

# **Department of Resources Recycling and Recovery**

## **Illegal Disposal Emergency Rulemaking**

### **NOTICE OF PROPOSED EMERGENCY ACTION**

NOTICE IS HEREBY GIVEN that the Department of Resources Recycling and Recovery (CalRecycle) is proposing emergency regulations to amend sections 17402, 17414, 17414.2, 17852, 17854.1, 17869, 17896.45, 18302, 18303, 18304, and 18304.1, and adopt sections 17410.5, 17862.3, 17868.6, and 17896.62 of Chapters 3, 3.1, 3.2, and 5, Division 7, Title 14, of the California Code of Regulations (CCR) to define Land Application Activities and place these activities within CalRecycle's Compostable Material Handling Facilities and Operations Regulatory Tiers and subject these activities to the appropriate operator filing requirements, state minimum standards, record keeping, and Enforcement Agency (EA) inspection requirements. The proposed regulations ensure that these activities which are land applying compostable material or digestate are appropriately regulated by the EA to ensure protection of public health and safety and the environment.

Additionally, these proposed regulations amend the sampling and record keeping requirement for solid waste facilities, operations, and activities to ensure that any facility and operation sending material to a location to be land applied are sampling to ensure the material is suitable for land application, consistent with section 17852(a)(24.5), and the sampling test results, weights, and end destination for each load sent offsite are included in the operator records. These proposed regulations allow EAs to review this new recordkeeping data to track the flow of material, investigate, and enforce land application activities to prevent unlawful disposal of material.

CalRecycle has complied with the requirement to provide notice of the proposed emergency rulemaking pursuant to Government Code section 11346.1(a)(2) and Title 1, CCR, section 50(b)(3)(A).

In compliance with Title 1, CCR, section 48, the following statement is included in this document: Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulation to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

The five-calendar day written comment period permits any interested person, or their authorized representative, to submit written comments addressing the proposed emergency amendments to CalRecycle. Written comments, which offer a

recommendation and/or objection, or support the proposed amendment, should indicate the amended section to which the comment or comments are directed.

Comments on the proposed emergency regulations must be submitted directly to OAL within five calendar days of when OAL posts the proposed emergency regulations on the OAL website. Comments on proposed emergency regulations should be submitted to the OAL Reference Attorney by mail to 300 Capitol Mall, Suite 1250, Sacramento, California 95814, by fax to (916) 323-6826, or by e-mail to [staff@oal.ca.gov](mailto:staff@oal.ca.gov).

When submitting a comment to OAL, a copy of the comment must also be submitted to CalRecycle via:

*Electronic Submittal:* [Illegal Disposal Emergency Rulemaking Comment Period](#)

OR

*Postal Mail:*

Csilla Richmond  
Illegal Disposal Emergency Rulemaking  
Department of Resources Recycling and Recovery, Regulations Unit  
1001 "I" Street, MS-24B  
Sacramento, CA 95814

OAL will confirm that CalRecycle has received the comment before considering it. The comment must state that it is about an emergency regulation currently under OAL review and include the topic of the emergency.

The public comment period will commence on February 4, 2025 when the emergency regulations are posted on OAL's website. The public comment period will close on February 10, 2025. **Written comments should be sent to OAL and CalRecycle and received before the close of the public comment period, no later than 11:59 PM on February 10, 2025.** Additionally, CalRecycle requests that written comments reference a subsection or section of the proposed emergency action. Written comments received by CalRecycle after the close of the public comment period will not be responded to in the rulemaking file.

Please note that under the California Public Records Act (Government Code section 7920.000 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone number, email address, etc.) become part of the public record and can be released to the public upon request.

Copies of the proposed regulation text, the Finding of Emergency, and all of the information upon which this proposal is based are available upon request and on CalRecycle's website accessible at the following internet address:

[www.calrecycle.ca.gov/Laws/Rulemaking/](http://www.calrecycle.ca.gov/Laws/Rulemaking/)

The rulemaking file is also available for review during normal business hours at CalRecycle, 1001 I Street, 23rd Floor, Sacramento, California. Please contact the agency contact person, Csilla Richmond, at (916) 327-0089 or [regulations@calrecycle.ca.gov](mailto:regulations@calrecycle.ca.gov), if you wish to review the rulemaking file in person. General or substantive questions regarding this file may also be directed to Csilla Richmond.

## **FINDING OF EMERGENCY**

### Express Statement of Existence of Emergency

CalRecycle finds that an emergency exists due to significant illegal disposal of organic waste and construction and demolition waste occurring in the Antelope Valley region in Los Angeles, San Bernardino, and Kern Counties. This illegal disposal is occurring in large part because of significant limitations within the regulations implementing the California Integrated Waste Management Act of 1989 (IWMA) that are inhibiting or preventing the EAs from addressing the generation, transportation, and disposition of the solid waste at issue. This waste has caused fires and nuisance, and created a significant risk of harm to public health and safety and to the environment. At this time, the cost of cleaning up this waste is estimated to be in the tens of millions of dollars.

Limitations within the existing regulatory framework have made it extremely challenging if not impossible for the EAs to enforce the IWMA's provisions related to illegal disposal. These proposed regulations will allow EAs to use the authority granted in Public Resources Code (PRC) section 44000.5 to bring enforcement actions against any person who causes solid waste to be disposed of, arranges for solid waste to be disposed of, transports solid waste for the purpose of disposal, or accepts solid waste for the purpose of disposal, except for at a solid waste disposal facility for which a permit has been issued. Existing regulations only allow EAs to bring an enforcement action against facility operators or the owners of the property where the waste is disposed, not the other actors that facilitate its disposal.

Additionally, these proposed regulations will regulate the land application of organic waste, bringing the activity into the permitting tier structure, thereby further bolstering an EA's ability to regulate the waste and protect the public from harm from illegal disposal.

### Emergency Defined

"Emergency means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare" (Government Code section 11342.545.). If a state agency makes a finding that the adoption of a regulation is necessary to address an emergency, the regulation may be adopted as an emergency regulation pursuant to Government Code section 11346.1(b)(1).

In this document, CalRecycle is providing the necessary specific facts demonstrating the existence of an emergency and the need for immediate action to prevent serious

harm to the general welfare of the citizens of California, pursuant to Government Code section 11346.1(b)(2).

### Evidence of Emergency

Government Code section 11346.1(b) requires that a finding of emergency include, *inter alia*, a “description of the specific facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific to address only the demonstrated emergency”.

On October 16, 2024, at CalRecycle’s monthly public meeting, members of the public were invited to speak and make any public comments regarding solid waste and recycling issues in California. Residents of Antelope Valley spoke, communicating the significant issues with illegal disposal that they had been experiencing. They described significant amounts of illegal disposal of contaminated compostable material, especially mulch, construction and demolition waste (C&D), solid waste (SW), and household hazardous waste on multiple parcels throughout the Antelope Valley. They described thousands of tons of waste, with piles of waste over 12 feet high, having been disposed of in the Antelope Valley, creating, what they described as a horizontal landfill. They expressed frustration that large trucks would come at all hours of the night, delivering waste to these high desert rural parcels of land. They even described multiple fires that resulted from burning mulch, with at least one having burned a home. A transcript of the October monthly public meeting is included as Attachment 3 in the Documents Relied Upon.

On October 29, 2024, CalRecycle met with Antelope Valley community members to learn more about the troubles they had been experiencing. During that meeting, the community members identified over 50 parcels where this illegal disposal has occurred. They invited CalRecycle to visit these locations with them to see firsthand the problems being caused by the illegal disposal.

CalRecycle contacted the Los Angeles, San Bernardino, and Kern County Local Enforcement Agencies (collectively, the Antelope Valley LEAs) to obtain information on current compliance status and enforcement. The Los Angeles County LEA informed CalRecycle that it had documented over 80 cases and had issued several Notices of Violation and Cease and Desist Orders against the property owners. However, Los Angeles County has been unable to bring any enforcement of the IWMA against the waste generators, haulers, and others causing the waste to be illegally disposed because of the problems with existing regulations described below. Both the San Bernardino and Kern County LEAs have been coordinating with the County Code Enforcement, which are pursuing enforcement of local ordinances, and not the IWMA, because of limitations in existing law.

On November 17 and 18, 2024, CalRecycle participated in a two-day tour of the impacted sites. The tour was coordinated by Antelope Valley community members.

During the tour, CalRecycle visited approximately 20 locations, with some sites consisting of multiple impacted parcels (52 parcels in total). During the tour, CalRecycle staff observed the following:

- (1) The parcels ranged in size from 5 acres to 180 acres.
- (2) Multiple types of solid waste were observed, including mulch (both clean and contaminated), fines from construction and demolition recovery facilities (materials recovery facility (MRF) fines), mixed solid waste (MSW), and household hazardous waste.
- (3) Multiple berms (a level space, shelf, or raised barrier), ranging from six to twelve feet in height, had been constructed of layers of native soils and C&D MRF fines, and then covered by MSW or mulch.
- (4) Many of the parcels contained piles or spread MRF fines, MSW, or mulch.
- (5) Some parcels had trenches containing solid waste. One site was a shallow canyon that had been filled in with waste to a depth of approximately 20 to 30 feet.
- (6) CalRecycle staff observed fire damage of structures that were the result of a mulch fire.
- (7) Some of the parcels were within 500 to 600 feet of the Department of Water Resources aqueduct, the State Water Project, and a community well, posing a risk of harm to vital water resources.

According to the Antelope Valley LEAs, the emergency in Antelope Valley has been caused by often unknown individuals and solid waste operations disposing of significant amounts of solid waste in Antelope Valley. The parties disposing of the solid waste will often transport significant quantities of C&D waste and MRF fines and illegally dispose of them by creating large berms consisting of the waste and native soil and then covering the berms with compostable material (often mulch) in an effort to give the appearance of land application the material. CalRecycle confirmed these assertions by the Antelope Valley LEAs during its tour of Antelope Valley. A photo log from the visit is included as Attachment 4 in the Documents Relied Upon. The log contains representative samples of photographs taken by CalRecycle staff during the visit. Additionally, a log detailing the sites visited and noting certain observations is included in the Documents Relied Upon as Attachment 6.

#### Limitations Within Existing Regulations

Existing regulations (14 CCR, section 17852(a)(24.5)) do allow for the final deposition of compostable material or digestate on land (also known as land application), provided that the application meets certain criteria, including requirements related to contamination, metal concentrations, and pathogen density limits. Additionally, the material when applied cannot exceed 12 inches in accumulated depth on the land surface. If the land application requirements in existing regulation are not met, then, with some exceptions, the compostable material is deemed to be waste that has been illegally disposed of pursuant to 14 CCR section 17852(a)(15).

In the existing land application legal framework, EAs are allowed to request records from property owners to prove compliance with the pathogen and heavy metals testing requirements. However, there is no additional recordkeeping of any kind provided for in Title 14. There is no record of where the waste came from, how the waste was delivered, or whether the waste met the criteria. Nor is there any requirement that a person engaged in the land application of compostable material affirmatively notify the EA of the land application either before or after it occurs. These limitations have made it impossible for the Antelope Valley LEAs to know where the waste is generated, who is transporting the waste, and who is disposing the waste on the land. Without knowing who is generating or transporting the waste, the Antelope Valley LEAs have no way to determine whether the waste is coming from within their respective jurisdictions or from some other jurisdiction within California.

This has made it extraordinarily challenging for the Antelope Valley LEAs to monitor and regulate the disposition or land application of this waste. It has also left the Antelope Valley LEAs relying on bringing enforcement actions solely against the property owners themselves, and not the bad actors who are illegally disposing of the waste. Many of these property owners are unaware that this waste has been disposed on their land, leaving them with very expensive cleanup bills if and when the disposal is discovered, and the EA issues a cleanup order.

Additionally, even if the EAs could identify the parties that were arranging for the illegal disposition of this waste, they would be limited in bringing an enforcement action against them. The existing notice and order regulations only allow for notices and orders to be issued to “owners” and “operators”, not the other individuals that facilitate this illegal disposal. This is in conflict with PRC section 45005, which provides that an EA can issue a cease and desist order against any person who has violated, is violating, or proposes to violate section 44000.5. By amending regulations related to the issuance of notices and order to include individuals in violation of 44000.5, the Antelope Valley LEAs will be empowered to enforce the IWMA against those individuals who are illegally disposing of waste in Antelope Valley.

Given the severity of the illegal disposal issue as brought to CalRecycle’s attention by members of the public on October 16, 2024 and subsequently verified by CalRecycle staff on November 17 and 18, 2024, CalRecycle determined that there is insufficient time to conduct a nonemergency rulemaking in accordance with the provisions of Article 5 of the Government Code to mitigate this emergency and its serious harm to the public peace, health, safety, or general welfare.

## **FINDING OF NECESSITY**

CalRecycle proposes to amend the following sections of the CCR, Title 14, Division 7, Chapter 3, 3.1, 3.2, and 5:

Section 17402 will be amended to define compostable material, fines, and land application activity. This amendment is necessary because these definitions are

referenced in section 17410.5 of Chapter 3 regarding material sent offsite for land application. These terms are defined so that they can be interpreted and applied consistently with the other proposed regulations to distinguish between permissible land application and illegal disposal.

Section 17414 and 17414.2 will be amended to add recordkeeping requirements for material sent offsite for land application, including records of the total weight of material sent offsite each day, delivery date, destination address, and test results demonstrating compliance with section 17852(a)(24.5)(A). This amendment is necessary to allow CalRecycle and EAs to review the specific facts in the records to verify that material sent offsite for land application is meeting the requirements of section 17852(a)(24.5), to track the flow of material from solid waste facilities to land application, and to allow EAs to perform their enforcement duties based on those facts.

Section 17852 will be amended to clarify the definition of land application and disposal of compostable material and/or digestate, and to define land application activity. This amendment is necessary to prevent the final deposition of compostable material and/or digestate with inorganic or non-compostable material, reduce risks associated with stockpiling of material, prevent the acceptance of additional material until the previous application of material has been conducted, reduce the depth of land application, clarify the use of compost produced with amendments or additives is excluded, and add a volume threshold for the amount of compostable material used for gardening or landscaping. An exception to the definition of land application activity was included for the land application of certain agricultural material when overseen by the Department of Food and Agriculture. This exception was included to preserve certain activities excluded under section 17855(a)(5)(E) from being subject to Enforcement Agency Notification Tier requirements as these activities are not part of the emergency being addressed. The amendments in section 17852 address the emergency as there is inconsistency in terminology used between parties involved with land application resulting in gaps in information, lengthy response times from EAs, and/or in limited enforcement actions. Defining these terms will ensure they are interpreted and applied consistently along with the other proposed regulations to distinguish between permissible land application and illegal disposal.

Section 17854.1 will be amended to add the Land Application Activity type under the Enforcement Agency Notification Tier. This amendment is necessary because it supports the effectuation of newly added section 17862.3 "Land Application Activity" which is a new compostable material handling activity type under the existing Enforcement Agency Notification regulatory tier. This addresses the emergency by identifying the new Enforcement Agency Notification Tier in the Compostable Material Handling Operations and Facilities chart and pertinent section number associated with Land Application Activity.

Section 17869 will be amended to add the delivery date and destination address of where material is sent to the record keeping requirements for compostable material handling facilities and operations. This amendment is necessary for CalRecycle and

EAs to review the specific facts in the records to verify that material sent offsite for land application is meeting the requirements of section 17852(a)(24.5) and allow EAs to perform enforcement duties based on those facts.

Section 17896.45 will be amended to add the delivery date, weight and destination address of where material is sent to the record keeping requirements for in-vessel digestion facilities and operations. This amendment is necessary for CalRecycle and EAs to review the specific facts in the records and to verify that material sent offsite for land application is meeting the requirements of section 17852(a)(24.5) and to allow EAs to perform enforcement duties through the process of reviewing records to ensure cradle-to-grave tracking of land applied material. This amendment allow EAs to make a determination whether the origin of the material that is being or will be land applied came from an authorized generator based on those facts.

Section 18302 will be amended to add the term “activity” to the list of alleged entities or locations that are in violation of any related solid waste laws or regulations. This amendment is necessary to clarify the EA’s scope and authority to perform investigation and enforcement duties include action against a person or persons involved in an activity to address non-compliance with state solid waste laws and regulations with illegal disposal.

Section 18303 will be amended to include section 18103 and PRC section 44000.5 to the applicable related solid waste laws and regulations. This amendment is necessary to clarify the EAs scope and authority to perform investigation and enforcement duties include action against a person or persons involved in an activity to address non-compliance with state solid waste laws and regulations with illegal disposal.

Section 18304 will be amended to include PRC section 44000.5 to the list of statutes the EA can reference in their issuance of notices and orders. This amendment is necessary to clarify the EAs authority and scope to perform investigation and enforcement duties include action against a person or persons involved in an activity to address non-compliance with state solid waste laws and regulations with illegal disposal.

Section 18304.1 will be amended to add “person” to the list of entities and to add a reference to PRC section 44000.5. This amendment is necessary to clarify the EAs authority and scope to perform investigation and enforcement duties include action against a person or persons involved in an activity to address non-compliance with state solid waste laws and regulations with illegal disposal.

Additionally, CalRecycle proposes to adopt the following sections to Title 14 of the CCR, Division 7, Chapter 3, 3.1, 3.2, and 5:

Section 17410.5 will be added to ensure materials produced from transfer/processing facilities and operations, including construction and demolition transfer/processing, meet the requirements of section 17852(a)(24.5)(A) prior to being sent offsite for land



application, prohibit fines from being sent offsite to be land applied, and require alternative methods for the management of materials that do not meet the requirements for land application. This adoption is necessary because currently there are no sampling requirements for producers to comply with prior to sending material offsite for land application. These regulations will allow CalRecycle and EAs to verify that materials produced from transfer/processing facilities and operations sent offsite for land application are meeting the requirements of section 17852(a)(24.5) and not illegally disposed.

Section 17862.3 will be added to specify that land application activities that meet specific volumetric thresholds be regulated as a new activity type within the compostable material handling regulatory tier, and to include recordkeeping requirements such as the date of material received, date material was land applied, date material was incorporated into the soil, business name and address of entity who produced the material, volume of material received, and evidence demonstrating compliance with section 17852(a)(24.5)(A). Land application activities are required to land apply material or remove material from the site within 48 hours or at an alternative timeline as approved by the EA. This section also clarifies what activities are prohibited. This amendment is necessary because this new regulatory tier clarifies the distinction between land application and illegal land disposal and to support enforcement of these activities by the EA.

Section 17868.6 will be added to ensure materials produced at composting facilities and operations meet the requirements of section 17852(a)(24.5)(A) prior to being sent offsite for land application and require alternative methods for the management of materials that do not meet the requirements for land application. This amendment is necessary because currently there are no sampling requirements for producers to comply with prior to sending material offsite for land application. These regulations will allow CalRecycle and EAs to verify that materials produced from compostable material handling facilities and operations sent offsite for land application are meeting the requirements of section 17852(a)(24.5) and not illegally disposed.

Section 17896.62 will be added to ensure materials produced at in-vessel digestion facilities and operations will meet the requirements of section 17852(a)(24.5)(A) prior to being sent offsite for land application and require alternative methods for the management of materials that do not meet the requirements for land application. This amendment is necessary because currently there are no sampling requirements for producers to comply with prior to sending material offsite for land application. These regulations will allow CalRecycle and EAs to verify that materials produced from in-vessel digestion facilities and operations sent offsite for land application are meeting the requirements of section 17852(a)(24.5) and not illegally disposed.

#### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT OR DOCUMENTS RELIED UPON**

CalRecycle utilized the following sources in the development of the proposed regulations:

- Attachment 1: Economic and Fiscal Impact Statement (STD 399)
- Attachment 2: STD 399 Appendix
- Attachment 3: Transcript from CalRecycle’s October 2024 Monthly Public Meeting
- Attachment 4: Site Photographs from Tour of Antelope Valley
- Attachment 5: California - May 2023 State Occupational Employment and Wage Estimates, [https://www.bls.gov/oes/current/oes\\_ca.htm#19-0000](https://www.bls.gov/oes/current/oes_ca.htm#19-0000), accessed January 8, 2025
- Attachment 6: Visit Log, November 17 – 18, 2024 (Antelope Valley)

## **AUTHORITY**

### **Chapter 3. Minimum Standards for Solid Waste Handling and Disposal.**

Article 6.0. Transfer/Processing Operations and Facilities Regulatory Requirements

Public Resources Code Sections 40502, 43020 and 43021.

Article 6.2. Operating Standards

Public Resources Code Sections 40502, 43020, 43021 and 44000.5.

Article 6.3. Record Keeping Requirements

Public Resources Code Sections 40502, 43020 and 43021.

### **Chapter 3.1 Compostable Material Handling Operations and Facilities Regulatory Requirements.**

Article 1. General

Public Resources Code Sections 40502, 43020 and 43021.

Article 2. Regulatory Tiers for Composting Operations and Facilities

Public Resources Code Sections 40502, 43020, 43021 and 44000.5.

Article 7. Environmental Health Standards.

Public Resources Code Sections 40502, 43020, 43021 and 44000.5.

Article 8. Composting Operation and Facility Records

Public Resources Code Sections 40502, 43020, 43021 and 42652.5.

**Chapter 3.2. In-vessel Digestion Operations and Facilities Regulatory Requirements.**

Article 4. Record Keeping Requirements.

Public Resources Code Sections 40502, 43020 and 43021.

Article 6. Digestate Handling Standards

Public Resources Code Sections 40502, 43020 and 43021.

**Chapter 5. Enforcement of Solid Waste Standards and Administration of Solid Waste Facility Permits; Loan Guarantees.**

Article 4. Enforcement by EA and Review by Department

Public Resources Code Sections 40502 and 43020.

**REFERENCE**

**Chapter 3. Minimum Standards for Solid Waste Handling and Disposal.**

Article 6.0. Transfer/Processing Operations and Facilities Regulatory Requirements

Public Resources Code Sections 40053, 42652.5, 43020 and 43021; and Health and Safety Code Section 39730.6.

Article 6.2. Operating Standards

Public Resources Code Sections 40053, 43020, 43021, and 44000.5.

Article 6.3. Record Keeping Requirements

Public Resources Code Sections 40053, 42652.5, 43020 and 43021; and Health and Safety Code Section 39730.6.

**Chapter 3.1 Compostable Material Handling Operations and Facilities Regulatory Requirements.**

Article 1. General

Public Resources Code Sections 43020 and 43021.

Article 2. Regulatory Tiers for Composting Operations and Facilities

Public Resources Code Sections 43020, 43021 and 44000.5.

Article 7. Environmental Health Standards.

Public Resources Code Sections 40053, 43020, 43021 and 44000.5.

Article 8. Composting Operation and Facility Records.

Public Resources Code Sections 40192 and 42652.5.; and Health and Safety Code Section 39730.6.

### **Chapter 3.2. In-vessel Digestion Operations and Facilities Regulatory Requirements.**

Article 4. Record Keeping Requirements.

Public Resources Code Sections 40053, 42652.5, 43020 and 43021; and Health and Safety Section 39730.6.

Article 6. Digestate Handling Standards.

Public Resources Code Sections 40053, 42652.5, 43020 and 43021; and Health and Safety Code Section 39730.6.

### **Chapter 5. Enforcement of Solid Waste Standards and Administration of Solid Waste Facility Permits; Loan Guarantees.**

Article 4. Enforcement by EA and Review by Department

Public Resources Code Sections 43209, 44012, 44015, 44305-44306 and 45000-45024.

### **INFORMATIVE DIGEST**

Current regulations allow land application of compostable material and digestate that meet land application requirements. Currently, responsibility is placed on the landowner to verify material is meeting the land application requirements.

There is a lack of regulatory requirements for solid waste facilities to sample and verify material produced and sent for land application is meeting the requirements of section 17852(a)(24.5).

It is not possible for the EA to track the movement of material from solid waste facilities to landowners for land application. Furthermore, EAs are not able to identify the source of the material at illegal disposal activities.

These regulations will require material produced at solid waste facilities to be sampled prior to being sent off site for land application to verify the material meets the land

application requirements; prohibit material not meeting the land application requirements from being land applied and require that it be reprocessed on site, sent off site for processing, or disposed; and, create a definition for “fines” and prohibit this material type from being land applied.

Current regulations lack requirements for solid waste facilities to sample material destined for land application prior to sending off-site and to retain records of these sampling results for EA review and verification. Due to lack of recordkeeping requirements, the EA is limited in their ability to verify that material is meeting the requirements for land application.

The proposed regulations will ensure that solid waste facilities and operations which are sending any amount of material to a location are maintaining and providing records to the EA, and that records can be used by the EA for investigation and enforcement actions to prevent unlawful disposal of material and to protect the environment and public health and safety.

Current land application regulations lack a limitation on stockpiling of material intended for land application, clarity on the size of land, and a limit on the quantity of material for gardening/landscaping exclusion.

The proposed regulations provide the necessary clarification and ensure land application is completed prior to the acceptance of new material, preventing any stockpiling concerns or load confusion. The regulations will prevent the risks associated with mixing contaminated, nonorganic, and/or inert material with compostable material that would otherwise meet the land application requirements.

Current regulations do not provide adequate EA regulatory oversight of existing land application activities which has resulted in large illegal disposal. Activities land applying any amount of compostable material and/or digestate currently operate without direct regulatory oversight, and do not have any specific checks on the disposition of any waste material on land that does not meet the land application requirements referenced above.

The proposed regulations will establish a new activity type, “Land Application Activities”, placed within the Compostable Material Handling Material requirements and linked to other solid waste facility requirements. These activities will have clear standards regarding the appropriate filing requirements and approvals to operate; storage limits; and, record keeping and inspection requirements, including recording land application events and storage time for stockpiled material.

Current regulations are specific to owners and operators of solid waste facilities including illegal disposal sites and do not encompass all “persons” associated with illegal disposal. This specificity as to whom may be subject to enforcement for illegal disposal circumscribes the broad enforcement authority provided by PRC section 44000.5.

The proposed regulations will clarify that all persons associated with illegal disposal are subject to enforcement action by the EA by referencing PRC section 44000.5, which authorizes enforcement against any “persons” associated with illegal disposal.

Current regulations are not specific enough for EAs to determine if materials are being disposed or land applied.

These regulations will clarify that compostable material or digestate commingled with inorganic or non-compostable material is disposal and that use of compost including amendments and additives in compliance with Chapter 3.1 and 3.2 of the Division is not subject to land application requirements.

Current regulations do not specify what materials can be land applied, does not align with the industry used term “fines”, and have restrictions on material destined for land application.

The proposed regulations will clarify what materials can be land applied, define the term “fines” for the purpose of restricting this material from being land applied, and add further procedures to be taken for material that does not meet the land application requirements.

Current regulations allow for the use of finished compost that meet the compost environmental health standards to be land applied. However, there is no standard in place for compost that includes amendments and additives to be permissible for land application.

The proposed regulations will clarify that compost that includes amendments and additives and meets the limits for metals, pathogens and physical contaminants can be land applied.

### **Policy Statement Overview/Anticipated Benefits Of Proposal**

These emergency regulations define Land Application Activities and place those activities within CalRecycle’s Regulatory Tiers. This ensures that Land Application Activities are subject to appropriate approvals, inspections requirements, and operate within state minimum standards, including operational and record keeping requirements. The emergency regulations will regulate land application of compostable material and digestate. The emergency regulations will ensure that the statewide land application infrastructure can continue to operate in compliance with regulatory requirements while ensuring that those activities which are land applying compostable material and digestate, are under EA regulatory oversight to prevent or mitigate the impacts of the illegal final disposition of material onto land in order to protect public health and safety and the environment. Without these regulations, EAs would not have the authority to inspect and take enforcement on land application activities and to monitor the end destination, quantity, and quality of material sent from solid waste facilities and operations for land application.

Additionally, these regulations amend the sampling and record keeping requirement for solid waste facilities, operations, and activities to ensure that any facility and operation sending material to a location for use as land application are sampled to ensure the material is suitable for land application, consistent with section 17852(a)(24.5), and the sampling test results, material quantity, and end destination for each load sent offsite for land application are included in the facility's records. These emergency regulations allow EAs to review this new recordkeeping data to track, investigate, and enforce land application activities in order to prevent unlawful disposal of material. These regulations are consistent and compatible with CalRecycle's existing Tier regulations as they would place these activities within the appropriate level of oversight for the type of activity involved.

### **Consistency and Compatibility With State Regulations**

PRC section 43020 mandates CalRecycle with establishing the minimum standards for solid waste handling, transfer, composting, and disposal. The enforcement of these standards is the responsibility of EAs (PRC sections 43200.5, 43209). This includes Local Enforcement Agencies (LEA), which are designated by a jurisdiction and certified by CalRecycle (PRC section 43200.5), or where there is no LEA, CalRecycle assumes the powers and duties of the EA (PRC section 43205). When an LEA is exercising its authority and duties, it is performing a state function (PRC section 43200.5(b)).

Pursuant to Government Code section 11346.5(a)(3)(D), CalRecycle conducted an evaluation of existing state regulations. CalRecycle determined that the proposed regulations are neither inconsistent nor incompatible with existing state regulations and that CalRecycle is the only agency that can implement this proposed regulation.

### **INCORPORATION BY REFERENCE**

No documents or forms are incorporated by reference in the proposed regulation.

### **EXISTING COMPARABLE FEDERAL REGULATION OR STATUTE**

CalRecycle has determined that the proposed regulations do not significantly differ from federal law because there are no existing comparable federal statutes or regulations in this subject area.

### **OTHER STATUTORY REQUIREMENTS (GOVERNMENT CODE SECTIONS 11346.1(b) AND 11346.5(a)(4))**

CalRecycle has determined that no other matters, as prescribed by statute, need to be addressed.

## **ANTICIPATED BENEFITS**

The goal of this emergency rulemaking is to ensure that land application activities which are applying compostable material or digestate are appropriately regulated by the EA and solid waste facilities and operations sending material offsite for land application are performing sampling, recording the quantity delivered, and documenting end destinations for the protection of public health and safety and the environment.

The proposed amendments in these regulations will achieve the objectives of the authorizing statute:

Provisions of the California Integrated Waste Management Act of 1989 mandate CalRecycle to adopt and revise regulations which set forth minimum standards for solid waste handling, transfer, composting, transformation, and disposal in accordance with Division 30 of the PRC. Assembly Bill 2679 (Chapter 500, Statutes of 2008) added PRC section 44000.5 to Part 5 of Division 30 prohibiting a person from disposing, transporting, or arranging for the disposal of solid waste except at a permitted solid waste disposal facility and authorizes CalRecycle or the EA to issue a cease and desist order to any person who violates this provision.

The proposed amendments in these regulations will also achieve the following additional benefits and objectives:

- Prevent and mitigate the illegal final deposition of material that does not meet the quality standards of land application onto lands of the state in order to protect public health and safety and the environment.
- Add a new enforcement agency notification regulatory tier, Land Application Activity, with requirements for land application, material storage time limits, record keeping, and inspection responsibilities for the EA.
- Ensure material produced from solid waste facilities sent for land application meets the land application requirements by:
  - Establishing sampling requirements to test material quality prior to it leaving the site.
  - Amending recordkeeping requirements to include the test results, quantity, and end destination for each load of material sent for land application.
  - Provide records of test results to landowners upon receipt of material.
- Clarify and strengthen the EA's investigation and enforcement authority to prevent and mitigate the final deposition of material that does not meet the land application requirements onto lands of the state.
- Prohibit material types from being land applied that pose a risk to public health and safety and the environment.



## **MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

CalRecycle has determined that the proposed regulations do not impose a mandate on school districts.

It would impose a mandate on those local agencies which act as CalRecycle's LEAs where these facilities exist, but reimbursement would not be required as these agencies are authorized to impose fees pursuant to PRC sections 43213 and 44006.

## **FISCAL IMPACT**

### **Local Agencies or School Districts Subject to Reimbursement**

CalRecycle has determined that the proposed regulations do not result in costs to any local agency or school district that must be reimbursed pursuant to section 6 of Article XIII B of the California Constitution and Part 7 of Division 4 of the Government Code section 17500 et seq. Additional expenditures to local government enforcement agencies in the current and two subsequent fiscal years will be fully financed from fees or other charges authorized by PRC sections 43213 and 44006.

### **Cost or Savings to Any State Agency**

CalRecycle has determined that adoption of these regulations does have a cost to state agencies.

Based on the results of a Fiscal Analysis prepared pursuant to Government Code section 11346.3(c)(1), CalRecycle estimates the economic impact of this regulation (including the fiscal impact) is \$35,590 in FY 2024-25, \$26,950 in FY 2025-26, and \$26,950 in FY 2026-27.

### **Non-Discretionary Cost or Savings Imposed Upon Local Agencies**

CalRecycle has determined that there are not non-discretionary costs or savings imposed upon any local agencies.

### **Cost or Savings in Federal Funding to the State**

CalRecycle has determined that adoption of these regulations will not have an impact on costs or savings in federal funding to the State.