



RURAL COUNTY REPRESENTATIVES  
OF CALIFORNIA

July 13, 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.

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 Section 42649.8(h). RCRC was extensively engaged in the SB 54 development process and strongly advocated for its passage.

Local governments have long been the backbone of solid waste management and recycling efforts and are charged with diverting 50 percent of solid waste from landfill disposal through source reduction, recycling, and composting. As we’ve shared earlier, local governments and the solid waste industry have no control over the introduction of products into the marketplace that we will be charged with recycling and/or disposing to meet California’s mandates for diversion. With that, we were pleased to support SB 54 because it creates a paradigm shift in which product manufacturers will bear responsibility for management and recycling of the products they introduce into the stream of commerce. We also hope this shift will prompt manufacturers to focus product design on reuse and recyclability.

RCRC appreciates CalRecycle’s reiteration that SB 54 was intended to shift the costs of collection, processing, and recycling covered materials from local jurisdictions to the producers of those materials. SB 54 clearly expressed the Legislature’s intent “that local jurisdictions will be made financially whole for any new costs incurred associated with [its] implementation.”<sup>1</sup>

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<sup>1</sup> Public Resources Code Section 42040(b)(2)(B).

We also note that AB 1526 (Committee on Natural Resources), which is currently working through the legislative process, makes a number of technical changes to SB 54. These changes including clarifying that SB 54 intended to shift the cost burdens associated with collection, processing, and recycling materials to not just producers of plastic products but to producers of all covered materials. That legislation also includes important clarifications that the Producer Responsibility Organization's (PRO) plan must include a mechanism and schedule for paying for costs incurred by local jurisdictions.

With that, we are pleased to offer the following responses to the specific questions posed in your workshops on: 1) SB 54 Impacts on Local Jurisdictions; 2) Recyclability; and 3) Responsible End Markets.

### **LJ Item 1: Transportation costs include staffing**

The Regulation Concept proposes to clarify that the “transportation costs” for which local governments may be reimbursed include “costs related to staffing and the hiring and managing of staff for the company transporting covered material to a materials recovery facility, broker, or viable responsible end market.”

RCRC believes that SB 54 clearly intended to cover all local government costs incurred related to SB 54 implementation, which would include those costs included in the regulation concept.<sup>2</sup> The logistics for arranging transportation can be significant especially on rural jurisdictions with limited staff. Weather conditions often result in rescheduling transportation resulting in more staff time for this effort. Transportation logistic companies may need to be hired to arrange transport especially if multiple jurisdictions participate in the shipment.

While RCRC supports clarification, we caution against creating any inference that similar administrative costs related to other aspects of managing covered materials are ineligible for reimbursement. Rather than a narrow provision specifically targeting transportation administrative costs, we suggest CalRecycle clarify that all local government administrative costs associated with managing covered materials are to be reimbursed by the PRO.

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<sup>2</sup> PRC 42051.1(j) (1) The plan shall include a budget designed to fully fund the costs necessary to implement this chapter. The budget shall include, but not be limited to, fully funding the plan and all other costs associated with implementing the plan, including, but not limited to, all of the following:[...]

(B) Costs associated with this chapter incurred by local jurisdictions, recycling service providers, and other collection programs, and costs related to consumer outreach and education; the transportation of covered materials to a materials recovery facility, broker, or viable responsible end market; cleaning, sorting, aggregating, and baling covered materials as necessary to bring those materials to a viable responsible end market; waste stream sampling and reporting required by this chapter for local governments; costs incurred to educate ratepayers to improve the preparation and sorting of covered material; and improvements to collection, sorting, decontamination, remanufacturing, and other infrastructure necessary to achieve recycling rates. These costs include costs related to both curbside and noncurbside collection programs and may be varied based on population density, distance to a viable responsible end market, and other relevant factors.

**LJ Item 2: Reimbursement costs include purchasing and maintaining equipment, signage, and other similar costs**

The Regulation Concept proposes clarifying that local jurisdictions should be compensated for costs related to receiving, consolidating, and loading covered materials and the purchase and maintenance of equipment, signage, and other similar costs.

Local governments are likely to include significant costs to receive, consolidate, and load covered materials as the first step to get them to a responsible end market. Those costs could include the purchase and maintenance of equipment such as storage containers, balers and supplies to process the covered materials. Plastic packaging tends to be lighter than other salvaged materials like metal, so baling is essential for viable shipments. RCRC believes that SB 54 clearly intended to cover all local government costs incurred related to SB 54 implementation, which would include those costs included in the regulation concept. For these reasons, we support the regulation concept's clarification that these expenses are reimbursable.

At the same time, we note there is inconsistency between the regulation concept and the specific question stakeholders are asked to comment upon. CalRecycle's request for feedback seems to narrow the universe of eligible costs by tying those costs to the operation of a materials recovery facility, broker, or viable responsible end market. SB 54's PRC 42051.1(j)(1)(B) is not so narrow and seeks to provide cost recovery for all costs incurred by local jurisdictions, recycling service providers, and other collection programs. The statute contemplates the PRO funding the transportation of covered materials to a materials recovery facility, broker, or viable responsible end market. It also contemplates PRO funding for the cleaning, sorting, aggregating, and baling of covered materials as necessary to bring those materials to a viable responsible end market. While we support the proposed underlined changes included in the regulation concept, we are concerned that the text box requesting feedback on page 10 seems to indicate that eligible costs are only those borne by the entity operating the materials recovery facility, broker, or end market. Any clarification should ensure that eligible costs include both curbside and non-curbside collection programs and related equipment and signage.

**LJ Item 4: Definition of Ratepayer**

SB 54 is intended to ensure that local governments and ratepayers are not burdened by its implementation. There are many different types of local government solid waste management models in use throughout the state. We appreciate CalRecycle's attempt to cast a broad net in defining "ratepayer" and note that in some cases, the term "ratepayer" and "taxpayer" are synonymous.

We agree that ratepayers should include those members of the public or business who pay user fees or rates, gate fees or tipping fees, excise taxes, parcel taxes, property

taxes, and similar fees, and voter-approved surcharges or fees. All these types of fees are paid to support local solid waste and recycling programs.

At the same time, it is not clear why “franchise fees” are included in the list, as they are inherently different in nature and the product of negotiations between local governments and franchisees who are awarded an exclusive or non-exclusive franchise to provide solid waste collection and/or recycling services within a jurisdiction.

### **LJ Item 5: Exemption Process**

SB 54’s exemption process reflects the difficulties with imposing a one-size-fits-all approach to solid waste management throughout the state of California. It was intended to ensure there is a relief value that jurisdictions can utilize for those materials that are difficult to manage because of specific local conditions, circumstances, or challenges. If the PRO objects to an exemption or extension, it must arrange for alternative means for collection, processing, storage, and transportation of those covered materials. The Regulation Concept does not explore the criteria that will be used to determine whether a producer’s alternative means of collection will provide an equivalent or equitable alternative or what type of process will govern disputes over the suitability of the alternative.

It is not clear what criteria or process CalRecycle will use for reviewing requests for extensions or exemptions pursuant to PRC 42060.5(b); however, we note that the language of SB 54 is clear that an extension or exemption *shall* be approved upon a written showing by the jurisdiction or recycling service provider that compliance is not practicable because of specific local conditions, circumstances, or challenges.

We do note that there appear to be incorrect internal cross references within the Regulation Concept. In particular, subdivision (a) requires that requests be submitted pursuant to subdivision (d), which discusses CalRecycle’s process for dealing with incomplete applications. It appears that a better cross-reference would be to subdivision (b) which states that the request shall be submitted in a format determined by CalRecycle.

Finally, it is not clear how a jurisdiction or recycling service provider may appeal a denied extension or exemption request.

### **RD Item 1: Definition of “Recycling Program”**

The Regulation Concept” proposes to define “recycling program” as a “program that provides or facilitates collection of materials for the purpose of recycling those materials. “Recycling program” includes, but is not limited to, services provided by a hauler that is authorized by a State or local government entity pursuant to a contract, agreement, permit, or other authorization to regularly collect materials within the government entity’s jurisdiction for recycling.”

We appreciate CalRecycle including the clause “includes, but is not limited to;” however, we believe the definition should be broadened to avoid any inference that “recycling programs” include only those services provided by haulers. In some cases, recycling programs will be conducted by local governments or their contractors and will not be conducted by the haulers. We suggest the following modifications:

Recycling program means a program that provides or facilitates collection of materials for the purpose of recycling those materials. “Recycling program” includes, but is not limited to, services provided by a **local government, contract service provider, or** hauler that is authorized by a State or local government entity pursuant to a contract, agreement, permit, or other authorization to regularly collect materials within the government entity’s jurisdiction for recycling.”

### **REM Item 1: Definition of Responsible End Market**

The regulation concept seeks to develop a far-reaching regulatory scheme to define what constitutes a “responsible end market.” On first glance, we are concerned that the proposed framework is unnecessarily complex and will make SB 54 implementation even more difficult and unwieldy.

The framework appears to unnecessarily contemplate creation of a manifest tracking system for recyclable materials much like what is used for the transportation and management of hazardous waste. We fear that the requirements to maintain extensive documents related to the chain of custody of materials transported from the origin facility to the end market will add unneeded complexity. While manifests and shipping papers are important to ensure the proper handling, transportation, and management of hazardous wastes that can cause serious health, safety, and environmental problems if improperly managed, the same precautions are not necessary for the transportation and management of bales of recyclable plastics, cardboard, paper, etc. It is unclear whether this chain of custody begins at the MRF that created the bale of recyclable material; with the broker who finds a market for the bale; or some other entity. Given the broad definition of “intermediate supply chain entity” contemplated in the regulation concept, we fear this “chain of custody” could begin even as far upstream as the individual hauler who collected and brought materials to a MRF for processing.

It is our view that entities engaged in collecting, segregating, and preparing materials for the market should not fall within the definition of “responsible end market” or “intermediate supply chain entity” under this regulatory concept. We understood SB 54 to operate such that haulers and facilities engaged in the primary, secondary, and tertiary processing of materials would not be considered or regulated as a responsible end market. The regulation concept appears to sweep these facilities and downstream and upstream haulers and transporters as “intermediate supply chain entities” that will have to demonstrate how they meet CalRecycle’s standards of responsibility. This could end up having the perverse impact of barring a PRO from taking or recycling

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material collected in California by a hauler or facility that sorts and bales materials and which has any previous enforcement history.

While we agree with efforts to increase the yield of material recovered and recycled from each bale of material sent to a recycler, we fear that establishing rigid performance standards to achieve recycling or composting yields of at least 60% could inhibit the utilization of facilities where the yield falls just under that threshold. It is also unclear whether the yield will be calculated on a monthly, quarterly, or annual basis.

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](mailto: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 "J" and "K".

JOHN KENNEDY  
Senior Policy Advocate