ATTACHMENT TO NOTICE OF EXEMPTION

Project Title: Illegal Disposal Emergency Regulations

Project Applicant: Department of Resources Recycling and Recovery (CalRecycle)

Description of Nature, Purpose and Beneficiaries of Project:

Provisions of the California Integrated Solid Waste Management Act of 1989 (IWMA) 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 Public Resources Code (Public Resources Code Sections 40502, 43020, and 43021). Furthermore, Assembly Bill 2679 (Chapter 500, Statutes of 2008) added Public Resources Code 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 authorizing CalRecycle or the LEA to issue a cease and desist order to any person who violates this provision.

CalRecycle is readopting emergency regulations to establish administrative procedures to enable CalRecycle to fulfill its responsibilities pursuant to PRC Sections 40502, 43020, 43021, and 44000.5. This readoption will remain in effect for 90 days.

Reasons Why Project is Exempt:

The adoption of the regulation is exempt from the California Environmental Quality Act (CEQA) because it falls under the “Class 8” exemption as defined in the CEQA Guidelines. The Class 8 exemption states that a project is exempt from CEQA if it “consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment” (CEQA Guidelines section 15308). The Illegal Disposal Emergency Regulations are intended to protect the state’s environment through the implementation of the regulations to ensure that land application activities applying compostable material or digestate are appropriately regulated by the Enforcement Agency 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.

As explained in the Notice of Proposed Emergency Action (NOPEA) prepared for these regulations, CalRecycle found 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 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. See the NOPEA for further details.

Additionally, the adoption of the regulation is exempt from CEQA because it falls under the "Class 21" exemption as defined in the CEQA Guidelines. The Class 21 exemption states that a project is exempt from CEQA if it consists of enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency." (CEQA Guidelines section 15321). The Illegal Disposal Emergency Regulations are intended to protect the state's environment through the implementation of the regulations to ensure that land application activities applying compostable material or digestate are appropriately regulated by the Enforcement Agency 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 as required by law.

Finally, the adoption of the regulation is exempt from CEQA because it falls under the common-sense exception provided by section 15061(b)(3) of the CEQA Guidelines. That section provides that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA. These regulations create new permitting requirements for the application of compostable material and digestate to land and create reporting requirements to allow for enforcement of the laws related to illegal disposal and land application. These regulations also change the requirements for land application in such a way as to ensure that compostable material is responsibly managed, and also provide requirements that will curtail illegal disposal. None of the requirements in the regulations will either actually or potentially result in substantial adverse effects on the environment.