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COMPOST COALITION

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December 5, 2014

Mr. Ken Decio
Senior Integrated Waste Management Specialist
Department of Resources Recycling and Recovery
1001 I Street
PO Box 4025
Sacramento, CA 95812-4025

Dear Mr. Decio:

Re. CalRecycle Draft Regulatory Revisions to Title 14 and 27 Regarding Compostable Materials Handling and Transfer/Processing

Dear Ken:

Introduction

The California Compost Coalition values the opportunity to comment on CalRecycle's proposed Title 14 and 27 revisions regarding Compostable Materials Handling and Transfer/Processing Regulations, and our participation in the entirety of the informal workshops and meetings conducted to date. CCC commends and supports CalRecycle in its efforts to update the existing regulations regarding compostable materials and transfer/processing facilities in order to address the changing nature of organic waste handling throughout California, as well as safely enable the needed growth in diversion of this waste stream to meet the 75% Initiative, Strategic Directive 6.1, and other sustainability goals of the state.

We have reviewed the Consolidated Draft Regulation Text, released originally on October 30, 2013, that has been provided for this Proposed Rulemaking, in addition to the corresponding Initial Statement of Reasons and Standardized Regulatory Impact Assessment (ISOR). We are generally supportive of the draft language provided for a majority of the issues being addressed, as they resulted from our participation in your robust informal rulemaking process, in many cases. However, we have significant concerns about certain key issues and are hopeful that our comments will result in revisions to the proposed text prior to the conclusion of this formal rulemaking process.

Economic Analysis

The *Standardized Regulatory Impact Analysis* provided as a section of the *Initial Statement of Reasons* for this rulemaking is fundamentally flawed as a tool for evaluating the full economic impacts on the compost industry. While the analysis may arguably provide a reasonable range of costs (with a daunting $31 million

median annual average and a range from approximately $800,000 to over $53,000,000) resulting from the rulemaking, it fails to evaluate the relevant impact on the composting industry or take into account a number of market forces and looming changes to market conditions expected over the next decade. We do not believe it is nearly enough justification to claim that the potential $53,000,000 annual price tag is reasonable, even given CalRecycle's responsibility to protect the public health, safety, and the environment, without further analysis of the compost industry and its markets.

CalRecycle's 2010 publication, *Third Assessment of California's Compost- and Mulch-Producing Infrastructure — Management Practices and Market Conditions*, estimated that the total tonnage processed by California's organics processing and composting industry, was 9.3 million tons, bearing approximately 9 million cubic yards of marketable materials; current volumes are uncertain, but likely range from 10 to 12 million tons. Prices for the compost, mulch, and boiler fuel products range from $5 to $25 per ton, or a median of $10 per ton, which tends to correlate to the estimated current average market price for compost, a price which has proven largely stable for the last decade or more. The above factors provide a total estimated market valuation of $100 to $120 million for compost and mulch products in 2014.

Organics processing facilities also receive tipping fees for the inbound green and food materials. Tipping fees for green and food materials range from free (at many significant Southern California landfills) to over $100 per ton (at some Bay Area transfer stations) with a typical incoming tipping fee likely to fall between $10 to $35 per ton on a statewide basis, with an average of approximately $20 per ton. Operators could expect the 10-12 million tons of feedstock to generate additional revenue of approximately $240 million. Our estimated total revenue for organics processing operations - between tipping fees and product prices – would appear to fall in the range of $350 -$400 million.

If the "high cost scenario" becomes true, the direct costs, nearly $51,000,000 in 2015, represent a 13% to 15% increase to the total industry revenue, and would represent an expected uptick in the median market price of $9-$10 per ton of materials sold, or $4-$5 per ton of feedstock, or some combination thereof. This type of cost increase will cause serious market disruption as a majority of potential buyers will seek alternatives (i.e. organic or synthetic fertilizers) or opt out entirely and not purchase compost or mulch products at all. Compost and mulch products do not have the same inelastic demand of gasoline (few products do) as their agricultural customers and other buyers tend to be highly price-sensitive. While tip fee revenues are not quite as price sensitive, competitive pressures from lower-cost options will still take time to overcome. Much of the current demand for compost and mulch is the result of tireless marketing by industry, with the aid of some policy and market drivers. The potential market disruption will be insurmountable for many operators and lead to a retraction in available organics processing and composting capacity unless there is some phase-in period to allow a gradual price adjustment process to occur.

Furthermore, the ISOR estimates a potential to create from four to 57 jobs at composting and in-vessel digestion facilities, and seven jobs at laboratories, associated with this rulemaking. The cost for this potential job creation appears to range from $200,000 to nearly $1,000,000 in market "value", based upon the low- and high-cost scenarios. We would question whether it is reasonable that the "Department expects the proposed regulations to create positive, net job growth". In our estimation, the likely industry downsizing that would occur from the adoption of current draft regulatory language will cause negative, net job loss.

While the passage of AB 1826 (Chesbro) and AB 1594 (Williams) could not be anticipated during development of the ISOR, CalRecycle's own policy directives have expected massive growth in the organics processing and composting infrastructure, an expectation that is now amplified given this recent legislation. Absent any unforeseen market drivers coming into play, the price instability created by adoption of this rulemaking will be detrimental to the ability of operators to garner loan approvals, or otherwise capitalize new equipment or land purchases, add labor, or absorb sales losses, while the industry undergoes a massive market correction.

Physical Contamination Limits

Clearly – based upon our conversations with other industry members and stakeholders, as well as conclusions found in your own economic analysis in the Standardized Regulatory Impact Assessment – no issue is more controversial, nor will have a greater impact on the composting industry in California than your proposed limits on physical contaminants allowed in compost products (currently set at 0.1%, by weight).

We believe that the proposed physical contamination limits are unjustified, unachievable (given current and foreseeable compost market conditions and available technology), and will cause significant harm to the financial health of composters statewide, stifling industry growth at one of the more critical points in its history, when multiple policy directives point to approximately 10 million tons of organics being removed from landfills over the next decade, material that is likely to take years of concerted outreach, education, and processing and technology improvements to clean up, tremendously increasing the demands on organics processing and composting companies to provide service.

As representatives of an industry that prides itself on providing environmental solutions on multiple fronts, we believe that CalRecycle - by setting physical contamination limits – are attempting to solve a perceived problem for which scant supporting evidence is available. Heretofore, existing regulations, industry standards, and market forces have worked effectively to enable the members of this still-young (but growing) industry to deliver millions of tons of compost products to an ever- increasing number of willing buyers with minimal, if any, environmental disruption or threat to public health and safety.

While we would prefer that CalRecycle continue to allow market forces to dictate the level of allowable contaminants – similarly to their regulation of other processed recyclable commodities – the below recommendation has been previously provided to, and discussed with, your staff. We have refined it and include it with these comments to assure its formal consideration.

Compost and Green Waste Physical Contamination Limit Proposed Recommendations

1. Sampling and Testing Protocol *– Labs which frequently test compost have expressed concern that the sample size, sampling procedure, and the methodology in the TMECC (Test Methods for the Examination of Composting and Compost – a national standard developed by the US Compost Council for lab testing) may be inadequate for certain material types. Specifically, the sampling protocol is inadequate to allow repeatable results for physical contaminants >4 mm, due to the wide range of particle sizes of materials proposed for regulation. A larger sample size and standardized collection methodology needs to be agreed upon prior to implementation of rule. TMECC is currently under review and time is ripe to establish new parameters. In addition the testing methodology is rudimentary and may not be able to provide repeatable results. Labs have indicated a much larger sample size than is typically submitted may be needed to adequate assess physical contamination across the broad range of particle sizes, particularly for the larger size products (i.e. 3" minus and above).*

***2. Field testing methodology**. A field testing methodology needs development (along with guidance and/or training) for LEAs to assure field testing conducted produces results which are standardized and repeatable.*

3. Proposed phased-in approach for Physical Contamination Limit

Prior to implementation of the standard for either material type, the above Sampling and Testing Protocols for laboratory samples and field samples must be adopted. CalRecycle shall engage a stakeholder panel to develop the protocols in 2015.

Phased Implementation Schedule – Green Material Compost and Chip and Grind Mulch	
Adoption of sampling/testing methodologies – December 31, 2017	*1%*
January 1, 2018 –December 31, 2019	*0.5%*
January 1, 2020	*0.1%*

Phased Implementation Schedule – Mixed Material	
Adoption of sampling/testing methodologies – December 31, 2017	*2%*
January 1, 2018 –December 31, 2019	*1%*
January 1, 2020	*0.5%*

Data Collection and Reporting Proposal

All lab testing for physical contaminants would be required at labs participating in the USCC's Seal of Testing Assurance Program (STA), employing the TMECC method. The benefit of using STA certified labs is that the labs utilize a nationally-accepted, standardized testing methodology, and could provide periodic, anonymous reporting of compost and green waste testing data, including the range and mean for physical contaminants, to CalRecycle.

Preliminary information requested from our industry members (some of which has already been provided to and discussed at length with CalRecycle staff) reveals that current levels of physical contamination range from .01% to .015% for green material compost and 1.5% to 5% for mixed material compost. While new technology entering the market may be capable of removing contaminants from finished mixed material compost to below 1% levels, the current cost of this equipment appears to make it economically unsuitable for all but the largest volume facilities. Additionally, using conventional screening equipment to remove physical contaminants – likely the best option for most composters and requiring the use of smaller screen sizes (frequently down to 1/4" to 1/8") – creates product that is too fine for a majority of markets, while also creating significantly more "overs"(meaning lower landfill diversion) and increased production costs. Mechanized sortlines – as proposed in the ISOR, will require significant capitalization and lead in time for composters to install such systems; again, this type of investment will not be suitable for most small and mid-size facilities and will likely be affordable only for large, regional operators.

Anaerobic Digestion

CCC is generally supportive of the new stand-alone regulations for in-vessel digestion operations and facilities. However, we have concerns about the lack of clarity for regulation of Dairy In-Vessel Digestion Operations which appear to rely solely on the discretion of State Water Resources Control Board authority – where Waste Discharge Requirements (WDRs) are present – and limited LEA oversight.

The proposal to allow In-Vessel Dairy Digestion Operations to be permitted under an EA Notification if the facility operates under WDRs – without any apparent restrictions on the level of processing that may

occur at the site – creates considerable regulatory inequities for current and future digestion projects at non-dairy sites.
In our experience, WDRs fail to address a large number of issues considered in approval of a SWFP; absent issues include scavenging, traffic control, odors, hazardous waste handling, noise, personnel and users health and safety, supervision and training, and site security, to name a few. We recommend that processing not be allowed to occur at these dairy sites without requirements that the food materials received be introduced into the digester within a prescribed time limit (i.e. not to exceed 48 hours) typical of solid waste facilities.

Additionally, the digestate handling section § 17896.57(a)(2)(A) appears to require unnecessary permitting activity for composting facilities that would be composting digestate from an In-Vessel Digestion Operation which was co-located onsite. We would expect that a composting facility, with a full Solid Waste Facility Permit (SWFP) would also be able to compost digestate without additional permit revision to obtain an In-Vessel Digestion Facility Permit.

Land Application
CCC is supportive of the current language related to land application, with some additional restrictions. Land application continues to undermine potential feedstock sources for our industry, while increasing the potential for spreading pathogens, physical contamination, and invasive pests throughout the state. §17852 (a)(24.5)(A)(5) requires that the operator provide verification of compliance with sampling and testing requirements for metals, pathogens, and physical contaminants; this section is vague and needs to be modified to include specific language that any and all sampling and testing results related to compliance with this subsection be subject to the General Record Keeping Requirements found in §17869. We understand that chipping and grinding operations and facilities have restrictive time limits for the storage of materials onsite; however, this time limit need not impact their ability to receive and retain lab results after tested materials have shipped, in order to verify compliance, as noted above, when needed. Additionally, current language suggests that chipping and grinding operations would only be required to sample and test materials upon EA request; we do not support a lower standard for sampling and testing at chipping and grinding operations, as the materials they produce are processed to a much lower level than compost, and represent a significantly higher threat for the spread of pathogens and/or invasive pests. Chipping and grinding operations and facilities should be subject to the same materials sampling and testing requirements as composting operations and facilities. If the CalRecycle goal is to protect the public health, safety, and the environment – as is stated repeatedly in the ISOR – there appears no logical basis for lesser testing requirements for non-composted materials versus composted materials.

Odor Best Management Practice Feasibility Report
CCC supports this additional odor management regulatory process which would require operators to fully evaluate odor sources on their sites, with an eye on developing appropriate, effective mitigation measures for nuisance odors. While we understand that this new Odor Best Management Practice Feasibility Report would be required at a critical time in the compliance and enforcement process for an odor issue, it is highly infeasible that such a report be produced within 14 days, if the goal is to produce a comprehensive plan that may represent the operator's last, best chance to survive. Unless the odor issue is a proven threat to public health and safety – which is rarely the case – we see no good reason why allowing 60 days for proper development and submittal of this report should be a problem.

Research Composting and In-Vessel Digestion Operations

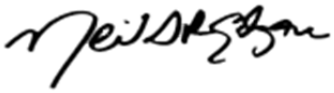
CCC is in full support of Research Composting and In-Vessel Digestion Operations as a necessary option for the development of innovative technologies and processes that allow these young industries to expand in a more environmentally-friendly manner. Many of our members have taken advantage of Research Operations to help them advance our understanding and adoption of feasible technology options that are now employed across the industry.

We believe the future of some new technologies may be in jeopardy, or innovation may be stifled at some levels, if the new draft regulations you have proposed are adopted to include a maximum of four years for an individual research operation. Many new technologies – particularly for potential in-vessel digestion options –come with a significant capital investment, with prices for infrastructure and equipment reaching into the tens of millions of dollars for even the smallest volume operations. Operators seeking to "kick the tires" on many of the technology options that are likely the future of organics processing will have a difficult time developing loans, grants, and other financing for a project with a two-year lifespan, let alone justifying the expense. Even the potential for the EA to extend the research operations for a second, and final, two years is onerous and represents a barrier to project development. We would recommend that the limit of two, two-year periods be removed, with current language retained which leaves the time limit at the discretion of the EA.

Conclusion

CCC looks forward to improvements to the proposed regulations which allow for continued industry growth, provide a level playing field with competitive operations, and set standards that are reachable, yet still provide reasonable protection of the public health, safety, and the environment. Our members operate permitted operations and facilities and have concerns about inconsistent enforcement of current regulations which has often left them at a competitive disadvantage. Given the expectation of tremendous industry investment to meet the imminent policy mandates to be implemented over the next few years, we are hopeful that enhanced enforcement mechanisms can be developed and employed that will keep the composting industry thriving and make our efforts worthwhile.

Sincerely,



Neil S.R. Edgar
Executive Director