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**LEGISLATIVE TASK FORCE**

[www.swanacal-leg.org](http://www.swanacal-leg.org)

**LEGISLATIVE ADVOCATES**

PAUL J. YODER

JASON SCHMELZER

*Shaw / Yoder / Antwih, Inc.*

1415 L Street, Suite 1000

Sacramento, CA 95814

(916) 446-4656

FAX (916) 446-4318

[paul@shawyoderantwih.com](mailto:paul@shawyoderantwih.com)

[jason@shawyoderantwih.com](mailto:jason@shawyoderantwih.com)

**CHAIR**

MARK A. BOWERS

*City of Sunnyvale*

PO Box 3707

Sunnyvale, CA 94088

(408) 730-7421

[mbowers@sunnyvale.ca.gov](mailto:mbowers@sunnyvale.ca.gov)

**VICE CHAIR**

GLENN ACOSTA, P.E.

*Sanitation Districts of Los Angeles County*

1955 Workman Mill Road

Whittier, CA 90601

(562) 908-4288

[gacosta@lacsdc.org](mailto:gacosta@lacsdc.org)

**TREASURER**

ERIC ZETZ

*City of Clovis*

155 N. Sunnyside Avenue

Clovis, CA 93611

(559) 324-2612

[ericz@ci.clovis.ca.us](mailto:ericz@ci.clovis.ca.us)

**SECRETARY**

MARK J. URQUHART, P.E.

*Solid Waste Consulting*

2741 Fairover Drive

Placerville, CA 95667

(530) 626-4771

[MarkJ.Urquhart.PE@gmail.com](mailto:MarkJ.Urquhart.PE@gmail.com)

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Mr. Robert Carlson

Senior Environmental Specialist

CalRecycle

1001 I Street – PO BOX 4025

Sacramento, CA 95812-4025

[AB901.Reporting@CalRecycle.ca.gov](mailto:AB901.Reporting@CalRecycle.ca.gov)

Subject: Draft AB 901 Regulations

Dear Mr. Carlson,

On behalf of the Legislative Task Force (LTF) of the California Chapters of the Solid Waste Association of North America (SWANA), I would like to thank you for the opportunity to comment on the draft regulations implementing AB 901 (Gordon, 2016). The California Chapters of the Solid Waste Association of North America (SWANA) represent much of the publicly-owned and -operated solid waste management infrastructure in the state and the local governments responsible for implementing waste diversion and recycling programs. The SWANA Legislative Task Force (LTF) represents the California Chapters on legislative and regulatory issues.

First, we would like to note that the Draft Regulations released on 11/4/2016 contain many improvements that are responsive to our comments on the Draft Regulations released on 6/24/2016.

**DRAFT REGULATIONS DATED 11/4/2016**

Broadly speaking, we would like to note that facilities operated by our members are not well-situated to collect all of the information required by the Draft Regulations, and that logistical issues at facilities are expected as we attempt to comply with the regulations. We have the following concerns:

- *Unattended Scales:* The SWANA LTF is concerned that some self-haulers may not correctly enter information when using unattended automated scales, such as the jurisdiction of origin or whether it is a commercial sector load. They may not even identify themselves as a self-hauler, particularly if they were hired by a business or a homeowner association.
- *Granularity of Information:* The SWANA LTF is concerned with the amount of detail required by the regulations, and believe that this departs from the original intent of the authorizing statute. Specifically, we'd recommend having franchise haulers report the required information because they are required to track loads carefully under their agreements, but have self-haulers provide only basic information.
- *Operational Slowdowns:* The SWANA LTF is concerned that attempting to collect the required information at a landfill or transfer station will cause significant delays in entering facilities and could cause significant backups at the gate and result in traffic spilling out into feeder roads.
- *Civil penalties are imposed even for unintentional errors:* As written the Section X.10 Procedures for Imposing Civil Liabilities does not clearly allow for an opportunity to remedy the violation without incurring a financial penalty. Given the complexity of these regulations, errors will occur. There should be an opportunity to remedy an issue prior to formal notice of violation or penalty.

As a result of this general concern, we'd recommend that CalRecycle provide for a phased implementation process that allows for the mitigation of unanticipated problems in the collection of data and resulting logistical complications at facilities.

Below we have outlined our more specific concerns with the 11/4/2016 Draft Regulations.

## **SECTION X.2 DEFINITIONS**

### *(a)(14) "Contract Hauled"*

Section X.2(a)(14) currently defines "Contract Hauled" to mean "material hauled by any person paid to collect and transport material from a Generator, including franchised Haulers and private contract Haulers." The regulations are unclear with respect to who will be responsible for determining what is contract hauled and what is not, and what factors go into making that determination. This is important because this definition ties directly into the definition of "Source Sector", as well as reporting requirements in Sections X.5 and X.6.

### *(a)(28) "Hauler"*

Section X.2(a)(28) currently defined "Hauler" as "'a person who collects solid waste, organics, or recyclable material from a Generator and delivers it to a Reporting Entity, End User, or outside of the state. "Hauler" includes public contract Haulers, jurisdictions, districts, private companies, Self-Haulers, and local governments who perform this function. "Hauler" does not include a person who transports solid waste, organics, or recyclable material from a Reporting Entity to another person; in this case, the person would be considered a "Transporter." We are concerned that this definition is broad enough to include small junk haulers, clean-up companies, and even contractors hauling their own material generated from a jobsite.

### *(a)(49) "Source Sector"*

Section X.2(a)(49) currently defines "Source Sector" as "the source from which solid waste is generated, described as:

- (A) Contract-hauled Single-family Residential
- (B) Contract-hauled Commercial/Multi-family Residential
- (C) Self-Hauled
- (D) Disaster Debris"

The SWANA LTF is concerned that this information will be difficult to obtain because facilities will not be able to determine what is contract hauled (see concerns on definition above). Additionally, it will be difficult to accurately determine which category applies to each load. As a result, we believe that the concept of "Source Sector" should be removed from the regulations entirely.

## **SECTION X.3 REGISTRATION, REPORTING AND EXEMPTIONS**

The SWANA LTF is concerned with the draft language contained in Section X.3(g) because it requires all reporting entities include in their report "the amounts of each of the following materials or mixture of materials...". The list under (g) does not include Municipal Solid Waste (MSW) or Single Stream Recyclables (SSR), or other normally mixed materials. A hauler will not necessarily be able to break down loads of SSR into the required categories, and "Reporting Entities" will not break down MSW into the required categories without conducting a time-consuming waste characterization analysis on each load. CalRecycle staff have indicated in workshops that there would be an opportunity to report simply mixed loads as mixed and not itemized materials.

In addition, Section X.3 (c) requires completely separate reporting for transfer stations, MRFs, and recycling or composting facilities when co-located at a disposal facility. This additional effort is excessive and reporting for those other activities should be able to be accomplished under the same DDRS number entry. It is also unclear if a MRF will be required to report different information than a transfer station. Many transfer stations include activities that would be considered a MRF. CalRecycle does not have a separate permit for MRFs which are either considered to be a recycling center or a transfer station and the permit tiers for both of these activities range from Excluded to Full permits. Data collection for combined facilities should be simplified.

Thank you again for providing the opportunity for the SWANA LTF to provide comment on the Draft Regulations released on 11/4/2016. We will attempt to schedule a meeting to follow up on our comments and answer any questions you may have.

Sincerely,



Jason Schmelzer  
SWANA Legislative Advocate