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May 21, 2015

Ms. Marshalle Graham
Department of Resources Recycling and
Recovery (CalRecycle)
1001 I Street
Sacramento, CA 95812

Dear Ms. Graham:

COMMENTS ON MANDATORY COMMERCIAL ORGANICS RECYCLING GUIDELINE MATERIALS

The Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force) appreciates this opportunity to comment on the items discussed at the April 28, 2015, Mandatory Commercial Organics Recycling workshop and the Frequently Ask Questions (FAQs) guidelines recently placed on CalRecycle's website as guidance for the mandatory commercial organics recycling requirements established pursuant to Assembly Bill 1826 (AB 1826, 2014). It is important for affected stakeholders to be fully aware of their requirements under this law, and for this reason the Task Force is commenting and/or requiring clarification on the following:

- FAQ Webpage Responses
- Workshop Item #5: Electronic Annual Report Questions to Address AB 1826
- Workshop Item # 8: Countywide IWMP Enforcement Policy Part II

General Comment

The guidelines state that no regulations will be developed in relation to AB 1826. However, the guidelines make significant interpretations and elaborations on the meaning of statute, AB 1826, which go far beyond the letter of the law (e.g., the inclusion of "FOG" and meat in the definition of food waste, the detailed criteria for determining what is food-soiled paper, the requirement that all of the organic portion of the waste generated must be "recycled" by the covered businesses, and the statement that "*A local government that collects street sweepings should divert the organic fraction...*"). Such broad interpretations beyond the letter of the law are inappropriate without undergoing a rule-making process and, therefore, must be eliminated from the document.

FAQ Webpage Section A. General, 1)

It is stated that by January 1, 2016, “*local jurisdictions must have an organic waste recycling program in place.*” Subsequently, under **C. Jurisdiction**, 20) it is stated that some jurisdictions “*may not need to implement organics recycling services until 2017.*”

These statements are inconsistent among them and are also inconsistent with the AB 1826, Section 42649.82. (a)(1), which states that “*on and after January 1, 2016, each jurisdiction shall implement an organic waste recycling program...*” (Emphasis added). These inconsistencies create confusion and should be corrected.

FAQ Webpage Section A. General, 6)

It is stated that fats, oil, and grease (FOG) are a form of food waste, and therefore, are subject to the “recycling” requirements of AB 1826. Does CalRecycle have any guidelines for estimating the quantities of FOG discharged into the sewer system? FOG is also regulated as industrial waste. What is the basis for CalRecycle’s decision to deem it solid waste and thus regulate its management? Will this mean that all FOG will now come under the regulatory umbrella of CalRecycle, subject to all other requirements applicable to solid waste? Will the transporting of trapped FOG to a rendering facility meet the definition of “recycling?”

FAQ Webpage Section A. General, 10)

It is stated that “*based on the definition of organic waste, the organic fraction of street sweepings is included (i.e., there are green waste materials in street sweepings). A local government that collects street sweepings should divert the organic fraction.*” Street sweepings have a high level of contamination due to the presence of oil, other vehicle fuels, car brake fines, and other pollutants. What are the expectations of CalRecycle from local governments or their contractors with regard to the extent of their efforts to separate, test, and “recycle” the organic portion of street sweepings? Is that left to the contractor/hauler to determine?

FAQ Webpage Section A. General, 14)

It is stated that the jurisdiction “*is responsible for implementing the law...*” This is inconsistent with the language in AB 1826, Section 42649.82. (a)(1), which states that “*...each jurisdiction shall implement an organic waste recycling program.*” (Emphasis added). There are numerous inconsistencies like this throughout the document which alter the meaning of the text and should be corrected.

FAQ Webpage Section A. General, 15)

According to the response, “there *could* be increased costs due to identifying generators that meet the organics thresholds.” (Emphasis added) It is also stated that “*Providing additional commercial organics recycling services could increase costs, depending upon whether new or expanded commercial organics recycling services are necessary to meet the needs of businesses.*” (i.e., this is equivalent to stating “*if you’ve done this already, it won’t increase your costs*”).

For the vast majority of jurisdictions, there absolutely will be significant costs to jurisdictions to implement the mandatory organic recycling law and it should be stated so clearly. The response given only touches the surface of the increased efforts and costs that will be required by jurisdictions to comply with this unfunded mandate.

FAQ Webpage Section A. General, 16)

The discussion on the potential applicability of Propositions 26 and 218 requirements to the fees levied pursuant to AB 1826 appears inadequate to provide meaningful guidance to local governments. For example, it does not reference the fact that the authority provided is limited to the local government charging and collecting “*a fee from an organic waste generator to recover the local governmental agency’s costs incurred in complying with this chapter...*” (Section 42649.85).

FAQ Webpage Section E, Compliance, 1) and Proposed FAQ #1

According to the compliance section of the FAQ page and the proposed answer for this question on the Proposed FAQ document, jurisdictions’ “good faith effort” may be partly based on “the recovery rate of the organic waste from the material recovery facilities (MRFs) that are utilized by businesses which includes all information, methods, and calculations, and any additional performance data, as requested by CalRecycle”. Jurisdictions have no ability to force a MRF to provide this data, particularly when MRFs are located outside their respective jurisdictions. The data and information is provided to CalRecycle pursuant to Section 18809.4 of Title of the California Code of Regulations; however, CalRecycle does not specify a reported recovery rate of organic material is required by facility operators, so to request this by Jurisdictions is not reasonable. To partly base a jurisdictions’ compliance with AB 1826 based on something in which they have no control over is unwarranted and consequently places jurisdictions in a precarious situation. We strongly believe that CalRecycle (the State agency responsible for achievement of 75 percent diversion by 2020) needs to collect this data and make them available to local jurisdictions.

FAQ Webpage Section B, Business, 4) Will CalRecycle be responsible for ensuring that these generators comply with AB?

The response provided in the document does not address the FAQ and does not state whether a local jurisdiction who has no authority over state facilities, colleges, prisons, Caltrans, and school districts will be held responsible for non-compliance by these type of agencies if they choose not to recycle organic waste even after being provided the education, outreach, and monitoring. At the workshop, they advised they will examine our efforts and grade us accordingly. Our efforts will then be subject to interpretation of a CalRecycle/“IRS” employee. Has CalRecycle established a formal manual for use by its staff to endure uniformity throughout the State? If yes, will they share a copy for review by the Task Force?

Jurisdiction education and outreach activities

PRC Section 42649.82 (d) (C) requires jurisdictions to “provide for the education of, outreach to, and monitoring of, businesses,” however; the CalRecycle FAQ page indicates on several occasions that the education and outreach must be performed on an annual basis (emphasis added). This places an undue burden on jurisdictions which already have to implement many requirements established pursuant to AB 1826. The guidelines must be consistent with the letter of the law, and requiring jurisdictions to educate and provide outreach to affected entities on an annual basis is beyond the requirements of AB 1826. The Task Force respectfully requests this requirement be clarified to be consistent with the law.

Electronic Annual Report Question to Address AB 1826

Question E, (8) on Workshop Item #5, requires a description of “any efforts the local jurisdiction is participating in or aware of to promote local markets for processed organic material.” Please note that according to Section 42649.82 (d), this is not a requirement for recycling programs. This element is somewhat mentioned in Section 42649.86 (b); however, it should be noted that the section directs the Department to “cooperate with local governmental agencies and industry to provide assistance for increasing the feasibility of organic recycling by promoting processing opportunities and the development of new infrastructure of sufficient capacity to meet the needs of generators, and developing sufficient end-use markets throughout the state for the quantity of organic waste required to be diverted.”

Assessment of a jurisdictions’ compliance with the requirements of AB 1826 must be consistent with the law, otherwise jurisdictions risk non-compliance for following the law’s actual requirements which have been incorrectly interpreted by CalRecycle staff in this guidance item.

Workshop Item # 8: Countywide IWMP Enforcement Policy Part II

Under the “Mandatory Commercial Organics Recycling Implementation” section, page 23, it states that “Every jurisdiction’s organic waste recycling program, at a minimum, **must** consist of the following [among other things] (4) Measures ensuring that organic waste recycling services is available to every (emphasis added) business in the jurisdiction.” However, PRC Section 42649.82 (a) (1) states that “each jurisdiction shall implement an organic waste recycling program for that jurisdiction and designed specifically to divert organic waste generated by businesses subject to Section 42649.81.” Under the referenced section, businesses subjected to the organic recycling requirement are limited to: beginning April 1, 2016, businesses which produce eight cubic yards of organic waste per week; beginning January 1, 2017, businesses which produce four cubic yards of organic waste per week; and beginning January 7, 2019, businesses that generate four cubic yards of solid waste per week. Therefore, requiring CalRecycle staff to determine jurisdictions’ compliance with AB 1826 requirements by ascertaining if said jurisdictions have taken measures to ensure organic waste recycling services are available to every business in the jurisdiction is beyond the actual law and may place jurisdictions out of compliance due to an overly aggressive interpretation of the law. The Task Force respectfully requests this correction in the document.

Also under the “Mandatory Commercial Organics Recycling Implementation” section, page 25, Conducting Education/Outreach, there are several references to “annual education and outreach efforts.” However, as addressed above regarding the FAQ webpage, PRC Section 42649.82 (d) (C) requires jurisdictions to “provide for the education of, outreach to, and monitoring of, businesses.” This requirement is not an annual requirement as it has been incorrectly interpreted throughout the guidance materials by CalRecycle.

At the afternoon session of the April 28, 2015, workshop it was stated:

- Jurisdictions must recycle 100 percent of their organic and it was repeated a several times in response to verification. This statement is incorrect in totality and contradictory to the AB 1826 requirements. For the record, AB 1826 mandates 100 percent organic waste recycling only on those “businesses” that generate a certain amount of green waste per week. And, further this requirement is a function of time as well.
- That each jurisdiction must (1) identify all organic waste generators within its boundaries, (2) identify what each business is doing to recycle the green waste being generated, (3) substantiate the implementation of public education/outreach program applicable to that type of business, and (4) Signify through adoption of an ordinance or other legal means for imposition of penalty on a business that fails to implement an organic waste recycling program.

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Has CalRecycle conducted a cost analysis of such requirements, especially on large jurisdictions similar to those in Los Angeles County? What justification does CalRecycle have to substantiate such a requirement forcing jurisdictions to spend millions of dollars simply to assuage the curiosity of a state agency?

Pursuant to Chapter 3.67 of the Los Angeles County Code and the California Integrated Waste Management Act of 1989 (Assembly Bill 939 [AB 939], as amended), the Task Force is responsible for coordinating the development of all major solid waste planning documents prepared for the County of Los Angeles and the 88 cities in Los Angeles County with a combined population in excess of ten million. Consistent with these responsibilities and to ensure a coordinated and cost-effective and environmentally sound solid waste management system in Los Angeles County, the Task Force also addresses issues impacting the system on a countywide basis. The Task Force membership includes representatives of the League of California Cities-Los Angeles County Division, County of Los Angeles Board of Supervisors, City of Los Angeles, the waste management industry, environmental groups, the public, and a number of other governmental agencies.

Should you have any questions regarding these comments, please contact Mr. Mike Mohajer of the Task Force at (909) 592-1147 or MikeMohajer@yahoo.com.

Sincerely,



Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Management Committee/
Integrated Waste Management Task Force and
Mayor, City of Rosemead

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cc: League of California Cities
Each member of the Los Angeles County Board of Supervisors
San Gabriel Valley Council of Governments
South Bay Cities Council of Governments
Gateway Cities Council of Governments
Westside Cities Council of Governments
Each City Mayor and City Manager in the County of Los Angeles
Each City Recycling Coordinator in Los Angeles County
Each Member of the Los Angeles County Integrated Waste Management Task Force