



## DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

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### NOTICE OF PROPOSED RULEMAKING

- Title 14: Natural Resources**
- Division 7: California Integrated Waste Management Board**
- Chapter 1: General Provisions**
- Chapter 3: Minimum Standards for Solid Waste Handling and Disposal**
- Chapter 3.1: Compostable Materials Handling Operations and Facilities Regulatory Requirements**
- Chapter 3.2: In-Vessel Digestion Operations and Facilities Regulatory Requirements**
- Chapter 5: Enforcement of Solid Waste Standards and Administration of Solid Waste Facility Permits; Loan Guarantees.**
- Title 27: Appendix 1-Joint Permit Application Form and Instructions.**

### PROPOSED REGULATORY ACTION

The California Department of Resources Recycling and Recovery (Department) proposes to amend California Code of Regulations, Title 14, Division 7, Chapters 1, 3, 3.1 and 5 and create Chapter 3.2. The Department also proposes to amend Title 27, Appendix 1. 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.

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulation to the Department. **The written comment period for this rulemaking closes at 4:00 p.m. on December 5, 2014.** The Department will also accept written comments during the public hearing described below. Please submit your written comments to:

Ken Decio  
Waste Permitting, Compliance and Mitigation Division  
California Department of Resources Recycling and Recovery  
P.O. Box 4025  
Sacramento, CA 95812-4025  
FAX: (916) 319-7244  
e-mail: [compost.transfer.regs@calrecycle.ca.gov](mailto:compost.transfer.regs@calrecycle.ca.gov)



## **PUBLIC HEARING**

A public hearing to receive public comments has been scheduled for December 10, 2014. The hearing will be held at:

Joe Serna Jr., Cal EPA Building  
Coastal Hearing Room  
1001 I Street, 2nd Floor  
Sacramento, CA 95814

The hearing will begin at **1:30 PM on December 10, 2014**, and will conclude after all testimony is given. The Department requests that persons making oral comments also submit a written copy of their testimony at the hearing. The hearing room is wheel chair accessible. If you have any questions, please contact [compost.transfer.regs@calrecycle.ca.gov](mailto:compost.transfer.regs@calrecycle.ca.gov).

## **AUTHORITY AND REFERENCES**

Public Resources Code Sections 40502, 43020, 43021, and 43209.1 provide authority for this regulation. The following is a list of references cited in this proposed regulation: Public Resources Code: 40053, 40110, 40400, 40401, 43020, 43021, 43209.1, 44100-44101, 43000-45802, 45000-45024, and 50000-50002.

## **INFORMATIVE DIGEST**

The existing California Integrated Waste Management Act (Act), Public Resources Code (PRC) §40000 et. seq., gives the Department authority to provide for the protection of public health, safety, and the environment through waste prevention, waste diversion, and safe waste processing and disposal. The proposed rulemaking revises existing regulations and develops new regulations to ensure that solid waste facilities handle compostable materials in a manner that protects public health, safety, and the environment. The proposed regulations:

1. Clarify several compostable material feedstock definitions and the types of operations and facilities that can accept these feedstocks.
2. Revise the maximum concentrations of metals allowed in compost to reflect changes adopted by US EPA.
3. Provide Enforcement Agencies with discretion to authorize temporary storage of additional material at compostable materials handling operations.
4. Revise Enforcement Agency inspection frequency requirements for solid waste operations to ensure consistency throughout Title 14.
5. Provide operators and Enforcement Agencies with additional mechanisms to address chronic odor at compostable materials handling facilities and operations.
6. Establish criteria for land application of compostable materials and add pathogen and metal limits for compostable materials when applied to land.
7. Require compost products to meet a 0.1% physical contaminant limit by weight and set the same standard for compostable materials when applied to land.

8. Develop regulations for compostable materials at in-vessel digestion operations and facilities.
9. Clarify the term “permitted maximum tonnage” on the solid waste facility permit application.
10. Clarify requirements for composting at non-commercial sites, such as community gardens and schools.

The Department held 16 workshops from October 2011 through May 2013 to obtain stakeholder input on compostable material handling issues and developed the proposed regulations based on this stakeholder input.

### **FEDERAL LAW OR REGULATIONS MANDATE**

Federal law or regulations do not contain comparable requirements.

### **POLICY STATEMENT OVERVIEW**

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. The proposed regulations modify the existing Compostable Material Handling Operations and Facilities Regulatory Requirements by: clarifying several compostable material feedstock definitions and the types of operations and facilities that can accept these feedstocks; revising the maximum concentrations of metals allowed in compost to reflect changes adopted by US EPA; providing Enforcement Agencies with discretion to authorize temporary storage of additional material at compostable materials handling operations; revising Enforcement Agency inspection frequency requirements for solid waste operations to ensure consistency throughout Title 14; providing operators and Enforcement Agencies with additional mechanisms to address chronic odor at compostable materials handling facilities and operations; establishing criteria for land application of compostable materials and adding pathogen and metal limits for compostable materials when applied to land; requiring compost products to meet a 0.1% physical contaminant limit by weight and setting the same standard for compostable materials when applied to land; clarifying the term “permitted maximum tonnage” on the solid waste facility permit application; and clarifying requirements for composting at non-commercial sites, such as community gardens and schools.

The proposed regulations provide a standardized regulatory framework for in-vessel digestion activities. Currently, in-vessel digestion activities are subject to either existing Transfer/Processing Operations and Facilities Regulatory Requirements or Compostable Material Handling Operations and Facilities Regulatory Requirements, depending on the nature of the feedstock and how it is handled. The proposed regulations combine transfer/processing and compostable material handling requirements into a stand-alone set of in-vessel digestion regulations, which will have marginal impacts on in-vessel digestion activities compared to existing regulations.

### **CONSISTENCY WITH STATE REGULATIONS**

After conducting an evaluation for any regulations relating to this area, the Department has found that these are the only regulations dealing with compostable materials processed/handled by solid waste facilities. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

### **PLAIN ENGLISH REQUIREMENTS**

Department staff prepared the proposed regulation pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Sections

11342.580 and 11346.2(a)(1). The proposed regulation is considered non-technical and is written to be easily understood by those parties that will use them.

## RESULTS OF THE STANDARDIZED REGULATORY IMPACT ASSESSMENT

### Costs

Based on the results of a Standardized Regulatory Impact Assessment prepared pursuant to Government Code section 11346.3(c)(1), the Department estimates the economic impact of this regulation (including the fiscal impact) is over \$50 million, as summarized in the table below.

LOW COST SCENARIO			
Year		2015	2018
Compostable Materials		\$797,587	\$846,407
In-Vessel Digestion		\$7,380	\$774,563
Total		\$804,967	\$1,620,970

HIGH COST SCENARIO			
Year		2015	2018
Compostable Materials		\$50,762,353	\$53,869,415
In-Vessel Digestion		\$8,646	\$9,679,347
Total		\$50,770,999	\$63,548,762

The complete Standardized Regulatory Impact Assessment is available as part of the Initial Statement of Reasons. See “Availability of Statement of Reasons and Text of Proposed Regulations” section.

#### Creation or Elimination of Jobs within the State

The proposed regulatory action may create between two and 57 new jobs at compostable material handling and in-vessel digestion facilities due to hiring additional laborers to manually remove physical contaminants or operate equipment to remove physical contaminants, designing and maintaining roads, providing adequate lighting, and providing and maintaining visual screening, and up to 7 additional jobs at laboratories that analyze percent contamination. Up to 4 jobs may be lost somewhere in the economy. Compostable material handling and in-vessel digestion facilities may also need to purchase additional equipment to remove physical contaminants which may create new equipment manufacturing and/or maintenance/repair jobs in California.

#### Creation/Elimination of Businesses within the State

Based on this assessment, the proposed regulations would not affect the creation or elimination of businesses within California. Currently, these types of solid waste operations and facilities are subject to either the Transfer/Processing Operations and Facilities Regulatory Requirements (California Code of Regulations, Title 14, Division 7, Chapter 3, Articles 6.0 – 6.35) or the Compostable Material Handling Operations and Facilities Regulatory Requirements (California Code of Regulations, Title 14, Division 7, Chapter 3.1).

#### Competitive Advantages and Disadvantages for California Businesses

The proposed regulations revisions would not impact the ability of California businesses to compete with businesses in other states to produce goods or services within California. The proposed regulations

revisions are intended to create more equitable compostable material handling and in-vessel digestion business competition within California.

### Increase or Decrease of Investment in California

The results of this assessment do not indicate whether the proposed regulations would either increase or decrease investment in the State.

### Incentives for Innovation in Products, Materials, Processes

One proposed change in these regulations is a standard for compostable material applied to land, and compost produced at a regulated operation or facility, to meet a 0.1% physical contaminant limit. The Department assumes operators will incur costs associated with removing contaminants from feedstock or product to meet this standard. Initially, operators may employ labor and/or utilize available equipment (e.g., screens) to remove contaminants. Moving forward, the Department anticipates the standard may stimulate the development of innovative equipment or physical processes to more efficiently and cost-effectively remove contaminants.

### Benefits

The principal benefit of the proposed regulations is protecting public health, safety and the environment. Requiring compost products to meet a 0.1% physical contaminant limit will reduce litter and minimize the amount of plastic entering surface water and the ocean while creating new jobs and increasing the market value of compost. Establishing criteria for safe land application of compostable material will reduce litter and minimize the amount of plastic entering surface water and the ocean and improve food safety and animal health by reducing toxic metals, disease-causing organisms, physical contaminants, and invasive/noxious species in compostable material. Other benefits of the proposed regulations include minimizing odors at compostable material handling and in-vessel digestion facilities; decreasing greenhouse gases, air pollution, and long-distance transportation of organic material by facilitating small-scale composting; providing clarity to the regulated community and regulators. Finally, the regulations will ensure safe operations and facilities to handle organic material diverted as the result of California's goal to source-reduce, recycle, or compost 75% of the solid waste generated in the State by 2020.

The new, "stand-alone" In-vessel digestion portion of the proposed regulations will establish a clear regulatory framework for the digestion of organic material. Digesting this material will decrease greenhouse gas generation and increase production of biofuels/bioenergy.

### Department of Finance Comments

Pursuant to Government Code section 11346.3(f), the Department of Finance (DOF) shall comment on the extent to which the Department's Standardized Regulatory Impact Assessment adheres to the regulations adopted pursuant to Government Code section 11346.36, and the Department shall summarize DOF's comments and the Department's responses to those comments. The following are the DOF's comments received and the Department's response to the comments:

#### **DOF Comment #1:**

*The implication that higher costs on their own would create more jobs to the regulated waste management and remediation services industry is incorrect. This is likely due to the decision to change the rental cost of capital, as this affects substitution between capital and labor usage, leading to the positive job impacts. However, there does not seem to be any reason to change that parameter, and in general, higher costs should lead to job losses. For example, while the purchase of machinery and equipment benefits the sectors providing such services, these are additional costs to the regulated industry. On the other hand, if the regulations leads to growth in the supplying and*

*regulated industries by offering greater certainty for investment, we would expect there could be positive job impacts overall. That argument should be made explicitly, even if the benefits are difficult to quantify.*

**Department Response:**

The Department revised Section II. E. of the Standardized Regulatory Impact Assessment by stating that, in general, while some economic models may predict that the higher costs resulting from the proposed regulations should lead to job losses, the Department expects the proposed regulations to create positive, net job growth in the waste management, remediation and laboratory services industries by offering greater certainty for investment and from the efforts of businesses to comply a lower cost.

**DOF Comment # 2:**

*There are some errors in the submitted Standardized Regulatory Impact Assessment. Some of the economic impacts are characterized as indirect, rather than total, as in Table 3. This mislabeling changes how the impacts are evaluated and needs to be corrected. In addition, while the presentation of compostable materials and in-vessel digestion separately provides useful detail, it may be helpful to also report the total impact of the proposed regulations in these areas. Direct references to the results in Table 3 would make the discussion on job creation/elimination, competitive advantage/disadvantage and increase/decrease in investment more transparent.*

**Department Response:**

The Department revised Section II. D. of the Standardized Regulatory Impact Assessment by changing “indirect costs” to “costs” in Table 3 and adding Table 4 that summarizes the total costs of the proposed regulations.

**DOF Comment #3:**

*Modeling the direct effects of Alternative 2 would also allow a more straightforward comparison to the impacts of the proposed regulations.*

**Department Response:**

The Department modeled the direct effects of Alternative 2 and revised Section IV. B. of the Standardized Regulatory Impact Assessment by adding Table 6 that summarizes the cost of Alternative 2.

**DOF Comment #4:**

*We suggest the introductory section be expanded to discuss the wider benefits that would be made possible with these regulations. Composting could play a large part in meeting California’s goals to reduce or divert solid waste. Strictly speaking, these issues are outside the scope of regulatory impact, but form a large part of the justification for the need to adopt these regulations. We think it would benefit the public’s understanding to include such context.*

**Department Response:**

The Department included an expanded discussion of the wider benefits of the proposed regulations in Section I. A. of the Standardized Regulatory Impact Assessment.

## **MANDATE ON STATE AGENCIES, LOCAL AGENCIES, OR SCHOOL DISTRICTS**

Department staff has determined that the proposed regulation does not impose: 1) a mandate on local agencies or school districts; 2) costs to any local agency or school district that must be reimbursed in accordance with Government Code §§17500 through 17630; 3) other non-discretionary costs or savings on local agencies; or 4) costs or savings in federal funding to the state.

The Department would have an additional expenditure of approximately \$4,250 in the current FY, \$4,250 in FY 2016-17, and \$4,505 in SFY 2017-18. Other State agencies would have additional expenditures of approximately \$1,445 in the current FY, \$1,445 in SFY 2016-17, and \$1,955 in FY 2017-18.

## **FINDINGS ON NECESSITY OF REPORTS**

The Department finds that it is necessary for the health, safety, or welfare of the people of this state that the reporting requirements in the proposed regulation apply to businesses.

## **EFFECT ON BUSINESSES**

Department staff made an initial determination that although the proposed regulation would affect approximately 363 businesses in California that handle compostable materials, it would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This determination is based on the results of a Standardized Regulatory Impact Assessment prepared pursuant to Government Code section 11346.3(c)(1).

## **EFFECT ON SMALL BUSINESSES**

Department staff made an initial determination that although the proposed regulation could affect approximately 115 small businesses (using the definition in Government Code section 1132.610), it will not have a significant statewide adverse economic impact, including the ability of California businesses to compete with businesses in other states.

## **EFFECT ON CREATION OR ELIMINATION OF JOBS, EXISTING OR NEW BUSINESSES IN THE STATE OF CALIFORNIA**

The proposed regulations would not affect the creation or elimination of businesses within California. The types of businesses that would be affected are currently subject to either the Transfer/Processing Operations and Facilities Regulatory Requirements (California Code of Regulations, Title 14, Division 7, Chapter 3, Articles 6.0 – 6.35) or the Compostable Material Handling Operations and Facilities Regulatory Requirements (California Code of Regulations, Title 14, Division 7, Chapter 3.1). The impact of these regulations is not sufficient to create or eliminate businesses. Businesses involved in reducing contaminants and businesses that perform laboratory analysis of organic products could potentially expand as a result of the proposed regulations.

## **COST IMPACT ON PRIVATE PERSONS OR BUSINESSES**

Based on the results of a Standardized Regulatory Impact Assessment prepared pursuant to Government Code section 11346.3(c)(1), the Department estimates the economic impact of this regulation (including the fiscal impact) is over \$50 million. See “Results of the Standardized Regulatory Impact Assessment” section. There are a range of representative businesses subject to this rulemaking action depending on the type of facility involved. Cost impacts on those representative businesses are fully discussed and analyzed in the Standardized Regulatory Impact Assessment. The complete Standardized Regulatory Impact Assessment is available as part of the Initial Statement of Reasons. See “Availability of Statement of Reasons and Text of Proposed Regulations” section.

## **EFFECT ON HOUSING COSTS**

Department staff made a determination that the proposed regulation will not have a significant effect on housing costs.

## **CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## **CONTACT PERSON**

Inquiries concerning the substance of the proposed action may be directed to:

Ken Decio  
Waste Permitting, Compliance and Mitigation Division  
California Department of Resources Recycling and Recovery  
P.O. Box 4025  
Sacramento, CA 95812-4025  
PHONE: (916) 341-6313  
FAX: (916) 319-7244  
e-mail: [compost.transfer.regs@calrecycle.ca.gov](mailto:compost.transfer.regs@calrecycle.ca.gov)

Back-up contact person to whom inquiries concerning the proposed administrative action may be directed:

Cody Oquendo  
Waste Permitting, Compliance and Mitigation Division  
California Department of Resources Recycling and Recovery  
P.O. Box 4025  
Sacramento, CA 95812-4025  
PHONE: (916) 341-6719  
FAX: (916) 319-7271  
e-mail: [compost.transfer.regs@calrecycle.ca.gov](mailto:compost.transfer.regs@calrecycle.ca.gov)

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

The Department may adopt the proposed regulation substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text -- with changes clearly indicated -- available to the public for at least 15 days before the Department adopts the regulation as revised. Requests for the modified text should be made to the contact person named above. The Department will transmit any modified text to all persons who testify at the public hearing; all persons who submit written comments at the public hearing; and all persons whose comments are received during the comment period, and all persons who request notification of the availability of such changes. The Department will accept written comments on the modified regulation for 15 days after the date on which they are made available.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

The Department will have the entire rulemaking file, and all information that provides the basis for the proposed regulation, available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. Copies may be obtained by contacting Ken Decio at the address or e-mail address listed above. For more timely access to the proposed text of the regulation, and in the interest of waste prevention, interested parties are encouraged to access the Department's Internet webpage at <http://www.calrecycle.ca.gov/Laws/Rulemaking/Compost/default.htm>. Additionally, the Final Statement of Reasons will be available at the above listed Internet address or you may contact the persons named above.