



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

July 28, 2023

Rachel Machi Wagoner
Director, Department of Resources Recycling and Recovery
1001 I Street
Sacramento, CA 95814

RE: SB 54 Informal Rulemaking Workshop Comments

Dear Director Wagoner:

On behalf of the Rural County Representatives of California (RCRC), we are pleased to provide comments on your recent SB 54 Informal Regulatory Workshops conducted on July 24th and July 25th.

RCRC is an association of forty rural California counties and the RCRC Board of Directors is comprised of elected supervisors from each of those member counties. RCRC represents all 19 California counties that qualify as “rural counties” under Public Resources Code (PRC) Section 42649.8(h). RCRC was extensively engaged in the SB 54 development process and strongly advocated for its passage.

We take this opportunity to respond to questions raised on: 1) Rural Jurisdiction and Rural County Exemptions; and 2) Producer Responsibility Plan Implementation.

Exemptions Item 1: Rural Jurisdiction and Rural County Exemptions

The Regulation Concept proposes to establish a “thorough review and approval process” for rural jurisdictions and rural counties to qualify for the exemption contained in PRC 42060.5(c). In particular, the discussion document notes that rural jurisdictions “may” be eligible for an exemption after thorough review and approval by CalRecycle. As such, it seeks comments upon a regulatory concept whereby:

- Rural exemptions are subject to CalRecycle review and approval,
- CalRecycle will verify if requirements are met as part of that review and approval,
- CalRecycle will review eligibility of rural jurisdictions and exemption renewals.

PRC 42060.5 requires local jurisdictions and recycling service providers to include covered materials in their recycling programs, with four different categories of exemptions (only one of which is covered by the July 25th workshop). These exemptions were established based upon (and intended to avoid) some of the frustrations local

1215 K Street, Suite 1650, Sacramento, CA 95814 | www.rcrcnet.org | 916.447.4806 | Fax: 916.448.3154

governments have experienced as part of the SB 1383 drafting and implementation process. Each of the exemptions applies to different types of circumstances.

We strongly disagree with CalRecycle's interpretation of PRC 42060.5(c), the authority it presumes the section gives it to review and approve rural exemptions, and any implication that it has discretion to deny rural exemptions. The only "requirements" that must be met to qualify for a rural exemption are that the county must have a population of less than 70,000 persons and that the county's board of supervisors must adopt a resolution exempting the jurisdiction from PRC 42060.5. We also strongly disagree with CalRecycle's assertion that rural exemption will be subject to expiration for any reason other than a county's population exceeding the 70,000-person limit specified in PRC 42649.8.

SB 54 does not give CalRecycle discretionary authority to review and approve or deny rural exemptions – such authority is invested solely with the local government.

We fear that CalRecycle is misinterpreting the rural exemption in PRC 42060.5(c) by conflating it with the other exemptions in PRC 42060.5. PRC 42060.5(c) provides that:

"A county board of supervisors of a rural county or a rural jurisdiction, as those terms are defined in Section 42649.8, may adopt a resolution to exempt the rural county or rural jurisdiction from the requirements of this section. If a rural jurisdiction is a regional agency composed of jurisdictions that are located entirely within one or more rural counties, the board of the regional agency may adopt a resolution, as prescribed in this subdivision, to exempt the rural jurisdiction from the requirements of this section. An exemption for a rural county or a rural jurisdiction does not in any way relieve a producer or PRO from meeting the requirements of this chapter."

SB 54 was crafted to give gives those 19 rural counties with fewer than 70,000 residents the choice and authority to determine whether to exempt themselves from the requirements contained in PRC 42060.5(a). All they need to do is adopt a resolution exempting themselves. PRC 42060.5(c) (the rural exemption) does not specify or contemplate any role for CalRecycle review or approval of these exemptions, nor does it contemplate that CalRecycle with have the authority to deny rural exemptions.

This reading is affirmed through comparative analysis of the different exemptions in 42060.5. The exemption contained in PRC 42060.5(b) contemplates some role for CalRecycle's involvement in granting local governments extensions or exemptions from having to include specific covered materials in local collection programs under certain circumstances. Even there, CalRecycle is required to grant an extension or exemption upon a written showing by the local jurisdiction or recycling service provider that compliance is not practicable.

The rural exemption contained in PRC 42060.5(c) is not subsidiary to, but is wholly independent of, the exemption contained in PRC 42060.5(b). This is explained by the fact that the exemptions in the different subparagraphs apply to different types of situations. While PRC 42060.5(c) provides broad exemptions for the state's 19 small

rural counties, the exemption contained in PRC 42060.5(b) was intended to apply to other situations where jurisdictions in non-rural counties may be unable to include specific covered materials in their collection and recycling programs. This reflects the fact that there may be some very small and remote jurisdictions in non-rural counties that face challenges similar their counterparts in rural counties. Rather than simply exempt all jurisdictions under a certain population in a single subdivision, SB 54 instead sought to provide specific relief to smaller rural counties in subdivision (c) and flexibility for CalRecycle to provide relief to other jurisdictions facing similar challenges.

The rural exemption in subdivision (c) does not provide any role for CalRecycle to consider or grant a request and clearly states that the rural local government may adopt a resolution exempting itself from the collection/recycling requirements of PRC 42060.5(a). If the Legislature had meant to provide CalRecycle with review (or even discretion) over these rural exemptions, it could have chosen to either make subdivision (c) subordinate to subdivision (b) as a subparagraph or could have clearly articulated a role for CalRecycle.

Furthermore, it is unclear just what “requirements” CalRecycle expects rural jurisdictions to meet to qualify for an exemption. Page 5 of the working document states that “The department will assess whether the requirements for rural jurisdiction exemptions are satisfied during this review and approval process.” But the only requirements to qualify for a rural exemption are that: 1) The jurisdiction be located in or one of the 19 rural counties with fewer than 70,000 residents pursuant to PRC 42649.8; and 2) The county Board of Supervisors adopted a resolution exempting it from PRC 42060.5(a).

SB 54 does not establish any durational limits on rural exemptions such that any action is necessary to renew an exemption.

CalRecycle’s overview document seems to indicate that some type of durational limit applies to rural exemptions and that they will expire at some point. The statute contains no evidence of any temporal restrictions on rural exemptions other than that point in time when a rural county’s population hits 70,000 or more residents. While the broader exemption contained in PRC 42060.5(b) contemplates that exemptions and extensions granted to non-rural jurisdictions are to be reviewed every two years and may be renewed, there is no similar review or durational limit for rural exemptions under PRC 42060.5(c). As mentioned above, rural exemptions are not a subset of 42060.5(b) exemptions and are intended to stand on their own.

Given this construction, there should be no need for CalRecycle to review and renew rural exemptions because SB 54 did not anticipate they would expire before the jurisdiction exceeded the population limit included in PRC 42649.8.

PRP Item 1: Producer Responsibility Plan Implementation

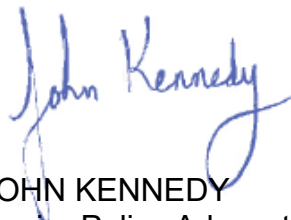
The Regulation Concept proposes to specify what information must be included in a producer responsibility plan. We note that Assembly Bill 1526 (Committee on Natural Resources), which is currently working through the legislative process, makes a number of technical changes to SB 54, a few of which clarify requirements related to producer responsibility plans.

The Regulation Concept outlined in (c)(5) would require the plan to describe how it will be implemented in a manner utilizing solid waste collection programs and solid waste facilities as the designated system for curbside collection and processing of covered materials. Unfortunately, PRC Section 42051.1(c)(3)(B) contained a drafting error that narrowed the construction by referring only to the use of existing *curbside* collection activities. Many local areas are not covered by curbside collection but are included in a jurisdiction's overall recycling program. AB 1526 seeks to address this drafting error by striking the word "curbside" from PRC 42051.1(c)(3)(B). As a result, CalRecycle should anticipate conforming the draft regulations based upon the revisions included in AB 1526.

Regulation Concept (e) would require the plan to outline the process for determining and paying costs incurred by local jurisdictions, recycling service providers, alternative collections systems, and others. AB 1526 also provides some important clarifications to PRC 42051.1(g), upon which this regulation concept is based. Specifically, AB 1526 requires the plan to include a mechanism and schedule for transferring funds to local jurisdictions. This is intended to provide more predictability to local governments on how and when they will be paid by the producer responsibility organization. Similarly, AB 1526 provides more detail by specifying that the PRO shall determine costs based on information provided by local jurisdictions, recycling service providers, and others. We mention these changes as they are important clarifications for local governments and to point out that CalRecycle should anticipate conforming the draft regulations based upon these revisions included in AB 1526.

RCRC appreciates your consideration of these comments. We look forward to continuing to work with you on the development and implementation of SB 54. If you should have any questions, please do not hesitate to contact me at jkennedy@rcrcnet.org.

Sincerely,

A handwritten signature in blue ink that reads "John Kennedy". The signature is written in a cursive style with a large, looping "K" and "y".

JOHN KENNEDY
Senior Policy Advocate