

**REQUEST FOR APPROVAL**

**To:** Scott Smithline  
Director

**From:** Mark de Bie *md/B*  
Deputy Director, Waste Permitting, Compliance, and Mitigation Division

**Request Date:** August 18, 2015

**Decision Subject:** Adoption of Compostable Materials, Transfer/Processing Regulations

**Action By:** August 31, 2015

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**Summary of Request:**

Staff requests adoption of the proposed Compostable Materials, Transfer/Processing regulations.

**Recommendation:**

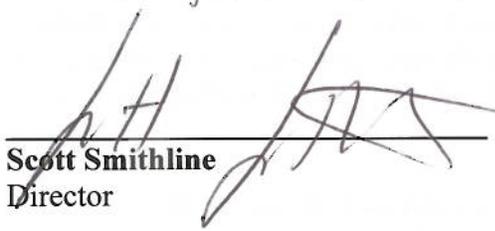
Staff recommends adoption of the proposed revisions to the regulations so that the package may be forwarded to the Office of Administrative Law for approval and publishing.

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**Action:**

On the basis of the information, analysis, and findings in this Request for Approval, I hereby adopt the Proposed Compostable Materials, Transfer/Processing Regulations and direct staff to forward the regulatory packet to the Office of Administrative Law for approval and publishing.

**Dated:** August 26, 2015

  
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**Scott Smithline**  
Director

**Attachments:**

1. Proposed Compostable Materials, Transfer/Processing Regulations
2. Response to Comments
  - 2A. 45-day comment period (October 10, 2014 – December 5, 2014)
  - 2B. 1<sup>st</sup> 15-day comment period (April 21, 2015 – May 6, 2015)
  - 2C. 2<sup>nd</sup> 15-day comment period (June 29, 2015 – July 14, 2015)

## **Statement of Purpose:**

The main purpose of the proposed regulations is to protect public health, safety, and the environment by more effectively regulating solid waste facilities that handle compostable materials. The proposed regulations modify the existing Compostable Material Handling Operations and Facilities Regulatory Requirements by: clarifying several feedstock definitions, and the types of operations and facilities that can accept these materials; revising the maximum concentrations of metals allowed in compost; providing Enforcement Agencies with discretion to authorize temporary storage of additional material; revising Enforcement Agency inspection frequency language to ensure consistency throughout Title 14; providing operators and Enforcement Agencies with a mechanism to better address chronic odor complaints and identify specific sources of odor; establishing specific criteria for safe land application of compostable material; requiring compost products to meet a physical contaminant limit by weight; and clarifying small-scale composting requirements at sites, such as community gardens and schools.

The proposed regulations provide a standardized regulatory framework for in-vessel digestion activities. The proposed regulations combine regulatory approaches from the transfer/processing and compostable material handling requirements into a stand-alone set of in-vessel digestion regulations.

The proposed regulations also clarify permitted maximum tonnage (and other updates) on the joint application for Solid Waste Facility Permit and Waste Discharge Requirements.

The proposed regulations provide a wide range of benefits to public health, safety, and the environment. Benefits include: requiring subject materials to meet a physical contaminant limit, which will reduce litter and minimize the amount of plastic entering surface water and the ocean while creating new jobs and increasing the market value of compost and mulch; establishing criteria for safer land application of compostable material, which will also reduce litter and minimize the amount of plastic entering surface water and the ocean and improve food safety and animal health by reducing toxic metals, disease-causing organisms, physical contaminants, and invasive/noxious species in compostable material; minimizing odors at compostable material handling and in-vessel digestion facilities; decreasing greenhouse gases, air pollution, and long-distance transportation of organic material by facilitating small-scale composting and in-vessel digestion; increasing the production of biofuels/bioenergy; and providing clarity to the regulated community and regulators.

Finally, the proposed regulations will ensure safe operations and facilities to handle organic material diverted as the result of California's goal to source-reduce, recycle, or compost 75% of the solid waste generated in the State by 2020.

## **Rulemaking Timeline and Process:**

Between October 2011 and September 2014, staff held 17 public workshops to obtain stakeholder input on fourteen key regulatory issues.

Formal rulemaking activities commenced on October 15, 2013 after CalRecycle staff to were directed to initiate the formal rulemaking process. After completing a standardized regulatory impact analysis (see Economic and Financial Impact Analysis section below), staff submitted the proposed regulations to the Office of Administrative Law for publication to initiate a 45-day public comment period, which ran from October 10, 2014 through to December 5, 2014. Staff held a public hearing on December 10, 2014. On March 3, 2015, staff held a workshop to ensure staff captured and addressed all interested parties' comments and concerns from the 45-day comment period. After considering comments received during the 45-day comment period and comments made at the public hearing (see Attachment 2.A.), staff revised the proposed regulations.

On April 21, 2015, CalRecycle initiated a 15-day comment period for the proposed changes. This comment period ended on May 6, 2015.

After considering comments received during the first 15-day comment period (see Attachment 2.B.), staff again revised regulatory text.

On June 29, 2015, CalRecycle initiated an additional 15-day comment period for the proposed changes. This comment period ended on July 14, 2015.

#### **Analysis:**

The complete list of all comments submitted by stakeholders on the proposed regulatory text and staff's response to these comments are located on-line at this web address:

<http://www.calrecycle.ca.gov/Laws/Rulemaking/Compost/default.htm>

- Public comments and CalRecycle responses, 45-day Public Comment Period (October 10, 2014 - December 5, 2015) (Attachment 2.A.)
- Public comments and CalRecycle responses, First 15-day Public Comment Period (April 21, 2015 - May 6, 2015) (Attachment 2.B.)
- Public comments and CalRecycle responses, Second 15-day Public Comment Period (June 29, 2015 - July 14, 2015) (Attachment 2.C.)

Below is a listing of the area of the proposed regulations that generated the majority of comments during the public input portion of the rulemaking process.

### **COMPOSTABLE MATERIALS**

#### **§17868.3.1 Physical Contamination Limits**

##### **Existing Regulations**

- There is no existing limit on physical contaminants in compost or compostable material applied to land

### **Proposed Regulations**

- A physical contaminant limit would become effective on January 1, 2018
- The physical contaminant limit would be set at 0.5%
- Film plastic could make up no more than 20% of the 0.5% physical contaminant limit
- The operator would determine the percentage of physical contaminants utilizing a methodology that provides accurate results and is approved by the Enforcement Agency
- If the Enforcement Agency had reason to believe an operator's determination was not accurate, the Enforcement Agency could require the operator to send a sample to laboratory to determine the percentage of physical contaminants
- Compostable material applied to land will need to meet the requirements

### **§17852(a)(24.5) Land Application**

#### **Existing Regulations**

- The use of compostable material is excluded from being deemed disposed if it is used for slope stability, weed suppression, alternative daily cover, or if land applied it meets California Department of Food and Agriculture requirements, or if used for reclamation project it meets the requirements of the Department of Conservation

#### **Proposed Regulations**

- Allows any use of compostable materials if it meets physical contaminant limit which would become effective on January 1, 2018
- The physical contaminant limit would be set at 0.5%
- Film plastic could make up no more than 20% of the 0.5% physical contaminant limit
- The material would need to meet maximum metals concentrations and pathogen density requirements
- Minimum standards would be set for application frequency and depth

### **§17852(a)(4.5) Agricultural By-Product Material**

#### **Existing Regulations**

- There are no existing regulations pertaining to Agricultural By-Product Material

#### **Proposed Regulations**

- Would recognize the unique nature of Agricultural By-Product Material and specify such material is not subject to the land application requirements in §17852(24.5)

## **§17852(a)(20) Food Material/§17852(a)(20)(A) Vegetative Food Material**

### **Existing Regulations**

- The existing definition of food material is general and does not distinguish between various food material types
- Food material composting requires a full permit

### **Proposed Regulations**

- Would expand the food material definition by adding “vegetative food material”
- Would authorize composting of vegetative food material at a “Vegetative Food Material Composting Facility” under a Registration permit
- Food material composting would still require a Compostable Materials Handling Facility Permit

## **§17855(a)(4) Excluded Activities**

### **Existing Regulations**

- Three “small scale” exclusions:
  - 500 yd<sup>3</sup> or less – feedstock must be generated on-site, food material limited to 10%, and sell or give away limited to 1,000 yd<sup>3</sup> per year
  - Non-commercial – less than 1 yd<sup>3</sup> food material and all material must be generated and used on-site
  - Within-vessel less than 50 yd<sup>3</sup>

### **Proposed Regulations**

- Would collapse the three existing “small scale” exclusions into one:
  - Processing area includes less than 100 yd<sup>3</sup> of material within 750 ft<sup>2</sup> and feedstock includes green material, agricultural material, food material, or vegetative food material, alone or in combination from any source

## **§17863.4 Odor Impact Minimization Plan**

### **Existing Regulations**

- Approaches to verification of odor complaints at compost sites are not consistent statewide

### **Proposed Regulations**

- An operator would be required to minimize odor impacts so as to not cause a “nuisance”
- The Enforcement Agency would be required to investigate odor complaints as soon as practical, and include specified information (e.g., date, time, climatic conditions, odor characteristics and intensity) in the investigation

- If an Odor Impact Minimization Plan (OIMP) is being followed but odor impacts are still occurring, the Enforcement Agency would require the operator to:
  - Prepare and implement an Odor Best Management Practice Feasibility Report
  - Take additional reasonable and feasible measures to minimize odors
- An operator could also voluntarily prepare an Odor Best Management Practice Feasibility Report and take additional measures to minimize odors

## **IN-VESSEL DIGESTION**

### **All Sections**

#### **Existing Regulations**

- Anaerobic digestion is currently regulated under the Compostable Material Handling or Transfer/Processing regulations, depending on the nature of the feedstock and how it is handled.

#### **Proposed Regulations**

- Would establish a stand-alone set of In-vessel Digestion regulations
- Combination of Transfer/Processing and Compostable Material Handling
  - Handling of feedstock and residual waste materials will be subject to standards adapted from Transfer/Processing requirements
  - End products will be subject to standards adapted from Compostable Material Handling requirements

### **§17896.6(a)(1) – Publicly Owned Treatment Works Exclusion**

#### **Proposed Regulations**

- Would apply to a publicly owned treatment works (POTW) that receives vehicle-transported anaerobically-digestible material for the purpose of co-digestion with wastewater
- Anaerobically digestible material only includes inedible kitchen grease, food and vegetative food material. Additional materials can be reviewed and considered for approval
- The anaerobically digestible material would need to be pumped or off-loaded directly into a covered, leak-proof container and then pumped, or diluted or slurried and then pumped, and co-digested in an anaerobic digester
- The POTW would need to develop Standard Operating Procedures (SOPs) for acceptance of anaerobically digestible material and notify the Regional Water Quality Control Board that SOPs are being implemented
- A Standard Provision (permit condition) that reflects the acceptance of anaerobically digestible material would need to be incorporated in the POTW's Waste Discharge Requirements or National Pollutant Discharge Elimination System permit no later than the next permit renewal

### **§17896.6(a)(3) In-vessel Dairy Digester Exclusion**

#### **Proposed Regulations**

- Would apply to dairies that co-digest manure and agricultural material derived on-site, imported agricultural material, and/or imported vegetative food material in accordance with Waste Discharge Requirements issued by a Regional Water Quality Control Board
- Any imported materials delivered to the dairy would need to be pumped or off-loaded directly into a covered, leak-proof container and then pumped, or diluted or slurried and then pumped, and co-digested in an in-vessel digester

### **§17896.9 Dairy In-Vessel Digestion Operations**

#### **Proposed Regulations**

- Would apply to dairies that import solid waste to co-digest with manure in accordance with Waste Discharge Requirements issued by a Regional Water Quality Control Board
- Any imported materials delivered to the dairy would need to be pumped or off-loaded directly into a covered, leak-proof container and then pumped, or diluted or slurried and then pumped, and co-digested in an in-vessel digester
- Enforcement Agency inspection frequency would be set as follows:
  - Year 1 – at least monthly
  - Year 2 – quarterly, with Enforcement Agency approval and Department concurrence, a reduced inspection frequency of quarterly
  - Year 3+ – annually, with Enforcement Agency approval and Department concurrence

### **§17896.57 Digestate Handling**

#### **Proposed Regulations**

- Digestate not contained in an in-vessel digester would need to be (within 24 hours):
  - Stored or processed in a sealed container or sealed structure,
  - Incorporated in an on-site aerobic compost process, or
  - Removed from the site and:
    - transported to another solid waste facility or operation
    - used in a manner approved by local, state, and federal agencies having jurisdiction, or
    - properly disposed

### **California Environmental Quality Act (CEQA)**

Pursuant to the California Environmental Quality Act (CEQA), CalRecycle conducted a review (Negative Declaration and Initial Study Evaluating the Compostable Materials, Transfer/Processing Regulations, SCH#2015062080) to determine whether the proposed regulations may have a significant effect on the environment. Staff determined that, based on

the whole of the record, there is no substantial evidence that the adoption of the proposed regulations will have a significant effect on the environment. CalRecycle developed the Negative Declaration and Initial Study and, prior to reaching its decision on the proposed regulations, considered any comments received during the public review period.

### **Economic and Financial Impact Analysis**

Staff prepared a standardized regulatory impact analysis (SRIA), pursuant to Government Code section 11346.3(c)(1). The Department used a Regional Economic Models, Inc. (REMI) model to estimate the economic impacts of the proposed regulations. The REMI model is an analytical tool which can model a regional economy and analyze year-by-year impacts and total impacts on a macro scale. The current regulations (baseline) were compared to the proposed regulations, and economic impacts on businesses complying with the proposed regulations were estimated using the REMI model. The SRIA is incorporated in the both the Initial Statement of Reasons and the Final Statement of Reasons, which are part of this rulemaking file.

Staff also prepared, and submitted to the Department of Finance, an Economic and Fiscal Impact Statement (STD. 399) pursuant to State Administrative Manual (SAM), sections 6601 - 6616.

### **Findings**

The Department has determined that no reasonable alternative considered or brought to the Department's attention will be as effective in carrying out the statutory requirements of the California, or would be as effective and less burdensome to affected stakeholders, than the proposed action.