June 3, 2025

Zoe Heller, Director
Department of Resource Recycling and Recovery
1001 I Street | Sacramento, CA 95814

RE: SB 54 Draft Regulations – May 2025 – *Coalition Concerns and Feedback*

Dear Director Heller,

On behalf of the undersigned organizations, we are writing to express our appreciation for CalRecycle's diligence in releasing these draft regulations, particularly given the challenging circumstances and tight timelines associated with its implementation. While we appreciate your team's commitment to efficiency and responsiveness throughout this process, we have identified several areas where the proposed regulations depart from the letter and spirit of SB 54.

As the state moves forward with this ambitious and necessary effort, the regulations must be thoughtfully and effectively designed to fulfill the law's promise. California's leadership on environmental policy has long set the standard for the nation and the world. With an economy larger than all but four countries, the state's approach to SB 54 will not only impact its nearly 40

million residents and vast economic sectors, but also serve as a bellwether for other states and nations evaluating whether to implement similar comprehensive plastic pollution reduction frameworks and shift responsibility back on the producers of plastic packaging waste.

Getting this right is about more than checking a legislative box. California has an opportunity to lead in the global effort to tackle plastic pollution, but not if vague, watered-down language subverts that very goal.

End Market Identification (§18980.4.1): Provisions around recycling technologies are inconsistent with statutory requirements

Approval of New Recycling Technologies

> *'Substantial compliance with a Permit'*[1]
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> Section 18980.4.1(B), when considered in conjunction with Section 18980.4.1(d), indicates that chemical recycling facilities generating hazardous waste that is produced and disposed of in "substantial compliance with a permit" are allowable under the regulations, disqualifying them as significant quantity hazardous waste generators. This means that these technologies are effectively automatically allowed under the regulations, no matter how much hazardous waste is produced or how severe its threat to public and environmental health is, since the litmus test for approval is solely 'substantial compliance' with a permit they would have needed to have in order to operate anyway. In effect, this creates a legally tautological requirement under which no amount of hazardous waste would be considered "significant."
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> By construing the hazardous waste provision in a manner that largely nullifies its operative force, the Department renders the Legislature's deliberate choice of language superfluous, contrary to the presumption that each word in a statute serves a purpose. The proposed interpretation contravenes the surplusage canon[2], a settled principle of statutory construction which requires that effect be given to every word and clause enacted by the Legislature, such that no portion of the statute is rendered redundant, inoperative, or devoid of meaning.

Definition of Hazardous Waste

> *Federal vs. State Definition of Hazardous Waste*[3]
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> The regulations reference the *federal* definition of hazardous waste, and not the California state definition, which is far more protective of public health and the

[1] §18980.4.1(d)(1)(B)
[2] https://www.law.uh.edu/faculty/adjunct/dstevenson/2018Spring/CANONS%20OF%20CONSTRUCTION.pdf
[3] §18980.4.1(d)(1)

environment. This problematically opens the door to the generation of hazardous wastes that are not considered federally hazardous but should otherwise be considered 'California Hazardous.' This includes more protective toxicity tests, lower thresholds for heavy metals (e.g., lead, copper, zinc), lower thresholds for ignitability, lower thresholds for reactivity and corrosion, and prohibitions on certain chemical products and pharmaceuticals.

Section 25117 of the California Health and Safety Code clearly states that "hazardous waste" means "a waste that meets any of the criteria for the identification of a hazardous waste adopted by the department pursuant to Section 25141."

The legislature has repeatedly stated, and the courts have upheld, that "it is in the interest of the health and safety of all Californians...to establish a regulatory program that is more stringent than federal law" (Health & Safety Code 25100) when it comes to hazardous waste. In the absence of other statutory direction, the Department must default to California statutory and regulatory definitions when implementing state laws, like SB 54.

Misalignment of Measurement Metrics – Risk vs. Amount

The definition of "significant amounts of hazardous waste" in Section 18980.4.1(d)(1) and Section 18980.4.1(B) is problematic. SB54 language refers to the amount of hazardous waste, not the "risk" associated with it, and these are clearly different standards. The proposed regulatory framework is clearly at odds with the SB 54 statute.

As mentioned in the letter submitted to the Governor on behalf of 23 legislators, this unlawfully shifts the standard from the production of hazardous waste (as required by the statute) to its management, which directly conflicts with the legislative intent to exclude technologies based on the generation, not governance, of hazardous waste.

Striking of 'Other Forms of Disposal'[4]

In this round of regulations, CalRecycle changed the definition of disposal in Section 18980.3.5 and deleted subsection (e), which references a CA code section that defines disposal to include "transformation" (which includes specifically listed technologies), engineered municipal waste conversion, and land disposal. Moreover, the legislature added Section 41781.4 to the Public Resources Code in 2021 to state that the "export of a mixture of plastic wastes shall not constitute diversion through recycling and shall be considered disposal." This is an area of law where specific terms like disposal carry immense contextual meaning and significance, underscoring that the use of the term must be thoughtful and intentional.

Both the technologies listed as forms of disposal and the export of mixed waste plastics have been used extensively in other jurisdictions that have implemented producer

[4] §18980.3.4 (e)

responsibility policies for plastics, and the legislature very intentionally prohibited these from being considered forms of compliance. While the statute is clear, the intentional striking of this section (especially in response to extensive lobbying from industries asking for a greater reliance on chemical recycling) will, at best, lead to significant confusion and legal challenges to the implementation of the regulation, as its deletion will inevitably be read as a knowingly intentional removal.

The department has argued that this was struck because a repetition of statute would be a violation of the "nonduplication" standard used by the Office of Administrative Law (OAL). However, according to OAL's own guidelines, "overlap or duplication is justified if information in the rulemaking record establishes that the overlap or duplication is necessary to satisfy the Clarity standard of the APA," with clarity being defined as a requirement that "the meaning of regulations will be easily understood by those persons directly affected by them."

The regulated community and technology providers have either asked for clarification on whether certain disposal technologies would count as recycling or made comments at odds with the statutory requirements at nearly every public meeting the Department and the Advisory Committee have held during the SB 54 implementation process. This makes it clear that the requirements are not "easily understood," and the regulations must clearly delineate that other forms of disposal are not eligible to count as a form of recycling.

Differential Permit Scope and Standards

Per Section 18980.4.1(B), compliance with permitting may be different in different jurisdictions, and this provision applies to end markets, which may be outside California. This would impose unequal requirements for the same technology in different jurisdictions for meeting a California requirement focused on the amount of hazardous waste generated. This would exacerbate historic waste colonialism by encouraging the siting of polluting technologies in the parts of the world with the fewest environmental protections.

Infrequently Reported Facility Level Information

The PRO approves "chemical recycling" technologies, with review by CalRecycle. The way that "chemical recycling" technologies get approved is by submitting facility-level information about hazardous waste generation (among other information) to the PRO. Assuming CalRecycle rectified other unlawful, extrastatutory provisions, it is conceivable that the current language (Section 18980.4.1(d)(4)(D)) would enable a pilot facility to submit data showing minimal hazardous waste generation, and upon approval, would be allowed for up to 5 years (AKA the window approved between approvals under the new regs). During this time, a plant could massively scale up in size and come to produce significant quantities of hazardous waste, which it may not have been doing at a sufficient threshold in its nascency to justify rejection of the recycling technology

previously. It is also not clear if the submitted information would be provided to the public, which undermines the deliberative democratic process at the core of SB 54 itself.

The regulations must be more stringent about needing to re-enter the approval process if facilities substantially increase in size, change or add technologies, or begin processing different covered material types. Further, this information must be made available to the public for transparency on the issue of costs, hazardous wastes, and climate impacts.

Language Should Reflect Unequivocal Prohibition on Chemical Recycling

Leaving the approval of recycling technologies solely to the discretion of the Producer Responsibility Organization (PRO)—as currently permitted under the draft regulations—undermines the objectivity, transparency, and environmental rigor required by SB 54. The PRO, by design, is a producer-led entity with a fiduciary and operational interest in minimizing compliance costs for its members. Granting the PRO unilateral authority to determine which technologies qualify as "recycling" creates an inherent conflict of interest that threatens to weaken the law's core requirements.

Under Public Resources Code § 42051.1, CalRecycle is directed to ensure that packaging is recyclable in practice and at scale. That determination must be grounded in science, operational evidence, and public accountability—not left to an industry-governed body with incentives to greenlight emerging technologies that may have questionable environmental outcomes, such as pyrolysis or solvent-based depolymerization.

To safeguard SB 54's credibility, all recycling technology approvals should be subject to final CalRecycle review, with decisions made during publicly noticed monthly meetings, after:

- Meaningful public comment,
- Technical vetting by independent experts, and
- Clear findings regarding environmental safety, yield efficiency, and alignment with California's waste hierarchy.

This public, science-based process ensures that "recycling" maintains its integrity, avoids regulatory capture, and reflects the law's intent to advance genuine circularity, not just chemical conversion or incineration masquerading as recycling. The baseline for a process like this should be overseen by the regulatory agency, not by the companies and industry via the PRO.

Reference to Inappropriate ISO Standards[5]

ISO 59014:2024 does not define 'recycling,' nor does it establish criteria relevant to environmental safety, GHG emissions, or human health. Its focus on material tracking

[5] §18980.4.1(d)(2)

and internal process management is wholly insufficient to serve as a proxy for SB 54's environmental justice and pollution minimization mandates. Referencing ISO 59014 misleads stakeholders into believing it aligns with California's goals when it demonstrably does not.

Staff comments during the workshop indicate that this ISO standard is intended to be a proxy for the requirement that "the department's regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts." ISO 59014:2024 does not address (or even reference) the majority of these criteria.

Furthermore, the aforementioned ISO standard does not even define recycling at all, let alone in line with the statutory definition of recycling, nor does it include a single environmental or efficiency benchmark to distinguish legitimate recycling operations from fraudulent, toxic, and climate-harming operations. Instead, the ISO proposes soft, optional, qualitative guidelines for material recovery operators to standardize their operations from a labor and circular economy aspect (e.g., recommendations on types of data to collect, and on types of policies to include) and is a purely non-binding standard.

In fact, unlike California law, this ISO standard does not consider energy recovery a form of disposal and promotes the use of a very narrow LC,A which ignores issues around toxics and human health concerns and environmental pollution.

End Market Viability is Ignored

While the regulations refer to a "viable responsible end market" as a responsible end market that is feasible and capable of being economically successful, there are no clear criteria for "viability" – especially given it's only mentioned one time in the entire draft regulatory text. The regulations must be amended to require a company proposing a new recycling end market to demonstrate a track record of viability at scale.

Manufacturers have pledged recyclability for the packaging for decades, often without anything to show for it. Recovering a material that has never been effectively recycled isn't "viable," and this needs to be explicitly addressed in the regulations to avoid intentional delay by packaging manufacturers that want to see material as long as possible, even when they know they will never hit the ultimate targets in the law.

The statute sets a clear baseline that should eliminate problematic material types *prima facie* if the market for recycling those materials is not sustainable or solvent. To this end, CalRecycle must provide further clarity on what a viable, responsible endmarket looks like relative to a non-viable one, as well as publish guidance about how the PRO should enhance or expand access to new viable endmarkets.

Absent a functional definition of 'viable responsible endmarket' in statute or the regulations, it will be impossible for the Department or the PRO to ensure that covered

material recycling is occurring in a way that prioritizes sustained investment into industries with a proven track record of success.

Categorically Excluded Materials (§18980.2): Categorical Exclusions for Covered Materials are Far Too Broad, Excluding Most Food Packaging

USDA and FDA Exclusion with Federal 'Guidance' Guarantees Circumvention[6]

Overly Broad Exclusions Stifle Market Incentives for Sustainable Innovations

As proposed, the regulations would likely exempt all food and drug packaging, including categories of products that have highly recyclable alternatives. The proposed regulations reference compliance with "rules, guidance, or other standards issued by the United States Department of Agriculture or the United States Food and Drug Administration." Not only is there some form of guidance for nearly all forms of food packaging, but this also opens the door for industry to exempt itself from all regulation by advocating for voluntary guidance documents or standards.

Staff comments during the workshop indicate that this was not the Department's intent, but significant revisions are necessary to make this requirement consistent with the statute. Any exemptions in the regulations should be based solely on whether the state is federally preempted from regulating packaging for that product category. Products that are not preempted but don't have recyclable alternatives should be evaluated on a case-by-case basis under the existing process for "unique challenges".

Broad, categorical exclusions from the scope of SB 54 beyond those allowed in the law would not only create gigantic loopholes but would also foreclose the possibility of future innovation or best practices in those sectors.

Inappropriate Exemption for Over-The-Counter Drugs

The draft regulations also substantially expand categorical exclusions to many over-the-counter medications, which is fundamentally antithetical to both the statute and the bill's legislative intent. While SB 54 *does* exclude prescriptions and medical devices, it *does not* exclude over-the-counter drugs, and was clear in the final statutory language agreed to by all parties, including the Department. Throughout the draft regulations, the Department has flip-flopped from excluding OTCs to not excluding OTCs, and now partially excluding them without a clear definitional bright line. Nothing gives CalRecycle the authority to unilaterally renegotiate this component of the statute.

The impacts of this exclusion could be devastating to the efficacy of SB 54's implementation. For instance, its broad framing might sweep in non-essential or

[6] §18980.2(a)(2)

high-waste categories like single-use thermoplastics on shampoos, lotions, and supplements, undermining the goal of driving packaging innovation. The draft regulations also do not distinguish between primary sterile contact packaging (e.g., IV bags) and tertiary or promotional plastic (e.g., blister packs in cardboard, outer sleeves, etc.), potentially undoing the statutory provisions regarding packaging types not primarily used for prescriptions and medical devices.

Require Exemption, not Exclusion

The Unique Circumstances Exemption Already Exists to Cover Edge Cases

As mentioned in the legislature's letter to the Governor, SB 54's provision regarding exemptions for products and packaging types facing 'unique challenges' provides a sufficient pathway for addressing these circumstances, particularly as it relates to food and drug producers.

SB 54 requires CalRecycle to ensure that its regulations do not come into conflict with federal packaging laws, but it does not imbue CalRecycle with the statutory authority to create class-wide exemptions simply because a producer claims that plastic packaging is 'necessary.' This is drafted so broadly that it potentially exempts all food packaging, as well as ignores that many, if not all, types of food service packaging necessary to comply with federal law are *already* recyclable or compostable.

Rather than create categorical exclusions outside of the scope of the statute, require that said item categories apply for a material or unique circumstances exemption with the Department.

Exclusion of Reusable and Refillable Packaging and Food Service Ware (§18980.2.1): Reuse and Refill Standards Regressed and Became Far Too Lax

Lack of Product Standard Floor Might Enable a New 'Thicker Plastic Bags' Problem

California's experience with so-called "reusable" plastic bags offers a cautionary precedent for why SB 54's reuse and refill criteria must be stringent, enforceable, and clearly defined.

Following the passage of SB 270 (2014) and voter approval of Proposition 67 (2016)—which banned single-use plastic carryout bags—California retailers were permitted to offer reusable plastic bags provided they met minimum durability standards (e.g., 2.25 mil thickness, 125-use durability claim, ability to carry 22 pounds). However, instead of promoting true reusability or encouraging consumers to shift to durable alternatives like cloth or canvas, many manufacturers simply increased the thickness of single-use bags, often just enough to meet the letter of the law without any realistic expectation of multiple uses.

California's plastic bag policy failure demonstrates that allowing industry self-certification, vague durability standards, or weak enforcement leads to greenwashing, not environmental progress. The thicker bag problem should be a warning: if SB 54 permits minimal or nominal reuse claims, without rigorous criteria for refill infrastructure, number-of-use thresholds, collection systems, and post-consumer accountability, it risks replicating this failure at scale across packaging types.

This regulation is far broader in scope, so there are many more opportunities for disingenuous "reuse" designed to skirt the fees and recyclability requirements of the law. To avoid the repeat of this unintended consequence, CalRecycle must adopt strict, performance-based definitions for reusable packaging, informed by lifecycle data and enforcement capacity. Reuse should not be a label—it must be a measurable, verifiable practice.

For food service ware used in a dine-in setting, the Department should evaluate reusability by whether it is washed/reused on site. It is self-evident that when a restaurant reuses cups, dishes, and flatware, further standards are likely unnecessary.

For food service ware that is used to package food for consumption off-site, a higher threshold for what is considered 'reused' must incorporate return, washing, and reintegration into the food service system. Otherwise, existing disposable food service packaging could simply be rebranded as "reusable," without meeting any meaningful benchmarks.

For consumer good packaging, producers should be required to submit verified reuse/refill take-back data as a condition of maintaining reuse/refill status. The PRO plan should also identify a clear strategy for quantifying the amount of reusable and refillable packaging that is actually reused, as well as outlining steps that the PRO is implementing to maximize these numbers (including through deposits or other incentives). Packaging cannot be considered reusable if it doesn't realistically get reused.

CalRecycle should also establish a process for adopting third-party certification requirements when they become available.

Exclusion of Certain Types of Packaging (§Section 18980.2.2): *De Minimis* Exemptions Lack Sufficient Definition, Creating a Race to the Bottom[7]

Overly Broad, Insufficient Definitional Criteria

We are deeply concerned that the '*de minimis*' exemption in § 18980.2.2(b) is drafted too broadly and lacks enforceable criteria. This invites producers to self-classify various

[7] §Section 18980.2.2(b)

problematic plastic elements, like films, foils, and liners, as exempt, undermining the recyclability and source reduction objectives of SB 54. Without firm thresholds and objective definitions, this provision incentivizes strategic fragmentation of packaging and opens a backdoor for widespread noncompliance.

While we recognize the need to reasonably exempt incidental, non-material elements of packaging from full regulatory burdens, the current proposal lacks the specificity and enforceability criteria necessary to prevent abuse. In effect, this exemption risks encouraging a "race to the bottom" in packaging design, wherein producers strategically fragment packaging into "non-countable" subcomponents—undermining the recyclability goals, source reduction targets, and producer responsibility requirements established under Public Resources Code § 42050(b) and § 42067.

The current exemption relies on vague standards such as:

- Components must not "prevent recyclability,"
- Use must not be "inconsistent with the state's goals," and
- Components must not create a "significant effect on the environment."

These terms are open to broad interpretation and inconsistent enforcement given the lack of a definitional bright line. Without objective thresholds, producers may claim *de minimis* status for a wide range of problematic plastic items, including:

- Metallized foil layers,
- Multilayer films and barrier coatings,
- Shrink labels or adhesive liners,
- Small detachable caps or lids.

The inclusion of plastic components—regardless of size—that enter the waste stream and contribute to MRF contamination is in direct conflict with PRC § 42050(b), which requires that packaging be "recyclable or compostable in practice and at scale."

Moreover, plastic coatings in food service might not affect recyclability, but once soiled, the food service ware is no longer recyclable and will likely end up in the compost stream, where it will be a contaminant. For this reason, it is important that de minimus exemptions for food service ware not hinder *both* recyclability and compostability (instead of either/or).

Problematic 'Detachable Component' Element[8]

Specifically, this risks misclassification of multi-component packaging with non-detachable elements. A component can be considered *de minimis* if it is not independently detachable, even if it contributes to contamination in recycling systems (e.g., labels, coatings, inks).

[8] §Section 18980.2.2(b)(1)(i)

Labels, adhesives, and cap liners routinely cause recycling stream contamination, yet could be exempted as "non-detachable" *de minimis* elements.

This contradicts PRC § 42050(b), which mandates recyclability in practice, not theoretical recyclability, ignoring contamination impacts.

Lack of Procedural Transparency

The current version permits producers or PROs to submit exemption requests for *de minimis* designation with no clear public notice, stakeholder input, or third-party review process. Even with the Department's intent to publish approved components online, the lack of a transparent, public process could result in politically motivated, but not legally sound, exemptions. All exemptions should be handled through an open process with input from both the advisory committee and members of the public.

These regulations represent a pivotal moment in California's decades-long battle against plastic pollution—a fight defined by perseverance and sustained effort from countless stakeholders and communities dedicated to environmental protection and public health. Getting these regulations right is critical: the success or failure of SB 54 will set a national precedent and profoundly shape California's environmental legacy.

The stakes could not be higher. We have a singular opportunity to shift California toward a truly sustainable, circular economy and dramatically reduce plastic waste and pollution. California deserves regulations that fully reflect the bold vision of SB 54.

Sincerely,

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