



## **Memo of Opposition**

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Technical Analysis of California SB 54, June 24, 2022 version

For Information: Judith Enck, President, Beyond Plastics and Former EPA Regional Administrator, [JudithEnck@Bennington.edu](mailto:JudithEnck@Bennington.edu)

Many of the following concerns have been raised in 3 letters dated July 19, 2022.

The details matter in establishing an effective packaging reduction program. SB 54, if adopted without amendments, will not establish an effective packaging reduction program. The following identifies 25 deficiencies in the current bill that are problematic and need to be addressed.

1. This bill would allow for some types of plastic burning aka “chemical recycling” or “advanced recycling”. Without expressly prohibiting the use of incineration, gasification, pyrolysis and solvolysis, this bill allows burning- type technologies to count as plastics reduction and recycling. These facilities are almost always located in low-income communities and/or communities of color.
2. The bill does not ban polystyrene packaging, but instead Section 42057 (2) (i) requires that polystyrene used for food packaging needs to achieve the following recycling rates: 25% by 2025, 30% by 2028, 50% by 2030 and 65% by 2032. Polystyrene is unlikely to achieve those numbers because it is an unrecyclable material. California should expect the manufacturer to challenge any agency determinations and then litigate, as they have in other jurisdictions. If the goal is to ban polystyrene, this should be clearly required. Furthermore, the recycling rates for polystyrene do not apply to non-food uses of polystyrene, such as packing peanuts or padding within boxes. This is still packaging and should be banned along with food-service polystyrene. The entire lifecycle of polystyrene, from production to disposal is incredibly toxic. There are less-toxic materials that can be used to replace polystyrene.

3. There is too much power concentrated with a single, privately run Producer Responsibility Organization (PRO). California has had numerous problems with industry-run PROs in the context of extended producer responsibility programs.
4. There are no requirements for the elimination or reduction of toxics in packaging. This is especially problematic for food packaging. Section 42051 states that compostable materials that do not contain toxic additives should have a reduced fee as decided by the PRO. Also, covered materials that contain toxic heavy metals, pathogens or additives shall be subject to an increased fee. These provisions partially acknowledge that the presence of toxic chemicals in packaging is problematic, but the bill fails to reduce toxic chemicals in packaging.
5. The bill needs a greater focus on reduction. This bill requires only an actual 10% reduction in plastic packaging, which is not nearly enough because plastic production is forecast to triple by 2050. The 25% reduction requirement is broken down as follows:
  - a. 10% shift to reuse/refill or elimination (true reduction)
  - b. 15% through other types of strategies, such as using post consumer recycled content, shifting to non-plastic packaging, right-sizing, and lightweighting.
    - i. 8% cap on reliance on post consumer recycled content.  
Utilization of recycled content is not source reduction.
6. The environmental standards for packaging only apply to plastics, though all packaging will pay fees. While single-use plastic packaging is the most problematic, all single-use packaging has significant environmental impacts.
7. 40% of the Plastic Pollution Mitigation Fund money is to be spent to monitor and reduce the impacts of plastics on the environment. There is not enough of a focus on preventing pollution before it has to be mitigated.
8. 65% of plastic recovered material to be recycled by 2032, but Section 42062 (a), allows the recycling rates to be adjusted downward. The entire point of the bill is to improve recycling and reduce packaging. If the rates can be adjusted downwards, the Producers will not have the necessary incentives to ensure the system is functional enough to meet the requirements and will instead spend their time tying up the regulatory process so that standards cannot be enforced. The word “decrease” should be removed from this section. Plastics have only achieved a 5 to 6% recycling rate.
9. The source reduction requirements take effect in 2032, but a better approach is to phase them in over time, such as new requirements and milestones every

two years, which scale up to get to the end goal in ten years. Having the requirements kick in ten years down the road makes the goal less likely to be achieved and little will happen during the next decade.

10. Section 42051. It is good that fees cannot be used to litigate against the state or hire someone to primarily lobby. However, money can still be used for the PRO to lobby for local, state and federal policies. The PRO should be prohibited from all lobbying. Further, the bill does not allow for fees to be used for advertising to influence the outcome of legislation, 30 calendar days prior to or during a legislative session. This would allow for advertising for many months of the year and that, too, should be prohibited. The bill would allow the PRO to spend money supporting or opposing ballot initiatives.
11. Section 42040 (2) (A) The intent should be to transfer the costs of recycling to the Producers of **all covered materials**, not just plastic. If local governments come to rely on payments from the plastics industry, it will be difficult to phase out plastics, which should be the ultimate goal.
12. Section 42041 (4) The definition of “Producer” excludes all persons who produce, harvest, and package agricultural commodities on the site where the agricultural commodities are raised. This Exemption is too broad. It would be better to exempt small agricultural producers. There are many large growers in CA who should be shipping and packaging with source reduced and better materials. Section 42060 exempts all fresh produce from the recycled content requirements.
13. 42041 (5) (ad)The definition of “Responsible End Market” is too subjective: *“Responsible end market” means a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that **benefits the environment and minimizes risks to public health and worker health and safety.**”*
14. Section 42057 (C), the source reduction rates are a requirement of the PRO and not of each producer. This makes the law less enforceable over individual Producers. It is imperative that the packaging standards apply to each package and not the PRO as a whole or not even a brand as a whole. Each package. Otherwise, it is too hard to implement.
15. Section 42060 (3) (A), there is a big loophole for the Department to exempt “single-use material that presents unique challenges in complying.” This should be removed.
16. Section 42060 (4), directs the department to establish a process for identifying covered material that cannot comply with the law because it is unsafe to

recycle. This is a problem since this bill does not eliminate toxic chemicals from packaging or ban toxic packaging materials. The bill has no definition of what it means to be “unsafe to recycle”. It could be argued that most plastics are not “safe” to recycle, given their chemical composition. If a material is deemed “unsafe to recycle”, then what? The bill is silent on this, which is problematic. This could allow for a material to be declared “unsafe to recycle”, but then its use in the marketplace could continue. Also, toxic additives are not defined and it is not clear who is determining their presence or toxicity.

17. Section 42060.5. (b), allows the department to grant exemptions to local jurisdictions or recycling service providers from collecting materials that the department deems recyclable given specific local conditions, circumstances, or challenges. This should be revised to only allow for extensions and require the PRO to work with the locality or service provider to create the infrastructure necessary to collect that Covered Material. Furthermore, Section 42060.5 (c), lines 32 - 12, allows rural counties and local jurisdictions to vote to be exempt from the law. This is a loophole that should be eliminated.
18. Section 42061 (6), requires that inspections/sampling of recycling facilities be conducted at a mutually agreed upon day and time. This needs to be amended to allow the department to conduct sampling unannounced, by request, or in response to a complaint, and with whatever frequency is necessary to ensure compliance.
19. Section 42067 (D) is a backdoor way to analyze whether advanced recycling and chemical recycling would help with processing capacity. This section should explicitly disallow those specific technologies and add a strong definition of recycling that explicitly excludes those technologies..
20. Section 42081 (2) (A), lines 15- 21, allows a corrective action plan for non-compliance to last 24 months and gives the department the ability to extend that for an additional 12 months. Three years to correct non-compliance is excessively long. This should be 6 months.
21. A majority of the 13 Advisory Board appointees are representatives of the waste or packaging industry.
22. The PRO is required to provide \$500 million annually to the State starting in 2027. The previous version of the bill required this to begin in 2024. Why is the state giving up \$1.5 billion in funding?
23. Section 41821.5. (5) Facilities defined as End Users are not bound by the reporting requirements. What effect does this have?

24. 1821.7 (1) is confusing and seems potentially problematic. *“Recycling is not limited to the processing of materials that would otherwise become solid waste, but also includes processes applied to nonhazardous materials that have value principally as a feedstock for that processing, regardless of whether the materials have been discarded or constitute solid waste.”*

25. Section 42083, this section is confusing and seems potentially problematic. What does market share have to do with compliance of recycling rates? *“A producer may offer for sale, sell, distribute, or import covered material in a covered material category that does not meet the recycling and composting rates established pursuant to subdivision (c) of Section 42050 if the producer demonstrates to the department that the producer has achieved the applicable rate for an amount equal to the producer’s market share of that covered material category in the state.”*