



August 6, 2021

The Honorable Phil Ting  
The Honorable Jacqui Irwin  
California State Assembly  
State Capitol  
Sacramento, CA 95814

**RE: AB 478 – Plastic Thermoform Containers: OPPOSE UNLESS AMENDED**

Dear Assembly Members Ting and Irwin:

The undersigned organizations are writing as a follow-up to our previous comments regarding AB 478, legislation pertaining to the use of post-consumer recycled (PCR) material in plastic thermoform containers. As we have stated, we recognize that steps need to be taken to not only increase the collection and processing of these containers but to also ensure that sustainable end-use markets exist. To that end, many of our respective industries and individual member companies have made public commitments to increase the use of recycled material in the production of new packaging materials.

Although our coalition believes AB 478 offers an opportunity to further increase the amount of plastic material collected for recycling and used in the manufacture of new packaging, we have identified the following issues that we believe need to be addressed so that any future statutory requirements are technically feasible, take into account ever changing market conditions, offer compliance flexibility for the regulated community and provide the Legislature with the appropriate level of oversight to ensure administrative accountability.

**SOURCES OF ELIGIBLE PCR MATERIAL SHOULD BE EXPANDED**

As currently drafted, the bill specifies that only recycled thermoform plastic container material may be used to meet the minimum PCR requirements. While this requirement may be appropriate for some material, the available supply of PCR resin is unlikely to be sufficient at this point to achieve the mandated percentages. We believe the bill should be amended to allow producers to use PCR from non-thermoform sources to meet their compliance obligations.

**TECHNICALLY FEASIBLE PCR RATES/DATES NEEDED**

As currently drafted, the bill sets very aggressive mandatory PCR levels and recycling rates that in our view are unlikely to be technically feasible in the proposed timeframes. Bear in mind that there are a number of considerations that need to be taken into account when adding PCR resins to packaging products, including U.S. Food & Drug Administration (FDA) requirements, supply of PCR resins, and product specifications and constraints.

According to the FDA, PCR resins must meet the same specifications as virgin plastic resin. All food packaging manufacturers have to follow strict FDA guidelines for all manufacturing processes and materials used in the making of food packaging as per the [Guidance for Industry: Use of Recycled](#)

[Plastics in Food Packaging \(Chemistry Considerations\)](#). Of particular note, food contact materials used in the manufacture of food packaging are required to obtain a letter of no objection (LNO) from the FDA, including for PCR resins. With these FDA requirements, supply of PCR resin types available for food contact applications has historically been low and varies between resin types. The FDA has issued significantly fewer LNOs for Polystyrene (PS) and Polypropylene (PP), resulting in fewer available food contact PCR choices for those resin types.

Further, as various food and beverage companies make commitments to use PCR at higher rates for an increasing number of products, the supply of available material dwindles. There is currently not enough PCR resin in the marketplace to meet the voluntary demand driven by manufacturers. In fact, a recent study by [AMERIPEN](#) that analyzed U.S. company recycled content goals against available supply states that, *“domestic supply and reprocessing capacity for plastic resin concludes that based upon demand stated through public commitments for plastic PCR, the U.S. currently lacks the available supply and, in some cases, domestic reclamation capacity to meet those goals.*

Several companies are working to commercialize new technologies to reclaim and process plastic packaging into high quality, food grade PCR to meet ever increasing demands. We believe the Legislature should direct CalRecycle to evaluate how these types of processing technologies can play a complimentary role in creating additional PCR resin that can be used as feedstock in the manufacture of new packaging.

#### **ADJUSTMENTS TO PCR MANDATES/ADMINISTRATIVE PENALTIES**

The bill provides an opportunity for a reduction in the administrative penalty should a producer not meet the mandatory PCR levels. The coalition appreciates this language but we believe there should be an established process by which producers can petition CalRecycle for an adjustment in both the PCR percentages and any administrative penalty levied for not being in compliance.

In addition to the factors currently listed in the bill, the coalition feels CalRecycle should also be required to take into consideration the availability of recycled plastic suitable to meet the PCR requirements, including the availability of high quality recycled plastic, food-grade recycled plastic, taking into account US FDA requirements.

#### **ADMINISTRATIVE PENALTY PROVISION**

The bill currently proposes an administrative penalty of \$0.20/lb for plastic thermoform resin and \$4.00/lb for expanded polystyrene. The significantly higher penalty for polystyrene will likely result in a “de-facto” ban on that material. The coalition believes that the \$0.20/lb penalty level should be equally applied to all resins.

Another option would be to direct CalRecycle to first undertake an assessment to more clearly understand the level of financial support that may be necessary to improve the state’s collection and processing infrastructure for these materials, taking into account input from all stakeholders. At that point, the Legislature can better assess the appropriate administrative penalty that is required. We also believe that the intent of this provision should be to incentivize compliance and that any administrative penalty should not be overly punitive to producers.

Finally, any administrative penalty language should also include clear guidelines on how CalRecycle will disburse funds, including establishing accountability measures for recipients and periodic reports to the Legislature on the programs implementation.

Attached is a mock-up of proposed amendments that would address the issues identified in this letter. We thank you for the opportunity to share these concerns and suggested amendments and we look forward to working with you on this important issue.

Should you have any questions or comments, please do not hesitate to contact either Lauren Aguilar at 916-718-9079; [laguilar@serlinhaley.com](mailto:laguilar@serlinhaley.com) or Tim Shestek at 916-448-2581; [tim\\_shestek@americanchemistry.com](mailto:tim_shestek@americanchemistry.com)

Sincerely,



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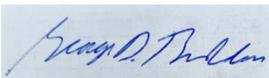
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