

Organics Waste Recycling in the U.S.

An Overview & Update



April 18, 2019
3:00-4:00 PM ET

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- Do not discuss profits or profit margins, including what is a "fair" profit margin.
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Technology Housekeeping

**Please take a minute to mute
your phone.**

This will reduce background noise during the presentations and while others are posing questions.

Technology Housekeeping

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An Overview & Update

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Angela is a Partner in the San Francisco office of Troutman Sanders, LLP and a member of the firm's Environmental and Natural Resources Section.

Her practice includes **advising retailers on the management of retail products and wastes** under federal and state laws, including **Proposition 65**, the **Safer Consumer Product regulations**, the **Medical Waste Management Act**, the **Hazardous Waste Control Law**, as well as the **Resource Conservation and Recovery Act**.



Agenda

- **California's Mandatory Commercial Organics Recycling Program – a Deep Dive**
- **An overview of additional U.S. organics requirements**
 - Vermont
 - Massachusetts
 - Rhode Island
 - Connecticut
 - Austin, TX
 - New York, NY

Trash Talk



- When applicable?
- What wastes are regulated?
- Who's covered?
- What challenges do businesses face?
- How are jurisdictions implementing this program?
- What happens if I don't comply?
- When am I exempt?
- What's next?

What's Required?

A covered business shall recycle all of the organic waste that it generates.

A business that is required to recycle organic waste will not be in compliance with the law if it only arranges for organic waste recycling for a portion of the organic waste it generates.

Brief History

- **2011: California passes the Mandatory Commercial Recycling Law**
- **2014: California passes the Mandatory Organics Recycling Program (AB 1826)**
 - Goal: 50% reduction in disposal of organic waste from 2014 levels
- **Implementation Dates and Thresholds**
 - 01/01/2016: Local jurisdictions developed an organic waste recycling program.
 - 04/01/2016: Program applied to businesses that generated 8 cubic yards of organic waste per week.
 - 01/01/2017: Program applied to businesses that generated 4 cubic yards of organic waste per week.
 - 01/01/2019: Program applies to businesses that generate 4 cubic yards or more of ***commercial solid waste*** per week.

4 Cubic Yards Visual Aid

Dumpster Sizes

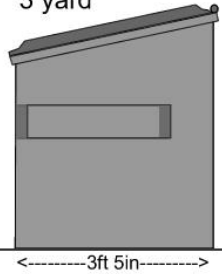
Exact dimensions may vary slightly depending on the manufacturer. Castors add approx. 7 inches to the height.



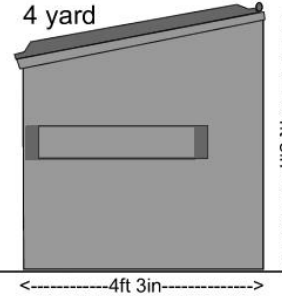
6ft
All Frontload dumpsters are 6 ft wide

Side view

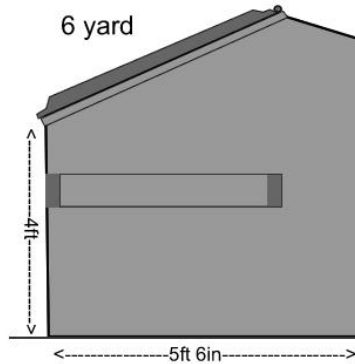
3 yard



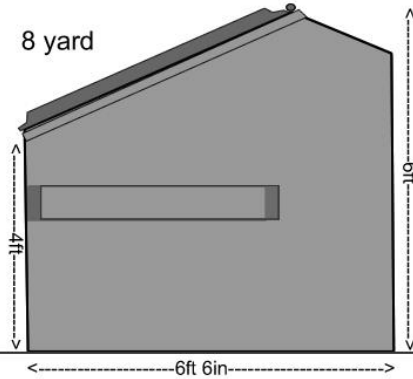
4 yard



6 yard



8 yard



Organic Waste vs. Commercial Solid Waste

Organic Waste:

1. food waste,
2. green waste,
3. landscape and pruning waste,
4. nonhazardous wood waste, and
5. food-soiled paper waste that is mixed in with food waste.

Commercial Solid Waste: solid waste generated by a store, office, or other commercial or public entity source, including a business or multifamily dwelling of five or more units.

Food Waste: Examples

Examples of **food waste** include 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 [i.e. something that is liable to decay] produced from human or animal food production, preparation, and consumption activities.

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 is difficult to tell whether a product with some type of coating is compostable. Some wax materials are compostable. Therefore, a regulated business should seek clarity from their recycling facility about acceptable food-soiled paper.

Who's Covered?

A business is defined as: a commercial or public entity, including but not limited to a firm, partnership, proprietorship, joint stock company, corporation, or association that is organized as a for-profit or nonprofit entity, strip mall (e.g. property complex containing two or more commercial entities), industrial facility, school, school district, California State University, community college, University of California, special district or a federal, state, local, regional agency or facility, or a multifamily residential dwelling (with more than five units).

[California PRC Section 42649.81\(c\)](#) explains that, “a business that is a property owner may require a lessee or tenant of that property to source separate their organic waste to aid in compliance with this section.”



Challenge: Are You Sharing A Dumpster?

Question: When a property management company pays for waste services at a strip center or large building, how does one determine which business is accountable when it is sharing bins with other businesses?

Answer: After January 1, 2017: if the group of businesses *collectively* generates 4 cubic yards of organic waste, the group would need to arrange for organic recycling services for its organic waste.

After January 1, 2019: if the group of businesses *collectively* generates more than 4 cubic yards of commercial solid waste the group would need to arrange for organic recycling services for its organic waste.



Challenge: Multiple Areas of Organic Waste

Question: In addition to food sales, our location also has an employee break room and an on-site café. There is some landscaping outside of the building handled by a landscaper who is contracted by our lessor, and our store has a garden section. Would organic material from all of these sources need to be recycled?

Answer: Yes, the organic material from all of these sources would need to be recycled.

A covered business must recycle all of the organic waste that it generates. If a business generates both food and green waste, then it is required to divert both material types from all sources at the location.



Challenge: Employee Turnover and Customer-Facing Bins

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:

- Establish 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
- Train all new employees and tenants, and retrained if compliance is an issue
- Post signs that explain the program in all applicable languages for both employees and customers, with pictures of common waste items for the business. Some jurisdictions, such as the [City of Hayward](#), provide signage in multiple languages. CalRecycle also provides an [outreach and education toolkit](#).

Challenge: Local Implementation

- Each county and city must prepare an integrated waste management plan. Each jurisdiction is responsible for implementing the regulation.
- Regulated businesses will need to review their local jurisdiction's adopted rules to determine how the organics program will be implemented in their town.
- Provided the jurisdiction has not applied for and received a waiver, the business can utilize the Facility Toolbox* to determine available hauler and/or composting options.

* <https://www.calrecycle.ca.gov/docs/cr/Recycle/Commercial/Organics/MapGuide.pdf>

Local Implementation: Spotlight on Del Mar

Del Mar Implementation plan

- The City will ensure that all businesses have green waste collection service (through landscaper or hauler).
- The City will review subscription levels to determine if any businesses can move to a lower tier of organic waste generation and also assist businesses in reducing generation through waste generation measures.
- The City will focus on outreach to businesses to adopt the waste reduction and food recycling aspects of the hierarchy.
- The City will provide resources and education.
- The City currently does not plan to require transportation to a processing facility until affordable local capacity develops.
- It is the goal of the City to achieve compliance through the steps indicated above, and through voluntary participation of the business community. If compliance cannot be achieved, the City may need to implement ordinances for the enforcement of the provision of AB 1826.

<https://www.delmar.ca.us/552/How-to-Fulfill-AB-1826-Requirements>

Local Implementation: Enforcement

- AB 1826 does not have enforcement provisions
- Instead, each jurisdiction has the authority to develop enforcement mechanism

City of Hayward's Fines (2012 Ordinance)

(d) Violation of any provision of this 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.

Boostrapped Enforcement?

But ...

California Business & Professions Code §17200 prohibits any “unlawful, unfair or fraudulent business act or practice”

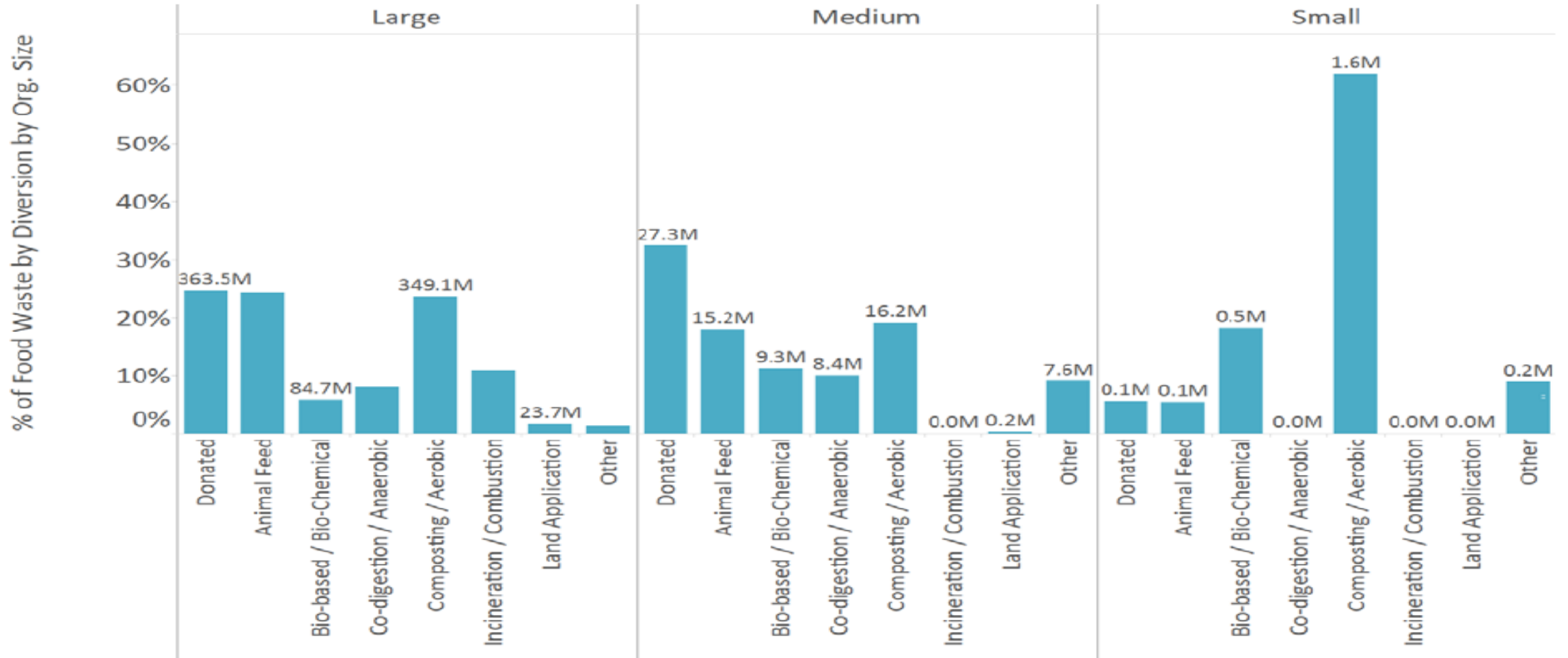
What Are My Options?

- Collection services offered by a waste hauler
- Recycle organic waste onsite or self-haul for recycling
- Participate in food donation programs
- Subscribe to an organic waste recycling service that may include mixed waste processing that specifically recycles organic waste
- Sell or donate its recyclable organic waste
 - Anaerobic digestion
 - Animal feed options for food material
 - Landscaping service providers for green waste and landscape and pruning waste
 - Salvage companies for nonhazardous wood waste

For more information, view CalRecycle's FAQ:

<https://www.calrecycle.ca.gov/Recycle/Commercial/Organics/FAQ/>

DIVERTED FOOD WASTE (IN POUNDS) BY COMPANY SIZE, 2016



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

Exemptions

- Insufficient space for organic material recycling bins
- Existing organic diversion program
- Less than one-half a cubic yard of organic waste per week
- Less than one cubic yard of organic waste per week, if the jurisdiction provides CalRecycle with information justifying the higher exemption amount
- Businesses in [rural jurisdictions](https://www.calrecycle.ca.gov/recycle/commercial/organics/exempt)
(<https://www.calrecycle.ca.gov/recycle/commercial/organics/exempt>)
- Limited-term exceptions 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

What's Next?

AB1826

- Summer/Fall 2021: If CalRecycle determines that the statewide disposal of organic waste in 2020 has not been reduced by 50% of the level of disposal during 2014, the organic recycling requirements will expand to cover businesses that generate **2 cubic yards** or more of commercial solid waste per week. Additionally, certain exemptions may no longer be available if this target is not met.

SB 1383

- Requires CalRecycle to reduce the disposal of organic waste 75 percent by 2025
- Also includes requirements designed to recover 20 percent of edible food for human consumption that is currently landfilled by 2025
- Proposed regulations issued in January 2019, scheduled to take effect in 2022

Vermont – Act 148

- In 2012, the Vermont Legislature unanimously passed the Universal Recycling Law (Act 148), which bans three major categories of materials from Vermonters' 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.
- Currently, **any** food scrap generators that generate more than 18 tons/year (~1/3 ton/week) must divert material to a certified facility, **if** one is located within 20 miles.

Connecticut – Public Article 11-217

- Applies to commercial food wholesalers or distributors, industrial food manufacturers or processors, supermarkets, resorts or conference centers
- If they generate a projected annual volume of **104 or more tons per year** of source separated organic material and
- If they are located **within 20 miles** of a permitted recycling facility that can accept that material

Rhode Island – Chapter 23-18.9

- 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 (**1 ton per week**).
- 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.

Massachusetts – 310 CMR 19.000

- Commercial food material waste disposal is banned
- Ban applies to all businesses and institutions disposing **one ton or more** commercial organic material (food material and vegetative material) per week

New York, NY - New York City Admin. Code, Title 16, Chapter 3 § 16-306.1

- 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**.

Austin, TX – Article 5 – Universal Recycling

- 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.
- 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.

Questions?

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