



KANNER & WHITELEY, L.L.C.
ATTORNEYS AT LAW

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THE RISING TIDE OF PLASTICS LITIGATION: WHAT CITIES NEED TO KNOW

Moderator:

Allan Kanner, Kanner & Whiteley, LLC

Speakers:

David Ivy-Taylor, Kanner & Whiteley, LLC

Megan Stedtfeld, Singleton Schreiber, LLP

Patrick Boyle, Center for International Environmental Law

Q&A Panel Format

- Rather than a lecture, this session was designed to be a collaborative discussion between the panelists—but also a collaborative discussion with you, the audience!
- Any and all questions, concerns, ideas, comments, and general thoughts and musings are more than welcome! Please chime in!
- Use this QR Code to submit written questions:
 - We'll have this code throughout the slides



QUESTION 1



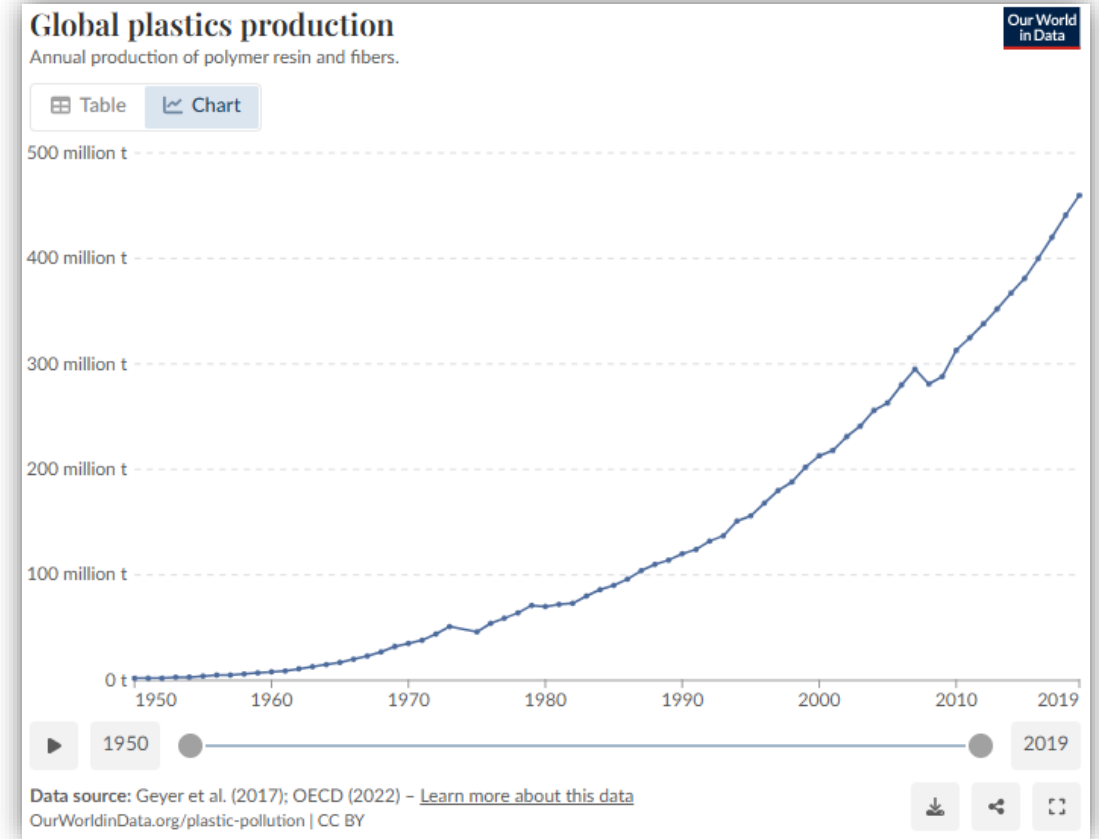
What is the
scope of the
plastic
pollution
crisis?



Since WWII, plastic production has exploded (rising 230-fold since 1950), and plastics are now ubiquitous in modern life.

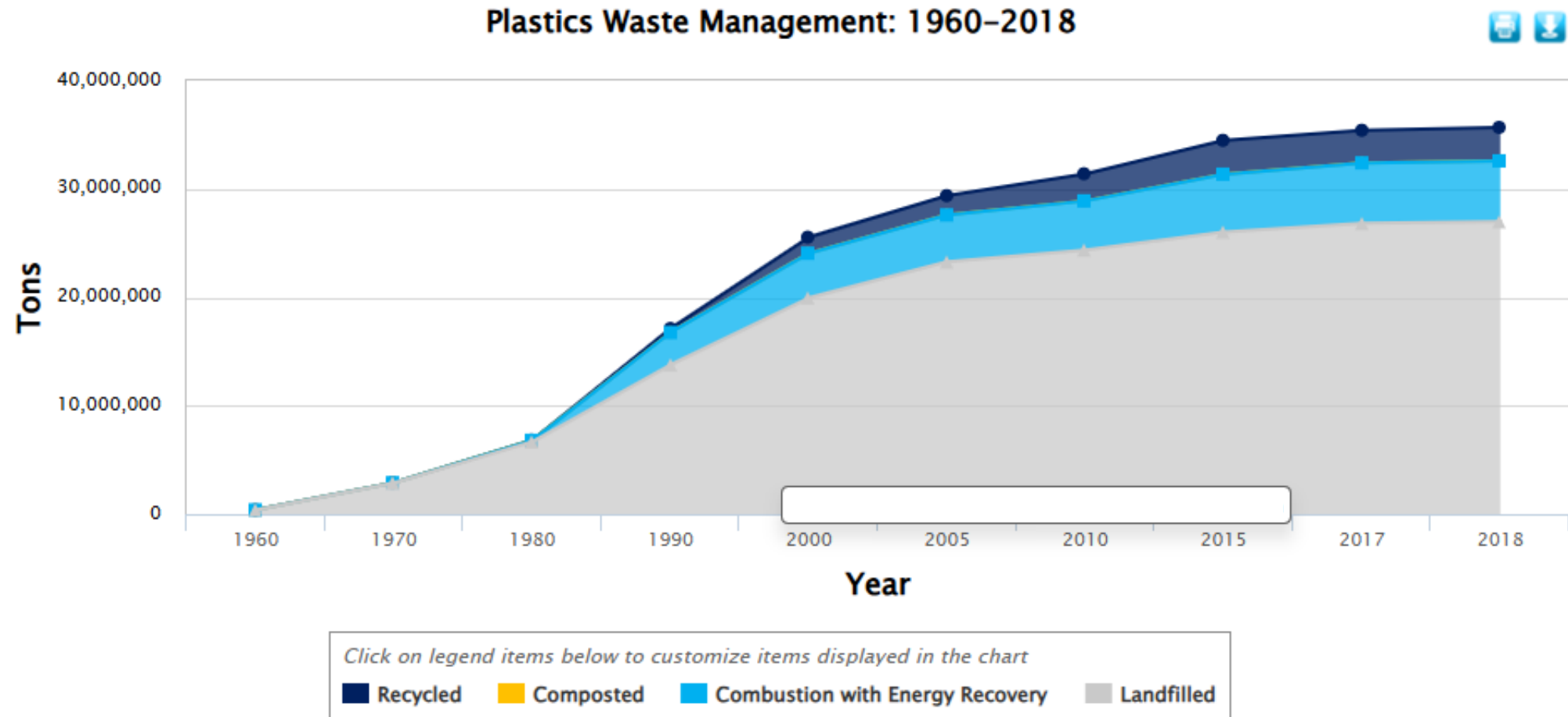
Largely due to the rise of “**single-use plastics**”—drink bottles, food containers, packaging, cigarette butts, etc.

Will worsen as petrochemical companies transition to the “green economy”



“One Word: Plastics”
(The Graduate)

Recycling Doesn't Work and Never Has



EPA, *Plastics: Material-Specific Data*, [epa.gov](https://www.epa.gov/plastics-material-specific-data)

Why Recycling Doesn't Work

- Practical Limitations:
 - Many types of plastic ineligible in most places
 - Requires extensive sorting and cleaning
 - Chemical additives in plastic
 - Flexible plastics
 - Plastic degrades when recycled
- Immovable Economic Barriers:
 - No end-market for most plastic-types
 - Virgin plastic is cheaper to produce

QUESTION 2



Why should
local
governments
care?



Financial Impact and Public Perception



- **Massive Costs:** Handling and landfilling plastics, along with cleaning waterways, has created significant financial burdens for public entities.
- Addressing **concerns of constituents** concerned about plastic waste.
- Promotion of environmental health and community safety.
- Establishing accountability for manufacturers and reducing plastic pollution.
- Dismal Recycling Rates
- Recent bans highlight the problem
- *Note:* cigarette filters are the most commonly littered item in the world

Environmental Impact of Plastic

Macroplastics (*i.e., plastic litter*)

- Harms wildlife through accidental ingestion, entanglement, and habitat alteration.
- Leaches toxic chemicals into the environment, such as PFAS.
- Incineration, a common form of disposal, results in toxic air emissions and greenhouse gases.
- Impedes organic waste decomposition, leading to increased methane emissions.
- Clogs landfills and waste disposal facilities, leading to indirect environmental impacts.

Microplastics: Plastics break down into microplastics that infiltrate ecosystems and our bodies, posing risks to wildlife and human health.

- **Pollution:** These pollutants can accumulate in food chains, leading to severe ecological and health consequences.
- **Public Health Risks:** Exposure to microplastics is linked to various health issues, raising the stakes for community safety. (“Triple Threat” = Plastics + additives + as vectors)
- **Natural Resource Damage:** Plastic pollution (both micro and macro) fouls natural resources, harming wildlife and fisheries, and degrading habitats.

QUESTION 3



What is the legal landscape around plastic pollution, and how can it help cities locally?



CA's Regulatory Approach to Plastics

- Monitoring: developing procedures to test and monitor for the presence of microplastics in drinking water (Cal. Health & Safety Code § 116376).
- Combatting Greenwashing: SB 343 truth in recycling law ensures plastic products do not falsely include “chasing arrows” or claim recyclability.
- Single-Use Restrictions:
 - SB 270 and SB 1053: limiting plastic grocery bags.
 - SB 54: reducing total single-use plastics, ensuring recyclability or compostability, and addressing end-of-life and waste management costs.

QUESTION 4



What myths has
the plastics
industry
propagated, and
what evidence do
we have of their
deception?



Industry Accountability

The industry has touted recycling as the solution to the plastic waste crisis:

Creation of the Resin Identification Code (♻️) Code system, despite pushback from environmental agencies and recyclers themselves that they are misleading

Plastic industry spent \$50 million per year marketing plastic recycling

“[A] bottle can come back as a bottle, over and over again...”

“History has shown that markets will pay top dollar for high quality post-consumer PET.”

“This is no blue-sky thinking. The proven systems are in place. The talk is over. Plastics recycling is here.”

But internally, they admit the truth:

“No doubt about it, legislation is the single most important reason why we are looking at recycling.”

“[P]urity and quality demands set for many applications preclude the use of recycled material.”

“[R]ecycling cannot be considered a permanent solid waste solution.”

The economic of plastic recycling are “virtually hopeless.”

“[W]here mechanical recycling is possible, the energy and other resources consumed outweigh the environmental gain.”



The Latest Myth: Advanced Recycling



Advanced Recycling Truths

Industry Claims	Point of Fact
A “breakthrough technology”	Proposed and rejected in the 1970s. Patented in 1978 by ExxonMobil.
Fills gaps in mechanical recycling	Subject to same limitations as mechanical recycling (e.g., cannot handle mixed or contaminated plastic waste)
Can be used to create new products	Produces an unrefined oil byproduct (plus hazardous waste) that can be used as a fossil fuel
Is economical	“Not economically feasible”; “Still fairly theoretical” (European Chemical Industry Council)
Can meet demand	All proposed facilities (few of which have been built) could only handle 1.3% of this country’s plastic waste. By 2050, will only be able to handle 7%.
Is environmentally friendly	Produces hazardous waste, and massive greenhouse gas emissions



QUESTION 5



How do you
prove damages in
these cases—and
what data should
cities begin
collecting now?



Municipalities' Damages

Direct Costs:

- Plastic waste management
- Recycling (futile)
- Landfills
- Lost revenue from plastic waste exports

Indirect Costs:

- Educational outreach programs
 - Diminution of property value (tax revenue)
 - Loss of tourism revenue
 - Health impacts on communities
 - Water Treatment
- 

Incentivize Corporate Change

Incentivize and change corporate behavior, forcing industry to internalize the cost of their businesses that are currently externalized to municipalities.

The Polluters should Pay.

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QUESTION 6



What are the key legal theories being advanced in current litigation against the plastics industry?



Theories for Litigation

Nuisance:	“Anything which is injurious to health . . . or an obstruction of the free use of property, so as to interfere with the comfortable enjoyment of life or property.” Ca. Civ. Code § 3479	Unfair Competition	“[A]ny unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising.” Bus. & Prof. Code § 17200 (the Unfair Competition Law)
Public Nuisance:	A nuisance which affects “an entire community or neighborhood, or any considerable number of persons.” Ca. Civ. Code § 3480.	Untrue or Misleading Advertising	“[A]ny statement . . . which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” Bus. & Prof. Code § 17500 (the False Advertising Law)
Product Liability (strict liability and/or negligence):	Design defect: Product not as safe as expected by an ordinary consumer when used in a reasonably foreseeable manner Failure to warn of foreseeable dangers at the time of manufacture/distribution	Environmental Representations	“It is unlawful for a person to make an untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied.” Bus. & Prof. Code § 17580.5

QUESTION 7



What are some examples of successful or pending plastic litigation and their outcomes so far?



Leading Cases

See NYU's Plastic Litigation Tracker

- *The People of the State of California [L.A. Cnty] v. Pepsico, Inc., et al.*, No. 24STCV28450 (Cal. Super. Ct., filed 2024)
- *The People of the State of California, ex rel. v. Exxon Mobil Corporation et al.*, No. CGC-24-618323 (Cal. Super. Ct., filed 2024)
- *Sierra Club, Inc. et al. v. Exxon Mobil Corporation et al.*, No. 3:24-cv-07288 (N.D. Cal., removed 2024)
- *Earth Island Institute v. Crystal Geyser Water Co., et al.*, No. 20CIV01213 (Cal. Super. Ct., filed 2020)
- *Baltimore v. PepsiCo et al.*, Case No. 24-CV-24-1003 (Cir. Ct. Baltimore City, filed 2024)
- *Baltimore v. Phillip Morris et al.*, Case No. 24-C-22-4904 (Cir. Ct. Baltimore City, filed 2022)
- *Earth Island Inst. v. Coca-Cola Co.*, No. 1:21-cv-1926 (D.C. Super. Ct., filed 2022)
- *The Last Beach Cleanup Litigations*

Sierra Club v. Exxon

The Court's Order

- *“ExxonMobil created products that it knew would harm the environment and lied about the inevitable harm by suggesting it could be mitigated through recycling.”* (Emphasis in original).
- Hinged more on manufacture/distribution than fraudulent statements: *“Exxon’s statements are merely part and parcel of a larger alleged course of action that, when viewed in totality, sufficiently states a nuisance claim. Moreover, the statements themselves are notable, not merely for what they say, but what they omit—that is, Exxon’s knowledge that the polymers it produced would never degrade and thus would inevitably create a pollution crisis.”*
- Finds “proximate cause,” a defense frequently raised by the plastic industry: *“the complaint adequately avers that Exxon foresaw the harm that has resulted from its single-use plastics business.”*
- Notes viability of product liability: *“It seems highly likely that Plaintiffs here could have pled a products liability claim on the same facts they raise to support the nuisance claim.”*

Baltimore v. Phillip Morris

The Court's Order

- Claims not preempted by state or federal law
- Claims not barred by the Master Settlement Agreement (from the Big Tobacco lawsuit), because it did not apply to municipalities, nor to any environmental claims
- Claims not barred by any statute of limitations, because the case and its goals are “governmental functions” (doctrine of “nullum tempus”)
- Finds product liability claims viable: *“ordinary consumers did not and do not expect that cigarette filters would: (a) permanently contaminate the soil and ground water . . . and (g) cost Baltimore City millions of dollars in cleanup costs.”*
- Finds nuisance claims viable: *“Pollution may be considered a public nuisance . . . Defendants, by manufacturing nonbiodegradable filtered cigarettes, contribute to the degradation and pollution of [the City’s] natural resources.”*
- Rejects industry’s argument that litterers are to blame: *“One could also conclude that smokers litter the filters on the ground because the paper like appearance leads smokers to believe it is biodegradable. . . Maryland courts have never adopted the ‘exclusive control’ rule.”*

QUESTION 8



What is the
ultimate goal—
money, reform,
or both?



Money or Reform?

- Parties across the country are engaged in plastics litigation – some seek injunctive relief, others damages.
 - Plastic pollution won't go anywhere unless the industry changes its practices: product redesign, source reduction, and environmental transparency.
 - That can happen though injunctive relief awarded by a court, but is also often motivated by civil liability, which can force the industry to internalize costs (direct and indirect) which the industry has externalized to municipalities.
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QUESTION 9



What challenges
should
municipalities
anticipate—
internally and
externally—when
pursuing
litigation?



LITIGATION CHALLENGES

- ✓ **Staff strain:** document collection, inter-departmental coordination.
- ✓ Political blowback or opposition from industry lobbying.
- ✓ Importance of early litigation readiness and internal champions.

QUESTION 10



How can local governments assess if they're good candidates for litigation?



Case Evaluation

- ✓ **Evaluate Plastic Use in City Operations**
 - Review where plastics are used/disposed across departments (parks, events, waste, procurement).
 - Pinpoint high-volume or high-cost areas.
 - ✓ **Identify Burden & Costs**
 - Track recurring cleanup, stormwater, and maintenance tied to plastics.
 - Note disproportionate impacts on certain neighborhoods or facilities.
 - ✓ Work with counsel to conduct an initial review—litigation doesn't need to be solo; coalition options exist.
- 

QUESTION 11



How can coalitions amplify municipal impact? What are best practices for coordinated efforts?



BENEFITS AND BEST PRACTICES

- ✓ **Benefits:** pooled resources, aligned messaging, shared data.
- ✓ **Examples:** opioid, fire and PFAS coalitions.
- ✓ **Critical Components:**
 - Clear MOU
 - Designated spokespersons
 - Cross-jurisdictional coordination



KANNER & WHITELEY, L.L.C.
ATTORNEYS AT LAW



Allan Kanner

a.kanner@kanner-law.com

<https://www.kanner-law.com>



David Ivy-Taylor

d.ivy-taylor@kanner-law.com

<https://www.kanner-law.com>



Megan Stedtfeld

mstedtfeld@singletonschreiber.com

<https://www.singletonschreiber.com>



Patrick Boyle

pboyle@ciel.org

<https://www.ciel.org>

Questions and/or Comments?

