

**Environmental Services Joint Powers Authority**  
**Sample Board Staff Report**  
**for**  
**Mandatory Commercial Organic Recycling Exemption**

**Summary**

This memo provides information on the requirements of Assembly Bill (AB) 1826 (Chesbro, 2014) regarding mandatory commercial organics recycling and a Resolution for a temporary exemption from the requirements thereof.

**Background**

Over the last several years, the Legislature has grappled with the issue of mandating the recycling of organic materials. In addition, the California Air Resources Board (ARB) has indicated that it would consider adopting regulations – under their purview associated with the California Global Warming Solutions Act of 2006 (AB 32) - that would restrict or ban the disposal of organic material in landfills in order to reduce greenhouse gases. Specifically for the solid waste sector, the 2013 Scoping Plan Update identified six key recommended actions. The most significant as to the impacts to rural counties and the priority to ARB and the Department of Resources Recycling and Recovery (CalRecycle) is the first one:

ARB and CalRecycle will lead the development of program(s) to eliminate disposal of organic materials at landfills. Options to be evaluated will include: legislation, direct regulation, and inclusion of landfills in the Cap-and-Trade Program. If legislation requiring businesses that generate organic waste to arrange for recycling services is not enacted in 2014, then ARB, in concert with CalRecycle, will initiate regulatory action(s) to prohibit/phase out landfilling of organic materials with the goal of requiring initial compliance actions in 2016.

In other words, if legislation for organics diversion was not enacted in 2014, ARB was poised to develop regulations under its authority from AB 32. Concerned with statements made by the ARB, a number of solid waste industry stakeholders worked to construct a mandatory organics recycling measure that would have CalRecycle as the lead state entity rather than the ARB.

Following a number of bills that failed passage, in 2014, Assemblyman Wesley Chesbro (D-Humboldt) introduced Assembly Bill (AB) 1826 that requires commercial organic generators to begin diversion and recycling of organics. Local jurisdictions would be required to adopt a mandatory commercial organics recycling program and be responsible for public education and outreach, monitoring, and reporting to CalRecycle, much the same as with the current mandatory commercial recycling.

The Rural County Representatives of California (RCRC) and the Rural Counties' Environmental Services Joint Powers Authority (ESJPA) staff worked closely with the public and private sector solid waste industry, CalRecycle, legislative staff, and Californians Against Waste (CAW) to address a number of concerns and craft a more reasonable and workable version of AB 1826. RCRC/ESJPA maintained a number of principles surrounding AB 1826, mainly, ensuring

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generators/local governments are not penalized or face costly burdens when an organics recycling infrastructure simply does not exist; and providing a temporary reprieve from the mandate for rural county/city solid waste managers in less populated counties where virtually no viable organics recycling can/will occur in the near future.

AB 1826 Recycling of Organic Waste was signed into law September 28, 2014 (attached). The statute requires businesses that generate a specified amount of organic waste per week to arrange for recycling services for that organic waste in a specified manner. It phases in businesses by the amount of organic waste generated as follows:

- By April 1, 2016 for businesses that generate eight cubic yards or more of commercial organic waste per week
- By January 1, 2017 for businesses that generate four cubic yards or more of commercial organic waste per week
- By January 1, 2019 for business that generate four cubic years or more of commercial *solid* waste per week (the same businesses subject to the mandatory commercial recycling requirements)

AB 1826 also requires that jurisdictions implement an organics recycling program for businesses by January 1, 2016, and implement education, outreach, and monitoring activities and report annually to CalRecycle, much the same as the mandatory commercial recycling program. However, with the mandatory commercial organic recycling program, there are some additional components for the jurisdiction to include in the program. The jurisdiction must identify:

- Existing organic waste recycling facilities within a reasonable vicinity and the capacities available for materials to be accepted at each facility.
- Existing solid waste and organic waste recycling facilities within the jurisdiction that may be suitable for potential expansion or co-location of organic waste processing or recycling facilities.
- Efforts of which the jurisdiction is aware that are underway to develop new private or public regional organic waste recycling facilities that may serve some or all of the organic waste recycling needs of the commercial waste generators within the jurisdiction subject to this chapter, and the anticipated timeframe for completion of those facilities.
- Closed or abandoned sites that might be available for new organic waste recycling facilities.
- Other nondisposal opportunities and markets.
- Appropriate zoning and permit requirements for the location of new organic waste recycling facilities.
- Incentives available, if any, for developing new organic waste recycling facilities within the jurisdiction.
- Identify barriers to siting new or expanded compostable materials handling operations, as defined in paragraph (12) of subdivision (a) of Section 17852 of the Title 14 of the California Code of Regulations, and specify a plan to remedy those barriers that are within the control of the local jurisdiction.

## **Issue**

One of the primary concerns in the development of the legislation was a recognition and acceptance by CalRecycle that if there are no facilities to process organic waste available within a reasonable vicinity, and the local jurisdiction has done what it can to assist in the implementation of the organics recycling program under its control, that the local jurisdiction is not penalized. Language was included in the bill that requires CalRecycle during their jurisdictional reviews to consider the following:

- The availability of markets for collected organic waste recyclables.
- Budgetary constraints.
- In the case of a rural jurisdiction, the effects of small geographic size, low population density, or distance to markets.
- The availability, or lack thereof, of sufficient organic waste processing infrastructure, organic waste recycling facilities, and other nondisposal opportunities and markets.
- The extent to which the jurisdiction has taken steps that are under its control to remove barriers to siting and expanding organic waste recycling facilities.

During a jurisdiction's review CalRecycle will determine whether the jurisdiction has made a "good faith effort" to implement its selected organic waste recycling program and take into account the above criterion.

A provision was also included in the statute that provides a potential exemption from all requirements of AB 1826 for the smallest counties (counties with a population of less than 70,000) until January 1, 2020, at which time CalRecycle could chose to extend or terminate the exemption. A larger threshold was originally proposed, however the inclusion of the rural county exemption language created a backlash of controversy, primarily from the composting industry and some waste haulers. The two basic objections to the exemption are: (1) to create economic feasible projects, all amounts of organic waste and jurisdictions should be subject to the requirements, and (2) those areas that currently have a composting facility and program in an exempt county will elect to discontinue utilizing the services, thus jeopardizing the investment and viability of the project. Assemblyman Chesbro was pressured to delete the exemption entirely. However the result was the threshold was reduced to a population of 70,000. This includes 19 counties in the exemption provision, representing only 1.4% of the solid waste stream statewide (see attached map).

In order to take advantage of the exemption, the county Board of Supervisor must pass a resolution including findings as to the purpose and need for the exemption. This resolution must be presented to CalRecycle six months before the operative date of the exemption, which means it must be submitted by July 1, 2015. Attached is a resolution exempting **XXXXXX** County from the mandatory commercial organics recycling.

(Add any information specific to your county or program here.)

## **Staff Recommendation**

### **Attachments**

- Copy of AB 1826 (Chesbro, 2014)
- Map Depicting Counties with less than 70,000 Population
- Resolution Opting to Affirm an Exemption from the Requirements of Mandatory Commercial Organics Recycling