



**ASSOCIATION OF
COMPOST
PRODUCERS**
"We Build Healthy Soil"



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December 5, 2014

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

Dear Mr. Decio:

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

The Association of Compost Producers (ACP) is pleased to offer this letter to make comments and recommendations on CalRecycle's revisions to the Title 14 and 27 Compostable Materials Handling and Transfer/Processing Regulations.

ACP is a non-profit association of public and private organizations representing the vast majority of compost producers in the state. We are dedicated to increasing the quality, value and amount of compost being used in California. We do this by promoting activities and regulations that build healthy soil, benefiting people and the environment. ACP is also the California State Chapter of the U.S. Composting Council. We are largely supportive of the revisions and view them as a positive step forward to assist better preparing the state to manage a significant increase in organics diversion to meet California's 75% Recycling Goal. ACP members are leaders in the California compost industry and work together to increase compost markets and improve compost product and manufacturing standards. The association provides education and communication on compost benefits and proper use through support of scientific research and legislation aligned with developing and expanding quality compost markets.

GENERAL COMMENTS

Over the past three years, ACP has worked with CalRecycle staff to understand how we can improve organics regulations while at the same time continuing to build a robust compost industry in California. In previous letters and discussions with CalRecycle staff on this issue, starting in October 2012, we stated our substantial agreement with a majority of the regulatory language changes which have made it into the regulatory revisions. For example, including permitted maximum tonnage requirements, on-site storage limits, maximum metals concentrations, small-scale composting exclusions, etc. These will help to clarify a number of issues surrounding the compost industry processing and marketing of recycled organic material. We are pleased that CalRecycle is now revising these titles to correct existing ambiguities in a manner that facilitates the current transformation in organics management in the State of California, to help contribute greatly to the California's 75% Recycling goal by 2020.

To ensure that the revised Title 14 and Title 27 regulations promote a commercially viable organics management industry, ACP offers the following comments.

Economic Analysis:

The economic analysis that was completed as part of the Initial Statement of Reasons (ISOR), Appendix B1, did not adequately address the possible economic impacts of the proposed rule change to the compost industry. We believe that a more broad-based and in-depth economic analysis is necessary to assess the full range of potential economic impacts to our industry. Moreover, if we were to assume that the high end of the economic impact were valid at \$53 million per year, this represents an untenable impact to the compost industry that could not be readily absorbed given the current market conditions for the industry.

Enforcement:

We are concerned that overall the proposed rule change does not adequately address enforcement. While regulations on their own tend to level the playing field for all players, unequal and inconsistent enforcement creates potential inequities. Are the LEAs currently able to enforce 1% contamination standards? If not, how can we expect them to enforce any more stringent and complicated standards, as proposed? This needs to be addressed at the global level so that all players subject to these rule changes are enforced equally under the law.

Physical Contamination Limits:

One of the main contested topics remains the proposed 0.1% Physical Contamination Limit (PCL). While our membership struggles to reach a consensus on an appropriate PCL, the fundamental question remains as to what is the scientific or operational basis of this limit. We believe that the proposed PCL is arbitrary and not based on substantial existing compost operations in the State. Nor does the economic analysis that was completed as part of the ISOR adequately address the economic impact of a 0.1% PCL. Because of this lack of data, we believe that more research is warranted before a PCL number can be justifiably proposed.

We further believe that it is unreasonable to propose an almost instantaneous compliance timeline with such a low PCL. If any aggressive PCL is to be achieved without unreasonable

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economic impacts, it will require phasing in over time, to allow operators to adjust their operations and invest in the necessary equipment and human capital required to achieve compliance. Since we have an existing timeline mandated by the recent passage of AB 1826 and AB 1594 that roughly wind up to the year 2020, this may be an appropriate timeline to phase in new, well researched PCLs. Without such a phased and researched approach, the proposed 0.1% PCL has the potential to stifle the economic viability of the composting industry at a time when the State is requiring the very same industry to become a very large part of its waste diversion goals.

ACP is supportive of a collaborative approach to achieving lower PCLs for compost. As such we advocate the formation of a collaborative working group that would meet regularly to support CalRecycle's leadership in developing higher physical contamination standards that could be phased-in as part of the proposed regulatory framework. We propose this working group to be comprised of representatives from the composting and waste management industry, experts in the academic and scientific community, and members of the regulatory community (including air, water (SWRCB), solid resources and CDFA). In addition, it should include representatives from the main affected industry, i.e. agriculture and horticulture growers and ag commissioners, who use most of this material for environmentally beneficial purposes. We see this "California Compost Standards Working Group" as a working committee that would advise CalRecycle in the phasing and implementation of more stringent standards that are both scientifically based and economically feasible. This working group would be able to advise CalRecycle on expanded industry economic impact analysis, development of effective, standardized testing methods, and similar topics related to compost standards, with the common goal of achieving workable Compost standards in general.

The California Compost Standards Working Group could also advise CalRecycle on other areas of the proposed rule changes and provisions should be made within the regulatory framework that would allow modifications to Title 14 and 27 based on the recommendations of the group.

Until such a time that a collaborative working group can establish the scientific and economic justification for lower physical contamination standards, ACP advocates a PCL of 1.0% by weight. We believe that any arbitrary timeline to ratchet down the contamination limit in the absence of substantive research, industry input, and data leaves our industry vulnerable to undue duress.

The following are specific justifications for not pursuing the proposed 0.1 % PCL at this time:

- 0.5% is the existing detection limit for most compost labs. The current "industry standard," USCC - TMECC testing protocol has a 0.5% detection limit.
- Material recovery on the front end for 0.1% would be cost prohibitive.
- Screening on the back end, down to 4 mm, to achieve 0.1% would eliminate too much valuable compost in "overs," if this size limit were imposed on all compost produced. These trashy overs would likely find their way to landfills affecting California's 75% goals.
- Caltrans has adopted 0.5% as their specification for State highway landscape application, which is the current testing limit, but was not based on if this is workable in all market-based applications, as it is new this year, and we have little experience with it to date.

- The true economic impact of a 0.1% PCL has not been adequately addressed in the economic analysis that was prepared as part of the Initial Statement of Reason because there are few, if any, operators in the state that are presently operating at this PCL threshold.

Sampling and Testing Protocols:

As discussed above, there are no existing laboratory standards or protocols that both collect statistically reproducible samples, as well as test, for physical contamination below 0.5 percent. We advocate CalRecycle's support of updates to the USCC - TMECC and the requirement of use of labs that are in the U.S. Composting Council's "Seal of Testing Assurance" (STA) program "approved list" in the "Compost Analysis Proficiency Program." The TMECC is currently under review by the USCC and we advocate the adoption of new TMECC protocols that can address the proposed sampling, testing, and lower detection limits that are contemplated in several different classes of material as part of these rule changes. Use of STA approved labs could allow the anonymous sharing of testing data back to CalRecycle to gather the necessary basis for modifications to compost and other material limits and standards. Until such an industry standard analytical protocol is modified and tested, changes to physical contamination standards are not warranted.

Chip and Grind Physical and Pathogen Standards:

The requirement that any Chip and Grind material that is land applied meet the pathogen standards that are proposed for composted material is in effect requiring that this material be composted. Allowing the chip and grinders to circumvent composting protocols weakens the protocols suggesting that they are an optional process for reducing pathogens effectively giving the fully permitted composting projects a disadvantage in the marketplace due to the additional cost burdens of legally composting. Was it the intent of the proposed rule change to require the composting of chip and grind material to achieve pathogen reduction standards as well as to address pest mitigation? If so, the net effect of the rule change is to virtually eliminate the chip and grind operator classification, because they would need to compost the material in order to comply. As compost producers we would not be against composting all the material. And while it may address some plant pathogen contamination issues (since composting green material effectively eliminates these pests and pathogens, according to CDFA protocol), this would greatly increase the cost of organics materials management in most jurisdictions. We could include this discussion in the above proposed "California Compost Standards Working Group", to provide for more effective management of the chip & grind material, in concert with finished compost.

Land Application Definition, Physical Contamination:

To reiterate, the proposed 0.1% physical contamination requirement for land application material is presently untenable by our industry. ACP is open to exploring methods and timelines to achieve this standard. But, presently there is too much material that is currently being land applied that would not be able to meet this proposed standard, and the cost to immediately achieve such a standard would pose an unreasonable economic burden. We recommend revising this limit to 1%, then employing the "California Compost Standards Working Group" methodology to the assist CalRecycle in developing methodologies and timelines to determine if

more stringent limits are necessary and then to develop appropriate physical contamination standards for all land applied material.

In Vessel Digestion Facility Pathogen Reduction Standards:

The pathogen reduction standards from section 17868.3 for "Compost" appear to be replicated in the "In-Vessel Digestion Facility" section, 17896.60. In vessel digestion facilities may achieve their own process to further reduce pathogens as part of the digester operations. Additional pathogen reduction such as windrow and/or aerated static pile time and temperature requirements may not be required, provided the material passes the proposed laboratory test for pathogens. Further processing would be a marketing decision. Requiring composting for all digestate material would add a redundant and potentially costly step to the processing of material for certain in-vessel digestion facilities who otherwise meet the pathogen standards and have markets for the "raw" digestate material.

Specific Language Recommendations

We offer specific language for implementing our comments in a separate document, attached, "ACP Title 14-27 Specific Language Recommendations". It is anticipated that further revisions would be incorporated based on the recommendations of the proposed California Compost Standards Working Group.

Conclusion

ACP appreciates the opportunity to comment and provide these recommendations to the proposed rule changes. We believe that CalRecycle's encouragement of industry dialogue -- which is reflected in its willingness to meet with ACP in March and April of this year, as well as its strong participation in the ACP's First Annual California Compost Summit in Sacramento in October - is an essential component of fostering a robust organics management industry in the State of California. We look forward to continued collaboration in addressing the complex issues before us.

Very truly yours,



Jeff Ziegenbein, ACP President,
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