver may only be issued when there has been a proclamation of a state of emergency or local emergency, as those terms are defined in section 17210.2 of Title 14 of the CCR.*
- (2) De Minimis Waiver. A jurisdiction may waive some or all of the requirements of this chapter that apply to a generator, if the generator provides documentation satisfactory to the jurisdiction that organic materials comprise, an average of, less than 10% by weight of solid waste taken to landfill(s) from that collection location.*
- (3) Physical Space Waiver. A jurisdiction may waive some or all of the requirements of Sections xxx30.1, as appropriate, if a generator or property owner provides documentation from the hauler, licensed architects or engineers, or building officials that demonstrates that the organic waste generator or property owner does not have adequate space for separate organics containers.*
- (4) Rural Waiver. A jurisdiction may waive or reduce levels of requirements within its boundaries, or for a portion thereof, due to small geographic size; low-population density; the lack of sufficient organic waste processing infrastructure, organic waste recycling facilities, and other nondisposal facilities and markets within a reasonable distance.*
- (5) Facility Access or End-market Limitation Waiver. A jurisdiction may temporarily waive some or all the requirements that apply to a hauler or generator, if the documentation is provided satisfactory to the jurisdiction that there is not economically-feasible organic facility processing capacity or end-markets available, or that meet the following criteria:*
  - (A) A processing facility shortage will be deemed to exist if the available organic waste processing or recycling, composting or approved alternative technology capacity available within a 50-mile radius of the jurisdiction is less than 75% of the amount of organic waste generated within that jurisdiction; or*
  - (B) An end-market limitation will be deemed to exist if there is a lack of sufficient end-markets for the organic waste, or its byproducts, within a 100-mile radius of the jurisdiction.*

**D. Article 6 Regulations of Haulers**

Article 6 appears to establish a registration program for the approval of haulers. While we are not opposed to an approval system that insures that only qualified haulers can participate in the organics waste collection program, we are concerned that the proposed regulations do not consider local franchise agreements and contracts.

**Recommendation:** Include an affirmative statement that approval may be in the form of a local franchise agreements or contract.

**Amendment:**

**Section xxx60.1 Approval of Haulers.**

- (a) A hauler providing residential, commercial, or industrial organic waste collection services shall obtain all local government licenses, permits, or written approval requirements from the applicable city or county in which such services are provided. Such written approval may be in the form of a local franchise agreement or contract and shall be contingent upon the hauler's demonstrated capability to comply with the standards and requirements of this division.
- (b) The hauler shall keep a record of the applicable documentation of that approval.
- ~~(c) A jurisdiction shall require compliance with the standards and requirements of this division as a condition of approval to collect organic waste from within the jurisdiction's territory.~~
- (d) Each jurisdiction shall maintain records of all persons holding written approval to provide organic waste collection services within its jurisdiction. The record shall include:
  - (1) Each issued document of approval.
  - (2) The name, office, address, telephone number and emergency telephone number if different of each such approved operator.
  - (3) The number and types of vehicles employed by such person providing such organic waste collection services.
  - (4) A notation indicating whether the hauler is providing source separated organics recycling services as allowed in section xxx30.1 or mixed waste organics recycling services as allowed in xxx30.2.
  - (5) For haulers collecting commingled recycling containers, a list of the materials that may be collected in the container and the facility that the material is transported to for processing or recycling.
- (e) A jurisdiction shall submit to CalRecycle a list of each hauler approved to collect organic waste within 30 days of the operative date of this section and within 30 days of a newly issued document of approval.
- (f) A person lawfully self-hauling waste in accordance with section xxx70 is not subject to the requirements of this section.

**E. Article 10 Enforcement**

**1. Section xxx10.1**

Jurisdictions are required to adopt ordinances, or otherwise enforceable policies and procedures that impose requirements on the various aspects of regulations including inspections and enforcement. The regulations should include requiring jurisdictions to address limitations on exposure to the regulated entities when their ability to comply is constrained by circumstances beyond their control. This is not to suggest that regulated entities' exposure is eliminated. The amount of that limitation would be determined by the local agency crafting the ordinance, policy or procedure, but at least the topic will be required to be addressed.

**Recommendation:** Include a provision that requires jurisdictions to address exposure limits in their ordinances, policies and procedures.

**Amendment:**

**Section xxxx10.1. Scope of Jurisdiction Requirements.**

- (a) By January 1, 2022, a jurisdiction shall adopt one or more ordinances, or otherwise enforceable policies and procedures that impose requirements that are equivalent to, or stricter than, to those required by this Chapter including, but not limited to the following:
  - (1) Use of source-separated organic waste collection service or mixed waste organic collection services pursuant to section xxx30.1 or xxxx30.2;
  - (2) Organic waste generator requirements in Article 5 of this Chapter, sections xxx50.1 through xxx50.4;
  - (3) Requirements on haulers in Article 6 of this Chapter, sections xxx60.1 through xxx60.2; and,
  - (4) CalGreen Building standards in section xxx70.1
  - (5) Edible Food requirements in Article 9 of this Chapter, sections xxx90.1 through xxx90.2.
- (b) A jurisdiction shall include in its ordinances, policies and procedures required by subsection (a), requirements for inspections and enforcement of the standards that are equivalent, or stricter, to those required by this Article. A jurisdiction is not required to assess penalties until January 1, 2024.
- (c) A jurisdiction shall include in its ordinances, or otherwise enforceable policies and procedures, consistent with subsection (a), a provision that limits the exposure of haulers or facilities to enforcement actions or penalties when a failure is directly attributable to, or substantially the result of, circumstances beyond the control of the regulated entity. Such circumstances shall include, but are not limited to, a lack of available organics recycling infrastructure, or a lack of available markets for products generated by organics recycling facilities.
- (d) A jurisdiction shall not include in its ordinances, or otherwise enforceable policies or procedures, consistent with subsection (a), a provision requiring a hauler or facility to indemnify the jurisdiction for the jurisdiction's failure to achieve SB 1383 compliance, when a failure is directly attributable to, or substantially the result of, circumstances beyond the control of the regulated entity. Such circumstances shall include, but are not limited to, a lack of available organics recycling infrastructure, or a lack of available markets for products generated by organics recycling facilities.
- (e) Nothing in this Article limits or restricts the power of any federal, state, or local agency to enforce any provision of law that it is authorized or required to enforce or administer, nor limit or restrict cities or counties from promulgating laws which are at least as strict as the regulations contained in this Chapter. However, no city or county may promulgate laws which are inconsistent with the provisions of this Chapter.

**2. Section 10.3**

**Section xxxx10.3. Jurisdiction Inspection and Enforcement Requirements.**

- (a) A jurisdiction shall adopt an inspection and enforcement plan for all regulated entities within its authority for which it is required by this Chapter to impose requirements.
- (b) The Plan shall:
  - (1) Include all ordinances, policies, or other requirements required by this Chapter, that are required to be enforced by the Plan.
  - (2) Include a provision that limits the exposure of haulers or facilities to enforcement actions or penalties when a failure is directly attributable to, or substantially the result of, circumstances beyond the control of the regulated entity. Such circumstances shall include, but are not limited to, a lack of available organics recycling infrastructure, or a lack of available markets for products generated by organics recycling facilities.

### Section xxxx10.3(b)

- (5) The enforcement procedures and potential penalties to be used for violations of local ordinances or policies adopted pursuant to this Chapter shall be equivalent to, or stricter than, those contained in Articles 10, 11 and 12 of this Chapter. Enforcement procedures and potential penalties, to the extent they are stricter than those contained in this Chapter, must be consistent with the contents of this Chapter including, but not limited to, Articles 10.1 and 10.3.

### 3. Section xxxx10.4

Haulers seek to clarify that records retention by a local jurisdiction does not convert hauler proprietary information into a public record by that fact alone.

### Section xxxx10.4 Maintenance of Records.

- (a) A jurisdiction shall maintain a record of all inspections and enforcement actions taken pursuant to this Chapter.  
(b) The records shall include, but not be limited to all inspections, notices, orders, penalties, reports, correspondence, and other documents pertaining to the entities inspected or subject to enforcement action.  
(c) Records may be kept electronically, but shall be made available to the department in manner requested by the department.  
(d) All records shall be retained by the jurisdiction for five years.  
(e) Records pertaining to regulated entities, to the extent that they may include confidential, proprietary or trade secret information supplied by the regulated entity or derived from information supplied by the regulated entity, are not public records and do not become public records by reason of the fact that they are retained by the jurisdiction. All such records shall be destroyed or returned to the regulated entity after five years.

### 4. Section xxxx10.5

Many jurisdictions have code enforcement policies that do not accept anonymous complaints, but do not reveal the complainant unless the issue is taken to court. Whenever a complaint is made against a regulated entity that it has violated the law, the entity is entitled to have an opportunity to confront its accuser, and to attempt to refute the charge, particularly where the sanction may include the loss of the right to do business, or the imposition of significant monetary penalties.

### Section xxxx10.5. Investigation of Complaints of Alleged Violations by a Jurisdiction

- (a) Any person having information alleging that a regulated entity is in violation of a local ordinance or policy adopted pursuant to this chapter, may file a complaint in writing to the jurisdiction. The complaint shall include the following:  
(1) The name, address and telephone number of the person making the complaint, ~~however nothing in this chapter shall be construed to prevent the making of~~ The making of anonymous complaints by omitting the identity of the reporting party from the complaint (those in which the identity of the reporting party is not available) is not authorized by these regulations;

Given the quasi-criminal nature of all of this, it is vital that the applicable evidentiary standard be something more than a “preponderance of the evidence.” We have not gone so far as to say the evidence must be “proof beyond a reasonable doubt” (which is the criminal standard). We have instead compromised at a “clear and convincing” evidentiary standard.

- (c) Upon receipt of a complaint, the jurisdiction shall:  
(1) within 30 days, investigate the complaint if it determines that the allegations may indicate a violation, and determine whether its allegations, if true, would constitute a violation. The investigation shall be

conducted by the jurisdiction within the adopted time frame of its code enforcement policies, or within 30 days if no adopted policies exist.

(2) The jurisdiction shall make its determination on the basis of the substance of the allegations rather than on the basis of the complaint's technical compliance with this section based on clear and convincing evidence, and must find that it is highly and substantially more probable than not that a violation has occurred before it may undertake an enforcement procedure or impose penalties. The burden of establishing that a violation has occurred rests with the jurisdiction.

(3) The jurisdiction shall notify the person who submitted the complaint of the results of the jurisdiction investigation in writing.

(4) The jurisdiction shall keep records of the complaints and response available for review by the department or public. Any review by the public shall be limited to only that material which qualifies as a public record.

(d) Pending investigation by the jurisdiction, a regulated entity is presumed to be innocent of an alleged violation of a local ordinance or policy adopted pursuant to this Chapter.

(e) If a jurisdiction determines that a violation has occurred, it shall take enforcement action as required by this Chapter.

## 5. Section xxxx10.6

### Section xxxx10.6 Enforcement by a Jurisdiction

(d)The jurisdiction ~~may~~shall consider extensions to the compliance deadlines set forth in subsection (c) if it can make the following findings:

(1) The regulated entity is making timely progress toward compliance; and

(2) The operator's success or lack thereof in accomplishing specific tasks within the compliance deadline is due to:

(A) Despite the regulated entity's good faith effort to comply, a delay in compliance has been caused by extenuating circumstances outside entity's control. Examples of extenuating circumstances include acts of God such as inclement weather, earthquakes, and delays in obtaining discretionary permits or other government agency approvals, but where the operator's actions or failure to act was not the cause of the delay.

(B) Despite the entity's good faith effort, the correction requires a long term infrastructure or capacity change which requires a correspondingly longer length of time to achieve compliance.

### F. Article 11. Enforcement Oversight by the Department

Amend Article 11, the Department's counterpart to Enforcement by a Jurisdiction (Article 10), with virtually every change we have proposed for Article 10. We seek the same criteria for enforcement against a regulated entity that is a hauler or a facility, regardless of whether it is the jurisdiction or the department doing the enforcement.

The term audit implies strict accuracy with meeting numbers, not program review of reaching towards goals. We believe that a version of "good faith effort" provisions are imperative to successful compliance with the SB 1383 regulations being developed. This approach has proven successful in determining compliance with the Integrated Waste Management Plan in nearly all jurisdictions across the state. While SB 1383 sets state targets, those targets can be achieved most efficiently and effectively through a state and local partnership.

#### **Recommendation:**

We urge CalRecycle to initiate this program with a "good faith effort" approach to foster participation and outreach and build on a familiar and successful framework.

**Amendment:**

**Section xxxx11.2. Department Inspections and Audits Reviews of Regulated Entities and Jurisdictions**

- (a) The department may conduct audits reviews of a jurisdictions program performance to assure compliance with this chapter.
- (b) The audits reviews shall include inspections of a random sampling of regulated entities, a review of the jurisdiction planning, programs and reporting and recordkeeping requirements and data reported in those reports and records.
- (c) Where a jurisdiction has authority over a regulated entity, the department shall notify the jurisdiction prior to conducting inspections within its jurisdiction and provide the period of time the jurisdiction will be under audit.
- (d) The department may conduct inspections in conjunction with the jurisdiction where a jurisdiction has authority over a regulated entity. The department shall conduct the types and numbers of inspections it determines necessary to evaluate a jurisdiction's compliance with this chapter or in order to ensure a regulated entity's compliance with this chapter. During an audit period, a jurisdiction shall provide, upon request, records required by the chapter. The results of the inspections under this section may be used for the purposes of assessing a jurisdiction's or a regulated entity's compliance with this chapter.
- (e) A summary of the audit program review findings shall be provided in writing within 90 days of the audit review end-date. The audit review report shall include a summary of inspection report findings of regulated entities inspected within the jurisdiction and document compliance or violations by the jurisdiction. The audit review report shall at a minimum state whether the jurisdiction is in compliance or violation of the following standards:
  - (1) Use of source-separated organic waste collection service or mixed waste organic collection services pursuant to section xxx30.1 or xxxx30.2;
  - (2) Organic waste recycling education and outreach pursuant to section xxxx40.1;
  - (3) Organic waste generator requirements in Article 5 of this Chapter, sections xxx50.1 through xxx50.4;
  - (4) Requirements on haulers in Article 6 of this Chapter, sections xxx60.1 through xxx60.2; and,
  - (5) CalGreen Building standards in section xxx70.1.
  - (6) Edible Food requirements in Article 9 of this Chapter, sections xxx90.1 through xxx90.2.
- (f) During a review pursuant to subdivision (a), the department shall determine whether the jurisdiction has made a good faith effort to implement its selected organic waste recycling program. For purposes of this section, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its organic waste recycling program. During its review, the department may include, but is not limited to, consideration of the following factors in its evaluation of a jurisdiction's good faith effort:
  - (1) The extent to which regulated entities have complied with this Chapter.
  - (2) The extent to which the jurisdiction is conducting education and outreach to businesses.
  - (3) The extent to which the jurisdiction is monitoring regulated entities and notifying those entities that are not in compliance.
  - (4) The appropriateness of waivers allowed by the jurisdiction.
  - (5) The availability of markets for collected organic waste recyclables.
  - (6) Budgetary constraints.
  - (7) In the case of a rural jurisdiction, the effects of small geographic size, low population density, or distance to markets.
  - (8) The availability, or lack thereof, of sufficient organic waste processing infrastructure, organic waste recycling facilities, and other nondisposal opportunities and markets.
  - (9) The extent to which the jurisdiction has taken steps that are under its control to remove barriers to siting and expanding organic waste recycling facilities.
- (g) Upon presentation of proper credentials, the Department, an authorized Department employee or agent, shall be allowed to enter a regulated entity during normal working hours to conduct inspections and investigations, to examine organic recycling activities and records pertaining to the regulated entity to determine compliance with this chapter; including but not limited to, allowing the review or copying, electronically or through mechanical methods (i.e. photocopy) of any paper or electronic records required by this chapter or other records, such as invoices, memoranda, books, papers, records, or memoranda.

- (1) This subdivision is not intended to permit an employee or agent of the department to enter a residential property.

**G. Article 12. Penalties**

**Section xxxx12.1. Scope Procedure for Imposing Civil Penalties.**

- (a) The Department may impose administrative civil penalties authorized by PRC 42652.5 sections 41821.5 through 41821.8 of the Public Resources Code in accordance with the procedures set forth in this Article section.

\*\*\*Delete the remainder of the proposed Penalties article and replace with the following to be consistent with AB 901 regulations\*\*\*

- (b) Prior to initiating any enforcement proceeding, the Department shall notify a reporting entity in writing of any potential failure to comply with this Article and its implementing statute. The notification will include all of the following:
- (1) A description and dates of the potential compliance failures;
  - (2) A compliance deadline that allows for reasonable time to remedy; and
  - (3) Any potential penalties that may be assessed if the compliance deadline is not met.
  - (4) If the alleged violation or compliance failure is corrected by the deadline, no further enforcement will be pursued by the Department.
  - (5) If there are extenuating circumstances the Department can extend the compliance deadline.
- (c) Civil penalties may be imposed as set forth in Penalty Table I as follows:
- (1) The number of violations shall be multiplied by the number of days the business was in violation. The number of days the violation occurred will begin one day after the compliance deadline the Department issued in its written notification of a potential failure to comply to the reporting entity. If the infraction is not corrected per subsection (b) then the following table applies.

<u>Authority</u>	<u>Description of Violation</u>	<u>1<sup>st</sup> Offence</u>	<u>2<sup>nd</sup> Offence</u>	<u>3<sup>rd</sup> and Subsequent Offence</u>
<u>Public Resources Code 42652.5(a)(5)</u>	<u>Any person who fails to submit information as required by this Article on time.</u>	<u>\$500</u>	<u>\$1,000</u>	<u>\$5,000</u>
<u>Public Resources Code 42652.5(a)(5)</u>	<u>Any person who refuses to submit information required by this Article.</u>	<u>\$500</u>	<u>\$1,000</u>	<u>\$5,000</u>
<u>Public Resources Code 42652.5(a)(5)</u>	<u>Any person who knowingly or willfully files a false report or any person who alters, cancels, or obliterates entries in the records for the purpose of falsifying the</u>	<u>\$500-\$10,000</u>	<u>\$2,500 -\$10,000</u>	<u>\$2,500 -\$10,000</u>

	<u>records as required by this Article.</u>			
<u>Reserved for other offences?</u>				
<u>Reserved for other offences?</u>				
<u>Reserved for other offences?</u>				

(d) Once a potential penalty range from Penalty Table I is determined, the Department shall take the following factors into consideration in determining the total penalty amount to be requested in an Administrative Accusation:

- (1) Whether the violation(s) were intentional.
- (2) Whether the violation(s) demonstrate a chronic pattern of noncompliance with the regulations set forth in this Article.
- (3) Whether the violation(s) were due to circumstances beyond the reasonable control of the person or were unavoidable under the circumstances.
- (4) Whether the person acted in good faith to comply, including correcting the violations in a timely fashion.
- (5) Whether the violation(s) were voluntarily and promptly reported to appropriate authorities prior to the commencement of an investigation by the enforcement agency.
- (6) The circumstances, extent, and gravity of any violation(s).

(e) The Administrative Accusation may be served on the respondent by the following means:

- (1) Personal service.
- (2) Substitute service by using the same service procedures as described in section 415.20 of the Code of Civil Procedure.
- (3) Certified Mail: For respondents who are registered with the Department's electronic RDRS system, the mailing address(es) provided at the time of registration will be used. Proof of service of the Administrative Accusation shall be the certified mail receipts or registered mail receipts proving the accusation and accompanying materials were sent to respondent by certified mail or registered mail. For other respondents that have not provided addresses to the Department, certified mail or registered mail pursuant to the procedures indicated in the Administrative Procedure Act at section 11505(c) of the Government Code applies.

(f) In any case in which it is determined that more than one reporting entity is responsible and liable for a violation, each such reporting entity may be held jointly and severally liable for an administrative civil penalty.

(g) Reports regarding jurisdiction of origin shall be based on the information provided to a reporting entity at the time the report is due. The Department shall not hold reporting entities liable for incomplete or inaccurate reports regarding jurisdiction of origin information provided by a hauler, if the reporting entity identifies the hauler that failed to provide data or provided incorrect data, as required by section 18815.3(l) of this Article.

#### **H. Amendments to Existing Title 14 Regulations**

We understand that contamination is a significant hurdle in properly managing organics collection. How a jurisdiction and collection program manage this issue should be flexible and adjustable based on local needs. We believe a robust education and outreach program, supported by CalRecycle, is the best means of achieving reduced contamination in our programs. As mentioned in a previous letter, education should occur long before the customer is placing their organics in the appropriate container.

The regulatory language regarding how a hauler should inspect and report contamination at the curb is problematic and puts the hauler in the position of policing customers. Jurisdictions may choose to employ comparable methods in their own agreements, but this should not be mandated at the State level. Flexibility in program design will be key to meeting the goals of SB 1383. Educational outreach should commence well before

the formal implementation occurs, and we would encourage the state to reconcile the various implementation challenges and dates that might be inconsistent with the timelines anticipated in SB 1383.

**Recommendation:** The regulations should not require a specific contamination threshold that will be virtually impossible to administer and enforce. 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.

The following sections from Title 14 include a variety of changes in contamination levels and load checking to verify contamination. We believe that the contamination measurements, load checking and record keeping requirements are redundant and excessive. We believe that a system based on a minimum of one monthly inspection per hauler and each material type will be adequate to provide a reasonably sampling to estimate contamination levels.

## I. Article 6.0. Transfer/Processing Operations and Facilities Regulatory Requirements

### Section 17402. Definitions.

~~(18.5) "Organic Waste" means solid wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green waste, landscape and pruning waste, applicable textiles and carpets, wood, lumber, fiber, biosolids, digestate and sludges. "Organic waste" means food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste. This definition will be amended as markets develop for other organic materials~~

(NOTE: The changes to this section conform with earlier changes to the definition of "Organic Waste".)

~~(18.6) "Source Separated Organic waste" (1) means organics that have been separated or kept separate from the solid waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Source separated organics contain no greater than 10 percent of contaminants by weight.~~

## J. Article 6.2 Operating Standards.

### Section 17409.5.1. Organics Diversion at Mixed Waste Processing Facilities.

~~(a) On and after January 1, 2022 2025, at least 50-30 percent of the organic waste received from mixed waste collection services, calculated on a monthly basis, shall be removed from the mixed waste organic collection stream and sent for additional processing or recycling. To determine compliance with this subdivision, the operator shall:~~

~~(1) Establish a baseline monthly volume of organics in the incoming mixed waste organic collection stream by either:~~

~~(A) Conducting an operation or facility specific waste characterization study of the incoming mixed waste organic stream to determine a baseline amount of organics in the incoming mixed waste organic stream using current business methods; or,~~

~~(B) Utilizing the latest statewide waste characterization study prepared by the Department.~~

~~(b) On and after January 1, 2022, all of the source separated organic waste shall be sent for additional processing or recycling.~~

~~(c) On and after January 1, 2025 2028, at least 75-50 percent of the organic waste received from mixed waste collection services shall be removed from the mixed waste organic collection stream and be sent for additional processing or recycling, calculated on a monthly basis. To determine compliance with this subdivision, the operator shall:~~

(1) Establish a baseline monthly volume of organics in the incoming mixed waste organic collection stream by either:

- (A) Conducting an operation or facility specific waste characterization study of the incoming mixed waste organic collection stream to determine a baseline amount of organics in the incoming mixed waste organic collection stream using current business methods; or,
- (B) Utilize the latest statewide waste characterization study prepared and published by the Department.

(d) On and after January 1, 2030, at least 75 percent of the organic waste received from mixed waste collection services shall be removed from the mixed waste organic collection stream and be sent for additional processing or recycling, calculated on a monthly basis.

(e) This section is not intended to apply to mixed waste processing efforts that are additive or supplemental to a source separated organics collection system or program. To the extent that a mixed waste processing facility processes mixed waste that does not originate from a mixed waste organic collection system, the foregoing operating standards and organic waste removal requirements shall not apply, and the facility has no obligation to remove a specified percentage of organic waste from the mixed waste stream it processes.

~~(d) Organics recovered after processing from the source separated organic waste stream and from the mixed waste organic collection stream shall not have more than 10 percent of contamination by volume prior to leaving the site.~~

~~(d) Organics recovered after processing from the source separated organic waste stream and from the mixed waste organic collection stream shall not have more than 10 percent of contamination by volume prior to leaving the site.~~

~~(e) (f) The operator shall maintain records demonstrating compliance with this section.~~

#### **Section 17409.5.2 Measuring Organics in Residuals Removed from Mixed Waste Organic Collection Stream.**

~~(a) The operator of an attended operation or facility that accepts a mixed waste organic collection stream shall, once per operating day, measure the amount of organics by volume in the residuals removed from the mixed waste organic collection stream after processing to determine a monthly average.~~

~~(b) The operator shall maintain records of measurements and the training of personnel in evaluating the amount of organics in the residual material removed from mixed waste organic collection stream. These records shall be maintained for three (3) years in the operating record and be available for review by the appropriate jurisdiction of origin, haulers, and other duly authorized regulatory agencies.~~

~~(c) The operator shall conduct a measurement in the presence of the EA when requested.~~

~~(d) The operator shall use the following protocol to measure the amount by volume of organics in the residuals removed from mixed waste organic collection stream:~~

~~(1) Take at least a one (1) cubic yard composite sample of the residuals removed from mixed waste organic collection stream during processing at the operation or facility;~~

~~(A) The composite sample shall be representative and random by taking samples either from various times during the operating day or from various locations within the pile.~~

~~(2) Separate the organics from the composite sample and determine the volume of the separated organics;~~

~~(3) Determine the percentage of organics in the residuals removed from the mixed waste organic collection stream by dividing the volume of separated organics by the total volume of the composite sample.~~

~~(4) Determine the monthly average of organics in the residuals removed from the mixed waste organics.~~

#### **Section 17409.5.3 Measuring Contamination in Organics Recovered from Mixed Waste Organic Collection Stream.**

(a) The operator of an attended operation or facility that accepts mixed waste organic collection streams shall, once every other month, measure the amount by volume of contamination in each organic material type recovered from the mixed waste organic collection stream and separated through processing at the operation or facility.

(b) The operator shall maintain records of measurements and the training of personnel in evaluating the amount of contamination in organics removed from mixed waste organic collection stream by volume. These records shall be maintained for three (3) years in the operating record and be available for review by the appropriate jurisdiction of origin, haulers, and other duly authorized regulatory agencies.

(c) The operator shall conduct a measurement in the presence of the EA when requested.

(d) The operator shall use the following protocol to measure the amount by volume of contamination in the organics recovered from mixed waste organic collection stream:

(1) Take at least a one (1) cubic yard composite sample of organics separated by organic material type following processing at the operation or facility;

(A) The composite sample shall be representative and random by taking samples either from various times during the operating day or from various locations within the pile.

(2) Separate the contaminants from the composite sample and determine the volume of the contaminants;

(3) Determine the percentage of contamination by dividing the volume of contamination by the total volume of the composite sample.

#### **Section 17409.5.4. Source Separated Organics Handling.**

(a) Source-separated organics handling shall be kept separate from other solid waste streams.

(b) Source-separated organic waste and organic waste removed from a mixed waste organic collection service for recovery shall be:

(1) Stored away from other activity areas in specified, clearly identifiable areas as described in the Facility Plan or Transfer/Processing Report; and,

(2) Removed from the site consistent with Section 17410.1 and either:

(A) Transported only to another solid waste facility or operation for additional processing, composting, in-vessel digestion, or other recycling as specified in section (xxxxx); or,

(B) Used in a manner approved by local, state, and federal agencies having appropriate jurisdiction; or,

(C) Sent for disposal.

#### **Section 17409.5.5. Loadchecking – Contamination in Source Separated Organic Waste.**

(a) The operator of an attended operation or facility that accepts source separated organics shall perform loadchecking to measure the amount by volume of contamination in source separated organic waste according to the following schedule:

(1) One (1) loadcheck shall be conducted for every 500 tons of source separated organic waste received per operating day. If the operator receives less than 500 tons for the operating day, a minimum of one (1) loadcheck shall be conducted for that operating day or the operator may request a greater or less frequency subject to approval by the EA.

(2) At least one loadcheck per month of each ~~hauler type and collection route~~ Source Sector as defined in Section 18815.2 (51).

(b) The operator shall maintain the following loadchecking records under this section:

(1) Records of the number of rejected or redirected loads and reasons for rejection or redirection.

(2) Records of received loads with contamination that exceeds an estimated 10 percent by volume.

(3) Records of notices provided to haulers and or jurisdictions pursuant to subdivision (e).

(4) Records of loadchecks and the training of personnel in evaluating the amount of contamination in source separated organic waste. These records shall be maintained for three (3) years in the operating record and be available for review by the appropriate jurisdiction of origin, haulers, and other duly authorized regulatory agencies.

(c) The operator shall conduct a loadcheck in the presence of the EA when requested.

#### **Section 17409.5.6. Measuring Contamination Level in Organics Recovered from Source Separated Organic Waste.**

(a) The operator of an attended operation or facility that accepts source separated organic waste shall measure, once per month, the amount by volume of contamination in each separated organic material type recovered from the source separated organic waste stream that have been separated through processing at the operation or facility:

(b) The operator shall maintain records of measurements and the training of personnel in evaluating the amount of contamination in organics recovered from source separated organic waste by volume. These records shall be maintained for three (3) years in the operating record and be available for review by the appropriate jurisdiction of origin, haulers, and other duly authorized regulatory agencies.

(c) The operator shall conduct a measurement in the presence of the EA when requested.

(d) The operator shall use the following protocol to measure the amount by volume of contamination in the organics recovered from source separated organic waste:

(1) Take at least a one (1) cubic yard composite sample of source separated organic waste separated by organic material type following processing at the operation or facility;

(A) The composite sample shall be representative and random by taking samples either from various times during the operating day or from various locations within the pile.

(2) Separate the contaminants from the composite sample and determine the volume of the contaminants;

(3) Determine the percentage of contamination in the organics recovered from source separated organic waste by dividing the volume of contamination by the total volume of the composite sample.

#### **Section 17409.5.7 Measuring Organics in Residuals Removed from Source Separated Organic Waste.**

(a) The operator of an attended operation or facility that accepts a source separated organic waste shall, once per operating day, measure the amount of organics by volume in the residuals removed from the source separated organic waste stream after processing to determine a monthly average.

(b) The operator shall maintain records of measurements and the training of personnel in evaluating the amount of organics in the residual material removed from source separated organic waste stream. These records shall be maintained for three (3) years in the operating record and be available for review by the appropriate jurisdiction of origin, haulers, and other duly authorized regulatory agencies.

(c) The operator shall conduct a measurement in the presence of the EA when requested.

(d) The operator shall use the following protocol to measure the amount by volume of organics in the residuals removed from source separated organic waste stream:

(1) Take at least a one (1) cubic yard composite sample of the residuals removed from source separated organic waste stream during processing at the operation or facility;

(A) The composite sample shall be representative and random by taking samples either from various times during the operating day or from various locations within the pile.

(2) Separate the organics from the composite sample and determine the volume of the separated organics;

(3) Determine the percentage of organics in the residuals removed from the source separated organic waste stream by dividing the volume of separated organics by the total volume of the composite sample.

(4) Determine the monthly average of organics in the residuals removed from the source separated organic waste.

### **K. Chapter 3.1 Composting Operations Regulatory Requirements**

#### **Article 5.0. Composting Operation and Facility Siting and Design Standards**

##### **Section 17867. General Operating Standards.**

(a) All compostable materials handling operations and facilities shall meet the following requirements:

(1) All handling activities are prohibited from composting any material specified in section 17855.2 of this Chapter.

(2) All handling activities shall be conducted in a manner that minimizes odor impacts so as to not cause a nuisance.

(3) All handling activities shall be conducted in a manner that minimizes vectors, litter, hazards, nuisances, and noise impacts; and minimizes human contact with, inhalation, ingestion, and transportation of dust, particulates, and pathogenic organisms.

(4) ~~Random load checks of feedstocks, additives, and amendments for contaminants shall be conducted.~~ The operator of an attended compostable materials handling operation or facility shall perform loadchecking to measure the amount by volume of contamination according to the following schedule:

(A) One (1) loadcheck shall be conducted for every 500 tons of source separated organic waste received per operating day. If the operator receives less than 500 tons for the operating day, a minimum of one (1) loadcheck shall be conducted for that operating day or the operator may request a greater or less frequency subject to approval by the EA.

(B) At least one loadcheck per month of each hauler type and collection route Source Sector as defined in Section 18815.2.

(C) The operator shall conduct a loadcheck in the presence of the EA when requested.

## **Article 8. Composting Operation and Facility Records**

### **Section 17869. General Record Keeping Requirements.**

(e) The operator shall record the number of load checks performed, ~~loads with contamination that exceeds 10 percent~~ and loads rejected ~~and the reasons for rejection.~~

## **L. Title 14. Natural Resources - Division 7. Department of Resources Recycling and Recovery**

### **Chapter 3.2. In-Vessel Digestion Operations and Facilities Regulatory Requirements**

#### **Article 2.0. Siting and Design**

##### **Section 17896.25.1. Loadchecking – Contamination in Source Separated Organic Waste.**

(a) The operator of an attended in-vessel digestion operation or facility shall perform loadchecking to measure the amount by volume of contamination according to the following schedule:

(1) One (1) loadcheck shall be conducted for every 500 tons of source separated organic waste received per operating day. If the operator receives less than 500 tons for the operating day, a minimum of one (1) loadcheck shall be conducted for that operating day or the operator may request a greater or less frequency subject to approval by the EA.

~~(2) At least one loadcheck per month of each hauler type and collection route.~~

(b) The operator shall maintain the following loadchecking records under this section:

(1) Records of the number of rejected or redirected loads and reasons for rejection or redirection.

~~(2) Records of received loads with contamination that exceeds 10 percent.~~

(3) Records of loadchecks and the training of personnel in evaluating the amount of contamination in source separated organic waste. These records shall be maintained for three (3) years in the operating record and be available for review by the appropriate jurisdiction of origin, haulers, and other duly authorized regulatory agencies.

(c) The operator shall conduct a loadcheck in the presence of the EA when requested.

## **M. Title 27. Environmental Protection - Division 2. Solid Waste**

### **Chapter 3. Criteria for All Waste Management Units, Facilities, and Disposal Sites**

#### **Subchapter 4. Criteria for Landfills and Disposal Sites**

##### **1. Article 2: Alternative Daily Cover Material and Beneficial Reuse**

##### **§20700. ~~CIWMB~~ CalRecycle—Intermediate Cover. ~~(T14:S17684)~~**

(a) Compacted earthen material of at least twelve (12) inches shall be placed on all surfaces of the fill where no additional solid waste will be deposited within 180 days to control vectors, fires, odors, blowing litter, and scavenging.

(b) Alternative materials of alternative thickness (other than at least twelve inches of earthen material) for intermediate cover may be approved by the EA with concurrence by ~~the CIWMB~~ CalRecycle, if the owner or operator demonstrates that the alternative material and thickness control vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment.

(c) For waste classification, composition, and liquid percolation requirements of intermediate cover and alternative intermediate cover, refer to the SWRCB requirements set forth in s20705 of this article.

(d) Proposed use of alternative intermediate cover shall be subject to site specific demonstration to establish suitability as intermediate cover. Demonstration projects shall be approved by the EA with concurrence by ~~the CIWMB~~ CalRecycle.

##### **~~§20700.5. CalRecycle—Long Term Intermediate Cover.~~**

~~(a) Compacted earthen material at least 36 inches shall be placed on all surfaces of the fill where no additional solid waste will be deposited within 30 months to control methane emissions.~~

~~(b) For waste classification, composition, and liquid percolation requirements of intermediate cover, refer to the SWRCB requirements set forth in section 20705 of this article.~~

(NOTE: We have raised concerns about this requirement in each of the hearings. A strict intermediate cover standard for all facilities does not consider site specific considerations such as climate, slope, and individual facility construction standards. This requirement needs much more detailed analysis and discussion.)

**O. Article 4. ~~CIWMB~~ CalRecycle—Controls**

**§20901. CalRecycle – Loadchecking–Contamination in Source Separated Organic Waste.**

~~(a) The operator shall implement a loadchecking program to measure the amount of contamination in source separated organic waste by volume according to the following schedule:~~

~~(1) One (1) loadcheck shall be conducted for every 500 tons of source separated organic waste received per operating day. If the operator receives less than 500 tons for the operating day, a minimum of one (1) loadcheck shall be conducted for that operating day or the operator may request a greater or less frequency subject to approval by the EA;~~

~~(2) At least one loadcheck per month of each hauler type and collection route;~~

~~(b) The operator shall maintain the following loadchecking records under this section;~~

~~(1) Records of the number of rejected or redirected loads and reasons for rejection or redirection;~~

~~(2) Records of received loads with contamination that exceeds 10 percent.~~

~~(3) Records of notices provided to operators and or jurisdictions pursuant to section xxx30.15 of this Division.~~

~~(4) Records of loadchecks and the training of personnel in evaluating the amount of contamination in source separated organic waste. These records shall be maintained for three (3) years in the operating record and be available for review by the appropriate jurisdiction of origin, haulers, and other duly authorized regulatory agencies.~~

~~(c) The operator shall conduct a loadcheck in the presence of the EA when requested.~~

~~(d) The operator shall use the following protocol to measure the amount by volume of contamination in source separated organic waste:~~

~~(1) Take at least a one (1) cubic yard composite sample of the incoming source separated organic waste load;~~

~~(A) The composite sample shall be representative and random by taking samples from various times during the operating day or from various locations within the pile.~~

~~(2) Separate the contaminants from the composite sample and determine the volume of the contaminants;~~

~~(3) Determine the percentage of contaminants in source separated organic waste by dividing the volume of contaminants by the total volume of the composite sample.~~

~~(e) The operator shall provide a written notice to the collection service operator that the load exceeds 10 percent of contamination by volume.~~