



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

December 5, 2014

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 Regulations Compostable Materials, Transfer/Processing

Dear Mr. Decio:

On behalf of Dairy Cares, thank you for the opportunity to submit the following 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.

Due to the complexity of this proposed regulation, particularly in terms of the potential for consequences related to definition changes and negative impacts related to duplication or inconsistency with other existing regulations, significantly more time is needed to study this issue. Dairy Cares requests that the comment period be extended an additional 45 days to allow for stakeholders to better understand and provide useful comments on the proposed regulation.

Notwithstanding the above request, Dairy Cares submits the following comments regarding CalRecycle's proposed new regulations, which attempt to regulate compostable materials from various sources. As part of its purported rationale for this regulation, CalRecycle identifies

several public instances that highlighted the illegal disposal of compost with physical contaminants, such as plastic and metals.

In our view, CalRecycle has cast its net too wide and created the unintended consequence of regulating materials, at least with respect to the dairy industry, that are already sufficiently controlled. It appears to us that many industries that could be affected by these regulations are already extensively regulated and that these regulations should contain language that clearly excludes, rather than includes, these materials.

Introduction

The regulations propose to regulate as “compostable material” all organic material with any potential to decompose, particularly when the material is applied to the soil. This includes manure, which is expressly defined as an agricultural waste.

CalRecycle staff has long expressed their particular view that any compostable materials must be regulated as solid waste, unless their handling and disposal is expressly excluded as a defined beneficial use under detailed regulations.¹ Cal Recycle staff believes that normal use or “beneficial use” must be viewed as “disposal,” absent an express exclusion, would regulate normal use of a useful product rather than regulate disposal facilities. The regulations place the burden on the person authorizing the activity (the operator) to prove activity falls within the detailed exclusions any time the Local Enforcement Agency, generally the county, says it has “reason to believe” disposal is occurring.

The regulations are confusing and are an attempt to make wholesale changes to the CalRecycle policies, changing definitions and key provisions of the existing regulations. The proposed regulations’ attempt to define agricultural materials that are clearly to be reused as “wastes.” This would create new restrictions that are unnecessary and outside CalRecycle’s expertise and statutory mandate. The proposed regulation would result in these materials becoming integrated into CalRecycle’s uniquely tiered permitting, which varies on the spectrum from a notice tier, a registration tier, and a full permit. Many materials may be regulated if they do not demonstrate they qualify for the exclusion and restrictions. CalRecycle’s continuous efforts to regulate agricultural use would result in paperwork compliance and would impose long term overhead costs on the food processing industry and on farmers using the byproducts. California dairy farms are already regulated with respect to storage and re-use of organic materials, cradle to grave; the proposed regulations would result in added restrictions that would constitute an unnecessary burden.

¹ “Without regulations to clarify when application of compostable material could be regarded as either beneficial or disposal, application of waste derived compostable material on agricultural land would need to be viewed as disposal. The only State requirements for land application would be with the SWRCB and the RWQCBs. Local governments could continue to address issues through development and implementation of local ordinances.”

“Draft -- Agricultural Land Application of Compostable Material: White Paper,” February 2010, IWMB.

All dairy farms in California's Central Valley are regulated by the Central Valley Regional Water Quality Control Board ("Regional Board"), one of nine regional boards 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, or about 1,200 dairies are regulated under a Regional Board General Order³ and the remainder are regulated via individual orders with essentially the same requirements. These requirements include:

- A Nutrient Management Plan (NMP), prepared by a certified professional crop advisor or equivalent,
- A Waste Management Plan (WMP), prepared by a licensed engineer,
- Environmental sampling and monitoring of soil, manure, water and plant tissue for compliance,
- Routine site inspections, record-keeping, and annual reporting, and
- Additional groundwater monitoring to assess water quality protection

Enforcement of the regulations is the responsibility of the Regional 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.

The major purpose of these regulations 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. 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.

14 CCR Divisions 7, Chapter 3. Article 8: Agricultural Solid Waste Management Standards

I. Compostable Material Definition

The regulations in Chapter 3.1 describe restrictions on compostable material handling operations and facilities. The definition of "compostable material" is the foundation of the regulation, and is found, along with other definitions, in 14 CCR Section 17852(a). In addition to describing "handling" restrictions, the definition of "disposal of compostable material" specifies that disposal activities are subject to regulation under Title 27, a compilation of landfill rules

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)

promulgated by Cal Recycle and the State Water Resources Control Board.⁴ The strict language of the definition of compostable material in the existing regulations is internally inconsistent with other parts of the proposed regulatory amendments. Under Section 17852(a):

(11) “Compostable material” means any organic material that when accumulated will become “active compost” as defined in section 17852(a) (1).”

In turn,

17852(a) (1) “Active compost” means compost feed that is in the process of being rapidly decomposed and is unstable. Active compost 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, or the equivalent of oxygen uptake.”

Based on this language, material that is (1) not accumulated; or (2) or that does not begin to compost and reach temperatures of 122 (or release CO₂ at a high rate) degrees should not be considered a “compostable material.” On the other hand manure due to its character would likely fall into the active compost category without regard to its eventual use. If it is not “compostable material,” it is not subject to the regulations. This suggests that clarifying the definition could help exclude any materials that do not need to be regulated.

II. Definition of and Regulation as Disposal

A. Definitions

The new regulations differentiate between defined categories of “compostable materials,” which, in turn, affect the way the material is regulated, including the conditions under which their handling is considered to become “disposal.” The existing categories include Agricultural Materials,⁵ Green Materials,⁶ Food Material⁷ and Vegetative Material (subset of Food

⁴ 14 CCR § 17852(a)(15)(D): If the activities at a site meet the definition of disposal of compostable material, the site shall be regulated as set forth in the Consolidated Regulations for Treatment, Storage, Processing or Disposal of Solid Waste (commencing at Title 27 CCR § 20005).

⁵ (5) “Agricultural Material” means waste material of plant or animal origin, which results directly from the conduct of agriculture, animal husbandry, horticulture, aquaculture, vermiculture, viticulture and similar activities undertaken for the production of food or fiber for human or animal consumption or use which is separated at the point of generation, and which contains no other solid waste. With the exception of grape pomace, agricultural material has not been processed except at its point of generation and has not been processed in a way that alters its essential character as a waste resulting from the production of food or fiber for human or animal consumption or use. Material that is defined in this section 17852 as “food material” or “vegetative food material” is not agricultural material. Agricultural material includes, but is not limited to, manures, orchard and vineyard prunings, grape pomace, and crop residues.

⁶ “(21) ‘Green Material’ means any plant material except food material and vegetative food material that is separated at the point of generation, contains no greater than 1.0 of percent physical contaminants by weight, and meets the requirements of section 17868.5. Green material includes, but is not limited to, tree and yard trimmings, untreated wood wastes, natural fiber products, wood waste from silviculture

Materials).⁸ Manure is clearly defined as an Agricultural material. In turn, under that definition it is also immediately identified as a waste, implying that any use then is implied to be disposal.

In summary, under the proposed amendments, Agricultural Material is waste that comes directly from agriculture but is not altered before being managed. Green Material is plant material separated at the point of generation that is not food material. The listed examples of Green Material is woody materials and landscaping wastes. Agency staff indicated it generally should not include trimmings from vegetables, though the definition is not clearly worded in this regard.

B. Disposal Definitions

Once the materials are determined to be wastes, it must be determined whether their disposal is regulated.

The proposed revision to 14 CCR § 17852(a), (15), adds broad language to the beginning of the definition of “disposal of compostable material,” specifying that it means: “(A) 1. The final

and manufacturing, and construction and demolition wood waste. Green material does not include food material, vegetative food material, bio solids, mixed material, material separated from commingled solid waste collection or processing, wood containing Lead-based paint or wood preservative, or mixed construction and demolition debris. Agricultural material, as defined in this section 17852(a) (5) that meets this definition of ‘green material’ may be handled as either agricultural material or green material.”

⁷ “(20) ‘Food Material’ means a waste material of plant or animal origin that results from the preparation or processing of food for animal or human consumption, and that is separated from the municipal solid waste stream.” Food material include, but is not limited to, food waste from food facilities as defined in Health and Safety Code section 113789 (such as restaurants), food processing establishments as defined in Health and Safety Code section 111955, grocery stores, institutional cafeterias (such as prisons, schools and hospitals), and residential food scrap collection. Food material does not include any material that is required to be handled only pursuant to the California Food and Agricultural Code and regulations adopted pursuant thereto.”

⁸ “(20) (A) ‘Vegetative Food Material’ means that fraction of food material, defined above, that is a plant material and is separated from other food material and the municipal solid waste stream. Vegetative food material may be processed or cooked but must otherwise retain its essential natural character and no salts, preservatives, fats or oils, or adulterants shall have been added. Vegetative food material includes, but is not limited to, fruits and vegetables, edible flowers and plants, outdated and spoiled produce, and coffee grounds.

“(38.5) (A) ‘Vegetative Food Material Composting Facility’ is a facility that composts agricultural material, green material, vegetative food material, additives, and/or amendments. A vegetative food material composting facility may also handle manure and paper products. An operation or facility that handles a feedstock that is not agricultural material, green material, vegetative food material, manure, or paper products, shall not be considered a vegetative food material composting facility. ‘Vegetative Food Material Composting Facility’ does not include activities excluded from regulation in section 17855.

deposition of compostable material on land, unless excluded by 14 CCR 17855....”⁹ It then revises existing language that deems lengthy storing or stockpiling to be disposal (a common type of provision in the tiered regulations for other materials), as follows:

(2) storing or stockpiling more than 200 cubic yards of compostable material ... on land for more than 30 days, except as provided in subdivision (A) 3.; or

(3) storing or stockpiling more than 200 cubic yards of agricultural material and, green material, or compost for more than twelve months on prime land that is zoned for agricultural land uses”¹⁰

These are fairly low numbers, implying that many dairies would not be excluded from regulation by this section.

As in the existing definition, a second part, § 17852(a) (15) (B), excludes certain activities from being “disposal,” if the land application activities satisfy specified criteria (in addition to use as daily cover at landfills and in mining reclamation¹¹).

Of most significance is the exemption for certain types of land application. Disposal does not include “land application of compostable organic material as defined in section 17852(a) (24.5).” § 17852(a) (15) (B) (3). “Land application” would now be broken out with its own definition section (presumably because of the level of detail in its new restrictions).¹² In existing

⁹ Section 17855 Contains Exemption such as for 1) if the materials composted are returned to the same facility or one owned by the same owners with less than 1000 cubic yards sold or given away on an annual basis; 2) vermicomposting 3) mushroom farming 4) very small composter 5) facilities with existing Cal Recycle Permits; 6) biosolids 7) biomass conversion 8) silviculture 9) temporary storage ag material not used on composting on mulch 10) chip and grind facility that returns the products to self-owned lands g) is part of an animal food manufacturing or rendering operation h) trimmings I) materials are handled in such a way as to keep the temperature below 122 degrees. J) Storage in bags no greater than 5 cubic yards.

¹⁰ An exclusion applies if the EA, after consultation with the applicable RWQCB and other agencies as the EA deems appropriate, makes a written finding that storing or stockpiling the material more than 12 months will not adversely affect the public health and safety or the environment.

¹¹Under slightly amended wording, this include beneficial reuse at a solid waste landfill, pursuant to Title 27, California Code of Regulations, section 20686; or mine reclamation in accordance with applicable law.

¹² “(24.5) ‘Land Application’ means either subdivision (A) or (B):

(A) The final deposition of compostable material and/or digestate spread on any land, including land zoned only for agricultural uses, under the following conditions:

1. The compostable material does not contain more than 0.1% by weight of physical contaminants greater than 4 millimeters as specified in section 17868.3.1;

2. The compostable material meets the maximum metal concentrations as specified in section 17868.2;

3. The compostable material meets the pathogen density limits as specified in section 58 17868.3(b)(1); and

regulations, the definition of “disposal” continues with the following shorter provision that troubles CalRecycle (and California Department of Food and Agriculture) staff in referring to CDFA regulations, which do not apply to bulk soil amendments unless they are sold with guaranteed nutrient content:

“‘Land Application’ means the application of compostable material, excluding food material or mixed solid waste for the following applications: to forest, agricultural, and range land at agronomic rates; in accordance with California Department of Food and Agriculture (CDFA) requirements for beneficial use as authorized by Food and Agricultural Code section 14501 et seq.; or for beneficial uses that may be otherwise exempt or excluded from regulation by CDFA.”

The proposed regulations continue to place the burden on the operator to prove activity is not disposal. § 17852(a) (15) (C).

Definition of and Regulation of Handling

4. The compostable material is not applied more frequently than once during a 12 month period, and, at the time of the application, the compostable material shall not exceed an average of 112 inches in total, accumulated depth. The EA, in consultation with the Regional Water Quality Control Board, may approve alternative application frequencies and depths, if the EA after such consultation determines that the alternatives will not adversely affect public health and safety or the environment.

5. Verification of compliance with this subdivision must be provided to the EA upon request.

(B) The final deposition of compostable material spread on land zoned only for agricultural uses under the following conditions:

1. The compostable material does not contain more than 0.1% by weight of physical contaminants greater than 4 millimeters; and

2. Prior to application, the California Department of Food and Agriculture (CDFA) has determined that the land application is in compliance with all applicable requirements established by CDFA under Title 3 of the California Code of Regulations, and CDFA has determined that the land application is agronomical beneficial; and

3. Prior to application, the EA has received confirmation that CDFA has made the determination specified in (B) 2. Above. ”

[Note: This subdivision (a)(24.5) does not apply to: 1) the use of compost produced in compliance with Article 3.1 and/or 3.2 of this Division, 2) the use of compostable material for gardening or landscaping on a parcel of land 5 acres or less in size, 3) the final deposition of compostable material spread on land by a Federal, State, or local government entity, provided the material is applied in accordance with applicable law, 4) beneficial reuse at a solid waste landfill pursuant to Title 27, California Code of Regulations, section 20686, or 5) beneficial reuse of bio solids pursuant to Part 503, Title 40 of the Code of Federal Regulations and State Water Resources Control Board General Order No. 2004-0012-DWQ, or site-specific Waste Discharge Requirements or other issued requirements from the State Water Resources Control Board or a Regional Water Quality Control Board having jurisdiction.

In addition to the use of “Compostable Materials,” the term “handling” is also effected in the way that might impact dairies or their feed suppliers. The regulations addressed in the proposed amendments also describe restrictions on “handling operations and facilities.”

The definition of “handling” is proposed to remain unchanged, reading as follows:

(23) ‘Handling’ means the processing, transfer, and storage of compostable materials. Handling of compostable materials results in controlled biological decomposition. Handling includes composting, screening, chipping and grinding, and storage activities related to the production of compost, compost feedstock’s, and chipped and ground materials.”

In addition, Chapter 3.1 contains broad exclusions that are separate and apart from the definition sections of the regulations. CalRecycle is stating that the definitions of “agricultural materials” is necessary to separate materials that are separated at the point of generation and has not been processed in “a way that alters its essential collection.” The disposal definitions for agricultural materials include “storing or stockpiling – more than 200 cubic yards more than 30 days – except, written findings are obtained.

Digestate

The third portion of the regulations deal with digestible materials, including manure. The rules appear to apply to most manure digesters except those at POTWs, or those that have a minimal volume that then reapplies the digesters material on their own property.

The rules propose to regulate in-vessel digestion, the transfer of processing and compostable materials, and the end products would also be subject to the compostable handling requirements. With respect to regulations, CalRecycle has indicated an interest in not regulating agricultural material derived from an agricultural site and returned to the same site. This is the premise for excluding pomace. Under the proposed regulating tiers, compostable materials that would be excluded from tiers include: 1) digesters at publicly operated treatment works; 2) Agricultural material derived from an agricultural site returned to the same site; 3) in-vessel digestion activities with less than 100 cubic yard on-site capacity, and 4) handling activities that are already subject to regulation.

These materials that are required to be under the notification tier, include: 1) limited volume in-vessel digestion; 2) research in-vessel digestion; 3) dairy in-vessel digestion operations; 4) distribution center in-vessel digestion operations. The restricted permit tier is for a medium volume in-vessel digestion facility, and full permit would be under large volume in-vessel digestion facility. The proposed regulation for dairy in-vessel digestion operations also applies to dairies that import solid waste to co-digest with manure and other agricultural materials in accordance with Waste Discharge Requirements.

Conclusion

The materials that are handled by dairies, both as feed and manure, are strictly managed under existing regulation. No additional regulation is required. Dairies should be excluded by definition either with respect to their operation or the materials they handle. Likewise, digestible materials are also fully managed and should be exempted as well.

We would respectfully request that CalRecycle reconfigure its regulation to exclude dairy materials as waste.

Sincerely,

A handwritten signature in black ink, appearing to read 'AFC', written in a cursive style.

Program Coordinator

C: Charles "Chuck" Ahlem, Chairman, Dairy Cares
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