May 21, 2020

Delivered via email: SB1335@calrecycle.ca.gov

Daphne Molin
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812-4025

Dear Ms. Molin:

RE: Comments on the Proposed Regulations - Sustainable Packaging for the State of California Act of 2018 (SB 1335)

The California Compost Coalition (CCC) is a statewide organization representing operators of composting and anaerobic digestion facilities involved in the processing of green and food waste materials derived from municipal solid waste throughout California. CCC is pleased to see CalRecycle pursuing regulatory language that advances sound, economically viable organic materials management which will promote resource recovery markets and help California reach its mandated recycling and composting goals. To this end, CCC is providing our comments here related to the latest draft regulatory language.

We are pleased to see CalRecycle taking a practical approach to setting these packaging guidelines which could help minimize contamination in food waste feedstocks from State food production providers which are received by our member facility operators. We have comments and requests for clarification on some remaining issues which we would like to see addressed in the next draft of regulations.

Concerns About Identification and Contamination

Packaging and products made from compostable materials are not welcome at a majority of compost manufacturing facilities, especially those products which are not directly associated with food scrap recovery. Likewise, compostable plastics frequently are a contamination problem for recycling facility operators. We have comments and requests for clarification on some remaining issues which we would like to see addressed in the next draft of regulations.

One of the key issues for both composting and recycling facility operators is a lack of clear identification of materials, which leads to cross contamination. These regulations, and the impacted industries, could benefit greatly from a standard which could require listed packaging to be “readily and easily identifiable” as either compostable or recyclable so that source separation options are obvious to both consumers and facility operators, providing a pathway to reduced contamination.
We would suggest that products covered under this regulation be clearly and legibly marked with the words “compostable” or “recyclable”, as appropriate. If, by cursory visual inspection, a product is not discernible as either, it would not be allowed for listing.

The remainder of our comments will proceed in the order of the written proposed regulations.

§17989 Definitions

(a)(1) – Accepted

We recommend revising the following sentence, on lines 15 to 17, to account for the potential for a compost facility to both receive and not compost an item and also identify it as a physical contaminant.

Revision: “A food service packaging item is not considered “accepted” under this Article if the compost facility that received the item does not compost the item and/or identifies the item as a physical contaminant.”

(a)(4) – Compost facility

We are unaware of a reason to consider in-vessel digestion facilities as a potential recipient of compostable materials. While “in-vessel” digesters may also include aerobic technologies, in addition to anaerobic digestion, we are unaware that any exist which will effectively compost materials meeting the ASTM D6400 or D6868 standards.

Given that is the case, it would be best if in-vessel digestion operations or facilities were excluded from this definition.

(a)(24) – Recycling program

The use of “organics” for on Line 110 is not defined in this regulatory package. Please define “organics” or use “mixed materials” or “food materials” which are less vague, and for which definitions already exist in Title 14.

(a)(25) – Safe and timely manner

CCC is fully supportive of setting a more restrictive disintegration time period, one which better reflects the realities of compost manufacturing instead of the lab standards found in ASTM D6400 and D6868. Our members have experience attempting to compost a number of packaging types, few of which meet the processing timeline needed to efficiently create saleable, finished products; the processing time for compost manufacturing is always well below the 180-day standard for complete degradation found in the ASTM regimen.

Additionally, we are aware that compostability depends greatly on the type of composting technology employed at an individual facility, as well as the manner in which composting is conducted. So, because a certain packaging type may meet a shorter degradability standard at one facility, it has little or no bearing on what may occur at a different site, with different conditions and technology application. We recommend that testing be conducted at both windrow composting facilities as well as aerated static pile facilities to assure that 90 percent disintegration occurs within 60 days in the varying active composting processes.

We are also unclear on who will be providing the third-party certification. Currently, the only third-party certification entity we are aware of is the Compost Manufacturing Alliance (CMA), based in Seattle, Washington, which has abundant experience and well-defined product testing protocols. Will CalRecycle be developing a list of potential, authorized service providers to the packaging manufacturers?
§17989.2 Public Health and Litter Impacts Criteria

(a)(5)

We recommend revising the below language to provide clarity. Current language, “the department may not include or remove food service packaging items made from that material from the List” could be interpreted that the department may not include or may not remove packaging items, if it is subject to ban, fee or other restriction.

If a food service packaging material is subject to a ban, fee for distribution (e.g., a fee for a single use disposable cup at point of sale), or other restrictions, at least in part due to litter or ocean debris concerns, in city or county ordinances, the department may exclude or remove food service packaging items made from that material from the List.

§17989.4 Recyclable Food Service Packaging Criteria

(a)(2) The food service packaging item shall not contain additives that initiate or accelerate fragmentation.

Please clarify how the language pertains to a product which is composed of 100% polylactic acid (PLA). We would not consider PLA to be an “additive”, yet the product may fragment and would be a detriment to recyclable plastic collection and recovery. We would recommend rephrasing this section as “shall not contain additives, nor be composed of materials, which initiate or accelerate fragmentation.”

§17989.5 Compostable Food Service Packaging Criteria

CCC is fully supportive of requiring wide acceptability of both recyclable and compostable packaging materials as criteria for listing. We are unclear who will be responsible for verifying how many programs are accepting recyclable or compostable materials. While we have concerns that “regularly collected by a minimum of 75 percent of programs” is an adequate metric – given that the collection of materials does not necessarily mean the materials will not be sorted and landfilled.

Similar to our previous comments: The use of “organics” is not defined in this regulatory package. Please define “organics” or use “mixed materials” or “food materials” which are less vague, and for which definitions already exist in Title 14.

We are supportive of the concept that listed packaging be “accepted by at least 75 percent of compost facilities permitted to accept mixed materials.” We would like to have additional clarity on who would verify that the facilities are accepting the type of packaging that is applying for being listed. Additionally, the latest information that we are aware of, a 2019 survey of permitted mixed materials composting facilities in California revealed that only 14 of 38 facilities willingly accepted compostable packaging. We would appreciate having CalRecycle conducting similar work to confirm acceptance rates.

§17989.6 Application Requirements and Submittal Process
Our comments on this section are reflective of the similar issues already addressed above. In particular, Section (e) is consistent with the requirements noted in §17989.5 and we will refer to our comments specific to that section.

We look forward to continued participation in this regulatory process – recommending that you assemble a compost manufacturer’s working group – to address some of these outstanding issues and are happy answer any questions you may have regarding our comments.

Sincerely,

Neil S.R. Edgar
Executive Director