



May 8, 2024

Comments transmitted via Cal Recycle
Public Comment Portal

Ms. Zoe Heller
Director, California Department of Resources, Recycling, and Recovery
1001 I Street
Sacramento, CA 95814

**RE: Public Comments - SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act
Draft Regulations**

Dear Director Heller and staff,

The League of California Cities (Cal Cities) appreciates the opportunity to provide public comment to the California Department of Resources, Recycling, and Recovery (CalRecycle) on the draft regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54, Chapter 75, Statutes 2022) on behalf of California's 482 cities statewide. We appreciate the robust stakeholder process CalRecycle is undertaking, the timeline extension for public comments, and the opportunity to provide input on the draft regulation.

In California, local jurisdictions are the backbone of solid waste management and recycling efforts¹. Cal Cities has long-supported solid waste management and recycling goals that are developed with reasonable and achievable implementation measures, anticipating the need to ensure that communities maintain public health and advance recycling efforts based on our changing climate. SB 54 was successfully chaptered into statute based on several critical components being incorporated into the law, including that producers are responsible for the full costs of processing covered materials to drive towards a more circular economy. Full costs include the costs incurred by local jurisdictions. Therefore, the regulations must include provisions which (1) implement the PRO's obligation to fully reimburse local governments, (2) explain how local governments will participate fully in the PRO's development of its plan and budget in this regard, and (3) establish a process for how the PRO will transfer a portion of the fee required to be paid by Section 42053(c)(7) to local jurisdictions.

Below are our recommendations that will improve how these regulations can facilitate the implementation of SB 54. We respectfully request CalRecycle consider all of the following:

1) Comment 1: CalRecycle must provide greater specificity in the regulations to ensure that local governments are fully reimbursed by the PRO as was required by the enacting legislation.

While the draft regulations cover a significant amount of detail included in SB 54, they noticeably neglect the specific information in statute regarding reimbursement to local jurisdictions and cost recovery. Specifically, there are two key areas Cal Cities would like to see greater specificity in the draft regulations to achieve the intended full cost recovery. These include 1) defining eligible reimbursable costs, 2) establishing a process to engage local governments in the development of the plan and budget, 3) a process by the PRO provides

¹ Public Resources Code Section 42040(2)(A)

reimbursement to local governments including a mechanism to not only fund the costs but transfer funding to local jurisdictions, and 4) a process for dispute resolution related to cost and reimbursement.

A) Comment 1A: The regulations must identify eligible costs to ensure that the costs incurred by a local jurisdiction are fully funded in the Producer Responsibility Organization (PRO) plan and budget.

SB 54 statute² clearly states that by January 1, 2025, CalRecycle must adopt regulations necessary to implement and enforce the Act. The law³ is specific that the regulations must include any necessary provisions to ensure the PRO fully funds plan implementation, including fully funding the budget, including recovery of costs incurred by a local jurisdiction or a local jurisdiction's recycling service providers necessary to implement the Act. Further, the PRO plan must comply with the regulations⁴ adopted by CalRecycle and the PRO must submit a plan and budget⁵ that includes the provision necessary for CalRecycle to ensure producers covered under the plan comply with the Act.

The draft regulations do not clearly address what constitutes an eligible cost. This could lead to the PRO making subjective decisions as to what is reimbursable, which would lead to local jurisdictions not receiving full cost recovery, if this information is not specified by the regulations for the PRO to be include in their plan and budget. Further the regulation should specify when reimbursable costs can date back to, which typically falls after the enactment date of the legislation.

Cal Cities strongly recommends Article 8, Section 18980.8 of the draft regulations be amended to include the following:

“Pursuant to Public Resources Code Sections 42051.1 and 42060(a)(1), the plan and budget shall include and fully fund costs incurred after June 30, 2022 by a local jurisdiction or local jurisdiction's recycling service providers to implement the Act, 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*
- *Costs to improve collection, sorting, decontamination, remanufacturing, and other infrastructure necessary to achieve recycling, reuse and refill rates*
- *Costs to transport covered materials to a materials recovery facility, broker, and other viable responsible end markets*
- *Costs of waste stream sampling and reporting required by this chapter for local governments*
- *Costs to collect, sort, process, store, segregate, break, flake or otherwise process materials to specifications for sale, and transport covered materials through the supply chain to responsible end markets*
- *Costs for containers or modifications to existing containers where relevant*

² Public Resources Code Section 42060(a)

³ Public Resources Code Section 42060(a)(1)

⁴ Public Resources Code Section 42051.1(a)

⁵ Public Resources Code Section 42051.1(j)(1)(B)

- *Costs related to waste stream sampling and reporting required by this chapter for local governments*
- *Costs and investments to improve/expand collection, processing and end market infrastructure*
- *Costs and investment in reuse/refill infrastructure”*

B) Comment 1B: The regulations must include a process to guide how the PRO should engage with local jurisdictions when developing the PRO plan and budget to determine the full costs, the funding mechanism and fee schedule, and a process for dispute resolution related to determining and paying the full costs.

As identified in SB 54, the producers of covered materials are required to join a PRO, and the PRO will serve as the representative organization to develop the plan and budget. The PRO is required to submit the plan to the SB 54 Advisory Board for review and comment⁶ and then to CalRecycle for approval⁷. As stated in SB 54⁸, costs may vary based on population density or other relevant factors and the regulations must allow local jurisdictions to protect ratepayers from increased costs associated with the processing and marketing of covered materials. The law⁹ also states that the plan must include a process for determining the costs that will be incurred by local jurisdictions, recycling service providers, alternative collection systems, and others under the Act and the PRO must determine the costs based on information provided by local jurisdictions, recycling service providers, and others.

The draft regulations currently lack information on the process for how the PRO will engage local governments in determining relevant information for full cost recovery. Cal Cities strongly recommends Article 8, Section 18980.8 of the draft regulations be amended to include the following:

“Pursuant to Public Resources Code Section 42051.1(g) and prior to the development of the plan and the budget, the PRO shall develop procedures for engaging local jurisdictions, recycling service providers, and other relevant stakeholders to collect relevant information to determine the full costs of implementation and the mechanism and fee schedule to include in the plan and budget. The PRO should engage with urban, rural, and suburban cities and counties, recycling service providers, and other relevant stakeholders to ensure regional needs, population density, and various types and models of service, among other factors, are represented when identifying the full costs anticipated with implementation. The PRO should post information on its internet website for how local jurisdictions, recycling service providers, and other relevant stakeholders can engage with the PRO on cost information and determination, including the posting of draft materials and opportunities for relevant stakeholders to provide input or public comment. The PRO may utilize the Advisory Board meetings as opportunities to engage the public to ensure broad awareness of how the PRO is developing the plan and budget.”

⁶ Public Resources Code Section 42051.2

⁷ Public Resources Code Section 42051.1

⁸ Public Resources Code Section 42060(a)(1)

⁹ Public Resources Code Section 42051.1(g)(1)

The draft regulations currently lack information on the parameters of the process for resolving disputes that arise between the PRO and a local government or a recycling service provider when determining and paying the full costs, which is required to be included in the plan¹⁰. Parameters would include identifying a third party to resolve disputes; establishing a process that allows either the PRO, recycling service provider, or local jurisdictions to initiate dispute resolution. Cal Cities strongly recommends Article 8, Section 18980.8.1(a) in the draft regulations be amended to include this information.

The law states that the plan and budget must include a mechanism to disburse funds¹¹ and fee schedule to both collect fees charged to producers and to reimburse local jurisdictions for the full cost of implementation. The PRO will need to coordinate with all local jurisdictions, including all 482 cities and 58 counties, as well as recycling service providers when developing and coordinating the mechanism to disburse funds. This is not a simple undertaking. Therefore, the regulations must include information to direct the PRO to include in the plan how they will coordinate and communicate with local governments and recycling service providers regarding the disbursement of funds. Cal Cities strongly recommends Article 8, Section 18980.8.1(a) in the draft regulations be amended to include:

“(a) A PRO shall in addition to the requirements specified in section 18980.8:

(1) Pursuant to section 42051.1(f) of the Public Resources Code, the plan shall additionally include a closure and transfer plan, as specified in section 18980.8.2.

(2) Pursuant to section 42051.1(d) and section 42053(c) of the Public Resources Code, the plan shall additionally include a mechanism for reimbursement and a fee schedule. The fee schedule shall be developed using the requirements specified in section 18980.6.7.”

The draft regulations lack specific information that once the PRO plan is adopted, the PRO needs to account for the full cost recovery to local governments and recycling service providers. This is the cornerstone and intent of the Act and therefore, it must specifically be articulated in the regulations. Cal Cities strongly recommends Article 8, Section 18980.6.7(b) in the draft regulations be amended to include:

“(b) Upon approval of a PRO’s plan, the PRO shall charge each participant producer annual fees that are eco-modulated as described in the plan. A PRO shall account for the full costs to reimburse local jurisdictions and recycling service providers and the costs to ensure each covered material and covered material category meet the requirements of this chapter, including minimization of environmental and public health impacts along the entire supply chain of covered materials and covered material category.”

¹⁰ Public Resources Code Section 42051.1(g)(2)

¹¹ Public Resources Code Section 42051.1(i)(2)

2) Comment 2: CalRecycle must specify the date in which local jurisdictions must collect recyclable and compostable covered materials.

As part of SB 54 implementation, CalRecycle must establish and post on its website the list of covered material categories by July 1, 2024¹². All local jurisdictions or recycling service providers are required to include in their collection and recycling programs the list of covered material categories determined to be recyclable or compostable¹³.

Since the draft regulations lack a specific date by which local jurisdictions must begin to collect items determined to be recyclable and compostable, Cal Cities recommends the draft regulations be updated to provide local jurisdictions a specific date, which we propose to be one month after the PRO plan is approved by CalRecycle. Many local jurisdictions across the state will need to create or modify existing recycling collection programs, update public education materials, and work with their recycling service providers to make necessary changes, including amending contracts if applicable. This proposed timeline would allow local jurisdictions adequate time to comply, without having to float the costs associated with the collection and recycling of covered materials. If the covered materials categories list is updated in the future, an additional two years after a given update should be provided to local jurisdictions to comply.

Cal Cities strongly recommends that Article 2, Section § 18980.2.4 be amended to include the following:

“Pursuant to Public Resources Code Sections 42060.5(a) and 42061, all local jurisdictions and recycling service providers shall include in their collection and recycling program all covered materials contained on the covered materials categories lists no later than one month after the PRO plan is approved by the department. As the covered materials lists are updated, local jurisdictions and recycling service providers shall be granted two years after the date in which a list is updated to incorporate the updated covered materials into their collection and recycling.”

3) Comment 3: CalRecycle must clarify in the draft regulation that an extension or exemption process is available for local jurisdictions unable to collect recyclable/compostable covered materials.

As stated in SB 54¹⁴, CalRecycle is required to grant an extension of or exemption from collection and recycling of covered materials upon a written showing by the local jurisdiction or recycling service provider when compliance with the requirement is not practicable for a specific identified covered material because of specific local conditions, circumstances, or challenges. The draft regulation lack specific references to address the process for applying for an extension of an exemption. By not clearly stating the extension and exemption application process, there will likely be confusion for local governments on how to navigate this process as intended in statute.

¹² Public Resources Code Section 42061(a)(1)

¹³ Public Resources Code Section 42060.5(a)

¹⁴ Public Resources Code Section 42060.5(b)

Cal Cities strongly recommends that the draft regulations Article 11, Section 18980.11 be amended to include the following:

*“Article 11: Requirements for Local Jurisdictions and Recycling Service Providers
§ 18980.11. **Extensions and Exemption for Local Jurisdictions and Recycling Service Providers***

*(a) A local jurisdiction or recycling service provider seeking **an extension or an exemption pursuant to section 42060.5(b) of the Public Resources Code, shall submit an application to the Department. [...]***

*(c) The Department shall review and evaluate whether an application meets the requirements of this section. If the Department approves the application, the **extension or exemption is effective on the date the application is approved and is valid for two years.**”*

4) Comment 4: CalRecycle must clarify in the draft regulations its enforcement authority pertaining to local jurisdictions.

As clearly stated in statute¹⁵, failure to comply with the requirements of the Act, including, but not limited to, failure by a PRO to implement and satisfy the requirements of its plan and shall subject a PRO, producer, wholesaler, or retailer to penalties for violations or revocation of an approved plan. SB 54 does not impose penalties on local jurisdictions or recycling service provider, and specifically states the penalties for violation are subject to a PRO, producer, wholesaler, or retailer. The regulations should allow CalRecycle to issue violations for Public Resources Code Section 42060.5 but refrain from enforcing penalties until informational notices are provided and the violation can be addressed in a corrective action plan by the PRO or producer. Quickly jumping to penalties without an opportunity to remedy the violation should not be the preferred pathway.

Cal Cities strongly recommends that the draft regulations Article 13, Section 18980.13 be amended to remove the following subsections:

“(i) For violations of section 42060.5 of the Public Resources Code by a local jurisdiction:

*(1) The number of violations shall be the number of covered material categories contained on the list published pursuant to section 42060.5(a) of the Public Resources Code that are not included in their collection and recycling programs. **If the PRO or producers fail to develop covered materials that are acceptable for recyclability or composability thus impeding the collection and recycling programs of local jurisdictions or recycling service providers, this does not constitute a violation of Section 42060.5 of Public Resources Code.***

(2) Prior to the issuance of a violation, the department shall issue two informational notices, 90 days apart, to the local jurisdiction and the PRO or producer to inform them of the compliance concern and allow time to remedy the concern to ensure overall compliance.

*(~~23~~) 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,*

¹⁵ Public Resources Code Section 42080



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.

(4) Penalties shall not accrue or be issued at a minimum until the provisions of subsection 2 are met and until the department works with the PRO or producer to develop and submit a corrective action plan to the department detailing how and when the PRO or producer will work with the local jurisdiction or recycling service provider to come into compliance, consistent with section 42081(b)(1) of Public Resources Code.

Consistent with the law¹⁶, CalRecycle can work with the PRO or producer to develop and submit a corrective action plan. The corrective action plan that a PRO or producer develops could include actions to continue to work with local jurisdictions and recycling service providers to meet the requirements of Public Resources Code Section 42060.5, without immediately placing the cost of penalties on local governments and ratepayers.

Cal Cities appreciates the opportunity to provide formal public comments to CalRecycle on the draft regulations and looks forward to working together collaboratively to address our comments. Please do not hesitate to contact me at msparkskranz@calcities.org or 916-658-8232 regarding our input.

Sincerely,

A handwritten signature in blue ink that reads "Melissa J. Sparks-Kranz".

Melissa Sparks-Kranz
Legislative Representative
League of California Cities

¹⁶ Public Resources Code Section 42081(b)