



March 14, 2018

AB 901 Comments

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RE: Comments on CalRecycle's Fifth Draft of Reporting Regulations for Disposal, Diversion & Enforcement, Dated January 2018 (AB 901 Regulation Development)

Dear Ms. Mantey,

On behalf of the California Chapters of the Solid Waste Association of North America (SWANA) Legislative Task Force (LTF), thank you for the opportunity to provide comments on the January 2018 Fifth Draft of Reporting Regulations for Disposal, Diversion & Enforcement (AB 901 Regulation Development). SWANA represents 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 LTF represents the California Chapters on legislative and regulatory issues.

SWANA appreciates CalRecycle staff's efforts to meet with stakeholders and consider comments on these complex proposed regulations. The current version of the draft regulations is much improved from earlier versions of the informal regulations and addresses many of the concerns SWANA raised, including: reduced number of source sectors, increased reporting timeframes, time to remedy issues before a violation is issued, allowance for records to be retained at an alternative location, ability to apply for alternative methods of reporting other than estimating source sector, etc. However, some of our concerns remain, as outlined below.

Definitions:

Some of the proposed definitions are different than the terms used in other existing regulations and statutes. This could be a source of confusion during implementation. For example, the proposed definition of "organics" in the AB 901 regulations (Section 18815.2 (a)(33)) is different than the "organics waste" used in the Mandatory Commercial Organics Recycling statutes in PRC 42649.8 (c), which states that "organic waste" means food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste. The proposed AB 901 regulations' organics definition of "organics" means compostable materials like food, agricultural by-products, green waste, landscape and pruning waste, nonhazardous lumber and dimensional wood, manure, compostable paper, digestate, biosolids, and biogenic sludges; and any product manufactured or refined therefrom, including compost, wood chips, biofuels, and biogas. We encourage CalRecycle to utilize consistent definitions.

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We are also recommending that Section 18815.2(a)(51) be expanded to include the term “disaster debris” as a fourth definition of source sector. Utilizing disaster debris as a source sector will be helpful in quantifying and planning efforts during an emergency/disaster situations and cleanup activities.

The definition of "Recyclable material" means a material that is not an end product, and that is managed through recycling facilities and operations, and includes intermediate recycled materials (Section 18815.2 (a)(38)). This definition may require a facility to count a material as “recyclable” even if it is too contaminated to be marketable.

Duplicative Facility Reporting Requirements:

Section 18815.3 (c) requires a composting or recycling facility, or operation at the same facility as a transfer or disposal facility or operation, to get separate DDRS numbers and report separately. This is extra, unnecessary effort for those facilities with multiple activities.

Cost Impacts on Facilities:

The Notice of Proposed Rulemaking’s section on “Cost Impacts on Representative Person or Business” indicates that “CalRecycle staff estimate the average cost per facility in the first 12 months, due to the proposed regulations, will be approximately \$2,150.” There is no supporting documentation of this estimate and it seems significantly lower than expected. During the various workshops, some stakeholders have indicated that the costs to modify their scale software will likely be more than \$10,000. Assuming a labor rate of \$30 per hour for a scalemaster and five minutes per hour to input data, the cost of a five day per week operation would be \$5,200 annually.

Currently, transfer stations (18809.2) and landfills (18810.2) are required to have weigh scales if the facility or operation accepts more than 100 tons per day of solid waste (a facility or operation in a rural city or county has a 200 ton per day limit). Volumetric conversion can be used for all received. The proposed regulations (Section 18815.9 (d)) would reduce that exemption limit to 4,000 tons per year (333 tons per month) from "contract-haulers" (Section 18815.9(g)(3)(A)). This new limit is for all material and not just solid waste received. This further increases the difference between the old and new limits. "Contract-hauled" means material hauled by any person paid to collect and transport material from a Generator, including franchised Haulers and private contract Haulers. The revision limiting the exemption to contract haulers is a significant benefit but the change from 200 tons per day of solid waste to 333 tons per month of all materials is significant for those facilities and operations that do not have scales but would be required to purchase them. Since scales costs can range from \$60,000 to \$100,000 to install, the financial impact of this provision is significant.

CalRecycle should determine the number of facilities and operations that would be impacted by this requirement. It is important to note that continuing the exemptions for installing expensive scales for smaller facilities and operations is greatly appreciated and definitely a reasonable method.

The published total cost estimate of the impact of these regulations on facilities should be reevaluated.

Additionally, the Initial Statement of Reasons dated January 2018 states that AB 901 will dramatically improve local jurisdiction’s ability to achieve and measure legislatively mandated goals by expanding reporting to include data on recycling and composting. It also states that additional tools will enhance and expand the ability of local jurisdictions to verify the accuracy of reported information. Further, AB 901 amended Section 41821.5 (b)(3) of the Public Resources Code to state that CalRecycle may provide reported information to jurisdictions. However, it is unclear in the Regulations as to how local jurisdictions will reap the benefits of a more comprehensive and robust data collection by CalRecycle. The regulations should incorporate provisions describing the information and tools that will be made available, as well as the parties responsible for making such information and tools available, so that local jurisdictions may have the ability to measure and achieve the State-mandated goals.

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Requirements for Self-Haulers:

The proposed regulations need to clarify that individual self-haul generators, residents and small businesses are not required to individually register with CalRecycle or file reports. Please verify that the following interpretation correctly exempts residents and small haulers from registering and reporting directly to CalRecycle.

Persons that generate wastes may choose to haul their own waste to a facility approved to accept that waste. These self-haulers are common in rural areas. These self-haulers are included in the definition of "Hauler" (Section 18815.2 (28)) and is also a "Generator" (25), "whose activities result in the initial creation of solid waste, organics, or recyclable material." Haulers, including self-haulers, are also classified as a "Reporting entity" (43).

Section 18815.3 (a) exempts generators from registration and reporting requirements when that generator (3) "generates, processes, and uses material all on the same site" and is not a food waste self-hauler (2). Under Section 18815.3 (b), self-haulers are required to register and obtain a RDRS number if two conditions are met: 1) recycles, sells, transfers, processes, composts, or disposes of listed materials, and 2) recycles, sells, transfers, chips and grinds, processes, or disposes 100 tons or more of any combination of recyclable material, organics, or solid waste in a quarter. Applying all of these requirements does indicate that individual households and small businesses transporting smaller amounts of their own wastes are exempt from registration, although they are still classified as a "Hauler" and a "Reporting entity" and will have to report jurisdiction of origin and source sector upon arrival at a Reporting entity. Clarification is needed.

Reporting Requirements for Haulers:

Haulers, including self-haulers, will continue to report jurisdiction of origin and source sector (self-hauled). It would be helpful to clarify the exemptions related to self-hauled reporting. The following change is proposed:

(c) In its report to the Department, a hauler shall provide the following information for tons hauled, using the reasonable methods described in section 18815.9 of this Article, [unless exempted from reporting per Section 18815.3](#):

Reporting Requirements for Transfer/Processors:

Transfer/Processors sending materials and wastes to other facilities, including for disposal and beneficial reuse, are not certain that the materials will be disposed or used beneficially. The material may not meet the quality standards and would need to be redirected. The determination of how the material will be handled is made by the receiving facility, sometimes after the material has been delivered. The management method could change after receipt of the material. Transfer/Processors do know the amount and types of material that are delivered. The following changes to Section 18815.5 are requested:

(4) For disaster debris sent ~~for to~~ disposal inside or outside of California, report the total tons sent to each facility by jurisdiction of origin, and the facility's contact information, and RDRS number if the facility has one.

(5) For designated waste sent ~~for to~~ disposal inside or outside of California, report the total tons sent to each facility by jurisdiction of origin, and the facility's contact information, and RDRS number if the facility has one.

~~(6) For material sent for beneficial reuse to a landfill or other transfer/processor inside or outside of California, report the tons sent to each facility by material type pursuant to section 18815.6(c)(4) of this Article. Green waste material sent for beneficial reuse at a landfill shall be reported in tons by jurisdiction of origin.~~

Reporting Requirements for Disposal Facilities:

Section 18815.6 requires disposal facilities to report "material types" used for ADC, AIC, and construction. Currently, there is a requirement to report this information by the following categories: Ash, Auto Shred, Construction and Demolition, Compost, Contaminated Sediment, Green Waste, Mixed, Sludge, Tires, and Other. The proposed requirement is to report using the reasonable methods in Section 18815.9. Section 18815.9 lists various material types but does not include material types for beneficial use at disposal facilities. The current list should be continued in the proposed regulations to provide data consistency.

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Reporting Requirements for Transporters and Brokers:

As indicated in comments for Section 18815.5, the final fate of materials is not always known upon delivery. The following changes are proposed:

- (1) For materials sent ~~for disposal or beneficial reuse~~ to a transfer/processor, disposal facility, broker, or transporter inside or outside of California, report the total tons of each material type, pursuant to section 18815.9(a) of this Article, sent to each person or facility and their contact information, and RDRS number if the person or facility has one.
- (2) For materials sent ~~for recycling or composting to a~~ recycler, composter, broker, or transporter inside or outside of California, report the tons of each material type, pursuant to section 18815.9(a), sent to each person or facility and their contact information, and RDRS number if the person or facility has one

Reporting Requirements for Recycling and Composting Facilities and Operations:

As indicated in comments for Section 18815.5, the final fate of materials is not always known upon delivery. The following changes are proposed:

- (1) For materials sent ~~for disposal or beneficial reuse~~ to a transfer/processor, broker, transporter, or disposal facility inside or outside of California, report the total tons of each material type, pursuant to section 18815.9(a) of this Article, sent to each person and their contact information, and RDRS number if the person or facility has one.
- (2) For materials sent ~~for recycling or composting to a~~ recycler, composter, broker, or transporter inside or outside of California, report the tons of each material type, pursuant to section 18815.9(a), sent to each person and their contact information, and RDRS number if the person or facility has one.

Reasonable Methods:

Per the comments for Section 18815.6, the following language should be added to:

- (a) (3) A disposal facility shall report beneficial reuse by the following material types: Ash, Auto Shred, Construction and Demolition, Compost, Contaminated Sediment, Green Waste, Mixed, Sludge, Tires, and Other.

Civil Penalties:

Regarding civil penalties in Section 18815.10, when a "person" has multiple occurrences of the same violation in the same time period, it is not clear whether that counts as a first offense or multiple offenses. Also, the penalties are assessed per "person" and not per facility, so if an organization has multiple problems over many facilities and even many counties, it could be interpreted as one penalty.

Thank you again for the improvements in this version of the regulations, and for your consideration of the additional comments expressed above.

Sincerely,



Melissa Immel
Legislative Advocate
Shaw / Yoder / Antwih, Inc.

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