



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

Submitted via email: 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:

Roll Law Group PC, on behalf of Paramount Farming Company LLC (“PFC”), Paramount Farms International LLC (“PFI”), POM Wonderful LLC (“POM”), and Paramount Citrus Holdings LLC (“PCA”) (collectively “Paramount”), appreciates the opportunity to provide comments to the California Department of Resources Recycling and Recovery (“CalRecycle”) regarding the proposed changes to the California Code of Regulations, Title 14, Division 7, Chapters 1, 3, 3.1 and 5 and create Chapter 3.2; and to amend Title 27, Appendix 1 (“Compostable Materials Regulation”).

PFC and PFI, together, are the world’s largest vertically integrated grower and processor of pistachios and almonds. We farm approximately 75,000 acres of pistachios and almonds across California’s Central Valley, and deliver nearly 280 million pounds of pistachios and 140 million pounds of almonds to our customers annually. In addition, PFC, in combination with POM farms and markets 13,000 acres of pomegranate trees and products. PCA and its growers cultivate and harvest various types of citrus varieties across southern and central California, including mandarins, navel and valencia oranges, and lemons. PCA’s state-of-the-art packing and grading facilities and equipment make us one of the largest integrated growers, packers and shippers of fresh citrus in California and the United States.

We understand that CalRecycle’s primary concern in proposing amendments to the Compostable Materials Regulation is to protect public health and safety, and to mitigate the environmental hazards that have been attributed to the mishandling and final deposition of compost. Paramount agrees that operations, whose primary business is composting, should be required to follow protocol to lessen potential issues with this product. 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. Furthermore, we believe that the unintended consequences of the current amendments to the Compostable Materials Regulation may have grave impacts on the beneficial uses of agricultural by-products if the rules go forward as proposed.

In addition to the following points, Paramount shares a number of the same concerns as other agricultural groups—such as the Almond Hullers and Processors Association (“AHPA”), Western Agricultural Processors Association (“WAPA”), and the Agricultural Council of California—and urges CalRecycle to critically consider the negative implications of the currently proposed regulations, and fully engage the agriculture community, prior to finalizing the rules.

As part of the diverse agricultural industry in California, Paramount offers the following comments and recommendations:

1. The Agricultural Materials Definition Should Continue to Include Food Processing Material

We are concerned that the proposed amendments to section 17852(a)(5), “agricultural material,” will be interpreted to exclude primary harvesting and food processing activities that are essential agricultural activities which do not pose a risk of becoming compostable material. By removing the inclusion of “processing” from the agricultural materials definition, raw agricultural by-products, such as almond and pistachio hulls and shells removed prior to further processing, would no longer be considered an agricultural material. The act of hulling and shelling for example, does not alter the inherent nature of the product and therefore should still be considered an agricultural material for the sake of these regulations.

Moreover, we suggest that CalRecycle reconsider referring to raw agricultural by-products as “waste” material, as most of the separated material is further used for beneficial purposes such as animal feed and bedding, land applied, biomass feedstock, or another approved method and is not considered unusable trash.

2. The Regulations Must Not Discourage Beneficial Uses and Land Application of By-products

CalRecycle has proposed to change the definition of “disposal” under section 17852(a)(15) to mean the “final deposition of compostable material on land unless excluded from this Chapter 3.1 under section 17855.” The definition continues to expand on the requirements for storing and disposing of compostable material—which, as currently written, would include agricultural

and food processing by-products. We feel that this newly defined section expands beyond the inherent risk factors and scope of the intended purposes of the proposed regulations.

Land application of agricultural and food processing by-products on farmland is a common practice in the agricultural industry. There are a number of positive benefits from this activity, including enhancing the soil structure and reducing the amount of reusable material that is taken to landfills every year. The material being applied to the land is not contaminated with man-made trash, such as glass or other toxic materials, but is rather the by-product materials from fruit, nut and vegetable processing including, *but not limited to*: stems, leaves, sticks, seeds, nut hulls and shells, peels and under or over ripe produce.

Land application in this manner is not a disposal activity, but rather a beneficial reuse of the by-product. As such, Paramount believes that the beneficial uses of agricultural and food processing by-products, which include the use of the material as slope stabilizers and weed suppression as originally included in the exemption under section 17855(a)(9), should continue to be included as an exempted activity in the final Compostable Materials Regulation.

Additionally, the newly proposed section 17852(a)(24.5) defining “land application,” severely limits the application options that agricultural entities have, and would impose overly prescriptive regulations on farms and facilities choosing to use agricultural and food processing by-product material in this manner. By limiting land application to two rigid pathways, it may result in fewer and fewer establishments reusing this material in a beneficial manner.

With the deletion of section 17855(a)(9) from the proposed rule, and with the newly expanded and proposed definitions of “disposal of compostable material” and “land application,” agricultural and food processing by-product materials used in land application would unnecessarily be subject to the regulations, even when the inherent risks of the material and their final uses do not support this inclusion. Furthermore, numerous land application activities are already subject to state wide regulations. One such example are those imposed by the Regional Water Quality Board. By subjecting these same land application uses to the Compostable Materials Regulation, CalRecycle would be creating a duplication in oversight for many entities.

Paramount understands that the primary goal of the proposed Compostable Materials Regulation is to protect the health and wellbeing of the public. However, we ask that the agency consider that many of the aspects of the agricultural community that CalRecycle is proposing to regulate, are already under guidance from several other agencies (both State and Federal). Furthermore, even without regulation, farmers are motivated to minimize any appeal for vectors and unwanted pathogens as their presence is detrimental to the success of the commodity they are growing and harvesting.

We believe, along with AHPA and others, that the regulations should be written in a way that supports the beneficial reuse of agricultural and food processing by-products rather than discourage them. As such, we encourage CalRecycle to revisit the proposed definitions and exclusions pertaining to land application and deposition of agricultural and food processing by-product material.

3. CalRecycle Must Provide Further Clarification on the Intent and Application of Various Sections of the Proposed Compostable Materials Regulations Prior to Finalizing

Definitions. We are generally concerned that the definitions found in Chapter 3.1 of the proposed Compostable Materials Regulation can be easily misinterpreted and confusing—even to enforcement agencies. We understand that there are multiple definitions that require explanation and that many are interdependent on another, but feel that as they are currently organized and written, the entire section creates more ambiguity than clarity. CalRecycle should consider reworking the definitions found under 17852 to be more straightforward and transparent.

Specifically, CalRecycle did not propose any changes to the definition of “compostable materials” under section 17852(a)(11), which currently means “any organic material that when accumulated will become active compost as defined in section 17852(a)(1) (“active compost”).” However, with the proposed amendments to other definitions of Chapter 3.1, Paramount is concerned that CalRecycle will now interpret this to mean *any organic material that has the potential to turn into compost* regardless of the intended purpose of the material. We agree with AHPA and other industry groups, that this interpretation would unnecessarily lump the storing and holding of some types of agricultural and food processing by-product material (such as stockpiles waiting to be used as animal feed, animal bedding or biofuel feedstocks) as “compostable material” causing them to be subject to the regulation regardless of risk.

We seek clarification on this aspect of the proposed Compostable Materials Regulation and ask that CalRecycle consider narrowing the definition of “compostable material” as to exclude agricultural and food-processing material intended for beneficial uses from “active compost.”

In addition to the aforementioned requests for clarifications, Paramount also asks that CalRecycle expound upon section 17852(a)(10)(C), the definition of “chipping and grinding operations and facilities.” We are principally concerned that the time limit associated with this subsection is not practical for material that is stockpiled on-site and waiting immediate removal. For instance, it is often the case that biofuel purchasers are limited to accepting a certain amount of material a day, which can lead to some piles remaining on-site for longer than the allotted 48 hour time limit. Since these materials are destined for a beneficial reuse purpose, remaining on site for a few extra hours should not classify the stockpiles as “compostable material.”

We respectfully request that CalRecycle work with agriculture to create a definition that better fits the risks associated with the material.

Exclusions. We agree with the exclusion for animal feed activities under section 17855(a)(5)(H) of the proposed Compostable Materials Regulation, but believe that as the rules are currently written, holding or stockpiling material for this intended purpose may still qualify the activity as subject to the regulation. CalRecycle should be clear that the holding requirements under the proposed Compostable Materials Regulation should not be applied to by-product being held for animal feed.

Paramount also seeks further clarification on the intent of the exclusion under section 17855(a)(1). As we interpret this exclusion, green material produced on a farm and re-applied to the farm should be exempt from the regulations. We ask that CalRecycle provide clarity as to situations such as hulling and shelling of tree nuts, where green material is separated from the harvestable portion of the commodity during pre-cleaning at an offsite facility, and then brought back to the farm and land applied for multiple uses. We believe that this situation should still be included in this exemption, as the activity does not impose any additional risks to the green material regardless of whether the product was transferred to the facility before going back to the farm. Additionally, this exclusion specified that agricultural material derived from an agricultural site and returned to a similar site, "...owned or leased by the owner, parent, or subsidiary of the composting activity" is excluded. Being that neither farming nor processing are composting activities, Paramount seeks further elaboration of this exclusion to explicitly exempt farming and processing activities.

Finally, as previously mentioned, Paramount respectfully requests that CalRecycle consider reinstating the exclusion for beneficial uses under 17855(a)(9) and believe that this inclusion is critical to the continuation of good agricultural practices.

We appreciate the opportunity to provide feedback on the proposed amendments to the Compostable Materials Regulations, and are available to discuss our thoughts should CalRecycle require additional input or information.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Melissa Poole', with a long, sweeping flourish extending to the right.

Melissa Poole
Roll Law Group PC
Director of Government Affairs