

INFORMATIONAL UPDATE

To: Scott Smithline, Director

From: Howard Levenson
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Date: October 16, 2018

Subject: Process for Determining AB 1826 Reduction of Statewide Organics Disposal in 2020

Summary:

The purpose of this informational update is to share staff's planned process regarding implementation of AB 1826 provisions requiring CalRecycle to decide whether to: 1) require businesses that generate 2 or more cubic yards of solid waste per week to arrange for recycling services on or after January 1, 2020, and 2) extend the rural exemption from these requirements (pursuant to Public Resources Code Sections 42649.81(a)(4) and 42649.82(D), respectively). While this determination does not need to be made immediately, this item informs stakeholders about the process and timing that staff plans to deploy; it also is an opportunity for stakeholders to ask questions and provide input.

Staff is planning the following for this process:

Staff will use the 2018 Statewide Waste Characterization Study (WCS) data with 2019 Recycling and Disposal Reporting System (RDRS) data to determine whether statewide disposal organic waste has not been reduced to 50% of the 2014 level. Based on this determination CalRecycle then must decide:

1. Whether businesses that generate 2 cubic yards or more of solid waste must arrange for organic waste recycling services, unless the department determines that this requirement will not result in significant additional reductions of organics disposal. The timeline for this determination would be early 2020. **(Issue 1)**
2. The relative impact by rural jurisdictions on statewide disposal of organics, and whether rural exemptions authorized under AB 1826 can be extended. In 2020, if the relative impact by rural jurisdictions on statewide disposal is not significant, then CalRecycle staff proposes extending the current AB 1826 exemption until January 1, 2025. **(Issue 2)**

Statutory background and details of options are provided below.

Background Information:

AB 1826 (Chapter 727, Statutes of 2014) established new requirements for mandatory commercial organics recycling. The law phases in the requirements for businesses, including multifamily residential dwellings that consist of five or more units, over time based on the amount and type of waste the business produces on a weekly basis, with full implementation realized in 2019. Additionally, the law contains a 2020 trigger that will increase the scope of affected businesses if waste reduction targets are not met.

The 2020 trigger is the focus of this informational item.

First, CalRecycle must determine if the statewide disposal of organic waste has not been reduced by 50 percent of the level of disposal during 2014, pursuant to Public Resources Code (PRC) Section 42649.81(a)(4):

“On or after January 1, 2020, if the department determines that statewide disposal of organic waste has not been reduced to 50 percent of the level of disposal during 2014, a business that generates two cubic yards or more per week of commercial solid waste shall arrange for the organic waste recycling services specified in paragraph (3), unless the department determines that this requirement will not result in significant additional reductions of organics disposal.”

Based on that determination, if the disposal reductions do not meet the statutory levels specified in AB 1826, then commercial organics recycling requirements will be extended to businesses generating 2 cubic yards of solid waste per week. This expansion can only be delayed if CalRecycle can find that including these businesses would not result in significant additional reductions in organics disposal.

Note that this AB 1826 trigger is based on whether there is a 50% reduction in “AB 1826 organics” from the 2014 level, where “AB 1826 organics” include food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste. This definition of organics is narrower than the definition proposed in the pending rulemaking to implement SB 1383.

Second, CalRecycle must also determine if exemptions for rural jurisdictions can be extended or must be terminated pursuant to PRC Section 42649.82(D):

“On or after January 1, 2020, if the department determines that statewide disposal of organic waste has not been reduced to 50 percent of the level of disposal during the 2014 calendar year, all exemptions authorized by this paragraph shall terminate unless the department determines that applying this chapter to rural jurisdictions will not result in significant additional reductions of disposal of organic waste.”

Analysis and Findings:

Issue 1: Whether Organics Disposal Has Been Reduced by 50% and Whether Businesses Generating 2+ Cubic Yards of Solid Waste Must Arrange for Organics Recycling Services

Since AB 1826 does not specify what data or time period CalRecycle must use to make the determination, staff considered three process options, all revolving around the timing of Waste Characterization data and Recycling and Disposal Reporting System data availability. Staff’s plan is to deploy Option 1, which would allow CalRecycle to change the threshold, if warranted, during the first quarter of 2020 (i.e., after receiving the 2019 statewide disposal data). If the threshold is changed to 2 cubic yards, CalRecycle would still provide jurisdictions until the end of 2020 to complete the process of providing organics collection service to all regulated entities.

Options:

1. Use the 2018 Statewide Waste Characterization Study (WCS) data with 2019 Recycling and Disposal Reporting System (RDRS) data.
2. Use the 2018 Statewide WCS data with 2018 Disposal Reporting System (DRS) data.
3. Use the 2020 Statewide WCS data with 2020 RDRS data.

Staff recommends Option 1 for the following reasons:

- a. **Timeliness:** Option 1 would provide the most current available data to make a determination in early 2020 (i.e., if organics waste disposal has been reduced by 50 percent). CalRecycle will have the 2019 RDRS data in early 2020.
 - i. Under Option 1, staff would use 2019 RDRS data, which would reflect the 2019 status of implementing AB 341 and AB 1826; i.e., in 2019 the threshold for mandatory commercial organics recycling decreases to 4 cubic yards of solid waste. This is the same threshold that applies to mandatory commercial recycling (AB 341).
 - ii. By contrast, under Option 2 CalRecycle could use the 2018 RDRS data to make a determination on January 1, 2020, but the data would *not* reflect the implementation of the lower 2019 threshold for mandatory commercial organics recycling.
 - iii. Under Option 3, CalRecycle would use the 2020 WCS/RDRS data, but then a decision could not be made until late 2021, since this data would not be available until sometime in 2021.

- b. **2018 versus 2020 Waste Stream Composition:** Staff assessed using the 2018 versus 2020 WCS data for this process. While it is possible that the waste stream composition could be different from the 2018 WCS to the 2020 WCS, waiting until mid-2021 for the next WCS is problematic for the reasons below.
 - i. Data from the 2020 WCS will not be available until mid to late 2021. This would result in almost a two-year delay in changing the threshold.
 - ii. There is no guarantee resources for a 2020 WCS will be available.
 - iii. Even if funding is available, state contracting procedures could delay timely execution of a contract and possibly delay the commencement of a WCS to 2021. As such, this could result in further delays in getting the study completed and making the data available by mid-2021, or in not being able to contract for the study at all.
 - iv. AB 1826 states that the decision to change the threshold is to be based upon the statewide reduction in organics disposal, not on the commercial portion of the waste stream. Staff is not anticipating that the waste stream composition will have changed that much (from 2018 to the end of 2019); e.g., many jurisdictions will not have implemented residential food waste for single family or multifamily. In addition, CalRecycle is aware of 66 jurisdictions that already have implemented the 4 cubic yards of commercial solid waste per week threshold well before the 2019 statutory deadline for doing so. Therefore, CalRecycle does not anticipate a significant change in statewide reductions for organics disposal from 2018 to the end of 2019.

Issue 2: Whether Organics Disposal Has Been Reduced by 50% and Whether the Rural Exemption Should be Terminated

Under AB 1826, if statewide disposal of organic waste has not been reduced to 50% of the 2014 level (as determined through the process outlined above), then the rural exemption terminates “unless” CalRecycle determines that eliminating the rural exemptions will not result in significant additional organic disposal reductions. To prevent or delay the end of exemptions, the department must positively find that extending the AB 1826 requirements to rural jurisdictions would not result in significant additional reductions.

In 2020, if the relative impact by rural jurisdictions on statewide disposal is not significant, then CalRecycle staff will be extending the current AB 1826 exemption until January 1, 2025. To make this determination, CalRecycle will use the 2018 Statewide Waste Characterization Study (WCS) data with 2019 Recycling and Disposal Reporting System (RDRS) data.

CalRecycle staff notes that draft SB 1383 regulations do not conflict with the decision-making process outlined in AB 1826. Draft Section 30.12 (c)(2) of the May 1, 2018 draft of the SB 1383 regulations reads:

“An exemption implemented pursuant to this subdivision shall be valid until January 1, 2025, or until five years after the Department makes a determination pursuant to Section 42649.82 (a)(2)(D) that the statewide disposal of organic waste has not been reduced to 50 percent of the level of disposal during the 2014 calendar year, whichever is later.”

If, using the process outlined here, CalRecycle determines that statewide disposal of organic waste has not been reduced to 50% of the 2014 level, then the rural exemptions proposed in SB 1383 will expire in 2025. This aligns with the proposed SB 1383 regulations and staff’s proposal to extend AB 1826 rural exemptions 5 years beyond their natural expiration in 2020.