

2019-2020

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May 13, 2020

Ashlee Yee

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

Submission via email to SLCP.Organics@calrecycle.ca.gov

RE: SB 1383 Proposed Regulations Released April 2020 – COMMENT LETTER

Dear Ms. Yee,

The League of California Cities (League) writes to comment on the revised proposed regulations released in April 2020, which seeks to implement SB 1383 (Lara, 2016). The League appreciates the opportunity to comment on these proposed regulations and acknowledges the challenge undertaken by CalRecycle to develop a comprehensive program to meet the ambitious goals set forth by SB 1383.

The League has been an active participant in the development of these regulations during both the informal and formal rulemaking and has seen some encouraging changes made over the four iterations. However, cities remain significantly concerned about critical aspects that hinder local governments' ability to implement the proposed regulations.

Although the changes to this draft did not, unfortunately, address our repeated fiscal and other concerns, we find it prudent to continue to reiterate the serious challenges cities will face with implementing these regulations.

Cities key concerns remain as follows:

Infrastructure Capacity: California lacks sufficient capacity to meet the need for new organic waste processing. Other regulatory and permitting issues can impede the construction of these new facilities that are outside of local governments' control. Cities are concerned that the timelines set forth in these regulations will not be adequate to develop and permit the new facilities required to successfully implement and comply with these regulations.

Funding: Insufficient state and local funding continue to be among the major challenges cities face in implementing new organic waste diversion programs. These regulations will be costly to implement, and cities will need to raise their collection rates to compensate. CalRecycle should not rely on the fee authority granted to local jurisdictions in SB 1383 alone, because local governments do not have unrestrained authority to impose costs on waste generators and must comply with the requirements of the California Constitution.

Penalties: The League remains concerned as to how these penalty violations will be assessed and requests further clarification. Specifically, in Section 18997.3(b)(2) and (3), it is unclear as to the distinction between what constitutes a “moderate” and “major” violation. Clarity is needed given the significant penalty amounts of up to \$10,000 a day. These penalties could make it difficult for cities to allocate the funds necessary to increase infrastructure capacity and other hindrances to compliance.

Procurement: As mentioned in previous comment letters, the League continues to be concerned with the significant cost burden cities will bear as they are required to purchase these recovered organic waste products at levels set by CalRecycle. The League anticipates these requirements will result in substantial additional costs to local governments, over and above the costs already anticipated to comply with the requirements of the proposed regulations.

Scope of Regulations: These proposed regulations are both complicated and broad in scope. As such, there needs to be a robust effort and accompanying funding source to ensure that cities are able to implement these regulations by adequately providing education and outreach to their residents. Additionally, it is unclear why local jurisdictions are required to adopt Model Water Efficient Landscape Ordinances (MWELO), as these do not appear to be at all related to the implementation of SB 1383.

Seeking Further Clarification: In addition to these overarching comments, the League would like to offer the following specific suggestions to improve the clarity of the proposed regulations:

- **Chapter 12, Article 1, Section 18982. Definitions.** Section 18982.2(a)(56.5) defines project baseline as “...a conservative estimate of the business-as-usual greenhouse gas emissions that would have occurred if the organic waste proposed for recovery was disposed of in activity that constitutes landfill disposal....” The League finds that the use of the term “conservative” in this definition injects unnecessary ambiguity and subjectivity into the definition and fails to aid practitioners, courts, and the public in understanding the requirements of the law. Therefore, the League respectfully requests that CalRecycle delete the word “conservative” from Section 18982.2(a)(56.5).
- **Chapter 12, Article 3. Organic Waste Collection Services.** Several sections of Article 3 of the proposed regulations have been amended to provide that notices be given “annually” instead of “within the last 12 months.” As currently drafted, it is unclear whether “annual” notices must be given within the last 12 months or whether such notices must now be given within a calendar year. Therefore, the League suggests that CalRecycle clarify when such notices must be given.
- **Chapter 12, Article 16, Section 18997.5. Department Procedures for Imposing Administrative Civil Penalties.** Section 18997.5(c) provides that a jurisdiction must file a request for a hearing with the director of the Department within 15 days of receiving an accusation of violation or the jurisdiction will be deemed to have waived its right to a hearing. The League does not believe that this provides jurisdictions sufficient time to avail themselves of their right to a hearing. The League respectfully requests that CalRecycle extend this deadline to 30 days, so that jurisdictions have sufficient time to analyze the accusation and determine whether a hearing is warranted.



- **Chapter 12, Article 16, Section 18997.6. Department for Hearings and Penalty Orders.** Section 18997.6(b) provides that a penalty order may be served by any method described in Section 18997.6(b). However, Section 18997.6(b) does not describe methods of service. The League suggests that CalRecycle clarify the permissible methods of service of a penalty order.

COVID-19: With the onset of the COVID-19 pandemic this year, cities statewide are [projected](#) to have a nearly \$7 billion budget shortfall and the shortfall grows as modified stay-at-home orders remain in effect through the summer. This places cities in a dire fiscal situation and will have serious and long-lasting budgetary and personnel implications of potential furloughs and/or layoffs. During this time of great economic uncertainty and strain for California cities, we urge CalRecycle to take these under consideration when implementing this law. Cities are committed to achieving the state's ambitious climate and solid waste goals, but flexibility will be needed as a result of this crisis.

The League values the opportunity to provide feedback in this extensive stakeholder process. We stand ready to work with CalRecycle to further the state's ambitious climate change and solid waste goals, while implementing them in a way that will work for local government. If you have any questions regarding these comments, do not hesitate to contact me at (916) 658-8218.

Sincerely,

A handwritten signature in blue ink that reads "Derek Dolfie".

Derek Dolfie
Legislative Representative