



**CalRecycle**

# **AB 901: RULEMAKING**

Disposal and Recycling Reporting Regulations

April 19<sup>th</sup>, 2016

# Agenda

- Opening Remarks
- Disposal Reporting Requirements
- Recycling Reporting Requirements
- Enforcement Provisions
- General Discussion and Feedback
- Comments and Questions

# OPENING REMARKS

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# AB 901 Summary and Intent

- AB 901 (Gordon, 2015)
- Update and Streamline Procedures
  - Utilize technology to improve procedures
    - Online Reporting, notifications, contact updates, etc...
  - Direct reporting to CalRecycle
- Improve Data Quality
  - Expand reporting facilities
  - Remove manual data input
  - Further CalRecycle's Mandates

# Major Statutory Changes

- Facilities will report directly to CalRecycle rather than to Counties
- Expand reporting requirements for recycling and composting operations and facilities to include transporters, exporters, and brokers
- Require online reporting
- Provide authority to CalRecycle for enforcement and civil penalties

# Current Reporting

- Disposal only
  - Haulers report to Facilities (or to County if direct-export)
  - Facilities report to Counties
  - Counties report to CalRecycle
- No reporting of recycling
- Various reporting methods
  - Paper, e-mail, other
- Little to No enforcement authority

# AB 901 Reporting- Who?

- **Disposal**
  - Haulers report to Disposal Facilities (or to CalRecycle if direct-export)
  - Disposal Facilities report to CalRecycle
- **Source-Separated Materials**
  - Haulers to CalRecycle
  - Facilities to CalRecycle
  - Transporters to CalRecycle
  - Processors to CalRecycle
  - Brokers and exporters to CalRecycle

# AB 901 Reporting- How?

- Online Reporting Only
- Enforcement Authority with Civil Penalties for Non-Compliance

# The Regulatory Development Process and Project Timeline

- 1) Informal Workshop(s)
  - Input from regulated stakeholders
  - Scoping for Regulations
  - April and tentatively June/July (??)
- 2) Formal Rulemaking Process
  - Governed by the Office of Administrative Law (OAL)
  - Strict timelines, procedures, and comment periods
  - Tentatively scheduled to begin later in 2016
  - Expected to be complete by mid 2017
- 3) Online reporting system developed in late 2017
- 4) First reporting period Q1 2018

# Regulatory Framework

- Simplify the regulations
- Sections by activity rather than facility type
  - Remove repetition
- Prefer this approach?
- Prefer facility-specific requirements?
  - Many facilities engage in multiple activities
    - Would result in repetition
- What is most clear and easy to understand?

# DISPOSAL REPORTING

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# Disposal Reporting Requirements

- Disposal facilities report online to CalRecycle
  - Must include tonnage and jurisdiction or region of origin
- To Discuss:
  - Definition of Disposal Facility
  - How to determine generator type (residential, multi-family, commercial, etc.)
    - In support of Mandatory Commercial Recycling Mandate
  - How to track and manage jurisdiction of region of origin when passing through other facilities (transfer stations, MRF's, etc.)

# Definition of Disposal Facility

- Final destination for solid waste
  - Landfills
  - Transformation Facilities
- Intermediate destination for solid waste
  - Transfer Stations
  - Mixed Waste Processing Facilities
  - Material Recovery Facilities
- Haulers transporting solid waste directly to out of state facilities
- Others?

# How to determine generator type (residential, multi-family, commercial, etc)

- To support CalRecycle's mandates
  - 75% Diversion, Mandatory Commercial Recycling (including organics)
- Estimates
- Guidelines
- Prescribed methods

# How to track and manage jurisdiction of region of origin when passing through other facilities

- Source facility reports origin information to CalRecycle
- Final disposal facility reports total disposal by source facility (transfer station/MRF/etc) to CalRecycle

OR

- Source facility reports origin information to next disposal facility
- Final disposal facility combines source and tonnage information then reports to CalRecycle
- OR
- Other ideas?

# Open Discussion on Disposal Reporting Requirements

# RECYCLING REQUIREMENTS

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# Recycling Reporting Requirements

- Recycling and composting operations and facilities report online to CalRecycle
  - Types and quantities of materials disposed, sold, or transferred
  - Exporters, brokers, and transporters must report as well
- To Discuss:
  - Definitions of Recycling and Composting operations and facilities
  - Definitions of Exporters, transporters, and brokers

# Recycling Reporting Requirements (cont.)

- What material types (and at what level) must be reported
  - Plastics or #1 vs #2 vs #3-7, etc
- How often must the reporting occur?
- What is the “de minimus” level that would trigger reporting?
  - Different levels for different materials?
- How do we define an “end user”?

# Definitions of Recycling and Composting operations and facilities (official)

- **A facility that engaged in:** the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. “Recycling” does not include transformation, as defined in Section 40201 or EMSW conversion.
- **Or:** the controlled or uncontrolled biological decomposition of organic wastes

# Definitions of Recycling and Composting operations and facilities

- Recycling
  - MRFS? Flakers? Pelletizers? Smelters? Bottle blowers? Shredders? Paper Pulpers?
- Composting
  - Windrows? Vermicompost? AD? Mushroom Farms? In-vessel? Covered Lagoons? Chip and grind? Aerated static piles?

# Definitions of Exporters, transporters, and brokers

- Brokers must take physical possession?
- Export out of CA or US?
- Franchise haulers, self-haulers (residential and commercial)= transporters?

# What material types (and at what level) must be reported

- Traditional materials?
  - Plastic, paper, metal, glass, inerts, organics?
- Expanded list?
  - Non-covered electronics, batteries, used oil, tires, HHW
  - Hadn't planned on including these

# What material types (and at what level) must be reported

- Total tonnage only?
- Large categories?
  - Plastic, paper, metal, organics, electronic devices?
- Finer Detail
  - PET, HDPE, OCC, White ledger, aluminum, steel, green waste, food waste, stereos, solar panels, computers?
- Very Fine Detail
  - PET bottles, PVC irrigation tubing, aluminum cans, copper wires, circuit boards, computer components

# How often must the reporting occur?

- Annual
- Semi-annual
- Quarterly
- Monthly
- Weekly
- Daily

# What is the “de minimus” level that would trigger reporting?

- By facility?
  - >100 tons combined materials per year, must report ALL materials
- By material type?
  - >10 tons per year PET, must report PET
  - >5 tons organics, must report organics
  - >50 tons per year paper, must report paper
- Combination?

# How do we define an “end user”?

- End users are the point at which reporting ends
  - Is a bale an end product?
  - Is a paper pulper an end user? Paper Mill? Converter?
  - Is an aluminum smelter an end user?
  - Is a plastic flaker an end user? Pelletizer? Thermoformer?
  - Is a chip-and-grind facility an end user?
    - If sold as mulch maybe? If sold as compost feedstock, maybe not?
  - Composter? Compost bagger? Landscape companies?

# Open Discussion Regarding Recycling Reporting Requirements

# ENFORCEMENT

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# Enforcement

- Statute is fairly clear regarding enforcement and penalties
- \$500-\$5,000 for each violation of a separate provision or, for continuing violations, for each day (Up to \$10,000 for violations involving false reports or refusing to allow review of records)
- Procedures to ensure that an opportunity to comply is provided per Section 41821.7
- Factors to be considered in determining penalty amounts that are similar to those provided by Section 45016

# Procedures for an opportunity to comply, per Section 41821.7

- 41821.7.
- (a) The department may issue an administrative complaint to any person on whom civil liability may be imposed pursuant to this article. The complaint shall allege the acts or failures to act that constitute the basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the party so served that a hearing shall be conducted within 60 days after the party has been served, unless the party waives the right to a hearing.
- (b) If the party waives the right to a hearing, the department shall issue an order setting liability in the amount proposed in the complaint unless the department and the party have entered into a settlement agreement, in which case the department shall issue an order setting liability in the amount specified in the settlement agreement. If the party has waived the right to a hearing or if the department and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.
- (c) Any hearing required under this section shall be conducted by an independent hearing officer according to the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except as otherwise specified in this section.

# Factors for determining penalty amounts similar to those in Section 45016

- 45016.
- In making a determination regarding the allegations in, and the amount of any liability that may be imposed pursuant to, an order, petition, or complaint and determining the appropriate outcome, and when determining whether to deny, suspend, or revoke a permit or to deny a permit application, the issuing agency, the board, or a court, as the case may be, shall take into consideration:
  - (a) The nature, circumstances, extent, and gravity of any violation or any condition giving rise to the violation and the various remedies and penalties that are appropriate in the given circumstances, with primary emphasis on protecting the public health and safety and the environment.
  - (b) Whether the violations or conditions giving rise to the violation have been corrected in a timely fashion or reasonable progress is being made.
  - (c) Whether the violations or conditions giving rise to the violation demonstrate a chronic pattern of noncompliance with this division, the regulations adopted pursuant to this division, or with the terms and conditions of a solid waste facilities permit, or pose, or have posed, a serious risk to the public health and safety or to the environment.
  - (d) Whether the violations or conditions giving rise to the violation were intentional.

# Factors in Section 45016, continued

- (e) Whether the violations or conditions giving rise to the violation were voluntarily and promptly reported to appropriate authorities prior to the commencement of an investigation by the enforcement agency.
- (f) Whether the violations or conditions giving rise to the violation were due to circumstances beyond the reasonable control of the violator or were otherwise unavoidable under the circumstances.
- (g) Whether in the case of violations of this division, or the regulations adopted pursuant to this division, the violator has established one or more of the following programs prior to committing the violation that will help to prevent violations of the type committed in the future:
  - (1) A comprehensive compliance program designed to prevent violations of this division, the regulations adopted pursuant to this division, and of the terms and conditions of the solid waste facilities permit.
  - (2) Employee training programs designed to educate the employees regarding their responsibilities under this division, the regulations adopted pursuant to this division, and the terms and conditions of the solid waste facilities permit.
  - (3) Regular internal audits to monitor the effectiveness of the comprehensive compliance programs described in paragraph (1).
  - (4) Confidential systems for employee reporting of potential statutory, regulatory, or solid waste facilities permit violations and for protecting persons so reporting from retaliatory employment actions.
  - (5) Special incentive programs that promote and reward statutory, regulatory, and permit compliance.

# Open Discussion Regarding Enforcement

# GENERAL DISCUSSION ON REGULATIONS

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# QUESTIONS AND COMMENTS

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# Next Steps

- Review questions and comments
- Draft regulatory language
  - Post for stakeholder review
- Schedule second informal workshop

# Contact

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