

590 Ygnacio Valley Road, Suite 105
Walnut Creek, California 94596
Telephone: 925/977-6950

Northern California
Southern California
www.hfh-consultants.com

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CalRecycle
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812

Sent via email: packaging@calrecycle.ca.gov

Subject: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations

Dear CalRecycle SB 54 Team,

HF&H Consultants, LLC (HF&H) appreciates the opportunity to provide comments on the April 2024 Draft SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations. HF&H is supportive of the goals established by SB 54, and we appreciate the opportunity for stakeholder engagement in the rulemaking process.

HF&H exclusively represents public sector clients. Over the past three decades, we have assisted over 400 local government agencies in the State of California. Our work is primarily in the areas of strategic planning, local policy development, negotiations with recycling service providers, financing infrastructure, program funding, and rate setting for local government solid waste programs. These services relate to the materials and programs regulated under SB 54, particularly regarding impacts to local jurisdictions and recycling service providers. The following comments and suggestions are based on our experience providing these services to local governments throughout California.

COMMENTS

General

1. We greatly appreciate CalRecycle's extension of the comment letter deadline. SB 54 and its implementing regulations are complex, and providing sufficient time to engage is critical to ensure all stakeholder voices are heard. Local governments in particular benefit from this, as they have unique administrative requirements and public approval processes that require additional time. We encourage CalRecycle to continue providing ample time for stakeholder engagement, to ensure these critical voices are heard.
2. SB 54 acknowledges explicitly that "Local jurisdictions are the backbone of the solid waste management and recycling efforts in California," and that the intent of SB 54 is to, among other goals, "shift the burden of costs to collect, process, and recycle materials from the local jurisdictions to the producers of covered material."

In order to meet these goals, CalRecycle is required to develop regulations, pursuant to PRC Section 42060(a)(1), including: ***"Any regulations necessary to ensure the PRO fully funds plan***

CalRecycle
 May 7, 2024
 Page 2 of 18

implementation, including fully funding the budget. This shall include the costs incurred by a local jurisdiction or a local jurisdiction's recycling service providers to implement this chapter..."

We understand CalRecycle cannot promulgate regulations that extend beyond the statutory requirements; however, the section referenced above clearly outlines not only CalRecycle's statutory authority but its statutory obligation to add sufficient detail to the regulations, and establish new provisions where necessary, to ensure the PRO successfully implements the plan, including supporting local jurisdiction efforts. As currently drafted, HF&H is concerned that areas of the regulations lack sufficient detail to ensure this statutory requirement is met. The following comments below highlight such areas and provide suggestions for CalRecycle's consideration.

Article 1 – Definitions

1. **"Ratepayer"** – Section 18980.1(a)(28) of the draft regulations defines ratepayer as follows:

"Ratepayer" means a member of the public or business whose method of paying to prepare and sort covered material, though ultimately covered under PRO funding as required under this article, includes, but is not limited to:

(A) User fees or rates

(B) Franchise fees on solid waste service providers

(C) Solid waste facility gate or tipping fees

(D) Mitigation or host fees on disposal facilities

(E) Excise tax, parcel tax, property tax, or respective fee

(F) Voter-approved surcharge or fee." (Section 18980.1(a)(28))"

The proposed definition of "ratepayer" is overly broad, and as written, would have unintended consequences by encompassing entities and fee types that extend beyond traditional ratepayers. For example, franchise fees are a contract mechanism used in solid waste service agreements between a solid waste enterprise and a local jurisdiction, not as a method for a generator to pay user fees. Under this definition, a solid waste enterprise could be considered a "ratepayer." Additionally, items (E) and (F) are overly broad, if not clarified, and could be interpreted beyond user fees for services related to covered materials in this statute. In the spirit of the statute to protect ratepayers receiving service, this definition needs to be revised to include only user fees. It is worth noting that tipping fees (C), solid waste charges on a property tax bill (commonly charges, not taxes as in [E]), and voter-approved surcharges/fees for solid waste services (F) are all forms of user fees, under certain parameters, and would be covered under a revised definition that focuses on the term user fees. This is of particular concern in relation to recent and emerging case law regarding Proposition 218 and Proposition 26. CalRecycle's inclusion of particularly (B), (D), and (E), as written, could create legal inconsistencies or disputes that may undermine funding of critical public services for local agencies around the state.

Additionally, we appreciate and agree with CalRecycle's emphasis that the PRO should cover ratepayer costs. However, we would recommend moving that language to the appropriate operative section(s) of the regulations, rather than embedded within the definition of ratepayer, to avoid any potential interpretation that a category of ratepayer or concept of a ratepayer could

CalRecycle
 May 7, 2024
 Page 3 of 18

change based on the ultimate cost mechanisms with the PRO, which are yet to be determined. We would recommend maintaining this concept, but instead incorporate it into the sections regarding covered costs, as proposed in comment subsection A under Article 6 below.

To mitigate unintended consequences described above and to align with existing law, HF&H recommends CalRecycle consider revising the definition of ratepayers as follows:

“Ratepayer means a person or entity that pays user fees, rates, or charges for recycling, composting, or solid waste collection and handling services provided by a local jurisdiction and/or their designated recycling service provider.”

2. **Viable responsible end market** – Section 18980.1(a)(28) of the draft regulations defines viable responsible end market as follows:

“Viable responsible end market” means a responsible end market that is feasible and capable of being economically successful.

It is unclear within this definition how “feasible,” “capable of” and “economically successful” are defined and measured. For example, does “economically successful” imply an expectation that certain profit margins are met? Additionally, the use of the word “feasible” and “capable of being” imply that the market does not need to demonstrate actual effective use in the market.

We recommend that CalRecycle add clarifying language to define “feasible,” “capable of,” and “economically successful.”

Article 2 – Covered Material and Covered Materials Categories

§ 18980.2.5. Covered Material Category List Recommendations

1. Section § 18980.2.5 (b)(7) states that any recommendation to the CMC list made by a PRO or independent producer include the “Financial implications and impact of recommended changes on affected entities including but not limited to, responsible end markets and intermediate supply chain entities, and, where applicable, include information concerning the necessity of expanding or creating new facilities and viability of responsible end markets pursuant to section 18980.4.4 if the change is made.”

We would recommend including other entities such as local jurisdictions, collection programs, and ratepayers. Including these additional entities will ensure that key stakeholders are considered when reviewing recommended changes to the CMC list. Local jurisdictions will be required to adjust programs to accommodate changes in the CMC list and such changes could place significant administrative and operational burdens on the jurisdiction and its local collection program. Without properly considering these impacts, local ratepayers could end up bearing the cost of the change.

We recommend revising the language to add local jurisdictions and ratepayers such that the final text reads:

CalRecycle
 May 7, 2024
 Page 4 of 18

*“Financial implications and impact of recommended changes on affected entities including but not limited to, responsible end markets, **local jurisdictions, ratepayers, and intermediate supply chain entities, and, where applicable, include information concerning the necessity of expanding or creating new facilities and viability of responsible end markets pursuant to section 18980.4.4 if the change is made.**”*

Article 3 – Evaluations for Covered Material and Covered Material Categories

§ 18980.3. Recyclability

1. Section § 18980.3 (f)(1)(C) states that “A PRO shall conduct periodic audits and investigations of the identified covered materials and participant producers to ensure the covered materials continue to meet the requirements specified in section 42355.51(d)(4) or section 42355.51(d)(5) of the Public Resources Code. The results of any audits and investigations shall be included in a PRO’s annual report. All investigations and audits shall be conducted by an independent third-party, with all financial audits being conducted by an independent public accountant certified in the United States. The Department shall have full access to any results of an audit or investigation.”

In order to ensure audits and investigations of covered materials are performed in a manner that adequately investigates whether the materials generated by producer’s are in compliance with section 42355.51(d)(4) or section 42355.51(d)(5) of the Public Resources Code, we recommend CalRecycle include additional specifications describing the minimum scope requirements of conducting these audits and investigations. The scope of these audits and investigations should at minimum, include verification of data received directly from the PRO or participant producer to validate compliance claims through a site visit of the producer’s manufacturing facility and site visits to a minimum of two material recovery facilities and end markets that collect, process, and/or recycle the material under investigation.

§18980.3.2. Methodology for Recycling Rate Determination

1. Section §18980.3.2 (d)(5) of the proposed regulations states “For a new covered material category created after 2024 for which insufficient information exists to calculate recycling rate, the recycling rate shall be assumed to achieve the required rate under section 42050(c) of the Public(5) Resources Code, as may be adjusted pursuant to section 42062 of the Public Resources Code, until one year of data is available for the covered material category, at which point the recycling rate shall be calculated based on available data.”

We recommend rather than assuming recyclability requirements are achieved, CalRecycle consider categorizing the materials recycling rate as “unknown” until one year of data is available for the covered material category. Assuming the recycling rate is achieved would allow the material to be considered “recyclable” and thus require local jurisdictions to accept the material within their local recycling programs. This could cause significant financial and operational burden on the jurisdiction prior to funding being made available to recover and process the covered material. Furthermore, this could cause confusion for the public if the material is initially considered recyclable to only be removed one year later when sufficient data is available.

CalRecycle
 May 7, 2024
 Page 5 of 18

Article 4 – Responsible End Markets

§ 18980.4. Responsible End Market Determination Criteria

1. Section 18980.4(a)(3) states that in order to be a responsible end market “The entity shall maximize benefits to the environment and minimize risks to public health and safety...” and includes a list of criteria around recycling, handling incompatible materials, material handling and minimization of emissions, effluents, and residuals. CalRecycle might consider including additional language regarding the waste hierarchy or other factors that align with the goals of SB 54. For example, subsection (C) could be revised as follows:

*“(C) The entity shall provide documentation to a PRO or Independent Producer that describes how it recycles covered materials, ~~and~~ how the entity works to **prioritize highest and best use of materials and to minimize and manage emissions, effluents, and residuals.**”*

2. Section 18980.4(a)(4) states that an entity must “...fully convert compostable covered materials or covered material made of wood or organic material into a recycled organic product, specified in subparagraph (B).” Subparagraph (B) states: “Fully convert compostable covered material or covered material made of wood or organic material into a recycled organic product **means 100 percent of the covered material is converted into a recycled organic product.** If the end market does not fully convert the covered material into a recycled organic product and disposes of the unconverted portion, the end market shall not be deemed responsible.”

This 100 percent standard is not feasible for composting operations to meet. There is always some amount of residual material leftover from processing organic materials, in order to ensure the compost product is free of contamination and non-compostable materials. Additionally, this 100 percent standard is not consistent with other State law, such as the ten percent incompatible materials limit set forth in section 17409.5.8(a) of the Public Resources Code. This inconsistency may undermine the existing investments that local governments and facilities have invested in ensuring successful SB 1383 programs.

Section 18980.4(a)(3)(B) specifies the standards for how responsible end markets must “maximize benefits to the environment and minimize risks to public health and safety” by handling incompatible materials in a manner that includes disposing of “incompatible materials that cannot be further processed and recycled” in a way that prevents environmental, public health, and safety risks. Considering the regulations contemplate and acknowledge the existence of residual and incompatible materials in that subsection, the 100 percent standard in Section 18980.4(a)(4) appears inconsistent with CalRecycle’s intent.

CalRecycle addressed a question on this topic during the Q&A session held on February 1, 2024. Our interpretation of CalRecycle’s response is that the intent is to refer to material *after* incompatible materials are screened out. This interpretation appears to be more consistent with the regulatory section cited above. However, it should also be noted that even when contamination is removed, processing systems inevitably have some form of “shrinkage,” loss through the nature of processing.

CalRecycle
 May 7, 2024
 Page 6 of 18

We recommend that CalRecycle add clarifying language to align with the verbally expressed interpretation and other sections of the regulations.

We recommend that CalRecycle align the end market standards for compostable materials with the existing state law of a 10% incompatible materials limit by amending the first sentence of subsection B as follows:

“Fully convert compostable covered material or covered material made of wood or organic material into a recycled organic product means ~~100 percent~~ no more than 10 percent of the covered material is disposed as incompatible materials after ~~converted~~—conversion into a recycled organic product.”

3. Section 18980.4(b) lists how end markets shall be identified by material type, including: “(4) For covered material made of plastic, end markets include, but are not limited to, entities that create a new product by molding, extruding, or thermoforming processed material.”

This appears to mean that only the maker of the final new product from the plastic material needs to meet the standards as an end market. This creates a large gap in the chain, in which the entities that further process plastic into plastic flake or pellets are a key step in the process. This is inconsistent with how markets for other covered materials are defined in the regulations, which include the entities that make the secondary product to be turned into final product. For example, the markets for metal include the smelting of metal to produce materials that are then subsequently refabricated into a packaging or product, and paper or fiber include entities the re-pulp the material that is then sold to manufacturers to produce final products.

HF&H requests that CalRecycle clarify why plastic end markets are required to meet lower standards in the chain compared to other materials such as metal and paper, especially considering plastics are a key focus of SB 54.

HF&H recommends clarifying the language as follows:

“For covered material made of plastic, end markets include, but are not limited to, entities that create a new product by molding, extruding, or thermoforming processed material; and entities that convert processed covered material into feedstock material, such as flakes or pellets, to be used in the creation of new products.”

§ 18980.4.1. End Market Identification

1. Section 18980.4.1(c) of the regulations states:

“(c) For any independent supply chain entity that manages covered material, the end market or independent supply chain entity shall agree to:

- (1) Maintain chain of custody information for any collected covered material or intermediate product.*

CalRecycle
 May 7, 2024
 Page 7 of 18

(2) *Supply the information to a PRO or Independent Producer upon request.*

HF&H recommends correcting “independent supply chain entity” to be “intermediate supply chain entity,” as CalRecycle acknowledged verbally during the February 1 Q&A session.

Additionally, HF&H recommends revising the language regarding availability of information in order to align with the transparency goals of SB 54. Please consider the following revisions:

“(c) For any ~~independent~~ *intermediate* supply chain entity that manages covered material, the end market or independent supply chain entity shall agree to:

(1) *Maintain chain of custody information for any collected covered material or intermediate product.*

(2) *Supply the information to a PRO, ~~or~~ Independent Producer, and/or local jurisdiction upon request.*

§ 18980.4.4. End Market Viability

1. Section 189804.4(a)(2) states that a PRO or independent producer shall: *“To facilitate material diversion and assist end markets in satisfying the standards specified in section 18980.4(a), provide financial support to local jurisdictions, recycling service providers, independent supply chain entities, and other entities that provide services used for the diversion of materials.”*

We appreciate this regulatory language to ensure jurisdictions are made whole for their investments. We recommend that CalRecycle clarify whether the text is intended to read as “intermediate supply chain entities” rather than “independent supply chain entities.”

Additionally, in accordance with comment subsection A under Article 6 below, we recommend that CalRecycle include a section reference to clarify the types of costs covered. The section reference added below should be updated to reflect the final location of that proposed language, if ultimately included by CalRecycle.

*“To facilitate material diversion and assist end markets in satisfying the standards specified in section 18980.4(a), provide financial support to local jurisdictions, **including, at a minimum, the costs set forth in Section 18980.8,** recycling service providers, independent supply chain entities, and other entities that provide services used for the diversion of materials.”*

2. Section 189804.4(a)(2) describes what a PRO or independent producer shall include in its plan or plan amendment if it believes a viable responsible end market exists for a covered material described in that section. Among other items, this must include description of:

“(iv) Budget and investment strategy that describes how a PRO or Independent Producer will fund the development of the end market, along with any necessary development of collection, transportation, and processing infrastructure.”

CalRecycle
 May 7, 2024
 Page 8 of 18

This is an important factor to include in the plan, however the language as written is not fully reflective of the systems and costs that would need to be considered to make an end market viable.

We recommend revising the language as follows:

“(iv) Budget and investment strategy that describes how a PRO or Independent Producer will fund the development of the end market, along with any necessary development **or enhancement of current or future** collection, transportation, and processing infrastructure; **including both direct and indirect costs necessary to implement and operate such services, programs, and infrastructure.**”

3. Section 189804.4(a)(4) states: *“(4) If the covered material is made of a material type that does not have a responsible end market, as described in section 18980.4(b), that is also viable, a PRO or Independent Producer shall: If the covered material is made of a material type that does not have a responsible end market, as described in section 18980.4(b), that is also viable, a PRO or Independent Producer shall:*

(A) *Conduct a study, within a two-year period, that:*

- i) *Evaluates technology that could be used to recycle the covered material and ensure that the technology can constitute recycling, as defined in section 42041(aa) of the Public Resources Code.*
- ii) *Evaluates the feasibility of collecting, transporting, processing, and recycling the covered material.*
- iii) *Evaluates how the end market can meet the standards specified in section 18980.4(a).*
- iv) *May also include pilot programs to test components specified in clauses (i), (ii), or (iii).”*

The pilot program option listed in subsection (iv) may be a helpful tool in evaluating an end market; however, such pilot programs should not disrupt operations of current systems run by local jurisdictions and service providers. Such a disruption would be contrary to the goals of SB 54. We recommend adding in language requiring the PRO to obtain approval from impacted local jurisdictions prior to implementing a pilot program.

“(iv) *May also include pilot programs to test components specified in clauses (i), (ii), or (iii), **provided the PRO or Independent Producer obtain approval from any impacted local jurisdictions prior to implementing the pilot program.***”

Additionally, we recommend that CalRecycle provide clarifying language on what is meant by “feasibility” in subsection ii). It is unclear whether this means economic feasibility, operational feasibility, or other factors, and how each would be defined. Technologies will need to be evaluated for economic and operational feasibility, as well as demonstrated operational success and accessibility of the technology in the market.

CalRecycle
 May 7, 2024
 Page 9 of 18

Article 6 – Requirements for the Producer Responsibility Organization

A. Costs for Local Jurisdictions / Recycling Service Providers (RSPs)

As stated in the general comments section above, CalRecycle has the authority and statutory obligation under Section 42060(a)(1) to develop *“Any regulations necessary to ensure the PRO fully funds plan implementation, including fully funding the budget. This shall include the costs incurred by a local jurisdiction or a local jurisdiction’s recycling service providers to implement this chapter...”*

As currently drafted, HF&H is concerned that areas of the regulations lack sufficient detail to ensure CalRecycle is fulfilling this obligation, which will hinder the implementation and success of SB 54’s goals. Particular focus areas and recommendations are noted below.

1. **Covered Costs and Timeframe.** In order to meet CalRecycle’s statutory requirement for the regulations to ensure recovery of local jurisdiction costs, it is critical that the regulations clarify the types of costs incurred by local jurisdictions and the timeframe such cost were incurred.
 - a. Timeline of Covered Costs. We appreciate CalRecycle clarifying during the February 2024 Q&A workshop, in response to a question about whether both new and pre-existing costs were covered, that CalRecycle interprets SB 54 to cover all costs of the system. We recommend that CalRecycle state that explicitly in the regulations, to reduce confusion in implementation of costs recovery mechanism and reduce risk of future disputes.

In response to existing law such as AB 939 and SB 1383, jurisdictions and recycling service providers have made significant investments in the recycling system. The PRO will be unable to meet the targets set forth in SB 54 without reliance on the existing recycling infrastructure and programs established by jurisdictions and RSPs. Consideration of only “new” costs is not reflective of actual system costs and therefore would not achieve the goal of shifting the burden of costs from local jurisdictions and RSPs, to the producers. This would also disadvantage jurisdictions who were proactive and responsive to CalRecycle’s goals by being early adopters of programs if they are not able to recoup those existing costs. This may have an unintended consequence of discouraging local programs from proactive efforts.

We recognize the complexity of determining the timeline for these costs, and do not anticipate that the PRO will fund every possible pre-existing cost for local jurisdictions. However, there should be some combination of existing and pre-existing costs that are covered, and there are a variety of mechanisms that could be used to specify and calculate such costs in a reasonable manner for all parties, as described below.

We recommend that “new” costs include any costs incurred on or after the passage of SB 54 on June 30, 2022. We have further described the cost categories we recommend including in our detailed example language in subsection c, below. Historic, or “pre-existing,” costs incurred by local jurisdictions prior to June 30, 2022 may be focused on specific capital investments (infrastructure, facilities, vehicles, etc.), which may be calculated as a dollar per

CalRecycle
 May 7, 2024
 Page 10 of 18

- ton amount based on the annualized depreciation value of such investment. Please see subsection c for further detail on how this mechanic may be realized in the regulations.
- b. **Scope of Covered Costs.** Similarly, the statute has multiple sections that mention types of costs that are included as examples of costs that jurisdictions incur. However, these inconsistent with types of activities listed, and are not comprehensive or fully reflective of the types and structure of costs incurred by local jurisdiction in relation to covered materials. We recommend that CalRecycle provide a consolidated list, as described below.
 - c. To address the issue areas highlighted above, we recommend that CalRecycle consider the language presented in comment subsection A.3 below to be added to Article 8 Section 18980.8 Producer Responsibility Plan.

2. **Payment Mechanism.** In order to ensure that the plan is correctly funded and implemented, as CalRecycle is statutorily required to ensure, further clarification around payment mechanisms for local jurisdictions and service providers is necessary.

Without a consistent payment mechanism and if handled solely through individual negotiations, there is potential for inconsistency of results and resources distributed across jurisdictions. This also disadvantages jurisdictions with limited resources to participate in detailed negotiations processes. While some negotiations will be needed to reflect unique local conditions or dynamic changes, establishing minimum components for the payment mechanism process is critical for setting a more equitable and transparent baseline.

Examples of points of clarification are as follows. Please see subsection C below for specific example language.

- a. We recommend that CalRecycle require the PRO to consult with local jurisdictions and recycling service providers in development of the mechanism and schedule. Additionally, the process should include a mechanism for concurrence of costs with the impacted local jurisdictions and recycling service providers.
 - b. We recommend that CalRecycle require the PRO to include in its plan a proposed process for how the PRO will allocate funding to each jurisdiction for facilities, infrastructure, or other programs, that service multiple jurisdictions.
 - c. We recommend that the PRO be required to ensure that payments are made in a timely manner, including a specific schedule and process for doing so.
3. **Transparency.** In order to successfully and equitably cover jurisdiction costs and meet the goals of SB 54, transparency is critical. As such, we recommend the following clarifications be added to the regulations.

We recommend that CalRecycle add regulatory language to clarify that a local jurisdiction retains the full right to facilitate the payment or reimbursement process for their local programs and to

CalRecycle
 May 7, 2024
 Page 11 of 18

participate in any negotiations or dispute processes. Jurisdictions may delegate these roles to their recycling service providers or other entities, as appropriate, however the local jurisdiction should be included as a party that must ultimately agree to the cost arrangements, and shall receive any and all documentation of terms and payments made directly between the PRO and RSPs.

4. **Example language.** In order to address some of the issue areas above, we recommend that CalRecycle include the following language in the regulations. This language provides a consolidated list of costs to reduce confusion between sections of the statute with slight variations in language. The list of costs is largely the same as the statute, but with some additions that better reflect the actual costs of recycling programs costs, which are intended to be covered by SB 54. This language also clarifies timeline of costs and potential payment mechanism details. Finally, as stated in Comment #1, Article 1 above, we recommend that CalRecycle include the concept that ratepayer costs shall be "...ultimately covered under PRO funding" into this section (see subsection [h] of the example language) rather than within the definition of ratepayer.

This language would likely fit into Article 8 Section 18980.8 Producer Responsibility Plan; however, CalRecycle may wish to incorporate it elsewhere in the regulations. New text is shown in red. Blue text represents language that would be new in the regulations, but was consolidated from the various conflicting sections of the statute, but without content changes to that language.

"Pursuant to sections 42051.1 and 42060(a)(1) of the Public Resources Code the plan shall include and the budget shall fully fund costs incurred by a local jurisdiction or a local jurisdiction's recycling service providers to implement this chapter, including, but not limited to:

- a. *Costs related to consumer outreach and education, including but not limited to, costs to educate ratepayers to improve consumer behavior related to sorting and proper disposal necessary to achieve recycling, reuse and refill rates*
- b. *Costs to improve collection, sorting, decontamination, remanufacturing, and other infrastructure necessary to achieve recycling, reuse and refill rates*
- c. *Costs to transport covered materials to a materials recovery facility, broker, and-or viable responsible end markets*
- d. *Costs of waste stream sampling, recordkeeping, and reporting required by this chapter for local governments*
- e. *Costs to collect, sort, process, clean, aggregate, bale, store, segregate, break, flake or otherwise process materials to specifications for sale, and transport covered materials through the supply chain to viable responsible end markets*
- f. *Costs for containers, and modifications to existing containers, and other receptacles or drop-off area equipment where relevant*

CalRecycle
 May 7, 2024
 Page 12 of 18

- g. Costs incurred by local jurisdictions to administer and manage recycling programs and services, including indirect costs such as overhead and fully-burdened personnel costs*
- h. Costs paid for by ratepayers, as defined, related to covered materials handling services and programs*
- i. Costs and investments to develop, improve, and expand collection, processing and end market infrastructure*
- j. Costs and investment in reuse/refill infrastructure*
- k. Costs for accomplishing the actions set forth in PRC Section 42051.1*

For the purposes of this Chapter, costs incurred by local jurisdictions and recycling service providers means any new costs incurred after June 30, 2022 for implementation of this Chapter, as well as pre-existing costs incurred for capital investments made prior to June 30, 2022. The PRO plan shall describe its plan for calculation and payment of new and pre-existing costs, where pre-existing costs shall be, at a minimum, calculated as a dollar per ton amount based on the annualized depreciation value of the capital investment made, or through an alternative approach proposed in the PRO plan, whichever is greater. Notwithstanding this Section, the PRO shall only be responsible for paying the portion of pre-existing costs that were not already fully paid for through public grant funding or another State-funded program, if applicable.

The PRO shall consult with local jurisdictions, or their designees, and recycling service providers in the development of the mechanism and schedule for payment to local jurisdictions. The PRO's proposed process shall include a process for concurrence of the calculated payment amount with local jurisdictions and recycling service providers, and obtaining ultimate approval from the local jurisdiction on final cost arrangements.

To the extent that any costs incurred are for infrastructure, programs, or other resources that service or are used by multiple jurisdictions, the PRO shall include a proposed process for how funding will be allocated and distributed amongst multiple jurisdictions."

B. Dispute Processes

SB 54 currently permits the PRO to determine the process for disputes regarding payments to local jurisdictions and RSPs. In order to ensure equitable, transparent, and objective results that prioritize the goals of SB 54, disputes between jurisdictions and the PRO over adequacy of compensation must be resolved by an independent oversight body, and the dispute process should not be designed by the PRO itself. If CalRecycle decides to retain the PRO requirement to develop the dispute process, additional detail and guardrails are needed in the regulations to ensure the proposed process is fair to all parties.

Additionally, the final results and documentation of dispute processes between the PRO and jurisdictions or recycling service providers should be made available to local jurisdictions as public information. This

CalRecycle
 May 7, 2024
 Page 13 of 18

aligns with the transparency goals of SB 54 and will help ensure that negotiations are being handled more consistently, efficiently, and equitably across jurisdictions.

C. Collection Programs and Alternative Collection

Pursuant to Public Resources Code Section 40000, et seq., jurisdictions have discretion in how to handle solid waste programs, and therefore should remain central in decision making around programs and services operating in their jurisdiction under SB 54.

Introduction of alternative collections systems, while they may be beneficial or necessary in some cases, should not interrupt local collection programs or be implemented without the consent of local jurisdictions. In order to align with the PRC section referenced above, we recommend that CalRecycle add language to the regulations stating that local jurisdictions, or their designee(s), retain the right to be the primary sponsor of alternative collection programs, if desired. The PRO may sponsor or implement an alternative collection program, only after the local jurisdictions declines to sponsor the program and after the PRO obtains written approval from the jurisdiction on the proposed alternative collection program.

Additionally, we recommend that CalRecycle add language to the regulations to specifically clarify the language set forth in PRC Section 42051.1(I), which reads:

- “(I) (1) A plan shall include curbside recycling and composting collection for covered materials under any of the following circumstances:*
- (A) The category of covered materials can be made suitable for curbside collection and can be effectively sorted by the facilities receiving the curbside collected material for recycling or composting.*
 - (B) The recycling facility providing processing and sorting service, in consultation with the local jurisdiction, agrees to include the category of covered materials as an accepted material for recycling or composting and agrees to collect and sort the material in a manner that achieves the quality necessary for recycling and remanufacturing or composting.*
 - (C) The provider of the curbside collection and recycling or composting service agrees to the costs arrangement.”*

Subsection B includes mention of consultation with local jurisdictions but does not require ultimate approval of the arrangements by the jurisdiction. Similarly, subsection C includes no mention of local jurisdictions and would therefore allow curbside collection contractors to make policy decisions on behalf of local jurisdictions and ratepayers. This language is in conflict with the PRC section referenced above that allows jurisdictions control over their local collection programs. We recommend that CalRecycle add language to the regulations to clarify that the conditions set forth in PRC Section 42051.1(I) shall be made with the involvement of local jurisdictions and are subject to final approval by the local jurisdiction.

CalRecycle
May 7, 2024
Page 14 of 18

D. 18980.6.1. Producer Responsibility Plan Submission

1. Subsection (a) states: "A PRO approved by the Department pursuant to section 42061.5 of the Public Resources Code shall on or before April 1, 2026, prepare and submit a producer responsibility plan pursuant to section 42051.2 of the Public Resources Code..."

Subsection (c) states: "Upon submittal of the producer responsibility plan to the advisory board, the PRO shall make the proposed updated plan available for review and public comment by, at minimum, posting the plan to its internet website" and Subsection (d) includes the requirement to "make the plan available for public review by, at minimum, posting the plan to its internet website until an approved updated plan is posted."

We appreciate the requirement to make the plan publicly available, however, posting the plan to the internet website without any other notification to the public, will not result in the necessary level of engagement in order to submit public comment. We recommend adding additional specifications to ensure there is an adequate and equitable opportunity for all members of the public to comment on the proposed plan. Additional specifications CalRecycle may consider including are requirements for how long the plan must be posted, that the PRO must provide clear direction for how the public can submit comment, and that the PRO must provide opportunity for the public to comment during public hearings or meeting.

Article 8 – Producer Responsibility Plan Requirements

Please see comments under subsection A.4 of Article 6 for relevant suggested language to add to Article 8.

Article 9 – Annual Report and Program Budget

Section § 18980.9.1 lists additional requirements that must be included in the PRO's annual report and program budget. We recommend CalRecycle include additional specificity around the budget report to ensure complete transparency around the PRO's allocated costs. In particular, we recommend CalRecycle consider the following language in Section 18980.9.1(b):

"(7) For the PRO's costs and revenues, separately include the costs paid directly to recycling service providers collecting covered materials, recycling service providers processing recyclable materials, recycling service providers processing compostable materials and local jurisdictions."

Article 11– Requirements for Local Jurisdictions and Recycling Service Providers

§ 18980.11. Exemption for Local Jurisdictions and Recycling Service Providers

1. Conditions of Exemption. Section 18980.11(a) states requirements for a jurisdiction or RSP application for exemption from collection of specified covered material types. We would recommend revising the language in Section 18980.11(a) – (a)(2) as follows:

CalRecycle
 May 7, 2024
 Page 15 of 18

“(a) A local jurisdiction or recycling service provider seeking an exemption pursuant to section 42060.5(b) of the Public Resources Code, shall submit an application to the Department. The application shall include but not be limited to the following, and shall be submitted electronically:

- (1) The specific identified covered materials, which may be expressed as a covered material category or categories.*
- (2) A description, with any available supporting documentation, of the specific local conditions, circumstances, or challenges, that make it **impracticable impractical** for the local jurisdiction or recycling service provider to include the specified covered material or covered material categories in their existing collection and recycling programs. The description must demonstrate why the plan requirements in section 42051.1(l)(1) of the Public Resources Code for the identified material cannot be met in terms of program efficacy but also considering any applicable environmental, environmental justice, worker health, or public health impacts; generation of hazardous waste or greenhouse gasses; **cost impacts to local jurisdictions and ratepayers**; and transportation safety standards.”*

2. Review Process. Subsection (b) requires that *“(b) Prior to submitting the application to the Department, the local jurisdiction or recycling service provider shall send the application to the PRO(s) and all Independent Producers for review and comment”* The Independent Producer or PRO then has 90 days to confer with the applicant as necessary, respond in writing, or mutually agree with the applicant on an extended timeline, if necessary.

The jurisdiction then needs to include with its application: *“(A) Any comments received by a PRO or Independent Producer; (B) How those comments were addressed or considered.”*

Overall, this process seems to place a disproportionate burden on local jurisdictions, who already face additional administrative barriers and constraints compared to large producers. The exemption process for other regulated entities such as the PRO requesting exemptions, or CalRecycle deciding to exempt a material, do not require the same level of consultation and approval from regulated entities. This does not align with the spirit of SB 54 to shift the burden from local jurisdictions to producers.

The language requiring PRO involvement and jurisdictions’ necessary response does not provide protection for jurisdictions from unreasonable denial or overly extensive comments from the PRO that could significantly hinder a local jurisdictions’ ability to effectively apply for an exemption in a timely manner. This may put the jurisdiction at risk of enforcement and takes away the time a jurisdiction would need to implement a major change in collection program. Additionally, we recommend that the regulations require the PRO to be made responsible for providing evidentiary documentation for their comments and concerns provided to the local jurisdictions.

This type of language also relies on channels of communication outside the scope of local jurisdiction requirements. It would be more in alignment with public practices for the jurisdictions

CalRecycle
 May 7, 2024
 Page 16 of 18

to submit their application to CalRecycle, which CalRecycle could make available to the PRO. Additionally, this requires jurisdictions to not only engage with the PRO, but also all independent producers. It will be difficult for local jurisdictions to know all of the independent producers, and their contacts and communication channels. If there are numerous independent producers, a local jurisdiction could be inundated with comments, for which they are required to respond to each individual comment. We recommend that local jurisdictions submit the application to CalRecycle. CalRecycle can then make the application publicly available to the PRO or independent producers. Follow-up questions could be directed to the jurisdiction as needed, and the jurisdiction would need to be provided ample time in order to respond.

Article 13 – Enforcement Oversight by the Department and Administrative Civil Penalties

§ 18980.13. Compliance Evaluation and Determination

1. **Enforcement Mechanism.** Local jurisdictions are already subject to enforcement under existing law such as AB 939 and SB 1383. We recommend that CalRecycle rely on existing enforcement mechanisms for local jurisdictions, rather than introduce a new and conflicting process that could lead to suppletive violations being assessed.
2. **Enforcement/Implementation Timeline for Local Jurisdictions.** We request that CalRecycle provide more clarity on the timeline in which local jurisdictions are required to collect materials listed on the recyclability/compostability list. As written, it appears that in the absence of a date, jurisdictions could be subject to enforcement for non-collection. This is not equitable to jurisdictions, as it takes time to make large changes to collection programs, and this is not the intention of SB 54. As such, we request that CalRecycle provide clarifying language in the regulations regarding when enforcement may occur, both in initial implementation, as well as in the future in response to changes in the compostability/recyclability list. We recommend that CalRecycle specify that jurisdictions shall not be subject to enforcement prior to being provided the funding required to implement their programs, which the PRO is required to provide under SB 54.
3. **Compliance Criteria.** If CalRecycle intends to include new enforcement mechanisms rather than relying on established and functional enforcement mechanisms mentioned in the comment above, additional clarity is needed on the specific criteria and sources of information that CalRecycle will use to evaluate jurisdictions' compliance. We recommend that CalRecycle include a more specific list of criteria, source of information, and due diligence process that CalRecycle will use to determine local jurisdiction compliance.

Additionally, considering solid waste management is a multi-party system, clarity is needed on how violations will be attributed to the appropriate party. Section 18980.13(j) specifies that violations by an RSP shall be calculated in the same manner as violations by local jurisdictions under Section 18980.13(j); however, the responsibility for such violations is unclear. For example, if a violation occurs due to a recycling service provider's unwillingness to participate or other factors beyond the control of the local jurisdictions, to which party(ies) would the penalty be assessed? We recommend

CalRecycle
 May 7, 2024
 Page 17 of 18

that CalRecycle include clarifying language in the regulations regarding responsible parties for violations and allocation of penalties.

4. **Cause of Violation.** Section 18980.13(i)(2) related to violations by a local jurisdiction states, *“Penalties for each violation shall accrue on each day any covered material category is not included, regardless of the reason, in their collection and recycling programs, except in the case that the Department has granted an extension or exemption from the requirements pursuant to 42060.5(b) of the Public Resources Code.”*

We recommend removing “regardless of the reason” from this sentence, as it seems unnecessarily severe and does not factor in potential situations where an implementation delay may be due to a delay caused by another party (CalRecycle, the PRO, RSP, etc.) or other situations beyond the jurisdiction’s control.

Additionally, as described in the comments under Article 11, the jurisdiction exemption process may take a significant amount of effort and time. While Section 18980.13 states that a local jurisdiction shall not be issued a violation in the case that CalRecycle has granted an extension or exemption, we recommend that CalRecycle add language that a jurisdiction shall not be subject to enforcement for non-collection while the exemption application development, review, and approval process is underway, particularly in the event of delays in the process.

§ 18980.13.1. Corrective Action Plan

1. The regulations provide an opportunity for producers to request a compliance action plan in response to violations of Section 42081; however, a similar compliance action plan process is not available for local jurisdictions or RSPs. Particularly considering the goal of SB 54 is to shift responsibility to producers, it is unclear why local jurisdictions are being provided with less compliance pathways and more strictly enforced than producers. We recommend that CalRecycle add a CAP process for local jurisdictions and RSPs to come into compliance prior to penalties.

§ 18980.13.2. Administrative Civil Penalties

1. Section § 18980.13.2(a) states that “Any entity, including, but not limited to, a PRO, producer, local jurisdiction, recycling service provider, retailer, or wholesaler, not in compliance with the Act or this chapter is subject to penalties pursuant to section 42081(a) of the Public Resources Code.” Section 42081(a) of the Public Resources Code allows for penalties of up to \$50,000 per day per violation on any entity.

We recommend that CalRecycle clarify whether it is their intention to require the same level of penalties for both local jurisdictions and the PRO. The described penalty amount would not have the same impact on multi-national companies as it would for local jurisdictions, the latter being excessively burdened with the high cost. This approach does not align with the intent of SB 54 to shift the burden of costs to producers. We recommend that CalRecycle include clarifying language that in CalRecycle’s determination of penalties, CalRecycle may assess lower penalties for public entities, or include specific penalty amounts for jurisdictions violating the collection requirements of section 42060.5 of the Public Resources Code.

CalRecycle
May 7, 2024
Page 18 of 18

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HF&H appreciates the stakeholder process CalRecycle has undertaken and particularly the opportunity to provide input into the development of these important regulations. We hope that our suggestions and recommendations are helpful to you and the process. For further questions or clarification, feel free to contact me directly at (925) 977-6959 or rchilton@hfh-consultants.com.

Sincerely,
HF&H CONSULTANTS, LLC



Rob Hilton
President