

BAAQMD Rule 13-2 Talking Points

This rule will impede the achievement of SB 1383 and other organics diversion policies by reducing capacity in the District.

Meeting the organics diversion mandates of SB 1383 (and other regulations) will require a significant increase in regional and statewide capacity for organics diversion processing (i.e. composting, anaerobic digestion and other facilities), estimated to be 12-15 new facilities in District staff reports. The proposed rule will make it more difficult to operate existing facilities, let alone site, finance, permit, and operate the new facilities needed to support the materials flows required to meet the State's goal to divert 75% of organics by 2025.

The rule will cause unforeseen and undue economic impacts on a large number of the regulated facilities and will increase the transportation impacts of organic materials handling both within and outside the District.

If enforced in its current form, the rule will not only stifle the development of future organics diversion facilities, but will lead to a number of facility closures within the District, meaning organic materials will need to be increasingly transported to distant facilities outside its jurisdiction.

The proposed rule lacks clarity and creates unnecessary confusion by failing to clearly define requirements for solid waste transfer and processing operations. Maintaining separate rules for Organic Materials Handling Operations and Composting Operations – as the District has previously planned – would provide more clarity on the distinct requirements for each type of operation.

In its current draft, the rule creates regulatory confusion for municipal solid waste (MSW) transfer and processing operators. Given the differences in processing timelines and limited residence time for materials already required for MSW transfer and processing (at Material Recovery Facilities (MRFs) or Transfer Stations), there appears to be no distinction from composting operations – where materials are expected to remain for extended periods.

MSW is not clearly defined and no minimum standard for putrescible materials content is identified; it is unclear at what level of putrescible materials receipt compliance with this rule is required.

The proposed implementation schedule of six months following adoption of the rule is unreasonable and impossible to achieve for a majority of facilities.

By proposing an implementation timeline of six months, the District has failed to understand the real-world requirements of other regulatory agencies and local planning processes for the addition of the proposed structures and improvements that would need to be employed. The following areas of concern need to be given due consideration and verified with the appropriate oversight agency(ies):

- Land use and CEQA approvals – In most cases the addition of structures will likely require approval from local planning agencies, in accordance with California Environmental Quality Act (CEQA) requirements. Typical approval processes for developing the application documentation,

which will include design and engineering work, other study work of potential environmental impacts, and processing time for the agency that can range up to 3 to 5 years, depending upon the complexity of the issues surrounding the project.

- Solid waste permitting modifications and revisions – nearly all of the regulated entities also operate under California Code of Regulations, Title 14 (and Title 27) requirements under oversight by the California Department of Resources Recycling and Recovery (CalRecycle), and implemented by their Local Enforcement Agency (LEA). The addition of structures, buildings, and other modifications to currently-permitted operations will require modifications or revisions to the Solid Waste Facility Permit (SWFP) documentation for each facility. This process may be completed within six months to one year, but often extends beyond that timeframe and is typically completed after local land use and CEQA approvals.
- Following the design, engineering, local land use and CEQA approvals, all jurisdictions require a building permit, another process that can consume months in its approval. After acquiring a building permit, contractors will need time to implement a construction schedule, which may need to account for seasonal considerations (i.e. grading during winter months is infeasible on many projects); this process may add months to the ability of an operator to have required improvements in place for compliance with this rule.
- Dependent upon the cost of compliance measures – which may be several million dollars to construct new buildings or major improvements to existing structures, an operator may need to secure approval from their local jurisdiction(s) and/or ratepayers for rate increases, in order to maintain reasonable profitability or balance budgets. While there are typically “change of law” clauses in contracts for private operators, which can enable them to pass through these costs, the local jurisdiction may endure a public process, required under Proposition 218, in order to garner approval of their local citizens.

Approvals from other local and state agencies will also likely be required. State Water Resources Control Board (and Regional Water Quality Control Boards) requires composting operations to seek coverage under the Industrial General Storm Water Permit, in addition to General Waste Discharge Requirements, for the protection of surface and ground water; permitting documentation for these measures will likely need to be revised where new structures are required.

The District has not been transparent in the development of this rule or provided adequate explanation of the nexus between emissions reductions and many of the rule requirements.

The rule contains an overwhelming number of parametric measurements and procedures for nearly every aspect of materials management and composting. The District has not provided information or scientific justification for the extreme amount of effort and expense to be undertaken by operators in pursuit of this monitoring, testing and recordkeeping.

The District has conducted inadequate outreach to the regulated community.

The large majority of solid waste facility operators received no notification from the District regarding this rule. Most of these operators already hold permits from the District for their operations and equipment.