



VIA EMAIL TO compost.transfer.regs@calrecycle.ca.gov

May 4, 2015

Mr. Ken Decio
Waste Permitting, Compliance, and Mitigation Division
California Department of Resources Recycling and Recovery
P.O.Box4025
Sacramento, CA 95812-4025

Re: Proposed Regulation Text, Compostable Materials, Transfer/Processing (April 2015)

Dear Mr. Decio:

On behalf of Dairy Cares, thank you for the opportunity to once again submit comments regarding the above-referenced program.

Dairy Cares (www.dairycares.com) is a coalition of California's dairy producer and processor organizations, including the state's largest producer trade associations (*Western United Dairymen, California Dairy Campaign, Milk Producers Council, California Farm Bureau Federation* and *California Cattlemen's Association*) and the largest milk processing companies and cooperatives (including *California Dairies, Inc., Dairy Farmers of America-Western Area Council, Hilmar Cheese Company, and Land O'Lakes, Inc.*), and others. Formed in 2001, Dairy Cares is dedicated to promoting the long-term environmental and economic sustainability of California dairies.

In general, the regulations remain somewhat complex and difficult to assess and understand for the regulated community. Dairy Cares previously provided comments on an earlier version of the proposed regulatory changes in December 2014. While the revised regulations provide a partial response to our comments, staff has not yet provided written responses to our earlier comments and the comments of other stakeholders. In particular, we urge the staff to provide more clarity regarding the need for the proposed regulations as they pertain to dairy farms. We believe the regulations as proposed, even with amendments, potentially create and/or perpetuate an unnecessary additional regulatory burden for dairies. As we stated in our December comments, the "compostable materials" handled and stored at California dairies largely or entirely fit the

definition of “manure” in the proposed regulations. As such, these materials are already regulated, cradle to grave, by California water quality and air quality agencies. We can envision only extremely limited circumstances where existing regulation would not be sufficient, and we will describe that circumstance below; however, the regulations as proposed unnecessarily include already-regulated facilities into another layer of unnecessary notification, reporting, inspection and, perhaps, other redundant requirements.

Our comments are summarized as follows:

- Dairy handling of manure is already covered by existing regulations and only extremely atypical composting operations on dairies should be subject to Cal Recycle oversight;
- Most typical dairy handling of organic materials (manure as defined in Chapter 3.1, Section 17852 (25)) should be classified as an excluded activity under Title 3.1, Article 2, Section 17855;
- If any dairies are not classified in the Excluded Tier (Table 1, page 13) but instead meet the definition as an “Agricultural Material Composting Operations” per Section 17856, the proposed notification and inspection system is excessive, and we offer suggestions to address this;
- We request specific clarification on regulatory requirements for dairies that would potentially be included in the Enforcement Agency Notification Tier; and
- We support recent changes in the regulation regarding in-vessel digestion.

Typical dairy handling of compostable materials; discussion of applicability of the proposed regulation and exclusions for typical dairies

Typical California dairy operations handle compostable materials on a daily basis. These include manure excreted by cows (urine and feces) as well as additional materials used in the care and feeding of animals, such as bedding materials and various feed materials (hay, grains, silage and commodities such as culled fruits and vegetables, almond hulls, cotton seeds, etc.).

The vast majority of these materials are generated on site, including much of the feed. Additional feed and sometimes bedding materials are brought to the dairy. Once these materials are fully utilized on the dairy, they fully meet both the definition of “agricultural material” (see Section 17852 (a) (5), “...waste material of plant or animal origin”) and also of “manure” (see Section 17852 (25)) “...the definition shall include feces and urine, and any bedding material, spilled feed, or soil that is mixed with feces or urine.”). As defined, all dairies produce “manure” and handle “manure” and “agricultural materials.”

Section 17852 (11) defines “compostable material” as “any organic material that when accumulated *will* [emphasis added] become active compost as defined in Section 17852 (a) (1), that is, “...is generating temperatures of at least 50 degrees Celsius (122 degrees Fahrenheit) during decomposition or is releasing carbon dioxide at a rate of at least 15 milligrams per gram of compost per day....”

The proposed regulation does not apply to a dairy until and unless some compostable material actually becomes “active compost,” and indeed, the activity is excluded specifically by Section 17855 (a) (5)(J) if “the materials are handled in such a way to preclude their reaching temperature at or above 122 degrees Fahrenheit as determined by the E[nforcement] A[gency].”

Notably, Cal Recycle and the Enforcement Agency retain ability to inspect a facility (dairy) to determine whether the conditions supporting the exclusion apply.

However, Section 17855 (a) (1) excludes from being defined as a “compostable material handling operation” a facility that meets the following definition: “handles agricultural material, derived from an agricultural site, and returns a similar amount of the material to that same agricultural site, or an agricultural site owned or leased by the owner, parent, or subsidiary of the composting activity. No more than an incidental amount of up to 1,000 cubic yards of the compost product may be given away or sold annually.”

Based on these definitions and regulatory provisions, one would likely *not* conclude under the present draft of the regulation that a dairy is an “Agricultural Material Composting Operation” unless it gives away or sells more than 1,000 cubic yards of materials of “compost product.” Also, if “a similar amount of the material ... derived from an agricultural site” is not returned to “that same agricultural site” then the exclusion may not apply.

Dairy Cares’ concern here is that the 1,000-cubic-yard limit in regulation may have the unintended consequence of discouraging export of manure (a compostable material), or manure compost from dairies, for use on other farms not under the dairy owner’s control. Such exports are legal, and in fact are encouraged under existing water quality regulations, as a way of assuring that manure is not over-applied to the cropland of a dairy farm on which it is produced. Such manure exports are tracked and reported under existing regulation (see, e.g., General Order R5-2013-0122).

We are also concerned that to qualify for the exclusion, composted manure must be returned substantially to the “same agricultural site.” This again seems to limit the exclusion to situations where composted manure remains on the farm where it was produced, rather than allowing the exclusion to apply to situations where dairy compost material is moved off farm for various other beneficial uses.

Exclusion preferable to the notification tier

One might observe that while most dairy activities are excluded (that is, dairies which export less than 1,000 cubic yards of compost or manure), dairies that are unable to meet the requirements associated with the exclusion would fall into the Enforcement Agency (EA) Notification Tier¹, which requires EA Notification pursuant to Section 18103, including in relevant part:

- Notifying the EA and providing name, address, phone number of the owner/operator;

¹ Table 1, page 13, April 2015 Cal Recycle Proposed Regulation Text.

- Describe the facility’s operations including “but not limited to” hours of operation , wastes/materials handled, and “peak and annual loading” with reference to “section in Chapters 3, 3.1 or 3.2 of Division 7” authorizing eligibility for this tier;
- Documentation that the operator has notified the local planning department with jurisdiction over the site of its intent to commence operations. Documentation “may include, proof of compliance with CEQA, correspondence with the local planning department that compliance with the California Environmental Quality Act is not required for the operation to obtain local land use approval or written notice to the local planning department...;” and,
- Annual inspections by the EA.

In short, dairies exporting more than 1,000 cubic yards of compost product or considered to not return a “similar amount” of agricultural materials to the site where they were generated, thus trigger a reporting and administrative process associated with the export of such compost product. We believe this is unnecessary, wasteful, confusing and duplicative, and probably costly.

Additional regulation is unnecessary

In the case of dairies, the “compostable materials” that Cal Recycle proposes to regulate are manure, and manure handling, storage, land application and export. With respect to dairies, these activities and materials are already entirely regulated by the State Water Resources Control Board (State Board) and the nine regional water quality control boards (regional boards). Accordingly, there is no need for additional regulation of manure by Cal Recycle regardless of whether or not it is composted.

Notably, as stated in our December comment letter, all dairy farms in California’s Central Valley region are regulated by the Central Valley Regional Water Quality Control Board (“Central Valley Water Board”). Regional Boards are charged by the state Legislature with enforcing state and federal water quality protection laws, most notably the federal Clean Water Act and the state’s Porter-Cologne Water Quality Control Act (California Water Code Division 7)². The vast majority of dairies in the Central Valley, approximately 1,200 dairies, are regulated under a Central Valley Water Board General Order³ and the remainder are regulated via individual orders with essentially the same requirements. These requirements include, in relevant part:

- Preparation and implementation of a Nutrient Management Plan (NMP), prepared by a certified professional crop advisor or equivalent;
- Preparation and implementation of a Waste Management Plan (WMP), prepared by a licensed engineer;
- Environmental sampling and monitoring of soil, manure, water and plant tissue for compliance;

² http://www.waterboards.ca.gov/laws_regulations/docs/portercologne.pdf (accessed December 2014)

³ http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0122.pdf (accessed October 2014)

- Routine site inspections, record-keeping, and annual reporting; and,
- Additional groundwater monitoring to assess water quality protection.

Enforcement of the General Order and individual orders is the responsibility of the Central Valley Water Board, whose staff independently reviews annual reports submitted by dairies. Such reports include laboratory results and data from environmental testing, nutrient budgets and other key information. Inspectors also visit dairies, on average once every three years, to verify compliance on site, including tracking of manure storage, application to crops, and record-keeping for any manure exported from the dairy. Regulated dairies must demonstrate integrity of waste control and nutrient delivery systems, proper record-keeping and other key information.

A primary purpose of these orders is to ensure responsible storage and use of manure as a crop fertilizer and soil amendment. Responsible use prevents unnecessary runoff or leaching of nitrogen compounds to the environment, where they can impact water quality and other environmental media. Specifically, the NMP is designed to assure that the amount of nitrogen excreted by milking cows and support stock is in reasonable balance with the needs of crops grown at the dairy farm.

The Cal Recycle regulation adds nothing to this process except an additional and expensive administrative burden. Further, EAs do not have the appropriate level of expertise to ensure appropriate application of manure to land, nor are they generally qualified to determine whether waste management systems at dairies have proper integrity. At best, EA inspectors could review the documents prepared for dairies by certified professional agronomists and civil engineers, as required by regional board regulations. However, this would be wasteful and redundant, as these documents are already subject to Central Valley Water Board inspection.

Moreover, most dairies in the state are also subject to inspection by their local air quality management districts. For example, in the San Joaquin Valley Air Pollution Control District, dairies are subject to inspection every 18 months for compliance with Rules 4550 and 4570, which also contain provisions for manure handling and storage.

Only atypical composting on dairies should be considered for regulation by Cal Recycle

Dairy Cares recognizes that there is concern at Cal Recycle over the issue of ensuring that dangerous or hazardous materials, such as medical waste or municipal waste, are not mixed with compost or applied to agricultural lands or other lands. Dairy Cares understands this concern but finds that Cal Recycle is casting the regulatory net too wide to address this concern, which as applied to dairies is of very limited concern. We would support regulation of composting operations, including composting operations located at dairies were any found to exist, that propose to accept waste streams that include non-agricultural materials such as municipal green waste. However, dairy farms that handle, store and apply manure only (including bedding, spoiled feed, etc. as defined in the proposed regulation) should be excluded from additional regulation.

Suggested language to exclude typical dairy handling and storage of manure

To address these concerns, we recommend one or more of the following language changes for consideration by Cal Recycle to avoid placing dairies into an unnecessary, duplicative regulatory process:

1. Change Section 17855 (a) (1) to read (or add a similar section immediately following):
“An activity is excluded if it is located on an agricultural site, and handles exclusively agricultural materials derived from that agricultural site or other agricultural sites. An unlimited amount of compost product derived from such agricultural materials may be given away or sold annually.”
2. Add Section 17855 (a) (5) (K) “the activity takes place on a dairy or other confined animal facility regulated under waste discharge requirements or a conditional waiver of waste discharge requirements issued by a Regional Water Quality Control Board, and the materials handled are limited to manure as defined in Section 17852 (a) (25).

Requirements related to Notification Tier

Although we believe the present applicability of the regulation to dairies is limited to those who export more than 1,000 cubic yards of “compost product” – and we further believe that requirement is unnecessary, in the event the EA Notification Tier applies to any dairies that are defined as Agricultural Material Composting Operations, we request clarification on the following as to whether any or all of the following sections would apply to dairies so identified:

- Section 17867
- Section 17868.1 through Section 17868.3.1
- Section 17869

Changes in in-vessel digestion language

Dairy Cares supports the inclusion of “in-vessel digestion at a dairy involving co-digestion of manure with agricultural material derived on site, imported agricultural material and/or imported vegetative food material in accordance with Waste Discharge Requirement issued by a Regional Water Quality Control Board” in Section 17896.6 “Excluded Activities.” However, the newly proposed exclusion appears to include two additional requirements that would further limit the exclusion rather than allowing it to apply generally when such activities are regulated by a regional board or the State Board. Dairy Cares supports the first qualifying requirement but must express concerns with the second, which is to limit the amount of material that could be given away or sold to less than 1,000 cubic yards annually. Our concern with this limitation here is the same as our concerns expressed above.

Conclusion

California dairies are among the most regulated in the world today and are struggling to cope with rising business costs. We appreciate the opportunity to comment and urge Cal Recycle to avoid duplicative and unnecessary regulations for dairies.

Sincerely,

A handwritten signature in black ink, appearing to read 'AFC', is written over a faint, light-colored signature line.

Program Coordinator

C: Charles "Chuck" Ahlem, Chairman, Dairy Cares
Michael Boccadoro, Executive Director, Dairy Cares
Paul Sousa, Environmental Services Director, Western United Dairymen
Kevin Abernathy, Director of Regulatory Affairs, Milk Producers Council
Lynne McBride, Executive Director, California Dairy Campaign