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July 19, 2016

Mr. Robert Carlson
Supervising Environmental Scientist
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CalRecycle
801 K Street
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Re: AB 901 Regulation Development Draft of Reporting Regulations for Disposal, Diversion & Enforcement for Public Release 6/24/2016

Dear Mr. Carlson,

On behalf of the California Asphalt Pavement Association (CalAPA), thank you for the opportunity to comment on the AB 901 Regulation Development Draft on reporting regulations for disposal, diversion and enforcement, which was released on June 26, 2016. We had the opportunity to watch the video feed of the April informal workshop and also attend the July 12th workshop in Diamond Bar. In both hearings the focus of the presentation and discussion pertained to waste haulers, composting and waste separating facilities. It is our understanding that this was the focus and intent of the original legislation. The only discussion about construction activities came from questions posed by industry at the most recent workshops. These questions arose because of included definitions in the Draft Regulation, which included construction and demolition debris, inert materials and end-users. Again, since it our understanding that asphalt recycling was not the focus or intent of the legislation, these definitions are unnecessary and should be removed because they only serve to create confusion in the rule-making process.

The asphalt pavement industry has prided itself on being proactive in adopting sustainable practices, including the use of Reclaimed Asphalt Pavement (RAP).National surveys show our industry has continually increased the amount of reclaimed or recycled asphalt and returned back into the reconstructed roads or other infrastructure. This material is not being deposited in California's landfills. The inclusion of RAP in reconstructed roads is done by owner specification. This process also allows for the reuse of existing asphalt petroleum to be reused and reduce the amount needed for the end product. This is also true for Crushed Miscellaneous Base (CMB), which is returned back into the subsurface structure of the pavement.

Let us first address each of these individually. In the Draft definitions it states “Construction and Demolition (C&D) Debris" has the same meaning as in section 17381(e) of Title 14 of the California Code of Regulations which states:

> (e) "Construction and Demolition Debris", or "C&D Debris" is solid waste that is a portion of the waste stream defined as "construction and demolition wastes," as defined in Section 17225.15 of Article 4 of this Chapter, and means source separated or separated for reuse solid waste and recyclable materials, including commingled and separated materials, that result from construction work, that are not hazardous, as defined in CCR, Title 22, section 66261.3 et seq., and that contain no more than 1% purtrescible wastes by volume calculated on a monthly basis and the putrescible wastes do not constitute a nuisance,
>
> C&D debris **includes** only the following items which meet the above criteria:
>
> (A) components of the building or structure that is the subject of the construction work including, but not limited to, lumber and wood, gypsum wallboard, glass, metal, roofing material, tile, carpeting and floor coverings, window coverings, plastic pipe, concrete, fully cured asphalt, heating, ventilating, and air conditioning systems and their components, lighting fixtures, appliances, equipment, furnishings, and fixtures;
>
> (B) tools and building materials consumed or partially consumed in the course of the construction work including material generated at construction trailers, such as blueprints, plans, and other similar wastes;
>
> (C) cardboard and other packaging materials derived from materials installed in or applied to the building or structure or from tools and equipment used in the course of the construction work; and
>
> (D) plant materials resulting from construction work when commingled with dirt, rock, inert debris or C&D debris.
>
> (2) C&D debris expressly excludes, commingled office recyclables and, except as provided in subdivision 17381(e) above, commingled commercial solid waste and commingled industrial solid waste as they are defined in Title 27, CCR section 20164.
>
> (3) Notwithstanding anything to the contrary in this Article, C&D debris includes material, whether or not from construction work, that is generally similar to C&D debris and that is separated for reuse, that is not hazardous, that contains no putrescible wastes and that can be processed without generating any residual, provided that the material is generated by an activity that is similar to, or is directly or indirectly related to, construction work, including without limitation: manufacturing materials for use in construction work, such as wood products, clay or ceramic products, plumbing systems, electrical equipment, metal work and HVAC systems.

The nature of the reclaimed pavement operation is specific in production and does not include mixed materials of the nature described above. The inert material, asphalt and concrete, as described in the regulation, should not be lumped into the same category as construction and demolition debris when it is reused and placed back into the pavement. Other than inclusion of the definition of inert materials there is no other discussion about these materials other than a hint that debris and inert material are looked at together.

Next, we would like to address the term "end-user" included in the regulation:

> "End User" means the person who uses a product made from recovered material after a level of processing that has resulted in that material:
> (A) Significantly resembling a virgin material (such as plastic pellets, paper pulp, metal ingots, glass cullet, etc.), or
> (B) Becoming a homogenous mixture or material (such as mulch or compost or a material suitable for direct land application).
> End use or End User does not mean a facility solely engaged in baling, washing, or simple size reduction for ease of transportation or processing.

It is our belief that vertically integrated companies, such as the ones that are common in the asphalt industry, meet these standards for "end-users." Asphalt companies produce the material and lay down the material. For old pavement, the industry is contracted to remove the material and reprocess the materials with new material to replace the reclaimed pavement back into to the roadway. This material is the same as the original material, removed and replaced. The industry, as much or more than as any other industry, works to keep used materials for being placed in the landfills. By legislation and specification, owners are reusing materials as "end users". We believe this is the ultimate goal of Cal Recycle: to keep material from ending in the landfill.

For the reasons listed above, especially as "end-users," we believe strongly that the asphalt industry should be exempt from the reporting requirements. This is consistent with the results of the 2002 discussions with the Integrated Waste Management Board, where it was decided that there was not a need to report.

This is our initial response, considering the short window of opportunity to provide comments. As this process continues, we hope you will allow us to provide more detail.

Sincerely,

RUSSELL W. SNYDER, CAE
Executive Director