

Calif. Organic Waste Regs Mean Sweeping Changes For Cos.

By **Abbey Hudson, Dione Garlick and Mark Tomaier** (April 9, 2020, 6:03 PM EDT)

The California Department of Resources Recycling and Recovery, or CalRecycle, is set to release final regulations aimed at aggressively minimizing the state's organic waste, defined under current proposed regulations as "solid wastes containing material originated from living organisms and their metabolic waste products."^[1]

On Jan. 21, CalRecycle sent its final rulemaking package to the Office of Administrative Law,^[2] which returned the regulations to CalRecycle with nonsubstantive changes.^[3] CalRecycle will hold a 15-day public comment period after the changes are made, and then release the final regulations.^[4]

CalRecycle will adopt these regulations according to the mandate in S.B. 1383, also known as the Short-Lived Climate Pollutant Reduction Strategy. S.B. 1383 was signed into law by Gov. Jerry Brown in 2016, and established "methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants in various sectors of California's economy."^[5]

With respect to the waste management sector, S.B. 1383 requires CalRecycle, in consultation with the California Air Resources Board, to adopt regulations designed to reduce statewide landfill disposal of organic waste.^[6] Cities and similar local jurisdictions will assume significant responsibilities under the regulations by providing collection services and by implementing the food recovery programs.

Given that these programs and services will be provided at the local level, businesses should review their obligations both under CalRecycle's final regulations as well as their local jurisdiction's implementation of those regulations.

Targets Set By S.B. 1383

S.B. 1383 establishes two organic waste disposal reduction targets. These targets are tied to the 2014 baseline of 23 million tons of organic waste disposal, and must be achieved by 2020 and 2025.^[7] The two targets require a 50% reduction in organic waste from the 2014 baseline by 2020 and, by 2025, a 75% reduction of the 2014 baseline.^[8]



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CalRecycle must also provide regulations “intended to meet the goal that not less than 20% of edible food that is currently disposed of is recovered for human consumption by 2025.”[9]

The Proposed Regulatory Framework

On Oct. 2, 2019, CalRecycle released its third formal draft of the proposed regulatory text.[10] The following are key features of the regulatory framework.

Activities Constituting Landfill Disposal

Disposal activities are actions that result in organic waste’s final deposition at a landfill, use of certain forms of alternative cover, and any other disposition of organic waste that does not otherwise constitute a reduction of organic waste under the regulations.[11]

Activities Constituting a Reduction in Landfill Disposal

Recovery activities are those deposits of organic waste to operations or facilities with processes that reduce short-lived climate pollutants, including recycling, composting, in-vessel digestion, biomass conversion, soil amendment, land application, animal feed as recovery, and other approved operations that reduce methane.[12]

Organic Waste Collection Services

Each jurisdiction — which can be a city, county, a city and county together, or a special district — is charged with providing the organic waste collection services.[13]

Jurisdictions must use the organic waste to procure minimum levels of compost, renewable natural gas, electricity from biomass conversion, or mulch.[14]

Organic Waste Generators

Organic waste generators are required to either subscribe to their local jurisdiction’s collection service or self-haul their organic waste.[15]

Commercial businesses that generate organic waste have a number of obligations, which include providing disposal containers matching their jurisdiction’s containers (or otherwise properly labeled containers), prohibiting employees from placing organic waste in an improper container, and conducting periodic container inspections.[16]

Edible Food Recovery Programs and Services

Jurisdictions are required to implement and oversee edible food recovery programs.[17]

Commercial Edible Food Generators

Commercial edible food generators must recover “the maximum amount of edible food that would otherwise be disposed” and establish documented arrangements with food recovery services or organizations.[18]

Recordkeeping and Reporting by Regulated Entities

Regulated entities are required to keep certain records demonstrating compliance with the regulations. These requirements are largely assumed by jurisdictions and counties, which must report on compliance with many regulations.[19]

However, commercial entities are not exempt. For example, commercial edible food generators must maintain information on the services or organizations that receive their edible food, including: copies of contracts or written agreements; contact information; the types of food collected or self-hauled; the frequency of collection or self-haul; and the quantity of food collected or self-hauled.[20]

Enforcement and Oversight

Jurisdictions will enforce the regulations in areas subject to their authority.[21] By Jan. 1, 2022, jurisdictions must have an inspection and enforcement program meeting certain minimum requirements.[22] For violations occurring after Jan. 1, 2024, the regulations provide the timeframes and circumstances under which a jurisdiction must impose penalties for violations by regulated entities.[23]

CalRecycle will oversee jurisdictions and other entities outside of local government regulatory authority.[24] CalRecycle also has authority to take direct enforcement action against an entity if the relevant jurisdiction fails to do so.[25]

The regulations provide for administrative and civil penalties for violations. Jurisdictions are required to impose penalty amounts that increase per violation. For a first violation, the base penalty is \$50-\$100 per offense; a second violation incurs a \$100-\$200 penalty per offense; a third or subsequent violation incurs a \$250-\$500 penalty per offense.[26]

Jurisdictions are not the only authorities that can impose penalties. The proposed regulations provide that CalRecycle has the authority to impose administrative penalties ranging from \$500 to \$10,000 per violation per day, based on the severity of the violation.[27]

Feedback From Regulated Parties

One of the foremost concerns stakeholders have raised is the lack of necessary infrastructure to manage the additional organic waste.[28] By 2025, S.B. 1383 limits the tons of organic waste disposable in landfills to 5.75 million.[29]

By then, approximately 27 million tons of organic waste will need to be managed by organic waste facilities and operations.[30] About 50-100 new or expanded composting or anaerobic digestion facilities will be needed to meet these additional needs, costing approximately \$2 billion.[31]

To address the infrastructure concern, the regulations charge counties with developing implementation schedules if they currently lack sufficient capacity to manage organic waste. The schedules must demonstrate how the county will ensure enough available capacity to recover the organic waste currently disposed of by generators within their jurisdictions.[32]

Counties are also charged with consulting with local task forces, haulers, owners of facilities, operations and activities that recover organic waste, and community composting operators to identify

existing capacity and potential for expansion.[33] In conjunction, the county must conduct community outreach regarding new or expanded facilities.[34]

Funding for the additional infrastructure has come from a variety of sources, including cap-and-trade grants, as well as CalRecycle's Recycling Market Development Zone and Greenhouse Gas Reduction Loan Programs.[35] A new source of funding may come from a recent budget change proposal, which provides a loan program titled the Climate Catalyst Revolving Loan Fund.[36]

This fund would "work in concert with the other elements of the climate budget by providing low-interest loans for a portfolio of projects across California's climate agenda: from zero emission vehicles and infrastructure, to climate-smart agriculture and forestry projects, to projects focused on recycling or reuse of valuable resources." [37]

With respect to the edible food recovery programs and services to be implemented by jurisdictions, at least one mayor has raised concerns that liability remains undetermined if, for example, recovered food triggers an individual's allergies or the food has pathogens.[38] Others have suggested that edible food providers would be protected from such liability under the California Good Samaritan Food Donation Act, which provides in part that:

Except for injury resulting from gross negligence or intentional misconduct in the preparation or handling of donated food, no person, gleaner, or food facility that donates food that is fit for human consumption at the time it was donated to a nonprofit charitable organization or food bank shall be liable for any damage or injury resulting from the consumption of the donated food.[39]

Conclusion

CalRecycle's final regulations will establish sweeping changes in California's management of organic waste. This effort will require the state, local governments and businesses to make significant changes to meet S.B. 1383's goals.

Pursuant to the proposed regulations, organic waste generators should review their local jurisdiction's approach to organic waste management. Among other responsibilities, generators will need to subscribe to their local jurisdiction's collection service or self-haul their organic waste.[40]

In addition, they will need to provide disposal containers matching their jurisdiction's containers, or otherwise properly labeled containers, prohibit their employees from placing organic waste in an improper container, and conduct periodic container inspections.[41] Commercial business owners will be responsible for providing these containers to employees, contractors, tenants and customers, and will need to keep these parties informed annually about organic waste recovery requirements and about proper sorting of organic waste.[42]

Commercial businesses will also need to provide or arrange for access to their properties during enforcement inspections.[43] Finally, businesses should also review local obligations, which will vary by jurisdiction.

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[1] Heather Jones, SB 1383: A Revolution For Organic Waste (Mar. 23, 2020), <https://www.biocycle.net/2020/03/17/sb-1383-revolution-organic-waste/>; Short-lived Climate Pollutants (SLCP): Organic Waste Reductions, Proposed Regulation Text, Third Formal Draft, tit. 14, § 18982. (a)(46) (proposed Oct. 2, 2019).

[2] *Id.*

[3] *Id.*

[4] *Id.* On March 19, Governor Gavin Newsom issued a stay at home order for all California residents. Exec. Order N-33-20 (Mar. 19, 2020). CalRecycle has not indicated whether the COVID-19 outbreak will postpone the release of the final regulations.

[5] Cal. Dep't of Res. Recycling and Recovery, Short-Lived Climate Pollutants (SLCP): Organic Waste Methane Emissions Reductions, <https://www.calrecycle.ca.gov/climate/slcp> (last visited Mar. 29, 2020).

[6] Cal. Pub. Resources Code § 42652.5.

[7] Cal. Pub. Resources Code § 42652.5.; Cal. Dep't of Res. Recycling and Recovery, Initial Statement of Reasons, Amendment to Original ISOR, 2 (Jan. 2019) available at <https://www2.calrecycle.ca.gov/Docs/Web/110853>.

[8] *Id.*

[9] Cal. Pub. Resources Code § 42652.5.

[10] Cal. Dep't of Res. Recycling and Recovery, Short-lived Climate Pollutants (SLCP): Organic Waste Reductions, Proposed Regulation Text, Third Formal Draft (Oct. 2, 2019), available at <https://www2.calrecycle.ca.gov/Docs/Web/115719>.

[11] Short-lived Climate Pollutants (SLCP): Organic Waste Reductions, Proposed Regulation Text, Third Formal Draft, tit. 14, §18983.1. (a) (proposed Oct. 2, 2019).

[12] *Id.* §§ 18983.1. (b)(1)-(8).

[13] *Id.* §§ 18984.2.-3.

[14] *Id.* § 18993.1.

[15] *Id.* §§ 18984.9. (a); 18986.1. (non-local entities).

[16] *Id.* §§ 18984.9.; 18984.10.

[17] Id. § 18991.1.

[18] Id. § 18991.3.

[19] See, e.g., id. §§ 18985.3.; 18988.3.; 18988.4.; 18992.1.; 18992.3.; 18994.2.

[20] Id. § 18991.4.

[21] Id. § 18995.1.

[22] Id. § 18995.1.

[23] Id. §18995.4.

[24] Id. §§ 18996.1.; 18996.5.; 18996.6; 18996.7.

[25] Id. §§ 18996.3.; 18996.9.

[26] Id. § 18997.2.

[27] Id. §§ 18997.3.; 18997.5.

[28] See, e.g., S.B. 1383 Short-Lived Climate Pollutants: Organic Waste Methane Emissions Reductions, 2017 Stakeholder Workshop, 8, 12, 26, 30, 76, 82, 98-99, 118, 125 (Feb. 14, 2017) available at <https://www2.calrecycle.ca.gov/Docs/Web/110040>; S.B. 1383 Short-Lived Climate Pollutants (SLCP) Local Organic Waste Collection, Solid Waste Facilities, and Edible Food Definitions and Concepts, Informal Rulemaking Stakeholder Workshop, 27, 55 (June 26, 2017) available at <https://www2.calrecycle.ca.gov/Docs/Web/115320>.

[29] Supra note 5.

[30] Supra note 1.

[31] Ken DaRosa and Scott Smithline, California Launches Its Organics Revolution, BioCycle, Vol. 59, No. 3, p. 22 (Mar. 2018), available at <https://www.biocycle.net/2018/03/12/california-launches-organics-revolution/>.

[32] Supra note 11, § 18992.1. (d).

[33] Id. § 18992.1. (c).

[34] Id.

[35] Supra note 1.

[36] Governor's Office of Bus. and Econ. Dev., Budget Change Proposal, 40 (Sep. 2019), available at https://esd.dof.ca.gov/Documents/bcp/2021/FY2021_ORG0509_BCP3557.pdf.

[37] Id.

[38] Dennis L. Taylor, Monterey Officials Fret Over Looming Food Waste Law, (last visited March 28, 2020) <https://www.montereyherald.com/2020/03/05/monterey-officials-fret-over-looming-food-waste-law/>.

[39] Cal. Civ. Code § 1714.25(a).

[40] Supra note 11, §§ 18984.9. (a); 18986.1 (non-local entities).

[41] Id. §§ 18984.9.; 18984.10.

[42] Id.

[43] Id. § 18984.10.