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COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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September 8, 2020

IN REPLY PLEASE

REFER TO FILE: **EP-4**

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

Dear Ms. Yee:

COMMENTS ON THE ANALYSIS OF THE PROGRESS TOWARD THE SENATE BILL 1383 ORGANIC WASTE REDUCTION GOALS

Public Works would like to thank California Department of Resources Recycling and Recovery (CalRecycle) for the opportunity to comment on the "Analysis of the Progress Toward the Senate Bill 1383 Organic Waste Reduction Goals" (Report), dated August 18, 2020.

CalRecycle prepared this Report pursuant to Senate Bill (SB) 1383 (Lara, 2016 State Statutes), which requires that no later than July 1, 2020, CalRecycle in consultation with the State Air Resources Board shall conduct an analysis of the progress that the waste sector, state government, and local governments have made in achieving the organic waste reduction goals for 2020 and 2025.

SB 1383 also provides that, if CalRecycle determines that significant progress has not been made in achieving the said goals, CalRecycle may, upon consultation with stakeholders recommend to the Legislature revisions to those organic waste reduction goals.

Since the SB 1383 implementing regulations are yet to be finalized, no substantial progress has been made towards achieving the goals set forth in SB 1383. However, despite this lack of progress and the severe economic, social, and fiscal impacts of the COVID-19 pandemic, the Report is not recommending to the State Legislature any changes to the SB 1383 goals or implementing timelines.

Public Works strongly recommends CalRecycle to revise the Report to address major factors that will hamper achievement of the organic waste reduction goals and prevent jurisdictions from fully complying with the requirements of the SB 1383 regulations. These factors include:

- CalRecycle's delay in developing the SB 1383 implementing regulations will have a major impact on jurisdictions' ability to meet the extensive new regulatory requirements. It has taken four years for CalRecycle to develop the SB 1383 regulations, which will leave jurisdictions less than 1 and 1/2 years to comply with the extensive new requirements.
- Lack of recognition of a jurisdictions' "good faith" efforts to comply with the SB 1383 requirements.
- Inadequate commitment of State funding to support the development of new organic waste recycling infrastructure.
- The Report relies heavily on composting, which has operational limitations in managing a range of organic feedstock and shortcomings in reducing greenhouse gas emissions including methane, missing the opportunity to highlight the need for greater flexibility in the use of other technologies and processes to divert organic waste and reduce methane emissions.

In addition, COVID-19 has had severe economic and social impacts on residents, businesses, and jurisdictions, which will make it extremely difficult to comply with the SB 1383 requirements. The Report does not recognize the seriousness of this situation and, therefore, makes no recommendations to address it.

Recently released CalRecycle guidance documents make it clear that failure by a local government to comply, including failure to provide funding and adequate staffing, will subject a local government to enforcement action and penalties up to \$10,000 per day. This may force jurisdictions to cut essential services in order to pay for organics recycling.

Although jurisdictions have urged CalRecycle to provide greater flexibility in complying with the SB 1383 requirements, extend the compliance timelines, and make allowance for jurisdictions' "good faith" efforts to comply with SB 1383, the Report is not proposing to do so. Complying with SB 1383 requirements by the current deadlines will be impossible for many jurisdictions unless this situation is addressed.

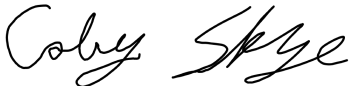
Enclosed are additional, detailed comments on the Report.

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Public Works would be pleased to participate in future stakeholder opportunities related to the development and implementation of the SB 1383 regulations. If you have any questions, please contact Mr. Christopher Sheppard at (626) 458-3592 or csheppard@pw.lacounty.gov, Monday through Thursday, 7 a.m. to 5:30 p.m.

Very truly yours,

MARK PESTRELLA
Director of Public Works



COBY J. SKYE
Assistant Deputy Director
Environmental Programs Division

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P:\SEC\AK\EP4\PW COMMENTS ON B 1383 PROGRESS ANALYSIS

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COMMENTS

General Comment:

1. For the County of Los Angeles, implementing the Senate Bill (SB)1383 (Lara, 2016 State Statutes) regulations will be a massive undertaking. The State has a significant lack of infrastructure capacity to recycle organic waste. The capacity shortfall is especially severe in Los Angeles County and the Southern California region. Developing the needed infrastructure will require major capital investments. CalRecycle has estimated that implementing the regulations will cost nearly \$40 billion but has only provided \$140 million in grants and loans for organic waste recycling infrastructure.

Public Works understands that funding for infrastructure is currently limited by Greenhouse Gas Reduction Fund allocations. However, if additional State funding cannot be provided, CalRecycle should understand that local jurisdictions may not be able to fully implement all aspects of the regulations by the deadlines established by SB 1383. Local jurisdictions will need years to plan facilities, complete environmental reviews, apply for permits, secure funding, and finish construction. Although CalRecycle stated in the "SB 1383 Compliance Process" guidance document that it may provide three-year compliance extensions for jurisdictions lacking adequate organic waste recycling infrastructure, this will still not be enough time to develop the dozens of new facilities that are needed to process organic waste from Los Angeles County.

CalRecycle should also understand that jurisdictions will need to invest significant time and resources to implement organic waste collection programs and develop organic waste recycling infrastructure. CalRecycle has spent nearly four years simply developing the SB 1383 regulations, which have still not been finalized, due to complex nature of completely overhauling solid waste management programs and infrastructure throughout the State. Complying with the extensive requirements of the regulations will be even more complex and time consuming.

Implementing organic waste collection programs will require local jurisdictions to renegotiate existing waste hauling contracts or revamp entire waste collection systems. For example, the County of Los Angeles may need to overhaul its commercial franchise system and form one or more garbage disposal districts. These actions must be conducted in compliance with State law and will require significant stakeholder and customer outreach. Monitoring and enforcing the requirements will necessitate local jurisdictions to develop new information systems, hire additional staff, adopt ordinances to impose penalties on residents and businesses, and develop enforcement programs.

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Funding these programs as well as the needed infrastructure will require local jurisdictions to raise or create new fees and/or taxes, which is a challenging political process. These challenges have only been exacerbated by the COVID-19 pandemic, which has resulted in many residents becoming unemployed and facing eviction, the permanent closure of small businesses, and severe fiscal impacts to local governments.

The "Analysis of the Progress Toward the SB 1383 Organic Waste Reduction Goals (Report)," prepared by CalRecycle, recommends that local jurisdictions satisfy the SB 1383 procurement requirement by using renewable natural gas (RNG) fuel in existing compressed natural gas fleets. It is not clear how CalRecycle can make this recommendation when the California Air Resources Board is pushing for electrification of local government fleets and refuse fleets by the year 2040. CalRecycle must provide an analysis of the effects of California Air Resource Board policies on SB 1383 compliance and the development of sufficient anaerobic digestion (AD) and RNG infrastructure, which are financed based on a 20- to 30-year operating life, if fleets are expected to transition to battery electric in 20 years or less.

As part of the said analysis, Public Resources Code (PRC) §42653 (b) allows CalRecycle to include incentives or additional requirements in the regulations to facilitate progress towards achieving organic waste reduction goals. The additional requirements are listed in PRC §42652, and include different levels of requirements for local jurisdictions and phased timelines based upon their progress in meeting the organic waste reduction goals for 2020 and 2025. PRC §42652.5 (a) (4), also states that CalRecycle shall base its determination of progress on relevant factors, including, but not limited to, reviews conducted pursuant to PRC §41825, which describes the "Good Faith Effort" review of a jurisdiction's compliance.

The "SB 1383 Compliance Process" guidance document states that, "If CalRecycle takes enforcement action, it can consider extenuating circumstances as well as substantial efforts made by a jurisdiction." We are concerned that the actions needed to demonstrate "substantial effort" to comply (including providing adequate staffing, providing sufficient funding, and adopting ordinances that will raise customer rates and impose penalties) will be extremely difficult to implement due to the effects of the COVID-19 pandemic, particularly in light of continued economic strain facing all local agencies. Hiring additional staff for waste collection monitoring and enforcement at a time when local jurisdictions may be considering layoffs is not feasible. The criteria for determining "substantial effort" needs to be re-evaluated in light of the impacts of COVID-19 and CalRecycle should take the effects of COVID-19 into consideration when determining whether a local jurisdiction has made a "substantial effort" to comply with the SB 1383 regulations.

CalRecycle has the opportunity to recognize and acknowledge the challenges local jurisdictions are facing in attempting to comply with SB 1383 by January 1, 2022, and to make recommendations to the State Legislature regarding State funding for infrastructure, extension of compliance deadlines by at least two years, and more flexibility in enforcement including consideration of "Good Faith Effort." **Public Works urges CalRecycle to seek changes in the law to address these issues.**

Specific Comments:

1. The report states that CalRecycle estimates that approximately 27 million tons of organic material will need to be redirected from landfills in 2025 to meet the SB 1383 reduction goal and that approximately 18 million tons of organic waste will need to be processed at compost, AD, chip-and-grind, or other organic waste processing facilities (Page 1). This statement implies that CalRecycle expects that 9 million tons of organic waste will be source reduced or donated for human consumption each year. CalRecycle should verify whether this assumption is correct. If so, CalRecycle should conduct an analysis to determine if there is sufficient existing edible food recovery capacity in the State.
2. The Report mentions that very few facilities can accept food-soiled paper (Page 15). CalRecycle should provide clarification on whether paper coffee cups, food wrappers, etc. generated by businesses are required to be diverted from landfill disposal. Also, the Report should clarify whether jurisdictions will face enforcement actions for allowing businesses to continue disposing food-soiled paper items in the trash, even if these items comprise less than 25 percent of the black bin and the businesses are diverting other organic waste, such as food waste and green waste.
3. The Report states that most of the State's jurisdictions already require mandatory residential organics collection service and that jurisdictions that are implementing mandatory commercial organics recycling programs are likely to meet the requirements of the regulations before January 1, 2022 (Page 18). The Report does not acknowledge that most residential organic waste collection programs only collect green waste and do not collect food waste, paper products, or other organic waste. Residential waste collection systems will require significant contract modifications, rate increases, outreach, and infrastructure development to become SB 1383 compliant. In addition, many existing organics processing facilities can accept green waste but are not permitted to accept food waste mixed in with green waste, and do not want to accept food waste due to concerns about environmental impacts such as odors. This means that entirely new facilities will need to be developed to process mixed organic waste. The Report should acknowledge that jurisdictions may not be able to fully implement residential and commercial organic waste collection programs by January 1, 2022, due to a lack of suitable organic waste recycling infrastructure and the difficulty in raising waste

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collection rates to fund these programs in light of the COVID-19 pandemic, and its adverse economic impact on residents and businesses.

4. The Report discusses concerns with the composting process, which can generate criteria air pollutants, such as volatile organic compounds, nitrogen oxides, and particulate matter (Page 21). CalRecycle should consider a study on alternatives to composting and land application for organic waste management, including AD and non-combustion thermal conversion technologies. This study should compare the emissions of carbon dioxide, methane and criteria air pollutants from alternative technologies with those from composting and land application. The "Assessment of Regional Methane Emission Inventories through Airborne Quantification in the San Francisco Bay Area" published in Environmental Science and Technology on July 7, 2020, states that "significant methane emissions at composting facilities indicate that a California mandate to divert organics from landfills to composting may not be an effective measure for mitigating methane emissions unless best management practices are instituted at composting facilities." This finding also implies that land application of green waste, biosolids, and digestate, which are considered reductions in landfill disposal under the SB 1383 regulations, may also generate significant methane emissions as well.
5. The Report describes barriers to food waste digestion, such as that fuel produced from digesters processing food waste receives less valuable Renewable Fuel Standard credits than fuel produced from landfill gas, animal manure, agricultural waste, green waste, or wastewater sludge. The United States Congress would have to make revisions in order for fuel produced from food waste to receive the same credits as other organic materials (Page 26). CalRecycle should consider advocating changes to the Renewable Fuel Standard program with the Federal Government to provide greater credits for food waste digestion projects.
6. The Report describes challenges for AD and biomass conversion projects to join the BioMAT program, which offers power purchase agreements for eligible bioenergy projects (Page 30). CalRecycle should consider supporting the California Public Utilities Commission Proposed Decision on the BioMAT program dated July 24, 2020. The Proposed Decision extends the program end date to the end of 2025 and establishes deadlines for utilities to review project eligibility and approve contracts. CalRecycle should also work with the State legislature to develop a Renewable Portfolio Standard program for renewable natural gas to further incentivize the development of AD projects.
7. The Report states that although paper and old corrugated cardboard are technically recyclable, their disposal in 2018 alone exceeds the 5.7 million-ton organic waste disposal limit required by SB 1383. This suggests additional measures may be necessary to address this specific portion of the waste stream (Page 31). The Report also states that CalRecycle may need to place a greater focus on the diversion of the organic portion of packaging waste to meet the SB 1383 targets, such as requiring manufacturers to produce new products with

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minimum recycled content (Page 34). In addition to these measures, CalRecycle should consider providing diversion credit for all unrecyclable organic waste and solid waste diverted from landfills through non-combustion thermal conversion technologies. Although the State considers unrecyclable paper to be "biomass" that will receive diversion credit when processed through thermal conversion, the definition of "biomass" is quite narrow and the volume of municipal biomass materials may be too low to support the widespread development of biomass conversion facilities. Paper and old corrugated cardboard are collected alongside a wide variety of materials that are usually processed at Materials Recovery Facilities (MRFs) to remove unrecyclable materials, referred to as "MRF residuals". The State should provide diversion credit for all unrecyclable MRF residuals processed through non-combustion thermal conversion to ensure that all unrecyclable paper and old corrugated cardboard can be diverted from landfill disposal.

8. The Report states that the procurement requirements will motivate local jurisdictions to ensure food and green waste generated by their citizens have very few contaminants, as it would cost them much more to have it removed from the product they are required to procure. The Report states that because it would be unacceptable to the public for jurisdictions to use material in public spaces, parks, and landscaping that has visible contamination, jurisdictions will use education, monitoring, and enforcement to ensure their generators do not contaminate the feedstock. (Page 32). Large jurisdictions usually have contracts with multiple waste haulers who will differ in how they choose to provide organic waste collection services (e.g. mixed waste collection, food waste mixed with green waste, and separate food waste bin) and which materials are considered "contamination". In addition, large jurisdictions expect to divert organic waste to multiple organics recycling facilities, many of which will be located in other jurisdictions. Large jurisdictions also expect to procure recovered organic waste products from multiple facilities, which are likely to be processing organic waste from multiple jurisdictions. Although jurisdictions will be motivated to reduce contamination, the procurement requirements do not necessarily guarantee that jurisdictions will be successful in doing so even with robust education, monitoring, and enforcement. CalRecycle must consider the challenges of preventing contamination in large jurisdictions when assessing whether a jurisdiction has complied with the outreach, monitoring, enforcement, and procurement requirements of SB 1383.