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1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327.7500

Facsimile
916.441.5507

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

Transmitted via E-mail: SLCP.Organics@calrecycle.ca.gov

RE: Comments on Senate Bill 1383 Draft Proposed Regulations – March 2019

The California State Association of Counties (CSAC) offers the following comments on the proposed regulations to implement SB 1383 (Lara, Chapter No. 395, Statutes of 2016) relating to organics diversion from our landfills. CSAC has been actively engaged in this regulatory process since the passage of SB 1383 in 2016. We appreciate the consistent outreach on the part of the Department of Resources, Recycling and Recovery (Cal Recycle). However, we do believe this proposal contains significant implementation challenges, a punitive approach, and a heavy cost burden that will ultimately be borne by the rate payers.

Creating a regulatory framework that is economically feasible and implementable is our priority. We support the state's goal of reducing short-lived climate pollutants and meeting our greenhouse gas emissions (GHG) targets, but we also support an approach that recognizes existing challenges to markets, the need for additional infrastructure, and the potential impact that the proposed regulations will have on businesses and residents. We offer the following comments, and also support and align ourselves with similar comments by individual counties.

Implementation Challenges

The proposed regulations have a number of challenging implementation issues. We highlight several below:

Procurement — CSAC supports greater flexibility in complying with the organic waste product procurement mandates. Many counties have invested heavily in alternative fuel vehicle fleets. The proposed procurement mandate is limited to compost and renewable transportation fuels only. This would exclude the renewable electricity derived from organic waste. We recommend that Cal Recycle take a broader approach that creates a process for local jurisdictions to exhibit compliance through the use of fuels or technologies that demonstrate GHG and short-lived climate pollutant reductions.

Flexibility & Good Faith Effort — The short timeline associated with the proposed regulations will require a significant investment in local government programs, and require incredible outreach and education to inform residents and businesses of requirements. Facilitating changes in consumer and public behavior takes time and consistent messaging. We strongly urge Cal Recycle to reflect a more flexible approach in assessing compliance by including a

“good faith effort tool” that recognizes special circumstances that might prevent the successful short-term adoption of these proposed regulations and procedures. A punitive approach does always not result in better outcomes. A good faith effort tool has precedent, is consistent with the Integrated Waste Management Planning Act, and has proven successful in identifying challenges and helping bring jurisdictions into compliance.

Exemptions — CSAC supports the inclusion of an extended timeframe to delay implementation to counties with populations of less than 70,000, and the ability for a county to apply to Cal Recycle for waivers for rural areas within a county. A two-year exemption does not reflect the significant challenges this proposed regulation will have in rural and low-population areas. It also does not accurately reflect the benefit of bringing these low yield jurisdictions in after two years while their circumstances and challenges remain the same.

Reviews, Inspections and Reporting — The proposed regulations require intensive route reviews, facility inspections and reporting requirements. The draft does not provide specific information on levels of contamination or a defined threshold. The proposal would require a local jurisdiction to find the source of contamination along a route of generators, and require the local jurisdiction to give written notice to a generator who has improperly disposed of organic material. This requirement would be labor intensive and expensive for jurisdictions. We recognize the need and importance of data, but question the frequency and intensity of inspection, reviews and reporting requirements.

Landfill Operations — The proposed regulations include a requirement of compacted earthen material of at least 36 inches of fill where no additional solid waste will be deposited within 30 months. This requirement would be an additional financial burden on jurisdictions, while not fully taking into consideration or demonstrating the need for this requirement beyond the current obligation for methane capture systems at landfills.

Food Rescue Program — The proposed regulations mandate the diversion of 20% of edible food waste to food rescue organizations by 2025. Counties would be required to educate food waste generators, track their performance and report to Cal Recycle. If planning efforts indicate that additional food rescue programs are needed, the county would be responsible for developing new programs to meet the goal. While we support the intent of this measure, this presents a significant cost impact, as counties currently do not have this data and generally do not have the specific expertise in coordinating food recovery at this scale. Nongovernmental organizations that have expertise in this process must be inserted. Additionally, the proposed regulations would require local jurisdictions to educate and monitor compliance efforts for edible food generators that are non-local entities.

Local Mandate

The proposed regulation is a mandate on local jurisdictions. SB 1383 gave Cal Recycle tools to help meet the statewide organic disposal goals of 50 percent by 2020 and 75 percent by 2025 to meet the statewide methane emission reduction goals. We do not believe that this bill was

intended to be a local jurisdiction mandate. The imposition of fines and penalties, and the manner in which the regulations are structured, result in a punitive approach that does not fully take into consideration the enormous challenges that could prevent the successful implementation of this law. Local governments are committed to working with the state, but the lack of sufficient infrastructure and minimal resources to address the problem only exasperates this approach.

Need for Infrastructure

Our consistent message throughout this process has been the need for sufficient infrastructure to manage this portion of the waste stream. California has added a minimal amount of capacity over the last 20 years compared to the need associated with this proposed regulation. To meet the goals set forth in SB 1383, California will need upwards of \$3 billion in capital investment for additional composting and anaerobic digestion facilities. Cap and Trade funding has provided limited resources to make progress towards the significant amount needed to site, permit and construct facilities. We firmly believe that capacity is a statewide conversation that requires the participation of all stakeholders, and should be part of an overall strategy to implement this measure.

Local governments stand ready to work with the state to help develop reasonable and economically feasible regulations that will help reduce methane emissions. We stand ready to collaborate on all of the challenges that we've highlighted above, and commit to our continued partnership to achieve a successful outcome. Should you have any questions, please feel to contact me at 916-327-7500, ext. 504, or cmartinson@counties.org.

Sincerely,



Cara Martinson
Senior Legislative Representative & Federal Affairs Manager