

# **Department of Resources Recycling and Recovery**

## **Illegal Disposal Emergency Rulemaking**

### **ADDENDUM TO FINDING OF EMERGENCY**

#### **Changes in Regulations Text and Supplements to the Finding of Necessity of Specified Sections**

##### **Section 17410.5**

CalRecycle is amending the language in subsection 17410.5(a) to clarify the required sampling frequency. This provides additional clarity that a transfer station does not need to collect the entire 5,000 cubic yards prior to sampling and only that the first stockpile of a sequence of stockpiles that total 5,000 cubic yards to be transferred for land application must be sampled.

CalRecycle is requiring that sampling of material occur for every 5,000 cubic yards of material produced. The sampling requirement is necessary to protect public health and safety and the environment by helping to ensure that the material to be land applied is not contaminated, and does not contain excessive metals or pathogens. This frequency is consistent with sampling requirements for compost (see section 17868.1(a)(1)) and in-vessel digestion (section 17896.58(b)).

##### **Section 17852**

CalRecycle is amending the new language being added to subsection 17852(a)(24.5)(A)(4) to be consistent with the new section 17862.3. Requirements that material must be “tilled” into the soil prior to future land application are being changed to “incorporated” into the soil to provide consistency with subsection 17862.3(d)(3).

The addition of the clause in 17852(a)(24.5)(B)(2) that exempts certain parcels of land less than from the land application requirements (parcels of land five acres or less in size and that receive 4,040 cubic feet or less of material) is necessary to clarify that these smaller parcels remain exempt from the land application requirements when the material is used solely for gardening or landscaping purposes. (Note, 4,040 cubic yards is the maximum amount of compostable material or digestate that can be lawfully applied in one year on a five acre parcel not zoned for agricultural uses as there is a maximum allowable depth of six inches and such applications may not occur more than once in a 12-month period.)

##### **Section 17862.3**

CalRecycle is amending this section to correct several formatting errors that combined subdivisions (b) and (c) into subdivision (a) instead of listing them out.

Additionally, CalRecycle is removing the references to “land application event.” CalRecycle is clarifying that inspections of land application activities shall occur within 90 days of when the EA receives evidence that the material to be land applied complies with 17852(a)(24.5)(A), and can occur more frequently as the EA determined to be necessary to ensure compliance with this section and to protect public health and safety and the environment. The inspection requirements are being moved to subdivision (f).

CalRecycle is striking originally proposed subdivision (e), and moving its requirement that land application activities maintain records of land application to subdivision (d). The rest of the section is being renumbered accordingly.

The records being required in subdivision (d) are necessary because the information required in these records will allow EAs to determine whether a land application activity is in compliance with the requirements in this section as well as the land application requirements in 17852(a)(24.5). Additionally, the information in these records will allow EAs to determine the source of any and applied material, will assist enforcement efforts where illegal disposal is discovered. The three dates required in subsections (d)(1)-(3) are necessary to ensure that the material was incorporated into the soil in the required amount of time. Subsection (d)(4) is necessary so that EAs can verify the source of the material. Subsection (d)(5) is necessary so that EAs can validate this amount with the required paperwork needed to be kept at the producer of the material and also to ensure that the amount of material that was received at the land application activity does not exceed maximum amount threshold. Subsection (d)(6) is necessary so that EAs can validate whether the sampling required for this material in fact occurred and that the sample results were provided to the landowner and also necessary to ensure that the material complies with the requirements for land application in relation to contamination, metal concentration, and pathogen reduction.

## **Sections 17868.6 and 17896.62**

CalRecycle is amending the language in subsections 17868.6(a) and 17896.62(a) to clarify the required sampling frequency. This provides additional clarity that a transfer station does not need to collect the entire 5,000 cubic yards prior to sampling and only that the first stockpile of a sequence of stockpiles that total 5,000 cubic yards to be transferred for land application must be sampled.

CalRecycle is requiring that sampling of material occur for every 5,000 cubic yards of material produced. The sampling requirement is necessary to protect public health and safety and the environment by helping to ensure that the material to be land applied is not contaminated, and does not contain excessive metals or pathogens. This frequency is consistent with sampling requirements for compost (see section 17868.1(a)(1)), in-vessel digestion (section 17896.58(b))

## **Section 18304**

CalRecycle is removing the strikeout line for the words “or actual” in subsection (a)(5) from the proposed regulation text. This existing regulation text was unintentionally proposed for deletion in the proposed regulations.

### **Section 18304.1**

CalRecycle is removing several strikeouts in subsection (a)(1)-(3) that were included inadvertently, specifically the strikeout for the word “or” and the insertion of a “,” between the words “disposal site” and “operation”.

Additionally inadvertent strikeouts were made in subsection (a)(3) in the part beginning with “Example”. All of those strikeouts were removed and the original language, as currently published, is preserved.

## **Addendum to the Finding of Emergency**

### **Statewide Impact of the Emergency**

Illegal disposal is a statewide issue. These proposed regulations will give Enforcement Agencies (EAs) the tools necessary to more effectively enforce California’s statutes and regulations related to illegal disposal. Without these regulations, EAs will continue to be unable to determine the source of compostable material that has been land applied and whether that material meets the requirements for land application related to contamination, metal concentration, and pathogen reduction.

Further, while the illegal disposal sites being addressed by these regulations are located in the Antelope Valley area of Los Angeles, Kern, and San Bernardino Counties, there is no reason to believe that the waste that is being illegally disposed of at those sites is necessarily from those counties. The waste could be coming from anywhere within the state, and thus a statewide solution is needed.