

**California State Association of Counties
Recology
Regional Council of Rural Counties
Republic Services Inc.
Waste Management**

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Animal Health and Food Safety Services
1220 N Street, Room A-116
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RE: Request for a Public Hearing and Initial Comments on the Proposed Regulations for Renderers, Collection Center, Dead Animal Haulers, and Transporters of Inedible Kitchen Grease

Dear Mr. Aquino:

We are writing this joint letter to you regarding the Proposed Regulations for Renderers, Collection Centers, Dead Animal Haulers and Transporters of Inedible Kitchen Grease (Proposed Regulations) and the related draft document titled "Safely Disposing Of Waste Meat, Poultry, and Fish Material Guidance and FAQs (FAQ)" dated January 25, 2010.

The Proposed Regulations were very recently circulated for 45-Day comment without intent to hold a public hearing. We are concerned that the procedures outlined in the Proposed Regulations and described in the FAQ will impose duplicate and unnecessary regulations, discourage solid waste recycling, composting and renewable energy efforts, and impose additional financial burden on local governments and on retail and commercial establishments served by the solid waste industry. **Therefore, we submit the following general concerns regarding the FAQ and the Proposed Regulations and formally request that a public hearing be held to insure that the many stakeholders impacted by significant revisions in these Proposed Regulations have an adequate opportunity to have their concerns addressed.**

This FAQ and the Proposed Regulations would in part impose the regulatory authority of the California Department of Food and Agriculture (CDFA) over some solid waste facilities and operations already thoroughly regulated by CalRecycle and Local Enforcement Authorities (LEAs) pursuant to California's Integrated Waste Management Act (Public Resources Code 40000 et seq.). We learned of this effort when the Draft FAQ was circulated in January 2010. Since that time, we have expressed our concern in a public workshop held in February 2010 and in two subsequent informal stakeholder meetings held with CDFA and The Department of Resources Recycling and Reuse (CalRecycle) staff.

During those meetings, we have explained the solid waste collection and processing infrastructure and the extensive array of regulatory requirements imposed on solid waste facilities by local land use requirements, LEAs, CalRecycle, state, and local air and water regulatory agencies. The existing solid waste infrastructure collects, processes, recycles, and disposes of solid waste. CalRecycle is designated as the state agency responsible for managing "solid waste" (PRC Section 40508). Solid waste is defined in statute to include putrescible and nonputrescible waste including "...vegetable or animal solid and semisolid waste..." (PRC Section 40191). The solid waste industry has traditionally managed residential and commercial food waste including animal, poultry, and fish scraps.

We offer the following comments in the context of our extensive experience in handling, processing and recycling food waste including meat, poultry, and fish scraps. The following comments are general in nature and we will be submitting more detailed comments specifically on the Proposed Regulations during the public comment period.

1. We are concerned that the Draft Guidance and the proposed CDFA Regulations will impose a duplicate regulatory program that is not creating additional safeguards to public health, safety, or the environmental concerns.

The state's solid waste laws thoroughly regulate solid waste collection, handling, recycling, and disposal. The term "Solid Waste" potentially includes almost any discarded material other than specified types of waste like hazardous waste.

PRC 40191. (a) Except as provided in subdivision (b), "solid waste" means **all putrescible and nonputrescible solid, semisolid, and liquid wastes**, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other **discarded** solid and semisolid wastes. (b) "Solid waste" **does not include** any of the following wastes:

- (1) Hazardous waste, as defined in Section 40141.

(2) Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).

(3) Medical waste regulated pursuant to the Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a solid waste landfill, as defined in Section 40195.1. Medical waste that has been treated and deemed to be solid waste shall be regulated pursuant to this division. (Emphasis added ¹¹).

A Solid Waste Facility Permit (SWFP) is required for solid waste facilities.

PRC 44002. (a) (1) No person shall operate a solid waste facility without a solid waste facilities permit if that facility is required to have a permit pursuant to this division. ...

The types of facilities that would potentially require a SWFP are identified in statute:

PRC 40194. "Solid waste facility" includes a solid waste **transfer** or **processing** station, a **composting** facility, a **gasification** facility, a **transformation** facility, and a **disposal** facility.

As mentioned above, fish, poultry, and animal scraps all fall within the definition of solid waste and as such are under the purview of CalRecycle. This recent effort by CDFA to impose a new and redundant regulatory requirement over solid waste handling, processing, composting and anaerobic digestion can only be justified if there is an overarching public health, public safety, or environmental concern motivating these changes. So far, neither the draft guidance document nor discussions with CDFA staff have provided us with a clear demonstration of any such overarching concerns.

According to the FAQ, meat, poultry, and fish scraps from restaurants and residential solid waste collection services are exempt from CDFA Regulations. However, CDFA applies Title 3, CCR, Section 1180.39 as a blanket authorization for CDFA regulatory authority over the same type of meat scraps from retail stores such as a grocery stores or big box retailers with meat departments. The term "...not intended for use as human food..." seems to be key. CDFA staff argues that when meat arrives at a grocery store or big box retailer and is cut and packaged, the scraps are no longer meant for human consumption and must be handled separately from other food waste collection services and sent to a licensed rendering operation. But when is that scrap of previously inspected meat not meant for human consumption? We understand that loads of meat, poultry, or fish past the sale date is no longer fit for human consumption. But in our view, a scrap off a cut of meat that was inspected and approved for human consumption is incidental to preparing food that was approved for human consumption and is still fit for human consumption. In fact, those trimmings were initially intended for human consumption but were trimmed for packaging.

Therefore we would argue that these meat, poultry and fish scraps approved for human consumption and thrown into a food waste recycling bin do not pose an overarching threat to public health, safety or the environment and are already thoroughly and appropriately regulated by CalRecycle.

Solid waste facilities regulated pursuant to the California Integrated Waste Management Act (PRC 40000 et seq) and regulations adopted by CalRecycle are appropriate facilities to manage solid wastes that may contain meat, poultry or fish wastes. Duplicative regulation by Department of Food and Agriculture is simply not warranted. Just as renderers are adequately regulated pursuant to your regulations and do not warrant duplicative regulation by CalRecycle.

Furthermore, the authorizing statutes cited by CDFA for this regulation (Food and Agriculture Code sections 19383 and 19384) are intended to prevent pet food and pet food ingredients from being diverted for consumption by humans-- a goal far afield from regulating the solid waste industry.

2. The Draft Guidance and the Proposed Regulations will inhibit the development of composting programs, anaerobic digestion projects that produce alternative energy and biofuels.

Title 14 currently states that composting of unprocessed mammalian tissue is prohibited except in the case of an authorized research project (14 CCR 17855.2). However, that section allows for the composting of animal waste products when generated by the food service industry, grocery stores, and residential food scrap collection programs. Title 14 states:

§ 17855.2. Prohibitions.

*(a) The composting of unprocessed mammalian tissue, including but not limited to, flesh, organs, hide, blood, bone and marrow is prohibited, **except when from the food service industry, grocery stores, or residential food scrap collection**, or as part of a research composting operation for the purpose of obtaining data on pathogen reduction or other public health, animal health, safety, or environmental concern, in accordance with section 17862. (Emphasis added.)*

(b) The composting of medical waste is prohibited.

(c) The composting of hazardous waste is prohibited.

Under this section of the code, CalRecycle and local jurisdictions are increasingly requiring solid waste programs to include more food waste, including meat, poultry and fish scraps, in diversion programs such as composting and anaerobic digestion.

The permitting requirements for composting and anaerobic digestion facilities are already complex and expensive to manage under CalRecycle regulations. Including another arguably unnecessary set of permitting, licensing and inspection requirements under CDFA will unquestionably discourage to development of these facilities when the state clearly needs to divert more organics from landfills and to produce increasingly more alternative energy and clean biofuels. Under the California Environmental Quality Act, composting facilities are required to assess the environmental impacts of each waste stream accepted. Facilities that accept food waste have been assessed for the composting processes impact on human health and the environment.

3. The *de minimis* threshold in Section 1180.48 is unreasonable and an unenforceable standard.

The Proposed CDFA Regulation (see Section 1180.48, page 40)) would only exempt from your regulations those restaurants and retail stores that dispose of up to 4 lbs of animal waste products per day and cumulatively 60 lbs per month (and also the establishment cannot have gross sales of meat and poultry in excess of \$1,000 per month) if they contract with a waste management company for its removal, disposal or recycling. This standard would effectively prohibit food waste management programs now being implemented or considered by many jurisdictions in California. By public and private solid waste service providers – unless we subject ourselves to overlapping and duplicate regulations by CDFA

Further, this standard makes it virtually impossible for a retail store or a waste hauler to manage meat, poultry, or fish scraps in a food waste container without extensive record keeping and constant load checking and oversight. The standard is set so low that the only alternative will be to exclude animal waste entirely from any food waste collection program. – or subject our industry to duplicative regulation by two separate state agencies Again, the regulations will be a strong disincentive for food waste recycling!

4. We believe that facilities regulated by CalRecycle and haulers that deliver to those permitted and regulated solid waste facilities should at most be authorized under a Permit By Rule procedure adopted by CDFA to allow the collection, handling, and processing of meat, poultry and fish scraps pursuant to the Integrated Waste Management Act.

Solid waste haulers should be able to collect and haul meat, poultry and fish scraps as part of a food waste recycling program to facilities with Solid Waste Facilities Permits for transfer/processing, composting, anaerobic digestion or similar processes without these haulers having to register their trucks and facilities with CDFA. Requiring a duplicate layer of regulation under CDFA will create another significant expense for waste haulers and recyclers, another layer of regulation, which is unnecessary, and an additional burden on state and local governments.

We respectfully submit that CDFA and CalRecycle consider implementing a Permit By Rule process that recognizes the existing regulatory structure established by the California Integrated Waste Management Act and eliminates duplicate regulation, and encourages diversion programs that produce compost, alternative energy, and clean biofuels. Such an approach would allow appropriate regulatory oversight without duplication and would allow the respective agencies to honor the existing regulatory structure within a clearly defined overarching regulatory framework that will insure the protection of public health, safety, and the environment. Our industry will communicate further with you on this concept within the comment period for these proposed regulations.

5. We strongly urge the Department to eliminate controversial provisions in these draft regulations and conduct extensive workshops on these provisions before proceeding with the formal regulatory process.

There are numerous provisions in these draft regulations that will have a significant regulatory and fiscal impact on renderers, grease haulers, the solid waste industry, and renewable energy producers. These impacts are not discussed in any of the documents released on the draft regulations. Nor have these draft regulations been properly vetted with the public and other agencies impacted by the draft regulations. Therefore, we request that the Department remove from the following provisions from the draft regulations to allow for regulatory transparency, public comment, and additional analysis of the fiscal impact of the various proposals:

- **Section 1180(a)(21)** “Packing house waste”: This definition is overbroad, is used throughout the regulations, and includes references to grocery stores and retail stores. Those establishments and their waste haulers should be provided with an opportunity to discuss potential impacts in a public setting.
- **Article 42. Transporters of Kitchen Grease:** While we understand the need to regulate the hauling of kitchen grease, we are concerned that the proposed regulations will restrict the ability of anaerobic digestion facilities to accept kitchen grease at their facilities. Given the sensitive nature of kitchen grease transport, we believe that these regulations would benefit from a thorough stakeholder vetting.
- **Section 1180.48(b):** The de minimis standards established in this section for waste haulers is far too restrictive for retail establishments and is an essentially unenforceable weight and sales standard imposed upon “Inspected establishments, retail stores, custom slaughterers, and custom processors...”. Further, why did the Department select certain establishments to be eligible for this de minimis standard and not others? Again, the implications of this standard are very significant to retail establishments and waste haulers and a public discussion of these implications is essential to the implementation and enforceability of these regulations.

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¹ All references to PRC are to the Public Resources Code, the main source of statutes that govern the Department of Resources Recycling and Reuse.

¹¹ Any emphasis (bolding) shown in an excerpt from statute or regulations is added emphasis.

