



February 14, 2020

Tim Hall
Senior Environmental Scientist, CalRecycle
1001 I Street (MS 22-B)
P.O. Box 4025
Sacramento, CA 95812-4025

RE: SB 1383 Local Services Rates Analysis Draft Report – COMMENT LETTER

Dear Mr. Hall,

The League of California Cities (League) writes to provide comments on the Local Services Rates Analysis Draft Report (Report) released in January 2020, which seeks to provide information regarding the cost implications of SB 1383 (Lara, Chapter 395, Statutes of 2016) to local jurisdictions. The League appreciates the opportunity to comment on this Report, and acknowledges the steps undertaken by CalRecycle to solicit feedback from stakeholders on regulations and supporting documents pertaining to the implementation of SB 1383.

The League has engaged with CalRecycle since 2017 on the formulation of these regulations, both during the informal and formal rulemaking stages. The gravity of what local jurisdictions need to undertake to successfully implement these draft regulations is not lost on them. Cities around the state are now preparing themselves to, or already have, implement CalRecycle's SB 1383 regulations and understandably have numerous questions. Most notably, how local jurisdictions are going to pay for the costs associated with compliance.

The League is grateful for CalRecycle's effort to create and publish this analysis to address how local jurisdictions can approach the question of funding. However, cities remain significantly concerned about aspects of this analysis that either gloss over or do not address critical issues that hinder local governments' ability to implement the proposed regulations. The League's comments and concerns are as follows:

Rate Structures: The League agrees with the Report's findings that current rate structures are not adequate to achieve compliance. As the League has noted in previous comments, insufficient state and local funding continue to be among the major challenges cities face in implementing new organic waste diversion programs. The Report does acknowledge the political realities cities face in raising their garbage rates, but does not provide substantive recommendations on what else cities can do if the local political will is not compelled to raise rates. We understand that there are no formal "good faith" provisions contained within the language of SB 1383 nor the regulations. Nevertheless, in the absence of state funding, it will be extremely difficult for cities to comply with the regulations if they are not able to secure the additional funding the Report outlines is needed to comply.

Consistent with our previous comments on the SB 1383 regulations, CalRecycle and this Report 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.

Infrastructure Capacity: The League appreciates that the Report highlights that California does not currently have the organics processing infrastructure to achieve compliance with SB 1383. Similar to our concerns regarding rate increases, cities are concerned that the timelines set forth in the SB 1383 regulations will not be adequate to develop and permit the new facilities required to successfully implement and comply with these regulations. The Report says that typically it takes a year to construct a new anaerobic digester facility and approximately four months to commission said facility. The Report does not give timelines for other regulatory and permitting issues that can impede the construction of these new facilities that are outside of local governments' control. Including more detail on this aspect could help local jurisdictions understand how lengthy the process will be for the construction of these new facilities.

Absence of Finalized Regulations: The Report found that the absence of finalized regulations is precluding local jurisdictions from planning and implementing the required services associated with SB 1383. Cities should not be expected to plan for regulations that remain in draft form, especially while changes can continue to be made. The Report recommends that cities do not wait to see the final regulations, and should begin implementation as soon as possible. However, these regulations will impose great costs on local governments as they invest in infrastructure, raise rates, and re-negotiate contacts with waste haulers. It is incredibly difficult for cities to justify incurring such costs when the final regulations have yet to be seen.

Recommendations vs. Requirements: The Report, at times, blurs the lines between what CalRecycle is suggesting local jurisdictions need to do and what local jurisdictions are statutorily required to do in order to achieve compliance with the SB 1383 regulations. The League suggests making it clear what are recommendations or suggestions CalRecycle is giving jurisdictions and what are aspects are mandatory for compliance. This can help stave off confusion over what cities are statutorily obligated to do.

Local Jurisdiction Case Studies: The League appreciates the inclusion of city and county case studies that provide helpful context and ideas for other jurisdictions that may be curious about what others are doing to comply with the regulations. These examples highlight the varying approaches to, and levels of success at, approaching SB 1383 requirements. Going forward it would be helpful to also include examples of jurisdictions that have had a more challenging time either creating or implementing an organic waste recycling system and how they were able to overcome such adversity successfully.

The League values the opportunity to provide feedback in this extensive stakeholder process. We will continue to work with CalRecycle and other affected entities to implement these regulations in a way that works for all parties.

If you have any questions regarding these comments, please do not hesitate to contact me at (916) 658-8218.

Sincerely,



Derek Dolfie
Legislative Representative