

California Senate Bill 54

“Solid Waste: Reporting, Packaging, and Plastic Food Service Ware”

Sponsor: Senator Allen

Status: Signed by the Governor on June 30, 2022

Legislative Snapshot

California’s SB 54 establishes the Plastic Pollution Prevention and Packaging Producer Responsibility Act. Under this Extended Producer Responsibility (EPR) scheme, “producers” are required to establish and join a Producer Responsibility Organization (PRO), which will be responsible for the general administration of the program. The law establishes extensive requirements, criteria, guidelines, and procedures for producers and the PRO and requires CalRecycle to promulgate regulations to implement and enforce the Act. Additionally, the PRO will be responsible for paying a \$500 million annual surcharge to be collected from members and deposited into the newly established California Plastic Pollution Mitigation Fund (via the California Department of Tax and Fee Administration).

Definition of “Producer”

“Producer” means a person who manufactures a product that uses covered material and who owns or is the licensee of the brand or trademark under which the product is used in a commercial enterprise, sold, offered for sale, or distributed in the state.

(2) If no person in the state is the producer for purposes of paragraph (1), the producer of the covered material is the owner or, if the owner is not in the state, the exclusive licensee of a brand or trademark under which the covered product using the covered material is used in a commercial enterprise, sold, offered for sale, or distributed in the state. For purposes of this subdivision, a licensee is a person holding the exclusive right to use a trademark or brand in the state in connection with the manufacture, sale, or distribution of the product packaged in or made from the covered material.

(3) If no person in the state is the producer for purposes of paragraph (1) or (2), the producer of the covered material is the person who sells, offers for sale, or distributes the product that uses the covered material in or into the state.

“Producer” does not include a person who produces, harvests, and packages an agricultural commodity on the site where the agricultural commodity was grown or raised.

Elements at Issue

Preemption

SB 54 establishes several highly ambitious recycling targets. As producers and material suppliers continue to make significant investments to reach those aggressive rates, local jurisdictions should not be able to ban materials covered by this legislation in the future. So is there preemption or not under the bill?

Advanced Recycling

Advanced recycling technologies are able to process plastics that do not have strong end markets, thus enabling a more circular economy for plastics. In addition to benefiting the environment, advanced recycling provides important economic benefits. Under SB 54, CalRecycle is responsible for determining which processes and technologies constitute “recycling.” FPA believes that a suite of options is needed to address the plastics pollution issue and that advanced recycling is a critical piece of that puzzle. Thus, any meaningful stewardship program should be explicitly inclusive of advanced recycling and innovations in recycling technology.

Rates and Dates

Under SB 54, at least 30% of all plastic packaging in the state must be recycled in 2028; 40% by 2030; and 65% by 2032. While the timeline under SB 54 allows producers more time to comply with recycling mandates than the ballot initiative, many of the targets are arbitrary and will likely be extremely difficult or impractical to achieve.

Plastic Pollution Mitigation Fund

SB 54 also creates the California Plastic Pollution Mitigation Fund (PPMF). Producers and plastic resin manufacturers will be required to pay into the fund \$500,000,000.00 annually. The purpose of the fund is to monitor and mitigate plastic pollution in the state of California, prioritizing low income and historically disadvantaged areas. This “environmental mitigation surcharge” is quite simply a tax on the industry. Furthermore, the creation of the PPMF under SB 54 rather than a separate standalone piece of legislation sets a dangerous precedent for working non-EPR measures into large EPR bills.

Timeline and Phases of Implementation

2024	<p>January 1</p> <ul style="list-style-type: none"> Department shall publish the list of covered materials deemed recyclable (same for compostable) Producers shall form and join a PRO <p>July 1</p> <ul style="list-style-type: none"> Department shall establish and post on its website a list of covered material categories
2025	<p>January 1</p> <ul style="list-style-type: none"> Department shall adopt regulations for program administration Department shall establish a baseline for a 25% reduction based on the 2023 calendar year <p>July 1</p> <ul style="list-style-type: none"> Department shall complete first material characterization study (shall update study in 2028, 2030, 2032, and every 4 years after)
2026	<p>January 1</p> <ul style="list-style-type: none"> Department shall calculate and publish on its website the recycling rates being achieved for each material category The department shall assess whether the recycling rate should be adjusted every 2 years after
2027	<p>January 1</p> <ul style="list-style-type: none"> The producer must participate in a PRO 10% source reduction of plastic covered materials with 2% reduction through shifting to reusable or refillable <p>July 1</p> <ul style="list-style-type: none"> PRO begins annual payments of the PP Mitigation Fund
2028	<p>January 1</p> <ul style="list-style-type: none"> 30% recycling rate for covered materials
2030	<ul style="list-style-type: none"> Every 5 years, the Department shall evaluate plastic covered material to consider actions for greater source reduction The Department shall determine whether the surcharge requires adjustment <p>January 1</p> <ul style="list-style-type: none"> 20% source reduction of plastic covered materials with 4% reduction through shifting to reusable or refillable 40% recycling rate for covered materials
2031	<p>January 1</p> <ul style="list-style-type: none"> The Department may approve additional PROs
2032	<p>January 1</p> <ul style="list-style-type: none"> 65% recycling rate for covered materials 25% source reduction
2037	<p>January 1</p> <ul style="list-style-type: none"> PP Mitigation Fund sunsets

Extended Producer Responsibility (EPR)

Packaging Extended Producer Responsibility (EPR) is a policy that proposes making manufacturers/producers financially and managerially responsible for what happens to packaging material after it is sold and used. To fund it, consumer brands and users of packaging pay fees that go to a designated nonprofit Stewardship Organization (SO). Ideally, the SO is entrusted to maintain and develop the modern recycling infrastructure we need for today's packaging.

Good EPR legislation provides for a comprehensive EPR program that is based on a collaborative approach where everyone in the recycling system has a seat at the table to develop a workable program; incentivizes increased recycling and composting and discourages landfilling; and can adapt annually based on recycling market conditions and new infrastructure investment without the need for new rulemakings. A true EPR program ensures that producers have more than just financial responsibility: that they can control how funding is used and invested to ensure the goals of the program fosters a modernized approach to recycling and promotes a more circular economy.

Conclusion

The passage of SB 54 makes California the fourth state to adopt an EPR program for packaging. The program established under SB 54 is by far the most expansive, expensive, and disconcerting. In addition to the unprecedented PPMF, with its \$5,000,000,000.00 price tag, PROs are responsible for 100% of the costs of the program, including collection costs, and the program covers primary, secondary, and tertiary packaging. While this EPR scheme does include a PRO and Advisory Board, virtually all decision-making authority ultimately lies with CalRecycle. Not only is this a poor model of EPR but given the size of California's economy, the effects of decisions made by CalRecycle likely have sizable fiscal impacts in other states.