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November 15, 2017

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 Proposed Regulation

Dear Mr. Brady:

The Rural Counties' Environmental Services Joint Powers Authority (ESJPA), consisting of twenty-three rural counties, exists to assist member counties in their efforts to comply with State and Federal solid waste requirements. We appreciate the opportunity to provide input into the development of Senate Bill 1383 (Lara, 2016) regulations for organics diversion from our landfills. Our counties' solid waste managers are dedicated to providing meaningful, environmentally-conscious, and cost-effective solid waste services to their residents and businesses.

The ESJPA counties contain only 3.8 percent of the state's population and contribute only 4.2 percent to California's solid waste disposal tonnage. These counties contain nearly 32 percent of California's square miles. The average population density of the ESJPA member counties is 34 persons per square mile, with nine counties having less than ten persons per square mile. Most of the population in each county is concentrated within a few population areas. In contrast, the state's average population density is 240 persons per square mile with the major populous areas having population densities of over 5,000 persons per square mile. The economies of scale are vastly different and often prohibitive for rural California compared to the urban areas.

The ESJPA has appreciated CalRecycle conducting the public workshops and presentations to the ESJPA Board of Directors soliciting input for drafting the organics regulations and would like to offer some thoughts and comments related to the proposed regulations. First, we believe that the task before us all is unachievable within the time frames provided in Assembly Bill 1826 (Chesbro, 2014) Mandatory Commercial Organics Recycling, SB 1383, and the Air Resources Board (ARB) March 2017 Short-Lived Climate Pollutant Reduction Strategy. That is not to say we should not begin to work towards its implementation. We also believe that rural counties are partners in working towards

achieving the state's goals. But we must be mindful of proposals that do not result in unintended negative consequences.

We summarize some very general concerns below and provide detailed comments in the attachment. The central premise to our concern is that a vast majority of rural California cannot economically (and in many cases practically) meet the same level of service for organics diversion as urban California. The ESJPA recommends that the regulation be tiered based upon population density, travel distances, and infrastructure capacity. The following highlights our general concerns with the proposed regulations:

- The disposal definition excessively includes all beneficial reuse at landfills as disposal.
- Rural areas need more flexibility to meet the requirements of these regulations due to the small amount of solid waste generated and minimal greenhouse gas impact, low population density, and lack of easily accessible organics facilities.
- 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.
- There are currently insufficient existing organic processing facilities in the state to handle the amount of organics to be diverted. The proposed requirements need to allow sufficient flexibility for jurisdictions making a reasonable, but unsuccessful, effort.
- The ESJPA believes the "good faith effort" provisions are imperative to compliance with the SB 1383 regulations being developed and have proven successful in determining compliance with the Integrated Waste Management Plan. It is the responsibility of the jurisdiction to document their compliance efforts, including those that are unsuccessful efforts.
- A significant generator of organic waste in rural areas are state and federal agencies. The proposed regulations should clarify that compliance, inspection, and enforcement provisions also cover State Entities and how the state will engage federal cooperation.
- The reporting and enforcement requirements are excessive and need to be streamlined and coordinated between local jurisdictions and contractors.

Thank you for the opportunity to provide input into the regulatory process, and we look forward to continue working with CalRecycle on viable organics programs for rural communities. If you have any questions, please contact me at mpitto@rcrcnet.org or (916) 447-4806.

Sincerely,



MARY PITTO
Regulatory Affairs Advocate

ESJPA Specific Comments on SB 1383 Proposed Regulations

Article 1 Definitions

The comprehensive nature of this regulatory challenge incorporates many other regulatory requirements (e.g. mandatory organics, solid waste permitting, proposed AB 901 reporting). The mandates the need for the proposed SB 1383 regulations to use consistent definitions. In addition, a number of terms utilized in the proposed SB 1383 regulations lack definitions in this proposal or in existing regulations, and there are definitions included here that are not used in the proposed regulations.

Definitions that need clarification include:

(6) "County Health Director" has the same meaning as in section 113774 of the Health and Safety Code.

This term is not used in the proposed regulations and should be removed. In addition, Section 113774 defines "Enforcement Officer" not "County Health Director."

(12) "Contamination", or "contaminants" means human-made inert material contained within organics including, but not limited to, glass, metal, and plastic.

This definition is too restrictive by limiting contamination to human-made inert material. As used in Section xxx30.15 Contamination of Source-Separated Organic Waste, this definition would not allow for non-inert human made contamination in an organics waste container. For example, a container with manure laced textiles would not be acceptable at a textile manufacturer but would not be considered contaminated with this definition.

(21) "Food Handler" has the same meaning as in section 113790 of the Health and Safety Code,

This term is not used in the proposed regulations and should be removed.

(22) "Food Processing Establishment" has the same meaning as in section 111955 of the Health and Safety Code.

This term is not used in the proposed regulations and should be removed. The referenced Health and Safety Code Section 111955 excludes restaurants and cottage food operations.

(30) "Large Commercial Edible Food Generator" & (33) "Medium Commercial Edible Food Generator"

One criteria for both of these terms is the number of employees. Many food facilities use part-time staff. It would be most appropriate to clarify that the number is based upon full-time employee equivalents. An alternative criteria might be use of annual gross sales

similar to that used for the definition of supermarkets or under the beverage container facility requirements.

(31) Large Event and (32) Large Venue

To maintain consistency with current statute, these definitions should revert to the ones in PRC Section 42648. There is no benefit to the minor modifications in these definitions.

(34) “Mixed waste organics collection service” means a waste collection service that collects organic waste with other solid waste in a mixed waste collection container or a disposal container and sends the material to a high diversion mixed waste processing facility that recovers the organic waste at the level specified in xxx30.2.

Section xxx30.2 does not specify recovery levels. It does reference transport of mixed waste organics to the undefined “high diversion facility” complying with section 17409.5.1. Section 17409.5.1. is for “Organics Diversion at Mixed Waste Processing Facilities” but does not reference what “high diversion” means.

The term “Mixed Waste Organic Collection Service” is defined a little different later in section 17402 (19.5) as “Mixed Waste Organic Collection Service” means a collection service that is provided to a generator pursuant to section xxx30.2.

(35) “Mixed waste organics container” indicates “a container that is intended for the collection of solid waste including organic waste that will be are separated at a high diversion mixed waste facility”.

Both (34) “Mixed waste organics collection service” and (35) “Mixed waste organics container” should, and do not clearly, indicate management of organic wastes with other solid waste that are not sent for separation at a high diversion mixed waste processing facility. Some of these mixed waste containers may be sent for transfer or disposal.

(37) “Organic Waste” means 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 extremely 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.

(39) Organics waste generator” means a person or entity that is responsible for the initial creation of organic waste.

This definition covers every possible generator, even an individual household, and would consider all generators to be a “regulated entity” under Section xxx10.2.

This is excessive for rural jurisdiction or areas without curbside service.

(49)“Self-hauler” means a person who hauls solid waste, organics or recyclable material they have generated to another person. Self-hauler also includes a person who back-hauls waste.

This definition covers every person hauling their own solid waste, organics or recyclable material. As used in Section xxx60.2, Self-haulers would be required to source-separate organics, keep records of the amount of organics wastes delivered which are subject to inspection by the local enforcement agency, and report annually to the jurisdiction. Expecting each resident to comply with these procedures is excessive and the cost impact to jurisdictions is not realistic.

Under the proposed AB 901 regulations, self-haul waste is not tracked individually by the receiving facility. These regulations should establish a larger threshold for compliance such as the 12 or more cubic yards limit used for food waste self-haulers. This definition should refer to the proposed AB 901 term.

(52) “State Entity” means an entity that is an organic waste generator but is not subject to the control of city or count regulations related to solid waste. These entities include but are not limited to special districts, school districts, community college districts, public universities, and all state agencies.

Independent special districts are local agencies, not state agencies.

(53) “Supermarket” means a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items.

This definition would not include online retailers that only offer home-delivery of these items since these entities are not self-service. The following change is recommended

(53) "Supermarket" means a full-line, **self-service** retail store with gross annual sales of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items.

Additional Definitions Needed

There are a number of terms used in the proposed regulations that do not have definitions but ones should be developed to provide clarity. These definitions including the following:

- "Generator"
- "High Diversion Facility"
- "High Diversion Mixed Waste Processing Facility."
- Local Enforcement Agency should also include Enforcement Agency for cases where CalRecycle functions as the Local Enforcement Agency.
- Metabolic waste products

Article 2 Landfill Disposal and Reductions in Landfill Disposal

General Comments

- The Article Title should use consistent punctuation. The following change is recommended:

Article 2 Landfill Disposal **A**and Reductions in Landfill **d**Disposal

- Definitions in this article should be included in Article 1.

Section xxxx20.1 (a)

This proposed language excessively includes all beneficial reuse at landfills as disposal. This proposal is also inconsistent with current statute. Section 41781.3 (a)(1) indicates that beneficial reuse, except green material as alternative daily cover under some circumstances, is not considered disposal. 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, son-site generation should not be considered disposal.

Section xxxx20.1 (b) (3) An "In-vessel Digestion Operation of Facility" as defined in section 17896.2(a)(14)

This specific definition is not defined in the referenced section. There are several similar terms used in the existing regulations. There are a number of references in this section for

in-vessel including “Dairy”, “Distribution Center”, “Digester”, “Large Volume”, “Limited Volume”, “Medium”. Is this definition intended to refer to all of the above types?

There are other uses of the term in other sections including the following:

Section 17852 (a) (41) "Within-vessel Composting Process" means an aerobic process in which compostable material is enclosed in a drum, silo, bin, tunnel, reactor, or other container for the purpose of producing compost, maintained under uniform conditions of temperature and moisture where air-borne emissions are controlled.

Is the proposed definition intended to include “Within-vessel Composting Process” activities also?

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

Section (a)(1) limits approval of “operations” to those where “methane emission reductions are equivalent to, or greater than those which are assumed from a composting operation in the California Air Resources Board (CARB) adopted Short-Lived Pollutant Reduction Strategy (March 2017)”. Given the lack of available facilities that will be available by the effective date of these proposed regulations, imposing this threshold will severely limit development of activities that could provide some benefit.

In addition, the term “operation” has specific definitions in the permitting regulations that are distinct from a “facility”. This term should be changed to “activities” to avoid confusion.

Section (a)(2) lists the information needed from an applicant to demonstrate reduction in landfill disposal including “calculations, assumptions, or emission factors”. This section should reference what approved formulas and procedures are acceptable for these concepts.

Article 3 Mandatory Organic Waste Collection

Section xxxx30 Collection of Organic Waste

Nineteen low-population counties of California have been granted an exemption to the requirements of Assembly Bill 1826 (Chesbro, 2014), Mandatory Commercial Organics Recycling (MORe), until 2020 when the program will be reevaluated. This exemption recognized the unique needs of rural areas and the limited impact of rural programs on the statewide numbers. ESJPA requests that these same 19 counties, which collectively

represent 2 percent of the state's solid waste¹, be granted an exemption to the requirements of these proposed regulations until 2025 or five years following initiation of the MORE programs in these counties. If the extension ends in 2020, the counties will need additional time to phase in the MORE requirements and the additional mandates from these regulations. We propose the following be added to section xxxx30:

(a) *Except as provided in section xxxx30.b*, every jurisdiction shall be responsible for the collection and recycling of organic waste generated within the territory subject to its authority in a manner that complies with the requirements of this chapter.

(b) Low population counties that were granted the exemption provided in section 42649.82 of the Public Resources Code (PRC) are exempted from the requirements of this chapter until 2025 or five years following the initiation of the requirements of PRC Chapter 12.9.

It is economically infeasible for these counties to be mandated to participate in an organics collection program. And it would be difficult to justify the state spending any of their valuable resources ensuring compliance within one-third of the state's counties for such a small fraction of the waste stream. There are other rural jurisdictions that should also be considered for the exemption. In addition to the 19 above mentioned counties, there are an additional five counties without any urban areas (cities of 50,000 or greater), as defined by the US Census. These counties should be included in the exemption as well.

Section xxxx30.1 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 xxxx30.3 provides for waivers in certain situations. Therefore, ESJPA recommends xxxx30.3 be added to xxxx30.1 (a) as follows:

(a) Except as provided in sections *s 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):

¹ This figure has increased from 1.4 percent in 2012, the year used when AB 1826 was approved, due to the Lake and Calaveras counties 2016 fire debris clean-up.

(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.~~

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

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.

The waste container labeling requirements of xxxx30.1 (a)(3)(D) allows for a jurisdiction or hauler to use educational material provided by CalRecycle to comply with the labelling requirements. This provision is useful provided the types of materials can be tailored to the jurisdiction's ability to recycle certain materials.

ESJPA recommends 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 xxxx30.15 Contamination of Source-Separated Organic Waste

Paragraph (b) allows a hauler to refuse to collect the container or may dispose of a container that has contamination of greater than 10 percent. If the container is not picked up, what is expected to happen to the container? Is the generator expected to sort through it and leave it until the next pick-up? Does this violate section 17331 Frequency of Refuse Removal?

In addition, a hauler performing a random check is unable to quantify the extent of the contamination since the entire load cannot be reviewed at the curb. They can only identify contamination in the top of the load. Significant contamination can exist at the bottom of the container. Significantly contaminated waste in the container is allowed to be disposed of as solid waste. The container itself does not need to be disposed of as waste.

The following change is recommended:

(b) A hauler, who, in the course of his or her duties, or during a random check for contamination, notices or identifies contamination ~~of greater than 10 percent~~ in an organics container may refuse to collect the container, or may dispose of the ~~waste in the~~ container.

Paragraph (b)(3) requires a jurisdiction to implement certain measures when notified by a hauler or solid waste facility operator of contaminated material. There should be an allowance for reviewing and investigating the notification rather than automatically targeting each reported generator. In addition, if a notice is to be placed on a container that would likely be conducted by the hauler and not the jurisdiction. The targeted education of a generator is best performed immediately by the hauler at the time of detection. Many haulers currently utilize tags or notices to the customer of many issues (overweight, contamination). Similarly, solid waste facility operators detecting contamination in a load should notify the hauler as well as the jurisdiction. The hauler should be required to notify the jurisdiction of the measures the hauler has taken to correct the problem.

Section xxxx30.2 Mixed Waste Organic Collection Services

Paragraph (a)(2) prohibits 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.

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.~~

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 Mixed Waste Processing Facility rather than mandate a switch to a source-separated program that requires significant cost to change an existing system. Many High Diversion Mixed Waste Processing Facilities will be utilized by multiple jurisdictions. The failure to meet

requirements by the High Diversion Mixed Waste Processing Facility may not be related to the jurisdiction's mixed organics. The ESJPA suggests the following 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 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.*

Section xxxx30.3 Waivers

Because most counties have rural areas that are similarly constrained as the 19 low-population counties in the MORE, those areas of the counties should be considered for a separate tier of compliance. It is economically infeasible to collect organics from residential development in these areas due to the low density and travel distances. For those counties that are subject to MORE, the effects of small geographic size, low-population density, the availability, or lack thereof, of sufficient organic waste processing infrastructure, organic waste recycling facilities and other nondisposal opportunities and markets needs to be considered during a jurisdiction's performance review. These same considerations for compliance will be necessary in the SB 1383 regulations.

In many rural areas, there is not mandatory or even voluntary curbside recycling programs. Self-hauling waste and recyclables to drop-off locations is a common practice. These rural areas that are distant to urban areas could be responsible for developing and implementing organics diversion programs to reduce the amount going to landfills from a suite of programs that are suitable for the jurisdiction, such as education and outreach, food rescue programs, and encouraging backyard and small-scale community composting.

ESJPA recommends adding a waiver to section xxxx30.3 (4) to accommodate more encompassing areas of the counties appropriate for reduced organics diversion requirements as follows:

Section xxxx30.3 Waivers *and Reduced Levels of Requirements*

(4) Rural Waiver. A jurisdiction may waive or reduce levels of requirements in areas of the counties due to small geographic size; low-population density; the lack of sufficient organic waste processing infrastructure, organic waste recycling facilities, and other nondisposal opportunities and markets within a reasonable distance. The jurisdiction shall specify a date at which time the waiver will be reevaluated.

The mechanics to divert organics from landfills is only part of the problem. Building the necessary infrastructure needed to process the organics once diverted will be challenging

not only financially, but due to the constraints of the state and local permitting process. CalRecycle estimated it will require an additional 100 new or expanded facilities to process the diverted organics from AB 1826. Since 2014, only seven new or expanded facilities have been permitted.

The local land use permitting process involves the public. Organic processing facilities are considered undesirable land uses and are very difficult to site due to the public participation. In addition, if a project can make it through the local permitting process, there are still the permit requirements from the State Water Board and local air permits, which make approving a new facility difficult and costly. To get through the permitting process for compost or anaerobic facilities generally takes five to ten years. Quite frankly, it is unrealistic to believe that 93 or even 50 new facilities can be built within the next two years given the challenges of the permitting process.

We also recommend that even in the urban areas there be a distance requirement and access to a processing facility requirement before a jurisdiction is mandated to collect organics for processing. Once a facility is located within the acceptable distance and the jurisdiction is capable of securing access to the facility, the jurisdiction could then be required to use the facility. An additional waiver should be added as follows:

(5) Facility Access Waiver. A jurisdiction may temporarily waive some or all the requirements that apply to a generator, if the generator provides documentation satisfactory to the jurisdiction that there is not organic facility processing capacity economically feasible available.

Article 5 Generators of Organic

Section xxxx50.1 Organic Waste Generator

Section xxxx50.1 (d) allows generators that subscribe to source-separated organics recycling service to have collection once every fourteen days, provided the Local Enforcement Agency (LEA) agrees that greater than a seven day pick up will not result in a public health and safety, or nuisance issue. It is the organic waste, particularly the food waste, that generally causes the public health and safety or nuisance concerns. What criteria will be used for the LEA determination?

This section should clearly allow for generator compliance with the proposed waivers. A new provision should be added as follows:

[\(a\)\(3\) compliance with the waiver process in xxxx30.3](#)

Section xxxx50.4 State Entities and State Facilities

This section should be expanded to include specific provisions for separate containers, contamination, labelling, education and outreach, food recovery, reporting, and enforcement upon the state entities and facilities.

Local jurisdictions do not have direct oversight of many generators and stakeholders. The state should take direct responsibility for those state and federal agencies located within a jurisdiction, such as state prisons and school facilities, federal parks and forests, and tribal lands. These are significant generators of food waste, especially in rural counties, that the local jurisdiction has no control but significantly impact jurisdiction waste generation and disposal.

Nearly 60 percent of the ESJPA rural counties' land is owned by the federal government and member counties have limited control over the waste management activities. Alpine and Inyo counties contain 92 percent federally owned lands and Mono County has 86 percent federal ownership. Yosemite National Park had over 5.2 million visitors in 2016 which is equivalent to 78.5 percent full time residents of Mariposa's population. Most of the solid waste generated from these forest and parks are attributed to the counties. There are also 24 casinos located in 14 ESJPA rural counties. Food wastes and other solid wastes generated at these casinos are typically disposed of within that county. Given these challenges, how will a local jurisdiction meet the requirements of section xxx30.15 and other requirements when the generator is a state or federal agency? Rural agencies cannot impose recycling mandates on these federal and tribal facilities despite the significant impact on waste generation. Jurisdiction's should not be penalized for s state or federal agencies non-compliance.

Rural areas are also severely impacted by wildfires and the associated debris which is often managed by state or federal agencies. A consequence of these fire debris clean-ups is the generation of organic waste, especially edible food, from the fire camps. These fire camps direct significant amounts of edible food to disposal and not diversion. One requirement of these regulations should require fire camps and their associated state and federal agencies to work with local edible food organizations to divert edible food for use rather than disposal.

It is our recommendation to add another section to include requirements on the Department to deal with the federal and tribal facilities that outlines the required measures preferably in compliance with or comparable to local jurisdiction requirements:

Section xxx50.5 Federal and Tribal Facilities

Article 6 Regulations of Haulers

Section xxx60.2 Self-haulers of Organic Waste

In section xxxx50.1 (f), a generator that subscribes to source-separated organics recycling service may have collection once every fourteen days, provided the LEA agrees that greater than a seven day pick up will not result in a public health and safety, or nuisance issue. However, in section xxxx60.2 (b) (3) self-haulers are subjected to the provisions of section 17331, which is seven days. And section (5) of this paragraph provides that if a self-hauler only generates enough to haul once a month, the generator is not subject to comply with source separation of organics at all. If the organic waste must be stored for no more than seven days how can these other provisions work?

The provisions in sections xxxx60.2 (b)(4) and (5) for record keeping and reporting do not seem appropriate for residential generators that self-haul. If the residential generator has a facility that accepts residential organics, the quantities do not warrant the extra time and effort providing receipts and weight tickets by the facility, nor is it likely the generator would keep them. Facilities and operations without scales will not issue weight tags. In addition, for areas that do not have curbside pickup, the resources necessary to comply are not justified to the jurisdiction.

Under the proposed AB 901 regulations, haulers would be reporting directly to the facility and to CalRecycle. Requiring self-haul generators of organic waste to also report to the jurisdiction seems contradictory to the proposed AB 901 regulations.

Article 7 Green Building Standards

Section xxxx70.1 CAL Green Building Code

Local jurisdictions are already required to adopt and require compliance with the entire California Green Building Standards Code (CALGreen), including sections 4.410.2 and 5.410.1 and 4.408 and 5.408. If this is intended to clarify CalRecycle has the authority of enforcement of these standards upon a jurisdiction, the local enforcement authority is the Building Department, not the Solid Waste Management authority. CalRecycle staff should therefore work directly with the Building Departments, as the solid waste staff has no authority over other departments, much like CalRecycle has no authority over the Air Resources Board or State Water Resources Control Board.

Article 8 Restrictions on Locally Adopted Standards and Policies

Section xxxx80.1 Organic Waste Recycling Standards and Policies

Section xxxx80.1 (c) prohibits a jurisdiction from restricting a facility to accepting organic waste based upon the geographical origin of the waste. Current statutory restrictions (PRC Section 40059.3) limits this restriction to privately owned facilities, but not publicly owned facilities. Often times during the local environmental permitting process, it is the public that

insists on a facility be restricted to only the jurisdiction's waste and it becomes a condition of approval. ESJPA recommends section 80.1 (c) be deleted:

~~A jurisdiction shall not prevent a facility or activity from accepting organic waste solely based upon the geographical origin of the waste.~~

Instead, to encourage regional facilities that transcend jurisdictional boundaries, CalRecycle should develop a robust incentive program for jurisdictions.

Article 9 Food Generators and Food Recovery

Section xxx90.1 (b) requires an operator to arrange for food recovery services or food recovery organizations to collect all of the excess edible food. Finding services that will "collect all of the excess edible food that was not sold or served by the operator" and that are "capable of accepting every type of edible food", that also meets the health standards is an extensive undertaking beyond most operators. There should be some de minimis level of edible food amounts and types.

Paragraph (b)(2)(A) requires. "An operator shall arrange for ready-to-eat food that cannot be sold or served the next day to be collected each day the operator serves ready-to-eat food." Imposing a daily collection of food is not feasible for many organizations. An operator serving food prior to closing would need to make arrangements for collection of edible food late in the day at significant expense.

Article 9.9 Organic Waste Recycling Capacity Planning

Section xxx99.1 Planning by Cities and Counties

This section requires "every county, in cooperation with the Cities and Regional Agencies in the County" to prepare an estimate of organic wastes and capacity. Existing Public Resources Code Section 41821.4 that in the annual report "a county or regional agency" estimate the amount of organics and capacity. Since a Regional Agency prepares the annual report for its members, cities and county, the reporting proposed in Section xxx99.1 should continue to be conducted by the Regional Agency. Regional reporting is a primary activity of a Regional Agency. This entire section should be revised to reflect existing statute in Section 41821.4 and only add additional reporting requirements if needed to meet SB 1383 requirements.

The meaning of section xxx99.1 (a)(2)(B)(2) is unclear. One option to verify available capacity is to contact the facility to determine if capacity is available pursuant to (b)(2), which deals with estimating the amount of edible food that will be disposed by large and medium generators.

Section xxx99.1 (a)(4) requires jurisdictions to identify new and expanded facilities that will be available in 2025 and every year thereafter. A jurisdiction cannot predict or guarantee when a facility will become available. There are too many factors that are out of a jurisdiction's control to be able to comply with this requirement. Since there is an insufficient number of facilities to process all organic waste and there may not be existing facilities within a reasonable distance, at best, jurisdictions may only be able to provide information on efforts being made to locate viable facilities.

ESJPA recommends xxx99.1 (a)(4) be amended to read:

(4) Provide information on efforts being made to locate viable new or expanded organic waste recycling capacity.

Sections (d) and (e) should be deleted. The only new requirement in xxx99.1(d) is the reference to the implementation schedule in (e) that requires jurisdictions to submit a report on how it will secure access to new or expanding capacity by 2025, including obtaining funding and securing capacity. As stated above, a jurisdiction cannot guarantee facilities being built to meet the goals of SB 1383; jurisdictions will only be able to provide information on efforts being made to locate viable facilities.

Article 10 Enforcement

Section xxx10.2 Definitions

These definitions should be relocated to Article 1 so that all definitions are in one place. And "regulated entity" should include state agencies in the definition:

- (1) "Regulated entity" means a person, including organics waste generators, haulers and facilities, **including state agencies and facilities**, subject to the requirements of this Chapter or subject to local ordinances or policies adopted pursuant to the Chapter.

Section xxx10.3 Jurisdiction Inspection and Enforcement Requirements

Paragraph (b)(3)(A) requires a jurisdiction to develop a plan to inspect every entity that generates organic wastes and not just those subject to PRC 42649.2 and 42649.81. Since every business and residence will generate organics waste, it is not feasible to expect a jurisdiction to inspect every single business and all residences in their area. Inspections should be limited to those businesses subject to PRC 42649.2 and 42649.81.

Section xxx10.5. Investigation of Complaints of Alleged Violators by a Jurisdiction

Since there are more complaints filed than most jurisdictions can deal with, many jurisdictions have adopted policies for code enforcement that are based upon their

resources and severity of the alleged violations. Depending upon many other forces that compete with staff resources, a thirty day investigation may not be reasonable. The time frame should be dependent upon a local jurisdiction's adopted inspection and enforcement plan.

Section xxxx10.6. Enforcement by a Jurisdiction

This section outlines a jurisdiction's efforts for enforcement even if there is no viable option for a business or residents to divert organics. Paragraph (d) allows extensions to the compliance deadline. Once a jurisdiction determines that, despite its good faith efforts, viable infrastructure does not exist there should be no need to continue enforcement actions on other businesses.

Article 11 Enforcement Oversight by the Department

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

Section xxxx11.2 (f) indicate that "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". Yet, paragraph (f)(1) indicates that this inspection and audit function by the Department "is not intended to permit an employee or agent of the department to enter a residential property." Since the proposed regulations include residential properties as regulated entities how will the verification of compliance be determined? Is the expectation that the jurisdiction will be conducting the inspections of residential property under Article 10?

As indicated in earlier comments, these proposed regulations, especially the enforcement provisions, should not apply to residents.

In addition, there should be a section on enforcement efforts by the Department on other state and federal agencies. The ESJPA proposes to include them in the definition of Regulated Entity in Section xxxx10.2. Regardless if other state and federal agencies are not included as a "Regulated Entity", there should be enforcement provisions applied to state agencies. The only provisions currently included in the proposed regulations for a State Entity is for edible onsite food facilities in Section xxxxx90.1. State Entities contribute far more organic waste to a local jurisdiction than food waste, especially in rural areas. There should be additional compliance and inspection requirements similar to jurisdictions with enforcement provisions.

Section xxx11.3. Actions by Department over Jurisdictions and Regulated Entities

Section xxx11.3 (a)(3) gives the department authority to require a jurisdiction to demonstrate that it has sufficient staff and adequate budget resources for implementing the provisions of this Chapter. The proposed regulations are onerous and financially infeasible for rural jurisdictions to comply, especially when considering the amount of waste contributed to the state's overall tonnage. It is not reasonable to expect our local governments to commit scarce resources to comply with the proposed regulations for a De Minimis amount of waste compared to other more urgent needs.

Article 12. Penalties

Section xxx12.2. Amount of Civil and Administrative Penalty Schedule

Paragraph (a) (1)(B) indicates that, "Separate penalties shall accrue for each separate violation and for each day of violation." There are no Base Tables included for Generators in xxx12.2 (b)(3), it is not possible to determine the magnitude of the penalties. Since Regulated Entity includes every person, including each resident, this penalty provision implies potential significant penalties "for each separate violation and for each day of violation". It is not appropriate for a jurisdiction, or the Department, to impose these magnitudes of penalties against residents. Residents should be excluded from these proposed penalty provisions unless a jurisdiction selects penalties as an option.

Paragraph (b) imposes various penalties but the Base Tables are missing.

Section xxx12.3 Organics Recycling Noncompliance Inventory

This proposed section indicates that noncomplying regulated entities will be listed on CalRecycle's website inventory list and various timelines for notices. As indicated above, these measures are not realistic for residents and residents should be excluded from this measure.

Amendments to Existing Title 14 Regulations

Chapter 3. Minimum Standards for Solid Waste Handling and Disposal

Article 6.0. Transfer/Processing Operations and Facilities Regulatory Requirements

(6.1) "Hauler" has the same meaning as defined in section 18815.2 (a)(28) of Title 5 of the 22 California Code of Regulations (CCR).

This referenced regulation does not exist. There is a definition of Hauler in the proposed AB 901 regulations which is currently referenced as Title 14, Section 18815 (a)(28)

(28) “Hauler” means a person who collects solid waste, organics and/or recyclable material from a generator and delivers it to a reporting entity, end user, or a destination outside of the state. “Hauler” includes public contract haulers, private contract haulers, food waste self-haulers, and self-haulers. A person who transports material from a reporting entity to another person is a transporter not a hauler.

(18.5) “Organic Waste” and (18.6) “Source Separated Organic waste”.

This section is too broad in that it implies that all the defined organics wastes can be mixed into a single container at the point of generation with future additional sorting sufficient enough for the separated wastes to be returned to the economic mainstream. There is no viable recycling system that will separate biosolids from textiles and carpet. Part of the education program will need to clarify what proper source segregation of organics is allowed. These definitions need to be tightened up to clearly indicate proper source segregation at the point of generation.

Article 6.3. Record Keeping Requirements

Section 17414. Record Keeping and Reporting Requirements

This proposed section (a) removes the reporting requirements for solid waste operations and facilities that are not involved in receiving mixed waste or source separated organics.

There are numerous references in paragraphs (a) and (b) for recording “weights and volumes”. Tracking both units is excessive. In addition, many rural operators do not have weigh scales available and rely on volume conversions. These references should be changed to “weights or volumes”. This proposed language should also not allow an EA to impose a requirement for weighing materials if that facility is not required to install a scale under the proposed AB 901 regulations.

Paragraph (c)(1) imposes a requirement for operators to report monthly to the jurisdiction of origin. Under the proposed AB 901 regulations, facilities reporting to jurisdictions has been removed. This paragraph also requires operators to report monthly to haulers. The proposed definition of hauler from the AB 901 regulations includes all self-haulers, including residents. This provision in (c)(1) would require operators to notify each resident monthly. This provision should be removed or at least limited to the AB 901 regulations reporting.

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

§20700.5. CalRecycle—Long-Term Intermediate Cover.

This section indicates:

(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.

The allowance to temporarily cease operations for a portion of a landfill could be beneficial in some cases.

Currently, if a fill area reaches capacity or stops filling, intermediate cover of at least twelve inches of compacted earthen material is applied. Existing fill with intermediate cover is monitored for emission of landfill gas.

As written, this proposed standard required that 36 inches of compacted earthen material be placed if no solid waste is deposited within 30 months. This additional amount of material is excessive and costly endeavor. First, what is the basis for the additional two feet of earthen material will control methane emissions?

This proposed provision could also be interpreted to imply that when the time comes to close the fill area, the final cover will need to be placed upon the 36 inches of earthen material. Unless that long-term intermediate cover is allowed to be removed, the addition of the final cover, which can be four to five feet, could result in the landfill exceeding its maximum permitted height. Landfills are designed to use the maximum amount of air space and this additional 36 inches of earthen material will result in significant loss of capacity.

If some of that long-term intermediate cover is allowed to be removed, the additional cost is a significant expense that is not necessary.

The proposed requirement would require 36 inches of compacted earthen material to be placed on all surfaces of the fill. This would include side slopes. This could be a dangerous practice and may result in unstable side slopes.

Another excessive proposed requirement is that final cover has depth requirements for various materials that are required to be applied and then compacted. To ensure that the long-term intermediate cover meets the proposed standard more than 36 inches of earthen material will need to be applied resulting in additional excessive expense.

In addition, the term used through other CalRecycle regulations is “earthen” not “earthern” as proposed and should be corrected.

Article 3: CalRecycle—Enforcement Agency (EA) Requirements

§21660.2. Informational Meeting for New and Revised Full Solid Waste Facilities Permit Applications.

Paragraph (c) (3) requires multilingual notices be issued for the informational meetings. Shouldn't these notices follow the same five percent or more criteria in Section xxx40.1 for "limited English speaking household," or as "linguistically isolated" by the U.S Census Bureau."

Article 3.2. CalRecycle-Other Requirements

§21695. CalRecycle—Organic Disposal Reduction Status Impact Report

Imposing an additional reporting requirement for all disposal sites to prepare and submit at one time will require significant local and state resources for preparation and review.

It would be more productive if this report was incorporated into the next five-year review permit process already required for disposal sites under Section 21865 or similar to the staggered submittal of nonwater release corrective action cost estimates under Title 27, Section 22101.

In addition, a number of the listed impacts need to be revised or removed including:

(1) Site Development

There is no significant change to site development other than potential slower development.

(3) Daily and intermediate cover and beneficial use;

As indicated in earlier comments for Section Xxxx20.1 (a), this requirement should consider green material use as directed in statute. Impacts for Daily and intermediate cover and beneficial use are already part of the required solid waste permit documents.

(4) Volumetric capacity based on the disposal site experiencing a reduction of organics disposal of 50% by 2020 and 75% by 2025;

The volumetric capacity of a disposal site will not change due to reduction in organics. The physical capacity will remain the same. The site life will increase due to decreased tonnage. However, the resulting change in site life or closure will likely trigger a CEQA review which cannot be completed in the proposed timeframe.

(5) Waste handling methods;

Waste handling methods do not really change due to reduction in organics.

(8) Operation and closure design (individual cells and overall site geometry);

The operation and closure design will not change due to a reduction in organics.

(9) Grading Plan;

The grading plan also will not change due to decrease organics in a disposal site.

(11) Ancillary facilities.

There is no change in ancillary operations due to a reduction in organics.

Paragraph (d) imposes a 120 days submittal requirement for the SIR. This short time frame will inundate the limited number of qualified registered civil engineer or certified engineering geologists with requests for preparation of SIRs.

Paragraph (e) imposes a 60-day limit for CalRecycle's review of SIR. Since there will be over 200 SIRs submitted, it will be difficult for CalRecycle to conduct a thorough review of these plans.

Paragraph (g) authorizes CalRecycle to require an updated JTD. What criteria will CalRecycle use to evaluate if an updated JTD is required?

Paragraph (h) requires the operator to submit an updated JTD. An updated JT cannot be submitted without CEQA review as indicated above especially if the closure date is extended to a reduction in organics wastes.