

*Athens Services
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 Connection Inc.
Western Placer Waste Management Authority*

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Mr. Hank Brady
Senate Bill 1383 Manager
California Department of Resources
Recycling and Recovery
1001 I Street
Sacramento, CA 95814

Transmittal Via E-mail: 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 comment on the Draft SB 1383 Short-Lived Climate Pollutants (SLCP) Proposed Regulations (dated: October 24, 2017). While we appreciated the very deliberative informal process undertaken by CalRecycle and the Air Resources Board (ARB) over the past year and the complexity of this undertaking, we have significant concerns regarding many facets of the proposed draft regulations.

The undersigned companies, associations, and local governments have all been actively engaged in the SLCP processes at the ARB and the informal regulatory process at CalRecycle over the past several years. We have been engaged because together, we will bear a vast majority of the burden of achieving the goals set by SB 1383 and in implementing the regulations. We are also largely responsible for the existing infrastructure, programs, and funding mechanisms that have produced the most innovative and effective recycling system in the country. This system is the base upon which the many new recycling requirements of mandatory commercial recycling, mandatory commercial organics recycling, and now SB 1383 will be built.

At the outset, we want to note that throughout the past three years of deliberations on the SLCP Strategy, SB 1383, and now the informal regulatory process we have consistently made the same points. While we support a reasonable goal of reducing SLCP's and the disposal of organics, we believe that these goals cannot be achieved without:

- 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, and
- A dramatic increase in markets for compost and renewable fuels.

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 regulation. 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.

These proposed draft regulations are complicated and, as Director Smithline has noted during the workshops, we have not encountered such a heavy lift since AB 939. That fact alone warrants a very thorough and often critical review of the draft regulations by the stakeholders that will bear the brunt of the regulations. We also recognize that this is a first proposed draft so many questions must be asked so that we as stakeholders clearly understand the intent of the proposed regulations.

In that context, we offer the following general comments, concerns and recommendations. More detailed comments will be offered in our individual stakeholder letters and in follow-up discussions with CalRecycle staff.

A. Building an SB 1383 Organics Diversion Program off of AB 341 and AB 1826

The industry and local government have developed a business strategy based the 75 percent recycling goal contained in AB 341 and the 50 percent organics reduction by 2020 in AB 1826. We are committed to meeting those goals even though we disagree with CalRecycle's efforts to redefine recycling under AB 341. The Draft Proposed Regulations do not effectively acknowledge those efforts. Nor do they effectively recognize that current solid waste franchise agreements and contracts with cities and counties across the state will require major modifications to fund and enforce the organics reduction targets. We believe that the AB 341 and 1826 implementation efforts should inform and become a bridge for implementing SB 1383.

Recommendation: CalRecycle should convene a working group to discuss how the industry and local governments would propose to improve the SB 1383 regulations based on our actual experiences in implementing AB 341 and 1826. We recommend that this working group be conducted prior to the release of the second draft regulations.

B. Markets

Another area where we would like to see greater emphasis in the Draft Proposed Regulations is regarding marketing organics. Even if, by some miracle, we were to suddenly identify the additional processing capacity that is truly needed to manage an additional several million tons of organic material annually, no one has yet answered the question of where we will find

markets to accept the processed organics. And, to the extent that the Draft Proposed Regulations would discourage existing practices such as the land application of chip and grind material and biosolids by treating it as “disposal,” this only serves to exacerbate the problem.

An honest appraisal of the state of organics markets in Southern California leads to the unavoidable conclusion that land application must represent a viable option, and must not be equated with “disposal.” We are not opposed to reasonable regulations regarding the quality of material applied to the land, provided the standards are practical and achievable. But the application to the land of organic material that meets reasonable specifications must not be equated with or regulated as a disposal activity.

Recommendation: This is another area that needs more deliberation to produce the best results. Again, we urge CalRecycle to conduct a working group discussion on markets prior to releasing the second draft regulations.

C. Consistency with the Provisions of SB 1383

The central premise to our concern is that the regulations take a command and control 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 state law. The implementing regulations should not exceed the authority granted in the law to the point that they are neither cost-effective nor feasible.

We are very concerned with CalRecycle’s contention that SB 1383 codifies ARB’s SLCP Strategy. This interpretation of SB 1383’s grant of regulatory authority is the basis for CalRecycle and ARB arguing that the targets and recommendations in the SLCP are mandates and that the regulations must be “verifiable and enforceable”. In following this path, CalRecycle and ARB are ignoring key SB 1383 provisions that were intended to set limits on the SLCP regulatory process, including a provision that states no numeric organic waste disposal limits at landfills.

In that vein, we have two general concerns:

1. Redefining Disposal

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

2. Definition of Organic Waste

The Draft 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.

Jurisdictions have devoted significant resources to the compliance with the Mandatory Commercial Organics Recycling requirements. It is not clear how a jurisdiction is expected to transition from this existing program.

The regulations should target the types of organic waste that are the greatest sources of methane production. For example, lumber generates little methane and the diversion of lumber from landfill should not be given equal priority to other types of organic waste such as food waste that generate large amounts of methane.

Recommendation: We recommend that the focus be on high SLCP organics and only adding new types of organics to the definition after an analysis that verifies that markets for that material are available and viable.

D. Contamination

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 specify the desired accuracy of the measurable criteria and should not require unnecessary accuracy for the regulatory programs and goals. For example, it was indicated during the June 21 and June 26 workshops that measuring contamination at transfer/processing facilities and organics recycling facilities that receive source-separated organics or organic waste that was separated for reuse at a prior facility will require load checking for feedstock contamination and reporting on the level of contamination.

A visual inspection, with no sorting or characterization of waste, should be sufficient for measuring contamination. In addition, the acceptable threshold for contamination should not be so precise that it cannot be determined by visual inspection.

E. Mixed Waste Organic Collection Services

We are very concerned about the language that prohibits mixed-waste processing infrastructure to be built post 2020 without 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. 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.

Recommendation: (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 the jurisdiction shall begin implementing 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, within a year and half of the due date of an implementation schedule.*

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.

Recommendation: This section should be changed as follows:

(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.*

F. 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. We recommend adding the waivers as an exception in xxx30.1(a) as follows:

- (a) Except as provided in sections xxxx30.2 and 30.3 a jurisdiction shall provide a source-separated collection service that complies with the following:

Section xxxx30.1 (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 xxxx30.1(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 of organic wastes, when the goal of SB 1383 is 50 percent by 2020 and 75 percent by 2025. We recommend the following change to section xxxx30.1 (a)(2)(C):

- (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.~~

G. Good Faith Effort

The signatories on this letter have a long history of managing our MSW stream, and we look forward to the further development of organics management in California. We do understand the importance of verifiability. However, we feel strongly that the Draft Proposed Regulations reliance on prescriptive measures and extensive report flies in the face of the success of AB 939 and other more recent diversion initiatives. We are legitimately concerned that over prescription will do more harm than good. Jurisdictions and their waste haulers need the flexibility to design programs based on a jurisdictions specific needs. 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 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. To accomplish this, CalRecycle should hold a separate stakeholder meeting on this topic.

H. Containers and Labeling

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.

Most curbside containers have an average useful life of 15 years or more. As we understand the draft regulations, they will require the wholesale replacement of containers in less than 7 years (if the 2025 date is used for compliance), maybe less than 2 years (if the 2020 date is used for compliance). There is no clear compliance date listed for the requirements under this

Sub-Section. Further, for those containers already deployed in the field that meet the color requirements, they will likely not meet the labelling requirements of this Sub-Section. There will be a significant economic impact to the cities and counties here if they have to deploy labor and materials into the field to sticker those color compliant containers with the labels as specified in the regulations. Below is an analysis provided by the County of Sacramento reflecting their cost estimates to bring approximately 516,000 containers for trash, green waste, and recycling into compliance with the regulation language as currently drafted.

Of the 515,927 containers currently deployed in the Sacramento County service area, 165,806 are new three-color containers (black for trash, green for green waste, and blue for recycling) and these three-color containers have been deployed as needed since early 2012. The remaining 350,121 non-color specific containers would be non-compliant with the color coding requirement of SB 1383 regulations in their current form. The 165,806 three-color containers would only be non-compliant from a labelling requirement perspective.

Based on an average cost per container by size since Sacramento County started buying the three-color containers, the County would need to spend \$15.7M on container replacements, an additional \$800K on graphic thermal transfer labels for those replacement containers, and finally an additional \$1M for stick-on-labels for the three-color containers already purchased and deployed.

The estimated total impact from the draft SB 1383 regulations just for this item is \$17.5M which would likely need to be completed sometime between 2020 & 2025. If the compliance date is 2025, that would leave the County with only about seven years to spread these costs. This would require a minimum rate increase in curbside rates of \$1.34/month. If only two years are allowed for compliance, then the curbside rate would have to increase by \$4.70/month.

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.

We recommend the following be added to section xxx30.1 (a)(3)(D):
(D) 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).

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. 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:

(D) In lieu of separate containers for each generator, drop-off locations can be established for organic wastes.

Please contact any one of the undersigned if you have any questions or require further information about our comments, recommendations and concerns.

Sincerely,

Kelly Astor, Executive Director, Inland Empire Disposal Association, Los Angeles County Waste Management Association, Solid Waste Association of Orange County
jka@astor-kingsland.com

Chuck Boehmke, Department Head, Solid Waste Management Department, Sanitation Districts of Los Angeles County
cboehmke@lacsdsd.org

Erin Evans-Fuldem, Legislative Representative, League of California Cities
eevans-fudem@cacities.org

Chuck Helget, Director of Government Relations, Republic Services
Chelget@republicservices.com

Melissa Immel, Legislative Advocate, Solid Waste Association of North America, California Chapters
melissa@shawyoderantwih.com

Doug Kobold, Waste Management Program Manager, County of Sacramento Department of Waste Management & Recycling
koboldd@SacCounty.net

Greg Loughnane, President, Athens Services
GLoughnane@athensservices.com

Cara Martinson, Legislative Representative, California State Association of Counties
cmartinson@counties.org

Kathy Lynch and Veronica Pardo, Regulatory Affairs, California Refuse Recycling Council
joshpane1@icloud.com
jka@astor-kingsland.com

Mary Pitto, Regulatory Affairs Advocate, Rural County Representatives of California
mpitto@rcrcnet.org

Jolena L. Voorhis, Executive Director, Urban Counties of California
jolena@urbancounties.com

Eddie Westmoreland, Western Region Vice President of Government Affairs, Waste Connections, Inc.
eddiew@wasteconnections.com

Melissa Immel, Western Placer Waste Management Authority
melissa@shawyoderantwih.com

cc: Scott Smithline, Director, CalRecycle