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Alameda County Waste Management Authority
City of San Diego, Miramar Greenery
City of Bakersfield
California Bio-Mass
CCL Organics
Californians Against Waste
California Compost Coalition
California Organics Recycling Council
Central Coast Compost
ComGro
Hidden Resources
Integrated Waste Management Consulting, LLC
Monterey Regional Waste Management District
Recology
Republic Services, Inc.
SA Recycling
San Pasqual Valley Soils
Sonoma Compost
United States Composting Council

September 12, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Ms. Townsend:

The companies and organizations listed above represent a coalition that owns, operates, or represents owners and operators of composting facilities in California. Many of these organizations and companies have participated in an informal stakeholder process regarding the development of a statewide waiver of Waste Discharge Requirements for composting facilities (DWQ-2012-XXXX). While we appreciate the opportunity to comment on the proposed regulations and the lengths the State Water Resources Control Board (SWRCB) staff has gone to involve stakeholders in the process, unfortunately we cannot support DWQ-2012-XXXX in its current form.

We are extremely disappointed and confused by the latest draft (August 6, 2012) of DWQ-2012-XXXX. While we appreciate that this is a working document, there are some significant changes represented in this draft which contradict earlier conversations and present a significant change from the direction this process appeared to be heading. This is particularly true for facilities located within the footprint of a Regional Board issued Waste Discharge Requirement (WDR). The question of whether or not existing composting facilities within the footprint of a Regional Board-approved WDR were included in this General Order was asked more than once at SWRCB-sponsored public meetings. On more than one occasion SWRCB staff assured stakeholders that these facilities would not be covered by the standards in DWQ-2012-XXXX. Nor would facilities covered under existing WDRs be required to seek coverage under the proposed order. The August 6, 2012 Draft contradicts this understanding completely. As stated in B 2) (Page 9, Version 8.6.2012):

“Dischargers of CMUs subject to individual WDRs issued by the Regional Waster Boards are not required to enroll under this Order if the requirements of the individual WDRs are more protective than those proscribed in this Order.”

It remains unclear whether or not composting facilities operating within the footprint of an approved WDR will be required to comply with this order. We would hope this could be clarified in subsequent drafts.

First and foremost, the requirement that the entire operating surface of most composting facilities be held to a 1×10^{-6} permeability standard is perhaps the most troubling. To our knowledge, many existing composting facilities in the state do not meet this standard. Given construction costs that can vary from \$50,000 to \$250,000 an acre, upgrading to a 1×10^{-6} pad is cost-prohibitive for most composters. **Using the lower end of the cost spectrum, this might require a typical 20-acre facility to spend more than a \$1 million to continue to operate.** Most composters affected by this order would eventually attempt to recover these costs from their ratepayers (Ultimately most composting facilities are ratepayer supported). It is unclear whether or not Proposition 218 would allow for recovery of these costs. This is particularly troublesome in light of the fact that there is no evidence that composting is contributing to groundwater pollution statewide. Furthermore the 6 month timeframe for compliance is unrealistic.

We recommend that this unnecessary, burdensome, unsubstantiated pad requirement be removed in favor of something that is achievable by more facilities without substantial investments. We suggest you let the regional boards decide whether or not additional

protection is needed. Improving the quality of the stormwater retention ponds, the area where groundwater pollution is perhaps more likely is a better alternative.

Equally troubling is the provision that would require facilities operating at a facility covered by an existing Waste Discharge Requirement (WDR) such as at a landfill or feedlot, be required to document that their previously approved WDR is at least as protective of the standards contemplated by DWQ-2012-XXXX. **We suggest that all facilities with existing Regional Board Issued WDRs (such as landfills, feedlots, and similar) be exempted from DWQ-2012-XXXX.**

Our concerns can be summarized in a few key points:

I. Out of Proportion. The controls contemplated in the draft are out of proportion to the water quality threat posed by composting facilities. Statewide, composting manages only a fraction of the organic materials (manure, yard trimmings and/or biosolids) that are applied to agricultural land; yet by approving DWQ-2012-XXXX they would be held to the strictest standards. The Draft Initial Study (Version 8.3.2012) developed for the proposed Order highlights the innocuousness of these materials:

“Preliminary water quality information collected indicates that composting of the feedstocks and additives, and/or the incorporation of amendments as specified in the Order, is relatively innocuous, when compared to the composting of such feedstocks as municipal solid waste, animal carcasses, and/or untreated sewage sludge.”

The application of an overbearing standard (1×10^{-6} for the entire pad) to composting facilities statewide is unnecessary and burdensome. Has the State Board considered the cost to taxpayers for what is most likely a very modest, incremental increase in a very small amount of groundwater? California comprises over 100 million acres of land. Compost facilities covered under this order might cover as many as 2,000 acres (0.002 percent). Yet by adding this onerous standard we may require taxpayers to pay for over \$100 million in unnecessary improvements (see cost estimates above – 2,000 acres * \$50,000/acre). Compost, the product, is a recognized treatment method for stormwater (see EPA Publication 833-F-11-007 March 2012 – Stormwater Best Management Practice – Compost Blankets and others). By increasing the costs of operating a compost facility, the State Board is creating a significant negative incentive to increased composting. The SWRCB has provided extremely limited, largely anecdotal information on the *potential* impacts of composting facilities on groundwater. Clearly the majority of the operating facilities are not creating a groundwater threat. Without

additional data it is difficult to support the need for such prescriptive standards. The broad evidence of nitrate pollution presented in various workshops is not specific to composting, nor relevant for most composting facilities.

We were under the impression that the current SWRCB process was contemplated to replace the previous SWRCB General Waiver of Waste Discharge Requirements for composting that was eliminated in 2001. While the Tier 1 requirements listed in DWQ-2012-XXXX do attempt to address the need for a replacement of that waiver, the Tier 1 requirements (which are reasonably similar to the “old” waiver process) only apply to the smallest of permitted facilities (i.e., <12,500 cubic yards on site). The “Old” waiver made no such distinction based on scale. While we appreciate the inclusion of Tier 1 standards, these should be extended to all facilities that previously qualified (and have been operating in good faith) since the demise of the “old” Waiver. This process was not meant to create prescriptive standards more in line with water quality protections needed at landfills and hazardous waste facilities than at composting facilities. **The requirement that all aspects of a facility’s operational area (ditches, berms, pad and pond) meet a 1×10^{-6} permeability standard creates an insurmountable barrier that will force some composting facilities to close and will prevent others from expanding.**

2. Impact on Statewide Recycling Goals. While we do not believe that statewide recycling goals (AB 939, AB 341, etc.) trump the need for water quality protection, the extremely stringent statewide standards contemplated in DWQ-2012-XXXX provide an overwhelming obstacle for both existing facilities to comply with and to the development of new facilities. AB 341, while not prescriptive, will likely encourage the development of new food scraps collection programs, some of which was envisioned to be composted. The overzealous standards contained in the Tier 2 requirements create a significant new cost to facilities, some of which have been operating for decades with no known violations of water quality standards. Not only will DWQ-2012-XXXX discourage and inhibit new facility growth, it will likely result in a decrease in statewide compost capacity as facilities close or downsize rather than make the significant capital investments that would be necessary to meet the proposed standards.

It is also critical to look at the impact on manure composting facilities. Composting manure represents an improvement to water quality from current practice. By creating standards which most manure composters can not meet, the SWRCB is incentivizing the status quo and discouraging more composting of manure.

3. Status of Existing WDRs. As stated above, it is unclear whether or not a composting facility operating within the footprint of an existing WDR will be required to revisit that Regional Board-approved WDR or seek new coverage under the General Order. The current draft appears to want to override the existing WDRs and install a new statewide minimum standard for composting facilities.

This is disappointing because this topic was discussed at length during stakeholder meetings, and SWRCB staff indicated more than once that composting facilities within the boundaries of existing WDRs would not be affected by DWQ-2012-XXXX. The latest draft contradicts the verbal assurances that were given to stakeholders. The new language in the August 6, 2012 draft muddles the issue further rather than clarifying it. Thus there are a number of stakeholders who were under the impression that the DWQ-2012-XXXX would not apply to them (or at a minimum are now unsure). The intent of this draft appears to be to create statewide minimum standards that will apply to all composting facilities and to ensure that existing WDRs are not less stringent than the proposed standards in DWQ-2012-XXXX. **At a minimum, the SWRCB needs to clarify the applicability of this document.** Some of the larger composting facilities in the state are located within the footprints of existing WDRs. Prior to this Draft, many of these facilities were thought to be excluded from this process. These facilities may or may not have participated in the informal discussion process. **To be clear we suggest that all facilities with existing Regional Board Issued WDRs (such as landfills, feedlots, and similar) be exempted from DWQ-2012-XXXX.**

4. Misunderstanding of Composting Process. Composting is an EPA-recognized treatment process for a number of organic materials that are not well managed using other technologies. The composting process requires water – not as an additive – but as an essential component of the microbial process. Adequate moisture in a composting pile is one of the significant challenges California composters face. Some enterprising composters have developed processes that use difficult to dispose of liquid wastes as a replacement for this required moisture. The current draft of DWQ-2012-XXXX appears to limit the use of water during the composting process to prevent the *potential* for leachate, and would prohibit the use of liquid wastes. These requirements are not practical or sustainable and will send difficult-to-manage liquids back to either the landfill or the wastewater treatment plant, further increasing their load.

The US EPA has recognized compost and the use of compost as an important tool in managing stormwater and in erosion control applications. DWQ-2012-XXXX would result in a decrease

in the availability of compost for these applications, resulting in decreased water quality statewide. Also directing organic materials to a well-managed compost facility results in an increase in the opportunity to manage the potential water quality impacts of these materials.

Furthermore, the use of compost by agriculture in CA (by far the major use of compost in the state) helps conserve valuable water resources. The benefits in water holding capacity of adding compost to soil are well-documented. Increasing the costs of production for composters hurts farmer's ability to pay for and use compost.

5. Inconsistent Definitions. While we appreciate that DWQ-2012-XXXX is a work in progress, the current draft contains a number of inconsistent definitions which are critical to understanding the potential impact of these regulations on specific facilities. For example, the definition of agricultural composting is significantly more stringent than that used by CalRecycle. This will create a significant level of confusion over which facilities are or are not required to comply with DWQ-2012-XXXX. The definitions of "Food Material" and "Vegetative Food Waste" are contradictory.

The definitions of "food material" and "vegetative food material" are currently being proposed by CalRecycle as a part of the revisions to the Title 14 Regulations. CalRecycle is in the early stages of this process and these two definitions have not been vetted through the required public process and are not close to being adopted. At this point in the process, it is inappropriate for the SWRCB to include these definitions within the general order. Furthermore, defining sub-categories of food waste may end up creating more confusion among regulators, instead of helping to streamline the permitting process for food waste composting operations.

Similarly it is very unclear from the August 6 draft whether "Stabilized Compost Areas" and indeed "Stabilized Compost" is exempt from the requirements or not, the terms are used inconsistently in the document.

JEANINE TOWNSEND

SWRCB

SEPTEMBER 12, 2012

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If you have any questions regarding this letter, please do not hesitate to contact any of the stakeholders listed below.

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