

March 2, 2015



VIA E-MAIL - Commentletters@waterboards.ca.gov
AND FACSIMILE - (916) 341-5620

Ms. Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, California 95814

Re: General Order and Draft Environmental Impact Report for Composting
Operations

Dear Ms. Townsend,

We represent Bull Holdings Corporation. We are submitting this letter as our formal comments on the proposed General Waste Discharge Requirements for Composting Operations ("General Order") and the Draft Environmental Impact Report ("DEIR") for the proposed General Order. While we support the concept of the General Order, the General Order as drafted conflicts with the CalRecycle regulations governing compost facilities¹ ("CalRecycle Composting Regulations").

General Order Section 31 prohibits composting of "animal carcasses."² However, it is well known that poultry litter may include carcasses from "spent fowl."³ The disposal of "spent fowl" carcasses in the litter is a routine practice when the hens die naturally (*i.e.*, not from a disease). Diseased chickens are not disposed of in the litter.

Under the proposed General Order definition of "animal carcasses", the use of chicken litter that contains any carcasses ("chicken litter") would be prohibited, and would result in the loss of a viable feedstock for composting operations and increased operational and disposal costs from the ranches that produce the chicken litter. The

¹ California Code of Regulations, Title 14, Division 7, Chapter 3.1

² General Order Attachment "A" Definitions - "Animal Carcasses - Refers to any whole or part (including, but may not be limited to the flesh, organs, blood, bones, and marrow) of a carcass of a bird, fish, or mammal, which cannot meet the definition of 'food material'."

³ "Spent Fowl" means hens which have been in production of commercial eggs and have been removed from such production for slaughter." USC Title 7, Chapter 60, §2702(o).

DEIR does not address the impacts associated with the composting operations that cannot use chicken litter and does not analyze the environmental impact of the additional handling and hauling of chicken litter to an alternative disposal source (*i.e.*, landfill or renderer) in the event it cannot be used in composting operations.

This letter is organized into two sections, the first section contains a request to modify the General Order to be consistent with current CalRecycle regulations and the second section contains comments to the DEIR related to the impacts to the environment resulting from the prohibition of the use of chicken litter at a composting facility when the chicken litter includes carcasses of "spent fowl."

Modifications to General Order

We request that the General Order be modified to follow CalRecycle composting regulations to prevent a contradictory regulatory scheme that will harm those that wish to use chicken litter in their composting operations. In support of our request, below is a summary of the applicable CalRecycle composting regulations and how CalRecycle has regulated the composting of mammalian flesh.

Current Mammalian Flesh Composting Regulations

California Code of Regulations Title 14. Natural Resources §17855.2 Prohibitions:

- a) The composting of unprocessed mammalian tissue, including, but not limited to, flesh, organs, hide, blood, bone and marrow is prohibited, except from the food service industry, grocery stores, or residential food scrap collection, or as part of a research composting operation for the purpose of obtaining data on pathogen reduction or other public health, animal health, safety, or environmental concern, in accordance with section 17862.
- b) The composting of medical waste is prohibited.
- c) The composting of hazardous waste is prohibited.

History of Mammalian Flesh Composting Regulations

The original basis for the prohibition appears to have been centered on concerns related to the control of *Bovine Spongiform Encephalopathy (BSE)* or "Mad Cow Disease." Recent discussions with animal health specialists at the California Department of Food and Agriculture (CDFA) suggest that BSE should not be considered as a primary

justification for a prohibition on the composting of unprocessed mammalian tissue. CDFA has no indication that BSE occurred in California.

1995 Code

- The definition of "animal material" was originally codified in California Code of Regulations Title 14 §17852(i).⁴
- The definition of "animal material" included: any material derived from animal products, that is grown, processed, marketed, or managed by any non-residential, or commercial entity(ies) for consumption by humans or animals. These entities include, but are not limited to, agriculture, food manufacturing and processing industries, restaurants, hospitals, and food distributors. "Animal Material" is either separated at the point of generation, or separated at a centralized facility that employs methods to minimize contamination. *The composting of mammalian flesh, organs, unprocessed hide, blood, bone and marrow is prohibited, except when from the food service industry.*⁵
- CalRecycle's reasoning for adding this definition was as follows: "Subdivision (i) is used to define the term "animal material" for the purpose of clarification and to clearly differentiate it from other types of organic materials; e.g., "clean green material", "green material", "sewage sludge", or "mixed solid waste" used in the production of compost. This definition is necessary because it describes the types of organic material that are categorized as "animal material", and which composting facilities or operations are allowed to operate under a registration or standardized permit."⁶

2003 Amendment

- The CCR §17852(i) prohibition was repealed because the term "animal material" was no longer used in the regulations.⁷

⁴ CalRecycle Rule Making Archive: Approved Text 1995 Available at:
<http://www.calrecycle.ca.gov/Laws/Rulemaking/Archive/1995/Compost/>

⁵ Id.

⁶ CalRecycle Rule Making Archive: Final Statement of Reasons 1995 Available at:
<http://www.calrecycle.ca.gov/Laws/Rulemaking/Archive/1995/Compost/>

⁷ CalRecycle Rule Making Archive: Final Statement of Reasons 2003 Available at:
<http://www.calrecycle.ca.gov/Laws/Rulemaking/Archive/2003/CompMaterial/>

California Code of Regulations Title 14. Natural Resources §17855.2(a)

2003 Amendment

- CCR §17855.2(a) was added: “The composting of *unprocessed mammalian tissue* (emphasis added), including, but not limited to, flesh, organs, hide, blood, bone and marrow is prohibited, except when from the food service industry, grocery stores, or residential food scrap collection. Carcasses of animals with any contagious disease shall not be composted, unless approved in writing by the California Department of Food and Agriculture, Division of Animal Industry. The composting of medical waste is prohibited. The composting of hazardous waste is prohibited.”⁸
- CalRecycle’s reasoning for adding this section was as follows: “Certain compostable materials may present a threat to public health, safety, and the environment if composted. Existing regulations do not explicitly prohibit the composting of these materials.”⁹

“Subsection (a) is used to identify that composting of unprocessed mammalian tissue is prohibited, with some exceptions. This is similar to language in the current regulations. In addition, this subsection is used to prohibit the composting of animal carcasses with any contagious disease unless approval from the California Department of Food and Agriculture is obtained prior to composting. This is necessary to protect the public health, safety and the environment.”¹⁰

Proposed Amendment to General Order

Given that current regulations and the composting process, including allowable feedstock, are regulated by CalRecycle and that there is no similar authority in regulations regarding the State Water Resources Control Board, we request that the General Order be modified to follow CalRecycle regulations as outlined below:

Proposed modifications to the General Order would allow the composting of chicken manure that includes spent hens from egg laying operations.

⁸ CalRecycle Rule Making Archive: Clean Final Text 2003 Available at:
<http://www.calrecycle.ca.gov/Laws/Rulemaking/Archive/2003/CompMaterial/>

⁹ CalRecycle Rule Making Archive: Final Statement of Reasons 2003 Available at:
<http://www.calrecycle.ca.gov/Laws/Rulemaking/Archive/2003/CompMaterial/>

¹⁰ Id.

- A. General Order Section 31 Discharge Prohibitions. Subsection a:
 - a. Animal Carcasses be amended to read "Mammal Carcasses".
- B. General Order Attachment A – Definitions be amended as follows:

~~Animal~~ **Mammal Carcass** – Refers to any whole or part (including, but not limited to, the flesh, organs, blood, hide, bone and marrow) of a carcass of a ~~bird, fish or~~ mammal which does not meet the definition of "Food Material".

These proposed changes will not result in changes to the analysis in the DEIR as presented to the Board.

The DEIR fails to analyze impacts from alternative disposal methods of chicken litter.

The General Order prohibits the use of "animal carcasses" in a composting operation; but, allows the use of "manure" as a feed stock. As discussed above, chicken litter can include "spent fowl" carcasses. The carcasses from the "spent fowl" can be mixed into the litter at the producing ranch and disposed of as part of the litter. The litter is then composted on-site or hauled to a composting facility.

If the General Order is approved with the current prohibition against composting "animal carcasses", the chicken litter that includes carcasses will have to be disposed of through alternative means (i.e. landfill or renderer). These alternatives will cause impacts not only at the locations where the litter is produced; but, also at the areas surrounding a generator, by adding truck trips necessary to haul the carcasses to a landfill or renderer. As a result, implementation of the General Order will result in impacts to traffic and air quality. The DEIR does not analyze these impacts to the environment that will result from implementation of the General Order.

The California Environmental Quality Act ("CEQA") Guidelines¹¹ §15126.2 requires the following in an EIR: "[d]irect and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects." The DEIR fails to discuss the direct impacts that the prohibition on the composting of "animal carcasses" will have on the environment. The DEIR should, at a minimum, include analysis of the additional

¹¹ California Code of Regulations Title 14, Chapter 3: "Guidelines for Implementation of the California Environmental Quality Act"

Water Resources Control Board

March 2, 2015

Page 6

traffic and air quality that will result from the "spent fowl" carcasses having to be hauled to a landfill or other disposal facility.

In closing, we respectfully request that the State Water Resources Control Board amend the General Order as outlined above. This amendment will cause the General Order to be consistent with existing state composting regulations and will also result in a DEIR that complies with CEQA. If the Board does not amend the General Order, we request that the DEIR be revised to include a legally adequate analysis of the effects that implementation of General Order will have on the Environment, and be recirculated for public review.

Please let us know if you have any questions or concerns with this request. I can be reached at 909-890-4499.

Very truly yours,



Mark A. Ostoich, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MAO:BRM

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