

2018-2019

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July 16, 2019

Gwen Huff

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 Regulation Released June 2019 – COMMENT LETTER

Dear Ms. Huff,

The League of California Cities writes to comment on the revised proposed regulations released in June 2019, which seek to implement SB 1383 (Lara, 2016). The League supports the state's goals to develop a robust waste management system that is consistent with California's climate goals. This includes achieving reasonable and attainable goals to reduce the amount of short-lived climate pollutants emitted.

The League appreciates the opportunity to comment on the 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 is encouraged by several key changes in the most recent draft, including the addition of lack of infrastructure as a reason to apply for a Corrective Action Plan (CAP) in the enforcement provisions, and removing the requirement to physically inspect containers that are contaminated.

However, cities remain significantly concerned about critical aspects that hinder local governments' ability to implement the proposed regulations. City key concerns are as follows:

Infrastructure Capacity: Today, California lacks sufficient capacity to be able to meet the needs for new organic waste processing. Many cities have expressed concern over an ability to comply with organic waste diversion requirements due to a lack of waste disposal infrastructure. There is an uneven distribution of waste disposal infrastructure, such as bio-digesters, across the state. Moreover, where the infrastructure does exist, capacity is limited. 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 these regulations.

Enforcement: These regulations create CAPs that set timelines and milestones for jurisdictions to achieve compliance before CalRecycle takes enforcement actions. We appreciate including inadequate capacity as a reason to file for a CAP, as outlined in Section 18996.2. However, the way the language is written will make it difficult for cities to prove that they have taken all of the steps required to reach compliance, but simply do

not have the infrastructure. State and local governments should work in conjunction to develop an adequate funding source to build the infrastructure required.

Funding: Insufficient state and local funding continue to be among the major challenges local governments face in implementing new organic waste diversion programs. The League, for example, has urged for a number of years that state “Cap-and-Trade” proceeds be used to help offset the costs for developing organic waste recycling infrastructure. More state dollars are needed for local governments to successfully implement all of the provisions of these regulations. Cities recognize that local dollars are also needed, however, cities face challenges in raising local revenues.

These regulations assume that local governments have the ability to raise their rates to generate the resources needed to implement this bill. However, 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: These regulations will impose daily fines on jurisdictions that, for certain violations, could cost up to \$10,000 per day for not being in compliance. The League asks that these penalties be imposed per-violation rather than per-day as cities, whose budgets are already strained to comply with these regulations, would economically suffer as a result. This penalty structure could make it difficult for cities to allocate the funds necessary to increase infrastructure capacity and address problems that are hindering jurisdictions from being in compliance. If the purpose of penalties is to ensure generators are sufficiently deterred from non-compliance, these regulations are premature and put the cart before the horse by designing penalties before the sticking points and needs of generators are understood.

Procurement: Local governments will be required to purchase specified recovered organic waste products at target 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 extensive programmatic requirements of the proposed regulations. As mentioned in the funding section, CalRecycle should not rely solely on fee authority granted to local jurisdictions to generate such resources for procurement.

Scope of Regulations: These proposed regulations are both complicated and broad in scope. As such, there needs to be a robust effort and funding source to ensure that cities are able to implement these regulations and adequately provide education and outreach to their residents. CalRecycle needs to continue to partner with local governments and other stakeholders to successfully implement all of the provisions outlined in the regulations. Additionally, the League is concerned about Article 8, Section 18989.2 that requires local jurisdictions to adopt Model Water Efficient Landscape Ordinances (MWELO) or face the possibility of penalties up to \$5,000 per day. It is unclear how this requirement factors into the implementation of SB 1383 and why they are included here.



The League appreciates the stakeholder process CalRecycle has undertaken and the extension of the comment period for this iteration of regulations. We will continue to work with CalRecycle and other affected stakeholders to implement these regulations in a way that works for all parties.

If you have any questions regarding these comments, please contact me at (916) 658-8218.

Sincerely,

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

Derek Dolfie
Legislative Representative
League of California Cities