



December 14, 2024

The Honorable Gavin Newsom
Governor of California
1021 O Street, Suite 9000
Sacramento, CA 95814

Dear Governor Newsom,

The below listed organizations are writing to raise very serious concerns regarding the most recent draft Plastic Pollution Prevention and Packaging Producer Act (SB 54) regulations as put forward by CalRecycle on Monday, December 2nd.

As you know, SB 54 enacted an extended producer responsibility (EPR) model directing producers to achieve ambitious recyclability, recycling and source reduction targets on unprecedented timelines. We are supportive of these objectives and have demonstrated our commitment both in the passage of SB 54, but also in participating in the workshops and now formal regulatory process. However, we note that the goals of this legislation will be complex to achieve and will require new innovations in technology as well as creative and flexible solutions to create a successful system.

As currently written, we believe this most recent draft of the regulations contain significant flaws, both policy and legal, and provide prescriptive requirements more akin to command-and-control regulations than EPR regulations. We are concerned that these regulations do not provide the balance of guidance and flexibility to allow the Producer Responsibility Organization (PRO) to work with its members and producers to build and invest in a system that will be implementable nor achieve the statutory objectives of creating a circular economy.

CalRecycle received over 130 substantive comments prior to this draft, but unfortunately, the department's responsiveness to those comments is lacking and could result in a system that will not work as intended and will not fulfill the goals of SB 54.

A few examples of our concerns, though not exhaustive, are:

1. The Department's economic impact analysis, included in the initial Standard Regulatory Impact Analysis, indicates that implementation of the regulations might originally result in increased costs to consumers of at least \$300 per year. Based on the latest version of the regulations we estimate that the true cost to consumers could be several multiples of that number annually, as well as very significant costs to producers.

2. The most recent draft regulations create significant barriers to the necessary technological innovation sought by SB 54. Existing recycling technology alone cannot successfully implement this program. Advancement in the latest recycling technologies can benefit the state and complement existing infrastructure to grow a circular economy for materials covered under this and other upcoming EPR programs. California was primed to lead the way for the rest of the nation to unlock circularity by creating a model that works and others would adopt-- however the current regulations prevent that benefit from being realized.
3. The most recent draft regulations likely create a conflict for both our state's agricultural producers and food industry with federal law and regulatory requirements governing food safety packaging. Despite specific statutory language requiring that the SB 54 regulations not conflict with federal requirements (Public Resources Code section 42060 (b)(2)), as currently drafted we believe the regulations do in fact place our agriculture and food industries in a position of being in conflict with various federal rules governing packaging for food safety. If enacted as currently drafted, there is substantial risk that critical packaging for food products would ultimately be banned without adequate substitutes resulting in much greater food waste and higher prices in California, as well as impacting food safety and potentially decreasing food production in California.

Similarly, the new regulations as drafted may create a conflict for drug manufacturing and medical device approvals with federal law and FDA/European Union regulatory requirements. Additionally, over the counter (OTC) medicines are now treated differently from prescription medicine, risking the sterility, safety, affordability and availability of OTC medicine sold in California.

4. Various definitions to define "producer" create confusion, ambiguity and create unnecessary complexity for both manufacturers and the PRO in their efforts to develop the Plan required by both the legislation and the regulations.
5. In several areas, the latest draft of the regulations fails to recognize and respond to the areas where it has been noted that the Department exceeds the statutory authority given in SB 54. In some cases, we believe the regulations go so far as to not comply with specific statutory provisions.

We are happy to discuss the specifics of each of these concerns, and many others, in an effort to assist in the successful implementation of SB 54 as envisioned by the Legislature. We reiterate our commitment to achieving a circular economy and achieving the goals of SB 54.

We would ask that the regulations are significantly amended to provide much greater flexibility to the PRO as intended by EPR programs. Overlaying a highly specific command-and-control regime on top of an EPR program likely sets the PRO up to fail. CalRecycle should provide direction to the PRO and its plan, clear definitions of terms, and flexibility for the PRO to adjust where needed as the plan is implemented. As currently written, the definition of and overly prescriptive obligations on producers, costly and confusing requirements for participation, limitations on innovative technologies and vague enforcement language, to name a few, create nearly insurmountable barriers for the industries that are looking to partner with California for the successful implementation of this program. Unfortunately, as currently written, we do not believe that these regulations are implementable and will not position California to achieve a successful circular economy.

We would welcome the opportunity to meet with you and outline our concerns in more detail.

Respectfully submitted,



Adam Regele
Vice President of Advocacy and Strategic Partnerships
California Chamber of Commerce

On behalf of the following organizations:

Agricultural Council of California
Air-Conditioning, Heating, and Refrigeration Institute (AHRI)
American Apparel and Footwear Association
American Chemistry Council
American Institute for Packaging and the Environment
BioCom California
California Building Industry Association (CBIA)
California Cattlemen's Association
California Citrus Mutual
California Cotton Ginners and Growers Association
California Fresh Fruit Association
California Grocers Association
California League of Food Producers
California Manufacturers & Technology Association (CMTA)
California Poultry Federation

California Strawberry Commission
California Restaurant Association
California Retailers Association
Can Manufacturers Institute
Chemical Industry Council of California (CICC)
Coalition for Responsible Celebration
Consumer Brands Association
Consumer Healthcare Product Association (CHPA)
Dairy Institute of California
Dart Container Corp.
Del Monte Foods
Flexible Packaging Association
International Dairy Foods Association (IDFA)
Personal Care Products Council
Plastics Industry Association
Vinyl Institute
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association
Western Plastics Association
Western United Dairies
Wine Institute