



MARK PESTRELLA, CHAIR  
MARGARET CLARK, VICE - CHAIR

LOS ANGELES COUNTY  
SOLID WASTE MANAGEMENT COMMITTEE/  
INTEGRATED WASTE MANAGEMENT TASK FORCE  
900 SOUTH FREMONT AVENUE, ALHAMBRA, CALIFORNIA 91803-1331  
P.O. BOX 1460, ALHAMBRA, CALIFORNIA 91802-1460  
[www.lacountyiswmtf.org](http://www.lacountyiswmtf.org)

February 10, 2020

Ms. Debra Cornez, Director  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814-4339

Dear Ms. Cornez:

**ADOPTED REGULATION TEXT – SHORT LIVED CLIMATE POLLUTANTS FOR  
SENATE BILL 1383 – OFFICE OF ADMINISTRATIVE LAW FILE NUMBER 2020-0121-03**

The Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force) would like to draw your attention to several reasons why, in our view, as established in the record of rulemaking proceeding, the above-referenced regulation does not comply with the requirements of Government Code Section 11349.1, particularly the requirements of consistency and authority. The California Department of Resources Recycling and Recovery (CalRecycle) adopted the subject regulation (a copy can be found here: <https://www2.calrecycle.ca.gov/Docs/Web/115719>) at its monthly public meeting on January 21, 2020 (a copy of the meeting agenda is enclosed).

By way of background, the Los Angeles County Board of Supervisors formed the Task Force pursuant to Chapter 3.67 of the Los Angeles County Code and the California Integrated Waste Management Act of 1989 (AB 939). Its membership consists of a wide range of public and private stakeholders with a wide range of perspectives on solid waste issues.<sup>1</sup> 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 the County with a population in excess of ten million. Consistent with these responsibilities and to ensure a coordinated, 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 participated actively in the rulemaking process and submitted comments on several formal draft regulations on February 25, 2019, July 16, 2019, and October 16, 2019. The Task Force respectfully recommends that the OAL return the adopted regulation to CalRecycle to be revised to address/incorporate the below comments/recommendations before the regulation is considered for approval by the OAL.

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<sup>1</sup> Specifically, the Task Force membership includes representatives of the League of California Cities-Los Angeles County Division, Los Angeles County Department of Public Works, Los Angeles County Department of Public Health, City of Los Angeles, City of Long Beach, the Los Angeles County Sanitation Districts, the South Coast Air Quality Management District, the waste management industry, environmental groups, and the public. See Los Angeles County Code, Chapter 3.67.

An electronic copy of this comment letter will be emailed to the following: [staff@oal.ca.gov](mailto:staff@oal.ca.gov)

1. **Lack of Consistency:** The adopted regulation imposes inordinately excessive responsibilities on cities and counties compared to other regulated public entities, which are inconsistent with Senate Bill 1383 (SB 1383) and other state statutes.

While the Task Force strongly supports efforts to reduce climate pollutants, the Task Force is very concerned about the approach that CalRecycle has selected, which contrary to the provisions of SB 1383 places a tremendous burden and responsibility on counties and cities (more than any other stakeholder group, including, but not limited to, state agencies, public and private colleges and universities, school districts, local education agencies and non-local entities as defined in Article 1, Section 18982 (a) (40) and (42) of the adopted regulation [emphasis added]), while imposing extremely prescriptive requirements, and excessive inspection and monitoring reporting, as well as requiring counties and cities to impose steep penalties on residents and businesses for non-compliance.

The Task Force believes that the adopted regulation contains a number of mandates that are inconsistent with the authority that Article XI of the California Constitution provides to general law and charter cities and counties as well as provisions of the California Public Resources Code (PRC), Subdivision 40059 (a) which, in part, states, “*each county, city, district, or other local governmental agency may determine all the following:*

*Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.” (emphasis added)*

(as an example, see provisions of Articles 3, 14, and 15 through 17 of the mandates imposed by the adopted regulation.)

State law, Section 40001 (a) of the Public Resources Code (PRC), declares that “the responsibility for solid waste management is a shared responsibility between the state and local governments (*emphasis added*).” Furthermore, SB 1383 recognizes the shared responsibility “the waste sector, state government, and local governments” have in achieving the organic waste landfill disposal reduction goals for 2020 and 2025, and thus requires CalRecycle to analyze the progress made by the three sectors, in that order, including “commitment of state funding”, in achieving the said goals {PRC Section 42653 (a)} (*emphasis added*). However, under the adopted regulation, the responsibility weighs much more heavily on counties and cities, including programmatic and penalty requirements, than on state agencies, school districts, and special districts, local education agencies, and non-local entities (as an example, see provisions of Articles 14 and 15 of the adopted regulation).

The Task Force strongly recommends that the OAL consider the lack of consistency, as defined by Government Code 11349(d), between the adopted regulation and PRC 40059 when considering the regulation pursuant to Government Code 11349.1. Before approval, the adopted regulation must be revised to be consistent with the provisions of the California Constitution and the California Law to provide for a more equitable distribution of the responsibility for achieving the disposal reduction goals among all sectors, including industry, state government, school districts, public and private colleges and universities, and other non-local entities and local education agencies, etc.

2. **Lack of Authority and Consistency: The adopted regulation exceeds CalRecycle’s statutory authority and is inconsistent with SB 1383 and other state statutes in requiring jurisdictions to impose mandatory monetary penalties on residents and businesses.**

While SB 1383 grants CalRecycle the authority to “require local jurisdictions to impose requirements on generators or other relevant entities within their jurisdiction,” this authority does not extend to the imposition of penalties (emphasis added). SB 1383 only states that CalRecycle “may authorize local jurisdictions to impose penalties on generators for noncompliance” {see Section 42652.5. (a)(1) of the PRC} (emphasis added).

However, the adopted regulation [Article 16, Section 18997.1 (b)] specifies that jurisdictions “shall *adopt ordinance(s) or enforceable mechanisms to impose penalties* as prescribed in Section 18997.2.” (emphasis added).

In addition, Section 18997.2. Penalty Amounts, requires: “(a) *A jurisdiction shall impose penalties* for violations of the requirements of this chapter consistent with the applicable requirements prescribed in Government Code Sections 53069.4, 25132 and 36900. The penalty levels shall be as follows:...” (emphasis added). As proposed, a single-family dwelling may be subject to penalties of \$50-\$100 for the first offense, \$100-\$200 for the second offense, and \$250-\$500 for the third and each subsequent offense.

In requiring counties and cities to impose steep civil penalties of up to \$500 per offense on residents and businesses for non-compliance with each requirement of the regulation, CalRecycle would exceed its authority under the law, notwithstanding the provisions of Government Code Sections 53069.4, 25132 and 36900. Such authority is vested on local governmental agencies by PRC Section 40059, which states that, “each county, city, district, or other local governmental agency may determine...aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, *charges and fees*, and nature, location, and extent of providing solid waste handling services” (emphasis added).

The Task Force therefore recommends that OAL decline to approve the regulation unless CalRecycle deletes any and all provisions that *require* counties and cities to impose civil (monetary) penalties on their residents or businesses. The language may be revised pursuant to PRC Section 42652.5 (a)(1) to authorize counties and cities to do so, as they deem appropriate (emphasis added).

3. **Lack of Consistency: By precluding CalRecycle from considering “good faith effort” by local jurisdictions to comply with the adopted regulation, the adopted regulation is in conflict with existing state statute.**

CalRecycle’s Statutory Background and Primary Regulatory Policies document states, in part, that “**Legislative guidance directs CalRecycle not to**...utilize the “Good Faith Effort” compliance model specified in PRC Section 41825.” *This is inaccurate and contrary to the language of SB 1383.*

Section 42652.5. (a)(4) of the PRC specifically requires CalRecycle to consider “good faith effort” in determining a jurisdiction’s progress in complying with the law. It states that CalRecycle “**shall** base its determination of progress on relevant factors, including, but not limited to, **reviews conducted pursuant to Section 41825**” (emphasis added).

Since PRC Section 41825 establishes the process to determine whether a jurisdiction has made a “good faith effort” to comply with the law, it is clear that CalRecycle is required to consider “good faith effort” in making its determination of a jurisdiction’s progress.

The Task Force strongly recommends that the (OAL) consider the lack of consistency, as defined by Government Code 11349(d), between the adopted regulation and PRC 41825, when considering the adopted regulation pursuant to Government Code 11349.1. Before approval, the adopted regulation needs to be revised to require CalRecycle to consider “good faith effort” in evaluating jurisdictional compliance.

4. **Lack of Authority: The procurement requirements in the adopted regulation exceeds the authority granted to CalRecycle in existing state statute.**

Without addressing compliance with the requirements of Government Code 11349.1 (d) (3) (A through D), the adopted regulation requires local governments to purchase recovered/recycled organic waste products targets set by CalRecycle. The implementation of these requirements will result in substantial additional costs to local governments over and above the costs cities and counties already anticipate incurring for complying with the extensive programmatic requirements of the adopted regulation, because the procurement requirements will require these jurisdictions to purchase products that are more expensive than they would otherwise purchase. Further, the additional costs that will result from complying with the adopted regulation’s procurement requirements represent an unfunded state mandate under California Constitution, Article XIII B, Section 6 (a) since the adopted

regulation would impose a new program on local governments and contrary to Government Code 11349.1, neither the adopted regulation nor the Amended Initial Statement of Reasons identifies a state funding source. PRC § 42652.5(b) provides that a local jurisdiction may charge a fee to recover the costs of complying with regulations pursuant to SB 1383. However, local governments would not have any authority to impose fees or assessments that would pay for the increased costs that they would incur as a result of these procurement requirements. This suggests that the procurement requirements exceed CalRecycle's authority under SB 1383.

The Task Force strongly recommends that the OAL consider the lack of authority, as defined in Government Code 11349 (b), granted to CalRecycle to require local jurisdictions to procure specified minimum amounts of recovered organic waste products, when considering the adopted regulation pursuant to Government Code 11349.1. Before approval, the adopted regulation must be revised to remove the procurement requirements.

5. **Lack of Consistency: The regulation places excessively prescriptive requirements on local jurisdictions in violation of Section 11340(d) of the Administrative Procedure Act (APA).**

The adopted regulation contradicts Government Code 11340 (d) which states that *"The imposition of prescriptive standards upon private persons and entities through regulations where the establishment of performance standards could reasonably be expected to produce the same result has placed an unnecessary burden on California citizens and discouraged innovation, research, and development of improved means of achieving desirable social goals."* The adopted regulation is highly prescriptive, even though similar or better results may be achieved through establishing performance standards for jurisdictions and providing them with the necessary tools to achieve the standards (emphasis added).

The Task Force strongly believes that the adopted regulation would be less burdensome on jurisdictions and regulated agencies but equally or even more effective if it were less prescriptive, more flexible, and less punitive, and included more reasonable timeframes for compliance, such as not requiring local jurisdictions to be in compliance with almost every aspect of the regulations by January 1, 2022. At the same time CalRecycle should focus state efforts on market development, technical support, including efforts to investigate emerging technologies leading to the development of new facilities and products, and funding for infrastructure.

The Task Force strongly recommends that the OAL consider the excessively prescriptive nature of the adopted regulation which is inconsistent with the provisions of Government Code 11349(d) when considering approval of the adopted regulation pursuant to Government Code 11349.1. Before approval, the regulation needs to be significantly revised to reduce the excessive requirements on cities and counties.

Ms. Debra Cornez  
February 10, 2020  
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We respectfully request that the OAL return the adopted regulation to CalRecycle for the purpose of revising the adopted regulation to address the above-mentioned issues. Should you have any questions regarding these comments, please contact Mr. Mike Mohajer, a member of the Task Force, at MikeMohajer@yahoo.com or at (909) 592-1147.

Sincerely,



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

KW:cso

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Enc.

cc: League of California Cities  
League of California Cities, Los Angeles Division  
California State Association of Counties  
Each Member of the Los Angeles County Board of Supervisors  
Sachi A. Hamai, Los Angeles County Chief Executive Officer  
Los Angeles County Agricultural Commission  
Each City Mayor/Manager in the County of Los Angeles  
South Bay Cities Council of Governments  
San Gabriel Valley Council of Governments  
Gateway Cities Counsel of Governments  
Each City Recycling Coordinator in Los Angeles County  
Each Member of the Los Angeles County Solid Waste Management  
Committee/Integrated Waste Management Task Force  
Each Member of the Task Force Alternative Technology Advisory Subcommittee  
Each Member of the Task Force Facility and Plan Review Subcommittee

## Monthly Public Meeting

10:00 A.M., January 21, 2020  
Cal/EPA Building – Byron Sher Auditorium

### A. DIRECTOR'S REPORT

*Presentations or discussions by the Director and/or Executive Offices regarding department matters, legislative updates, public affairs, or initiatives.*

### B. PUBLIC COMMENT\*

*People may speak on any matter concerning CalRecycle with the exception of items appearing elsewhere on this agenda or items related to pending adjudicative (certification or enforcement) proceedings.*

\*Please note that while CalRecycle affords members of the public the opportunity to participate by Webcast, CalRecycle strongly encourages public comments to be made in person.

### C. POLICY MANDATES/WORKSHOPS/RULEMAKING PROCEEDINGS

*Possible decisions or discussions by department staff regarding any order instituting a rulemaking proceeding to develop and adopt regulations and/or policy guidelines specifying the procedures to implement or revise program guidelines or requirements such as Product Stewardship, Commercial Recycling, Organics Roadmap or the 75% initiative.*

#### Action Items

1. Consideration of California Paint Stewardship Program Year 7 Annual Report  
Department Contact: [Joyce.Thung@calrecycle.ca.gov](mailto:Joyce.Thung@calrecycle.ca.gov)  
[Public Notice](#)
2. Request for Approval to Initiate Formal Rulemaking on the Sustainable Packaging for the State of California Act of 2018 (SB 1335)  
Department Contact: [Andrew.Parrish@calrecycle.ca.gov](mailto:Andrew.Parrish@calrecycle.ca.gov)  
[Public Notice](#)
3. Request for Approval of 2020 Annual Rulemaking Calendar  
Department Contact: [Elliot.Block@CalRecycle.ca.gov](mailto:Elliot.Block@CalRecycle.ca.gov)  
[Public Notice](#)

#### Information Items

1. Recycling and Disposal Reporting System (RDRS) Third Quarter System Update  
Department Staff Contact: [Steven.Sander@CalRecycle.ca.gov](mailto:Steven.Sander@CalRecycle.ca.gov)
2. Announcing Three Upcoming Waste Characterization Study Request for Proposals  
Department Contact: [Kamrun.Zargar@CalRecycle.ca.gov](mailto:Kamrun.Zargar@CalRecycle.ca.gov)  
[Public Notice](#)

3. State of Disposal and Recycling in California: For Calendar Year 2018  
Department Staff Contact: [Frederick.Thomas@CalRecycle.ca.gov](mailto:Frederick.Thomas@CalRecycle.ca.gov)
4. Adoption of Regulations on Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions (SB 1383)  
Department Staff Contact: [Hank.Brady@CalRecycle.ca.gov](mailto:Hank.Brady@CalRecycle.ca.gov)

#### **D. GRANT AND LOAN PROGRAMS**

***Possible decisions or overview regarding matters related to the used oil and household hazardous waste programs.***

##### **Action Items**

1. Eligibility, Scoring Criteria, and Evaluation Process for the Household Hazardous Waste Grant Program (Integrated Waste Management Account Fiscal Year 2020–21)  
Department Staff Contact: [When.Kwon@CalRecycle.ca.gov](mailto:When.Kwon@CalRecycle.ca.gov)  
[Public Notice](#)
2. Approval of Scope of Work for the Retread Tire Contract (Tire Recycling Management Fund, Fiscal Year 2019–20)  
Department Staff Contact: [Calvin.Young@CalRecycle.ca.gov](mailto:Calvin.Young@CalRecycle.ca.gov)  
[Public Notice](#)
3. Eligibility Criteria and Evaluation Process for the Local Government Waste Tire Cleanup Grant Program (Tire Recycling Management Fund, Fiscal Year 2020–21)  
Department Staff Contact: [Cathy.Aggergaard@CalRecycle.ca.gov](mailto:Cathy.Aggergaard@CalRecycle.ca.gov)  
[Public Notice](#)

##### **Information Items**

1. Awards for the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program (Farm and Ranch Solid Waste Cleanup and Abatement Account, Fiscal Years 2018–19 and 2019–20)  
Department Staff Contact: [Stephanie.Becker@CalRecycle.ca.gov](mailto:Stephanie.Becker@CalRecycle.ca.gov)  
[Public Notice](#)
2. Approval Of A Greenhouse Gas Reduction Loan for eco.logic brands inc. (Greenhouse Gas Reduction Revolving Loan Fund, FY 2015–2016)  
Department Staff Contact: [Bruce.Quigley@CalRecycle.ca.gov](mailto:Bruce.Quigley@CalRecycle.ca.gov)  
[Public Notice](#)
3. Awards for the Rubberized Pavement Grant Program (Tire Recycling Management Fund, Fiscal Year 2019–20)  
Department Staff Contact: [Loreto.Tamondong@CalRecycle.ca.gov](mailto:Loreto.Tamondong@CalRecycle.ca.gov)  
[Public Notice](#)



## E. SOLID WASTE AND TIRE FACILITIES

***Possible decisions or reconsiderations to petitions for a facility or landfill permit or modification; and, possible determinations of enforcement actions, clean-up requirements; or LEA training.***

### **Action Items**

1. Health Sanitation Services – Santa Barbara County, New Solid Waste Facilities Permit, Action Date Needed February 3, 2020  
Department Staff Contact: [Dianne.Ohiosumua@CalRecycle.ca.gov](mailto:Dianne.Ohiosumua@CalRecycle.ca.gov)  
[Public Notice](#)
2. East Valley Recycling & Transfer – San Bernardino County, Revised Solid Waste Facilities Permit, Action Needed January 25, 2020  
Department Staff Contact: [Dianne.Ohiosumua@CalRecycle.ca.gov](mailto:Dianne.Ohiosumua@CalRecycle.ca.gov)  
[Public Notice](#)
3. Central Disposal Site – Sonoma County, Revised Solid Waste Facilities Permit, Action Needed February 11, 2020  
Department Staff Contact: [Patrick.Snider@CalRecycle.ca.gov](mailto:Patrick.Snider@CalRecycle.ca.gov)  
[Public Notice](#)

### **Information Items**

1. Waste Tire Enforcement Report  
Department Staff Contact: [Krysty.Emery@CalRecycle.ca.gov](mailto:Krysty.Emery@CalRecycle.ca.gov)
2. Approval of the Scope of Work and Authorization to Solicit Statements of Qualifications for the Bonzi Sanitary Landfill Closure Engineering Services Contract (Integrated Waste Management Account, FYs 2019-2020, 2020-2120 and 2021-2022) Department Staff Contact: [Steve.SantaCroce@CalRecycle.ca.gov](mailto:Steve.SantaCroce@CalRecycle.ca.gov)  
[Public Notice](#)

## F. LOCAL ASSISTANCE

***Possible approval or discussion of locally adopted planning documents, bi-annual reviews, compliance and enforcement actions, or other program-related proceedings.***

### **Action Items**

1. Referrals for Compliance Investigation Regarding the Implementation of the Mandatory Commercial Recycling and the Mandatory Commercial Organics Recycling Programs for the Cities of Banning, Norco, and Riverside  
Department Contact: [Cara.Morgan@Calrecycle.ca.gov](mailto:Cara.Morgan@Calrecycle.ca.gov)  
[Public Notice](#)
2. State Agency and Large State Facility AB 75 Diversion Program Compliance – 2017/2018 Report of Biennial Review Findings  
Department Contact: [Cara.Morgan@CalRecycle.ca.gov](mailto:Cara.Morgan@CalRecycle.ca.gov)  
[Public Notice](#)

### **Information Items**

Nothing to report at this time

## **G. ELECTRONIC WASTE RECYCLING PROGRAM**

***Possible decisions or overview regarding the reuse, recycling, and handling of covered electronic devices; including matters related to fees, recyclers, enforcement, claim reviews and adjustments.***

### **Action Items**

1. Re-adoption of Emergency Regulations Providing a Structure for Pursuing Multiple Covered Electronic Waste Recycling Payment Rates  
Department Staff Contact: [Matt.Sheehan@CalRecycle.ca.gov](mailto:Matt.Sheehan@CalRecycle.ca.gov)  
[Public Notice](#)

### **Information Items**

Nothing to report at this time

## **H. BEVERAGE CONTAINER RECYCLING PROGRAM**

***Possible decisions or announcements regarding BCRP matters including fund condition, rates, approval of new/renewed certifications, or enforcement actions.***

### **Action Items**

No actions at this time

### **Information Items**

1. Recycling Program Certification & Registration Report  
Quarterly Report on Branch workload metrics and key data.  
Department Staff Contact: [Jennifer.Akins@CalRecycle.ca.gov](mailto:Jennifer.Akins@CalRecycle.ca.gov)
2. Recycling Program Enforcement Report  
Quarterly Report on the Branch activities, including Probationary Reviews, Inspections, Investigations completed, and accusations filed. Updates will also be provided on Department of Justice/Office of the Attorney General interagency activities.  
Department Staff Contact: [Ben.Shelton@CalRecycle.ca.gov](mailto:Ben.Shelton@CalRecycle.ca.gov)
3. Recycling Program Operations Report  
Quarterly Report on the Branch activities will include a summary of Rate Determination Studies statistics, Market Information and Statistics.  
Department Staff Contact: [Mike.Miller@CalRecycle.ca.gov](mailto:Mike.Miller@CalRecycle.ca.gov)

## **I. OTHER**

***Possible decisions or discussions regarding the development or implementation of a new or an amendment to policies and procedures for grants, loans and contracts. Please note that grants, loans, or scopes of work will be agendized specific to program area unless otherwise noted here.***

**Action Items**

No actions at this time

**Information Items**

Nothing to report at this time

**J. COMPLIANCE AND ENFORCEMENT HEARINGS**

*Hearings for Compliance and Enforcement matters and Administrative Appeals which are required to have a public hearing prior to the Department taking action*

**Action Items**

No actions at this time

**Information Items**

Nothing to report at this time

**K. PROGRAM AND ISSUE UPDATES**

**Action Items**

No actions at this time

**Information Items**

Nothing to report at this time

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We want to assure all of our stakeholders that transparency and stakeholder involvement remains a high priority for CalRecycle. In keeping with a history of providing stakeholders with information about programs, activities, and departmental decisions, CalRecycle has a public noticing site. To review Final CalRecycle Decisions and other department activities, please go to: <https://www.calrecycle.ca.gov/PublicInfo/> or <http://www.calrecycle.ca.gov/BevContainer/Notices>. For meeting participation, listserv, and feedback information, please go to: <http://www.calrecycle.ca.gov/PublicMeeting/>