LOS ANGELES COUNTY
SOLID WASTE MANAGEMENT COMMITTEE/
INTEGRATED WASTE MANAGEMENT TASK FORCE
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April 30, 2015

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

Dear Mr. Decio:

CALRECYCLE'S PROPOSED REGULATION TEXT AMENDING TITLE 14 AND 27 OF THE CCR - COMPOSTABLE MATERIALS/TRANSFER PROCESSING REGULATIONS DATED APRIL 2015

The Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force) appreciates the opportunity to comment on CalRecycle's consolidated regulatory revisions to Title 14 and 27 of the California Code of Regulations, which were released for a 15-day comment period on April 21, 2015. The proposed regulatory revisions address: (1) Compostable Materials Handling Operations and Facilities Regulatory Requirements; (2) In-Vessel Digestion Operations and Facilities Regulatory Requirements; (3) Enforcement of Solid Waste Standards and Administration of Solid Waste Facility Permits, Loan Guarantees; and (4) Joint Permit Application Form. The Task Force recognizes and appreciates CalRecycle's efforts to revise and adopt new regulations in order to manage "compostable materials" within the State in a manner that protects the public's health and safety. The Task Force continues to firmly believe that an integrated approach is necessary to reduce our dependence on landfilling while considering the health and safety of the public and environment. In order to facilitate an integrated approach, <u>the proposed regulations must be applied uniformly to all technologies (emphasis added)</u>. This would help create <u>a level playing field for all landfill diversion technologies</u> to be successful in the future and help compliance with AB 341 (2011) and implementation of AB 1594 (2014) and AB 1826 (2014) (emphasis added).

We had previously reviewed the proposed regulations and would like to offer the following comments on the revised proposal with the goal that our comments and concerns will be addressed prior to submittal of the proposed regulations to the State Office of Administrative Law (OAL) in order to ensure public health and safety as well as

protection of our environment which must be the number one priority of CalRecycle (emphasis added).

General Comments:

1. As previously indicated by the Task Force on several occasions starting with our letters of August 13, 2008, December 8, 2008, June 14, 2011, May 15, 2012, November 21, 2012, March 28, 2013, October 10, 2013, and October 30, 2014, there is a clear need for CalRecycle to define the terms "organic", "organic material," "non-organics" and "non-compostable organic," such as plastic material [e.g. Sections 17850(c), 17852(a) (13.5), (26), etc. (emphasis added). These terms are being used by CalRecycle throughout the Draft Regulation Text without having defined their terminology. The Task Force respectfully requests CalRecycle to (1) define these terms through the regulatory process, or (2) avoid further use of these undefined terms.

2. In general, the California Environmental Quality Act (CEQA) document is used by the appropriate Local Enforcement Agency (LEA) and CalRecycle to issue a Solid Waste Facility Permit and/or the State Regional Water Quality Control Board (Water Board) to issue Waste Discharge Requirements. In many cases, the LEA, CalRecycle, and/or Water Board use the CEQA document prepared by another entity (the "Lead Agency") as a tool in the issuance of the Solid Waste Facility Permit/Waste Discharge Requirements. Thus the LEA, CalRecycle, and/or Water Board become the "Responsible Agency" pursuant to CEQA. In some cases, the LEA, CalRecycle, and/or Water Board are identified as the entities to monitor and enforce some of the mitigating measures adopted to address negative impact(s) of the project as identified in the project's CEQA document even though they may be outside the State minimum standards adopted for solid waste facilities. Unfortunately, this fact may not be known by these agencies' field personnel resulting in the lack of monitoring and enforcement of the appropriate mitigating measures (emphasis added).

   As such, the proposed "Joint Permit Application Form" should be modified to indicate if the LEA, CalRecycle, and/or Water Board are the "Responsible Agency" pursuant to the requirements of CEQA and enumerate mitigating measures that these agencies are responsible for monitoring and enforcing (emphasis added).

Specific Comments:

1. Section 17852, Subsection (a), Paragraph (12), "Compostable Materials Handling Operation" or "Facility" - The proposed expansion of "compostable materials handling operation or facility" definition to include "*vegetative food material composting facilities*" may not be allowable since it expands the requirements of AB 1826 (Chapter 727 of the 2014 State Statutes) as stipulated in its

Section 42649.82, Subsection (d), Paragraphs (1) (B) and (2). AB 1826 was chaptered using the existing "compostable materials handling operation or facility" definition and does not incorporate any future addition and/or deletion. This issue needs to be addressed prior to promulgation of the proposed regulations.

2. Section 17852, Subsection (a) (26), "Mixed Material." – The existing definition refers to "non-organics" and "plastics" (emphasis added). As previously indicated, these terms need to be clearly defined for the purpose of "Compostable Materials Handling Operations and Facilities Regulatory Requirements," and "In-Vessel Digestion Operations and Facilities Regulatory Requirements." (Title 14 of the CCR, Division 7).

3. Section 17852, Subsection (a) (27.5) (A) and (B), "Nuisance." – Based on the proposed definition, "nuisance" may be anything that is injurious to human health and affects at the same time an "entire community" (emphasis added). Please expand the definition to specifically define the term "entire community" and factors considered to define the term. For cases such as surface and ground water contamination or "odor" what criteria are to be used to establish the boundaries of the entire affected community?

   Based on the proposal, it is next to impossible for a regulatory agency to substantiate the existence of any nuisance within the entire community based on the tools currently available to regulatory agencies. Secondly, it makes it financially impossible for a private citizen to substantiate the existence of any type of nuisance.

   It is strongly recommended the proposed definition be revised by deleting Subparagraph "B" and deleting the word "and" at the end of the Subparagraph "A."

   The foregoing is also applicable to Section 17896.2, Subsection (a) (20).

4. Sections 17854.1 and 17857.1 – Please provide a list of criterion used for establishing a threshold limit of 12,500 cubic yards for "Green Material Composting Operations" under the "EA Notification Tier" and "Registration Permit Tier."

5. Section 17855.2, Subsection (a), "Prohibitions" – It has been indicated that composting residential food materials and residuals that may contain unprocessed mammalian tissues, including but not limited to, flesh, organs, hide, bone and marrow do not constitute "compostable material handling operation or facilities." Prior to granting such an exemption, the impact on public health and the environment needs to be addressed.

6. Section 17856 – Agricultural Material Composting Operations.

   - Subsection (c) – This Subsection indicates that an Agricultural Materials Composting Operation may handle unlimited quantities of agricultural waste materials of plant and animal origin as feedstock on the site. It has been further stated that such an operation is subject to inspection by LEA on annual basis. Considering that such an operation may be a nuisance to adjacent properties due to potential odor generation, there is a need for more frequent and inspection by the LEA (i.e. at least on a quarterly basis).

   - To assist local governments with the effectiveness of their diversion programs, this Section needs to be expanded to include the following new subsection:

     "Subsection (e) – These sites shall record the quantities of agricultural materials received, by jurisdiction of origin, and submit the data to the appropriate jurisdictions on a calendar quarterly basis."

7. Section 17857.1 – Green Material Composting Operations and Facilities. To assist local governments with the effectiveness of their diversion programs, this Section needs to be expanded to include the following new subsection:

   - "Subsection (d) - These sites shall record the quantities of green materials received by jurisdiction of origin and submit the data to the appropriate jurisdictions on a calendar quarterly basis."

8. Section 17862 – Research Composting Operations. Please expand to (a) require surface and ground water protection, (b) prohibit any surface water from leaving the property without a National Pollutant Discharge Elimination System (NPDES) Permit, and (c) control and mitigate any odor nuisances and obtain a permit from the appropriate local air pollution control district/air quality management district.

9. Section 17863.4, Subsection (f) – Odor Impact Minimization Plan. We strongly recommend specifying a timeframe by which the Enforcement Agency (EA) is to direct the operator to prepare and implement a Best Management Practice Feasibility Report (Report) as specified in Section 17863.4.1. We also strongly recommend specifying a timeframe (possibly a week) within which the EA would review the results of the Report in order to reduce and eliminate the time the public is exposed to the odor nuisance. If the foregoing measures are ineffective in addressing the odor nuisance then alternatives should be considered such as enclosing operations within a structure that operates under negative pressure. As an alternative, the facility's permitted daily waste intake can be incrementally reduced until such time the nuisance is eliminated or reduced to a level that is no longer a nuisance to the public. Considering odor nuisances are hazardous to public health and safety, it is imperative that mitigation measures be clearly

established to ensure such nuisances are addressed in an efficient and timely manner.

10. Section 17868.5, Subsection (a) (1) – It is next to impossible to visually measure the level of physical contaminant to 1.0 percent or less by weight. It is recommended that (1) a minimum of 5 percent of daily incoming feedstock, (b) a percentage established based on a 90 percent confidence level of the incoming feedstock, or (c) at least one truck load, whichever is the greatest, shall be tested. Each sample shall first be weighed followed by collecting and weighing the physical contaminants. The percentage of physical contaminants shall be determined. The load shall be rejected if physical contaminants are greater than 1.0 percent of total weight or if the load contains materials that do not meet the definitions of green material in Section 17852(a)(21) or vegetative food materials in Section 17852(a)(20)(A).

11. Section 17896.1 (c) - It has been stated that digestion of organic materials (both "compostable" such as green materials and "non-compostable" such as landfill plastic liners) can occur naturally. Please refer to the General Comment #1 and Section 17896.2(a)(7), and verify the accuracy of the said statement.

12. Section 17896.1, Subsection (d) – In part, this Subsection states "…..However, no city or county may promulgate or enforce laws which otherwise <u>conflict</u> with the provisions of this Chapter (emphasis added)." Such an authority is far reaching and it is limited to the State Legislative body and not the State Administrative body because the proposal would negatively impact a local jurisdiction's land use decision. As such, the term "conflict" needs to be defined or the statement should be revised to read "….However, no city, county, or special district may promulgate or enforce laws which are less restrictive than the provision of this Chapter."

13. Section 17896.2, Subsection (a), Definitions – Please expand this Subsection to provide definition for the processed mammalian tissue, flesh, organs, hide, blood, bones, and marrow.

14. Section 17896.2, Subsection (a) (20) – Nuisance. Please refer to the Specific Comment #2 for concerns and recommendations.

15. Section 17896.21, Drainage and Spill Control. – The proposed requirements need to be expanded to prohibit any off-site drainage without a NPDES Permit.

16. Section 17896.30, Odor Best Management Practice Feasibility Report – Pursuant to Sections 17852 (a) (27.5) and 17896.2 (a) (20), please identify/describe the boundaries of the community that may potentially be affected.

17. Section 17896.45, Record Keeping Requirements – Please expand to require each operator to record the quantities/tonnages of incoming waste received and

outgoing residual waste, by jurisdiction of origin, and submit the data to the appropriate jurisdictions on a calendar quarterly basis."

18. Section 18302, Subsection (c), Written Complaints of Alleged Violations – Please revise this Subsection to require the EA investigate any odor complaint by the next business day instead of the stated 15 days.

19. Section 18302, Subsection (d). – Please expand Line #1 to insert the phrase "but not later than one business day" after "…as soon as practical,"

20. Section 18302, Subsection (d) (2). - Please expand the paragraph to require the EA to also collect weather related data for the time that the odor complaint was received.

21. Instructions for Completing the Application for Solid Waste Facility Permit and Waste Discharge Requirements.

    - Part 2. Item E.12, MSW- Please expand to define the term "commercial sources" to be consistent with the definition provided by AB 341 (2011), as amended.

    - Part 3. Item A.1.a.2 – Please expand line 8 to also include "compost."

    - Part 3. Items A.4. "I" and "J" – Please expand to describe the disposal footprint by latitude and longitude and expressed in degrees, minutes, and seconds, or decimal degrees identifying the boundaries of the waste footprint for existing and/or proposed new areas.

Pursuant to the California Integrated Waste Management Act of 1989 (Assembly Bill 939 [AB 939], as amended) and Chapter 3.67 of the Los Angeles County Code, the Task Force is responsible for coordinating the development of all major solid waste planning documents prepared for the County of Los Angeles and the 88 cities in Los Angeles County with a combined population in excess of ten million. Consistent with these responsibilities and to ensure a coordinated, cost-effective, and environmentally sound solid waste management system in Los Angeles County, the Task Force also addresses issues impacting the system on a countywide basis. The Task Force membership includes representatives of the League of California Cities-Los Angeles County Division, County of Los Angeles Board of Supervisors, City of Los Angeles, waste management industry, environmental groups, the public, and a number of other governmental agencies.

The Task Force respectfully requests that CalRecycle consider the above comments and make appropriate changes to the revised regulations to address <u>public health and safety</u> as well as the <u>land use authority of cities and counties</u> prior to submittal of the

proposal to the OAL (emphasis added). If you have any questions, please contact Mr. Mike Mohajer of the Task Force at MikeMohajer@yahoo.com or (909) 592-1147.

Sincerely,

Margaret Clark

Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Management Committee/
Integrated Waste Management Task Force and
Mayor, City of Rosemead

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cc: CalEPA (Matt Rodriguez)
CalRecycle (Caroll Mortensen, Ken DaRosa, Mark De Bie, Howard Levenson, Brenda Smyth, Robert Holmes, and Georgjan Turner)
California Air Resources Board (Mary Nichols)
California Department of Food and Agriculture (Annette Whitford)
State Water Resources Control Board (Charles Hoppin, Thomas Howard, Leslie Graves, Scott Couch, and Roger Mitchell)
Each Member of the Los Angeles County Integrated Waste Management Task Force