



June 3, 2025

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
Informal 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 483 cities statewide. Given the circumstances that CalRecycle is now navigating a second iteration of the regulations on SB 54, we sincerely appreciate that CalRecycle has provided an informal period and informal public workshop for interested parties to provide input on the proposed draft regulations.

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.

The draft regulations are intended to address "affordability concerns", which was the primary response from the Governor's Office as to why the regulations were withheld, preventing CalRecycle from finalizing the rulemaking in March 2025. Local jurisdictions continue to have "affordability concerns" with the draft regulations. If the draft regulations are not clarified to fully implement the requirements of SB 54, as we request in this letter, the program will cause greater affordability burdens on local governments and their ratepayers. It is imperative the regulations support the successful implementation of SB 54 and ensure the program does not cause these greater affordability burdens.

California's Constitution requires that the state reimburse local governments for programs the state requires local governments to carry out. Extensive statutory and regulatory structure governs the manner in which local governments are reimbursed. SB 54 imposes a mandate on local governments. Instead of requiring the state to reimburse local governments for the costs incurred to comply with the mandates, SB 54 requires the PRO to reimburse local governments. Yet the draft regulations fail to explain with any specificity the process for reimbursement, the costs that will be reimbursed, the

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

mechanism for transferring payment to local governments, and even at a minimum the regulations do not even acknowledge that these cost recovery details be included as a requirement in the PRO Plan and budget.

Cal Cities respectfully request CalRecycle consider all of the following comments in their draft regulations (Appendix A contains our proposed language revisions):

1) Comment 1: Section 18980.8 must be revised to clarify the definition of a “covered costs” to comply with the mandate to protect ratepayers by fully funding the implementation of the PRO Plan, including paying costs incurred by local jurisdictions.

As drafted, the regulations do not ensure that local governments will be fully reimbursed by the PRO as required by the enacting legislation. Specifically, SB 54 requires that the regulations "ensure the PRO fully funds plan implementation," including "the costs incurred by a local jurisdiction". Ultimately, the Legislature's goal in ensuring fully funding plan implementation was to "allow local jurisdictions to protect ratepayers from increased costs associated with the processing and marketing of covered material."²

Cal Cities believes that the draft regulations must be revised in Article 8, Sections 18980.8 to reflect that covered costs must be consistent with the requirements of the Act, including but not limited to Sections 42051.1 and 42060 of Public Resources Code. This will clarify that the PRO plan must specify, based on statute eligible covered costs.

2) Comment 2: Section 18980.8(g) must be revised to include specific requirements for the PRO plan to identify the “mechanism and schedule” for fully funding costs pursuant to the Act.

SB 54 requires that the PRO Plan include not only a process for determining costs incurrent by local jurisdictions (based on information provided by the local jurisdiction³), but the mechanism and schedule for transferring the portion of the fee required by Public Resources Code Section 42053(c)(7) to local jurisdictions. The Draft Regulation Section 18980.8(g) does not include adequate information regarding the mechanism and schedule for issuing payments to local jurisdictions for covered costs. As written, the Draft Regulation Section 18980.8(g)(4) simply requires an undefined "reasonable period" and fails require the PRO to include in their plan the "mechanism" for reimbursement.

Cal Cities strongly urges language be clarified in the draft regulations to address the following:

- Covered costs must be based on information provided by the local jurisdiction;
- The PRO plan must specify how covered costs will be determined in writing by the PRO; and
- The PRO plan must specify the schedule for issuing payments and payment mechanism;

² Public Resources Code Section 42060(a)(1)

³ Public Resources Code Section 42051.1(g)(1)

3) Comment 3: The draft regulations must specify that the local jurisdiction should be consulted and then notified of payments directly to recycling service providers from the PRO to prevent duplication in cost recovery from local jurisdictions.

Many, but not all, local jurisdictions have existing contracts with recycling service providers to provide the waste management and recycling services within their jurisdiction. While SB 54 allows for both local jurisdictions and recycling service providers to receive payment for their costs from the PRO, it is important not to duplicate requests for payment. For example, if a local jurisdiction has a franchise agreement and is requesting reimbursement directly from the PRO for covered costs, the recycling service provider should not request the same costs of the PRO. To ensure this is handled smoothly, the regulations in Article 8, Section 18980.8 should be revised regarding any costs determined to be a recycling service provider's covered costs, where the PRO or Independent Producer must first consult with and then subsequently notify the local jurisdiction on whose behalf a recycling service provider provides solid waste handling services of such determination. By initiating a consultation first, the local jurisdiction can clarify if the request for covered costs is already a part of their existing contract with the recycling service provider and already a covered cost of the local jurisdiction.

4) Comment 4: The draft regulations must be revised to address how to resolve disputes over the amount that will be paid for a "covered cost" as part of the dispute resolution process.

Section 18980.8(h) offers mediation or arbitration, or any process agreed to by the parties as a way of resolving disputes over what's a "covered cost." However, there's no process for resolving disputes over the amount that is owed to the local jurisdiction for an agreed-upon "covered cost." We believe this is simply a clarification that should be added to Section 18980.8 (h) to ensure that the dispute resolution process does not only address whether a cost is a "covered costs" but also to resolve the amount claimed by the local jurisdiction.

5) Comment 5: Section 18980.13, the enforcement provisions pertaining to local jurisdictions, must be revised to ensure that penalties and fines are not imposed prior to providing local jurisdictions the opportunity to respond to a notice of violation and to cure the violation.

As clearly stated in statute, failure to comply with the requirements of the Act, including failure by a PRO to implement and satisfy the requirements of its plan, shall subject a PRO, producer, wholesaler, or retailer to penalties for violations or revocation of an approved plan. SB 54 specifically states the penalties for violation are subject to a PRO, producer, wholesaler, or retailer. Local jurisdictions are not explicitly authorized to develop a corrective action plan to remedy a violation under SB 54 (in large part because they were not anticipated to be subject to enforcement actions).

Local jurisdictions are solely required to collect covered materials on the covered materials list, as required in statute under SB 54. Article 11, Section 18980.11 must be revised to explicitly require 'collection', not 'collection and transfer' of covered materials to a responsible end market or intermediate supply chain entity.

Prior to imposing penalties for a violation, CalRecycle should identify if the PRO or producer are preventing the local government or recycling service providers from complying. CalRecycle should then be required to provide notice to the local jurisdiction/recycling service provider (proposed as two notices issued 90 days apart) and provide a minimum of 180 days to remedy the violation before penalties are invoked. CalRecycle must provide the local jurisdiction/recycling service provider the opportunity to develop a response to remedy the violation prior to any further compliance action being taken.

The draft regulations must recognize that SB 54's enforcement authority is directed toward producers and the PRO and respect that local jurisdictions and recycling service providers are instead subject to existing enforcement regimes, including AB 939. The draft regulations impermissibly sought to impose SB 54's enforcement regime intended for the PRO on local jurisdictions and recycling service providers. This approach was unsupported by SB 54's statutory construction and local compliance can be better accomplished through existing enforcement pathways.

SB 54's enforcement authority is clearly limited to imposing penalties on producers and the PRO. The regulations are predicated on the assumption that the term "any entity" in Section 42081(a)(1) of Public Resources Code broadens the scope of its enforcement authority; however, that term should be defined in context of the other provisions included in Article 5 of SB 54. Public Resources Code Section 42081 seeks to interpret and implement Public Resources Code Section 42080 and does not vest CalRecycle with additional authority to determine what constitutes a violation of SB 54 beyond the scope of Public Resources Code Section 42080.

Public Resources Code Section 42080 establishes what constitutes a violation of SB 54 and provides that failure to comply with the requirements of SB 54 will subject a PRO, producer, wholesaler, or retailer to penalties for those violations or revocation of an approved plan. Public Resources Code Section 42081 in turn:

- Sets the amount of penalties;
- Provides that they shall not accrue against a producer or PRO until 30 days after notification of the violation;
- Allows a producer or PRO to submit a corrective action plan to CalRecycle for approval detailing how and when it will come into compliance with SB 54; and
- Sets forth various factors CalRecycle shall consider when determining the penalty amount, including whether the violation was beyond the reasonable control of the producer or PRO, the size and economic condition of the producer or PRO [...]

Public Resources Code Sections 42083 and 42084 also allows CalRecycle to impose additional requirements on a producer or PRO for failure to meet various requirements of SB 54.

Great lengths are taken in statute to outline the potential enforcement actions that can be imposed against producers or the PRO, yet there is not a single instance in statute that refers to enforcement upon local jurisdictions or recycling service providers. Neither Public Resources Code Sections 42080 nor 42081 contemplate penalties against local governments or recycling service providers. Furthermore, the draft regulations would have inappropriately subjected local jurisdictions and recycling service providers



to even more severe consequences for violations of SB 54 than apply to the PRO and producers since local governments and recycling service providers cannot implement a corrective action plan, as is available for the PRO and producers. It is difficult to imagine the Legislature providing a more lenient compliance pathway for a producer or PRO than that which would be available to a local jurisdiction or recycling service provider, given that the law is intended to shift the burden of solid waste recycling *away* from local jurisdictions and onto producers who introduce packaging into the marketplace.

Local jurisdictions are subject to AB 939's diversion requirements and must develop source reduction and recycling elements outlining how they will achieve the state's solid waste and recycling requirements. Under the AB 939 framework, CalRecycle is required to regularly review jurisdictions and determine whether they have made a good faith effort to implement their source reduction and recycling element, with penalties of up to \$10,000/day for noncompliance. Therefore, a local jurisdiction's failure to comply with SB 54 should be considered a violation of their existing requirements to implement diversion programs through AB 939 and subject them to these penalties exclusively.

Reporting and compliance review for SB 54 should be incorporated into existing Electronic Annual Report (EAR) system run by CalRecycle, as currently utilized for other laws that govern local jurisdiction diversion requirements such as SB 1383, AB 341, and AB 1826 compliance. This existing system can be updated to require local jurisdictions to self-report SB 54 compliance by certifying whether they collect the required recyclable or compostable covered material categories.

Cal Cities respectfully requests CalRecycle consider these comments and appreciates the opportunity to provide formal public comments to CalRecycle on the draft regulations. 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 Advocate
League of California Cities

Cal Cities Proposed Redline Changes:

Article 8: Producer Responsibility Plan Requirements

Section 18980.8 Producer Responsibility Plan

(g) Pursuant to paragraph (1) of subdivision (g) of section 42051.1 of the Public Resources Code, the plan shall include a process for determining and ~~reimbursing~~ paying costs that will be incurred, or otherwise would be incurred, by local jurisdictions, recycling service providers, alternative collection programs, and others due to requirements of the Act. For purposes of this subdivision, costs that the PRO and Independent Producers are obligated to pay are referred to as "covered costs." The process for determining covered costs must be consistent with the requirements of the Act, including but not limited to Sections 42051.1 and 42060 of Public Resources Code, and satisfy the following criteria:

(1) Costs incurred before January 1, 2023, are not covered costs ~~need not be reimbursed~~.

(2) Any of the following costs incurred due to requirements of the Act are covered ~~costs reimbursable~~:

(A) A cost of the same nature as one that would ordinarily exist, or be expected to exist, but is greater due to the requirements of the Act. Only the amount of the increase caused by such requirements is ~~reimbursable~~ a covered cost.

(B) A cost that would not reasonably have been expected to be incurred in the absence of the Act, such as a cost that is of a different nature than ordinarily expected costs and is incurred specifically for the purpose of complying with the requirements of the Act.

(C) A cost specifically approved in advance by the PRO or Independent Producer as a ~~reimbursable~~ covered cost.

(3) For every cost identified by the local jurisdiction entity ~~requesting reimbursement~~, the PRO or Independent Producer shall determine ~~both whether the cost is reimbursable and, if the cost is reimbursable, the extent to which it is a covered cost reimbursable~~. The PRO or Independent Producer shall notify the local jurisdiction entity of all determinations in writing. The plan shall include a procedure for the PRO or Independent Producer to make the written determination.

(4) The process must establish reasonable periods for making ~~require the determinations pursuant to paragraph (3) and issuing payments, if any the reimbursement to be made within a reasonable period after reimbursement was requested~~. The schedule and mechanism for determining and issuing payments must be specified in the plan, including what the specific 'reasonable periods' are for specific covered costs.

(5) An entity may seek a determination pursuant to paragraph (3) before it incurs costs it considers ~~reimbursable~~ to be covered costs. The PRO or Independent Producer shall consider the expected costs that the entity identifies and determine the extent to which ~~whether they are covered costs are subject to mandatory reimbursement~~.

(6) In addition to allowing identification of covered costs based on claims for certain amounts, the process may establish a performance-based approach (e.g., based on tons of covered material) for identifying covered costs. ~~To implement either approach, identification of covered costs must be based on information provided by the local jurisdiction.~~

~~(7) Subject to the dispute resolution procedure provided in subdivision (h), the PRO or Independent Producer shall not be required to reimburse pay costs that had been submitted to the PRO or Independent Producer for consideration before they were incurred and were determined not to be covered costs subject to mandatory reimbursement.~~

(8) For costs determined to be a recycling service provider's covered costs, the PRO or Independent Producer shall ~~first consult with and subsequently~~ notify the local jurisdiction on whose behalf a recycling service provider provides solid waste handling services of such determination. The notice may be the same notice provided to the local jurisdiction pursuant to paragraph (3) and shall, at a minimum, describe the nature and amount of the covered costs.

(h) Pursuant to paragraph (2) of subdivision (g) of section 42051.1 of the Public Resources Code, the plan shall include a dispute resolution process concerning determinations of whether costs incurred by local jurisdictions and recycling service providers are covered costs ~~and the amount that are claimed as costs by local jurisdictions and recycling service providers.~~

ARTICLE 11: Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers

Section 18980.11. Requirements for Local Jurisdictions and Recycling Service Providers

(a) No later than the date the Department first approves a PRO's plan, local jurisdictions and recycling service providers shall satisfy the requirement of subdivision (a) of section 42060.5 of the Public Resources Code that their collection and recycling programs include all covered materials within the covered material categories included in the CMC list pursuant to subdivisions (c) and (d) of section 42061 of the Public Resources Code. For all purposes under the Act, the term "recycling programs" encompasses composting-related collection and processing.

(b) Covered material is considered included in a local jurisdiction or recycling service provider's collection and recycling program if the local jurisdiction or recycling service provider collects the covered material ~~and directs it to recycling at responsible end markets, either by transferring~~ transfers it to responsible end markets directly or to intermediate supply chain entities. The local jurisdiction or recycling service provider shall not be required to establish the availability of a responsible end market to ultimately recycle the covered material. However, the absence of responsible end markets shall be deemed a local condition, circumstance, or challenge rendering inclusion of the covered material in the program impracticable for purposes of subdivision (b) of section 42060.5 of the Public Resources Code and paragraph (4) of subdivision (c) of section 18980.11.1 of this chapter.

ARTICLE 13: Enforcement Oversight by the Department and Administrative Civil Penalties

Section 18980.13. Compliance Evaluation and Determination

(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 lists identified in subdivision (a) of section 42060.5 of the Public Resources Code that are not included in their collection and recycling programs.~~ Each covered material that is not included in a collection and recycling program, as required by section 42060.5, shall constitute a separate violation.

(2) ~~In addition to the exceptions provided by subdivisions (b) through (d) of Section 42060.5, a local jurisdiction shall not be required to include in their collection and recycling programs, any covered material which has not been made acceptable for recycling or composting.~~

(3) ~~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.~~

(~~24~~) Penalties for each violation shall accrue ~~annually for on each day~~ any covered material category is not included in their collection and recycling programs, except as described in sections 18980.11.1 and 18980.11.2, or unless the local jurisdiction is otherwise not required to include the covered material category in its collection and recycling programs under section 42060.5 of the Public Resources Code or paragraph (2) of this subdivision.

(5) ~~Penalties shall not accrue or be issued at a minimum until the provisions of paragraph 3 are met.~~