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September 12, 2016

Mr. Robert Carlson
Senior Environmental Scientist
CalRecycle
1001 I Street--P.O. Box 4025
Sacramento, CA 95812-4025

RE: Comments on AB 901 Regulations

Dear Mr. Carlson:

Thank you for the opportunity to provide comments on the informal AB 901 regulations on behalf of the 23 member county Rural Counties' Environmental Services Joint Powers Authority (ESJPA).

The primary issues of concern include:

- Definition revisions
- Remove hazardous waste from target products list
- Eliminate self-hauler reporting
- Avoid duplicative reporting
- Allow time to resolve inaccuracies without penalty
- A process that allows local jurisdictions to request resolution of discrepancies

Given the magnitude of this proposal and the significant concerns raised by stakeholders, the ESJPA joins others in requesting at least another version of these informal regulations and another public workshop after there is time to review the revised regulations. This extensive informal review process has served CalRecycle well with past major regulatory packages.

Thank you again for the opportunity to provide comments.

Sincerely,

Mary Pitto
Program Manager

ESJPA Comments

Section X.2 Definitions

Several definitions are listed but not used in the proposed regulations (e.g. Alternative daily cover, Alternative intermediate cover, Designated waste, Disaster debris). These definitions should not be included.

(a)(22) "Hauler" the proposed definition does not include state and federal agencies. Agencies such as CalTrans and federal parks commonly transport wastes to transfer and disposal facilities. Exempting state and federal agencies skew the reported tonnages and origin and may require significant effort to extrapolate those entities from existing reporting systems. These agencies would be considered self-haulers in the proposed regulations. The ESJPA has significant concerns with the proposed reporting requirement for self-haulers as discussed in comments in (a)(37) below and requests that the term self-hauler be removed from the definition of hauler. Including state and federal agencies in the definition of "hauler" would be more appropriate.

(a)(26) "Material recovery facility" or "MRF" – This definition can be further clarified by adding the term "mixed" to avoid capturing operations that convey recyclables. The suggested revision is:

"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

(a)(27) "Material category" - The proposed regulations use both the terms "material category" and "material type" but only material category and target products are defined. Please clarify the definitions.

In addition, it is not clear if wood waste is included in the definitions of Organics (27)(E) and/or Construction and demolition debris and inerts (27)(F).

(a)(27)((G) Target product - Hazardous waste such as electronics, household batteries, and architectural paint should not be included as target materials. Existing reporting requirements for other target products should be synchronized to prevent duplicative efforts.

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 since AB 901 only specified reporting of solid waste and recyclables.

Facilities handling these hazardous wastes do not fit into any of the defined entities in the draft regulations. Although many of these hazardous wastes are sent for hazardous waste recycling, that recycling activity is not included in the statutory definition of "Recycle" or "Recycling" since they would never "otherwise become solid waste" as required by the definition in Public Resources Code section 40180. Disposal of hazardous waste in solid waste is illegal and the mixture would not be considered solid waste.

Facilities collecting these hazardous waste, such as solid waste facilities and household hazardous waste are considered “generators” of that waste which do not report under AB 901. These facilities are not disposal facilities, transfer stations, exporters, brokers, or transporters of recyclables or composters which are the only entities listed in AB 901.

Many solid waste facilities and some household hazardous waste facilities do not participate in the Architectural Stewardship Program but do send architectural paint with other paint offsite. Requiring these facilities to report the amount of architectural paint is an excessive burden by requiring additional documentation.

Jurisdictions already report Household Hazardous Waste under the Form 303 process. If additional information is needed, then a statutory or regulatory change in that program should be pursued. Expanding the reporting mandates for jurisdiction is an excessive burden and partially duplicative effort.

In addition, solid waste facilities participating in the Used Mattress Recovery and Recycling Program are already required to submit an annual report on the number of mattresses handled (Title 14, 18967). These regulations should consolidate the reporting requirements to avoid multiple reports under different requirements.

(a)(37) “Self-hauler” – Including reporting of self-haulers is a significant concern.

Residents who haul their own wastes, recyclables, and/or compostables are significant, and in some cases the primary, contributors to rural facilities and commonly deliver mixed loads. Most self-haulers do not contract for services and may haul their materials weekly to a facility. It is unreasonable to require Self-haulers to report the quantities of materials they deliver to the receiving facility. Even if they were to report, the estimated quantities would have an extremely large margin of error. The accumulated range of errors would be significant enough to not be of value.

Since “Self-hauler” is included in the definition of “Haulers”, Section X.4 (c) would require each self-hauler to report to CalRecycle under certain conditions – delivered to End Users or exported. Expecting residents to report this information to CalRecycle is an unreasonable request especially since failure to report can result in financial penalties.

In addition, AB 1103 has been enrolled and is awaiting the Governor’s signature. AB 1103 modifies the current disposal reporting regulations in the Public Resources Code 41821.5 to include a definition of Self-hauler:

to include, at a minimum, a person or entity that generates and transports, utilizing its own employees and equipment, more than one cubic yard per week of its own food waste to a location or facility that is not owned and operated by that person or entity

If that bill is signed, these regulations will need to reconcile the definition.

(a)(40) “Source sector” - Tracking and reporting by source sector is a significant burden on haulers and facility operators. Many collection routes collected from multiple sectors, e.g. multi-family and

commercial. Many small facilities are not equipped to track this level of information. Any reporting by these sectors would only be an estimate.

In addition, not all solid waste is collected by Franchised sectors. Some collection is done by contracts granted by jurisdictions. These other sectors are not included in the proposed regulations.

Section X.3 Registration, Reporting and Exemptions.(a)

Another exemption should be added for small, remote transfer stations where materials are transported to central facilities. Local residents and small businesses deliver wastes to these facilities. Minimal separation of some materials may occur such as metal and cardboard. Solid waste from these sites is transported to a central facility. Tracking is more appropriate and less burdensome at the central facility.

Section X.9 Procedure for Imposing Civil Liabilities

Problems with accurate reporting with the current system occur and many are inadvertent errors. Given the complexity of the proposed system, unintentional errors will occur. Many of the violations listed rightly appear to target intentional acts. There should be a provision that allows for correction of incorrect information within a reasonable time (such as 15 days) without being considered a violation or assessing penalties.

Section X.12 Complaints Regarding Non-Compliance. (b)

Since the proposed reporting system significantly impacts local jurisdictions AB 939 reporting, they should be considered an affected or involved parties. These concerns may need an informal or potentially more formal review process that submittal via an electronic process.