City of ARCATA

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822·5957	822·8184	825·2128

February 27, 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 January 2019 – COMMENT LETTER

Dear Ms. Huff:

The City of Arcata appreciates the opportunity to comment on the proposed regulations released in January 2019, which seek to implement SB 1383 (Lara, 2016). The City of Arcata continues to support both a robust waste management system that complies with California's climate goals as well as reasonable and achievable goals in removing short-lived climate pollutants, including methane, from landfills. We appreciate the stakeholder process CalRecycle is undertaking and the ability to weigh in on the proposed regulations.

We would like to thank CalRecycle for acknowledging in these regulations the critical need for infrastructure capacity statewide. As you know, the state does not have available infrastructure capacity to fully meet the goal set forth in SB 1383. The City of Arcata is seeking and advocating for solutions to address the need for substantial new infrastructure funding both in our community and across the state.

We remain concerned about critical points that hinder our ability to implement the proposed regulation. Recently the biomass facilities in our area have either shut down or curtailed accepting material. We have a single contractor who accepts greenwaste currently and they are ramping up their fees for accepting material. In terms of food waste composting operations existing infrastructure is lacking in our area to accept material. Food waste processing facilities need to be in close proximity to populations to minimize hauling costs and associated GHG from transportation. We promote backyard composting for the residential sector and would be interested in a food waste solution such as local in-vessel composters or digesters associated with wastewater treatment facilities where biogas can be used for energy production. The scale of these facilities are challenging in a remote rural area such as northern Humboldt County.

Additionally, our key concerns are as follows:

Infrastructure Capacity: As we have noted, California lacks sufficient capacity today 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. While the regulation provides five years to implement programs, cities are concerned that this is not sufficient time to develop and permit new facilities.

Funding: Lack of sufficient funds continues to be among the major challenges local governments face in the effort to implement new organic waste diversion programs. The City of Arcata and other communities continue to seek solutions to address the need for substantial public sector funding. For example, "Cap-and-Trade" proceeds can be used to help offset the costs for developing organic recycling infrastructure. However, even if additional appropriations were made to the Waste Diversion Program, it will not address much of the local need. Local governments, like ours, continue to work to address the need for funds to undertake prescribed activities, such as updating bins and labels, as well as providing education and outreach.

Enforcement: These regulations allow for Corrective Action Plans and establishes extended timelines and milestones for achieving compliance. We appreciate the addition of a pathway to compliance. This is a step in the right direction and we urge careful consideration of the differences among local jurisdictions, as well as the variety of community stakeholders, and infrastructure challenges a local jurisdiction may face.

Penalties: The penalties outlined in these regulations are premature. If the purpose of penalties is to ensure generators are sufficiently deterred from non-compliance, this regulation puts the cart before the horse by designing penalties before the sticking points and needs of generators are understood. We encourage CalRecycle to continue working through the programmatic scheme before implementing an appropriate set of penalties, particularly since programs have until 2022 to be implemented. We ask that CalRecycle adopt penalties in a second set of regulations to take effect at a future date.

Procurement: New procurement requirements in these proposed regulations require local governments to purchase recovered organic waste products targets set by CalRecycle. We anticipate these requirements will result in substantial additional costs to local governments, over and above the costs we already anticipate to comply with the extensive programmatic requirements of the proposed regulations. We ask that CalRecycle instead work to develop markets for such materials in a second regulatory proceeding.

The City of Arcata further notes the additional costs that will result from complying with the procurement regulations represent an unfunded state mandate under Cal. Const. Art. XIII B, sec. 6(a) as the regulations would impose a new program on cities and neither the draft regulations nor the Initial Statement of Reasons identifies a state funding source. CalRecycle should not rely on the fee authority granted to local jurisdictions in SB 1383. Any fee that a city attempted to impose to fund the additional costs of these regulations would likely be treated as a tax under

Cal. Const. Art. XIII C, sec. 1(e) (Prop. 26) as it would not meet any of the exceptions identified in that section. Further, even were a fee to survive scrutiny under Prop. 26, it is questionable whether a city would not have the authority to impose the fee without first complying with the majority protest procedures of Cal. Const. Art. XIII D, sec. 6 (Prop. 218.) This latter concern is currently the subject of litigation in the Third District Court of Appeal (Paradise Irrigation District v. Commission on State Mandates, Case No. C081929). For these additional reasons, The City of Arcata requests that the procurement regulations be addressed in a separate regulatory proceeding.

The City of Arcata appreciates the inclusive stakeholder process CalRecycle has undertaken. We look forward to continued opportunities to comment on specific proposals.

Sincerely,

Brett Watson
Mayor
Arcata, CA

cc:
Senator Mike McGuire, Senator.McGuire@senate.ca.gov & VIA FAX: (916) 651-4902
Congressman Jared Huffman, John.Driscoll@mail.house.gov
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