



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

May 8, 2024

Zoe Heller
Director, Department of Resources
Recycling and Recovery
1001 I Street
Sacramento, CA 95814

RE: SB 54 Formal Rulemaking 45-Day Comment Period Comments

Dear Director Heller:

On behalf of the Rural County Representatives of California (RCRC), we are pleased to provide comments on CalRecycle's proposed SB 54 regulations.

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I. Introduction – Local Government Interest in SB 54

RCRC is an association of forty rural California counties, including all 19 California counties that qualify as “rural counties” under Public Resources Code Section 42649.8(h). The RCRC Board of Directors is comprised of elected supervisors from each member county. RCRC was extensively engaged in the Senate Bill 54 (Chapter 75, Statutes of 2022) development process and strongly advocated for its passage because of the paradigm shift it will have on waste management.

A. Existing solid waste management and recycling framework.

Local governments are the longstanding backbone of solid waste management and recycling. Cities and counties are charged with diverting 50 percent of solid waste from landfill disposal through source reduction, recycling, and composting. Despite these responsibilities, local governments and the solid waste industry have no control over which products are introduced into the marketplace and must be managed at the end of lifecycle. As a result, manufacturers have long introduced products into the marketplace with little to no regard for their end-of-life management costs and complications. Local governments have also struggled to manage products marketed by manufacturers as “recyclable,” but which are merely theoretically recyclable (at best) with no viable end market or infrastructure to make recycling a reality.

B. SB 54 fundamentally changes responsibilities for managing single-use packaging and ensures local governments will be made finally whole for implementation costs.

RCRC was pleased to support SB 54 because it creates a paradigm shift in which product manufacturers will bear responsibility for management and recycling of the products they introduce into the stream of commerce. Ideally, this shift will prompt manufacturers to focus product design on reuse and recyclability.

Senate Bill 54 was clear and unambiguous in its intent “that local jurisdictions will be made financially whole for any new costs incurred associated with [its] implementation.”¹ The scope of implementation costs eligible for reimbursement is extensive, as outlined in PRC 42051.1(c) and 42051.1(j)(1)(B). These reimbursable costs include infrastructure development, education, transportation, cleaning, sorting,

¹ Public Resources Code (PRC) Section 42040(b)(2)(B).

aggregating, baling, marketing, waste stream sampling, and reporting. SB 54 acknowledges that those local costs will vary based on population density, distance to markets, etc. Finally, SB 54 recognizes that jurisdictions will use different strategies to manage and recycle solid waste, including curbside collection, self-haul, drop-off, take-back, and alternative collection systems.

C. Stakeholder involvement and next steps.

CalRecycle conducted a robust stakeholder engagement process in developing these regulations, including numerous public workshops that allowed stakeholders and regulators to dive deeper into the concepts prior to publication of draft regulations. RCRC engaged in several of those workshops, and we appreciate CalRecycle's responsiveness to some of the concerns we articulated, particularly with respect to rural exemptions.

While we acknowledge the challenges associated with developing regulations to implement SB 54, RCRC believes that additional work is necessary to refine the regulatory framework to avoid some serious consequences and ensure successful program delivery.

We recognize that these regulations are just one aspect of SB 54 implementation. Overall success also depends on the producer responsibility organization (PRO) crafting a robust, workable product stewardship plan that achieves the Legislature's intent to make local governments financially whole for implementation costs. Another foundational element is development of an accurate needs assessment to guide infrastructure investment so that local governments and recycling service providers can recover covered materials and get them to market.

II. Looming Unanswered Question is How Reimbursement and Dispute Resolution Processes Will Work

Local governments and solid waste enterprises are the backbone of the state's solid waste recycling and disposal system. Local governments and ratepayers have long shouldered all the costs of managing and recycling waste, including single-use packaging. As mentioned, SB 54 was embraced by local governments because it is transformative: it shifts the costs of system improvements, market development, and recycling single-use packaging from local governments to the producers of those products. Two of the biggest questions local governments have at this point about SB 54 implementation is how the reimbursement process will work and how potential disputes regarding reimbursements will be resolved.

Public Resources Code Section 42051.1 requires a PRO to submit a plan and budget to CalRecycle for approval. This plan must identify how the PRO will support and achieve, as well as how the budget will fund, the collection, processing, recycling, or composting of, and the development of viable responsible end markets for, covered

materials. This includes actions related to sorting, segregating, breaking or flaking, and processing material.

Importantly, the PRO plan must include a budget designed to fully fund implementation costs, including: costs incurred by local jurisdictions, recycling service providers, and other collection programs and costs related to consumer outreach and education; transportation of covered materials to a materials recovery facility, broker, or viable end market; cleaning, sorting, aggregating, and baling covered materials; local government waste stream sampling and reporting, ratepayer education, and infrastructure improvements.² This clearly reflects the stated legislative intent³ that “local jurisdictions will be made financially whole for any new costs incurred associated with the implementation of this chapter and its implementing regulations.”

SB 54 also requires the PRO plan to “include a process for determining the costs that will be incurred by local jurisdictions, recycling service providers, alternative collection systems, and others” as well as a mechanism and schedule for transferring funds to local jurisdictions. The PRO will “determine the costs based on information provided by local jurisdictions, recycling service providers, and others.” Finally, the PRO plan must include a process to resolve disputes between the PRO and a local jurisdiction or recycling service provider concerning how costs are determined and paid.⁴ The proposed regulations do not address these critical requirements of SB 54.

We understand that SB 54 requires these details to be outlined in the PRO plan and budget, which must be approved by CalRecycle. Unfortunately, we do not expect that plan to be submitted to CalRecycle for review and approval for another two years. Even then, the proposed regulations do not provide detail on the criteria that CalRecycle may use in determining whether to approve or reject a plan or budget; nor do they provide any clarification on the scope of, or process and timeframe for reimbursement. These details are vital as local governments begin planning for and acquiring additional services, equipment, and infrastructure to comply with SB 54. Local governments need certainty that costs incurred will be reimbursed fully and quickly, but the proposed regulations do not address these issues.

On the issue of the scope of which costs are reimbursable, RCRC believes CalRecycle and the PRO should take a broad reading of the statute in order to effectuate the Legislature’s intent that local governments be made financially whole for their implementation costs. Local governments should be tracking additional staff time and facility improvements related to SB 54 implementation. On the infrastructure/capital facility side, it should be practicable to determine what infrastructure costs are “new” and

² PRC 42051.1(j).

³ PRC 42040.

⁴ PRC 42051.1(g).

related specifically to SB 54 implementation. Generally, those will include new equipment, facility expansion or redesign, and other improvements necessary to process either additional covered materials that were not previously recovered, or to increase the capacity of the covered materials that are recovered. On the collection and processing side, SB 54's "covered materials" include some material types and forms that are already being collected and processed. Local jurisdictions and recycling service providers should certainly be reimbursed for collection and processing of any "covered materials" that were not previously recovered for recycling. Reimbursement should also be available for material types that have long been collected but are now being collected for the benefit of helping producers achieve their SB 54 compliance obligations: every ton of cardboard (or any other covered material) collected and processed after January 1, 2023, is an additional unit that had not been previously recovered and so constitutes a "new" SB 54 implementation cost. Local jurisdictions and recycling service providers should be eligible to seek reimbursement for these materials if they choose to do so.

Even more troubling, the proposed regulations imply that local governments are required to absorb and float these implementation costs for several years until the PRO's plan is approved by CalRecycle and implemented by the PRO – which is likely to be 2027. This is infeasible and should be clarified, as explained below.

III. PRC 42060.5(a)'s Obligation for Local Jurisdictions and Recycling Service Providers to Include All Covered Materials Identified by CalRecycle to be Recyclable or Compostable in Their Collection and Recycling Programs Logically Begins Once CalRecycle Approves a Producer Responsibility Plan (Plan) Submitted by a Producer Responsibility Organization (PRO), as That Plan Will Set Forth the Mechanism and Schedule for Reimbursing Local Governments for Their Costs Related to SB 54 Implementation

Neither SB 54 nor the proposed regulations directly address the issue of when local jurisdictions and recycling service providers must include in their collection and recycling programs all covered materials identified by CalRecycle as recyclable or compostable. While SB 54 is silent on the issue of when that obligation begins, the proposed regulations propose substantial penalties on local jurisdictions and recycling service providers for any failure to include recyclable or compostable covered materials in their programs, *regardless of the reason for the exclusion*. This creates tremendous uncertainty and risks for local jurisdictions, who may be under the impression that they are required to immediately expand their collection and recycling programs. As previously mentioned, one of the cornerstones of SB 54 is the Legislature's intent that local governments be made financially whole for SB 54 implementation costs.⁵ That will not happen before submission and approval of the PRO plan, which would occur

⁵ PRC 42040(b)(2)(B).

approximately July 1, 2026, pursuant to the timeframes contemplated in PRC 42051.2 and proposed 14 CCR 18980.6.1.

Local governments cannot afford, and were never expected, to float SB 54 implementation costs until CalRecycle approves the PRO plan and the PRO is ready to provide reimbursements. By failing to specify a compliance deadline, PRC 42060.5(a) provides enough ambiguity for CalRecycle to align SB 54's collection obligation with approval of the PRO plan. Furthermore, this interpretation aligns with the structure and processes included in other parts of SB 54.

Providing clarification that the collection obligation begins upon approval of the PRO plan will provide a relatively seamless timeline for local governments and recycling service providers.⁶ Indeed, an unnecessarily early compliance deadline will result in increased costs, stranded investments, and absurd administrative challenges for local jurisdictions, recycling service providers, and the state.

Under PRC 42051.1(l), the PRO's plan shall include curbside collection for covered materials where those materials can be effectively sorted, the processing/sorting facility agrees to include those covered materials, and the curbside provider agrees to the cost arrangement. Essentially, curbside collection of covered materials is predicated upon an agreement between the PRO and the recycling service provider. In some cases, the PRO is likely to pursue non-curbside collection opportunities for some covered material categories – especially those that may be difficult to recycle in the existing system. SB 54 clearly contemplates these pathways, which may include drop-off recycling services, retailer take-back, and alternative collection programs.

A requirement for local jurisdictions and recycling service providers to collect and recycle ***all*** covered materials before the PRO plan is developed and approved will result in locals and haulers incurring costs that must ultimately be reimbursed by the PRO: costs which the PRO may not have wanted to fund because it had other plans for collection and recycling of some of those covered materials. The PRO, local governments, and recycling service providers may be contemplating setting up and funding alternative collection programs, drop-off programs, and take-back programs for specific covered materials. While some of those plans may depend upon the local jurisdiction providing those services, others may not. A rigid, early collection timeframe would reduce flexibility for the PRO to develop a collection and recycling program that is tailored for specific material types and forms, especially where curbside collection is limited or unavailable. Forcing the situation with an unnecessarily early collection date

⁶ Some jurisdictions and recycling service providers may already be making investments in SB 54 compliance now, but they have flexibility to ensure those costs are not incurred too far in advance of when they can be reimbursed by the PRO. Furthermore, those costs are encumbered willingly and with adequate foresight into how to finance those projects until the jurisdiction can seek reimbursement from the PRO, if they choose to do so.

could inhibit innovation in developing and implementing alternative collection strategies and will result in stranded capital investments that the PRO did not want to fund. This will increase the risk that the PRO will not ultimately make local jurisdictions and recycling service providers financially whole for SB 54 implementation costs.

Aside from logistical challenges, local jurisdictions and recycling service providers should not – and cannot – be expected to float compliance costs for several years until the PRO’s plan is approved and the PRO is ready to provide reimbursements. Local governments have limited resources available and are struggling to fund mental health, public safety, and transportation projects. Money spent today that cannot be recouped from the PRO for several years means that local jurisdictions will have less revenues available for these core public purposes. Nor is the State of California in a financial position to reimburse local governments for these expenses given the magnitude of the current budget deficit. The Assembly Floor Analysis of SB 54 recognized that it created a state-mandated local program and that “the state may need to initially reimburse local jurisdictions for any costs incurred as a result of this bill until PRO reimbursement funds become available.”⁷ However, in light of the current budget deficit, and considering that Legislative Analysts’ Office expects \$30 billion annual budget deficits for the next several years,⁸ it is incredibly unlikely the state will be able to reimburse local implementation costs incurred before the PRO can provide reimbursements.

An unnecessarily early collection deadline will also significantly increase CalRecycle’s administrative costs and challenges. Local jurisdictions are simply unable to comply with this mandate before the PRO plan is approved and the PRO is prepared to pay for those costs. Some have suggested that local jurisdictions may be able to request a two-year extension pursuant to PRC 42060.5(b). That section allows a local jurisdiction or recycling service provider to seek a two-year extension or exemption from SB 54’s collection requirement based on specific local conditions, circumstances, or challenges. This is not a viable solution. Relying on PRC 42060.5(b) instead of aligning the collection obligation with approval of the PRO plan will result in several hundred different jurisdictions sending individual exemptions to CalRecycle for consideration. Worse yet, it appears that each jurisdiction would have to submit a different exemption request for each specific covered material. It does not appear that PRC 42060.5(b) allows jurisdictions or recycling service providers to submit a single application for multiple covered materials, meaning that CalRecycle will be inundated with thousands of exemption requests. Additionally, applicants may have difficulty showing that the exemption is based on specific local conditions, circumstances, or challenges, since the challenges are statewide in scope and due to the inability for the PRO to reimburse local governments. Because of the significant penalties proposed in the regulations for noncompliance, local jurisdictions and recycling service providers will have no choice but

⁷ Assembly Floor Analysis of Senate Bill 54, June 26, 2022, page 7.

⁸ Legislative Analyst’s Office, The 2024-25 Budget California’s Fiscal Outlook, December 7, 2023.

to inundate CalRecycle with exemption requests. For this reason, it is vital to read SB 54 as a whole and in light of stated legislative intent to avoid burdensome and unintended consequences for the regulated community and regulator.

To promote flexibility, reduce costs, avoid stranded investments, and minimize administrative burdens for CalRecycle, RCRC strongly suggests that CalRecycle take advantage of the flexibility that SB 54 provides to align the local jurisdictions and recycling service providers' obligation to collect and recycle covered materials with approval of the PRO plan (and ideally upon conclusion of negotiations for cost reimbursements).

IV. Proposed Regulation's Enforcement Scheme for Local Jurisdictions Is Unsupported by SB 54's Statutory Construction, Undermines Stated Legislative Intent to Make Local Jurisdictions Financially Whole for SB 54 Implementation Costs, and Can Be Better Accomplished Through Other Enforcement Pathways

The enforcement sections of the proposed regulations should be modified to remove references to local jurisdictions and recycling service providers. Their inclusion will have severe unintended consequences on SB 54 implementation, penalize those entities for things beyond their control, and alternative enforcement mechanisms are already available.

The proposed regulations allow CalRecycle to impose penalties of up to \$50,000 per day for each of the covered material categories that are not included in a local collection and recycling program. Worse yet, the proposed regulations provide that these penalties shall accrue ***regardless of the reason*** for the violation. This is draconian, undermines the ability for local jurisdictions to be made financially whole for SB 54 implementation costs, and is far harsher than necessary.

To ensure program success, state enforcement must be directed toward producers of covered materials who have not enrolled in a PRO or who sell products in packages or labels in violation of SB 54.

a. ***SB 54's enforcement regime (Article 5), when read its entirety, makes clear that local jurisdictions were never intended to be subject to SB 54's enforcement processes.***

CalRecycle's proposed regulations are predicated on the assumption that the term "any entity" in PRC 42081(a)(1) broadens the scope of its enforcement authority; however, that term should be defined in context of the other provisions included in Article 5 of SB 54. PRC 42081 seeks to interpret and implement PRC 42080 and does not vest CalRecycle with additional authority to determine what constitutes a violation of SB 54 beyond the scope of PRC 42080.

PRC 42080⁹ establishes what constitutes a violation of SB 54 and provides that failure to comply with the requirements of SB 54 will subject a PRO, producer, wholesaler, or retailer to penalties for those violations or revocation of an approved plan.¹⁰ PRC 42081 in turn:

- Sets the amount of penalties;
- Provides that they shall not accrue against a PRO or producer until 30 days after notification of the violation;
- Allows a producer or PRO to submit a corrective action plan to CalRecycle for approval detailing how and when it will come into compliance with SB 54; and,
- Sets forth various factors CalRecycle shall consider when determining the penalty amount, including whether the violation was beyond the reasonable control of the producer or PRO, the size and economic condition of the producer or PRO, etc.

PRC 42083 and 42084 also allow CalRecycle to impose additional requirements on a PRO or producer for failure to meet various requirements of SB 54.

Neither PRC 42080 nor PRC 42081 contemplate penalties against local governments or recycling service providers. Sections 18980.13 and 18980.13.2 of the proposed regulations inappropriately subject local jurisdictions and recycling service providers to even more severe consequences for violations of SB 54 than apply to the PRO and producers. It is difficult to imagine the Legislature providing a more lenient compliance pathway for a producer or PRO than that which would be available to a local government, given that the law intended to shift the burden of solid waste recycling AWAY from local governments and onto producers who introduce packaging into the marketplace. Yet CalRecycle's broad reading to PRC 42081 to allow for imposition of penalties on local jurisdictions and recycling service providers does just that, by allowing producers and the PRO to develop a corrective action plan and avoid accrual of penalties for 30 days after notice of a violation. These are far more lenient enforcement processes than the inflexible approach the proposed regulation set forth to deal with violations by local governments and recycling service providers, which seek to impose penalties

⁹ "(a) Failure to comply with the requirements of this chapter, including, but not limited to, failure by a PRO to implement and satisfy the requirements of its plan, shall subject a PRO, producer, wholesaler, or retailer to penalties for violations as set forth in this article or revocation of an approved plan. The department may conduct investigations, including by inspecting operations, facilities, and records of producers and PROs and by performing audits of producers and PROs, to determine whether entities are complying with the requirements of this chapter."

¹⁰ It is important to note the construction of this section: The statute clearly provides that failure to comply with the requirements of this chapter shall subject a PRO, producer, wholesaler, or retailer to penalties for violations as set forth in the article. The clause "including, but not limited to, failure by a PRO to implement and satisfy the requirements of its plan" does not alter the scope of the entities that are subject to penalties under the enforcement chapter (PRO, producers, wholesalers, and retailers), it merely illustrates the types of things that may constitute a violation.

regardless of the reason for the failure to include a covered material in the collection and recycling program.

b. Proposed regulations undermine legislative intent to make local jurisdictions financially whole for SB 54 implementation costs.

As previously mentioned, SB 54 makes it clear that the Legislature intended the PRO to fully fund implementation costs. Unfortunately, the proposed regulations' threat to impose penalties of up to \$50,000/day against jurisdictions that fail to include all recyclable or compostable materials in their collection and recycling programs (regardless of whether there are legitimate reasons for that failure) directly undermines the ability for local governments to be made whole.

This enforcement threat, combined with Section 18980.13's inflexibility to consider legitimate mitigating factors (like the PRO's refusal to fully reimburse local jurisdictions) inappropriately increases the bargaining power of the PRO. The proposed regulations provide that the penalties shall apply regardless of the reason the local government failed to include the materials in their collection and recycling program, thereby undermining the ability for local governments to fairly negotiate on a level playing field. This directly undermines the stated legislative intent in PRC 42040(b)(2)(B) that locals will be made financially whole for SB 54 implementation costs.

The proposed enforcement process incentivizes the PRO to low-ball reimbursement offers to local governments, who will be left with a take-it-or-leave-it situation because local governments will face significant penalties for failure to collect and recycle materials for which the PRO has refused to fully reimburse those entities. RCRC is similarly concerned that the PRO may seek to provide the same level of reimbursement to all jurisdictions regardless of specific local differences in collection and processing systems – differences that were understood and are supposed to be accommodated under SB 54.

c. Enforcement actions against local jurisdictions for failure to include all recyclable and compostable materials in their collection and recycling programs should be undertaken under other regulatory authority.

CalRecycle and other stakeholders are legitimately concerned about how to ensure that local jurisdictions will be held accountable, since SB 54's success depends upon local jurisdictions and recycling service providers collecting and recycling covered materials. While those concerns have merit, the proposed enforcement scheme is unnecessary and unduly harsh.

Local jurisdictions are subject to AB 939's diversion requirements and must develop source reduction and recycling elements outlining how they will achieve the state's solid waste and recycling requirements. Under the AB 939 framework, CalRecycle is required to regularly review jurisdictions and determine whether they have made a good

faith effort to implement their source reduction and recycling element. Considering that the PRO is responsible for reimbursing local governments for SB 54 implementation costs, failure to include all compostable and recyclable covered materials in local collection and recycling programs is a strong indication that the local jurisdiction has not made a good faith effort to implement its diversion programs. This existing process is ideal, as it affords a more wholistic review of the jurisdiction and considers whether certain extraneous factors impacted the jurisdiction's compliance, including whether the PRO failed to reimburse the jurisdiction for its implementation costs. Finally, local jurisdictions will be able to hold the recycling service providers accountable under their contractual agreements with those entities.

For the reasons specified in sections (a), (b), and (c) above, the enforcement provisions related to local jurisdictions and recycling service providers included in Proposed 14 CCR 18980.13 and 18980.13.2 should be removed, as follows:

14 CCR 18980.13

~~(i) For violations of section 42060.5 of the Public Resources Code by a local jurisdiction:~~

~~(1) The number of violations shall be the number of covered material categories contained on the list published pursuant to section 42060.5(a) of the Public Resources Code that are not included in their collection and recycling programs.~~

~~(2) Penalties for each violation shall accrue on each day any covered material category is not included, regardless of the reason, in their collection and recycling programs, except in the case that the Department has granted an extension or exemption from the requirements pursuant to 42060.5(b) of the Public Resources Code.~~

~~(j) The number of violations of section 42060.5 of the Public Resources Code by a recycling service provider and the days on which each violation occur shall be calculated in the same manner as would apply under subdivision (i) for local jurisdictions committing the same violations.~~

14 CCR 18980.13.2

~~(a) Any entity, including, but not limited to, a PRO, producer, local jurisdiction, recycling service provider, retailer, or wholesaler, not in compliance with the Act or this chapter is subject to penalties pursuant to section 42081(a) of the Public Resources Code. If a PRO acting on behalf of its participants causes participants to be in violation in the Act or this chapter, such participants shall not be exempt from penalties on the grounds that their noncompliance was caused by the PRO's conduct.~~

d. At a minimum, the proposed enforcement regulations should be modified to avoid inappropriately shifting bargaining power in favor of the PRO and to promote fairness and equity.

In the event that CalRecycle determines to retain the enforcement provisions related to violations by a local jurisdiction or recycling service provider, Section 18980.13 must be modified to avoid undermining the ability for those entities to seek full cost recovery and in the interest of equity and justice.

As previously mentioned, CalRecycle's proposal to penalize local governments and recycling service providers for failing to collect and recycle a covered material, "regardless of the reason", will have far reaching consequences, inequitably turns a blind eye to legitimate reasons for failure to include a covered material, and inhibits the ability of local agencies and recycling service providers to secure full cost recovery. Beyond this situation, there may be fires, natural disasters, work stoppages, power outages, and other causes that CalRecycle must take into consideration.¹¹ These occurrences at either the local jurisdiction's (or recycling service provider's) facility could preclude acceptance of covered materials at that facility. Similarly, there may be temporary or permanent disruptions in end markets that require the local jurisdiction or recycling service provider to find alternate markets for the material. This would take time, and yet the local jurisdiction or recycling service provider would still be subject to penalties as a result of circumstances beyond its control. The threat of imposing penalties on local governments for not adequately accepting a covered material would motivate local governments to request exemptions from the collection requirements. For this reason, the clause "regardless of the reason," must be removed from proposed 14 CCR 18980.13.

The proposed regulations appropriately provide that penalties shall not accrue in situations where CalRecycle has granted an exemption or extension to the local jurisdiction or recycling service provider. Unfortunately, this does not provide any relief to those entities while the local agencies or recycling service provider is seeking an exemption or extension. Local agencies and recycling service providers that are seeking exemptions or extensions should not be subject to penalties during the process outlined in 14 CCR 18980.11. That process, which RCRC suggests streamlining in Section VII of these comments, envisions at least a 90-day process in which a PRO may respond to, confer with, or merely request additional time of the applicant. It would be inequitable to subject a local agency or recycling service provider to penalties when they are making a good faith effort to seek an exemption from CalRecycle, especially when the process is so deferential to (and the length of time is largely dependent upon) the PRO. For this reason, proposed Section 18980.13 should be modified to specify that penalties shall not accrue while a local jurisdiction or recycling service provider is seeking an exemption or extension pursuant to 14 CCR 18980.11.

To accomplish these objectives, the enforcement provisions in 14 CCR 18980.13 should be modified as follows:

- (i) For violations of section 42060.5 of the Public Resources Code by a local jurisdiction:*
 - (1) The number of violations shall be the number of covered material categories contained on the list published pursuant to section 42060.5(a) of the Public Resources Code that are not included in their collection and recycling programs.*

¹¹ It should be noted that these types of situations are to be taken into consideration when CalRecycle evaluates whether a jurisdiction has made a good faith effort to implement its source reduction and recycling element pursuant to PRC 41825(e).

(2) Penalties for each violation shall accrue on each day any covered material category is not included, ~~regardless of the reason,~~ in their collection and recycling programs, except in the case that the Department has granted an extension or exemption from the requirements pursuant to 42060.5(b) of the Public Resources Code or during the process outlined in 14 CCR 18980.11 through which a local jurisdiction or recycling service provider may seek an exemption or extension.

V. Unnecessarily Complex Regulatory Approach Will Substantially Increase Compliance Costs and Administrative Challenges

a. Chain of custody labeling requirements impose a complex tracking regime for bales of cardboard, paper, and plastics that is more appropriate for hazardous waste management and handling of criminal evidence.

The proposed regulations are overly reliant upon bale/container tracking to determine recycling rates and overall compliance with the statutory goals and objectives. Proposed Section 18980.4 requires the responsible end market party to document “chain of custody” of materials from origination to the end market. Section 18980.4.1 requires independent supply chain entities to maintain chain of custody information for any collected covered materials and intermediate products.

Chain of custody information is vital in certain contexts, such as the handling of evidence for use in a trial to ensure integrity of the process and guard against wrongful convictions or judgments. Similarly, manifests are required to enable state and federal regulators to track dangerous materials (like hazardous wastes) to protect public health, safety, and the environment. There is no similar justification to require tracking of an individual bale of cardboard or recycled paper from the point of collection (or materials recovery facility as we suggest in Section IX below). Rather than relying on maintenance of a “chain of custody,” we suggest allowing the PRO to develop and use approved statistical models that can accurately estimate recovery and recycling rates based on less intensive sampling processes.

From a practical standpoint it is unclear how this “chain of custody” can be maintained in light of existing sorting practices and procedures. Sometimes mixed bales are broken, resorted, split into different commodities, and/or re-baled at a secondary materials recovery facility before being sent to an end market for recycling. Also, bales and containers will not necessarily be limited to SB 54 covered materials. A container of glass packaging may contain SB 54 jars along with non-SB 54 beverage containers (beer and wine bottles). How should such a container be labeled? Multiple covered materials, such as mixed paper and cardboard, might be present in a bale that is then split into different shipments for different end markets. How should such a split bale be tracked? RCRC cannot anticipate that CalRecycle would require the separate containerization/baling of SB 54/non-SB 54 materials or tracking multiple covered materials to different end markets, but it is unclear how CalRecycle expects this to work based on the proposed regulations as currently drafted.

b. *Data Requirements for Take-Back, Drop-Off, and Alternative Collection Programs Are Unnecessarily Complex and Will Increase Costs for the PRO, Local Jurisdictions, and Recycling Service Providers.*

Proposed Section 18980.10.2(c) requires reporting entities to submit painfully granular information about what is recovered in non-curbside collection programs, including take-back, dropoff, and alternative collection programs. It requires reporting on the take-back, dropoff, or alternative collection program for each covered material category, including the total weight of material and total number of plastic components collected by the program.

The proposed regulations go beyond the statute to require collection of information on the number of individual plastic components collected and recycled by each of those programs. This information is far too granular and will be extremely difficult and expensive to collect, both for the operators of those programs and for the PRO. While consideration of the number of plastic components may be relevant in evaluating package design, efforts to track numbers of plastic components in the collection or recycling process is impractical and of questionable value. Indeed, proposed regulation Section 18980.3.2(c) specifically states that recycling rates are to be determined based on material weight rather than number of items. *If such information is required under the PRC, it should be derived by sampling and statistical analysis.*¹²

RCRC believes that many local recycling centers, transfer stations and landfills will be among the “take-back” and “dropoff” programs impacted by this bill. These facilities are integral to waste collection and management, especially in areas where curbside collection is not available or compulsory. Even in areas with established curbside collection programs, these facilities play an important supplemental role where residents and businesses can self-haul solid waste and recyclables for disposal and recycling.

In some areas, transfer stations may only be staffed by a single person, but the proposed regulation would require permanent staffing by a small army of personnel. As drafted, the proposed regulation would require personnel to separate and weigh SB 54 covered materials by category and count each individual plastic component that comes into those facilities. Such a requirement would impose extraordinary costs on local jurisdictions and recycling service providers and significantly increase the PRO’s financial liabilities.

RCRC strongly suggests eliminating the requirement to separately track the “total number of plastic components collected by the program” as follows:

¹² PRC 42052 requires the PRO to collect and submit data demonstrating the performance of take-back, dropoff, and alternative collection and recycling programs, including the amount and type of covered materials collected. The “amount” can be satisfied by reporting on the weight of materials collected rather than an individual count of each plastic widget coming into a facility.

18980.10.2(c)(2) For each take-back, dropoff, or alternative collection program, the report shall include the following data, reported by covered material category:

(A) The total weight of covered material that is collected by the program.

(B) ~~The total number of plastic components that is collected by the program.~~

~~(C) The total weight of covered material collected by the program that is recycled.~~

~~(D) The total number of plastic components collected by the program that is recycled.~~

- c. Regulations should focus on developing a defensible, peer reviewed statistical model to derive collection and recycling rates based on discrete random sampling activities.

In light of these concerns about the practicality of (and costs associated with) the proposed strategies for determining recycling rates, **RCRC strongly suggests that CalRecycle instead work with the University of California or the California State University on a statistical model that is far more reliant on random sampling and analytical models to determine recycling rates and SB 54 compliance.** Other programs within CalEPA such as the State Water Resources Control Board's water quality monitoring program have established means for compliance determinations to be made from statistically significant random sampling. While it might require some additional time to develop a model or random sampling program that enables CalRecycle to determine recycling rates for SB 54 compliance, it would be beneficial long-term by providing a more readily implementable program and offering CalRecycle outputs that could spur more intense auditing or analysis where necessary.

VI. Regulations Lack Sufficient Detail to Effectively Oversee the PRO and Ensure It Lives Up to Obligations to Reimburse Local Governments for Implementation Costs

PRC 42060 requires CalRecycle to adopt, "Any regulations necessary to ensure the PRO fully funds plan implementation, including fully funding the budget. This shall include the costs incurred by a local jurisdiction or a local jurisdiction's recycling service providers to implement this chapter, including, but not limited to, the cost of consumer education and of collection, including the cost of containers where relevant, as well as the processing, storage, and transportation of covered materials."

Unfortunately, the proposed regulations generally lack any process or mechanism by which CalRecycle will ensure that the PRO will fully fund implementation and cover the costs incurred by local jurisdictions and recycling service providers in implementing SB 54. These are core components of SB 54, as PRC 42040(b)(2)(B) notes that one of the Legislature's primary intents was to "ensure that local jurisdictions will be made financially whole for any new costs incurred associated with the implementation of this chapter and its implementing regulations."

While the proposed regulations set out a process for PRO submission (and CalRecycle approval) of a producer responsibility plan, they lack any real detail on how

CalRecycle will evaluate the adequacy of that plan and ensure the PRO is well positioned to achieve the goals of SB 54.¹³ Similarly, the proposed regulations set out the process for submission of a PRO's annual report and annual budget; however, the section again sets out no criteria to guide CalRecycle's consideration of the adequacy and approval of those documents.¹⁴ At a minimum, the annual report and budget must include detailed information on the total costs of reimbursements to local jurisdictions, recycling service providers, alternative collection systems, take-back, and drop off programs. The annual report should also include information on the number and magnitude of reimbursement-related disputes and how they were resolved. To address this issue, we suggest adding language to Section 18980.9.1(b) as follows:

(b) The annual report shall additionally include:

(6) Detailed information on the total costs of reimbursements to local jurisdictions, recycling service providers, alternative collection systems, take-back, and drop off programs.

(7) Information on the number and magnitude of disputes with local jurisdictions and recycling service providers related to reimbursement and how they were resolved.

VII. Local Government Exemption Process Is Unnecessarily Lengthy, Improperly Conflates Unrelated Statutes, and Should Be Modified

Senate Bill 54 created several different, independent statutory exemptions for local jurisdictions and recycling service providers. PRC 42060.5 establishes the following exemptions:

- 1) A discretionary exemption from the requirement to collect specific covered materials, which is available to any local jurisdiction or recycling service provider upon a showing that specific local conditions, circumstances, or challenges make compliance impracticable (PRC 42060.5(b));
- 2) A self-executing exemption from collection requirements for rural counties with fewer than 70,000 residents (PRC 42060.5(c));
- 3) A self-executing exemption from the collection requirement for local jurisdictions and recycling service providers for covered materials that are not suitable for curbside collection, cannot be effectively sorted by facilities, or where the provider agrees with the PRO on the cost arrangement and where the material will be collected and recycled/composted in a non-curbside program under the PRO plan (PRC 42060.5(d)); and
- 4) A self-executing exemption from collection requirements for covered material categories that were banned from sale or distribution in that jurisdiction before CalRecycle's publication of the list of covered materials determined to be recyclable or compostable (PRC 42060.5(e)).

¹³ Proposed Regulations Sections 18980.6.1 and 18980.6.2.

¹⁴ Proposed Regulations Section 18980.6.5.

It is important to recognize that each of these exemption categories is separate and distinct and are not interlinked.

a. *Proposed regulations improperly conflate unrelated statutes and exemptions.*

The proposed regulations appear to improperly conflate two of the statutory exemptions and so impose additional requirements that are unwarranted by a clear reading of the underlying statute. Under proposed 14 CCR 18980.11(a), a local jurisdiction or recycling service provider may submit an exemption application to CalRecycle identifying the specific covered material, a description of the local conditions, circumstances, or challenges that make collection and recycling impractical, *and demonstrate why the materials cannot be incorporated into a curbside collection program.* This section appears to implement the PRC 42060.5(b) exemption, but improperly incorporates some of the criteria found in the PRC 42060.5(d) exemption that are inapplicable. This effectively constrains the circumstances where local jurisdictions and recycling service providers can seek an exemption, inappropriately assumes that curbside collection is available in all of the areas for which a 42060.5(b) exemption may be sought,¹⁵ and is unsupported by the statute.

PRC 42060.5(d) is a separate, unrelated, and self-executing exemption and was not intended to modify any of the other exemptions included in PRC 42060.5. Indeed, PRC 42060.5 and its counterpart in PRC 42051.1(l) allow local governments to refuse to include covered materials in their curbside collection programs in certain circumstances as long as those materials are collected through non-curbside means. This means that locals may still have to accept those materials in local drop off programs (and be fully reimbursed for those costs) if the PRO does not establish a different dropoff, takeback, or alternative collection program.

To better align the proposed regulations with the statutory construction of PRC 42060.5, RCRC suggests the following modifications to proposed 14 CCR 18980.11(a):

(2) A description, with any available supporting documentation, of the specific local conditions, circumstances, or challenges, that make it impracticable for the local jurisdiction or recycling service provider to include the specified covered material or covered material categories in their existing collection and recycling programs. **The description must demonstrate why the plan requirements in section 42051.1(l)(1) of the Public Resources Code for the identified material cannot be met in terms of program efficacy but also considering any applicable environmental, environmental justice, worker health, or public health impacts; generation of hazardous waste or greenhouse gasses; and transportation safety standards.**

b. *Exemption process is too lengthy and cumbersome.*

¹⁵ It is important to note that PRC 42060.5 recognizes that curbside collection is not universally available, much less universally available for all covered materials, and specifically prohibits mandatory route collection service where it does not already exist.

RCRC appreciates CalRecycle's efforts to describe the process that will be used to review exemption requests submitted pursuant to PRC 42060.5(b); however, we are concerned that the process outlined is far too lengthy and cumbersome and will inhibit effective implementation of SB 54.

As stated, PRC 42065.5(b) allows local jurisdictions or recycling service providers to seek an exemption from the requirement to collect specific covered materials because local conditions, circumstances, or challenges make collection impracticable. As part of this process, the local jurisdiction or recycling service provider must notify the PRO and independent producers, who can object and arrange for alternative means for collection, processing, storage, and transportation of those covered materials.

The proposed regulations allow the PRO and independent producers 90 days to confer with the local agency, respond in writing, or mutually agree on an extended timeline for those actions. As crafted, this is not 90 days to resolve the underlying issue, but merely to begin conferring with or respond to the applicant. It should be noted that the PRO and Independent Producers are under no obligation to respond to an exemption request under PRC 42060.5. As such, the proposed regulation puts the applicant in purgatory for three full months while waiting to see if the PRO or independent producer even cares enough about the request to respond. This timeframe is unnecessarily lengthy and could easily be exploited by a PRO or independent producer to drag out the process, which becomes an even greater risk if the applicant is subject to penalties for failure to collect a specific covered material during the period in which it is seeking an exemption. Rather than provide 90 days to begin the consultation and response process, RCRC recommends providing a much shorter, 14-day period for the PRO and independent producers to either confer with the applicant or respond in writing. Failure of the PRO or Independent Producers to respond or confer within that period should result in CalRecycle considering the request uncontested. If the PRO or Independent Producers object within 14 days, the parties may begin consultations to resolve the dispute, which should occur within a maximum timeframe of 30 calendar days.

Of course, the applicant and PRO/Independent Producers should have the ability to mutually agree to a longer timeframe than those specified in the regulations. Unfortunately, the proposed regulation creates additional delays by giving those parties 90 days to simply agree on a longer timeframe to resolve the underlying issue. RCRC suggests structural changes to preserve the ability for parties to mutually agree upon longer timeframes to resolve a dispute without prejudicing the shorter timeframe that should exist for the PRO or Independent Producer to respond to or confer with the applicant.

Finally, considering that an exemption only lasts for two years, the requirement to request an extension four months before the expiration date seems excessive, especially

if the conditions, circumstances, or challenges described in the original application have not changed. A longer CalRecycle review period is certainly appropriate if those conditions, circumstances, or challenges have materially changed since the original application was filed. For this reason, RCRC proposes that the timeframes for requesting an extension should be shortened to “at least 30 calendar days before the expiration date” if there have been no changes in the conditions, circumstances, or challenges described in the initial application. The proposed 90-day review period should be retained for situations in which there have been changes in the specific local conditions, circumstances, or challenges.

For these reasons, RCRC suggests the following changes to proposed 14 CCR 18980.11:

(b) *Prior to submitting the application to the Department, the local jurisdiction or recycling service provider shall send the application to the PRO(s) and all Independent Producers for review and comment.*

(1) *The PRO(s) and any Independent Producers shall have **90 14** calendar days to:*

(A) *Confer with the applicant as necessary*

(B) *Respond in writing to the applicant*

Failure of a PRO or Independent Producer to confer or respond within 14 calendar days shall result in the request being deemed uncontested by CalRecycle.

(2) If the PRO(s) or any Independent Producers object to the application pursuant to subparagraph (1), the applicant, PRO(s), and Independent Producers shall seek to resolve the dispute within 30 calendar days

~~(C)~~ ***(3) The local jurisdiction or recycling service provider and the PRO and Independent Producers may mutually agree with the applicant to extend the on an extended timelines contained in subparagraphs (1) or (2), if necessary***

~~(2)~~ ***(4) The application to the Department, pursuant to subsection (a), shall additionally include:***

(A) *Any comments received by a PRO or Independent Producer*

(B) *How those comments were addressed or considered*

...

(d) *A local jurisdiction or recycling service provider may extend their exemption pursuant to section 42060.5(b) of the Public Resources Code by conducting the following:*

(1) *Notify the PRO(s) and all Independent Producers of the intent to apply for an exemption extension.*

(2) *If the conditions, circumstances, or challenges described in the application have not changed, the applicant shall submit a request electronically in the form of a letter to the Department, signed by the applicant under penalty of perjury, stating as such. If the information included in the application pursuant to (a)(3) is no longer current, the letter shall provide updated information. ***If the conditions, circumstances, or challenges described in the application have not changed, the request letter shall be submitted at least 30 between 120 and 90*** calendar days before the expiration date. If approved, the exemption shall be extended for another two years, with the new expiration date being two years later from the previous two-year expiration date.*

(3) *If the conditions, circumstances, or challenges described in the application have changed, the applicant shall submit a new request pursuant to subdivision (a) ***at least 90 calendar days before the expiration date.****

c. RCRC Appreciates CalRecycle’s Simplification of the Rural Exemption, but Minor Changes Are Required.

RCRC appreciates CalRecycle’s responsiveness to our concerns during the pre-rulemaking workshops about the discretionary exemption process for rural jurisdictions. We believe SB 54 is clear that the PRC 42060.5(c) exemption for rural jurisdictions is self-executing and requires no discretionary or ministerial approval by CalRecycle. We believe proposed Section 18980.11.1 reflects this reality but requires an additional modification. The proposed regulation requires the local jurisdiction to provide a copy of its resolution within 14 calendar days of adoption. We do not dispute the need to submit that resolution to CalRecycle, but it is not clear that a two-week submission period is necessary. At worst, an innocent mistake that delays submission of the resolution until the 15th day after adoption could invalidate that local action despite the presence of a clear statutory exemption unencumbered by this requirement.

For this reason, we suggest the following modification to proposed Section 18980.11.1:

*(a) A rural county or rural jurisdiction that has adopted a resolution pursuant to section 42060.5(c) of the Public Resources Code shall notify the Department and provide a copy of the resolution **within 14 calendar days of the adoption date.***

VIII. Definition of “Intermediate Supply Chain Entity” is Ambiguous, Unnecessarily Broad, and Should Be Refined

The proposed regulations define “intermediate supply chain entity” to mean “an entity that takes custody of materials at the end of their life, including intermediate products, and is within the supply chain that exists between collection, processing, and transfer of material to end markets. “Intermediate supply chain entity” includes, but is not limited to, recycling service providers, processors, brokers, or materials recovery facilities.¹⁶ Intermediate supply chain entities are required under the regulations to maintain chain of custody information for any collected covered materials or intermediate products.¹⁷

As drafted, the regulations are ambiguous and could be construed to include within the definition of “intermediate supply chain entity” the individual solid waste truck picking up material at a residential or commercial location. Such ambiguity is harmful and will substantially increase compliance costs and complexity for no added benefit. There will be little to no meaningful information gathered by including the point of collection within the “chain of custody”, since that material is taken to a transfer station or materials recovery facility after collection. Furthermore, covered materials are unlikely to be separated at that point in time and must go through further processing for sorting, aggregation, and baling. Requiring the chain of custody to begin at the transfer station is

¹⁶ Proposed regulation Section 18980.1(a)(17).

¹⁷ Proposed regulation Section 18980.4.1(b)(1).

similarly impractical, since the covered materials must be further sorted, aggregated, and baled before that material can be effectively tracked. For this reason, CalRecycle should modify the definition of “intermediate supply chain entity” and related regulatory sections to only require tracking to occur once covered materials have been sorted, aggregated, and baled (or containerized) for transport for subsequent processing or recycling. It is at this point where some meaningful information can be collected and integrated into analytical models or recycling rate calculations.

For these reasons, we suggest the following modifications to various sections of the proposed regulations relating to “intermediate supply chain entities”:

*14 CCR 18980.1(a)(17) “Intermediate supply chain entity” means an entity that takes custody of materials at the end of their life, including intermediate products, and is within the supply chain that exists between **collection the materials recovery facility**, processing, and transfer of material to end markets. “Intermediate supply chain entity” includes, but is not limited to, **materials recovery facilities, recycling service providers, processors, brokers, or materials recovery facilities.***

*14 CCR 18980.4(a)(2) The entity shall be transparent, which means the entity shall:
(A) Document the chain of custody of materials transported from **origination the materials recovery facility** to the end market.*

IX. Requirement for Responsible End Market to Fully Convert Compostable Covered Materials is Ambiguous and Unworkable

Proposed regulation Section 18980.4(a)(4) requires a responsible end market to fully convert compostable materials or covered materials made of wood or organic material. Under the proposed regulation, to “Fully convert compostable covered material or covered material made of wood or organic material into a recycled organic product means 100 percent of the covered material is converted into a recycled organic product. If the end market does not fully convert the covered material into a recycled organic product and disposes of the unconverted portion, the end market shall not be deemed responsible.”

California has some of the most stringent environmental standards in the world and is on the forefront of organic waste recycling with respect to both technology and capacity. Sadly, this proposed requirement is simply unworkable and will result in California’s flagship fleet of organic waste recycling facilities being excluded from consideration as a “responsible end market.” No facility is able to fully convert 100% of compostable material into a recycled organic product. All facilities have residuals and fines that must either be disposed or reprocessed. It would be infeasible to expect a facility to reprocess all residuals and fines *ad infinitum*. Similarly, the bar on facilities disposing unconverted portions of compostable materials would simply exclude all facilities from the definition of “responsible end market.”

Beyond the mere infeasibility of the proposed regulation, the definition of “fully convert” is ambiguous about whether the 100% conversion applies to all the covered materials that come into a facility or just what is processed by that facility. Some portion of incoming material may be sorted out because it becomes contaminated or adheres to and cannot be feasibility separated from contaminants. Does “full conversion” mean that 100% of what is processed must be converted or that 100% of what comes into the facility must be converted?

RCRC strongly suggests that CalRecycle rework these provisions to better reflect real world conditions and practicality.

X. Covered Material Exemption Pathways and CMC Revision Process Would Benefit from Public Input

- a. Producers seeking an exemption for “specific material with demonstrated recycling rates” under Section 18980.2.2 should provide more information about how and where material is collected, processed, and recycled. Additionally, the public should be able to provide feedback on the exemption request.

The proposed regulations provide a pathway for producers of specific materials with demonstrated recycling rates to seek an exemption from inclusion as a “covered material” subject to SB 54. To qualify for the exemption, the producer must provide a list of entities that collect and process the material and how it is treated.

The proposed regulations do not require the producer to provide any information about the geographic scope of collection opportunities within the state or describe the entities from which those materials are collected. This information is important for CalRecycle and the public to determine the geographic scope the existing collection system and just how much of the state is covered by that system. Similarly, requiring information about where the material is collected can be useful in determining how accessible that framework is for members of the public. For instance, the fact that a material is solely collected from back-haul operations to distribution centers may be sufficient for covered materials that do not normally make their way to consumers; however, this would be inadequate if those covered materials do make their way to consumers and there are no effective channels for consumers to properly recycle the covered materials.

Similarly, there should be a process for stakeholder engagement and validation of the claims made in the application.

To address these issues, RCRC suggests the following modification to proposed Section 18980.2.2:

(a)(3) Description of how **and where** the material is collected, processed, and recycled including:

(A) List **and location** of entities that collect the material **and the types of locations from which the material is collected**

(B) List of entities that process the material

(C) A description of how the treatment of the material is consistent with Article 4 of this chapter

...

(d) The Department shall review and evaluate an application to determine if it meets the requirements of this section. **Any member of the public may provide comments to CalRecycle on an exemption request submitted pursuant to this section.**

b. Covered material exemption pathways proposed in Sections 18980.2.3 and 18980.2.6 would similarly benefit from public input.

Under proposed Section 18980.2.3, producers may seek an exemption based on unique challenges posed by the covered material, health and safety justifications, or because the covered material is unsafe to recycle.

For the “unique challenges” exemption, producers must provide detailed information on the nature of the unique challenges, practical necessity of the covered material, explanation of why the covered material cannot be recycled or source reduced, and a descriptions of existing alternative collection programs for those covered materials. For the “health and safety” exemption, the producer must describe the nature of the health and safety concerns and how they prevent compliance with SB 54. Finally, for the “unsafe to recycle” exemption, the producer must explain the characteristics of the covered material that render recycling unsafe and why those risks cannot reasonably be mitigated.

Unfortunately, the regulations do not provide a process through which members of the public may be able to respond to or challenge assertions made in exemption applications. If the regulations are modified to facilitate public engagement, industry stakeholders may either dispute those justifications or offer innovative strategies to overcome those challenges.

To address these concerns, RCRC suggests adding a new subdivision (g) to proposed Section 18980.2.3 as follows and renumbering the subsequent subsections accordingly:

(g) **Any member of the public may provide comments to CalRecycle on an exemption request submitted pursuant to this section.**

Under proposed Section 18980.2.6, CalRecycle, in its sole discretion, may expand the scope of any exemption granted to products and covered materials or may categorically exempt a class of products or covered materials regardless of whether an exemption was otherwise requested. RCRC does not question the need for CalRecycle to be able to expand the scope of a previously-granted exemption or to otherwise exempt a class of materials or products on its own motion; however, we are concerned that this process does not provide any meaningful way for members of the public to provide input

on those decisions. Given the sweeping scope of this authority, stakeholder input would help ensure that CalRecycle makes an informed decision.

To address this concern, we suggest adding a new subdivision (d) to proposed Section 18980.2.6 as follows and renumbering the subsequent subsections accordingly:

(d) Any member of the public may provide comments to CalRecycle on an exemption request submitted pursuant to this section.

c. Process to revise the Covered Material Category list should include a mechanism for stakeholder response to claims made by the PRO, participant producer, or Independent Producer.

Proposed Section 18980.2.5 establishes a pathway through which a PRO, participant producer, or Independent Producer may recommend changes to the current Covered Material Category (CMC) list. As part of that process, the entity making the request must discuss financial implications and impact of the recommended changes on responsible end markets and intermediate supply chain entities.

If changes to the CMC list result in certain covered materials no longer being covered, this may result in stranding investments that recycling service providers and local jurisdictions made in anticipation of PRO reimbursement. Similarly, a PRO or independent producer may significantly underestimate the potential financial impacts of adding a new material to the CMC list so they can sell it in the state. Given the potentially significant impact that changes to the CMC list may have on the industry and local governments, it is imperative that those entities be given an opportunity to provide feedback on the change and be able to comment on the accuracy of the supporting information.

To address this concern, RCRC suggests adding a new subdivision (e) to proposed Section 18980.2.5 as follows:

(e) Any member of the public may provide comments to CalRecycle on changes to the CMC list recommended pursuant to this section, including, but not limited to, responding to the estimated financial implications and impacts of those changes on affected entities identified pursuant to subdivision (b)(7).

XI. Comments on Statements Included in the Standardized Regulatory Impact Assessment (SRIA)

The SRIA identifies substantial implementation costs over the life of the SB 54 program: roughly \$36 billion. This figure includes \$934 million to develop infrastructure for reusables, \$296 million for collection costs, \$1.8 billion for sorting infrastructure, and \$2.9 billion for processing infrastructure.

On page 19 of the SRIA, CalRecycle estimates “The expected cost for the PRO through implementation of the Proposed Regulations is estimated to total \$117 million

through calendar year 2031, at an average annual cost of \$14.6 million.” This estimate was based on existing Extended Producer Responsibility (EPR) programs for paint, carpet, and mattresses. It is unclear whether CalRecycle expects these will be its own program administration costs that the PRO will have to fund or whether this is expected to be the PRO’s own costs of running its program. RCRC is inclined to believe the \$117 million will be CalRecycle’s reimbursable costs through 2031, as the total costs of program implementation are likely to be many times greater than that amount after factoring in infrastructure investments, reimbursements to local jurisdictions and recycling service providers, etc. **CalRecycle should update the SRIA to resolve this ambiguity.**

The SRIA notes that local governments and recycling service providers are “expanding collection and processing infrastructure for organic materials” pursuant to SB 1383.¹⁸ As a result, the SRIA does not seem to include any new costs associated with managing organics pursuant to SB 54 under the SRIA.¹⁹ RCRC is very concerned with any assumption that locals will be able to comply with SB 54 merely because they are already implementing SB 1383. Depending on program implementation and what materials are ultimately determined to be “compostable,” SB 54 may impose many new obligations and challenges over and above what is already taking place pursuant to SB 1383.

SB 54 requires local jurisdictions and recycling service providers to collect and recycle all covered materials CalRecycle determines to be recyclable or compostable. If CalRecycle deems covered materials to be compostable but those materials are not readily compostable in existing facilities, local jurisdictions and recycling service providers will incur very substantial costs to upgrade those facilities, develop new processes, or build new facilities to accommodate those previously-excluded waste streams. These costs should all be recoverable from the PRO. **RCRC strongly suggests that the SRIA be modified to recognize that there may be substantial costs related to collection and management of SB 54 compostable materials beyond the scope of the current SB 1383 program.**

XII. Core Requirements for Program Success

In addition to the aforementioned comments on the proposed regulations, RCRC believes there are several other core requirements for program success.

CalRecycle should strive to reduce program complexity and costs for all stakeholders.

First and foremost, it must be easy for consumers and processors to recycle. For consumers, it must be easy to determine what is recyclable and where to recycle it.

¹⁸ SRIA, page 4.

¹⁹ Id.

Convenience is key. Few people will take the extra time to recycle something if it is even minimally inconvenient to do so: those materials will often simply be thrown in the trash for disposal. This will increase local government costs and challenges to recover those recyclable materials, if it is even feasible to do so.

Simplicity is just as important on the collection and processing side, the program cannot expect consumers or materials recovery facilities to separate layers or components of a single product. Extra handling will dramatically increase costs for which the PRO and manufacturers are ultimately responsible. Similarly, it is impractical to expect local governments or intermediate supply chain entities to identify the number of plastic components in a given bale or that come into a drop-off, take-back, or alternative collection program. Many of these take-back or drop-off programs are likely to be located at transfer stations or landfills where it would be impossible to manually perform those tasks or acquire the infrastructure to do so on an automated basis.

Over the decades, one of the largest barriers to recycling has been the lack of stable, healthy end markets for materials collected by local governments. Without stable and healthy end markets, local governments and recycling service providers will have no place to send materials. Local governments embraced SB 54 in part because it is expected to drive the creation of those markets and increase the recyclability of packaging sold into the state. While CalRecycle and the PRO focus on development and support of end markets, both must also continue to ensure that the state successfully transitions away from harder to recycle packaging types and forms, as well as homogenizing packaging to simplify end-of-life sorting, processing, and recycling.

Aside from regulating single use packaging, SB 54 establishes clear requirements and obligations for producers of plastic single-use food service ware. Unfortunately, the regulations provide little guidance on how food service ware will be managed or regulated. How will CalRecycle oversee the transition to compliant food service ware by California restaurants and retailers – especially when food is ordered for consumption off-site? How will that material be collected, processed, and recycled (if even feasible)? While more detail can be provided in the proposed regulations on how CalRecycle will regulate in this area, it is imperative that the upcoming needs assessment give careful consideration to the collection, processing, and recycling challenges associated with food service ware and the infrastructure needed to manage those materials.

The availability of SB 54-compliant packaging and food service ware will be even more complicated in border counties where retail and wholesale goods are often purchased in Oregon, Nevada, or Arizona. Smaller restaurants and retailers in those jurisdictions will not have the ability to procure those products from California retailers, which can be located an hour or more away. While we believe California's size and regional distribution models will ensure that most products sold in bordering states will likely be SB 54 compliant, some consideration must be made for the particular compliance

challenges and circumstances faced by smaller restaurants and retailers in border counties.

Finally, California must ensure the effective and equitable dissemination of the California Plastic Pollution Mitigation Fund. SB 54 requires manufacturers to pay \$500 million annually to the state for ten years to mitigate the impacts of plastics on communities and the environment. We recognize that 40% of funds are continuously appropriated to the Department of Fish and Wildlife, Wildlife Conservation Board, Coastal Conservancy, Coastal Commission, Ocean Protection Council, Department of Parks and Recreation, Natural Resources Agency, and the California Environmental Protection Agency to monitor and reduce the environment impacts of plastics on terrestrial, aquatic, and marine life and human health. At the same time, 60% of funds are available, upon appropriation, to the Strategic Growth Council, California Environmental Protection Agency, Natural Resources Agency, and Department of Justice to monitor and reduce the environmental justice and public health impacts of plastics, including on disadvantaged and low-income communities and rural areas. These funds may be awarded to tribes, nongovernmental organizations, community-based organizations, land trusts, and local jurisdictions. It is important to ensure that funds are distributed equitably on multiple bases, including income, pollution burden, urban/rural, geographic, etc. While SB 54 will result in \$5 billion in investment for these purposes over ten years, it is vital for these funds to be spent effectively to maximize the benefits that can be derived from these one-time funds. Furthermore, it is important to note that even relatively small grants and awards can have a transformative impact on smaller or rural communities. We appreciate that CalRecycle will not have control over all distributions from the California Plastic Pollution Mitigation Fund; however, its input and experience administering funds for similar programs will position it well to influence its sister agencies.

XIII. Conclusion

RCRC appreciates your consideration of these comments. We look forward to continuing to work with CalRecycle on the development and implementation of SB 54. If you should have any questions, please do not hesitate to contact me at jkennedy@rcrcnet.org.

Sincerely,



Director Zoe Heller
SB 54 Formal Rulemaking 45-Day
Comment Period Comments
May 8, 2024
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JOHN KENNEDY
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