

ASTOR & KINGSLAND, LLP

LAWYERS

XEROX CENTRE  
1851 EAST FIRST STREET  
SUITE 1220  
SANTA ANA, CALIFORNIA 92705  
TELEPHONE (714) 245-0995  
FACSIMILE (714) 245-0171

September 12, 2016

[AB901.Reporting@CalRecycle.ca.gov](mailto:AB901.Reporting@CalRecycle.ca.gov)

Department of Resources Recycling and Recovery  
1001 I Street  
P.O. Box 4025  
Sacramento, CA 95814-4025

Re: AB 901 Rulemaking

Attn: Robert Carlson, Project Lead

Dear Mr. Carlson

This letter supplements my July 18, 2016 letter to you on the matter referenced above. As before, I am grateful for the opportunity to share the views of my waste industry clients.

As a result of having attended several of the workshops that CalRecycle has hosted on this issue, it is apparent to me that the direction in which the Department proposes to go with these regulations does not perfectly align with the industry's understanding of the AB 901 objective. Our understanding, simply put, was that the bill was necessary to better enable you to measure progress toward the AB 341 policy goal that "not less than 75% of solid waste generated be source reduced, recycled, or composted by the year 2020." To us, that meant that CalRecycle would gather only that amount of information that it reasonably needs to determine recycling (and composting) levels.

The draft regulations, however, go much further. CalRecycle seeks, by its own admission, to acquire enough information that it can track the movement of individual materials or shipments throughout the entire waste recycling process. Indeed, staff has rather candidly acknowledged its interest in better understanding how individual materials move through the system, in order that it may later identify additional measures that may be necessary to achieve the policy goal.

Robert Carlson  
September 12, 2016  
Page 2

While information in that level of detail would no doubt be of interest to the Department, I ask that you also appreciate the industry's reasons for resisting detailed disclosure, namely, because of the misuse to which such information may be put. In the hands of a competitor, such information provides an unfair and potentially devastating competitive advantage. In the hands of government, it may well lead to any number of new policy initiatives (the adoption of MRF "performance standards" among them) that may, however well intentioned they may be, do great injury to the waste recycling sector.

As AB 901 itself expresses, at PRC Section 41821.5(b), the Department is only entitled to information on the "types and quantities of materials that are disposed of, sold, or transferred" to other recycling or composting facilities, end users, exporters, brokers or transporters [Emphasis added]. Further, this information may be aggregated, on a facility-wide basis, and presented in a manner that excludes financial data, contract terms and conditions, pricing, and other proprietary business terms, jurisdiction of origin, or information on the entities from which the materials are received.

While Section 41821.5(c) provides a rather general authorization to develop regulations that are "reasonable and necessary" to implement the reporting requirements, it also expressly cautions against regulations that impose an "unreasonable burden" or that "otherwise interfere" with the handling, processing, and disposal of solid waste and recyclables.

I cannot emphasize enough that these limitations were foundational to the waste recycling industry's support for AB 901.

As several waste industry representatives have repeatedly commented, the level of information which the draft regulations would require to be disclosed in a report to the Department is far more than merely an aggregated summary of "types and quantities," and calls for reporting proprietary information, such as customer identity, which is a valuable trade secret that should not be required---not to mention subject to disclosure---under any circumstances.

The Department has privately acknowledged that customer lists and related information are valuable trade secrets meriting protection from disclosure. We appreciate that the legal office concurs, but we are not prepared to concede that, even with a trade secret designation and protection, the Department is entitled to that information. I agree with other stakeholders that, at most, a reporting entity should be required to provide destination reporting by general category, rather than by specific customer or end user.

ASTOR & KINGSLAND

Robert Carlson

September 12, 2016

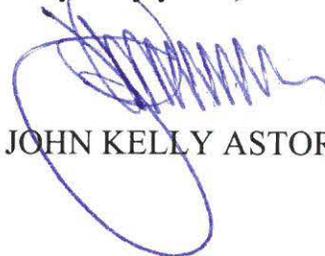
Page 3

Further, to the extent that a reporting entity may unwittingly include information identifying its specific customers, sources or end users of material in the reports it submits to CalRecycle, or should it fail to take the affirmative steps necessary to avail itself of the protections afforded to trade secret information by PRC Section 40062, I urge that the draft regulations be amended to clarify that information regarding the identity of a reporting entity's sources, customers or end users will be deemed, in all cases, to qualify for treatment as protectable trade secrets, and handled by the Department as such. Anything less than a trade secret "blanket" of this sort for customer-related information will expose my clients to the potential risk that highly sensitive information may inadvertently be submitted and made public by other reporting entities with which they do business. We cannot expect that every reporting entity will be sophisticated in the risks associated with such activity.

To date, the Department has done a very commendable job of explaining the draft regulations, and of offering affected stakeholders an opportunity to comment. As has been the case with so many of the Department's regulations, my clients are among those who will be most impacted (financially and operationally) by this rulemaking. I am hopeful that your analysis of these comments, including my own, will lead you to extend the informal stage of the regulatory approval process and publish a new draft of the AB 901 regulations that responds to the input, followed by another round of workshops or stakeholder meetings.

As always, I invite you to call or meet at any time to discuss the contents of this letter.

Very truly yours,



JOHN KELLY ASTOR

cc: Scott Smithline, Director  
Elliot Block, Esq., Legal Office  
Christine Hironaka, Policy Development  
Board of Directors, CRRC, LACWMA, IEDA, SWAOC