



## THE CITY OF SAN DIEGO

December 5, 2014

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Sent via email

Subject: Proposed Regulation Text Amending Title 14 and 27 of the California Code of Regulations -  
Compostable Materials/Transfer Processing Regulations Dated September 2014

The City of San Diego Solid Waste Local Enforcement Agency (LEA) is pleased to submit the following comments on the subject proposed regulatory rulemaking package. As the certified enforcement agency for the City of San Diego the LEA is responsible for implementing California's solid waste statutes and regulations including inspections, enforcement and permitting activities within its jurisdiction.

Overall the LEA is satisfied with the regulatory rulemaking package and we believe it will help protect public health and safety and the environment from potential impacts from solid waste operations and facilities while providing the solid waste industry with direction to establish the infrastructure needed to turn organic wastes into resources. However, the LEA's main concerns are with a lack of clarity in some of the definitions and increasing the burden on the EA Notification tier by making it more of a "discretionary" action than a ministerial procedure as it is intended to be.

The following comments refer to specific sections in the proposed regulations:

§17852(a)(5) "*Agricultural Material*" – the insertion of the word "waste" in this definition seems to be in conflict with viewing composting feedstock as materials or resources. A waste is something deemed to have no further value or use. Cal Recycle should consider removing the term "waste" to be consistent with policy objectives and with the Initial Statement of Reasons (ISOR).

§ 17852(a)(15)(A) "*Disposal of Compostable Materials*" states, "unless excluded from this Chapter 3.1 pursuant to section 17855" (sic). However §17855 does not discuss disposal of compostable material as an excluded activity. This language gives the impression that disposal of compostable materials could be an excluded activity. Does this definition apply only to permitted facilities and operations or does it also apply to illegal dumping at unpermitted locations such as vacant property or agricultural land?



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§ 17852(a)(15)(D) If 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, California Code of Regulations, section 20005).

There is a long and convoluted enforcement path to determine if a specific situation is defined as “disposal of compostable materials”: is it greater than 200 cubic yards; is it green material, agricultural material or stabilized compost; does it meet maximum metal concentrations; has the compostable material been at the site longer than 30 days or more than 12 months if it is zoned for agriculture; is it for beneficial reuse or mine reclamation; if there is a *reason* to believe a person is disposing of agricultural material then the burden of proof is on that person to prove otherwise? If, after all this, the activity is deemed to be “disposal of compostable materials” then the LEA is to regulate it as though it was a “disposal site” under 27 CCR. According to the Public Resources Code and Title 14 enforcement procedures this would mean issuing a Cease and Desist Order for operating a disposal site without a solid waste facility permit. The enforcement of this definition may also have a close nexus with §17852(a)(24.5) “Land Application”.

§17852(a)(24.5) “Land Application” – the LEA is supportive of this restriction that compostable material applied to land shall contain no more than 0.1% by weight of physical contaminants greater than 4 millimeters as specified in 17868.3.1. This will allow only “clean” materials to be applied to land for agricultural purposes. However, enforcement of this definition will be a challenge to determine the small fraction of physical contaminants (see comments above on “Disposal of Compostable Materials”). Another caveat to this strict contamination load may be an increase in illegal dumping of heavily contaminated compostable material that is not economical to clean up. However, the LEA believes this strict contamination limit is necessary to prevent environmental impacts associated with spreading contaminated materials on land and the accumulative effects of this practice.

Cal Recycle, by providing joint trainings to LEAs and operators of land application sites and compostable materials processors would be able to promote mutual understandings and uniform application of this definition to avoid confusion with disposal of compostable materials. There would also be benefits to educating “upstream” providers of compostable green material on how to distribute and apply compostable material in a manner meeting all of the above requirements of this definition.

§17852(a)(41) “*Within-Vessel Composting Process*” – means an aerobic process in which compostable material is enclosed in a drum, silo, bin, tunnel, reactor, or other container for the purpose of producing compost, maintained under uniform conditions of temperature and moisture where air-borne emissions are controlled. The two main criteria to meet this definition are 1) that the process must be aerobic and 2) the product must be compost. Is it a correct understanding that this definition does not include processes that create biofuels or products other than compost?

Also Within-Vessel Composting will no longer be an excluded activity under Chapter 3.1 as indicated by the stricken language of §17855(a)(8). Will *Within-Vessel Composting* be considered a sub-category of “Aerobic digestion” defined in Chapter 3.2 §17896.2(a)(7)(A)? Will Within-Vessel Composting be an excluded In-Vessel operation per 17896.6(a)(3)?

§17857.1(a)(2) "*Green Material Composting Operations and Facilities*" – This subsection would allow the EA to authorize a "seasonal storage adjustment" at an operation with an EA notification only if it will not adversely affect public health and safety and the environment. It further states that an EA (LEA) may impose "reasonable conditions" on its approval of a seasonal storage adjustment. This gives EA considerable discretion to set conditions upon a *ministerial* EA notification. The EA notification requires no CEQA review or local land use approvals yet this section authorizes the LEA to impose "reasonable conditions". To request seasonal storage authorization the operator must submit extensive descriptions, schematic drawings, additional fire prevention and controls and odor impact minimization plans for the LEA to review. The ISOR states that this section, "provides the enforcement agency with *discretion* to authorize" temporary storage of additional material (emphasis mine). The LEA must determine that it will not adversely affect public health and safety or the environment if it increases storage volume beyond the limits of the EA Notification. How does the LEA gain the necessary discretionary authority over a ministerial action if this section is adopted? Additionally, this section would authorize the LEA to allow the operation to exceed the regulatory limits of 12,500 cubic yards limitation of the EA Notification tier.

The operator, in requesting a seasonal storage adjustment, is required to submit descriptive documents that requires the LEA to make "discretionary" determinations without environmental review or land use approval when it is likely that the request for storage will exceed the maximum allowable material volumes of the EA Notification tier. This section also gives the LEA 30 days to review the operator's submittal and it is obligated to respond in writing within 30 days. Please explain how this action is ministerial.

The LEA believes it would be more prudent for the operator to apply for the appropriate Compostable Materials Handling Facility Permit if the need for additional seasonal storage capacity became necessary. Especially if the request is for storage capacity that exceeds the EA Notification limitation of 12,500 cubic yards of compostable material.

§17857.1(b) "*Green Material Composting Operations and Facilities*" – The LEA supports the "Three-Strikes" provision to determine that an operation no longer qualifies for the EA Notification tier if certain violations are recorded within specified time frames. Under said circumstances, the operator would be required to apply for the appropriate Compostable Materials Handling Facility Permit.

17857.1(b) - Page 17, line 27 – The word "facility" should be changed to "operation".

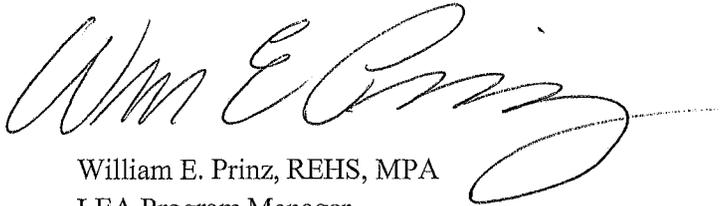
§17852(a)(20)(A) "*Vegetative Food Material*" – the definition states that plant material, "may be processed or cooked" and "retain its essential natural character" and that "no salts, preservatives, fats or oils, or adulterants shall have been added." For example does this preclude spoiled green salad with dressing (fats or oils) added from being a Vegetative Food Material?

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§17896.45(e) "*Record Keeping Requirements*" – the operator should record *all* public complaints and complaints referred to the operator from the LEA or other regulatory agencies not just written complaints. The word "written" should be stricken from the text so as to include any and all complaints received by telephone or by any means of communication from any reporting party.

Thank you for the opportunity to provide these comments.

Sincerely,

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

William E. Prinz, REHS, MPA  
LEA Program Manager

cc: Michael Richmond, Deputy Director, Development Services Department  
KeriLyn Merlos, Southern LEA Roundtable Representative  
Linda Johnson, Southern City LEA Roundtable Representative  
Christine Sosko, Committee Chair, California Conference of Directors of Environmental Health –  
Solid Waste Policy Committee