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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
jason@shawyoderantwih.com

CHAIR
MARK A. BOWERS
City of Sunnyvale
PO Box 3707
Sunnyvale, CA 94088
(408) 730-7421
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@lacsd.org

TREASURER
ERIC ZETZ
City of Clovis
155 N. Sunnyside Avenue
Clovis, CA 93611
(559) 324-2612
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

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Mr. Robert Carlson
Senior Environmental Scientist
CalRecycle
1001 I Street--P.O. Box 4025
Sacramento, CA 95812-4025
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 Assembly Bill 901 (AB 901). The California Chapters of 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 LTF represents the California Chapters on legislative and regulatory matters.

The LTF has the following concerns about the draft AB 901 regulations released to the public by CalRecycle on June 24, 2016:

DEFINITION OF MATERIAL RECOVERY FACILITY

We believe that a facility that only uses a conveyor to load source-separated materials into a baler or truck could be inappropriately classified as a material recovery facility (MRF). MRFs sort and process **mixed** materials. Consequently, the definition of a MRF under Section X.2 should be modified as follows:

(a)(26) "Material recovery facility" or "MRF" means a facility which sorts and processes ***mixed*** materials for the purpose of recovery of recyclable and/or compostable materials, by moving materials through a processing line which includes a mechanized conveyance system, and separating or sorting materials by machinery or by hand, in order to aggregate materials by type or grade, and produce materials for sale to various markets or end users.

MATERIAL CLASSIFICATIONS FOR WOOD WASTE

As currently drafted, it is unclear which material category wood waste would fall under in Section X.2 (a)(27). Wood waste could potentially be classified as either "organics" or "construction and demolition debris and inerts." This needs to be clarified.

MATERIAL CATEGORY VS MATERIAL TYPE

The proposed regulations use both the terms "material category" and "material type" but only material category and target products are defined as shown below. We request that all terms be defined in the regulation. Furthermore,

several materials should be struck from the definition of material category for the reasons cited below and as follows:

> (a)(27)"Material category" is the kind material that recycling and composting operations must report, pursuant to this article. Material categories include:
>
> > (G) Target products including carpet, mattresses, white goods, furniture, ~~electronics~~, textiles, ~~household batteries, architectural paint~~, used tires.

It is unclear as to the need for facility operators to provide origin information on all materials. CalRecycle should clarify the need and how the information will be used.

REMOVAL OF UNIVERSAL AND NON-RCRA HAZARDOUS WASTES FROM REGULATIONS

In both the intent language and text of AB 901, there is no mention of attempting to include household hazardous waste, universal waste or non-RCRA hazardous materials in the new reporting scheme. Hazardous wastes are specifically excluded from the definition of solid wastes in Public Resources Code 40191 and thus should not be included in these regulations. Materials such as electronics, household batteries and architectural paint are classified as universal waste and non-RCRA hazardous materials, respectively, and should therefore be excluded from these regulations. We also believe that materials that are part of a legislatively-enacted Extended Producer Responsibility (EPR) program with reporting requirements should not be included in these regulations since facility would have to report twice on the same materials. Alternatively, these reporting requirements should be combined to eliminate duplication.

SMALL FACILITIES WOULD BE EXCESSIVELY BURDENED WITH NEW REPORTING

Imposing an extensive reporting system on small, remote facilities that deliver wastes to a central facility would be excessive and burdensome. There needs to be a mechanism to aggregate the reporting from multiple small facilities delivering materials to the same central facility. Small facilities could also be exempted from reporting or designated for annual reporting.

RECONCILING DEFINITION OF SELF-HAULER WITH AB 1103

Under Section X.2 (a)(37) of the proposed regulations, “self-hauler” means a person who hauls their own waste or recyclable/compostable material, and transports the waste to a solid waste facility, recycling facility, or end user. This includes anyone other than a contracted, franchised, or municipal hauler. Should AB 1103 (Dodd) be signed by the Governor, the definition of “self-hauler” needs to be modified accordingly.

SPECIFIC SOURCE SECTOR INFORMATION MAY NOT BE AVAILABLE

In the proposed regulations, source sector is divided into five categories: (a) franchised residential, single family, (b) franchised residential, multi-family, (c) franchised commercial, (d) self-hauled residential, and (e) self-hauled commercial. We believed there is no added benefit or real need in using this extreme refinement of sector-specific information in determining a jurisdiction’s diversion or recycling rate. Additionally, a hauling route can include all of these sectors, so determining the amount from each sector may be impossible or highly inaccurate. In many instances, source sectors may not be serviced by non-franchised haulers.

Materials collected from source sectors (b) & (c) above are usually co-collected in a single route. Typically a front loader collection route will include both multi-family and business stops. Tonnage from each stop can vary day to day. Attempts to apportion the load to a specific sector would be very burdensome, inaccurate, and ultimately may not be achievable.

Obtaining reliable source sector from self-haulers can be challenging. The types of self-haul vary significantly: independent clean-up companies that haul materials from homes and/or small businesses, small business owners that use their company-owned vehicles to haul waste, and residential and commercial landscapers. Self-hauler loads can include multiple sectors, making apportionment difficult, particularly if there is a language impediment.

AB901 does not require or request the proposed source sectors, and such speciation in reporting would be very burdensome to facility operators. Therefore, we request that the proposed source sectors be removed from the regulations. At most, reporting should be limited to residential, commercial and multi-family.

LARGE FACILITIES NEED 45 DAYS TO DEVELOP THE REPORT

Under Section X.3 (d)(2), facilities are required to report to CalRecycle within 30 days after the end of the reporting period. This timeline may be difficult to meet for larger transfer stations and MRFs due to lead times in obtaining origin information from some haulers. Also, there may not be enough time to reflect changes made as a result of billing questions from haulers to the facilities they utilize. Larger facilities experience similar data correction and consolidation issues to that of disposal facilities. For these reasons, the reporting timeframe should be 45 days.

This would be similar to the reporting requirements for disposal facilities, especially since transfer stations and MRFs will now be reporting to CalRecycle rather than to the disposal facilities. A reporting timeframe of 45 days would provide for any delays in getting information from the haulers. If haulers are granted a time extension as recommended below, then MRFs and transfer stations also need the extension.

HAULING COMPANIES NEED MORE THAN 15 DAYS TO REPORT

Under Section X.4 (b), haulers would be required to report to CalRecycle no later than 15 days after the end of the reporting period. This timeframe may not be sufficient for haulers to compile and file information from the prior reporting period. This proposed timeframe does not take into consideration company size, collection service type and complexity, or franchise requirements, if applicable. We believe 30 calendar days would be reasonable and appropriate.

ABILITY TO REMEDY VIOLATIONS PRIOR TO ASSESSING PENALTIES

Section X.9 of the proposed regulations describes the process for levying administrative civil penalties for reporting violations. However, the regulations do not include provisions for curing the alleged violation prior to assessing a penalty. There may be instances where the incorrect information was filed due to a simple error or omission. There should be a clear process, with timelines, that allows for the reporting entity to cure or remedy the reporting violation prior to any administrative civil penalties being assessed.

RECONCILING DATA REPORTED TO DIFFERENT ENTITIES

There does not appear to be any provisions for reconciling data between what is reported to CalRecycle and what is reported to the jurisdictions through contractual or local government mandated reporting requirements. Section X.12 (b) proposes an electronic process for non-compliance but not resolving discrepancies. It is unclear if or how will CalRecycle resolve differences in the data reported.

Thank you again for the opportunity to comment on the draft AB 901 Regulations. The members of the LTF look forward to working with CalRecycle staff to develop meaningful and reasonable regulations that will provide CalRecycle with the information needed to assess the recycling effort in the state, while not placing burdensome requirements on haulers and facilities operators.

If you have any questions regarding the information contained herein, please contact Doug Kobold of Sacramento County at (916) 875-7087 or Larry Sweetser of Sweetser & Associates at (510)703-0898.

Respectfully,

Glenn Acosta
Vice Chair