



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 Compostable Materials and Transfer/Processing Regulations

Dear Mr. Decio:

The California League of Food Processors (CLFP) appreciates the opportunity to comment on California's Department of Resources Recycling and Recovery (CalRecycle) Proposed Compostable Materials, Transfer/Processing regulations dated September, 2014.

CLFP represents the \$82 billion dollar food processing industry in California. A number of our member companies are canners, freezers, dryers and dehydrators of fruits, nuts, and vegetables. The food processing industry is an important component of the economy of the State, generating thousands of jobs and significant economic activity.

We understand and appreciate that the central purpose of the proposed regulations is to protect public health and the environment by more effectively regulating "compostable materials." We share your concern about several incidents in recent years where haulers of municipal green waste inappropriately applied large amounts of residential green waste mixed with trash to farmland. These specific cases clearly warrant attention, but they have no connection to the legitimate land application operations conducted by food processors and farmers; activities that are already regulated by other agencies to prevent any harm to the environment or human health.

Land Application is a Beneficial Reuse of Food Processing Solid Byproducts

CLFP is most concerned about the revision of the definitions of "agricultural materials" and "land application" to include a presumption that they are "wastes" in the proposed regulation and the possible implications of that designation. As currently drafted, the proposed regulations may be unintentionally pulling unadulterated food processing byproducts into the world of "solid waste," and regulating an agricultural practice as "disposal of solid waste." This could subject such beneficial reuse practices to CalRecycle permitting requirements, and, possibly, regulate facilities that only briefly stockpile or store byproducts as "handling facilities." This added layer of regulation would discourage the very activity that the agency should be promoting; the beneficial reuse of organic material.

Food Processing Byproduct Land Application

Some, but certainly not all, food processors apply some of their solid organic byproducts to their own farmland or land owned by other growers. The byproducts are applied to the agricultural land as an organic soil amendment on a seasonal basis in a manner that is environmentally benign and causes no nuisance to the neighboring properties. Land application is a beneficial activity that reduces the amount of material taken to landfills, enhances soil structure, and reduces the need to apply synthetic fertilizer to grow crops.

The organic byproducts from fruit, nut, and vegetable processing plants include materials such as; stems, leaves, seeds, nut hulls and shells, peels, and off-grade or over-ripe or under-ripe produce that could not be used in the finished products. The byproducts may also include incidental amounts of soil removed from the raw product during handling.

Land applied food processing byproducts do **not** include packaging materials, trash, metals, glass, or toxic materials. The byproducts are solid or semi-solid organic residuals that do **not** contain wastewater, municipal green waste, restaurant or institutional prepared food waste, or municipal biosolids. The material is segregated by the processors from other waste streams specifically for land application or animal feed. The material is **not** stored or stockpiled at processing plants for extended periods of time and is **not** held under time and temperature conditions that would constitute a composting activity.

The material is typically loaded into trucks at the processing plants and then hauled to agricultural sites, where it is spread out by a grader and allowed to dry, and promptly disked into the soil. The depth and frequency that the byproducts are applied is determined by the established agronomic rate for the soil at the site and the nature of the material involved. At some sites the material may only be applied once a year, at others additional applications may comply with the agronomic rate. Incorporating the material into the soil in a timely manner prevents creating odors or an insect vector. Land application of food processing byproducts is **not** a waste disposal activity, and it is **not** a composting activity.

Based on our discussions with staff, CalRecycle seems to make a distinction between materials applied to a processor's own property and what is applied to other properties due to perceived issues with chain of control. CLFP would like to emphasize that *no legitimate commercial farming operation would allow toxics or trash to be applied to their land by a processor or a contract hauler* due to obvious food safety and environmental concerns, and the potential impact of these types of waste on the crops the farmers grow for their livelihood.

Land Application is Already Subject to Other Regulations and Oversight

Land application of organic material by food processors is generally regulated by the Regional Water Quality Control Boards, which impose site-specific permit conditions to ensure that land application will not result in degradation of groundwater or generate any nuisance conditions. In particular, California Water Code Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system must file with the Regional

Water Board a report of waste discharge (RWD). Sites that handle very low volumes of waste may qualify for a waiver.

The Regional Water Boards have a statutory obligation, pursuant to California Water Code Section 13263, to prescribe waste discharge requirements (WDRs) for each discharges of materials that could affect groundwater.

CLFP's understanding of the existing regulatory process is as follows:

- A farmer or processor who decides to start land applying solid food processing byproducts in regular and significant amounts must file a Report of Waste Discharge (RWD) to the appropriate Regional Water Board.
- The Board will review the RWD, and decide if the site will either; (1) require a permit (WDR), (2) qualify for a waiver due to the low volume of material applied, or (3) the amount is incidental and does not require regulation
- If a WDR is required (for wastewater and/or solid byproducts) the WDR will state that the material must be applied at an appropriate agronomic rate and not create any nuisance conditions.
- Some regional boards have not issued any WDRs for land application of food processing solid byproducts because they don't have that activity in their region. But if that activity were to occur the appropriate Board could take whatever action they deem is necessary
- Under the conditions of a WDR the processor or farmer cannot mix trash, restaurant waste, biosolids, or wastewater in with the food processing solid byproducts that are land applied. Prior to issuing the WDR the Regional Board will want to know what exactly is being applied, where it came from, and where it is going.
- The material that is land applied must be incorporated into the soil in a timely manner to avoid any significant odor or pest vector issues. However, they may be allowed to let the material dry on the surface of the soil for a couple of days.
- Land application of food processing solid byproducts is considered to be a beneficial reuse by the Regional Boards, as long as it is done in compliance with the letter of the permit
- If a land application site is not being managed in accordance with the permit, or there are any public complaints about the site, the Regional Board can, and will, take appropriate action

The key is applying the material at an established agronomic rate based on the material applied, the soil type at the site, and the crop that is grown there. In many cases multiple applications of material will be permissible, in some cases a single application may fulfill the agronomic rate. This is a site-specific determination. CalRecycle is arbitrarily proposing that sites be limited to only one application, which may conflict with some Regional Water Board WDR's that would allow multiple applications.

Land application of solid byproducts from food processing facilities is also subject to a myriad of federal, state, and local requirements, including:

- **Local air quality control districts** have the authority to investigate and cite food processors for nuisance odors and dust violations associated with land application of their solid byproducts (Health and Safety Code Section 41700).
- **City and county health/environmental departments** also have the authority to investigate and cite food processors for nuisance and dust complaints.
- **City and county zoning laws** also allow for local jurisdictions to regulate nuisances and issue special use permits to enable a municipality to control certain uses which could have detrimental effects on the community (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176).
- **Local vector control agencies** investigate complaints related to pest "vectors" creating a public nuisance or may transmit diseases as a result of land application (Health and Safety Code 2000).
- **The Federal Food and Drug Administration** is currently developing the final Produce Safety rule for Biological Soil Amendments (Subpart F) under the Food Safety Modernization Act which identifies possible routes of microbial contamination of produce and sets requirements to prevent or reduce the introduction of pathogens through soil amendments.

Years of practical experience, regulatory oversight, and careful monitoring at various locations has shown that properly managed land application of solid byproducts from fruit, nut, and vegetable operations poses no threat to local farms, water supplies, wildlife, or human health.

CalRecycle has not presented any substantive information to suggest that there are documented compliance problems specifically associated with any food processing land application sites. Adding new restrictions to those operations will increase compliance costs with no apparent benefit. If there are compliance problems associated with municipal green waste haulers or composting operations, then CalRecycle should focus its regulations and enforcement on those activities, not expand its regulatory purview into areas that do not require additional oversight.

CLFP's Recommendations

CLFP respectfully requests the following:

1. Classify Land Application of Food Processing Byproducts as a Beneficial Reuse

The overriding policy goal should be to encourage food processors and farmers to reuse organic materials in a beneficial manner rather than dispose of the residuals in landfills. CLFP is not aware of any significant problems associated with land application of food processing

byproducts as currently practiced and believes that a sufficient regulatory structure is already in place to deal with any issues that arise.

2. Exempt Land Application of Food Processing Byproducts from the Proposed Regulations

CLFP maintains that CalRecycle should exempt food processing byproducts from the proposed regulations because most sites are already regulated by other agencies, or the activity poses no threat to the environment or public health. An additional layer of regulation by CalRecycle is not necessary, and could be counter-productive by causing confusion regarding compliance obligations and discouraging land application altogether. Food processors should not be forced to send their byproducts to composting facilities because new regulations give them no viable alternative.

3. Utilize the Existing Code of Regulations Definition for Land Application

Regarding the definition of land application, CLFP recommends that CalRecycle use the definition already contained in the Food and Agriculture Code (section 14501), which states that *“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”* with the understanding that “food material” applies to restaurant or institutional prepared food waste, not commercial food processing byproducts.

4. Ensure that Food Processing Byproducts are Properly Defined

If CalRecycle chooses to define food processing byproducts for the purpose of CLFP’s proposed exemption, we recommend the following definition: *Food processing byproducts include solid or semi-solid materials from fruit, nut, and vegetable processing facilities such as stems, leaves, seeds, nut hulls and shells, peels, and off-grade or over-ripe or under-ripe produce that could not be used in the finished products. The byproducts may have incidental amounts of residual soil but do not include packaging material, trash, metal, glass, or toxic materials other than in de minimis amounts. Food processing solid byproducts do not include wastewater.*

5. Refine the Requirements for Agricultural Waste Materials

CLFP defers to agricultural stakeholders to suggest any changes to the proposed regulations regarding agricultural wastes (e.g. orchard or vineyard trimmings, culls, manure, other) that may be land applied or composted. However, CLFP contends that land application of those materials also constitutes a beneficial reuse that should not be discouraged by new regulation.

6. Work with Stakeholders to Refine and Amend the Draft Regulations

CalRecycle seeks to expand its authority to new areas where no significant problems exist and do not need additional regulatory oversight. In addition, there are a number of issues with some of the proposed definitions and terms in the draft regulations, and a general misunderstanding of land application operations. This is an important issue, and CLFP would be glad to work with CalRecycle staff to carefully craft the necessary changes to address these issues and to achieve the exemption that we request.

Thank you for your consideration of these comments and recommendations, we look forward to working with CalRecycle to address CLFP's concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Neenan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rob Neenan
President/CEO