

October 11, 2023

Senate Bill 54 Implementation Team
California Department of Resources Recycling and Recovery
1001 I Street
Sacramento, CA 95814

Subject: HCPA Comments on SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations – September Workshop

The Household & Commercial Products Association (HCPA)¹ appreciates the opportunity to provide additional input on the implementation of California Senate Bill 54 (SB 54), the Plastic Pollution Prevention and Packaging Producer Responsibility Act of 2022². We look forward to continuing to work with the California Department of Resources Recycling and Recovery (CalRecycle) on establishing and implementing regulations to carry out the requirements of SB 54.

Background

HCPA represents approximately 240 member companies engaged in the manufacture, formulation, packaging, distribution, and sale of products for household, commercial, institutional, and industrial use. HCPA members are continuously working to improve products and packaging in line with the principles of a circular economy to decrease waste and enable economic growth without greater resource use. Companies utilize several different materials for packing and shipping their products to ensure that products arrive undamaged, uncontaminated, safe for use, meet user expectations, have a lower environmental footprint, and generally enhance the quality of life of the consumers and workers who depend on these products daily. We have many members who sell products into California or otherwise have a presence in the state and are committed to ensuring that Californians have access to high-quality products with reduced environmental impacts.

¹ The HCPA is the premier trade association representing companies that manufacture and sell \$180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.

² https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB54

In addition to representing various categories of household and commercial products (regardless of packaging), HCPA represents products packaged in the aerosol delivery form. The aerosol delivery form is used to dispense a wide range of products, including but not limited to adhesives, air fresheners, antiperspirant, asthma inhalers, body spray, cleaners, degreasers, deodorant, disinfectants, dry shampoo, hair spray, insect repellent, insecticides, lubricants, paints, pan sprays, sealant, shaving creams and gels, sunscreen, and whipped cream. HCPA has represented the U.S. aerosol products industry since 1950 through its Aerosol Products Division, which includes companies that manufacture, formulate, supply, market, and recycle a variety of products packaged in an aerosol form.

HCPA's comments below address both areas of CalRecycle's non-regulatory and regulatory concepts that are generally applicable to household and commercial products and items specific to aerosol products.

Covered Material Category (CMC) List Part II – Non-Regulatory Concept

Framework Factor 2 – Delineating Between Plastic and Nonplastic Covered Material

HCPA remains concerned about the broad categorization of packaging types into “plastic component” and the lack of a *de minimis* level. While HCPA appreciates CalRecycle's clarification that the presence of a small amount of plastic will not cause the dominant material type to be changed to plastic (discussed under “Framework Factor 3” below), potential issues related to source reduction requirements may still arise.

As described in our comments from August 8, 2023, “plastic component” is currently defined as any single piece of covered material made *partially or entirely* of plastic (emphasis added), but “partially” is not defined, indicating that any amount of plastic, no matter how small, may be enough to classify a material as a “plastic component.” This could be an ever-moving target as analytical techniques and the ability to detect minimal levels of plastic polymers improve.

CalRecycle should base requirements on percentage of plastic material and recyclability of that material rather than a broad categorization of plastic component that may encompass a variety of materials due to the complexity of product packaging. Treating a package that is primarily non-plastic but that contains a small amount of plastic as though it is the same as a package that is primarily plastic for the purposes of source reduction would create disincentives for producers to engage in plastic reduction. For example, if the two packages were treated the same, a company could reduce the non-plastic portion of the former type of package (which would be considered a plastic covered material under the proposed definition) and it would appear as a plastic reduction using CalRecycle's metrics. To support SB 54's plastic reduction objective, HCPA recommends that only the plastic portion of packaging that is made up of multiple materials be subject to source reduction and that producers report multi-material

packaging as the separate components subject to corresponding fees based on the individual material components.

The lack of a *de minimis* threshold creates unreasonable compliance challenges for CalRecycle and the regulated community and does not help to achieve SB 54’s goals of preventing plastic pollution and increasing packaging circularity. HCPA recommends that CalRecycle consider separable plastic components to be independent plastic components and subject to all associated source reduction requirements. HCPA additionally recommends that, for multi-material packaging with non-separable components, CalRecycle incorporate a *de minimis* definition based on the following: “*De minimis* amounts of the total weight or volume of the single-use packaging material is acceptable when the nonrecyclable material is required for the proper delivery, safety, sterility, stability, or use of the product or the product contained within the packaging. If the nonrecyclable material negatively affects the recyclability of the product or packaging, the material shall not be considered *de minimis*.”

Timeline for Covered Material Categories (CMC) List Development

HCPA is concerned by the rapidity with which CalRecycle is seeking to make a decision on which CMCs are recyclable or compostable in the state of California. The timeline that CalRecycle is adhering to for SB 54 is faster than the timeline for meaningful data development. CalRecycle is required by SB 54 to publish a list of CMCs deemed recyclable or compostable by January 1, 2024, yet by this date, only the preliminary findings of the material characterization study on recyclability of products and packaging, conducted in accordance with Senate Bill 343 (SB 343), the “Truth in Labeling” law for recyclable materials, will be available.

Notably, in the case of SB 343, there will be an opportunity for the public to review and comment on the findings of the material characterization study before CalRecycle finalizes the results. The public comment period could provide key insights and additional information that result in a modification of the study findings and, by extension, a change in what CMCs are considered recyclable in California. But per the timeline in SB 54, CalRecycle must make a determination on the recyclability and compostability of CMCs prior to this public comment period and based only on preliminary findings.

HCPA appreciates that CalRecycle intends to update the CMC list by July 1, 2024, providing an opportunity to make appropriate changes based on the final results of the material characterization study. We are concerned that stakeholders will have been making decisions over the course of the first six months of 2024 – a key time for planning EPR implementation activities – based on a list that may not capture the full picture of recyclability in California.

The rapid timeline makes it especially important for CalRecycle to establish an on-ramp for materials that are trending towards meeting the statewide requirements to be considered “recyclable.” Some material innovations may not currently be considered “recyclable” and a policy which excludes them will be a loss for end market development and improved collection and sorting. As described in our comments from August 8, 2023, it is critical for CalRecycle to explicitly provide a pathway to improve the recycling rates for materials that may not meet statewide requirements today but have the potential to in the near future with improvements to recycling infrastructure and education. HCPA seeks clarity for materials that will transition to “recyclable” to foster incentives to improve infrastructure and education.

Framework Factor 3 – Categorization by Dominant Material

HCPA supports CalRecycle’s proposed change to framework factor 3 for defining CMCs, which clarifies that for multi-material products and packaging the dominant material type shall be determined based on percent by weight. This will help ensure that packages of similar recyclability are categorized and treated similarly, minimizing consumer confusion about what is and is not recyclable and supporting efficient processes at waste management and recycling facilities.

SB 54 Producers and Source Reduction Study – Non-Regulatory Concept

Source Reduction Item 2 – Study Goals

HCPA is concerned about the timing challenges CalRecycle faces in completing a robust source reduction baseline study (discussed further below under “Source Reduction Item 3”). To ensure completion of the study by the statutory timeline and minimize the burden of data collection on the entities which participate, CalRecycle should focus the study on task 1, estimating the amount of plastic covered material in the state by number and weight of plastic components for the calendar year of 2023. It is particularly important to minimize the burden of data collection for this study on participating entities and focus on the topics that are critical to meeting statutory requirements. Participation in this data call must occur on a voluntary basis and additional data collection requirements lower the likelihood of robust participation to support an accurate baseline.

HCPA recognizes the importance of collecting some background information from producers, but questions why the source of the covered material and the location of where producers are assembling the finished product are included. These are not necessary to establish a baseline of number and weight of plastic components for source reduction and the utility of including them in the baseline source reduction data collection is unclear to HCPA. We recommend that, for task 2, CalRecycle *remove* information on the source of covered material and information on the location of where producers are assembling the finished product from study goals.

Additionally, we recommend that CalRecycle *add* information on the number of products sold along with the number and weight of plastic components specifically. This will enable CalRecycle to calculate future reductions in a way that normalizes against sales volume to not unintentionally limit new sales of products into the state as the population grows and penalize companies for market growth.

Source Reduction Item 3 – Study Approaches

HCPA is concerned about the timing challenges that CalRecycle must address in completing a study to estimate the source reduction baseline for California before widespread producer data on covered material produced and plastic vs. non-plastic components is available. As with the designation of CMCs as recyclable or compostable prior to finalization of the material characterization study results, this has the potential to result in baseline inaccuracies that negatively impact decision-making during key stages of EPR implementation. Unlike with the designation of CMCs, it is not clear to HCPA that there is a specific intention or commitment on the part of CalRecycle to update the source reduction baseline as more accurate information, via producer reporting to the Producer Responsibility Organization (PRO), becomes available. HCPA encourages CalRecycle to identify a process and timeline for updating the source reduction baseline once actual data from all producers becomes available via the source reduction plan that the PRO must submit to CalRecycle.

For the purpose of estimating an initial baseline to ensure compliance with the statutory timeline of January 1, 2025, HCPA supports the approach of collecting new information on a voluntary basis directly from producers on the amounts of covered material sold or distributed into the state in 2023. While this approach still has the potential for inaccuracies, such as leaving out data on important market segments if no producers of those types of products participate in the voluntary data call, we believe it is the best option in the absence of full producer reporting to the PRO being available. We encourage CalRecycle to take care to broadly solicit participation from producers of varying sizes, market segments, and the diverse products and packaging categories covered under SB 54. CalRecycle should actively engage with the selected PRO on communications and outreach to producers about the data call to decrease the likelihood of not taking into account an important stakeholder and needing to incorporate significant updates further down the line. CalRecycle should also consider incentivizing producer participation by allowing producers who participate in the voluntary data call to use their collected baseline data for future reporting reductions rather than the generic estimates CalRecycle may use for producers that do not participate.

Conclusion

HCPA thanks CalRecycle for the opportunity to provide input on CalRecycle's concepts for implementation of SB 54 and appreciates the care that CalRecycle is taking to solicit stakeholder input on developing rulemaking concepts. HCPA looks forward to continuing to engage with CalRecycle in a good-faith process to support the success of SB 54 implementation. We invite any questions about this submission and look forward to CalRecycle's response.

Sincerely,

A handwritten signature in black ink, appearing to read "Molly R. Blessing". The signature is written in a cursive, flowing style.

Molly R. Blessing
Director, Sustainability