



September 14th, 2022

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

Dear Governor Newsom:

RE: AB 2784 (Ting) –Solid waste: thermoform plastic containers: Veto Request

We are writing to respectfully request a veto of AB 2784 (Ting). That mandates the use of post-consumer recycled (PCR) content in plastic thermoform containers. Throughout this legislative session our coalition had multiple conversations with the author’s office and the proponents of the bill, conveying the difficulties our coalition would have implementing the unfeasible and inequitable requirements in AB 2784.

The framework in AB 2784 fails to provide a clear path forward to a closed-loop recycling system and would derail significant progress we have already made towards recycling thermoform plastics. During the legislative session, a large group of stakeholders met for hundreds of hours to find a comprehensive and compromised solution to California’s recycling issues. As a result of those meetings, the California legislature passed and you signed SB 54 (Allen), a comprehensive packaging and plastics recycling bill that puts mandates on producers of the same types of packaging covered in AB 2784. SB 54 is the solution California needs to address multiple types of materials, mandating producers to fund infrastructure upgrades to the recycling system. With the process set forth in SB 54, thermoform recycling will significantly increase and address the issues Assemblymember Ting is trying to fix with this legislation.

AB 2784 creates a duplication of administrative fees and penalties that are already stipulated in SB 54. AB 2784 does not account for market and economic conditions, there are no collection mandate or sorting mandates for material recovery facilities (MRFs) or recycling centers and lastly, there are no incentives for MRF’s to separate thermoforms into their own bales.

Another major concern is that the Food and Drug Administration (FDA) requires PCR resins to 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. Both are used significantly in thermoform containers.

Our member companies strongly support the use of PCR content and the goals set forth in SB 54 and will be working with Cal Recycle and the Producer Responsibility Organization (PRO), to expand the use of PCR where they can. We are firmly committed to manufacturing products that meet the environmental, social and product needs of consumers. Unfortunately, we do not believe that there will be enough PCR content available to meet the mandates of this legislation. While this bill would develop end markets for plastic materials, there needs to be an equal emphasis on improving the collection and sortation of these materials to get more of them to these markets. Polyethylene terephthalate (PET) thermoforms are an extremely small percentage of an average MRF's total throughput volume as dedicated sorting of the PET thermoform stream in California is emerging. Volumes of clear polypropylene (PP) and polystyrene (PS) thermoforms in the post-consumer MRF stream are even lower, making sortation of these materials impractical, if not impossible, at this time.

In conclusion, AB 2784 will add conflicting requirements and duplicate fees that are now set in law with the historic signing of SB 54, that was intensely negotiated by all concerned stakeholders to create a system that will improve plastic recycling and reduce the amount of plastic in packaging. AB 2784 creates additional mandates and reporting requirements on the same materials and producers who will be regulated under SB 54.

We urge your veto of AB 2784 to allow the process and the authority given to Cal Recycle and the PRO under SB 54 to be properly implemented.

Respectfully,

Lee Sanders:	American Bakers Association
Rick Rivas:	American Beverage Association
Tim Shestek:	American Chemistry Council
Lauren Aguilar:	American Institute for Packaging and the Environment (AMERIPEN), Flexible Packaging Association
Louie Brown:	California Apple Commission, California Blueberry Association, California Blueberry Commission, California Grocers Association, California Fresh Fruit Association, California Cotton Ginners and Growers Association, California Strawberry Commission, Western Agricultural Processors Association
Ben Golombek:	California Chamber of Commerce
Rob Ross:	California Fisheries and Seafood Institute
Trudi Hughes:	California Food Producers
Robert Spiegel:	California Manufacturers and Technology Association
Matt Sutton:	California Restaurant Association
Brendan Flanagan:	Consumer Brands Association
Carol Patterson:	Foodservice Packaging Institute
Brian McKeon:	National Confectioners Association
Savonne Caughey:	Pet Food Institute
Kris Quigley:	Plastics Industry Association
Jerry Desmond:	Plumbing Manufacturers Association
Terry Grill:	Sealed Air
Mike Pope:	Sonoco
Tom Sheehy:	Tekni-Plex
Andy Harig:	The Food Industry Association
Bruce Magnani:	The Association of Plastics Recyclers, The Recycling Partnership, Pactiv Evergreen, Western Plastics Association
Gail Delihant:	Western Growers Association