



**ASSOCIATION OF
COMPOST
PRODUCERS**
"We Build Healthy Soil"



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May 6, 2015

Mr. Ken Decio
Senior Integrated Waste Management Specialist
Department of Resources Recycling and Recovery
PO Box 4025
Sacramento, CA 95812-4025

Dear Mr. Decio:

**Re. CalRecycle Regulatory Revisions to Title 14 and 27; 15Day Text Comment
Letter**

The Association of Compost Producers (ACP) is pleased to offer this letter to make comments and recommendations on CalRecycle's 15 day revisions text to the Title 14 and 27 Compostable Materials Handling and Transfer/Processing Regulations.

ACP is a non-profit association of public and private organizations representing the vast majority of compost producers in the state. We are dedicated to increasing the quality, value and amount of compost being used in California. We do this by promoting activities and regulations that build healthy soil, benefiting people and the environment. ACP is also the California State Chapter of the U.S. Composting Council. We are largely supportive of the revisions and view them as a positive step forward to assist better preparing the state to manage a significant increase in organics diversion to meet California's 75% Recycling Goal. ACP members are leaders in the California compost industry and work together to increase compost markets and improve compost product and manufacturing standards. The association provides education and communication on compost benefits and proper use through support of scientific research and legislation aligned with developing and expanding quality compost markets.

To ensure that the revised Title 14 and Title 27 regulations promote a commercially viable organics management industry, ACP offers the following comments.

EDITS WE SUPPORT

ACP supports many of the changes that were made based on the initial round of comments, including:

- Agricultural By-Product Material Definition: Clarifying the "Agricultural By-Product Material" definition (lines 43-49) is necessary in order to provide the best quality bioproducts.
- Vegetative food material contamination: *Exceeding 1% physical contaminant* operationally defines it as "solid waste facility", must obtain a solid waste handling permit.
- Physical Contamination Limits: We can support CalRecycle making the lower limit of physical contaminant (within the land application section, § 17852. Definitions (24.5)(A)1., and especially the Physical Contamination Limits, § 17868.3.1) at 0.5% by dry weight. We will discuss the possibility of creating alternative methods for measuring physical contaminants, as well as providing objective guidelines for these regulations, in the next section.
- Excluded Activity Edits: The expansion of the foot print for small compost piles <100 yd³ at any time, from 500 ft² to 750 ft² makes sense, since a 100 yd³ pile (the largest) could exceed 500 ft²

EDITS TO MAKE OR CLARIFY

While we do feel that these Title 14/27 regulatory revisions are moving in a direction that are increasingly workable for industry, some aspects of these regulatory revisions still require further attention.

Confusion of Sampling Frequency, Method and Parameters Between Various Facility Types

This version of the regulations still confuses between the *sampling frequency, sampling methods and parameters to be tested for the various types of facilities* (i.e. Chipping and Grinding Operations and Compost Operations, be they green, biosolids or digestate). Specifically,

Frequency of Sampling:

- Biosolids Composting operations not consistent for different parameters: As written in, §17868.1 (a),(2), large biosolids composters will have to sample monthly for metals and pathogens, but §17868.3.1 (b) requires sampling every 5000 CY for physical

contaminants. We feel this is inconsistent, and unnecessary given the fact that biosolids have not been associated with physical contaminants more than other feedstocks.

- To resolve this inconsistency and simplify compliance, on Page 26 – 17868.3.1(b), we request referring any statements of sampling frequency to §17868.1 (a)(1&2). This would make the monitoring frequency for biosolids composting consistent with federal and state requirements for metals, pathogens, and vector attraction reduction and would be appropriate for physical contaminant levels in biosolids.

Sampling Method: The language in this revision, as proposed, has introduced further confusion in the sampling protocol. Specifically, in §17868.1 Sampling Requirements, the taking of "composite sample" is specified in §17868.1 (a),(b) & (c). *This same protocol should apply to all "compostable material handling operations or facilities", i.e. chipping and grinding operations, not just compost operations, and the sampling should not be different for any potential contaminant (be they metals, biological or physical (trash)).*

In addition, in the Chipping and Grinding Operations & Facilities: § 17862.1.(d) – it states "sample every 5,000 cubic yards". Question: Is this a single sample or a composite sample? It says in the first sentence of this paragraph, "... shall sample every 5,000 cubic-yards of chipped and ground material produced...", not specifying the type of sample to be collected. But in the following sentence it says, if the "...facility produces less than 5,000 cubic-yards of chipped and ground material in a 12 month period, the operator shall analyze at least one composite sample of compost produced every 12 month period." So which is it? Also, there is no discussion here, or reference in this paragraph, nor in the list of definitions, as to what is a "composite sample." However, they are included under each of the various composting sections.

So we recommend clearing this up by simply eliminating the redundancy in the following sections and referring back to the "Sampling Requirements" section, i.e.:

- § 17868.3.1. (d) – should read: "Any sampling conducted to comply with this section shall require a compost sample, as per §17868.1 (b)."
- § 17896.58 (c) – should read: "Any sampling conducted to comply with this section shall require a compost sample, as per §17868.1 (b)."
- § 17896.61(d) – should read: "Any sampling conducted to comply with this section shall require a compost sample, as per §17868.1 (b)."

As stated, this uniform "composite sampling" method should apply to all "compostable material handling operations or facilities" (i.e. *both* chipping and grinding operations *and* compost operations). This can be easily clarified along with the frequency of testing, above.

To correct this confusion we recommend that either:

1. "Composite Sampling" be defined in the Definition section (§ 17852. Definitions.(a)), and simply put the wording of §17868.1 (b) in there (and refer all "composite sampling" references back to the "composite sampling" definition), or
2. Include "Chipping and Grinding Operations" in Article 7. Environmental Health Standards, § 17868.1. Sampling Requirements:

Parameters to be Tested:

- Article 7. Environmental Health Standards, § 17868.1. Sampling Requirements: This section starts with "All composting operations ..." and then includes in § 17868.1.(a)(1) "compostable material handling operation or facility". So do these regulations include "Chipping and Grinding Operations", or only "composting operations"?

We *strongly recommend* simply substituting the phrase "compostable handling material operations" for "composting operation", or adding "composting operation, or chipping and grinding operation" to the "Sampling Requirements" section.

Measuring Physical Contaminants:

As stated above, we can support the amended physical contaminant regulation that states, "compostable material and/or digestate does not contain more than 0.5% by dry weight of physical contaminants greater than 4 millimeters (no more that 20% by dry weight of this 0.5% shall be film plastic greater than 4 millimeters), as specified in section 17868.3.1, at the time of land application," (and also in "land application" definition). However, we've noticed that CalRecycle has still not addressed the conundrum that the current regulations create. Specifically, according to current CalRecycle regulations, non-composted material cannot be stored onsite for more 2 to 7 days. This is not enough time to receive tests back from organics testing laboratories.

Recommendation: To address this conundrum, we recommend that CalRecycle, through the LEA's, authorize chipping and grinding operations to either keep the material longer, otherwise, obtain a compost production permit. (Of course, in most instances, to keep the material longer will necessitate a compost permit, anyway).

In addition, we also believe that it benefits composters in the state to have a more efficient and cost effective manner to verify contaminant levels. We are, therefore, proposing test protocols to CalRecycle staff that can be performed in the field, and that are not dry mass based. Once these new tests and protocols are validated, calibrated and approved, the tests could be used in lieu of a dry mass based test. We will continue to seek approval from CalRecycle for these alternative testing methods. CalRecycle should consider referring to these alternative, but approved, test methods in these regulations, this would make this new 0.5% physical contaminant standard operationally workable. We would like to also leave the physical contamination testing method open to further innovation, and believe that an additional process of preparing guidance a document as a companion to this regulation package would provide an ongoing process for implementing these regulations, while providing for continuous cost and quality improvements.

Regulatory Revision Guidance Document and Process:

As discussed above, the ambiguity in the sampling frequency, methods and parameters, combined with the fact that there are multiple procedures and methods for performing, and reporting this information, it seems prudent for CalRecycle to develop a guidance document

that can be used by both industry and Local Enforcement Agencies to quickly mitigate against any potential confusion in the implementation of these regulations. For example, if CalRecycle were to develop alternative field testing to verify physical contaminant levels, this would not only be heartily embraced by many facility operators, it would also point to a need for operators to engage more directly with regulators to help achieve the objectives of this regulation in a potentially more timely and cost effective manner. However, we feel that more guidance in this area is warranted so as to give LEAs and facility operators clear direction as to the routine and reproducible implementation of these tests. We recommend that the proposed regulations include reference to a separate, "Guide to Title 14/27 Compliance Methods," that contains the proposed and verified field and lab sampling and testing methods. This guide could be unique to these new regulatory revision testing, but would also include the current industry standard testing methods used by the Seal of Testing Assurance (STA) compost producers promulgated by the US Composting Council's, Testing Methods for the Examination of Composting and Compost (TMECC). CalRecycle could publish and update this guide as new testing methods and standards are introduced with the input of labs, academia, industry associations, and compost operators.

Excluded Activities at Dairies and Rendering Facilities:

We have some questions as to the both the intentions and the workability of newly added dairy and rendering exclusions, i.e. "§ 17896.6. Excluded Activities. (a) (3) & (5)." Dairy manure digesters are becoming more common, and the digestate is used to enhance local soil quality. We question the motivation and environmental protection purpose of exempting "imported vegetative food material," used in these systems. We understand the operational motivation, to enhance bio-digester performance with these materials. However, we don't understand why the management of these materials should be exempt from these Title 14/27 regulations, while other compostable material in-vessel systems, i.e. non-dairy, are not exempt? In addition, this exemption could have the unintended consequence of providing a pathway for these materials to be processed, that avoids the same scrutiny that other facilities receive in terms of protecting human health and the environment, the stated purpose of these regulations.

Similarly, rendering facilities are proposed to be exempt from the proposed regulation. While we realize that rendering operations have their own set of regulations, it is not clear why they would be categorically excluded from these regulations. Again, this is unclear considering the potential for public health and safety and environmental protection issues arising from in-vessel digestion of rendering material. These operations could include, for example, potential odor concerns of a large-scale in-vessel digester operation co-located at a rendering operation. These facilities could be readily included in existing permitting tiers that these operations could fall under based on the proposed and actual volume of operation.

Compost producers and other in-vessel digester operations, that use the same "vegetative food material" feedstock, are not exempt from these regulations. They, therefore, have ongoing LEA oversight, to assure that public health and the environment are protected. However, these above exempted facility types will have no regulatory oversight by the LEA, so how will the state, or more importantly the public, know if these facilities are in compliance? This is especially critical given California's 75% Recycling Goal, administered by CalRecycle, which *anticipates greatly increasing amounts of vegetative food material* that will not be going to landfills as they are currently, and now owing largely to the current implementation of AB 1826?

Record Keeping at Chipping and Grinding Facilities:

Subsection § 17862.1. (d), states, "...sample using a method that provides accurate results and has been approved by the EA." However, there is no statement or guidance as to recordkeeping and reporting. That is, the "sampling" and the resulting *testing* records, that will be required to "... meet the physical contamination requirements of section 17852(a)(24.5)." and "...meet the maximum metal concentration and pathogen reduction requirements of section 17852(a)(24.5)." This regulation implies that these facilities must collect samples and test, thereby generating data on these parameters throughout the year. We *highly recommend* that this record keeping be required, and/or a reporting loop be set up with each local enforcement agency. Further, this will correct omissions in permitting records and tracking of processing levels identified in the Calrecycle report, "The State of Recycling in California" (March 2015, Page 72, paragraph 2).

Conclusion

ACP appreciates the opportunity to provide these comments and recommendations to the proposed rule changes in this 15 day comment period. We believe that CalRecycle's ongoing commitment to maintaining a robust industry dialogue -- which is reflected in its willingness to meet with ACP representatives ongoing, as well as its strong participation in the ACP's various water conservation and healthy soil working groups, - is an essential component of fostering a robust organics management industry in the State of California. We look forward to continued collaboration in addressing the complex issues while improving both the economics of the industry along with the quality of California's environment.

Very truly yours,



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