



**Agricultural Council**  
of California

December 5, 2014

Mr. Ken Decio  
Waste Permitting, Compliance, and Mitigation Division  
California Department of Resources Recycling and Recovery  
P.O. Box 4025  
Sacramento, CA 95812-4025

Submitted by Email: [compost.transfer.regs@calrecycle.ca.gov](mailto:compost.transfer.regs@calrecycle.ca.gov)

**RE: Revision of existing Title 14 and Title 27 regulations regarding compostable materials, transfer/processing, permit application form, and permit exemptions**

Dear Mr. Decio:

Agriculture Council of California (Ag Council) represents approximately 15,000 farmers across the state of California, ranging from small, farmer-owned businesses, to some of the world's best-known brands. We appreciate the opportunity to comment on the proposed revisions to California's Department of Resources Recycling and Recovery (CalRecycle) Compostable Materials, Transfer/Processing as set forth in Title 14 and Title 27 to be discussed at the December 10, 2014 public meeting.

We understand and appreciate that the central purpose of the proposed regulations is to protect public health, safety, and the environment by more effectively regulating solid waste facilities that handle compostable materials. We also understand and share CalRecycle's concern about fraudulent agricultural use of municipal green waste material mixed with contaminants from municipal waste, such as plastic and metals, being applied to agricultural lands. However, we are concerned that the newly proposed regulations cause more confusion than clarity in the agriculture community, and unnecessarily places agricultural and food processing by-products under a regulatory structure that is really intended to regulate composting operations and final deposition of finished composts.

We share the concerns of many others in the agricultural community that CalRecycle has cast its net too wide and because of drafting issues and changes to underlying definitions, it is not clear as to the entire scope of these regulations. What we do know is that most industries that could be affected by these regulations are already extensively regulated by other agencies. Being included in the new CalRecycle rules could add another layer of repetitive, duplicative and possibly conflicting laws, to some in our industry. This conflicts with other efforts within the Administration, such as the work at the Governor's Office of Business and Economic Development (GO-Biz) that streamlines the permit process and works to create a more business-friendly environment.



Of particular interest to our members are the Department’s proposed amended and new definitions of “agricultural materials”, “disposal”, “land application”, “excluded activities” and manure “digestion.”

#### Section 17852(a)(5) Agricultural Material

Some of our members are concerned that the new definition of agricultural material may be interpreted to not include for example tree nut processing byproducts destined for composting or land application – merely because they are the result of “processing.” We support the comments made by the Almond Hullers & Processors Association (AHPA) and Paramount Farming Company that the byproducts of tree nut harvesting are not in their nature “odorous,” do not have a high likelihood to cause public nuisances nor do they pose a risk to the public health and the environment. According to AHPA, “the amended and new definitions as proposed have the potential to pull hullers, processors and tree nut processing byproducts further into an unnecessary regulatory scheme intended to regulate composting and final deposition of finished composts, digestates, and compostable materials that are actual “wastes” not high quality and valuable animal feed, animal bedding, biomass feedstock or future biofuel feedstocks.” Organic material such as sticks, leaves, hulls and shells should be included in the agricultural material definition.

#### Section 17852(a)(15) Disposal

Tree nut processing byproducts, with its ultimate use as animal feed, animal bedding, biomass feedstock or biofuel feedstock should not be regulated as a compostable material. We share AHPA’s comments that, “Storage of almond processing byproducts at a facility or site where they are handled in the manufacture and distribution of animal feed, animal bedding, biomass feedstock or biofuel feedstock should not be held to any of volume and time based storage restrictions in Section 17852(a)(15) of the proposed regulations.”

These are fairly low numbers in section 17852(a)(15) (2) and (3), implying that many dairies would not be excluded from regulation by this section. Due to the uncertainty around this provision we believe this is important and needs to be addressed in further conversations with CalRecycle staff. California’s dairy industry is among the most regulated industry in agriculture, so we respectfully request CalRecycle to consider the state and federal regulations undertaken by dairy, prior to adding another set of potentially conflicting rules.

Each of our members who manufacture, handle or distribute tree nut processing byproducts as animal feed are licensed and regulated by the California Department of Food and Agriculture’s (CDFA) Feed Inspection Program and the federal Food and Drug Administration.

#### Section 17852(a)(24.5) Land Application



We agree with and support the comments and purposed recommendations made by the California League of Food Processors (CLFP) and we think it is important to reiterate some main points.

“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. Land application of food processing byproducts is **not** a waste disposal activity, and it is **not** a composting activity.”

#### Section 17855. Excluded Activities

We need more clarity to language in section 17855(a)(1). This section is confusing when trying to ascertain if certain activities are excluded. Furthermore, it does not fully address issues such as point of transfers. Clarification in the regulations is needed to specify how these types of transfers could be handled.

#### Section 17855(a)(5)(G)

It appears that shredding and pruning in the field falls in this exclusion but we have concerns on what the impact will be, if any, on those who chip orchards and move the chips to co-gen facilities. If that ability were hampered, we would see an impact on growers when they remove orchards.

#### Section 17855(a)(5)(J)

In this section we share AHPA concerns that it is, “completely counter-intuitive economically to allow tree nut processing byproducts, such as hulls and shells, to actively compost – which would alter their “essential character” and drastically damage their value and returns as animal feed, animal bedding, biomass feedstock or future biofuel feedstock.” It also doesn’t make much sense to be regulated under a composting regulation when the goal of certain facilities is to store materials under conditions that will NOT allow composting to occur and that are primary end use of those materials is animal feed, animal bedding, biomass feedstock or biofuel feedstock – not compost or storage on its way to land application. We believe that CalRecycle should follow the recommended changes proposed by AHPA.

### Chapter 3.2 In-Vessel Digestion Operations and Facilities Regulatory Requirements

The rules appear to apply to most manure digesters except to those at Publicly Owned treatment Plants (POTW), or those that have a minimal volume that then reapplies the digesters material on their own property. While still an emerging technology, renewable energy from dairy digesters provides a sustainable way to generate power for the dairy and its neighboring communities, while



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reducing greenhouse gas emissions and dependence on fossil fuels. Based on the existing regulations at CDFA and the Water Board of manure digesters all such material is accounted for and should be excluded.

In closing, due to the highly diverse agricultural industry encompassing more than 350 plant and animal commodities, and the variety of ways these commodities are managed, we respectfully request an **extension of 45 days** to the deadline of the comment period so that we can continue to analyze the impacts this proposed regulations will have on our membership. As you can see, we have a number of potential concerns, requests for clarity and a number of unknowns as we analyze this regulation's impact on California agriculture. An extension in the public comment period would provide us more time to fully understand all of the impacts to our industry.

We wish to thank you for the opportunity to provide comment on the proposed revisions. We feel strongly that the revisions as currently proposed would have significant unintended consequences in regulating activities not intended for composting. We respectfully encourage CalRecycle to consider our comments and concerns of the currently proposed regulations, and fully engage the agriculture community, prior to finalizing the rules.

We would also greatly appreciate the opportunity to continue to work with CalRecycle staff on our outstanding issues that have been raised in this letter as well as the concerns articulated by others in the agricultural community. Additionally, we purpose a comprehensive discussion between CalRecycle, CDFA and the agriculture community where we can bring together the necessary entities to help facilitate a productive conversation.

Should you have any questions regarding our concerns, please feel contact Rachael O'Brien at (916) 443-4887 or via email at [Rachael@agcouncil.org](mailto:Rachael@agcouncil.org).

Respectfully,

A handwritten signature in cursive script that reads "Emily Rooney".

Emily Rooney  
President