



### **CalRecycle Compliance Assistance**

California's effort to reduce super pollutants builds on the state's shared commitment to reduce greenhouse gas emissions, improve human health, and create clean jobs that support resilient local economies. Implementing a state-wide plan (SB 1383, Lara, Chapter 395, Statutes of 2016) to reduce short-lived climate pollutants, harmful super pollutants with significant warming impacts, is essential to achieving California's climate goals.

#### **CalRecycle will provide compliance assistance to jurisdictions, including:**

- Implementation Checklists
- Training and Guidance
- Model Implementation Tools (Model: Franchise Agreement, Edible Food Recovery Agreement, Enforcement Ordinance, Procurement Policy)

### **CalRecycle Enforcement Discretion**

The SB 1383 enforcement structure allows CalRecycle to focus on compliance assistance first and dedicate enforcement efforts to serious offenders. The regulations allow for flexibility and deadline extensions in some instances when there are extenuating circumstances causing compliance issues despite a jurisdiction's substantial efforts, such as the COVID-19 pandemic and natural disasters.

The enforcement process is an escalating process, and the timelines are not triggered until a Notice of Violation (NOV) is issued.

- CalRecycle has discretion to address compliance issues with a jurisdiction through compliance evaluations prior to moving to enforcement proceedings.
- CalRecycle will consider the totality of circumstances surrounding a jurisdiction's compliance prior to issuing NOVs.
- CalRecycle has discretion to issue NOVs and, depending on circumstances, not seek penalties.

If CalRecycle takes enforcement action, it can consider **extenuating circumstances** as well as **substantial efforts** made by a jurisdiction and place the entity on a Corrective Action Plan (CAP). CalRecycle has enforcement discretion to allow for a longer timeline for compliance.

The regulations allow for extended compliance timelines (under certain circumstances), giving jurisdictions additional flexibility to come into compliance before penalties are issued.

## SB 1383 Enforcement Process Timeline



**Notice of Violation (NOV)** - If CalRecycle determines a jurisdiction is violating one or more requirements and decides to take enforcement action, it must issue an NOV.

- A jurisdiction will have **90 days** to correct the violation.
- That timeframe can be extended an **additional 90 days** to a **total of 180 days** if CalRecycle finds that additional time is necessary.

**Corrective Action Plan (CAP)** - For violations due to barriers outside a jurisdiction's control (**extenuating circumstances**) and when a **substantial effort** is made towards compliance:

- Jurisdictions can be placed on a Corrective Action Plan, extended compliance timelines.

**Extenuating circumstances are:**

- Acts of God such as earthquakes, wildfires, flooding, and other emergencies (such as pandemics) or natural disasters.
- Delays in obtaining discretionary permits or other government agency approvals.
- An organic waste recycling infrastructure capacity deficiency requiring more than 180 days to cure.

**Substantial effort** is where a jurisdiction has done everything within its authority and ability to comply. **Substantial effort does not include** circumstances where a decision-making body of a jurisdiction has not taken the necessary steps to comply with the chapter, including, but not limited to:

- Failure to provide adequate staff resources to meet its obligations, or
- Failure to provide sufficient funding to meet its obligations, or
- Failure to adopt the ordinance(s) or similarly enforceable mechanisms.

If a jurisdiction does not demonstrate that they have made a **substantial effort**, they would not be eligible for the extended compliance deadlines. However, CalRecycle will consider the totality of circumstances surrounding a jurisdiction's compliance prior to issuing NOV's.

**Penalties are imposed after all other compliance actions have failed.**

- If a jurisdiction does not meet NOV or CAP deadlines, CalRecycle has another opportunity to exercise enforcement discretion by determining when to commence an action to impose administrative civil penalties.

- When CalRecycle commences an action to impose administrative civil penalties, it shall serve an accusation and hold a hearing—if requested by the respondent (roughly, a 180-day process).

### **AB 939’s Good Faith Effort vs. SB 1383’s Compliance Determination**

**AB 939 established a specified waste diversion target for each jurisdiction.**

- A **Good Faith Effort** determination relies upon a suite of indicators to determine if a jurisdiction is actively trying to implement programs and achieve its targets.

**SB 1383 establishes a statewide target and prohibits a target for each jurisdiction.**

- SB 1383 requires a more prescriptive approach and state minimum standards.
- Jurisdictions must demonstrate compliance with each prescriptive standard.
- Legislators amended SB 1383 to remove the requirement that CalRecycle use the AB 939 **Good Faith Effort** requirement for its enforcement for SB 1383.
- The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the **Good Faith Effort** standard.

### **Senate Bill 619 - Notification of Intent to Comply (NOIC)**

SB 619 authorizes a jurisdiction facing continuing violations that commence during the 2022 calendar year to submit a NOIC and a resolution to CalRecycle no later than March 1, 2022.

SB 619 authorizes CalRecycle to issue a CAP for any jurisdiction with an approved NOIC even if the jurisdiction has not provided sufficient funding, provided adequate staff, or adopted an enforcement ordinance.

Upon an approved notification, a jurisdiction may be eligible for both of the following:

1. Administrative civil penalty relief for the 2022 calendar year pursuant to 14 CCR section 42652.5(d).
2. A corrective action plan pursuant to 14 CCR section 18996.2.

**Administrative Civil Penalty Relief** – CalRecycle will waive administrative civil penalties for the 2022 calendar year for violation(s) disclosed in a jurisdiction’s approved NOIC, if the jurisdiction implements the proposed action(s) to remedy the violation(s) in accordance with the schedule in the NOIC.

Additionally, for violations commencing during the 2022 calendar year and continuing into the 2023 calendar year, administrative civil penalties will begin accruing starting January 1, 2023, but, if CalRecycle exercises its discretion to put a jurisdiction on a CAP, any penalties may be waived upon a determination of full compliance with the terms of the CAP (see 14 CCR section 18996.2).

- **In the SB 1383 enforcement process, penalties may begin accruing for violations occurring in 2022.**

If a jurisdiction fails to adhere to the proposed action(s) and schedule in the NOIC, CalRecycle may revoke its approval of the NOIC and impose administrative civil

penalties for violations occurring during the 2022 calendar year retroactive to the date of violation(s).

**Eligibility for a CAP through the NOIC Process** – For violations identified in the NOIC, CalRecycle may address any violations disclosed through a CAP that will take more than 180 days to correct.

- **A jurisdiction is not required to demonstrate a substantial effort to be eligible for a CAP through the NOIC process. This differs from the SB 1383 enforcement process outlined on page 3.**

For instructions on how to submit and what the NOIC should include, visit <https://www.calrecycle.ca.gov/organics/slcp/enforcement/noic>.