



Written Comments Received on Draft Recycling and Disposal Facility Reporting Regulations

Written comments received on draft regulations regarding CalRecycle's current rulemaking on proposed revisions to its regulations related to disposal facility reporting. If you require assistance accessing any documents on this page, contact CalRecycle's Office of Public Affairs at (916) 341-6300.

- Ken Thornberry
- Mimi Quesada, Temecula Recycling
- Jesson Panopio, Cal Micro Recycling
- Adam Harper, CAL CIMA
- Rose Radford, R3 Consulting Group
- John Bollinger, CSU Long Beach
- John Bolinger, CSU Long Beach
- John Bollinger, CSU Long Beach
- Carlos Chavez, Humboldt Waste Management Authority
- Catalina Jelkh Pareja, LKQ Corporation
- Don Carlos Monroe, C&M Metals, Inc.
- Elizabeth Bartheld, American Forest & Paper Association
- Greg Kester, CA Association of Sanitation Agencies
- Jacy Bolden, CARE
- Laura Ferrante, Recology
- Leonard Lang, Upper Room Consulting, Inc.
- Larry Sweetser, ESJPA
- Martin Aiyetiwa, Los Angeles County Public Works
- Robert Haley, San Francisco Dept. of the Environment
- Sharla Moffett, Western Wood Preservers Institute
- Timothy Flanigan, ISRI
- Veronica Pardo, California Refuse Recycling Council
- Nenad Trifunovic, Allan Company
- Nenad Trifunovic, Allan Company

From: ken thornberry
To: AB 901 Recycling and Diversion Reporting@CalRecycle
Subject: reporting
Date: Wednesday, May 16, 2018 7:39:14 PM

We recycle concrete, asphalt, stone, dirt, and a quandy of other material acceptable in cal trans class II Road base. The cost to record separately quantity of various material and destination of finish product would be excessive. The added cost of demolition contract would increase tremendous due to separate material reporting.

ken
209-495-9234

From: mimi@temecularecycling.com
To: AB 901 Recycling and Diversion Reporting@CalRecycle
Subject: Comments
Date: Thursday, May 17, 2018 8:52:22 AM

Hello Mr. Sander,

I have not read the entire proposal, but something came to mind immediately.

First some background: We're a large recycling center in Temecula, California situated on 10 beautiful acres and we just celebrated our 10th year. In the recent past the items we recycled were diverse, Plastics of all types, CRV bottles & Cans, Styrofoam, Clothing, Batteries all of which we recently stopped collecting because we can't find buyers or the return is so low that we can't sustain them. We're continuing with metals, large appliances and electronics. About 4 years ago, we opened our Surplus Corner re-use store. I keep separate books on our activities and found that we would have closed our doors had it not been for our re-sale shop. As an example, we collect flat screen monitors but we don't retire all monitors under the CEW program because we can sell some of them retail and make a little more. I think it would be good to capture these activities on your proposed questionnaire.

Also, I shared my concerns recently with CalRecycle but I have not heard back. Here's my message from 4/25/18.

Hello Carmen & Lyana,

I have a consideration for you.

I was thinking how much of a shame it is that we had to stop accepting CRV because it was not profitable. All the while, the recycling industry continues on a downward turn. I understand that many recycling centers have closed their doors. Every day, we continue to turn people away with a referral to another recycling center. Our community is disappointed. I have always considered my job to be a facilitator, if Temecula Recycling does not recycle it, I know who does: green waste, concrete, mattresses, furniture, household hazardous waste, paint, etc. The people who call us want to do the right thing and I'm here to help. I even give tours of the facilities to children and adults, and believe me, even the little ones are aware of our waste problems.

Here is my thought: The bottling companies share some responsible for the waste they create. They have created a culture of disposable stuff. As consumers we also share in the responsibility. The world is changing and it would be good public relations if the bottling companies stepped up.

I'm sure these large companies can afford to be more responsible.

Would the State be interested in a program like this?

I can call my local representative. Is there anyone else working on something like this that I can partner with?

Would you mind forwarding this to anyone @ CalRecycle that might help me move this forward?

Thank you for your time and I look forward to hearing from you.

Mimi Quesada

Those are my two comments sir. Please let me know if I can be of service in any way.

All the best,

Mimi Quesada

Temecula Recycling
27635 Diaz Road
Temecula, CA 92590
(951) 693-1500



Virus-free. www.avg.com

From: Jesson Panopio
To: AB 901 Recycling and Diversion Reporting@CalRecycle
Subject: Current 6th draft
Date: Monday, May 21, 2018 8:27:41 AM

Hello,

I just want to check to make sure that under this 6th draft on section 18815.3(c)(9), as an e-waste recycler and future mattress recycler, we are excluded from the AB901 reporting requirements?

Thank you for your time.

Regards,

Jess Panopio

Compliance Manager

Cal Micro Recycling

1541 W. Brooks St.

Ontario, CA 91762

Office: 909-467-4800 ext. 124

Fax: 909-467-4855

www.OneStopRecycler.com

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From: Sander, Steven@CalRecycle
To: AB 901 Recycling and Diversion Reporting@CalRecycle
Subject: FW: Voice Mail (1 minute and 13 seconds)
Date: Tuesday, May 22, 2018 9:16:55 AM
Attachments: [9165541000 \(1 minute and 13 seconds\) Voice Mail.mp3](#)

From: Microsoft Outlook **On Behalf Of** CAL CIMA

Sent: Tuesday, May 22, 2018 9:13 AM

To: Sander, Steven@CalRecycle

Subject: Voice Mail (1 minute and 13 seconds)

Hello Steven this is Adam Harper at CAL CIMA I want to thank you for doing the 9:01 regulations out last week and I just wanna check I.

Up a proper I'm understanding that you will correctly question I wasn't sure if you are the right person to talk to you my phone number is (916) 554-1000x102 -- and I'm really looking at kind of holiday inn on the inner debris recyclers language that was added pretty genius -- 100 and I believe that's going back to regulatory code [17381](#) 0.1 facilities -- I just wanted to check that out understanding was correct it might be broader than that but II think it included them -- I think overall I like these changes I just wanna make sure I'm interesting that particular one correctly.

So if you could give me a call when you get a chance or tell me who could may be clarified I wanna be back correctly so that would be great again [\(916\) 554-1000x102](tel:(916) 554-1000x102).

Preview provided by Microsoft Speech Technology. [Learn More...](#)

You received a voice message from CAL CIMA at [9165541000](tel:9165541000).

Caller-Id: [9165541000](tel:9165541000)

You have a new voice mail message

Transcribed on 6/1/2018:

“Hello Steven. This is Adam Harper at CalCIMA. I wanted to thank you for getting the 901 regulations out last week. And I just want to check I am understanding the new rule correctly. I wasn't sure if you were the right person to talk to. My phone number is (916) 554-1000 x 102. And I am really looking at kind of honing in on the inert debris language recyclers language that was added, page 100 -- and I'm really and I believe that's going back to regulatory code 17381.1 facilities - I just wanted to check that the understanding was correct it might be broader than that but I think it included them -- I think overall I like these changes I just want to make sure I'm interesting that particular one correctly. So if you could give me a call when you get a chance or tell me who could maybe clarify that I am reading that correctly. So that would be great again (916) 554-1000x102.”

From: Sander, Steven@CalRecycle
Sent: Wednesday, May 30, 2018 3:46 PM
To: AB 901 Recycling and Diversion Reporting@CalRecycle
Subject: FW: AB 901 and Green Waste ADC - Question from Martinez

From: Rose Radford <RRadford@r3cgi.com>
Sent: Wednesday, May 30, 2018 9:50 AM
To: Nathaniel, Eileen@CalRecycle <Eileen.Nathaniel@CalRecycle.ca.gov>
Cc: Michael Chandler (mchandler@cityofmartinez.org) <mchandler@cityofmartinez.org>; Garth Schultz <gschultz@r3cgi.com>
Subject: AB 901 and Green Waste ADC - Question from Martinez

Hi Eileen,

I am contacting you on behalf of Mike Chandler at the City of Martinez (copied on this email). It has come to our attention that the figure reported for "green material as ADC" for the City of Martinez (report of ADC here: <http://www.calrecycle.ca.gov/LGCentral/Reports/DRS/Origin/ADCMatlType.aspx>) is likely comprised of the material collected from the public or in other jurisdictions, transferred through the Central Contra Costa Transfer and Recovery Station in Martinez, and used as Alternative Daily Cover at Keller Canyon Landfill. Per an amendment in the agreement between Martinez and Republic effective January 1, 2016, 100% of the franchised organic material collected in Martinez is being delivered to an organic materials processing facility, and none is used as ADC.

The figure for ADC in 2015 and 2016 is significant, at around 7,000 tons. The entire City's disposal was around 41,000 tons in 2016, meaning that beginning in 2020, if there are no changes to the reports, the City's disposal figure will go up by 17%.

We are contacting you because the current draft regulations for AB 901 specify that jurisdiction of origin should be reported for disposal and "green material potential beneficial reuse." However, we understand that even under the current DRS reporting regulations, many landfills report jurisdiction of origin as the transfer station, and the Counties reallocate the origin based on reports from the transfer stations. I am not sure that the draft regulations make it perfectly clear whether the operators of transfer stations and landfills are required to communicate between themselves, such that the report by

the landfill accommodates the origin of the material delivered to a transfer station. If that is not the case, is it the State's intention to reallocate disposal tons as the Counties have been doing?

We plan to engage the hauler, the facility operators, and Contra Costa County in ensuring that as a jurisdiction with a transfer station in it, the City is aware of the methodology used for allocating tons of solid waste and green material used as ADC currently, and after January 1, 2019, when the operators will be reporting directly to the State.

So, to summarize our questions:

1. Do the current AB 901 draft regulations require facility operators to allocate jurisdiction of origin for tons that are transferred prior to delivery to the facility, among the jurisdictions of origin for the tons delivered to the transfer station?
2. Does the State intend to reallocate jurisdiction of origin of tons reported by operators (especially in the case of transfer, but also including residual after processing recycling and organics)?

Thank you for your time.

Best,
Rose

Rose Radford | *Senior Project Analyst*

R3 CONSULTING GROUP, INC.

Resources | Respect | Responsibility

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EMAIL: rradford@r3cgi.com

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From: John Bollinger
To: AB 901_Recycling_and_Diversion_Reporting@CalRecycle
Cc: [Sitts, John@CalRecycle](mailto:Sitts_John@CalRecycle); [Smithline, Scott@CalRecycle](mailto:Smithline_Scott@CalRecycle)
Subject: COMMENTS ON AB 901 SIXTH DRAFT OF ABA 901, TITLE 14, DIVISION 7, CHAPTER 9, ARTICLE 9.25 SECTIONS 18815.1018815.13
Date: Wednesday, May 30, 2018 8:40:27 PM

May 3
0
, 2018

Mr. Scott Smithline, Director
California Department of Resources Recycling and Recovery
1001 I Street
Sacramento, CA 95812
(Copy to John Sitts
Manager Policy Development & Analysis

CalRecycle)

Dear Mr. Smithline:
COMMENTS ON A B

901 SIXTH DRAFT OF ABA 901, TITLE 14, DIVISION 7, CHAPTER 9, ARTICLE 9.25
SECTIONS 18815.1018815.13 REGULATIONS FOR RECYCLING AND DISPOSAL
REPORTING SYSTEM

OVERALL COMMENTS

Why should the regulations be modified to permit the greater recycling of CDI materials, particularly clean soil and source separated broken concrete and how do they need to be changed to permit greater recycling in the future?

Millions of tons of such concrete are disposed in Los Angeles County due to the regulatory obstacles to recycling. Construction and demolition materials generated from building or infrastructure construction projects are commonly sorted and separated by contractors on a construction site according to a Waste Management Plans. Materials are sorted into several stacks, including inert CDIs which can be recycled, materials for regular disposal, and materials for hazardous waste disposal. Recyclable CDI materials are sent to Transfer Stations or Recyclers, with the objective of processing them to satisfy markets demand. In the case of broken concrete, crushers are required to reduce the size of the individual pieces to less than 4 inches for use in the concrete market. While the latter process may be economically viable on large projects where the material is recycled on site, such as the recycling of concrete for highway construction, generally the demand in the private sector has fallen far short of the supply. This is largely due to the value added to the material by transporting, recycling and crushing costs which exceeds the market value of new material. In other words, if it is cheaper to buy from regional suppliers of new clinkers, why would a contractor buy from a crusher?

Consequently, recyclers and crushers frequently encounter an oversupplies of materials, and turn away shipments of the broken concrete which ultimately end up in disposal facilities. The capacity of regional disposal facilities in Los Angeles County continue to shrink at a rapid pace. Something needs to be done to increase recycling.

A number of significant regulatory obstacles stand in the way of recycling of concrete. One them is the false assumption that broken concrete is considered waste unless it is crushed into pieces which have no greater dimension of 4 inches. Another is the requirement that concrete used as fill must be “engineered fill”. Both of these requirements are based on the safety concern that the only use of broken concrete is for use in structures or in supporting structures. These requirements ignore many safe and common uses of broken concrete which have greater dimensions than 4 inches and are used in general or unclassified fill, provided they are not used to support structures. It is not uncommon for public agencies, farmers and ranchers to use broken concrete in such productive uses such as general fill, landscaping, flood control, soil erosion control, rip-rap for streams and channels, embankments and terracing other non-structural uses. Yet the regulations appear to overlook these long standing uses of broken concrete. The regulations focus on hauling of materials from generators to transfer stations, disposal facilities, recyclers, and other reporting entities. In order to overcome some of these obstacles the regulations should have the goal of making it easier for broken concrete to be taken from construction sites directly to farms, parks, flood control areas. Wouldn't it be great if instead of paying for a hauler to take the broken concrete to a Transfer Station a Recycler, or Crusher a contractor could pay for the material to be delivered to a park, flood control area or farm, where it could be immediately recycled and

put to use? Would this make the contractor, park or farm be considered a “recycler” or a “commercial generator” or an “end user?” Would this be considered a “Beneficial reuse”? Would the relationship between the contractor, the hauler and the end user be considered “Business-to-Business post-industrial recycling?”

SECTION BY SECTION COMMENTS

Section 18815.2 Definitions, (a) (5) "Beneficial Reuse". The reuses to which this refers are very important. They are understood by reference to Section 20686 of Title 27 of the CCD. This requires a search of the Code in order to understand the inferred meaning. While there is a list of beneficial reuses included in the AB 901 text, the latter Code section also requires that specific uses of the materials be in accordance with engineering, industry guidelines, other standard practices, and meet the minimum requirements of the code. Some of the uses listed may cover broken concrete, but it is not clear from the list. For example, broken concrete can be used as general fill, for wet weather operations such as flood control, roadway abutments. and in landscaping. It can also be used in building terraces and non-structural outside walls and barriers. Are these uses considered beneficial uses?

Section 18815.2 Definitions, (a) (8) "Business-to-business post-industrial recycling": This term has been added to the draft of the regulations. Is a contractor who generates C&D inert

materials as a result of construction or demolition (an industrial process), separates the material at the source (the site of construction) transfers the material to a hauler or end user for consideration, where an end user receives the product for construction, land fill, landscaping, or other productive market use, considered a "commercial generator" engaged in a Business-to-Business post-industrial recycling activity? The term "end product" is used here despite the fact that the definition has been eliminated from the text of the latest draft. Why is a hauler who has an RDRS registration number not permitted to transfer of such material to an end user rather than to a Transfer Station? Otherwise, according to subsection (B) (vii) how is the material supposed to be transferred?

Section 18815.2 Definitions, (a) (23) "End User". The term "End User" has been modified to eliminate the phrase "uses or manufactures with end products" and the definition of the term "end products" has been eliminated from the text, even though it still appears there (see comment above). The term "End User" is commonly used in local, State and Federal code. Changing the definition of this term modifies it's common understanding elsewhere in the Code. The text of the present draft has extensively replace the use of End User with the term "Person" (i.e. "end user" is struck out and "person" substituted. The term person is used to describe any person which a role in waste management throughout the text. Therefore, it's specific applicability to "end user", is lost. When a contractor generates inert concrete material during the construction and/or demolition of a building or infrastructure, and source separates it on site, i.e. into clean broken concrete, reinforcing bars, painted concrete, and other debris, the resulting broken concrete , the pieces of which may vary in size and shape can have direct marketable uses which can be made available to end users in a number of ways, direct and indirect. Is source separated broken concrete, as described above, is a product which has been processed on the site. The scenario described above illustrates that that product can be distributed to an end user and used, essentially as is on another end site. Had the definition of "end product" not been eliminated from the text, this material might would have been considered an end product. Lacking that definition what term can be used to describe a marketable concrete material produced by the generator on a construction site? Which of the following categories can be used to describe the prospective end users described above (flood control, roadway abutments, Landscaping, park, farm, ranch, etc...): "material consumers", "construction end users", "land applications", and/or "inert debris fill" users. The term "End User" has been struck out sixteen times, inserted 31 new times, and replaced with the word "person" eight in the latest draft. CalRecycle has adopted as "Best Practices" the recycling of materials to end user projects. Why do the regulations make it so difficult for broken concrete to be recycled to projects as opposed to hauling the concrete disposal facilities?

Subsection (F) "Inert debris fill": This section includes a "person" that takes inert debris from a reporting entity and uses it for "engineered fill". A generator is not a reporting entity, so does this mean an end user may not received inert debris from a contractor? A hauler is a reporting entity, so does this mean that an end user may receive inert debris from an hauler? The requirement that the inert debris be used for "engineered fill", obstructs it from being

used for general or unclassified fill as discussed above. An end user should be permitted to receive general fill, unclassified fill, or engineered fill directly from a generator. If it is general or unclassified fill it may not be used to support any structures, but it should be allowed be used in non-structural conditions.

Section 18815.2 Definitions, (a) (42) “Recycle” or “recycling”: Defines recycling as a series of processes that ultimately result in the production of intermediate products utilizing materials recovered or discarded by a generator, and the person who engages in recycling is referred to as a “recycler”. This does not include reuse, as defined. In subsection (C) for CDI, recycling includes, but is not limited to, sorting, crushing, grinding, shredding, sizing or other processing. So, if a contractor who generates CDI during construction source separates this material the construction site, renders the material an intermediate product (i.e. broken concrete), and the product is then taken directly to another site (park, farm, etc...) where it is used for a productive purpose which is different than the original use (e.g. the concrete was originally in a slab or walkway. and is subsequently used for flood control or landscaping) does this series of processes fit the definition of recycling and make the generator (contractor)a recycler, subject to certification and reporting requirements?

General comment on the following sections:

Each of the following sections address the reporting system, including schedules for reporting and methods of tracking weights, volumes and values of materials which are hauled, transferred, disposed, recycled, etc... The reporting periods are quarterly, the methods depend on significant paperwork and estimates of weights and volumes. The required information appears to be obtained and maintained by methods which do not utilized technology which is currently available. If these methods are used, the records will be inaccurate, inefficient and outdated. Using relatively inexpensive hardware, software and other technology widely available today it is possible to track the weight, size, description, value, condition, location, source, destination, ownership, and more in real time. The shipping industry has been able to track the locations and conditions of container cargo on a worldwide basis for some time. Amazon, the post office, UPS, etc... have systems in place to track even the smallest package on a daily, and even hourly basis anywhere in the world. The cost and amount of labor involved in doing this tracking is nominal. All the information is transmitted instantaneously via the internet and the cloud. Public agencies such as US Customs, the US Post Office and others are utilizing these systems. If the State of California adopts this regulation without implementing latest methods and technologies which are available today, it may be ten years before the State of California will have another opportunity to update these regulations, during which many opportunities to implement recycling will be missed. Now is the time to adopt current state of the art methods and technologies, rather than relying on methods which are at least ten years old. I urge you to update the following sections to reflect this recommendation. Thank you.

Section 18815.2 Definitions, (a) (43) “Recycling and disposal reporting system number” or “RDRS number”

Section 18815.2 Definitions, (a) (48) “Reporting period”

Section 18815.4 Reporting Requirements for Haulers (d) (2)

Section 18815.5 Reporting Requirements for Transfer/Processors (b)

Section 18815.6 Reporting Requirements for Disposal Facilities (d)

Section 18815.7 Reporting Requirements for Recycling and Composting Facilities and Operations (d)

Section 18815.8 Reporting Requirements for Transporters and Brokers (b)

Section 18815.9 Reasonable Methods

Respectfully,

John Bollinger, DBS
Professor of Engineering
College of Engineering
CSULB
323-823-7442
bollingerjb@gmail.com

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From: John Bollinger
To: AB 901 Recycling and Diversion Reporting@CalRecycle
Cc: Sitts, John@CalRecycle; Smithline, Scott@CalRecycle
Subject: Revised comments
Date: Wednesday, May 30, 2018 10:20:13 PM
Attachments: [John Bollinger - AB 901 Regulation Comments-rev01.pdf](#)

CalRecycle,

Attached please find my final revised comments on the 6th Draft of the AB901 Regulations. Please disregard previous drafts which are now superseded by the attached comments.

Thank you for your patience and diligence.

Respectfully,

John Bollinger, DBS
Professor of Engineering
College of Engineering
CSULB
323-823-7442
bollingerjb@gmail.com

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May 31, 2018
Mr. Scott Smithline, Director
California Department of Resources Recycling and Recovery
1001 I Street
Sacramento, CA 95812
(Copy to John Sitts
Manager Policy Development & Analysis)

Dear Mr. Smithline:

**COMMENTS ON A6 901 SIXTH DRAFT OF ABA 901, TITLE 14, DIVISION 7, CHAPTER 9, ARTICLE 9.25
SECTIONS 18815.1018815.13 REGULATIONS FOR RECYCLING AND DISPOSAL REPORTING SYSTEM**

OVERALL COMMENTS

Why should the regulations be modified to permit the greater recycling of CDI materials, particularly clean soil and source separated broken concrete and how do they need to be changed to permit greater recycling in the future?

Millions of tons of such concrete are disposed in Los Angeles County due to the regulatory obstacles to recycling. Construction and demolition materials generated from building or infrastructure construction projects are commonly sorted and separated by contractors on a construction site according to a Waste Management Plans. Materials are sorted into several stacks, including inert CDIs which can be recycled, materials for regular disposal, and materials for hazardous waste disposal. Recyclable CDI materials are sent to Transfer Stations or Recyclers, with the objective of processing them to satisfy markets demand. In the case of broken concrete, crushers are required to reduce the size of the individual pieces to less than 4 inches for use in the concrete market. While the latter process may be economically viable on large projects where the material is recycled on site, such as the recycling of concrete for highway construction, generally the demand in the private sector has fallen far short of the supply. This is largely due to the value added to the material by transporting, recycling and crushing costs which exceeds the market value of new material. In other words, if it is cheaper to buy from regional suppliers of new clinkers, why would a contractor buy from a crusher? Consequently, recyclers and crushers frequently encounter an oversupplies of materials, and turn away shipments of the broken concrete which ultimately end up in disposal facilities. The capacity of regional disposal facilities in Los Angeles County continue to shrink at a rapid pace. Something needs to be done to increase recycling.

A number of significant regulatory obstacles stand in the way of recycling of concrete. One them is the false assumption that broken concrete is considered waste unless it is crushed into pieces which have no greater dimension of 4 inches. Another is the requirement that concrete used as fill must be "engineered fill". Both of these requirements are based on the safety concern that the only use of broken concrete is for use in structures or in supporting structures. These requirements ignore many safe and common uses of broken concrete which have greater dimensions than 4 inches and are used in general or unclassified fill, provided they are not used to support structures. It is not uncommon for public agencies, farmers and ranchers to use broken concrete in such productive uses such as general fill, landscaping, flood control, soil erosion control, rip-rap for streams and channels, embankments and terracing other non-structural uses. Yet the regulations appear to overlook these long standing uses of broken concrete. The regulations focus on hauling of materials from generators to transfer stations, disposal facilities, recyclers,

and other reporting entities. In order to overcome some of these obstacles the regulations should have the goal of making it easier for broken concrete to be taken from construction sites directly to farms, parks, flood control areas. Wouldn't it be great if instead of paying for a hauler to take the broken concrete to a Transfer Station a Recycler, or Crusher a contractor could pay for the material to be delivered to a park, flood control area or farm, where it could be immediately recycled put to use? Would this make the contractor, park or farm be considered a "recycler" or a "commercial generator" or an "end user?" Would this be considered a "Beneficial reuse"? Would the relationship between the contractor, the hauler and the end user be considered "Business-to-Business post-industrial recycling?"

SECTION BY SECTION COMMENTS

Section 18815.2 Definitions, (a) (5) "Beneficial Reuse". The reuses to which this refers are very important. To understand the meaning of this term reference is required to Section 20686 of Title 27 of the CCD. Some of the provisions inferred by this reference include "specific uses of the materials which must be in accordance with engineering, industry guidelines, other standard practices, and must meet the minimum requirements of the code." Since broken concrete can be used as general fill, for wet weather operations such as flood control, roadway abutments, landscaping, terraces, non-structural outside walls and external access barriers, when used in these ways in it considered beneficial use?

Section 18815.2 Definitions, (a) (8) "Business-to-business post-industrial recycling": This term was added to the 6th draft. Are the following contractor activities considered "Business-to-business post-industrial recycling": Generating C&D inert materials as a result of construction or demolition (an industrial process), separating the material at the source (the site of construction), transferring the material to a hauler or end user, receipt of the product by end user, use of the product for construction, land fill, landscaping, or other economically viable and productive market uses? In this case is the contractor considered a "commercial generator"? The term "end product" is used in this Section, even though that the definition was removed in the 6th draft. Why is a hauler who has an RDRS registration number not permitted to transfer material to the end user rather than to another reporting entity? According to subsection (B) (vii) how is the material supposed to be transferred between a generator and an end user?

Section 18815.2 Definitions, (a) (23) "End User". The term "End User" has been modified to eliminate the phrase "uses or manufactures with end products". Since the term "End User" is commonly used in local, State and Federal code why is the definition changed in this draft? The term "End User" has been struck out sixteen times, inserted in new places 31 new times, and replaced with the word "person" eight in the latest draft. The term "person" is used throughout the regulations to describe any person which a role in waste management, not just an end user. Therefore, the references where it occurs no longer refer to an end user. When a contractor in the process of constructing buildings or infrastructure generates construction and demolition waste, and separates broken concrete out of this waste on site, as indicated in the above overview, the broken pieces represent a product which can have direct economic and marketable applications which can be utilized by end users on another site. How is such a product defined in the regulations? Had the definition of "end product" not been eliminated from the text, this material could have been defined as end product. Lacking that definition what term can be used to describe this product? Given the examples of end users described in the Overall Comments above, which of the following terms best describe those types of end users: "material consumers", "construction end users", "land applications", and/or "inert debris fill" users. Given that CalRecycle has adopted as "Best Practices" the recycling of materials to end users, how does the present regulation encourage these practices by making it easier for these products to get to end users for recycling?

Subsection (F) “Inert debris fill”: This subsection identifies a “person” that takes inert debris from a reporting entity and uses it for “engineered fill”. This suggests that, an end user may not receive inert debris from a contractor because they are not a reporting entity but may only receive the material from a reporting entity, such as a hauler or recycler. The requirement that the inert debris be used for “engineered fill”, prevents the use of general or unclassified fill, as discussed in the Overall Comments. Permitting the end user to receive general fill, unclassified fill, or engineered fill directly from a generator opens up a large market for recycling of inert debris, provided that the general or unclassified fill is not used to support any structures, but is used in non-structural applications.

Section 18815.2 Definitions, (a) (42) “Recycle” or “recycling”: This Section defines recycling as a series of processes that ultimately result in the production of “intermediate products” utilizing materials recovered or discarded by a generator. The person who engages in recycling is referred to as a “recycler”. This definition does not include reuse. Subsection (C) characterizes CDI recycling as including, but not limited to, sorting, crushing, grinding, shredding, sizing or other processing. Is the following process considered recycling and is the contractor who performs the process considered a “recycler”: CDI generated during construction, material is source separated at the construction site, the material transformed into an intermediate product (i.e. broken concrete), the product is delivered to another end user site (project, park, farm, etc...) where it is put to a direct productive use which is different from the original use (e.g. original use of concrete in a slab or walkway. and subsequent use for flood control or landscaping).

General comment on the following sections:

Each of the following sections address the reporting system, including schedules for reporting and methods of tracking weights, volumes and values of materials which are hauled, transferred, disposed, recycled, etc... The reporting periods are quarterly, the methods depend on significant paperwork and estimates of weights and volumes. The required information appears to be obtained and maintained by methods which do not utilize technology which is currently available. If these methods are used, the records will be inaccurate, inefficient and outdated. Using relatively inexpensive hardware, software and other technology widely available today it is possible to track the weight, size, description, value, condition, location, source, destination, ownership, and more in real time. The shipping industry has been able to track the locations and conditions of container cargo on a worldwide basis for some time. Amazon, the post office, UPS, etc... have systems in place to track even the smallest package on a daily, and even hourly basis anywhere in the world. The cost and amount of labor involved in doing this tracking is nominal. All the information is transmitted instantaneously via the internet and the cloud. Public agencies such as US Customs, the US Post Office and others are utilizing these systems. If the State of California adopts this regulation without implementing latest methods and technologies which are available today, it may be ten years before the State of California will have another opportunity to update these regulations, during which many opportunities to implement recycling will be missed. Now is the time to adopt current state of the art methods and technologies, rather than relying on methods which are at least ten years old. I urge you to update the following sections to reflect this recommendation. Thank you.

Section 18815.2 Definitions, (a) (43) “Recycling and disposal reporting system number” or “RDRS number”

Section 18815.2 Definitions, (a) (48) “Reporting period”

Section 18815.4 Reporting Requirements for Haulers (d) (2)

Section 18815.5 Reporting Requirements for Transfer/Processors (b)
Section 18815.6 Reporting Requirements for Disposal Facilities (d)
Section 18815.7 Reporting Requirements for Recycling and Composting Facilities and Operations (d)
Section 18815.8 Reporting Requirements for Transporters and Brokers (b)
Section 18815.9 Reasonable Methods

Respectfully,

John Bollinger, DBS
Professor of Engineering
College of Engineering
CSULB
323-823-7442
bollingerjb@gmail.com

From: John Bollinger
To: AB 901 Recycling and Diversion Reporting@CalRecycle
Subject: COMMENTS ON A6 901 SIXTH DRAFT OF ABA 901, TITLE 14, DIVISION 7, CHAPTER 9, ARTICLE 9.25 SECTIONS 18815.01-18815.13
Date: Wednesday, May 30, 2018 10:34:51 PM

May 31, 2018

Mr. Scott Smithline, Director
California Department of Resources Recycling and Recovery
1001 I Street
Sacramento, CA 95812
(Copy to John Sitts
Manager Policy Development & Analysis)

Dear Mr. Smithline:

COMMENTS ON A6 901 SIXTH DRAFT OF ABA 901, TITLE 14, DIVISION 7, CHAPTER 9, ARTICLE 9.25 SECTIONS 18815.01-18815.13 REGULATIONS FOR RECYCLING AND DISPOSAL REPORTING SYSTEM OVERALL COMMENTS

Why should the regulations be modified to permit the greater recycling of CDI materials, particularly clean soil and source separated broken concrete and how do they need to be changed to permit greater recycling in the future?

Millions of tons of such concrete are disposed in Los Angeles County due to the regulatory obstacles to recycling. Construction and demolition materials generated from building or infrastructure construction projects are commonly sorted and separated by contractors on a construction site according to a Waste Management Plans. Materials are sorted into several stacks, including inert CDIs which can be recycled, materials for regular disposal, and materials for hazardous waste disposal. Recyclable CDI materials are sent to Transfer Stations or Recyclers, with the objective of processing them to satisfy markets demand. In the case of broken concrete, crushers are required to reduce the size of the individual pieces to less than 4 inches for use in the concrete market. While the latter process may be economically viable on large projects where the material is recycled on site, such as the recycling of concrete for highway construction, generally the demand in the private sector has fallen far short of the supply. This is largely due to the value added to the material by transporting, recycling and crushing costs which exceeds the market value of new material. In other words, if it is cheaper to buy from regional suppliers of new clinkers, why would a contractor buy from a crusher? Consequently, recyclers and crushers frequently encounter an oversupplies of materials, and turn away shipments of the broken concrete which ultimately end up in disposal facilities. The capacity of regional disposal facilities in Los Angeles County continue to shrink at a rapid pace. Something needs to be done to increase recycling.

A number of significant regulatory obstacles stand in the way of recycling of concrete. One them is the false assumption that broken concrete is considered waste unless it is crushed into pieces which have no greater dimension of 4 inches. Another is the requirement that concrete used as fill must be "engineered fill". Both of these requirements are based on the safety concern that the only use of broken concrete is for use in structures or in supporting structures. These requirements ignore many safe and common uses of broken concrete which have greater dimensions than 4 inches and are used in general or unclassified fill, provided they are not used to support structures. It is not uncommon for public agencies, farmers and ranchers to use broken concrete in such productive uses such as general fill, landscaping, flood control, soil erosion control, rip-rap for streams and

channels, embankments and terracing other non-structural uses. Yet the regulations appear to overlook these long standing uses of broken concrete. The regulations focus on hauling of materials from generators to transfer stations, disposal facilities, recyclers, and other reporting entities. In order to overcome some of these obstacles the regulations should have the goal of making it easier for broken concrete to be taken from construction sites directly to farms, parks, flood control areas. Wouldn't it be great if instead of paying for a hauler to take the broken concrete to a Transfer Station a Recycler, or Crusher a contractor could pay for the material to be delivered to a park, flood control area or farm, where it could be immediately recycled put to use? Would this make the contractor, park or farm be considered a "recycler" or a "commercial generator" or an "end user?" Would this be considered a "Beneficial reuse"? Would the relationship between the contractor, the hauler and the end user be considered "Business-to-Business post-industrial recycling?"

SECTION BY SECTION COMMENTS

Section 18815.2 Definitions, (a) (5) "Beneficial Reuse". The reuses to which this refers are very important. They are understood by reference to Section 20686 of Title 27 of the CCD. This requires a search of the Code in order to understand the inferred meaning. While there is a list of beneficial reuses included in the AB 901 text, the latter Code section also requires that specific uses of the materials be in accordance with engineering, industry guidelines, other standard practices, and meet the minimum requirements of the code. Some of the uses listed may cover broken concrete, but it is not clear from the list. For example, broken concrete can be used as general fill, for wet weather operations such as flood control, roadway abutments. and in landscaping. It can also be used in building terraces and non-structural outside walls and barriers. Are these uses considered beneficial uses?

Section 18815.2 Definitions, (a) (8) "Business-to-business post-industrial recycling": This term has been added to the draft of the regulations. Is a contractor who generates C&D inert materials as a result of construction or demolition (an industrial process), separates the material at the source (the site of construction) transfers the material to a hauler or end user for consideration, where an end user receives the product for construction, land fill, landscaping, or other productive market use, considered a "commercial generator" engaged in a Business-to-Business post-industrial recycling activity? The term "end product" is used here despite the fact that the definition has been eliminated from the text of the latest draft. Why is a hauler who has an RDRS registration number not permitted to transfer of such material to an end user rather than to a Transfer Station? Otherwise, according to subsection (B) (vii) how is the material supposed to be transferred?

Section 18815.2 Definitions, (a) (23) "End User". The term "End User" has been modified to eliminate the phrase "uses or manufactures with end products" and the definition of the term "end products" has been eliminated from the text, even though it still appears there (see comment above). The term "End User" is commonly used in local, State and Federal code. Changing the definition of this term modifies it's common understanding elsewhere in the Code. The text of the present draft has extensively replace the use of End User with the term "Person" (i.e. "end user" is struck out and "person" substituted. The term person is used to describe any person which a role in waste management throughout the text. Therefore, it's specific applicability to "end user", is lost. When a contractor generates inert concrete material during the construction and/or demolition of a building or infrastructure, and source separates it on site, i.e. into clean broken concrete, reinforcing bars, painted concrete, and other debris, the resulting broken concrete , the pieces of which may vary in size and shape can have direct marketable uses which can be made available to end users in a number of ways, direct and indirect. Is source separated broken concrete, as described above, is a

product which has been processed on the site. The scenario described above illustrates that that product can be distributed to an end user and used, essentially as is on another end site. Had the definition of "end product" not been eliminated from the text, this material might have been considered an end product. Lacking that definition what term can be used to describe a marketable concrete material produced by the generator on a construction site? Which of the following categories can be used to describe the prospective end users described above (flood control, roadway abutments, Landscaping, park, farm, ranch, etc...): "material consumers", "construction end users", "land applications", and/or "inert debris fill" users. The term "End User" has been struck out sixteen times, inserted 31 new times, and replaced with the word "person" eight in the latest draft. CalRecycle has adopted as "Best Practices" the recycling of materials to end user projects. Why do the regulations make it so difficult for broken concrete to be recycled to projects as opposed to hauling the concrete disposal facilities?

Subsection (F) "Inert debris fill": This section includes a "person" that takes inert debris from a reporting entity and uses it for "engineered fill". A generator is not a reporting entity, so does this mean an end user may not receive inert debris from a contractor? A hauler is a reporting entity, so does this mean that an end user may receive inert debris from a hauler? The requirement that the inert debris be used for "engineered fill", obstructs it from being used for general or unclassified fill as discussed above. An end user should be permitted to receive general fill, unclassified fill, or engineered fill directly from a generator. If it is general or unclassified fill it may not be used to support any structures, but it should be allowed be used in non-structural conditions.

Section 18815.2 Definitions, (a) (42) "Recycle" or "recycling": Defines recycling as a series of processes that ultimately result in the production of intermediate products utilizing materials recovered or discarded by a generator, and the person who engages in recycling is referred to as a "recycler". This does not include reuse, as defined. In subsection (C) for CDI, recycling includes, but is not limited to, sorting, crushing, grinding, shredding, sizing or other processing. So, if a contractor who generates CDI during construction source separates this material the construction site, renders the material an intermediate product (i.e. broken concrete), and the product is then taken directly to another site (park, farm, etc...) where it is used for a productive purpose which is different than the original use (e.g. the concrete was originally in a slab or walkway. and is subsequently used for flood control or landscaping) does this series of processes fit the definition of recycling and make the generator (contractor) a recycler, subject to certification and reporting requirements?

General comment on the following sections:

Each of the following sections address the reporting system, including schedules for reporting and methods of tracking weights, volumes and values of materials which are hauled, transferred, disposed, recycled, etc... The reporting periods are quarterly, the methods depend on significant paperwork and estimates of weights and volumes. The required information appears to be obtained and maintained by methods which do not utilize technology which is currently available. If these methods are used, the records will be inaccurate, inefficient and outdated. Using relatively inexpensive hardware, software and other technology widely available today it is possible to track the weight, size, description, value, condition, location, source, destination, ownership, and more in real time. The shipping industry has been able to track the locations and conditions of container cargo on a worldwide basis for some time. Amazon, the post office, UPS, etc... have systems in place to track even the smallest package on a daily, and even hourly basis anywhere in the world. The cost and amount of labor involved in doing this tracking is nominal. All the information is transmitted instantaneously via the internet and the cloud. Public agencies such as US Customs, the US Post

Office and others are utilizing these systems. If the State of California adopts this regulation without implementing latest methods and technologies which are available today, it may be ten years before the State of California will have another opportunity to update these regulations, during which many opportunities to implement recycling will be missed. Now is the time to adopt current state of the art methods and technologies, rather than relying on methods which are at least ten years old. I urge you to update the following sections to reflect this recommendation. Thank you.

Section 18815.2 Definitions, (a) (43) "Recycling and disposal reporting system number" or "RDRS number"

Section 18815.2 Definitions, (a) (48) "Reporting period"

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Section 18815.7 Reporting Requirements for Recycling and Composting Facilities and Operations (d)

Section 18815.8 Reporting Requirements for Transporters and Brokers (b)

Section 18815.9 Reasonable Methods

Respectfully,

John Bollinger, DBS
Professor of Engineering
College of Engineering
CSULB
323-823-7442

bollingerjb@gmail.com

Sent from [Mail](#) for Windows 10

From: Carlos Chavez
To: [AB 901 Recycling and Diversion Reporting@CalRecycle](mailto:AB_901_Recycling_and_Diversion_Reporting@CalRecycle)
Subject: AB901 Comment
Date: Thursday, May 31, 2018 1:35:17 PM

Hello, here is my comment on the proposed AB901 regulations:

18815.9(b)(2)(C) The survey interval standard was changed from not having sufficient staff to having an “attendant present during business hours to ask about each incoming load”. It is unclear if this would be an all or nothing standard or if the Department would consider the size of the unattended portion of some unspecified period such as a day, month, report period or year when determining if survey week is used appropriately. It is unclear if the standard refers to a reporting entity’s “business hours” as the hours it is open to the public, the hours listed in their permit or the operating hours in the Facility Plan requirements or something else.

The benefit provided by the updated text is the difference in accuracy between survey week results and per-load survey results for disposal within rural jurisdictions but only to the degree that facilities within their borders do not already survey on a per-load basis. The jurisdictions that would be affected by this text, at most, have individually contributed about .5% of the annual statewide disposal while the average contribution is about .25%.

For those facilities that still use the survey week interval, increasing the number of surveyed loads would also increase the number of survey misses and errors which would increase the amount of time and work required to correct them. The cost increases caused by this text would be new to these rural facilities, they would be in addition to the low estimates provided for complying with AB901 and they would be asked of the very facilities with the least ability to pay them.

The benefit that the additional text would provide to the State in meeting the goals of AB901 does not justify the additional burden of work, the cost in staff time and money, nor the issues that the lack of clarity invites.

Please consider using the standard as it appears below, without the additional text:

(C) That is located in a rural city or county, as defined in sections 40183 and 40184 of the Public Resources Code, may conduct origin surveys no less frequently than once per reporting period and for at least one week in duration. During the survey weeks, the reporting entity shall survey every load of solid waste to determine jurisdiction of origin. Jurisdiction percentages obtained during survey week shall be applied to tonnages for the entire reporting period.

Carlos Chavez
Program Analyst
Humboldt Waste Management Authority
(707) 268-8680

From: Ebenezer SDG Group Inc.
To: [AB 901_Recycling and Diversion Reporting@CalRecycle](mailto:AB 901_Recycling_and_Diversion_Reporting@CalRecycle)
Cc: [AB 901_Recycling and Diversion Reporting@CalRecycle](mailto:AB 901_Recycling_and_Diversion_Reporting@CalRecycle)
Subject: Re: Notice of Changes to Proposed AB 901 Reporting Regulations
Date: Thursday, May 31, 2018 4:41:28 PM
Attachments: [CA AB 901 Rulemaking - LKQ Comments- 6thDraftRegs.pdf](#)

Please find attached comments on behalf of LKQ Corporation.

Thank you,

Catalina Jelkh Pareja

LKQ Corporation

Government Affairs Representative

Ebenezer SDG Group, Inc.

Government Affairs & Organizational Consulting

+1 (754) 248-9796

ebenezerSDG@outlook.com

From: AB 901: Disposal and Recycling Facility Reporting Listserv
Sent: Wednesday, May 16, 2018 5:38 PM
To: ebenezersdg@outlook.com
Subject: Notice of Changes to Proposed AB 901 Reporting Regulations
DATE: May 16, 2018
TO: Interested Parties
FROM: Steven Sander, Environmental Scientist
SUBJECT: Notice of Changes to Proposed AB 901 Reporting Regulations

On May 16, 2018, the California Department of Resources Recycling and Recovery (CalRecycle) will initiate a 15-day comment period for changes to the Proposed AB 901 Reporting Regulations. The 15-day written public comment period for this rulemaking ends at 11:59 p.m. on May 31, 2018.

This 15-day comment period follows an initial 45-day public comment period that ran from January 26, 2018 to March 14, 2018. CalRecycle staff held a public hearing on the proposed regulations on March 14, 2018. After considering comments received during the initial comment period and comments made at the public hearing, CalRecycle staff revised the Proposed AB 901 Reporting Regulations. These revisions will add clarity to the existing language.

A copy of the full text of the regulations as originally proposed that include the newly proposed changes clearly indicated is available on the AB 901 - Recycling and Disposal Reporting - Proposed Rulemaking website at:

<http://www.calrecycle.ca.gov/laws/rulemaking/Reporting/default.htm>. Text shown in double underline (addition) and ~~double strikeout~~ (deletion) depict proposed changes made after the initial comment period. CalRecycle staff is only required to respond to comments related to the newly proposed changes to the regulations.

Please submit your written comments to:

Steven Sander

Project Lead

801 K St., MS 17-01
Sacramento, CA 95814
FAX: (916) 319-7227

EMAIL: AB901.Reporting@CalRecycle.ca.gov

Thank you for your interest and participation in this process.

For more information go to [AB 901: Disposal and Recycling Facility Reporting Program](#). To unsubscribe from the AB 901: Disposal and Recycling Facility Reporting Program list, please go to <http://www.calrecycle.ca.gov/Listservs/Unsubscribe.aspx?ListID=146>.



May 31, 2018

Steven Sander
Project Lead
California Department of Resources, Recycling and Recovery
801 K Street, 17th Floor, MS 17-01
Sacramento, CA 95814

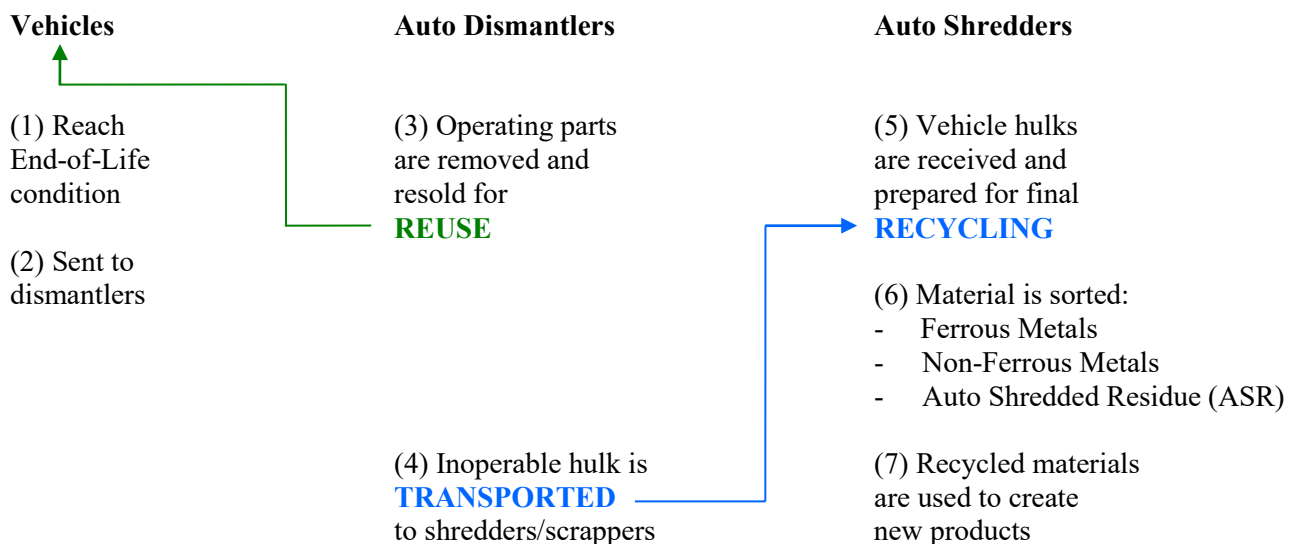
ATTN: AB 901 Reporting

Dear Mr. Sander:

On behalf of LKQ Corporation, thank you for the opportunity to provide input and comments on the 6th draft proposed rules for AB 901 that were released on May 16th.

LKQ is particularly interested in clarifying the End-of-Life Vehicle Recycling Process to ensure that CalRecycle's goal to capture recycling information from the automotive industry is accurately accomplished.

First, we would like to thank CalRecycle for taking into consideration our proposal to add the definitions of "automobile dismantler" and "automobile shredder." This is a first step in the right direction to clearly differentiate the nature of these two separate operations. Also, we believe that Section 18815.3(b)(4)(R) properly identifies automobile shredders as the reporting entity from the auto recycling industry. **In order to avoid duplicate records, we respectfully ask CalRecycle to remove automobile dismantlers from the reporting requirements since automobile shredders will provide the appropriate information regarding vehicle recycling.** Please refer to the below information that illustrates the End-of-Life Vehicle Recycling Process:





As the global leader in the auto dismantling industry with 55 facilities in California, LKQ promotes the environmental benefits of auto recycling by properly processing used and salvage vehicles. This process includes dismantling the vehicles, draining the fluids, and harvesting useful parts. These parts are then available for resale to reuse by consumers who opt to repair their vehicles with affordable, original fit and function recycled auto parts. The remaining, inoperable hulk of the vehicle is subsequently shipped to a shredder or scrap metal operator for recycling and end-of-life processing.

The nature of the auto dismantling business is the purchase of whole motor vehicles for dismantling purposes with the main objective of selling auto parts for reuse and then transferring the remaining, recyclable material to a shredder or scrap metal processor. Auto dismantlers first supply auto parts (without changing their form) for reuse and then supply hulks (in one unit without separation of materials) for recycling. Therefore, it is practically unfeasible for auto dismantlers to provide the information that CalRecycle requests since the auto shredders are the primary entity that recycle end-of-life vehicles and produce auto shredder waste, which is the data of interest under AB901.

Please consider LKQ's proposed language:

Page 100

Section 18815.3 Registration, Reporting and Exemptions.

(c) ~~(a)~~ The following are not required to register or report under this Article, for their activities as:

(4) A thrift store, ~~automobile dismantler~~, building supply reclaimer or reuser, and any other person whose primary business is resale for reuse of an object or material without significantly altering the physical form of the object or material that who meets one of the following criteria:

(A) Revenues associated with resale for reuse exceeds revenues associated with recycling or composting activities, or

(B) Tons associated with resale for reuse exceeds total tons associated with recycling or composting activities.

(5) An automobile dismantler that sends material to automobile shredders,

~~(5)~~ (6) A wastewater treatment plant that only sends material to other wastewater treatment plants,

LKQ Corporation is the leading provider of alternative and specialty parts to repair and accessorize automobiles and other vehicles. LKQ offers its customers a broad range of replacement systems, components, equipment and parts for automobiles, trucks, and recreational and performance vehicles. Globally, LKQ has an industry leading team of over 43,000 employees and operates over 630 facilities.

In California, LKQ has 770 employees, pays taxes on a payroll of over \$25.9 million dollars, and operates 55 facilities located in the following cities: one (1) in Adelanto, two (2) in Anaheim, three (3) in Bakersfield, one (1) in Bloomington, one (1) in Cerritos, two (2) in Chula Vista, one (1) Corona, one (1) in Fontana, four (4) in Fresno, one (1) in Hesperia, one (1) in Jurupa Valley, one (1) in Merced, one (1) in Modesto, one (1) in Monrovia, one (1) in Oceanside, two (2) in Ontario, one (1) in Poco Rivera, one (1) in Poway, six (6) in Ranch Cordova, two (2) in Redding, one (1) in Sacramento, one (1) in San Bernardino, two (2) in Santa Fe Springs, one (1) in Stanton,



four (4) in Stockton, three (3) in Sun Valley, one (1) in Thousand Palms, three (3) in Union City, one (1) in Victorville, one (1) in Visalia, and three (3) in Wilmington.

We appreciate the opportunity to provide industry input and work with CalRecycle and stakeholders to advance sound policy related to the automotive industry. We look forward to your feedback as we request the above mentioned clarification to ***exempt auto dismantlers from the registration and reporting requirements as the nature of the industry is resale for reuse of motor vehicle parts and subsequent transfer of motor vehicle hulks to auto shredders that will be required to report under this Rule.***

Please do not hesitate to contact me if you have any questions, comments or input. I can be reached at ebenezersdg@outlook.com and 754-248-9796.

Respectfully,

Catalina Jelkh Pareja
Government Affairs Representative
LKQ Corporation

From: Don carlos Monroe
To: [AB 901 Recycling and Diversion Reporting@CalRecycle](mailto:AB_901_Recycling_and_Diversion_Reporting@CalRecycle)
Subject: Re: Comments to draft 6 AB901
Date: Thursday, May 31, 2018 11:55:29 PM

Re: AB901
Comments to 6th draft

In the reading of the 6th draft it has appeared to me that the 15 day review period should not have been set as these recent changes in this 6th draft are not minor but without a doubt major and should have be given the 45 day comment period as required.

I wish to bring up section :

- (8) "Business-to-business post-industrial recycling" means a recycling activity that:
- (A) Meets all of the following conditions:
- (i) A commercial generator generates materials as a by-product of an industrial or manufacturing process,
 - (ii) The commercial generator separates the material at the source of generation,
 - (iii) The commercial generator sells or transfers the material directly to a recycler in a business-to-business relationship, and
 - (iv) The recycler produces an end product equivalent to a specification grade raw material for use by end users.
- (B) And does not include materials from the following sources:
- (i) Residential generators,
 - (ii) Curbside collection of recyclables,
 - (iii) Collection implemented pursuant to mandatory commercial recycling requirements section 42649 et seq. of the Resources Code,
 - (iv) Scavengers or collectors who did not generate the materials,
 - (v) Collection of post-consumer materials,

In part (iii) with all of section B , this language would create burden to recyclers by restricting recyclers that have been creating products for decades through practices such as creating blends that meet standards set by ISRI (Institute of Scrap Recycling Industry). These standards are accepted world wide for consumers that make a large variety of end products. Such a thing would take away recyclers ability to be competitive in the market place and create inefficiencies in the production recycled products.

I wish to challenge the term of end consumer on the basis of clarity as well.

Respectfully
Don Monroe

C&M Metals, Inc 1709 E. 24th Street Los Angeles California, 90058 USA
Phone 323 234 4662 Fax 323 234 5844
CMMETALS.COM or CMMETALS.NET

"This E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged, confidential or trade secret under applicable law If you are not the intended recipient of this e-mail, you are hereby notified that any

dissemination, distribution or copying of this e-mail or any attachments thereto, is strictly prohibited. If you received this e-mail in error, please immediately notify the undersigned and permanently delete the original and any copy of this message, its attachments, and any printout thereof. C&M Metals, Inc., 1709 E 24th Street, Los Angeles, California, 90058 USA, www.cmmetals.com"

From: AF&PA Government Affairs
To: [AB 901 Recycling and Diversion Reporting@CalRecycle](mailto:AB_901_Recycling_and_Diversion_Reporting@CalRecycle)
Subject: AF&PA Comments on AB 901 Proposed Implementation Regulations
Date: Thursday, May 31, 2018 10:37:02 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)
[image005.jpg](#)
[image006.jpg](#)
[AF&PA Comments on AB 901 Implementation Regulations_053118.pdf](#)

Dear Mr. Sander,

Attached, is the American Forest and Paper Association (AF&PA) comments on AB 901 proposed implementation regulations.

We look forward to continued discussions and offer our assistance on future work. Please do not hesitate to contact us if you have questions, or our legislative counsel in California, Kathy Lynch at (916)443-0202 or lynch@lynchlobby.com.

Thank you for your consideration.

GOVERNMENT AFFAIRS

Government_Affairs@afandpa.org

(202) 463-2700

AMERICAN FOREST & PAPER ASSOCIATION

1101 K Street, N.W., Suite 700

Washington, D.C. 20005





**American
Forest & Paper
Association**

May 31, 2018

Mr. Steven Sander
Project Lead
CalRecycle
801 K Street, MS-17-01
Sacramento, CA 95814

RE: AB 901 Proposed Implementation Regulations—Recycling and Disposal Facility Reporting

On behalf of the American Forest & Paper Association (AF&PA), we appreciate the opportunity to provide stakeholder input on draft regulations under consideration to implement AB 901. We have reviewed the draft regulations and are including feedback in this letter. As discussed below, we have concerns that the draft regulations' reporting requirements would create an unreasonable administrative burden on companies engaged in the recovery of paper for recycling, do not streamline reporting as intended in AB 901 and could result in the disclosure of confidential business information.

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry's sustainability initiative - [Better Practices, Better Planet 2020](#). The forest products industry accounts for approximately 4 percent of the total U.S. manufacturing GDP, manufactures over \$200 billion in products annually, and employs approximately 900,000 men and women. The industry meets a payroll of approximately \$50 billion annually and is among the top 10 manufacturing sector employers in 45 states.

In California, the industry employs more than 22,000 individuals at 420 facilities, with an annual payroll of more than \$1.7 billion. The estimated state and local taxes paid by the forest products industry totals \$479 million annually.

AF&PA member companies are active at all stages in the recovery of paper for recycling. Our member companies operate recycling businesses, employ brokers and transporters of paper, operate mills that utilize recovered fiber in the manufacture of new products and operate converting facilities that collect post-industrial scrap for recycling.

Reporting Requirements Create an Unreasonable Administrative Burden

We are concerned that the draft implementation regulations create an unreasonable burden by requiring member companies to report more information than is required under the law. In Section 41821.5 (b) (1) of the law, recycling and composting operations and facilities are required to submit information on "...the types and quantities of materials that are disposed of, sold or transferred..." The implementation regulations expand that requirement in Section 18815.7 (a) to require recycling and composting facilities and operations to provide the following information for all tons handled: "(1) For materials sent for disposal or beneficial reuse...report the total tons of each material type...sent to each person and their contact information, and RDRS number if applicable. (2) For materials sent for potential recycling or composting...report the tons of each material type...sent to each person and their contact information, and RDRS number if applicable."

A similar problem exists related to reporting requirements for exporters, brokers and transporters of recyclable materials between the language in the law (Section 41821.5 (b) (2)) and the language in the implementation regulations (Section 18815.8 (b)).

By requiring reporting entities to report "...each person and their contact information, and RDRS number if applicable" in the implementation regulations, CalRecycle is requiring disclosure of information beyond the requirements of the law.

Requirements do not Streamline Reporting

We are concerned that the reporting requirements outlined in the implementation regulations do not streamline reporting as intended in AB 901. In fact, the expanded reporting requirements complicate reporting by member companies that would now be required to submit information to CalRecycle that is neither reasonable nor necessary to implement the law.

Any new requirement that makes recycling more difficult could very well have the unintended consequence of discouraging participation in the recycling business. That is, it may have the opposite impact intended. Any regulatory requirement should substantially promote recycling, not make it more burdensome for participants.

Reporting Requirements do not Adequately Protect Confidential Business Information

We are concerned that the implementation regulations as written will not adequately protect member companies' confidential business information from disclosure. As cited above, the regulations require disclosure to CalRecycle of the types and volumes of recyclable materials sent to any customer inside or outside of California, as well as the identity and contact information for any customer inside or outside of California.

We believe that requiring reporting of customer lists unnecessarily exposes confidential business information to a risk of disclosure by asking reporting entities to submit confidential business information that is not required by the law.

The regulations should be revised to eliminate the “person and their contact information” reporting requirement. Instead, reporting entities should report the types and quantities of materials that are disposed of, sold or transferred to recycling or composting facilities, end users, exporters, brokers or transporters inside or outside of the state in a similar manner as “intermediate products” sent to “end users” inside or outside California (Section 18815.7 (a)(4) and 18815.8 (a)(3)). That is, reporting entities should report the tons of each material type sent to customers by type (as identified in 41821.5: recycling or composting facilities, end users, exporters, brokers or transporters) by region only.

Conclusion

AB 901 purports to streamline and centralize the current reporting system for information necessary for CalRecycle to measure and track the disposition of recyclable materials in the state. However, we believe that in drafting the proposed implementation regulations, CalRecycle has inappropriately decided to require reporting entities to submit information that the state has no compelling need to know and is not required by the law. We believe that CalRecycle’s proposed regulations exceed the authority granted by AB 901.

We look forward to continuing our work with California. Please feel free to contact Terry Webber, Director, Government Affairs, AF&PA at (202) 463-2732 or terry_webber@afandpa.org for further information.

Sincerely,



Elizabeth Bartheld
Vice President, Government Affairs

From: Greg Kester
To: [AB 901 Recycling and Diversion Reporting@CalRecycle](mailto:AB_901_Recycling_and_Diversion_Reporting@CalRecycle)
Cc: [Brady, Hank@CalRecycle](mailto:Brady_Hank@CalRecycle); [Morgan, Cara@CalRecycle](mailto:Morgan_Cara@CalRecycle); [Johnson, Evan@CalRecycle](mailto:Johnson_Evan@CalRecycle); [Levenson, Howard@CalRecycle](mailto:Levenson_Howard@CalRecycle); Johnny.Gonzales@waterboards.ca.gov; [Bobbi Larson](mailto:Bobbi_Larson)
Subject: CASA Comments on AB 901 Draft Regulations
Date: Thursday, May 31, 2018 4:01:10 PM
Attachments: [image001.png](#)
[5-31-18 CASA comments on draft AB 901 reqs 053118f21.pdf](#)

Dear Mr. Sander – Please find attached comments from the California Association of Sanitation Agencies (CASA) on the draft proposed regulations to implement AB 901. Please let me know if you have questions or would like further clarification on any of the points. Thank you – Greg Kester

Greg Kester

Director of Renewable Resource Programs

CA Association of Sanitation Agencies

1225 8th Street, Suite 595

Sacramento, CA 95814

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May 31, 2018

Steven Sander
Policy Development and Analysis Office
California Department of Resources, Recycling and Recovery (CalRecycle)
801 K Street, 17th Floor, MS 17-01
Sacramento, CA 95814

VIA ELECTRONIC SUBMITTAL: AB901.Reporting@CalRecycle.ca.gov

Dear Mr. Sander:

The California Association of Sanitation Agencies (CASA) appreciates the opportunity to provide comments on the draft regulations intended to implement AB 901. CASA is an association of local agencies, engaged in advancing the recycling of wastewater into usable water, as well as the generation and reuse of renewable energy, biosolids, and other valuable resources. Through these efforts, we help create a clean and sustainable environment for Californians.

CASA supports the efforts of CalRecycle to better understand the flow of solid waste generated in California and its importance in meeting state objectives and mandates. However, we have serious concern that the current draft regulation is confusing with respect to the wastewater sector, the biosolids we manage, and the means by which it is managed. We offer comments below but would also welcome the opportunity to meet to further explain and clarify the concerns. We fear there is still a significant gap in understanding our sector and how it differs from conventional solids waste streams.

General Comments: Numerous definitions as referenced below are vague and result in uncertainty with respect to how biosolids, the wastewater sector, and our contractual arrangements generally are impacted by these regulations. As noted in earlier comments and meetings, the draft regulations remain extremely confusing and unclear with respect to biosolids. It remains unclear how biosolids are to be reported and by whom. We strongly recommend a separate section be developed for biosolids since they are distinctly different from typical "solid waste" streams.

As an example: biosolids are generated and treated at a wastewater treatment facility (WWTF). The biosolids may then be managed in the following ways:

1. Direct land application or for purposes of reclamation
2. Sent for further treatment at a compost or other facility (then subsequently land applied or otherwise recycled)
3. Publicly distributed.
4. Used as ADC or AIC at a landfill
5. Disposed of at a landfill
6. Sent to another treatment plant for treatment
7. Innovative technology such as pyrolysis
8. Surface disposed on-site
9. Incinerated

For options 1 – 7, there is generally a third-party company who “transports” the biosolids from the WWTF to the end use or other facility. The third party generally acts as a contract agent under the purview of the WWTF, though under a variety of contract types. Biosolids managed under options 8 and 9 never leave the site on which they are generated, and we expect they are exempt from these regulations, although that remains a question. Under the proposed regulations, it is completely unclear as to who reports what with respect to biosolids. The third-party hauler could be interpreted to be a “broker”, “hauler”, and “transporter”. Is the intent that a WWTF should report the volume of biosolids managed by the third party and the third-party reports where biosolids are sent? This seems inefficient since under state and federal law, the WWTF must report the disposition of their biosolids. Only when a receiving entity alters the characteristics of the biosolids (under option 2) would they report that disposition.

It appears that there are duplicative and confusing reporting requirements in the proposed regulations, which clarity can remedy. It is our belief that CalRecycle seeks to avoid double reporting and counting, therefore we recommend that if a reporting entity (such as a Transfer/Processor, Disposal Facility, or Recycling/Composting/WWTP Facility) reports outgoing tonnages, that their transporters/brokers, who decided the final destinations, be exempted from reporting those same tonnages.

Specific comments follow:

1. Section 18815.2(a)(7) – Broker – This definition is unclear with respect to contracted hauling agents for wastewater treatment plants. It states that a broker “gains control” of a material and determines the destination to which it is sent. We are unsure what “gains control” means in this context. Would an agent hired by a POTW to transport biosolids be a broker if the broker had the discretion of where to send the biosolids? Would that change if the POTW was informed of the destination beforehand?
2. Section 18815.2(a)(12) – Compost – Why is compost considered an “intermediate product”? What would be required to make it a final product? This is unclear and inconsistent with practice. This definition should also include Vector Attraction Reduction as necessary to achieve.
3. Section 18815.2(a)(13) – Composting Operation or Composting Facility - Includes in-vessel digestion in the definition. As included in earlier comments, we strongly recommend bifurcating digestion and composting as two distinct technologies. A separate definition should be added for in-vessel digestion consistent with Section 17896 PRC. Nothing about the anaerobic digestion process resembles composting and they should not be considered the same.
4. Section 18815.2(a)(23)(E) – End User – This applies to one land applying an “intermediate product”. How does an action such as land application become a “user”? It is a “use”. Also why are biosolids, compost, and other soil amendment products considered “intermediate”?
5. Section 18815.2(a)(28) – Generator – It remains very unclear whether a wastewater treatment plant generating sewage sludge and/or biosolids are included in this definition. Is the generation of sludge in the treatment process considered “the initial creation of solid waste, organics, or recyclable material”? This is a critically important definition and needs

- clarity. Understanding whether biosolids are included in this definition impacts interpretations throughout these regulations and thus should be explicit and unambiguous.
6. Section 18815.2(a)(31) – Hauler – It is very unclear how this category applies to the wastewater sector. The definition states that a hauler collects material from a “generator” and delivers it to a reporting entity. The wastewater sector routinely classifies third parties contracted to move biosolids from the plant to an end user, composter, or other point of disposition as haulers. This definition appears not to apply to such parties but clarity is strongly requested.
 7. 18815.2(32) – Intermediate Product – This definition is extremely confusing since it applies to compost in Sub (D) and biosolids in Sub (E) which would be land applied. What distinguishes an intermediate product from a final one? What are they intermediate to?
 8. 18815.2(42) Recycle or recycling – processes which result in the production of intermediate products from materials which have been “recovered or discarded by a generator”. Elsewhere wastewater treatment is designated as a recycling facility, which makes this definition unclear. Are biosolids considered a product made from recovered or discarded material from a generator? Why wouldn't recycling be defined as engaged in one of the end user categories?
 - a. Sub(B) – as a recycling category includes organics which are not composted, including “treating wastewater”. What does this mean? How is this used in the regulation?
 9. Section 18815.2(47) – Reporting Entity – Clarity is necessary to determine who reports what activity. Wastewater treatment plants producing biosolids and those who haul them could be captured in this section under Subs (A, C, and E), but the reporting requirements remain unclear.
 10. Section 18815.2(62) – Transporter – Designates a transporter as one who takes physical possession of a material and determines the destination for its disposition. The distinction between a broker, hauler, and transporter and their relationship to biosolids needs clarity and explicit explanation of reporting requirements. Would a party contracted by a wastewater treatment plant to haul biosolids to either an end user or a recycling facility or operation be the reporting entity if they assume legal ownership for the period during which they possess biosolids? What of the wastewater treatment plant? In some cases the ownership is only for the duration of the transport. We assume only one entity should report this but which one is unclear, and whether they are a broker, hauler, transporter and/or generator?
 11. Section 18815.2(63) – Wastewater Treatment plant – is considered a “recycling facility”. The relationship of a WWTP as a “generator” should be explained.
 12. Section 18815.3 (b)(1) – Describes entities that must register and report for materials handled in subsection (a)(1): It is unclear if wastewater treatment facilities should register, and if so, under what category?
 13. Section 18815.3(b)(2)(B) – In describing who must report includes contract haulers who deliver organics for direct land application. This could be simplified if elsewhere the distinction between brokers, haulers, and transporters of biosolids were explicitly defined and responsibilities explained.
 14. Section 18815.3(b)(4)(D) – Includes wastewater plants as reporting entities but lacks the clarity of under what circumstances as expressed earlier. To assist with the clarification the scenarios below were developed last year in consultation with CalRecycle staff originally working on these regulations to describe the various reporting obligations with respect to biosolids produced at wastewater treatment plants. The following is from May 22, 2017:

“Currently the approach taken for biosolids seeks information on gross volumes of biosolids sent off site for a number of management options (compost, land application, landfilling, alternative daily cover, etc.). Reporting will be based on gross volumes for each end use based on where they are sent. This will be by County if in California, by state if sent to another state, or by country if sent out of the US. If biosolids are used on-site such as through incineration or surface disposal, then no reporting is required. The attached summary provides more detail on how it is intended to work.

Reporting would be quarterly online or digital to CalRecycle beginning with the first quarter of 2019.

- A. *As an illustrative example: the amount of biosolids sent by a POTW to an end use, or another facility and where it was sent (ie. County).
 - a. *POTW X sends Y (Dry Metric Tons (DMT)) biosolids to County Z for land application.*
 - b. *POTW X also sends Y biosolids DMT to County A for land application.*
 - c. *POTW X also sends Y biosolids DMT to third party B for further treatment.*
 - d. *POTW X also sends Y biosolids DMT to landfill C for alternative daily cover.*
 - e. *POTW X also sends Y biosolids DMT to landfill D for burial.**
- B. *The amount of biosolids or compost sent by a third party (ie, composter) to an end user and where it was sent.
 - a. *Composter A sends Y tons of compost or biosolids (DMT) to County A for consumer use (ie, individual farmers, or public distribution).*
 - b. *Composter A sends Y tons of compost or biosolids to County B for consumer use.**
- C. *A POTW contracts with a third party to manage their biosolids in a manner specified in the contract (ie, 70% land application in County D and 30% landfill at Landfill E). In this case the POTW generator would report the end use of all of its biosolids.*
- D. *A POTW contracts with a third party to manage their biosolids and leaves the disposition to the discretion of the contractor. In this case the contractor reports the end use(s) of all biosolids it manages in this way. If the contractor executes contracts with multiple POTWs and has the discretion to manage the biosolids however it deems best, then gross volumes are reported for all biosolids. There is no need to specify the source of the biosolids. The individual POTWs would report that they gave Y tons of biosolids to the third-party contractor. “*

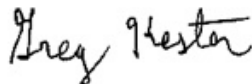
The intent described above seems to be consistent with the draft language but needs explicit clarity.

- 15. Section 18815.3(b)(5) – Includes composters and in-vessel digesters not excluded by sub (E) through PRC sections 17855 or 17896.6. How does this correlate with other sections requiring such reporting. We don't believe entities excluded in the referenced sections are intended to be excluded from reporting.

16. Section 18815.3(c)(5) – Excludes wastewater treatment plant that only sends material to another wastewater treatment plant. Since we believe it is the intent of CalRecycle to exclude biosolids which never leave their site of origin we recommend adding: "...or manage all sludge and biosolids on-site".
17. Sections 18815.4, 18815.7, 18815.8 – Set forth reporting requirements for haulers, recyclers and composters, and brokers/transporters which require clarity as previously articulated.

CASA would be glad to meet with CalRecycle to clarify our comments and concerns and to offer solutions. Please contact me at gkester@casaweb.org or at 916-844-5262. Thank you again for the opportunity to provide comments and we look forward to proactively working with you on solutions.

Sincerely,



Greg Kester
Director of Renewable Resource Programs

From: Jacy Bolden
To: [AB 901 Recycling and Diversion Reporting@CalRecycle](mailto:AB901_Recycling_and_Diversion_Reporting@CalRecycle)
Cc: [Bob Peoples](#); [Jacy Bolden](#)
Subject: AB901 Reporting Clarification Question
Date: Thursday, May 31, 2018 6:09:30 PM

Dear Mr. Sander,

Carpet America Recovery Effort (CARE) serves as the designated carpet stewardship organization in California. As outlined by legislation (AB1158 and AB2398) CARE both facilitates and coordinates the post-consumer carpet recovery and collection program in California. Carpet collection may be coordinated by private collection companies (carpet recyclers, waste haulers, independent recyclers) or CARE. CARE coordinates and co-manages public access drop-off sites for the collection of carpet which are primarily located at public access recycling facilities (MRFs, C&D Facilities), transfer stations or landfills. Materials collected at these locations are loaded into collection trailers and transported to one of four designated carpet sorting and/or processing facilities in California. Those four designated facilities receive the carpet and sort it by fiber type. From there the materials are either baled and brokered for sale to a processor or, if the collector is also a processor, the material is processed/dismantled into marketable materials for sale to product manufacturers.

CARE's understanding, from speaking with CalRecycle Staff, is that the reporting in AB901 is on outflows of materials, and not inflows. Additionally, CARE also understands from that same conversation with Staff that generators (e.g., carpet retailers separating out carpet for carpet collection) will not be required to report.

One question for clarification is: As the entity coordinating the transportation for carpet recycling collection for these public access drop-off sites, which is then transported to one of our stakeholder sorters or processors, what reporting responsibility, if any, might CARE have?

On behalf of CARE, we greatly appreciate the time taken by CalRecycle Staff to talk with us about our concerns regarding confidentiality and questions pertaining to who in our stakeholder network may be required to begin reporting to CalRecycle.

Sincerely,

Jacy

Jacy M. Bolden
California Carpet Stewardship Program Director
Carpet America Recovery Effort (CARE)

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www.carpetrecovery.org

Advancing Market-Based Solutions to Increase Diversion and Recycling of Post-Consumer Carpet

Visit the CARE website at: www.carpetrecovery.org

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the views of Carpet America Recovery Effort (CARE).

From: Laura Ferrante
To: AB 901 Recycling and Diversion Reporting@CalRecycle
Cc: [Eric Potashner](mailto:Eric.Potashner)
Subject: AB 901 draft regulations - Recology comments
Date: Thursday, May 31, 2018 9:46:46 PM
Attachments: [2018.05.31 AB 901 Draft Regs - Recology Comment Letter.pdf](#)
[2018.05.31 AB 901 6th Draft Regs - Recology Comments \(5.16.18 version\).pdf](#)

On behalf of Recology, please find the attached comment letter and suggested edits to the AB 901 Reporting draft regulations.

Thank you,

Laura

Laura J. Ferrante

Strategic Affairs and Planning Manager

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May 31, 2018

Steven Sander
Project Lead
Department of Resources Recycling and Recovery
801 K Street, MS 17-01
Sacramento, CA 95814

Re: Comments – AB 901 Draft Reporting Regulations

Dear Mr. Sander,

Recology, Inc. would like to thank you for the opportunity to comment on the draft reporting regulations under Assembly Bill (AB) 901 dated May 16, 2018. We have appreciated working through various issues with you during the informal rulemaking period. However, we have continued concerns with the draft language, including:

1. Definitions

“Organics,” as defined in Section 18815.2(a)(38) of the draft regulations, includes organic material feedstock as well as intermediate products. However, “organics” is used repeatedly throughout the draft regulations to mean organic material feedstock only. Intermediate products should be excluded from the definition of “organics” so that the term is consistent both with how it is used in the draft regulations and the Public Resources Code definition of “solid waste.”

2. Reporting requirements for an integrated company

It remains unclear what the extent of reporting for a vertically integrated company, like Recology, will be. According to the draft regulations, a fully integrated company could end up reporting on the same material as a hauler, a transfer/processor, a recycling or composting facility, and a disposal facility. This amount of reporting on the same material by a single entity seems excessive.

3. Transfer/Processing facilities reporting on outbound material only

AB 901 does not direct transfer/processors to report on material accepted at the facility, only on material that leaves the facility. The only language in AB 901 authorizing reporting by transfer/processors is in Section 41821.5(a) which states, “...solid waste handlers and transfer station operators shall provide information to disposal facility operators on the origin of the solid waste that they deliver to the disposal facility.” This provides for reporting on material only as it leaves a facility. Recology suggests the language in Section 18815.5(a)(1) of the draft regulations that requires

transfer/processors to report information to CalRecycle about material accepted at a facility be removed.

4. Maintaining the confidentiality of customer information

Reporting entities should only be required to provide identifying information for receiving entities that have an RDRS number and are reporting entities within the state. To require reporting identifying information of a party other than a reporting entity would contravene AB 901 Section 41821.5(b)(3), which provides that reports may exclude proprietary business terms. Recology suggests eliminating any language in the draft regulations that requires reporting identifying information for any party other than reporting entities, including, but not limited to:

- Any provision requiring reporting entities to provide identifying information for out-of-state receiving entities as they are not reporting entities. Reporting entities should not be required to provide identifying information for any type of customer.
- Any provision requiring reporting entities to provide identifying information for a receiving entity that does not have an RDRS number in the event that receiving entity is an end user.

5. Liability and enforcement provisions

The draft regulations currently impose liability on reporting entities for the responsibilities of other reporting entities. It is unreasonable to hold a reporting entity responsible for the actions, inaction, and/or non-compliance of another reporting entity.

Additionally, we believe the enforcement provisions of the draft regulations must provide reporting parties an opportunity to submit a response before penalties are assessed, as well as the right to an administrative hearing to consider the merits of any penalty assessed.

In addition to the specific issues discussed above, we found potentially unintended inconsistencies, omissions, and/or confusion throughout the draft regulations. To simplify the discussion, attached please find an edited version of the draft regulations that includes our specific comments seeking clarification and/or suggesting alternative language.

Recology thanks the Department for the opportunity to participate in the AB 901 rulemaking process and looks forward to addressing the issues raised in this letter.

Sincerely,



Eric Potashner
Vice President & Sr. Director of Strategic Affairs

TITLE 14. NATURAL RESOURCES
DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
CHAPTER 9. PLANNING GUIDELINES AND PROCEDURES FOR PREPARING, REVISING, AND
AMENDING COUNTYWIDE OR REGIONAL INTEGRATED WASTE MANAGEMENT
PLANS
ARTICLE 9.25. RECYCLING AND DISPOSAL REPORTING SYSTEM
SECTIONS 18815.1-18815.13.

Section 18815.1 Scope and Purpose.

- (a) This Article implements the reporting system set forth in sections 41821.5 through 41821.8 of the Public Resources Code.
- (b) Nothing in this Article shall prevent a government entity from requiring a reporting entity to supply additional information on activities related to disposal, diversion, composting or recycling based upon their its own separate authority granted by Public Resources Code section 41821.5(g) of the Public Resources Code, or based upon local ordinances, franchise terms or other agreements.
- (c) The Department shall maintain the confidentiality of information in reports submitted to the Department as required by section 18815.12 of the California Public Records Act [Chapter 3.5 (commencing with section 6250) of Division 7 of Title 1 of the Government Code], section 40062 of the Public Resources Code, and Title 14 of California Code of Regulations [Division 7, Chapter 1, Article 4 (commencing with section 17041)].
- (d) In order to protect data quality, ensure timely reporting, and expedite the reporting process, especially when material is flowing between several reporting entities, the Department will serve as a central repository of information that is required to be reported ~~to~~ by reporting entities, transfer/processors to disposal facilities.
- (e) If a person is required to report based on the criteria in section 18815.3~~(b)~~ of this Article, then the person shall report using the reasonable methods outlined in section 18815.9 of this Article and comply with the applicable requirements for:
- (1) Haulers in section 18815.4.
 - (2) Transfer/processors in section 18815.5.
 - (3) Disposal facilities in section 18815.6.
 - (4) ~~Recyclers and composters~~ Recycling and composting facilities and operations in section 18815.7, or
 - (5) ~~Brokers and transporters~~ Transporters and brokers in section 18815.8.

Authority cited: Sections 40502, and 41821.5(c), Public Resources Code, Reference: Sections 41821.5, 41821.6, 41821.7, 41821.8, 41821.9, Public Resources Code.

Section 18815.2 Definitions.

- (a) For the purposes of this Article, the following terms have the meanings given below.
- (1) "Alternative daily cover" or "ADC" has the same meaning as in section 20690 of Title 27 of the California Code of Regulations.
 - (2) "Alternative intermediate cover" or "AIC" has the same meaning as in section 20700 of Title 27 of the California Code of Regulations.

- (3) “Automobile dismantler” has the same meaning as in section 17402.5(c)(1) of this division. This does not include automobile shredders, as defined in section 17402.5(c)(2) of this division.
- (4) “Automobile shredder” has the same meaning as in section 17402.5(c)(2) of this division. This does not include automobile dismantlers, which has the same meaning as in section 17402.5(c)(1) of this division.
- (5) ~~(2)~~ “Beneficial reuse” has the same meaning as in section 20686 of Title 27 of the California Code of Regulations and occurs at disposal facilities. Beneficial reuse does not include the use of clean or contaminated soil segregated prior to receipt by a landfill. For the purposes of this section, beneficial reuse includes waste-derived materials used for:
- (A) ADC
 - (B) AIC
 - (C) Construction, for example, final cover, foundation layer, liner operations layer, leachate and landfill gas collection systems, fill, road base, wet weather operations pads, and access roads.
 - (D) Landscaping and erosion control, for example, soil amendments for erosion control, dust suppression, and landscaping.
- (6) ~~(4)~~ “Biosolids” means sewage sludge that has been treated to meet the land application standards for heavy metal concentrations, ~~and~~ pathogen and vector control as specified in Subparts B and D of Part 503 of Title ~~Chapter~~ 40 of the Code of Federal Regulations ~~part 503~~.
- (7) ~~(5)~~ “Broker” ~~is defined as~~ means a person who takes ~~legal ownership of a~~ control of material from a reporting entity in California and determines the destination of the material. ~~sells, transfers, or exchanges materials.~~ When used in this article, material “sent to” or “received by” a broker does not require physical possession or legal ownership of the material, but, rather, means that the broker gains control of the material as described above. Brokers are not haulers, disposal facilities, transfer/processors, recyclers, or composters. A person that arranges or facilitates the sale or transfer of materials, but does not ~~take~~ determine the destination of the material ~~legal ownership of the materials~~, is not a broker.
- (8) “Business-to-business post-industrial recycling” means a recycling activity that: (A) Meets all of the following conditions:
- (i) A commercial generator generates materials as a by-product of an industrial or manufacturing process.
 - (ii) The commercial generator separates the material at the source of generation.
 - (iii) The commercial generator sells or transfers the material directly to a recycler in a business-to-business relationship, and
 - (iv) The recycler produces an ~~end-intermediate~~ product equivalent to a specification grade raw material for use by end users.
- (B) And does not include materials from the following sources:
- (i) Residential generators,
 - (ii) Curbside collection of recyclables,
 - (iii) Collection implemented pursuant to mandatory commercial recycling requirements section 42649 et seq. of the Public Resources Code,
 - (iv) Scavengers or collectors who did not generate the materials,
 - (v) Collection of post-consumer materials,
 - (vi) Commercial generators that do not directly generate the material as a result of an industrial or manufacturing process but whose recycling or reuse activities result in the accumulation of the material or,

Commented [R1]: “End product” is no longer defined. It has been changed to “intermediate product.”

- (vii) Haulers, operations or facilities that are required to have an RDRS registration number.
- (9) ~~(6)~~ "Carpet" has the same meaning as defined in section 42971(d) of the Public Resources Code.
- (10) ~~(7)~~ "Chipping and grinding facility or operation" is a recycling facility, and has means a facility or operation that meets the requirements the same meaning as in sections 17862.1 of this division, and section 17383.3 of this division for construction and demolition ~~CD~~ wood debris-related operations, or section 17852(a)(12) of this division.
- (11) ~~(8)~~ "Commercial sector" means businesses, industries, institutions, public organizations, school districts and universities, and multifamily residences of five or more units.
- (12) ~~(9)~~ "Compost" has the same meaning as defined in section 17896.2(a)(4) of this division. For the purposes of these regulations, compost is considered an ~~end~~ intermediate product after it has achieved acceptable metal concentrations, pathogen reduction, and physical contamination levels as required by sections 17868.2, 17868.3, and 17868.3.1 of this division.
- (13) ~~(10)~~ "Composting operation" or "composting facility" has the same meaning as "compostable material handling operation" or "composting facility" as defined in section 17852(a)(12) of this division, and includes in-vessel digestion as regulated in section 17896 of this division. A person operating a "composting operation" or "composting facility" is referred to as a "composter" in these regulations.
- (14) ~~(11)~~ "Construction and demolition/inert debris" or "CDI" means any combination of construction and demolition debris as defined in section 17381(e) of this division and inert debris as defined in section 17381(k) of this division.
- (15) ~~(12)~~ "Contact information" means name, mailing address, physical address, phone number, and e-mail address.
- (16) ~~(13)~~ "Contract Hauler" means any person, whether through a franchise or private contract, material hauled by any person, including franchised haulers and private contract haulers, paid to collect and move material from a generator to a reporting entity, end user, and/or a destination outside of the state. Any material transported by a contract hauler is referred to as "contracthauled" in these regulations.
- (17) "Conveyance system" means a method designed to move material from one facility or operation to another facility or operation on the same site. Examples of a conveyance system include, but are not limited to, conveyor belts, pipes, tubes, and heavy equipment, such as a front-end loader.
- (18) ~~(14)~~ "Department" means the California Department of Resources Recycling and Recovery or CalRecycle.
- (19) ~~End Product~~ means a waste material derived product that has been processed beyond simple baling, or size reduction for ease of transport to a level so that it:
- ~~(A) Either replaces or substitutes a virgin material in a manufacturing or construction process, or replaces fuels, including, but not limited to, plastic pellets, paper pulp, metal ingots, biogas, syngas, biofuels, pet food, animal feed, or~~
 - ~~(B) Is wood chips that meet the standards for use in playgrounds, landscaping, erosion control, biomass facilities, or~~
 - ~~(C) Is compost, or~~
 - ~~(D) Is a suitable homogeneous mixture used for direct land application or fill, such as aggregate or crushed miscellaneous base, or organics including biosolids.~~
- (19) ~~(15)~~ "Designated waste" has the same meaning as in section 13173 of the California Water Code.

- ~~(20)(16)~~ “Disaster debris” has the same meaning as in section 17210.1(d) of this division.
- ~~(21)(17)~~ “Disposal” has the same meaning as section 40192 of the Public Resources Code, but does not include lawful land application that complies with section 17852(a)(24.5) of this division.
- ~~(22)(18)~~ “Disposal facility” ~~is defined as~~ means a facility where the disposal of solid waste occurs, including but not limited to:
- (A) Landfills,
 - (B) Engineered municipal solid waste conversion facilities,
 - (C) Transformation facilities, and
 - (D) Inert debris and CDI disposal facilities as specified in sections 17388.4 and 17388.5 of this division.
- ~~(23)(20)~~ “End user” ~~is defined as~~ means a person who first uses a material, as defined in this section, ~~or manufactures with end products. End users are categorized~~ within the following categories:
- (A) “Manufacturing and Packaging”. This includes, but is not limited to, ~~an end user that a person who takes end products from a reporting entity and~~ uses the material to produce consumer products, industrial products, pet or animal feed, or packaging. It also includes ~~an end user that a person who takes finished compost from a reporting entity and blends, packages, bags or distributes it to consumers. Manufacturers who produce consumer or industrial products with recycled content and do not transfer or sell intermediate products to other entities are “end users”, not reporting entities.~~
 - (B) “Fuel consumers”. This includes, but is not limited to, ~~an end user that a person who takes or uses material, including, but not limited to, biomass or tires, derived for use as fuel from a reporting entity. Biomass conversion is a “fuel consumer end use”.~~
 - (C) “Material consumers”. This includes, but is not limited to, ~~an end user that a person who takes a material derived product or chemical an intermediate product derived from organics or recyclables from a reporting entity for general consumer distribution or retail, such as compost or wood chips, fertilizers, and crushed glass, from a reporting entity or uses it as an ordinary consumer would.~~
 - (D) “Construction end users”. This includes, but is not limited to, ~~an end user that a person who takes a material from a reporting entity and uses it in construction.~~
 - (E) “Land Application”. This includes, but is not limited to, ~~an end user that a person who takes an organics intermediate product from a reporting entity and uses it for land application.~~
 - (F) “Inert debris fill”. This includes, but is not limited to, ~~an end user that a person who takes inert debris from a reporting entity and uses it for engineered fill.~~
- ~~(24)(21)~~ “Engineered municipal solid waste conversion” or “EMSW conversion” has the same meaning as ~~defined~~ in section 40131.2 of the Public Resources Code.
- ~~(25)(22)~~ “Food waste” ~~and “food waste”~~ is organic solid waste and has the same meaning as “food material” as defined in section 17852(a)(20) of this division, ~~and~~ “Food waste” excludes “agricultural material” and “agricultural by-product material” as defined in sections 17852(a)(4.5 and 5) and 17852(a)(5) of this division. “Food waste” does not include food redirected to edible food recovery organizations, food banks, direct animal feeding, or other applications that meet the definition of “reuse” as defined in subsection (a)(52).
- ~~(26)(23)~~ “Food waste self-hauler” ~~is~~ means a person ~~that~~ who generates and transports, utilizing ~~its~~ their own employees and equipment, more than one cubic yard per week of ~~its~~ their own food waste to a location or facility that is not owned and operated by that person. A person ~~that~~ who self-hauls food waste but does not meet the criteria of a “food waste self-hauler” is a selfhauler.

- (27)~~(24)~~ "Furniture" is defined as means large, bulky objects used to enhance a residence, business, or other space for living or working. This includes, including but is not limited to, couches, chairs, dressers, tables, desks, and bed frames. Furniture does not include mattresses, as defined by section 42986(g) of the Public Resources Code.
- (28)~~(25)~~ "Generator" is defined as means a person whose activities result in the initial creation of solid waste, organics, or recyclable material.
- (29)~~(26)~~ "Glass" means a hard, brittle, usually transparent nonhazardous substance commonly made from sand heated with chemicals. This includes, but is not limited to, whole or crushed materials derived from: clear or colored containers with or without California Redemption Value, flat glass, and automotive glass.
- (30)~~(27)~~ "Government entity" is means an entity identified in section 40145 of the Public Resources Code or an entity formed pursuant to section 40976 of the Public Resources Code.
- (31)~~(28)~~ "Hauler" is defined as means a person who collects solid waste, organics or recyclable material from a generator and delivers it to a reporting entity, end user, or a destination outside of the state. "Hauler" includes public contract haulers, private contract haulers, food waste selfhaulers, and self-haulers. A person who transports material from a reporting entity to another person is a transporter, not a hauler.
- (32) "Intermediate product" means a material or feedstock derived from organics or recyclables that:
- (A) Either replaces or substitutes for a virgin material in a manufacturing, construction, or agricultural process, including, but not limited to, plastic pellets, plastic flake, paper pulp, crushed/baled/shredded metal, and glass cullet, or
 - (B) Replaces or substitutes for a virgin material in the production of energy, including but not limited to biomass at a biomass conversion facility, or
 - (C) Is wood chips that meet the standards for use in playgrounds, landscaping, erosion control, and by biomass conversion facilities, or
 - (D) Is compost, or
 - (E) Is a suitable homogeneous mixture used for direct land application or fill, such as aggregate or crushed miscellaneous base, or organics, including biosolids and biochar.
- (33)~~(29)~~ "Jurisdiction of origin" means the place where a material is initially generated. For places located within California, this means a city, county, city and county, or regional agency with responsibility for waste management, formed pursuant to sections 40970 through 40975 of the Public Resources Code. For places located in states or territories of the United States other than the State of California, jurisdiction of origin means the state, territory, or tribal lands in which a material was generated. For places located in a country other than the United States of America, jurisdiction of origin means the country or tribal lands in which a material was generated.
- (34)~~(30)~~ "Land application" has the same meaning as in section 17852(a)(24.5) of this division, and includes biosolids applied under the purview of the ~~U.S. EPA~~ United States Environmental Protection Agency, ~~or the statewide waste discharge requirements (general order), or individual waste discharge requirements issued by a regional water board.~~
- (35) "Maintenance District Yard" means a transfer/processor that has been issued a Solid Waste Identification System (SWIS) number by the Department, and is directly operated by a municipality, sanitation district, county, state, or federal public works or sanitation agency, including the United States Forest Service. A "maintenance district yard" also means a facility or operation whose primary purpose is to receive waste collected from road maintenance activities, such as sweeping public thoroughfares, litter abatement, and maintaining street trees.

Commented [R2]: "Organics" as defined in section 18815.2(a)(38) includes organic material feedstock as well as intermediate products. It is unclear how a generator can create an intermediate product, which, by its own definition, has undergone a certain level of processing?

Commented [R3]: This formulation is not consistent with PRC 40191. Under that section, "solid waste" is the blanket term that includes virtually all nonhazardous discarded material, including organic waste and discarded recyclables. All references to categories of solid waste through the regulations should be reviewed and language corrected so the terminology aligns with the PRC.

It should also be kept in mind that, under the CA Supreme Court's decision in *Waste Management of the Desert* (7 Cal.4th 478), material that is sold is not "waste" within the meaning of the PRC. It is not legally possible to sell waste, though it is possible to sell commodities, finished compost, or other material that is derived from waste.

Commented [R4]: Generators can't create intermediate products, therefore haulers can't deliver material from generators directly to end users.

~~(35)~~ "Permitted Landfill" has the same meaning as defined in section 18720(a)(5).

~~(36)~~ ~~(31)~~ "Material(s)" means solid waste, recyclables, organics, or as well as end intermediate products derived therefrom from these materials. "Mixed materials" is a combination of different material types.

~~(37)~~ ~~(32)~~ "Metal" means iron, steel, tin, aluminum, copper, and their alloys, including scrap metal and products made of these metals, like containers, building materials, and plumbing materials.

~~(38)~~ ~~(33)~~ "Organics" is defined as means material originated from living organisms and their metabolic waste products. This includes, ~~including~~ but is not limited to, food, "agricultural material" as defined in section 17852(a)(5) of this subdivision, "agricultural by-products material" as defined in section 17852(a)(4.5) of this subdivision, green waste material, landscape and pruning waste, nonhazardous lumber and dimensional wood, manure, compostable paper, digestate, biosolids, and biogenic sludges; and any product manufactured or refined therefrom from these materials, including compost, and wood chips, ~~biofuels, and biogas.~~

~~(39)~~ "Recyclable material" means a material that is managed through recycling facilities and operations, and includes any material that does not meet the definition of an end product.

~~(39)~~ ~~(34)~~ "Paper" means all types of paper products including pulp, corrugated cardboard, newspaper, office paper, magazines, catalogs and directories, and other composite paper products such as food and beverage cartons and containers.

~~(40)~~ ~~(35)~~ "Person" has the same meaning as defined in section 40170 of the Public Resources Code.

~~(41)~~ ~~(37)~~ "Plastic" means a synthetic material made from a wide range of carbon-containing polymers, which can be used to make rigid and flexible plastic products, ~~including~~ This includes, but is not limited to, packaging (bags, bottles, caps, clamshells, containers, cups, films, and lids); household and bulky rigid items (buckets, crates, toys, and tubs); agricultural products (drip tape, film, and greenhouse covers); and other products (electronics housing, carpet fibers, ~~and~~ automobile plastics, and bioplastics).

~~(42)~~ ~~(39)~~ "Recycle" or "recycling" means a series of processes that ultimately result in the production of intermediate products utilizing materials recovered or discarded by a generator ~~has the same meaning as defined in section 40190 of the Public Resources Code.~~ A person who engages in recycling is referred to as a "recycler" in these regulations. Recycling does not include reuse. Recycling includes but is not limited to the processes below:

- (A) For recyclable materials such as paper, glass, metal, and plastics, this includes but is not limited to sorting, cleaning, baling, shredding, pulping, crushing, cullet making, ~~smelting, flaking, and pelletizing.~~
- (B) For organics that are not composted, recycling includes, but is not limited to, treating wastewater ~~treatment, producing mulch, mulching,~~ or chipping and grinding.
- (C) For CDI, recycling includes, but is not limited to, sorting, crushing, grinding, shredding, sizing, or other processing.
- (D) For other products including furniture, carpet, white goods and textiles, this includes but is not limited to sorting, baling, crushing, cutting, shearing, deconstructing, and removing components from products for recycling (not resale or reuse).

~~(43)~~ "Recycling and disposal reporting system" or "RDRS" means the Department's electronic system for reporting pursuant to this article.

~~(44)~~ ~~(40)~~ "Recycling and disposal reporting system number" or "RDRS number" means the number assigned to a reporting entity upon registration with the Department's electronic Recycling and Disposal Reporting System.

Commented [R5]: Intermediate products should be excluded from the definition of "organics" which is meant to describe organics waste.

~~(45)(41)~~ “Recycling Facility or Operation” ~~is defined as~~ means any facility or operation that recycles material, as defined in this article, ~~accepts, separates, or processes materials for recycling and~~ Recycling facilities or operations include entities that meets the definition of “Recycling Center” set forth in section 17402.5(d) of this division. This also includes chipping and grinding operations, and CDI recycling centers as described in section 17381.1 of this division.

~~(46)(42)~~ “Report” means the quarterly report submitted to the Department by a reporting entity.

~~(47)(43)~~ “Reporting entity” ~~is defined as~~ means a person who engages in reportable activities. A “reporting entity” is required to register and report pursuant to this Article. A “reporting entity” also means a person who reports on material handling activities pursuant to section 18815.4 through section 18815.8 of this article, as applicable, within ~~including~~ the following reporting entity categories:

- (A) Haulers
- (B) Transfer/processors
- (C) Recycling and composting facilities and operations
- (D) Disposal facilities
- (E) ~~Transporters and brokers~~ Brokers and transporters

~~(48)(44)~~ “Reporting period” or “Quarter” ~~is defined as~~ means the time period in for which a report must be submitted to the Department. The four reporting periods or four quarters in each calendar year are:

- (A) Reporting Period 1 – January 1 to March 31
- (B) Reporting Period 2 – April 1 to June 30
- (C) Reporting Period 3 – July 1 to September 30
- (D) Reporting Period 4 – October 1 to December 31

~~(49)(45)~~ “Residential sector” ~~is defined as~~ means single-family residences and multifamily residences of less than 5 units.

~~(50)(46)~~ “Residual” has the same meaning as ~~defined~~ in section 17402.5(b)(1) of this division.

~~(51)(47)~~ “Resale for Reuse” means selling a used object or material again, to a person ~~an end user~~ who will use it either for its original purpose or for a closely-related purpose, not as a raw material, but without significantly altering the physical form of the object or material. This does not include beneficial reuse.

~~(52)~~ “Reuse” means the utilization of an object or material again by a person for its original purpose or for a closely-related purpose, not as a raw or intermediate material, but without significantly altering the physical form of the object or material.

~~(53)(48)~~ “Self-hauler” ~~is defined as~~ means a person who hauls solid waste, organics or recyclable material they have generated to another person. “Food waste self-haulers” are a type of selfhauler.

~~(54)(49)~~ “Site means the location of a facility or operation that has one physical address or assessor parcel number, or multiple adjacent addresses or assessor parcel numbers, that contains one or more facilities, operations, or activities.

~~(55)(50)~~ “Solid waste” has the same meaning as ~~defined~~ in section 18720(a)(40) of this chapter.

~~(56)(51)~~ “Source sector” means one of these three sources from which solid waste is generated: (A) Contract-hauled single-family residential (e.g., houses), (B) Contract-hauled commercial/multi-family residential (e.g., businesses and apartments), or (C) Self-hauled (e.g., hauled by a generator). “Disaster debris” and “designated waste” shall be assigned to the “self-hauled” source sector.

Commented [R6]: “Organics” as defined in section 18815.2(a)(38) includes organic material feedstock as well as intermediate products. Self-haulers can’t generate and haul intermediate products which must undergo a certain level of processing.

Commented [R7]: This should be changed to be consistent with PRC 40191 which uses “solid waste” as a blanket term to include virtually all nonhazardous discarded material, including organic waste and discarded recyclables. See comment for “generator” under subsection (28).

~~(57)(52)~~ "Textiles" means items made of natural or synthetic thread, yarn, fabric, or cloth, including clothing, fabric trimmings, and draperies, but ~~not including~~ excluding carpet.

~~(58)(53)~~ "Tire-derived rubber" means rubber from the processing of waste tires as defined in section 42807 of the Public Resources Code.

~~(59)(54)~~ "Ton", also referred to as short ton or net ton, means 2,000 pounds ~~(lbs)~~. Weight of material shall be reported as handled.

~~(60)(55)~~ "Transfer/processor" ~~means~~ has the same meaning as "Transfer/processing facilities" and "transfer/processing operations," as defined in sections 17402(a)(30-31) of this division, as well as CDI processing operations and facilities as defined in sections 17383.5 through 17383.8 of this division, which receive, temporarily store, convert, process, and transfer materials for recycling, composting, or disposal, but do not meet the requirements of a "Recycling Center" set forth in section 17402.5(d) of this division.

~~(61)(56)~~ "Transformation Facility" has the same meaning as in section 40201 of the Public Resources Code.

~~(62)(57)~~ "Transporter" ~~is defined as~~ means a person who takes legal ownership physical possession and determines the destination of solid waste, organics, recyclable material, or end intermediate products from a reporting entity, and transports those materials to another person inside or outside the state ~~in California, or a person who acts as an exporter~~. A person who collects and moves material from a generator ~~to another person is a hauler~~, is not a transporter. A driver employed or contracted by a reporting entity to deliver material(s) to a destination specified by the contracting reporting entity is not a transporter, ~~unless they take legal ownership of the material~~.

~~(58)~~ "Waste derived material" means material sent to a facility for disposal, which the facility ~~separates for another use~~.

~~(63)(59)~~ "Wastewater treatment plant" has the same meaning as in section 3671 of Title 23 of the California Code of Regulations. For the purposes of these regulations, it is a recycling facility.

~~(64)(60)~~ "White and brown goods" means discarded major appliances and small home appliances of any color, including, but not limited to, washing machines, clothes dryers, water heaters, stoves, ~~and~~ refrigerators, microwaves, and toasters.

Authority cited: Sections 40502, and 41821.5(c), Public Resources Code, Reference: Sections 41821.5, 41821.6, 41821.7, 41821.8, 41821.9, Public Resources Code.

Section 18815.3 Registration, Reporting and Exemptions.

~~(a)~~ ~~(b)~~ Except as provided in subsection (c), a person shall register and report on the materials listed in subsection (1) if they meet both of the following criteria: ~~A reporting entity shall register and obtain at least one RDRS number per activity on each site they operate, if they meet both of the following criteria:~~

(1) The following material categories and associated definitions in section 18815.2(a) of this article are provided as examples of the types of materials upon which a person would be required to register and report. They are not intended to be definitive or supersede definitions elsewhere. The person, other than a generator, recycles, sells, transfers, processes, composts, or disposes any of the following materials or mixtures thereof, after the materials are discarded by a generator:

(A) Carpet

(B) Construction and demolition/inert debris

- (C) Furniture excluding mattresses
 - (D) Glass excluding cathode ray tube glass
 - (E) Metal
 - (F) Organics
 - (G) Paper
 - (H) Plastic
 - (I) Solid waste
 - (J) Textiles
 - (K) Tire-derived rubber or fuels
 - (L) White and brown goods
- (2) The person recycles, sells, transfers, ~~chips and grinds~~, processes, composts, or disposes 100 tons or more of any combination of ~~recyclable material, organics, or solid waste~~ the materials listed in subsection (a)(1) in a quarter, for all activities on the same site by that person, ~~or is one of the following:~~
- ~~(A) An active permitted disposal facility;~~
 - ~~(B) A food waste self-hauler who hauls 12 or more cubic yards, or 6,000 lbs of food waste per quarter;~~
 - ~~(C) A person who delivers organics for direct land application in excess of 50 tons per quarter in accordance with section 17852(a)(24.5);~~
 - ~~(D) A person who exclusively processes CDI in excess of 2,500 tons per quarter;~~
 - ~~(E) A person who composts any amount of organics and is not excluded per section 17855 for composting operations or section 17806.6 for in vessel digestion operations; (F) A wastewater treatment plant.~~
- (b) The following entities shall register and report under this article for the materials they handle listed in subsection (a)(1):
- (1) Permitted disposal facilities with a Registration, Standardized, or Full Permit, including, but not limited to:
 - (A) Solid waste landfills,
 - (B) Engineered municipal solid waste (EMSW) conversion facilities, (C) Transformation facilities,
 - (D) Inert debris Type A/Type B disposal facilities,
 - (E) CDI waste disposal facilities,
 - (F) Industrial waste co-disposal facilities, and (G) Waste tire disposal facilities.
 - (2) Haulers, including, but not limited to:
 - (A) Contract haulers who haul 100 tons or more of materials described in subsection (a)(1) outof-state per quarter,
 - (B) Contract haulers who deliver organics for direct land application in excess of 50 tons per quarter in accordance with section 17852(a)(24.5) of this division, and
 - (C) "Food waste self-haulers" as defined in section 18815.2(a)(26) of this article who haul over 12 cubic yards, or 6,000 pounds, of food waste per quarter.
 - (3) Transfer/processing facilities and operations, including Enforcement Agency Notification, Registration, Standardized, and Full Permit, that exclusively process 2,500 or more tons of CDI per quarter, or transfers or processes 100 tons or more of other materials described in subsection (a)(1) per quarter, including, but not limited to:
 - (A) Contaminated soil operations,
 - (B) Inert debris processing facilities Type A,
 - (C) Inert debris processing facilities Type B,

- (D) Inert debris type a processing operations,
 - (E) Nonhazardous ash transfer/processing operations,
 - (F) Small volume CDI debris processing operations,
 - (G) Medium volume CDI debris processing facilities,
 - (H) Large volume CDI debris processing facilities,
 - (I) Limited volume transfer/processing operations,
 - (J) Small volume transfer stations,
 - (K) Medium volume transfer/processing facilities,
 - (L) Large volume transfer/processing facilities,
 - (M) Secondary material processing facilities and operations,
 - (N) Glass container processing operations,
 - (O) Direct transfer facilities, and
 - (P) Sealed container transfer operations.
- (4) Recycling facilities and operations, including those that exclusively process 2,500 or more tons of CDI per quarter, or recycle 100 tons or more of other materials described in subsection(d)(1) per quarter, including, but not limited to:
- (A) A recycler that handles business-to-business post-industrial materials, but also handles materials that do not meet the criteria in section 18815.2(a)(8) of this article,
 - (B) Material recovery facilities,
 - (C) Recycling centers,
 - (D) Wastewater treatment plants,
 - (E) Paper pulpers,
 - (F) Textile fiber reclaimers,
 - (G) Plastic reclaimers, shredders, grinders, flakers, and pelletizers,
 - (H) Metal shredders, sorters, and processors,
 - (I) Glass cullet manufacturers/beneficiators,
 - (J) Beverage container recycling program recyclers or processors,
 - (K) Carpet collectors and recyclers,
 - (L) Construction, demolition & inert debris (CDI) recyclers,
 - (M) Construction and demolition recyclers,
 - (N) Inert debris recyclers,
 - (O) Chipping and grinding facilities or operations,
 - (P) Medium volume construction and demolition wood debris chipping and grinding facilities,
 - (Q) Construction and demolition wood debris chipping and grinding operations, and (R) Automobile shredders.
- (5) Permitted composting facilities and operations that process 100 tons or more of material and are not excluded by section 17855 of this subdivision for composting operations or by section 17896.6 of this subdivision for in-vessel digestion operations, including, but not limited to:
- (A) Composting facilities and operations
 - (B) Composting research operations
 - (C) In-vessel digestion facilities and operations
- (6) Brokers/transporters who sell or transfer 100 tons or more of material for which they control and determine its destination.
- (c) ~~(a)~~ The following are not required to register or report under this ~~A~~ article, for their activities as:
- (1) An end user, including but not limited to:

- (A) Asphalt plants,
- (B) Biomass conversion facilities,
- (C) Glass bottle, container, fiberglass, or construction material producers,
- (D) Inert Debris Engineered Fill Operations,
- (E) Metal foundries,
- (F) Metal smelters,
- (G) Paper converting plants,
- (H) Paper mills,
- (I) Plastic injection molders, blow molders, and extruders, and (J) Rendering plants.
- (2) A generator who is not a food waste self-hauler as defined in section 18815.2(a)(26) of this article,
- (3) A recycler who only recycles what they generate, ~~A person that generates, processes, and uses material all on the same site, and~~
- (4) A thrift store, automobile dismantler, building supply reclaiming or reuser, and any other person whose primary business is resale for reuse of an object or material ~~without significantly altering the physical form of the object or material that~~ who meets one of the following criteria:
 - (A) Revenues associated with resale for reuse exceeds revenues associated with recycling or composting activities, or
 - (B) Tons associated with resale for reuse exceeds total tons associated with recycling or composting activities.
- (5) A wastewater treatment plant that only sends material to other wastewater treatment plants,
- (6) A Maintenance District Yard as defined in section 18815.2(a)(35) of this article,
- (7) An Emergency Transfer/Processing Operation, (8) An Emergency CDI Processing Operation,
- (9) A persons who exclusively handles:
 - (A) Household Hazardous Waste,
 - (B) Hazardous waste,
 - (C) Electronic waste,
 - (D) Medication and sharps,
 - (E) Used oil,
 - (F) Paint,
 - (G) Mattresses, and
 - (H) Business-to-business post-industrial materials, as defined in section 18815.2 (a)(8) of this article. Business-to-business post-industrial recyclers shall self-certify that they are exempt from registration and reporting utilizing RDRS.
- (10) A broker or transporter who only moves or facilitate transactions of material from a reporting entity, but does not determines the destination of the material,
- (11) A person who collects material from a generator and delivers the material directly to an end user inside the state, unless the person is a contract hauler hauling material to land application pursuant to section 18815.4(d)(1) of this article, and
- (12) A contract hauler who hauls solid waste to a reporting entity inside the state. A contract hauler shall provide information to the reporting entity pursuant to section 18815.4 of this article.
- (d) ~~(e) For a facility site engaged in with multiple activities, regardless of ownership, on the same site:~~
 - (1) Each disposal facility and transfer/processor located on the same site shall register for a separate RDRS number and file a separate report that provides information specific to ~~each~~ that facility.

- (2) All recycling and composting facilities or operations owned by the same person and located at the same site may register for a single RDRS number and file a single report that aggregates information on materials sent from all recycling and composting activities pursuant to section 18815.9 of this article.
- (3) Each recycling and composting facility or operation not owned by the same person and located at the same site shall register for a separate RDRS number and file a separate report that provides information specific to that facility.
- ~~(3) Each disposal facility or transfer/processor co-located with recycling/composting activities above the reporting thresholds described in section 18815.3(b)(2) of this article shall register for a separate RDRS number and file a separate report.~~
- ~~(4) For determining registration status or reporting status for an individual reporting period, a reporting entity must shall account for all cumulative tons across all activities conducted at the site by this reporting entity, pursuant to section 18815.3(b)(2) subsection (a)(2) of this Article. If any single activity is subject to reporting, reportable material handling activity, or the cumulative tonnages of multiple aggregated activities, exceeds the tonnages in section 18815.3(b)(2) subsection (a)(2), the reporting entity must shall report all activities conducted at the site by this reporting entity.~~
- ~~(5) A reporting entities entity who engages in multiple activities at on the same site must shall inform the Department in their its report of all reportable activities occurring at the site each quarter.~~
- ~~(e) A reporting entity operating on November December 1, 2018 shall register by November December 31, 2018.~~
- ~~(f) A reporting entity that begins operation, or changes activities such that reporting is required, after November December 1, 2018 shall register within 30 days of being subject to these reporting requirements, and begin reporting for the following quarter.~~
- ~~(g) A reporting entity that becomes permanently inactive, or closes, or no longer meets the reporting requirements outlined in section 18815.3(b) shall notify the Department within 30 days and request that their RDRS registration status become permanently inactivated.~~
- ~~(h) If a reporting entity that has registered and has an RDRS number, but their activities have permanently changed such that they no longer meet the reporting requirements outlined in this section, it may request that the Department permanently inactivate its RDRS registration. In that request, the reporting entity shall demonstrate to the Department that it no longer should be registered. The burden of proof shall be on the reporting entity. The Department shall act on a request within 60 days. A reporting entity shall continue to report until and unless the Department permanently inactivates the RDRS registration. For example, a reporting entity whose activities have changed such that it now exclusively engages in the handling of materials described in subsection (b)(2), such as business-to-business post-industrial materials, it may request that the Department permanently inactivate its RDRS registration status.~~
- ~~(i) A reporting entity that is registered but has cumulative tonnages below reporting thresholds for a reporting period shall notify the Department it has nothing to report for the reporting period.~~
- ~~(j) In its report, a reporting entity shall comply with the applicable requirements specified in provide information, as set forth in sections 18815.4 through 18815.8 of this Article, on all materials composted, recycled, beneficially reused at a landfill, disposed or sent to end user.~~
- ~~(k) A reporting entity that transfers, sells or sends end intermediate products to an end user shall report on the tons of material aggregated by end user category for each region as set forth in this~~

Commented [R8]: May a recycling or composting facility and a disposal facility owned by the same person and located on the same site also register for a single RDRS number?

subsection. End uses which are located on the same site as the reporting entity ~~are reportable~~ shall be included in the report pursuant to section 18815.9 of this article.

(1) Regions shall be reported as follows:

(A) End users located within California shall be reported by county.

(B) End users located in the United States, but outside California, shall be reported by state.

(C) End users located outside the United States shall be reported by country or tribal lands.

(2) Reporting entities shall report end user categories as defined in section 18815.2(a)(20)(23) of this Article.

(3) ~~In those instances where persons acquire end products directly at the reporting entity's site, the reporting entity shall report them as end users in the county where the site is located. A reporting entity may aggregate end users in small vehicles (automobiles, pickups, and small trailers) who pick up material from their facility or operation and assign them to the county in which the site is located.~~

~~(i) A reporting entity that transfers, sells, or sends materials to another reporting entity shall provide information for each individual reporting entity, including RDRS number, contact information, materials and tonnages. Reporting entities that send material to transfer/processors, recyclers, composters, brokers, or disposal facilities outside the state of California, shall provide information for each individual recipient, including contact information, materials and tonnages.~~

(l) ~~(k)~~ If a person receiving material does not have a RDRS number, and the reporting entity cannot determine that the person is an end user, then the reporting entity shall:

(1) Report the individual tonnages and materials as if the receiver is a reporting entity, and

(2) Supply the Department with contact information for that person in their report.

(m) Reporting entities shall commence filing reports using RDRS for the reporting period beginning January 1, 2019.

(n) ~~(j)~~ A registered reporting entity shall file a report for each reporting period using the Department's electronic reporting system RDRS, and ensure that the information they submit ~~generate and are responsible for providing~~ is accurate, complete, and entered electronically.

(1) A reporting entity shall use information available at the time the report is due. If the reporting entity has not received the required information from a person, either directly or through RDRS, then the reporting entity shall submit all available information in its report to the Department and ~~may~~ identify the reporting entities who have not provided them with the required information. ~~The Department shall not hold reporting entities liable for incomplete or inaccurate information provided by a hauler or other third party.~~

(2) If a reporting entity identifies an error in a previously submitted report, then ~~they~~ it shall correct the error and notify the Department within 10 business days.

(3) Each report to the Department shall include:

(A) The contact information and RDRS number of the person submitting the report;

(B) The contact information and RDRS number, if applicable, of each ~~person or~~ reporting entity receiving materials from the reporting entity, with the exception of material sent to end users that may be aggregated by category and region as specified in subdivision (i) of this subsection;

(C) The information required by sections 18815.4-18815.9 of this Article, as applicable.

(4) If the day of a reporting deadline is a weekend or holiday, a reporting entity shall submit the report on the next business day.

(o) ~~(m)~~ A reporting entity shall designate a person who has signature authority to submit the report.

Commented [R9]: This is problematic in the event the receiver is an end user. Reporting entities should not be required to report on individual customers unless they are actually reporting entities.

Commented [R10]: Reporting entities can only ensure the accuracy and completeness of information they have generated themselves. To the extent they must rely on information provided to them by another reporting entity or third party, they cannot ensure the quality of that information.

Commented [R11]: Reporting entities should not be held responsible for another reporting entity's noncompliance.

Commented [R12]: A receiving party would only ever be a reporting entity, an end user, or an out-of-state party. Reporting entities should only be required to provide contact information for other reporting parties as information regarding end users and any out-of-state parties would be confidential business information.

(p) ~~(a)~~ If the Department has reason to believe that a person has not registered or reported as required by this article, ~~has information that a person does not meet the requirements to not register or report based on the requirements set forth in subsection (a) of this section,~~ then the burden of proof shall be on that person to demonstrate otherwise, through documentation such as business records, receipts, invoices, or similar records. At the time that the Department requires a person to provide evidence that it is not required to register or report, the Department shall provide a written description of the information that has caused the Department to believe that the person is required to register and report. Nothing in this requirement is intended to require the Department to identify the name or other identifying information regarding any individual(s) who have complained about the person. Nothing in this section precludes the Department from the following: inspecting a business to verify that it is conducted in a manner that meets the provisions of this subsection or from taking any appropriate enforcement action pursuant to this ~~a~~Article.

Authority cited: Sections, 40502, and 41821.5(c), Public Resources Code, Reference: Sections 41821.5 and 41821.6, Public Resources Code.

Section 18815.4 Reporting Requirements for Haulers.

- (a) A self-hauler shall provide the jurisdiction of origin for all material delivered to each transfer/processor or disposal facility. A self-hauler does not have to report to the Department, unless it is a food waste self-hauler.
- (b) ~~(a)~~ "Food waste self-haulers", as defined in section 18815.2(a)(26) of this article, shall report to the Department the tons of food waste sent ~~for recycling or composting to each person or end user category as follows:~~
- (1) To a reporting entity, report the tons by material type, pursuant to section 18815.9 of this article, sent to each person and their contact information and RDRS number, if applicable.
 - (2) To an end user, report the tons of each material type, pursuant to section 18815.9 of this article, sent to each end user category by region pursuant to section 18815.3(k) of this article.
- (c) ~~(b)~~ A contract hauler shall provide the following information to a receiving reporting entity for all tons delivered, using the reasonable methods in section 18815.9 of this article. A hauler shall provide the information at the time of delivery, unless both the hauler and receiving facility have agreed to periodic reports in lieu of providing information at the time of delivery. In all cases, the hauler shall provide the information to the receiving reporting entity within 30 days of the end of the reporting period.
- (1) For solid waste, or ~~mixed materials containing a significant amount of solid waste, organics, or recyclable material~~ hauled:
 - (A) A hauler shall provide the jurisdiction of origin for all material ~~delivered~~ sent to each broker or transporter, transfer/processor or disposal facility; and
 - (B) If requested by a broker or transporter, transfer/processor or disposal facility, then a hauler shall provide the source sector for all material delivered to each broker or transporter, transfer/processor, or disposal facility, in tons or by percentage using the methods provided in section 18815.9 of this Article.
 - (C) ~~A hauler shall provide jurisdiction of origin and source sector for solid waste delivered to a broker.~~
- (d) ~~(c)~~ A contract hauler who takes material directly from a generator and hauls it to land application or to a person outside of the state shall report to the Department. In its report to the Department, a

Commented [R13]: Nothing in this section addresses material hauled to recycling and composting facilities or operations.

Commented [R14]: A "significant amount" is not defined.

contract hauler shall provide the following information for tons hauled, using the reasonable methods described in section 18815.9 of this Article:

- (1) Directly from a generator to land application or another end user inside or outside the state, the tons of each material type sent to each end user category by region pursuant to section 18815.3(k) of this Article.
- (2) Directly from a generator to a person outside of the state:
 - (A) For solid waste, the total tons by jurisdiction of origin for all material sent to each person for disposal to a disposal facility, and the person's contact information, and an estimate of the overall source sector tons or percentages for waste sent to each person.
 - (B) For organics or recyclable material sent to recycling or composting operations, the tons of each material type sent to each person, and the person's contact information.
 - (C) To end users, the tons of each material sent to each end user category by region pursuant to section 18815.3(k) of this article.
- (3) A hauler shall submit their report to the Department by the following due dates for each reporting period:
 - (A) Reporting period 1 due April 30
 - (B) Reporting period 2 due July 31
 - (C) Reporting period 3 due October 31
 - (D) Reporting period 4 due January 31
- (e) For the purposes of RDRS reporting, the Department shall not require a hauler to submit information on specific collection locations or customers when providing jurisdiction of origin, material type or source sector information to other reporting entities or to the Department as part of a quarterly report.
 - (1) A jurisdiction is not precluded from requiring this information through franchise agreements, contracts, local ordinances, section 41821.5(g) of the Public Resources Code, or other authority it may have.
 - (2) The Department may request this information in lieu of an audit, or as part of an audit.

Authority cited: Sections 40401, 40502, and 41821.5(c), Public Resources Code, Reference: Sections 41821.5 and 41821.6 Public Resources Code.

Section 18815.5 Reporting Requirements for Transfer/Processors.

- (a) In its report to the Department, a transfer/processor shall provide the following information, using the reasonable methods in section 18815.9 of this Article:
 - (1) For all tons accepted:
 - (A) From another transfer/processor or disposal facility, report the tons of material accepted from each facility and the delivering facility's contact information, and RDRS number, if applicable.
 - (B) From haulers, brokers, transporters, recyclers, composters, and disposal facilities collectively all haulers collectively (including those bringing waste from recyclers, composters, and brokers or transporters), report the total aggregated tons accepted.
 - (C) As specified in section 18815.9(b) and section 18815.9(d) of this article, transfer/processors may request periodic reports from haulers, which provide jurisdiction of origin for solid waste and green material potential beneficial reuse, and source sector for the materials they haulers deliver.

Commented [R15]: Reporting entities should not be required to report on individual customers in or out of the state, unless they are also reporting entities, which any out-of-state party is not.

Commented [R16]: Reporting entities should not be required to report on out-of-state customers.

Commented [R17]: AB 901 does not direct transfer stations to report on material received/accepted at the facility, only on material that leaves the facility. The only language regarding reporting by transfer/processors is in Section 41821.5(a) which states, "...solid waste handlers and transfer station operators shall provide information to disposal facility operators on the origin of the solid waste that they deliver to the disposal facility." Under AB 901, only disposal facilities are to report on material they receive.

- (2) For all tons sent for potential recycling or composting, inside or outside of California pursuant to section 18815.9 of this article:
- (A) ~~To a recycling or composting facility or operation not on the same site, or to a broker or transporter, report the tons by material type, pursuant to section 18815.9(a) of this article, sent to each person and their contact information and RDRS number, if applicable.~~
 - (B) ~~To an end user, report the tons of each material type, pursuant to section 18815.9(a) of this article, sent to each end user category by region pursuant to section 18815.34(k) of this article.~~
 - (C) ~~To a broker or transporter:~~
 - (i) ~~In cases where the final destination of the material is known by the reporting transfer/processor, report pursuant to subsections (a)(2)(A) and (a)(2)(B).~~
 - (ii) ~~In cases where the final destination of the material is not known by the reporting transfer/processor, report tons of each material type, pursuant to section 18815.9(a) of this article, sent to each broker or transporter and their contact information and RDRS number, if applicable.~~
 - (D) ~~To a recycling or composting facility or operation on the same site, report pursuant to section 18815.9(h) of this article.~~
- (3) ~~For solid waste, mixed materials, commingled recyclables or residuals all tons sent to a disposal facility, sent to each transfer/processor, broker or transporter, or disposal facility, inside or outside of California:~~
- (A) ~~To each transfer/processor or disposal facility, report the total tons sent to each person, and their contact information and RDRS number, if applicable.~~
 - (B) ~~To a broker or transporter:~~
 - (i) ~~In cases where the final destination of the waste is known by the reporting transfer/processor, report pursuant to subsection (a)(3)(A).~~
 - (ii) ~~In cases where the final destination of the waste is not known by the reporting transfer/processor, report tons of solid waste sent to each broker or transporter and their contact information and RDRS number, if applicable.~~
 - (C) ~~Report the percentage of materials solid waste and green material potential beneficial reuse sent which originated from each sending facility received from each transfer/processor; and the total percentage of materials sent which originated from all haulers collectively.~~
 - (i) ~~The percentage that originated from all haulers shall be further divided into the jurisdictions of origin of the materials solid waste and green material potential beneficial reuse.~~
 - (ii) ~~The percentage that originated from all haulers shall be divided into source sectors, using methods described in section 18815.9(c) of this article. Source sector shall be reported to the department as a facility-wide estimate.~~
- (4) ~~For disaster debris sent for disposal to a disposal facility 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 applicable. ~~the entity has one.~~~~
- (5) ~~For designated waste sent for disposal to a disposal facility 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 applicable. ~~the entity has one.~~~~
- (6) ~~For material sent for potential 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~~

Commented [R18]: Reporting entities should not be required to report on out-of-state customers.

Commented [R19]: Reporting entities should not be required to report on out-of-state customers.

Commented [R20]: Reporting entities should not be required to report on out-of-state customers.

Commented [R21]: Reporting entities should not be required to report on out-of-state customers.

18815.9(a)(3) of this Article, and the facility's contact information and RDRS number, if applicable. Green waste material sent for potential beneficial reuse at a landfill shall be reported in tons by jurisdiction of origin pursuant to subsection (a)(3)(C).

Commented [R22]: Reporting entities should not be required to report on out-of-state customers.

(b) A transfer/processor shall ~~observe~~ report to the Department by the following due dates for each reporting period:

- (1) Reporting period 1 due May 31
- (2) Reporting period 2 due August 31
- (3) Reporting period 3 due November 30
- (4) Reporting period 4 due February 28

(c) ~~With the exception of haulers who fail to provide required information,~~ For the purposes of RDRS reporting, the Department shall not require a transfer/processor to submit information on the identities of individual haulers ~~(except for haulers who fail to provide required information), or end users~~ when providing jurisdiction of origin, ~~material type,~~ or source sector information to the Department as part of its report. The Department shall not require a transfer/processor to submit information on the identities of individual end users when providing material type or region to the Department as part of its report.

Commented [R23]: Reporting entities should not be held responsible for another reporting entity's noncompliance.

- (1) A jurisdiction is not precluded from requiring this information through franchise agreements, contracts, local ordinances, section 41821.5(g) of the Public Resources Code, or other authority it may have.
- (2) The Department may request this information in lieu of an audit or as part of an audit.

Authority cited: Sections 40502, and 41821.5(c), Public Resources Code, Reference: Sections 41821.5 and 41821.6 Public Resources Code.

Section 18815.6 Reporting Requirements for Disposal Facilities.

(a) All active permitted disposal facilities ~~must~~ shall report each quarter to the Department. In its report to the Department, a disposal facility shall provide the following information for all tons disposed, using the reasonable methods in section 18815.9 of this Article:

- (1) ~~For solid waste,~~ all tons received for disposal from a transfer/processor, report the tons of each stream, including solid waste, disaster debris, and designated waste, ~~material~~ disposed from each transfer/processor, and their contact information and RDRS number, if applicable.
- (2) ~~For solid waste~~ all tons received for disposal directly from haulers, brokers, transporters, recyclers, composters, and other disposal facilities collectively (for waste generated by the reporting entity): ~~all haulers collectively (including those bringing waste from recyclers, composters, and brokers or transporters):~~
 - (A) Report the total tons of solid waste disposed from each jurisdiction of origin.
 - (B) Report an estimate of the aggregated tons, or overall percentage, from each source sector, using methods described in section 18815.9(c) of this article.
 - (C) As specified in section 18815.9 of this article, disposal facilities may request periodic reports from haulers, which provide jurisdiction of origin and source sector information for the materials they deliver.
- (3) ~~For direct-hauled~~ disaster debris not commingled with other solid waste, report the total tons disposed ~~from each jurisdiction of origin.~~
- (4) ~~For direct-hauled~~ designated waste not commingled with other solid waste, report the total tons disposed ~~from each jurisdiction of origin.~~

(b) In its report to the Department, a disposal facility shall provide the following information for all tons sent off-site, using the reasonable methods in section 18815.9 of this Article:

- (1) For materials generated on-site, (such as ash), sent to another reporting entity or an end user disposal facility, broker, or transporter inside or outside of California, report the total tons by material type sent to each facility and the facility's contact information and RDRS number, if applicable.
- (2) ~~# For material recovered by the disposal facility and sent for potential recycling or composting, recycling and composting activities on site do not surpass the reporting thresholds set forth in section 18815.3(b)(2), then~~ report the tons sent pursuant to section 18815.9 of this article:
 - (A) ~~For~~ To a recycling or composting facility or operation not on the same site inside or outside of California, by material type, pursuant to section 18815.9(a) of this article, sent to each person and their contact information and RDRS number, if applicable.
 - (B) To an end user, by each end user category by region as defined in section 18815.3(k) of this article, and by material type, pursuant to section 18815.9(a)(2) of this article.
 - (C) To a broker or transporter:
 - (i) In cases where the final destination of the material is known by the reporting disposal facility, report pursuant to subsections (b)(2)(A) and (b)(2)(B).
 - (ii) In cases where the final destination of the material is not known by the reporting disposal facility, report tons of each material type, pursuant to section 18815.9(a) of this article, sent to each broker or transporter and their contact information and RDRS number, if applicable.
 - (D) To a recycling or composting facility or operation on the same site, report pursuant to section 18815.9(h) of this article.
- (3) ~~If production of end products on site does not surpass the reporting thresholds set forth in section 18815.3(b)(2), then report the tons of end products sent to each end user category by region, pursuant to section 18815.3(i) by material type pursuant to section 18815.9(a).~~
- (4) ~~If a disposal facility sorts, recycles, or composts material above the reporting thresholds set forth in section 18815.3(b)(2), then the recycling and composting activities shall be reported pursuant to the Recycling and Composting Operations requirements set forth in section 18815.7 of this Article, under a separate RDRS number.~~
- (5) ~~If a disposal facility receives material that it cannot or chooses not to dispose and sends that material to another person inside or outside of California, then that disposal facility shall report on that material according to the requirements for transfer/processors in section 18815.5 of this article.~~

(c) In its report to the Department, a disposal facility shall provide the following information for all tons accepted for beneficial reuse, using the reasonable methods in section 18815.9 of this Article:

- (1) ~~For waste-derived material accepted for beneficial reuse from a transfer/processor or another disposal facility, report the tons of each material used accepted for use from each transfer/processor or disposal facility, and their contact information and RDRS number, if applicable as follows:~~
 - (A) Report the total tons of each material type accepted for use as ADC.
 - (B) Report the total tons of each material type accepted for use as AIC.
 - (C) Report the total tons of each material type accepted for use in construction, which includes final cover, foundation layer, liner operations layer, leachate and landfill gas collection systems, fill, road base, wet weather operations pads, and access roads.

Commented [R24]: Reporting entities should not be required to report on individual customers in or out of the state, unless they are also reporting entities, which any end user or out-of-state party is not.

Commented [R25]: Reporting entities should not be required to report on out-of-state customers.

- (D) Report the total tons of each material type accepted for use in landscaping and erosion control, which includes soil amendments for erosion control, dust suppression, and landscaping.
- (2) For green waste material accepted for beneficial reuse from haulers, brokers, transporters, recyclers, composters, and disposal facilities: ~~all haulers collectively (including those bringing waste from recyclers, composters, and brokers or transporters):~~
- (A) Report the total tons by jurisdiction of origin of each material type accepted for use as ADC.
- (B) Report the total tons by jurisdiction of origin of each material type accepted for use as AIC.
- (C) Report the total tons by jurisdiction of origin of each material type accepted for use in ~~used~~ ~~for~~ construction, which includes final cover, foundation layer, liner operations layer, leachate and landfill gas collection systems, fill, road base, wet weather operations pads, and access roads.
- (D) Report the total tons by jurisdiction of origin of each material type accepted for use in ~~used~~ ~~for~~ landscaping and erosion control, which includes soil amendments for erosion control, dust suppression, and landscaping.
- (3) For waste-derived material, other than green waste material, accepted for beneficial reuse from haulers, brokers, transporters, recyclers, composters, and disposal facilities (for material generated by the reporting entity): ~~all haulers collectively (including those bringing waste from recyclers, composters, and brokers or transporters):~~
- (A) Report the total tons of each material type accepted for use as ADC.
- (B) Report the total tons of each material type accepted for use as AIC.
- (C) Report the total tons of each material type accepted for use in ~~used for~~ construction, which includes final cover, foundation layer, liner operations layer, leachate and landfill gas collection systems, fill, road base, wet weather operations pads, and access roads.
- (D) Report the total tons of each material type accepted for use in ~~used for~~ landscaping and erosion control, which includes soil amendments for erosion control, dust suppression, and landscaping.
- (4) Disposal facilities shall report beneficial reuse material types as approved by the enforcement agency, which include, but are not limited to:
- (A) Sludge and sludge-derived materials,
- (B) Ash and cement kiln dust materials,
- (C) Contaminated sediment, dredge spoils, foundry sands, energy resource exploration, and production wastes,
- (D) Compost materials,
- (E) Processed construction and demolition wastes and materials,
- (F) Treated auto shredder waste, and
- (G) Other material types approved for beneficial reuse by the enforcement agency.
- (d) A disposal facility shall ~~observe~~ report to the Department by the following due dates for each reporting period:
- (1) Reporting period 1 due June 30
- (2) Reporting period 2 due September 30
- (3) Reporting period 3 due December 31
- (4) Reporting period 4 due March 31
- (e) For the purposes of RDRS reporting, the Department shall not require a disposal facility to submit information on the identities of individual haulers, ~~except though they may do so~~ for haulers who

Commented [R26]: Jurisdiction of origin information can be collected when material is accepted on-site, but may be lost by the time material is actually used for a specific use (ADC, AIC, construction, landscaping and erosion control, etc.)

fail to provide required information), when providing jurisdiction of origin, material type, or source sector information to the Department as part of a quarterly report. The Department shall not require a disposal facility to submit information on the identities of individual end users when providing material type or region to the Department as part of its report.

Commented [R27]: Reporting entities should not be held responsible for another reporting entity's noncompliance.

- (1) A jurisdiction is not precluded from requiring this information through franchise agreements, contracts, local ordinances, section 41821.5(g) of the Public Resources Code, or other authority it may have.
- (2) The Department may request this information in lieu of an audit, or as part of an audit.

Authority cited: Sections 40502, and 41821.5(c), Public Resources Code, Reference: Sections 41821.5 and 41821.6 Public Resources Code.

Section 18815.7 Reporting Requirements for Recycling and Composting Facilities and Operations.

- (a) In its report to the Department, a recycling or composting facility or operation shall provide the following information for all tons handled, using the reasonable methods described in section 18815.9 of this aArticle:
 - (1) For materials sent for disposal or potential 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)(2) of this aArticle, sent to each person and their contact information and RDRS number, if applicable.
 - (2) For materials sent for potential recycling or composting to a recycler, or composter not on the same site, ~~broker, or transporter~~ inside or outside of California, report the 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 applicable.
 - (3) For materials sent for potential recycling or composting on the same site, report pursuant to section 18815.9(h) of this article.
 - (4) For ~~end~~ intermediate products sent to end users inside or outside of California, report the tons of each material type, pursuant to section 18815.9(a) of this aArticle, sent to each end user category by region pursuant to section 18815.3 ~~(h)~~ of this aArticle.
 - (5) For materials sent to a broker or transporter, report:
 - (A) In cases where the final destination of the material is known by the reporting recycling or composting facility or operation, report pursuant to subsections (a)(1), (a)(2), and (a)(3), as applicable.
 - (B) In cases where the final destination of the material is not known by the reporting recycling or composting facility or operation, report tons of each material type, pursuant to section 18815.9(a) of this article, sent to each broker or transporter and their contact information and RDRS number, if applicable.
- (b) A recycling or composting facility or operation is not required to report on material sold for reuse or transferred for reuse.
- (c) A recycler who handles business-to-business post-industrial materials, but also handles materials that do not meet the criteria in section 18815.2(a)(8) of this article, shall:
 - (1) Report as a recycler pursuant to this section for all materials that do not meet the criteria for business-to-business post-industrial recycling, and
 - (2) Not include information or tonnages associated with the business-to-business post-industrial materials recycled as defined in section 18815.2(a)(8) of this article.

Commented [R28]: Reporting entities should not be required to report on out-of-state customers.

Commented [R29]: Reporting entities should not be required to report on out-of-state customers.

- (d) ~~(b)~~ A recycling or composting facility or operation shall ~~observe~~ report to the Department by the following due dates for each reporting period:
- (1) Reporting period 1 due May 31
 - (2) Reporting period 2 due August 31
 - (3) Reporting period 3 due November 30
 - (4) Reporting period 4 due February 28
- (e) ~~(c)~~ For the purposes of RDRS reporting, the Department shall not require a recycling and composting facility or operation to submit information on the identities of individual end users, suppliers, or customers, ~~(with the exception of other reporting entities), when providing material type information to the Department as part of a quarterly report.~~
- (1) A jurisdiction is not precluded from requiring this information through franchise agreements, contracts, local ordinances, section 41821.5(g) of the Public Resources Code, or other authority it may have.
 - (2) The Department may request this information in lieu of an audit, or as part of an audit.

Commented [R30]: This provision should not be limited to recycling and composting facilities or operations. No reporting entity should be required to submit information on the identities of individual end users, suppliers, or customers unless they are other reporting entities for any reason.

Authority cited: Sections 40502, and 41821.5(c), Public Resources Code, Reference: Sections 41821.5 and 41821.6 Public Resources Code.

Section 18815.8 Reporting Requirements for Brokers and Transporters ~~Transporters and Brokers.~~

- ~~(a) A person who does not take legal ownership of materials and does not decide the destination for the material, but merely facilitates a sale or transfer, is not required to report the transaction to the Department.~~
- (a) ~~(b)~~ In its report to the Department, a ~~transporter or broker~~ broker or transporter shall provide the following information for all tons of material for which they determined the destination ~~they legally possess~~, using the reasonable methods described in section 18815.9 of this ~~a~~Article:
- (1) For materials sent for disposal or potential beneficial reuse to a transfer/processor, ~~or 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 ~~a~~Article, sent to each person or facility and their contact information and RDRS number, if applicable.
 - (2) For materials sent for recycling or composting to recycler, ~~or composter, broker, or transporter~~ inside or outside of California, report the 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 applicable.
 - (3) For ~~end~~ intermediate products sent to end users inside or outside of California, report the tons of each material type, pursuant to section 18815.9(a) of this ~~a~~Article, sent to each end user category by region pursuant to section 18815.3 ~~(k)~~ of this ~~a~~Article.
 - (4) For materials sent to another broker or transporter:
 - (A) In cases where the final destination of the material is known by the reporting broker or transporter, report pursuant to subsections (a)(1), (a)(2), and (a)(3), as applicable.
 - (B) In cases where the final destination of the material is not known by the reporting broker or transporter, report tons of each material type, pursuant to section 18815.9(a) of this article, sent to each receiving broker or transporter and their contact information and RDRS number, if applicable.
- (b) ~~(c)~~ A ~~transporter or broker~~ broker or transporter shall ~~observe~~ report to the Department by the following due dates for each reporting period:
- (1) Reporting period 1 due May 31

Commented [R31]: Reporting entities should not be required to report on out-of-state customers.

Commented [R32]: Reporting entities should not be required to report on out-of-state customers.

- (2) Reporting period 2 due August 31
- (3) Reporting period 3 due November 30
- (4) Reporting period 4 due February 28
- (c) ~~(d)~~ For the purposes of RDRS reporting, with the exception of other reporting entities ~~or out of state entities~~, the Department shall not require a ~~transporter or broker~~ ~~broker or transporter~~ to submit information on the identities of customers or destinations ~~(with the exception of other reporting entities), or end users~~ when providing jurisdiction of origin, material type, or source sector information to the Department as part of a quarterly report.
 - (1) A jurisdiction is not precluded from requiring this information through franchise agreements, contracts, local ordinances, section 41821.5(g) of the Public Resources Code, or other authority it may have.
 - (2) The Department may request this information in lieu of an audit, or as part of an audit.

Commented [R33]: Reporting entities should not be required to report on individual customers in or out of the state, unless they are also reporting entities. Any end user or out-of-state party is not a reporting entity.

Authority cited: Sections 40502, and 41821.5(c), Public Resources Code, Reference: Sections 41821.5 and 41821.6 Public Resources Code.

Section 18815.9 Reasonable Methods.

- (a) When required by this ~~A~~ article, a reporting entity shall use the following methods to report material types:
 - (1) With the exception of recycling and composting facilities and operations, ~~a~~ reporting entity shall report all material ~~sent for disposal~~, including residuals, ~~sent to a disposal facility as solid waste~~. A reporting entity is not required to further sort or characterize this material.
 - (2) A reporting entity shall report ~~recyclable materials, organics, and end products~~ at the level of segregation ~~of the material~~ at the time ~~it~~ ~~was~~ were sold or transferred, as follows:
 - (A) A reporting entity shall report a homogeneous material or individual grade of material as that individual material type, for example, HDPE, aluminum, concrete, or mulch.
 - (B) A reporting entity shall report combinations of various materials within a single material category based on industry standards, for example, ferrous metals, mixed glass, mixed paper, or rigid plastics. A reporting entity is not required to further sort or characterize this material.
 - (C) A reporting entity shall report mixed materials from several categories as mixed materials or commingled recyclables. A reporting entity is not required to further sort or characterize this material.
 - (3) A reporting entity shall:
 - (A) Report all ADC and AIC by the following material types: (i) Ash and cement kiln dust materials,
 - (ii) Construction and demolition wastes and materials,
 - (iii) Compost materials,
 - (iv) Green material,
 - (v) Contaminated sediment, dredge spoils, foundry sands, energy resource exploration, and production wastes,
 - (vi) Processed construction and demolition wastes and materials,
 - (vii) Shredded tires
 - (viii) Sludge and sludge-derived materials,
 - (ix) Treated automobile shredder waste, and

- (x) Other material types approved for beneficial reuse by the enforcement agency. The reporting entity shall specify the approved material type in its report to the Department.
 - (B) Report all materials used for construction, landscaping, and erosion control on site by material type, pursuant to subsection (a)(2).
 - (C) Not include tons of clean or contaminated soil used as cover material or for other uses at a landfill.
- (b) When required by this Article, a reporting entity shall use the following methods to determine jurisdiction of origin for material sent to disposal:
- (1) A hauler shall provide the jurisdiction of origin information at the time of delivery, unless both the hauler and receiving facility have agreed to periodic reports in lieu of providing information at the time of delivery. The hauler shall provide the periodic report to the receiving reporting entity within 30 days of the end of the reporting period. The hauler shall use any of the following sources of information to estimate the percentage of solid waste from each jurisdiction:
 - (A) Actual tons collected from each jurisdiction.
 - (B) Total volume of bins emptied from each jurisdiction.
 - (C) Billing records for customers in each jurisdiction.
 - (D) Company dispatcher records of hauling routes and generator locations.
 - (2) A transfer/processor or disposal facility:
 - (A) With a gatehouse attendant present during business hours shall ask all haulers of incoming loads persons bringing materials for the jurisdiction of origin, unless they receive that information via periodic reports from haulers.
 - (B) Without a gatehouse attendant present during business hours may use billing or property records to determine jurisdiction of origin for that material. If billing or property records are not available or not representative of material disposed, then the reporting entity shall assign the solid waste to the jurisdiction where the reporting entity is located.
 - (C) Without a gatehouse attendant present during business hours That does not have sufficient staff to ask about each incoming load, and is located in a rural city or county, as defined in sections 40183 and 40184 of the Public Resources Code, may conduct origin surveys no less frequently than once per reporting period and for at least one week in duration. During the survey weeks, the reporting entity shall survey every load of solid waste to determine jurisdiction of origin. Jurisdiction percentages obtained during survey week shall be applied to tonnages for the entire reporting period.
 - (3) A transfer/processor shall determine jurisdiction of origin for material sent for disposal solid waste and green material potential beneficial reuse sent to a disposal facility based on allocations of inbound materials. A transfer/processor may adjust the allocations of inbound percentages from facilities or haulers, based on facility-specific practices such as:
 - (A) Tracking and sorting individual loads,
 - (B) Segregating the flows from different jurisdictions, or
 - (C) Gathering other relevant information on the composition and recoverability of the materials from each facility or jurisdiction.
- (c) When required by this Article, a reporting entity shall estimate the overall tonnages or percentages from each source sector for materials sent for disposal, using any of the following methods:
- (1) Assigning source sector based on truck type:

- (A) Small vehicles, such as ~~automobiles, pickups and small trailers~~, and flat beds as "selfhaled."
- (B) Side loaders as "contract-hauled single-family residential."
- (C) Front loaders and rear loaders as "contract-hauled commercial/multi-family."
- (2) Assigning sources sector by using billing records:
 - (A) Cash accounts as "self-hauled."
 - (B) Accounts with jurisdictions or their haulers for residential routes as "contract-hauled singlefamily residential."
 - (C) Accounts with jurisdictions or their haulers for commercial routes as "contract-hauled commercial/multi-family."
- (3) Using periodic reports from contract haulers on the source sectors of their routes. A transfer/processor or disposal facility may request but not require periodic reports from a hauler.
- (4) Asking all incoming loads if they are bringing waste from residential routes, commercial routes or as a self-hauler, including disaster debris and designated waste.
- (d) If asked for information on source sector, then a hauler shall provide the information at the time of delivery, unless both the hauler and receiving facility have agreed to periodic reports in lieu of providing information at the time of delivery. In these cases, a hauler shall provide the periodic report to the receiving reporting entity within 30 days of the end of the reporting period. When providing source sector information, a hauler shall use any of the following methods to estimate the overall tonnages or percentages of disposal from each source sector sent to the receiving facility:
 - (1) Assigning source sector by truck type as follows:
 - (A) Side loaders as "contract-hauled single-family residential."
 - (B) Front loaders and rear loaders as "contract-hauled commercial/multi-family."
 - (2) Assigning source sector by using billing records as follows:
 - (A) Accounts with jurisdictions for residential routes as "contract-hauled single-family residential."
 - (B) Accounts with jurisdictions for commercial routes as "contract-hauled commercial/multifamily."
 - (C) Accounts with businesses and apartments as "contract-hauled commercial/multi-family."
 - (3) Assigning source sector by using dispatcher records of hauling routes, total bin volumes from each source sector, or total weights from each source sector.
- (e) If a reporting entity is unable to estimate source sector using one of the methods in this section, then the reporting entity shall submit to the Department a request to use an alternative method. The Department shall review proposals for alternative methods and either approve or disapprove of the method within 90 days.
- (f) If an approved method in this section is used, then inaccuracies or errors in source sector reporting shall not be subject to penalties pursuant to section 18815.10 of this ~~A~~article.
- (g) When required by this ~~A~~article, a reporting entity shall use the following methods to report tonnages:
 - (1) A reporting entity that uses ~~scales~~ certified scales to measure a transaction by weight shall use that measurement, and not an estimate based on volume, when compiling and submitting its report to the Department.
 - (2) A reporting entity that does not use certified scales, but uses non-certified scales to measure a transaction by weight shall use that measurement, and not an estimate based on volume, when compiling and submitting its report to the Department.

- (3) ~~(2)~~ A reporting entity shall use scales to measure tons, unless they meet one of the following exceptions:
- (A) If a transfer/processor or disposal facility records self-haul loads by volume, then it may estimate disposal tonnages using volume to weight conversion factors.
 - (B) If a transfer/processor weighs total inbound contract-hauled tons and the total tons sent to disposal, then it may use the difference in weight to estimate self-haul sector.
 - (C) If a transfer/processor accepts an annual average of less than 100 tons of material per operating day, or less than 200 tons per operating day if located in a rural city or county, as set forth in sections 40183 and 40184 of the Public Resources Code, then it may use volume to weight conversion factors, or report tonnages weighed at the receiving facility.
 - (D) If a recycler ~~(including CDI recyclers)~~ or composter sells or transfers materials based on volume, then ~~they~~ it may use material-specific volume to weight conversion factors to estimate tons.
 - (E) ~~If a reporting entity creates end products which are liquids or gases, then they shall use material specific conversion factors to estimate tons.~~
 - (E) When required by subsection (h) of this section, a reporting entity who sends material to another reporting entity located on the same site using a conveyance system without scales shall estimate and report tonnages transferred by using volume to weight conversion factors, flow rates, belt scales, or another method approved by the Department.
- (4) ~~(3)~~ A disposal facility may use volume to weight conversion factors under the following conditions:
- (A) The disposal facility does not have access to scales and does not receive more than 4,000 tons of solid waste per year from contract-haulers, not including disaster ~~waste~~ debris.
 - (B) The disposal facility is located in an area prone to inclement weather for three or more months of the year, which would not allow for the adequate operation and maintenance of scales.
 - (C) The disposal facility is so remote that the availability of an electric utility to power the scales is prohibitive.
- (5) ~~(4)~~ A reporting entity shall indicate in their report if conversion factors were used to estimate tons, retain documentation on the basis and usage of any volume to weight conversion factors, and update the factors every three (3) years. The Department may require a reporting entity to revise the factors and reports if the Department determines that volumetric conversion factors are not satisfactory.
- (h) Tonnages of material transferred within or between a reporting entity or entities located on the same site shall be recorded and reported as described below. Refer to subsection (g)(2) of this article for situations in which volume-to-weight conversion factors are allowed to estimate material tonnages.
- (1) Recycling and composting facilities and operations reporting with the same RDRS number and located on the same site are not required to report the tonnages of material transferred between each facility or operation to the Department. The reporting entity responsible for the off-site sale or transfer of the aggregated material shall report the appropriate tonnages to the Department.
 - (2) A reporting entity who sends separated recyclables or separated organics to another reporting entity with a different RDRS number located at the same site is not required to report the tonnages of separated recyclable or separated organic material transferred between each

facility or operation to the Department. The reporting entity responsible for the off-site sale or transfer of the aggregated material shall report the appropriate tonnages to the Department.

- (3) A reporting entity who sends mixed recyclables or mixed organics to another reporting entity with a different RDRS number located at the same site for additional processing shall record tonnages transferred. The reporting entity shall report this information on on-site material transfers to the Department.
- (4) A reporting entity who sends solid waste to a transfer/processor or disposal facility located at the same site shall record tonnages transferred. The reporting entity shall report this information on on-site material transfers to the Department.
- (5) A reporting entity who sends material for potential beneficial reuse at a disposal facility located at the same site shall record tonnages transferred. The reporting entity shall report this information on on-site material transfers to the Department.
- (i) ~~(h)~~ In its report to the Department, a reporting entity shall identify which methods set forth in this section they used in the preparation of the report.

Authority cited: Sections 40502, and 41821.5(c), Public Resources Code, Reference: Sections 41821.5, 41821.6, 41821.7, 41821.8, 41821.9, Public Resources Code.

Section 18815.10 Procedure for Imposing Civil Liabilities.

- (a) The Department shall impose administrative civil penalties authorized by sections 41821.5 through 41821.8 of the Public Resources Code in accordance with the procedures set forth in this section.
- (b) Prior to initiating any enforcement proceeding, the Department shall notify a reporting entity in writing of any ~~potential~~ alleged failure to comply with this Article and its implementing statute. The notification will include all of the following:
 - (1) A ~~reasonably detailed~~ description and dates of the ~~potential~~ alleged compliance failures.
 - (2) A compliance deadline, ~~not less than 30 days~~, that allows for reasonable time to remedy.
 - (3) Any potential penalties that may be assessed ~~for each of the alleged compliance failures if the alleged compliance failures are not corrected prior to if the compliance deadline is not met.~~
 - (4) If the alleged violation or compliance failure is corrected by the deadline, then no further enforcement will be pursued by the Department ~~and no penalties will be assessed.~~
 - (5) If there are extenuating circumstances, then the Department can extend the compliance deadline.
- ~~(5)(6)~~ If the reporting entity fails to correct a noticed violation before the compliance deadline stated in the notice of violation, then the Department may issue an Administrative Accusation to the reporting entity with respect to the uncorrected violation. The actual penalty amount to be sought in the Administrative Accusation for an uncorrected violation may not exceed the potential penalty amount for that violation stated in the notice of violation.
- (c) Civil penalties may be imposed as set forth in Penalty Table I as follows:
 - (1) The number of violations shall be multiplied by the number of days the ~~business reporting entity was in violation~~ violation occurred, if applicable. The number of days the violation occurred will begin one day after the compliance deadline the Department issued in its written notification of an ~~potential~~ alleged failure to comply to the reporting entity. If the infraction is not corrected ~~per~~ pursuant to subsection (b), then the following table applies:

Commented [R34]: Reporting entities need sufficient time to investigate noticed violations (which may be inadvertent or incorrect) and prepare any required data.

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Penalty Table I. All fines are per day the person is in violation.

<u>Authority</u>	<u>Description of Violation</u>	<u>1st Offense Violation</u>	<u>2nd Offense Violation</u>	<u>3rd and subsequent Offense Violation (s)</u>
<u>Public Resources Code 41821.5(d)</u>	<u>Any person who fails to submit information on time as required by this Article.</u>	<u>\$500</u>	<u>\$1,000</u>	<u>\$5,000</u>
<u>Public Resources Code 41821.5(d)</u>	<u>Any person who refuses to submit information required by this Article.</u>	<u>\$1,000 – \$5,000</u>	<u>\$1,000 - \$5,000</u>	<u>\$5,000</u>
<u>Public Resources Code 41821.5(e)</u>	<u>Any person who knowingly or willfully files a false report or any person who alters, cancels, or obliterates entries in the records for the purpose of falsifying the records as required by this Article.</u>	<u>\$500 - \$10,000</u>	<u>\$2,500 - \$10,000</u>	<u>\$5,000- \$10,000</u>
<u>Public Resources Code 41821.5(e)</u>	<u>Any person who refuses to allow the Department or any of its representatives to inspect or examine records as required by this Article.</u>	<u>\$500- \$2,500</u>	<u>\$2,500- \$5,000</u>	<u>\$5,000</u>
<u>Public Resources Code 41821.5(e)</u>	<u>Any person who fails to keep any records for inspection as required by this Article.</u>	<u>\$500</u>	<u>\$500 - \$2500</u>	<u>\$1,000 - \$5,000</u>

(d) Once a potential penalty range from Penalty Table I is determined, the Department shall take the following factors into consideration in determining the actual total penalty amount to be requested in an Administrative Accusation:

- (1) Whether the violation(s) were intentional.
- (2) Whether the violation(s) demonstrate a chronic pattern of non-compliance with the regulations set forth in this Article.
- (3) Whether the violation(s) were due to circumstances beyond the reasonable control of the person or were unavoidable under the circumstances.

- (4) Whether the person acted in good faith to comply, including correcting the violation(s) in a timely manner.
- (5) Whether the violation(s) were voluntarily and promptly reported to appropriate authorities prior to the commencement of an investigation by the enforcement agency.
- (6) The circumstances, extent, and gravity of any violation(s).
- (e) The Administrative Accusation may be served on the respondent by the following means:
- (1) Personal service.
 - (2) Substitute service by using the same service procedures as described in section 415.20 of the Code of Civil Procedure.
 - (3) Certified Mail: For respondents who are registered with the Department's electronic RDRS system, the mailing address(es) or addresses provided at the time of registration will be used. Proof of service of the Administrative Accusation shall be the certified mail receipts or registered mail receipts proving the accusation and accompanying materials were sent to respondent by certified mail or registered mail. For other respondents that have not provided addresses to the Department, certified mail or registered mail pursuant to the procedures indicated in the Administrative Procedure Act at section 11505(c) of the Government Code applies.
- (f) In any case in which it is determined that more than one reporting entity is responsible and liable for a violation, each reporting entity may be held jointly and severally liable for an administrative civil penalty.
- (g) Reports regarding jurisdiction of origin shall be based on the information provided to a reporting entity at the time the report is due. The Department shall not hold reporting entities liable for incomplete or inaccurate reports regarding jurisdiction of origin information provided by a hauler or other third party, if the reporting entity identifies the hauler that failed to provide data or provided incorrect data, as required by section 18815.3(f) of this Article. If a reporting entity is aware that a third party has failed to provide information or has provided incorrect information, then the reporting entity shall may identify the third party and the alleged error or omission, as required by section 18815.3(p) of this article.

Commented [R35]: What is the procedure after the Administrative Accusation is received by the reporting entity? AB 901 Section 41821.7(a) requires a hearing within 60 days after a party has been served.

Commented [R36]: No reporting entity should be liable for violations committed by another. Since that is what joint and several liability is, this provision should be deleted. We also do not understand the concern this language is intended to address. As far as we are aware, the Department has not articulated any reason why it thinks this language is necessary.

Commented [R37]: Reporting entities should not be held responsible for another reporting entity's noncompliance.

Authority cited: Sections 40502, and 41821.5(c), Public Resources Code, Reference: Sections 41821.5, 41821.6, 41821.7, 41821.8, 41821.9, Public Resources Code.

Section 18815.11 Record Retention Requirements for a Reporting Entity.

- (a) A reporting entity shall retain a copy of all reports and supporting records that were used in creating those reports at its place of business for five (5) years.
- (b) As applicable to your type of reporting entity, records to be retained shall include, but are not limited to:
 - (1) The specific generator locations of a load of solid waste to verify the jurisdiction of origin for disposed waste.
 - (2) Bills of lading, receipts, monthly billing statements to any person transferring material, and contact information for those entities.
 - (3) Daily log entries prepared by the reporting entity detailing the acceptance, transport, or delivery of material, the associated amounts, sources, material types, jurisdictions of origin, and the associated dates.

(4)

Weight tags for individual haulers, transfer or other loads that identify the hauler, vehicle, vehicle type, quantity and unit of measure, date, waste type, and jurisdiction of origin of material delivered, transported, or received.

(5) All base data, methods and calculations used to derive information in a report.

(c) A reporting entity shall maintain the documentation described in this section in a usable format, either electronically or on paper.

Authority cited: Sections 40502, and 41821.5(c), Public Resources Code, Reference: Sections 41821.5, 41821.6, 41821.7, 41821.8, 41821.9, Public Resources Code.

Section 18815.12 Confidentiality of Reports and Records and Record Review Requirements for a Reporting Entity.

(a) A reporting entity shall provide access to the records required by this Article to any authorized representative of the Department upon request.

(b) If the Department requests copies of specific records either prior to, in lieu of, or after an inspection, then a reporting entity shall provide the copies within ten business days, unless additional time is necessary to search for, collect, and examine records to respond to the request. In no case shall the copies be delayed more than an additional 14 days, unless agreed to by the Department.

(c) A reporting entity shall provide records to the Department electronically, and in a format that will allow effective review, such as searchable portable document format (PDF), spreadsheet, or other searchable format.

(d) Pursuant to section 41821.5(g)(7) of the Public Resources Code, a reporting entity may redact the records subject to inspection or copying by the Department before inspection or submittal, to exclude confidential pricing information contained in the records, such as contract terms and conditions, including information on pricing, credit terms, volume discounts, and other proprietary business terms.

(e) Pursuant to section 41821.5(g)(1) of the Public Resources Code, the records maintained by a reporting entity to support a report shall be confidential and shall not be subject to disclosure by the Department under the California Public Records Act [Chapter 3.5 (commencing with section 6250) of Division 7 of Title 1 of the Government Code].

(f) Pursuant to section 41821.5(i) of the Public Resources Code, a reporting entity may designate information as trade secret and request that the records provided to the Department in accordance with this section ~~may~~ be exempt from disclosure. The Department will review the request as provided in Public Resources Code section 40062 and implementing regulations.

(g) For purposes of this Article, whether retained by a reporting entity or submitted to the Department as part of a report required by this Article or as part of an audit or in lieu of an audit, the following types of records shall be deemed to be confidential and not subject to disclosure, whether or not the record is identified as such by the person furnishing the information to the Department, without the need to follow the procedure set forth in section 17046(c):

(1) Weight tickets,

(2) Customer lists,

(3) Pricing or similar financial data, or

(4)

Any other information, from which the identity of any account, customer, vendor, buyer, supplier, end user, or other source or transferee of recyclable material may be reasonably ascertained, such as name, address, or other identifying information.

- (h) Pursuant to section 41821.6 of the Public Resources Code, in order to ensure that records required pursuant to this Article are accurate and properly maintained, in addition to inspecting all relevant records, the Department may conduct audits, perform site inspections, observe facility operations, and otherwise investigate the recordkeeping and reporting of persons subject to the requirements of this Article. Any records, reports, notes, studies, drawings, schematics, photographs, or trade secrets, as defined in section 3426.1 of the Civil Code, obtained, produced, or created by the Department in connection with or arising from such audits, inspections, or observations are confidential and shall not be subject to disclosure under the California Public Records Act [Chapter 3.5 (commencing with section 6250) of Division 7 of Title 1 of the Government Code]. They also shall also be deemed confidential and not subject to disclosure according to subsection (g).
- (i) Government entity requests for inspections or records shall be subject to the provisions of Public Resources Code section 41821.5(g) and shall not be subject to the Department's compliance procedures outlined in 18815.10, 18815.11 and 18815.12 of this Article.

Authority cited: Sections 40502, and 41821.5(c), Public Resources Code, Reference: Sections 41821.5, 41821.6, 41821.7, 41821.8, 41821.9, Public Resources Code.

Section 18815.13 Complaints Regarding Non-Compliance.

- (a) A reporting entity shall inform the Department ~~of specific allegations of non-compliance by~~ another reporting entity ~~who~~ fails to provide it with the information required by this Article. The reporting entity shall provide the relevant and specific details for each occurrence reported.
- (a) A reporting entity ~~shall~~ may inform the Department if it has evidence suggesting the information provided to it by another reporting entity, as required by this article, is inaccurate. The reporting entity shall provide the relevant and specific details for each occurrence reported.
- (b) Affected or involved parties who are not reporting entities, such as jurisdictions, may report specific allegations of non-compliance by a reporting entity. The party reporting the alleged non-compliance shall identify the reporting entity and the facts upon which ~~the~~ their allegation is based ~~upon~~ so the Department may investigate appropriately.

Authority cited: Sections 40502, and 41821.5(c), Public Resources Code, Reference: Sections 41821.5, 41821.6, 41821.7, 41821.8, 41821.9, Public Resources Code.

Commented [R38]: A reporting entity should only be required to report suspected noncompliance if another reporting entity fails to provide the first reporting entity with information required under these regulations. Any other reporting of noncompliance should be voluntary.

From: Leonard Lang
To: AB 901 Recycling and Diversion Reporting@CalRecycle
Subject: Comments AB 901 Renotice
Date: Thursday, May 31, 2018 11:53:30 PM
Attachments: [FINAL AB 901 Comments Re Ntc.docx](#)

Stephen Sander

CalRecycle

The attached comments are being submitted in response to the renotice. Please note that the original comments are also resubmitted since many of them were ignored in the renotice.

Respectfully,

Leonard Lang

Upper Room Consulting, Inc.
10481 Christopher St.
Cypress, CA 90630

714-321-6607 Cell

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lang@recyclingandregulation.com

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FINAL

AB 901 Rulemaking - Renotice

Steven Sander CalRecycle

EMAIL: AB901.Reporting@CalRecycle.ca.gov

The California Waste Management Act was created and directed local governments to focus on diverting waste from landfills and possessed the authority to require reporting on those efforts to achieve an eventual goal of 50% diversion. One of the primary results of AB 901 was to direct statistics quantifying diversion efforts from local governments and report them to the state. The presumption would be that if you don't report to the county now, the amendment had no effect. Instead, the regulations as proposed would significantly expand CalRecycle's authority over recyclers that was not intended.

AB 901 added or amended PRC Sections 41821.5, 41821.6, 41821.7 and 41821.8.

Statutes covering the treatment of recyclers is covered by PRC section 40180. Till now, recyclers have been excluded from reporting since the purpose of the Act was to measure diversion from landfills. That could be done and measured on a per capita basis. But the appearance of the proposed regulations indicate a significant expansion to include those not required to report in the past. The statutory changes did not change that. Regulations could have been drafted that those formerly reporting to local agencies now report to the state.

Based upon proposed regulations, it's clear that the department is moving into a whole new area in which it lacks experience. It's taking a shotgun approach in identifying reporting entities. Nowhere in the ISOR do they present evidence that this helter-skelter collection of data will not be subject to error while putting the regulated through more work in the process.

CalRecycle admits to a lack of organization and the statute and it appears to have caused confusion. Thus the expansion of reporting. One telltale sign of this expansion is to note the definitions that were deleted and then reinstated and expanded in the proposal.

The Department may want to seek clarifying amendments in statute prior to proceeding. In the beginning of the Act, 1990, cities and counties rushed to obtain recycling statistics for their reporting until they were redirected to focus on diversion and ignore recycling because it had not been a part of the waste stream and therefore subject to diversion by the Act.

At the heart of the problem is that staff believes that taking materials of different types and turning them into a homogeneous mix for a different use such as composting, burning or landfill cover is recycling. Recycling is when elements such as plastics, fibers, metals and glass are reused for the same purpose, i.e. paper, plastic parts and packaging, metal parts and glass bottles. They are not subject to conversion into other uses nor can they return to

their original form. You cannot form or create a new plant or tree from green waste or compost.

Response to Renoticed Regulations

Based upon review of the renoticed regulations some of the changes appear to be major changes thus requiring a 45 day renotice time period. The addition and modification of specific definitions require more time to determine the effect of those changes.

Section 18815.1 (e) (4) Recycling and composting facilities lacks clarity and specific definition.

Section 18815.2 in general has a number of changes to definitions which require thorough analysis not provided by a 15 day renotice.

(8)(A)(i) "generator generates" this redundancy lacks clarity. Any time regulations lack clarity permits the department to presume interpretations not authorized and create underground regulation.

(8) (B) (iv) statute does not provide authority to regulate scavengers.

(16) strike the word "collect" for clarity and accuracy.

(19) the original proposal contain the definition "End Product". In a procedural error this section was not identified as being removed and thus ignored. This indicates a lack of quality control. This must be corrected to allow for proper analysis by the regulated prior to adoption.

(23)(C) The term "Material consumers" is undefined and therefore lacks clarity.

(36) the definition "Material" is too simplistic and fails to provide clarity when referring to "Mixed materials"

The following is resubmitted as many of the original comments were ignored.

ORIGINAL RULEMAKING RESPONSE

Section 17365-17389

If we accept CalRecycle's position that recyclers be required to report, then it should have been included within the sections above as a reporting entity. It is not found.

Sec. 17414-Record Keeping Requirements. "Each operator"

(H) As written, if it were to apply to recyclers it would subject to their records to inspection by the LEA which has no jurisdiction over recycler's records.

Sec. 18794.1 Recyclers do not participate in local agency waste management plans. Note that they are not identified as a part of the diagram for waste management and reporting.

Reporting requirements that are implied at recyclers begin with Article 9.25 recycling and disposal reporting system.

Sec. 18815.1

(e) The word reasonable is unproven, judgmental, potentially inflammatory and should be removed for the purposes of clarity.

(4) This section lacks clarity. If, in referring to “Recyclers” it means only those entities which were required to report in the past and not an expansion into those recyclers who do not report we would agree. If we are to assume that the Department does intend to incorporate these businesses into reporting, then they should be separate from composting since they are completely distinct and separate functions. First we challenge authority and second we challenge clarity. Since recyclers have not reported in the past, there is no necessity.

Section 18815.2 Definitions

(5) **Broker (J)** The term broker is being included as a reporting entity. A Broker should not be a reporting entity because they purchase things from reporting entities subjecting the resulting reports to be erroneous and inflated due to duplication. Does the department believe that it has the authority to require reporting by a broker when the material is purchased from a reporting entity? It’s not clear that they have the authority, and for what purpose? Erroneous results? Broker should not be included as reporting entities.

(9) Compost-this definition makes a clear and distinguishable difference between recyclables and waste diversion. The processes are distinctly different. Confusion in the definition violates the mandate for clarity. It’s the reason why regulations for recyclables should be separate from compost.

(15) Designated waste is defined by using a reference to different code. For clarity, use that definition instead of referencing.

(19) End Product is a waste material. A distinction must be made between recyclables and waste material for clarity. Recyclables may substitute for virgin material as scrap furnish but waste does not. Any use of the term recyclable must be in concert with PRC 40052.

Metal ingots are not used for fuel. It’s reference should be removed for clarity, it’s not fuel.

(20) **End User**-This section lacks clarity since it attempts to combine too many different classifications under one definition. As it pertains to recycling, fuel consumption is not recycling nor is land application as it pertains to supplying salable scrap commodities to an end user such as a paper mill, a smelter, a beneficiator or a plastics reprocessor.

Commented [L1]: (23) still combines too many functions

(C) “Material consumers” seem in conflict with end user. It also incorporates another undefined term, “material-derived product or chemical”. This fails to meet the standard of clarity. Crushed glass is a product of beneficiation and has no relationship to compost or fertilizers further demonstrating the need to separate compost and salable scrap commodities referred to as recyclables.

(26) Glass is defined in far too confusing terms. Use a standard that is currently established by a credible organization, the Institute of Recycling Industries (ISRI) definition.

(28) Hauler-the definition is confusing and refers to persons who may deliver material from a generator to a reporting entity, and user or a destination outside the state. The purpose of this definition lacks clarity and also necessity. If material is delivered to or from a reporting entity, reporting by a hauler could double and triple count the same material giving and invalid result. CalRecycle must show how they will prevent this before impose this burden on recyclers.

The deleted definition of hauler focused on a transporter of waste and had no reference to recyclables.

(29) Jurisdiction of Origin-Since there is no reason for recyclers to capture and report this information the intent must be waste. It imposes a significant burden on recyclers who have no need for this information to run their business. Adding this unnecessary burden ensures that it will not be done well. Any time this occurs it will subject the recycler to enforcement violations unnecessarily. The department lacks authority and there is no need for recyclers to incorporate this into their computer systems and forms to satisfy unauthorized regulations.

(31) Material-the word “therefrom” is rarely used and its definition confusing. A simpler and clearer definition is required for clarity.

(34) Paper-Should be defined in terms of fiber derived from wood formed into writing paper to packaging and convenience products or use ISRI’s definition.

(37) Plastic-this definition is confusing and verbose and needs to be simplified to obtain clarity. Use ISRI

(38) Recyclable material-We agree that recyclable material should be defined but a better definition might be found within ISRI specifications. This would be required for clarity and consistency in describing commodities that are traded worldwide.

(39) Recycle or Recycling-has the same meaning as PRC 40180. For clarity that’s what should be used.

(D) White goods are considered and should only be included in the metals category. It should be removed from this section for clarity. Additionally the inclusion of “(not resale or reuse)” makes no sense especially in the case of white goods which are sold for recycling.

(41) Recycling facility or operation-This definition lacks clarity because it attempts to define too many different types of operations into this definition. It references CCR sec 17402.5 (d). It says in part: A recycling center shall not be subject to the requirements of Articles 6.0, 6.1, 6.2, 6.3 and 6.35 of this Chapter. It also states that materials received at a buyback center or drop-off center shall not be included in calculating residual. What is the justification to force the reporting of something that’s intended to be excluded? That constitutes excessive burden. Because the section also includes reference to construction debris, it’s clear that the intent of this law is to track diverted waste and not count recycling. In summary this section is challenge on burden, clarity and authority.

(43) Reporting Facility- For clarity change the description to “Waste Recycling and composting facilities and operations” to ensure that recyclers of commodities are excluded.

(47) Resale for reuse-Industry terminology is "Reusable". They are not a part of the waste stream nor reporting requirements since they are not considered a part of diversion. There is no need for this definition and it should be removed.

(48) Self hauler-We see no need for this unclear definition.

(55) Transfer/processor definition. This is very confusing since the definition is used to define itself. There are references to other sections of regulation for definition but that's not statutory authority. Statute prompts regulation not regulation prompting regulation. The section should be removed because it lacks authority, clarity and necessity.

(57) Transporter. This appears to be a new definition and it seems to be suffering from over think. A person who takes legal ownership is a buyer or a purchaser or a customer who may transport. For clarity this section should be stricken or a more common term used, possibly trucker.

(60) White goods-This is an accurate description and proves the point as to why the reference to it should be excluded from Sec (39) (D) above.

Section 18815.3 Registration, Reporting and Exemptions. (Who doesn't report and what they report)

Who doesn't report:

a) This section should be amended to include buyback recycling centers/ scrap yards etc. as referenced in CCR Sec 17402.5 (d). This would clarify that they are to be excluded by this sections negative declaration.

It also should include reference to those entities which reported to counties in the past to now report to the state for clarity.

The end user does not report as thrift stores don't report, but the next section fails to identify who reports.

What is reported:

(b) (2) The terms "recycles, recyclables and the reference to recyclable material" in as being used for combustion distorts the definition of recycling and recyclables which are reusable commodities traded on worldwide markets. Waste is not nor is transformation and combustion. For clarity the Department must clarify its thinking before this adoption.

Exclude recyclers who purchase and sell recyclable material.

(E) Metal should also note the inclusion of white goods for clarity.

(c) "Regardless of ownership" insinuates that separate owners can and should know each other's business. How can that be clear, authorized or needed? It's not. Multiple activities needs to be specific.

(2) "Recycling facilities" should be excluded for accuracy, clarity, necessity and authority.

(i) The section refers to transfers but transfers are not defined. Only Transfer/processor is defined. That leaves the term confusing. It might be rectified by simply using the industry term “ships”.

(1) This section forces burdensome conditions, things that are not a normal part of the business, and then subjects the person to penalties in the process. CalRecycle is imposing its work onto the regulated without regard to business’s ability to conform using its own normal and accepted practices. It must be proven that they have authority to do that. It’s also not clear that CalRecycle understands what it’s asking for and how it’s going to be used to measure diversion.

(3) Although this doesn’t affect recycling directly we have no idea what it’s talking about but it must be waste because it’s not recycling. Maybe they could provide examples in a graphic. If they were to identify what they were talking about it would likely be apparent that they are talking about waste materials

(j) Remove brokers from the section. See definition for discussion

(k) The rulemaking package focuses on reporting but fails to present and adopt a reporting methodology to prevent error. That methodology should be adopted according to the APA either before this rulemaking package or as a part of it.

The (l) If the Department is using an electronic reporting system and the department intends to use and require electronic submission, that methodology should be adopted according to the APA first.

(m) A reporting entity is required to designate a person with signature authority but no methodology on who is eligible or how it’s designated is provided which should be a part of the adopted regulation.

(n) The first sentence contains a double negative and should be rewritten for clarity purposes.

Section 18815.4 Reporting Requirements for Haulers.

(a) Referring to our comment on what recycling is and is not, food waste is a perfect example. Food waste is not reprocessed into food. It is converted into other materials for other purposes

this is yet they share the air go by or go by her (b) This section requires the hauler to provide information to a receiving in reporting entity. Hauler should be exempt from reporting and it is up to the receiving reporting entity to document the delivery in the form of a scale ticket with the identification of the commodity. Since it’s up to the reporting entity, haulers have no need to report and incur a significant burden in the process as well as subject them to penalties.

The authority cited covers general provisions, states that the department shall adopt regulations and provides definitions. They do not demonstrate that there is necessity or authority for the adoption of these regulations. They also say that the regulations shall not impose unreasonable burden. The department should stick with the original definition.

Section 18815.5 Reporting for transfer/processor

This section should be removed based on our comments pertaining to the definition of “Transfer/processor” being unclear.

(a)(3) Strike the word broker since material is not physically sent to them which is the subject of the section.

Section 18815.7 Reporting for recycling and composting facilities.

This section treats recycling facilities and composting facilities the same which they are not. For clarity they must be separate. An alternative would be to use a different definition for recycler. "Waste processor" would be more accurate for composting.

(a) Strike the word ~~reasonable~~ as inflammatory and inaccurate.

(b) These reporting dates are not common nor found in other areas of business reporting on a quarterly basis. That makes them burdensome on the reporter (person) and staff to remember these uncommon dates and avoid potential fines. Make them normal quarterly reporting dates ending in March, June, September and December.

Sec 18815.8 Reporting for transporters and brokers

In reviewing the section I found it quite confusing. The statement of reasons made it even more confusing. For clarity we should use industry known and understood terms like truckers, haulers, public carriers, customers etc. but not make up something that only the Department thinks it understands. The proposed regulation fails on clarity but more importantly it fails on necessity.

Why was there a need to invent transporters? Brokers do not take physical possession and should be ignored by the regulations. Secure this information from the reporting entities.

(c) These reporting dates are not common nor found in other areas of business reporting on a quarterly basis. That makes them burdensome on the reporter and staff to remember these uncommon dates and avoid potential fines. Make them normal quarterly reporting dates ending in March, June, September and December.

Sec. 11815.9 ~~Reasonable~~ Methods

The title Reasonable Methods should be simplified to Methods or more accurately, "Instructions". Methods indicates the opportunity for choices which this does not.

For the vast majority of recyclables, grades are defined and automatically updated when necessary, by ISRI. This should be incorporated into the regulation and adopted when referring to recyclable grades.

(a)(1) Reporting all materials sent for disposal ignores that the disposal site is a reporting site and that's where it should be measured and reported. If this system of reporting was intended to track waste from its source to an end destination we fail to see the authority or the need.

(a)(2)(C) This proposal attempts to define Mixed Materials as Mixed Materials (or commingled) recyclables. The regulations acknowledge the use of industry standards for grading and now contradicts with that language by prescribing a definition. It fails on clarity. The regulation goes on to state "A reporting entity is not required to further sort..." It has been my observation that in several cases like this, where the department is supposed to be addressing reporting, it goes on to incorporate

operational comments or instructions. Philosophically, the two should be separate for clarity as they may be read by different people for compliance purposes.

(b) This section instructs the following on how to report but the definitions for these entities lack clarity as discussed in the definition section.

(1) Hauler

(2) A transfer/processor

(3) A transfer/processor

(c) This section instructs a reporting entity to estimate tonnages. Four recyclables this would conflict with the CA Business and Professions Code. If the Department wants or is willing to permit estimates then it must adopt standards by which to apply estimates to help ensure some type of accuracy. For the record, this would not be permitted and is in conflict with regulation covering **Weighmaster** license requirements governed by Business and Professions Code, Weights and Measures. Government Code prohibits the adoption of regulations which conflict with existing law.

(g) In general this section lacks clarity but the instruction “shall use scales to measure tons”, should reference certified scales operated by licensed certified weighmasters to ensure legal and accurate weights.

Authority cited by PRC Sec 40502 and 41821.5 (c) do not provide the authority for these amendments.

18815.10 Procedure for Imposing Civil Liabilities.

Reference to “Potential” compliance failures should be corrected and changed to “Alleged” compliance failures. The term potential is inaccurate.

(b)(2) We agree that covered entities should be given reasonable time to remedy compliance failures. But without adopting a time frame leaves the Department with too much discretion. Adopt a timetable as a part of this rulemaking package.

(c) We agree with the use of a Penalty Table and its adoption but the methodology for applying the fines should be adopted pursuant to the APA. Standards should be defined in regulation to justify the rapid increases in the proposed fines. The penalties adopted should be based upon significance, ability to pay and knowledge of the violation and should be adopted.

(d) (5) If the Department is to conduct investigations the standards for conducting an investigation should also be defined in this rulemaking proposal. Investigations conducted for the purposes of imposing civil penalties must also adopt standards by which staff conducting investigations must meet. This should include legal rights and protections provided to all Californians provided by the APA.

18815.11 Record Retention.

(a) CalRecycle is taking a position that has authority over record retention. The statute quoted as authority is moot on record retention and therefore the department should have no authority to do this. Record retention should be up to the business and record retention for tax purposes. The imposition of five years is arbitrary and assumes that CalRecycle might use old information to correct old reports. We recommended be limited to two years. Statute does not speak to the department's requirement to amend reports. There is no need for this length of time.

(b) If recyclers were required to report they would not maintain records by "generator location" making this burdensome to the business. PRC 41821.5 mandates that the Department be reasonable in adopting regulation. Forcing a business to do something that would not normally do in its record-keeping process could impose significant burden in reprogramming systems and reprinting forms to supply an arbitrary and unnecessary request by the state. Some systems may not be adaptable.

Record retention should be based upon existing forms such as invoices and bills of lading. Imposing requirements for generator location isn't something the recycler would normally do. But their documents would have an address. The inclusion of "monthly billing statements" demonstrates just how creative staff has gotten without understanding business records or record-keeping. Statements pertain to outstanding receivable balances and would not normally have any tonnage information. It should be removed as unnecessary. The same interpretation applies to "Log" entries. The department needs to identify how much it wants to get involved in this process because it appears to be getting far more invasive than the system it was replacing, reporting to local jurisdictions.

Landfills and transfer stations may use and maintain logs, but as a rule, recyclers do not. The exception would be recyclers participating in the CA Beverage Container Recycling Program. Although it is unclear if CalRecycle intends those entities to report, the department already receives that information through a different system. That information is already reported to the state in electronic form as a part of the program. If the information is already collected, and if the Department intends to collect information from these entities, then they should be excluded from these regulations because it would force them to duplicate reporting data to the state. Or they could simply recognize true recycling should not be a part of this rulemaking.

Authority cited by PRC Sec 40502 and 41821.5 (c) doesn't provide the authority for these amendments.

Section 18815.12 Confidentiality of Reports and Records and review requirements.

In this section the department is authorizing itself to have access to records. Access is to be provided to an authorized department representative. For clarity regulations should define who is authorized.

(b) Specific records should be specifically identified in this rulemaking package to properly identify elements covered by the APA which are necessary for comment. Time limits cannot be evaluated without knowing the size of the project created by the department's request. This should be clarified.

(c) CalRecycle is mandating electronic submission of data in a format that they will define without regard to the burden imposed on the reporting entity. They should consider that not every entity has the same electronic capabilities even though the legislature didn't. Without the adoption of those electronic formats commenters can't determine their ability or cost to comply. These requirements must be adopted as a part of the rulemaking package so that commenters can determine whether or not it's clear, necessary and authorized.

(d) How do you redact records electronically?

(f) Commenters to this rulemaking package should know which records are or are not exempt from disclosure. "May be" exempt from disclosure fails to provide a standard that the regulated can understand and evaluate pursuant to the guarantees of the APA.

(g)(h) This section somewhat cryptically exposes participants to audits. If the department is to audit then we insist they include adopted standards for auditor qualifications and that they be equivalent to auditor standards required by BOE, FTB, BSA and DOF and their knowledgeable of and follow GAGAS (Yellow book). In addition, this rulemaking package should include audit procedures directing the work of auditors. We refer to the following decisions:

Grier v. Kizer (1990) 219 Cal.App.3d 422.

Union of American Physicians and Dentists v. Kizer, 223 Cal. App. 3d 490.

The department must be required to acknowledge these decisions.

(h) As proposed, this section is extremely onerous and opens up every reporting entity to audits, site inspections observe facility operations and investigate record-keeping. As with auditing, we insist that the same requirements for adopting procedures for investigations as well as qualifications of the investigators be included in any rulemaking package. We recommend that enforcement be contracted with and performed by CA DOJ.

Again, authority cited in Sections 40502 and 41821.5(c) does not specifically give the authority being usurped in these proposed regulations. They are also not reasonable.

The ISOR points out that the statute covering confidentiality appears in different parts which points to the clarity problem with the statute itself. The Department may need to seek clarifying amendments in statute prior to proceeding. Clear regulations cannot come out of unclear legislation

Section 18815.13 Complaints

We will call this the tattletale regulation. It should be removed. No matter what CalRecycle may think and believe, this is absurd on face value. They do not have the authority and they cannot mind read what a reporting entity should or shouldn't know about its competitors or neighbors. Unfortunately, it's more likely that they would complain when there are no violations. This should include penalties for false reports.

Summary

In the beginning of the Act, 1990, cities and counties rushed to obtain recycling statistics for their reporting until they were redirected to focus on diversion.

The Department has asserted that the imposition of these regulations will not have a Significant Adverse Economic Impact on Business. We disagree. It imposes reporting standards on entities that have not had these reporting standards and it does so without clarity and authority. Until clarity is achieved the economic impact on our businesses cannot be determined and reasonable alternatives proposed pursuant to the standards of the APA.

I am a consultant to recyclers, processors, waste haulers and other consultants in this field. I submit this response on behalf of myself and for the benefit of those who lack the time and skills necessary to evaluate the significant rulemaking package. We recognize that this may be a significant task and our response is intended to assist in the adoption of the best regulations possible to protect California business.

Respectfully,

Leonard Lang
Pres.
Upper Room Consulting Inc.
Cypress, CA

From: Larry Sweetser
To: [AB 901 Recycling and Diversion Reporting@CalRecycle](mailto:AB_901_Recycling_and_Diversion_Reporting@CalRecycle)
Cc: Sander_Steven@CalRecycle; mpitto@rccnet.org; lsweetser@rccnet.org
Subject: AB 901 comments
Date: Thursday, May 31, 2018 5:12:56 PM
Attachments: [ESJPA AB 901 comments 2018-05-31.pdf](#)

Attached are comments on the proposed AB 901 regulations.

Please let us know if you have any questions.

Larry

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MADERA, MARIPOSA, MODOC, MONO, NEVADA, PLUMAS,
SHASTA, SIERRA, SISKIYOU, TEHAMA, TRINITY, TUOLUMNE

TECHNICAL ADVISORY GROUP (TAG)

TAG CHAIR – JIM MCHARGUE, AMADOR COUNTY

TAG VICE CHAIR – RACHEL ROSS, TEHAMA COUNTY

PROGRAM MANAGER – MARY PITTO

CHAIR – MICHAEL KOBSEFF, SISKIYOU COUNTY

VICE CHAIR – MICHAEL RANALLI, EL DORADO COUNTY

EXECUTIVE DIRECTOR – GREG NORTON

May 31, 2018

Steven Sander
Project Lead
801 K St., MS 17-01
Sacramento, CA 95814
EMAIL: AB901.Reporting@CalRecycle.ca.gov

RE: Comments on Proposed AB 901 Regulation Development Reporting Regulations for Recycling, Disposal & Enforcement, May 2018 version

Dear Mr. Sander:

On behalf of the 23-member Rural Counties' Environmental Services Joint Powers Authority (ESJPA), thank you for the opportunity to provide comments on the proposed AB 901 regulations. There have been significant improvements to these regulations based upon the stakeholder feedback from the informal regulations.

Please let me know if you have any questions.

Larry Sweetser
ESJPA Consultant

AB 901 Regulation Development Reporting Regulations for Recycling, Disposal & Enforcement

May 2018 version

ESJPA Comments

Section 18815.2 Definitions

(5) ... “Beneficial reuse does not include the use of clean or contaminated soil segregated prior to receipt by a landfill.”

(35) “Maintenance District Yard” means a transfer/processor that has been issued a Solid Waste Identification System (SWIS) number by the Department, and is directly operated by a municipality, sanitation district, county, state, or federal public works or sanitation agency, including the United States Forest Service. A “maintenance district yard” also means a facility or operation whose primary purpose is to receive waste collected from road maintenance activities, such as sweeping public thoroughfares, litter abatement, and maintaining street trees.

It is not clear that this definition also includes yards that have not been issued a Solid Waste Identification System number. This section should be revised to include both yards with and without issued SWIS numbers.

(56) ... “Disaster debris” and “designated waste” shall be assigned to the “self-hauled” source sector. This sentence is confusing in that beneficial reuse does not occur until after a material is received by the disposal facility. If clean or contaminated soil is used beneficially at a landfill, that material would not be considered to be disposed and is allowed by the referenced section 20686 of Title 27. There is no need for this sentence and it should be removed.

It is inappropriate to assign all disaster debris and designated waste to the self-haul sector. Recent fires have shown that disaster debris is transported by both self-haul and contractors. In some cases, multiple sites might be combined into one load. A significant amount of designated wastes (e.g. contaminated soil, sludges) is from commercial operations and are usually transported by contractors and not the generator. This sentence should be removed from the proposed regulations.

Section 18815.3 Registration, Reporting and Exemptions.

(b)(2) We appreciate the clarification that individual self-haulers are not listed as an entity that needs to register and report except if transporting more than 12 cubic yards of food waste per quarter.

(4) Recycling facilities and operations, including those that exclusively process 2,500 or more tons of CDI per quarter, or recycle 100 tons or more of other materials described in subsection(d)(1) per quarter, including, but not limited to:

A number of other reporting entities (b)(1) and (b)(3) also conduct recycling activities identified in the definition (42) “Recycle” or “recycling” and should not be required to also report under this section. The language should be changed as follows:

AB 901 Regulation Development Reporting Regulations for Recycling, Disposal & Enforcement

May 2018 version

ESJPA Comments

(4) Recycling facilities and operations, that are not required to report under other requirements in this section, including those that exclusively process 2,500 or more tons of CDI per quarter, or recycle 100 tons or more of other materials described in subsection(d)(1) per quarter, including, but not limited to:

Also, there is no regulatory definition of a material recovery facility (B). This term is used for both activities regulated under the transfer/processing regulations or under recycling centers. This term should be removed from the proposed regulations.

~~(B) Material recovery facilities,~~

(c)(9) A persons who exclusively handles:

Although there are a number of activities that exclusively handle the materials listed in section 18815.3 (c)(9) and should not be required to register and report, there are a number of these activities co-located at solid waste facilities and operations that may not be required to report under section 18815.3 except that the amount of the materials listed in section (c)(9) could result in the combined activities being over the limit. Most of these materials are not even regulated as solid waste (i.e. hazardous waste) and would not be included anyway. This section should be revised as follows:

~~(c)(9) The following materials are not included in determining applicability under section 18815.3A persons who exclusively handles:~~

(A) Household Hazardous Waste,

(B) Hazardous waste,

(C) Electronic waste,

(D) Medication and sharps,

(E) Used oil,

(F) Paint,

(G) Mattresses, and

(H) Business-to-business post-industrial materials, as defined in section 18815.2 (a)(8) of this article. Business-to-business post-industrial recyclers shall self-certify that they are exempt from registration and reporting utilizing RDRS.

Section 18815.4 Reporting Requirements for Haulers.

- (a) A self-hauler shall provide the jurisdiction of origin for all material delivered to each transfer/processor or disposal facility. A self-hauler does not have to report to the Department, unless it is a food waste self-hauler.

Thank you for providing this clarification.

From: Martins Aiyetiwa
To: [AB 901 Recycling and Diversion Reporting@CalRecycle](mailto:AB901.Reporting@CalRecycle)
Cc: [DaRosa, Ken@CalRecycle](mailto:DaRosa.Ken@CalRecycle); Christine.Hironaka@calepa.ca.gov; [Sitts, John@CalRecycle](mailto:Sitts.John@CalRecycle); Jane.Mantey@CalRecycle.ca.gov; Robert.carlson@calrecycle.ca.gov
Subject: RE: Notice of Changes to Proposed AB 901 Reporting Regulations
Date: Thursday, May 31, 2018 6:21:27 PM
Attachments: [Public Works Comments on AB901 Proposed Regulation Tex \(May 2018\).pdf](#)

Good Afternoon Mr. Smithline,

Please see attached letter with Los Angeles County Department of Public Works' comments regarding AB 901 - 6th Draft Proposed Regulations (May 2018). The original signed letter will be sent via USPS next week.

Thank you,

Martins Aiyetiwa, P.E.

Senior Civil Engineer

Los Angeles County Public Works

Phone: (626) 458-3553

From: AB 901: Disposal and Recycling Facility Reporting Listserv
[mailto:AB901.reporting@calrecycle.ca.gov]

Sent: Wednesday, May 16, 2018 3:48 PM

To: Martins Aiyetiwa

Subject: Notice of Changes to Proposed AB 901 Reporting Regulations

DATE: May 16, 2018

TO: Interested Parties

FROM: Steven Sander, Environmental Scientist

SUBJECT: Notice of Changes to Proposed AB 901 Reporting Regulations

On May 16, 2018, the California Department of Resources Recycling and Recovery (CalRecycle) will initiate a 15-day comment period for changes to the Proposed AB 901 Reporting Regulations. The 15-day written public comment period for this rulemaking ends at 11:59 p.m. on May 31, 2018.

This 15-day comment period follows an initial 45-day public comment period that ran from January 26, 2018 to March 14, 2018. CalRecycle staff held a public hearing on the proposed regulations on March 14, 2018. After considering comments received during the initial comment period and comments made at the public hearing, CalRecycle staff revised the Proposed AB 901 Reporting Regulations. These revisions will add clarity to the existing language.

A copy of the full text of the regulations as originally proposed that include the newly proposed changes clearly indicated is available on the AB 901 - Recycling and Disposal Reporting - Proposed Rulemaking website at: <http://www.calrecycle.ca.gov/laws/rulemaking/Reporting/default.htm>. Text shown in double underline (addition) and ~~double strikeout~~ (deletion) depict proposed changes made after the initial comment period. CalRecycle staff is only required to respond to comments related to the newly proposed changes to the regulations.

Please submit your written comments to:

Steven Sander

Project Lead

801 K St., MS 17-01

Sacramento, CA 95814

FAX: (916) 319-7227

EMAIL: AB901.Reporting@CalRecycle.ca.gov

Thank you for your interest and participation in this process.

For more information go to [AB 901: Disposal and Recycling Facility Reporting Program](#). To unsubscribe from the AB 901: Disposal and Recycling Facility Reporting Program list, please go to <http://www.calrecycle.ca.gov/Listservs/Unsubscribe.aspx?ListID=146>.



MARK PESTRELLA, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803 1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE **EP-4**

May 31, 2018

Mr. Scott Smithline
California Department of Resources
Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025

Dear Mr. Smithline:

COMMENTS ON AB 901 SIXTH DRAFT OF REPORTING REGULATIONS FOR RECYCLING, DISPOSAL, AND ENFORCEMENT DATED MAY 2018

The County of Los Angeles Department of Public Works (Public Works) appreciates the opportunity to comment on the Assembly Bill (AB 901) Proposed Regulation Text Sixth Draft as part of the Formal Rulemaking process released on May 16, 2018. Please see our comments below:

GENERAL COMMENTS

1. Incorporate Information and Tools Made Available to Jurisdictions

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. Additionally, 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 benefit 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 responsibility for making such information and tools available so that local jurisdictions may have the ability to measure and achieve the State mandated goals.

2. Provide Access to Collected Information

For the purpose of solid waste planning and implementing and evaluating programs, the County and cities within Los Angeles County could benefit greatly by having access to the information, which CalRecycle will be able to collect under the new regulations. The Public Resources Code Section 41821.5 (b)(3) states that CalRecycle may provide information in the reports submitted pursuant to AB 901 to jurisdictions aggregated by company upon request. The regulations should address the types of reports that will be available and jurisdictions should have the opportunity to comment on the format of requested information, prior to the regulations being finalized.

3. Access of Information to Aid Local Planning

Currently, pursuant to Sections 18800 through 18813 of Title 14 of the California Code of Regulations, which will be removed upon formal adoption of the subject regulations, solid waste disposal operators are required to submit surveys of disposal tonnages and jurisdictions of origin for the waste received to counties. In turn, each County will provide quarterly reports to cities within the County with information regarding tonnages, jurisdiction of origin, and receiving facilities. This information is used by local jurisdictions to measure their progress in achieving the State waste reduction mandates and to plan for long-term disposal capacity. Since the requirement for counties to provide this information to cities is to be eliminated, the proposed regulations should include provisions that describe how the information will be made available to them, the parties responsible for providing the information, and the tools that will be used to make such information available. CalRecycle should also provide opportunities to comment on the format of requested information prior to the Regulations being finalized.

SPECIFIC COMMENT

CHAPTER 9. PLANNING GUIDELINES AND PROCEDURES FOR PREPARING, REVISING, AND AMENDING COUNTYWIDE OR REGIONAL INTEGRATED

ARTICLE 9. ANNUAL REPORT REGULATIONS

1. (NEW) Subsection 18794.2(d) Reporting Requirements for Calculations.

In regard to Article 9, Section 18794.2, the new Subsection (d) proposes that the Department will now calculate jurisdiction disposal using information provided by the

Mr. Scott Smithline
May 31, 2018
Page 3

Recycling and Disposal Reporting System. With this method, jurisdictions will not have the opportunity to determine their disposal rate, nor monitor their disposal reduction efforts since the report is only provided annually. Therefore, their disposal and diversion rates will be based solely on information provided by CalRecycle at the end of the reporting year. Based on past experience in data collection and reporting by counties since 1995, there have been many inaccuracies in disposal reporting. Therefore, a county or city may be stuck with the disposal numbers provided by CalRecycle and may have no means to correct inaccurate or erroneous data.

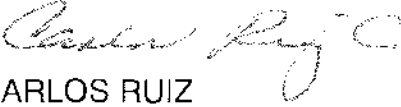
Therefore, Public Works recommend the proposed regulations be revised to include:

- Jurisdiction reports be provided quarterly and annually.
- A process and mechanism for a jurisdiction to correct inaccurate or erroneous data.
- The types of recycling and disposal reports that will be made available to jurisdictions.

We respectfully request that the above suggestions be considered and incorporated in the next version of the Proposed Regulation Text. Public Works would be pleased to participate in future stakeholder opportunities related to the development of these regulations. If you have any questions, please contact Mr. Martins Aiyetiwa at (626) 458-3553.

Very truly yours,

MARK PESTRELLA
Director of Public Works


CARLOS RUIZ
Principal Engineer
Environmental Programs Division

CS:jl
P:\Sec\Public Works Comments on AB 901 Proposed Regulation Text (May 2018).doc

From: [Sitts, John@CalRecycle](mailto:Sitts,John@CalRecycle)
To: [AB 901 Recycling and Diversion Reporting@CalRecycle](mailto:AB_901_Recycling_and_Diversion_Reporting@CalRecycle)
Cc: [Sander, Steven@CalRecycle](mailto:Sander,Steven@CalRecycle); [Dhillon, Surjit@CalRecycle](mailto:Dhillon,Surjit@CalRecycle); [Staklis, Peter@CalRecycle](mailto:Staklis,Peter@CalRecycle)
Subject: FW: COMMENTS ON AB 901 SIXTH DRAFT OF REPORTING REGULATIONS FOR RECYCLING, DISPOSAL AND ENFORCEMENT, DATED MAY 2018
Date: Thursday, May 31, 2018 4:57:45 PM
Attachments: [image001.jpg](#)
[Task Force Letter \(AB 901\).pdf](#)

From: DPW-EPD TaskForce
Sent: Thursday, May 31, 2018 4:43 PM
To: Smithline, Scott@CalRecycle
Cc: Carlos Ruiz ; Bahman Hajjaliakbar ; mikemohajer@yahoo.com
Subject: COMMENTS ON AB 901 SIXTH DRAFT OF REPORTING REGULATIONS FOR RECYCLING, DISPOSAL AND ENFORCEMENT, DATED MAY 2018

cid:image001.jpg@01D1CD63.97088770



TO: Mr. Scott Smithline, Director

California Department of Resources Recycling and Recovery

Please see the attached letter dated May 31, 2018, from the Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force **COMMENTS ON AB 901 SIXTH DRAFT OF REPORTING REGULATIONS FOR RECYCLING, DISPOSAL AND ENFORCEMENT, DATED MAY 2018**

If you have any questions regarding the subject matter, please contact Mr. Mike Mohajer of the Task Force at MikeMohajer@yahoo.com or at (909) 592-1147. For questions regarding the Task Force, please contact Ms. Margarita Quiroz at (626) 300-3214 or mquiroz@dpw.lacounty.gov.



MARK PESTRELLA, CHAIR
MARGARET CLARK, VICE - CHAIR

LOS ANGELES COUNTY
SOLID WASTE MANAGEMENT COMMITTEE/
INTEGRATED WASTE MANAGEMENT TASK FORCE
900 SOUTH FREMONT AVENUE, ALHAMBRA, CALIFORNIA 91803-1331
P.O. BOX 1460, ALHAMBRA, CALIFORNIA 91802-1460
www.lacountyiswmf.org

May 31, 2018

Mr. Scott Smithline, Director
California Department of Resources Recycling and Recovery
1001 I Street
Sacramento, CA 95812

Dear Mr. Smithline:

COMMENTS ON AB 901 SIXTH DRAFT OF REPORTING REGULATIONS FOR RECYCLING, DISPOSAL AND ENFORCEMENT, DATED MAY 2018

The Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force) would like to express its continued appreciation to the California Department of Resources Recycling and Recovery (CalRecycle) for soliciting input from the public and local jurisdictions regarding draft regulations to implement Assembly Bill 901 (AB 901, Chapter 746 of the 2015 State Statutes). The Task Force has reviewed the sixth draft development regulations, dated May 2018 (Regulations), published by CalRecycle on May 16, 2018, <http://www.calrecycle.ca.gov/laws/rulemaking/Reporting/6thDraftReqs.pdf> and has the following comments:

GENERAL COMMENTS

1. 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 the reported information. Additionally, 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 benefit 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.
2. For the purpose of solid waste planning and implementing and evaluating programs, the County and cities in Los Angeles County could benefit greatly by having access

to the information which CalRecycle will be able to collect under the new regulations. The Public Resources Code Section 41821.5 (b)(3) states that CalRecycle may provide information in the reports submitted pursuant to AB 901 to jurisdictions, aggregated by company, upon request. The regulations should address the types of reports that will be available and jurisdictions should have opportunities to comment on the format of requested information prior to the regulations being finalized.

3. Currently, pursuant to Sections 18800 through 18813 of Title 14 of the California Code of Regulations, which will be removed upon formal adoption of the subject regulations, solid waste disposal operators are required to submit surveys of disposal tonnages and jurisdictions of origin for the waste received to counties. In turn, each county provided quarterly reports to cities within the county with information regarding tonnages, jurisdiction of origin, and receiving facilities. This information is used by local jurisdictions to measure their progress in achieving the state waste reduction mandates and to plan for long-term disposal capacity. Since the requirement for counties to provide this information to cities is to be eliminated, the proposed regulations should include provisions that describe:
 - how the information will be made available to them
 - parties responsible for providing the information
 - tools that will be used to make such information available

CalRecycle should also provide opportunities to comment on the format of requested information prior to the regulations being finalized.

SPECIFIC COMMENT

4. The proposed new Article 9, Subsection 18794.2(d) proposes that the Department will now calculate jurisdiction disposal using information provided by the Recycling and Disposal Reporting System. With this method, jurisdictions will not have the opportunity to determine their disposal rate, nor monitor their disposal reduction efforts since the report is only provided annually, and therefore, their disposal and diversion rates will be based solely on information provided by CalRecycle at the end of the reporting year. Based on past experience in data collection and reporting by Counties since 1995, there have been many inaccuracies in disposal reporting, and therefore, a county or city may be stuck with the disposal numbers provided by CalRecycle and may have no means to correct inaccurate or erroneous data. Therefore, the Task Force recommends the proposed regulations be revised to include:
 - jurisdiction reports be provided quarterly and annually.

Mr. Scott Smithline, Director
California Department of Resources Recycling and Recovery
May 31, 2018
Page 3

- a process and mechanism for a jurisdiction to correct inaccurate or erroneous data.
- the types of recycling and disposal reports that will be made available to jurisdictions.

Pursuant to Chapter 3.67 of the Los Angeles County Code and the California Integrated Waste Management Act of 1989 (Assembly Bill 939, as amended), the Task Force is responsible for coordinating the development of all major solid waste planning documents prepared for the County of Los Angeles and the 88 cities in Los Angeles County with a combined population more than ten million. The Task Force also addresses issues impacting the system on a countywide basis. The Task Force membership includes representatives of the League of California Cities-Los Angeles County Division, County of Los Angeles Board of Supervisors, City of Los Angeles, waste management industry, environmental groups, the public, and a number of other governmental agencies. As a collective group responsible for ensuring a coordinated, cost-effective, and environmentally sound solid waste management system in Los Angeles County, the Task Force respectfully requests that CalRecycle consider and address the above comments.

If you have any questions, regarding this matter, please contact Mr. Mike Mohajer, a Member of the Task Force, at MikeMohajer@yahoo.com or at (909) 592-1147.

Very truly yours,



Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Management Committee/
Integrated Waste Management Task Force and
Mayor Pro Tem, City of Rosemead

CS:mq

P:\epub\Budget\T\TASK FORCE\Task Force\Letters\2018\May\Task Force Letter (AB 901)

cc: CalRecycle (Ken DaRosa, Christine Hironaka, John Sitts, Jane Mantey,
Robert Carlson)
Each Member of the Los Angeles County Integrated Waste Management Task Force

From: Haley, Robert (ENV)
To: AB 901 Recycling and Diversion Reporting@CalRecycle
Subject: AB 901 Regulations Comments
Date: Thursday, May 31, 2018 4:30:38 PM
Attachments: [AB 901 Final Comments.pdf](#)

Robert Haley, Zero Waste Manager

San Francisco Department of the Environment
1455 Market Street, Ste. 1200
San Francisco, CA 94103
E: Robert.Haley@sfgov.org
T: (415) 355-3752

SFEnvironment.org | [Facebook](#) | [Twitter](#) | [Get Involved](#)

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SF Environment

Our home. Our city. Our planet.

A Department of the City and County of San Francisco

Mark Farrell
Mayor

Deborah O. Raphael
Director

May 31, 2018

Steven Sander
Project Lead
Policy Development and Analysis Office
California Department of Resources, Recycling and Recovery (CalRecycle)
801 K St., MS 17-01
Sacramento, CA 95814
via email: AB901.Reporting@CalRecycle.ca.gov

Dear Mr. Sander:

Thank you for the opportunity to provide comments on the newly proposed changes to the Recycling and Disposal Reporting System (AB 901 or RDRS) regulations. The City and County of San Francisco has been a leader in zero waste and looks to the AB 901 rulemaking process to enhance our ability to meet our statewide and local waste reduction goals.

We have several comments on the newly proposed changes to the AB 901 regulations.

TITLE 14 NATURAL RESOURCES
DIVISION 7
CHAPTER 9

Section 18815.2 (a) (5)

The definition of “Beneficial reuse” excludes contaminated soil. If contaminated soil cannot be used otherwise, it should be considered beneficial reuse and not disposal.

Section 18815.6 (a) (2) (A)

Only solid waste is proposed to be tracked by jurisdiction of origin. The rationale seems to be that some material categories are not counted as disposal and jurisdictions, such as San Francisco, have been required to complete a disposal modification form on an annual basis. Material categories currently tracked separately by origin (e.g., C&D debris, designated waste by material type, disaster waste) should continue to be reported even if they are not counted as disposal. Local jurisdictions need to know the sources and types of these materials so we can address them appropriately.

Section 18815.9 (a) (3)

The reporting requirements for ADC should specify if materials are processed C&D debris residuals (e.g., fines remaining after recovery) or processed green material residuals (e.g., overs screened out of finished compost). It is especially important that operators differentiate between processed green material residuals and green material, since green material used as ADC is now considered disposal.

Section 18815.12 (g)

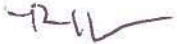
This section seems to imply that weight tickets, customer lists and other identifying information will not be available to local jurisdictions. We need to be able to obtain a customer name, date, and amounts and types of materials disposed to ensure the integrity of the RDRS and continue our waste reduction efforts.

Section 18815.13 (b)

To report non-compliance, we need to be able to obtain the information in our Section 18815.12 comment above.

Please contact me at 415-355-3752 or robert.haley@sfgov.org if you require any clarifications about our comments on the AB 901 regulations.

Sincerely,



Robert Haley
Zero Waste Manager

From: Sharla Moffett
To: AB 901 Recycling and Diversion Reporting@CalRecycle
Subject: Comments on AB 901 Draft Regulations
Date: Thursday, May 31, 2018 12:15:22 PM
Attachments: [AB 901 Comments on Draft 6 of Regs LH.docx](#)

To: CalRecycle

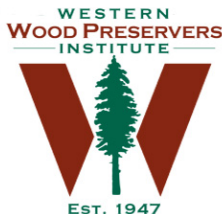
Please find attached comments of the Western Wood Preservers Institute on the AB 901 draft regulations.

Thank you,

Sharla

Sharla Moffett

Director of Government Relations
Western Wood Preservers Institute
Office: 360.693.9958
Mobile: 971.998.2272



May 31, 2018

CalRecycle
1001 I Street
P.O. Box 4025
Sacramento CA 95812-4025

Re: Comments on AB 901 Proposed Regulations
Via: AB901.Reporting@CalRecycle.ca.gov

Western Wood Preservers Institute (WWPI) is a non-profit trade association founded in 1947 to serve the interests of the preserved wood industry in western North America. WWPI works with federal, state and local agencies, as well as designers, contractors and users over the entire preserved wood life cycle, ensuring that preserved wood is used in a safe, responsible and environmentally friendly manner.

We appreciate the opportunity to comment on the implementation of AB 901 to change how organics, recyclable material, and solid waste are reported to CalRecycle. Given the existing regulatory structure around disposing of treated wood waste (TWW), WWPI has been keenly interested in the development of the AB 901 regulations.

Treated wood waste has been managed in California according to statute and regulation since 2005. To our knowledge, the draft AB 901 regulations do not seek to alter the way in which TWW is managed or disposed. However, we are concerned that the AB 901 rulemaking, its definitions and strict reporting requirements could have unintended impacts on the management of TWW.

At this time, the Department of Toxic Substances Control (DTSC) is finalizing recommendations for the TWW disposal program. In general, the program has worked very well, but it is extremely complex and could be made to function more effectively. WWPI continues to work closely with DTSC to ensure that TWW is safely and lawfully disposed.

Due to California's long history of managing TWW and the complexity of this program, **we believe it would be helpful for the AB 901 regulations to clearly affirm that the rules are not intended to modify or add more layers of bureaucratic process to managing TWW.** We believe any rulemaking adding further complexity to the management of TWW would likely be counterproductive and could result in confusion and decreased rates of compliance.

Thank you, again, for the opportunity to comment on the AB 901 rulemaking. Please contact me should you have any questions about WWPI's comments.

Sincerely,

Dallin Brooks
Executive Director

From: Timothy Flanigan
To: AB 901 Recycling and Diversion Reporting@CalRecycle
Subject: ISRI's Memo regarding the AB 901 15-day comment period
Date: Thursday, May 31, 2018 1:27:58 PM
Attachments: [ISRI memo re AB 901 15-day comment period 5-30-18.docx](#)

Dear Steve,

Enclosed please find ISRI's memorandum regarding the 15-day Comment Period for the AB 901 proposed reporting regulations. Please acknowledge receipt of this document.

Thank you,

Tim Flanigan

tim@flaniganfirm.net

(916) 443-0381

Memorandum

To: Steve Sanders, Project Lead
CalRecycle
801 K St., MS 17-01 Sacramento, CA 95814
AB901.reporting@calrecycle.ca.gov

From: The Flanigan Firm on behalf of its client, ISRI
Timothy Flanigan, Esq. (916-443-0381)
tim@flaniganfirm.net

Date: May 30, 2018

Re: ISRI's Response to AB 901 15-Day Comment Period

We are writing on behalf of our client, the West Coast Chapter of the Institute of Scrap Recycling Industries (ISRI). This memorandum is intended to address the amendments to the fifth draft of the proposed regulations, found in the sixth draft and subject to the 15-day comment period.

Though we have come to an agreement with the department on language regarding an exemption for "business to business post-industrial recycling" (another expression for what we refer to as "perpetual commercial recycling"), we have concerns with some of the revisions the department has made in its latest (May 2018) revised publication of the regulations. We are still in negotiations regarding our concerns and are submitting these comments to make a record concerning the current 15-day comment period. We also incorporate herein by reference our March 9, 2018 memorandum titled, "ISRI's Opposition to the Proposed AB 901 Reporting Regulations," which is already a part of the AB 901 rulemaking record.

Our concerns are as follows:

Revision of the Definition of "Recycling"

In the department's "Summary of Changes" it states that it "changed the definition of recycling to remove confusing reference to [the] statute . . ." However, any interpretive language by regulation cannot change or override the intent and clear meaning of the statutory language, which is always paramount.

As we have stated consistently in our March 9, 2018 memorandum referenced above, the phrase in the existing statute (Public Resources Code §40180) that a recyclable is a "material that would otherwise become solid waste" is essential in understanding the legislative intent underlying the statute. Thus, it cannot be ignored when writing a new definition which can only be seen as an interpretation of the statutory language and not a replacement. Unlike the department, we do not find a clear reading of the statutory definition confusing. It may be

inconvenient in some way for the department from a drafting perspective, but it is certainly not confusing.

That being said, we believe the language of the previous draft regarding sections 28815.3(a) and (b) was a much clearer explanation of who would be exempt from reporting altogether [as found in subsection (a)] as opposed to who would not be required to report¹ [as found in subsection (b)] and, thus, was a clearer reflection of the law. This is particularly relevant regarding a generator of a recyclable as to his or her intent in distinguishing between a recyclable that is sold or donated as opposed to one which is discarded. The latter, of course, would become solid waste under the Integrated Waste Management Act (the Act), especially as the Supreme Court has interpreted the Act.² After all, the intent of a generator (i.e., owner) regarding the disposition of a recyclable is the determining factor of whether that material would be within the purview of the Act for purposes of diversion.

The amended language of the latest draft of section 28815.3 of the proposed regulations is confusing particularly considering the amended version of the definition of "recycling." The new definition of recycling states, in pertinent part, "Recycle or Recycling means a series of processes that ultimately result in the production of intermediate products utilizing materials recovered or discarded by a generator." What exactly does "recover" mean in this context? Absent a clear and acceptable explanation of the department's intended meaning of the word, we believe the amended definition is challengeable for lack of authority, reference, and consistency.³

Contradiction between the New Section 28815.3(a) and the New Definition of Recycling

The new section 28815.3(a) appears to be in conflict with the language of the proposed new definition of recycling. The new definition defines "recycling" to include "a series of processes that ultimately result in the production of intermediate products utilizing materials recovered or discarded by a generator." One would necessarily assume such processes include those listed in section 28815.3(b) of the previous version of the proposed regulations and repeated in section 28815.3(a) of the most recent version. However, the confusing way in which the most recent version is set forth leads one to conclude that the only person not required to report is a generator; everyone else (recyclers, etc.) would be required to report even if the material he or she is handling has been previously discarded by its generator. That section only

¹ Section 18815.3 Registration, Reporting and Exemptions.

(a) The following are not required to register or report under this article, for their activities as: (1) An end user, (2) A generator who is not a food waste self-hauler, (3) A person that generates, processes, and uses material all on the same site, and (4) A thrift store, auto dismantler, building supply reclaimer or reuser, and any other person whose primary business is resale for reuse of an object or material without significantly altering the physical form of the object or material that meets one of the following criteria: (A) Revenues associated with resale for reuse exceeds revenues associated with recycling or composting activities, or (B) Tons associated with resale for reuse exceeds total tons associated with recycling or composting activities.

(b) A reporting entity shall register and obtain at least one RDRS number per activity on each site they operate, if they meet both of the following criteria: (1) The person recycles, sells, transfers, processes, composts, or disposes any of the following materials, or mixtures thereof, **after the materials are discarded by a generator:** (Emphasis added.)

² *Waste Management of the Desert, Inc. v. Palm Springs Recycling Center, Inc.* (1994) 7 Cal 4th 478

³ Government Code §11349.1(a)

makes sense and conforms with the new amended definition of recycling if is kept in its previous (fifth draft) version ending with the dependent clause, “after the materials are discarded by a generator.” This conflict must be resolved to correct the confusion and inconsistency with the intent of the Act.

Addition of Auto Shredders to the Proposed Regulations

First, since 1994, state law has prohibited the disposal of “vehicles” into solid waste landfills.⁴ Automobiles, being vehicles under the statute, whether generated by a dismantler, a wrecker or a private party sale, are all outside the proposed reporting requirements because they cannot go into landfills as a matter of law and neither would the valuable metals which are the product of an auto shredding operation. So what legal basis does the department claim to have for requiring auto shredders to report under the proposed regulations? This last version of the proposed regulations (May 2018) is the first time the term “auto shredder” has been defined and listed as an entity that must report. The department maintains that it has stated its intent previously to have auto shredders report, but it waited until its sixth draft (i.e., the one subject to the 15-day comment period) to make the addition. The department also intended to add “auto dismantlers” at one point in the process yet subsequently removed them. Consequently, what the department has stated as its goals and desires have not necessarily been finalized in its proposed regulatory language. Thus, what the department says and what it does can be completely different. And, it is not unreasonable for us to assume that what is placed in its final draft (i.e., (i.e., its fifth iteration subject to the 45-day comment period) is its final word on the subject.

Second, and more to the point, the department’s second draft of the proposed regulations (November 4, 2016) included “automobiles” for reporting purposes, something ISRI vigorously opposed for the same reasons stated here relative to the addition of “auto shredders,” and the category was subsequently removed from later drafts.

In ISRI’s January 4, 2017 Memorandum to CalRecycle on the subject titled “Comments on CalRecycle’s Second Draft of its AB 901 Proposed Reporting Regulations for Disposal, Diversion & Enforcement,” a copy of which is included with this memorandum as an “Attachment” and incorporated herein by reference, we made the following argument:

Not Used for the Purposes of the Diversion Mandate – First, it is understandable as to why the information about whole automobiles would not be used for purposes of the diversion mandate in that as Mr. Carlson [of CalRecycle] states, “. . . the automobile recycling industry has achieved a significant recycling rate for waste vehicles and essentially no vehicles are disposed of in California landfills . . .” As important, however, is the fact that since 1994, state law has prohibited the disposal of automobiles into state solid waste facilities and landfills. (See Public Resources Code, section 42170.) (Emphasis added.)

⁴ Public Resources Code §42170

No Statutory Authority – Second, we see nothing in AB 901 that grants any legal authority whatsoever to CalRecycle regarding adding automobiles, whole or otherwise, to its proposed reporting requirements for purposes of assisting it in its current responsibilities for “market development, local assistance, and environmental protection.” If CalRecycle wants to expand its authority vis-à-vis automobiles for the purposes just stated, it must do so by legislation, not by regulation under AB 901.

More specifically, when an automobile is purchased by an auto dismantler, the automobile is considered a business asset of the company. Thus, every part taken from the vehicle and sold to a customer is considered outside of the AB 901 reporting process according to CalRecycle. (This was confirmed by staff in our November 21st meeting referenced above and subsequently again by staff at its second stakeholders’ meeting on the second proposed draft of the regulations.) Likewise, it is our position that a car body, crushed or otherwise, remains a valuable metal commodity and business asset of the company which can be sold as such to a recycler. [In other words, it is not a "material that would otherwise become solid waste." Again, Public Resources Code §40180 and the *Waste Management of the Desert* case would control under this scenario.]

Thank you for your consideration. We retain the right to comment further on these latest amendments to the proposed regulations should that become necessary.

ATTACHMENT

Memorandum

To: CalRecycle
AB901.reporting@calrecycle.ca.gov

From: The Flanigan Firm on behalf of its client, ISRI
Timothy Flanigan, Esq. (916-443-0381)
timflanigan@flaniganfirm.net

Date: January 4, 2017

Re: Comments on CalRecycle's Second Draft of its AB 901 Proposed Reporting Regulations for Disposal, Diversion & Enforcement

We are writing on behalf of our client, the West Coast Chapter of the Institute of Scrap Recycling Industries (ISRI). This memorandum is intended to address the amendment to the second draft of the proposed regulations which specifically applies to recycled automobiles.

Proposed Reporting of Automobiles – On November 21, 2016, I met with CalRecycle's staff responsible for the drafting and implementation of the proposed regulations to discuss certain concerns our members had with the first draft of the proposed regulations. An issue that was presented for the first time in the second draft of the proposed regulations and was discussed at our November 21st meeting has to do with the proposed reporting of "whole automobiles for the purpose of recycling" (see the Carlson statement below), which would also include spent and crushed automobile bodies. This amendment to the proposed regulations is extremely disconcerting to the members of ISRI.

Staff believes CalRecycle has been granted authority under AB 901 to require all recyclers who handle such material to abide by the new automobile reporting requirements set forth in the proposed regulations. I disagreed with staff's position on the issue during our meeting. I told them that automobiles had not been placed in state disposal sites for decades. I also told them that I did not believe AB 901 granted them any new authority to require the reporting of such material. After discussing the matter further, I asked staff to provide me with their rationale justifying their position on the issue. Robert Carlson, a staff member in attendance at the meeting, agreed to send me something in writing, which he did by email on December 11, 2016. The following is the full text of Mr. Carlson's written statement on the subject presented on behalf of CalRecycle:

"CalRecycle is tasked with monitoring the waste management and recycling industry as well as illegal disposal. New reporting requirements under AB 901 enhance existing disposal reporting as well as add new reporting requirements for the recycling and

composting industries. The information received from these facilities will be used in two main ways. First, to assist CalRecycle in measuring local jurisdictions' adherence to their 50% diversion mandate as well as measuring CalRecycle's state-wide 75% diversion mandate. Second, to assist with CalRecycle's other programmatic responsibilities including market development, local assistance, and environmental protection. It is this second set of uses to which data associated with the transportation of whole automobiles for the purpose of recycling will be put. It is clear that materials derived from automobile processing (scrap metal, plastic, glass, etc.) must be reported to CalRecycle under the AB 901 reporting requirements once the automobile has been shredded and those materials are sent for further processing. These materials clearly play a significant role in the recycling industry and all these materials are disposed of in California landfills. While the automobile recycling industry has achieved a significant recycling rate for waste vehicles and essentially no vehicles are disposed of in California landfills, very little to no data exists regarding imports and exports of vehicles for recycling. Vehicles (or parts of vehicles) are also common among illegal dumping sites across California. In order for CalRecycle to not only better understand the recycling markets associated with materials derived from automobiles (scrap metal, plastic, glass, etc.) but also to better track the import and export of a product that not only is commonly found in illegal dump sites but also exhibits some hazardous materials (batteries, fuel, used oil, mercury switches, etc.) it is important for CalRecycle to receive information about the transfer of whole automobiles transported for the purpose of recycling as well as the individual materials (scrap metal, plastic, glass, etc.) that are sent for further processing after an automobile has been shredded." – Robert Carlson

We appreciate Mr. Carlson's timely response on this matter on behalf of CalRecycle. However, we respectfully disagree with several of the conclusions set forth in his statement. Please consider the following:

Mr. Carlson begins by stating that "CalRecycle is tasked with monitoring the waste management and recycling industry as well as illegal disposal."

We disagree with this general statement as a matter of law, specifically its implication as applying to the entire recycling industry. First, CalRecycle is governed in its activities by the California Integrated Waste Management Act of 1989 (the Act) found in state's Public Resources Code, Division 30, sections 40000 to 49620. Second, section 40052 specifically states, in pertinent part, that "The purpose of this division is to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible . . ." The important distinction here regarding "recycling" is that it is limited to recycling of "solid waste generated in the state," not all recycling in general. This, of course, was the basis of the majority decision in the seminal California Supreme Court Case regarding the legal boundaries of the Act. (See *Waste Management of the Desert, Inc. v. Palm Springs Recycling Center, Inc.* (1994) 7 Cal 4th 478.) What I stated in my September 12, 2016 memorandum to CalRecycle regarding the first draft of the proposed regulation bears repeating here:

The section entitled “Notes of Decisions” in Deering’s California Public Resources Code, annotated, (pages 268-269) explains the court’s holding relating to section 40180, the definition of “recycle or recycling” for purposes of the Act as follows:

“The right of an owner to sell property for value applies to recyclable materials, and this right is not affected by the definitions of ‘solid waste handling’ and ‘recycling’ in the Integrated Waste Management Act of 1989 [cite]. Since the definition of ‘solid waste handling’ includes the processing of solid waste [cite] and the definition of ‘processing’ includes the recycling of solid waste [cite], solid waste handling includes recycling of solid waste. If however, the owner does not discard his or her property, it does not become waste in the first instance. Thus, even if the property might be viewed as feasibly recyclable material, it is not necessarily a recyclable waste. The reference in the definition of ‘recycling’ [cite] to ‘materials’ that would otherwise become solid waste is merely an acknowledgement of the reality that materials are capable of being recycled, but the provisions that define ‘solid waste handling’ refer only to ‘recycling of solid waste,’ not the recycling of solid materials.” (Emphasis added.)

Mr. Carlson then states, “New reporting requirements under AB 901 enhance existing disposal reporting as well as add new reporting requirements for the recycling and composting industries.” This, in fact, may be the case. However, AB 901 does not expand the jurisdictional authority of CalRecycle beyond what is currently in the Act. Both section 40052, discussed above, and the *Waste Management of the Desert Case*, still apply.⁵

Under AB 901, amended section 41821.5(c) authorizes the department to “adopt regulations . . . requiring practices and procedures that are reasonable and necessary to implement this section, that provide a reasonable accounting of solid wastes and recyclable materials that are handled, processed, or disposed.” The language here specifically relates to

⁵During the November 21st meeting, staff acknowledged the limitation placed by the California Supreme Court in the *Waste Management of the Desert* case on the reporting of recyclables under the Integrated Waste Management Act of 1989 (the Act) as it relates to the purchase of source separated recyclables, more specifically metals, which have not been discarded into the solid waste stream. However, I agreed with staff that this limitation would not apply to the reporting of recyclables that have been discarded into the waste stream and have been subsequently removed from the solid waste stream by a solid waste handler/recycler and sold to a third party recycler. I then asked staff how they would handle a situation where a recycler had purchased source separated recyclables, not taken from the solid waste stream, from one client as opposed to another client whose recyclables had been removed from the solid waste stream. Staff responded that the company would be seen as two separate operations for purposes of reporting under the proposed AB 901 regulations. Under the first example the recycler would be exempt from the reporting requirements. However, under the second example (i.e., the purchase of recyclables removed from the solid waste stream) the recycler would be required to report under the proposed regulations.

reporting changes within the Act, not to an expansion of governance under the Act. In other words, the new law requires recycling operations and facilities to submit their information directly to the department, rather than to the counties. Recycling under AB 901 is still limited to recyclables that have been discarded into the waste stream and have subsequently been removed for the purpose of further processing. This point is further supported by the Legislative Counsel's analysis of AB 901 as it appears in the bill's Legislative Counsel's Digest, to wit:

Legislative Counsel's Digest

AB 901, Gordon. Solid waste: reporting requirements: enforcement.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, generally regulates the disposal, management, and recycling of solid waste. Existing law requires disposal facility operators to submit information to counties from periodic tracking surveys on the disposal tonnages that are disposed of at the disposal facility by jurisdiction or region of origin. Existing law requires solid waste handlers and transfer station operators to provide information to the disposal facility on the origin of the solid waste they deliver to the disposal facility. Existing law requires recycling and composting facilities to submit periodic information to counties on the types and quantities of materials that are disposed of, sold to end users, or sold to exporters or transporters for sale outside of the state, by county of origin. Existing law requires counties to submit periodic reports to the cities within the county, to any regional agency of which the county is a member, and to the Department of Resources Recycling and Recovery on the amounts of solid waste disposed of by jurisdiction or region of origin, and on the categories and amounts of solid waste diverted to recycling and composting facilities within the county or region. Existing law authorizes the department to adopt regulations in this regard.

This bill would revise these provisions by, among other things, (1) requiring recycling and composting operations and facilities to submit specified information directly to the department, rather than to counties, (2) requiring disposal facility operators to submit tonnage information to the department, and to counties only on request, and (3) deleting the requirement for counties to submit that information to cities, regional agencies, and the department. The bill would delete references to periodic tracking surveys. The bill would require exporters, brokers, and transporters of recyclables or compost to submit periodic information to the department on the types, quantities, and destinations of materials that are disposed of, sold, or transferred inside or outside of the state, and would authorize the department to provide this information, on an aggregated basis, to jurisdictions, as specified. The bill would make the aggregated information, other than that aggregated by company, public information. The bill would make other related changes to the various reporting requirements. (Emphasis added.)

Mr. Carlson then goes on to state that “The information received from these facilities will be used in two main ways. First, to assist CalRecycle in measuring local jurisdictions’ adherence to their 50% diversion mandate as well as measuring CalRecycle’s state-wide 75% diversion

mandate. Second, to assist with CalRecycle's other programmatic responsibilities including market development, local assistance, and environmental protection." He then states, "It is this second set of uses to which data associated with the transportation of whole automobiles for the purpose of recycling will be put." (Emphasis added.)

Not Used for the Purposes of the Diversion Mandate – First, it is understandable as to why the information about whole automobiles would not be used for purposes of the diversion mandate in that as Mr. Carlson states, ". . . the automobile recycling industry has achieved a significant recycling rate for waste vehicles and essentially no vehicles are disposed of in California landfills . . ." As important, however, is the fact that since 1994, state law has prohibited the disposal of automobiles into state solid waste facilities and landfills. (See Public Resources Code, section 42170.)

No Statutory Authority – Second, we see nothing in AB 901 that grants any legal authority whatsoever to CalRecycle regarding adding automobiles, whole or otherwise, to its proposed reporting requirements for purposes of assisting it in its current responsibilities for "market development, local assistance, and environmental protection." If CalRecycle wants to expand its authority vis-à-vis automobiles for the purposes just stated, it must do so by legislation, not by regulation under AB 901.

More specifically, when an automobile is purchased by an auto dismantler, the automobile is considered a business asset of the company. Thus, every part taken from the vehicle and sold to a customer is considered outside of the AB 901 reporting process according to CalRecycle. (This was confirmed by staff in our November 21st meeting referenced above and subsequently again by staff at its second shareholders' meeting on the second proposed draft of the regulations.) Likewise, it is our position that a car body, crushed or otherwise, remains a valuable metal commodity and business asset of the company which can be sold as such to a recycler. Again, the *Waste Management of the Desert* case would control under this scenario.

Furthermore, any scrap material which results from the processing of an automobile body by a recycler goes to a landfill in the form of auto shredder residue (ASR) which is used in alternative daily cover (ADC) rather than being disposed of in the landfill.⁶

Finally, the fact that some "vehicles (or parts of vehicles) may be common among illegal dumping sites across California" is interesting, but of no relevance in this discussion. That is an enforcement issue. Legitimate recyclers are not part of that problem.

This is not a final commentary on the proposed regulations by ISRI. We retain the right to comment further on any other sections of the proposed regulations as other drafts of the proposed regulations appear. Thank you for your consideration.

⁶ This type of material is currently the subject of an ongoing treatability study by the state Department of Toxic Substances Control (DTSC).

From: Veronica Pardo
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Cc: ["Kathy Lynch \(lynch@lynchlobby.com\)"](mailto:Kathy_Lynch_(lynch@lynchlobby.com))
Subject: CRRC Comments re: 6th draft of AB 901
Date: Thursday, May 31, 2018 4:51:47 PM
Attachments: [CRRC AB 901 05.31.18.pdf](#)

Dear Dr. Mantey and the AB 901 team,

Please see the attached letter from the California Refuse Recycling Council (CRRC) regarding the sixth draft of proposed AB 901 reporting regulations. Please let us know if you have any additional questions or comments.

Sincerely,

Veronica Pardo, Regulatory Affairs Director

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JOINT STATE OFFICE

May 31, 2018

VIA EMAIL & U.S. POST

Jane Mantey, Ph.D.
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Re: Sixth Draft AB 901 Proposed Reporting Regulations

Dear Dr. Mantey,

The California Refuse Recycling Council (CRRC) appreciates the opportunity to comment on the sixth draft of proposed AB 901 Reporting Regulations. We continue to be deeply engaged in this process and are grateful for CalRecycle staff as we work to craft an attainable and useful reporting mechanism for the waste and recycling industry that does not impose an unreasonable burden or economic impact on reporting entities. Ultimately, it is critical that these regulations reflect the statutory underpinning of AB 901 as set forth in Section 41821.5(c):

*The department shall adopt regulations pursuant to this section requiring practices and procedures that are **reasonable and necessary to implement this section**, and that provide a representative accounting of solid wastes and recyclable materials that are handled, processed, or disposed. Those regulations approved by the department **shall not impose an unreasonable burden on waste and recycling handling, processing, or disposal operations** or otherwise interfere with the safe handling, processing, and disposal of solid waste and recyclables.*

We thank you for several constructive changes we noted in the new draft text and staff presentation including: the recognition that the development cycle will include external beta testing, that training and outreach is a high priority, that biogas is no longer a reportable material, tracking clarification for disaster waste and designated waste, a list of who is expected to report and who is not, and a weekend and holiday extension for filing deadlines.

However, we have substantial remaining operational and economic concerns. It is critical to provide a reporting flowchart with the regulations, as several significant changes have been made and reporting entities seek clear understanding of the proposed reporting mechanisms. This reporting flowchart is essential, especially as we move forward with education and outreach efforts. These elements will also have acute cost implications for reporting entities,

from training expectations to equipment expenses. Once again, we strongly recommend CalRecycle develop a clear flowchart of how reporting and tracking will take place among reporting entities, with several examples by reporting entity example and type.

Furthermore, given the proposed filing report date of January 1, 2019, it is crucial that reporting entities are provided the opportunity to beta test the system long before reporting begins. The reporting format should be distributed prior to the finalization of these regulations so reporting entities can provide pertinent feedback. Additionally, the filing date may need to be adjusted if thorough external beta testing and formal reporting format review has not occurred.

On the issue of protecting confidential and proprietary or trade secret information from public disclosure, we are very pleased that the regulations include our suggested language in Section 18815.12(g)(4), among other provisions. However, the regulations do not specifically address the issue of information sharing between agencies of government. It is important that any recipients of information which reporting entities may supply to CalRecycle are obligated to treat it the same way as the regulations require CalRecycle to treat it. We understand the regulations are silent on this point because CalRecycle customarily enters into an MOU or Information Sharing Agreement with other agencies whenever information is exchanged. Accordingly, we wish to confirm here that our understanding is correct, and that it is CalRecycle's policy that any information of a confidential, proprietary or trade secret nature will not be shared with any other agency of government unless the recipient agrees in writing to preserve and protect such information from public disclosure.

We also note that changes have occurred for the same-site transfer of materials. We appreciate the inclusion of Section 18815.9 (g)(3)(E) that allows for conveyance systems without scales to estimate and report tonnages transferred by volume to weight conversion factors, flow rates, belt scales, or other methods approved by the Department. We also appreciate specific reporting methodology in Section 18815.9 (h) for material transferred on the same site. However, it is unclear what is the difference between "separated recyclables" or "separated organics" from "mixed recyclables" or "mixed organics." We recommend that movement of recyclables and organics to another reporting entity on the same site with the same owner not be required to report tonnages transferred. For Section 18815.9 (h)(3), "mixed organics or mixed recyclables" should be replaced with "mixed materials" as defined in Section 18815.2(a)(36) as that presumes a "combination of different material types". The simplest solution, however, would be to allow same-site facilities to have one RDRS number and report accordingly. This would greatly reduce overall costs and inaccuracies in reporting as everything would be based on inbound tons and outbound tons within the same site, including jurisdiction of origin reporting and source sector reporting. This would allow a same-site facility to report on aggregated outbound data, which serves to address the overarching goal of AB 901 and track the ultimate flow of material. The inclusion of multiple RDRS numbers for same site facilities only creates unnecessary higher costs with little to no benefit in terms of tracking material.

Ultimately, compliance costs were not accurately represented in your initial economic analysis. While we appreciate that an updated economic analysis is being drafted for the final rulemaking, it is imperative that we have the chance to review and comment on this analysis prior to completion of the regulatory process. At a minimum it should also include the following estimated costs:

- Administrative support
- Updated computer programming, database modification and management system upgrades
- Equipment purchases, such as mobile scales that can vary from \$8000 - \$10,000 per scale
- Decreased processing efficiencies
- New employee hires – One example is of “spotters” that might be needed for same-site transfer of materials. One CRRC member facility has eight distinct tip areas, that could potentially require eight new hires to properly track material flow. At the entry level, these employees would be paid \$20 per hour plus a 50% factor for other benefits, conservatively bringing the cost to \$30-\$40 per hour per employee. This one example would cost an additional \$500,000 annually just to track material for the purposes of reporting.
- Training – From reporting to customer service to tracking of material, these regulations will incur new training obligations.
- Reporting, including data entry
- Customer service development – We will need to increase consultation to local jurisdictions, brokers, reporting entities and self-haulers
- Internal auditing functions – Accounting functions require a highly trained labor pool. Employing a staff member at a Material Recovery Facility in this capacity would cost a conservative \$100,000 annually.
- A distinction between different sized facilities, regions and labor needs

Additionally, the analysis fails to capture the fact that reporting entities will be forced to internalize these costs as they are immediate in nature and not currently part of the rate structure. These costs are only exacerbated as we work to meet the mandates and policy objectives set forth in [AB 341](#) (2011), [AB 1826](#) (2014), [AB 1594](#) (2014), and [SB 1383](#) (2016), many that set new aggressive goals in 2020, one year following the implementation of AB 901.

In addition to the issues addressed above, we have the following comments regarding the proposed regulations, divided by section and issue.

Section 18815.2 Definitions

(38) Organics – In anticipation of SB 1383, we recommend that the definition be included by reference for all future reporting obligations.

(39) Paper – Again, in anticipation of SB 1383, we recommend that the definition be included by reference for all future reporting obligations.

Section 18815.3 Registration, Reporting and Exemptions

(d) For a site with multiple activities – We recommend that a site with multiple activities, owned by the same person and on the same site, shall register for a single RDRS number and file a single report that aggregates material information.

(m) Reporting entities shall commence filing reports using RDRS for the reporting period beginning January 1, 2019. – If reporting entities have not had sufficient time to review the new reporting database format and beta test the reporting system, the proposed filing date may need to be delayed.

(n)(2) If a reporting entity identifies an error in a previously submitted report, then it shall correct the error and notify the Department within 10 business days. – While we appreciate the added clarification of “business days,” this section is still unclear in terms of when the reporting entity is expected to notify the Department. We read it as 10 business days from the date of identification, but think it needs further refinement to express that. There is also a new addition that reporting entities must “correct the error” within the short timeframe of 10 business days. A reporting entity may discover they have submitted inaccurate data, say from a hauler, but not know what the correction should be within that timeframe. 10 business days is insufficient time to correct any errors that are due to inaccurate reporting from other entities. In some cases, notification may be the only option.

Section 18815.4 Reporting Requirements for Haulers

(c)(1) For solid waste, or mixed materials containing a significant amount of solid waste hauled – This new addition of mixed materials containing a “significant amount of solid waste” is subjective and confusing. Only solid waste material should include jurisdiction of origin reporting obligations.

Section 18815.5 Reporting Requirements for Transfer/Processors

(a)(3)(C) Report the percentage of materials solid waste and green material potential beneficial reuse received from each transfer/processor; and the total percentage of materials sent which originated from all haulers collectively. – Reporting entities will primarily be managing green material for organics processing (to meet the obligations of AB 1594 and SB 1383) and cannot preemptively know if green material will be used for beneficial reuse. This adds an unnecessary layer of reporting complexity and should be removed. The reporting focus should remain on jurisdiction of origin for solid waste.

Section 18815.9 Reasonable Methods

(g)(2)(D) If a recycler or composter sells or transfers materials based on volume, then it may use material specific volume to weight conversion factors to estimate tons. – This section should

include all CDI processing operations and facilities, not strictly CDI recycling centers, as they often sell material, such as colored mulch, by volume and not weight.

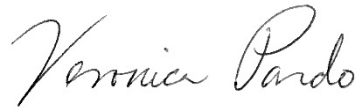
Finally, we urge CalRecycle to build AB 901 off the existing disposal reporting infrastructure to avoid an unreasonably complex and cost prohibitive reporting system, while achieving more accurate reporting and advancing the policy goals we all share.

We thank you again for the opportunity to comment on these proposed regulations. Please do not hesitate to reach out to the CRRC regulatory team with any additional questions or concerns.

Sincerely,



Kathryn Lynch
Regulatory Affairs



Veronica Pardo
Regulatory Affairs

cc: CRRC State Executive Committee Members

From: legal@trifunovic.com
To: [AB 901 Recycling and Diversion Reporting@CalRecycle](mailto:AB901_Recycling_and_Diversion_Reporting@CalRecycle)
Subject: AB 901 Comments
Date: Friday, June 1, 2018 12:04:55 AM
Attachments: [F2BFBBABAFA447B49B9E28F2F7F5EAD1.png](#)

VIA EMAIL ONLY (AB901.Reporting@CalRecycle.ca.gov)

Steven Sander, Project Lead
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**RE: Proposed Regulations
AB 901, Gordon. Solid waste: reporting requirements: enforcement**

To whom it may concern:

I write on behalf of my client, Allan Company, and the Association of California Recycling Industries (“**ACRI**”). Allan Company was founded in California in 1963 and is one California’s largest independently owned and operated recyclers. ACRI is a nonprofit trade association comprised of recycling businesses located in California. ACRI was founded in order to help protect the rights of independent recyclers, and its members are committed to promoting free-market competition for recyclable materials. For more information please visit www.allancompany.com and www.acrinow.org.

Proposed Regulation Enlarges Statute

The Department of Resources Recycling and Recovery, commonly known as CalRecycle, is established^[1] and governed in its activities by the California Integrated Waste Management Act of 1989^[2] (the “**Act**”) found in Division 30 of the Public Resources Code. CalRecycle succeeds the former California Integrated Waste Management Board in administering the Act^[3].

The purpose of the Act, as embodied in Division 30, is as follows:

The purpose of this division is to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient and cost-effective manner to conserve water, energy and other natural resources, to protect the environment, to improve regulation of existing solid waste landfills, to ensure that new solid waste landfills are environmentally sound, to improve permitting procedures for solid waste management facilities, and to specify the responsibilities of local governments to develop and implement integrated waste management programs.

Cal. Pub. Res. Code § 40052 (emphasis added)

As the West Coast Chapter of the Institute of Scrap Recycling Industries (ISRI) aptly stated, the important distinction here regarding “recycling” is that, under the Act, that term is limited to recycling of “solid waste,” not recycling in general. It is well-established that “if the owner of

recyclable materials discards them into the solid waste stream, they become solid waste subject to the Act,” but not until then^[4]. Hence, only recyclable materials that have been discarded and later recovered from solid waste stream would be subject to the Act and the reporting requirements of AB 901.

The Legislature has repeatedly and consistently demonstrated that the Act is intended to deal with solid waste generated in the state^[5]. This view is supported by the Act’s express language^[6] and case law^[7].

As part of the state’s effort to manage solid waste, the Legislature declared that the state and local governments share responsibility for solid waste management with the state overseeing the design and implementation of local *integrated waste management plans*.^[8] The requirements of such waste management plans are set forth in Part 2 of Division 30 and the statutory text of AB 901 is deliberately codified and expressed within that context^[9]. Given this placement, AB 901’s reporting requirements must be read in the context of the state’s effort to manage solid waste, including accounting for progress in reducing, recycling, and reusing solid waste generated in the state. In proper context, AB 901 was clearly intended to refer to the recycling of “solid waste,” not all recycling in general.

Moreover, these integrated waste management plans “shall conform, to the maximum extent possible to the policies and goals established under Article 1 (commencing with Section 40000) and Article 2 (commencing with Section 40050) of Chapter 1 of Part 1”^[10]. Those policies and goals expressly relate to the management of solid waste. Accordingly, AB 901 reporting requirements must be read in the context of the state’s waste management policies and goals, which include the *recycling of solid waste* generated in this state.

It is worth noting the following text at the top of the chaptered version of AB 901: “An act to amend Section 41821.5 of, to amend, renumber, and add Section 41821.6 of, and to add Sections 41821.7 and 41821.8 to, the Public Resources Code, *relating to solid waste*.” (emphasis added) Even the Legislative Counsel’s Digest labels the bill as follows: “AB 901, Gordon. *Solid waste*: reporting requirements: enforcement.” (emphasis added)

Here, however, CalRecycle proposes regulations that would require the reporting of recyclable material that *has not become solid waste*. We believe that this exceeds the authority granted to CalRecycle by the enabling legislation (the Act inclusive of AB 901). CalRecycle’s interpretation would effectively bring under its jurisdiction various persons (i.e. entities, facilities, and operations) and materials for the first time by impermissibly expanding the meaning of AB 901.

We note that the authority of an administrative agency, like CalRecycle, to adopt regulations is limited by the enabling legislation.^[11] Furthermore, “[w]hile an agency is authorized to fill up gaps in the details of a statutory scheme, the scope or intent of a statute cannot be diminished or altered by a regulation purporting to interpret or implement it.”^[12]

We do not agree with CalRecycle’s interpretation of AB 901 and believe that requiring the reporting of recyclable material that has not become solid waste to be inconsistent with the Act and AB 901, when read in its proper context.

It is important that CalRecycle reasonably interpret the text of AB 901. That requires that AB 901 be read in the context of the Act, and it is our position that failing to do that is unreasonable.

“When the authority of an agency to issue a regulation is challenged, the court's task is to decide whether the agency reasonably interpreted its legislative mandate as regulations that alter or amend the statute or enlarge or impair its scope are void. The standard of review is one of respectful nondeference to the agency's interpretation of its authority under the enabling statute as a court does not defer to an administrative agency's view when deciding whether a regulation lies within the scope of the authority delegated by the legislature.”^[13] Furthermore, “[t]he court, not the agency, has final responsibility for the interpretation of the law under which the regulation was issued.”^[14]

For the foregoing reasons, we respectfully urge CalRecycle to further revise the proposed regulations to exclude from the reporting requirement recyclable material that has not become solid waste. We appreciate the opportunity to comment and welcome further discussion on this important topic.

Sincerely,

Nenad Trifunovic

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^[1] Cal. Pub. Res. Code § 40400

^[2] Cal. Pub. Res. Code § 40000 *et seq.*

^[3] “(a)(1) Except as otherwise specified by statute, the Department of Resources Recycling and Recovery succeeds to and is vested with all of the authority, duties, powers, purposes, responsibilities, and jurisdiction of the former California Integrated Waste Management Board. Cal. Pub. Res. Code § 40401; “Any reference in any law or regulation to the State Solid Waste Management Board, the California Waste Management Board, or the California Integrated Waste Management Board shall hereafter apply to the Department of Resources Recycling and Recovery.” Cal. Pub. Res. Code § 40400

^[4] See Waste Mgmt. of the Desert, Inc. v. Palm Springs Recycling Ctr., Inc., 7 Cal. 4th 478, 489, 869 P.2d 440 (1994)

^[5] Cal. Pub. Res. Code §§ 40000, 40001, 40002, 40004, and 42649

^[6] “‘Recycle’ or ‘recycling’ means 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.” Cal. Pub. Res. Code § 40180 (emphasis added)

[7] “The Act's very title, the California Integrated *Waste* Management Act of 1989, and its repeated references to ‘solid *waste*,’ ‘solid *waste* handling,’ ‘recycling of solid *wastes*,’ and the like strongly indicate the Legislature was concerned with just what it said—*waste*—and not with materials of economic value to their owner.” Waste Mgmt. of the Desert, Inc. v. Palm Springs Recycling Ctr., Inc., 7 Cal. 4th 478, 485, 869 P.2d 440 (1994) (emphasis in original)

[8] Cal. Pub. Res. Code § 40001(a)

[9] *See generally* Cal. Pub. Res. Code § 41821.5 found in Division 30 (Waste Management, Part 2 (Integrated Waste Management Plans), Chapter 7 (Approval of Local Planning), Article 3 (Other Provisions))

[10] Cal. Pub. Res. Code § 40900

[11] 2 Cal. Jur. 3d Administrative Law § 265 citing Esberg v. Union Oil Co., 28 Cal. 4th 262, 121 Cal. Rptr. 2d 203, 47 P.3d 1069 (2002); Bearden v. U.S. Borax, Inc., 138 Cal. App. 4th 429, 41 Cal. Rptr. 3d 482 (2d Dist. 2006); Friedman v. Southern Cal. Permanente Medical Group, 102 Cal. App. 4th 39, 125 Cal. Rptr. 2d 663 (2d Dist. 2002), as modified, (Sept. 24, 2002).

[12] 2 Cal. Jur. 3d Administrative Law § 265 citing Mineral Associations Coalition v. State Mining and Geology Bd., 138 Cal. App. 4th 574, 41 Cal. Rptr. 3d 544 (3d Dist. 2006) and California School Boards Ass'n v. State Bd. of Educ., 186 Cal. App. 4th 1298, 113 Cal. Rptr. 3d 550, 258 Ed. Law Rep. 1186 (1st Dist. 2010), as modified on denial of reh'g, (Aug. 24, 2010).

[13] 2 Cal. Jur. 3d Administrative Law § 266 citing Agnew v. State Bd. of Equalization, 21 Cal. 4th 310, 87 Cal. Rptr. 2d 423, 981 P.2d 52 (1999); Association for Retarded Citizens v. Department of Developmental Services, 38 Cal. 3d 384, 211 Cal. Rptr. 758, 696 P.2d 150 (1985); Bearden v. U.S. Borax, Inc., 138 Cal. App. 4th 429, 41 Cal. Rptr. 3d 482 (2d Dist. 2006); Yamaha Corp. of America v. State Bd. of Equalization, 19 Cal. 4th 1, 78 Cal. Rptr. 2d 1, 960 P.2d 1031 (1998); Security Nat. Guar., Inc. v. California Coastal Com'n, 159 Cal. App. 4th 402, 71 Cal. Rptr. 3d 522 (1st Dist. 2008); Schneider v. California Coastal Com., 140 Cal. App. 4th 1339, 44 Cal. Rptr. 3d 867 (2d Dist. 2006).

[14] 2 Cal. Jur. 3d Administrative Law § 266 citing Yamaha Corp. of America v. State Bd. of Equalization, 19 Cal. 4th 1, 78 Cal. Rptr. 2d 1, 960 P.2d 1031 (1998); California Assn of Medical Products Suppliers v. Maxwell-Jolly, 199 Cal. App. 4th 286, 131 Cal. Rptr. 3d 692 (1st Dist. 2011); California School Boards Assn. v. State Bd. of Educ., 191 Cal. App. 4th 530, 119 Cal. Rptr. 3d 596, 263 Ed. Law Rep. 268 (3d Dist. 2010).

From: legal@trifunovic.com
To: [AB 901 Recycling and Diversion Reporting@CalRecycle](mailto:AB901.Recycling.and.Diversion.Reporting@CalRecycle)
Subject: RE: AB 901 Comments
Date: Friday, June 1, 2018 12:06:27 AM

Please forgive the slightly tardy AB 901 comments found below. After experiencing issues sending the comments using Allan Company's mail server, I resent them using my law office mail account.

Nenad Trifunovic | Attorney and Counselor at Law
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From: legal@trifunovic.com
Sent: Friday, June 1, 2018 12:02 AM
To: AB901.Reporting@CalRecycle.ca.gov
Subject: AB 901 Comments

VIA EMAIL ONLY (AB901.Reporting@CalRecycle.ca.gov)

Steven Sander, Project Lead
Department of Resources Recycling and Recovery
801 K St., MS 17-01
Sacramento, CA 95814

RE: Proposed Regulations
AB 901, Gordon. Solid waste: reporting requirements: enforcement

To whom it may concern:

I write on behalf of my client, Allan Company, and the Association of California Recycling Industries ("ACRI"). Allan Company was founded in California in 1963 and is one California's largest independently owned and operated recyclers. ACRI is a nonprofit trade association comprised of recycling businesses located in California. ACRI was founded in order to help protect the rights of independent recyclers, and its members are committed to promoting free-market competition for recyclable materials. For more information please visit www.allancompany.com and www.acrinow.org.

Proposed Regulation Enlarges Statute

The Department of Resources Recycling and Recovery, commonly known as CalRecycle, is established^[1] and governed in its activities by the California Integrated Waste Management Act of 1989^[2] (the "Act") found in Division 30 of the Public Resources Code. CalRecycle succeeds the former California Integrated Waste Management Board in administering the Act^[3].

The purpose of the Act, as embodied in Division 30, is as follows:

The purpose of this division is to reduce, recycle, and reuse solid waste generated in

the state to the maximum extent feasible in an efficient and cost-effective manner to conserve water, energy and other natural resources, to protect the environment, to improve regulation of existing solid waste landfills, to ensure that new solid waste landfills are environmentally sound, to improve permitting procedures for solid waste management facilities, and to specify the responsibilities of local governments to develop and implement integrated waste management programs.

Cal. Pub. Res. Code § 40052 (emphasis added)

As the West Coast Chapter of the Institute of Scrap Recycling Industries (ISRI) aptly stated, the important distinction here regarding “recycling” is that, under the Act, that term is limited to recycling of “solid waste,” not recycling in general. It is well-established that “if the owner of recyclable materials discards them into the solid waste stream, they become solid waste subject to the Act,” but not until then^[4]. Hence, only recyclable materials that have been discarded and later recovered from solid waste stream would be subject to the Act and the reporting requirements of AB 901.

The Legislature has repeatedly and consistently demonstrated that the Act is intended to deal with solid waste generated in the state^[5]. This view is supported by the Act’s express language^[6] and case law^[7].

As part of the state’s effort to manage solid waste, the Legislature declared that the state and local governments share responsibility for solid waste management with the state overseeing the design and implementation of local *integrated waste management plans*.^[8] The requirements of such waste management plans are set forth in Part 2 of Division 30 and the statutory text of AB 901 is deliberately codified and expressed within that context^[9]. Given this placement, AB 901’s reporting requirements must be read in the context of the state’s effort to manage solid waste, including accounting for progress in reducing, recycling, and reusing solid waste generated in the state. In proper context, AB 901 was clearly intended to refer to the recycling of “solid waste,” not all recycling in general.

Moreover, these integrated waste management plans “shall conform, *to the maximum extent possible to the policies and goals* established under Article 1 (commencing with Section 40000) and Article 2 (commencing with Section 40050) of Chapter 1 of Part 1”^[10] Those policies and goals expressly relate to the management of solid waste. Accordingly, AB 901 reporting requirements must be read in the context of the state’s waste management policies and goals, which include the *recycling of solid waste* generated in this state.

It is worth noting the following text at the top of the chaptered version of AB 901: “An act to amend Section 41821.5 of, to amend, renumber, and add Section 41821.6 of, and to add Sections 41821.7 and 41821.8 to, the Public Resources Code, *relating to solid waste*.” (emphasis added) Even the Legislative Counsel’s Digest labels the bill as follows: “AB 901, Gordon. *Solid waste*: reporting requirements: enforcement.” (emphasis added)

Here, however, CalRecycle proposes regulations that would require the reporting of recyclable material that *has not become solid waste*. We believe that this exceeds the authority granted to

CalRecycle by the enabling legislation (the Act inclusive of AB 901). CalRecycle's interpretation would effectively bring under its jurisdiction various persons (i.e. entities, facilities, and operations) and materials for the first time by impermissibly expanding the meaning of AB 901.

We note that the authority of an administrative agency, like CalRecycle, to adopt regulations is limited by the enabling legislation.^[11] Furthermore, “[w]hile an agency is authorized to fill up gaps in the details of a statutory scheme, the scope or intent of a statute cannot be diminished or altered by a regulation purporting to interpret or implement it.”^[12]

We do not agree with CalRecycle's interpretation of AB 901 and believe that requiring the reporting of recyclable material that has not become solid waste to be inconsistent with the Act and AB 901, when read in its proper context.

It is important that CalRecycle reasonably interpret the text of AB 901. That requires that AB 901 be read in the context of the Act, and it is our position that failing to do that is unreasonable.

“When the authority of an agency to issue a regulation is challenged, the court's task is to decide whether the agency reasonably interpreted its legislative mandate as regulations that alter or amend the statute or enlarge or impair its scope are void. The standard of review is one of respectful nondeference to the agency's interpretation of its authority under the enabling statute as a court does not defer to an administrative agency's view when deciding whether a regulation lies within the scope of the authority delegated by the legislature.”^[13] Furthermore, “[t]he court, not the agency, has final responsibility for the interpretation of the law under which the regulation was issued.”^[14]

For the foregoing reasons, we respectfully urge CalRecycle to further revise the proposed regulations to exclude from the reporting requirement recyclable material that has not become solid waste. We appreciate the opportunity to comment and welcome further discussion on this important topic.

Sincerely,

Nenad Trifunovic

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^[1] Cal. Pub. Res. Code § 40400

^[2] Cal. Pub. Res. Code § 40000 *et seq.*

^[3] “(a)(1) Except as otherwise specified by statute, the Department of Resources Recycling and Recovery succeeds to and is vested with all of the authority, duties, powers, purposes, responsibilities, and jurisdiction of the former California Integrated Waste Management Board. Cal. Pub. Res. Code § 40401; “Any reference in any law or regulation to the State Solid Waste Management Board, the California Waste Management Board, or the California Integrated Waste Management Board shall hereafter apply to the Department of Resources Recycling and Recovery.”

Cal. Pub. Res. Code § 40400

[4] See Waste Mgmt. of the Desert, Inc. v. Palm Springs Recycling Ctr., Inc., 7 Cal. 4th 478, 489, 869 P.2d 440 (1994)

[5] Cal. Pub. Res. Code §§ 40000, 40001, 40002, 40004, and 42649

[6] “‘Recycle’ or ‘recycling’ means 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.” Cal. Pub. Res. Code § 40180 (emphasis added)

[7] “The Act’s very title, the California Integrated *Waste Management Act* of 1989, and its repeated references to ‘solid waste,’ ‘solid waste handling,’ ‘recycling of solid wastes,’ and the like strongly indicate the Legislature was concerned with just what it said—*waste*—and not with materials of economic value to their owner.” Waste Mgmt. of the Desert, Inc. v. Palm Springs Recycling Ctr., Inc., 7 Cal. 4th 478, 485, 869 P.2d 440 (1994) (emphasis in original)

[8] Cal. Pub. Res. Code § 40001(a)

[9] See generally Cal. Pub. Res. Code § 41821.5 found in Division 30 (Waste Management, Part 2 (Integrated Waste Management Plans), Chapter 7 (Approval of Local Planning), Article 3 (Other Provisions))

[10] Cal. Pub. Res. Code § 40900

[11] 2 Cal. Jur. 3d Administrative Law § 265 citing Esberg v. Union Oil Co., 28 Cal. 4th 262, 121 Cal. Rptr. 2d 203, 47 P.3d 1069 (2002); Bearden v. U.S. Borax, Inc., 138 Cal. App. 4th 429, 41 Cal. Rptr. 3d 482 (2d Dist. 2006); Friedman v. Southern Cal. Permanente Medical Group, 102 Cal. App. 4th 39, 125 Cal. Rptr. 2d 663 (2d Dist. 2002), as modified, (Sept. 24, 2002).

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Products Suppliers v. Maxwell-Jolly, 199 Cal. App. 4th 286, 131 Cal. Rptr. 3d 692 (1st Dist. 2011);
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