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California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812

Subject: Comment Letter –CalRecycle Rulemaking on SB 1383 Short-Lived Climate Pollutants:
Organic Waste Methane Emissions Reductions

Dear Ms. Huff,

City of Davis staff appreciates the opportunity to provide input on the proposed CalRecycle regulations for the SB 1383 Short-Lived Climate Pollutants (SLCP): Organic Waste Methane Emissions Reductions.

We support and appreciate the goals of SB 1383; reducing landfill methane emissions by keeping organic materials out of landfills mirrors our City's goals for waste diversion and GHG emission reductions. Some of the regulations will directly support our current efforts and assist our staff in implementing programs that are already in place. However, City staff has comments related to some items in the draft regulations.

Specifically, City staff is concerned about the following items:

1. **The requirement for black, blue and green-lidded bins.** *Title 14, Chapter 12, Article 3, Section 18984.1*

This poses a significant challenge for dual-stream single split-cart recycling systems. Requiring a single color lid (blue) to identify a recycling cart will pose issues for cities like Davis with a dual-stream recycling program where paper is collected separately from other recycling. The dual stream process has kept our paper clean and has resulted in a higher quality recycled product. Given the current recycling markets (driven by China's restriction on the import of recyclable material), high quality recycled paper is essential. The recycling industry as a whole is taking a closer look at how to achieve cleaner recycling and a dual-stream system is one of the ways to reach this goal.

Davis uses a split-recycling cart for curbside recycling service. The top of these carts have two separate lids—a blue lid for containers and a black lid for paper. These two different colored lids allow residents to easily tell which items go in each side of the cart. Under the proposed regulation, both lids would be required to be blue. This would make it much more challenging to easily differentiate the container side of the cart from the paper side of the cart, particularly if the labels were to come off of it. Having different shades of blue for the lids is not as effective as two completely different colors, especially for residents who have a vision impairment, such as color blindness.

Changing out lids to conform to a design standard will be an unnecessary cost burden on jurisdictions. The City is very appreciative that CalRecycle amended the previous draft of the regulation to require only *the lid* of the trash, recycling and organics cart to be color-compliant. However, the City is still concerned with the cost and waste associated with having to change out all of the cart lids that are currently being used. Unlike other sections of the regulation that will actively increase access to organics and recycling service and can increase waste diversion, the City does not believe that the expense required to change out lids prior to the end of their useful life is outweighed by the consistency of color coding of bins statewide. The recycling and organics carts that we use in Davis do not conform to the colors identified in the draft regulation. In Davis, commercial recycling carts are green, organics carts have a brown lid, and the split-recycling cart has a grey body with a blue and black lid.

Replacing lids still within their useful life is wasteful. In 2016, the City began a city-wide organics collection program and issued brand new carts to all our customers. The carts are grey with a brown lid. It is anticipated that these new carts will last at least 20 years. The proposed regulation would require us to change out all of our cart lids far before the end of their useful life. This would not only be extremely costly, but wasteful as well.

To this end, the City makes the following requests:

- Allow increased flexibility for jurisdictions with dual-stream recycling collection systems to color-code their recycling carts.
- Rather than require that the entire lid be replaced, allow color-coded labels to be applied to existing bins until the lids/bins are replaced at the end of their useful life with color conforming lids.

OR

- Add some flexibility to the regulations to allow jurisdictions with existing 3-bin systems to be grandfathered in and keep their own color schemes, especially if different colors are being used to indicate different waste streams. Existing containers that are purchased with CalRecycle funds, and approved for purchase by CalRecycle, be grandfathered in and allowed to remain as is.

OR

- If existing containers will not be grandfathered in, and if no recycling markets exist for the lids, allow the jurisdictions to file for a disaster waste tonnage exemption for lids and bins that are not color compatible.
- If CalRecycle will maintain the green, blue and black requirement, consider pushing back the 2032 implementation date as our experience shows that carts can last longer than 15 years.

2. The requirement for food scrap carts to be completely yellow. *Title 14, Chapter 12, Article 3, Section 18984.1*

While the earlier draft text was changed to only requiring the lids of trash, recycling and organics bins to be color-compliant, food scrap carts are still required to be completely yellow.

- In order to be consistent with the regulations, the City requests that the same modifications be made to this requirement—only the lids should be required to be yellow.

3. The requirement for all collection containers to have a label that specifies what can and what cannot go into the bin. *Title 14, Chapter 12, Article 3, Section 18984.8*

The City has found that imprinting labels directly onto container lids last on the lid much longer and do not fall off and contribute to litter. Labeling can be done when lids are replaced as is required by Section 18984.7 in order to be color compliant. However, the lids are not required to be color compliant until 2032 but the labels must be in place by 2022. This would mean that temporary labels are required in the interim; labels which could fall off.

- The City requests that the labeling of outdoor containers be phased-in on the same timeline as Section 18984.7 (at the end of their useful life, or by January 1, 2032).

4. The requirement for all businesses to have recycling and organics bins next to each trash container that conform with the containers provided for collection in both color and labeling obligations. *Title 14, Chapter 12, Article 3, Section 18984.9-10*

It is not immediately clear if these sections apply only to indoor waste bins with lids, or to all indoor waste bins. Depending on how this is interpreted, the regulation as written could require all indoor bins to have lids and to be color compliant with labels that depict what can and cannot go into them.

Given that businesses must be compliant with this requirement no later than January 2, 2022, this does not allow bins that are already in use to reach the end of their useful life. Bins in good condition will be discarded simply because they are not a compliant color, or do not have a color compliant lid. In addition, requiring business to have a blue recycling bin and a green organics bin next to every single trash bin can potentially penalize businesses, many of which have already proactively invested in three bin systems that do not conform to the specified colors.

- The City also requests that rather than requiring bins or bin lids in businesses to be color compliant, only require the label to be color compliant.

OR

- If the regulation is not modified to allow just the label color to be changed, instead of requiring the entire bin (or lid) to be color compliant, the City requests that businesses with existing three bin systems in place for waste diversion be grandfathered in and allowed to keep their existing waste sorting systems in place. When the time comes for replacement, then the new bins would have to be color compliant.

5. All tier 1 and tier 2 commercial edible food generators must keep records of each place they donate food to, all contracts, written agreements or other documents from the food recovery organization(s) they work with, and the quantity of food donated. Article 10, Section 18991.4.

Due to many factors, the city anticipates a number of significant challenges in working with restaurants to maintain these records. These factors include high staff turnover, rush hours, language barriers, and hours of operation outside of standard business hours. There is concern that collecting this information on a regular basis may not be feasible, and could create an antagonistic relationship between the city and restaurants should the city have to issue fines for anticipated non-compliance.

- If CalRecycle keeps this requirement in the regulations, the City requests that the state maintain an online reporting system that restaurants can use. As most restaurants have a license through the CA Dept. of Alcoholic Beverage Control, the City further requests that the State use their own licensing systems to require edible food generators that have a ABC license to report this information directly to the state, leaving the jurisdictions to manage only the Tier 1 and Tier 2 edible food generators that do not have ABC licenses.

6. Implementation Records and recordkeeping requirements and making records available to CalRecycle within one business day if requested. Article 14, Section 18995.2 (c)

There are many items that are required to be included in the implementation record, all of which will require additional time for jurisdictions to compile and to create a new accounting and record system to maintain. These records may compel some jurisdictions, particularly larger ones, to purchase expensive recordkeeping software and database systems, just to ensure compliance.

- Rather than require each jurisdictions to create their own recordkeeping and data management system in order to maintain compliance with these regulations, the City requests that CalRecycle provide an electronic method for jurisdictions to maintain an Implementation Record. The electronic format may be a formatted Excel Spreadsheet template, a downloadable database software system, or CalRecycle's own online system (such as the CalRecycle online LoGIC system

where jurisdictions submit annual reports). An online system hosted by CalRecycle would give CalRecycle continual access to the records.

- The requirement that records be made available to CalRecycle within a single business day is not practical. The City requests an allowance of 5 business days to make records available, as five days is much more reasonable and practical. The short turnaround time can serve to penalize smaller jurisdictions with limited staffing.

7. Agencies must provide a method for anyone to report a violation of these regulations, and must provide a method for a complainant to find out the results of their complaint. *Article 14, Section 18995.3*

The City is concerned about the privacy of its residents and customers. Should the result of a complaint investigation be an administrative fine, there is no record to release on the incident, other than a general description of the outcome. The City requests that the language of this section be amended to further protect information that is confidential and allow for general descriptions of outcomes, including “Per CalRecycle regulations, the City is investigating the issue” and “the investigation has been completed and any required actions, if needed, have been taken.”

8. Financial burden of the draft regulations.

It is not an understatement to say that the program implementations, extensive requirements for reporting, contamination monitoring, edible food recovery program, program reporting, recordkeeping, violation reporting and monitoring process, etc. will be a significant cost to jurisdictions and ratepayers. While CalRecycle acknowledges that this will be a financial burden, simply anticipating that costs will be passed along to ratepayers in the form of increased solid waste service fees is problematic.

The City of Davis is one of many jurisdictions that is required to use the Proposition 218 process to implement solid waste rates. Majority protests from ratepayers rejecting the increases, therefore, could severely limit the ability of these jurisdictions to fulfill the requirements of these new regulations. The City has recently approved a 40% solid waste rate increase that will occur over the next five years, in part to comply with existing (pre-SB 1383) diversion requirements. Placing additional cost burdens on rate payers for unfunded requirements at this time may create a situation where new rates may not be approved per the Prop 218 requirements. Past disputes in the City of Davis over significant water rate increases have resulted in litigation and a citizen referendum to block rate increases, and the City is at risk of similar responses if waste disposal rates again must be increased due to new state mandates.

- The City requests that CalRecycle provide financial assistance to jurisdictions in the form of grants, payment programs or other methods to assist jurisdictions in complying with these regulations.
- Recognizing that in some jurisdictions, solid waste rate increases are required to go through the Proposition 218 process, the City requests that CalRecycle provide

options for jurisdictions where this occurs and provide assistance with the 218 process to ensure the success of implementing these mandated programs.

9. In addition to the concerns listed above, the City of Davis requests that as part of these regulations, CalRecycle provide the following resources:

- **Model ordinances.** The depth and breadth of what is covered under these new regulations places a particular challenge on jurisdictions to develop language for enforceable ordinances. Please provide several model ordinances that meet the requirements set forth in these regulations so jurisdictions can choose the ones that work best with the programs already in place.
- **Sample outreach materials.** As this regulation provides numerous requirements for specific outreach items, the City requests that the state provide sample outreach pieces in a modifiable form, so that jurisdictions can add their own logo and contact information, distribute the outreach materials and comply with the regulations.
- **Translated text of all required outreach materials.** This translation is particularly needed for topics that cannot be communicated through the use of images and a limited number of words, such as methane reduction benefits of reducing the disposal of organic waste, and the public health and safety and environmental impacts associated with the disposal of organic waste as required in Title 14, Chapter 12, Article 4, Section 18985.1. These translations would need to be listed in multiple languages, including Spanish, Cantonese, Mandarin, Tagalog, Vietnamese, etc., in order for jurisdictions to comply with the translation requirements of this section. As an alternative, the State could offer a free translation service to jurisdictions that need to comply with the regulations.
- **Compliance training.** There are many facets to these regulations which solid waste professionals in California will need training on, including outreach, contamination monitoring, and required reporting. The City requests that CalRecycle provide web-based training via multiple modules to address the different requirements of these regulations.
- **Training for contamination monitoring.** As the regulations require every route to be monitored for contamination every quarter, the City requests that CalRecycle provide web-based training modules on visual contamination estimation, so that waste hauling and solid waste staff can learn to provide an accurate estimation of the percentage of contamination in a bin.
- **Labels.** The requirements to place labels on every single indoor and outdoor bin will require millions of labels. As with all printing projects, bulk purchasing of large quantities is much more cost effective than smaller purchases. Requiring each business to purchase its own labels will be far more expensive than if the State purchases large quantities and offers them for free or at a discounted price. The City requests that CalRecycle provide some method for businesses to order labels for free or at a discounted rate. There is already a precedent set for this as

the State offers recycling posters and stickers that can be ordered and shipped in California for free.

- **Indoor recycling and organics bins.** Should the state move forward with the requirement that all single indoor trash bins will be required to have accompanying recycling and organics bins that are color compliant, the City requests that the State create partnerships with bin manufacturers to secure low cost purchasing of color compliant indoor bins for jurisdictions, businesses and schools.
- **Web-based calculation worksheets.** In order to identify the tier 1 and 2 edible food generators, as required in Title 14, Chapter 12, Article 10, it would be helpful if CalRecycle could provide a database that can help calculate which businesses are considered Tier 1 and Tier 2 compliant.
- **Training on Health Code regulations surrounding edible food donation regulations and serving food.** The Edible Food Recovery Program described in the regulations is extensive and is outside of the experience of the recycling industry. Requiring professionals within the solid waste industry to manage a food donation program will require a large education campaign for staff and employees. The City requests that CalRecycle provide webinars, online training modules and fact sheets regarding all applicable health code regulations, best management practices, and refrigeration and food storage requirements associated with edible food donations in order for solid waste program staff in jurisdictions to successfully implement these programs.
- **Postponement of implementation until assistance is provided.** Lastly, the City is requesting that CalRecycle postpone the implementation of these regulations until after the assistance requested above has been provided.

Please contact us with any questions regarding our written comments.

Thank you for the opportunity to provide feedback.

Sincerely,



Michael Webb
City Manager