



SHAW/YODER/ANTWIH, inc.
LEGISLATIVE ADVOCACY • ASSOCIATION MANAGEMENT

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To: SWANA Legislative Task Force
SWANA – Northern California Gold Rush Chapter
SWANA – Central California Sierra Chapter
SWANA – Southern California Founding Chapter

From: Jason Schmelzer, Partner
Shaw / Yoder / Antwih, Inc.

RE: 2016 Year-End Report & 2017 Preview

On behalf of all of the employees of Shaw / Yoder / Antwih, Inc. (SYA), we'd like to thank the SWANA Legislative Task Force (SWANA LTF) for once again entrusting our firm with the important task of providing legislative and regulatory advocacy services to the California chapters of SWANA. SYA has represented the SWANA LTF for approximately twenty years, and we look forward to many more years advocating on your behalf.

The California State Legislature ended the 2015-2016 legislative session on August 31, 2016, and Governor Jerry Brown completed the signature and veto process on September 30, 2016. The legislature sent a total of 1,059 bills to Governor Brown for consideration; of those, he signed 898 and vetoed 159. Two bills became law without his signature. Governor Brown and the legislature focused on several important public policy areas in 2016, including health care, transportation infrastructure financing, minimum wage, and especially greenhouse gas emissions.

This report outlines legislation related to solid waste more completely below; however, the legislature focused mostly on taking steps to help meet the 75% statewide diversion goal, reforming the bottle bill, extended producer responsibility, and greenhouse gas emissions related to solid waste operations. With the Trump Administration coming to power in Washington, D.C. we can expect the California State Legislature to maintain its focus on reducing greenhouse gas emissions.

2016 LEGISLATIVE REPORT

The SWANA LTF directed SYA to actively advocate on several pieces of legislation in 2016, which are outlined below. We have also identified and described several other pieces of legislation that, despite the SWANA LTF having no official position, could have an impact on the operations of SWANA members.

Bills with SWANA Position

AB 45 (Mullin) – Household Hazardous Waste / Pharmaceuticals

SWANA consistently and actively opposed AB 45 in both 2015 (the year it was introduced) and 2016. The bill was an attempt by pharmaceutical manufacturers to advance an alternative to pharmaceutical and sharps Extended Producer Responsibility (EPR) legislation that has been

advanced by the California Product Stewardship Council in recent years. The bill undermined product-by-product EPR legislation, which SWANA supports, by mandating that local governments improve HHW collection and disposal. Additionally, AB 45 expanded the definition of HHW to include home-generated sharps and pharmaceutical waste. Opposition to the bill was fierce, and ultimately the bill was modified to require an LA County pilot program on the collection of pharmaceuticals.

SWANA directed SYA to lobby with a broad coalition to defeat AB 45 in 2015, but the bill was resurrected early in 2016 and began to advance. The author amended the bill into a sort of “spot bill” form and urged much of the opposition to back off, which many did in deference to the author. SWANA sustained opposition to the bill as it evolved and gave SYA broad latitude to defeat the measure in 2016. As a result, SWANA was instrumental in ensuring defeat of the bill in the Senate Environmental Quality Committee.

The defeat of AB 45 was crucial to advancing a producer responsibility paradigm with respect to the collection and disposal of home-generated sharps and pharmaceutical waste.

SWANA LTF POSITION: Oppose

RESULT: **Failed Passage**

AB 1103 (Dodd) – Solid Waste Disposal: Self-Haulers

This bill allows CalRecycle to define the term “self-hauler” and adds self-haulers to the existing requirement for exporters, brokers, and transporters of solid waste to periodically report certain information to CalRecycle. This bill was a bit of a moving target from the time it was introduced, and moved from a bill that sought to regulate self-hauling to a bill that provided authority to CalRecycle on the subject. The SWANA LTF formed a subcommittee on this legislation and worked with the author and sponsor on the bill. Our final amendment request, which would have limited the regulatory authority of CalRecycle in the bill, was approved by the administration, but resisted by legislative staff. The final amendment was not taken before the bill was signed by Governor Brown.

SWANA LTF POSITION: Oppose Unless Amended

RESULT: **Signed by Governor Brown**

AB 1669 (Hernandez) – Displaced Employees: Service Contracts

The SWANA LTF was an early opponent of this measure, which was sponsored by the Teamsters, and worked to build a small opposition coalition of local government organizations. AB 1669 creates a 10% bid preference applicable to local government contracting processes for solid waste collection and transportation services. The legislation awards this bid preference to any contractor who elects to retain the employees of the prior contractor for a period of 90 days. The Teamsters already had an existing provision in law that applies to operators of public transit systems and simply modified the statute to expand the scope.

SWANA coordinated with advocates for other local government associations and we worked to defeat the union-backed measure. In large part, the Teamsters were able to use public transit

operators as a point of reference, and claim that previous application of this bid preference had not caused problems in contracting.

The bill passed the legislature and we urged Governor Brown to veto the measure because it wasn't addressing any specific problem, but instead simply protecting current employees with a blanket bid preference. We argued that this created a low threshold for state interference in local government contracting, and should be avoided. Unfortunately, Governor Brown chose to sign the bill into law.

SWANA LTF POSITION: Oppose

RESULT: **Signed by Governor Brown**

AB 2039 (Ting) – Sharps EPR

The SWANA LTF was an active supporter of this legislation, which would have established an Extended Producer Responsibility program in California to collect and manage home-generated sharps waste. This is a significant issue for local governments because of the significant risk of needle stick injuries for employees of solid waste haulers and MRF operators. The bill was heavily opposed by sharps and pharmaceutical manufacturers, who have consistently pushed back against the concept of extended producer responsibility relative to their products.

After AB 2039 was defeated there was outreach from some pharmaceutical companies interested in negotiating a compromise proposal on both pharmaceutical and sharps take-back programs. As a result, a request was sent to the California State Auditor to provide information about various aspects of drug take back programs currently in operation. That audit report is intended to provide a common set of facts for stakeholders seeking to negotiate a compromise. SYA is actively involved in the conversations and will continue to provide SWANA with information and the ability to provide feedback during that process.

SWANA LTF POSITION: Support

RESULT: **Failed Passage**

AB 2153 (Garcia) – Lead Acid Batteries

This legislation was an effort to manage the environmental and fiscal impacts resulting from lead acid battery recycling efforts over the past decades. This legislation was mostly driven by the contamination associated with the Exide battery recycling facility in Vernon, California, but there are several other similar sites around the state that will require similar remediation and will present similar problems. The State of California allocated \$176 million in the form of a loan to help clean up the site, but needed a mechanism to collect that money back from industry.

Assemblymember Cristina Garcia introduced AB 2153 in an effort to create a funding stream to repay the state's loan to clean up Exide, and to create a fund for future sites. The ultimate legislation was a compromise proposal that managed to survive extensive lobbying by both industry and environmentalists. The bill creates two fees to fund contamination remediation – one on consumers and one on producers. The money collected can be appropriated by the legislature to repay the state loan or to clean up contamination.

SWANA chose to “work with the author” to offer assistance where needed, and to help steer clear of unintended consequences. Collection and recycling rates for lead acid batteries are quite high so there wasn’t much debate about the need to get this material out of landfill. This bill ended up mostly focusing on balancing consumer and manufacturer funding streams for remediation efforts.

SWANA LTF POSITION: Work with Author

RESULT: [Signed by Governor Brown](#)

AB 2313 (Williams) – Monetary Incentive Program for Biomethane Projects

The SWANA LTF supported this measure to increase the amount of ratepayer-funded incentive amounts allowed to encourage the development of biomethane projects. The CPUC will be allowed to consider rate recovery for direct investments in infrastructure necessary to achieve interconnection between biomethane facilities to the natural gas transmission and distribution pipeline network.

SWANA LTF POSITION: Support

RESULT: [Signed by Governor Brown](#)

AB 2396 (McCarty) – Solid Waste: Annual Reports

Existing law requires state agencies to develop an integrated waste management plan for purposes of diverting 50% of waste from landfill. The SWANA LTF supported this measure to require state agencies to include information related to commercial recycling and organic waste recycling in their annual report to CalRecycle. This legislation will help state agencies divert more waste from landfills and move the state closer to achieving its 75% recycling goal.

SWANA LTF POSITION: Support

RESULT: [Signed by Governor Brown](#)

AB 2530 (Gordon) – Recycling: Beverage Containers

This legislation requires manufacturers of plastic beverage containers to report the amount of virgin plastic and postconsumer recycled content in plastic used in their beverage containers subject to California Refund Value (CRV) sold in the state the previous calendar year. The purpose of the bill is to inform consumers about the extent to which beverage containers contain recycled plastic.

SWANA LTF POSITION: Support

RESULT: [Signed by Governor Brown](#)

AB 2725 (Chiu) – Food Manufacturers: Food Labels

The SWANA LTF was supportive of this effort to achieve source reduction of food waste by standardizing expiration date labels on food products. SWANA backed this bill because, according

to the 2014 waste characterization study, food waste is the most prevalent item in the California waste stream and its presence in landfills contributes significantly to greenhouse gas emissions. Additionally, surveys indicate that consumers discard food predominantly because they misinterpret food expiration date labels.

AB 2725 was defeated in the Assembly Health Committee because of substantial industry opposition.

SWANA LTF POSITION: Support

RESULT: **Defeated in Legislature**

AB 2812 (Gordon) – State Facilities Recycling

The SWANA LTF was supportive of this legislation that requires state agencies to improve waste diversion and recycling in waste streams from large state facilities. The bill specifically requires state agencies to provide appropriate receptacles, signage, education, and staffing to divert at least 50% of their waste from landfill. The bill also requires state agencies to annually review their progress and report to the legislature. This legislation will help California accomplish the statewide 75% recycling goal, which will help head off future state mandates on local governments.

SWANA LTF POSITION: Support

RESULT: **Signed by Governor Brown**

SB 423 (Bates) – Surplus Household Consumer Waste

This bill requires the California Department of Toxic Substances Control (DTSC) to convene a Retail Waste Working Group to identify regulatory and policy directives that need clarification for managing consumer products, and adopt consensus recommendations for waste reduction opportunities. The bill is intended to help clarify statutory and regulatory barriers to effectively managing some health care products when they are not sold at stores, and instead enter the reverse distribution process to be used in some other manner.

The Retail Waste Working Group has already been created at DTSC, but this legislation provides additional authorization for its activities. SWANA effectively lobbied for amendments to the bill that specifically added local government representatives to the DTSC working group.

SWANA LTF POSITION: Support

RESULT: **Signed by Governor Brown**

SB 778 (Allen) – Automotive Repair: Oil Changes

This legislation attempted to encourage source reduction of used oil by requiring an automotive repair dealer to recommend to customers the date or mileage for the next oil change to follow the oil drain interval specified in the vehicle manufacturer's published maintenance schedule. According to CalRecycle, changing motor oil based on the manufacturer's specifications would reduce motor oil demand in our State by about 10 million gallons per year.

SWANA LTF POSITION: Support

RESULT: **Vetoed by Governor Brown**

SB 970 (Leyva) – GGRF: Recyclable Material

This legislation seeks to fine-tune CARB's authority relative to awarding grants within the GGRF for organic waste diversion and composting. The bill requires CARB to evaluate the scale of greenhouse gas reductions resulting from organics diversion programs, and allows larger grants for large scale projects. The bill was passed by the legislature and signed by Governor Brown.

SWANA LTF POSITION: Support in Concept

RESULT: **Signed by Governor Brown**

SB 1170 (Wieckowski) – Stormwater Pollution Prevention Plans

The SWANA LTF actively opposed this bill that would have prohibited a public entity from contracting with an outside entity to develop Stormwater Pollution Prevention Plans (SWPPP). SWANA opposed this bill, which was advanced by the Associated General Contractors, because our members often rely on the expertise of qualified SWPPP developers who are knowledgeable in the principles and practice of erosion and sediment controls and possess the skills needed to assess conditions at the construction site that could impact stormwater quality. In addition, local agencies do not have the resources or workload to employ personnel qualified to perform these tasks year-round. The bill was heavily opposed by local governments and was ultimately held in the Assembly Appropriations Committee.

SWANA LTF POSITION: Oppose

RESULT: **Defeated in Legislature**

SB 1229 (Jackson) – Pharmacy Drug Take Back Programs: Civil and Criminal Immunity

This legislation was a small step forward for prescription drug take back programs operated on the local government level. The SWANA LTF actively supported this measure to create a reasonable standard of care for hosting a drug take back bin and provide civil and criminal immunity to pharmacies that host those bins. The purpose of the bill was to remove barriers to pharmacy participation in local ordinances requiring drug take back by producers. Some pharmacies had indicated that they didn't want to participate because of concerns over liability.

SWANA LTF POSITION: Support

RESULT: **Signed by Governor Brown**

SB 1383 (Lara) – Short-Lived Climate Pollutants

CARB drafted and released a short-lived climate pollutant strategy in 2016 based on prior legislation that asked them to do so. Among other things, the strategy proposes to reduce methane emissions by further reducing organic waste in landfills and continuing to evaluate landfill emissions. However, it was unclear whether CARB had the authority to actually implement the plan once it was developed. SB 1383 provided CARB with the authority to implement their

plan, but provided for delayed implementation for emissions reductions applying to landfills. The bill was passed by the legislature and signed by Governor Brown.

SWANA LTF POSITION: Oppose

RESULT: [Signed by Governor Brown](#)

Other Bills of Interest

Although the SWANA LTF did not directly take a position on the bills below, they do warrant some attention:

State Budget – Bottle Bill Reforms

There was an effort this year on the part of grocers, convenience zone operators, and some local governments to advance reforms to the bottle bill program because of falling commodity prices and failing collection locations. Ultimately the Brown Administration determined that it would not support any short-term fixes to the program and instead proposed to advance comprehensive reform after Fall/Winter 2016 stakeholder meetings.

The SWANA LTF expects the Brown Administration to release information on their proposed reform of the bottle bill in the Governor's January 10th proposed budget.

AB 197 (E. Garcia) – CARB Oversight – Signed into Law

This bill was driven, in part, by the feeling that the legislature did not have sufficient oversight capabilities relative to the California Air Resources Board (CARB). The bill establishes the Joint Legislative Committee on Climate Change Policies, which will include at least three members of each legislative house. The Committee will review the effectiveness of CARB programs and make recommendations to the legislature on programs, policies, and investments related to climate change. The bill was passed by the legislature and signed by Governor Brown.

AB 1550 (Gomez) – GGRF: Disadvantaged Communities – Signed into Law

This bill was driven, in part, by the feeling among legislators that the Greenhouse Gas Reduction Fund (GGRF) expenditures were not appropriately benefiting disadvantaged communities. The bill increases the proportion of funds that must be allocated to disadvantaged communities in the GGRF investment plan. The bill was passed by the legislature and signed by Governor Brown.

SB 32 (Pavley) – Global Warming Solutions Act of 2006: Emissions Limit – Signed into Law

Current authority for CARB to regulate greenhouse gas emissions in California is rooted in AB 32 (Nunez, 2006). AB 32 requires CARB to reduce California's greenhouse gas emissions to the 1990 level by 2020. Because AB 32 was so specific about the compliance date (2020), it was unclear whether CARB would have authority beyond that date. SB 32 extends and expands CARB's authority by requiring the board to reduce California's greenhouse gas emissions to 40% below 1990 levels by 2030. After a hard fought battle against moderate democrats in the Assembly the bill was passed by the legislature and signed by Governor Brown.

2016 REGULATORY REPORT

In addition to actively working on a broad cross section of legislation, the SWANA LTF provides formal comments on regulatory proposals that potentially impact members. We engaged formally on the following proposed regulations in 2016:

Short-Lived Climate Pollutants

In April 2016, the CARB released a strategy to comport with the parameters of SB 605 (Lara). As of this writing, the strategy remains un-adopted. Workshops were held during the fall of 2016. Formal adoption could occur in the next weeks or months. With the passage of SB 1383 (Lara, 2016), the CARB now has authority to proceed with the adoption of regulations. They have since released a new draft of the regulations and will begin formal rulemaking processes in early 2017.

2030 Scoping Plan

In 2015 Governor Brown issued an executive order establishing a new statewide goal of reducing greenhouse gases by 40% below 1990 levels by 2030. And, the CARB has additional authority to reduce greenhouse gasses because of the passage of SB 32 (Pavley, 2016). The CARB has held and is holding a series of public meetings and workshops to discuss the various aspects of the scoping plan. The ARB released a very rough draft 2030 Scoping Plan in late 2016, and the SWANA LTF provided some commentary. However, we expect significant revisions when the formal rulemaking process begins in 2017.

AB 901 Reporting Regulations

This legislation was signed by Governor Brown in 2015. The purpose was to change how disposal and recycling data is reported to CalRecycle. Waste, recycling, and compost facilities, as well as exporters, brokers, and transporters of recyclables or compost will be required to submit information directly to CalRecycle. Note: AB 1103 (Dodd, 2016) expands this requirement to self-haulers and gives CalRecycle authority to define self-haulers.

CalRecycle released its first draft of regulations in June of 2016. SWANA commented extensively on those regulations and some meaningful changes were made. A second draft of regulations was released by CalRecycle in November of 2016, and additional workshops will be held in December of 2016. SWANA again commented on the regulations and is now seeking to connect LTF members with CalRecycle staff for a conversation about our concerns with the approach being taken. Formal workshops and rulemaking will begin in 2017, and CalRecycle anticipates finalizing the regulations in 2017. CalRecycle is also proposing to provide outreach and training to the regulated community in 2017, and the first round of reporting will be required in 2018.

2017 PREVIEW

The California State Legislature returned to Sacramento on December 5, 2016 to swear in new members of the legislature and officially begin the 2017-2018 legislative session. The majority party, Democrats, return this legislative session with a two-thirds supermajority in each house of the legislature after a dominant year at the ballot box. Additionally, we expect the majority party to attempt in many ways to set the standard for a progressive public policy agenda as a counterbalance to the ascendance of President-elect Donald Trump, who is widely expected to push in the other direction.

When we look ahead to this coming legislative session, there are at least two significant reform efforts coming that could impact the operations of SWANA members. While the fate of these efforts is unclear at this point, following is a brief preview of each issue.

Bottle Bill Reform

CalRecycle is currently working with stakeholders to evaluate the current bottle bill program, which is plagued by fraud, subject to wild swings in commodity prices, and failing to meet convenience standards for consumer redemption opportunities. While the Brown Administration has clearly stated that it is not interested in short-term fixes, it is unclear what options for reform will be advanced in 2017. Various options, however, have been widely discussed among stakeholders. These options include moving from a deferred deposit program to an extended producer responsibility approach, adding container types to the program to broaden the fee base, providing local jurisdictions with alternative methods of meeting convenience requirements, and potentially reducing the consumer refund from 5 cents to 4 cents to account for administrative overhead.

CalRecycle Funding

It is anticipated that the Brown Administration will again attempt to address CalRecycle's structural deficit through the implementation of new fees, and potentially an increase in the tipping fee. While it remains improbable that the Administration will be successful in convincing a required 2/3 supermajority of the legislature to implement a broad reform proposal, it is possible that the administration will attempt to advance portions of their plan, such as a generator fee, through the budget process with a simple majority vote. CalRecycle funding reform efforts gained steam in 2015, but fell by the wayside in 2016. SYA will continue to monitor the situation because of the potential for action in 2017 during the budget process.

CARB Adoption of Short-Lived Climate Pollutants and 2030 Scoping Plan

The CARB will continue its development of regulations to implement reductions in short-lived climate pollutants and develop a 2030 scoping plan. We expect the actions by CARB to be far-reaching and will be engaged in the regulatory process to identify and comment on any aspects that impact the SWANA membership.