

March 15, 2023

Rachel Machi Wagoner, Director
California Department of Resources Recycling and Recovery
(CalRecycle)
1001 I Street
Sacramento, CA 95814

Via email at: regulations@calrecycle.ca.gov

**RE: CALRECYCLE’S AUTHORITY UNDER SB 343 AND SB 54 TO CREATE A
RECYCLABILITY BRIDGE FOR CERTAIN MATERIALS**

Dear Director Wagoner:

On behalf of the undersigned, we thank you for the opportunity to submit comments regarding Recycling and Disposal Reporting System Permanent Regulations implementing SB 343 (Allen, Statutes of 2021, Chapter 507), “Truth in Labeling for Recyclable Materials.” We respectfully urge CalRecycle to exercise its regulatory authority to create an on-ramp for materials on track to meeting statewide recycling goals so that they can continue to be classified as recyclable during a critical transition period.

The purpose of SB 343 was to provide consumers with accurate information about what is and is not recyclable in California. This information helps consumers make more informed choices when it comes to purchasing products and provides guidance at the end of the product’s life on the correct method of disposal or recycling. By making this change, the law seeks to lower recycling processing costs and reduce the amount of non-recyclable plastics that must be sorted to landfill or incineration.

SB 343 tightens the requirements around the permissible use of the “chasing arrows” recycling symbol and plastic packaging resin identification code as well as when claims of recyclability can be made. It also requires CalRecycle to publish the types and forms of products and packaging that get recycled according to rules set by the State. In order to determine recyclability, SB 343 set out a two-prong test materials have to meet.

This approach created a binary—“in or out”—analysis to determine whether material types and forms can be claimed as recyclable in the state of California based on what is currently recycled at specified rates. Regrettably, this approach creates a pitfall for the state as materials that enjoy growing collection, sortation and end market demand, but may fall short of the thresholds set out in the bill, will lose any recyclability designation or claims, resulting in the likely diversion of these materials to landfills. This is a negative environmental outcome that would undermine millions of dollars of private and public investments to increase the collection and sortation of these materials. It would decrease the state’s recycling rates—not increase them. There are two important avenues that provide CalRecycle with rulemaking authority to create an on-ramp for materials on track to meeting statewide recycling targets set under SB 54 (Allen, Statutes of 2022, Chapter 75), the Plastic Pollution Producer Responsibility Act.

CalRecycle has authority under Public Resources Code Section 42355.51 (d)(6) to determine that any product or packaging in compliance with “a program established pursuant to state or federal law on or after January 1, 2022, governing the recyclability or disposal of that product or packaging” is in compliance with SB 343 so long as the agency determines it will not increase contamination of curbside recycling or otherwise deceive consumers. Since SB 54 creates such a program, we urge the agency to exercise its authority and create a streamlined process in order to avoid a product by product and package by package determination that could inundate the agency with requests for tens of hundreds of thousands of material types and forms in the marketplace that will result in unnecessary delay and confusion.

Since the program referenced above will not be implemented by the effective date of SB 343, SB 54 expressly contemplated an interim on-ramp by giving CalRecycle the authority under Public Resources Code Section 42061 (a)(3)(B) to identify material types and forms that, while not meeting the SB 343 60% thresholds, are trending toward meeting it through statewide recycling programs or alternative programs, such as industry-funded or third party take-back systems, and whose continued collection, sortation, and end market development and investments would be disrupted by a loss of the recyclable designation. The language modified CalRecycle’s authority under SB 343 to proactively identify these material types in its first material characterization study. Materials identified may continue to be labeled as recyclable until they are part of and in compliance with the program discussed above.

We strongly urge CalRecycle to exercise its authority under both avenues to avoid restricting recyclability claims on materials with growing collection rates and while state-approved Extended Producer Responsibility programs are put into place. Preserving the ability of these identified materials to be labeled as recyclable until they are part of and in compliance with the EPR program established by SB 54 will further accelerate recycling outcomes for these materials if managed effectively and avoid the negative environmental outcome of otherwise recyclable material being landfilled. Thank you for your attention to this matter, and we look forward to further discussions with you on implementation of both legislative measures. Please direct further inquiries or follow up to John Hewitt via jhewitt@consumerbrandsassociation.org.

Sincerely,

Consumer Brands Association, John Hewitt

Agricultural Council of California, Emily Rooney

American Chemistry Council, Tim Shestek

AMERIPEN, Dan Felton

Association of Plastic Recyclers, Steve Alexander

California Chamber of Commerce, Adam Regele

California League of Food Producers, Trudi Hughes

California Manufacturers & Technology Association, Robert Spiegel

Flexible Packaging Association, Alison Keane

Pet Food Industry, Savonne Caughey

The Recycling Partnership, Dylan de Thomas

Toy Association, Erin Raden

cc: Zoe Heller, Deputy Director Materials Management & Local Assistance
Erin Rodriguez, Deputy Director of Legislative Affairs
Dan Brown, Environmental Program Manager I