



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

May 16, 2018

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

Transmit Via E-mail: SLCP.Organics@calrecycle.ca.gov

RE: Comments on the Final Informal Draft of the Proposed Short-Lived Climate Pollutants Regulation Text

Dear Mr. Brady:

On behalf of the Rural County Representatives of California (RCRC), I am writing to express our appreciation for the opportunity to provide input into the development of Senate Bill 1383 (Lara, 2016) regulations for organics diversion from our landfills, the final informal draft of the Proposed Short-Lived Climate Pollutants (SLCP) Regulations. RCRC is an association of thirty-five rural California counties, and the RCRC Board of Directors is comprised of an elected supervisor from each of those member counties.

In addition, twenty-four member counties have formed the Rural Counties' Environmental Services Joint Powers Authority (ESJPA) to provide assistance to solid waste managers in rural counties. These solid waste managers have been charged with ensuring that their respective counties meet state-imposed requirements to reduce waste being disposed in landfills and increase recycling/re-use efforts for certain products. Our counties' solid waste managers are dedicated to providing meaningful, environmentally conscious, and cost-effective solid waste services to their residents and businesses.

First, I would like to thank CalRecycle for your extensive outreach to the stakeholders during the informal development of the Proposed SLCP Regulations. This draft is testament to the thoughtful consideration that CalRecycle gave to comments received from the stakeholders, as CalRecycle responded to many of the concerns that were expressed by various stakeholders.

Most important to our member counties is the extension of the Assembly Bill 1826 (Chesbro, 1914), Mandatory Organics Commercial Recycling (MORe) provision to delay implementation to counties with populations of less than 70,000 to the Proposed SLCP

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Regulations. The Proposed SLCP Regulations now include a delay of implementation of the residential organic collection service to those same counties until 2025. In addition, in our previous comments we suggested that rural areas of other counties be considered for waivers. The Proposed SLCP Regulations now includes a provision for a county to apply to CalRecycle for two-year waivers for census tracts located in unincorporated areas of the counties that have a population density of less than 50 persons per square mile or incorporated cities with a total population of less than 5,000 people and less than 5,000 tons of solid waste as reported in 2014.

Notwithstanding the above provisions and other flexibilities that were included in this new draft, some previous issues need further addressing and the new provisions for procurement, record-keeping, capacity planning, reporting, enforcement, and penalty requirements have generated new concerns.

The short public review period for the final draft of the Proposed SLCP Regulations has not provided ample time to vet this version with our members. Therefore, when the formal draft is released we could have additional issues that are not presented here. This letter provides a summary of key issues and an attachment with more specific comments. We plan to continue our review of this draft and anticipate we will provide a more detailed comment letter with suggested specific language edits.

Waivers and exemptions

As stated earlier, RCRC is appreciative of the proposed waivers and exemptions. However, we still believe it is appropriate to allow a local jurisdiction to request a waiver for a proposed area based upon the local circumstances and conditions. Rural areas need more flexibility to meet the requirements of these regulations due to the small amount of solid waste generated, low population density, lack of easily accessible organics facilities, or other unique situations, and the greenhouse gas impact tradeoffs.

Section 30.12 (c), Rural Exemptions, specifies that Rural Jurisdictions meeting the definition in Section 42649.8 of the Public Resources Code are exempt from the requirements in Section 30.0 – 30.5. This should be extended to Sections 30.6 – 30.10 as well. We previously proposed that these counties be exempted from the entire Chapter as it is economically infeasible for these counties to be mandated to participate in an organics program for the small percentage of benefits received. It would be difficult to justify the state spending any of their valuable resources ensuring compliance within one-third (1/3) of the state's counties for such a small fraction of the waste stream. At a minimum, the provisions should be reviewed closely to eliminate those that are economically unjustified or do not provide a direct impact (i.e. planning capacity implementation for edible food recovery and processing infrastructure).

Procurement Program

Market development is a crucial component of the success of meeting organics diversion goals, of which state and local governments procurement requirements is an important piece. However, RCRC does not believe that the SLCP Regulations should be the vehicle to address this issue. We suggest that procurement be removed from the proposed

regulations and that it be an all-encompassing (state and local government) effort. As identified in our previous correspondence, we believe this procurement mandate was not authorized by SB 1383 and is inconsistent with other statutes, constitutes an unfunded mandate, and causes potentially significant environmental impacts requiring California Environmental Quality Act (CEQA) review.

RCRC also has concerns with using the proposed formula based upon a statewide average of organic waste generated by an employee, times the number of a jurisdiction's employees as a target for purchasing compost and renewable natural gas. This does not consider the availability of these products in each jurisdiction or the ability or need to use these recycled products. It would seem more appropriate to require a certain percentage of purchases of recycled products, consistent with Public Contract Code 12203.

At the stakeholder meeting, CalRecycle indicated the number of employees included are only the counties' and cities' employees, as provided by the Employment Development Department (EDD). However, EDD staff verified that for the rural areas, *all* local government employees were lumped together, including special districts and school districts. In responses I have received, this represents 3 to 5 times the number of actual county employees. While this will reduce the amount of required purchases of the recycled materials needed to be purchased in these counties, it also reduces the amount of the overall benefits of the requirement.

Capacity Planning

The Proposed SLCP Regulations capacity planning for edible food recovery and processing facility infrastructure includes a requirement that jurisdictions that lack sufficient capacity shall submit an implementation schedule to CalRecycle that demonstrates how it will ensure there is enough new or expanded capacity to recover the organic waste currently disposed of by its generators. This is beyond the ability of most local jurisdictions to achieve.

It is common knowledge that California does not have sufficient infrastructure capacity today to handle the amount of organics to be diverted from landfills to meet the goals of AB 1826 and SB 1383. In addition to being costly, the facilities are difficult to site and can take five to ten years to get through the permitting process. To place the responsibility of providing sufficient capacity on local jurisdictions is not realistic. This effort will necessitate all stakeholders, including the state, local jurisdictions, private industry, and the residents of the state to participate in this endeavor.

Monitoring, Compliance, and Enforcement

The requirement of the property and business owner's responsibility to provide organic waste collection services and annual notification about organic waste recovery requirement and proper sorting is duplicative for residential tenants and will be difficult for jurisdictions to monitor. The local jurisdiction is already required to conduct public education and outreach that should already cover the individual residence, whether rented or owner-occupied.

RCRC appreciates the inclusion of a mechanism to allow consideration of a jurisdiction's efforts for compliance. The "Corrective Action Plans" allows extended timelines

and milestones for achieving compliance, if the jurisdiction has demonstrated that it has made a “substantial effort” to comply and there are extenuating circumstances that have prevented it from complying. Substantial effort is then defined to mean that a jurisdiction has taken all practicable action to comply. However, it further clarifies that substantial effort does not include circumstances where a decision-making body of a jurisdiction has not taken the necessary steps to comply with the Chapter, including but not limited to, a failure to provide staff resources or sufficient funding to assure compliance. We believe this to be too severe of a requirement for determining compliance. There are many factors for a decision-making body to consider when establishing programs that are reasonable and economically feasible.

Penalties

The Proposed SLCP Regulations includes a very specific and extensive penalty table that RCRC believes is premature and should be considered in a separate set of regulations. This regulation is complicated on all fronts and will be difficult to implement and administer. All stakeholders need to begin working through responsibilities and requirements to determine appropriate levels of fines for the various infractions. Jurisdictions have until 2022 to implement the programs so there is ample time to consider appropriate levels of penalties after implementation of these regulations.

It is also very difficult to justify such a prescriptive set of penalties onto our residents, industry partners, and local jurisdictions when the State entities, federal agencies, and schools, who are large contributors to the organic waste stream, get put on a “list-of-shame” for non-compliance.

RCRC appreciates the effort that CalRecycle staff has spent on crafting a regulation to assist all stakeholders in meeting the statewide organic diversion goals. We also appreciate the outreach efforts and early stakeholder involvement that CalRecycle has provided. We remain dedicated to working collaboratively to find a reasonable and responsible way to move forward in meeting our goals. Please do not hesitate to call if you have any questions or want to discuss any of these concerns further.

Sincerely,



MARY PITTO
Regulatory Affairs Advocate

Attachment: RCRC General Comments on the Final Informal Draft of the Proposed SLCP Regulations

RCRC General Comments on the Final Informal Draft of the Proposed SLCP Regulations

Article 1. Definitions

1. RCRC supports the concept of using references to existing definitions rather than creating new ones. This avoids much confusion during the implementation process.
2. (45) “Organic Waste”. The definition of “Organic Wastes” is extremely broad and even includes plastics since plastics are made from petroleum which “originated with living organisms”. As this term is used later, the inclusion of plastics does not fit into the concept of organic collection and processing. This definition should be narrowed to prevent confusion.
3. (66) “Self-hauler”. Since the definition is included in the definition of “Hauler” (31), the proposed regulations are not clear when the provisions of hauler also apply to self-hauler. Self haul is a predominate means of managing solid waste in rural areas and imposing mandatory record keeping and reporting would be excessive on small business and jurisdictions.

Article 2. Landfill Disposal and Reductions in Landfill Disposal

4. Section 20.1 (a) (2) - The overly broad definition of organic waste, as material originated from living organisms and their metabolic waste products, would result in many currently approved alternative daily and intermediate covers also be deemed to constitute disposal including wood ash, construction and demolition wastes, contaminated sediment, sludge, and even shredded tires (petroleum based). The definition of organic waste should be narrowed and/or allowance in this section to clearly indicate that use of the above materials is not deemed to be disposal.

Article 3, Organic Waste Collection Services

5. Repeated testimony at workshops indicated sufficient support for allowing flexibility on container colors, which we support. Significant costs to replace containers is better spent on programs. Some jurisdictions are utilizing, or considering, the use of split carts to allow collection of different materials in the same container. The proposed regulations support this concept but require the color of the split container body to match the contents. This is not feasible with a split container and the proposed regulations should allow the common practice of using different color lids rather than the entire container. This would also reduce the number of containers needing to be disposed.

6. The requirement that the contents of organic and recyclable container can only be transported to a facility that processes the waste does not allow for these materials to be transported to a transfer operation or facility before being sent to a subsequent facility for processing. This practice is common in rural areas or areas lacking the processing infrastructure.

Article 7. Regulation of Haulers

7. Section 70.3. Self-haulers of Organic Waste - The requirement for source-separation does not include all collection options allowed in Article 3. This provision should be changed to include section 30.3.
8. Section 70.3. Self-haulers of Organic Waste - Section (b) states that generators “shall source-separate all organic waste generated on site” and self-haulers are required to keep records of the amount of organics waste generated and annually report to jurisdictions. These provisions are an excessive compliance measure for small businesses. It also imposes excessive and time-consuming requirements on the jurisdiction, effort that is better spent on implementing the other requirements.
9. Section (b) (5) does exempt residential organic waste generators from the record keeping and annual reporting but does not exempt residents from source separating organic waste and hauling to a facility “that processes or recovers source-separated organic waste”. In many rural areas, these facilities might not be available and thus would force residents to haul their organic waste to facilities much greater distances than feasible and could exacerbate illegal dumping. Residential generators should be exempt from all requirements, especially if options do not exist.

Chapter 3. Minimum Standards for Solid Waste Handling and Disposal

Article 6.0. Transfer/Processing Operations and Facilities Regulatory Requirements

10. Section 17402, Definitions – The definition of consolidation sites is helpful, and these facilities are provided exemption from some requirements later in the proposed regulations. However, provisions in Article 3 Organic Waste Collection Services require organics and recyclables to be taken only to facilities that require processing. These earlier requirements should be modified to allow these consolidation sites to function as intended.

Article 6.2 Operating Standards

11. Section 17409.5.2. Measuring Organic Waste Recovered from Mixed Waste Organic Collection Stream – The daily sampling requirement for each separate organic waste type is excessive. It would require significant space and is not related to the amount of waste accepted. Operators should have flexibility on how to implement sampling for contamination. In addition, facilities located in jurisdictions that have waivers should not be required to conduct sampling.
12. Section 17409.5.3. Measuring Organic Waste in Residuals Removed from Mixed Waste Organic Collection Stream – The comments above apply to this section also.
13. Section 17409.5.4. Measuring Organic Waste Recovered from Source Separated Organic Waste Collection Stream – The comments above apply to this section also.

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

Subchapter 4. Criteria for Landfills and Disposal Sites

Article 2: Alternative Daily Cover Material and Beneficial Reuse

14. Section 20700.5 CalRecycle—Long-Term Intermediate Cover – There has been no scientific or engineering justification for increasing the long-term intermediate cover from the current 18 inches to 36 inches. Methane emissions are already regulated at landfills including monitoring requirements. If the rationale for this increase is to control methane, there has been no indication that the current 18 inches is not sufficient and, in addition, Health and Safety Code 39730.6 states that “the state board shall not adopt, prior to January 1, 2025, requirements to control methane emissions associated with the disposal of organic waste in landfills other than through landfill methane emissions control regulations.” Doubling the amount of cover is a divert funds from program implementation with no added benefit. This provision should revert to the current 18 inches.
15. 20750.1. CalRecycle– Organics Waste Handling – This proposed section would require all landfills to implement organic waste recovery activities even if the jurisdiction has received a waiver from the organics management programs. All landfills, especially small landfills, cannot feasibly implement organics recovery activities. This provision should be removed or made not mandatory.

Article 4. CalRecycle—Controls

16. Section 20901 imposes a load check requirement for one load check for every 500 tons of source separated organic waste 54 received per operating day, but a facility receiving less than 500 tons is required to do a minimum of two load

checks. These limits are inconsistent in that facilities accepting between 501 to 999 tons only needs to do one load check. Facilities with less than 500 tons should only be required to do one load check.

Article 3.2. CalRecycle—Other Requirements

17. Section 21695. CalRecycle—Organic Disposal Reduction Status Impact Report –
This report imposes excessive requirements on landfills. The report could be included in the next five-year review rather than imposing a separate report. A number of the listed analysis are not impacted by reducing organic disposal including the site development, volumetric capacity (less waste will not change capacity), waste handling methods, operation and closure design, and grading. This report needs significant changes.