

**Association of Compost Producers
California State Association of Counties
California Refuse Recycling Council
League of California Cities
Recology
Republic Services, Inc.
Rural County Representatives of California
Waste Connections
Waste Management**

Mr. Robert Carlson
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Dear Robert Carlson,
The companies and organizations listed above are fundamental stakeholders in achieving our ambitious 75% waste diversion goal, as we mutually look for solutions to effectively manage California's solid waste stream. We participated in the original development of AB 901 and in the informal rulemaking process to-date. Thank you for the opportunity to provide comments during this informal cycle.

This letter is an effort to address primary concerns with current AB 901 draft regulations, while recognizing that secondary concerns cannot be properly addressed until we resolve the primary. For example, thresholds for reporting cannot be determined until we know in general what reporting entities will be expected to report. To that end, we request another round of informal conversations once this round is completed.

Of highest concern to our group is the proprietary business protection afforded to reporting entities as outlined and directed in AB 901. Section 41821.5 (b) (3) states:

*The information in the reports submitted pursuant to this subdivision may be provided to the department on an **aggregated facility-wide basis and may exclude financial data, such as contract terms and conditions (including information on pricing, credit terms, volume discounts and other proprietary business terms), the jurisdiction of the origin of the materials, or information on the entities from which the materials are received.** The department may provide this information to jurisdictions, aggregated by company, upon request. The aggregated information, other than that aggregated by company, is public information (emphasis added).*

It is essential that reporting entities protect their customer list and aggregate reporting data so that proprietary business information is not made available to the public. Additionally, we recommend that destination reporting be done by category, not specific customer, to safeguard proprietary trade secrets from public disclosure. This approach is explained in more detail below.

Furthermore, we believe that many reporting entities (e.g. scrap metal yards, automobile shredders, chip & grind facilities, landscape material yards) are not yet aware of these developing regulations or are not yet participating in the informal discussions. It is crucial that more outreach occur with potential reporting entities and that they be clearly outlined in a written document for distribution. This will facilitate all necessary stakeholders to participate in the development process. Otherwise, we risk a prolonged regulatory process as affected entities are made aware later on in the formal rulemaking.

Finally, of significant importance is the fact that AB 901 regulations should not impose increased costs or burdensome reporting on reporting entities. We have several suggestions outlined below to address these concerns.

Reporting System

The reporting system will remain crucial to the success of AB 901 regulations and the accuracy of data received. Several elements must be addressed to ensure that data reporting is simplified and streamlined.

- **Report destination of recyclable material at the level defined in AB 901.** Central to AB 901's structure and intent is the protection of sensitive customer and proprietary business information. To that end, reporting entities should report and aggregate the destination of their recyclable materials by category, not individual destination, as written in AB 901: recycling facility, composting facility, end user in state, end user out of state, exporter, broker or transporter. For reporting purposes, this would protect the identity of any customer and reduce the opportunity for a competitor to take advantage of proprietary data.
- **Simplify recycling reporting by material type.** As material types are not discrete, reporting recyclables by material type will present challenges if these types are not clearly defined in the reporting system. In general, we recognize reporting by basic paper, metal, plastic, glass and organics recycling categories, but remain concerned that more granular reporting will lead to confusion and bad data. This is particularly important when we discuss potential targeted materials such as carpet and mattresses, which already have their own EPR program reporting. Any duplicative reporting needs to be streamlined so that the reporting system handles all defined categories. In addition, some materials types are managed as commingled material types with other materials; quantifying separate amounts for each would be a difficult and expensive process. As CalRecycle staff indicated in the workshops, reporting of mixed material types would be possible. This topic deserves more conversation after primary issues are addressed.
- **Remove source-sector from disposal reporting.** Not only would reporting source-sector create excessive data inaccuracies, it adds an unreasonable burden on reporting

entities. As numerous stakeholders have described, material may move through several operations and may contain multiple source sectors before it is sent to the landfill for disposal, creating a chain of data points that would need to be managed by staff at each facility. It is unreasonable to assume material can be tracked appropriately in this manner. Moreover, only “jurisdiction or region of origin” is described in AB 901, with no mention of source-sector. In lieu of source-sector reporting, CalRecycle may use an annual survey to estimate what percentage of disposed material is from the sectors they choose to define.

- **Remove hazardous waste from ALL reporting requirements.** Hazardous waste (e.g. paint, batteries, used oil, e-waste, etc.) is managed and regulated separately from solid waste and was never intended to be part of AB 901 reporting. Hazardous wastes are also specifically excluded from the definition of solid waste in Public Resources Code 40191 and thus should not be included in these regulations.
- **Consider modifying reporting for remote facilities.** Imposing extensive reporting from small, remote facilities that deliver solid waste to a central facility is burdensome. These systems should be allowed to provide aggregated reporting to CalRecycle.
- **Resolve data discrepancies.** Given the potential inaccuracies with this comprehensive reporting system, the regulations should create a process for jurisdictions, facilities, and haulers to resolve discrepancies in reported data. If there is no process for reconciliation, jurisdictions and facilities could be assigned tonnages and materials estimates that should be attributed to other sources.
- **Beta test the new reporting system** before it goes live to identify and resolve any major issues.
- **Define how clerical errors can be easily resolved.** Ensure that reporting entities have a straightforward method by which to correct any reporting errors in a timely manner without assessment of penalties.

Procedures for Imposing Civil Liabilities

As these regulations will bring new reporting entities under the directive of CalRecycle, it is essential that ample time is given to understand the new reporting system. Furthermore, regulatory enforcement language must provide a means of resolving issues, especially minor clerical errors, prior to the initiation of enforcement. AB 901 regulations should specifically include language from Section 41821.5 (c) (1): *Procedures to ensure that an opportunity to comply is provided prior to initiation of enforcement authorized by Section 41821.7.*

Reporting entities should not be penalized for minor clerical errors fixed within an appropriate timeframe.

Open Issues

Several issues cannot fully be examined until the aforementioned issues are addressed including, reporting at a facility with multiple operations, thresholds, tracking of self-hauled material, etc. We recommend another informal round of draft regulations to sort out the high level issues so that we may better tackle the secondary issues.

Conclusion

Reporting should be designed to minimize burdens on reporting entities while accomplishing the goals of AB 901. In addition to synchronizing with other reporting, any necessary percentage calculations and breakdowns desired by CalRecycle should be imbedded in the reporting system. An in-depth IT discussion will be crucial to designing a useful system.

We also request more informal discussions and outreach to potential reporting entities. Affected sectors need to be clearly delineated in writing by CalRecycle before formal rulemaking to engage those sectors.

Not yet outlined in the draft regulations is the engagement of state organizations, such as state prisons, in the reporting process. In order to get the most accurate data, we want to ensure that state agencies are active participants if they too are considered a recycling or composting facility or operation.

Finally we ask for more clarification on what information will be made available to local governments through AB 901 reporting. How will discrepancies between reporting at the state or local level be resolved? This is a discussion that merits considerable attention and is not yet well-defined.

The comments in this letter provide a general consensus on issues we hope to resolve, though each stakeholder reserves the right to provide individual comments.

We look forward to another informal round of AB 901 regulations to go over the most pressing issues before we begin formal rulemaking.

Sincerely,

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