



February 10, 2025

OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

RE: Illegal Disposal Emergency Rulemaking Comments
Transmitted via email to staff@oal.ca.gov

To Whom It May Concern:

On behalf of the Rural County Representatives of California (RCRC), we are pleased to provide comments on CalRecycle's Illegal Disposal Emergency Rulemaking proposal. We share CalRecycle's concern about the illegal and improper land application of solid waste in the Antelope Valley. These activities cannot be tolerated and we welcome the opportunity to enhance regulatory and enforcement tools to address these problems.

While RCRC support's CalRecycle's efforts to stop illegal and improper land application, we have significant concerns about the proposal's crafting, its inherent ambiguity, and conflicts it creates related to sampling, testing, and recordkeeping. The existing regulatory framework is complex; however, the ambiguity and internal inconsistencies created by these emergency regulations will increase stakeholder confusion and make compliance by good actors even more challenging. RCRC strongly suggests changes to the regulatory text and record, as articulated below, to address these issues.

RCRC is an association of forty rural California counties, and the RCRC Board of Directors is comprised of elected supervisors from each member county. Illegal dumping is a chronic and pervasive problem throughout the state. RCRC has long supported efforts to close statutory loopholes, increase penalties, and provide additional resources for remediation related to illegal dumping, including for those activities that give rise to these proposed regulations.

Proposed Regulations Create Ambiguity About What Materials and Facilities Are Subject to Sampling and Testing and Creates Conflicts with Other Sections that Exempt Specific Materials and Facilities from Sampling and Testing

The Emergency Regulations seek to create similar testing and reporting obligations under Chapters 3, 3.1, and 3.2 of Division 7 of Title 14 of the California Code

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of Regulations. The Emergency Regulations create confusion by attempting to require sampling and testing in Chapters 3 and 3.2 of materials that are specifically exempt from such requirements pursuant to Chapter 3.1.

Chapter 3 establishes minimum standards for solid waste handling and disposal, while Chapters 3.1 and 3.2 are more specifically focused on establishing standards for compostable materials handling operations and facilities (Chapter 3.1) and in-vessel digestion operations and facilities (Chapter 3.2).

Chapter 3.1, which regulates compostable materials handling operations and facilities, specifically exempts certain categories of materials from Section 17852(A)(24.5)'s sampling and testing requirements (14 CCR 17852(a)(24.5)(B)). Furthermore, Chapter 3.1 exempts certain types of facilities from the definition of "compostable materials handling operation or facility" to which the chapter (and sampling and testing requirements apply). These "excluded facilities" exempt from Chapter 3.1 are listed in 14 CCR 17855 and referenced in 14 CCR 17852(a)(12).

Chapter 3's proposed 14 CCR 17410.5 requires material sent offsite for land application to be sampled to verify it meets the requirements of 14 CCR 17852(a)(24.5) prior to the material leaving the site. Modifications to 14 CCR 17414 require operators to record and maintain information about material sent offsite for land application, including the daily weights and destinations to where material is sent and the "test results showing the material met the physical contamination, maximum metal concentration, and pathogen density limits in that material sent offsite to be land applied required by Section 17852(a)(24.5)(A)."

Section 17410.5 appears to require **all** "materials" sent offsite for "land application" to be sampled to ensure they meet the requirements of Section 17852(a)(24.5); however, the testing requirements included in Section 17852(a)(24.5) do not apply to all "materials" that ultimately go to land application, since there are several discrete categories of materials articulated in Section 17852(a)(24.5)(B) to which the testing requirements contained in subsection (A) do not apply. Similarly, materials produced at "excluded facilities" listed under Section 17855 are also exempt from the sampling and testing requirements articulated in Section 17852(a)(24.5). Newly proposed changes to Section 17414(i) add to the confusion by requiring **ALL** site operators to retain test results "showing the material met the test results showing the material met the physical contamination, maximum metal concentration, and pathogen density limits in that material sent offsite to be land applied required by Section 17852(a)(24.5)(A)". The proposed emergency regulation does not require testing of **only** those materials **subject to testing** under Section 17852(a)(24.5)(A), but instead appears to require **all materials** produced at **all facilities** to be tested for the criteria set forth in that subdivision. As these excluded facilities and exempted materials are only exempt from the provisions of Chapter 3.1, they are not exempt from the requirements set forth in Chapter 3 unless clearly indicated. As such, the proposed emergency regulations appear to require sampling and testing for vermicomposting, mushroom farming, small composting facilities that do not exceed 100

cubic yards, chip and grind operations, and activities that are part of silvicultural operations. Together, the changes to Sections 17410.5 and 17414 imply that operators (including excluded activities) must now test (and keep records of test results) for materials exempt from testing under Section 17852(a)(24.5)(A). Because of these unresolved issues, the changes to Sections 17410.5 and 17414 are overbroad and directly conflict with the provisions of Chapter 3.1. These conflicts must be resolved and the reporting obligations should be refined to acknowledge that not all materials or facilities will be required to maintain inapplicable sampling and testing results.

The proposed emergency regulations create similar consistency problems between Chapters 3 and 3.2 relative to sampling and testing of digestate that is sent offsite for land application. Proposed Section 17896.62 requires all digestate sent offsite for land application to be sampled to verify it meets the requirements of Section 17852(a)(24.5) prior to the material leaving the site. Again, not all digestate is subject to the sampling and testing requirements articulated in Section 17852(a)(24.5)(A), as the use of digestate for gardening or landscaping on a parcel of land five acres in size or less, or spread on land by a Federal, State, or local government entity is exempt from sampling and testing pursuant to 17852(a)(24.5)(B). As such, the Emergency Regulation's changes to Chapter 3.2 are ambiguous and appear to conflict with the provisions of Chapter 3.1's Section 17852(a)(24.5)(B).

In attempting to define "Land Application Activity", the proposed emergency regulations similarly cast too broad a net and appear to capture materials exempt from testing or produced by an excluded facility, thereby requiring sampling and testing of material that should otherwise be exempt from those requirements. This definition should be modified to reflect that sampling and testing do not apply to exempt materials and materials produced by excluded facilities. The definition of "Land Application Activity" also excludes the land application of processed poultry mortality material overseen by the California Department of Food and Agriculture. It is unclear whether those processes are adequate to kill pathogens before the material is spread on land.

The proposed regulations also require operators and facilities to record and retain information about the weight of material sent offsite for land application. RCRC strongly cautions CalRecycle that not all sites have scales to weigh material sent offsite (this is even more concerning if these new recordkeeping requirements apply to excluded facilities listed under Section 17855). It is standard industry practice to allow facilities and operators to convert volume to weight and maintain a copy of the conversion factor used. For these reasons, RCRC strongly suggests CalRecycle modify proposed changes to Sections 17414, 17414.2, and 17896.45 to allow operators to record and maintain records of either the weight or the volume of material sent offsite.

RCRC strongly suggests that CalRecycle modify the proposed changes to Sections 17410.5, 17414(i), 17414.2(b), 17852(a)(24.5.1), 17868.6, 17896.45, and 17896.62 to avoid ambiguity, resolve regulatory inconsistency, and reduce confusion in the regulated community. We suggest the following modifications to these sections:

14 CCR 17410.5 Material Sent for Land Application.

(a) **Unless exempt pursuant to section 17852(a)(24.5)(B) or section 17855,**

~~M~~material that is sent offsite for land application must be sampled to verify it meets the requirements of section 17852(a)(24.5) prior to the material leaving the site.

(1) The facility or operation shall conduct one composite sample every 5,000 cubic yards of material produced. If the facility or operation produces less than 5,000 cubic yards of material in a 12-month period, the operator shall conduct at least one sample of material produced.

(2) Sampling results, **if required,** shall be provided to the consumer receiving the material for land application.

(b) Fines shall not be sent offsite for land application.

(c) Any other material that does not meet the land application requirements of section 17852(a)(24.5), **if applicable,** shall not be sent offsite for land application. The material shall be reprocessed onsite, sent offsite for further processing, or sent to disposal.

14 CCR 17414 Record Keeping Requirements

(i) The operator shall record and maintain the following records regarding material that is sent offsite for land application, including at a land application activity:

(1) The total weights **or volume** of the material sent offsite each day.

(2) **Unless exempt pursuant to section 17852(a)(24.5)(B) or section 17855,**

~~T~~he test results showing that the material met the physical contamination, maximum metal concentration, and pathogen density limits in that material sent offsite to be land applied required by section 17852(a)(24.5)(A).

(3) The delivery date, weight **or volume**, and destination address where material was sent.

14 CCR 17414.2 Recordkeeping and Reporting Requirements-- Organic Waste Recovery

(b)(3) For material that is sent offsite for land application:

(A) The total weights **or volume** of the material sent offsite each day.

(B) **Unless exempt pursuant to section 17852(a)(24.5)(B) or section 17855,**

~~T~~he test results showing that the material met the physical contamination, maximum metal concentration, and pathogen density limits in that material sent offsite to be land applied required by section 17852(a)(24.5)(A).

(C) The delivery date, weight **or volume**, and destination address where material was sent.

14 CCR 17852(a)(24.5.1) Land Application Activity

“Land Application Activity” is a solid waste operation where a landowner accepts any combination of compostable material or digestate for land application onto their own parcel of land. Land Application Activity does not include the land application of processed poultry mortality material consisting only of agricultural material when overseen by the California Department of Food and Agriculture,

activities specified in 17852(a)(24.5)(B), or materials from operations listed in Section 17855.

Section 17868.6. Material Sent for Land Application.

(a) **Unless exempt pursuant to section 17852(a)(24.5)(B) or section 17855,**

Material that is sent offsite for land application must be sampled to verify it meets the requirements of section 17852(a)(24.5) prior to the material leaving the site.

(1) The facility or operation shall conduct one composite sample every 5,000 cubic yards of material produced. If the facility or operation produces less than 5,000 cubic yards of material in a 12-month period, the operator shall conduct at least one sample of material produced.

(2) Sampling results, **if required,** shall be provided to the consumer receiving the material for land application

(b) Any material that does not meet the land application requirements of section 17852(a)(24.5), **if applicable,** shall not be sent offsite for land application. The material shall be reprocessed onsite, sent offsite for further processing, or sent to disposal.

14 CCR 17896.45 Record Keeping and Reporting Requirements for In-Vessel Digestion Facilities and Operations

(a)(7) The delivery date, weight **or volume,** and destination address where material was sent

14 CCR 17896.62 Digestate Material Sent for Land Application

(a) **Unless exempt pursuant to section 17852(a)(24.5)(B) or section 17855,**

Material that is sent offsite for land application must be sampled to verify it meets the requirements of section 17852(a)(24.5) prior to the material leaving the site.

(1) The facility or operation shall conduct one composite sample every 5,000 cubic yards of material produced. If the facility or operation produces less than 5,000 cubic yards of material in a 12-month period, the operator shall conduct at least one sample of material produced.

(2) Sampling results, **if required,** shall be provided to the consumer receiving the material for land application.

(b) Any material that does not meet the land application requirements of section 17852(a)(24.5), **if applicable,** shall not be sent offsite for land application. The material shall be reprocessed onsite, sent offsite for further processing, or sent to disposal.

Proposed Definition of Fines Is Overbroad and May Restrict Land Application of Finished Compost

RCRC is concerned that the brief timeframe available to review proposed emergency regulations may inhibit careful consideration of the nuances and implications of definition changes, including the proposed definition of “fines.”

Proposed 14 CCR Section 17402 (a)(6.1) defines “fines” as “material of a soil or sand consistency remaining after processing that cannot be sorted further and includes a variety of organics or inorganic material.” RCRC is concerned that this definition is overly broad and would even capture (and prevent land application of) finished compost. Finished compost may occasionally have the consistency of soil or sand and will contain organic materials small enough to meet this threshold that cannot be further processed. Finished compost may also have very small amounts of dirt or other material but still meet market specifications.

RCRC urges caution and careful consideration of how this definition may impact the production and use of finished compost products that meet market specifications.

Modifications to 14 CCR 18304 Restrict the Ability for Local Enforcement Agencies to Issue Notices and Corrective Orders to Remedy Threats to Public Health

The Emergency Regulations seek to modify 14 CCR 18304 outlining the situations in which a LEA may issue a notice and order to a facility, disposal site, operation, or person. 14 CCR 18304(a)(5) currently allows the LEA to issue a notice and order when a facility, disposal site, operation, or person “poses a potential or actual threat to public health and safety or the environment.” The Emergency Regulations seek to strike “or actual”, thereby only allowing the LEA to issue a notice and order when there is a potential threat to public health and safety or the environment. RCRC believes that potential and actual threats are two distinctly different situations.

RCRC does not understand what CalRecycle intends from this change and is concerned that it could be used against a LEA trying to remedy an actual threat to public health and safety or the environment. A future violator could argue that striking “or actual” from this section precludes the LEA from issuing a notice and order when there is an actual threat to public health and safety or the environment. The Notice of Emergency Action contains no explanation for why this change is proposed or CalRecycle’s intended objective. It is unclear whether CalRecycle intends this change to merely clean up terms it believes to be unnecessary or to limit the LEA’s ability to correct actual threats to public health and safety or the environment.

Unless CalRecycle can provide compelling reasons why narrowing the scope of remedial measures is necessary (or explains in the administrative record how LEAs will retain those powers after these regulatory changes go into effect), RCRC suggests eliminating this change.

Notice of Proposed Emergency Action Fails to Address Potentially Significant and Unrecoverable Cost Increases for Local Governments

The Notice of Proposed Emergency discusses whether the proposal imposes a mandate on local agencies and whether such a mandate is reimbursable. The Notice focuses exclusively on mandates imposed on LEAs and highlights the LEAs’ statutory authority to impose fees under Public Resources Code Sections 43213 and 44006. The

duties imposed on local governments by the regulations go far beyond LEA-related duties for which cost recovery is available under those statutes.

The Notice of Proposed Emergency fails to disclose potentially significant and unrecoverable costs on local governments that own or operate facilities that produce material subsequently sent offsite for land application. These regulations impose additional recordkeeping obligations on those local governments and those costs are not recoverable from fees that can be charged for services provided. In some cases, the local government will be producing materials for use at its own properties and so cannot recover added costs from anyone other than itself.

Even more troubling is the ambiguity as to whether the proposed emergency regulations expand the 14 CCR 17852(a)(24.5)(A) testing and recordkeeping requirements to exempt operations and facilities (listed in Section 17855) or to products that are currently exempt from testing pursuant to Section 17852(a)(24.5)(B). If local government operators are required to test and maintain records for all materials sent offsite for land application, including in those situations that are currently exempt from the 24.5(A) testing requirements, the proposed emergency regulations will impose unknown and significant cost increases on local governments. In some circumstances, there will be no way for local governments to recoup those costs through the imposition of fees, since local governments commonly apply compostable materials and digestate on their own lands, as acknowledged in Section 17852(a)(24.5)(B)(3).

RCRC strongly urges CalRecycle to modify the Proposed Emergency Regulations to clarify that the land application of material exempt pursuant to Section 17852(a)(24.5)(B) and excluded facilities will not be subject to the testing requirements contained in Section 17852(a)(24.5)(A).

*If CalRecycle instead intends that **all** land applied materials and excluded facilities must meet the standards outlined in the Section 17852(a)(24.5)(A), the Notice of Proposed Emergency Action must be revised to estimate the costs to local governments and appropriately reflect the fact that these costs may not always be recoverable through fees imposed by those entities. If this is CalRecycle's overarching intent, RCRC is concerned that these changes exceeds the scope of the emergency and are instead more appropriate for consideration either by the Legislature or through the regular rulemaking process.*

Conclusion

RCRC appreciates your consideration of these comments and strongly urges incorporation of refinements to address and avoid the concerns raised above. If you should have any questions, please do not hesitate to contact me at jkennedy@rcrcnet.org.

Sincerely,

A handwritten signature in blue ink that reads "John Kennedy". The signature is fluid and cursive, with the first name "John" and the last name "Kennedy" clearly legible.

JOHN KENNEDY
Senior Policy Advocate

cc: Csilla Richmond, Illegal Disposal Emergency Rulemaking
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