

May 6, 2015

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**RE: VIA EMAIL  
15-Day Draft Comments**

Dear Mr. Decio:

Thank you for the opportunity to comment on the Notice of Changes to Proposed Compostable Material, Transfer/Processing Regulations. I appreciate that a number of my previous comments have been taken into consideration and addressed. However, I continue to have concerns with a few aspects of this current package:

**Vegetative Food Material.** While I am OK with the addition of a new incoming contamination limit, I still believe the fundamental definition is flawed. I am not aware of any food-containing material that doesn't meet the new "Agricultural by-Product Material", that meets the new proposed definition and is also something that generators in CA routinely need to send to a compost facility. I have long been an advocate for allowing the lower-tier facilities to accept food scraps. This definition, which I believe is trying to accomplish this, is so restrictive that it does not serve this purpose (or any purpose I can conceive of). Can the Department provide a practical example of a feedstock routinely generated in CA that meets this definition?

Perhaps a better solution is to set a maximum volume of food scraps at a Registration-tier food material composting facility. Since this tier of facility will be limited to less than 12,500 cubic yards on-site, (maybe roughly 100 tons per day) why not allow these facilities to accept up to 25 percent of "food material" (broadly defined) since, I imagine, the bigger concern with these facilities accepting food is odor, not blowing litter or contamination? Additional food scraps composting capacity is critical considering the pending requirements of AB 1826.

**Land Application.** Line 30, page 10, I think you mean "than" not "that".

While I applaud the Department's efforts to curtail the land application (without composting) of compostable material and/or digestate, I continue to have concerns with how these proposed rules will be enforced, particularly when it is common for a compostable material generated in one county to be land applied in another. It would seem critical to make the point of

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compliance with the metals, pathogens, and inerts requirements be the producing facility (i.e., at the chipping and grinding facility and/or the digestion facility), as they currently are for compost (which has undergone an EPA approved pathogen reduction process, which chip & grind and most digestate will not). Therefore, verification of compliance (line 53, page 10) should not be "upon request" of the EA, but should be maintained at the point of production, should be kept on file for inspection by the LEA and should be available to any LEA at any time for verification purposes. Further, any chipping and grinding facility or digestion facility proposing to send compostable material or digestate to land application should be required to maintain a log of locations where material was applied. Why would CalRecycle think it appropriate to require less regulation for land application of compostable material and/or digestate then for compost? Any permitted composter is required to conduct regular lab analysis, maintain those records on site, ensure compliance with metals, pathogens (and in the future, inerts) prior to application of the material, and have records onsite at all times for LEA inspection. Again, I am curious how CalRecycle can justify a lower regulatory threshold for materials that pose a greater potential threat and have not undergone any approved treatment process.

Page 10, line 29 (1) I must reiterate that the point of compliance should be at the point of production (as it is for any permitted compost facility), not "at the time of land application". Has the Department, or any of the EAs considered how to properly take a sample from a pile of to-be-land applied compostable material or digestate once it is piled on land? Has the Department considered that "at the time of application" has already occurred once the material is dumped on the application site? In the case that this material does not meet either the metals, pathogens, or inerts contamination requirements, how is it to be handled? Does the Department expect the producer to remove and dispose of the material properly? By not requiring compliance at the point of production, CalRecycle is setting up a very weak system of oversight.

Page 10, Line 38 (a), How is the EA from one county, going to enforce the land application of compostable material and/or digestate in another county? What jurisdiction does an EA have outside of their home county? How is the EA to be made aware of land application locations? Is the burden of EA and RWQCB consultation on the producer?

Page 11, line 9; as I have commented before, providing this loophole to local government seems to provide a very un-level playing field, particularly given that historically some local governments have sometimes been challenged finding markets for organics. What is the basis for this exemption?

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Page 20, Chipping & Grinding Facilities, Line 47, “compost” should be “chipped and/or ground material”

Page 22, Line 10, Odor Impact Minimization Report. I continue to believe that:

1) CalRecycle should develop some useful guidance on the efficiency of odor reducing BMPs, before requiring operators to implement them – specifically “*the effectiveness of the BMP in reducing odor impacts*” , and

2) 14 days is far too short a time frame for an operator to prepare the Odor BMP Feasibility Report.

Page 23, Line 52, Sampling and Testing requirements. Since the intent (and responsibility) of CalRecycle is to require all chip & grid operations conducting direct land application of their material to meet the maximum metals and pathogen requirements it would seem as though these should be as stated in 17868.1 – 17868.3, as these are required of all compost facilities. One would simply need to add “compost, chipped and ground material, and/or digestate” to this section, rather than having it specifically in the definitions section.

I think it is important to reiterate here that all compost facilities (except those producing *de minimus* amounts) are required to have the results of all analytical sampling, performed by laboratories, received at the facility, before material can leave the production facility. This standard has been in place for many years and is accomplished by the vast majority of composters. I still do not understand why CalRecycle staff would propose to reduce this standard for a material that has demonstrated a strong potential for abuse (i.e., chipped & ground material for direct land application), and has demonstrated the potential to spread imported pests and weed seeds. **The direct land application of processed green material is the greatest threat to the continued viability of the composting industry. Please do not approve this increasingly used loophole in the regulations. CalRecycle should be doing everything it can to reduce, discourage, and/or prevent this practice.**

In addition, clarifying that chipped and ground material to be land applied must meet §178686.1 - §17868.3 would clarify what happens to material that fails to meet the metals, pathogens, and/or physical contamination limits, well before they are spread on agricultural land. A sample failing these tests, yet already staged for spreading, defeats the purpose of these standards in the first place.

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Page 26, Line 16, Physical Contaminants. While I appreciate that CalRecycle staff need to make a compromise on the physical contaminant limit, requiring a contamination limit for compost is unnecessary and perhaps should be more stringent for material that is to be directly applied to land without composting. The proposed 0.5 percent limit is no less picked from thin air (despite being used by CalTrans, (approximately 1 percent of the compost market in CA) than 0.1 percent was. CalRecycle has still provided no scientific support for this limitation. Further, there continue to be concerns with feasible laboratory analytical methods for correctly and consistently determining compliance with this standard. As such, the proposed text on line 34 seems to allow an operator-derived field method, not a lab method. Since all composters, chip & grind land appliers, and digesters will be held to this standard, and all producers will be required to test the same material for metals and pathogens, using accepted, proven laboratory analytical methods, it seems unfathomable that CalRecycle would abandon lab methods for physical contaminants.

I look forward to discussing these comments with you at your convenience.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Matthew Cotton', written in a cursive style.

Matthew Cotton