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July 23, 2012

Mr. Roger Mitchell, P.G.  
Engineering Geologist  
Division of Water Quality  
State Water Resources Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340

Dear Mr. Mitchell:

**Re: DRAFT STATE WATER RESOURCES CONTROL BOARD WATER QUALITY ORDER  
NO. DWQ-2012-TENT**

The Association of Compost Producers (ACP) is pleased to offer this letter to make comments and recommendations on the "DRAFT STATE WATER RESOURCES CONTROL BOARD WATER QUALITY ORDER NO. DWQ-2012-TENT," that was made available for comment on May 16, 2012, as "Draft, Version 1." ACP attended one of the final informal meetings on the subject, which took place in Riverside on May 22 where this 59 page document was reviewed with you, and we offer this comment and recommendation letter for your consideration and action prior to commencing the formal process in August 2012.

ACP represents over 100 compost producers throughout the state. Our members — consisting of large and small companies, special agencies, municipalities and counties alike — provide a large share of the quality compost products produced in California, and contribute an important and growing share of the beneficially reused organic residuals. As you know, our Executive Director and selected members have been following this Statewide Order process since it was introduced in September 2011.



The "DRAFT STATE WATER RESOURCES CONTROL BOARD WATER QUALITY ORDER NO. DWQ-2012-TENT" (59 pages) was made available for comment on May 16, 2012 giving us only six days of review before attending the May 22 meeting. We engaged for approximately 3 hours in direct discussions with you, Roger, as well as asking some quick clarifying questions on June 27, 2012 and July 3, 2012. As stated at that meeting and in subsequent conversations, we fully recognize the effort and thoroughness of the work that went into assembling the order. While we did very much appreciate the time engaged with you in leading up to the drafting of this Draft Order, *we have a number of important concerns that have not been addressed to date.*

Below are significant issues and concerns that fall into two main area of "process specific" and "Order specific" categories. We would appreciate and strongly recommend proactively and explicitly addressing our concerns prior to the next draft of this order, and *definitely*, prior to our entering into the formal regulatory drafting phase scheduled for this fall. Until these critical issues are addressed, we cannot support the Order.

**Process Specific Concerns:**

- **The Case for this Statewide Order Has Not Been Made:** Numerous times during the workshops to date, many participants, composters, other regulators, have asked questions, in many forms, related to the justification for more stringent Water Board regulations on compost facilities in California. It is our understanding that there is no *scientifically based economic and environmental documentation* of:
  - An existing, scientifically documented, problem that we are actually solving;
  - An established need a Statewide Order for Compost facilities, e.g. documented failure of local WDRs that are not working;
  - A significant number of compost facilities in California that are polluting the ground water basins of this state that warrant the issuing of a Statewide Order;
  - Inability of the Regional Water Boards to address local problems that may exist in their respective jurisdictions; that the process has not worked in the past. If so, where, how and why?
  - Data to back up the justification for the prospective new investments in all the compost facilities Statewide; and
  - Existing facilities have been sufficiently characterized to show that they require more protection.

These are just a few points that form the basic question related to "need" for this broad, Statewide Order. As an industry that will be critical to the future

health of California's environmental and economy, composters feel that the Water Board owes us clear, documented answers to these questions *prior* to implementation of the formal process for this proposed Statewide Order.

- **Small Compost Facilities Will Be Hurt the Most:** As a percentage of small composter (12,500 tons per year total storage capacity) profit, cash flow and capital raising capabilities, these facilities will be most severely impacted by the proposed Order. Nevertheless, the collective, distributed capacity of these facilities is a very important function for all the local communities in which they operate. Alternatives to exemptions might be to provide Water Board acceptable best management practices (BMPs) to this category of facilities. For these reason, we make the following recommendation.
- **Extended Public Process:** Since:
  - Small compost facilities do not have the funding or luxury to attend the Water Board workshops to date, and
  - Many of the large facilities, that have existing WDRs were under the impression that they were going to be excluded from this process (but have not been exempted from this draft Order), they, too, need to be brought back into this process.

So these emerging issues need to be worked through during an additional public process, prior to finalizing the order and transitioning it into a formal process. Given this concern, ACP is willing to continue working more closely the Water Board, to help address these underrepresented constituency's concrete concerns. We are prepared to work collaboratively to see if there's some way of accommodating them into a proposed Order, once the need for the Order has been explained (first process concern above). Alternatively, we might consider exempting these facilities from this order, or to simply retain the current WDR process, only on the large facilities that have demonstrated problems.

#### **Order Specific Concerns:**

After we have reengaged on addressing the above concerns and recommendations, and if the Water Board still intends to proceed with this Statewide Order process, we have specific recommendations related to this current Draft of the Statewide Order, as follows:

- **Existing WDRs:** We strongly recommend that facilities that already have existing waste discharge requirements (WDR) with their respective Regional Water Quality Control Board ***should be exempt from this new order***. This exemption

could be included in section A.3.b. "Exempt Composting Activities", with the explicit statement of this exemption.

- **"Chip & Grind" language:** We strongly recommend that the chipping and grinding operation of a "CMU [compost management unit]" be included in the "Exempt composting Activities" (section A.3.b.). Proposed wording could be: "The Chipping & Grinding operations (stock piling and size reduction) is not included in the definition, working area, and regulations of the 'Compost Management Unit'. It is therefore an exempt activity under this Statewide Order, as long as that portion of the facility adheres to the 'chipping and grinding facilities and operations' as contained in this order." [Page ii]
- **Landfills:** Clarify specifically why compost operations at landfills are not excluded from this regulation, even though the landfill may have a more stringent WDR (see Existing WDRs above).
- **"Liquid waste" definition:** We recommend that the "liquid waste" definition be modified to not include liquid food waste, but to include that under the food waste definition.
- **"Composting" definitions:** We have observed that "composting" definitions are not consistent between regulatory agencies. We recommend that composting be defined, explicitly as CalRecycle defines composting within Title 14 and 27, and that it explicitly state that "plant, animal and human pathogen reduction" has occurred in the finished compost.
- **Adoption deadlines:** This order needs both "effective dates" and "adoption deadlines" for operations that are subject to this Order. See also "Existing WDRs" above.

We look forward to further opportunities to help clarify and help implement our recommendations above, as well as engaging with you in the formal regulatory adoption process if and when that is initiated.

Very truly yours,



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