



May 19, 2020

Ms. Ashlee Yee
Materials Management and Local Assistance Division
California Department of Resources
Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812

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

RE: Comments on the Short-Lived Climate Pollutants: Organic Waste Reductions, Proposed Regulation Text Second Formal Draft

Dear Ms. Yee:

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, Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions Proposed Regulation Text (Proposed SLCP Regulations), Fourth Formal Draft dated April 20, 2020. RCRC is an association of thirty-seven 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.

Recent events will impact organics diversion and were not contemplated in the draft regulations, including investor-owned utility public safety power shutoff (PSPS) events and post-coronavirus (COVID-19) impacts. PSPS events are not eligible for the disaster provisions of the currently proposed SB 1383 regulations, but will significantly increase the disposal of organics when refrigeration equipment is without power. The amount of spoiled food will overwhelm limited Edible Food programs and subsequently

1215 K Street, Suite 1650, Sacramento, CA 95814 | www.rcrcnet.org | 916.447.4806 | Fax: 916.448.3154

increase the disposal of organics. Although COVID-19 is a declared state disaster and eligible for disaster relief, the impacts of business and commercial closures will last long after the COVID-19 disaster is declared over. Also, residential tonnages have increased which is more difficult to divert. The solid waste impacts from COVID-19 will continue for some time and will likely skew the results of the upcoming 2020 Statewide Disposal Based Waste Characterization Study which is scheduled to start in June 2020 and take about 15 months. This study should be delayed to allow more time for recovery.

On January 21, 2020, the Department of Resources Recycling and Recovery (CalRecycle) submitted to the Office of Administrative Law (OAL) its proposed action to adopt regulations to require the implementation of programs for the diversion of organic waste from landfill disposal to reduce the methane gas emissions that would otherwise occur. The OAL notified CalRecycle that it could not approve this action because of failure to meet the clarity and necessity standards and certain procedural requirements of the California Administrative Procedure Act. This fourth formal draft reflects changes made to the draft regulations to specifically address those issues found by OAL. While our previous unaddressed concerns included in our letters dated March 2, 2019, March 12, 2019, July 17, 2019, and October 18, 2019 are part of the rulemaking record and remain relevant issues to our counties, we will limit our specific comments to the new proposed changes contained in the fourth draft.

RCRC agrees that most of the changes were made to provide certainty and clarity and did not impose any major changes to policies.

Changes to Section 18984.11 (a)(2) remove the allowance to use a “similarly qualified source” for providing documentation for the physical space waivers. While the term was vague, the concept of allowing other parties to provide the documentation is sound and should be reinstated. Many jurisdictions are using the services of professional firms to conduct customer reviews and are as qualified to conduct such an assessment as the hauler, which would alleviate limited staff time for this effort. We recommend the following change: “jurisdiction has evidence from its staff, a hauler, licensed architect, or licensed engineer, or designee demonstrating that the premises lack adequate space ...”. In addition, Section 18986.3 retains the use of “similarly qualified entity” for Waivers for Non-Local Entities and Local Education Agencies”. We recommend that the “or designee” term be replaced in this section.

We also take exception to changes that have been proposed in Article 14, Enforcement Requirements and Article 15, Enforcement Oversight by the Department. While we can concur that certain timeframes for issuing Notices of Violations (NOVs) and commencing enforcement action were confusing and inconsistent, the curative proposal significantly reduces the timeframe a jurisdiction has to achieve compliance that is outside of the scope of OAL’s rejections.

Section 18995.4 (a)(1) required the jurisdiction to issue a NOV within 60 days of a determination that a violation has occurred. Section 18995.4 (a)(3) required a jurisdiction to commence an action to impose penalties no later than 150 days after issuance of the initial NOV for a first offense and 90 days for subsequent offenses. So, for a first offense, the timeframe from discovering a violation to commence an action to impose penalties was 210 days for a first offense and 110 days for subsequent offenses. The inconsistency came from Section 18995.4 (a)(2) which required the jurisdiction to conduct follow up inspections at least every 90 days following the issue date of the initial NOV. A second follow up inspection would occur after the 150 days timeframe in Section 18995.4 (a)(3). Changing Section 18995.4 (a)(2) from 90 days to 60 days would alleviate the inconsistency and not change the process established in the previous draft.

However, under the current draft a jurisdiction is required to commence an action to impose penalties within 60 days of the issuance of the NOV. This is a significant, substantive change and does not allow flexibility at the local level to evaluate the individual circumstances surrounding the violation. RCRC had interpreted the original proposal to be a more accommodating approach, allowing local jurisdictions to work with its constituents with this new significant regulation and responsibilities and use its judgement based upon specific circumstances.

Also, in Article 15, Enforcement Oversight by the Department, we believe the change of all “mays” to “shalls” is a major shift of the substance and tone of the regulations that is unwarranted at this point in the process and is not within the context of OAL’s direction to the Department. CalRecycle has stated, and all stakeholders agree, that SB 1383 is the most significant waste reduction mandate to be adopted in California in the last 30 years. The impacts to CalRecycle’s resources is currently unknown and, therefore, CalRecycle should maintain the discretion to prioritize and utilize its resources most effectively and efficiently.

In this unprecedented time of uncertainty and challenges due to the COVID-19 pandemic, the state’s budget is expected to take a deep setback that could last for years. Additionally, the state has experienced other catastrophic events, predominantly wildfires, in recent years that have significantly impacted CalRecycle resources. If resources are not available and CalRecycle does not act in a timely fashion, the state is open to costly litigation. This illustrates the need for CalRecycle to be able to determine how to best use its resources depending on other circumstances and challenges that may arise.

RCRC appreciates the outreach efforts and stakeholder involvement that CalRecycle provided during the development of the regulation to assist all stakeholders in meeting the statewide organic diversion goals. 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.

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Sincerely,

A handwritten signature in black ink, appearing to read "Staci Heaton", with a large, sweeping flourish at the end.

STACI HEATON
Senior Regulatory Affairs Advocate

cc: Ken DaRosa, Acting Director, CalRecycle
Members of the RCRC Board of Directors