
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: SB 619
Author: Laird
Version: 4/13/2021
Urgency: No
Consultant: Genevieve M. Wong
Hearing Date: 4/29/2021
Fiscal: Yes

SUBJECT: Organic waste: reduction regulations

DIGEST: Requires, until January 1, 2023, CalRecycle to only impose a penalty on a local jurisdiction, and would require a penalty to only accrue, for a violation of the regulations if the local jurisdiction did not make a reasonable effort, as determined by the department, to comply with the regulations.

ANALYSIS:

Existing law:

- 1) Requires the State Air Resources Board (ARB) to complete, approve, and implement a comprehensive strategy to reduce emissions of short-lived climate pollutants in the state to achieve, among other things, a reduction in the statewide emissions of methane by 40%. (Health and Safety Code (HSC) §§39730, 39730.5)
 - a) Requires methane emissions reduction goals to include specified targets to reduce the landfill disposal of organics. (HSC §39730.6)
- 2) Requires the Department of Resources Recycling and Recovery (CalRecycle), in consultation with ARB, to adopt regulations to achieve those targets for reducing organic waste in landfills (SB 1383 regulations). (Public Resources Code (PRC) §42652.5)
- 3) Requires the regulations to take effect on or after January 1, 2022.
- 4) Prescribes CalRecycle enforcement actions over local jurisdictions (14 C.C.R. §18996.2)

This bill, until January 1, 2023, only permits:

- 1) CalRecycle to impose a penalty on a local jurisdiction in accordance with the regulations for a violation of the regulations if the local jurisdiction did not

make a reasonable effort, as determined by the department, to comply with the regulations.

- 2) A penalty to accrue for a violation of the regulations if the local jurisdiction did not make a reasonable effort, as determined by the department, to comply with the regulations.

Background

- 1) *Solid waste in California.* For three decades, CalRecycle has been tasked with reducing disposal of municipal solid waste and promoting recycling in California through the Integrated Waste Management Act (IWMA). Under IWMA, the state has established a statewide 75 percent source reduction, recycling, and composting goal by 2020 and over the years the Legislature has enacted various laws relating to increasing the amount of waste that is diverted from landfills. According to CalRecycle's *State of Disposal and Recycling Report for Calendar Year 2019*, published in February 2021, approximately 77.5 million tons of material was generated in 2019; with about 55% sent to landfills; 19% exported as recyclables; 12% composted, anaerobically digested or mulched; and 6% either recycled or source reduced.

The amount of material sent to landfills has been steadily increasing over the years, with an estimated 43 million tons of waste disposed of in California's landfills in 2019. Organic materials accounts for more than a third of California's waste stream and food continues to be the highest single item disposed at approximately 18% of materials landfilled. Leaves, grass, prunings, and trimmings represent just under 7% of the total waste stream.

Local governments have been required to divert 50% of the waste generated within the jurisdiction from landfill disposal since 2000. AB 341 (Chesbro, Chapter 476, Statutes of 2011), requires commercial waste generators, including multi-family dwellings, to arrange for recycling services for the material they generate and requires local governments to implement commercial solid waste recycling programs designed to divert solid waste generated by businesses out of the landfill. A follow up bill, AB 1826 (Chesbro, Chapter 727, Statutes of 2014), requires generators of organic waste (i.e., food waste and yard waste) to arrange for recycling services for that material to keep it out of the landfill.

- 2) *Short Lived Climate Pollutants (SLCPs).* Greenhouse gas (GHG) emissions such as carbon dioxide work to warm the earth by trapping solar radiation in the earth's atmosphere. Depending on the molecule, these pollutants can vary

greatly in their ability to trap heat, which is termed their global warming potential (GWP), and the length of time they remain in the atmosphere. Carbon dioxide remains in the atmosphere for centuries, which makes it the most critical GHG to reduce in order to limit long-term climate change. However, climate pollutants including methane, tropospheric ozone, hydrofluorocarbons (HFCs), and soot (black carbon), are relatively short-lived (anywhere from a few days to a few decades), but when measured in terms of how they heat the atmosphere (GWP), can be tens, hundreds, or even thousands of times greater than that of carbon dioxide. These are SLCPs.

- 3) *Short-Lived Climate Pollutant Regulations (SB 1383 Regulations)*. According to CalRecycle's website, methane emissions resulting from the decomposition of organic waste in landfills are a significant source of GHG emissions contributing to global climate change, with organic waste in landfills emitting 20% of the state's methane, which is a climate super pollutant 84 times more potent than carbon dioxide. As noted above, organic materials – including waste that can be readily prevented, recycled, or composted – account for a significant portion of California's overall waste stream. Food waste alone accounts for approximately 17 – 18% of total landfill disposal. Increasing food waste prevention, encouraging edible food rescue, and expanding the composting and in-vessel digestion of organic waste throughout the state will help reduce methane emissions from organic waste disposed in California's landfills.

In 2016, the Legislature passed and Governor Brown signed SB 1383 (Lara, Chapter 395, Statutes of 2016), establishing methane emissions reduction targets in a statewide effort to reduce emissions of SLCPs in various sectors of California's economy. Actions to reduce SLCPs are essential to address the many impacts of climate change on human health, especially in California's most at-risk communities, and on the environment.

SB 1383 required ARB to approve and implement a comprehensive short-lived climate pollutant strategy to achieve, from 2013 levels, a 40% reduction in methane, a 40% reduction in hydrofluorocarbon gases, and a 50% reduction in anthropogenic black carbon, by 2030. In order to accomplish these goals, the bill specified that the methane emission reduction goals include targets to reduce the landfill disposal of organic waste 50% by 2020 and 75% by 2025 from the 2014 level; and to rescue for people to eat at least 20% of currently disposed of surplus food by 2025. CalRecycle was given authority to adopt regulations that would achieve these organic waste reduction requirements.

The regulations were approved by the Office of Administrative Law (OAL) in November 2020 and take effect January 1, 2022.

The regulatory package is comprehensive, placing various responsibilities on local jurisdictions. The six main requirements of the regulations are:

- Providing organic collection services;
- Edible food recovery program;
- Education and outreach to the community;
- Procurement requirements of organic material;
- Providing access to edible food and composting facilities; and
- Monitoring and enforcement by the local jurisdictions. Pursuant to statutory requirements, local jurisdictions cannot issue enforcement penalties until two years after the operative date of the regulations – January 1, 2024.

- 4) *Enforcement of SB 1383 Regulations.* According CalRecycle’s *Guidance on CalRecycle’s SB 1383 Compliance Process*, “The SB 1383 enforcement structure allows CalRecycle to focus on compliance assistance first and dedicate enforcement efforts to *serious offenders* (emphasis added). Regulations allow for flexibility and deadline extensions in some instances when there is extenuating circumstances causing compliance issues despite a jurisdiction’s substantial efforts, such as the COVID-19 pandemic and natural disasters.

“While the regulations become effective Jan. 1, 2022, the enforcement process is an escalating process and the timelines are not triggered until a Notice of Violation (NOV) is issued.

- CalRecycle has discretion to address compliance issues with a jurisdiction through compliance evaluations prior to moving to enforcement proceedings.
- CalRecycle will consider the totality of the circumstances surrounding a jurisdiction’s compliance prior to issuing NOVs.
- CalRecycle has discretion to issue NOVs and, depending on the circumstances, not seek penalties.

“If CalRecycle takes enforcement action, it can consider **extenuating circumstances** as well as **substantial efforts** made by a jurisdiction and place the entity on a Correction Action Plan (CAP) (emphasis in the original). CalRecycle has enforcement discretion to allow for a longer timeline for compliance.

- Low population and rural waivers also delay or exclude implementation of certain requirements for jurisdictions, or portions of jurisdictions, in

particular circumstances.

“Regulations allow for extended timelines (under certain circumstances), giving jurisdictions **up to 3 years** to come into compliance before penalties are issued (emphasis in original).”

Comments

- 1) *Purpose of Bill.* According to the author, “SB 619 supports continued efforts by local jurisdictions to achieve statewide organic waste recycling targets and climate goals.

“Local governments across California face severe budget shortfalls in response to the COVID-19 pandemic and state leaders must support local efforts to meet our statewide climate goals. SB 619 provides the support needed by all local governments in their ongoing endeavors to design and implement thoughtful and successful organic waste recycling programs.”

- 2) *Local jurisdictions are worried about fines for noncompliance.* Enforcement of SB 1383 regulations have some local jurisdictions worried due to the comprehensiveness of the regulations and the short timeframe in which they have to comply. According to some stakeholders, because the final draft of regulations was not adopted until November 2020, this only gives local jurisdictions 14 months to develop organic waste management programs that would fulfill the requirements of the regulations. Stakeholders have also indicated that because city budgets have been impacted by COVID-19, cities will be forced to increase the rates of their constituents to cover the costs of implementing the regulations.

Stakeholder groups fear that if they are found to be in noncompliance of the regulations, they will be subject to large fines. However, according to the CalRecycle Guidance, the focus will be on assisting local jurisdictions to come into compliance; enforcement actions such as fines will only be imposed on serious offenders and, in some cases not for three years. Despite this Guidance, local jurisdictions still seek assurances that they will not be subject to hefty fines when the regulations go into effect next year.

- 3) *A long time coming.* On the other hand, local jurisdictions have known about these regulations and its methane emission reduction goals since 2016, when SB 1383 was first enacted and well before COVID-19. Further, the state has a demonstrated history of desiring to manage its waste, including organic waste, in a sustainable manner with enactments of SB 341 (Chesbro, Chapter 476,

Statutes of 2012) and AB 1826 (Chesbro, Chapter 727, Statutes of 2014).

SB 341 requires businesses to contract for solid waste recycling services and requires local jurisdictions to implement a recycling program to divert solid waste from businesses subject to those recycling services requirements. AB 1826 requires businesses to arrange for organic waste recycling services and requires local jurisdictions to implement an organic waste recycling program to divert organic waste from businesses subject to those requirements.

Thus, local jurisdictions have known about the state's organic waste and recycling goals since 2012, almost 9 years. And, in theory, a local jurisdiction should have had an organic waste recycling program for the past 7 years.

- 4) *Staying on track.* According to some stakeholders, there are consequences if CalRecycle's ability to meaningfully enforce the regulations is impacted. For instance, if jurisdictions do not make a substantial effort to comply, not only would it affect the state's ability to meet its SLCP reduction goals, the first target goal being in 2025, but it could undermine the confidence of entities looking to invest in California's organic waste infrastructure. If it becomes unknown whether a local jurisdiction will be required to comply, it also becomes unknown when a market for organic waste will develop.
- 5) *Restrictions on imposing and accruing penalties.* This bill places restrictions on the circumstance in which CalRecycle would be permitted to impose penalties on local jurisdictions and when penalties against local jurisdictions may accrue. Under the bill, both would be dependent on a finding that the local jurisdiction did not make a reasonable effort to comply with the regulations.
- 6) *Is a "reasonable effort" standard too amorphous?* The intent of the "reasonable effort" standard is to separate those jurisdictions who have actively tried to comply with the upcoming SB 1383 regulations with the development or implementation of an organic waste management program from those who have not. It seeks to provide some reassurances to local jurisdictions who at least make a reasonable effort to comply and help the state meet its SLCP reduction goals. In other words, as long as a local jurisdiction makes a reasonable effort to implement the SB 1383 regulations, that jurisdiction will not be subject to an imposition of fines or the accrual of fines.

Some stakeholders believe that a "reasonable effort" standard does not provide CalRecycle with enough authority to enforce the regulations against local jurisdictions that make minimal effort, if any, to comply with the SB 1383 regulations on time, but may still try to claim a "reasonable effort." If the

standard is too lax, CalRecycle will have difficulty getting a non-acting jurisdiction to take meaningful steps towards compliance. If a number of jurisdictions are able to superficially and minimally comply with the regulations, the question becomes – will the state meet its SLCP reduction goals?

The committee may wish to require the author to continue to work with committee staff and stakeholders to further define “reasonable effort.”

Related/Prior Legislation

AB 734 (E. Garcia) revises the organic waste reduction goals of the SB 1383 regulations by authorizing recovery for animal or livestock consumption, in addition to recovery for human consumption, in order to recover, by 2025, not less than 20% of edible food that is disposed of as of January 1, 2022. AB 734 has been referred to the Assembly Natural Resources Committee.

AB 1086 (Aguiar-Curry) requires, on or before January 1, 2023, the Natural Resources Agency to create an implementation strategy for the state to meet its organic waste management mandates, goals, and targets. AB 1086 was approved out of the Assembly Natural Resources Committee with a vote of 10-0 and has been referred to the Assembly Appropriations Committee.

SB 1191 (Dahle, 2020) created various exemptions, and an alternative compliance pathway, to the SB 1383 regulations and required CalRecycle to consider a jurisdiction’s good faith effort to implement its organic waste reduction program when determining whether to issue a compliance order or impose penalties. SB 1191 was held in the Senate Environmental Quality Committee.

SB 1383 (Lara, Chapter 395, Statutes of 2016) requires the state to reduce emissions of short-lived climate pollutants, including reducing methane emissions 40% by 2030, as specified, reducing hydrofluorocarbon gas emissions 40% by 2030, and reducing anthropogenic black carbon emissions 50% by 2030.

SOURCE: Author

SUPPORT:

City of Barstow
City of Carmel-by-the-sea
City of Covina
City of Del Mar

City of El Centro
City of El Cerrito
City of Industry
City of Livermore
City of Monterey
City of Oceanside
City of Paramount
City of Pleasanton
City of Salinas
City of Scotts Valley
City of Signal Hill
City of Tehachapi
Concord; City of
Emeryville; City of
Sacramento; County of
San Diego; City of
San Jose; City of
San Pablo; City of
The City of Lakewood
Town of Yucca Valley

OPPOSITION:

City of Winters
Yolo Climate Emergency Coalition
Yolo Food Bank

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