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RE: Comments on June 17th Second Formal Draft Short-lived Climate Pollutants Organic Waste Reduction Regulations

The California State Association of Counties (CSAC) is pleased to offer the following comments on the proposed regulations to implement SB 1383 (Lara, Chapter No. 395, Statutes of 2016) relating to organics diversion from our landfills. CSAC has been actively engaged in this regulatory process since the passage of SB 1383 in 2016. We appreciate the consistent outreach on the part of the Department of Resources, Recycling and Recovery (Cal Recycle), and their attention to local government concerns and issues with the draft – some of which were addressed in this recent update. However, CSAC has ongoing concerns regarding the implementation of the proposed regulations and the heavy cost burden that will ultimately be borne by local rate payers.

Creating a regulatory framework that is economically feasible and implementable has always been our priority. We support the state's goal of reducing short-lived climate pollutants and meeting our greenhouse gas emissions targets, but we also support an approach that recognizes existing challenges to markets, the need for infrastructure and the potential impact the proposed regulation could have on organic waste generators and rate payers. We must reiterate our concern that the proposed regulations are a mandate on local jurisdictions; whereas, the authorizing statutes directed the state to adopt a program to achieve goals. It is our belief that SB 1383 was not intended to be a local jurisdiction mandate, however given the manner in which the regulations are structured and the inclusion of the enforcement and penalty requirements, the proposed regulations have that effect.

We appreciate the opportunity to provide additional feedback, and we offer the following comments and also support and align ourselves with those of individual counties.

Implementation Challenges

The latest proposed regulations have a number of challenging implementation issues. We highlighted a number below.

Reporting—Counties must keep an implementation record of documents of all ordinances, policies, contracts, violations, exemptions, education and outreach efforts, container contamination results, edible program food program information, procurement information, and organic waste processing capacity planning documents for at least five years and must give Cal Recycle access to these files upon request within ten days. Incomplete records or policies could lead to fines from Cal Recycle. While CSAC appreciates the extension of time allowed for counties to comply with a request from Cal Recycle from one day to ten days in the latest proposed regulations, the volume and detail required in this implementation record is onerous and we require significant staff oversight to manage to avoid fines.

Exemptions -- The proposed regulations provide for two major types of exemptions; locally granted exemptions and state granted exemptions. The locally granted exemptions include waivers from organic waste collection for generating too little organic waste, not having enough space to put a collection service, and a request to reduce collection frequency. State based waivers from the regulations include low population exemptions for unincorporated areas with less than 75 people per square mile, a rural exemption based on a declaration of need by the county, and an exemption for communities above 4,500 feet in altitude. CSAC proposes that local jurisdictions should simply be granted the ability to provide the low population waivers and elevation waivers.

Local governments are in a better position to evaluate unique circumstances when it comes to compliance with these regulations. In some instances in census tract based populations, the tracts could geographically large, but also contain a small portion, likely near the edge of the census tract, that is population dense. In this type of situation the county is in a better position to grant waivers based on a better understanding of community needs and hauler routes. The elevation waiver is intended prevent the nuisance of animal consumption in communities near large populations of wildlife. This condition could happen at, above, or below 4,500 feet. This waiver would also be better granted at the local level, where counties and local communities have a better understanding of the natural environment and the potential community disruption that animals can cause than the state.

Education & Outreach -- Counties will be required to do specific outreach regarding organic waste collection service, generator compliance requirements, the benefits of methane reduction, methods to reduce organic waste, and programs for edible food donations. These materials may be provided through print or electronic media. In addition, the county must provide these materials to certain groups of non-English speaking generators that meet specified thresholds. California counties are linguistically diverse, and translating all educational materials into every language spoken may not be feasible to produce and may come at a significant cost. CSAC suggests that jurisdictions translation educational materials in the most commonly spoken languages of the jurisdiction and offer to provide outreach materials in other language upon request by residents and/or generators.

Route Checks & Contamination Inspections -- Local jurisdictions will be required to verify the contents of bins for contamination or presence of organic waste on an annual basis. Counties may verify contamination using either a route inspection method or waste characterization sample method. Generators are required to receive written notice if contamination is found using either of the two prescribed methods. CSAC appreciates the reduction of these contamination checks to annual basis instead of quarterly; however, we remain concerned that the prescribed method of performing the waste characterization sample will be burdensome and unwieldy in facilities with limited space.

Capacity Planning— Under Article 11 of these proposed regulations, counties will be required to issue a report to Cal Recycle on the development of both organic waste processing and edible food recovery capacity for all of the local jurisdictions within the county. In addition, if the county determines that more capacity is needed, it must notify local jurisdictions contributing to this lack capacity to submit a detailed implementation plan to Cal Recycle in order meet the county needs.

The regulations state that jurisdictions shall conduct community outreach regarding locations being considered for new or expanded facilities. The proposed language is unclear as to which jurisdiction shall conduct outreach, whether it is the city or the county, and is not specific to jurisdictional boundaries. CSAC recommends that the responsibility of community outreach be the role of the jurisdiction (city if located within a city or County if located in a County unincorporated area) in which

the new or expanded facility is being proposed, and not solely the role of the County regardless of the location of the new or expanded facility.

In addition, CSAC recommends that the proposed regulations include a requirement on cities, regional agencies and edible food recovery organizations to respond to and provide the requested capacity data/information to Counties or other applicable jurisdictions for edible food capacity planning purposes.

Procurement— CSAC supports greater flexibility in reaching procurement goals as provided for in the most recent regulations. We appreciate the expansion of procurement options under Article 12 and consider those changes as a step in the right direction.

Infrastructure

Our consistent message and main point throughout this process has been the need for sufficient infrastructure to manage this portion of the waste stream. California has added roughly 13 active anaerobic digestion (AD) facilities and 169 active composting facilities in the past 20 years. At least 135 to 150 new facilities must be financed, sited, permitted, and built in the next nine years to achieve the target of 75% organics diversion by 2025. To meet these goals, California will need upwards of \$3 billion in capital investment. Cap and Trade funding has provided limited resources to make process towards the significant resources needed to site and permit facilities. We firmly believe that capacity is a statewide conversation that is tied to resources and requires the participation of all stakeholders. This requirement is beyond the ability of most local jurisdictions to achieve, and should be part of a broader effort focused on the development of organics infrastructure and associated funding in California.

Thank you for the opportunity to provide you our comments. Should you have any questions, please feel to contact me at 916-327-7500, ext. 504, or cmartinson@counties.org.

Sincerely,



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