

MANDATORY ORGANICS RECYCLING REGULATIONS



The landfill has long been the accepted destination for food and other organic waste. However, this is changing, especially in California with passage of the 2014, California Mandatory Organics Recycling Program (AB 1826). The goal of AB 1826 is to reduce the amount of organic waste that covered businesses send to landfills by half of the 2014 amount. As of January 1, 2019, covered businesses will include retailers and other businesses that generate more than 4 cubic yards of commercial waste each week. These businesses will need to arrange for organic waste recycling services or take steps to recycle their organic waste onsite. While AB 1826 will apply across California, the Program is being implemented at the local level. Therefore, the specific requirements and potential penalties can vary across the State. This fact sheet lays out the elements of AB 1826 that may apply to retailers and trends in organics recycling across the country.

AM I A COVERED BUSINESS?

As of January 1, 2019, businesses that generate 4 cubic yards of commercial solid waste a week are subject to the organic recycling requirements. Commercial solid waste, as defined in California Code Section 42649.1, includes all types of solid waste items that are disposed of by a store, office, or other commercial business including recyclable material such as paper, plastic, metals, and cardboard, among other waste streams. Note that even if recyclable material is diverted from the solid waste stream by being recycled, it still counts toward the 4 cubic yard threshold.

Most retailers generate enough commercial solid waste to be subject to the program, though certain exemptions may apply, as described below. The Mandatory Recycling Program applies to individual store locations. Therefore, large retailers with multiple locations need to assess each individual store's waste stream to determine applicability on a site-by-site basis.

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WHAT DOES MY BUSINESS NEED TO DO TO COMPLY?

Retail locations that generate enough commercial waste to be considered a covered business and are not otherwise exempt must collect and recycle all the organic waste that would otherwise be thrown away. U.S. EPA's 2018 Food Recovery Challenge National Award Winners, discussed below, provides examples of how some California businesses have implemented successful organic waste programs. These programs include compliance through food donation for grocery and produce items that are nearing sell-by dates, and disposal using anaerobic digesters.

Each county, city or other local jurisdiction is responsible for developing its own ordinance to implement the recycling requirement. Many jurisdictions adopt the language of AB 1826; however, some have developed more comprehensive – and in some cases more restrictive – programs than others, as further described below.

WHAT ORGANIC WASTES MUST BE RECYCLED?

All organic waste streams are subject to the recycling requirement. This includes food waste, green waste, landscaping and pruning waste, and food-soiled paper waste that is mixed with food waste.

Food waste includes solid, semisolid, and liquid food, such as, fruit, vegetables, cheese, meat, bones, poultry, seafood, bread, rice, pasta, and oils; coffee grounds and filters and tea bags; cut flowers and herbs; and any putrescible matter produced from human or animal food production, preparation, and consumption activities.

Green waste/landscaping waste includes grass clippings, leaves, branches, flower trimmings, hedge trimmings, and weeds.

Food-soiled paper includes items such as soiled napkins, paper towels, tissues, and formed paper packaging such as egg cartons. Food-soiled paper does not include paper products with plastic coating, e.g., paper cups with polyethylene or other synthetic grease/water resistant coating. It can be difficult to tell if products with a coating is compostable as some wax materials are compostable. CalRecycle recommends that businesses coordinate with their local organic recycling service provider to learn which types of food-soiled paper are acceptable at the local recycling facility. In addition, local jurisdictions are expected provide guidance to businesses on this issue.

ARE THERE ANY EXEMPTIONS THAT MIGHT APPLY TO MY BUSINESS?

Yes. The law allows jurisdictions on a case-by-case basis to grant exemptions to qualified businesses under the following scenarios:

- Businesses that can demonstrate that they lack sufficient space for organic material recycling bins.
- The current actions of the business, such as food donation, already results in the recycling of a significant portion of organic waste.
- Businesses, or a group of businesses using the same dumpster, do not generate more than one-half a cubic yard of organic waste per week.
- Businesses, or a group of businesses using the same dumpster, do not generate more than one cubic yard of organic waste per week, if the jurisdiction provides CalRecycle with information justifying the higher exemption amount. Jurisdictions must include their rationale for these exemptions in the electronic annual report (EAR) they submit to CalRecycle.
- Businesses in rural communities that do not have access to organic recycling facilities. CalRecycle provides a list of rural jurisdictions that qualify for this exemption.
- Limited-term exceptions may be granted for unforeseen events (fire, flood, strike, food recall, spoilage due to declared emergencies, or spoilage due to power outage etc.).
- A business that is located on tribal land where CalRecycle has no jurisdiction.
- Retailers who believe they qualify for the one-half cubic yard or 1 cubic yard exemptions should collect and record the amount of organic waste that they generate each week. The retailer should consider developing a procedure for collecting this information and provide training to ensure that the data provides a credible basis for the exemption.

The use of a shared dumpsters is a challenge for retailers attempting to qualify for the one-half cubic yard or 1 cubic yard exemptions. Under CalRecycle's interpretation of the program, if a group of businesses with shared refuse containers (e.g., located in a strip mall or business park) collectively generates more than one-half or one cubic yards of waste per week, the group will need to arrange for organic recycling services regardless of the amount of organic waste generated by each business individually.

WHAT HAPPENS IF I DO NOT COMPLY?

The state-level regulations do not have any enforcement mechanisms against individual businesses. In other words, a business that does not comply with the organics recycling requirements cannot be directly penalized for its non-compliance at the state level. Instead, CalRecycle has the authority to penalize local jurisdictions if they fail to fully implement the program. However, local jurisdictions can impose more stringent requirements on local businesses through local ordinances, and some jurisdictions have incorporated penalties for businesses' that do not comply, as further described below.

WILL I HAVE TO DO MORE IN THE FUTURE?

Most likely.

Organic waste recycling in California is not a fad. Even more aggressive organic waste programs than AB 1826 are on the horizon. SB 1383 requires CalRecycle, in consultation with the California Air Resources Board, to develop regulations to reduce the disposal of organic waste 50 percent below 2014 levels by 2020 and 75 percent by 2025.

SB 1383 also includes requirements designed to recover 20 percent of edible food for human consumption that is currently landfilled by 2025. This means that food service industries such as grocery stores and restaurants may be required to deliver uneaten food to those in need rather than disposing of it by recycling. This extra component will be the first time that generators of edible food will be required to connect unspoiled food with consumers rather than disposal.

The more stringent requirements under SB 1383 take effect and are enforceable on January 1, 2022. To allow jurisdictions time to plan and implement budgetary, contractual, programmatic and other changes, the state intends to adopt final regulations in early 2019. CalRecycle's public notice website, which includes the proposed regulations is available [here](#).

AB 1826 also has a provision to ensure the goals under the law are reached. If CalRecycle determines that the state-wide disposal of organic waste is not being sufficiently reduced, in 2020, the organic recycling threshold for businesses will be lowered to 2 cubic yards or more of commercial solid waste per week, and exemptions may no longer be available.

WHAT'S HAPPENING IN YOUR NECK OF THE WOODS: COUNTY LEVEL IMPLEMENTATION/TRENDS

The majority of California's local jurisdictions have implemented organic recycling programs that mirror AB 1826. However, some jurisdictions have implemented more restrictive organic management practices. For example, cities within Alameda County, such as the City of Hayward, must include penalties for non-compliance with organic recycling, whereas such fines are optional under AB1826. Other jurisdictions have enacted landfill bans on all yard waste. The table below provides examples of local jurisdictions with more stringent requirements.

Local Jurisdiction

Alameda County

Rule Code:

- [Alameda County Waste Management Authority \(ACWMA\) Mandatory Recycling Ordinance 2012-01](#)
- [ACWMA Plant Debris Landfill Ban Ordinance 2008-01](#)

Details

Violation of any provision of the Alameda County Mandatory Recycling Ordinance shall constitute a misdemeanor punishable by a fine not to exceed \$500 for the first violation, a fine not to exceed \$750 for the second violation within one year and a fine not to exceed \$1000 for each additional violation within one year.

Violation of any provision of this Ordinance may also be enforced as an infraction punishable by a fine not to exceed \$100 for the first violation, a fine not to exceed \$200 for the second violation within one year and a fine not to exceed \$500 for each additional violation within one year.

There shall be a separate offense for each day on which a violation occurs.

Alameda County law prohibits disposal of plant debris in county landfills. ACWMA Plant Debris Landfill Ban Ordinance 2008-01 requires landscape professionals, residents and businesses to separate all plant debris from garbage.

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Those subscribing to 4 or more cubic yards of weekly on-site garbage service must place plant debris in the designated "organics" bin, and those who haul to their local facility must deposit plant debris in the disposal facility's designated "clean green" area. Plant debris includes grass, leaves, shrubbery, vines and tree branches.

Local Jurisdiction

San Francisco

Rule Code:

[Ordinance No. 100-09](#)

Details

San Francisco requires all businesses to separate recyclable, compostable and waste material. Businesses are required to subscribe to adequate trash, recycling and composting service.

San Francisco's regulations are also more stringent than AB1826 because they require property owners/managers to provide color-coded, labeled bins in convenient locations (blue for recycling, green for compost, black for trash). Additionally, property owners/managers are required to provide training to tenants, employees, contractors and janitors. Moreover, food vendors that provide disposable food service ware or to-go containers must provide color-coded labeled bins for use by customers and visitors, and the bins must be placed near a main exit.

Local Jurisdiction

San José

Rule Code:

[Ordinance No. 24133](#)

Details

All San José businesses are required to comply with AB 1826 by receiving collection service from [Republic Services](#). All the material collected at businesses is processed locally at the Newby Island Resource Recovery Park. Recyclable material is separated by type, baled, and sold to recycled-content manufacturers. Food waste and other organic material is separated and sent to an anaerobic digestion facility.

Local Jurisdiction

[Monrovia](#)

Rule Code:

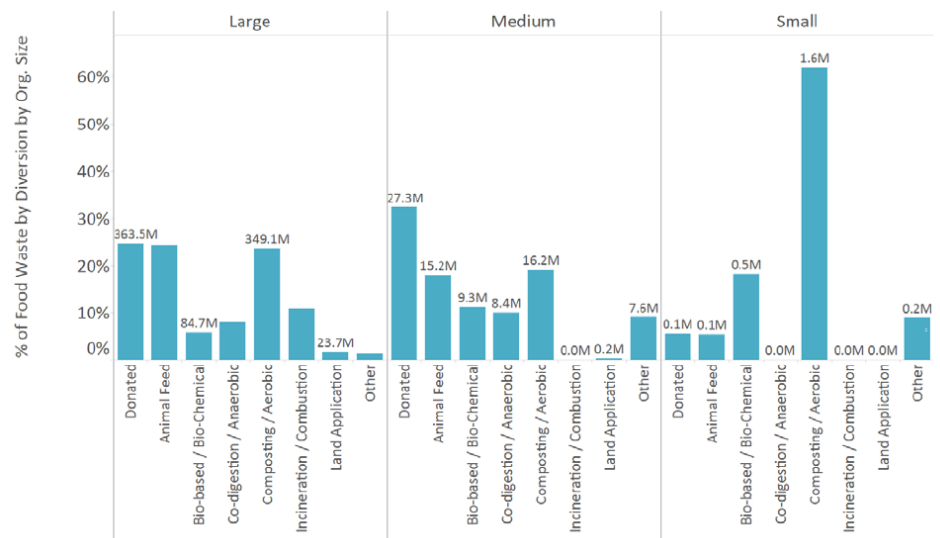
Chapter 8.10

Details

The city of Monrovia worked with its trash service provider, Athens, to develop a closed loop organics recycling program. The program involves taking all organic waste generated by commercial and multi-family properties and mixing it with green waste collected from residential properties. The material is turned into compost and mulch, which is available to residence at no cost. The program is paid for through increases to residential and commercial "Cal AB 1826 Organic Charge" service fees.

ORGANIC WASTE CHALLENGES FOR RETAIL AND INDUSTRY SOLUTIONS

CalRecycle suggests that businesses reference the Food Waste Reduction Alliance's Best Practices and Emerging Solutions Toolkit to develop organic waste compliance strategies. The most recent data from the Food Waste Reduction Alliance, in the graph below, shows that retail/wholesale businesses are using a number of diversion measures for food waste.



2016 Analysis of U.S. food Waste Among Food Manufacturers, Retailers, and Restaurants (Fourth Study) available at https://foodwastealliance.org/wp-content/uploads/2013/05/FWRA-Food-Waste-Survey-2016-Report_Final.pdf

Each diversion compliance strategy has some challenges. The following section addresses some common challenges and offers some potential solutions.

FOOD DONATION LIABILITY

- **Challenge:** Retailers that wish to donate food that is fit for human consumption may be reluctant to do so for fear that the business could be held liable for any resulting damage or injury were the food to spoil after leaving the business.
- **Solution:** In 2017, California Passed AB 1219, which is known as the Good Samaritan Food Donation Act. Under AB 1219, donors and recipients of any food that is fit for human consumption at the time it was donated are absolved of any liability associated with damage or injury resulting from consumption. Of course, the Act does not preclude liability if the injury resulted from negligence or a willful act in the preparation or handling of the donated food. To take advantage of this provision, businesses should maintain records demonstrating the condition of food at the time it was donated.

TRANSPORTATION

- **Challenge:** Transportation constraints may be an impediment to coordinating food donations (e.g. distance, cost, and fleet availability).
- **Solution:** Some jurisdictions, including Fresno (Food to Share), Orange County (Waste Not OC), Los Angeles (Safe Surplus Food Prevention and Donation Resources), and San Diego (Save the Food), have partnered with food recovery programs to reduce waste and assist with food insecurity. Because these programs typically coordinate transportation, they can serve as models for other similar programs. Retail participation through donations is key to the success of food recovery programs. Developing successful food recovery programs will be an essential part to compliance with AB 1826 in 2022.

STORAGE

- **Challenge:** Some retailers are concerned that storing organic waste could inhibit cleanliness within a store and/or a kitchen.

- **Solution:** Disposal stations that are color coded, including green for organics, blue for recycling, and black for trash, can be utilized to properly separate and store organic material. Moreover, to the extent possible, retailers can seek to reduce the purchase of organics and/or packaging by working with suppliers so that less organic material is brought into the business from the start.

TRAINING EMPLOYEES AND EDUCATING CUSTOMERS

- **Challenge:** Employees need to understand the organic recycling requirements to ensure compliance. In some cases, language barriers may cause compliance issues. Additionally, customers in certain restaurants and cafeterias will need to be educated about proper organic disposal.
- **Solution:** Retailers should consider establishing an Organics Team that will designate at least one person to take ownership of the organics diversion plan and regularly check that items are properly discarded. Additionally, all new employees and tenants should be trained, and retrained if compliance is an issue. Signs that explain the program should be placed in obvious locations and made available in all applicable languages for both employees and customers. Some jurisdictions, such as the City of Hayward, provide signage in multiple languages. CalRecycle also provides an outreach and education toolkit. Detailed signs providing instructions to customers, including tailored pictures of common waste items at the business, can often help customers know which items should be composted.

COMMUNAL DISPOSAL

- **Challenge:** Retail stores located at a mall may use a shared dumpster for waste disposal. If a building owner provides waste collection services to all its tenants, then the cumulative amount of solid waste generated by the stores will determine whether the Mandatory Organic Recycling Program applies. If the cumulative generation of all businesses exceeds 4 cubic yards of solid waste per week, then individual stores will not be exempt from the program even if the business individually does not generate 4 cubic yards of solid waste per week. As mentioned

above, this collective interpretation also applies to businesses seeking the one-half a cubic yard or one cubic yard exemption for organic waste described above.

- **Solution:** A retailer that faces this challenge may decide to study whether it is cost effective and feasible to secure its own separate waste disposal services to avoid this issue.

WHAT'S GOING ON IN THE REST OF THE COUNTRY:

It's no surprise that California's organic waste regulations are more stringent than most of the country. However, there are a handful of states on the East Coast and a few cities across the country that are also implementing organic waste recycling requirements. The table below provides an overview of some notable programs.

State/City

Vermont

Rule

[Act 148](#)

Implementation Timeline

- July 1, 2014: Food scrap generators of more than 104 tons/year (2 tons/week) must divert material to any certified facility within 20 miles.
- July 1, 2015: Statewide unit-based pricing took effect, requiring residential trash charges to be based on volume. Haulers and Transfer stations became responsible for accepting leaf and yard debris seasonally. Food scrap generators of more than 52 tons/year (1 ton/week) must divert material to any certified facility within 20 miles.
- July 1, 2016: Leaf, yard and clean wood debris is banned from landfills. Food scrap generators of more than 26 tons/year (1/2 ton/week) must divert material to any certified facility within 20 miles.
- July 1, 2017: Food scrap generators of more than 18 tons/year (~1/3 ton/week) must divert material to any certified facility within 20 miles.
- By 2020, all food scraps, including those from households, must be diverted with no exemption for distance.

Program Details

In 2012, the Vermont Legislature unanimously passed the Universal Recycling Law (Act 148), which bans three major categories of materials from Vermonter's trash bins over the course of six years:

- "Blue Bin" recyclables by July 2015,
- Leaf and Yard Debris; clean wood by July 2016,
- Food Scraps (organics; compostable kitchen wastes) by July 2020.

State/City

Massachusetts

Rule

[310 CMR 19.000](#)

Implementation Timeline

The program was implemented Statewide in 2014.

Program Details

Massachusetts has banned commercial food material waste disposal. It applies to businesses and institutions disposing one ton or more commercial organic material (food material and vegetative material) per week.

State/City

Austin, Texas

Rule

[Article 5 Universal Recycling](#)

Implementation Timeline

Beginning October 1, 2018, all food enterprises (enterprise (i.e. a food establishment, a food processing plant, a certified farmer's market vendor, a temporary food establishment and a mobile food establishment) that hold a food enterprise permit must comply with the organic diversion requirements.

Program Details

All food permitted businesses (regardless of the size of generation) must do the following:

- Provide signs in English and Spanish that illustrate onsite organics diversion program and/or acceptable materials,
- Provide employee instruction on the organics diversion program upon hiring and periodically thereafter,

- Develop and annually submit an Organics Diversion Plan describing diversion efforts,
- If using a compost collection service, collection containers must be placed within 25 feet of landfill trash containers.

State/City

New York, New York

Rule

[New York City Administrative Code, Title 16, Chapter 3 § 16-306.1](#)

Implementation Timeline

The NYC Commercial Organics Law became effective July 2016

Program Details

The Commercial Organics Law requires the following institutions to arrange for the recycling of organic material:

- An arena or stadium with seating capacity of at least 15,000 people,
- All food service establishments in hotels with (i) 150 or more rooms, (ii) operates under common ownership or control of such hotel and (iii) receives waste collection from the same private carter as such hotel,
- Food manufacturers with a floor area of at least 25,000 square feet,
- Food wholesalers with a floor area of at least 20,000 square feet,
- A food service establishment that is part of a chain of one hundred or more locations in the City of New York that (i) operate under common ownership or control; (ii) are individually franchised outlets of a parent business; or (iii) do business under the same corporate name,
- A retail food store that has a floor area of at least 25,000 square feet.

State/City

Rhode Island

Rule

[Chapter 23-18.9](#)

Implementation Timeline

Beginning January 2016, covered entities that produced 104 tons per year of organic-waste material (2 tons of organic waste per week) were required to arrange for organic recycling, provided the covered entity was located within 15 miles of an authorized composting facility or anaerobic digestion facility.

Since January 1, 2018 this limit has been reduced to 52 tons per year, which is 1 ton per week.

Program Details

Covered entities are defined as each commercial food wholesaler or distributor, industrial food manufacturer or processor, supermarket, resort or conference center, banquet hall, restaurant, religious institution, military installation, prison, corporation, hospital or other medical care institution, and casino.

State/City

Connecticut

Rule

[Public Act 11-217](#)

Implementation Timeline

The rule became effective January 2016.

Program Details

A commercial food wholesaler or distributor, industrial food manufacturer or processor, supermarket, resort or conference center, that generates a projected annual volume of 104 or more tons per year of source separated organic material, that is located within 20 miles of a permitted recycling facility that can accept that material, must ensure that those materials are recycled.

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